

International Conditions of Purchase (IEB)

BECO GmbH

Status December 2010

§ 1 Scope

1. These International Purchasing Conditions apply exclusively, in addition to the other contractual agreements, to all business transactions between BECO GmbH, hereinafter referred to as BECO, and the Supplier or contractors, hereinafter uniformly referred to as the Supplier. BECO does not acknowledge other conditions unless it expressly approves the validity of such conditions in writing.

These International Conditions of Purchase also apply if BECO accepts the delivery or performance, or makes payment in that respect, although it is aware of conditions to the contrary.

2. These International Conditions of Purchase also apply to all future business relations without renewed incorporation. They apply up until provision of new International Conditions of Purchase by BECO.

§ 2 Entering into a contract

1. Offers and the provision of samples are gratuitous for BECO. Variations from the inquiry are to be clearly stated in the offer. The Supplier shall be bound by its offer for at least one month.

2. The Supplier is to confirm the order in writing. Up until receipt of the confirmation of order, BECO shall be entitled to cancel the order. Confirmed prices apply as fixed prices. Delivery call-ups shall become binding if the Supplier does not object within one week following receipt. Framework contracts only provide an entitlement to procure the necessary quantity of primary material. Manufacturing parts for call-up orders is only permitted following receipt of the call-up.

3. If the Supplier's confirmation of order contains a reference to the incorporation of the Supplier's terms and conditions of business, this shall not constitute any significant amendment within the meaning of Section 19 CISG¹. In accordance with Section 1 of these International Conditions of Purchase, BECO does not acknowledge such conditions.

4. BECO may request contractual amendments prior to executing the order. The amendments are to be provided for in writing by way of mutual agreement. BECO is to be informed without delay of reservations regarding the amendments requested by BECO.

If an agreement cannot be reached, BECO shall be entitled to rescind the contract. In such a case the Supplier shall receive appropriate reimbursement of expenses.

Without prior written approval by BECO, the Supplier is not entitled to amend the order.

5. Assigning an order to a third-party without approval by BECO is prohibited, and shall entitle us to rescind the contract.

§ 3 Payment

1. Goods shall be delivered in accordance with the DDP v (*Delivered Duty Paid*) of INCOTERMS 2000. A price stated in the order is deemed the maximum price. The price may be lower but not higher than that stated in the order.

The Supplier shall not charge BECO any higher prices and not grant any less favourable conditions than those that apply to other comparable customers. The cost of packaging is included in the price.

2. Invoices are to be written out separately and in duplicate for each order by way of stating the original and the duplicate copy.

In that respect, BECO's order number and, if known, the person or department placing the order, and the intended application are to be stated.

3. In the absence of agreements to the contrary, BECO shall make payments in euros.

Payment shall be made within 30 days insofar as the invoice has fallen due, the goods have been received in full and fault-free or the services have been rendered in full and fault-free. This applies accordingly in the case of permissible partial deliveries.

Delays as a result of faulty invoices shall not have a detrimental effect on agreed trade discount periods.

In the event of an agreement on trade discounts, payment shall be made in accordance with the agreement, at least, however, in the case of payment within 30 days less 3%.

The period shall commence on the day of fault-free delivery, fault-free rendering of services, the day of acceptance or the day on which the invoice falls due for payment, whereby the latest time is deemed authoritative.

Payment shall be made subject to a review of the invoice and proper execution of the contract.

4. In the event of minor negligence, BECO shall not be deemed to be in default. BECO's obligation to provide compensation for damage caused by default is limited to typical cases of damage.

5. Insofar as advance payments are agreed upon, the Supplier is to provide an unlimited performance guarantee subject to a concurrent

condition and in the sum of the advance payment from a bank or insurance company. In the event of default in delivery, the advance payment amount shall be reduced by 8 percentage points above the base-lending rate of the European Central Bank and deducted from the invoice. In other respects, this does not affect BECO asserting a claim for damage caused by delay.

6. If the Supplier's solvency deteriorates to an extent that jeopardises honouring the contract or if the Supplier discontinues its deliveries or if insolvency proceedings are instituted regarding its assets, BECO shall be entitled to rescind the contract. BECO is entitled to rescind the contract at its discretion in part only.

7. Without approval by BECO, the Supplier is not entitled to assign to third-parties claims against BECO or arrange for these to be collected by third-parties. If the goods delivered to BECO are subject to an extended reservation of title, such approval shall be deemed granted. If the Supplier assigns to a third-party claims against BECO without approval by BECO, BECO may, with the effect of discharging an obligation, bring about performance for both the Supplier and the third-party.

