

General Supply and Payment Terms of BETRA Beton- und Baustoffverfahrenstechnik GmbH, D – 33181 Bad Wünnenberg/Haaren

§ 1 Validity

(1) Any deliveries of goods, services and offers of BETRA Beton- und Baustoffverfahrenstechnik GmbH (hereinafter referred to as: "Seller") shall be subject to these General Terms and Conditions. They are an inherent component of any contracts the Seller enters into with its contractual partners (hereinafter referred to as "Principal" or "Buyer", depending on the type of contract) regarding the goods and services it offers. They shall also apply to all future deliveries of goods, services and offers to the Principal, also if they are not subject to an additional separate agreement.

(2) Terms and conditions of the Principal or third parties shall not apply, also if the Seller does not separately object to their applicability in each individual case. Even if the Seller makes reference to a communication containing terms and conditions of the Principal or a third party or makes reference to such a document, this shall not constitute an agreement to the applicability of those terms and conditions.

§ 2 Offer and conclusion of agreement

(1) Any offers by the Seller are subject to confirmation and non-binding unless explicitly identified as binding or if they contain a specific confirmation period. The Seller reserves the right to accept orders or assignments within fourteen days after receipt.

(2) The only relevant document regarding legal relationships between the Seller and the Principal shall be the written purchasing agreement, including these General Terms and Conditions. This document comprises any and all agreements concerning the subject matter of the present agreement established between the parties to the agreement. Any oral agreements between the parties to the agreement prior to conclusion of this agreement are not legally binding and oral agreements between the parties to the agreement shall be replaced by the written agreement unless it is not expressly indicated that they continue to be legally binding.

(3) Additions and amendments of the agreed provisions, including the present Terms and Conditions, require the written form to be effective. With the exception of Directors or Authorised Signatories, the Seller's employees are not authorised to enter into any oral agreements deviating herefrom. To comply with the required written form, the above communication may be transmitted via telecommunication, in particular via facsimile or email, provided a copy of the signed declaration is submitted.

(4) Information provided by the Seller about the subject matter of the delivery of the goods or services (e.g. weight, use values, load-bearing capacity, tolerances, characteristics, chemical composition and technical data) as well as illustrations of the same (e.g. drawings and images) is relevant only in an approximate sense unless usability as intended by the agreement requires exact consistency. In that respect, this information does not represent guaranteed properties and characteristics but descriptions or identifications of the goods or services. Variations customary in the trade and variations ensuing from statutory regulations or which constitute technical improvements and the substitution of products by products of the same standard shall only be admissible insofar as they do not adversely affect usability for the contractually intended purpose.

(5) The Seller reserves the property or intellectual property rights in all offers and quotes communicated to the Principal as well as any drawings, illustrations, calculations, leaflets, brochures models and other documents and aids made available to the Principal. Without explicit authorisation by the Seller, the Principal must not make these items or their content available to third parties or publish them, use or reproduce them itself or have them used or reproduced by third parties. Upon request by the Seller, it undertakes to return these items to the Seller in their entirety and destroy any copies that may have been made when they are no longer required within the scope of its ordinary business activities or if negotiations do not result in the conclusion of an agreement.

§ 3 Prices and payment

(1) Prices shall apply to the scope of delivery of goods and services as specified in the order confirmation. Additional or extra services are charged for separately. Prices are quoted in EURO ex works plus packaging, the statutory value added tax and in the case of export deliveries custom and fees as well as other statutory charges.

(2) Where the agreed prices are based on the Seller's list prices and the delivery is not to take place until more than four months after conclusion of the contract of sale, the Seller's list prices valid on the date of delivery are deemed to apply (less any agreed percentage or fixed discount).

(3) Invoiced amounts are payable without deduction within thirty days unless otherwise agreed in writing. The date of receipt by the Seller shall be deemed to be decisive as the date of payment. Cheques are not deemed to constitute payment until receipt of funds by the bank. Where the Principal does not make payment by the due date, all and any outstanding amounts become subject to interest of 9% above the respective applicable basic interest rate from the due date; the right to apply higher rates of interest and to claim additional damages in the event of default remains unaffected.

(4) It is only permitted to offset or retain outstanding amounts against counterclaims by the Principal if those counterclaims are non-contentious or legally enforceable.

(5) The Seller is entitled to only deliver goods or services subject to advance payment or a provision of security if, after conclusion of the agreement, it becomes aware of circumstances suited to substantially diminish the Principal's creditworthiness and which represent a risk with respect to payment of the Seller's outstanding claims by the Principal arising from the respective contractual relationship (including other individual orders subject to the same framework agreement).

§ 4 Delivery and delivery period

(1) All deliveries are made ex-works.

