

# BEKA Purchasing Terms

As of: 07 August 2018

## 1. General terms

1.1 Baier + Köppel GmbH + Co. KG, Pegnitz, hereinafter: BEKA, places orders and purchase orders exclusively subject to the following purchasing terms. The confirmation or execution of the order is deemed acceptance of these purchasing terms ("Terms"). BEKA shall not accept any deviating or supplementary terms of Contractor, except by written consent, even if BEKA does not expressly object to them—This shall also apply if and as far as BEKA does not expressly object to Contractor's terms in case of future orders and/or purchase orders from case to case.

1.2 These Terms shall apply towards entrepreneurs (§ Section 14 para. 1 German Civil Code), corporations under public law and public-law special funds.

1.3 These Terms shall specifically apply to contracts for the purchase and/or delivery of movable goods and services (hereinafter consistently "Goods"), no matter if Contractor produces the Goods directly or purchases them from suppliers (Sections 433, 651 German Civil Code). The Terms as amended from time to time shall also apply to any further contracts concerning the sale and/or delivery of movable Goods with Contractor, without requiring separate indication of this by BEKA from case to case. BEKA shall inform Contractor of any changes to these Terms without delay in this case.

1.4 Any individual agreements reached between the parties from case to case, including any side agreements, supplements and changes, shall take precedence over these Terms. A written contract or the written consent of BEKA shall be essential for the content of such agreements.

## 2. Conclusion of the contract

2.1 The representatives of BEKA in conclusion of the contract shall only have the right to place written orders. Orders, agreements and modifications shall only be binding if issued or confirmed by BEKA in writing. The legally binding signature of BEKA shall be necessary.

2.2 Correspondence shall be kept with the ordering purchasing department. Agreements with other departments shall require written confirmation by the purchasing department in the form of a supplement to the contract, as far as any agreements are reached in this that are to change items stipulated in the purchasing agreement.

## 3. Order and order confirmation

3.1 Contractor shall confirm acceptance of the order to BEKA within five days of the date of the order with the maximum price (item 5) and binding delivery time (item 4). If no order confirmation is received during this time, the information from the order is deemed accepted.

3.2 These purchasing Terms of BEKA shall also be deemed accepted by this, even if this is not expressly declared.

3.3 An order confirmation shall only be accepted by BEKA technically concerning the object of the order; other terms than those of BEKA cannot be introduced by it.

3.4 Any deviations from the order in Contractor's order confirmation shall be deemed a new offer that must be expressly accepted by BEKA in order to become part of the contract. Silence of BEKA concerning such an order confirmation changed as compared to the order shall not be deemed consent of BEKA.

3.5 Offers of Contractor shall always be made free of charge.

3.6 Any property, copyright and commercial property rights in the offer documents of BEKA, specifically drawings, plans, calculations and technical specifications, shall remain with BEKA and shall be due to it exclusively. They must not be made accessible or disclosed to any third parties without their written consent. The following item 8 (Secrecy) shall apply apart from this.

## 4. Dates and contractual penalties

4.1 The agreed delivery time shall be a basic part of the contract and shall be binding. It shall commence on the day of the order. Contractor shall inform BEKA without delay according to the proviso of the following item 4.5 if it is unable to comply with agreed delivery times – no matter the reason.

4.2 The delivery period shall be "arriving at destination".

4.3 If the delivery is culpably not made within the agreed time, Contractor shall reimburse BEKA for any damage resulting from this. Additional costs for expedited and express shipments of Goods that result due to non-compliance with the agreed delivery time shall be assumed by Contractor in case of default. If the delivery is delayed, BEKA shall have the right to withdraw from the contract after unsuccessful expiration of an appropriate grace period set for subsequent performance, or to make a coverage purchase. If waiting for a grace period is not reasonable from case to case, a grace period does not need to be set.

