

# General Conditions of Purchase of Ball Packaging Europe GmbH (hereinafter BPE) for Machinery and Materials

## Art. 1 Scope

All orders placed by BPE are based solely on these General Conditions of Purchase. These conditions shall apply in the version applicable at the date the respective contract has been concluded and also to any future business relations with the supplier, even if they are not agreed upon explicitly at the time. BPE shall not accept any conditions imposed by the supplier which contradict these general conditions of purchase or deviate therefrom, unless BPE has explicitly accepted the applicability of such conditions in writing.

## Art. 2 Basis of Contract

Any conditions set out in the written order and in any attached specification shall take precedence over these general conditions of purchase.

## Art. 3 Quotation – Quotation Documents

1. BPE shall be bound by its order for a period of 10 working days as from the date the order is placed.

2. Drawings, tools, models or the like, which BPE makes available to the supplier, shall remain the property of BPE. They shall not be made accessible to third parties without the explicit written consent of BPE. They shall be used solely to produce the items specified in BPE's order. The supplier shall keep them safe with the care and diligence of a prudent businessman. The supplier shall return them to BPE without being asked upon fulfillment of the contract.

## Art. 4 Scope of Supply

1. Exclusively new and unused machinery and materials are to be supplied unless BPE has explicitly placed an order stating otherwise.

2. The supplier shall comply with any modifications to the agreed scope of supply requested by BPE after the conclusion of the contract, unless it is unreasonable to expect him to do so. In the event that the supplier makes any modifications, then he can claim an appropriate adjustment to the agreed compensation; to this end he shall submit BPE

revised quotations indicating detailed prices. Once the quotations have been accepted by BPE, a contract addendum shall be issued.

3. The supplier shall list the costs of all modifications to the scope of supply requested by BPE in a separate invoice.

## Art. 5 Supplier's Project Manager

The supplier shall appoint a qualified and competent project manager to act as the supplier's representative and to be responsible for all issues relating to the order. The project manager must also be authorized to take any decisions required by BPE immediately.

## Art. 6 Prices – Terms of Payment

1. The price indicated in the order shall be binding. The price shall include delivery "free of charge to address of purchaser" and packaging, unless divergent conditions have been agreed in writing.

2. The statutory value added tax is not included in the price.

3. Payment shall be made within 14 days as from the date of delivery and invoice with 2% cash discount or within 30 days after receipt of invoice, net.

4. BPE can only handle invoices which bear the order reference number. The supplier shall be responsible for any delays in payment caused by incorrect or incomplete invoices, unless the supplier can prove that the delay was beyond his control.

5. BPE shall be entitled to offset claims and retain payments to the extent legally permitted.

6. Payments made by BPE shall not be construed as acceptance of the invoice.

## Art. 7 Delivery Period

1. The delivery dates indicated in the order are binding. If necessary, the supplier shall instruct staff to work overtime and/or shifts in order

to make up for delays in production progress and consequently to guarantee compliance with the agreed delivery dates for the machinery and materials.

2. The supplier undertakes to notify BPE immediately in writing if circumstances occur or become apparent which prevent him from complying with the set delivery date.

3. In the event of delivery being delayed, BPE shall be entitled to claim fixed rate damages for delayed performance amounting to 0.5% of the net order value for each commenced week of delay, maximum however 5% of net order value. Any further legal claims shall not be affected by this. BPE and the supplier shall be entitled to prove that the delay in delivery led to greater damage, less damage or no damage at all.

4. The supplier shall not be entitled to make partial deliveries without a prior written agreement to this effect.

## Art. 8 Accident Prevention – Noise Protection – Vibration Protection – Environmental Protection

1. The design and construction of the machinery and systems must comply with the currently applicable standards, guidelines and legislation (e.g. EC Machinery Directive 98/37/EC, DIN standard EN 292 Parts 1 and 2 Safety of Machinery; EN 60204 Electrical Equipment in Industrial Machinery; DIN EN 294 Safety Clearance from Danger Spots); furthermore they shall be in accordance with the latest state of science and technology.

2. Ready-to-use machinery, systems and equipment shall be supplied with a certificate of conformity as per the EC Machinery Directive 98/37/EC and provided with the CE symbol.

3. Machinery, systems and equipment not ready for use shall be supplied with a manufacturer's certificate in line with EC Machinery Directive 98/37/EC.