(2) Deadlines and dates for the delivery of goods and services envisaged by the Seller shall always apply only approximately unless a fixed deadline or date has been explicitly approved or agreed. In case shipping is part of the contractual agreement, delivery periods and delivery dates shall refer to the point in time of handover to the carrier, forwarding agent or other third parties commissioned to organise shipping.

(3) The Seller may - without prejudice to its rights ensuing from default on the part of the Principal - request an extension of the delivery and supply periods or a postponement of the delivery and supply dates by the period for which the Principal has failed to comply with its contractual duties vis-à-vis the Seller.

(4) The Seller shall not be held liable for cases in which delivery is impossible or delayed due to force majeure or events that cannot be foreseen at the date of conclusion of the agreement (e.g. any kinds of disruption of work, difficulties regarding material or power supply, transport delays, strike, legal lockout, lack of labour, power or raw materials, difficulties in the provision of necessary statutory permits, measures by the authorities or missing, incorrect or delayed deliveries by suppliers) the Seller is not responsible for. In case such events make it substantially more difficult or impossible for the Seller to deliver the goods or services and the impairment is not restricted to a limited period, the Seller reserves the right to withdraw from the agreement. If the delay is perceived to be of a transient nature, the delivery or supply period is deemed to be put back by the same period as the delay plus an appropriate period for adjustment to the changed circumstances. If the Principal cannot, as a result of the delay, be expected to take delivery of the products or services, it is entitled to withdraw from the agreement by means of an immediate declaration in writing to the Seller.

(5) The Seller is entitled to partial delivery of goods or services if

- if the partial delivery is usable by the ordering party within the context of the contractually agreed purpose,
- if the delivery of the remaining goods ordered is secure and
- if the Principal incurs no major additional costs (unless the Seller agrees to bear those costs).

(6) In case the Seller is in arrears with respect to the delivery of goods or services or if the delivery of any goods or services, for whichever reason, becomes impossible, the Seller's obligation to pay damage compensation is restricted as defined in § 8 of these General Terms and Conditions.

§ 5 Place of performance, shipping, packaging, transfer of risks, acceptance

(1) The place of performance for all obligations arising from the contractual relationship shall be 33181 Bad Wünneberg/Haaren, Germany.

(2) Shipping and packaging shall be subject to the Seller's professional discretion.

(3) The risk shall at the latest be transferred to the Principal upon handover of the goods or services (with the beginning of the loading procedure being the relevant moment in time) to the carrier, forwarding agent or any other third party in charge of carrying out the shipment. This applies also to partial deliveries or in case the Seller has agreed to perform further services (e.g. shipping). If shipping or handover are delayed due to circumstances caused by the Principal, the risk shall be transferred to the Principal on the date when the delivery item is ready for dispatch and the Seller has notified the Principal thereof.

(4) Storage costs after transfer of risk shall be borne by the Principal. If storage is arranged by the Seller, the costs shall be 3 % of the invoice amount per full week for the goods to be stored. The Seller retains the right to claim additional or lower storage charges on the basis of appropriate documentation.

(5) Shipments are only insured against theft, breakage, transport damage, fire and water damage and other insurable risks if the Principal expressly requests this and agrees to pay the charges.

(6) In case - exceptionally - the delivery items are subject to an acceptance procedure, the delivery item is considered accepted, when

- delivery is concluded,
- the Seller has communicated this to the Principal, making reference to the deemed acceptance pursuant to the present § 5 (6) and has requested it to perform the acceptance procedure,
- 12 working days have passed since delivery or the Principal has started using the delivery item and, in this case, 6 working days have passed since delivery and
- in case the Principal has failed to perform the acceptance procedure during this period for other reasons than a defect the Seller has been notified of that would have rendered use of the delivery item impossible or would have represented a substantial impairment.

§ 6 Warranty, defects

(1) The warranty period is one year starting from the date of delivery or, where exceptionally an acceptance procedure is required, from the date of the successful acceptance procedure.

(2) The delivered products/items are to be thoroughly examined immediately after handover to the Principal or the third party the Principal has put in charge thereof. They shall be considered approved by the Buyer with respect to obvious defects or other defects that would have been recognisable in the case of an immediate, thorough examination unless the Seller has received a written notice regarding the defects within seven working days after delivery. Concerning other defects, the delivery items shall be considered approved by the Buyer unless the notice regarding defects is delivered to the Seller within seven working days after the date when the defect became apparent; in case the defect was recognisable to the Principal during regular use already at an earlier point in time, this earlier point in time is the respective starting date for the expiry of the period allowed for the examination and sending notice of a defect or deficiency. If the Seller so requests, the delivery item subject of the complaint shall be returned to the Seller.

