

CONDITIONS OF PURCHASE - BENTELER Maschinenbau GmbH (as at 01.07.2022)

- 1. Placing orders:** Our orders are placed on the basis of these purchasing conditions and are only legally valid when in written or text form and when, for values exceeding 25,000.00 Euros, bearing the signatures of two authorised persons. Verbal agreements as well as any additions must be confirmed in written or text form in order to be valid. Only our Purchasing Department is authorised to issue orders. Any contradicting conditions stated in the acceptance of order will only become legally binding when we agree to such in writing. The supplier acknowledges these purchasing conditions through his acceptance of the order or by delivery. The validity of these purchasing conditions extends also to orders relating to our domestic and foreign offices, subsidiaries and affiliated companies.
- 2. Acceptance of Order:** Our orders must be confirmed in writing within two weeks subsequent to receipt by the supplier by confirming and returning the response form. Otherwise we are entitled to rescind our order. On accepting an order the supplier undertakes to report immediately, with request for clarification, any details which are contradictory to those from our project managers on technical points or specifications. Only Benteler project management staff can clarify inconsistencies, etc. on technical issues.
- 3. Conditions of Delivery:** For transport not involving border-crossing the stipulations of the Incoterms DAP (domestic delivery address) are applied accordingly, the insurance contract in accordance with the Institute Cargo Clauses, No. A. For cross-border transport the stipulations of the Incoterm DDP (foreign delivery address) will be applied. The prices include packaging, subject to any agreements to the contrary. The valid version of the Incoterms will be applied for all trade clauses.
- 4. Payment:** Payment will be made after the goods/services have been received/rendered and found to be in good order within 30 days following receipt of invoice less 3% early payment discount or after 60 days without discount or as otherwise agreed. We are free to determine the method of payment. We reserve the right to claim appropriate security where down-payments are made.
- 5. Delivery Times and Delays:** The delivery dates and terms for delivery agreed are, unless influenced by Acts of God, legally binding. Whether a delivery date or term for delivery has been adhered to or not will be determined by the date of receipt of the goods at the stipulated address. Where the supplier fails to meet the delivery date, we reserve the right to withhold compensation for delay to the amount of 100.00 euros as a lump sum for every delivery that he is in arrears with due to the administrative and logistical inconveniences ("Inconveniences") resulting from this. If the Supplier proves that the Inconveniences caused by the delay are less than this, the sum is reduced correspondingly. Cost exceeding this are also to be compensated by the Supplier, if we prove them. A claim for compensation for greater damage remains unaffected.
- 6. Acceptance of Delivery Regulations:** All regulations of the Contract for Manufacture Law are to be applied in full as relevant in each case of delivery of plant, machinery and tools, in particular though not solely, §§ 640, 641 as well as 644 BGB (German Civil Code). The same applies – where an acceptance of delivery has been agreed on an individual contract basis – also to other objects.
- 7. Deliveries:** Only the ordered amounts may be delivered. Any amounts exceeding those ordered can be returned by us without prior notification at the supplier's expense and the invoice reduced accordingly. We do not in any event have a duty to pay until the agreed delivery date. In the event of discrepancies concerning amounts and weights it is the amounts and weights determined by our Goods In Department which will be considered relevant.
- 8. Dispatch:** A single copy of a clearly laid-out dispatch note giving our order details is to be sent on the day of dispatch to the Benteler Maschinenbau GmbH, Frachtstrasse 10-16, D-33602 Bielefeld, Germany. The goods themselves are to be accompanied by a delivery note with the same details, in duplicate. For deliveries made directly to third parties copies of the consignment note bearing an official railway company stamp are to be forwarded to ourselves. In the case of direct deliveries to third parties the goods and the packaging must not bear any indication of their of origin. Any disadvantage caused to or claim formed against us from non-compliance with these regulations will be passed on to the supplier. Where 'ex-works agreements' have been made the supplier must select the least-cost forwarding company when he has undertaken to charge a forwarding company with the transport.
- 9. Delivery Regulations:** The supplier is to use the delivery address stated on the front. Where attention is not paid to the agreed delivery address we will charge the supplier for any costs incurred over and beyond the pure administration costs. These costs will be covered by a standard compensation charge of 25.00 Euros per load. Both the supplier and ourselves remain free to produce proof of higher or lower costs incurred. The supplier must adhere to the standard goods receipt times (Mondays to Thursdays from 7.00 - 15.00 hours, Fridays 07.00 - 13.45 hours). Any deviations from these times require prior agreement.
- 10. Invoices:** Each invoice stating order details is to be addressed to the Benteler Maschinenbau GmbH, Audit Department, 33092 Paderborn and be submitted in duplicate and under separate cover immediately after execution of delivery. Invoices for deliveries to various plants cannot be settled collectively; a separate invoice is to be submitted in each case. The weights and number of units determined by ourselves will be used for establishing invoice amounts unless the supplier is able to prove that the weights and numbers which he determined are indeed correct where justified doubts exist. The supplier must seek our written approval before assigning any claims as well as transferring any collection demands against us. Setting off outstanding amounts is only permitted for undisputed counter-demands and legally established claims. In the case of non-agreed part-deliveries term of payment for the total delivery begins with the last part-delivery.
- 11. Reservation of Ownership:** We cannot acknowledge reservation of ownership of any kind whatsoever by the supplier or third parties.
