

General Terms and Conditions of Purchasing and Ordering of the BARTEC Group including all BARTEC Companies for Deliveries and Services by Suppliers and Contractors

Art. 1 Scope

1. All deliveries, services and quotations of our suppliers and contractors (hereinafter referred to as "Supplier/s") are made exclusively on the basis of these General Terms and Conditions of Purchasing (hereinafter referred to as "Terms and Conditions"). They form an integral part of all contracts which we (hereinafter referred to as "BARTEC") conclude with our Suppliers relating to the deliveries or services offered by them. These Terms and Conditions apply exclusively to companies within the meaning of Section 14 *BGB* [German Civil Code], public law entities and special funds under public law.
2. In particular, BARTEC shall be bound by general terms and conditions of the Supplier only to the extent that they are consistent with its Terms and Conditions or BARTEC has expressly consented to them in writing.
3. If framework contracts or individual contracts are concluded between the Supplier and BARTEC, these shall take precedence over these Terms and Conditions. They shall be supplemented by these Terms and Conditions unless more specific provisions are concerned there.
4. Within the framework of an ongoing business relationship, these Terms and Conditions shall also apply to any future purchase contract, contract for work, toll manufacturing or service or other contract (collectively referred to as "Contract") with the contracting party, without our having to refer to these Terms and Conditions in individual cases.
5. If these Terms and Conditions are based on a written form requirement, text form within the meaning of Section 126 *BGB* (e.g. telefax or email) shall be sufficient to comply with the written form.
6. The interpretation of commercial terms shall be governed by the Incoterms as respectively amended at the time of concluding the Contract.

Art. 2 Conclusion of Contracts

1. The conclusion of a Contract between BARTEC and the Supplier shall require our written purchase order or written order confirmation.
2. Quotations and cost estimates shall be made free of charge for BARTEC. BARTEC can accept quotations made by the Supplier within 4 weeks unless the Supplier specifies a longer period in its quotation. In such case, the quotation period offered by the Supplier shall apply. The Supplier shall be bound by the quotation until expiry of that period.
3. The Supplier shall accept a purchase order from BARTEC in writing to BARTEC within 48 hours of receipt (order confirmation). BARTEC shall in any case no longer be bound by the purchase order if the Supplier fails to accept the purchase order within the time stipulated. A Contract between BARTEC and the Supplier shall also be effected if the Supplier carries out the deliveries specified in the purchase order without reservation.
4. The Supplier must specifically highlight any modifications of or amendments to the purchase order within the scope of the order confirmation. They shall only become part of the Contract if they are expressly confirmed in writing by BARTEC.
5. If BARTEC refers to a specific intended use of the deliveries in a purchase order, the Supplier shall be obliged to notify BARTEC in writing prior to conclusion of the Contract if the deliveries specified in a purchase order are not entirely suitable for the intended use required according to the purchase order.

Art. 3 Delivery

1. Deliveries to BARTEC shall be made on the basis of special logistical

agreements with suppliers. Unless otherwise expressly agreed between BARTEC and the Supplier, delivery shall be made "free domicile" (DDP). Apart from scope of delivery, binding call-off dates, place of delivery, type of delivery, means of transport and transport routes as well as packaging shall also be stipulated in the specific logistical agreements. Unless otherwise agreed, the Supplier shall not have the right to make partial deliveries resp. render partial services.

