

General Terms of Sale and Delivery of BEK Systemtechnik Baugruppen und Elektronische Komponenten GmbH & Co.

As per: September 2008

Section 1 Application

- (1) These General Terms of Sale and Delivery (hereinafter: **General Terms**) apply to all business transactions between BEK Systemtechnik Baugruppen und Elektronische Komponenten GmbH & Co. (hereinafter: **BEK**) and the customer, even if they are not mentioned in subsequent contracts. They apply correspondingly to work and services. In the case of works, the delivery of the goods is replaced with acceptance; in the case of services, the delivery of the goods is replaced with the provision of the services.
- (2) These General Terms apply exclusively. General terms and conditions of the customer which conflict with, supplement the scope of or deviate from these General Terms do not become part of the contract unless BEK has expressly agreed to their application in writing. These General Terms apply even if BEK makes a delivery to the customer without reservations while being aware of the customer's conflicting or deviating general terms and conditions.
- (3) Agreements made between BEK and the customer for the performance of a contract which supplement or deviate from these General Terms must be set out in writing in the contract. This applies also to a waiver of this requirement of the written form.
- (4) Rights beyond the scope of these General Terms to which BEK is entitled under statutory law remain unaffected.

Section 2 Conclusion of Contract; Changes to the Contract

- (1) Offers of BEK are without engagement and not binding unless they are expressly stated to constitute a binding offer.
- (2) Pictures, drawings, information as to weights, measures, colors and performance, and other descriptions of the goods in the documentation pertaining to the offer are approximations only unless they are expressly stated to be binding. They constitute no agreement or guarantee of an according quality of the goods.
- (3) BEK reserves all proprietary rights and copyrights in and to all offer documents. Such documents may not be made available to any third party.
- (4) An order placed by the customer does not become binding upon BEK until after BEK has confirmed the order in writing. An order confirmation which has been prepared with the use of automatic devices and contains no signature and name shall be deemed a written confirmation. BEK's failure to reply to offers, orders, requests or other declarations of the customer shall be deemed an acceptance of the offer only where this has been expressly agreed upon in writing. To the extent that the confirmation of an order contains obvious mistakes or orthographic or arithmetic errors, it is not binding upon BEK.
- (5) If an order is carried out immediately, the invoice or delivery note shall be deemed the confirmation of the order.

Section 3 Scope and Form of Delivery

- (1) The written confirmation of the order by BEK is authoritative for the scope and form of the delivery. Subsequent changes to the scope or form of the delivery must be confirmed by BEK in writing to be valid.
- (2) BEK reserves the right to supply a larger or smaller quantity for production-related reasons, provided that the deviation does not exceed 5% of the quantity to be supplied. There will be no refund for the delivery of a smaller quantity.
- (3) BEK may make partial deliveries as far as the customer can reasonably be expected to accept them.
- (4) BEK reserves the right to change the design or form of the goods to the extent that such changes are not significant and that the customer can reasonably be expected to tolerate them.
- (5) BEK shall be authorized to make changes which serve technical progress to the agreed performance after the conclusion of the transaction to the extent that these changes are not of a fundamental nature, that they affect the purpose of the contract only immaterially, and that the customer can reasonably be expected to tolerate the respective change.
- (6) For changes to the agreed performance which are requested by the customer after the order has been placed and are confirmed by BEK and affect the procurement of material and manufacture by BEK (e.g. change to the parts list), the customer will be charged flat-rate costs in the amount of EUR 100.00. The customer is obliged to compensate BEK for all additional costs and for all damage or losses sustained as a consequence of the subsequent change in performance requested by the customer.

Section 4 Delivery Period

- (1) Delivery periods and delivery dates must be agreed upon in writing. Delivery periods and delivery dates are not binding unless expressly stated to be binding.

