

General Purchase Conditions of Benteler Distribution Deutschland GmbH & Co. KG (hereinafter called „Benteler“)

(Date: 01 May 2010)

- I. **Scope**

These General Purchase Conditions shall apply to all orders of goods or services –including those in the future– and the performance of such, by which the business division „Distribution“ of Benteler Distribution Deutschland GmbH & Co. KG or one of its affiliated companies in terms of §§15 et seq Stock Corporation Act (AktG) is involved as a party. Any conditions of the Seller which conflict with or vary from these Purchase Conditions are not recognised by us unless such is stated in these Purchase Conditions or the contract with the Seller. If we take receipt of goods without any express objection, in no case shall such constitute an acceptance of the Seller's conditions.
2. Oral agreements with our employees are only binding when confirmed in writing.
3. The provision of an offer shall be non-binding and at no expense to us.
4. The latest valid version of INCOTERMS shall be used for determining the interpretation of commercial terms.
- II. **Acceptance of Orders**

Orders from us shall be confirmed by the Seller in writing within two weeks of receipt unless otherwise agreed by way of individual contract.
- III. **Prices**

1. The price stated in the order is binding and shall apply for the therein stated term of the contract. The price shall cover all goods and services as well as any supplementary matters required for the completion of the performance to be provided, unless a separate remuneration is agreed to. This shall include in particular the costs for any materials or equipment, freight costs, customs charges, costs for packing materials or transport costs to the place of use determined by us as well as any taxes and other duties.

2. In case of prices „free house“, „free ...place of destination“ and other „free/prepaid“ deliveries, the price shall include freight and packing costs. In case of deliveries which are not free, we accept only the least expensive freight costs unless we have specified a particular means of transport. If an order does not stipulate a price or if no agreement can be reached as to a price for any other reason, a reasonable price shall be deemed to have been agreed to. In determining the reasonableness of a price priority shall be given to considering the normal market price at the time of the order. If the parties cannot agree on a reasonable price, an independent expert appointed by the President of the Chamber of Industry and Commerce in Dusseldorf shall determine such in accordance with § 317 (BGB) Civil Code. The costs for such an expert shall be borne by the parties in proportion to the extent that the price determined by the expert varies from the price proposed by the respective party as being reasonable.
- IV. **Payment**

1. Subject to other individual contract provisions or more advantageous provisions for us in the sales conditions of the Seller, payment shall be due within 14 days minus 3% discount for prompt payment or within 60 days net after due provision of an invoice in accordance with Point V and receipt of invoice by us. In the event that an invoice is received before complete delivery or the complete provision of any performance owed, such as, for example, erection services, notwithstanding the above, the payment deadline shall be calculated from the day following the date of complete delivery or the completion of performance. In the event of any agreed part-delivery, the payment deadline shall be calculated for the entire delivery from the day following the date of the last part-delivery. In the case of acceptance of premature deliveries the due date shall be calculated from the agreed delivery date.

2. Payment shall be by way of bank transfer or cheque. Separate agreements shall apply in relation to self-billing or EAS processing. In case of defective goods or services we may withhold payment until due performance or the rectification of any defect. We are also entitled to withhold payment if we have outstanding claims against the Seller which do not result from the same legal relations or which are not yet due.

3. Time of payment shall be determined on the basis of the undertaking of the necessary steps for such e.g. the issuing of instructions to a bank to transfer moneys or the sending of a cheque by post.

4. Any payments which exceed the prices agreed under Point III are made subject to the express condition that such may be claimed back at any time, unless there is a written agreement to the contrary. Neither party may rely on any practice at variance hereto.

5. The Seller is not entitled to assign its claims or allow such to be collected by a third party without prior written approval, which shall not be refused without good reason.
- V. **Invoicing**

Invoices shall be provided without undue delay and separately from the delivery to Benteler Distribution Deutschland GmbH & Co. KG, Postbox 100953, 47009 Duisburg with the details of the order data. Such will be regarded as having been received only if they comply with legal – and in particular the tax – requirements. In case of delivery to several locations, separate invoices shall be issued. The measurements, weights and quantities determined by Benteler shall be used for the purpose of calculations unless the Seller can prove that its calculations are correct.
- VI. **Delivery Deadlines/Default Delay in Delivery**

1. Agreed delivery dates and deadlines are binding. Part deliveries shall be permitted only with our express written approval. Any threatened delay shall be notified to us without undue delay in writing. At the same time suggestions should be made to us for appropriate measures to avoid the consequences.