2. Delivery by the Supplier shall only be in accordance with the Contract if the agreed or legally required documents, including documentation, examination certificates resp. certificates of compliance, spare parts lists, operating instructions for customs-approved documents for cross-border traffic (in particular the long-term supplier's declaration in accordance with EU Regulation 1207/2001 and all documents in accordance with the respectively valid Customs Code) accompany the delivery correctly and in full or they are adequately transmitted by the Supplier.
3. Deliveries shall only require acceptance if this has been expressly agreed between BARTEC and the Supplier or this follows from statutory provisions.
4. The risk of accidental loss and accidental deterioration of the deliveries shall pass to BARTEC upon their handover at the agreed place of delivery. If the deliveries require acceptance, the risk of accidental loss and accidental deterioration of the delivery shall pass to BARTEC only upon its acceptance.
5. Unless otherwise agreed in a specific logistical agreement, the shipping and packaging costs shall be covered by the agreed remuneration. Where pricing is ex works or ex sales warehouse of the Supplier, the delivery shall be shipped at the respectively lowest cost, unless BARTEC has stipulated a specific mode of transport. Additional charges for non-compliance with a shipping instruction shall be borne by the contractor. Where pricing is free delivery, BARTEC can determine the mode of transport. The Supplier shall bear any additional charges for expedited transport which may be required to meet a delivery date.
6. Non-reusable packaging shall be taken back by the Supplier at its expense. If reusable packaging is used, the Supplier must provide the packaging on loan. It shall be returned at the Supplier's risk and expense.
7. Each delivery shall be accompanied by corresponding delivery notes or packing slips, stating the contents as well as the complete purchase order reference. Partial, residual and replacement deliveries must be designated as such on the delivery note. BARTEC shall be notified of shipment with the same information before or at the latest upon dispatch of each delivery.
8. Where transport is requested by a freight forwarder instructed by BARTEC, the Supplier shall notify the freight forwarder of the required dangerous goods data in accordance with statutory requirements.

Art. 4 Prices and payment terms

1. The price shown on the purchase order is binding. Unless otherwise expressly agreed in writing between BARTEC and the Supplier, this price shall include delivery "free domicile" (DDP) and packaging as well as value added tax and other ancillary costs.
2. All purchase order references of BARTEC and each of the individual item numbers must be clearly listed on the invoices by the Supplier. If an invoice cannot be verified, the invoice concerned shall not become due for payment. Duplicates of invoices must be clearly marked as such. The principles of generally accepted accounting and possible reasons for return in case of non-compliance (status 06/2016) apply, available at: <http://www.bartec.de/lieferantenportal>.
3. Unless otherwise expressly agreed, payments shall be due for payment within 30 (thirty) days net. Payment within 14 (fourteen) days shall entitle BARTEC to

a deduction of 3% (three per cent) discount. BARTEC may also deduct a discount if BARTEC offsets or accordingly withholds payments in an appropriate amount due to defects. If BARTEC accepts partial deliveries by way of exception, this shall not result in the discount periods starting to run.

4. Payments made by BARTEC shall not constitute an acknowledgement of a delivery or service as free of defects and/or in due time or an acceptance of a delivery or service.
5. The payment period shall commence as soon as the delivery or service has been provided resp. rendered in full by the Supplier and the properly issued invoice has been received.
6. If early deliveries are accepted, the due date shall be determined by the agreed delivery date.
7. The Supplier shall be responsible for all consequences resulting from failure to comply with this obligation, unless the Supplier proves that it is not responsible for them.

Art. 5 Delivery period - default

1. The delivery period specified on the purchase order is binding. If the Contract does not indicate the delivery date, deliveries must be made within 14 calendar days. Early deliveries are not permitted. If BARTEC accepts goods delivered early, it shall have the right to charge the Supplier a reasonable storage fee for this.
2. BARTEC shall furthermore have the right, in the event of default in delivery, to request from the Supplier a contractual penalty of 0.5 % of the agreed net price, at most 5 % of the agreed net price for the deliveries which are in default, for each week of default in delivery or part thereof. This shall not affect the assertion of any further damages. The contractual penalty shall be offset against the damage caused by default to be compensated by the Supplier.
3. If the Supplier recognises that a delivery date cannot be met, it shall immediately notify BARTEC of this in writing, stating the reasons and the expected duration of the delay. This shall not affect the Supplier's obligation to comply with the delivery dates.
4. Unless expressly agreed in writing between the Supplier and BARTEC, delivery shall be made on working days exclusively between 8:00 a.m. and 4:00 p.m., on Fridays between 8:00 a.m. and 12:00 noon.
5. The Supplier is obliged to take out sufficient insurance against transport damages. If necessary, the Supplier shall assign its claims against the transport insurance to BARTEC.