8. BECO is entitled to assert a right to refuse performance, right to set-off and a right to retain.

The Supplier shall only be entitled to a right to refuse performance, right to set-off and a right to retain insofar as the counter-claim, which is the basis of the right to refuse performance, right to set-off or right to retain, is acknowledged by BECO or has become *res judicata*.

§ 4 Delivery activities

1. Dates and periods in orders and call-ups are binding.

In the case of deliveries, receipt of the delivery at BECO's agreed plant or the point of receipt and use stated by BECO shall be authoritative in respect of adherence to the periods and dates. In the case of services, the timely and full rendering of the service is crucial. In the case of plant output, the time of acceptance is authoritative.

Partial services are only permitted following written approval by BECO.

The Supplier is to inform BECO without delay in writing of difficulties that prevent the Supplier from performing the delivery or service on the due date, and bring about a decision on maintaining the order. The Supplier shall not be liable for lacking or delayed notification.

2. In the event of delivery earlier than agreed, BECO reserves the right to return a consignment at the Supplier's cost or interim storage with third-parties at the Supplier's cost. If a consignment is not returned or goods are not stored with a third-party in the case of early delivery, the goods shall be stored up until the delivery date at BECO's premises at the Supplier's cost and risk. In the event of early delivery, BECO reserves the right to make payment on the agreed due date only. In the case of early delivery, the trade discount period shall be calculated from the day of the agreed delivery date or the day of receipt of the invoice by BECO, depending on whichever date is later.

3. In the event of default in delivery, BECO shall be entitled to the statutory claims. An exemption of liability or restriction on liability on the part of the Supplier is excluded. In the event that dates are exceeded, BECO shall be entitled to rescind the contract. Setting an additional period in the event of non-delivery may be dispensed with in the case of particular urgency of the delivery regarding own binding dates.

4. If the Supplier is in default, it undertakes at BECO's request to provide subsequent performance by way of express delivery (express, fast freight, special delivery, express parcel and air freight etc.) at its cost.

5. A warning, or setting a period, shall not be required if the delivery date is agreed upon as a "fixed" date or if the Supplier states that it is unable to deliver within the agreed period.

6. If the Supplier is in default, BECO shall be entitled to demand a conventional penalty of 10% of the net delivery or performance value for each completed week but not, however, more than an amount totalling 50% of the net delivery or performance value, and request rescission of the contract. BECO reserves the right to assert a claim for greater damage. The Supplier is free to furnish proof of lesser damage. The paid conventional penalty shall be counted towards a claim for compensatory damages. The right to request payment of an agreement conventional penalty shall not be forfeited by the fact that the conventional penalty in the case of acceptance of the delayed delivery was not expressly reserved insofar as it is asserted up until the time of the final payment.

7. In the event of default in delivery on the part of the Supplier, BECO shall be entitled to purchase goods in replacement insofar as such action is expedient under the circumstances to ward off the threat of consequential damage as a result of the delay. Additional costs incurred by BECO in this respect shall be borne by Supplier.

¹ United Nations Convention on Contracts for the International Sale of Goods

8. The Supplier may only cite lacking and necessary documents to be supplied by BECO if the Supplier has issued a written warning regarding such documents, and has not received them within a reasonable period.

9. In the event of delayed acceptance, BECO shall only be liable for claims for damages in that it is culpable.

10. Each consignment is to be accompanied by a duplicate delivery note stating all the details of the order and, in particular, the order no., parts no. and batch no. Partial and residual deliveries are to be specifically labelled as such.

In addition, the delivery note is to be attached to the delivery item either underneath a sticker or wrapping paper with the reference "delivery note here".

Depending on the type of shipping and delivery country, the consignment is to be accompanied by all the necessary accompanying documents, in particular movement certificates, express parcel dispatch notes, customs permits for temporary exportation, certificates of origin and invoices.

Delays, additional costs and damage caused as a result of the failure to adhere to the shipping requirements shall be the responsibility of the Supplier.

11. If the goods to be delivered are goods from an EC country of origin, the Supplier is to submit to BECO a valid long-term supplier's declaration in which the Supplier confirms the delivery of goods originating in an EC country. In the event that this does not apply to the ordered products, the Supplier undertakes to clearly label these products on the delivery note and the invoice by way of "No Certificate of Origin". In the event that the obligation is not honoured, the Supplier shall be liable for damage sustained by BECO as a result, in particular subsequent demands of foreign import duties and fines.

