

Behr Service GmbH – Conditions of Purchase (Edition January 2008)

English version is just for information! German version is binding! Interpretation according to binding German conditions! No warranty for correct translations!

§ 1 Conditions governing the transaction

- Orders placed by Behr shall be exclusively on the basis of our Conditions of Purchase. The supplier's general terms and conditions of sale or other different agreements shall only apply if they are confirmed in writing by Behr as an addition to Behr's Conditions of Purchase.
- Our Conditions of Purchase shall also apply if we are aware of conditions of the supplier that conflict with or are different to our Conditions of Purchase yet accept a delivery without raising any objection. In the conditions set out here we expressly oppose any reference or counter-acknowledgment by the supplier asserting his terms and conditions of sale.
- Our Conditions of Purchase shall also apply to all future transactions with the supplier.

§ 2 Orders

- Only orders placed in writing shall be valid. A signature by Behr is not required here. The written form shall include EDI, WebEDI, e-mail and fax.
- The acceptance of every order shall be acknowledged without delay by the supplier upon receipt but at the latest within two weeks. If Behr has not received the acknowledgement within two weeks of the date of the order, Behr shall be entitled to cancel the order.
- Within the limits of what is reasonable for the supplier, Behr may request changes to the item to be supplied in respect of its design and execution. In this context, adequate provision must be made to take account of the implications, in particular in respect of additional and reduced costs and delivery dates.

§ 3 Prices

- Unless it is agreed to the contrary, the prices indicated in Behr's order and confirmed by the supplier shall be binding.
- If no special agreement is made, the prices shall be deemed valid for the delivery in accordance with Incoterms 2000 DDU, including packaging, to the unloading point stated by Behr, and insofar as no unloading point is stated, to Behr's registered office.

§ 4 Invoices and supplier declarations

- The invoice shall be sent to Behr's address and must not be enclosed with the delivery. It must contain all the data specified by Behr and one copy of this invoice shall be submitted to Behr without delay but at the latest within 5 days of delivery. Receipt of the invoice shall not render accounts receivable due for payment.
- The supplier is under obligation at the latest upon the initial delivery to issue a supplier's declaration on request in accordance with EC Regulation 1207/2001 or a declaration pertaining to non-preferential origin in accordance with EC Regulation 2913/92, Article 22-29.
- It shall be deemed that the invoices have not been submitted until the form requirements set out in § 4 Item (1) and (2) have been satisfied.

§ 5 Conditions of payment

- In the case of payment within 14 days Behr shall be entitled to deduct a 3% trade discount, and within 30 days deduct a 2% trade discount. The time of the transfer by Behr is deemed authoritative.
- Default on payment shall only occur 30 days following the due date and receipt of the invoice. The invoice shall fall due 30 days following further processing of the delivery items, at the latest, however, 60 days following receipt of the invoice, at the earliest, however, following adherence to the written form requirements specified in Para. 4, sub-paragraphs 1 and 2 and receipt of the delivery.
- The payment shall then be made subject to checking the invoice.
- In the case of the acceptance of early deliveries, the deadlines as regards determining the due dates shall only commence following the agreed delivery date.
- Interest on arrears for payment claims shall be limited to a maximum of 5 percentage points above the base lending rate. If the supplier pays lower interest on credit, such rates shall be deemed authoritative. In the event that compensation claims are lodged for delayed performance, the supplier is to provide Behr with proof of the interest on credits that the supplier pays.
- An extended reservation of title is excluded.

§ 6 Delivery dates and periods

- The dates, quantities and periods listed in the order and/or delivery schedule shall be binding and satisfied/complied with in full. Behr is under obligation to accept partial performance. In the event that the supplier brings about partial performance, Behr may, following a reasonable period as regards performing services for the entire amount that has proved unsuccessful, reject the partial deliveries as not due. Receipt of the goods at the agreed unloading point of Behr, and insofar as no unloading point is agreed, at Behr's registered office, shall be deemed authoritative as regards complying with the delivery dates.
- In the case of delivery call-ups, the supplier is to make the delivery available as follows:
 - The demand, which shall be described as immediate demand, is to be delivered by the supplier without delay following receipt of the call-up to the Behr plant specified in the call-up.
 - The future demand is to be kept available by the supplier on the dates stated in the call-up. The delivery is to be carried out at the time at which we call up such delivery quantities/parts of such delivery quantities as immediate demand;
 - Insofar as notice has been given for a demand which has not, however, been called-up as immediate demand, such a backlog is only to be delivered to Behr at the time at which Behr calls-up such a backlog as immediate demand.

