

BRUSA HyPower AG – Langäulistrasse 60 – CH-9470 Buchs

Terms and Conditions of Purchase

(Version April 2023)

1 General

- 1.1 Any deliveries and services of BRUSA HyPower AG (“BRUSA”) to its customers (“Buyer”) shall be exclusively governed by these Terms & Conditions of BRUSA (“T&C”).
- 1.2 These T&C shall apply exclusively. Any conflicting, deviating or supplementary terms and conditions of the Buyer shall only be part of the contract if and to the extent that BRUSA has expressly agreed to them in writing. This requirement of consent shall always apply and in particular also if BRUSA carries out the deliveries to the Buyer without reservation to or in full knowledge of the terms and conditions of the Buyer.
- 1.3 Individual agreements entered into between BRUSA and the Buyer for individual cases shall always have precedence over these T&C. Oral agreements, however, shall require the written confirmation of BRUSA in order to be binding for BRUSA.
- 1.4 The Buyer shall confirm that any products delivered, development services rendered, and knowledge acquired by BRUSA shall not be used for military purposes.
- 1.5 Any return of goods shall only be permitted after prior coordination and confirmation on the part of BRUSA.
- 1.6 If these T&C require an agreement in writing, a written form or similar, such requirement shall be fulfilled by a formal agreement signed by Buyer and BRUSA or also by facsimile or electronic form (e. g. by an exchange of e-mails exchanged by duly authorized representatives of Buyer and BRUSA).

2 Offers

- 2.1 Unless otherwise explicitly stated in an offer, any offers and quotes shall be non-binding.
- 2.2 Any purchase prices shall be net prices. The corresponding VAT shall be stated separately. VAT calculation shall be omitted only in those cases where the conditions for any tax exemption of export deliveries have been met.
- 2.3 BRUSA reserves the right to increase the purchase price upon notice to the contracting partner prior to the date of delivery if any changes in foreign exchange rates beyond the control of BRUSA or any unexpectedly increased raw material costs occur.
- 2.4 The minimum order value shall be CHF 500.00; otherwise, a minimum quantity surcharge of CHF 100.00 shall become due.

- 2.5 Any order shall only be binding for BRUSA upon transmission of a commercial letter or e-mail of confirmation by BRUSA. Upon acceptance of the delivered goods or services the contracting partner accepts the terms of such confirmation.

3 Deliveries

- 3.1 The goods to be delivered and their characteristics or the services to be performed by BRUSA are specified in the confirmation of BRUSA (including attachments or documents incorporated by reference into such confirmation).
- 3.2 In some cases BRUSA will have to rely on the timely transmission of necessary documentation, drawings, provisions, etc. by the Buyer. If these conditions have not been met, BRUSA reserves the right to change the delivery date accordingly.
- 3.3 No delay or other breach of contract exists if BRUSA is prevented from fulfilling its obligations by events of a force majeure (including but not limited to, war, terrorism, natural catastrophes, epidemics and pandemics, fire, strikes and lockouts, embargoes, governmental sanctions and supplier disruptions or insolvencies) and / or other events beyond BRUSA's reasonable control.
- 3.4 In case of contracts requiring the repetitive delivery of goods by BRUSA (e. g. by call-offs), the Buyer shall be obliged to order only goods within BRUSA's actual production capacities (on which BRUSA shall inform the Buyer always immediately upon request) and to respect necessary and reasonable lead times (time period between receipt of an order or call off and the delivery date requested by the Buyer).
- 3.5 If no call-offs have been agreed upon in writing between the parties, BRUSA reserves the right, after expiry of a time limit of six (6) months, to require immediate call-off of the whole number of goods being part of Buyer's order.
- 3.6 If a binding delivery date or delivery period is exceeded, the Buyer shall be entitled to liquidated damages for delay, if BRUSA is culpably liable for the delay and the Buyer has suffered damages as a result of such delay, provided that the liquidated damages shall not exceed 0.5 % of the contract price for each full week of delay and not exceed 5% as a maximum amount. If no delivery is performed within 10 weeks after a binding delivery date or binding delivery period has lapsed, the Buyer has the right to withdraw from the contract. Further rights and claims of the Buyer in case of a delay of delivery of BRUSA are excluded, unless BRUSA has caused such delay intentionally (in German "vorsätzlich") or with gross negligence.
- 3.7 In case of any postponement of the shipping date by the Buyer by more than four (4) weeks after notification of the readiness for dispatch, BRUSA reserves the right, upon reaching the confirmed delivery date, to charge storage costs in the amount equal to 5% p.a. (pro rata temporis) of the purchase price of the respective good.
- 3.8 Unless otherwise agreed, the offer prices and delivery term shall be FCA Sennwald (INCOTERMS 2020).

