

Number	Designation	Doc. No. old
UA_900_02_005	Procurement terms and conditions	-

Category	Type	Area
Instruction	Company instruction	Merchandise management

Area of application	Glossary term(s)
02 - BGH Edelstahlwerke GmbH 03 - BGH Edelstahl Freital GmbH 05 - BGH Edelstahl Lugau GmbH 06 - SEW BVG GmbH & Co. 07 - BGH Edelstahl Siegen GmbH 08 - RPS Rohstoff-, Press- und Schneidbetrieb Siegen GmbH 09 - BGH Edelstahl Lippendorf GmbH 10 - SEW Edelstahl Verwaltungs GmbH 16 - BGH SL-Stahl GmbH 17 - BGH Feindraht GmbH 19 - Technische Ausbildung Freital GmbH	-

Other applicable documents
<input type="checkbox"/> Procurement

Appendix
-

Vers.	Created	on	Formal check	on	Content check	on
1	Kiehne, Claus	28/04/2020	Kleinschmidt, David	29/04/2020	Kohl, Marcus	29/04/2020

Released	on
Kohlschein, Gunnar	12/05/2020

Version: 04/2020

## Procurement terms and conditions

applicable to  
BGH Edelstahlwerke GmbH  
BGH Edelstahl Freital GmbH  
BGH Edelstahl Lugau GmbH  
BGH Feindraht GmbH  
BGH Edelstahl Lippendorf GmbH  
BGH Edelstahl Siegen GmbH  
BGH SL- Stahl GmbH  
RPS Rohstoff-, Press- und Schneidbetrieb Siegen GmbH  
SEW Beteiligungs- und Verwaltungs- GmbH & Co  
SEW Edelstahl Verwaltungs- GmbH  
Technische Ausbildung Freital GmbH

### 1. General information

- 1.1. All our orders are subject to our procurement terms and conditions exclusively. The incorporation of the supplier's General Business Terms and Conditions, in particular sales and delivery conditions, is expressly precluded. They shall not become part of the contract.
- 1.2. Verbal or telephone orders only become legally binding when our written and signed order has been issued.
- 1.3. Documents used by the Contractor (= Supplier) in business transactions with us (the Customer) must include: Order number, plant, delivery address/point of receipt, complete article text/object designation, quantities and units of measure as well as the VAT REG. No.
- 1.4. Oral agreements after conclusion of the contract, in particular subsequent amendments and supplements to our procurement terms and conditions, as well as collateral agreements of any kind, also require our written confirmation to be effective.
- 1.5. If the supplier does not accept the order within two weeks of receipt, we shall be entitled to revoke it. Consignment delivery commitments become binding if the supplier does not object within two working days of receipt.

### 2. Prices

- 2.1. The agreed prices are fixed prices and include freight and packaging to our delivery address/point of receipt, unless other-wise expressly stipulated (freight costs shall not be paid). Cost estimates are non-binding, the preparation thereof remains free of charge for the Customer, unless expressly agreed otherwise. Freight charges and additional costs shall not be paid. Packaging shall only be paid if expressly agreed.
- 2.2. The dimensions, weights and quantities determined by us are decisive for payment.

### 3. Object of delivery

- 3.1. Our order shall be conclusive for the content and scope of the delivery.
- 3.2. The drawings, descriptions, etc. belonging to the order are binding for the supplier, but they have to be checked for discrepancies and we have to be informed immediately about detected or suspected errors. The supplier shall remain solely responsible for drawings, plans and calculations prepared by them even if they have been approved by us.
- 3.3. If no further requirements are specified in the order, the delivery items shall be of commercially customary quality and, if DIN, VDI, DVGW or equivalent standards exist, shall be delivered in accordance with them. In any case, the delivery items are to be manufactured and equipped in such a way that they comply with the statutory provisions applicable on the day of delivery at the place of performance, in particular with regard to technical equipment, dangerous working materials, accident prevention, emission protection and workplace protection, as well as with the established ergonomic findings. Portable electrical equipment and electrical installation material must be manufactured in accordance with VDE regulations. The products which can be marked must be tested according to VDE and bear the VDE test mark permanently.
- 3.4. For the determination of weight, the incoming weights determined on our factory scales shall apply. If weighing is not possible on our premises, the weights determined by the railway authorities as documented on the consignment note or, in the case of delivery by lorry, the weights determined by a public weighbridge shall apply. If weighing of the delivery item is not possible, the supplier must provide evidence of the construction weight.

