

TERMS AND CONDITIONS OF PURCHASE BY BENTELER STEEL/TUBE MANUFACTURING CORP. ("BENTELER")

1. Placement of orders.

a. These terms and conditions of purchase (the "Terms") shall apply to and become incorporated into all purchase orders ("Orders") by and between BENTELER, its successors, assignees, designees and the seller or supplier (the "Vendor") of goods and services (the "Goods"). Acceptance of the Order is expressly limited to the Terms. Terms and conditions to the contrary contained in any other orders, contracts or documents shall have no force or effect and are expressly rejected unless accepted by an authorized agent of BENTELER in writing. The Terms, together with any written and signed modification as described herein, will constitute the entire agreement between Vendor and BENTELER.

b. Orders shall only be effective if in writing. Electronically transmitted orders shall only be effective if framework agreements have been executed between the parties to govern such an order.

c. Unless specified on the face of the Order, the risk of loss of all Goods shall remain with the Vendor until delivery and acceptance of the Goods at Buyer's delivery address set forth on the Order.

2. Order Acceptance. Upon dispatch of BENTELER'S order confirmation, the Order shall be confirmed by the Vendor within ten calendar days of receipt by returning the signed confirmation page. If the signed confirmation page does not reach BENTELER within such time, BENTELER shall be entitled to revoke the order. Thereafter, any shipment or performance under the Order constitutes Vendor's acceptance of the Terms.

3. Shipping and Labeling.

a. The Vendor shall make all deliveries to the address specified by BENTELER in accordance with the shipping instructions and method designated by BENTELER in writing. If BENTELER does not specify a method of transportation or shipment, Vendor shall select such method and such route so as to ensure the most expeditious delivery at the lowest commercially practicable cost. The Vendor bears all risk of transportation and is responsible for all shipping costs, unless otherwise agreed by BENTELER in writing. If Vendor incorporates shipping cost into the price of the Goods, Vendor must make available receipted freight bills for BENTELER'S review, at BENTELER'S reasonable request.

b. All Goods shall, at no additional charge unless stated and itemized on the face of the Order, be properly packed, marked and shipped by Vendor in containers which are suitable for the prevention of damage under normal handling during loading, unloading, shipping and storage, and in accordance with the requirements of the carrier and the specifications of BENTELER. Vendor shall mark the outside of the shipment with BENTELER'S Order number and material number, if applicable. Vendor will be responsible for any and all damage caused to BENTELER due to Vendor's improper packaging, marking, or shipment. Vendor shall procure replacement value insurance for all shipments of Goods. Vendor will comply with all applicable laws, regulations and customs requirements for Goods shipped to the address on the face of the Order.

c. Unless otherwise agreed, the Vendor shall only deliver shipments during BENTELER'S regular business hours.

4. Deliveries. Vendor shall not provide Goods or services in excess of the quantities specified by BENTELER on the face of the Order. Deliveries in excess of stated quantities may be returned, without prior notification, at Vendor's expense. Vendor shall only provide partial performance to BENTELER with prior written approval. However, BENTELER may request partial performance from the Vendor without waiving its right to demand full performance from Vendor within a commercially reasonable amount of time thereafter. BENTELER has the right to reject in part, accept in part, or reject or accept the whole shipment if any part of the shipment is nonconforming.

5. Delivery periods/arrears. Time, quality and quantity are of the essence in Vendor's performance of its obligations under the Order. Vendor shall supply by the date indicated on the face of the Order. In the event Vendor has reason to believe that timely performance hereunder may be prevented or is threatened, Vendor shall immediately notify Benteler and promptly provide BENTELER with a remediation plan to ensure timely delivery. In the event Vendor's performance of services or the delivery of Goods is delayed, Vendor shall reimburse BENTELER for all costs, expenses and liabilities incurred by BENTELER as a result of such delay, in addition to any other remedies afforded to BENTELER under law. BENTELER expressly reserves the right, at its option and Vendor's sole expense, to either a) cancel the Order in whole or in part; b) direct Vendor to expedite performance of the services or delivery of the Goods or c) obtain substitute Goods or services from an alternative source. The agreed delivery dates shall be binding and Goods must arrive at the delivery address no later than the specified date. In the event of early delivery, BENTELER reserves the right to return or store the Goods at the Vendor's expense and risk.

