

# **BENTELER STANDARD TERMS FOR THE PURCHASE OF GOODS OR SERVICES (INDIRECT MATERIAL)**

**BENTELER Group, valid from: 2020-02-01**

## **1. Scope**

- a) These purchase conditions ("Purchase Conditions") shall apply to any future contracts between the respective contractor ("Contractor") and BENTELER Business Services GmbH, BENTELER Automobiltechnik GmbH and BENTELER Steel/Tube GmbH, or associated companies, as the contracting body ("BENTELER").
- b) This shall be the case regardless of whether the contract relates to the supply of goods, the provision of services, the creation of a work or hybrid forms thereof (in any case, "Goods"). The Contractor must read, check and take these Purchase Conditions into account when presenting any offer to sell Goods to BENTELER.
- c) These Terms and Conditions of Purchase shall also apply to contracts and legal relationships in which BENTELER acts with power of attorney on behalf of a third party.

## **2. Quotations**

- a) The preparation of quotations to BENTELER by Contractor, including the development of alternatives, is free of charge to and not binding on BENTELER. All offers, including those requested by BENTELER, must be in writing and strictly based on BENTELER's specified requirements.
- b) Further, any quotations submitted by Contractor must include all services and ancillary goods necessary for BENTELER to utilize the Goods to be delivered by Contractor to BENTELER.
- c) The Contractor commits to point out deviations of any kind.

## **3. Issuing of Order**

- a) Unless otherwise explicitly agreed in writing by BENTELER, these Purchase Conditions shall apply to all orders made to Contractor by BENTELER and any delivery of Goods by Contractor to BENTELER. If the parties agree on an individual contract about the Goods, the provisions thereof shall take priority in case of contradictions.
- b) BENTELER rejects any other conditions of sale or other terms and conditions of the Contractor, unless BENTELER specifically accepts such in writing. Silence by BENTELER does not constitute acceptance of those terms and conditions or conditions of sale.
- c) These Terms and Conditions of Purchase shall also apply even if BENTELER unconditionally accepts a delivery of Goods of the Contractor whilst being aware of conflicting conditions of sale or terms and conditions proposed by the Contractor.
- d) In relation to any agreed commercial clauses, the current version of the ICC Incoterms shall apply, unless the parties agree otherwise.
- e) In addition to these Purchase Conditions, additional documents may apply, if incorporated by BENTELER by reference, e.g. in a Purchase Order.
- f) Orders and delivery call-offs by BENTELER can be made by mail or data transmission.

## **4. Formation of the contract**

- a) Orders from BENTELER shall be confirmed in writing within 10 business days of receipt of the order by Contractor (via the functions of the Coupa Supplier Portal, direct confirmation of the order e-mail and/or by sending a PDF) unless agreed otherwise.
- b) The order shall, however, also be deemed accepted without explicit confirmation or reference if the aforementioned period has elapsed or if the Contractor commences production and delivery or performance of the ordered order items beforehand.
- c) Should BENTELER not receive a confirmation within 10 business days, BENTELER may cancel the order at no cost or penalty to BENTELER.
- d) By placing an order with the contractor, BENTELER does not enter into any subscription or other obligation to regularly accept the object(s) of the order, unless BENTELER states this explicitly in writing under the terms and conditions of the respective BENTELER company.

## **5. Service performance / Place of performance**

- a) Subjects of the order shall be produced/performed in accordance with the specifications and requirements of the order and conform to the current state of art technology.
- b) Unless otherwise specified, delivery of the Goods shall be at the registered office of the ordering BENTELER company. In case of doubt the Contractor must contact BENTELER for confirmation.
- c) Considerable changes to the contractual objects or the original manufacturing process must always be announced by the Contractor in advance and approved by BENTELER in writing.

## **6. Prices**

- a) The price specified in the order is binding. It shall cover all goods or services as well as any supplementary services required for the completion of the delivery of the Goods to be provided, unless otherwise agreed. The price includes, but is not limited to, costs for any materials or equipment, aids, freight costs, customs charges, costs for packing materials or transport costs, as well as any taxes and other duties.

