

Terms and Conditions of Purchase of BeA GmbH (hereafter referred to as "BeA")

The following terms and conditions shall govern orders and other contracts for the purchase of goods and services by BeA. The terms and conditions of purchase shall apply between the supplier and BeA.

I. Exclusivity

BeA's Terms and Conditions of Purchase shall apply exclusively. Other terms and conditions shall not become part of the contract, even if BeA does not expressly object to them. Anything to the contrary shall only apply if BeA expressly agrees to the other conditions in writing. BeA's Terms and Conditions of Purchase shall also apply if BeA accepts the supplier's delivery/service without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from BeA's Terms and Conditions of Purchase. Tacit acceptance by BeA shall be excluded. Neither failure to object nor payment or acceptance of the goods shall constitute recognition of third-party terms and conditions.

II. Order/Offer acceptance

1. Orders, changes to orders and the acceptance of offers (hereinafter referred to as "order") of the supplier must be made in writing or text form in order to be valid. Agreements made orally or by telephone require subsequent written confirmation in order to be valid. The same applies to verbal subsidiary agreements and amendments to the contract.
2. For the period of their validity, cost estimates are a binding basis for orders arising therefrom. They are not to be remunerated unless otherwise expressly agreed.
3. The supplier's documents used in business transactions with BeA must at least show: Order number, commission number, place of receipt, complete article text / object description, quantities and quantity units as well as VAT ID no. (for import from the EU).
4. The supplier must confirm all orders placed by BeA in writing.

III. Prices

The agreed prices are fixed prices. They cover everything that the supplier has to effect in order to fulfil his contractual delivery/service obligation.

IV. Scope of delivery/service; ownership; rights of use

1. The scope of delivery/service includes, among other things, that
 - the supplier shall transfer to BeA ownership of all technical documents (also for sub-suppliers) and other documents required for new production, maintenance and operation. These technical documents must be in German or English language.
 - the supplier shall grant BeA the non-exclusive and irrevocable right of use, unlimited in terms of space, time and content, in all known and unknown types of use for all deliveries/services capable of being protected by industrial property rights.
 - the supplier shall grant BeA exclusive rights of use and exploitation to the extent described above for such deliveries/services which it produces individually for BeA.
2. If the parties agree on a deviation from the scope of delivery/service initially agreed to, the supplier shall only be entitled to additional claims or changes to deadlines if a corresponding supplementary agreement has been made with BeA in text or written form prior to execution.
3. The ordered quantities are binding. In the event of over-deliveries/services, BeA shall be entitled to reject the surplus at the supplier's expense.

V. Quality assurance

The supplier shall set up and maintain a documented quality assurance system, which is suitable in terms of type and scope and corresponds to the latest state of the art. He shall keep records, in particular of his quality inspections, and make them available to BeA on request. The supplier hereby consents to the conduct of quality audits to assess the effectiveness of his quality assurance system by BeA or a person appointed by BeA.

VI. Deadlines/ Delay

1. The dates listed in the order/offer are binding. The receipt of the goods at the place of receipt or use specified by BeA shall be decisive for compliance with the delivery date or delivery period. Delivery/service provision prior to the agreed date shall entitle BeA to reject the delivery/service until the agreed date.
2. If and as soon as the supplier has to assume that, he will not be able to fulfil his contractual obligation in whole or in part at all or on time, he shall notify BeA of this in writing without delay, stating the reasons and the expected duration of the delay. If the supplier fails to give this notification, he shall not be entitled to invoke this impediment towards BeA, even in the event of force majeure or other circumstances for which he is not responsible. § 275 of the German Civil Code (BGB) shall remain unaffected by this clause. However, notification of the delay shall change the agreed delivery date in no case.
3. If the supplier does not fulfil the contract within the delivery period, BeA shall be entitled to the statutory claims, in particular the right to delivery and possible indemnity. In particular, if the statutory requirements are met, BeA shall be entitled to demand compensation for loss suffered and/or withdrawal from the contract.