4.4 In case of default of Contractor with the delivery, BEKA shall have the right to demand a contractual penalty of 1% of the net price per completed calendar week, but no more in total than 5% of the net price for the Goods delivered late. BEKA shall have the right to demand the contractual penalty in addition to performance and as a minimum amount of damages owed by BEKA under the law. Assertion of further damages and the right of BEKA to withdraw from the contract shall not be affected by this. If BEKA accepts the delayed service, it shall assert the contractual penalty at the latest with the final payment.

4.5 Contractor shall inform BEKA of any delays of delivery dates concerning the entire or individual parts of the Goods without delay, indicating the reason and the expected duration of the delay. If Contractor culpably violates this obligation to report, it shall reimburse BEKA for any damage resulting from this. Liability for default shall not be affected by this.

4.6 In case of force majeure, such as war, fire, rightful strike, authority measures, lock-out or natural disaster, in particular earthquake, storm, etc., and in case of any other events that are unforeseeable for BEKA outside the influence of BEKA, BEKA shall have the right to delay acceptance of the Goods for the term of the event.

4.6.1 BEKA may delay the time of delivery or withdraw from the contract wholly or in part in case of any essential changes to the economic situations that occurred at the time of the order.

4.6.2 An essential change within the meaning of item 4.6.1 for BEKA shall be an unreasonable, economically unacceptable overall situation that threatens its business operation. When applying this clause, BEKA shall submit a short description of the reasons to Contractor.

## **5. Prices**

5.1 Any agreed prices shall be fixed prices, to which the respective applicable VAT shall be added; they shall include "delivery free domicile destination address" including all secondary costs, such as packaging, transport and shipping costs, including any transport and liability insurance and assembly. The packaging will only be returned if this is expressly agreed.

5.2 The type of pricing shall not affect the agreement concerning the place of performance (item 15.1).

5.3. If an order is to be executed under the designation "subject to confirmation" or "daily rate", BEKA only commits to paying higher prices if it was informed of this increase before the delivery, including reasons, and BEKA approved it in writing.

5.3.1 Contractor is not obligated to deliver if BEKA does not accept the increase.

5.4 The risk of accidental destruction or accidental deterioration shall be assumed by Contractor until passing of the risk (delivery or acceptance, if this is intended or agreed). This shall also apply if the delivery is already at the agreed delivery point.

5.5 The agreed price shall be due for payment depending on the payment Terms agreed between BEKA and Contractor from case to case for the complete delivery and service, including any acceptance required from case to case by BEKA and receipt of a proper invoice. Apart from this, item 6.3 shall apply.

## **6. Shipping, receipt and examination of the Goods**

6.1 When shipping Goods, Contractor shall draw up a written dispatch notification / delivery receipt, including the order number, order date, BEKA material number and the customs tariff number of the Goods directory of foreign trade, with precise indication of the piece numbers and weight. Weight and quantity indications of BEKA must be observed precisely. Over-/underdelivery tolerances common in the industry cannot be cited to oppose this either. BEKA reserves the right to return any Goods delivered in excess or early at Contractor's expense, as well as charging the costs for the internally incurred additional effort.

6.2 Concerning the delivery, Contractor shall hand over a data sheet, operating or assembly instructions and declaration of conformity or declaration of incorporation according to the machinery directive in German and English for all Goods affected. Additionally, country-specific declarations of conformity or the corresponding equivalent shall be required according to the later sales area and must be included. If any Goods to be delivered are subject to the EMC directive, low-voltage directive or ATEX directive, this must be reported to BEKA in writing as well.

Generally, REACH, RoHS and conflict mineral conformity for Europe is required.

6.3 Contractor commits to delivering Goods with origin properties according to Section 61 et seqq. of the execution regulation (EU) 2015/2447. The country of origin, Goods number of foreign trade and preferential zones must be indicated every year in a long-term supplier declaration, indicating the material number. Third-country Goods must be clearly marked as such on the invoice.

6.3.1 Contractor shall meet all requirements of the currently applicable national and international customs and foreign trade law ("Foreign Trade Law"). Contractor shall provide the orderer with all information and data that the order requires to comply with Foreign Trade law for export, import and re-export in writing at the latest two weeks after the order is placed, and without delay in case of any changes:

- any applicable export lists numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
- the statistical Goods number according to the current Goods classification of the foreign trade statistics;
- the country of origin (non-preferential origin) and, if required by the orderer, supplier declaration on the preferential origin (for European suppliers) or certificates concerning preference (for non-European suppliers).

