

# Terms and Conditions of Purchase

Terms and Conditions of Purchase of Becker-Antriebe GmbH, Sinn

## §1 Validity of the terms and conditions

The following Terms and Conditions of Purchase shall apply exclusively to all orders of products and purchase of services of whatever type of Becker-Antriebe GmbH (hereinafter referred to as "Orderer") and the Supplier. The work contractor, service provider and other contracting party is also referred to below as Supplier. The Orderer shall not recognise any terms and conditions of the Supplier that conflict with or differ from these Terms and Conditions of Purchase, unless it expressly agrees to their validity in writing.

The Terms and Conditions of Purchase of the Orderer shall also apply to all future transactions with the Supplier even if they have not been expressly agreed again.

The execution of the order shall be deemed recognition of these Terms and Conditions.

All agreements which are reached between the Orderer and the Supplier for the purpose of implementing the Contract shall be set forth in writing. Verbal agreements must be confirmed in writing.

The Terms and Conditions of Purchase of the Orderer shall apply even if it unconditionally accepts the delivery or performance of the Supplier in the knowledge that the terms and conditions of the Supplier conflict with or differ from its Terms and Conditions of Purchase.

## §2 Order and order confirmation

The technical documents, drawings, article geometries and the works specifications and other data of the Orderer attached to the orders are an essential part of the orders.

The Orderer may revoke the order if the Supplier has not accepted it in writing within a period of 2 weeks after receipt (order confirmation). If the order confirmation differs from the order, the Orderer shall be bound only if it has agreed to the difference in writing. The acceptance of deliveries or services and payments do not constitute approval. The forwarding of orders to third parties is not admissible without the written approval of the Orderer and entitles the Orderer to withdraw from the Contract in whole or in part and demand compensation. If approval is granted by the Orderer, the third party shall be deemed the vicarious agent of the Supplier. Any amendments of or modifications to the order shall only be valid if they have been confirmed by the Orderer in writing.

## §3 Prices

The price listed in the order is binding. Unless otherwise expressly stated, the price is plus the valid statutory value added tax. Payments shall be made at the discretion of the Orderer by transfer to the Supplier's bank account specified in the respective invoice or by cheque or bill of exchange.

In the absence of a deviating written agreement, the price shall include delivery "franco domicile". The transport, shipping and packaging costs shall be borne by the Supplier. The return of packaging is subject to a separate agreement.

When quoting prices ex works or ex sales warehouse of the Supplier, goods shall be shipped at the lowest cost unless the Orderer has stipulated a specific mode of transport. Additional costs resulting from non-compliance with shipping regulations shall be borne by the Supplier.

## §4 Delivery time

The delivery time stated in the order is binding and shall commence on the date of the order unless a fixed date has been agreed.

The Supplier shall be obliged to notify the Orderer promptly in writing, stating the reasons and the expected duration of the delay, if circumstances occur or become apparent to it which result in the Supplier being unable to meet its contractual obligation in whole or in part or on time. If the Supplier fails to give notification, it may not cite a hindrance on the part of the Orderer.

If the Supplier does not render performance within the agreed delivery period, the Orderer shall be entitled to charge lump-sum damages for the delay amounting to 1% of the outstanding delivery value per commenced week, but only up to a maximum of 5% of the order value. The Orderer shall remain at liberty to assert higher damages. The Supplier shall retain the right to prove that no or a lower loss occurred. Other statutory claims shall not be affected thereby.

## §5 Transfer of risk

The risk shall be transferred upon delivery "franco domicile" unless otherwise agreed in writing. For deliveries involving the set-up or assembly of items and for performances the risk shall be transferred upon acceptance, and for deliveries which do not involve the set-up or assembly of items the risk shall be transferred upon receipt at the receiving station specified by the Orderer.

## §6 Inspection of defects, warranty, supplier recourse

The supplier vouches that its deliveries and services demonstrate the agreed quantity and quality, as well as comply with the assumed guarantee and the recognised rules of technology.