VII. Delivery/Performance and Storage

1. Insofar as the supplier and BeA agree on the validity of the "Incoterms" for the contract, the respective current version shall apply. However, they shall only apply insofar as they do not contradict the provisions of these Terms and Conditions of Purchase and the agreements otherwise made. Unless otherwise agreed in writing, the delivery/service shall be effected in accordance with the Incoterms clause (DAP "delivered at place") at the place of delivery/service or use specified in the order.
2. Deliveries/services shall be made to the specified shipping address. Delivery/service at a receiving point other than the one specified by BeA shall not result in a passing of the risk to BeA, even if this receiving point accepts the delivery/service. The supplier shall bear the additional costs incurred by BeA as a result of delivery/service at a receiving point other than the agreed receiving point.
3. If weighing is required, the weight determined on BeA's calibrated scales shall be decisive.
4. The storage of items required for delivery/service provision on the premises of BeA may only take place in specified storage areas. The supplier shall bear full responsibility and risk for these items until the passing of the risk for the entire order.
5. During carriage, the statutory provisions, in particular the provisions of the law on the carriage of dangerous goods and the applicable dangerous goods regulations, including the respective annexes and appendices, shall be complied with.
6. In the case of shipment by rail, the declaration of the goods in the consignment notes must be made in accordance with the currently valid regulations of railways. Costs and damage arising from incorrect or omitted declarations shall be borne by the supplier.
7. The delivery/service provider must have the receipt of consignments confirmed in writing by the specified receiving office.

VIII. Execution, subcontractors, assignment

Insofar as the contractual subject of performance is one under a contract for work and services (Werkvertrag) or the supply of movable things to be produced or manufactured (Werkliefervertrag), the following shall apply:

1. The supplier is not entitled to transfer the execution of the respective contract in whole or in part to third parties.
2. At BeA's request the supplier shall be obliged to name its subcontractors or sub-suppliers.
3. The supplier shall not be permitted to assign his contractual claims against BeA to third parties or to have them collected by third parties. This shall not apply to legally established or undisputed claims.

IX. Retention of title

1. If the ordered goods are delivered subject to retention of title, BeA shall nevertheless be entitled to use, process and/or resell these goods in the normal course of business.
2. If BeA provides parts to the supplier, BeA shall retain title thereto. Processing or transformation by the supplier shall be carried out for BeA. If these goods are processed with other items not belonging to BeA, BeA shall acquire co-ownership of the new item in the ratio of the value of BeA's item (purchase price plus VAT) to the other processed items at the time of processing.
3. If the item provided by BeA is inseparably mixed with other items not belonging to BeA, BeA shall acquire co-ownership of the new item in the ratio of the value of the reserved item (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the supplier's item is to be regarded as the main item, it shall be deemed agreed that the supplier shall transfer co-ownership to BeA on a pro rata basis; the supplier shall hold the sole ownership or co-ownership in safe custody for BeA.

X. Termination of Contracts for Work and Services; Plea of Uncertainty

1. In the case of contracts for work and services, BeA shall have the right to terminate the contract in whole or in part. In such a case, BeA shall be obliged to pay for all deliveries/services provided up to that point and to pay appropriate remuneration for procured material and work delivered/performed; in this case, § 648 S. 2 BGB shall apply. Any further claims of the supplier are excluded.
2. In the event that BeA is obliged to perform in advance, BeA may refuse the performance incumbent upon it if it becomes apparent after conclusion of the contract that its claim to consideration is endangered by the supplier's inability to perform. The right to refuse performance shall not apply if the consideration is effected or security is provided for it. BeA may set a reasonable period of time within the supplier shall, at its discretion, effect consideration or provide security concurrently with performance. After unsuccessful expiry of the deadline, BeA may withdraw from the contract. Further details are governed by § 321 BGB.

XI. Warranty claim, notice of defects and liability; liquidated damages in the event of a breach of competition law

1. The supplier warrants that the delivery item or the service rendered does not have any subjective or objective defects impairing its value or suitability at the time of passing of risk or, in the case of a contract for work and services, at the time of acceptance, has the agreed or guaranteed quality, is suitable for the use presupposed under the contract, complies with the generally recognized rules of technology, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and professional associations at the place of destination.
2. In the event of a defect, BeA shall be entitled to the full statutory warranty claims.

