

## 1. Entry into force, Application and Modifications

- i The present General Terms and Conditions of Service („GTC“) shall apply to the agreement made between the customer ("Customer") and Bühler ("Agreement") as far as the parties have made no other written agreements in individual cases, irrespective of whether an order is placed in one of Bühler's online-shops or by an offline transaction. Any Customer's conditions shall not be binding, except if expressly accepted by Bühler in writing.
- ii The Agreement shall only be effective upon Bühler's written confirmation of Customer's order ("Order Confirmation") and shall consist of the Order Confirmation, the present GTC as well as any Annexes attached thereto.
- iii Any addition to or modifications of any provision of the present GTC, shall only be binding upon the parties if executed in writing and duly signed by both parties.

## 2. Scope

- i The scope of any service to be provided by Bühler might it be for advisory, supervisory, maintenance, training, consultation or other services are exhaustively specified in these GTC and the Order Confirmation ("Services"). Bühler may unilaterally make changes to improve the Services provided such changes do not result in an increase of the Fee.
- ii For the avoidance of doubt the delivery of any machines, components, spare parts or other equipment is exclusively subject to separate agreement to be concluded between the parties.
- iii Bühler undertakes to provide the Services in the recognized state-of-the-art manner at the time when the Agreement is concluded by qualified personnel or third party subcontractors ("Delegate") and in accordance with all applicable laws and regulations.
- iv Any further warranty shall be excluded to the extent permitted under applicable law.
- v Bühler may perform the Services at its choice on the premises of the Customer or in its own workshops.

## 3. Provision of Services

- i The start of the Services shall be subject to the availability of the necessary planned staff, the travel possibilities, the issuance of the necessary visa and permits as well as Customer's due and timely performance of all of its obligations under these GTC.
- ii Bühler will provide a service report to the Customer after completion of the Services, or in time intervals as agreed in the Order Confirmation.
- iii Bühler reserves all rights to the drawings and technical documents delivered in connection with the provision of the Services. The drawings and technical documents shall not be made available to third parties nor used for purposes other than those for which they were provided.
- iv Except if expressly otherwise agreed in writing, the Delegates will solely perform Services assigned by Bühler. If a third party assignment has been approved in writing by Bühler such work shall be at the full responsibility of the Customer and invoiced additionally.

## 4. Fee

- i Subject to an explicit agreed lump-sum payment the fee for the Services shall be calculated based on time and material spent at the rates set forth in the Order Confirmation ("Fee").
- ii The Fee shall be deemed to be net without any deduction whatsoever. Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the Customer.
- iii Likewise, the Customer shall bear all value-added taxes, sales taxes, profit taxes, income taxes, withholding taxes, social contributions, registration fees, as well as all other kinds of taxes, fees, levies, custom duties and the like which are levied against Bühler, its related companies, its factories or its personnel in connection with the Services.
- iv In case of extraordinary conditions (e.g. difficult working conditions, shift work etc), Bühler is entitled to invoice to the Customer appropriate additional compensation to be determined by Bühler on the basis of fair market price.

## 5. Travel, transport and other Service costs

- i Travelling time as well as a reasonable period for preparation and follow-up time shall also be regarded as working time.
- ii Travelling time is understood to be the entire time the Delegate spends for the journey to and from the place of performance of the Services (e.g. effective travelling, waiting, hand-over/move-in to/move-out of accommodation facilities time including additional costs for indirect travel routes or extraordinary means of transportation to reduce travel and/or waiting risks) and will be invoiced as follows:
  - (a) Rail journeys: a second class railway ticket for delegations within Austria; a first class railway ticket for delegations abroad;
  - (b) Car journeys: an appropriate fee on a kilometre basis; and
  - (c) Air travels: an economy class ticket and in exceptional cases (e.g. special circumstances, flying time exceeding eight hours, etc.) a business class ticket.
- iii Bühler invoices to Customer the costs for the transport of luggage, tools and other materials as well as other transportation costs, if any.
- iv Subsistence expenses for the Delegates, including accommodation, board, both as best as possible in conformity with European standard of living and allowances for daily expenses shall be paid additionally by the Customer.
- v Any other extra costs resulting from the delegation such as issuance of visa, vaccinations, pharmaceuticals, special equipment necessary due to climatic conditions, etc. also need to be borne by the Customer.

