

**STANDARD TERMS FOR PURCHASES OF GOODS OR SERVICES
of Benteler Automobiltechnik GmbH**

(Date: 04 May 2009)

1. Scope:

These purchase conditions ("Purchase Conditions") shall apply to any contracts between the respective contractor ("Contractor") and Benteler Automobiltechnik GmbH ("Benteler"). This shall be the case regardless of whether or not the contract relates to the supply of goods, the provision of services, the creation of a work or any combination thereof.

2. Issuing of Order:

2.1 Orders of Benteler shall be valid in writing only and based solely on these Purchase Conditions.

2.2 Any conflicting business conditions of the Contractor or business conditions of the Contractor at variance hereto shall not be recognised by Benteler unless express acceptance is provided in each case in writing by Benteler.

2.3 These Purchase Conditions shall apply even if Benteler unconditionally accepts the delivery of the Contractor whilst being aware of conditions which vary from or conflict with these Purchase Conditions.

2.4 Any orders provided electronically (e.g. per EDI-FACT) shall be effective only if a framework agreement dealing with such is concluded between the parties.

2.5 In relation to any agreed commercial clauses, the current version of the ICC Incoterms shall apply, unless the parties agree otherwise.

3. Acceptance of Order:

Orders from Benteler shall be confirmed by the Contractor in writing within two weeks of receipt unless otherwise agreed by way of individual contract.

4. Prices:

4.1 The prices specified in the order are binding. The price shall cover all goods or services as well as any supplementary matters required for the completion of the performance to be provided, unless a separate remuneration is agreed to. This shall include in particular the costs for any materials or equipment, freight costs, customs charges, costs for packing materials or transport costs to the place of use determined by Benteler, as well as any taxes and other duties.

4.2 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, an independent expert appointed by the President of the Chamber of Industry and Commerce in Düsseldorf shall determine such in accordance with § 317 (BGB) Civil Code. The costs for such an expert shall be borne by the parties in proportion to the extent that the price determined by the expert varies from the price proposed by the respective party as being reasonable.

5. Payment:

- 5.1** Subject to any other individual contractual arrangement or any provision in the sales conditions of the Contractor which are more advantageous to Benteler, payment shall be due 60 days after the due issuing of an invoice and the receipt of such by Benteler. In the event that an invoice is received before complete delivery and the complete provision of any other performance owed, such as, for example, assembly services, notwithstanding the above, the payment deadline shall be calculated from the day following the date of complete delivery or the completion of performance. In the event of any non 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 is based upon the agreed delivery date.
- 5.2** Payment shall be effected by way of bank transfer or cheque. Separate agreements shall apply in relation to self-billing or EAS processing. In the case of defective goods or services, Benteler may withhold payment until due performance or the rectification of any defect. Benteler is also entitled to withhold payment if Benteler has outstanding claims against the Contractor which do not result from the same legal relationship or which are not yet due.
- 5.3** Timeliness of payment shall be determined on the basis of the undertaking of the necessary steps for such payment e.g. the issuing of instructions to a bank to transfer money or the sending of a cheque by post.
- 5.4** Any payments which exceed the prices agreed under paragraph 4 are made subject to the express 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.

6. Invoicing:

Invoices shall be sent separately from the delivery to Benteler Automobiltechnik GmbH, Postfach 1340, 33043 Paderborn without undue delay and with the details of the order. Such will be regarded as having been received only if they comply with the legal – and in particular the tax – requirements. In case of delivery to several plants, separate invoices shall be issued. The measurements, weights and quantities determined by Benteler shall be used for the purpose of invoicing unless the Contractor can prove that its calculations are correct.

7. Delivery Dates/Delay:

The delivery date provided in the order is binding. Compliance with the delivery date shall be determined on the basis of complete order performance. Any delays in delivery or performance of which the Contractor becomes aware shall be notified to Benteler without undue delay in writing with details of the reasons for such and the expected period of delay. In the event of delivery earlier than agreed, Benteler reserves the right not to accept such or to store the goods at the cost and risk of the Contractor.

8. Delivery Regulations/ Transport:

- 8.1** In case of any deliveries directly to third parties, Benteler 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 packaging shall have no identifying marks as to origin. If Benteler is paying freight for the transport of parcel or piece goods or for charge transport (delivery conditions EXW or FCA), the provisions of the Transport Regulations in the latest version shall apply; such can be viewed at www.benteler.de under the menu: "Purchasing – Automotive – Transport Regulations." Readiness for shipment shall be notified in writing to the responsible carriers in good time having regard to the shipping instructions and the disposition rules.

