

**General Terms and Conditions for Services and Works of BSH Hausgeräte GmbH, Neff GmbH, BSH Hausgerätewerk Nauen GmbH and BSH Hausgeräte Service Nauen GmbH (hereinafter referred to in each case as "Ordering Party")**

**1. General/Form of legally binding declarations**

1.1 These General Terms and Conditions ("GTCs") shall apply exclusively to companies within the meaning of Section 14 BGB [German Civil Code] i.e. natural persons or legal entities that provide the service in the course of pursuing their commercial or independent professional activities.

1.2 Different terms and conditions of the Supplier shall only apply if and to the extent expressly acknowledged by the Ordering Party in writing. The Ordering Party's silence regarding such different terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

1.3 These GTCs shall apply in place of any terms and conditions, especially general terms and conditions of the Supplier, also where such terms and conditions stipulate that a purchase order or call-up is deemed to be the unconditional recognition of the general terms and conditions, or the Ordering Party orders/calls up, after the Supplier has referred to the validity of its general terms and conditions, unless the Ordering Party has expressly waived the validity of these GTCs. By accepting the order confirmation, the Supplier expressly acknowledges that it waives its legal objection derived from its general terms and conditions or other conditions of the Supplier. Legally binding declarations by the Ordering Party within the scope of the contractual relationship shall only be valid when given in writing unless text form is sufficient according to these GTCs. This shall not affect the precedence of an individual agreement (Section 305 b BGB) in any form.

**2. Purchase orders**

2.1 Purchase orders and their amendments/modifications shall only be valid when given in writing. The conveyance of purchase orders and call-ups via remote data transmission and EDP printouts, especially from the Ordering Party's order centres, shall be valid without signature.

2.2 If the Supplier fails to accept the purchase order within 14 calendar days of receipt, the Ordering Party can revoke it. Purchase orders shall be deemed accepted if the Supplier does not contradict them in writing or text form within 5 calendar days, if the Ordering Party has expressly indicated this legal consequence in the purchase order/call-up.

**3. Implementation of contractual relationship**

3.1 The Supplier shall provide its services in its own name and for its own account as independent entrepreneur. The Supplier shall not be authorised to represent the Ordering Party in legal transactions.

3.2 In performing its activities, the Supplier shall not be subject to the instructions of the Ordering Party and its employees. An employment relationship between the parties shall not be created.

3.3 The Supplier itself shall freely determine the days, time management on these days and the place of providing its service. This shall not affect the Supplier's obligation to fulfil the agreed services according to the contract.

3.4 The Supplier can commission third parties to provide the service unless the Supplier's personal provision of the service was agreed. This shall not apply if there is good cause to exclude a third party commissioned. Such good cause shall exist in particular if the third parties commissioned by the Supplier lack the required qualifications and professional experience necessary to fulfil the tasks according to the contract or the requirements for the commissioning of third parties under data protection law do not exist.

3.5 If the Supplier provides services relevant for safety, the Supplier shall undertake a corresponding risk assessment. Work equipment used or facilities requiring special supervision must be subjected to the required examinations. If hazardous substances are handled, the corresponding safety data sheets must be taken along while the service is being provided.

3.6 If documents for the use of the service covered by the contract are required, the Supplier shall deliver them to the Ordering Party, even if this is not expressly agreed.

3.7 The Supplier shall ensure that he only appoints employees or subcontractors who are not registered by national and/or international sanction lists.

**4. Change request / Additional expenses**

4.1 The Ordering Party shall have the right, also after conclusion of the contract, to request changes to the delivery item and/or object of the service if the deviations, when considered objectively, taking into account the Supplier's business and its know-how and order book, can be reasonably expected of the Supplier technically and logistically. The Supplier shall review the Ordering Party's change request without delay and notify the Ordering Party immediately in writing of its effect on the contract framework. This notification duty shall include a declaration as to whether the desired changes are at all feasible technically and/or logistically and expedient and a declaration concerning the effects of the change requests on the contract framework agreed up to that time such as the concept, periods, deadlines, acceptance modalities and remuneration in the form of a quotation. The Ordering Party shall then give the Supplier a decision immediately on the implementation of the changes.

4.2 In the case of a positive decision and agreement on the changes to the contract terms and conditions, the change to the purchase order shall become an integral part of the contract.

4.3 Where change requests by the Ordering Party in terms of the object of the order or the implementation of the order are technically and economically insignificant for the Supplier, the Supplier cannot request a change to the contract terms and conditions.

4.4 Additional expenses shall only be reimbursed and additional remuneration only paid if the payment was expressly agreed. This shall not affect the precedence of an individual agreement (§ 305 b BGB) in any form.