2. The delivery period shall commence from the day of the legally-binding order unless otherwise agreed in writing.

3. The time of actual receipt of the goods by us shall be the determining factor in relation to compliance with the delivery date or delivery deadline unless otherwise agreed in writing.

4. Notwithstanding the above, in case of delay in delivery for reasons for which the Seller is responsible, a contract penalty shall be due to us which, unless agreed otherwise, shall be 0.5% of the agreed purchase price for each calendar day up to a maximum of 5% of the agreed purchase price. Notwithstanding the above, if a ship is named by us for shipping the material and such ship is accepted by the Seller, the Seller shall bear the costs for demurrage, missing cargo etc. if the material – for whatever reason – is not shipped or is not shipped at the planned time.

5. If our contractual duties become impossible or become substantially more difficult in case of force majeure, in case of strike or lock-out, we may withdraw from the contract in part or whole or require performance to a later deadline without the Seller being entitled to make any claim against us on the basis of such.

6. The Seller can only rely on a lack of necessary documentation to be provided by us if such documentation has not been received even after a written demand for such has been made.
- VII. **Delivery Provisions/Dispatch**

1. All delivery papers, operation instructions and other certificates belonging to the performance of the delivery of the Seller shall be sent to us on the day of dispatch. In case of any delay in delivery by the Seller including the late sending of the above named documentation, the payment deadline shall commence from the time of receipt of the performance, whereby the earliest payment from us shall be made after receipt of payment by our customer; any payment security shall no longer be valid.

2. In case of any deliveries directly to third parties, Benteler shall be provided with a copy of the consignment note acknowledged by the consignee as well as the commercial invoice. For such deliveries, the goods and packing shall have no identifying marks as to origin.
- VIII. **Retention of Title**

1. Any extended or enlarged retention of title by the Contractor is excluded. Title to the goods shall transfer to us with payment for these objects and any extended form of so-called current account reservation of title shall not apply.

2. On the basis of the retention of title the Seller may demand a return of the goods only if it effectively withdraws from the contract.
- IX. **Performance of Deliveries/Transfer of Risk/Packing/Subcontracting**

1. The Seller shall bear the risk of accidental loss or deterioration even in case of „prepaid“ and „free destination“ deliveries to the time of handing over the goods at the place of destination.

2. Part deliveries require our separate agreement.

3. Excess or short deliveries shall be permitted only in terms of the respective order specifications.

4. Packing costs shall be borne by the Seller unless agreed otherwise in writing. If we are to bear the costs of packing in individual cases, such shall be charged on a reasonable basis. Any duty to take back packing shall be in accordance with the Packaging Regulations of 21 August 1998 in the current applicable version.

5. The Seller shall ensure that its goods are packed in a way that such can be taken into stock with the agreed quality according to order specifications. The respective applicable national and international hazardous goods regulations shall be complied with.

6. The Seller is not entitled to transfer the performance of the contract in part or in whole to any third party without prior written agreement. Even if such agreement is given, the Contractor shall remain fully responsible for the performance of the contract. The instruction of subcontractors by the Seller shall also require prior written approval.
- X. **Declaration as to Originating Status**

1. In case of goods arising from the Contractor's production as to the originating status of the sold goods, the following shall apply:

2. The Seller undertakes to allow the verification of the evidence of origin by the customs authorities and to provide all necessary information in this regard as well as to provide any necessary confirmations.

3. The Seller undertakes to compensate for any damage resulting from the declared origin not being recognized by the responsible authorities as a result of defective certification or lack of verification possibilities unless the Seller is not responsible for such.
- XI. **Export Controls and Customs Requirements:**

The Seller shall notify us of all permit requirements for the re-export or export of the ordered goods in accordance with German, European or U.S. exports or customs provisions. In this regard, the Seller shall provide the following data in the invoice for the respective items:

 - the export list number in accordance with Attachment AL of the German Export Regulations (Außenwirtschaftsverordnung)
 - for U.S. goods, the ECN (Export Control Classification Number) in accordance with U.S. Export Administration Regulations (EAR),
 - the trade-policy place of origin of its goods and components thereof, including technology and software and details as to the preferential origin of the goods,
 - the statistical goods number (HS code) of its goods, as well as a contact person in its organisation for the clarification of any queries by us.