The aforementioned shall not affect varying agreements/allocation of deliveries.

§ 7 Dispatch/place of performance/passing of risk

- In each case, the delivery shall be itself to the shipping address given on the order. The goods are to be accompanied by a delivery note in duplicate.
- Unless Behr has undertaken dispatch itself and/or specified the freight forwarding company, the place of performance shall always be the shipping address given on the order.
- Unless it has been agreed otherwise, Behr shall take out the transport insurance. Behr is exempted from the mandatory freight forwarder's insurance (GLV-Verzichskunde). This does not affect the point at which risk is passed from the supplier.
- The supplier shall bear the risk until the goods to be supplied are delivered to the stated shipping address (place of performance), even if Behr has taken responsibility for the freight forwarder and/or the transport insurance.

§ 8 Delay in delivery

- The supplier shall bear the supply risk for the delivery items ordered by Behr.
- The date stated in written orders by Behr or in other declarations by Behr in conjunction with the order shall be deemed authoritative as regards the delivery date determined according to the calendar. Dating on the part of the supplier is irrelevant regarding the time of the service rendered by the supplier unless such dates correspond with those stated by Behr.
- As soon as the supplier sees that he is experiencing difficulties with the procurement of materials, manufacture etc., which could prevent him from supplying the contractual goods within the stipulated period, he shall inform Behr of this fact immediately. This shall not affect his obligation to supply the goods on schedule or to assume the supply risk.
- The acceptance of a delayed delivery or performance does not in any way constitute a relinquishment of the claims against the supplier to which Behr is entitled as a result of the delayed delivery. Behr may at all times reject partial performance as non-performance of the obligation to deliver on the part of the supplier.
- If the supplier is under obligation to supply Behr with delivery items on several occasions, and if the supplier exceeds the agreed delivery dates in the case of two deliveries/partial deliveries, Behr shall be entitled to cancel an outline agreement that may exist between the parties pertaining to the delivery on the grounds of an important reason. In this respect the objection raised by Behr regarding the initial non-compliance with the time limit shall be deemed a warning that has proved unsuccessful on the grounds of the additional non-compliance with time limits.

This does not affect Behr's right to assert all rights to which Behr is entitled as regards non-compliance with the time limit of the respective supply of single items.

If no outline agreement is in place between Behr and the supplier in the above-mentioned cases, Behr shall, in the case of non-compliance with time limits on two occasions, be entitled to withdraw from the deliveries/parts of deliveries that remain outstanding. This shall also apply if the supplier was not responsible for the delay. This does not affect further-reaching rights on the part of Behr, even in the event that a withdrawal is declared.

§ 9 Force majeure

- Incidents of force majeure, strikes and lock-outs at Behr or at Behr's suppliers, which result in production being stopped or restricted and which could not be avoided, in spite of taking reasonable care under the circumstances, entitle Behr to postpone acceptance and payment for the duration of the impediment and a reasonable start-up period.
- Should the acceptance be deferred in the above mentioned cases and the time fixed for payment be extended, any possible claims for compensation and rights to cancel the contract on the part of the supplier shall not apply. However, Behr may only claim relief by reason of such circumstances if Behr has informed the supplier of these events within a period appropriate for the circumstances.
- Should these impediments last longer than two months, after granting a reasonable additional period the supplier shall be entitled to withdraw from the contract in respect of the part that has not yet been completed.