For this purpose, the required form of Benteler Automobiltechnik GmbH – produced by way of CD-ROM – shall be used under specification of the order details. The CD-ROM is to be requested from Benteler Automobiltechnik, Central Logistics Department, An der Talle 27-31, 33102 Paderborn. A printout of the freight registration form is to be provided with the other delivery documents when the goods are collected by the carrier. A delivery note with details of the order shall be enclosed with the goods.

- 8.2** In relation to all orders, the place of delivery detailed on the front page under the terms of delivery is to be considered and correct labelling is to be provided on all packages in accordance with the latest version of VDA 4902. The Contractor shall keep to the normal hours for the acceptance of deliveries (Monday to Friday, 7 am to 5 pm).

9. Export Controls and Customs Requirements:

The Contractor shall notify Benteler of any permit requirements for re-export or export of the ordered goods in accordance with German, European or U.S. export or customs provisions. In this regard, the Contractor 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 U.S. Export Administration Regulations (EAR),
- the trade policy place of origin of its goods and components thereof, including technology and software and details of the preferential origin of goods,
- the customs-tariff numbers (HS code) of its goods, as well as a contact person in its organisation for the clarification of any queries by Benteler.

In addition, the Contractor shall notify Benteler upon request and in writing of any further export data for the ordered goods and their components. Any changes to the above data shall be notified to Benteler in writing without undue delay (before delivery of the respective goods).

10. Packaging:

The Contractor shall ensure that its goods are packaged in a way that they can be integrated into the production processes of the Benteler plants with the agreed quality. The respective applicable national and international hazardous goods regulations shall be complied with.

11. Quantity Supplied:

Only those quantities ordered shall be delivered. Any additional quantities 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.

12. Acceptance Provisions for Machinery, Equipment or Tools:

In cases of the supply of machinery and equipment or tools, all provisions of the law on works and services that regulate the acceptance shall apply. This applies accordingly if acceptance has been agreed upon by way of individual contract.

13. Transfer of Contract Performance:

The Contractor is not entitled to transfer the performance of the contract in part or in whole to any third party without prior written agreement. Even if such agreement is given, the Contractor shall remain fully responsible for the performance of the contract. The use of subcontractors by the Contractor shall also be subject to prior written approval.

14. Hazardous and Substances Requiring Notification:

The contractor shall comply in relation to its goods or services with the respective applicable statutory regulations of the European Union and the Federal Republic of Germany, e.g. Reach Regulation (EC) No. 1907/2006, End-of-life Vehicle Act and Electrical and Electronic Equipment Act. If the goods to be delivered 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 this data, the Contractor shall send Benteler the changed version without any need for Benteler to request such. The Contractor shall also provide without undue delay details of any relevant changes to the goods, in the ability to supply, in application possibilities or in the quality caused by legal regulations, and in particular the Reach Regulation, and 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.

15. Warranty:

- 15.1** The Contractor shall undertake quality controls during the production and shall carry out a check at the dispatch and accordingly shall check parts supplied extensively as to their quality. Benteler inspects the goods on receipt only as to their identity and completeness in accordance to the order as well as for any apparent damage, and in particular any transport damage. Any such defects shall be notified by the Benteler within a reasonable period. Benteler reserves the right to carry out further inspections upon receipt. In addition, Benteler shall give notice of any defects as soon as such are detected having regard to the circumstances of normal business procedures. The Contractor waives any objection in this regard based on a late notification of defect.
- 15.2** The Contractor accepts the statutory warranty for defects occurring within 36 months of delivery as far as no other mandatory legal deadlines apply. § 434, section 1, sentences 2 and 3 shall also apply to any goods or services contracts. The Contractor shall reimburse Benteler for any expenses necessary for correcting defects in accordance with § 439, section 2 (BGB) Civil Code and shall indemnify Benteler in advance against any third party claims arising from the costs of correcting any defect as well as any claims for compensation by third parties which relate to a defective delivery by the Contractor. The costs for correcting a defect shall include in particular, but are not limited to, the costs for disassembly and assembly of the defective goods, as well as any necessary transport to a location other than the place of performance. The Contractor shall indemnify hold harmless and defend Benteler against any third party claims resulting from the delivery of the Contractor to the extent that the Contractor is itself liable to Benteler.
- 15.3** To counter any imminent risk of serious damage Benteler may, at the expense of the Contractor and without any notice or setting a deadline in relation to the Contractor, correct the defect itself, have the defect corrected, or obtain a replacement, provided that because of the special urgency it is no longer possible to inform the Contractor of the defect and the possible damage and it is no longer possible to give the Contractor the opportunity to correct such.
- 15.4** Where the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) applies, Benteler may demand substitute delivery even in cases of non-substantial breaches of contract. In addition, rectification may be demanded in accordance with Art. 46, section 3 CISG even after the expiry of a reasonable deadline after the issuing of a notification of defect.