In addition, the Seller shall notify us upon request and in writing of any further export data for the ordered goods and their components. Any changes to the above data shall be notified to us in writing without undue delay (before delivery of the respective goods).
- XII. **Liability for Defects and Limitation Period**

1. The Seller shall supply us with goods and services free of any defects or defects as to title. The Seller shall in particular ensure that its goods and services comply with the recognized rules of technology and the contractually-agreed characteristics and norms.

2. The Seller shall undertake any controls during the production and shall carry out a check at the dispatch and accordingly shall check parts supplied extensively as to their quality. We shall inspect the goods at the time of receipt only as to their identity and completeness in terms of the order as well as for any apparent damage, and in particular any transport damage. Any such defects shall be notified by us within a reasonable period. We reserve the right to carry out further inspections upon receipt of the goods. In addition, we shall give notice of any defects as soon as such are detected having regard to the circumstances of normal commercial procedures. The Seller waives any objection in this regard based on a late notification of defect.

3. The Seller accepts the statutory warranty for defects occurring within 36 months of delivery to the extent that no other mandatory legal deadlines apply. § 434, section 1, sentences 2 and 3 shall also apply to any work and services contract (Werkvertrag). The Seller shall reimburse us for any expenses necessary for correcting defects in accordance with § 439 section 2 (BGB) Civil Code and shall indemnify us from the beginning against any third party claims arising from the act of correcting any defect as well as any claims for compensation by third parties which relate to a defective delivery by the Seller. The costs for correcting a defect shall include in particular, but are not limited to, the costs of de-installation of the defective goods and reinstallation, as well as any necessary transport to a location other than the place of performance. The Seller shall indemnify us against any third party claims resulting from the delivery of the Seller to the extent that the Seller is itself liable to us.

4. To counter a risk of serious damage we may, at the expense of the Seller and without any notice or setting of a deadline in relation to the Seller, correct the defect ourselves, have the defect corrected, or obtain replacements, provided that because of the special urgency it is no longer possible to inform the Seller of the defect and the possible damage and it is no longer possible to give the Seller the opportunity to provide supplementary performance.

5. If, in case of resale to a third party a claim is made against those in relation to the warranty, the Seller shall indemnify us in case of a defective delivery against any resulting damage insofar as the Seller is responsible for the warranty claim.

6. Where the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) applies, we may demand substitute delivery even in cases of non-substantial breaches of contract. In addition, rectification may be demanded in accordance with Art. 46 section 3 CISG even after the expiry of a reasonable deadline after the issuing of a notification of defect.

7. The Seller hereby assigns to us in advance – on account of its performance – any and all claims which it may have against its sub suppliers arising from or in connection with the supply of defective goods or services. It shall provide notice us with all documentation necessary for enforcing such claims.

8. In addition hereto the provisions of law shall apply in relation to warranties.
- XIII. **Liability/Product Liability/ Proprietary Rights of Third Parties:**

Any rights to claim compensation – regardless of the legal basis – shall be made against us only in case of wilful or grossly-negligent breach of a duty. This shall not apply to any breach of substantial contract duties, to claims based on product liability or in case of culpable injury to life, body or health. In case of any breach of a substantial contract duty, our liability shall be limited to typically-foreseeable damage at the time of entering the contract. In case any claim is made against us by a customer or other third party on the basis of product liability, the Seller shall indemnify us upon written request to do so insofar as the damage is caused by a defect in the goods/services provided by the Seller or by a breach of any duty for which the Seller is responsible. In cases of strict liability this shall only apply if the Seller is culpable. In addition, the Seller shall be liable to reimburse us for any expenses in terms of §§ 683, 670 (BGB) Civil Code arising from or in connection with any recall action.
- XIV. **Proprietary Rights**