- (2) The delivery period begins with the dispatch of the order confirmation by BEK, but not before the customer has supplied all documents, materials, permits and approvals to be furnished by it, before all questions have been clarified and before the agreed-upon down-payment, if any, has been received. As a prerequisite for compliance with the delivery period, the customer must perform its other obligations in due time and manner. The delivery is subject to BEK obtaining its own supplies in due time and manner.
- (3) The delivery period is deemed observed if the goods have left the factory, or if BEK has notified the customer that the goods are ready for dispatch, by its expiry.
- (4) The statutory provisions are authoritative for the commencement of default in delivery. In the event of default in delivery, the customer is entitled to withdraw from the contract after it has set BEK – upon commencement of the default in delivery – a reasonable additional period of time for performance to no avail.
- (5) If BEK has entered with the customer into a framework agreement concerning future deliveries which stipulates fixed delivery dates or periods during which to call for the goods and the customer does not request the goods timely, within the agreed upon periods of time, BEK may deliver the goods and issue an invoice, withdraw from the contract or, if the customer has acted in a negligent or willful manner, claim damages in lieu of performance after a reasonable additional period of time granted has expired to no avail.
- (6) If a framework agreement, as defined in the preceding paragraph (5), does not stipulate a particular period of time during which to call for the goods, a 12-month period, beginning with the customer's receipt of the confirmation of the order, shall be deemed agreed upon.

Section 5 Passing of Risk

- (1) The risks of accidental loss, destruction or deterioration of the goods passes to the customer with the handover of the goods, at the latest.
- (2) If, at the request of the customer, the goods are shipped to the customer or to a third party, the risk of accidental loss, destruction or deterioration of the goods and the risk of a delay pass to the customer as soon as the goods are handed over to the person carrying out the transport or as soon as the goods leave the warehouse for the purpose of shipment. This applies also when partial deliveries are made or when BEK has assumed further obligations, such as the cost of transportation or the set-up of the goods at the customer's place. Unless otherwise agreed, BEK shall be entitled to determine the manner of shipment (in particular, the carrier, the shipping route, and the packaging) itself. At the request and expense of the customer, BEK will take out transport insurance to insure the goods against the risks specified by the customer.
- (3) If the customer defaults in acceptance or breaches other duties to cooperate, BEK may demand to be compensated for the damage sustained including additional expenses, if any. The risk of accidental loss, destruction or deterioration of the goods passes to the customer at the point in time the customer defaults in acceptance.
- (4) If the customer defaults in a willful or negligent manner in the acceptance of the goods, BEK is entitled to withdraw from the contract after setting a reasonable additional period of time for acceptance of the goods which expires to no avail. The customer must pay BEK for each day of default in acceptance liquidated damages in the amount of 0.3% of the total order value, at maximum, however, 5% of the total order value. This does not affect the right of BEK to assert further claims for damages. The liquidated damages will be counted towards the damage actually sustained by BEK.
- (5) In the event that the customer defaults in acceptance, BEK is entitled, after setting a reasonable additional period of time for acceptance of the goods which expires to no avail, to otherwise dispose of the goods and to supply the customer subsequently, during a reasonably extended delivery period, instead of asserting the rights stipulated in paragraph (4) of this Section 5.
- (6) If the dispatch of the goods is delayed at the request of the customer for more than one month after readiness for dispatch has been notified, BEK may bill the customer for the cost incurred through the storage of the goods in the premises of BEK, at least, however, for an amount of 0.5% of the value of the goods per commenced month.
- (7) Without prejudice to its claims for defects, the customer must take delivery of the goods supplied even if they have minor defects.

Section 6 Prices and Payment

- (1) In the absence of a different agreement, prices are "ex works", but without packaging. The customer will be billed for packaging additionally. Statutory value-added tax is not included in the prices and will be stated separately in the invoice at the statutory rate applicable on the day the invoice is issued.
- (2) If the goods are shipped according to Sec. 5 paragraph (2) above, the customer bears the cost of transportation from the warehouse of BEK.
- (3) If the period of time between the conclusion of the transaction and the agreed delivery date is more than three months or if the goods are supplied more than

