



**General Terms and Conditions  
of Purchase  
of  
beflex electronic GmbH  
Frickenhausen**

Last revised: July 2018

## **Preamble**

- 1 Area of validity
  - 1.1 Our General Terms and Conditions of Purchase (“General Terms”) shall apply exclusively.
  - 1.2 We shall not accept any general terms used by the supplier that contradict or deviate from ours unless we have given our express written consent to their validity. Our General Terms shall apply even if we have been informed of any general terms used by the supplier that contradict or deviate from ours and still accept the delivery without reservation.
  - 1.3 Our General Terms shall only apply towards entrepreneurs governmental entities and special governmental estates under public law within the meaning of § 310 par. 1 BGB (German Civil Code).
  - 1.4 These General Terms shall also apply as a framework agreement to all future contracts with the same supplier without having to refer to them again in each individual case. However, this does not apply, if we change these General Terms; in this event, we will inform the supplier separately.

## **2 Conclusion of contract and offer documentation**

- 2.1 We shall be entitled to withdraw our order unless the supplier accepts it within one week from receipt and sends us the appropriate confirmation of order.
- 2.2 The confirmation of order shall show the product designation, price, rebate, delivery quantity, binding delivery date, and all the numbers and symbols from our order.
- 2.3 The supplier shall make no charge for submitting offers, draft designs, or samples to us and shall place us under no obligation thereby.
- 2.4 In the absence of any agreement to the contrary, no remuneration or compensation shall be granted for visits or for the preparation of offers, projects, etc.
- 2.5 We shall be entitled to require technical modifications and/or changes to the delivery date within the limits that the supplier can reasonably be expected to accept. Any consequences regarding an increase or decrease in costs or the delivery date shall be settled by mutual agreement.
- 2.6 We shall reserve the right of ownership of all illustrations, drawings, calculations, and any other proposals. The same applies for our copyright, provided the documents are subject to copyright protection. They shall be used exclusively for production on the basis of our order and shall be returned to us free of charge, whether we have requested them or not, as soon as the relevant transactions have been completed. They shall be kept secret from third parties. The supplier has no right of retention on these documents.

## **3 Prices, invoices, and terms of payment**

- 3.1 All prices shall be defined as “carriage paid” to the delivery address given to us including statutory VAT and packing, but we shall have the right to select the type of packing, the means of transport, and the transport route and insurance.

- 3.2 If premature consignments are accepted the due-date for payment shall be based on the agreed delivery date. If the goods have been invoiced but arrive later than the invoice, the date of receipt of goods shall be deemed to be the invoice date.
- 3.3 Attention is hereby drawn to our delivery regulations with regard to the correct and proper procedure for invoicing.
- 3.4 Unless anything to the contrary has been agreed, payments shall be made at our discretion either by credit transfer or by cheque within 14 days of receipt of invoice with a 3-percent prompt-payment discount or net within 30 days. This period of time shall not start to run until the supplier has fulfilled his obligations completely.
- 3.5 Invoices shall be sent to us as a single copy and separately from the goods. Every invoice shall state the number and date of the order. Invoices that are not issued in the required manner shall not be regarded as having been issued.
- 3.6 If goods or services could be delivered free of VAT the supplier shall be under an obligation to submit the necessary substantiation or alternatively to co-operate in obtaining it. For deliveries within the European Union the supplier shall state his VAT identification number and substantiate his capacity as a businessman as well as co-operating in providing the booking and voucher substantiation that the goods have been exported.
- 3.7 We are entitled to withhold due payments to an appropriate extent as long as we are still entitled to claims for incomplete or defective performance against the supplier; twice the costs required to remedy the defect shall normally be considered reasonable. The making of payments, on the other hand, shall not be construed as acknowledging that the consignment was in conformity with the contract.
- 3.8 The supplier shall not be entitled to assign his claim for payment against us or to arrange for any third party to collect it unless we have given our prior written consent, which we will not withhold arbitrarily. This consent shall be deemed to have been given in the case of extended retention of title.
- 3.9 The Supplier has a right of set-off and/or of retention only on the basis of counter-claims which have been finally and conclusively established or are undisputed or are ready for judgment in pending legal proceedings.

#### **4 Delivery period and arrears of delivery**

- 4.1 Agreed delivery periods and dates shall be binding. The delivery period or date shall be deemed to have been met if the goods arrive at the place of reception or use that we have designated. If delivery "free at works" has not been agreed, the supplier shall provide the goods far enough in advance to allow for the usual loading and despatch time.
- 4.2 Our delivery call-offs shall become binding if the supplier has not raised any objection within three business days of receiving them.
- 4.3 If the supplier realises that an agreed delivery date cannot be met for any reason whatsoever he shall inform us without delay and in writing, stating the reasons and the duration of the delay. However, this shall be without prejudice to the responsibility of the Supplier to deliver within the agreed deadlines and periods.

