

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## 1. SCOPE OF APPLICATION, PURPOSE

- 1.1** These General Terms and Conditions (hereinafter the "**General Terms and Conditions of Purchase**") shall apply to all contracts with regard the ordering of goods by Befesa Salzschlacke GmbH (hereinafter "**Befesa**") from the contractual partner (hereinafter the "**Supplier**").
- 1.2** These General Terms and Conditions of Purchase shall also apply to all future transactions between the parties, even if no explicit reference has been made to their applicability in the individual case.
- 1.3** All orders placed by Befesa shall exclusively be based on these General Terms and Conditions of Purchase. Befesa does not acknowledge any withstanding, amending or deviating terms and conditions of the Supplier, unless it has, in individual cases, expressly and in writing acknowledged their applicability in lieu of these General Terms and Conditions of Purchase.
- 1.4** Individual agreements concluded between the parties shall have priority over these General Terms and Conditions of Purchase. Oral agreements will have to be confirmed in text format (e-mail suffices).
- 1.5** Befesa hereby reserves the right to amend these General Terms and Conditions of Purchase subject to prior written notification of the Supplier. In case the amendment affects already concluded contracts, the Supplier is entitled to object to the change and Befesa will inform the Supplier accordingly in the prior written notification. The envisaged amendment shall become effective unless the Supplier expressly objects within five (5) working days after receipt of such notice. In case of the Supplier's objection, Befesa reserves the right to terminate the contract with an appropriate notice period.

## 2. TERMS AND CONDITIONS

### 2.1 Contract Conclusion

- (i) All requests made by Befesa shall be non-binding and only represent a request for quote from Befesa to the Supplier. The Supplier shall indicate the respective request number on its offer.
- (ii) Any offer presented to Befesa by the Supplier as a result of a request for quote shall reflect the details contained in Befesa's request and any possible

deviations therefrom shall be explicitly highlighted by the Supplier. The offer must be made free of charge and does not establish any obligations of Befesa.

- (iii) An order placed by Befesa (hereinafter the "**Purchase Order**") shall be considered the acceptance of Supplier's offer. Only Purchase Orders placed in text format (e.g. fax, letter, or email) and containing an order number shall be considered legally binding. Any orders made orally or via telephone shall require a written confirmation to become legally effective.
- (iv) The Supplier shall confirm each individual Purchase Order immediately (i.e. without undue delay) in writing. In the event a Purchase Order placed by Befesa was not preceded by an offer from the Supplier, and Befesa does not receive a respective order confirmation within 14 days from sending (or 21 days for orders at non-German Suppliers), it shall have the right to cancel such order. The Supplier shall handle each Purchase Order placed by Befesa separately, including all pertaining correspondence.

## **2.2 Price and Payment Terms**

- (i) The price agreed with the Supplier when the contract was concluded is binding. If not expressly agreed otherwise, all prices are fixed prices. All costs for packaging as well as customs clearance and formalities are included in the price and have to be indicated as separate items on the respective invoice.
- (ii) Where an order does not specify prices, the catalogue prices of the Supplier valid at the time of order placement shall apply, including any applicable rebates. The pricing particulars shall not in any way effect the agreement on the place of performance.
- (iii) The Supplier shall send the invoice within fifteen (15) days as of the actual delivery date and the invoice shall be settled by Befesa within forty-five (45) days as of receipt of invoice and complete delivery, unless the parties have explicitly agreed on pre-payment in writing.
- (iv) After completion of performance, the respective invoice must be submitted to Befesa separately in proper form (by post). Submission of the invoice by electronic means, i.e. email and fax, requires the prior written consent of Befesa. The invoice shall include all pertaining and explanatory documents and data, e.g. performance records, customs documents, etc. Until submission of such correct and complete invoice, Befesa shall have the right to withhold payment.
- (v) In instances of defective or deficient performance Befesa shall have the right to withhold payment *pro rata valoris* until correct and complete performance. Payment of an invoice by Befesa does not constitute acknowledgement of performance according to contract or correctness of the invoiced amount.
- (vi) Where Befesa effects payment in advance, the Supplier shall, upon Befesa's request, provide adequate security for such pre-payment in the form of a bank guarantee.

