

## General Purchase Conditions

Version: June 2015

### I. Scope

1. These General Purchase Conditions apply to all orders of goods or services – including those in the future – of Benteler Distribution International GmbH and any of its Affiliated Companies to the provider (hereinafter referred to as “**Supplier**”) of such goods or services (hereinafter referred to as “**Delivery/-ies**”) and the execution of such orders. An “**Affiliated Company**” shall be a person or company which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Benteler Distribution International GmbH. For the purposes of this definition, “control” (including the terms “controlled by” and “under common control with”) means possession, directly or indirectly or as trustee, of power to direct or cause the direction of management or policies of another person or company (whether through ownership of voting securities, as trustee, by contract, or otherwise). The following provisions shall be understood in relation to such person or company being the respective contractual party of the Supplier.
2. Any conditions of the Supplier which conflict with or vary from these General Purchase Conditions are not recognised by us unless such is stated in these General Purchase Conditions or the contract with the Supplier in writing. If we take receipt of an order confirmation or Deliveries without any express objection, in no case shall such constitute an acceptance of the Supplier’s conditions.

### II. Conclusion of Contract, Incoterms, Deterioration in the Supplier’s Creditworthiness, Modifications

1. Our inquiries are non-binding. The provision of an offer by the Supplier shall be at no expense to us and non-binding for us.
2. Our orders shall be confirmed by the Supplier in writing within two weeks of receipt unless otherwise agreed by way of individual contract. If the Supplier does not confirm an order within two weeks of receipt, we are entitled to revoke the order. Unless otherwise agreed upon, a call-off order under an existing framework agreement shall be deemed confirmed by the Supplier unless the Supplier objects to the call-off order within 24 hours in writing.
3. Amendments or supplements to the contract or oral contracts with the Supplier are only binding when confirmed in writing.
4. Unless otherwise agreed explicitly to the contrary, any written form requirement may be observed by letter, telegram, facsimile or email. A personal signature or a uniform contractual document is not required.
5. The Incoterms valid at the time of the conclusion of the contract with the Supplier apply with respect to the interpretation of commercial terms.
6. In case of any discrepancy or inconsistency between other parts of the contract and these General Purchase Conditions, the other parts of the contract shall prevail over these General Purchase Conditions.
7. Without prejudice to any further rights, we are entitled to withdraw from the contract (with retroactive effect) or to terminate the contract (with future effect) in case of the Supplier’s suspension of payment, if a petition to open insolvency proceedings against the Supplier’s assets has been filed or in case any other material deterioration in the Supplier’s creditworthiness becomes apparent. In case of termination, the Supplier shall be paid for these parts of the Deliveries already performed at the time of termination.
8. We are entitled to request from the Supplier modifications in the design and construction of the Deliveries, provided that the Supplier can be reasonably expected to meet such requests. The Supplier shall implement such modifications within a reasonable period of time and notify us prior to the implementation about the consequences, in particular with regard to the delivery dates and extra or reduced costs. The parties shall conclude mutually satisfactory agreements concerning the consequences of such modifications. We will determine such consequences within our reasonable discretion if an agreement cannot be reached within a reasonable period of time.

### III. Prices

1. The agreed price is binding and shall apply for the whole term of the contract. The price shall cover the complete Delivery, in particular 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 explicitly agreed to. This shall include in particular the costs for any materials or equipment, freight costs, customs charges, costs for packing or transport costs to the place of destination determined by us as well as any taxes and other duties.
2. If there is agreed in individual cases that the costs for packing material are borne by us, such shall be charged on a reasonable basis.
3. Unless otherwise agreed, prices shall be “DDP” according to Incoterms 2010. This applies also if prices are agreed “free house”, “free place of destination” and in case of other “free/prepaid” Deliveries.
4. If the Supplier enters into the transportation agreement with the carrier and the transportation is not free for us, we accept only the least expensive freight costs unless we have specified a particular means of transport to the Supplier.
5. 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, the parties agree to submit the matter to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce. The findings of the expert shall be binding upon the parties. The costs for the expertise proceedings shall be borne by the party whose pre-proceeding price proposal varies more from the price determined by the expert. In case that the proposals of both parties vary to the same extent from the price determined by the expert, the costs for the expertise proceedings shall be borne by the parties in equal shares.