- three months after the conclusion of the contract for fault on the part of the customer, BEK is entitled to demand from the customer the price newly calculated at the time of delivery, rather than the price agreed upon originally. The newly calculated price will especially take account of increases in costs, for example, increases in the prices of materials, which occur after the conclusion of the contract.
- (4) BEK will bill the customer for orders for which fixed prices have not been expressly agreed upon at the prices calculated by BEK on the day of delivery.
 - (5) Unless otherwise agreed, the delivery price is payable 30 days after the invoice date without any deduction. The day on which BEK can dispose of the delivery price will be deemed the date of payment.
 - (6) Accounts receivable of BEK that are owed by the customer will fall due immediately if the agreed terms of payment are not complied with or if it becomes obvious after the conclusion of the contract that an account receivable is jeopardized by a lack of liquidity on the part of the customer. In this case, BEK has additionally the right to make deliveries only against prepayment or against the provision of other security.
 - (7) If it becomes obvious after the conclusion of a contract that the claim of BEK for payment of the purchase price is jeopardized by a lack of liquidity on the part of the customer (e.g., because of a petition for the institution of insolvency proceedings), BEK may refuse to perform and – where necessary, after fixing a deadline for performance – withdraw from the contract (Sec. 321 German Civil Code) in accordance with the statutory provisions. In the case of contracts concerning the manufacture of products made to specification of the customer, BEK may withdraw from the contract immediately; this does not affect the statutory rules as to when the setting of a deadline is dispensable.
 - (8) BEK is entitled to apply payments received from the customer first against the customer's oldest debt. If costs and interest have already accrued, BEK may apply the payment first against the costs, then against interest and finally against the principal claim.
 - (9) The customer has the right to make a set-off only if its counterclaims have been established by final declaratory judgment or if they are undisputed. A right to retain may be asserted by the customer only if the customer's counterclaim is based on the same contractual relationship.
 - (10) BEK will accept bills of exchange only on behalf of performance and only with the reservation that the bill must be discountable. All costs related to a bill are to be borne by the customer.

Section 7 Claims for Defects and Liability

- (1) As a prerequisite for claims of the customer for defects, the customer must have performed its statutory obligations to examine the goods and report defects; this means that the customer must examine the goods supplied upon receipt and notify BEK in writing of any defect discovered without undue delay, but no later than two weeks after the receipt of the goods. Hidden defects must be reported to BEK in writing without undue delay, but no later than two weeks after their discovery. When reporting defects to BEK, the customer must describe the defects in writing. If the customer fails to report defects as described above, BEK will not be liable for defects not reported.
- (2) The customer is obliged to send the goods at its own expense to BEK for their examination for alleged defects.
- (3) If the goods are defective, BEK may repair the defect or, at its choice, may supply a good that is free of defects ("subsequent performance"). If BEK chooses to repair the defect, BEK must bear all expenses required for repair, in particular, the cost of transportation, travels, labor and material, to the extent that there is no increase in these costs as a result of the fact that the goods have been transferred to a place other than the delivery address. All personnel and material costs claimed by the customer in this respect must be calculated at cost price and be proven.
- (4) If BEK is unwilling or unable to repair defective goods or make a substitute delivery, the customer may choose between withdrawing from the contract or reducing the delivery price. The same rule applies in the event that subsequent performance in the form of a repair or substitute delivery is unsuccessful, poses an unreasonable burden on the customer or is delayed for an unreasonable period of time for reasons for which BEK is responsible.
- (5) The customer's right to withdraw from the contract is excluded if the customer is not able to return the services or goods received unless returning them is impossible because of their nature, or unless BEK is responsible for such inability, or unless the defect has not become apparent until the goods have been processed or transformed.
- (6) The customer's right to withdraw from the contract is further excluded if BEK is not responsible for the defect of the good.
- (7) Claims of the customer for defects do not exist if the goods deviate only immaterially from the agreed quality, if the usability of the good is affected only immaterially, or if the damage occurs only after the risk has passed as a consequence of incorrect or negligent handling, excessive strain or particular external impacts not supposed to occur according to the contract.
- (8) Claims for defects do not exist with respect to defects that are due to natural wear and tear of the goods, to improper handling of the goods, or to changes or repairs of the goods carried out by the customer or a third party in an improper manner. The same applies to defects that are attributable to the customer or the cause of which is not the original defect.
- (9) Claims of the customer for reimbursement of expenses instead of damages in lieu of performance are excluded unless a third party acting reasonably would have made the same expenses.