The Seller shall indemnify us against any claims of third parties based on infringement of proprietary rights as well as any resulting costs to us, insofar as the Seller or any of its agents or vicarious agents culpably cause such infringement. The parties shall notify each other without undue delay if any claim is made against a party based on infringement of proprietary rights.
- XV. **Insurance**

1. The Seller shall take out, at its own expense, third party liability insurance and extended product liability insurance to cover compensation claims of third parties arising from defective goods or services. This includes property damage, personal injury, and financial loss such as, for example, further processing costs, de-installation and installation costs, testing costs and sorting costs. The Seller shall maintain the above named insurance at all times during the term of the contract and shall ensure that even after the ending of the contract any remaining damage, which was caused at least in part during the term of the contract, remains insured.

2. The level of coverage for the above named insurance shall be respectively at least EUR 10 million for each case of damage and each year of insurance.

3. The Seller, either itself or through its insurer, shall provide us upon request with written evidence of the taking out and continuation of the insurance described above. Insofar as the Seller fails to provide the necessary written evidence and we are not able, because of statutory or other similar regulations, to provide the required insurance cover for the Seller, or we decide not to take out such insurance cover for the Seller, we may indemnify the Contractor against its own or third party claims to the same extent as the contents and level of such insurance („liability indemnification“). Any claims by us or third parties for further damage shall not be affected thereby.

4. We may demand from the Contractor the reimbursement of any costs resulting from such indemnification and set off any costs in terms of the existing contract relationship which generally do not exceed the premium for a corresponding insurance concluded by us against any claims of the Contractor, even if such are not yet due.

5. This liability indemnification shall not apply in cases of wilful or grossly-negligent breaches of a duty by the Seller.
- XVI. **Data Protection/Confidentiality/Advertising**

The Seller shall treat as a commercial secret all details of an apparently commercial or technical nature, and regardless of the form, of which it becomes aware from the business relationship with us. The Seller shall refer to its business relationship with us in its advertising only if we have expressly agreed to such in writing. We may process and store any data related to the Seller in terms of the Federal Data Protection Act (Bundesdatenschutzgesetz).
- XVII. **Provisions of Law and Regulations of the Authorities**

In relation to materials delivered to us, the Seller undertakes to comply with the respective applicable provisions of the European Union and the Federal Republic of Germany, e.g. the REACH Regulation (EC Regulation No.1907/2006), the Electrical and Electronic Equipment Act (ElektroG) as the national implementation of Directive 2002/95/EC (RoHS) and Directive 2002/96/EC (WEEE) and the End-of-Life Vehicles Act (Altfahrzeuggesetz) as the national implementation of EU Directive 2000/52/EC. Similarly the Seller guarantees that products delivered to us are free from radioactive elements in accordance with the Radiation Protection Ordinance (StrSchV) of 20 July 2001, Attachment III, Table 1, limits under columns 2 & 3

The Seller shall also provide without undue delay details of any relevant changes to the goods, to the ability to supply, to application possibilities or to the quality caused by legal regulations, and in particular the REACH Regulation, and the Seller shall consult with us as to suitable measures in each case.
- XVIII. **Place of Performance, Jurisdiction and Applicable Law, Miscellaneous**

1. The place of performance for the deliveries shall be, unless agreed otherwise, the respective plant.

2. The place of jurisdiction shall be the seat of our main office. We may bring an action against the Seller at its general place of jurisdiction or the place of jurisdiction of our branch office with which the contract was entered as registered in the commercial register.

3. All legal relations between us and the Seller in connection with these General Purchase Conditions shall be subject to the law of the Federal Republic of Germany.

4. The shall ensure at its own expense and without delay that all requirements for the effectiveness of the order in the Seller's country, e.g. export permits, are available and remain valid during the performance. If the Seller does not fulfil this obligation, the purchaser may withdraw from the contract and in any case claim damages.

5. The same shall apply in case, for example, the necessary permits are not issued within a reasonable period for the purchaser despite the efforts of the Seller or such are revoked during performance or become invalid.

6. Should any provision of these General Purchase Conditions be or become invalid, the effectiveness of the remaining provisions shall not be affected thereby.

7. These General Purchase Conditions shall apply correspondingly to other types of contracts, and in particular contracts for work and services (Werkvertrag) and for work and materials (Werkliefervertrag).