4 Technical Documentation

- 4.1 Goods to be delivered and / or services to be rendered by BRUSA are conclusively specified in the contract or order confirmation of BRUSA (including attachments or documents incorporated by reference, e. g. with a reference to BRUSA's official website).

- 4.2 Information on goods, products and services (including information on BRUSA's official website), such as product data sheets, brochures and catalogues, are only approximations and may differ, unless BRUSA has separately agreed in writing that certain parts of such information are binding or unless BRUSA agrees that such information is part of the contract (e. g. in BRUSA's letter of confirmation).

5 Warranty and Liability for Defects, Incoming Inspection

- 5.1 BRUSA only warrants that (i) the delivered goods comply with the specifications and characteristics as explicitly agreed in writing and (ii) are of good material and good workmanship.
- 5.2 Any other warranties, unless otherwise agreed in writing, are excluded. Especially BRUSA assumes no liability for a fitness for a specific purpose. The Buyer will extensively test the goods delivered by BRUSA for the purposes intended by the Buyer before a marketing of Buyer's products containing the goods delivered by BRUSA.
- 5.3 The warranty period (limitation period for defects) shall start upon the passing of risk of the goods (according to the INCOTERMS agreed upon) and shall end at the expiry of a period of 12 months.
- 5.4 Unless otherwise agreed in writing or stated in BRUSA's (order) confirmation, for goods named or marked by BRUSA (e. g. on BRUSA's website) as only having a sample status (A-, B- or C-sample status), such goods are only destined for an internal use by the Buyer. If the Buyer nevertheless markets products containing such goods, the Buyer assumes the full responsibility for such goods, releases BRUSA from its liability and shall indemnify and hold BRUSA harmless from third party claims to the fullest extent permitted by law, unless BRUSA can be reproached with intentional (in German "vorsätzlich") or gross negligent acts or omissions.
- 5.5 The Buyer shall inspect goods delivered by BRUSA immediately upon receipt for defects, completeness and conformity with the contract. Defects recognizable during an incoming inspection performed in line with the standard of a prudent businessman shall be notified immediately, at the latest however, within 10 business days after receipt of the goods. Other defects must be notified immediately after discovery, however not later than 10 days after discovery within the limits of Section 5.3.
- 5.6 If the delivered goods have a defect, the Buyer shall be entitled to an immediate rectification by BRUSA, who at its sole discretion, shall arrange for a replacement delivery or repair as soon as reasonably practicable. If such remedies are not successful, the Buyer shall be entitled to refuse acceptance of the defective good and to withdraw from the contract for the delivery of the defective good. Any replaced goods shall pass again into the ownership of BRUSA.
- 5.7 The Buyer, with regard to defective goods, has no other rights, remedies and claims than expressly stated under the articles 5.1 to 5.6 of these T&C, unless BRUSA can be reproached with intentional ("vorsätzlich") or gross negligent acts or omissions.
- 5.8 If any defect is notified erroneously, BRUSA shall be entitled to cause the Buyer to reimburse any expenses incurred.
- 5.9 Exempt from liability shall, amongst others, be any defects based on instructions of the Buyer, e. g. construction specifications, of the Buyer.
- 5.10 Any changes of and/or modifications to the goods by Buyer or third parties without any written approval by BRUSA shall likewise result in the warranty becoming void.