12. BECO is entitled to take possession of the goods from the owner of the goods (in particular forwarding agent, carrier, warehouse keeper) without original accompanying documents too if such a party has been furnished with proof of payment for the goods. The Supplier is not entitled to obstruct receipt of goods on the part of BECO by way of existing or assumed existing setting-off or retention rights.

On request the Supplier shall issue BECO with authority to accept the goods.

13. BECO is to be provided with advance notice of each delivery. The notification is to contain details of the order number, quantity, measurements, weight, special requirements for handling the goods, unloading, transport and storage.

14. Unless otherwise agreed, the goods to be delivered are to be packed in a manner that is customary in the trade and appropriately. The Supplier shall be liable for damage as a result of faulty packaging. BECO reserves the right to return packaging material to the Supplier.

15. Risk shall only pass upon delivery following discharging by the Supplier or the transport company to the shipping address stated by BECO, or upon acceptance. This also applies if BECO's personnel provide assistance during unloading. The Supplier is, therefore, required to take out appropriate transport insurance.

16. Goods shall be accepted during BECO's business hours or the goods acceptance times stated by BECO.

17. If BECO is entitled to reject the delivery, it does not undertake to take possession of the goods.

§ 5 Product safety

1. The Supplier guarantees that its products, services and plant output are as per agreement.

2. The Supplier is to obtain information about the intended use of its products, services and plant output as per agreement.

3. The Supplier is not to label any delivery items such that they can be identified as its products.

4. The Supplier shall enclose with its deliveries manufacturer's inspection certificates and safety data sheets.

5. The Supplier undertakes to inform BECO in good time prior to alterations, in particular to manufacturing processes, materials or bought-in parts, relocating manufacturing areas, reviewing procedures or facilities or other quality assurance measures, so that BECO can check whether or not the alteration could have a negative effect on the product.

§ 6 Obligation to inspect and provide notification of defects

BECO is to inspect the deliveries that are obviously not as per agreement. Notification of defects shall be deemed given in good time if provided within 10 days from the time of identifying deliveries that are not as per agreement. The Supplier waives insofar objecting to delayed notification of defects. In the case of transit transactions, notification of defects is to be geared towards the customer.

Complaints mean additional costs. For this reason BECO reserves the right to charge a flat-rate damage fee of € 100. The Supplier is free to furnish proof of lesser expenses, and BECO may furnish proof of greater expenses.

The Supplier shall carry the cost and risk of returning delivery items that are not as per agreement.

§ 7 Action in breach of contract

1. In the event that the delivery item or performance is in breach of contract, BECO shall be entitled, at its discretion, to demand that the Supplier provides subsequent performance, rescinds the contract or reduces the purchase price and claim for damages or reimbursement of expenses incurred in vain.

2. As part of the subsequent performance, BECO is entitled, at its discretion, to demand rectification of a defect or delivery of an item as per agreement. Replacement may also be demanded if the act in breach of contract does not constitute a significant breach of contract. The Supplier undertakes to carry all costs required to rectify defects, provide a replacement or eliminate damage, in particular transport, infrastructure, work and material costs.

3. If the Supplier does not rectify a defect or provide a replacement within a period of reasonable length set by BECO, or if rectifying a defect is impossible or fails, BECO shall be entitled to rescind the contract and claim for damages.

In urgent cases, in particular in the event of imminent danger or to ward off danger, BECO shall be entitled to rectify a defect or have it rectified by a third-party at the Supplier's cost.

4. If the same goods are repeatedly delivered with defects, BECO shall be entitled, after issuing a written warning, in the case of repeated faulty delivery to rescind the contract for the delivery scope that is not honoured.

5. BECO is also entitled to reduce the agreed price if the Supplier has offered subsequent performance but BECO has rejected this based on justified circumstances, in particular timely own delivery obligations.

6. BECO's means of redress regarding breach of contract by the Supplier and BECO's claims for damages shall fall under the statute of limitations in the case of a contract of purchase upon expiry of 36 months following delivery of the manufactured BECO products by way of using the delivery items, at the latest, however, upon expiry of 60 months from delivery to BECO, and in the case of services and plant output upon expiry of 60 months following acceptance of the service or plant output.