### IV. Invoices, Payment, Default in Payment

1. Invoices shall be provided without undue delay and separately from the dispatch to us 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.
2. Without any prejudice to other individual agreements or more advantageous provisions for us in the delivery conditions of the Supplier, 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 Section IV.1 and receipt of the invoice. In the event that an invoice is received before the complete provision of any performance owed, such as but not limited to, installation services, the payment deadline shall be calculated from the day following the date of complete performance. If the Supplier is required to provide delivery papers, operation instructions, material testing, test records, quality control documents, test certificates or any other documentation, such shall be part of the requirement of the completeness 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 originally agreed delivery date.
3. Payment shall be by way of bank transfer or cheque. Self-billing or EAS processing shall be subject to a separate agreement.
4. We are entitled to withhold payment, in particular in case of defective Deliveries, until due performance, if we have outstanding claims against the Supplier arising out of the business relationship with the Supplier.
5. We are entitled to set-off against the Supplier’s claims with any counter-claims of Benteler Distribution International GmbH or any Affiliated Company.
6. 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 money or the sending of a cheque by post.
7. We shall not be in default with payment before receiving a reminder of the Supplier subsequent to the amount becoming due. In addition, default in payment requires our fault. Section V.2 applies with respect to the Supplier’s right to declare the contract avoided.
8. Any payments which exceed the prices agreed are made subject to the 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.

# Benteler Distribution International

9. Payments do not constitute an acknowledgement that the corresponding Deliveries are provided in accordance with the contract (in particular in relation to quantity or quality).

## V. Breach of Duties, Force Majeure

1. Without prejudice to Section IV.7, we are only obliged to pay damages – regardless of the legal basis – in accordance with the contract, if we intentionally or gross negligently breach obligations owed to the Supplier.
2. The Supplier is only entitled to declare the contract avoided due to a breach of contract committed by us after a reasonable time period fixed by the Supplier in writing has elapsed without result. In particular and without prejudice to any further requirements, the Supplier 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 and within a reasonable time period fixed in writing by the Supplier.
3. If the performance of our contractual duties is impeded by events of force majeure, we may suspend the contract and require performance to a later deadline. Events of force majeure shall include, in particular, without limitation, war, civil commotion, insurrection, acts of terrorism, natural disasters, diseases, acts of God, governmental and other actions of official authorities, strike, lock-out, raw shortages, fire, power breakdown. In case that the event of force majeure lasts more than three months, we are entitled to withdraw from the contract without the Supplier being entitled to make any claim against us on the basis of such or to terminate the contract. In case of termination, Section II.7, last sentence applies accordingly.

## VI. Delivery Dates and Deadlines, Default in Delivery

1. Agreed delivery dates and deadlines are binding. Any recognizable delay shall be notified to us immediately in writing. At the same time the Supplier shall make suggestions for appropriate measures to be taken in order to conform with the delivery dates and deadlines and to minimize any damage due to the delay. The costs for such measures shall be borne by the Supplier without prejudice to any further rights of us due to the delay.
2. Delivery deadlines shall commence from the day of the receipt of our order unless otherwise agreed in writing.
3. For the purposes of establishing the timeliness of the Delivery (including remedy of a defect), the relevant point in time shall be the date of receipt, and for Deliveries involving installation or other services the relevant point in time shall be the date of acceptance.
4. In case of delay in Delivery caused by or otherwise attributable to the Supplier, a contract penalty shall be due to us which, unless agreed otherwise, shall be for each commenced week of delay 0.5% of the purchase price (net) for such part of the Delivery, which due to the delay cannot be used as intended by us, up to a maximum of 10% of such purchase price (net). The payment of the penalty by the Supplier shall not affect any other rights based on late Delivery and shall not release the Supplier from its other obligations arising out of the late Delivery. The penalty may be applied irrespective of whether we accept any Delivery with reservation for penalty or not.