- 12. Industrial Safety and Environmental Protection:** All ordered/commissioned goods and services, etc. must conform at the very least with prevailing German legislation, in particular such serving the interests of health and safety of persons and protection of the environment.
- 13. Defects:** Any defects in a delivery will be reported in writing to the supplier as soon as these can be established within the scope of normal procedures. The supplier hence waives his right to object to a notice of defect not made within a given time limit. He accepts the statutory guarantee for faults which occur within 36 months of delivery of the goods unless an alternative guarantee period has been agreed upon on an individual contract basis. This does not affect any rights concerning further liability claims. Materials subjected to our own processing will not be accepted by us unconditionally until they have proven themselves to be fit for the purpose subsequent to processing.
For goods which prove faulty as a result of workmanship-, material-, construction- or similar failures/errors we are free to choose whether to demand replacements free of charge and free of freight, or rectification of the defects. Where discrepancies exist between the goods themselves and those contractually agreed upon, for example with respect to size, firmness and rigidity, an independent expert commissioned in agreement with both parties will determine the values to be used in litigation. Should it not prove possible to appoint an independent expert on whom both parties can agree then our Chamber of Commerce and Industry will, on the request of one of the parties, determine an independent expert. The costs of engaging such an expert will be covered by the party whose values prove to be incorrect. The supplier relieves us from any claims from third parties resulting from a faulty delivery from the supplier inasmuch as he is liable to ourselves in an external association.
In agreement with the supplier we may ourselves carry out the improvements or have these carried out by third parties. Any costs incurred will be carried by the supplier. In urgent cases we are entitled to rectify the faults at the supplier's expense or have them rectified by third parties once he has been informed, without prejudice to any other claims by us. For every defective delivery we reserve the right to claim compensation of 150.00 euros as a lump sum due to the administrative and logistical inconveniences ("Inconveniences") resulting from this without excluding a claim for greater damages. If the Supplier proves that the Inconveniences caused by the defect are less than this, the sum is reduced correspondingly. . A claim for compensation for greater damage remains unaffected.
- 14. Force Majeure:** Acts of God as well as strikes, workers' lock-outs, riots, official measures and any other unexpected, unavoidable and grave events beyond our control entitle us to delay fulfilment of the duty to accept the goods by the period of the hindrance plus appropriate recovery time. Where the execution of the contract becomes an unreasonable expectation for one of the parties then this party may rescind the contract. The supplier cannot use the delay in the acceptance of the delivery or the rescission of the contract to make any claim for compensation.
- 15. Equipment Loan and Complementary Services:** Models, drawings, samples, stamps, tools, instructional and/or other technical aids and documents which are placed at the supplier's disposal or are produced by the supplier on the basis of information provided by ourselves may not be sold, pledged nor passed on in any way to a third party, nor used for third parties in any way without our written permission. This also applies to any objects manufactured using our production aids. Such may only be delivered to ourselves unless we have agreed to an alternative use in writing. Drawings and models provided by us remain our unsaleable material and intellectual property and are to be returned without specific request once they are no longer required. Drawings and models produced according to our details become our property once these have been paid for completely. The supplier is liable for any violation.
- 16. Trade Secrecy / Data Protection:** The supplier is bound to regard our orders and the work resulting from these as trade secret and to treat them with confidentiality. The supplier may not refer to his business connections with us for advertising purposes unless we have given our express permission to do so in writing. We are entitled to mechanically process and store data on the supplier within the framework of the German Federal Data Protection Act.
- 17. Industrial Property Rights:** The supplier is liable for any claims arising from the industrial property rights of third parties resulting from the use of the goods within the scope of the contract which he develops or has developed and relieves us from all such claims by third parties.
- 18. Liability:** Any claims for compensation, based on whatever legal principle, may only be made against us in the event of criminal intent and gross negligence. This is not the case for breach of fundamental contractual duties, for claims resulting from product liability as well as for negligently caused damage to life, to human body and to health.
- 19. Export Control and Customs Regulations:** The supplier is obligated to inform us of any licensing requirements or restrictions on (re-)exports of its goods in accordance with German, European, US export and other customs regulations, as well as the export regulations of the country of origin of its goods, in its business documents and to send the following information for the goods to be delivered to the company receiving the service by email in good time before the first delivery: our material number, goods description, origin of goods under trade policy, goods number (HS code) and a contact person in its company to clarify any queries. The contractor must also provide the following information to us by email for goods that are subject to approval in good time before the first delivery: All applicable list numbers according to the EU Dual-Use Regulation, including the Export Control Classification Number (ECCN) according to the U.S. Commerce Control List
The supplier is obligated to inform us immediately of any changes to the licensing requirements of the goods delivered to us as a result of technical and legal changes or official findings. BENTELER Export Control email address: exportkontrolle.bme@benteler.com
- 20. Place of Performance / Place of Jurisdiction:** The place of performance for both parties for all rights and duties resulting from the contract is Paderborn. Where the supplier is a registered trader the place of jurisdiction is Paderborn only, unless we declare to the supplier in writing that we wish to initiate legal proceedings at his place of jurisdiction.
- 21. Prevailing Law:** The laws governing the Federal Republic of Germany only will be applied.
The regulations of the UN Sales Law (United Nations agreement of 11.04.1980 on contracts for the international sale of goods) are expressly excluded.