

General Terms of Purchase of
BENSELER Oberflächentechnik NRW GmbH & Co. KG

These terms and conditions of business shall be governed by German law. In case of doubt, the German version shall prevail.

1. Scope

The following conditions apply exclusively to our orders, contract awards and purchases as well as associated legal relationships between the supplier and us, insofar as our business partner is a company, a legal entity under public law or the bearer of a public law special fund. They shall also apply to services of a non-physical kind. They shall apply to all future business relationships of any kind in their most recent valid version. Terms and conditions of the supplier and deviating agreements shall only apply if we have recognised these in writing. Neither our silence, nor the acceptance of the service or its payment are deemed as recognition. Suppliers also include contractors for services to be performed (such as work or services). Our General purchasing conditions are available online on our homepage www.benseler.de/de/downloads and can be printed out. Upon request, we are also happy to send a written copy of the General purchasing conditions.

Amendments and supplements, as well as other declarations and notifications must be made in text form (Sec. 126b BGB), unless the written form (Sec. 126b BGB) is required in an individual contract. Declarations ending the ongoing contractual relationship must always be submitted in written form.

2. Prices

The agreed prices are fixed prices free our plant or a receiving station stated by us including packaging and all secondary costs.

3. Delivery dates

The deadlines specified in our order are goods receipt deadlines and are binding. Partial deliveries are only permissible following our written approval. The supplier must immediately give notice in writing of any apparent delay of a delivery or performance specifying the reasons for and the likely duration of the delay. The supplier can only cite causes of a delay for which he is not responsible if he has fulfilled the disclosure obligation or if the causes are obvious; Point 10 shall remain unaffected by this. If the supplier is responsible for the delayed delivery or non-delivery, we are authorised to claim compensation or withdraw from the contract.

4. Delivery and passing of risk

The ordered services must be performed in full in terms of the type and quantity of service required. A delivery slip must be enclosed with all deliveries, and must include our order, article and supplier numbers. In case of a direct shipment to our customers, a neutral delivery slip should be used and a shipping notification should be signed by the freight forwarding company and returned to us for invoice controlling. Reports must be signed within 3 business days of when services are performed; otherwise, we will not recognise them due to insufficient or no capability of review.

Irrespective of the legal nature of the individual contract the risk shall only pass to us with the acceptance of the delivery at the receiving station.

We only carry out an incoming goods control with regard to externally visible damages and of externally visible deviations in identity and quantity. We will report such defects and deviations immediately. The right is reserved to carry out a more detailed incoming goods inspection. Incidentally we report defects as soon as they are determined according to the conditions of the proper flow of business. The supplier accordingly waives the objection of the delayed report of defects. If we determine defects in a delivery we are entitled to return the whole delivery.

5. Terms of payment

The invoice must conform to tax requirements, and two copies must be sent to us after the shipment; they may never be enclosed with the shipment. The invoices must contain all order data (such as our order no., cost centre, article no.). Partial invoices are only permitted if relevant partial deliveries have been expressly ordered or agreed. The invoice must refer to underlying delivery slips / report slips: if we do not have access to these, they must be enclosed with the invoice.

Payment shall be made after 14 days with 3 % cash discount or after 30 days net insofar as not otherwise agreed. The payment deadline shall apply from invoice receipt date, however not before receipt of the goods.

In case of reports of defects we are entitled to withhold the payment of the invoice in a reasonable amount until the full clarification and remedy and to make a cash discount deduction after this time still. A bank guarantee is to be submitted with the payment demand by the supplier at our request with agreed instalment payment for instalment amounts, which are paid before the delivery.

In case of orders with a value of at least € 10,000.00 and with which ourselves are subject to a warranty risk towards our customers we are entitled to make a retention of at least 10 % from the invoice amount in order to secure our warranty claims for the event of the insolvency of the supplier within the warranty period. The supplier can avoid the retention by providing a security guarantee of a bank which operates in the domestic country and which covers the risk.

6. Warranty

The supplier hereby expressly assures that the delivered objects shall conform to the properties and significant performance specifications agreed or assumed under the contract, and shall conform to the relevant standards (IN ESO, etc.) for the respective delivered object for safety, product liability, accident prevention, environmental and consumer protection both in the country of manufacturing, in Germany, in the EU and in the country of sale indicated in the respective contract. If necessary or agreed, a safety data sheet must be completed for the delivered objects. Changes to the safety data sheet must be delivered to us through our responsible contact person promptly.

Insofar as we make plans, drawings, material and/or accessories available to the supplier, stipulate material qualities or give instructions for execution the supplier undertakes to check these immediately for their completeness, accuracy and for their suitability for the envisaged purpose. If the supplier does not file any objections it is also accordingly liable to assume the warranty.