6.3.2 If Contractor violates its obligations according to number 6.3.1, it shall bear all expenses for damage that result for the orderer from this, except if Contractor is not at fault for the violation of obligations.

6.3.3 Reservation cause: Performance of the contract by the orderer shall be subject to the reservation that there are no obstacles due to national or international provisions of Foreign Trade Law, no embargos and/or other sanctions opposing the performance.

6.4 Statutory, also country-specific provisions, such as the AltfahrzeugVO, ElektroG and REACH (regulation (EC) 1907/2006) exclude the marketing of certain substances in certain applications; all currently applicable statutory provisions must be observed for this. Contractor commits to observing the respective current statutory provisions and regulations in the area of environment and adjacent legal areas that are relevant for the parts delivered by it, such as KrWG, ADR, GefStoffV, and to not install or process any prohibited substances in such parts or products. If it gains any knowledge of this nevertheless, it shall inform BEKA without delay, independently of any other statutory or authority information or recall obligations, and which of the parts/products delivered by it contain prohibited or regulated substances.

6.5 Contractor shall be responsible for the parts/products, partial products or preparations/mixtures delivered by it having been pre-registered or registered according to REACH, RoHS, Critical Products, Dual Use products and any other statutory provisions and regulations to be observed concerning registration or pre-registration.

6.6 Contractor shall be obligated to submit a safety data sheet and a product data sheet in electronic form as a PDF file to the environmental management officer under bekaumb@beka-lube.de before the first delivery if the delivered product, partial product, preparation or mixture contains any hazardous substances or dangerous preparations. BEKA shall be informed about any changes to the product data sheet or safety data sheet by email without prompting. Contractor commits to actively contributing to replacing/exchanging the substances classified as critical in coordination with BEKA.

6.7 Contractor commits to informing BEKA of any chemicals and materials that are subject to the laws named in the above item 6.5 in time before delivery of the parts, products or partial products.

6.8 Contractor commits to only delivering Goods that are free of radioactive, mutagenic and carcinogenic substances.

## **7. Payment and invoice**

7.1. Invoices shall be sent to BEKA at once after delivery, indicating the order number, unless further copies are desired in the order.

7.1.1 Invoices without complete references and numbers shall be deemed not issued until clarified by Contractor and cannot open any term of payment until that time.

7.1.2 The respective applicable statutory Vat shall be indicated separately in the invoice.

7.2. Payments made by BEKA shall not constitute acceptance of the accuracy of the settlement. Complaints about the delivery shall entitle BEKA to keep back due payments. Advance payments shall be made subject to the reservation of proper receipt of Goods.

7.3 BEKA shall pay with a discount of 3% within 14 days of receipt of the invoice, with a 2% discount within 30 days or net cash or accept order within 60 days. Payment default of BEKA cannot occur at an earlier time. If the delivery or service takes place after receipt of the invoice, the term of payment shall only commence at that time. If a period can be determined in time, BEKA shall only enter default after advance reminder from Contractor.

7.4 If any accepted bills of exchange are used for payment by BEKA, it shall compensate the bill of exchange tax and an appropriate discount rate.

7.5 BEKA shall be due set-off and retention rights, as well as the objection of the contract not being met at the statutory scope; in particular, BEKA shall have the right to retain due payments for as long as it still has claims from incomplete or defective services against Contractor.

7.6 Contractor shall only have set-off and retention rights against undisputed or finally determined counter-claims.

7.7 Claims of Contractor from this contract must only be assigned to third parties with the written consent of BEKA. For assignments that are made due to extended reservation of title, the approval shall be deemed granted in advance, with the proviso that set-off shall also be permitted against counter-claims acquired after disclosure of the assignment.