**5. Acceptance of works**

5.1 The Supplier and the Ordering Party agree on an acceptance date. If an acceptance date is not agreed, the works shall be accepted after their completion.

5.2 Once provided by the Supplier, the works shall be subjected to an acceptance test. After completion of the acceptance test, the Ordering Party shall declare acceptance of the work performance is free of defects.

5.3 Fictitious acceptance is expressly excluded. Acceptance must be given in writing, by email or fax except in the event that the Ordering Party uses the works delivered for the intended purpose outside the agreed test processes and/or test procedures for longer than 14 calendar days.

**6. Remuneration**

6.1 As remuneration for its services and for the rights granted and/or transferred to the Ordering Party according to section 10, the Ordering Party shall pay the Supplier the agreed amount after the services have been provided correctly and within the prescribed time.

6.2 The agreed remuneration shall cover all the services to be provided by the Supplier and other expenses connected therewith as well as all granted and/or transferred rights according to section 10 unless other agreed.

6.3 Travel expenses shall only be reimbursed if otherwise agreed in writing. They shall only be reimbursed when duly invoiced and copies of supporting documents are submitted. Exceptions to this shall require the prior written consent of the Ordering Party.

## 7. Invoices and payments

- 7.1 Payments shall be made, unless otherwise agreed, net without deduction of cash discount. The term of payment is 30 days and shall begin as soon as the delivery or service is provided in full (and, in the case of works, was accepted by the Ordering Party) and the duly issued invoice has been received by the Ordering Party.
- 7.2 An invoice shall only be deemed duly issued if it states the Ordering Party's purchase order number.
- 7.3 Payments shall not constitute any acknowledgement by the Ordering Party that the services comply with the contract.
- 7.4 The Supplier shall be responsible itself for the correct payment of taxes on all payments made by the Ordering Party. The remuneration shall be paid together with turnover tax added at the legally valid rate if and in so far as the Supplier's services are subject to turnover tax and if the Supplier issues a correct invoice according to the provisions of the UStG [German Turnover Tax Law]. If it is established that the Supplier's services are not subject to turnover tax, the Supplier shall reimburse the incorrectly shown turnover tax immediately to the Ordering Party, waiving the defence of disenrichment (Section 818 III BGB).

## 8. Default

- 8.1 The timeliness of the service shall depend on the agreed date of the service. If services are subject to acceptance, therefore the works capable of acceptance being offered to the Ordering Party for the purpose of carrying out acceptance is decisive.
- 8.2 Where a delay in the services or parts thereof resp. supplementary performance is evident, the Ordering Party must be notified immediately in writing or text form and any remedial measures by the Supplier must be described in detail.

## 9. Non-performance or defective performance/defects/limitation period

- 9.1 In the event of non-performance or defective performance and/or a defective service ("**defect**"), the Supplier shall, at the Ordering Party's option, at its own expense within a reasonable period either remedy the defect or provide its services again free of defects. If the Supplier fails to remedy the defect within a reasonable additional period or fails to provide the services again free of defects, the Ordering Party can rescind the contract or reduce the remuneration appropriately or remedy the defect or have it remedied at the Supplier's expense and request damages instead of performance.
- 9.2 The Ordering Party reserves the right to assert other statutory warranty claims and other damage claims.
- 9.3 In the case of works claims against the Supplier based on defects shall become statute-barred 36 months as of acceptance.
- 9.4 Warranty claims and other damage claims by the Operating Party shall in addition be determined by statutory provisions.

## 10. Work results, IP rights and copyrights

- 10.1 The Supplier undertakes to inform the Ordering Party of all work results in the form requested by the Ordering Party immediately after their creation. "**Work results**" shall mean all results and findings, including protectable results, which are created by the Supplier and/or by a third party commissioned by the Supplier during the performance of the contractually owed services, in particular the works to be created, intermediate and/or by-product results, objects, concepts, graphics, sketches, reports, documents, software and its source code as well as the associated documentation.
- 10.2 The Parties agree that the Ordering Party is entitled to all rights to the work results. The Supplier hereby transfers all rights to the work results to the Ordering Party upon their creation. Provided that the rights to the work results are not transferable, the Supplier shall grant the Ordering

Party the irrevocable, exclusive, transferable, sub-licensable right, such right being unlimited in time, place and content, to use and exploit the work results itself or through third parties for all conceivable types of use - whether already known or still unknown. The right to use includes in particular the right to reproduce, distribute, edit, modify, publish, exhibit, recite, perform and present, the right to lease, the right to broadcast, the right to reproduce by video and/or audio recordings, the right to reproduce radio broadcasts, the right to make available to the public and non-public (e.g. Internet or Intranet), the right to transfer and license (to affiliated companies of the Ordering Party and third parties) as well as the right to store the work results in any form.

