

## Böllhoff GmbH - Purchase Terms 09/2009

### **1. Application of purchase terms**

These purchase terms shall apply exclusively to all our orders, including future orders. We acknowledge no purchase terms differing from or supplementing these, unless we have expressly agreed to their application.

Our purchase terms are still binding if we unreservedly accept a shipment while being aware of contrary or differing terms of the supplier.

### **2. Contract note and tender documents**

Our computerised orders are still valid without signature.

The supplier should confirm our orders in writing within eight days, quoting the order number, otherwise we are released from any commitment arising from the order.

We retain our right of ownership and copyright with respect to illustrations, drawings, calculations and other documents and patterns; they may neither be utilised nor duplicated nor made accessible to third parties without our written consent, even if the supplier has manufactured them himself according to information that we have provided, but must be kept secret. They shall be used exclusively for executing our order.

They must be returned to us on completion of the order without our needing to request them.

The supplier shall only be permitted to refer to business relationships with us in his publicity material if we have given our express consent in writing.

Should it become known that the supplier has ceased payments or if an application for insolvency proceedings has been made against him we shall be entitled to withdraw partly or fully from the contract.

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

Agreed prices are fixed prices. Unless VAT at the current rate is shown in the contract note or invoice it shall be deemed to be included in the price.

Unless specifically agreed in writing the price shall include delivery free of charge to the premises of the purchaser and packing. Should the supplier use non-returnable pallets in spite of agreement to the contrary we shall be entitled to dispose of them at the supplier's expense.

Invoices should be submitted separately immediately after the goods have been dispatched, and should not be attached to the shipment. Packing lists and agreed information and documents, such as in particular first-sample reports, works certificates etc. should be enclosed with the invoices. VAT should be shown separately in all invoices. All invoices should include our order number and the name of our managing clerk.

Payment of invoices shall be made unless otherwise agreed by the 15th day of the month following delivery less 3% discount or by the 15th day of the next month but one, net. Currency of our choice. Self-acceptances and customer bills of exchange, valid for 3 months, are included. Should payment be made in promissory notes or trade bills we shall pay the bank discount, charged according to the rate on the day of which the bill is transferred, together with the bill tax.

We shall be entitled to set off and withhold payments as permitted by law.

### **4. Delivery, SLVS-prohibition and supplier declaration according to EG-VO 1207/01**

The supplier shall adhere without fail to packaging units and lettering on packaging/labels as prescribed by us. Our "general industry" and "automotive" delivery rules must be observed without fail. The supplier should request them from us.

Should delivery "ex-works" of the supplier be agreed in exceptional circumstances, the supplier should bear in mind that we are an SLVS-prohibition customer. The supplier shall ensure that no SLVS insurance has been concluded. Should the supplier fail to observe this SLVS-prohibition he shall bear the resultant costs.

Should delivery be "ex-works" we shall be entitled to specify to the supplier which carrier is engaged.

The supplier must attach appropriate supplier declarations for all goods manufactured within the EG and it is presupposed that these goods conform to the rules of the EG-regulation 1207/01. Goods, which have their origin outside the EG, must be clearly marked by the supplier "Non-EG-product" or in such a manner as to be acceptable to EG customs officials.

## **5. Delivery time**

The delivery time stated in our order is binding.

The supplier must inform us without delay in writing if the agreed delivery time cannot be met.

We are entitled to reject deliveries that arrive before the agreed delivery time at the supplier's expense. If we do not reject the goods we shall store them on our premises until the agreed delivery date at the supplier's expense and risk. Should goods be delivered prematurely we shall be entitled to effect payment based on the agreed delivery date and taking account of the agreed time allowed for payment.

We will only accept part-deliveries following express agreement. We should be notified of outstanding quantities when the part-delivery is made.

Should the supplier default in supply we shall be entitled to demand a contract penalty amounting to 0.3% of the value of the delivery for each calendar day that the delivery is overdue, up to a maximum of 10% of the delivery. We shall also be entitled to claim a contract penalty together with performance. It shall be sufficient for us to reserve the right to claim a contract penalty within 14 days of receiving the late delivery or by making an appropriate deduction from the supplier's invoice. We shall be entitled to claim compensation for losses arising from the default in excess of the contract penalty imposed.

We shall also be entitled to all statutory rights where there is a default in delivery. We shall in particular be entitled to claim compensation for non-performance after extending the original term by an appropriate period and allowing for the forfeited contract penalty.