- b) If an order does not stipulate a price or if no agreement can be reached as to a price for any other reason, the parties will be deemed to have agreed that BENTELER will pay Contractor a reasonable price for the Goods provided by such order.
- c) The Contractor's obligation to deliver/perform shall remain unaffected even in the event of any negotiations on price adjustment. If a claim for a higher or lower price is agreed or established by a judicial decision, the other party shall retroactively reimburse the price adjustment.
- d) If BENTELER receives a more competitive offer by a third party and the Contractor is not able, within thirty (30) days after receipt of the written notice by BENTELER, provide the Goods at a price and terms equal to or better than the competitive offer, BENTELER may cancel the relevant part of the order without further liability.

## **7. Invoicing**

- a) Upon request of BENTELER the parties may agree on a credit note procedure.
- b) If the credit note procedure has been agreed, billing takes place on the basis of the goods receipt and the delivery contract. A separate invoice is not required. Respective terms and conditions of the respective company of the BENTELER Group apply.
- c) If the contracting parties have not agreed to use a credit note procedure, a commercial invoice must be transmitted to the BENTELER company receiving the Goods. The invoice shall be sent to the e-mail/post address specified in the order ("Bill To-Information"); by e-mail in PDF format (300dpi) under the subject "Invoice" (one file per e-mail) or by original to the postal address provided. However, digital invoicing is preferred.
- d) Invoices must comply with applicable laws, especially tax-law provisions of any related countries and must include the following additional information:
  - BENTELER Supplier assigned number
  - BENTELER order number
  - Supplier delivery note number
- e) BENTELER, may reject invoices which do not contain the information required under section 8c above. If this occurs, BENTELER will notify the Contractor; Any resulting costs will be invoiced to the Contractor. In this case, the term of payment will begin on the day of receipt by BENTELER of a new, verifiable and proper invoice which complies with the requirements.
- f) For deliveries of Goods to different companies of the BENTELER group, single invoices shall be issued to each respective recipient of the delivery.

## **8. Payment**

- a) Unless otherwise agreed or more favourably for BENTELER regulated by the sales conditions of the Contractor, payment shall be due 30 days after the receipt by BENTELER of a verifiable invoice issued by Contractor and completed delivery of the Goods. In the case BENTELER accepts premature deliveries of Goods, payment is not due before the original delivery date.
- b) Payment shall be made by way of bank transfer, unless explicitly agreed otherwise. If they chose, the parties may enter into separate agreements providing for credit note procedure.
- c) In the case of defective Goods, BENTELER may withhold payment until due performance or the rectification of any defect has occurred.
- d) Payments by BENTELER which exceed the prices agreed under paragraph 6 are made subject to the express condition that such may be claimed back at any time, unless there is a voluntary and explicit written agreement to the contrary. Neither party may rely on any practice at variance hereto. In the event that BENTELER places a deposit with Contractor, BENTELER may require that Contractor provides adequate security in a type and amount determined by BENTELER.

## **9. Dates/Delay**

- a) The delivery or performance date provided in the order is binding. Failure to deliver on the deliver or performance date constitutes a default; no notice by BENTELER is necessary for BENTELER to exercise its rights. In order to be deemed delivered, the Goods delivered must be complete.
- b) In the event that Contractor becomes aware that its delivery of performance may be delayed, Contractor shall immediately notify BENTELER in writing of the delay, including reasons for the delay and the expected period of delay.
- c) If deliveries are made after the due dates, then BENTELER reserves the right not to accept, return or store the Goods at the expense and risk of the Contractor.

## **10. Delivery Regulations/ Transport**

- a) In case of any deliveries directly to third parties, BENTELER shall be provided with a copy of the bill of lading acknowledged by the consignee as well as the commercial invoice. For such deliveries, the Goods and packaging shall have no identifying marks as to origin.
- b) If BENTELER is paying freight for the transport of the Goods (delivery conditions FCA), the provisions of the Transport Regulations in the latest version shall apply; such can be viewed on the internet at [www.benteler.com](http://www.benteler.com) (BENTELER at a glance/ Global Procurement/ Overview: Global Procurement/ Logistics and EDI specifications).
- c) Once the Goods are ready for shipment, Contractor must notify the responsible forwarding agents in writing in compliance with the shipping instructions and shipping rules. Contractor must deliver a printout of the freight

registration form with the other delivery documents when the Goods are collected by the carrier. The Goods must also include a delivery note with details of the order data from BENTELER.