- 10.3 Provided that standard software is supplied as part of the work results, Clause 10.2 shall apply on condition that the rights to use shall be granted on a non-exclusive basis so that the Ordering Party is enabled to use the work results to the contractually agreed extent. The warranty rights under this contract also apply to such standard software.

- 10.4 The Ordering Party solely is entitled to use and exploit the rights granted under this Clause 10. The Supplier waives the right to be named as the author or co-author of the work results and the right of access to the software. The obligation to cite the source does not apply. The Supplier shall ensure that its employees, other staff and third parties involved in the performance of the contractually owed services accordingly waive of their rights and shall submit the waivers to the Ordering Party upon request.

- 10.5 Provided that the work results contain protectable ideas, the Supplier shall immediately notify the Ordering Party in writing. The Ordering Party solely shall have the right to use and exploit protectable ideas in any manner at its own discretion, to have them registered as IP rights in any country, to maintain or abandon such IP rights. Insofar as the Ordering Party requires declarations, documents or other support from the Supplier for the registration, processing and/or defense of such IP rights, the Supplier shall, upon request, immediately provide and grant these to the Ordering Party free of charge.

- 10.6 The Supplier guarantees that it is entitled to irrevocably and unrestrictedly transfer or grant the rights to the work results to the Ordering Party in accordance with this Clause 10 without additional costs and that the work results are free of rights of third parties. The Supplier shall indemnify the Ordering Party and its customers against all third party claims arising from the use of the work results and the resulting damages and expenses. This also includes the costs of a reasonable legal defense.

- 10.7 All rights transferred or granted in accordance with this Clause 10 shall be compensated with the contractually owed remuneration.

- 10.8 If the work results to be produced are essential software for the business of the Ordering Party, the Supplier shall, upon written request of the Ordering Party, deposit the source code of the most current version of the software with a depository to be designated by the Ordering Party at the expense of the Ordering Party (escrow).

## 11. Free and Open Source Software

- 11.1 "Free and Open Source Software" ("**FOSS**") is software that (i) has been licensed under a software license approved by the Open Source Initiative or the Free Software Foundation and listed on either's website; and/or (ii) is provided royalty-free by the respective licensor to any user on the basis of an agreement with the right to modify and distribute such software and which allows distribution or provision of access to the software only, if material or information (e.g. license texts, copyright/author notices, source code or written offer for the same) or links to material or information (hereinafter referred to as "**Additional FOSS Material**") are provided along with the software or are otherwise disclosed.

- 11.2 Supplier undertakes that its services include only such FOSS, the use thereof have been previously approved as acceptable by the Ordering Party in writing. There is no obligation to use FOSS.

- 11.3 If Supplier uses approved FOSS in a deliverable it is obliged to fulfil its obligations according to the applicable license terms of the FOSS; and to provide the Ordering Party with a complete list of the name and ver-

sion number of the applicable license and the FOSS component; the license texts; the complete corresponding source code of the Open Source Software components; all further Additional FOSS Material as well as a comprehensive list of the Open Source Software components used. A link to the Additional FOSS Material is not sufficient. The complete corresponding source code is the source code of the software provided by Supplier including all necessary information for compilation and installation of the software, enabling the Ordering Party to independently create a rebuild of the software.

**11.4** Supplier's warranty obligations according to the terms of the Agreement also apply to FOSS components and irrespective of whether the software is Open Source Software, or a proprietary development, or any form of third party software

## **12. Business liability insurance**

The Supplier undertakes for the duration of the contractual relationship to conclude an appropriate business liability insurance and to maintain this for at least 5 years after the contract ends.

## **13. Provision of documents, objects, material**

**13.1** Documents and/or objects provided shall remain the property of the Ordering Party and shall be stored separately free of charge, must be marked and managed as the Ordering Party's property. The provided software may not be re-developed (exclusion of reverse engineering). The supply or provision of information shall not constitute any transfer of intellectual property. Its use shall only be admissible for orders of the Ordering Party. In the event of a negligent reduction in value or loss, the Supplier shall provide compensation.

**13.2** If the Ordering Party supplies the Supplier with material or parts free of charge or subject to a charge, the Ordering Party shall retain title to them (goods subject to retention of title). Processing or conversion shall be performed by the Supplier on behalf of the Ordering Party. If goods subject to retention of title are processed with other goods that do not belong to the Ordering Party, the Ordering Party shall acquire co-ownership in the new article in the ratio of the gross value of its supplied article (purchase price plus VAT) to the other processed objects at the time of processing. Section 13.1 shall apply accordingly.