§ 10 Quality and documentation

- The goods or services delivered by the supplier shall comply with the generally accepted rules of engineering practice, safety regulations and the agreed technical data. Alterations to the delivery item or a production process that has already been cleared, or the transfer to another location shall be subject to prior, written approval by Behr.
- Should Behr request initial samples, series production may not commence until written confirmation has been given that the samples have been passed as good.
- The initial samples are to be made available in accordance with the Behr publication entitled "Guideline for co-operation with suppliers". The necessary documents are to be submitted in German or English. Insofar as Behr has not specified any other, more stringent, quality requirements, the initial samples are to be made available in accordance with volume 2 of the VDA (German Automobile Industry Association) publication or in accordance with PPAP (QS 9000). The material data is to be entered in the IMDS material database in addition to the initial samples and made available to Behr. Independently of this, the supplier shall as an on-going procedure inspect the quality of the goods supplied and design his quality assurance system so that it always incorporates state-of-the-art technology, in particular in respect of DIN ISO 9000:2000, TS 16949 or QS 9000 and VDA 6.1. The supplier is to place vendor supplies under obligation to the same extent by way of available legal means. In addition to this, the supplier shall indicate to Behr any potential improvements in quality assurance which may be possible.
- The type and scope of inspections as well as testing equipment and methods are to be stipulated by the supplier and co-ordinated with Behr. This applies primarily to products with q-important or q-critical features.
- Where the supplier has received from Behr drawings, samples or other specifications, he shall undertake to comply with these in respect of the type, nature and execution of the goods or services supplied.

The supplier may not refer to documents, sales messages or drawings that contain statements about the quality of the delivery item insofar as the requirements stated therein do not comply with Behr's requirements in the above-mentioned documents. In other respects the supplier is, however, bound by such statements insofar as these extend beyond Behr's requirements as regards quality. In the case of vehicle components marked in the technical documentation or where it has been specifically agreed, e.g. marked with "D", the supplier shall in addition keep special records indicating when, in which way and by whom these goods or services have been inspected in respect of the features for which documentation is compulsory and which results have been obtained from the required quality tests. The test documentation is to be kept for 30 years, and, if required, submitted to Behr. If the supplier discontinues his business operations prior to the expiry of the 30-year period, he is to surrender the documents at that time to Behr free of charge.

Within the scope of what is possible legally, the supplier shall obtain the same undertaking from his own suppliers. As a guide, reference is to be made to the latest edition of the VDA (German Automobile Industry Association) publication on "Parts for which documentation is mandatory at automobile manufacturers and their suppliers, implementation of documentation", Frankfurt (Main). In this respect a 30-year safekeeping period is deemed authoritative.

5. Should the authorities require Behr or Behr's customers to allow them to inspect production procedures or production documentation for specific requirements, the supplier declares that he is willing to grant them the same rights in his company and to give any reasonable assistance required in this context. In addition, the supplier shall also ensure that these rights will be granted to the authorities, Behr or customers of Behr in respect of his sub-contractors.

6. In the case of materials which for reasons of legislation, regulations, other provisions or their composition or their effect on the environment will require special treatment in respect of packing, transport, storage, handling and/or waste disposal, the supplier shall submit to Behr with the quotation a safety data sheet, completed in full, any data sheet that may be required for further distribution abroad and a relevant accident data sheet (transport). Should changes in the materials or legal position occur, the supplier shall submit revised data sheets to Behr.

§ 11 Notice of defects

- Insofar as Behr is under obligation to provide notice of defects in quality, such notice is to be given in the case of obvious defects at the latest 14 days following receipt of the goods.
- In the case of goods for which the defect can only be detected by processing on the part of Behr and/or installation on the part of Behr's customers, the notice of defects shall be deemed to have been given in good time if it is made within one week after the defect has been detected at Behr's premises or following receipt of the notice of defects in quality issued by Behr's customer.
- In the event that a claim is lodged by Behr's customer as a result of a defect - irrespective of non-compliance with the regulation pertaining to proper notice of defects - the notice of defects on the part of Behr shall be deemed to have been made in good time if the notice of defects on the part of Behr is made 7 days after notice is given of the defect by Behr's customer.
- If a claim can be lodged against Behr as a result of a defect that is attributable to the fact that the supplier and/or his various agent made inaccurate statements to Behr's customer regarding the quality of the delivery item, the notice of defect shall be deemed to have been made in good time if Behr provides the supplier with notice of such a defect 14 days following the notice of defect made by Behr's customer.
- If the facts provided for in accordance with Para. (1) to (4) constitute a restriction of the supplier's rights resulting from § 377 of HGB (German Commercial Code), the supplier shall waive raising an objection to a delayed notice of defects.
- Payment of the purchase price that may have been effected before the defect was detected does not constitute any recognition that the goods are free from defects and were delivered according to regulations.