### 4. Scope of performance

- 4.1. The scope of performance shall include, but is not limited to, the transfer by the Contractor to the Customer of the ownership of all technical documents (also for subContractors), as well as of other documents required for new production, maintenance and operation. These technical documents must be written in German and in accordance with the international SI system of units;
- 4.2. All rights of use which are necessary for the use of the deliveries and services by the Customer or third parties, taking into account eventual patents, supplementary protection certificates, trademarks and utility models, shall be transferred to the Customer;

- 4.3. The Customer shall be given the unrestricted authorization to carry out repairs of the accepted service and to make changes to it by themselves or to have them carried out by third parties.
- 4.4. If the agreed scope of performance is to be deviated from, the Contractor shall only be entitled to additional claims or changes to deadlines if a corresponding written supplementary agreement has been made prior to execution.
- 4.5. The ordered quantities are binding. In the event of excess deliveries, the Customer is entitled to reject these at the Contractor's expense.

## 5. Delivery

- 5.1. Deliveries must be made at the delivery address/point of receipt or at the shipping address stated in our order, unless otherwise agreed. If a price "ex works" or "ex warehouse" has been agreed, the Customer shall only pay the most advantageous freight costs.
- 5.2. The specified shipping addresses must be observed. Delivery to a point of receipt other than the point of receipt designated by the Customer does not result in a transfer of risk for the Contractor, even if this point accepts the delivery. The Contractor shall bear the additional costs incurred by the Customer as a result of delivery to a place other than the agreed place of receipt.
- 5.3. Partial deliveries must be identified as such. Each delivery must be accompanied by three copies of verifiable delivery notes. They must contain our order number, the quantities and the exact designation of the goods. In addition, in the case of direct deliveries, a detailed dispatch note or copy of the delivery note must be sent to us in good time. We are not obliged to accept partial or excess deliveries that have not been expressly agreed. The same applies if goods are delivered before the agreed delivery date. If necessary, we are entitled to return the goods at the supplier's expense and risk, or to store them with third parties.
- 5.4. Insofar as the Contractor is entitled to the return of the packaging necessary for the delivery, the delivery documents must indicate this clearly. If this is not indicated, the Customer shall dispose of it at the Contractor's expense; in this case, the Contractor's claim for the return of the packaging shall expire.
- 5.5. The storage of objects required for the provision of services on the Customer's premises may only take place in allocated storage areas. The Contractor shall bear full responsibility and risk for these objects.
- 5.6. During transport, statutory regulations must be observed, in particular the provisions of the law on the transport of dangerous goods according to the applicable dangerous goods regulations, including the respective annexes and appendices.
- 5.7. The declaration of the goods in the consignment notes must be made in accordance with the currently valid railway regulations in the case of shipment by rail. Costs and damages resulting from incorrect or omitted declarations shall be borne by the service provider.
- 5.8. The service provider must have the receipt of consignments confirmed in writing by the delivery address/point of receipt specified in the order.

## 6. Delivery Time

The agreed delivery dates and delivery periods are binding. The delivery time shall be deemed to have been met if the delivery is available to us at our plant on the agreed date or at the specially agreed delivery address/point of receipt after confirmation of acceptance by the person authorised to receive the goods. Delays in delivery which nevertheless occur must be notified to us immediately after they become known and the earliest possible delivery date must be indicated. Failure to comply with agreed delivery periods and delivery dates entitles us to withdraw from the contract and to claim damages after setting a grace period and giving appropriate notice. The latter also applies if we have accepted late deliveries without reservation. The aforementioned grace period is not required if the delivery date is agreed to be "fixed". The aforementioned right of withdrawal applies irrespective of whether the supplier is responsible for the failure to meet the delivery deadline, e.g. in the event of non-delivery due to force majeure, strike, lockout, etc.

