

General Purchasing Conditions (AEB) pro-beam Group (December 2018)

I. General information

1. Our supplies and services are based on these terms as well as other agreements. The terms and conditions of our customers have no effect even if they were not expressly opposed in a specific case.
2. In the event of an ongoing business relationship, these conditions apply to all future transactions with the supplier unless otherwise agreed.

II. Execution / object of contract

1. Supply contracts (order and acceptance) as well as changes and amendments thereto must be prepared and made in writing. Delivery requests may be communicated orally or by way of data transmission. Orders, agreements and changes are binding only if and to the extent that they are made or confirmed in writing, by facsimile or electronically. We are bound by orders for a period of two weeks; the customer is bound by its offers for a period of at least one month. The supply contract does not have effect until we have confirmed the supplier's offer in writing. Any correspondence must be directed to our management and/or designated contacts, and arrangements made with our employees that give rise to agreements amending items of the contract are subject to the express written confirmation of our management or designated contacts and must take the form of an addendum to the contract. Orders and delivery requests are deemed to have been accepted unless the supplier objects in writing within two weeks of receipt. However, we, too, are entitled to object, within an additional week, unless the supplier has previously declared its acceptance in writing.
2. The supplier must hold the execution of the contract in confidence and must not use us as a reference without our prior written consent. The supplier must hold in confidence any information made available to it in connection with the execution and implementation of the contract unless such information is or becomes public knowledge.
3. The supplier is obligated, upon our request, to make changes to the construction and/or design of the object of supply to a reasonable extent. The effects of such changes, especially with regard to added or reduced expenses and the delivery date, must be addressed by mutual agreement.
4. The supplier is obligated to deliver the object of supply to the location we designate (place of use). Any costs incurred, including but not limited to transportation, packaging and insurance, are borne by the supplier unless otherwise agreed in writing.
5. Cost estimates, specimen and samples are binding in nature and provided free of charge unless otherwise agreed in writing.

III. Prices and terms of payment

1. The agreed prices represent fixed rates and are stated exclusive of VAT (as applicable as of the invoice date), "free place of use," duty paid and including packaging and shipping costs. Whenever a rate is agreed to be "ex works" or "ex warehouse," we are liable only for the cost of the least expensive shipping option. All costs incurred up until the delivery to the carrier, including loading and carriage, are borne by the supplier. The agreement as to the place of performance is not affected by the nature of pricing. We reserve the right to accept deliveries that exceed or fall short of the intended volume. We make payment within 30 days from invoice receipt (or on the following working day) at a discount of 3 %, within 60 days from invoice receipt (or on the following working day) at a discount of 2 % or within 90 days from invoice receipt (or on the following working day) in the net invoice amount.
2. Payments are made by transfer or check. Their timeliness is determined on the basis of the date of the check or the completion of the transfer.
3. The receipt of payments from us does not establish our acceptance of the underlying invoice amount; payments are strictly made subject to review.
4. Subject to our written consent, the supplier's claims under this contract may be assigned to third parties. We are entitled to offset against any of the supplier's claims against us any claim to which we are entitled against the supplier. In the event of improper delivery, we are entitled - notwithstanding any other claim on our part - to retain payment in a corresponding amount until performance has been completed.