## 6. Terms of payment

- i As far as not deviating agreed in the Order Confirmation, the Customer shall make payments without any deduction for cash discounts, expenses, taxes, levies, fees, duties and the like within 30 (thirty) days after the date of the invoice. Customer's payment obligation are fulfilled as soon as the total Fee has been credited in full to Bühler's bank account indicated in the respective invoice. Except with Bühler's prior written approval the Customer must not retain payments or set-off any payments against counter-claims.
- ii The Customer shall, upon Bühler's request, make an advance payment or provide a security (e.g. bank guarantee, letter of credit) in the amount of the estimated costs. In case an advance payment or security is agreed, Bühler is under no obligation to start with the Services until the advance payment or security is received.
- iii Without prejudice to any other legal right of Bühler, if the Customer, for any reason whatsoever, is overdue with any payment, or if Bühler is, due to the circumstances occurring since entering into the Agreement, seriously concerned to not receive payments in total or in due time, Bühler is entitled to suspend the further performance of the Services until new, for Bühler acceptable payment and delivery terms, are agreed and Bühler has received satisfactory securities within a reasonable period of time. If no agreement is found and/or no securities are provided, Bühler is entitled to terminate the Agreement and to claim damages.
- iv With effect from the agreed due date until receipt of the outstanding payment, the Customer shall, without additional reminder, pay interest on the outstanding amount at a rate of 5 % over the 12-months-LIBOR, per annum, for the contractual reference currency valid at the due date plus the agreed late payment interest. In case the relevant LIBOR is negative, a base floor rate of 0.0% shall apply. The foregoing shall be without prejudice to any other right of Bühler described in these GTC. Payment of default interest does not release the Customer from its payment obligation.

## 7. Working Time

- i Regular working time of the Delegate amounts to 40 (forty) hours per week from Monday to Friday between 6.00 a.m. and 8.00 p.m. but not more than 10 hours per day. Any Services outside regular working time are subject to Bühler's prior written approval.
- ii Overtime will be charged to the Customer at the rates in accordance with clause 4 and a supplement as defined hereinafter:
  - (a) Supplement of 25% for Services performed within the regular working time but exceeding 40 hours per week or 10 hours per day;
  - (b) Supplement of 50% for Services performed on Saturdays or night work from 8.00 p.m. to 6.00 a.m.; and
  - (c) Supplement of 75% for Services performed on Sundays and public holidays at the place of performance (from midnight to midnight).
- iii In case the Delegate is to work on two consecutive weekends, he shall be allowed to claim a corresponding amount of days off during the following week, for which the normal subsistence expenses shall be paid.
- iv If due to reasons not attributable to Bühler the actual daily working time has to be shorter than the agreed regular working time, Bühler is entitled to charge the full agreed regular working time to the Customer.
- v If, due to any reason not attributable to Bühler, Services cannot be performed or Delegate is retained on Customer's site after termination of the Services, all costs resulting therefrom shall be borne by the Customer. If circumstances are hindering or rendering the performance of the Services impossible at the agreed time, Customer shall immediately inform Bühler in writing and take all reasonable measures to avoid or mitigate any possible damages.
- vi Both parties are entitled to suspend or cause suspension of the Services in case that events beyond the will and control of the parties, which were unforeseeable at the time of conclusion of the Agreement such as, in particular, fire, explosion, natural catastrophes (e.g. earthquake, flood, etc.), epidemics, mobilization, confiscation, war (declared or not), acts of piracy, riots, embargoes, boycott, lack of means of transportation, etc. render the performance of the Services impossible or unreasonably difficult ("Force Majeure"). Bühler is also entitled to suspend the Services in case one of its subcontractors is affected by Force Majeure. Neither party shall be deemed to be in default of its contractual obligations whilst performance thereof is prevented by Force Majeure and the agreed timetable shall be extended accordingly by a period equal to that during which the Force Majeure contingencies and their effects have occurred. Each party shall fulfill its obligations insofar as they have become due before the occurrence of Force Majeure. In case of Force Majeure lasting for more than 6 (six) consecutive months, each party is entitled to terminate the Agreement by written notice to the other party, whereby the parties shall mutually agree on the allocation of the accrued costs. No liquidated damages or any indemnity shall be claimed by either party in case of Force Majeure. However, the Customer shall pay any part of the Services, which, but for such delay, have already been rendered by Bühler.