## 7. Termination

- 7.1. The Customer is entitled to terminate the contract in whole or in part without giving reasons. In such a case, they shall be obliged to pay for all deliveries and/or services rendered up to that point and to pay appropriate remuneration for procured materials and work performed; in addition, § 648, p.2, 2 first half of the sentence of the German Civil Code (BGB) shall apply in this case. Further claims by the Contractor are excluded.
- 7.2. The Customer is also entitled to terminate the contract if, among other things, insolvency proceedings are filed for the Contractor's assets or the Contractor suspends payments. The Customer has the right to take over material and/or semi-finished products, including any special equipment, at reasonable conditions.

## 8. Warranty, notice of defects and liability

- 8.1. The supplier shall be responsible for ensuring that their deliveries comply with the recognised rules of technology and the statutory regulations / e.g. of occupational safety and environmental protection, and that they have the contractually agreed characteristics. Furthermore, they shall be liable for compliance with the quality, condition, dimensions, design, technical construction and completeness of the goods delivered by them, as well as for the specified or agreed performance.
- 8.2. In the event of a defective delivery or service, we shall be entitled to enforce the statutory claims for defects.
- 8.3. In urgent cases, or if the supplier does not fulfil their obligations for subsequent performance immediately after our relevant request, we are entitled to repair or replace defective parts at their expense and to the remedy of the associated damage.
- 8.4. Claims for material defects shall be subject to a statutory period of limitation. For the same period of time, the supplier shall as-

sume the unlimited guarantee for the contractual conformity of the goods. For a period of six months after transfer of risk, the supplier shall bear the burden of proof that the goods were free of defects at the time of the transfer of risk.

- 8.5. For parts of the delivery which have been repaired or overhauled within the limitation period of our claims for defects, the limitation period shall resume at the time when the supplier has completely fulfilled our claims for remedial action performance.
- 8.6. In the case that we incur costs as a result of the defective performance of the contractual object, in particular transport, labour, material costs or costs for an incoming goods inspection exceeding the usual scope, these shall borne by the supplier.
- 8.7. If we take back products manufactured and/or sold by us as a result of the inadequacy of the contract object delivered by the supplier, or if the purchase price was reduced affecting us as a result, or if claims were otherwise made against us because of this, we reserve the right of recourse against the supplier, then, the otherwise required deadline for claims of defects need not be establish with respect to our rights.
- 8.8. Notifications of defects shall be deemed to have been made in good time within the meaning of § 377 of the German Commercial Code (HGB) if the supplier is notified of obvious defects within 3 weeks of their detection. In the case of hidden defects, a period of at least 6 months from delivery shall apply.
- 8.9. In the event that claims are made against us on the basis of product liability, the supplier is obliged to release us from such claims if and to the extent that the damage was caused by a defect in the contractual object delivered by the supplier. In cases of fault-based liability, however, this shall only apply if the supplier is at fault. Insofar as the cause of the damage lies within the supplier's area of responsibility, they shall bear the burden of proof in this respect. In such cases, the supplier shall bear all costs and expenses, including the costs of any legal action or recall campaign. In all other respects, the statutory provisions shall apply. The Customer assumes that the supplier maintains a liability insurance with a coverage of at least € 3 million per loss event for property damage and financial loss, lump sum, unlimited for personal injury. Further claims for damages by the Customer remain unaffected by this. The supplier shall provide evidence of this insurance to the Customer upon request.

## 9. Third-party rights

The supplier shall provide a full guarantee that the delivery or use of the items to be delivered does not infringe any third-party industrial property rights or that claims by third parties against us for infringement of rights are not enforced. In the event of an infringement of third-party rights, we shall be entitled to claim compensation from the supplier for the damage incurred by us, irrespective of the supplier's fault.