7.8 Place of performance for any payments shall be the headquarters of BEKA.

7.9 BEKA shall not owe any interest on maturity. In case of default of payment, the default interest shall be 5% above the base interest rate, with the occurrence of default being subject to the statutory provisions with the proviso that the occurrence of default requires maturity as well as a reminder from Contractor.

## **8. Secrecy, drawings and models**

8.1 Contractor shall treat the entire contract confidentially. It must only designate BEKA as a reference towards third parties with its written consent. If and as far as the parties have signed a separate agreement on secrecy, this shall take precedence over the provisions on secrecy in these purchasing conditions.

8.2 BEKA reserves all property rights, commercial property rights and copyrights in all drawings, models, figures, plans, calculations, product descriptions and other execution documents in the wider sense that are provided to Contractor. These documents shall be used by Contractor solely for the contractual services and shall be returned to BEKA after termination. They must only be passed on to any third parties with the advance written consent of BEKA. This shall also apply if subcontractors are involved by Contractor. Apart from this, the documents shall be kept secret from third parties, also beyond the termination of the contractual relationship. The obligation to secrecy shall not apply if and as far as the knowledge embodied in the documents is generally known or becomes generally known during execution of the contractual relationship without any violation of Contractor's secrecy obligations by it.

8.2.1 Violation of items 8.1 and 8.2. by Contractor shall make it fully liable for damages.

8.2.2 Any documents shall be treated and kept with care by Contractor while in its possession. It shall insure them against damage and loss free of charge for BEKA during this time, or cover these directly.

8.3 Any execution documents shall be returned to BEKA without prompting after completion of the order.

## **9. Warranty**

9.1 The delivery/service must correspond to the contractually agreed property, the use assumed according to the contract, the latest state and the generally accepted rules of the art, the latest production execution of Contractor, the relevant provisions of authorities and specialist associations and the standard and directives concerning execution, accident prevention and environmental protection at passing of the risk. At least the product descriptions that are the object of the contract by reference or designation in the order of BEKA or that have been equivalently included in the contract shall be agreements concerning properties, with there not being a difference regarding whether it is the product description of BEKA or of Contractor.

9.2 BEKA shall be due the statutory warranty rights (claims from defects) and rights in case of other violations of obligations of Contractor without reduction. BEKA in particular objects to any limitations of the statutory warranty rights, including any damages claims resulting from this. This shall also apply to any other violations of obligations of Contractor. In addition to this, BEKA shall be due a warranty period of 24 months after acceptance and, in case of services on a building, of 5 years after acceptance, in addition to any guarantee granted to it in addition to the warranty claims. Deviating from Section 442 para. 1 s. 2 German Civil Code, BEKA shall be due claims from defects without limitation even if the defect has remained unknown to BEKA due to gross negligence.

9.2.1 Contractor shall be obligated to deliver replacements without delay and free of charge as soon as the defect can be recognised for any Goods in which any present defects are not evident at once or can only be determined later.

9.2.2 The freight expenses for returns and replacement deliveries shall be at Contractor's expense.

9.3 BEKA may remedy the defect directly and demand reimbursement of the required expenses due to a defect after unsuccessful expiration of an appropriate grace period set for subsequent performance according to the statutory provisions, except if Contractor rightfully refuses subsequent performance. Setting of a grace period is dispensable if it is unreasonable for BEKA or if Contractor seriously and finally refuses it. BEKA shall inform Contractor without delay, as far as possible, before performing any measures of its own.

9.4 BEKA may have the ordered objects accepted by an officer in Contractor's factory for cause. Acceptance shall not release Contractor from its warranty/guarantee.

9.5 Contractor waives the objection of delayed complaint about defects (Section 377 para. 1-4 German Commercial Code). As far as acceptance is agreed, there is no examination obligation.

9.6 Apart from this, BEKA shall have the right to reduce the purchasing price or to withdraw from the contract according to the statutory provisions in case of defect of material or title. Additionally, BEKA shall have a claim to damages and reimbursement for expenses according to the statutory provision.