IV. Delivery dates, periods proof of origin and export restrictions

1. Departures from the provisions of the contract and our orders are permitted only with our prior written consent.
2. Any established date and period is binding in nature (fixed). Whether a delivery date or period has been met is determined on the basis of the time of our receipt of the goods. Unless "ex works" (DDU or DDP according to 2000 Incoterms) has been agreed, the supplier must see to the timely delivery of the goods, taking into account the time needed for loading and shipment as coordinated with the carrier.
3. In the event that established deadlines are not met, legal provisions apply where appropriate. In response to delays in delivery, we may have a third party perform the task not yet completed by the supplier at the latter's expense once a reasonable grace period allotted by us has expired fruitlessly. Alternatively, we are entitled to rescind the contract following the fruitless lapse of such grace period. In the event of a delay in delivery, the supplier further undertakes to pay a contractual penalty to us, such penalty to amount to 0.2 % for each day of delay, not to exceed 5 % of the value of the supply portion not available for use as intended hereunder as a result of the delay.
4. As soon as the supplier becomes aware of difficulties in terms of production, material supply, schedule adherence or similar circumstances that may impair its ability to make deliveries on the dates or in the quality agreed, the supplier must promptly notify us. Its obligation to adhere to the agreed delivery schedule and specifications is not affected thereby.
5. Our unreserved acceptance of belated deliveries or performance must not be construed as a waiver on our part of claims arising from belated delivery or performance.
6. In general, partial deliveries are only permitted to the extent that we have expressly consented thereto or they do not impose an unreasonable burden on us.
7. Unless and until established otherwise, the unit numbers, weights and measurements we determine at the time of our receipt of the goods prevail.
8. In addition to the right of use (reference is made to §§ 69a et seq. of the German Copyright Act (UrhG)), our right to use as to software forming part of the scope of supply, including

documentation, extends to the agreed features and all other aspects instrumental to the application intended under the contract. The supplier is obligated to install and/or deliver software as updated or upgraded by the time of shipment. In addition, following delivery, it is obligated to offer to us all updates, upgrades, etc. of any software included in the supply contract.

9. The supplier bears the material risk until we or our agents have accepted the goods at the location to which they were meant to be delivered under the contract.
10. In the event of Force Majeure, collective action, shutdowns suffered through no fault of our own, unrest, official directives and other unavoidable events, we are entitled - notwithstanding our other rights - to rescind the contract or any part thereof unless such events are short-lived or trigger only a minor decrease in our demand.
11. The supplier will promptly supply any proof of origin we request, along with all related information and a valid signature. The same is true for proof of sales tax payments concerning international supplies and those made within the EU.
12. The supplier will promptly notify us if and to the extent that supplies are subject, wholly or in part, to export restrictions under German or other law. Suppliers from EU member nations are obligated, within 30 days from order acceptance, to furnish us with long-term supplier declarations under the appropriate EU ordinance (as amended) in the first two months of each calendar year; such declarations need not be specifically requested. In the event that this cannot be done for individual supplies, proof of origin must be supplied along with the appropriate invoice, at the latest.
13. The supplier undertakes to supply us with spare parts and products for a period of 10 years from the end of the most recent delivery. The prices for spare parts and products must not deviate significantly from related parts and products. Warranty claims, liability and default are regulated hereunder.

V. Notice of defect

We will inform the supplier in writing of any defects afflicting supply immediately following their detection in the regular course of business. To such extent, the supplier waives the right to invoke untimely notification. Acceptance is always subject to review and examination, chiefly with a view to verifying accuracy, completeness and fitness.

VI. Transfer of risk / acceptance

1. Unless demonstrably in the public domain, all business-related or technical information (including features that may be gleaned from items, documents or software provided hereunder, as well as other know-how and experience) must not be disclosed to third parties and may be provided only to those members of the supplier's operation who are instrumental to their use for the purpose of supplies to the principal and bound by a duty of confidentiality, if applicable, and such information remains our sole property. Without our prior written consent, information of such nature must not be duplicated or used for any purpose other than the supplies contemplated hereunder. Upon our request, any information that originated with us (including copies or records made thereof) as well as items provided on loan must be returned to us or destroyed in their entirety without undue delay. We reserve all rights to such information (including copyrights and the right to register industrial property rights, such as patents, utility models, semi-conductor protection, etc.). To the extent that such information was made available to third parties, this reservation applies vis-à-vis such third parties.
2. Drawings, models, templates, samples and other items must not be handed over or otherwise made available to third parties, and the duplication of such items is permitted only to the extent required for operational purposes or under copyright law.
3. The aforementioned items may be neither scrapped nor made available to third parties (e.g., for the purpose of production) without our written consent, and they may not be used for any purpose other than those contemplated under the contract (e.g., supplies to third parties). Such items must be stored carefully and insured to the customary extent by and at the expense of the supplier. The provisions of Item VI. 1 and 2 apply accordingly to print orders.
4. The maintenance, repair and partial refurbishment of the aforementioned items is subject to the arrangements entered into between us and the supplier.
5. Subsuppliers must be compelled to enter into the same obligations.
6. We reserve all rights to drawings, products made according to our specification, as well as to any procedure developed by us.