7. The above-mentioned periods of limitation also apply in the event that the Supplier has provided a guarantee for its products, work or services.

8. If a material defect is identified within 12 months from the passing of risk, it shall be assumed that the defect existed at the passing of risk unless such an assumption is incompatible with the type of defect.

9. In the case of parts that are subsequently improved or subsequently delivered within the periods of limitation, the period of limitation for such parts shall start afresh at the time the Supplier has rendered the services for subsequent performance, or upon acceptance.

10. The Supplier shall render BECO exempt, at the first request, from third-party claims for damages, the consequence of material defects in the delivery item or the rendered service or plant output.

11. Claims against the Supplier regarding defects of title regarding the products, services or plant output shall fall under the statute of limitations in 10 years. The Supplier shall render BECO and its customers free from third-party claims regarding defects of title at the first request.

12. Civil law statute of limitations shall not apply as long as authorities may assert claims against BECO. These claims include, in particular, administrative acts that involve a burden or the withdrawal of administrative acts resulting in a benefit.

13. The Supplier undertakes to reimburse expenses for and damage caused by a call-back or withdrawal campaign conducted to avoid personal or material damage, which are the result of delivery notes or the rendered service or plant output that are not as per agreement.

14. In the event of breach of contract by BECO, the Supplier is to set BECO an additional period of reasonable length to honour the contractual obligation.

15. In the absence of express and specific provisions in these International Conditions of Purchase, claims against BECO resulting from the violation of subsidiary obligations and indirect damage are excluded.

§ 8 Force majeure

In the case of force majeure BECO shall be released for the duration of force majeure from the obligation to accept the goods or plant output, and from the obligation to accept the services. This also applies to other acts of co-operation in the case of honouring the contract. If BECO cannot accept in good time because of force majeure and because of other unforeseeable obstructions or obstructions that are outside BECO's sphere of influence and which exert an influence upon the acceptance of goods, the acceptance shall be extended accordingly.

This also applies if BECO was already in default in acceptance when such obstacles occurred. BECO shall inform the Supplier without delay, at the latest within one week, of the start and end of such obstructions.

If acceptance is delayed by more than six weeks, both the Supplier

and BECO shall be entitled to withdraw from the contract regarding the affected performance scope.

§ 9 Insurance cover

The Supplier undertakes to take out a company and product third-party liability insurance policy that is customary in the country for personal damage on the one hand and material and product pecuniary loss on the other, and maintain a call-back cost insurance in accordance with the delivery scope and product for motor vehicle parts and non-motor vehicle parts.

The scope of such insurance cover must include personal and material damage caused by the lack of agreed characteristics of the delivery products, damage caused by the linking, blending and processing of the delivery products, further processing and finishing, dismantling and assembly costs, wastage production by machines and a reviewing and sorting clause.

The cover must also include damage abroad.

The Supplier shall surrender to BECO, at the latest upon the first delivery or services, confirmation of the insurer regarding the above-mentioned scope of cover (*Certificate of Insurance*).

§ 10 Means of production and provided material

1. Means of production made available, planned or paid by BECO, such as models, matrixes, templates, samples and tools, shall remain our property or become BECO's property. They may not be used for deliveries to third-parties, and may not be duplicated, sold, assigned as security, pledged or otherwise forwarded. The same applies to the delivery items manufactured using these means of production.

The Supplier undertakes to use the means of production exclusively to manufacture the contractual products ordered by BECO.

2. Insofar as third-parties seize items that are BECO's property, the Supplier undertakes to inform BECO of this in writing without delay. The Supplier is to bring the enforcement agency's attention at the time of a seizure to the status of ownership of the items.

3. The Supplier undertakes to insure items that are BECO's property at replacement value at its own cost in a material insurance policy with the greatest possible cover (*all-risk cover, extended coverage*).

The Supplier assigns to BECO the compensation claims resulting from such insurance. BECO hereby accepts the assignment.

4. The Supplier undertakes to perform the necessary servicing and inspection work regarding the surrendered items that may apply, and perform all repair and maintenance work in good time at its own cost.

5. Insofar as items are provided by BECO, BECO shall retain ownership of such items. Processing or conversion by the Supplier as per agreement shall be carried out on behalf of BECO. If the reserved goods are processed, linked or mixed with other items not owned by BECO, BECO shall acquire co-ownership of the new item in the proportion of the value of the reserved goods to that of the other items at the time of processing, linking or mixing. If processing, linking or mixing is carried out such that the Supplier's item is to be considered the primary item, it shall be deemed agreed upon that the Supplier shall assign proportionate co-ownership to BECO.