## **Art. 9 Maintenance Regulations**

The design and construction of the machinery and systems shall comply with the current state of maintenance technology and the applicable standards. In this respect, it is essential that the degree of automation and capacity load (up to three shifts, 7 days per week etc.) of the production processes at BPE be taken into account.

## **§ 10 Technical Documentation**

1. The technical documentation for the machinery and systems shall comply with the current state of the art and the applicable standards, legislation and directives. This relates to:

- a) operating instructions in acc. with the EC Machinery Directive 98/37/EC etc., containing descriptions of the functioning, setting and commissioning
- b) maintenance and inspection instructions
- c) trouble-shooting instructions,
- d) erection and dismantling instructions,
- e) handling instructions,
- f) catalogues of spare parts,
- g) 1 set of technical drawings on paper (assembly drawings) of the machine assemblies and tools, as required to understand the functioning of the machinery and systems and/or to order spare / wear parts. The supplier shall provide BPE with both installation and also "as-built" drawings. The sets of drawings should also be on data carriers in DWG format (Autocad 2000) or alternatively in DXF format.
- h) supplementary documents such as circuit diagrams, wiring diagrams, control system diagrams, hydraulic system diagrams, pneumatic system diagrams, assembly drawings etc.

2. The technical documentation shall be supplied in triplicate both in the national language of the supplier and also the national language at the site at which the machine is installed. The installation drawings shall be made available to the respective BPE plant at least one month prior to delivery of the machine or system; the "as-built" drawings at the latest 2 weeks after the final acceptance.

3. All the documents provided shall become possession and property of BPE. The supplier shall indicate the

BPE order number on all drawings and documents.

## **Art. 11 Inspections / Tests at the manufacturer's plant**

1. Having made a prior appointment with the supplier, BPE can carry out production inspections of a reasonable scope at the manufacturer's works and/or prior to shipment carry out a final inspection. The right of the supplier to safeguard his company secrets shall not be affected thereby.

2. Acceptance or inspection of production at the manufacturer's works and approval of the drawings, design calculations etc. by BPE, shall not release the supplier from his obligation to comply with the specifications of the order and the drawings and specifications and/or other valid standards referred to therein.

3. The supplier shall therefore be solely responsible for any non-conformity vis-à-vis the order specifications.

## **Art. 12 Shipment – Passing of Risk**

1. The supplier shall ensure that the machinery and materials are packaged and loaded in such a manner that they cannot become damaged during transport. The supplier shall be liable for all damage which occurs as a result of inadequate packaging and incorrect loading.

2. A delivery note in duplicate and also two copies of the packing list, all indicating the BPE order number and describing the machinery and materials, shall be attached to each consignment.

3. The supplier shall notify BPE 14 days prior to the definite delivery date of all details relating to shipment of the machinery, e.g. weight and size of the machinery, so that all necessary arrangements can be made.

4. The risk shall pass to BPE upon hand-over of the machinery or materials, or if there is a final inspection, upon acceptance.

## **Art. 13 Final Inspection at BPE**

1. Final inspections are carried out during which the supplied machinery

and materials are tested under normal production conditions.

2. The following conditions are necessary for the final inspection:

- a) uninterrupted operation of the machinery and materials for a period agreed between the parties or for the period necessary to establish whether machinery and/or materials conform to the production process.
- b) fulfillment of all conditions and compliance with all drawings and specifications set out in the order.

BPE shall not, however, be entitled to refuse acceptance on the grounds of trivial defects.

3. Each party can call for a final inspection report to be drawn up and signed by both parties.

4. In the event that BPE does not accept machinery or materials on the grounds of defects, then the supplier shall undertake to eliminate the detected defects free of charge; likewise shall apply to defects which BPE accepts subject to reservations. BPE's entitlement to lodge further legal claims shall not be affected.

## **Art. 14 Inspection for defects**

In the event that a final inspection is not performed, BPE shall undertake to inspect the items supplied within a reasonable period of time for possible quality and quantity non-conformities; any notice of complaint shall be deemed to be in due time on condition that it is received by the supplier within a period of 10 working days from the date of receipt of the items or, in the case of hidden defects, from the date of detection.

## **Art. 15 Warranty**

1. BPE shall be entitled to claim statutory damages for any defects in full and without any restrictions. Under all circumstances, BPE is entitled, at its own discretion, to call upon the supplier either to eliminate the defect or to supply a new item. The supplier shall undertake to bear all expenses incurred in order to achieve subsequent compliance. BPE explicitly reserves the right to claim damages, in particular damages instead of performance.

