

# General Terms and Conditions of Business of the company BETEK GmbH & Co. KG, Aichhalden

## I. Validity of the Terms and Conditions

- 1.) The following terms and conditions shall apply for all offers made by, and orders placed with us, regardless of what type they are.  
The customer accepts the terms and conditions of business of our firm as binding upon receipt of our written order confirmation – or when the goods are handed over to the customer if the orders are supplied at short notice, and when we take delivery of the goods for contract production. The parties to the contract shall have to observe the guidelines of the EU General Equal Opportunities Act [AGG] and shall undertake to run their business in such a way so that there are no complaints raised under the AGG.
- 2.) These terms and conditions shall apply from the first occasion on which they are received by the customer and also for future transactions without another express agreement being required on the matter. For business relationships already existing the customer accepts these terms and conditions of business even before placing an order with us.
- 3.) All terms and conditions of business contrary to these and also including any counter confirmations sent in by the customer referring to his own terms and conditions of business / purchase are hereby rejected.
- 4.) Amendments to our terms and conditions of business and side agreements shall be subject to our written confirmation.

## II. Offer and Entering into a contract

- 1.) The offers made by our firm shall be subject to change without notice until we have confirmed them in writing or in the event that the goods have been supplied prior to confirmation in writing, until the goods have been supplied.
- 2.) Should doubts as to the creditworthiness of the customer arise after the order has been confirmed, our firm shall reserve the right to supply against payment in advance or the furnishing of a security.
- 3.) Drawings, diagrams or other performance data shall only be binding if this has been expressly agreed in writing.
- 4.) Assurances confirming the existence or non-existence of specific product features shall only be legally valid in those cases in which they have been expressly stated in writing.

## III. Prices and payments

- 1.) The prices – plus value added tax at the rate in force at that time – shall apply ex works. These prices shall be based upon the wages and cost of materials applicable when the order is confirmed. Should these change by the delivery date we shall consequently reserve the right to amend our prices accordingly.
- 2.) The invoices shall be due for payment within 30 days from the date of invoice. If the customer falls into arrears with his payment, we shall be entitled to charge the statutory commercial default interest for outstanding overdrafts. We shall reserve the right to assert claims for default damages over and above this amount.
- 3.) The customer shall only be entitled to offset, exercise retention or to reduce the purchase price if our firm has expressly agreed to such action in writing or if counter claims have been declared final and absolute in a court of law.

## IV. Delivery and performance period

- 1.) The dates and periods stated by our firm shall not be binding, unless they are guaranteed by us in writing. Should our firm be to blame for failing to comply with expressly promised periods and dates, and the customer find himself in arrears as a result, the customer shall consequently be entitled to withdraw from that part of the contract not fulfilled, provided that he has set us in writing a period of at least 4 weeks - and 6 weeks for special productions – to fulfill the contract at the same time as threatening to withdraw from the contract. No claims over and above this, in particular compensation claims for damages of all types, will be admitted.
- 2.) Our firm shall be entitled to supply before the delivery period expires, and this includes part-deliveries and partial-services.
- 3.) Compliance with the delivery period by us will be dependent upon the customer having fulfilled his contractual obligations.
- 4.) If the customer places an order for special productions, he must accept over or under quantities of up to 10%.

## V. Dispatch and Passing of risk

- 1.) The type of dispatch and the choice of means of transport shall be left up to our firm. The costs of packing and dispatch shall be for the customer's account. At the written request of the customer, our firm shall insure the goods at the customer's expense against storage damage, breakage, transit damage and fire damage.
- 2.) The risk of accidental loss or accidental deterioration shall pass over to the customer when the goods are dispatched – even if the goods are delivered carriage-paid.

## VI. Quality defects

- 1.) All those parts turning out to be faulty as a result of a circumstance prior to the passing of risk are to be repaired or replaced with new parts free of charge. The identification of such faults is to be reported to us in writing immediately. We shall have title to replaced parts.
- 2.) Having notified us of the defect the customer must allow us the time and afford us an opportunity to carry out all the repairs and to supply replacement parts appearing necessary to us, otherwise we shall be exempted from the liability for the resulting consequences. Only in urgent cases in which operational safety is jeopardised and to avert disproportionate damage, in which case we are to be notified immediately, shall the customer be entitled to rectify the defect himself or to have it rectified by a third party and to demand that we reimburse him for the necessary expenditure.
- 3.) Provided that the complaint turns out to be justified, we shall bear the direct costs arising as a result of rectifying the defect or supplying a replacement part including dispatch free border excluding the costs of installation and dismantling. We shall acquire title to the replaced part.
- 4.) The customer shall be entitled to withdraw from the contract in keeping with statutory regulations, if we have allowed a reasonable period of time set by him for us to rectify the defect or to supply a replacement part for a quality defect to elapse without being successful, taking into account the exceptions laid down in law. If the defect is no more than minor, the buyer shall only be entitled to reduce the purchase price. Otherwise the buyer shall not be entitled to reduce the purchase price.
- 5.) Liability shall not be accepted for quality defects in the following cases in particular:
  - Unsuitable or improper use
  - Incorrect assembly or start-up by the customer or third party
  - Normal wear and tear
  - Incorrect or negligent operation
  - Improper maintenance
  - The use of incorrect machinery materials and/or
  - attributable to chemical, electro-chemical or electrical factors, provided that we are not responsible for them.

- 6.) If the customer or a third party carries out a repair improperly, we cannot be held liable for the resultant consequences. The same applies for modifications to the supplied item carried out without our prior consent.
- 7.) If parts or materials are supplied to us for processing or are ordered by us for handling an order, unless an express agreement is made otherwise, we shall not carry out an inspection for manifest defects when the goods are received by us.
- 8.) In the event of a defective consignment of mining and roadmaking drill-bits and other carbide components or tools as well the customer will certainly receive a cutting head bit or roller tipping credited. The rest of the consignment is to be made available for our company straightaway so that we can call in an expert. Either at the customer's premises or at our company premises once the consignment has been returned to us as we see fit. As above we shall not accept any other compensation claims over and above this here either.

## VII. Reservation of title

- The goods shall remain the property of our company until all our accounts (including outstanding balance accounts) based on whatever legal reason to which our company is entitled against the customer now or in the future have been fulfilled.
- The assertion of a reservation of title as well as the levy of execution of the supplied item by our firm shall not be regarded as withdrawal from the contract. Processing or transformation shall always be carried out for our company without, however, placing us under any obligation. If the (co) ownership of our firm expires as a result of the goods being combined with other goods, it shall consequently be agreed here and now that a proportion of the value (Invoice value) of the customer's (co) ownership of the jointly owned goods shall pass over to our firm. The customer shall keep the (co) ownership in safe-keeping free of charge. Goods to which our firm is entitled to (co) ownership shall be designated below as goods subject to reservation of title.
- The customer is entitled to process and to sell the goods subject to reservation of title in a proper commercial transaction as long as he is not in default with payment. Pledging or assigning by bill of sale is not allowed. The customer assigns here and now the accounts created by reselling the goods subject to reservation of title or based on another legal reason in connection with them in full to our firm as a security. If the value of our security exceeds our total accounts by more than 20% we shall, at the customer's request, undertake to release a proportion of the security. On the other hand, our firm shall authorise the customer irrevocably to collect the accounts assigned to us in his own name and for his own account. At our request the customer must however disclose the assignment to his buyers and hand over to us the documents and information necessary for us to collect accounts directly. If the customer stops making his payments, he shall not longer be allowed to dispose of the goods.
- In the event of third party seizures of the goods subject to reservation of title, the customer shall be obliged to point out our firm's ownership rights to the third parties and inform our firm immediately of the seizure. The customer shall bear the costs and losses.
- In the event that the customer is in breach of contract – chiefly by being in default with payment – our firm shall be entitled to take back the goods subject to reservation of title at the customer's expense and / or, if necessary, to demand the assignment to us of his rights against his buyers for the goods to be handed over to him.
- The taking back of goods subject to reservation of title as well as the levy of execution on them by our firm shall not constitute withdrawal from the contract– unless the German Act applies.

## VIII. Liability

- 1.) If material supplied by the customer to us is damaged or rendered unusable in processing and treatment we shall only be liable as a result if the damage has been caused by gross negligence, but only however, up to 10% of the value of the revision unless compulsory statutory regulations stipulate unlimited liability.
- 2.) We shall only be liable for damage not incurred on the supplied item itself – regardless of whatever legal reasons in the event that we are guilty of
  - intent
  - gross negligence on the part of the executive bodies or senior salaried staff
  - culpable loss of life, personal injury or physical harm
  - defects which we have maliciously concealed or if we have guaranteed that the supplied goods will be free of such defects
  - defects in the supplied goods to the extent that we are liable under the German Product Liability Act for personal injury or property damage to items in private ownership.
- 3.) We shall also be liable for the culpable breach of important contractual obligations by non-senior staff or ordinary negligence, limited in the latter instance to reasonably foreseeable damages typical for the contract.
- 4.) No other claims may be asserted.

## IX. Other provisions

- 1.) The remaining parts of the contract shall remain binding even if individual provisions are legally invalid. This shall not apply if adherence to the contract would constitute unreasonable hardship for one of the parties. Should an arrangement be partially or completely invalid, the parties to the contract shall endeavour to achieve the sought-after economic success by other lawful means.
- 2.) Recourse is to be made to the courts having jurisdiction for our firm if disputes arise from the contract. We shall however also be entitled to take legal action against the customer at the courts having jurisdiction where the customer is based.
- 3.) All legal relationships between us and the customer shall be governed by the substantive law of Germany applicable for legal relationships between German parties. The UN law of sales or other conventions on the sale of goods laws shall not apply however.