VII. Quality and documentation

1. The supplier's supplies must reflect the acknowledged state of the art, the safety regulations and any agreed specifications. It is obligated to monitor the quality of any object of supply on an ongoing basis. The parties hereto will inform one another of possibilities to improve quality.
2. For technical documents or specially marked (e.g., "D") vehicle parts, the supplier must record in a dedicated log when, in which manner and by whom the objects of supply were checked in reference to features warranting documentation, and which results were produced by the required quality tests. Test documentation must be retained for 10 years and is submitted upon request. To the extent permitted by law, the supplier must hold sub-suppliers to the same standard.
3. In the event that the authorities demand access to our production process and test documentation to verify compliance with certain requirements, the supplier agrees, upon our request, to grant to the authorities the same rights and provide reasonable support as needed.
4. The supplier must establish and maintain documented quality management processes that suit the intended purposes in terms of nature and scope and reflect the latest state of the art. Moreover, it must create records, especially with regard to quality assurance, and submit such records to us upon request.
5. The supplier hereby agrees to quality audits designed to assess the efficacy of its quality assurance system, such audits to be conducted by us or our agents - along with our customers, if applicable.
6. Upon our request, the supplier is obligated to enter into a quality assurance agreement with us.

General Purchasing Conditions (AEB) pro-beam Group (December 2018)

VIII. Warranty claims

1. The right to choose the manner in which remedial action is taken is generally ours, whereas the supplier is entitled to refuse the remedial action of our choice subject to § 439 para. 3 of the German Civil Code (BGB).
2. In the event that the supplier fails to initiate remedial action immediately upon our request, we are entitled to remedy the defect in question on our own or have a third party do so at the supplier's expense in especially urgent cases, including but not limited to the prevention of imminent danger or major damage. Claims based on material defects expire after 36 months, but no sooner than the lapse of 6 months from the time a warranty claim is asserted, unless the object of contract was used as indicated on a structure, causing it to be defective. The period of limitation for claims based on material defects commences upon the delivery of the object of contract (transfer of risk). The statute of limitation according to § 479 BGB is not affected thereby.
3. In relations with the supplier, we are entitled to recourse under §§ 478, 479 BGB - especially with regard to claims directed against a third party. This also applies in cases in which the object of supply was modified or processed by us or a third party. In addition, we are entitled to these claims even if such third party or end customer is not a consumer but a business.
4. In the presence of legal defects, the supplier must indemnify and hold us harmless from and against third-party claims, if any. Legal defects are subject to a period of limitation of 10 years.
5. With respect to parts of the supply that are repaired within the period of limitation for our warranty claims, the period of limitation commences anew at such time as the supplier has fully satisfied our claims for remedial action.
6. If, as a result of defective delivery, we incur costs, including but not limited to transportation, travel, personnel, material or higher-than-usual import control costs, the supplier shall bear such costs.
7. In the event that we recall products made and/or sold by us due to defects attributable to the object of contract supplied by the supplier, or if, for the same reason, the purchase price is lowered to our detriment or we are otherwise held to account, we reserve the right to take recourse against the supplier, whereas any warranty claim on our part is not subject to the notice requirements indicated otherwise.
8. We are entitled to demand that the supplier reimburse us for expenditures we were forced to bear in relations with our customer because the latter held a claim against us for the reimbursement of unavoidable expenditures, especially transportation, travel, personnel and material costs.
9. Irrespective of the provision under Item VIII.4, the period of limitation in cases of Items VIII.7 and VIII.8 ends no sooner than two months from the time at which we have satisfied the customer claims asserted against us, and no later than 5 years from the supplier's delivery.
10. In the event that, within 18 months from the transfer of risk, a material defect becomes apparent, it is assumed that such defect already existed at the time of the transfer of risk unless such assumption cannot be reconciled with the nature of the item or the defect.
11. The absence of guaranteed qualities triggers the supplier's liability regardless of culpability, and such breaches of duty are subject to the period of limitation prescribed by Item VIII.2 of this contract.
12. A defect is present especially if the supplied part deviates from the part specifications established between the supplier and us.
13. We are entitled to the warranty claims available under the contract and applicable law. Specifically:
 - a. We can demand, at our option, that the supplier take remedial action or replace the defective part by a defect-free part. The costs to be borne by the supplier in these cases also include incidental expenses incurred by us or our customers, especially transportation, travel, personnel and material costs and including the costs of repairing or replacing such parts as the supplier may not have delivered but which likewise required repair or replacement as a result of the supplier's defective delivery. In cases of the supplier providing or us procuring replacements, these costs further include expenses related to removal and installation. Finally, costs within the meaning of this item may also be contractual penalties due to our customers in the event of defective delivery.
 - b. In urgent cases or if the supplier falls behind in the removal of defects, we may take the required actions on our own or have third parties to do at the supplier's expense. We will notify the supplier prior to taking such actions. However, whenever this is impossible, advance notification may be waived and any action needed to avert damage may be taken if and to the extent that the urgency of the situation so requires, in which case notification will be provided at the next opportunity. The supplier's warranty obligations are not affected thereby. The right to damages, including but not limited to damages for non-performance, is not affected thereby.