2. BPE shall be entitled to eliminate the defects itself at the expense of the supplier in the event that a delay

would constitute a risk or that there is particular urgency.

3. In the event that BPE cancels the contract due to a defect in the purchased item, then the supplier shall also refund BPE any costs incurred in connection with the contract, even if the defect is beyond his control.

4. The period of limitation shall be 36 months as from the passing of risk unless the supplier offers a longer warranty period. Notice of defects shall suspend the period of limitation for the notified defects; the suspension shall end upon elimination of the defects or one week after written notification is received from the supplier that he does not accept the defects.

#### **Art. 16 Product Liability – Indemnity – Insurance Cover**

1. To the extent that the supplier is responsible for a product defect, he shall undertake to indemnify BPE against claims for damages from third parties at the first demand provided that the cause is within his scope of control and organization and that he is himself liable vis-à-vis third parties.

2. Within the scope of his liability for claims for damages in terms of par. (1), the supplier shall also undertake to reimburse any expenses in acc. with Art. 830, 840, 426 BGB (German Civil Code) which are incurred as a result of or in connection with recall measures initiated by BPE. BPE shall inform the supplier as far as possible and reasonable about the content and scope of the proposed recall measures to give him an opportunity to comment. All other legal claims shall in no way be affected thereby.

2. The supplier shall undertake to maintain a product liability insurance with a coverage of € 10 million per occurrence; in the event that BPE is entitled to more comprehensive

claims for damages, then these shall in no way be affected thereby.

#### **Art. 17 Right to Recourse**

In the event that claims are made against BPE as seller based on a defect in an item supplied by the supplier, then Art. 478, 479 BGB (German Civil Code) shall apply in the relationship between BPE and the supplier as long as these apply as well in the relationship between BPE and the purchaser.

#### **Art. 18 Claims for damages on the part of the supplier**

1. Claims for damages on the part of the supplier, on whatever legal grounds shall be excluded for slight negligence. This exemption from liability shall not apply to claims for damages due to a breach by BPE of significant contractual obligations. Neither shall it apply to claims arising from a guarantee, nor claims relating to injury to life, body or health nor to claims arising from the product liability law (“Produkthaftungsgesetz”).

2. In cases of slightly negligent breach of significant contractual obligations, then the claim for damages shall be limited to the typical damage foreseeable at the time that the contract was signed. The same shall apply in the case of gross negligence by agents, subcontractors and consultants.

3. To the extent that BPE's liability is excluded or limited, this shall also apply to the personal liability of BPE employees, staff, representatives and agents, subcontractors and consultants.

#### **Art. 19 Industrial Property Rights**

1. The supplier shall be liable for ensuring that the rights of third parties are not infringed by his supply and the use thereof by BPE.

2. In the event that BPE is held liable by a third party for an infringement of a right by the supplier, then the supplier shall undertake to indemnify BPE from these claims upon first written demand.

3. The supplier's obligation to indemnify BPE shall relate to all expenses incurred out of necessity by BPE as a result of or in connection with claims made by third parties.

4. The period of limitation shall be 10 years as from the date on which the contract is signed.

#### **Art. 20 Confidentiality**

1. In connection with this contract and in the previously conducted negotiations, the supplier has received information from BPE which is not normally made available to third parties.

2. The supplier shall use the information received from BPE in connection with this contract and in the previously conducted negotiations solely for the purpose of fulfilling the contract and not make it available to third parties, treating it in the same manner as secrets of the supplier's own company. This obligation shall not apply to information which is already in the public domain, which the supplier can prove to have drawn up independently or obtained legally from third parties.

3. The comprehensive confidentiality obligations shall remain in effect for 3 years as from the expiry of this contractual relationship.

#### **Art. 21 Jurisdiction – Place of Performance**

1. This contract shall be governed exclusively by the law of the Federal Republic of Germany without giving effect to the provisions of CISG.

2. In case that the supplier is a trader, the jurisdiction shall be the respective registered seat of BPE. BPE shall, however, also be entitled to enforce its claims before courts at the place of general jurisdiction of the supplier.

3. Place of performance for supplies and services is the BPE receiving dept., for payments the registered office of the BPE company placing the order.