### **2.3 Delivery, Transfer of Risk**

- (i) Unless otherwise agreed, delivery shall be effected at the expense and risk of the Supplier. The risk of deterioration including accidental loss of the goods shall remain with the Supplier until delivery at the place of receipt/use indicated by Befesa.
- (ii) Deliveries shall be made including customary packaging. The goods must be packed in a way to avoid damage in transit. With respect to the Supplier's obligation to take back packaging included in the delivery price statutory regulations shall apply.
- (iii) Where a deviating written agreement exists entitling the Supplier to charge packaging costs separately, Befesa shall have the right to send back to the Supplier carriage-paid any packaging in good, re-usable condition against a compensation of 2/3 of its value according to the invoice.
- (iv) Where certificates on material testing or other certificates have been agreed, they shall form an essential part of delivery and shall be submitted to Befesa together with the delivered goods.
- (v) All delivery notes, consignment notes, invoices as well as all other correspondence from the Supplier to Befesa must bear Befesa's order number.

### **2.4 Performance Date, Delay, Force majeure**

- (i) The agreed performance dates are binding. Decisive for the observance of the performance date or the performance period in connection with the Supplier's delivery obligation in case of debts to be discharged at Befesa's domicile shall be the receipt of the correct goods at the place of receipt/use indicated by Befesa.
- (ii) If there are reasonable grounds for the Supplier to foresee that he will not be able to fulfil its contractual obligations or parts thereof, it shall inform Befesa immediately in writing specifying the respective reasons and – in the event of foreseeable delays – also the estimated extent of the delay.
- (iii) In instances of non-performance or failure to perform within the agreed delivery period, the Supplier shall be liable according to statutory regulations.
- (iv) In the event of delivery delays attributable to the Supplier and after expiration of an appropriate grace period, Befesa shall have the right to claim a contractual penalty of 0.1% of the order value for each working day of the delay, which, however, shall not exceed 5% of the respective order value. Such contractual penalty may be claimed until payment of the respective invoice, independent of whether Befesa upon receipt of the delayed delivery has reserved the right to claim the contractual penalty. Where Befesa is entitled to claim statutory damages against the Supplier, the contractual penalty shall be deducted from such statutory claims. The assertion of statutory damages exceeding the amount of the contractual penalty shall remain unaffected.

- (v) In instances of force majeure, the parties shall be exempt from their contractual obligations for the duration and to the extent of such disturbance. Force majeure shall include all circumstances outside the control of the parties, such as natural disasters, governmental actions, official decisions, blockades, war or other military conflicts, mobilization, civil commotions, terrorist attacks, strike, lockout and other labor disturbances at subcontractors, attachment/confiscation, embargo or other circumstances which are unforeseeable, serious and are not the parties' fault, and which occur after conclusion of this contract. The Supplier's obligation to take precautionary measures remains unaffected. The parties shall be obliged to notify and inform the other party immediately about the respective impediment to perform as well as its estimated duration and all relevant factual circumstances. Should the Supplier be unable to perform its contractual obligations due to force majeure, Befesa shall be entitled to withdraw from the contract.
- (vi) The parties shall, within reasonable limits and according to the principle of good faith, endeavour to come to a mutual agreement regarding the adjustment of their respective obligations to the altered circumstances in case of force majeure. Befesa shall, however, be partially or wholly exempt from its obligation to purchase the ordered goods and entitled to withdraw from the contract, if acceptance of the ordered goods is no longer reasonable under economic aspects because their usability is no longer guaranteed.
- (vii) In the event of a not only insignificantly early delivery, Befesa reserves the right to return the goods or charge the cost of interim storage to the Supplier. During such storage until the agreed delivery date the risk remains with the Supplier. Irrespective of early delivery, Befesa's payment obligations shall become due at the earliest upon the agreed delivery date and receipt of the respective invoice.
- (viii) Befesa shall only be obliged to accept partial deliveries upon prior written agreement. Where partial delivery has been agreed, the Supplier shall indicate the residual delivery quantity in its delivery note.

## **2.5 Claims for Defects, Warranty**

- (ix) The Supplier warrants that its performance is free of defects. In particular, the Supplier warrants that the quality of its performance corresponds to
  - the contractually agreed terms (e.g. with respect to the designated use), and
  - state-of-the-art technology as at the delivery date;
  - the current statutory provisions, in particular those of the German Equipment and Product Safety Act and chemical and hazardous substances laws in their respective current versions, the currently valid safety specifications and requirements as well as industrial safety and accident prevention regulations; and

- the most recent regulations, provisions and guidelines issued by authorities, mutual indemnity associations and professional associations.

In case Befesa re-orders products, the Supplier warrants that any changes to previously ordered goods will be pre-agreed in writing with Befesa, also if the changes do not lead to deviations from the specifications.