IX. Liability

1. If, under German or other law, we are sued for product liability, the supplier assumes such liability in relations with us as it would bear directly, and its liability under the contract is not affected thereby. The supplier is obligated to indemnify and hold us harmless from and against such claims if and to the extent that the damages were caused by a defect afflicting the object of supply delivered by the supplier. Whenever liability is borne regardless of culpability, however, this true only to the extent that the supplier is culpable at least in part. To the extent that the cause of damage falls within the supplier's area of responsibility, it bears the burden of proof. In cases of this nature, the supplier also bears all costs and expenditures, including the costs of legal action or recall. Otherwise, legal provisions apply where appropriate.
2. We will immediately notify the supplier whenever we intend to avail ourselves of the rights set forth in the above paragraph and, to a reasonable degree, we will give the supplier opportunity to investigate the damaging event and coordinate with us the appropriate course of action (e.g., settlement negotiations).
3. The supplier also bears the costs of preemptive customer service activities on our part or that of our customers, especially with regard to actions designed to avert damages (e.g., recall), even if it is not obligated to do so by law, provided such preemptive customer service activities are due to the supplier's defective delivery at least in part.

X. Limitation

1. The supplier is liable for claims arising, in the course of the intended use of objects of supply, from violations of proprietary rights and registrations (industrial property rights), provided that at least one such industrial property right has been published in the supplier's country of domicile, by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria, Japan, China or U.S.
2. The supplier indemnifies and holds us harmless from and against any claims arising from the use of such industrial property rights.
3. The parties hereto undertake immediately to notify one another of risks or alleged cases of injury as well as to give one another opportunity to counter such claims in a concerted fashion.
4. Upon our request, the supplier will inform us of any instance of use of published or unpublished, fully owned or licensed proprietary rights and registrations pertaining to the object of supply.

XI. Plant regulations, use of personnel, supplies

1. Individuals performing work on our premises in connection with the contract must observe applicable plant regulation, and any liability on our part for accidents suffered by such individuals on our premises is excluded unless such accidents were caused by deliberate or grossly negligent breaches of duty attributable to our legal representatives or agents. The supplier undertakes only to deploy personnel sufficiently qualified, experienced and skilled and will provide proof of its compliance upon request.
2. Any materials, parts, containers and special packaging provided by us remain our property and may be used only as intended. Materials are processed and parts are assembled for us. There is agreement that we co-own the products made with our materials and parts in the proportion of the value of our supplies to that of the finished product, and that our supplies must be stored by the supplier at no charge to us.

XII. Miscellaneous

1. The place of performance for supplies is the place of use; for payments, it is the location of our registered offices.
2. The laws of the Federal Republic of Germany apply with exclusion of international uniform law, especially UN Sales Convention.
3. Disputes arising from or in connection with these terms are settled by the courts with jurisdiction over the location of our registered offices. However, we are entitled to institute legal action at the location of our supplier's registered offices as well.