- 4.4 In the event of arrears of delivery we shall be entitled to charge a contractual penalty of 1% of the value of the order for each full week of delay, subject to a maximum of 5%. We reserve the right to raise statutory claims over and above this penalty. We shall be under an obligation to declare no later than upon payment of the invoice that we are withholding the penalty amount.
- 4.5 The provisions according to Clause 4.4 are without prejudice to our statutory claims and rights in the event of a delay in delivery.
- 4.6 Force majeure, industrial disputes, or other ineluctable or unforeseeable events shall absolve the supplier from his obligation to supply only for the duration of the difficulties and to the extent that they affect him. The supplier shall be under an obligation within the limits that he can reasonably be expected to accept to provide the necessary information and to adapt his obligations to the changed circumstances to the best of his ability and in all good faith. We shall be absolved of the obligation to accept the goods and/or services that we have ordered, in their entirety or in any part or parts, and to this extent to cancel the contract, if the goods and/or services are of no further use to us, taking all commercial aspects into account, because of the delay that such circumstances have caused.
- 4.7 If goods are delivered earlier than agreed we shall reserve the right to send them back at the supplier's expense. If such goods are not sent back they shall be stored on our premises until the agreed delivery date at the supplier's expense and risk.

## **5 Delivery, transfer of risk, and packing**

- 5.1 We shall only accept part-consignments if they have been expressly agreed. If part-consignments are delivered they shall be accompanied by a list of the remaining quantities.
- 5.2 The goods shall be accompanied by a single copy of a delivery note stating not only the identity of the goods but also the type quantity of each article and our exact order data. Should the supplier omit any of this information, delays in processing will be unavoidable and we will not be required to bear the consequences.
- 5.3 Risk shall be transferred at the delivery address that we state.
- 5.4 Unless anything to the contrary has been agreed the goods to be delivered shall be packed properly and professionally in the manner that is customary in the trade. The packaging material shall comply with the relevant packaging ordinance in force at the time.
- 5.5 The place of execution within the meaning of Article 4 of the Packaging Ordinance and in relation to the supplier's obligation to take the goods back shall be the place where the goods are handed over.
- 5.6 If packaging is charged for but can be reused its full value shall be credited when it is returned. The credit note shall always be submitted as one copy and shall identify the invoice on which the packaging was charged.

## **6 Certificate of origin**

- 6.1 If the goods that the supplier produces for us are required for export, the supplier shall be under an obligation to make a written declaration on our prescribed pre-printed form on the origin of the goods for customs purposes. This declaration shall be sent to us no later than with the first consignment.

- 6.2 The supplier shall inform us without delay and without waiting to be asked about the origin of newly included goods or any change of origin. The supplier shall be liable for any disadvantages that we may suffer through any delay or error in submitting any such declaration in its proper form. If necessary the supplier shall substantiate his data on the origin of the goods by means of an information leaflet confirmed by his local customs office.

## 7 **Quality and documentation**

- 7.1 All goods and/or services that the supplier supplies shall represent the latest state of the technical art and comply with safety regulations, the agreed technical specification, the relevant legal regulations, and all and any regulations and guidelines published by the authorities, industrial workers' safety co-operatives, and industrial associations. If deviations are necessary in any individual case, the supplier must first obtain our written consent.
- 7.2 The supplier must comply with the VDA (German Association of the Automotive Industry – Verband der Automobilindustrie) publication "Securing the quality of deliveries in the motor industry – assessment of suppliers and inspection of first samples", Volume 2, with regard to the inspection of first samples. Regardless of this, the supplier shall constantly monitor the quality of the goods he supplies. The parties to the contract shall keep one another informed about possibilities for improving quality.
- 7.3 If the type and scope of the inspections and the inspection equipment and methods have not been firmly agreed between the supplier and ourselves, we will be prepared, if the supplier so requests and with all due regard to his knowledge, experience, and possibilities, to discuss the inspection with him and to investigate the necessary level of inspection technology.

