

General Conditions of Purchase of Ball Packaging Europe GmbH (hereinafter BPE)

Art. 1 Scope

All orders placed by BPE are based solely on these General Conditions of Purchase. These conditions shall apply, in the version applicable at the date the respective contract has been concluded, and also to any future business relations with the supplier, even if they are not agreed upon explicitly at the time. BPE shall not accept any conditions imposed by the supplier which contradict these general conditions of purchase or deviate therefrom, unless BPE has explicitly accepted the applicability of such conditions in writing.

Art. 2 Basis of Contract

Any conditions set out in the written order and in any attached specification shall take precedence over these general conditions of purchase.

Art. 3 Quotation – Quotation Documents – Business Secrets

1. BPE shall be bound by its order for a period of 10 working days as from the date the order is placed.

2. Drawings, tools, models or the like, which BPE makes available to the supplier, remain the property of BPE. They shall not be made accessible to third parties without the explicit written consent of BPE. They shall be used solely to produce the items specified in BPE's order. The supplier shall keep these safe with the care and diligence of a prudent businessman. The supplier shall return these items to BPE without being asked upon fulfilment of the contract.

3. The supplier undertakes to treat the order and all related commercial and technical details as business secrets. The obligation to confidentiality shall continue to apply after the contract has been completed; it shall expire when and to the extent that the disclosed details have become general knowledge.

Art. 4 Prices – Terms of Payment

1. The price indicated in the order shall be binding. The price shall include delivery "free of charge to address of purchaser" and packaging

unless divergent conditions have been agreed in writing.

2. The statutory value added tax is not included in the price.

3. Payment shall be made within 14 days as from the date of delivery and invoice with 2% cash discount or within 30 days after receipt of invoice, net.

4. BPE can only handle invoices which bear the order reference number. The supplier shall be responsible for any delays in payment caused by incorrect or incomplete invoices, unless the supplier can prove that the delay was beyond his control.

5. BPE shall be entitled to offset claims and retain payment to the legally permitted extent.

6. Payments made by BPE shall not be construed as acceptance of the invoice.

Art. 5 Delivery Period

1. The delivery dates indicated in the order are binding.

2. The supplier undertakes to notify BPE immediately in writing if circumstances occur or become apparent which prevent him from complying with the set delivery date.

3. In the event of delivery being delayed, BPE shall be entitled to claim fixed rate damages for delayed performance amounting to 0.5% of the net order value for each commenced week of delay, maximum however 5% of net order value. Any further legal claims shall not be affected by this. BPE and the supplier shall be entitled to prove that the delay in delivery led to greater damage, less damage or no damage at all.

4. The supplier shall not be entitled to make partial deliveries without a prior written agreement to this effect.

Art. 6 Passing of Risk – Documents

1. The risk shall pass to BPE upon hand-over of the items ordered to the BPE receiving department.

2. The supplier shall undertake to accurately indicate the BPE order number in all shipping documents and delivery notes.

Art. 7 Inspection for Defects – Warranty

1. BPE is obliged to inspect goods for any quality and quantity non-conformities; the notice of complaint shall be deemed to be in time provided that it is received by the supplier within a period of 10 working days as from the date of receipt of the goods or, in the case of hidden defects as from the date of detection.

2. BPE shall be entitled to claim statutory damages for any defects in full and without any restrictions. Under all circumstances, BPE is entitled at its own discretion to call upon the supplier to eliminate the defect or to supply a new item. The supplier shall undertake to bear all expenses incurred in order to achieve subsequent compliance. BPE explicitly reserves the right to claim damages, in particular damages instead of performance.

3. BPE shall be entitled to eliminate the defects itself at the expense of the supplier in the event that a delay would constitute a risk or that there is particular urgency.

4. In the event that BPE cancels the contract due to a defect in the purchased item, then the supplier shall also refund BPE any costs incurred in connection with the contract even if the defect is beyond his control.

5. The period of limitation shall be 36 months as from the passing of risk unless the supplier offers a longer warranty period. Notice of defects shall suspend the period of limitation for the notified defects; the suspension shall end upon elimination of the defects or one week after written notification is received from the supplier that he does not accept the defects.

Art. 8 Product Liability – Indemnity – Insurance Cover

1. To the extent that the supplier is responsible for a product defect, he shall undertake to indemnify BPE

against claims for damages from third parties at the first demand provided that the cause is within his scope of control and organization and that he is himself liable vis-à-vis third parties.

2. Within the scope of his liability for claims for damages in terms of par. (1), the supplier shall also undertake to reimburse any expenses in acc. with Art. 830, 840, 426 BGB which are incurred as a result of or in connection with recall measures initiated by BPE. We shall inform the supplier as far as possible and reasonable about the content and scope of the proposed recall measures to give him an opportunity to comment. All other legal claims shall remain unaffected.

3. The supplier shall undertake to maintain a product liability insurance with coverage of € 10 million per occurrence; in the event that we are entitled to more comprehensive claims for damages, then these shall in no way be affected thereby.

Art. 9 Right to Recourse

In the event that claims are made against BPE as seller based on a defect in an item supplied by the supplier, then Art. 478, 479 BGB (German Civil Code) shall apply equally in the relationship between BPE and the supplier as long as these apply as well in the relation-

ship between BPE and the purchaser.

Art. 10 Claims for damages on the part of the supplier

1. Claims for damages on the part of the supplier, on whatever legal grounds shall, be excluded for slight negligence. This exemption from liability shall not apply to claims for damages due to a breach by BPE of significant contractual obligations. Neither shall it apply to claims arising from a guarantee, claims relating to injury to life, body or health nor to claims arising from the product liability law ("Produkthaftungsgesetz").

2. In cases of slightly negligent breach of significant contractual obligations, then the compensation for damages shall be limited to the typical damage foreseeable at the time the contract is signed. The same shall apply in the case of gross negligence by agents, subcontractors and consultants.

3. To the extent that BPE's liability is excluded or limited, this shall also apply to the personal liability of BPE employees, staff, representatives and by agents, subcontractors and consultants.

Art. 11 Industrial Property Rights

1. The supplier shall be liable for ensuring that the rights of third par-

ties are not infringed by his supply and the use thereof by BPE.

2. In the event that BPE is held liable by a third party for an infringement of a right by the supplier, then the supplier shall undertake to indemnify BPE from these claims upon first written demand.

3. The supplier's obligation to indemnify BPE shall relate to all expenses incurred out of necessity by BPE as a result of or in connection with claims made by third parties.

4. The period of limitation shall be 10 years as from the date on which the contract is signed.

Art. 12 Jurisdiction – Place of Performance

1. This contract shall be governed exclusively by the law of the Federal Republic of Germany without giving effect to the provisions of CISG.

2. In case that the supplier is a trader, the jurisdiction shall be the respective registered seat of BPE. BPE shall, however, also be entitled to enforce its claims before courts at the place of general jurisdiction of the supplier.

3. Place of performance for supplies and services is the BPE receiving dept., for payments the registered office of the BPE company placing the order.