(3) Where the goods delivered have material defects, the Seller is obliged and entitled to choose either to repair or rework the goods or to replace them at his discretion, where the decision is to be taken within a reasonable time period. In the event of complete failure, i.e. if it is impossible for the Seller to repair or replace the goods, or if it is unreasonable for it to do so, or if it refuses to do so or if there are unacceptable delays in the repair or replacement, the Principal may withdraw from the agreement or make a reasonable reduction in the price paid.

(4) If a defect is culpably caused by the Seller, the Principal may claim damages in accordance with the provisions set forth under § 8.

(5) In case of defects in products provided by other producers/manufacturers the Seller is incapable of rectifying for licensing or factual reasons, the Seller may assert its warranty claims against the producers/manufacturers and contractors on account of the Principal or assign these rights to the Principal. In the case of such defects, warranty claims against the Seller only arise subject to the other provisions and in accordance with the present Terms and Conditions if legal enforcement of the above claims against the producer/manufacture and supplier failed or is without prospect, for example due to insolvency. For the duration of the legal dispute, the limitation period concerning the corresponding warranty claims of the Principal against the Seller is suspended.

(6) Warranty claims are obsolete if the Principal, without approval by the Seller, alters the delivery item or has it altered by third parties and in doing so renders remedy of the defects impossible or unreasonably difficult. In any case, the Principal shall bear the additional costs of repair of the defects associated with the modification.

(7) The delivery of used items agreed upon with the Principal in individual cases shall exclude all and any warranty for material defects.

§ 7 Property rights

(1) **The chemical composition of all of the Seller's products constitutes legally protected trade secrets.** However, pursuant to the provisions as per the present § 7, the Seller guarantees that the delivery item is not subject to any third party commercial property rights or any third party intellectual property rights. The parties to the agreement shall immediately notify one another in writing in case claims are asserted against either of them arising from the infringement of such rights.

(2) In case the delivery item infringes a third party commercial property right or a third party property right, The Seller shall modify or exchange the delivery item according to its own discretion and bearing the costs of such modification or exchange, such that no third party rights are infringed any longer but the delivery item continues to fulfil the agreed functions or, in the alternative, the Seller shall enter into a license agreement in order to procure the right of use for the Principal. If the Seller fails to achieve this within a reasonable period of time, the Principal is entitled to withdraw from the agreement or reduce the purchase price by a reasonable amount. Any potential damage claims of the Principal shall be subject to the limitations of § 8 of these General Terms and Conditions.

(3) In case of rights violations caused by products of other manufacturers delivered by the Seller, the Seller, according to its own discretion, shall assert its claims against the manufacturers and previous suppliers on account of the Principal or shall assign them to the Principal. In these cases, claims against the Seller only arise subject to the provisions of § 7 of the present Terms and Conditions if legal enforcement of the above claims against the producers and previous suppliers failed or is without prospect for example due to insolvency.

§ 8 Liability for culpable damages

(1) The liability of the Seller for damages, for whatever legal reason, in particular resulting from impossibility of supply, default, non-conforming or incorrect delivery, breach of contract, violation of obligations during contractual negotiations and unlawful acts where the Seller is culpable, is restricted by this § 8.

(2) The Seller shall not be liable in the event of simple negligence by the officers of the company, employees or other agents unless a violation of contractual obligations is involved. Essential contractual obligations include the obligation to deliver the delivery item in a timely fashion and that the goods are free of defects that would impair their functionality or usability more than in an insubstantial manner as well as advisory, protective and duty of care obligations that enable the Principal to use the delivery item in the contractually prescribed manner or whose purpose is to protect life and limb of the Principal's staff or his property to prevent major damage or injury.

(3) In so far as the Seller is liable for damages on the grounds of and in accordance with § 8 (2), this liability is limited to damage which the Seller has foreseen when concluding the agreement as a possible consequence of a contractual infringement or which, exercising due care and attention, it should have foreseen. Indirect damages and consequential damages due to defaults in the delivery item are only subject to compensation if such damages can typically be expected when the delivery item is used in accordance with its intended purpose.

(4) In the event of liability for simple negligence, the Seller's obligation to provide compensation for property damage and ensuing further financial losses is limited to an amount of EUR 3 million EUR in case of personal and property damages and EUR 1 million per claim in case of financial losses (corresponding to the current cover sum of its product liability insurance or third party insurance), even if in the case of infringement of obligations essential to the agreement.

(5) The aforementioned exclusions of liability and limitations of liability shall apply to the same extent in favour of the officers of the company, legal representatives, employees and other agents of the Seller.

(6) Where the Seller provides technical information or acts as a consultant, and this information or advice is not part of the contractually agreed services or one which it is duty bound to provide, it is provided free of charge and no liability at all is accepted for it.