## 8 **Physical and legal defects**

- 8.1 If the supplier has any misgivings concerning the type of construction we require he shall inform us of them without delay and in writing or text form.
- 8.2 If applicable, the statutory provisions (§ 377 German Commercial Code) apply to the commercial duty of inspection and notification of defects with the following proviso: our duty of inspection is limited to defects which are visible (including without limitation transport damage, wrong goods or incomplete delivery. Where the parties have agreed on a final acceptance, there is no duty of inspection. This shall be without prejudicing our duty to give notice of defects discovered at a later stage. In all cases, our complaint (notification of defects) shall be deemed immediate and timely if it is made within ten business days. In all other respects, the Supplier hereby waives the objection of delayed notification of defects.
- 8.3 In the event of any defect we shall be entitled to our unabridged statutory rights. Unless otherwise agreed, the place of subsequent performance shall be the specified place of use.
- 8.4 If the supplier falls into arrears in supplying a replacement or rectifying the defect, we shall be entitled to make the replacement purchase ourselves or to rectify the defect or to arrange for this to be done by a third party but in any case at the supplier's expense. The same shall apply when the matter is urgent and the supplier cannot be contacted in time or is unable to carry out the rectification work or supply the replacement in time.
- 8.5 Claims based on physical or legal defects shall become statute barred 36 months from the date of transfer of risk. Upon receipt by the Supplier of our written notification of defects, the limitation period for claims for defects shall be suspended. After replacement or repair of the

defective good, the period of limitation for replaced or repaired parts shall recommence, unless we had to assume due to the Supplier's conduct that the Supplier did not acknowledge any obligation to subsequent performance but only carried out the replacement or repair of the defective good as a gesture of goodwill or any similar reasons.

- 8.6 Work contract services (Werkvertragsleistungen) are subject to final acceptance by us. The Supplier must notify us in good time in writing or text form of the readiness for acceptance. Conclusively and fictitiously acceptance are not possible.

## 9 **Product liability, indemnity, and legal-liability insurance cover**

- 9.1 If the supplier is to blame for any injury, loss, or damage caused by his product, he shall be under an obligation to indemnify us and hold us harmless from any and all claims for damages from third parties upon first request from us if the cause lies within his area of control or organisation and he himself bears liability in the external relationship.

- 9.2 As part of his liability for any case of injury, loss, or damage within the meaning of sub-clause 9.1 above, the supplier shall be under a further obligation to reimburse us for any expenses incurred within the meaning of Articles 683 and 670 of the Code of Civil Law and within the meaning of Articles 830, 840, and 426 of the Code that result from or in connection with any recall action that we carry out. We shall inform the supplier, to the extent possible and reasonable, about the substance and scope of the recall action that is to be carried out and will give him the opportunity to state his considered position on the matter. The foregoing shall not affect any other statutory rights.

- 9.3 The supplier shall be under an obligation to hold product liability insurance with a cover of €5 million for any one instance of personal injury or damage to property. The foregoing shall not affect any further claims to which we may be entitled. Upon request, the Supplier must provide a copy of the insurance policy or, at our separate request, a current confirmation of insurance letter at any time.

## 10 **Exclusivity of technical designs, secrecy, and industrial property rights**

- 10.1 The Supplier shall be obliged to treat as trade and business secrets all commercial and technical details that are not common knowledge and that come to the Supplier's attention through our business relationship and to not disclose them to third parties..

- 10.2 If the parts that have been ordered are based on our own technical designs, the supplier shall be under an obligation neither to supply them nor to offer them, now or at any later date, to any third party. Models, drawings, templates, patterns, layout documentation, or anything similar that we have provided to the supplier for the purpose of executing an order shall remain our property and shall be returned with notification when the order has been completed. Rights of retention of the Supplier to these objects or documents are excluded. No such objects shall be handed over or otherwise made available to any unauthorised persons or third parties. No duplication shall be permitted except in accordance with operational requirements and the ambit of copyright regulations. Sub-contractors shall be placed under the same obligations.

- 10.3 The contracting parties may only advertise their business relationship with the prior written consent of the respective other party.

- 10.4 The contractual partners shall be under a mutual obligation to inform one another without delay of any risks of violations of any third party's industrial property rights and any alleged cases of the same of which they may become aware and to give one another every opportunity to counter such claims in mutual agreement.
- 10.5 The supplier shall inform us on request of any use he may be making of published or unpublished industrial property rights and/or applications for such rights, whether his own or under licence, in connection with the goods and/or services he is to supply.

## 11 **Labelling of goods**

The supplier shall label the goods in the manner prescribed by us or agreed between us.