6 Intellectual Property Rights and Copyrights

- 6.1 BRUSA reserves all rights to documents and other information provided by BRUSA to the Buyer, including but not limited to ownership and using rights of know-how and intellectual property rights and copyrights. Using rights of the Buyer for intellectual property rights and know-how of BRUSA always require a separate written and hand-signed agreement.
- 6.2 BRUSA shall not be liable for any claims resulting from the infringement of any intellectual property rights.
- 6.3 The Buyer shall inform BRUSA without undue delay of any intellectual property right infringements that become known.
- 6.4 Any claims of the Buyer shall be excluded if the intellectual property right infringement is attributable to the Buyer or if the Buyer does not support BRUSA to a reasonable extent in the defense against any third-party claims.
- 6.5 To the extent that BRUSA manufactures any products in accordance with the Buyer's specifications or instructions, the Buyer shall be liable if any third-party intellectual property rights are infringed.

7 Limitation of Liability

- 7.1 Any claims of the Buyer other than those expressly stated in these T&C, regardless of the legal grounds, are excluded (in particular, without limitation, any claims as to indirect or consequential damages ["indirekte Schäden" or "Mangelfolgeschäden"]), unless BRUSA can be reproached with intention (in German "Vorsatz") or gross negligence or unless such liability is mandatory according to the provisions of the applicable law.

8 Data Protection

- 8.1 Swiss Data Protection and Regulation Laws apply. In addition, BRUSA's Data Protection Policy available on <https://www.brusahypower.com> is applicable.

9 Terms of Payment

- 9.1 Unless otherwise agreed, all prices shall be in Swiss francs (CHF). They shall apply FCA Sennwald including packaging. VAT calculation shall be omitted only in those cases where the conditions for any tax exemption of export deliveries have been met.
- 9.2 Unless otherwise agreed, any payments shall be settled within 30 calendar days without any deduction.
- 9.3 BRUSA reserves the right, in case of new customers or justified indications for any payment risk, to change the terms of payment to advance payment.
- 9.4 Any default in payment or any other changes in the Buyer's situation jeopardizing the settlement of claims shall further entitle BRUSA to withdraw from the contractually agreed performance or, notwithstanding its due date, to immediately assert any outstanding claims.
- 9.5 Any liabilities vis-à-vis BRUSA shall only lapse upon full receipt of payment of the invoiced amount to our bank account.
- 9.6 Upon expiry of the payment term, the Buyer shall be deemed to be in default of payment, even without any reminder.

- 9.7 BRUSA reserves the right, in case of the payment term being exceeded, to charge default interest. The default interest rate for the calendar year shall be 5%. The assertion of any further damage shall remain expressly reserved.
- 9.8 The Buyer shall have the right to retain payments or to set them off against any counterclaims only to the extent that the Buyer's counterclaims are undisputed or have been legally established.
- 9.9 Partial deliveries can be invoiced immediately.

10 Confidentiality

- 10.1 Any non-public information of any kind, be it written, oral, digital, photo technical, graphical, figurative or any other information, shall be subject to confidentiality by the Buyer vis-à-vis third parties. This shall especially include, but not be limited to, any information regarding product developments, product design, technical data, operations, prices, etc. Any information shall only be forwarded to those employees of the Buyer who need such information to perform the contractual task, provided that such employees are obligated by the Buyer to strict confidentiality.
- 10.2 Unless otherwise agreed, the Buyer undertakes to immediately return to BRUSA any confidential information upon BRUSA's request.

11 Place of Jurisdiction and Applicable Law

- 11.1 The exclusive and compulsory place of jurisdiction for any disputes shall be the ordinary court of the City of St. Gallen, Switzerland. However, BRUSA shall be entitled to sue the Buyer at Buyer's place of business.
- 11.2 Any legal relationships between BRUSA and the Buyer shall be exclusively subject to Swiss law to the exclusion of the conflict-of-law rules (IPR) and of the United Nations Convention on Contracts for the International Sale of Goods dated 11/04/1980 (UN Sales Convention / CISG).