Art. 6 Warranty

1. The Supplier warrants to BARTEC that its deliveries/services have the individually guaranteed properties and the contractually agreed quality, are suitable for the contractually required use, are not adversely affected in terms of their value and suitability and comply with generally recognised rules of engineering as well as current statutory and official regulations.
2. If the delivery/service does not comply with the requirements of Art. 6 (1) above or if it is defective for other reasons, BARTEC shall be entitled to all statutory claims and rights. If the Supplier has assumed a guarantee for the quality or durability of the delivery/service, BARTEC can, without prejudice thereto, also assert further the claims arising from the guarantee.
3. The Supplier warrants that it shall carry out the necessary intermediate and final inspections during production and shall subject the parts supplied by suppliers to a comprehensive incoming goods inspection. The Supplier shall be liable for defects of title in accordance with statutory provisions, in particular for ensuring that neither patents nor other property rights of third parties in the Federal Republic or the agreed destination country are infringed by the delivery/service or by its contractually agreed use. If a claim is asserted against BARTEC by a third party for this reason, the Supplier shall be obliged to indemnify BARTEC at first written request against all claims (including court

and attorneys' fees) which BARTEC necessarily incurs BARTEC from or in connection with the claim by the third party. BARTEC shall not have the right to enter into any agreements with the third party to the detriment of the Supplier without the consent of the Supplier.

4. The limitation period for defects is 36 months, unless there is a longer limitation period for claims for defects according to the law. Longer contractual or statutory limitation periods shall remain unaffected by this. In the event of supplementary performance, the period shall be extended by the time in which the delivery item cannot be used in accordance with the Contract. The same periods shall apply to supplementary performance.
5. Apart from the cases of suspension of the statute of limitations provided for by law, the limitation period for claims and rights in respect of defects shall also be suspended during the period of time between notice of defects and rectification of defects. For deliveries or services newly made resp. provided, replaced or rectified in whole or in part, the limitation period shall begin to run again.
6. The statutory obligation to give notice of defects is limited to the examination of the deliveries with regard to their quantity, type of goods, any externally discernible transport damages or other obvious defects. Notices of defects shall in any case be deemed to be given by BARTEC in due time if BARTEC notifies the Supplier of them within 5 working days of receipt of the goods at BARTEC. Notice of hidden defects shall in any case be deemed to be given in due time if notification is given within 5 working days after detection of the defects of quality to BARTEC. BARTEC shall have no further obligations to examine and give notice than those set out above.
7. In the case of large deliveries, the examination of representative random samples shall be sufficient for proper examination by BARTEC. If the examination of random samples shows that the delivery is defective, BARTEC shall have the right at its option
 - to inspect the entire delivery at the Supplier's expense; or
 - to assert warranty claims for the entire delivery (replacement delivery, reworking, reduction of price, rescission of the Contract, damages for non-performance) if the suspicion that the entire delivery is defective cannot be eliminated by reasonable means.
8. This shall not affect further warranty and damage claims by BARTEC, also for consequential damages.

Art. 7 Retention of title

1. If, by way of exception, a retention of title is agreed between BARTEC and the Supplier, this shall have the effect of an "ordinary" retention of title (*einfacher Eigentumsvorbehalt*). Unless otherwise agreed, the Supplier's retention of title shall only apply if this relates to BARTEC's payment obligations for the respective products, to which the Supplier retains title. In particular, "current-account" retention of title (*erweiterter Eigentumsvorbehalt*) or "extended" retention of title (*verlängerter Eigentumsvorbehalt*) shall not be admissible.
2. Tools, samples, drawings and other aids which are produced to execute purchase orders and invoiced separately by the Supplier shall become the property of BARTEC at the time of production. Their handover shall be replaced by the Supplier holding them in safekeeping for BARTEC free of charge. They may be used only to execute purchase orders placed by BARTEC and must be handed over to BARTEC free of charge immediately upon request after execution of the Contract resp. in the event of delivery difficulties. The Supplier shall clearly mark the above-mentioned items as the property of BARTEC and shall draw the attention of third parties, who wish to establish claims to them, to BARTEC's property right. The Supplier shall inform BARTEC immediately if this occurs. Necessary costs of legal defence shall be borne by the Supplier. The Supplier shall be obliged to take care of and maintain the above-mentioned items and to remedy normal wear and tear. Expenses required for this shall be covered by the purchase price for the items. If the Supplier commissions a sub-contractor to manufacture tools and samples to execute BARTEC's purchase orders, the Supplier shall assign its claims against the sub-contractor for the

transfer of ownership of the tools and samples to BARTEC.