## 12 **Retention of title and provision of components**

- 12.1 A retention of title by the Supplier only becomes part of the contract, if the retention of title expires with the payment of the price agreed for the reserved goods and if we are authorized to resell and process the goods in the ordinary course of business. Any further retention of title by the supplier shall not be accepted.
- 12.2 Where we provide components to the Supplier, we reserve title thereto. Processing or transformation shall be carried out on our behalf. Where our reserved goods are processed with other goods not belonging to us, we shall acquire co-ownership of the new good in proportion to the value of our component to the other processed goods at the time of processing. The Supplier shall keep these goods in safe custody on our behalf. Where the security interests to which we are entitled exceed the purchase price of all our reserved goods not yet paid for by more than 10 %, we shall be obliged to release the security interests at our discretion at the Suppliers' request.
- 12.3 Drawings, gauges, models, matrices, layout documents, tools and other means of production (hereinafter collectively referred to as "tools") that we place at the Supplier's disposal shall remain our unrestricted property and shall be marked accordingly. The Supplier is obliged to insure them against fire, water and theft in our favour at replacement value and to prove the existence of the insurance to us. The Supplier is obliged to carry out any necessary maintenance work on our tools at his own expense in good time; the Supplier must notify us without undue delay of any malfunctions. When the tools are returned, they must be in perfect technical and optical condition. Costs of repair shall be borne by the Supplier. The tools shall be returned to us at the latest at the end of the contract period or otherwise at our first request; the same shall also apply to the drawings and documents, unless the Supplier has to destroy them on our written instruction and provide us with a written declaration of destruction.
- 12.4 The tools may only be made accessible to third parties or otherwise used or exploited with our written consent. The same applies to the products manufactured with the help of these tools.
- 12.5 In the event of delivery difficulties, we shall be entitled to demand the free return of the tools provided to the supplier in accordance with Clause 12.3 without the supplier being entitled to a right of retention.

### 13 **Minimum wage, export control, RoHS compliance and REACH compliance**

- 13.1 The Supplier is obliged to pay the employees employed by him for the performance of the commissioned services in accordance with the underlying contract at least the minimum wage in accordance with the German Minimum Wage Act of 11 August 2014. We may request written proof of payment of the minimum wage from the Supplier at any time during the duration of the commissioned work or services; where we do so, the Supplier shall be obliged to send us written proof without undue delay, but at the latest within three business days after receipt of the request.
- 13.2 The Supplier shall hold us harmless against all claims by third parties which are asserted because of a breach by the Supplier or their subcontractor of the provisions of the minimum wage law.
- 13.3 Without prejudice to any other right of termination or withdrawal, we are entitled to withdraw from the contract with immediate effect or to terminate the contract where the Supplier and/or their subcontractors culpably breach the aforementioned provisions or the minimum wage law of August 11, 2014. The Supplier is obliged to compensate us for any damage incurred as a result of the withdrawal or termination. Claims of the Supplier for non-performance are excluded. In all other respects, the consequences of withdrawal and termination shall be governed by the statutory provisions.
- 13.4 The Supplier warrants that he has observed all applicable export regulations before delivery and that neither export bans nor export licensing obligations have been disregarded. The Supplier undertakes to provide us with all information and specifications relevant to comply with export and re-export regulations, including information on the composition and origin of the recording of their goods in the lists of goods of the EU, Germany or the USA.
- 13.5 The Supplier shall ensure that the goods or products or parts thereof to be supplied by them comply in all respects with the Directive 2011/65/EU ("RoHS") and Directive 1907/2016/EC ("REACH") in the applicable version and also comply with the national statutory provisions adopted to transpose this Directive within the European Union and that they are suitable for ROHS-compliant and REACH-compliant manufacturing processes.

### 14 **General provisions**

- 14.1 The supplier shall not be entitled to assign the order – in whole nor in part – to any third party without our prior written consent.
- 14.2 Should either contractual partner cease to make payments or if an application for insolvency is made over his assets, the other party shall be entitled to cancel any part or parts of the contract that has not yet been fulfilled.
- 14.3 We shall treat all data received from the supplier and relating to specific persons in compliance with the Federal Data Production Act.
- 14.4 Unless anything to the contrary has been specifically agreed, the place of execution for the fulfilment of the obligation to supply shall be the delivery address or place of use that we have stated. The place of execution for all other obligations on either side shall be our postal address.



- 14.5 Where the Supplier is a merchant, a governmental entity or a special governmental estate under public law, exclusive place of jurisdiction for all disputes arising from the contractual relationship is the place where we have our registered office. However, we are also entitled, at our discretion, to take legal action at the place of performance of the delivery obligation or at the place where the Supplier has their registered office.
- 14.6 These Terms and Conditions of Purchase shall be governed by to the laws of the Federal Republic of Germany, to the exclusion of the CISG.
- 14.7 If individual sections of these Terms and Conditions of Purchase are wholly or partially void, the remainder of the contract shall remain effective and the invalid provision shall be replaced either by the statutory provision - or, in the absence of such provision - by such stipulation which the contracting parties would reasonably have agreed on in good faith if they had been aware of the voidness.

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