## VII. Dispatch, Delivery Provisions, Regulations, Certificates, Import

1. The measurements, weights and quantities determined by us shall be used for the purpose of calculating the scope of Delivery unless the Supplier can prove that its calculations are correct.
2. Partial, excess or short Deliveries shall be permitted only with our express written approval.
3. In case of any Deliveries supplied directly to third parties, we 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.
4. The Supplier shall ensure that its goods are packed in a way that such can be taken into stock with the agreed quality according to the order specifications. The respective applicable national and international hazardous goods regulations shall be complied with.
5. The Supplier is obliged to take back any supplied packing at its own costs.
6. The Supplier undertakes to comply with the applicable national and international provisions for the Delivery, in any event of the European Union and the Federal Republic of Germany, e. g. the REACH Regulation (EC Regulation No.1907/2006), the Directives 2011/65/EU (on hazardous substances in electrical and electronic equipment, "RoHS 2"), 2012/19/EU (on waste electrical and electronic equipment, "WEEE") as well as their applicable national implementations and the Directive 2000/53/EC (on end-of life vehicles). In addition, the Supplier guarantees that the goods delivered to us are free from radioactive elements, in particular in accordance with the German Radiation Protection Directive of 20 July 2001, Attachment III, Table 1, limits under columns 2 & 3.
7. The Delivery shall be accompanied by a test certificate according to EN 10204 (e. g. certificate 2.2, certificate 3.1). These test certificates shall be made available to us by e-mail as a pdf-file on the day of Delivery, indicating our order number and the position in the subject line of any such e-mail. The test certificates respectively the corresponding pdf-files shall be separated according to the dimension and melting of the Deliveries. The Supplier's obligation according to this Section VII.7 does not apply in case the (raw) material processed by the Supplier was provided by us.
8. Delivery notes shall be made in writing and indicate the order number, order date, melting number and any other information requested in the contract or the order.
9. The Supplier shall notify us of any governmental permits or notification requirements that may be required for the import and the use of the Delivery.
10. The Supplier shall provide without undue delay details of any relevant changes in the Delivery, its quality, application possibilities and the Supplier's ability to supply if such changes are required by legal regulations, in particular the REACH Regulation (EC Regulation No.1907/2006), and the Supplier shall consult with us as to suitable measures in each case.

## VIII. Declaration as to the Origin of the Delivery, Export Controls and Customs Requirements

In case the Supplier provides any declarations as to the origin of the Delivery, e. g. movement certificates etc., the following applies:

1. The Supplier 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.
2. The Supplier undertakes to indemnify us against any damage resulting from a defective declaration of origin or any lack to provide verification of the evidence of origin.
3. The Supplier shall notify us of all permit requirements for the re-export or export of the Delivery in accordance with the applicable national and international foreign trade, export control and customs regulations. In any event, the Supplier shall notify us of all permit requirements of the German, European and U.S. foreign trade, export control and customs regulations. In this regard, the Supplier 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 ECCN (Export Control Classification Number) in accordance with the 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 his goods, as well as a contact person in its organisation for the clarification of any queries by us.
4. In addition, the Supplier shall notify us upon request and in writing of any further export data for the Delivery. Any changes to the above data shall be notified to us in writing without undue delay.
5. The Supplier shall ensure at its own expense and without delay that all requirements for the execution of the Delivery in the country of destination, e. g. permit requirements, are available and remain valid during the execution of the contract. If the Supplier does not observe this obligation, we may

# Benteler Distribution International

withdraw from the contract or terminate the contract and in any case claim damages. The same applies if the necessary permits are not issued within a reasonable period. In case of termination, Section II.7, last sentence applies accordingly.

## **IX. Title, Transfer of Risk**

1. Title shall transfer to us with our possession of the Delivery or the respective part of the Delivery, without prejudice to any earlier transfer of title to us according to statutory law.
2. For Deliveries involving installation or other services, risk shall transfer to us on acceptance and for Deliveries not involving installation or other services, risk shall transfer to us upon receipt at the place of destination designated by us.

## **X. Transfer of the Contract, Subcontracting, Assignment, Set-Off and Retention Rights of the Supplier**

1. The Supplier is not entitled to transfer the contract or any of its duties in part or in whole to any third party without our prior written consent.
2. The use of subcontractors by the Supplier shall require our prior written approval. Such use will not relieve the Supplier from the responsibility for ensuring compliance with any and all provisions set forth in these General Purchase Conditions or other parts of the contract.
3. The Supplier is responsible that its subcontractors and component suppliers fulfil the obligations of the contract. The Supplier is responsible for any such failure of its subcontractors or component suppliers. This applies also if the Supplier delivers goods for the production or processing of which he is obliged to use materials or processes of other suppliers determined or selected by us. Upon demand, the Supplier shall provide a list of the subcontractors and component suppliers used in connection with the Delivery.
4. The Supplier is not entitled to assign any of our claims to a third party or to have such claims collected by a third party.
5. The Supplier is not entitled to set-off with any counter-claims or to exercise any right of retention unless its counter-claims are undisputed or finally adjudicated.

