

# General Terms and Conditions of Purchasing of Beutler Transport Systeme GmbH

## 1. General

1.1 These Purchasing Conditions apply to all purchase orders issued by Beutler Transport Systeme GmbH (hereinafter: Customer) to its Contractor/Supplier, irrespective of the legal basis, unless otherwise agreed in writing.

1.2 Purchase orders from the Customer shall be based solely upon these Purchasing Conditions. Amendments or additions, as well as diverging General Terms and Conditions and such like, require the written confirmation of the Customer.

1.3 Inclusion of the Contractor's General Terms and Conditions is hereby expressly rejected insofar as they do not correspond to the Customer's Purchasing Conditions. Any inclusion is only valid where the Customer recognises the Contractor's General Terms and Conditions, expressly and in writing. Acceptance of the delivery of goods/services, or payment in respect thereof by the Customer, shall not constitute such recognition. This also applies if the Contractor declares that it will only effect delivery of goods or services according to its own conditions but nevertheless accepts and/or executes the Customer's order.

1.4 These Purchasing Conditions also apply to all future transactions between the Customer and Contractor, even if no express reference is made to these Purchasing Conditions in the individual case.

1.5 The deployment of a third party for performance of the main contractual service is only permitted with the express, written consent of the Customer.

## 2. Purchase Orders and Conclusion of Contracts

2.1 Purchase orders shall only be binding upon the Customer if they are in writing. Oral or telephonic purchase orders or agreements, as well as additions and amendments to a purchase order, must be confirmed in writing in order to be valid.

2.2 Acceptance of the purchase order must be issued by the Contractor, in writing. Confirmation must take place within three working days. The time limit shall commence on the date of the purchase order.

2.3 The Customer reserves ownership and copyright to illustrations, drawings, calculations and other documentation; they must not be made available to third parties without the Customer's prior express written consent. They must be used exclusively for the purpose of the delivery of goods and services forming the basis of the purchase order.

## 3. Performance

3.1 The goods/services forming the subject matter of delivery must correspond with the Customer's order documentation, possess the agreed characteristics and correspond to the latest state of the art as regards design and materials.

3.2 The Contractor undertakes to comply with all applicable laws and regulations as well as official and technical provisions, such as the VOB/C, VDE, VDMA and TÜV guidelines etc., national and supranational standards (DIN, EN) and accident prevention regulations issued by the occupational insurance association.

## 4. Delivery, Transfer of Risk, Acceptance, Delivery Time

4.1 Delivery shall always take place at the Contractor's risk. In the case of contracts for the sale of goods, the risk shall pass to the Customer once receipt of the goods at the delivery point specified by the Customer has been confirmed. In the case of contracts for work and services and contracts for work and materials, transfer of risk shall take place, at the earliest, following completion of the overall assignment and joint formal approval of the work.

4.2 The Contractor is obliged to notify the Customer without delay where circumstances occur, or become apparent, which indicate that the agreed delivery/performance deadline cannot be met.

4.3 Where no delivery/performance deadline has been agreed, the Contractor shall effect delivery/performance within a time limit of two weeks from the order date. The Contractor is at liberty to prove that a longer time limit for delivery is reasonable.

4.4 If the assignment involves design, calculation, development or similar services, the Contractor is obliged to submit complete design and manufacturing drawings as well as documentation, user manuals etc. In the case of the delivery or development of software, the scope of work includes, in particular, the delivery of the software in source and object programme form, and the documentation of the program development and application.

## 5. Shipping

5.1 The goods are shipped at the risk of the Contractor to the shipping address specified by the Customer. This also applies to returns of defective goods by the Customer.

5.2 The Contractor shall comply strictly with the shipping instructions specified in the purchase order.

5.3 The Customer is entitled to refuse acceptance of shipments if they are not accompanied by a proper delivery note. The costs resulting from the refusal of acceptance shall be borne by the Contractor.

5.4 Packaging of the goods shall be at the Contractor's expense. Return of the packaging requires a special agreement.

5.5 Shipments of goods which, exceptionally and by special agreement, take place at the cost and risk of the Customer, must be insured by the Contractor. Additional remuneration only takes place where this has been expressly agreed.

## 6. Inspection for Defects

6.1 Where, for both parties, the sale is a commercial transaction, the Customer shall inspect the goods within five full working days after delivery, insofar as this is feasible in the ordinary course of business, and, if a defect is found, notify the Contractor without delay.

6.2 Costs arising from the inspection of defective goods shall be borne by the Contractor.

6.3 The signing of a delivery note relating to the number of pieces, weight and size, as well as the contractual conformity of the delivered goods, shall not constitute any acknowledgement of contractual conformity or of the figures.

6.4 Acceptance of the goods always takes place subject to subsequent inspection. On receipt of the goods, the Customer is only obliged to carry out visual checks and random sampling.

## 7. Non-compliant Performance

7.1 If the Contractor fails to properly fulfil one of its contractual obligations, the Customer shall be entitled to the statutory claims. This applies, in particular, where contractual performance is not carried out, is carried out late or is defective.

7.2 If the Contractor fails to properly fulfil its delivery obligation, the Customer is entitled to make a replacement purchase at the Contractor's expense.

7.3 If the Contractor defaults on delivery, the Customer shall be entitled, without prejudice to any additional or other claims, and unless otherwise agreed, to claim a contractual penalty of 1% of the order value (incl. VAT) for each week of delay or part thereof, up to a total maximum of 5% of the order value. The reservation of the contractual penalty may be asserted by the Customer up until the final payment on the underlying contractual relationship, but at least within 14 days of acceptance or inspection of the work.