## **14. Nondisclosure, return of documents**

**14.1** The Supplier shall treat the conclusion and results of the contract, business transactions and the know-how and experience in providing the services acquired from and about the Ordering Party or other information ("Information") obtained within the scope of the business relationship as secret with respect to unauthorised third parties as long as and if this has not lawfully entered the public domain unless a legal or official obligation to disclose exists or the Ordering Party has consented in writing to Information being passed on in an individual case. The Supplier shall use this Information exclusively for the purposes required to provide the services. This obligation of secrecy shall also survive termination of the contractual relationship for a period of 3 years.

**14.2** The Supplier undertakes to keep safe all property of the Ordering Party or Affiliated Companies within the meaning of Sections 15 et seq. AktG [German Stock Corporation Act] in its possession, in particular keys, files, data stored electronically and other documents relating to the business operations of the Ordering Party or Affiliated Companies in such a way that they cannot fall into the hands of unauthorised third parties. All documents must be delivered to the Ordering Party at any time upon request, at the latest when the contractual relationship ends, without being requested to do so, or destroyed. In the case of data transmitted to the Supplier by the Ordering Party, the Ordering Party shall also have a right against the Supplier for the Supplier to make a declaration to cease and desist with a penalty clause for the benefit of the Ordering Party.

**14.3** The Supplier shall place a written obligation corresponding to this section 14 upon third parties that it commissions to provide the services in compliance with section 3.4, and shall provide the Ordering Party with proof at its request.

## **15. Data protection, information security**

**15.1** The Supplier shall take appropriate data protection measures and measures to protect its IT systems against programs with malicious functions (viruses, worms, Trojans) and the access of unauthorised third parties in order to protect information received from the Ordering Party and to protect appropriately the results created for the Ordering Party against loss, modification, transfer or access by unauthorised third parties. A breach of this obligation shall entitle the Ordering Party to terminate the contract without notice.

**15.2** If the Supplier processes personal data on behalf of the Ordering Party when providing the service, the Supplier shall comply with statutory provisions on data protection and allow the Ordering Party to inform itself about compliance with such provisions. The Supplier shall in particular conclude the agreements with the Ordering Party legally required under data protection law. The Supplier shall take appropriate measures to ensure that its employees, freelancer and third parties, it uses for the provisions of services (data recipients) comply with the statutory provisions on data protection and that the exchange of personal data with the involved parties is adequately secured against access by unauthorised third parties. Insofar as data recipients do not require access to personal data for the provision of services, the Supplier shall implement appropriate precautions against access.

**15.3** The Supplier shall place a written obligation corresponding to this section 15 upon third parties that it commissions to provide the services in compliance with section 3.4.

**15.4** If employees of the Supplier have access to systems of the Ordering Party, the Ordering Party reserves the right to take measures to detect and prevent misuse, if necessary also by inspecting personal data of the employees of the Supplier accessing the systems (e.g. individual identification, name, contact data). The Supplier shall support the Ordering Party to reasonable extent to implement such measures (in particular to ensure the lawfulness of the use of such data by the Ordering Party).

## **16. Corporate social responsibility/AGG**

**16.1** The Supplier undertakes to comply with the laws of the respectively applicable legal system(s), not to tolerate any form of corruption and bribery, to respect the fundamental rights of its employees and the prohibition of child and forced labour. The Supplier shall furthermore assume responsibility for the health and safety of its employees at the workplace, provide for fair pay and working hours, comply with environmental legislation and use its best efforts to promote and demand compliance with such principles from its own suppliers.

**16.2** The Supplier undertakes to comply with the Allgemeines Gleichbehandlungsgesetz (AGG) [German General Act on Equal Treatment] i.e. to prevent or eliminate discrimination for racist reasons or on the grounds of ethnic origin, gender, religion or ideology, disability, age or sexual orientation. It should be noted that the prohibition of discrimination applies equally to employers, employees, external service providers, work colleagues and other business partners. Further information is given in the "Leaflet AGG" [leaflet on the German General Act on Equal Treatment] which can be downloaded at <http://www.bsh-group.com/index.php?page=141386&language=uk>.

## **17. Assignment**

**17.1** The Supplier shall have the right to assign the claims and other rights only with the prior written consent of the Ordering Party. This shall not affect Section 354 a HGB [German Commercial Code].

## **18. Place of jurisdiction, applicable law**

**18.1** If the Supplier is a general merchant, any disputes arising hereunder shall be subject to the exclusive jurisdiction of the courts of Munich (city), Germany.

**18.2** The contractual relationship is governed exclusively by the law of the Federal Republic of Germany, to the exclusion of conflict of law provisions and the uniform United Nations Sales Convention (CISG).