## **XI. Defects, Liability, Warranty Period**

1. The Delivery must be free of any defects, including deficiencies as to title, and fit for the intended purpose within the warranty period. The Supplier guarantees in particular that the Delivery complies with the agreed design, material, workmanship, the most recent status of science technology, all applicable national and international technical standards, guidelines and norms and with the agreed characteristics, specifications, samples and drawings. This shall include in particular compliance with statutory and official stipulations, including without limitation safety regulations, of the countries of production and destination. The Supplier guarantees that the Delivery is free from intellectual property rights of third parties.
2. The Supplier shall constantly undertake quality controls in accordance with EN ISO 9001 and ISO/TS 16949 (most recent version, including associated changes, supplements and replacements which are carried out from time to time) and shall carry out a check as to the quality of the Delivery at the time of dispatch.
3. The incoming goods inspection conducted by us is limited to checking conformity of the type and quantity of the Delivery with the contract and to the identification of easily visible external damages, particularly damages sustained in transit. We will notify the aforementioned defects to the Supplier without undue delay after the incoming goods inspection. No additional obligations and responsibilities for incoming goods inspection are borne by us. Any other than the aforementioned defects will be notified to the Supplier without undue delay as soon as they are detected having regard to the circumstances of normal business operations. The Supplier waives any right to assert that such other defects have been notified too late. This Section XI.3 does not apply with respect to contracts for works and services.
4. In case of a defect, our rights shall be according to the United Nations Convention on Contracts for the International Sale of Goods (CISG) subject to the following provisions.
5. We are entitled to request and the Supplier is obliged to perform at its costs rectification of the defect or substitute delivery resp. reproduction of a new work as chosen by us at our discretion. Within the warranty period, we are entitled to demand rectification or substitute delivery/reproduction even after the expiry of a reasonable time period or deadline. Our rights to claim rectification or substitute delivery/reproduction shall not be subject to any further time requirement or deadline. This applies in particular even if the Supplier requests us to make known if we will accept performance or in case of the Supplier's notice that he will perform within a specified time period. We may demand substitute delivery/reproduction even in cases of non-substantial breaches of contract. The Supplier shall bear any expenses in connection with the rectification or substitute delivery/reproduction, including, without limitation, the costs of de-installation and reinstallation, as well as any necessary transport (including costs for air freight), even to a location other than the original place of destination.
6. Without prejudice to any further rights, we are entitled to reduce the price or to declare the contract avoided if the Supplier does not perform the rectification or substitute delivery/reproduction within a reasonable deadline fixed by us. The same applies if remedying the defect is impossible or fixing of a deadline is unreasonable for us. Section XI.5, 2<sup>nd</sup> to 4<sup>th</sup> sentence apply accordingly.
7. To counter a risk of serious damage or if industrial safety is threatened or for the purpose of maintaining our ability to deliver to our customers, we may, at the expense of the Supplier and without fixing a deadline in relation to the Supplier, correct the defect ourselves, have the defect corrected, or obtain substitutes, provided that because of the special urgency it is not reasonable to give the Supplier the opportunity to remedy the defect. In addition, the Supplier shall be liable to reimburse us for any expenses arising from or in connection with any necessary recall action or field campaign.
8. The Supplier shall be obliged to assign to us, on first written demand, – on account of his performance - any and all claims which he may have against its sub suppliers/subcontractors arising from or in connection with the supply of the defective Delivery. He shall provide us with all documentation necessary for enforcing such claims.
9. The Supplier shall be liable for any and all costs, expenses and damage resulting to us by a defective Delivery or any other breach of duty regardless of fault. The Supplier shall indemnify us on first demand against any claims by third parties which relate to a defective Delivery or any other breach of duty by the Supplier, including, without limitation, against any third party claims arising from the costs of correcting any defect and against any third party claims based on an infringement of intellectual property rights by the Supplier.
10. Any further rights due to a defective Delivery or any other breach of duty by the Supplier according to the United Nations Convention on Contracts for the International Sale of Goods (CISG), contract or law are reserved. In addition, we are entitled to retract any declaration of us due to an error if the Delivery is defective.
11. The warranty period shall be three years, unless a longer period is given by contract or law. It shall commence at the time of the transfer of risk. Article 39 Subsection 2 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
12. Our rights due to a defect shall expire one year after the notification of the defect but in no case before the warranty period as set forth in Section XI.11 has expired.
13. In case of a rectification or substitute delivery/reproduction by the Supplier the warranty period shall commence anew. Negotiations with the Supplier suspend the expiry of the warranty period for their duration and an additional period of six months.