6. Payments.

a. Invoices shall be issued to BENTELER at the address indicated on the face of the Order, and submitted in duplicate, separate from the delivery, immediately after delivery. Invoices must contain a complete description of items delivered, appropriate price and reference the Order number. For per unit charges, weights and quantities determined by BENTELER shall control. Unless otherwise stated in the Order, payments shall be made to Vendor within 45 days from the date the Goods are accepted by BENTELER or the date the invoice is received at BENTELER, whatever is later, provided the invoice is correct and all charges stated therein are authorized or can be substantiated by Vendor. Benteler shall be entitled to setoff amounts owed to BENTELER from amounts due to Vendor.

b. All prices shall be inclusive of applicable excises, taxes, and duties. Price shall be agreed between the parties and be reflected on the face of the Order. The price may not be increased without BENTELER'S consent and modification of the Order. BENTELER shall make payment according to the terms of the relevant agreement following receipt and acceptance or approval of the Goods. In the event of partial deliveries which have not been agreed, the agreed payment period for the overall delivery shall be based on the date of the last partial delivery. BENTELER shall select method of payment.

7. Changes. BENTELER reserves the right to change from time to time any drawings, specifications, scope of work; method of shipment or packaging; time or place of performance or delivery; and/or instructions for the Goods or services provided under the Order, and Vendor agrees to promptly conform and comply with said changes. If said changes affect the price agreed to on the face of the Order, or the timing of the delivery, Vendor shall promptly notify BENTELER within seven (7) days of the change. An equitable adjustment in the price or performance schedule will be determined only by mutual agreement of the parties. However, if the price is adjusted downward, BENTELER shall receive the benefit of any savings.

8. Warranty. In addition to all warranties implied in fact or in law, Vendor expressly warrants that the Goods shall be free from defects in design, material and workmanship, and shall conform to and perform in accordance with all applicable specifications and requirements herein and Vendor's written representations. Vendor further warrants that it shall convey good and valid title to the Goods, that the Goods shall be provided free and clear of any liens and encumbrances, and that the use of the Goods shall not infringe any patents, copyrights or other proprietary rights. Vendor further warrants that the Goods shall be merchantable, fit, sufficient and suitable for the purpose(s) intended. All warranties shall survive inspection, acceptance, payment, and termination or cancellation of the Order, and extend to BENTELER'S heirs, successors, assigns, customers, and end users. Goods not meeting the warranties shall be repaired, adjusted or replaced by Vendor at no charge at BENTELER'S request.

9. Information/Property of BENTELER. Vendor shall consider any information provided by BENTELER as confidential information. Confidential information includes, but is not limited to, models, diagrams, samples, moulds, gauges, software and hardware or other technical aids and documents or information provided to or produced by the Vendor at BENTELER'S instruction. Confidential Information may not be sold, shared or otherwise transferred to third parties in any way without BENTELER'S prior written consent. No license to the Confidential Information is granted to the Vendor.

10. Hazardous and declarable substances. Vendor shall identify to BENTELER in advance of delivery any toxic substances or hazardous materials incorporated in or associated with the Goods, and shall advise BENTELER of all precautions to be taken for their use and disposal. When applicable, Vendor shall furnish BENTELER a completed Material Safety Data Sheet on any Goods as required by any federal, state or local laws, ordinances or regulations. Any transportation or other handling of the hazardous/toxic materials or substances by Vendor shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations.

11. Infringement. Vendor shall indemnify, defend and hold harmless BENTELER and its officers, directors, employees, partners, joint venturers, agents, affiliates, predecessors, successors, assigns and legal representatives, and all parties claiming by, through or under any of the above, from and against any suits, claims, actions, losses, damages, expenses (including attorneys' fees and court costs) or liabilities that may result by reason of any alleged violation, infringement or misappropriation of a patent, trade secret, copyright or other proprietary right based on BENTELER'S use of any Goods provided under the Order. BENTELER shall promptly notify Vendor of any claim of infringement, violation or misappropriation for which Vendor is responsible and shall cooperate with Vendor to facilitate the defense or settlement of such claim. Vendor or Vendor's attorney(s) shall keep BENTELER reasonably apprised of the continuing status of the claim, including any lawsuit resulting therefrom, and shall permit BENTELER, upon BENTELER'S written request, to participate in the defense or settlement of such claim. If the use of the Goods shall be prevented or appears likely to be prevented by court order or settlement resulting from any such claim, Vendor shall, at its expense, either: (a) by license or release from the claim of violation, infringement, or misappropriation, procure for BENTELER the right to continue using such Goods; or (b) modify any such Goods so that they are functionally equivalent to the original Goods but are no longer subject to a claim of violation, infringement or misappropriation; or (c) remove such Goods from the premises of BENTELER and replace same with equally suitable substitute goods free from claim of violation, infringement or misappropriation. Unless otherwise agreed in writing by BENTELER, Vendor shall use its best efforts to procure the right for BENTELER to use the Goods as provided in (a) above. This indemnification, defense and hold harmless obligation shall survive the delivery of any Goods hereunder and the termination of any order.