## 10. Production tests / final inspections

- 10.1. We reserve the right, during production and before delivery, to check the quality of the material used, the accuracy of dimensions and quantities and other quality aspects of the parts produced, as well as compliance with the other provisions of the order at the supplier's, and their suppliers', plant.
- 10.2. If we reserve the right to carry out a final inspection of the completed delivery item at the supplier's plant by ourselves and/or by a third party commissioned by us, we and the commissioned third party must be notified in writing 14 days in advance of the readiness for the final inspection, unless a different arrangement has been agreed. The material costs for production inspection and final inspection shall be borne by the supplier.
- 10.3. If we have stipulated that the final inspection of the completed delivery item be carried out by a third party, the supplier shall arrange for the final inspection by the third party free of charge for us and shall forward the inspection result to us without delay, at the latest with the shipping documents.
- 10.4. The production tests and the final inspection do not release the supplier from their fulfilment and warranty obligations in accordance with the aforementioned section 8.

## 11. Drawings / Models / Tools / Standards / Specification

- 11.1. Drawings, models, tools, production documents, etc., which we provide the supplier with for the manufacture of the goods to be delivered to us, may not be used for other purposes, copied or handed over to third parties. They shall remain our property and must be returned to us immediately, and without request, after completion of the order. If the production documents are used by the supplier or by third parties without authorisation, the supplier shall pay a contractual penalty for the amount of the sales price of the items produced according to the documents, subject to the assertion of higher claims for damages. This obligation is passed on by the supplier to subcontractors in the same way as orders are placed.
- 11.2. Products which have been manufactured according to documents drafted by us, or according to our specifications or with our tools or tools modelled thereon, may neither be used by the supplier themselves nor offered or delivered to third parties.
- 11.3. Tools which we have lent to the supplier are handled with care and stored accurately by the supplier and kept ready for use in accordance with the latest drawings. The tools are to be returned to us immediately on request. The supplier shall insure the tools against fire, theft and other damage at their own expense.
- 11.4. If no date of issue/revision number is given in the standards/ specifications/drawings quoted, the most recent edition shall apply. With your delivery, we shall receive the safety data sheet completed by you for all products in accordance with the REACH Regulation (EC) No. 1907/2006 ( Annex II, last amended by Regulation (EU) 2015/830) and TRGS 220 in German. In case of changes/additions we shall receive the most recent documents without this being requested.

## 12. Transfer of risk and ownership

The risk shall be transferred to us as soon as the goods have been received in our plant and have been properly handed over to the responsible acceptance points. The Customer does not recognise any simple or extended reservations of title.

**13. Performance of work**

Persons who carry out work on the plant premises in fulfilment of the contract must observe the regulations on occupational health and safety as well as on security at work. Liability for accidents that occur to these persons on the plant premises is excluded, unless they are caused by intentional or grossly negligent breach of duty by our legal representatives or vicarious agents.

**14. Billing, payment, offsetting**

- 14.1. All invoices shall be submitted to us in duplicate, separately for each order, quoting our order number. Invoices shall not be deemed to be an order confirmation at the same time.
- 14.2. Payment is made as agreed. A delivery made before the agreed date shall not affect the payment period bound to this date.
- 14.3. In modification of the legal provisions, default of payment requires the receipt of a reminder by the Customer.
- 14.4. The Customer is entitled to offset the claims, which the Contractor is entitled to against the Customer, against all claims which the BGH Group is entitled to against the Contractor at the time of offsetting.

**15. Place of jurisdiction and applicable law**

- 15.1. The place of jurisdiction for deliveries and payments, as well as all other obligations arising from the contract, is exclusively the location of the Customer's place of business.
- 15.2. The legal relationship between the supplier and us shall be governed exclusively by German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

**16. Severability clause**

Any unforceability of any of the above terms and conditions shall not affect the validity of the remaining terms and conditions.