- d) In relation to all orders, the Goods are to be delivered in accordance with the delivery conditions to the place of delivery detailed on the front page.; All packages are to be correctly labelled. The In case of vehicles/vehicle parts, labelling must conform to VDA 4902 current version. The Contractor shall deliver during normal hours for the acceptance of deliveries by BENTELER. In case of doubt, delivery times should be mutually agreed with BENTELER.

#### **11. Export Controls and Customs Requirements**

- a) The Contractor shall notify BENTELER of permit requirements or restrictions for re-export or export of its Goods in accordance with German, European, and U.S. export and other customs laws and regulations, as well as the export provisions of the country of origin of the Goods. For Goods requiring authorization, the Contractor must provide and send the following information to BENTELER in timely manner before the first delivery:
- BENTELER-material number
  - Goods description
  - All applicable list numbers according to EG DUAL-USE VO including Export Control Classification Number according to U.S. Commerce Control List (ECCN)
  - Trade-policy place of origin of goods  
Customs-tariff number (HS-code)
  - A contact person in its organization for the clarification of any queries.
- b) The Contractor shall notify BENTELER immediately on licensing requirement changes related to the Goods due to technical, legislative changes or governmental statements.
- c) Mailaddresses of the BENTELER-Exportcontrol:  
Automotive: export.controlAT@benteler.com  
Steel/Tube: exportkontrolle.sr@benteler.com

#### **12. Quantity**

- a) Only those quantities of Goods ordered shall be delivered. Any additional quantities of Goods may be returned by BENTELER at the expense and risk of the Contractor without any prior notification and with a corresponding reduction of the invoice. The same shall apply if less than the ordered quantity is delivered, whereas BENTELER is entitled, but not obliged, to accept such delivery.
- b) The same also applies for any additional services under contracts for services, work creation or others, which exceed the ordered scope. BENTELER must be informed thereof in writing in advance and BENTELER will only pay for them if BENTELER has issued a respective written order.
- c) In any case, BENTELER's obligation to pay remains at the date stipulated herein.
- d) In case of discrepancies regarding quantity or weight of the delivered Goods from those specified or ordered by BENTELER, the results calculated by BENTELER upon the reception of the goods are decisive, if the Contractor cannot prove that its calculated quantities and weights are accurate.

#### **13. Acceptance**

In cases of performance of service, the supply of machinery and equipment or tools, all provisions of the law on works and services that regulate acceptance shall apply. This applies even if acceptance has been agreed upon by way of individual contract – as well as for other goods.

#### **14. Transfer of Contract Performance / Subcontractors**

The Contractor shall not assign or subcontract the execution of the contract in part or in whole to any third party without prior written agreement from BENTELER. Even if BENTELER consents to such assignment or subcontract, Contractor shall remain fully responsible for the performance of the contract. The same applies for subcontractors.

#### **15. Hazardous and Substances Requiring Notification**

- a) The contractor shall comply in all respects with the applicable statutory regulations of the European Union and the Federal Republic of Germany, e.g. Reach Regulation (EC) No. 1907/2006, the End-of-life Vehicle Act, and Electrical and Electronic Equipment Act. If the Goods are hazardous substances in terms of the Chemical Act, the statutory safety data sheets shall be enclosed in accordance with RL 91/155/ECC or Reach Regulation (EC) No. 1907/2006. Immediately after any revision of data on these safety data sheets, the Contractor shall send BENTELER the changed version without any need for BENTELER to request such.
- b) The Contractor shall also immediately inform BENTELER about relevant changes to the Goods, in the ability to supply the Goods, in use of the Goods, or in the quality of the Goods caused by legal regulations, and in particular the Reach Regulation. In such a case, the Contractor shall consult with BENTELER as to suitable measures in each case. The same shall apply as soon as and to the extent that the Contractor becomes aware, or should have become aware, that such changes will take place.

#### **16. Service Provision at BENTELER**

- a) If the Contractor works or provides services at BENTELER locations, he is obliged to inform himself and employed personnel about the respective local work safety and security requirements and to ensure full

compliance with them.

- b) The Contractor must ensure that all employed personnel will follow the instructions of BENTELEERs work safety and security officers.
- c) Before commencing work or services, the Contractor shall ensure that the personnel employed by him at a BENTELEER location comprehend written and/or verbal instructions in the respective local language.
- d) Any performance records shall be countersigned by the BENTELEER project / plant / department manager or a next higher superior at BENTELEER. A copy must be handed over to BENTELEER immediately.