- (x) The Supplier shall be bound to observe any existing instructions and directives of Befesa regarding industrial safety and other safety aspects.
- (xi) If, in the opinion of the Supplier, deviations from the above-stated provisions (clause (ix)) are required in individual cases, it shall obtain Befesa's express written consent. The statutory warranty obligations of the Supplier shall not be restricted by such consent. Deviations shall not be permissible if they are in contradiction of mandatory law, e.g. with respect to safety regulations.
- (xii) The Supplier shall, prior to delivery, effect an adequate and state-of-the-art quality assurance and, upon request by Befesa, provide respective proof. Should Befesa so request, the Parties shall conclude a respective agreement on quality assurance.
- (xiii) The Supplier shall be held liable for the environmental compatibility of the delivered goods and packaging materials as well as for any consequential damages resulting from the violation of legal obligations for product disposal. Upon request of Befesa, the Supplier shall issue a quality certificate for the delivered goods.
- (xiv) According to clause (xii), the Supplier shall be obliged to adopt quality assurance measures in order to prevent defects and discover occurring defects. Against this background, the Parties agree that the obligation to give notice of defects according to §§ 377 para. 1 and 2 German Commercial Code shall only apply with respect to manifest defects. Befesa shall contest manifest defects within 14 calendar days after receipt of delivery.
- (xv) Notwithstanding further rights, Befesa may remedy the defect itself after expiration of an adequate supplementary performance period (or if the Supplier refuses supplementary performance) and claim compensation for the necessary disbursements. In urgent cases where Befesa is not in a position to set a remedy period, in particular in case a substantial threat of substantial damages as well as in cases of failed remedy by the Supplier or if the remedy offered by the Supplier is unacceptable to Befesa, it may remedy the defect itself without setting a deadline for supplementary performance at the expense of the Supplier. The aforesaid shall not apply if the Supplier rightfully refuses supplementary performance.
- (xvi) Claims for defect shall become time-barred after 36 months, unless a longer limitation period is prescribed under applicable law. The limitation period shall commence with the start-up or application of the goods to their intended use, but at the latest six months after delivery to the place of receipt/use designated by Befesa.

- (xvii) Where, in case of a justified notice of defect, supplementary performance is effected in the form of remedy of the notified defect, the limitation period for claims for defects shall commence anew with respect to such defect; with respect to other defects of the same item it shall extend by the period between notice of defect and termination of remedy, or failure or refusal to remedy on the part of the Supplier, respectively. In case of supplementary performance by delivery of new items, the limitation period for claims for defect shall commence anew. In case of a partial delivery of new items the aforesaid shall apply to the newly delivered items only. The above-stated regulations of this clause (xvii) shall not apply if supplementary performance by the Supplier is expressly made for the sake of goodwill only.
- (xviii) If Befesa is held liable for the infringement of regulatory safety provisions or of product liability laws and regulations in connection with a defect of goods or a product manufactured with the use of such goods originating from the Supplier, Befesa shall be entitled to request from the Supplier indemnification for all such claims against it and/or compensation for damages suffered, if the claims and/or damages were caused by a negligent or willful violation of duty on the part of the Supplier. Damages shall also include the costs of a necessary product recall.
- (xix) In the event of repeated delivery of defective goods by the Supplier, Befesa shall be entitled to terminate the respective contract for good cause if it has sent a letter of contest to the Supplier and a further defective delivery occurs.
- (xx) If, over a period of 6 months, more than 10% of the goods delivered by the Supplier show similar defects, all of the goods manufactured within this time period shall be considered deficient (serial defect), unless the Supplier is able to prove the opposite.
- (xxi) The Supplier undertakes to agree on the above-stated clauses regarding claims for defect also with its sub-contractors and shall be obliged to assign any claims for defect in connection with such subcontractors to Befesa on account of performance ("*erfüllungshalber*") upon its request.

## **2.6 Energy efficiency**

Befesa is certified according to DIN ISO 50001. For all new construction projects Befesa undertakes explicitly to consider the new investments under the conditions of the new Energy Saving Ordinance already at the planning stage. The contractor undertakes to submit his / her request to check these specifications and to take them into consideration.

## **2.7 Insurance**

- (i) The Supplier shall, at his own expense, take out sufficient liability insurance for any damages incurred by itself, by its legal representatives, its executive staff or any other vicarious agents in connection with the performance of the contract.

- (ii) The Supplier shall take out adequate insurance against all risks arising from product liability, including the risk of a possible product recall.
- (iii) The Supplier shall be obliged to present the respective insurance policies to Befesa upon its request.