§ 12 Material defects

- In the case of a deficient delivery, the statutory provisions shall be deemed valid at the time of the delivery by the supplier insofar as nothing contrary to these conditions of purchase is agreed upon.
- The provision of § 8, Para. (5) of these conditions of purchase apply accordingly to deficient call-up orders.
- Insofar as nothing to the contrary is specified hereinafter, the statute of limitations for claims for material defects that do not apply to a structure, and which are not objects that are normally used for a structure, is 24 months from the time at which the delivery item is processed by Behr, at the most, however, 30 months from the handing over of the delivery item at Behr's premises. If the delivery parts in question amount to parts that are installed in motor vehicles, the statute of limitations shall commence at the time at which the motor vehicle is initially licensed. The statute of limitations for material defects shall end in such cases at the latest, however, 36 months from the handing over of the delivery item at Behr's premises.
- The interruption of the statute of limitations is based on the statutory provisions subject to the proviso that the interruption of the statute of limitations commences at the time of receipt of the notice of defects at the supplier's premises. In the case of several attempts to remedy the defect, the statute of limitations shall be interrupted for at least 3 additional months as from the last attempt to remedy the defect.

§ 13 Producer's liability

- The goods and components to be supplied to Behr are - unless otherwise specified - intended for installation in motor vehicles or special vehicles and marine engines, aircraft and railway vehicles. These products are used throughout the world.
- The supplier must carry out all inspections of the products manufactured and/or supplied by him, irrespective of any goods-in inspections that may be undertaken by Behr. The supplier shall be responsible for the fault-free quality of the goods delivered. Any inspections carried out by Behr shall not release the supplier from this obligation.
- The statutory provisions shall be deemed applicable as regards claims lodged by Behr against the supplier pertaining to producer's liability.

Should a claim be made against Behr for product liability or a breach of safety regulations imposed by the authorities under legislation in Germany or other countries, the supplier shall reimburse Behr for any losses incurred as a result of this, including the

cost of the legal action, providing the supplier is the manufacturer of the part of the delivery that caused the defect as defined by § 4 para. 1 to 3 of the Law on Product Liability of the part of the delivery that was defective or caused the defect. This liability of the supplier shall also exist if the supplier is not negligent, if a claim is made against Behr under German or foreign law on the grounds of liability with fault on account of this defective part of the delivery.

The same rules governing the burden of proof shall apply to the relationship between Behr and the supplier as between the claimant and Behr. Should several parties be liable to pay damages for the same loss, § 5 of the Law of Product Liability shall apply in this case. Where Behr is also liable, § 6 of this law shall apply.

If Behr is obligated to carry out a recall campaign on account of a defect caused by the goods delivered by the supplier or if the performance of such a recall campaign constitutes a reasonable action, the supplier shall undertake to cover the costs. If the costs are to be apportioned among several responsible parties, the provisions set out in §§ 5 and 6 of the Law on Product Liability shall apply accordingly.

4. The supplier undertakes to conclude an appropriate third party liability insurance contract, in particular to conclude a product liability insurance contract with adequate coverage which also includes the call-back costs. At Behr's request the supplier is to furnish proof without delay of the conclusion of such an insurance contract.

§ 14 Property rights

- The supplier shall be liable for claims that arise as a result of the infringement of property rights and applications for property rights when the goods supplied are used as specified in the contract. Of these property rights, at least one of the series of property rights are published either in the home country of the supplier, by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain, Austria, Japan, the USA, Brazil, Switzerland, Spain, the Czech Republic or South Africa.
- The statute of limitations as a result of the liability for the violation of proprietary rights shall commence as soon as the claim arises and Behr has gained knowledge of the circumstances which establish the claim or Behr should gain such knowledge without gross negligence. At most it shall amount to 10 years from the handing over of the delivery item.

§ 15 Supply of spare parts

The supplier undertakes to ensure that spare parts will be provided for the proposed service life of the finished products in which the supplier's delivery items are installed. The finished products are largely passenger motor vehicles and lorries. The service life of such products is at least 20 years.

§ 16 Manufacturing equipment

1. Materials or parts supplied by Behr shall remain the Behr's property and must be marked "Behr". Such items may only be used for the purpose intended. The materials shall be processed and completed as assembled for Behr. It is agreed that Behr will be a joint owner of the items produced using materials and components supplied by Behr, the value being in proportion to the value of the items supplied in relation to the overall value. Handing over is replaced by an agreement that the goods will be held in the supplier's possession until the agreed delivery date for processing and will be kept separately for Behr.