3. Drafts made and samples developed by the Supplier for BARTEC - of whatever kind - and all rights shall become the property of BARTEC.

Art. 8 Protection of ownership

BARTEC shall retain title and its copyright to purchase orders, orders and drawings, illustrations, calculations, descriptions and other documents ("Documents") provided to the Supplier by BARTEC. The Supplier may not use or copy them itself or through third parties without the express consent of BARTEC. Copies which are indispensable for the execution of the order shall be excluded. The confidentiality obligations pursuant to Art. 13 of these Terms and Conditions shall also apply to the Documents.

All Documents shall be returned immediately upon first and simple request by BARTEC or when the business relationship ends.

Art. 9 Liability

1. Unless otherwise agreed, the Supplier shall be liable to BARTEC for damages and reimbursement of expenses in accordance with statutory provisions.
2. BARTEC shall not be liable to the Supplier for damages and reimbursement of expenses, for whatever legal reason (contract, tortious act, breach of duty arising from the obligation, indemnification, etc.).
3. The above exclusion of liability shall not apply in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act], in cases of intent or gross negligence, in the case of culpable injury to life, limb or health and in the case of violation of material contractual obligations i.e. such obligations, the fulfillment of which makes the due performance of the Contract at all possible in the first place, and where the Supplier regularly relies on and may rely on compliance with such obligations.
4. Liability for the violation of material contractual obligations shall, however, be limited to compensation for foreseeable damage which is typical for the Contract unless BARTEC is liable due to intent or gross negligence, injury to life, limb or health or under the *Produkthaftungsgesetz*.
5. If BARTEC's liability is excluded or limited pursuant to the above subparagraphs, this shall also apply to the corresponding personal liability of BARTEC's employees, representatives and vicarious agents.

Art. 10 Product liability and liability for environmental damage

1. The Supplier shall indemnify BARTEC against all product liability claims which are attributable to a defect in the product/component part supplied by it. On the same conditions, the Supplier shall also be liable for damages which BARTEC incurs as a result of precautionary measures of an appropriate nature and scope against claims arising from product liability e.g. as a result of public warnings, recall measures. This shall not affect BARTEC's right to claim its own damage against the Supplier.
2. The Supplier is obliged to maintain an extended product liability insurance with a sum insured of at least € 2 million as a lump sum at its own expense for personal injury and property damage. Cover must also extend to damages occurring abroad. The scope of the extended product liability insurance must extend to the forms of cover of the extended insurance cover pursuant to the model terms and conditions of the Gesamtverband der Deutschen Versicherungswirtschaft (GDV) [German Insurance Association]. This insurance must be maintained for the duration of the term of the Contract, taking into account all limitation periods resulting from terms of Contracts between the Supplier and BARTEC. Upon request, the Supplier shall provide BARTEC at any time with proof of the insurance and payment of the premium. If the Supplier fails to comply with the request, BARTEC can set the Supplier a time limit of seven calendar days and shall have the right, after this expires without effect, to rescind Contracts not yet fulfilled with regard to the part not yet fulfilled.

3. The Supplier shall be liable to BARTEC in accordance with statutory provisions, in particular for all damages incurred by BARTEC or third parties because the Supplier or its vicarious agents violate the provisions of the *Immissionsschutzgesetz* [German Immission Control Act] or the ordinances issued in this respect or other laws and regulations relating to environmental protection. The Supplier shall indemnify BARTEC against all third-party claims which are directed against BARTEC in the event of such a violation.