12. Confidentiality/advertising/data protection. The Vendor shall be obliged to treat all commercial, financial or technical information which become known to it from the business relationship or in any way connected to Vendor's provision of Goods or services under the Order, and are not public domain, as confidential information. Upon completion of the provision of Goods or services under the Order, Vendor must destroy or return the information to BENTELER. No information disclosed by Vendor will be deemed confidential unless acknowledged as such in writing by an authorized agent of BENTELER. The Vendor may only make reference to its business relationship with BENTELER in advertising or marketing materials if BENTELER have expressly consented in writing.

13. Indemnification. Vendor agrees to indemnify, defend and hold harmless BENTELER and its officers, directors, employees, partners, joint venturers, agents, affiliates, predecessors, successors, assigns and legal representatives, and all parties claiming by, through or under any of the above, from and against all losses, damages, expenses (including attorneys' fees and court costs), claims, suits and liabilities, whether based in contract or tort (including strict liability), arising out of or resulting from (a) Vendor's acts or omissions, or those of persons employed or furnished by Vendor, (b) any defective Goods provided hereunder, (c) the failure of Vendor or any Goods to fully comply with the terms and conditions of any order or any applicable law or regulation, or (d) assertions under worker's compensation or similar laws made by persons employed or furnished by Vendor. BENTELER shall promptly notify Vendor of any written claim or demand for which Vendor is responsible under this clause. This indemnification, defense and hold harmless obligation shall survive the delivery of any Goods hereunder and the termination of any order. If Vendor provides services to BENTELER on BENTELER'S premises, Vendor will examine the premises to determine whether they are safe for such services and will advise BENTELER promptly of any situation it deems to be unsafe. Vendor shall be exclusively responsible for, shall bear, and shall relieve BENTELER from liability for all loss, expense, damage or claims resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to or destruction of property, including that of BENTELER, arising out of, or in connection with the performance of work on BENTELER'S premises except that Vendor shall not be responsible for or relieve BENTELER from liability for claims arising from the willful misconduct or the sole negligence of BENTELER.

14. Cancellation/Remedies. BENTELER reserves the right to cancel the Order in whole or in part, at any time, for any reason, with thirty (30) days written notice to Vendor, or in the event of Vendor's default, petition for bankruptcy, or change of control. Vendor shall immediately stop work upon receipt of notice and terminate all orders with subcontractors to the extent they relate to the terminated Order. Vendor shall comply with BENTELER'S instructions for the transition of supply or disposition of completed, previously authorized Goods or material not yet delivered to BENTELER. In the event of default of the Terms or any obligation under the Order, BENTELER shall be entitled to any and all damages that result, including special, incidental and consequential damages, and all remedies are cumulative and in addition to any other rights afforded under the Terms or by law. An election by BENTELER of a partial remedy shall not be construed as a waiver of other remedies afforded herein. A waiver by BENTELER to enforce any breach of any provision herein shall not constitute a waiver of a subsequent breach of such provision nor a waiver of any other breach. Notwithstanding the above, BENTELER reserves the right to withhold payment of amounts otherwise due to Vendor in the event that Vendor a) fails to provide a fully conforming shipment as described herein, b) fails to provide satisfactory service, or c) fails to pay any of its subcontractors resulting in a claim or lien filed against BENTELER or BENTELER'S property, until such time that the nonconforming shipments, unsatisfactory service, or improper lien is remediated and cured.