This provision also applies if BECO may refuse acceptance regarding delayed or faulty delivery or if BECO may dispense with additional orders.

In such cases, the provided items are to be made available to BECO free of charge. Setting off is excluded.

6. The Supplier undertakes to check the provided items upon surrender in respect of obvious defects such as identity, quantity and transport damage, and inform BECO of defects without delay. In the case of processing identified defects in the surrendered items, BECO is to be informed of the identification of defects without delay.

7. BECO may only be invoiced for additional expenses regarding material faults and variations in measurements regarding the provided raw materials following prior, written approval by BECO of such additional expenses.

8. Insofar as the security rights to which BECO is entitled exceed the purchase price of all reserved goods, not yet paid, by more than 20%, BECO shall, at the Supplier's request, release an appropriate part of the security rights.

9. BECO shall not acknowledge any extension or expansion of a reservation of title that extends above the Supplier's basic reservation of title regarding the unprocessed delivery product stored at BECO's premises, in particular following processing, linking or mixing with other goods and following sale of the delivery product.

§ 11 Secrecy

1. The Supplier undertakes to treat all aspects of the business relationship in confidence. The Supplier shall, in particular, treat as business secrets all commercial and technical details that are not obvious and of which it gained knowledge by way of the business relationship. The obligation to maintain secrecy does not include information or aspects of the business relationship that were in the public domain at the time of disclosure, and information or aspects of the business relationship for which the Supplier has furnished proof that it was aware prior to disclosure of the information by BECO.

BECO's items and information may only be made available to persons who perform the assignment on behalf of BECO. The Supplier shall ensure that its employees too safeguard BECO's justified interest for which secrecy is to be maintained.

2. Items that BECO surrenders to the Supplier shall remain BECO's property.

Items manufactured by order of BECO shall become BECO's property. These may only be supplied to third-parties following express, prior, written approval by BECO.

3. The Supplier also undertakes to maintain secrecy following the end of the business relationship.

All items surrendered by BECO are to be returned to BECO following rejection or processing of the order.

4. Duplication of the items surrendered to the Supplier is only permitted as part of company requirements copyright law provisions.

5. None of the information regarding BECO's business relationships is intended for third-parties.

Details of a BECO order may only be disclosed to third-parties in part following prior, written approval by BECO. The Supplier is to likewise place the third-party under obligation to maintain secrecy as part of an equivalent agreement. The Supplier may only advertise with the business relationship with BECO following prior, written approval.

6. The Supplier undertakes not to directly or indirectly process business transactions with BECO's customers if such transactions correspond with the subject matter of order.

7. Products that correspond with BECO's order and are not of a general specification, but rather are intended for a specific application, may not be delivered to third-parties by the Supplier.

§ 12 Environmental protection

BECO operates an environmental management system. Great importance is attached to environmental protection in respect of the quality understanding in place at BECO. Therefore, BECO expects the Supplier to demonstrate environmental awareness in line with BECO's guidelines.

§ 13 Ban on child labour

The Supplier undertakes not to employ any children. The Supplier shall ensure that its own suppliers likewise do not employ any children. Children are to be construed as all persons below the age of 15. In exceptional cases, children may be employed at the age of 14 if work may be performed in the country of production by law from the age of 14.

§ 14 Place of jurisdiction, applicable law, miscellaneous

1. The court with local and subject matter jurisdiction for BECO's registered office is deemed the place of jurisdiction.

2. In addition to this agreement, the Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) and the customers that are authoritative at BECO's registered office apply to the legal relations between BECO and the Supplier. The UN Sales Law extends beyond its area of application, and irrespective of contracting state reservations, to all legal relations between BECO and the Supplier.

3. Outside the validity of the UN Sales Law, the parties' legal relations shall be determined in accordance with the law that applies at BECO's registered office.

4. In the event that a provision of these conditions is or becomes partially or wholly invalid, the provisions shall remain valid in other respects. The parties shall endeavour to replace the invalid provision with a legally valid provision that comes closest in terms of the economical essence and purpose of the invalid provision.

5. All notices, statements and advertisements etc. are to be drafted solely in the negotiation language or in BECO's national language. Notices by facsimile or e-mail are subject to the written form.