## **2.8 Third-party Rights**

- (i) The Supplier warrants that all deliveries are free of rights of third parties and that the delivery and use of the delivered items does not in any way infringe upon patents, copyrights, trademarks, licenses or other rights or know-how of any third party.
- (ii) The Supplier shall, upon first request, indemnify and hold harmless Befesa from any and all third-party claims that may arise in connection with the infringement of any third-party rights occurring due to the use of the delivered goods. This shall not apply in cases where the Supplier has not acted negligently or willfully.

## **2.9 Confidentiality**

- (i) The request, the order, the conclusion of the contract and all business-related information, which the parties make accessible to the other party in performance of the contracts concluded under these General Terms and Conditions of Purchase, are deemed "**Confidential Information**", unless they have been expressly declared otherwise, they have become known to the public without violation of this section, a third party has received them free and rightful for the purpose of non-confidential usage or the receiving party had investigated them on their own behalf prior to the receipt without necessary recourse to the Confidential Information. The existence of any of these exclusions shall be immediately notified in writing to the other party.
- (ii) The parties commit to keep Confidential Information confidential and to use them solely for the performance of their contractual duties. The Supplier may only refer to his business relationship with Befesa, after Befesa's written consent. Any potential sub-suppliers must be obliged to do so.
- (iii) Both parties shall be exempted from their duty of confidentiality as far as they are obliged by applicable laws or by official order to disclose information. In such cases the other party has to be informed immediately in writing of such intended disclosure of information in order to give the other party the opportunity to apply for legal remedies to prevent such disclosure.
- (iv) The duty of confidentiality ends 5 years after the termination of any business relationships between the parties based upon these General Terms and Conditions of Purchase.

## **2.10 Additional Obligations of the Supplier**

- (i) The Supplier will ensure that he will (a) perform the contract with the utmost care and attention, to avoid any damage to persons or to movable or immovable property of Befesa or any other party; (b) comply with all applicable legal provisions, regulatory requirements and industry standards (hereinafter summarized as "regulations").
- (ii) The Supplier will notify Befesa immediately in writing, should he become aware of any current or expected violation of the regulations.
- (iii) The Supplier is obliged to obtain and maintain all licenses, authorizations, consents etc. that might be required for the performance of the contract. Befesa is entitled to request from the Supplier copies of documents and any relevant correspondence with authorities, in order to prove the existence of these licenses, authorizations etc.
- (iv) The violation of the provisions of this clause must be seen as a major violation of this agreement. All costs incurred in order to be able to adhere to the provisions mentioned above have to be paid by the Supplier.

### **3. MISCELLANEOUS**

#### **3.1 Subcontracts, Assignments**

The Supplier is not entitled to pass on an order or any part of an order to a third party without the previous written consent of Befesa. Befesa is entitled to assign the agreement or parts thereof to an affiliated company according to Sections 15 et seq. German Stock Corporation Act. The Supplier is not entitled to assign his claims in connection with this agreement without prior written consent by Befesa, which may not be unreasonably withheld. Section 354a German Commercial Code remains unaffected.

#### **3.2 Modification, Written Form**

Unless otherwise agreed in these General Terms and Conditions of Purchase, any changes/amendments and/or additions to these General Terms and Conditions of Purchase, including to this clause 3.2, must be agreed in writing between the contract parties in order to be effective.

#### **3.3 Notifications**

Any notices required or permitted under these General Terms and Conditions of Purchase given by the Supplier to Befesa shall be made using the address and order number supplied by Befesa in the Purchase Order in textual form, unless the written form (i.e. a signed physical document) is required. Any notices required or permitted under these General Terms and Conditions of Purchase given by Befesa to the Supplier shall be made using the address supplied by the Supplier in its offer in textual form, unless the written form (i.e. a signed physical document) is required.

#### **3.4 Severability**

If individual provisions of these General Terms and Conditions of Purchase are or become fully or partially ineffective, the remaining provisions of the General Terms and Conditions of Purchase shall not be affected thereby. This also applies if an unintended omission is found in the contract.

### **3.5 Applicable Legislation and Place of Jurisdiction**

- (i) These General Terms and Conditions of Purchase and all legal relations between the Supplier and Befesa shall be governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
- (ii) Exclusive place of jurisdiction for all disputes arising between the parties shall be the registered seat of Befesa Hanover. Befesa is also entitled to take legal action at the registered seat of the Supplier.

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