The supplier guarantees that all deliveries and services comply with the state-of-the-art technology and all relevant legal provisions. If deviations from these regulations are necessary on a case-by-case basis, the supplier must obtain the written consent of the buyer. Furthermore, the supplier guarantees to use environmentally friendly products and processes for its deliveries or services within the scope of the economic and technical possibilities. In addition, the supplier guarantees the environmental compatibility of the delivered products and packaging materials. At the request of the buyer, the supplier shall be obliged to issue a certificate of inspection for the delivered goods.

The liability of the supplier always extends to include intent and any form of negligence.

Notwithstanding Section 438, Para. 1, No. 3 German Civil Code – BGB, the standard limitation period for claims for defects is 3 years from the passing of risk. The statute of limitation shall start with acceptance if acceptance has been agreed. This 3-year limitation period shall also apply correspondingly to claims based on legal defects, whereby the statutory limitation period for third-party claims for real restitution (Section 438, Paragraph 1, No. 1 BGB) remain unaffected; claims based on legal defects shall not become statute-barred as long as third parties can still make claims against the buyer, particularly in the absence of a limitation period.

The limitation periods specified in the sales law, including the aforementioned extensions, shall apply to all contractual claims based on defects to the legally permissible extent. If the buyer is entitled to claim compensation for non-contractual damages on the grounds of a defect, the regular legal statute of limitation (Sections 195, 199 BGB) shall apply, unless the application of the statute of limitation of the sales law would result in a longer statute of limitation in individual cases.

Statutory provisions (Sections 377, 381 German Commercial Code – HGB) shall apply to the commercial obligation to inspection and give notice of defects with the following stipulation: The buyer's obligation to inspect goods shall be restricted to defects that can be detected by incoming goods inspections by means of visual checks, including those that come to light in the delivery documents (e.g. transport damage, incorrect or short deliveries) and by random checks as part of quality assurance. There shall be no duty to investigate if the acceptance of goods has been agreed. Besides, it shall depend on the actual benefit of an investigation, taking into account individual circumstances in accordance with diligent commercial judgement. The obligation to give notice of defects for defects discovered at a later time remains unaffected. Notwithstanding the inspection obligation, the buyer's complaint (notification of defect) shall be deemed to have been made immediately and in good time if sent off within 5 working days from the discovery of defect and/or from delivery in the case of obvious defects.

The buyer shall be entitled to the statutory claims for defects and any claims for damages in full.

The buyer shall be entitled to raise legally stipulated claims to recourse within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 BGB) in addition to claims for defects. It may, in particular, request the exact type of subsequent fulfilment (subsequent repair or replacement delivery) from the supplier that it owes its customer in each individual case. This shall not limit the buyer's legal option (Section 439 Paragraph 1 BGB).

Prior to the buyer acknowledging or fulfilling any claims for defects raised by one of its customers (including compensation for expenses in accordance with Sections 445a Paragraph 1 and Section 439 Paragraphs 2 and 3 BGB), it shall notify the supplier and request a written statement, providing a brief description of the circumstances. Should a substantiated statement fail to be provided within a reasonable period of time and if no mutually agreeable solution is found, the actual claim for defects agreed by the buyer shall be deemed to be owed to its respective customer. In this case, the supplier shall be obliged to furnish proof to the contrary.



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Any claims of the buyer arising from supplier recourse shall also apply if the faulty goods have been further processed by it or another company, e.g. by incorporation into another product.

The supplier is obliged to notify its sub-suppliers of any recourse claims immediately after they have been asserted by the buyer and to assign these recourse claims to the buyer on account of performance. Furthermore, it shall immediately notify the sub-supplier of the assignment. Regardless of this, the supplier's own obligation towards the buyer shall remain.

