

# General Purchasing Terms and Conditions of BEHN + BATES Maschinenfabrik GmbH & Co. KG (Effective 1 March 2007)

## General

Our general purchasing conditions shall apply exclusively and for every purchase order placed by us, also for all future business with the Supplier. Any condition of the Supplier that is contrary or that deviates from our own conditions will not be accepted by us. This shall also apply when we do not expressly disagree with the Supplier's conditions.

## Orders

- 1 Purchase orders, agreements or other declarations shall only be binding when they have been submitted or confirmed by us in writing.
- 2 Subsequent change requests shall be taken into consideration by the Supplier. If a request shall entail an adjustment of term or price it has to be agreed upon with us in writing.

## Prices

- 1 The prices stated in our purchase order and confirmed by the Supplier are fixed prices.
- 2 The price shall include all necessary technical documentation in the quantities and languages requested by us.
- 3 Unless otherwise agreed upon in writing changes or alterations due to subsequently arising cost increases shall be excluded.

## Delivery time

- 1 The agreed delivery dates and times shall be binding and must be adhered to under all circumstances. The delivery time shall be deemed complied with when the object of delivery arrives at its place of destination stated by us or respectively - in case an official acceptance is to be carried out - when the object of delivery is accepted by us. In the event the delivery time cannot be adhered to, then we shall be informed thereof without delay.
- 2 If the Supplier does not fulfil his performance in due time due to reasons the Supplier is responsible for, then the legal provisions shall apply.

## Dispatch, packaging, transfer of risk

- 1 The shipment of the goods shall be accompanied by a delivery note that states the quantities and dimensions.
- 2 The Supplier shall be responsible for appropriate and suitable packaging and loading.
- 3 The transfer of risk shall take place only after acceptance by our receiving department.

## Invoice and payment

- 1 Invoices shall be sent to us in duplicate immediately after delivery. Payment terms and cash discount provisions shall become effective beginning on the day the invoice is received, but at no time before arrival of the goods. Unless otherwise agreed upon, payment shall be effected 14 days after receipt of the invoice with a 3% cash discount or 30 days after receipt of invoice with a 2% cash discount, or 60 days net after receipt of invoice.
- 2 We expressly reserve the right to the offset of due counter-claims and to the exercise of the right of retention.
- 3 Our payments shall not be considered as acceptance of proper delivery.

## Retention of title

The delivered goods shall become our exclusive property upon payment at the latest, any extended form of retention of title by the Supplier or by third parties is void and shall not be accepted by us.

## Liability for defects

- 1 The Supplier shall be responsible that all deliveries/performances correspond to the state-of-the-art and comply with all safety and environmental regulations.
- 2 In the event of a defect, we reserve the right to request within the legal limitation period, at our discretion subsequent performance such as repair, improvement, replacement or re-manufacturing as provided by law. We expressly reserve the right to claim for any kind of damage and for the refund of wasted expenditure.
- 3 Should the Supplier fail to fulfil his obligation to complete subsequent performances within a reasonable period of time set by us, without having the right to refuse to complete subsequent performance, then we shall be entitled to carry out the necessary measures ourselves at the expense and risk of the Supplier. Especially in urgent cases to avoid high damages, we shall have the right to carry out such performances immediately.
- 4 The liability for defects shall not be limited neither by the fact that we checked or approved calculations, drawings, executions etc. of the Supplier nor that we made suggestions or conducted quality controls.
- 5 The limitation period shall become effective from the time the goods are delivered, or, in the case an official acceptance is to be carried out, when this acceptance of the object of delivery has been carried out by us.
- 6 For all other cases not stated herein the legal provisions shall apply.

## Liability

- 1 The Supplier's liability is subject to the legal provisions. Liability exclusions or limitations of any kind whatsoever shall not be accepted by us.

This provision shall also apply to the breach of a non-essential contractual obligation or liability for assistants as well as limiting liability to a maximum amount or specific damages or limiting liability by shortening the legal limitation period.

- 9.2 For defects in the goods the Supplier is responsible for, the Supplier shall release us from the product and manufacturer's liability resulting therefrom to the extent the Supplier himself would be liable.

## 10. Notification of defects

- 10.1 At the delivery of goods to be checked by us as per § 377 of the German Commercial Code (HGB), the time period for inspection and notification of visible defects shall be 2 weeks from the time of acceptance of the delivery at the place of their use. The notification period for latent defects shall be 2 weeks after their discovery.
- 10.2 Upon the notification of defects, the limitation period shall be suspended.

## 11. Quality control

Within the scope of the Supplier's delivery obligations, the Supplier shall conduct on his own all necessary quality controls and provide us with the inspection certificates. We reserve the right to gain access to the quality records of the Supplier and, if necessary, to conduct our own inspections or audits with the full support of the Supplier, or to have them conducted.

## 12. Models and tools

- 12.1 If the Supplier manufactures tools or models at our cost for fulfilling an order, then the manufacturing shall be done solely for us. The Supplier shall thus be obliged to keep the manufactured objects on our behalf, or to hand them over to us when requested and to transfer to us the ownership as far as this has not been done.
- 12.2 Any processing of these models and tools as well as the resale of parts manufactured therefrom shall not be permitted without our expressly written approval.

## 13. Supply of spare parts

The Supplier shall assure supply of spare and wear parts for a period of minimum 10 years after the original delivery.

## 14. Confidentiality, data protection

- 14.1 All drawings shall remain our exclusive property. They shall be used only for their agreed purpose and not for any other purpose. Copies or other types of duplication, including electronic storage, processing or transmission using electronic systems shall only be made for the agreed purpose. Neither originals nor copies of any type may be handed or supplied to third parties.
- 14.2 Referring to our business relationship in any way for the purpose of advertising or promotion shall not be permitted without our prior written approval.
- 14.3 The Supplier shall be obligated to compensate for all damages incurred by us through a breach of any of the above mentioned obligations.
- 14.4 As per § 33 of the Federal Data Protection Act (BDSG) we advise that the Supplier's data is stored within the provisions of the Data Privacy Act.

## 15. Intellectual property rights

The Supplier shall assure that the rights of third parties do not conflict with the intended use of the purchased goods especially industrial property rights of third parties are not violated or infringed. In case we are claimed because of the possible violation of rights of third parties, such as copyrights, patent and other intellectual property rights, the Supplier shall release us herefrom and from any other related performance.

## 16. Other provisions

For all other matters that are not stated in these general terms and conditions, the legal provisions shall apply in general and exclusively.

## 17. Severability clause

If one clause of these terms and conditions should be void or become invalid, this shall have no effect on the validity of the remaining content of the terms and conditions. The void or invalid clause(s) shall be replaced by valid ones, through which the economic purpose aimed at is reached as far as possible.

## 18. Place of fulfilment, court of legal jurisdiction and choice of law

- 18.1 Place of fulfilment for deliveries/performances – inclusive the warranty obligations – shall be the place of destination specified by us in the purchase order.
- 18.2 Any dispute arising out of or in connection with these terms and conditions shall be settled by the court having jurisdiction over our place of business. However, we shall also be entitled to sue the Supplier before the court having jurisdiction over the Supplier's place of business.
- 18.3 For all legal relationships between the Supplier and us, the Law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention of Contracts for the International Sales of Goods (CISG) shall be expressly excluded.

The English version of these terms and conditions shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail.