

# General Terms of Purchase of BEVMAQ GmbH

## 1. Scope

(1) All deliveries, services and offers of suppliers of BEVMAQ GmbH, BEVMAQ GmbH, Mühlenhorst 8, 49637 Menslage, Federal Republic of Germany, register of companies entry: AG Osnabrück, in foundation, shall exclusively be carried out owing to these General Terms of Purchase. They are part of all contracts, which are concluded with the suppliers concerning the deliveries or services offered by them. Also covered by the General Terms of Purchase are in particular also all purchases of used machines.

(2) These General Terms of Purchase shall also apply to all future business between the contractual partners as well as if BEVMAQ GmbH should accept the delivery without reservation in the knowledge of deviating or contradictory terms and conditions.

(3) These General Terms and Conditions of Purchase shall only apply towards entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 Par. 1 BGB [German Civil Code]. An entrepreneur is each natural person or legal entity or a partnership with legal capacity, who acts with the conclusion of a legal transaction while performing their commercial or independent professional activity (cf. Section 14 Par.1 BGB).

## 2. Orders and acceptance

(1) Insofar as the offers of BEVMAQ GmbH do not explicitly include a binding period, it shall be bound hereto for the period of time of 7 days after the date of the respective offer. Decisive for the timely acceptance is the receipt of the declaration of acceptance at the registered seat of BEVMAQ GmbH.

(2) The creation of the order by the supplier is carried out free of charge, otherwise it has to inform BEVMAQ GmbH about possible costs in advance before creating its offer.

(3) Declarations of acceptance of BEVMAQ GmbH shall require a written confirmation in order to be legally valid.

## 3. Reservation

(1) Before conclusion of a purchase contract the parties can agree upon the binding reservation of the prospective object of purchase. In this case BEVMAQ GmbH will receive an exclusive and free option for the conclusion of the purchase contract at the terms and conditions listed in the order and these Terms of Purchase. The option is to be exercised towards the supplier in a text form within a maximum of 20 (twenty) days after the start of the reservation by BEVMAQ GmbH.

(2) Insofar as the supplier does not comply with the option of BEVMAQ GmbH, e.g. sells the object of purchase to third parties during the term of the option, it has to pay a contractual penalty to BEVMAQ GmbH in the amount of at least 5 % of the purchase price. BEVMAQ GmbH explicitly reserves the right to assert further damages.

## **4. Prices and terms of payment**

- (1) The contractual price is a fixed price.
- (2) All prices are net prices plus the applicable rate of value added tax.
- (3) The purchase price is payable 3 (three) days after pick-up and the proper invoicing net. The payment deadline will not begin before receipt of the invoice by BEVMAQ GmbH.
- (4) BEVMAQ GmbH will be entitled to rights to offset and rights of retention in the statutory extent.
- (5) Trade receivables can only be assigned with the written consent of BEVMAQ GmbH. This shall not apply if it concerns a monetary claim with a reciprocal trading business.
- (6) Invoices for partial deliveries will only be recognised by BEVMAQ GmbH if a partial delivery was agreed beforehand.
- (7) Reservations of price increases shall be subject to the explicit written consent of BEVMAQ GmbH.

## **5. Delivery**

- (1) Insofar as a delivery to BEVMAQ GmbH is not explicitly determined in the order it will pick the object of purchase up at the agreed place of provision within 15 days after conclusion of the contract.
- (2) The Supplier undertakes to place the object of purchase in interim storage free of charge until the pick-up by BEVMAQ GmbH.
- (3) For the event that BEVMAQ GmbH does not pick the object of purchase up at the agreed place of provision within the deadline agreed according to Sub-clause 5.1 it shall pay a flat rate amount of 0.2 % of the purchase price to the supplier, respectively per started week for the additional storage of the object of purchase.
- (4) All delivery dates stated in the order or agreed otherwise are binding. Premature deliveries are only permitted by coordination with BEVMAQ GmbH.
- (5) Decisive for the adherence to the delivery deadline is the provision date at the place of provision, or with an agreement otherwise, the receipt of the delivery at the agreed place of delivery.
- (6) The supplier undertakes to inform BEVMAQ GmbH immediately about an impending or already occurred delay with the provision or of the agreed delivery date, of the causes

and their expected duration. The occurrence of a delay in delivery shall remain unaffected hereby.

(7) For the event of the delay in delivery BEVMAQ GmbH shall be entitled to all statutory claims. The acceptance of a late delivery or service without reservation shall not mean a waiver of the claims to which BEVMAQ GmbH is entitled owing to the late delivery.

(8) Without the prior written consent of BEVMAQ GmbH the supplier is not entitled to make partial deliveries.

(9) BEVMAQ GmbH is entitled to request a contractual penalty in the amount of 0.5, a maximum of 5 % of the respective purchase price (purchase value) in the event of delays in delivery after a prior written warning for each started week of the delay in delivery. The contractual penalty is to be offset against the damages on default to be compensated for by the supplier.

## **6. Passing if risk**

(1) The risk of accidental loss or of the accidental deterioration to the object of purchase shall only pass to BEVMAQ GmbH with the proper hand-over at the agreed place of provision or delivery.

(2) Insofar as the object of purchase is picked up by BEVMAQ GmbH at the agreed place of provision it will bear the costs of the packaging and transport insurance that is possible to be concluded.

(3) Insofar as the object of purchase is not picked up by BEVMAQ GmbH, but is delivered by the supplier, it has to pack the object of delivery to the extent that damages are excluded with normal handling. The costs of the packaging and the transport insurance shall be borne by the supplier in this case.

(4) When it collects the object of purchase BEVMAQ GmbH shall inspect its functional capability and other freedom from defects. The supplier hereby assists to the respective necessary extent.

(5) For the event that the supplier has to deliver the object of purchase it shall be accepted subject to the reservation of the inspection for a freedom from defects, if and as soon as this is possible according to the proper course of business.

(6) The supplier waives the plea of the late report of a defect according to Section 377 HGB [German Commercial Code] insofar as the defect is not obvious or easily recognisable.

## **7. Warranty, guarantee**

(1) The goods and services that are to be delivered have to satisfy the order specifications. The supplier shall guarantee the performance data and other properties contained in the order.

(2) BEVMAQ GmbH is entitled to the statutory warranty rights to an unlimited extent. It is in particular entitled, at its choice, to request that the defect is remedied or delivery of a faultless object or damages.

(3) In case of danger in delay BEVMAQ GmbH is entitled, after a corresponding report to the supplier, to remedy the defect itself at the supplier's costs.

(4) If costs are incurred to BEVMAQ GmbH as a result of the faulty delivery, in particular owing to the thus associated subsequent fulfilment, e.g. transport, route, labour and material costs, these have to be borne by the supplier.

(5) Warranty claims for defects shall become statute-barred with new objects in 36 months and with used objects in 24 months after delivery.

(6) The warranty period shall begin to apply again for all parts exchanged or repaired during the period of the warranty at the time of the exchange or acceptance of the subsequent fulfilment.

(7) In case of fault delivery claims existing for the benefit of BEVMAQ GmbH from the German Product Liability Act, illicit act and management without an order shall remain unaffected.

## **8. Defects of title**

(1) The supplier shall guarantee that the object of purchase is delivered free of rights of third parties and that no rights of third parties are infringed by the delivery. It shall indemnify BEVMAQ GmbH insofar from all possible claims of third parties upon first request.

(2) Claims from defects of title shall become statute-barred according to the regulation pursuant to Sub-clause 7.5.

## **9. Instruction and obligations to show care and attention**

(1) The supplier shall guarantee that the objects to be delivered and the services comply with the relevant statutory regulations and standards (e.g. DIN standards, EC standards, etc.), the respective status of technology and the respective valid safety regulations. If necessary, they have to bear the CE mark. A corresponding certificate of conformity is to be submitted to BEVMAQ GmbH without request.

(2) If BEVMAQ GmbH has informed the supplier about the intended use of the deliveries and services, or of this intended use is also recognisable for the supplier without an explicit reference then the supplier undertakes to inform BEVMAQ GmbH immediately, if the deliveries or services of the supplier are not suitable, for fulfilling this intended use.

(3) The supplier has to inform BEVMAQ GmbH of special, not generally known treatment and disposal requirements as well as thus associated costs with each delivery.

(4) The contractual partners will inform each other immediately of all infringement risks which become known and counteract corresponding claims by mutual agreement. Subsequently recognised safety-relevant defects, which are recognised owing to product observations, are to be reported to BEVMAQ GmbH also after the expiry of the warranty period still immediately without request.

(5) The supplier has to inform BEVMAQ GmbH of changes to its company and asset circumstances immediately, if these relate to the fulfilment of the orders or may jeopardise these.

## **10. Product liability, insurance**

(1) The supplier undertakes, insofar as it is the producer of the object of purchase (Original Equipment Manufacturer, abbreviated OEM) and/or the importer, to indemnify BEVMAQ GmbH from all liability towards third parties or from claims of third parties, which arise by the production, delivery, storage or use of the delivered object of purchase, upon first request. The indemnification obligation shall not apply if the claim should be due to grossly negligent or wilful breach of duty of BEVMAQ GmbH.

(2) If the supplier is a producer (OEM) and/or importer of the object of purchase it will reimburse BEVMAQ GmbH for all necessary expenses and costs, including reasonable lawyer's costs, which are incurred in connection with the assertion of a claim according to Sub-clause 10. 1.

(3) Insofar as the supplier is not a producer (OEM) and/or importer of the object of purchase, it will assign all guarantee and damage claims existing against the respective producer or importer to BEVMAQ GmbH.

(4) If BEVMAQ GmbH and/or one of its customers obliged to carry out a recall action towards third parties owing to a fault of a product delivered by the supplier, the supplier will bear the costs associated with the recall insofar as it is the producer (OEM) and/or importer of the object of purchase.

## **11. Material provisions**

(1) Objects of all kinds handed over by BEVMAQ GmbH to the supplier shall remain the property of BEVMAQ GmbH. They may exclusively be used for providing the ordered deliveries and services.

(2) The supplier undertakes to treat the objects handed over to it by BEVMAQ GmbH with due care and attention, to maintain these at its own costs as well as to insure these sufficiently and to prove this to BEVMAQ GmbH upon request.

(3) Insofar as objects handed over by BEVMAQ GmbH are processed or converted by the supplier to form a new movable object, BEVMAQ GmbH shall be deemed as manufacturer. In the event of a connection or inseparable mixing with other objects BEVMAQ shall acquire the co-ownership to the new object in the ratio of the value, which the objects had at the time of the connection or mixing. If the connection or mixing is carried out to the extent that the objects of the supplier are to be seen as the main

object, then it is agreed that the supplier will assign the orderer prop rata co-ownership. The supplier will in this case hold the co-ownership in safekeeping for BEVMAQ GmbH.

## **12. Confidentiality**

(1) The supplier undertakes to maintain secrecy regarding commercial and technical information and documents which are not generally known, of which it becomes aware through the business relationship, and to exclusively use these for fulfilling the placed order. Possible sub-suppliers are to be obligated accordingly.

(2) When submitting references or with a publication the supplier may only name the corporate name or trademarks of BEVMAQ GmbH if this had granted its prior written consent in this respect.

## **13. Spare parts**

(1) With the delivery of new objects the supplier undertakes to deliver spare parts for the period of the customary technical use, at least however for 12 years after the last delivery of the object of delivery at reasonable conditions at the request of BEVMAQ GmbH.

(2) If the supplier discontinues the delivery of the spare parts after the expiry of the deadline stated in Section 13.1. or during this deadline the delivery of the object of delivery, BEVMAQ GmbH is to be given the opportunity for a final order.

## **14. Place of performance, place of jurisdiction, choice of law**

(1) The place of performance is Osnabrück.

(2) If the supplier is a merchant, a legal entity under public law or a special fund under public law the registered seat of BEVMAQ GmbH is also the exclusive place of jurisdiction in cheque and bill of exchange procedures. The same place of jurisdiction shall apply if the supplier does not have a general place of jurisdiction in the Federal Republic of Germany at the time of the initiation of court proceedings. BEVMAQ GmbH is however entitled to address each court of jurisdiction by law.

(3) The law of the Federal Republic of Germany shall apply. The Convention of the United Nations of 11 April 1980 on Contracts for the International Sale of Goods (UN law on purchases) will not apply.