15. Insurance. Vendor shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in subsections (a) through (e) below. Such insurance shall be primary and non contributing with any other insurance, shall be written with insurance carriers with an A.M. Best rating of at least "A" or better and shall be in a form and from insurance companies reasonably acceptable to BENTELER. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. Each policy required under this Section 4.1 shall name BENTELER, their respective officers, agents and employees, and any additional entities as BENTELER may request, as additional insureds. The additional insured endorsement, equivalent to ISO form B 20 10 11/85 edition, shall state that the coverage provided to the additional insureds is primary and non contributing with respect to any other insurance available to the additional insureds.

a. Commercial Automobile Liability Insurance covering all owned, non owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage not less than the Standard Comprehensive Automobile Liability policy in limits not less than \$1,000,000 Combined Single Limit;

b. Workers' Compensation Insurance with statutory limits as required in the State(s) where any operations are being performed, including Maritime coverage, if appropriate, and Employers' Liability limits of not less than \$1,000,000 each accident/\$1,000,000 policy limit/\$1,000,000 each employee;

c. General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the agreement and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy ("Occurrence Form"). Such insurance shall provide coverage for all operations and include independent contractors, products liability, completed operations for two (2) years after final completion and acceptance of, the final payment for the work, contractual liability specifically designating the indemnity provisions of this agreement as an insured contract, and coverage for the explosion, collapse, and underground hazards. The limits of such insurance shall not be less than \$1,000,000 per occurrence, \$2,000,000 general aggregate limit and \$2,000,000 aggregate for products and completed operations. The policies must be endorsed to provide Broad Form Property Damage Coverage.

d. If required by BENTELER, Aviation and/or Watercraft Liability Insurance, in form and with limits of liability and from an insuring entity reasonably satisfactory to BENTELER and in an amount of not less than \$5,000,000 per claim for Aviation Liability for onsite helicopter flights.

e. Professional Liability Insurance. If the work involves professionally licensed design contractors they shall provide professional liability with limits of not less than \$5,000,000 per claim and \$5,000,000 aggregate. If coverage is written on a claims made basis the retroactive date shall be prior to the start of the work. All design contractors shall continue to carry such insurance for at least two (2) years after completion of the work. For the purposes of this coverage, a professionally licensed design contractor is defined as a design contractor performing work requiring a professional license and/or performing environmental tests (whether or not the performance of such environmental tests requires a professional license).

f. Hazardous Material Liability Insurance covering bodily injury and/or property damage for both on-site and off-site exposures, if the work involves abatement, removal, replacement, repair, enclosure, encapsulation and/or disposal of any hazardous material or substance. Such insurance shall provide coverage not less than that of a standard Hazardous Material Liability Insurance policy in limits not less than \$1,000,000.

g. Excess Liability Insurance covering \$10,000,000 in excess of the Commercial Automobile Liability Insurance, Worker's Compensation Insurance and Commercial General Liability Insurance.

Neither Vendor, nor Vendor's insurer(s), shall have a claim, right of action or right of subrogation against BENTELER based on any occurrence insured, in whole or in part, under the foregoing insurance.

16. Force Majeure. Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to fires, nationwide strikes, stoppage of work, embargoes, requirements imposed by governmental regulations, civil or military authorities, acts of God, the public enemy or other causes which are beyond the control of the party unable to perform (hereinafter "Force Majeure"). If Force Majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party. In the event Vendor is the party delayed or unable to perform due to Force Majeure, BENTELER may elect: (a) to terminate the remainder of the Order relating to Goods not already delivered or (b) to suspend performance hereunder for the duration of the Force Majeure event, during which period BENTELER may buy elsewhere substitute goods, and, in its sole discretion, allow Vendor to resume performance once the Force Majeure event ceases. BENTELER'S exercise of the preceding option (b) shall not prevent BENTELER from subsequently terminating any Order.

17. Choice of law and venue. Any questions arising out of or in connection with the Terms or the Order shall be governed by and construed in accordance with the law of Michigan, without regard to conflict of laws principles and expressly excluding the CISG. At BENTELER'S option, Vendor submits to the personal jurisdiction of the courts seated in Michigan and agrees to litigate said claims or submit to binding mediation in the same jurisdiction. Vendor expressly waives its right to trial by jury on any claim, counterclaim, set-off, demand, action or cause of action arising out of or in any way related to the Terms or the Order. BENTELER shall recover any and all attorneys fees and costs incurred related to the enforcement or litigation arising from the Terms or the Order, unless Vendor is the prevailing party.

18. Miscellaneous. If any provision of the Terms is deemed legally invalid, the validity of the remaining provisions shall not be impaired. Vendor may not assign any obligation it may have under the Terms or the Order without BENTELER'S express written consent. Vendor shall comply with all applicable local, state, and federal laws, regulations, and guidelines in the jurisdiction in which the Goods or services originate, and the jurisdiction in which the Goods are delivered or the services are rendered, specifically including but not limited to the Fair Labor Standards Act and Occupational Safety and Health Act, as amended. Any notices required by the Terms shall be in writing and delivered to an authorized agent of BENTELER with proof of delivery.