## 8. Undertakings of the Customer

- i As far as the Services are provided on Customer's side the Customer undertakes and is responsible to take all necessary measures to prevent accidents or damages, guarantee safe access to the place where the Services are rendered, while ensuring at all times Bühler's minimum occupational health and safety requirements, which can be found under [www.buhlergroup.com](http://www.buhlergroup.com). Consequently Customer is fully responsible for all accidents, damages caused or influenced by inadequate safety conditions.

- ii As far as the Services are not performed on Customer's side the Customer is responsible for the disassembly, transportation and assembly of the products.
- iii The Customer shall provide, within due time and at its own cost, the necessary assistant staff in the quantity and with the qualifications necessary for the performance of the Services and is responsible to adequately insure them according to the applicable law. The Customer is fully liable for all acts and/or omissions of its assistant staff, or other third persons not engaged by Bühler, even though Bühler might have the overall responsibility for the Services. The Customer ensures that the assistant staff adheres at all time with Bühler's or Delegate's instructions.
- iv As far as not deviating agreed in the Order Confirmation the Customer shall provide Bühler in due time and at its costs with the necessary tools and materials necessary for the provision of the Services (e.g. lifting tools, ropes, scaffoldings, workbenches, welding equipment, lubrication, plaster, foundations, power, water, other operating resources).
- v The Customer shall make available to Bühler suitable storage room for the safe and separate storage of equipment, tools and/or materials.
- vi As far as not explicitly deviating agreed in the Order Confirmation, the Customer is responsible to procure the needed spare parts in due time and at its cost to enable Bühler to provide the Services.
- vii Any necessary residence, working and/or other governmental permits (in particular for overtime, night and Sunday work) as well as any required technical documentation shall be organized by the Customer within due time and at its own cost.
- viii The Customer undertakes to immediately inform Bühler of any exceptional circumstances or special requirements which need to be taken into consideration while providing the Services.
- ix In case in accordance with local applicable law additional insurance for illness and/or accident for the Delegate compared to the requirement under Austrian law is necessary the Customer undertakes to inform Bühler in advance in writing.

**9. Customer's delay**

- i If the Customer fails to duly perform any of its obligation under these GTC in time Bühler may (a) suspend in whole or in part its performance, (b) choose at its own discretion to carry out or employ a third party to carry out Customer's obligations, or otherwise take such measures as under the circumstances are appropriate to avoid or alleviate the effect of Customer's delay, and/or (c) inform Customer in writing of such failure and ask it to fulfil its obligation within a reasonable period of time but in no case longer than 14 (fourteen) calendar days.
- ii Customer shall reimburse Bühler for any damages, costs and/or expenses, which are reasonably incurred by Bühler as a result of Customer's failure to duly fulfil its contractual obligations.