#### **§7 Indemnity**

If the supplier is responsible for damage to the buyer's or third party's product, it shall be obliged to compensate the buyer for the damage or to indemnify the buyer against any claims for damages by third parties upon first request if the cause lies within its sphere of control and organisation. This includes any costs for legal representation.

Within the scope of its aforementioned liability for damages, the supplier is also obliged to reimburse any expenses in accordance with Sections 683, 670 BGB or in accordance with Sections 830, 840, 426 BGB arising from or in connection with a recall action carried out by the buyer. The buyer shall notify the supplier of the content and scope of any recalls to be carried out, insofar as possible and reasonable, and give it the opportunity to issue a statement. Other statutory claims shall remain unaffected.

The supplier shall take out and maintain product liability insurance with an appropriate amount of coverage. At the request of the buyer, the supplier shall prove existing insurance cover by submitting a corresponding certificate that also shows the amount of coverage.

#### **§8 Quality assurance**

The Supplier undertakes to maintain a quality management system during the business relationship with the Orderer and to monitor it on a regularly basis through internal audits. Changes may not be made to contractually agreed specifications without the Orderer's consent.

#### **§9 Long-term suppliers' declarations and certificates of origin**

The Supplier undertakes both upon initial acceptance of the order and subsequently once per calendar year to provide an original long-term suppliers' declaration, without being called upon to do so, for goods with preferential origin status according to the relevant statutory provisions (currently Implementing Regulation (EU) 2015/2447).

The Orderer shall be provided with the details of any changes to the originating status with the relevant order confirmation in text form (e.g. by fax or email) or in writing, without being required to request such details.

Should an additional charge be levied upon the Orderer or its customers by a customs authority on account of errors in their own declarations of origin which are due to incorrect details of origin provided by the Supplier, or should the Orderer or its customers suffer any other financial disadvantage as a result thereof, the Supplier shall make reparation for the loss suffered. Further claims for damages shall remain unaffected.

Deliveries of non-origin products shall be clearly marked in the invoices in each case.

#### **§10 Environmental protection and human rights**

The Supplier is obliged to comply with the recognised rules of technology (in particular IEC and EN standards and directives, VDE provisions, VDI guidelines, DVGW regulations) and the statutory provisions on product safety (especially the German Product Safety Act), the internationally applicable minimum labour standards, especially all the Conventions of the International Labour Organization (ILO) relating to employee rights, working hours and occupational safety, as well as all applicable statutory and official provisions, especially also in regard to environmental protection. It shall also guarantee that the goods delivered to the Orderer and any services rendered are produced, supplied and/or rendered in compliance with the applicable statutory requirements, EC Directive 2001/95 on general product safety, the statutory REACH & ROHS requirements and other environmental EU directives, especially Directive 2002/95/EC (ROHS 1) and Directive 2011/65/EU (ROHS 2), Directive 2005/69/EC (PAK), Directive 2006/122/EC (PFOS), Directive 2006/1907/EC (REACH) and shall provide the Orderer with corresponding certificates (e.g. safety datasheet, declaration of conformity and compliance) in writing without delay at the Orderer's request. This also applies to packaging products.

For purposes of clarification, it is emphasised that the Supplier is only obliged to delivery products which meet the above requirements. If the product contains SVHCs, an immediate duty to provide information applies pursuant to § 33 of Directive 2006/1907/EC (REACH).

The Supplier shall not participate either actively or passively or directly or indirectly in any form of bribery or corruption, breach of human rights or discrimination of its employees, forced or child labour. The Supplier undertakes in this connection to employ no person that cannot prove having reached the minimum legal age of 15 years.

The Supplier shall ensure that any third parties engaged by it who are involved in some form in the manufacture of the products it supplies to the Orderer comply with the obligations listed in the preceding paragraphs.