#### **17. Warranty**

- a) The statutory warranty periods shall apply, unless otherwise stipulated in these Purchase Conditions or in the Purchase Order. BENTELEER inspects the goods on receipt only as to their identity and completeness in accordance to the order as well as for any apparent damages, especially from transport. BENTELEER reserves the right to carry out further inspection but is not obligated to do so. In addition, BENTELEER shall give notice to the Contractor of any defects noticed by BENTELEER as soon as such are detected given the circumstances of normal business procedures. The Contractor waives any objection based on an unpunctual notification of defect.
- b) The Contractor accepts the statutory warranty for defects occurring within 24 months of delivery of the Goods, service performance, or acceptance of work services, unless another warranty period has been agreed in writing in the individual order.
- c) § 434, section 1, sentences 2 and 3 shall also apply to any work services contracts.
- d) BENTELEER shall be entitled to the statutory claims for damages and defects, including all ancillary costs, in particular, but not limited to, costs of disassembly, removal, and reassembly of the Goods, as well as transportation to a place other than the place of performance, to the extent required.
- e) To counter any imminent risk of serious damage BENTELEER may, at the expense of the Contractor and without any prior notice or giving a deadline for performance to Contractor, self-correct the defect, have the defect corrected by a third party, or obtain a replacement. This similarly also applies for replacement purchase, provision of services or work, or completion by BENTELEER, if the Contractor is in delay of delivery.
- f) For any Goods that will be used in the production of vehicle/vehicle parts, the latest version of BSQR (BENTELEER Supplier Quality Requirement) will be applicable. The latest BSQR is available at [www.benteler.com](http://www.benteler.com) (BENTELEER at Glance/ Global Procurement/ Overview: Global Procurement/ Quality Requirement and Specifications). The Contractor must fully comply with those requirements and also oblige its suppliers and subcontractors respectively.

#### **18. Force Majeure**

In case of any force majeure event including but not limited to strikes, lockouts, unrests, any acts of the authorities or any other unforeseeable, unavoidable events beyond the responsibility of BENTELEER, BENTELEER may postpone its obligation to accept delivery of the Goods by the period of such hindrance plus a reasonable preparation period. If the performance of the contract becomes unreasonable for BENTELEER as a result of the force majeure event, BENTELEER may withdraw from the contract. Any such delay of acceptance duties or any such withdrawal from the contract shall not allow the Contractor to claim compensation from BENTELEER.

#### **19. Confidentiality / Advertising / Data Protection**

- a) The Contractor shall treat as a trade secret all details, regardless of the form of such, of an apparently commercial or technical nature of which it becomes aware from the business relationship with BENTELEER, even after the execution of the contract. The Contractor shall refer to its business relationship with BENTELEER in its advertising only if BENTELEER has expressly agreed to such in writing.
- a) Each party is entitled to process data or store data about the other contracting party if it agrees with the European Data Protection Regulation or other local data protection regulations. All other use of such data or transfer of such data to a third party is strictly prohibited. Data processing activities by a third party is only allowed in compliance with Art. 28 EU-DSGVO. Art. 44 and 55 EU-DSGVO apply to the transfer of data to third countries.

#### **20. Proprietary Rights**

The Contractor ensures that the Goods do not infringe any rights of third parties and shall conduct necessary research to confirm same. Furthermore, the Contractor shall indemnify, hold harmless and defend BENTELEER against any claims of third parties based on infringement of proprietary rights as well as any resulting costs to BENTELEER, insofar as the Contractor or any of its agents or vicarious agents culpably causes such infringement. The parties shall notify each other without undue delay if any claim is made against such party based on infringement of proprietary rights related the Goods.

#### **21. Contractor management**

- a) The Contractor will assist BENTELEER with disclosure requirements, questions concerning sustainability issues in the broadest sense, and ad hoc questions on risk management along the supply chain; for instance on the use of conflicting minerals. The Contractor will provide such statements in a timely and fully manner on request and will notify BENTELEER of any impending changes of which it becomes aware. The Contractor knows that BENTELEER is a global company and therefore must take into account and comply with the national law of the different countries.

- b) The Contractor agrees to answer questions by a third party, appointed by BENTELER, regarding the topics mentioned in paragraph a).
- c) The Contractor is obligated to comply with the "BENTELER Supplier Code of Conduct" and to observe those rules and principles. Contractor must require its suppliers and subcontractors to also comply with the [www.benteler.com](http://www.benteler.com) (BENTELER at Glance/ Global Procurement/ Overview: Global Procurement/ Quality Requirement and Specifications).