If the object of delivery is faulty our claims shall be oriented to the statutory regulations insofar as not otherwise derived from the following provisions. In case of a danger to the operational safety, with a risk of unusually high damages or in order to maintain our delivery capability towards our buyers we can carry out the subsequent improvement ourselves or have this carried out by third parties after informing the supplier. Costs incurred hereby shall be borne by the supplier. It shall be liable for all damages and expenses incurred to us directly or indirectly owing to the defects to the object. This shall also apply to expenses for an incoming goods control which exceeds the customary extent insofar that at least parts of the delivery were recognised as faulty and for a partial or full examination of the received deliveries over the further course of the business in our company or at our buyers. If the supplier uses third parties to provide the services it shall be liable for these as for vicarious agents.

The supplier also has to reimburse expenses incurred by us or our buyers in advance of or in connection with defect liability events for the premature prevention, defence or minimisation of damages, e.g. in case of recall actions. It also has to reimburse expenses which we are obliged to bear by law towards our buyers and which are a result of defects to the delivery procured from the supplier.

Insofar as not otherwise stipulated as mandatory by law the supplier shall be liable for defects which occur within 36 months from receipt of the delivery by us or from acceptance (if such is determined by law or as per contract). In the event of the non-satisfaction the deadline shall be extended by the period of time in which the object of delivery cannot be used as per contract. The same deadlines shall apply to the subsequent performance.

The statute-of-limitations of claims owing to defects shall occur by no earlier than two months after the claims of the end customer have been satisfied. This inhibition to the expiry shall end by no later than 5 years after delivery to us.

7. Provided materials

Materials, parts, containers, special packaging, tools, measuring equipment, etc. provided by us (provided materials) shall remain our property. A use for other purposes is not permitted. The supplier shall be liable for loss or damage also without fault. In case of processing, connection or mixing of provided materials we shall be granted the co-ownership to the new product in the ratio of the value of provided materials to the value of the whole product. Reproductions of provided materials may only be produced after obtaining our prior written consent. These shall pass to our ownership when they are produced. The supplier is not entitled to a right of retention to the provided materials no matter for what reasons.

8. Assignment

Trade receivables can only be assigned to third parties with our prior written consent.

9. Property rights and rights of use

All objects, samples, drawings, films, models, tools, technical instructions, etc., also in an electronic form, which were handed over to the supplier, shall remain our property. The supplier also has to maintain secrecy concerning these objects after expiry of the contract and to hand these over to us free of charge upon request at all times. The employees and other persons entrusted with the execution are accordingly to be obliged to maintain secrecy in writing. The forwarding to third parties or the use for own purposes is not permitted. The same shall apply to objects which were fully or partly produced at our costs. Changes may only be carried out with our written consent.

If improvements are made at the supplier in connection with the order we have a free and non-excludable right of use to the commercial exploitation of the improvement and possible property rights hereto.

Insofar as the scope of delivery includes non-standardised software the supplier declares that it is willing for the duration of 5 years from delivery to carry out changes/improvements to the software according to our stipulations against a reasonable reimbursement of costs.

Insofar as the software stems from previous suppliers the supplier shall oblige these accordingly.

10. Compliance, minimum wage

The Contractual partner hereby undertakes to engage in no actions within the scope of our business relationship that violate valid anti-corruption statutes. The Client shall not offer, grant, request, or accept any advantages, and shall not enter into any agreements nor coordinate activities with other companies in such a manner as would bring about a hindrance, restriction, or falsification in accordance with current valid antitrust law.

The Contractual partner hereby ensure that it will observe the current valid provisions regulating the general minimum wage, and shall obligate any sub-contractors engaged by it to observe the same provisions. It must provide us proof of adherence to this assurance upon request; in case of a culpable violation, it must indemnify us against all resulting third party claims and compensate us for any associated disadvantages, including fees, payment obligations, and legal costs.

11. Force majeure, longer term impediments to delivery

Industrial disputes, civil commotion, natural disasters and other unforeseeable and unavoidable events as well as official measures for which we are not responsible, shall release the supplier and us from the service obligations for the duration of the interference and in the scope of its effect. The affected party has to inform the other contractual partner immediately in detail and to undertake everything within the framework of that which is deemed reasonable in order to limit the implications of such events. The affected party has to inform the other contractual partner immediately about the end of the interference.

In the event of a longer term impediment to delivery, the suspension of payment or the filing of an application for the opening of insolvency proceedings, the rejection of the opening of such proceedings return unsatisfied or the initiation of comparable proceedings over one of the contractual partners the other contractual partner is entitled to cancel the contract with regard to the not yet satisfied part. If the supplier is affected by one of the afore-mentioned events it shall make every effort to support us in relocating the production of the object of delivery to us or a third party including a licensing of industrial property rights which are necessary for the production at the customary conditions for the industry.

12. Place of performance, place of jurisdiction, applicable law, and retention of validity

The place of performance for deliveries and services is the place of destination stated by us.

The contractual relationship is subject to German law with the exception of the conflict of laws. The place of jurisdiction is Markgröningen subject to a deviating exclusively place of jurisdiction. We are however entitled to also file action against the supplier at another court of jurisdiction.

Should one provision be or become invalid this shall have no effect on the validity of the other provisions.

We would like to point out that we store personal data of which we become aware in connection with the business relationship by complying with the statutory provisions and process these only in connection with business transactions.