In the event that the Supplier breaches one of the aforementioned obligations in this paragraph, the Supplier shall indemnify both the Orderer and its customers from all costs or claims of third parties (especially direct or indirect claims for damages) as well as other disadvantages (e.g. fines) resulting from the breach of the statutory provision. This does not apply if the Supplier is not responsible for this breach of duty. The Orderer is also entitled to immediately cancel the corresponding order at any time and refuse to accept the corresponding delivery with no resulting cost to the Orderer. Any existing claims for damages shall remain unaffected thereby. Cancellation or refusal of acceptance does not constitute a waiver of any claims for damages.

#### **§11 Industrial property rights**

The Supplier shall guarantee that no rights of third parties are infringed in connection with its delivery. If a claim is asserted against the Orderer by a third party for this reason, the Supplier shall be obliged to release the Orderer from these claims upon initial written request. The obligation to release of the Supplier shall relate to all expenses necessarily accrued by the Orderer arising from or in connection with the claim by a third party.

The Orderer shall also be entitled, at the expense of the Supplier, to obtain the necessary permits for delivery, start-up, use, etc., from the holder of the industrial property rights.

#### **§12 Retention of title, forms, samples, secrecy**

The Orderer does not recognise extended retentions of title of the Supplier. The same applies to the contractual pledging of claims vis-à-vis the customers of the Orderer within the scope of an extended retention of title.

Supplied materials shall remain the property of the Orderer and shall be stored, labelled and administered free of charge. Use is only admissible for orders of the Orderer. Compensation shall be paid by the Supplier in the case of a decrease in value or loss. A list of materials shall be handed over to the Orderer upon request.

The processing or transformation of the material by the Supplier shall be carried out for the Orderer. If the reserved goods are processed with other items that do not belong to the Orderer, the Orderer shall acquire joint title to the new item in proportion to the value of the item of the Orderer compared to the other processed items at the time of processing.

The Orderer shall reserve the right of ownership and copyright to all diagrams, quotations, drawings, samples, models, forms, profiles, standard sheets, calculations, tools, etc., produced for the Supplier or surrendered to it. They and any items manufactured therefrom may not be copied, duplicated or made accessible to third parties without the express written consent of the Orderer. They shall be utilised exclusively for production. They shall be protected from unauthorised inspection and use and kept secret from third parties. Once the order has been processed, they shall be returned to the Orderer on an unsolicited basis free of charge. Subject to any further rights, the Orderer may demand their return if the Supplier breaches these duties.

#### **§13 Issue of invoices**

The invoice shall be submitted separately after delivery has taken place, stating the order number listed in the order.

If the invoice is received later than the goods, calculation of the discount period shall be determined by the date of receipt of the invoice instead of the date of receipt of the goods. Unless part deliveries have been expressly agreed, an invoice shall be issued for the total amount of each order after delivery has been effected in full.

Any claims vis-à-vis the Orderer may only be assigned with its written consent.

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## **§14 Payments**

Unless otherwise agreed in writing, payments shall be effected within 30 days with a deduction of 3% discount. The period allowed for payment shall commence as soon as the delivery or performance has been rendered in full and the duly issued invoice has been received. The deduction of discount is also admissible if the Orderer offsets or withholds payments to a reasonable extent due to defects; the period allowed for payment shall commence after defects have been remedied in full.

The Orderer shall be entitled to offset and withhold payments to the legally admissible extent.

## **§15 Place of performance, applicable law, place of jurisdiction, miscellaneous**

The place of performance for deliveries and performances is the delivery location specified by the Orderer. If no place of receipt is expressly specified by the Orderer, the place of performance is the Orderer's registered office. The law of the Federal Republic of Germany shall apply to these Terms and Conditions of Purchase and the entire legal relations between the Orderer and the Supplier to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

If the Supplier is a merchant as defined by the German Commercial Code (HGB), a legal entity under public law or special funds under public law, the registered office of the Orderer shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.

Should one of the provisions in these Terms and Conditions of Purchase or one of the provisions within the scope of other agreements be or become invalid, the validity of any other provisions or agreements shall not be affected thereby.

As at 04/2021



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