## **22. Loaned Material / Supplementary Performance**

Any models, drawings, samples, tools, gauges, software or hardware or other technical equipment or documents provided to the Contractor by BENTELER, or produced by the Contractor for BENTELER, shall not be disposed of, pledged or transferred to third parties or used in any other way than for the purpose of the order without the written approval of BENTELER.

The same shall apply to any Goods or any other objects and results produced with the help of such production equipment. All the named materials and objects shall remain the tangible and intellectual property of BENTELER and shall be returned upon the ending of the contract, without any need for such being requested. Insofar as they are produced at BENTELERs instructions, BENTELER shall become the owner upon payment in full.

## **23. Retention of Title**

Neither Contractor nor any third party may be granted title rights to the Goods greater than is provided herein.

## **24. Assignment / Transfer of Contract / Set-Off**

- a) Contractor must obtain BENTELER's written consent to assign any claims or transfer any rights to collect accounts receivables from BENTELER.
- b) BENTELER may transfer the delivery to an affiliated company according to §§ 15 ff. AktG. Furthermore, BENTELER may transfer all or part of the contract, including all rights and obligations, to an affiliated BENTELER company according to §§ 15 ff. AktG. BENTELER may also assign individual rights arising under the contract to an affiliated company of BENTELER according to §§ 15 ff. AktG.
- c) The Contractor may set off only those claims which are undisputed or determined by a final legal judgement.

## **25. Liability/Proprietary Rights of Third Parties:**

The liability of the contracting parties shall be based upon the statutory regulations, if not agreed otherwise in these Purchase Conditions. In case any claim is made against BENTELER by a customer or other third party based on product liability, the Contractor shall indemnify BENTELER upon written request to do so insofar as the damage is caused by a defect in the Goods provided by the Contractor or by a breach of any duty for which the Contractor is responsible. In cases of strict liability this shall only apply if the Contractor is at fault. In addition, the Contractor shall be liable to reimburse BENTELER for any expenses in terms of §§ 683, 670 (BGB) Civil Code arising from or in connection with any recall action.

## **26. Insurance**

- a) The Contractor shall affect, at its own costs, third party liability insurance and extended product liability insurance to cover claims of third parties arising from defective goods or services. This includes property damage, personal injury, and financial loss such as, including but not limited to further processing costs, assembly and disassembly costs, testing costs and sorting costs.
- b) For any Goods that will ultimately be used in the production of vehicles/vehicle parts, the Contractor shall provide insurance for recalls which covers the costs of notification, inspection, sorting, storage, removal, installation and destruction.
- c) The Contractor shall maintain the insurance throughout the term of the contract and shall ensure that after the ending of the contract any damage, which was caused at least in part during the term of the contract, remains insured.
- d) The amount of coverage for the above-named insurance shall be respectively at least EUR 5 million for any one occurrence and in the annual aggregate, in case of b) 10 million.
- e) The Contractor, either itself or through its insurer, shall provide BENTELER written evidence of the effecting and continuation of the insurance described above.
- f) If the Contractor fails to provide the necessary written proof of insurance coverage, BENTELER may, but is not obliged to do so, purchase the requisite insurance for the Contractor at fair market conditions at the expense of the Contractor.

## **27. Termination**

- a) The possibilities of termination of individual contracts result from the order as well as any legal provisions.
- b) BENTELER may withdraw from this contract in whole or in part, and in case of continuing obligations, may terminate such, if the Contractor suspends the performance of its duties, breaches its performance of contractual duties or in case of a substantial deterioration of the Contractor's assets which could endanger the performance of obligations to BENTELER.
- c) BENTELER may terminate the contract unilaterally at any time without notice if the Contractor violates the provisions of BENTELERs Supplier Code of Conduct

**28. Jurisdiction / Applicable Law:**

The exclusive jurisdiction for all disputes arising out of this contract shall be Paderborn unless BENTELER notifies the Contractor in writing that BENTELER intends to bring proceedings at the Contractor's general place of jurisdiction. This contract shall be subject to the law of the Federal Republic of Germany and shall exclude the private international law and United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN-purchase law).

**The English translation is for convenience only. In case of discrepancy, the German version of these Purchase Conditions shall prevail.**