(7) The restrictions in this § 8 do not apply to the Seller's liability for intentional actions, guaranteed quality features, injury to life and limb or health generally or under product liability legislation.

§ 9 Comprehensive reservation of title

(1) The following reservation of title agreed between the parties serves to secure all existing present and future claims of the Seller vis-à-vis the Purchaser arising from the delivery relationship existing between the parties to the agreement concerning the Seller's products (including all net claims under trade credit terms limited to this delivery relationship).

(2) The goods delivered by the Seller to the Buyer shall remain the Seller's property up until complete payment has been effected for all secured claims. The goods and the goods covered by the retention of title taking their place are hereinafter also referred to as "reserved goods".

(3) The Buyer shall store the reserved goods free of charge for the Seller.

(4) The Buyer shall be entitled to process and sell the reserved goods during the course of normal business operations until the time of the enforcement of the reservation (paragraph 9). Pledges and collateral assignments are inadmissible.

(5) If the reserved goods are processed by the Buyer, it is deemed to be on behalf of and for the account of the Seller as the manufacturer and the Seller directly acquires property or - if the processing involves materials provided by a number of proprietors or the value of the processed goods exceeds that of the reserved goods - partial property (fractional property) in the item thus created and in proportion of the value of the reserved goods to the value of the new item. In case the Seller should not be able to acquire property as described herein, the Buyer already now assigns its future property or partial property in the new item, in the ratio as described above, to the Seller as collateral. If the reserved goods become an integral part of another item or inseparably mixed with other items and if one of those items is to be considered the main item, the Seller, to the extent of the value of the Seller's property in the main item partially assigns the joint property of the integral item in the ratio as defined above in sentence 1.

(6) In the event that the reserved goods are resold, the Buyer hereby assigns to the Seller as collateral any claims it may in future have against the purchaser; in the case of joint property of the Seller in the reserved goods in an amount proportionate to the Seller's property in the reserved goods. The same is deemed to apply to other claims which may replace the reserved goods or which may arise in connection with the reserved goods, such as insurance claims or claims resulting from unlawful acts in the event of loss or destruction of the goods. The Seller hereby revocably empowers the Buyer to collect the claims assigned to the Seller in its own name. The Seller may only revoke this power to collect in the event of enforcement of the retention of title.

If third parties attempt to take hold of the reserved goods, in particular through seizure, the Buyer shall without delay notify those third parties that the reserved goods are property of the Seller and notify the Seller of this fact to enable it to take measures to secure its property rights. If the third parties are not in a position to reimburse the Seller for the costs incurred in this connection, whether in court or out of court, the Buyer shall be liable vis-à-vis the Seller in this regard.

(8) The Seller shall release the reserved goods and items or claims that have replaced them to the extent that their value exceeds the claims secured by them by more than 50%. It is up to the Seller's discretion which items are to be released with respect to the above.

(9) If the Seller withdraws from the agreement (enforcement of the retention of title) due to a violation of the agreement by the Buyer – in particular in the case of payment arrears – it shall be entitled to request return of the reserved goods.

§ 10 Storage

(1) Until property in the purchase item has been transferred to the customer, the customer stores the purchase item in our name and on our behalf. The customer is to ensure that the purchase item is stored separate from its property and from the property of third parties and is stored prudently, safely and covered by insurance, and can be identified as our property.

(2) The goods are to be stored protected from frost and great heat or direct sunlight. The usual safety procedures for handling chemicals are to be observed.

§ 11 Final provisions

(1) If the Principal is a merchant, a public law entity or a federal special fund under public law, or in case it has no general place of jurisdiction in the Federal Republic of Germany, for any dispute arising from the business relationship between the Seller and the Principal, the place of jurisdiction shall be Paderborn or, subject to the Seller's discretion, the headquarters of the Principal. Regarding legal action brought against the Seller, the Paderborn courts shall have exclusive jurisdiction. Binding legal provisions relating to exclusive courts of jurisdiction shall remain unaffected.

(2) All relationships between the Seller and the Principal are subject exclusively to the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 as amended is excluded.

(3) If the agreement or these General Terms and Conditions are found to contain regulatory gaps, the parties shall consider a legally effective provision agreed to fill the respective gap which the parties to the agreement would have chosen in accordance with the commercial intentions of the agreement and the purpose of these General Terms and Conditions if they had been aware of the regulatory gap at the time of conclusion of the agreement.

Note:

The Principal is aware that the Seller stores certain data relating to the contractual agreement in accordance with Section 28 of the German Data Protection Act for the purpose of data processing and reserves the right to transmit these data to third parties (e.g. insurance and shipping companies) provided this is necessary for fulfilment of the agreement.