Art. 11 Spare parts and quality assurance

1. The Supplier is obliged to hold spare parts available for the deliveries for a period of at least ten (10) years after the respective delivery.
2. Should the Supplier intend to cease the production of spare parts for the deliveries, it shall notify BARTEC of this immediately after the decision to cease production. This notification must be made at least 12 months before production ceases.
3. The Supplier shall carry out quality assurance which is suitable in nature and scope and corresponds to the latest state of the art and shall provide BARTEC with proof of this upon request. The Supplier shall conclude a corresponding quality assurance agreement with BARTEC if BARTEC deems this necessary.
4. For all deliveries, all relevant provisions, regulations, ordinances and laws shall be complied with, in particular the accident prevention regulations of the Hauptverband der gewerblichen Berufsgenossenschaften [German Federation of Institutions for Statutory Accident Insurance and Prevention], the regulations of VDE, VDI, DVGW, VdTÜV and the EC Machinery Directive.

Art. 12 Materials provided

1. The Supplier undertakes to use materials, tools or other means of production (materials provided) provided by BARTEC exclusively for the execution of the corresponding purchase orders. The Supplier shall hold the materials provided in safekeeping separately with the due diligence of prudent commercial judgment and identify BARTEC's ownership of the materials provided and in its accounting books.
2. In addition to this, BARTEC shall have the right at any time to satisfy itself of the existence of separate safekeeping and the proper identification of the goods resp. materials provided on site. Any acquisition of ownership by the Supplier in the event of processing, combining, mixing or transforming the materials provided by BARTEC into a new item shall be excluded. Any processing shall be carried out by the Supplier for BARTEC. Should the Supplier acquire co-ownership by combining or mixing, it shall assign its co-ownership share to BARTEC.
3. Delivery of possession shall be replaced by the Supplier holding the item in safekeeping for BARTEC free of charge.
4. The Supplier shall notify BARTEC immediately of any seizure of the goods belonging to BARTEC by third parties and shall support BARTEC in every way in the case of intervention, the costs of which shall be borne by the Supplier. The obligation to notify shall apply accordingly to the institution of insolvency proceedings. A right of retention shall be excluded in any case.
5. If the item provided by BARTEC is inseparably mixed with other items which do not belong to BARTEC, BARTEC shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus value added tax) to the other mixed items at the time of mixing. If mixing takes place in such a way that the Supplier's item is considered to be the principal item, it shall be deemed agreed that the Supplier shall transfer co-ownership to BARTEC proportionately. The Supplier shall hold sole ownership or co-ownership in safekeeping for BARTEC.

Art. 13 Confidentiality

1. The Supplier is obliged to maintain the strictest confidentiality towards third parties with regard to company matters which become known to it as a result of

executing the purchase order and with regard to information in the broadest sense provided by it to execute the purchase order, in particular data, regulations, samples, drawings and designs.

2. The confidentiality obligation shall also apply for a period of 5 (five) years after completion of the Contract. The above confidentiality obligations shall not apply to information which a) is proved to have been already known to the Supplier when the Contract was concluded or is subsequently disclosed by third parties, without thereby violating a confidentiality agreement, statutory provisions or official orders, b) is publicly known when the Contract is concluded or is subsequently made public, unless this is based on a breach of this Contract, c) must be disclosed due to statutory obligations or by order of a court or authority.
3. The name of the Supplier or manufacturer or its logo may only be indicated on printed matter, drafts, etc. with the express written consent of BARTEC. Such consent shall only apply to the special case for which it has been granted.
4. The use of BARTEC purchase orders for advertising purposes, also as reference, on e.g. websites or presentations, shall only be permitted after prior written consent.

Art. 14 Export control reservation

The performance of a Contract by BARTEC is subject to there being no obstacles to performance due to national or international regulations of foreign trade law and no embargos and/or other sanctions.

Art. 15 Place of performance, legal venue, applicable law

1. Unless otherwise agreed, the place of performance for all contracts is the place of receipt specified on the purchase order or, if no such place is specified, the registered office of the BARTEC company which placed the purchase order with the Supplier.
2. The exclusive place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship is the registered office of the BARTEC contracting party. However, BARTEC shall also have the right to bring an action against the customer at its general place of jurisdiction or before another competent court.
3. The Contracts concluded between BARTEC and the Supplier shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the principles of conflict of laws of private international law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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