Should a calendar week be agreed as a delivery date, we should be supplied with the goods no later than closing time on the Friday of the calendar week in question.

In order for the delivery date to be met it is important that the goods should be shipped to the delivery point or place of use specified by us.

## **6. Transfer of risk**

Delivery risks are not transferred to us until shipment and unloading at our Bielefeld premises, our branch premises, where the latter is to receive the goods, or at the agreed place of shipment or use.

## **7. Quality assurance, inspection for defects and guarantee**

The supplier is required to maintain an appropriate level of quality assurance equivalent to the latest state of the art and to provide evidence of attainment upon our request. We shall examine goods supplied for possible discrepancies in quality and quantity within an appropriate period of time; we shall be entitled to notify the supplier of defects within 30 days of receiving the goods.

The guarantee period shall be 36 months from the time that the shipment was received.

Should goods be defective we shall be entitled to demand that the defects are repaired or the goods replaced. Should the supplier be unable to do this within an appropriate period of time set by us we shall be entitled to have the defects repaired or to obtain replacements at the supplier's expense in order to avoid supply problems of our own. In urgent cases we may take the appropriate action ourselves after consulting the supplier without having to grant a period of grace.

The supplier indemnifies us from any and all claims; actual and consequential, received from our customers which arise due to any defect of the supplied commodity, in particular any costs for transport, labour and/or materials. The supplier is entitled to refuse the kind of correction selected by us under condition of § 439 subparagraph 3 German Civil Code (BGB).

We otherwise hold statutory guarantee rights, which entitle us to claim a reduction in the purchase price of defective goods or withdraw from the contract and make further compensation claims, including those of a third party at any time within a period not exceeding 10 years.

The supplier assures us that at the time of delivery the goods meet current DIN-standards and/or the state-of-the-art, the level of technology and knowledge, unless expressed agreed otherwise. Acceptance rules pursuant to ISO 3269 shall be deemed to have been expressly agreed. In the case of surface finishing of high-rigidity parts the supplier assures us that he has manufactured and inspected the goods supplied in compliance with DIN 50969 and/or DIN/ISO 4042.

## **8. Prohibited Chemicals, Hazardous Materials & Environmental Protection**

The Supplier hereby assures us that the goods supplied by it are free of prohibited materials pursuant to the annex to Sect. 1 of the Regulations concerning Prohibitions and Restrictions pertaining to the Putting into Circulation of Hazardous Materials, Preparations and Products as per the Chemicals Act (Chemicals Prohibition Regulations) as statutorily amended from time to time.

The Supplier shall observe the jointly applicable hazardous materials regulations contained in the REACH Regulations EC No. 1907/2006 and comply with its resultant information obligations vis-à-vis Böllhoff. Where observance of such regulations results in a change of the goods supplied by the Supplier or where such observance impinges upon the range of usage options or quality of the goods the Supplier shall inform Böllhoff thereof without delay.

## **9. Quality assurance, recall and product liability insurance**

In the case of a claim related to product liability, the supplier exempts us from all responsibilities, if and as far as the damage is caused as a result of defective commodity as delivered by the supplier. The supplier has to bear the associated costs and expenditures caused by a recall campaign which has been caused as a result of a defective commodity.

The supplier shall take out a product liability insurance policy with an appropriate level of cover while business relations exist, which shall also cover the risk of having to recall defective goods. The supplier shall also on request provide appropriate confirmation of the policy and the level of cover.

## **10. Reservation of title**

We acknowledge the supplier's simple reservation of title.

## **11. Assignment**

The assignment of claims arising from the supplier relationship requires our express consent.

## **12. Confidentiality**

The Supplier shall treat all commercial and operational information of or from Böllhoff or Böllhoff's customers, where such information is not in the public domain and is not intended to be passed to third parties and of which the Supplier gains knowledge as a result of the business relationship, as confidential and as a business secret and shall not directly or indirectly make such information accessible in whole or in part to third parties and shall use such information only for the contractually intended purposes. This shall also apply to the period following termination of the business relationship.

## **13. Place of performance**

Unless otherwise agreed the place of performance is our business premises in Bielefeld.

## **14. Choice of law and place of jurisdiction**

The law of the Federal Republic of Germany shall apply exclusively.

The place of jurisdiction for shipment and deliveries, claims arising from cheques and bills of exchange and other rights and duties arising from the transaction is Bielefeld, Germany for both parties. We shall however also be entitled to resort to the courts responsible for the supplier's place of business.