16. 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 Benteler, Benteler may postpone the performance of any acceptance duty by the period of such hindrance and a reasonable preparation period. If the performance of the contract becomes unreasonable for Benteler as a result, Benteler 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.

17. Data Protection/Confidentiality/Advertising:

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 Benteler. The Contractor shall refer to its business relationship with Benteler in its advertising only if Benteler has expressly agreed to such in writing. Benteler may digitally process and store any data related to the Contractor in terms of the Federal Data Protection Act.

18. Proprietary Rights:

The Contractor shall indemnify, hold harmless and defend Benteler against any claims of third parties based on infringement of proprietary rights as well as any resulting costs to Benteler, 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 a party based on infringement of proprietary rights.

19. Loaned Material/Supplementary Performance:

Any models, drawings, samples, tools, gauges, software or hardware or other technical equipment or documents made available to the Contractor, or produced by the Contractor as specified by Benteler, shall not be disposed of, pledged or transferred to third parties or used in any other way without the written approval of Benteler. The same shall apply to any objects 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 production takes place according to the specifications of Benteler, Benteler shall become the owner upon payment in full.

20. Retention of Title:

Any extended or enlarged retention of title by the Contractor is excluded.

21. Assignment/Transfer of Contract/Set-Off:

20.1.1 In order to assign any claims or transfer any rights to collect accounts receivables from Benteler, the Contractor shall require prior written approval.

21.2 Benteler may transfer the contract as a whole, including all rights and responsibilities, to an affiliated company of Benteler or may assign individual rights arising under the contract to an affiliated company of Benteler.

21.3 The Contractor may set off only those claims which are undisputed or determined by a final legal judgement.

22. Liability/Product Liability/ Proprietary Rights of Third Parties:

Any rights to claim compensation – regardless of the legal basis – shall be made by the contractor only in case of wilful or grossly-negligent breach of a duty by Benteler. This shall not apply to any breach of substantial contract duties, to claims based on product liability or in case of culpable injury to life, body or health. In case of any breach of a substantial contract duty, the liability of Benteler shall be limited to foreseeable damage at the time of entering the contract. In case any claim is made against Benteler by a customer or other third party on the basis of 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/services 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 culpable. 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.

23. Insurance:

23.1 The Contractor shall effect, at its own costs, third party liability insurance and extended product liability insurance to cover compensation 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. In addition, the Contractor shall effect vehicle recall cost insurance to reimburse, amongst other matters, the costs of notification, transport, testing, sorting, storage, assembly and disassembly as well as disposal in recall actions by automobile manufacturers or the authorities. The Contractor shall maintain the above named insurance at all times during 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.

23.2 The amount of coverage for the above named insurance shall be respectively at least EUR 10 million for any one occurrence and in the annual aggregate.

23.3 The Contractor, either itself or through its insurer, shall provide Benteler written evidence of the effecting and continuation of the insurance described above. Insofar as the Contractor fails to provide the necessary written evidence and Benteler is not able, because of statutory or other similar regulations, to provide the required insurance cover for the Contractor, or Benteler decides not to take out such insurance cover for the Contractor, Benteler may hold harmless the Contractor against Benteler's or third party claims to the same extent as the contents and level of such insurance ("**hold harmless agreement**"). Any claims by Benteler or third parties for further damage shall not be affected thereby.

23.4 Benteler may demand from the Contractor the reimbursement of any costs resulting from such indemnification and even set off any costs which generally do not exceed the premium for a corresponding insurance effected by Benteler within terms of the existing contract relationship against any receivables of the Contractor, if such are not yet due.

23.5 This hold harmless agreement shall not apply in cases of wilful or grossly-negligent breaches of duty by the Contractor.

24. Insolvency:

24.1 Benteler may withdraw from this contract in whole or in part or, in case of continuing obligations, may terminate such, if the Contractor suspends the performance of its duties or if Benteler or the Contractor or any other creditor duly applies for insolvency proceedings or any comparable legal proceedings.

24.2 Benteler shall even have the right to terminate or withdraw if insolvency or comparable proceedings are commenced against the assets of the Contractor or if the commencement of such proceedings is refused due to a lack of sufficient assets.

24.3 The same shall apply in the case of any substantial deterioration or threatened substantial deterioration in the assets of the Contractor which could endanger the performance of the obligations to Benteler.

25. Jurisdiction/Applicable Law:

25.1 The exclusive jurisdiction for all disputes arising out of this contract shall be the place of business of Benteler unless Benteler notifies the Contractor in writing that Benteler intends to bring proceedings at the Contractor's general place of jurisdiction.

25.2 This contract shall be subject to the law of the Federal Republic of Germany.