## **10. Product liability**

10.1 Contractor shall indemnify BEKA against any damages claims that are raised against BEKA due to any defects of a product delivered by Contractor upon the first request, provided that the defect was caused in the area of control and organisation of Contractor and it is liable itself in the external relationship.

10.2 Contractor shall also reimburse BEKA for any appropriate expenses according to Sections 683, 670 and Sections 830, 840, 426 German Civil Code that it incurs due to any defect caused by Contractor from or in connection with any recall or information campaign performed by BEKA (e.g. warnings in media). BEKA shall inform Contractor of the content and scope of measures to be performed - as far as this is possible and reasonable - and give it the opportunity to make a statement. Any other statutory claims shall not be affected.

10.3 Contractor commits to maintaining a product liability insurance with an appropriate coverage total. Upon request of BEKA, Contractor shall be obligated to document conclusion of a corresponding insurance and payment of the corresponding premiums. If Contractor is liable towards BEKA in the internal relationship due to a product defect, Contractor shall be obligated to assign its insurance claims to BEKA in the amount of the damage incurred by BEKA upon the first request. Payments to BEKA from such assigned insurance claims shall be set off against the claims BEKA has against Contractor.

## **11. Commercial property rights**

Contractor shall be liable for any defects of material and specifically of the object of the delivery being free of any third-party rights in German or, if it has knowledge of any other destination country, in the destination country. In case of violation of commercial property rights of third parties, Contractor shall be obligated to reimburse BEKA for any

damage resulting from this. If Contractor cannot remove the third-party property rights within an appropriate period of time, BEKA shall in particular have the right to acquire the permission to deliver, commission, use, further sell the object of the delivery or the service at the scope required for the purpose of the contract at Contractor's expense for a common and appropriate remuneration from the holder of such property rights.

## **12. Assignment, prohibition of set-off, reservation of title**

12.1 Rights from the order must only be assigned to third parties by mutual agreement. The consent of BEKA shall only be deemed granted if Contractor has admitted to an extended reservation of title to its suppliers in the proper course of business.

12.2 Set-off towards BEKA shall only be permitted if Contractor's claims are undisputed or have been finally determined. The same shall apply to any retention and performance refusal rights.

12.3 Extended reservations of title shall not be permitted.

## **13. Servants**

Contractor shall be liable for any deliveries and services of its suppliers as well as for any own deliveries and services; the suppliers of Contractor shall thus be deemed its agents.

## **14. Social responsibility and environmental protection**

14.1 Contractor commits to complying with the respective statutory provisions on handling of employees, environmental protection and industrial safety and to work on best reduction of detrimental effects on people and the environment in its work. For this, Contractor shall set up and further develop an environmental management system (e.g. according to DIN ISO 14001 and/or the regulation (EC) no. 761/2001 of the European Parliament and the council (EMAS) within the scope of its options. Furthermore, Contractor shall observe the 10 principles of the Global Compact Initiative of the UN. These essentially refer to the protection of international human rights, the right to collective agreements, the exclusion of forced labour and child labour, the exclusion of discrimination at commencement and execution of employment, the responsibility for the environment and the prevention of corruption (see [www.unglobalcompact.org](http://www.unglobalcompact.org)).

14.2 The quality and environmental policy of BEKA must be observed (see [www.bekalube.de/deu/unternehmen/umwelt.php](http://www.bekalube.de/deu/unternehmen/umwelt.php)).

## **15. Place of performance, law and jurisdiction**

15.1 The place of performance for all deliveries shall be the location where the Goods are to be delivered according to the order. If a specific place of performance is not designated by BEKA, the seat of BEKA shall generally be agreed.

15.2 Any claims from or in connection with this contract shall be subject to the law of the Federal Republic of Germany, subject to exclusion of UN purchasing law.

15.3 The headquarters of BEKA are agreed as place of jurisdiction for any disputes from or in connection with this contract. BEKA shall, however, remain entitled to raise a claim against Contractor at its general place of jurisdiction.

15.4 If individual provisions of the contract are or become invalid, this shall not affect the effectiveness of the remaining contractual provisions.