7.4 In the event of default on delivery or performance, the Customer also has the right to claim subsequent delivery and damages for late delivery or performance, or else - in lieu of performance - to claim damages for non-performance and rescind the contract.

7.5 In the case of orders involving partial deliveries, the Customer is also entitled to rescind the entire contract if the Contractor fails to properly fulfil its contractual obligations only with respect to a partial delivery.

7.6 If the Contractor's work is defective, the Customer shall be entitled, after giving prior notification to the Contractor, to remedy the defects at the Contractor's expense, where this is necessary to avoid or shorten interruptions in the Customer's business operations.

7.7 The limitation period for claims in respect of defects is 60 months. This is without prejudice to longer statutory limitation periods.

## **8. Insurance**

8.1 The Contractor is obliged to maintain insurance cover customary for the industry.

8.2 In particular, the Contractor is obliged to maintain product liability insurance with cover amounting to at least € 2 million per claim for personal injury/material damage per calendar year. This shall be without prejudice to the Customer's additional rights to claim damages.

## **9. Third-party Intellectual Property Rights**

9.1 The Contractor shall be liable vis à vis the Customer for claims arising from the infringement of third-party intellectual property rights or other third-party rights due to the delivery of its goods/services, their proper use by the Customer or the processing or resale of the goods which it has delivered.

9.2 In the event of third-party claims being brought against the Customer due to the infringement or impairment of such rights, the Contractor shall be obliged to hold harmless and indemnify the Customer from such claims or measures by third parties.

9.3 The liability of the Contractor under Clause 10.1 also covers all consequential loss incurred by the Customer, in particular that resulting from supply bottlenecks and stoppages in production as well as litigation costs.

9.4 The limitation period for claims due to a breach of intellectual property rights is 10 years from conclusion of the contract. This is without prejudice to longer statutory limitation periods and later statutory commencement of the limitation period.

## **10. Prices**

10.1 Unless otherwise expressly agreed, the agreed prices are irrevocable fixed prices and apply free to the delivery point inclusive of packaging and all ancillary costs.

10.2 The statutory value added tax must be shown separately.

## **11. Delivery Subject to Retention of Title, Ban on Assignment**

11.1 Delivery subject to a retention of title by the Contractor is excluded. Any contrary statements by the Contractor under property law shall be of no effect.

11.2 Where a retention of title on the part of the Contractor is agreed in the individual case, every item delivered shall pass into the Customer's unrestricted sole ownership when the respective payment is made.

11.3 Claims by the Contractor against the Customer may only be assigned to third parties with the Customer's consent.

## **12. Terms of Payment**

12.1 Payments by the Customer shall be made by bank transfer.

12.2 Invoices can only be processed by the Customer if – in accordance with the requirements of the purchase order – they specify the order number indicated therein; the Contractor shall be liable for all consequences of any failure to comply with this obligation.

12.3 Unless otherwise agreed in writing, invoice amounts shall be paid by the Customer within 14 days from receipt of the goods and/or inspection and receipt of the invoice, with 3% discount, or within 30 days net. If the Contractor effects performance prior to the agreed delivery date, commencement of the payment period shall be determined solely according to the agreed date, even if the Customer accepts the early performance.

12.4 Payments shall always take place subject to verification of the invoice.

12.5 Invoices agreed based on time and/or quantity may only be based on the time and material specifications or quantities, which have been confirmed by the Customer in advance; these must be attached to the invoices.

12.6 The Customer is entitled to rights of set off and retention in accordance with the statutory provisions.

## **13. Right of Rescission, Force Majeure**

13.1 The Customer is entitled to rescind the contract if labour disputes, operational disruptions, accidents, military operations, market stagnation, official intervention, similar occurrences or force majeure render the use of the ordered goods/services impossible or economically very difficult.

13.2 Where one party ceases payment or an application is made for insolvency proceedings against its assets, the other party shall be entitled to rescind any part of the contract that has not been fulfilled.

## **14. Data Protection**

The Contractor takes note and agrees that the Customer can collect, store, process and use the Contractor's data arising from the business relationship, within the context thereof, as well as transmit it to third parties and delete it. The data concerns e.g. address, delivery item and invoice data. In other respects, statutory provisions apply, in particular the GDPR.

## **15. Choice of Law, Place of Performance, Jurisdiction, Trade Secrets and Severance Clause**

15.1. All contracts between the Customer and the Contractor are subject to German law with the exclusion of the UN Vienna Convention on the International Sale of Goods (CISG).

15.2 The place of performance for all obligations of the Contractor arising under the business relationship is Customer's registered office.

15.3 If the Contractor is a trader, the Customer's registered office is also the place of jurisdiction; the Customer is however entitled to bring proceedings against the Contractor in the court with jurisdiction for the Contractor's registered office.

15.4 The Contractor is obliged to treat as a trade secret, all commercial and technical details, which are not in the public domain, and which come to its knowledge as a result of the business relationship, and to place any sub-suppliers under a corresponding obligation.

15.5. If individual provisions of a contract between the Customer and the Contractor are invalid, this will be without prejudice to the validity of the rest of the contract. The invalid provision shall be replaced by a provision which enables the economic purpose of the invalid provision to be achieved in the best way possible. This shall apply to any omissions in the contract.