3. The necessary expenses for the supplementary performance shall be borne by the supplier, including those, which are based on the fact that the delivery item or the service rendered was taken to a place other than the place of performance. The claim shall also include the costs for removal of the defective delivery item or other service and for installation of a defect-free delivery item or other service and for comparable cases (such as unpacking and repacking of goods). If BeA incurs external or internal expenses as a result of the delivery of defective delivery items, for example for examinations, sorting work, re-packaging or storage work or administrative activities, these shall be adequately compensated by the Supplier. The gross hourly wage paid by BeA to the employee, including all ancillary costs, shall be taken as the basis for reasonable compensation for the expenses incurred by employees of BeA.
4. If the supplier has granted a guarantee for the quality or durability of the delivery item, BeA may also assert claims under the guarantee.
5. The period for inspection and notification of defects in the case of mutual trade purchases shall in all cases only begin to run when the goods have arrived at BeA or at the external warehouse named by BeA and not before this can be expected by BeA with due regard to the circumstances of an orderly course of business. A complaint within 5 working days from the date of discovery of a defect shall in any case be deemed to have been made without undue delay and thus on time.
6. The warranty period shall be 3 years from passing of risk, in the case of a contract for work and services from acceptance. If the law provides for longer warranty periods, these shall apply. In the event of rectification or subsequent delivery, the limitation period shall start anew (in the event of rectification only with regard to the rectified defect and with regard to the defect-free nature of the rectification work).
7. The supplier shall indemnify BeA against claims arising from tortious producer liability, against claims based on the Produkthaftungsgesetz (Product Liability Act) and against claims based on other national laws implementing the European Product Liability Directive, insofar as the supplier or its supplier caused the product defect, which triggered off the liability. Within the scope of his liability for cases of damage the Supplier shall also be obliged to reimburse any expenses pursuant to §§ 683, 670 and §§ 830, 840, 426, 254 BGB arising from or in connection with a recall action or public warning carried out by BeA, insofar as BeA was obliged to do so or could be expected to consider itself obliged to do so under the known circumstances. The same shall apply if the customers or subsidiaries of BeA carry out the recall action or public warning. BeA shall inform the supplier of the content and scope of the recall measures carried out - insofar as this is reasonable and possible - and give him the opportunity to comment. Further legal claims of BeA shall remain unaffected.
8. The supplier commits itself to offer only prices and conditions that are not subject to any collusion or conduct in violation of antitrust law. Irrespective of this, the supplier commits itself to comply with all provisions of antitrust law. If the Supplier has agreed on sales prices or other conditions with a third party with regard to products delivered to BeA or has made arrangements with the third party or has agreed on territorial and customer divisions, the Supplier shall be obligated to pay BeA liquidated damages in the amount of 15% of the purchase price of the products delivered to BeA in the period concerned, unless damage in a different amount is proven. BeA shall have no such claim if the Supplier's conduct is permissible under the Act against Restraints of Competition (GWB) or the law of the European Union (TFEU) or if the Supplier is not responsible for the infringement.

XII. Assurances / REACH clause

1. The supplier assures BeA that it will comply with the requirements of the Minimum Wage Act (MiLoG) and indemnifies BeA against claims by third parties, in particular those pursuant to § 13 MiLoG in conjunction with § 14 Employee Posting Act (Arbeitnehmerentendegesetz).
2. The supplier further warrants that goods produced, stored or transported on behalf of BeA, or that are intended to be delivered to or taken over by BeA are produced, stored, processed and loaded at secure operating sites and secure handling locations and are protected against unauthorized access during production, storage, processing, loading and transport. The Supplier warrants that the personnel employed for the production, storage, processing, loading, transport and acceptance of such goods are reliable and that it has checked them against the currently valid EU sanctions lists. The Supplier further warrants that all business partners acting on its behalf have been informed that they must also take measures to secure the above-mentioned supply chain. The Supplier agrees that its data will be checked against the currently valid EU sanctions lists.
3. The supplier must comply with the requirements and measures resulting from the REACH Regulation for all substances, preparations and articles delivered to/provided to BeA.