**10. Exclusion and Limitation of Bühler's Liability**

- i Claims for compensation for damages, irrespective of the underlying legal basis and/or ground, out of or in connection with the Agreement, are exhaustively covered by these GTC. Any claim not originating from the scope of the Agreement is expressly precluded. Bühler shall solely be liable for direct damages to Customer's property intentionally or grossly negligently caused during the preparation or performance of the Services.
- ii Irrespective of this, Bühler shall only be liable for typical and foreseeable damage. Liability for damages out of or in relation to reduction of price, termination of or withdrawal from the Agreement, loss of production, loss of use, loss of orders, recall costs, loss of profit and other indirect, direct or consequential damage are expressly excluded.
- iii Furthermore liability out of or in relation to the Agreement is in any case whatsoever limited to the total Fee paid by the Customer under the Agreement.
- iv Subject to clause 13, liability is also excluded for compensation claims from third parties against the Customer for infringements of intellectual property rights.
- v This exclusion of Bühler's liability does not apply to unlawful intent, gross negligence, negligent harm to life, body, health, or as far as it is otherwise contrary to compulsory law.
- vi The limitation or exclusion of liability extends to Bühler as well as any person employed or appointed by Bühler to perform any contractual obligation under the Agreement.

**11. Complaints**

- i Any complaints concerning the Services or Delegate's behaviour shall be immediately notified to Bühler in writing, stating the reason for such complaint.

**12. Compliance**

- i In exercising its rights and performing its obligations under this GTC Customer, its subsidiaries and any of its respective businesses or employees shall comply with all applicable laws, regulations and orders, including but not limited those related to anti-corruption and export controls (understood as and including but not limited to the transfer of controlled products, technologies or services for the development, production, use or stockpiling of nuclear, chemical, or biological weapons or missiles) imposed by the United States of America (U.S.), European Union (EU), United Kingdom (UK), Switzerland and/or any other countries.

**13. Data Protection**

- i The Customer acknowledges and agrees that Bühler may have access to personal data (i.e. information relating to identified or identifiable nat-

ural person for example names, functions or contact details) of the Customer's employees, representatives, consultants, agents, contractors and other personnel. Such personal data may be processed by or on behalf of Bühler in accordance with Bühler's privacy policy, available at [www.buhlergroup.com/privacy](http://www.buhlergroup.com/privacy) in order to enter into and perform any rights and/or obligation under these GTC as well as related purposes, including but not limited to order and payment processing, tolls and import/export management, Customer relationship management, business accounting and general administrative purposes. The parties agree that they act as independent controllers (as defined under applicable law) in relation to personal data processed in accordance with this clause. The Customer further undertakes to inform its personnel of whom Bühler is entitled to process personal data and obtain valid consent (if applicable) thereby especially pointing out Bühler's right to transfer personal data to third parties or third parties abroad while ensuring a comparable data protection level as described in Bühler's privacy policy, in accordance with applicable law.

**14. Termination by Bühler**

- i If unforeseen events considerably change the economic effect or the content of the Services, or if the performance subsequently becomes impossible, the Agreement shall be adopted accordingly. If such adaptation is economically not justifiable, Bühler shall be entitled to terminate the Agreement or the parts affected thereby. Bühler shall immediately after recognition of the consequences of the event, inform the Customer. In case of termination Bühler shall be entitled to payment of those parts of the Services which have already been performed. Claims for damages from the Customer because of such termination are excluded.

**15. Severability**

- i If any provision of the Agreement shall be found to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the other provisions of the Agreement. The parties shall substitute any invalid or unenforceable provision with provision that achieves to the greatest extent possible the same legal and commercial objectives.

**16. Assignment**

- i Neither party may assign or otherwise transfer any right or obligation under the Agreement without prior written consent of the other party.
- ii Bühler may, however, transfer and/or delegate the exercise of its rights and/or the performance of its obligations under the Agreement to another affiliated company that it deems fit for the intended purpose.
- iii All terms, provisions and conditions of the Agreement are binding upon and inure to the benefit of the parties and their respective successors.

**17. Jurisdiction/applicable law**

- i The place of jurisdiction shall be exclusively Vienna/Austria. The applicable law shall be exclusively substantive Austrian law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (1980).

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