2. Documentation of whatever kind, which Behr has made available to the supplier, such as samples, drawings, masters and similar shall be returned free of charge to Behr upon request.

3. The supplier shall undertake to take out at his own expense adequate insurance against all risks and in particular fire and theft to cover the materials and components provided and, if requested, to furnish proof that such an insurance policy has been taken out.

4. Molds, masters and equipment, etc. may only be destroyed if written permission has been obtained from Behr.

The supplier shall undertake to submit at regular intervals and whenever requested to do so a list of manufacturing equipment owned or jointly owned by Behr.

5. If requested to do so by Behr, the supplier shall hand over immediately but at the latest within one day the materials, components, molds, masters, equipment or other manufacturing equipment provided by Behr. If the manufacturer is the joint owner, the goods will be handed over gradually against payment of the manufacturer's share of the goods. In the event of a dispute concerning the amount of the figure relating to the jointly owned goods, Behr can avoid the right of retention being exercised because of this joint ownership by issuing a guarantee for the amount in dispute.

In other respects, the right of the supplier to retain manufacturing equipment is excluded, if the demand on which the right of retention is based is disputed by the parties or where no final legal judgement has been given.

6. Where the security rights to which we are entitled in accordance with para. (1) exceed the purchase price of all our reserved goods that have not yet been paid for by more than 10%, if requested by the supplier we undertake to release the security rights, as chosen by us.

§ 17 Business secrets

- The supplier undertakes to treat Behr's order and all commercial and technical details associated with this as a business secret. This obligation shall also apply after the end of the delivery contract, until this business secret is - without any involvement on the part of the supplier - in the public domain.
- Products that have been manufactured on the basis of documentation produced by Behr such as drawings, masters and similar or using confidential information provided by Behr or using Behr's tools or tools copied from Behr may not be used by the supplier himself or be offered or supplied to third parties.
- Parts that have been developed or further developed by Behr in conjunction with the supplier may only be delivered by the supplier to third parties with Behr's written authorization.
- Where the supplier has involved sub-contractors in the performance of his delivery obligation to Behr, he shall ensure that they also give undertakings in respect of the scope of § 17 para. (1) and (2) with regard to confidentiality. Where requested to do so by Behr, the supplier shall provide Behr with proof of an appropriate written agreement with his sub-contractor.

§ 18 Special processing

(Delivery schedules shall only apply in conjunction with a corresponding price agreement.)
The arrangements below shall only relate to the processing of orders which result from delivery schedules.

- Backlogs for which notice is given are to be delivered without delay as immediate demand and apply to previous delivery allocations. Insofar as differences apply regarding the amount of such backlogs, the backlog for which Behr has given notice shall be deemed authoritative.
- Should any other shipments be en route to us in addition to the last deliveries listed, these quantities shall be added to the next delivery instalment due.
- Any advance deliveries not requested shall be returned and freight charged to the supplier.

4. We shall provide production release data for the first calendar month after the order date. Once the first month has passed, the second month will automatically be assigned fixed call-off criteria, etc. Raw materials may be made available for a further month. The figures provided for planning purposes shall not be binding. We shall be entitled to modify the scope of the order in accordance with our requirements.

5. If Behr has not received a communication refusing the order within three working days, the order shall be considered to have been accepted.

§ 19 Final provisions

- The law applicable in the Federal Republic of Germany shall apply to these Conditions of Purchase and the entire legal relationship between Behr and the supplier. The application of the agreement of the United Nations on contracts concerning the international sale of goods (CISG) is excluded.
- The exclusive place of jurisdiction for all disputes arising directly or indirectly from this agreement shall be Stuttgart and, if selected by Behr, the place of jurisdiction of the supplier.
- If one party to the contract suspends payments or if insolvency proceedings have been instituted against the assets of the contracting party or if arrangement procedures have been initiated either in or out of court, the other party shall be entitled to withdraw from the part of the contract that has not been completed. This does not affect further-reaching claims.
- Should one provision of these Conditions of Purchase or one provision of other agreements be or become invalid, the validity of all other provisions or agreements shall not be affected. If the invalid agreement in question does not amount to the General Terms and Conditions of Business, the parties shall be under obligation to replace the invalid agreement with a valid agreement which comes closest to the economic purpose of the invalid agreement in a manner that is deemed legally valid.

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