## **XII. Processing, Warehousing**

1. Unless otherwise agreed upon, the Supplier is responsible for the proper storage of component parts (including raw materials, substances, elements, etc.) provided by us to the Supplier for the manufacturing or processing of the Delivery. The Supplier is liable for any loss of or damage to such component parts and shall notify us thereof without undue delay. Without our prior written consent, the Supplier is not entitled to surrender the component parts to third parties or to manufacture with the component parts goods other than the goods to be delivered to us. The Supplier's responsibilities include taking care of repairs, storage, service and insurance of the component parts.

# Benteler Distribution International

2. The Supplier is entitled to use the component parts provided by us only in the ordinary course of business for the Deliveries to be manufactured and/or processed according to the contract. The Supplier shall inform us about the actual consumption of component parts provided by us for the performance of the contract on the respective delivery note or via another channel that is to be coordinated ( e. g. consumption per order by email with delivery, overview of consumption per week, etc.). The report shall comprise the actual consumption in the form of the used quantity of the components with details of the batch per Delivery. The costs for scrap parts and material consumptions beyond the agreed extent – provided that the Supplier caused such excess – shall be borne by the Supplier.

## **XIII. Tooling**

1. Notwithstanding any other agreement to the contrary, special tools and equipment manufactured by the Supplier to be used in fulfilment of the Supplier's contractual obligations, shall, when wholly or partly paid by us, become our property ("Tooling").
2. Supplier shall clearly mark the Tooling as our property. Without our prior written consent, the Supplier is not entitled to surrender the Tooling to third parties or to manufacture with the Tooling goods other than the Delivery to be supplied to us. Supplier's responsibilities include taking care of repairs, storage, service and insurance of the Tooling. The Supplier is liable for any loss of or damage to the Tooling and shall notify us thereof without undue delay.

## **XIV. Insurance**

1. The Supplier shall take out, at its own expense, third party liability insurance and extended product liability insurance to cover compensation claims arising from defective Deliveries or other breaches of duties. This includes property damage, death, bodily injury, and financial loss such as but not limited to further processing costs, de-installation and installation costs, testing costs and sorting costs. The Supplier shall maintain the above named insurance at all times during the term and execution of the contract and shall ensure that any remaining damage, which was caused at least in part in connection with the contract, remains insured.
2. The level of coverage for the above named insurance shall be at least EUR 10 million for each occurrence of damage and – in the aggregate - per year.
3. The Supplier, either himself or through his insurer, shall provide us upon request with written evidence of the taking out and maintenance of the insurance described in Sections XIV.1 and XIV.2. We are entitled, but not obliged, to provide the required insurance cover for the Supplier. The Supplier shall reimburse us of any costs resulting from the provision of such insurance and we may set off any such costs against the Supplier's claims, even if our costs are not yet due for payment.
4. Neither full compliance nor failure to comply with the insurance provisions of this Section XIV. shall limit or relieve the Supplier of its liability obligations under the contract.

## **XV. Confidentiality, Advertising, Data Protection**

The Supplier shall treat as a commercial secret all details of an apparently personnel, commercial or technical nature of which he becomes aware from the business relationship with us, regardless of their form (paper, electronic format etc.). The Supplier shall refer to his business relationship with us in his advertising only if we have expressly agreed to such in writing. We may process and store any data related to the Supplier and its employers for the purpose of executing the contract with the Supplier.

## **XVI. Place of Performance, Jurisdiction and Applicable Law, Miscellaneous**

1. The place of performance for the Delivery shall be, unless agreed otherwise, our registered office.
2. All legal relations between us and the Supplier arising out of or in connection with the contract are subject to the United Nations Conventions on Contracts for the International Sale of Goods (CISG) and supplementarily to Swiss Law. In particular, the United Nations Conventions on Contracts for the International Sale of Goods (CISG) applies also with respect to contracts for works and services, without prejudice to the supplementarily applicable Swiss Law.
3. Exclusive place of jurisdiction shall be the registered office of our company. However, we are entitled to bring an action against the Supplier at his general place of jurisdiction or any other competent court.
4. Should any provision of these General Purchase Conditions or the contract be or become invalid, the effectiveness of the remaining provisions shall not be affected thereby. The same applies for any gaps. The invalid or missing provision shall be replaced by a provision coming as close as possible to the legal and economic purpose of such invalid or missing provision.