XIII. Price, invoice, payment, cash discount

1. The price stated in the order is binding. Subsequent price increases are excluded. The unit price is stated net in the order. The total price does not include the statutory value-added tax.
2. The period for payment of the invoice shall begin with the receipt of a proper, verifiable invoice in accordance with § 14 UStG (Value Added Tax Act; date of receipt stamp is decisive - not the invoice date!). Invoices containing defects or errors shall not constitute a due date and may be returned by BeA at any time. In the latter case, the due date shall only be established upon receipt of the correctly issued invoice. Missing delivery documents, receipt by an office other than the one named, incomplete information or errors shall delay the payment deadline by as many days as it takes to rectify the defects caused by the Supplier. Payments do not imply acceptance of the delivery or service as being in accordance with the contract.
3. Unless otherwise agreed, payment shall be made within 30 days of receipt of the invoice or with a discount of 2% for payment within 14 days.

XIV. Documentation, models

All drawings, models and other documents provided to the supplier for the manufacture of the delivery item may not be used for other purposes or made accessible to third parties without the express consent of BeA and shall remain the property of BeA. The same shall apply to documents prepared by the supplier in accordance with BeA's specifications. Upon request, they shall be handed over to BeA without delay, together with all copies and duplicates. The same shall also apply if the contract is not concluded. The supplier shall be liable for all damage incurred by BeA as a result of failure to comply with this obligation.

XV. Advertisement

The supplier is not permitted to refer to the existing business relationship and/or to use BeA's brands or Logo in its advertising without BeA's express prior written consent. The same applies to corresponding references at exhibitions and trade fairs.

XVI. Other

1. If the Supplier is domiciled in the EU or the European Economic Area, the following shall apply: The exclusive place of jurisdiction shall be Ahrensburg if the supplier is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany. However, at its discretion BeA may also sue the supplier at the court having jurisdiction over the supplier's registered office.
2. If, on the other hand, the Supplier is domiciled outside the EU and the European Economic Area, the Court of Arbitration of the Hamburg Chamber of Commerce shall have exclusive jurisdiction over all disputes arising out of and in connection with the contracts concluded under these General Terms and Conditions and shall make its final decision to the exclusion of the ordinary courts of law. The defendant shall be entitled to file a counterclaim before the arbitration court. The place of arbitration shall be Hamburg. The language of the proceedings shall be German. The proceedings and in particular the taking of evidence shall be conducted in accordance with the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of the 10th Book of the Code of Civil Procedure. In the taking of evidence, the arbitral tribunal shall be guided by the customs of proceedings in German state courts. Procedural principles of common law, such as in particular the production of documents, do not apply directly or correspondingly. Insofar as one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, these shall be limited to the costs billable under the German Lawyers' Fees Act (RVG).
3. The place of performance for payment shall be Ahrensburg, and for delivery, performance and the fulfilment of warranty claims the place of destination specified by BeA.
4. Secrecy must be maintained with regard to all business and operational processes, facilities and business relationships, even after termination of the cooperation. If the supplier violates this obligation with regard to business or trade secrets, a contractual penalty shall be incurred in favour of BeA, unless the supplier is not responsible for this. BeA shall decide on the amount at its reasonable discretion, taking into account all circumstances of the individual case known to BeA. The decision on the amount shall be subject to full judicial review. The contractual penalty shall be offset against any claims for damages.
5. The supplier shall inform BeA immediately of any changes in contact details. Furthermore, the supplier shall notify BeA immediately of any changes to the delivery item or service, which are necessary for production reasons or due to changes in statutory or official regulations.
6. Insofar as these General Terms and Conditions of Purchase require declarations by the contracting parties to be in writing, the text form shall also suffice in each case.
7. Insofar as these general terms and conditions of purchase are also made available to the supplier in another language, only the German version shall apply.

XVII. Governing Law

The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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