- (10) BEK assumes unlimited liability for any damage or losses resulting from a breach of guarantee or from death, bodily injury or damage to health. The same applies to willful misconduct and gross negligence. In all other cases, BEK will be liable for simple negligence only in the event of a breach of material contractual obligations that result from the nature of the contract and are of particular relevance for achieving the purpose of the contract. If such material contractual obligations are breached, if BEK defaults, or if performance is impossible, the liability of BEK is limited to such damage or losses as can typically be expected to occur under such a contract. This does not affect mandatory statutory liability under the German Product Liability Act.
- (11) The limitation period for claims of the customer for defects is one year unless the defective good has been used for a building in line with its customary use and has caused a defect of this building. Additionally, the one-year limitation period applies to tort claims that are based on a defect of the good. The limitation period commences when the good is handed over to the customer of BEK. If acceptance of the good has been agreed upon, the limitation period commences with acceptance. This does not affect the unlimited liability of BEK for damage or losses resulting from a breach of guarantee or from death, bodily injury or damage to health, for willful misconduct and gross negligence, and for product defects. If BEK comments upon a claim for defects asserted by the customer, this is not to be deemed an entry into negotiations as to the claim or the circumstances giving rise to the claim if the claim for defects is fully rejected by BEK.
- (12) If the limitation period for claims for defects commences anew as a consequence of repairs or the delivery of a new item, the new limitation period is also one year from the handover or acceptance of the repaired or newly delivered good. In all other cases, the original limitation period according to paragraph (11) above continues unchanged.
- (13) Rights of the customer to have recourse to BEK pursuant to Sec. 478 German Civil Code exist only to the extent that the customer has not made arrangements with its own purchaser beyond the scope of the statutory claims for defects.
- (14) If BEK manufactures goods on behalf of the customer and sells these goods to the customer, BEK is not liable for the goods being free from third-party rights. In this respect, the application of Sec. 435 German Civil Code is excluded.
- (15) If BEK manufactures goods for the customer according to the customer's documents and specifications, BEK is not liable for defects which arise from deficient development by the customer or from incorrect documents or specifications of the customer.
- (16) If the customer supplies BEK with material for the manufacture of the goods ordered, BEK is not liable for defects of the manufactured goods that are due to defects of the material supplied by the customer.

Section 8 Retention of Title

- (1) The goods supplied remain the property of BEK until all accounts receivable owed to BEK by the customer as a result of the business relationship have been fully paid. The customer is obliged to handle all goods to which title is retained, and as long as title is retained, with due care. In particular, the customer is obliged to sufficiently insure the goods at its own expense at replacement value against damage by fire, water and theft. The customer assigns to BEK already now all claims for compensation under this insurance. BEK hereby accepts this assignment. In the event that such an assignment is not permissible, the customer hereby instructs its insurer irrevocably to make payments, if any, solely to BEK. This does not affect further claims of BEK. Upon request, the customer must furnish BEK with evidence of the conclusion of the insurance contract.
- (2) The customer may sell the goods to which title is retained only in the ordinary course of business. The customer is not authorized to pledge the goods to which title is retained, to transfer them by way of security, or to make other dispositions that jeopardize the property of BEK. In the event of attachments or other encroachments by third parties, the customer must notify BEK without undue delay in writing and provide all information needed, advise the third party of the property rights of BEK, and assist with the measures taken by BEK to protect the goods to which title is retained.
- (3) The customer assigns to BEK already now all accounts receivable arising from the resale of the goods, including all ancillary rights, irrespective of whether the goods to which title is retained are resold without or after further processing. BEK accepts this assignment already now. In the event that such an assignment is not permissible, the customer hereby instructs the third-party debtor irrevocably to make payments, if any, solely to BEK. The customer is authorized – this authority being subject to revocation – to collect the accounts receivable assigned to BEK in its own name on behalf of BEK on a trust basis. All amounts collected must be remitted to BEK immediately. BEK may revoke the customer's authority to collect accounts receivable and its right to resell the goods if the customer fails to properly perform its payment obligations towards BEK, if the customer is in default of payment or stops payment, or if a petition is filed for the institution of insolvency proceedings against the assets of the customer.
- (4) In the event that the customer defaults in payment, BEK may, without prejudice to its other rights, withdraw from the contract without fixing a deadline for performance first. The customer must grant BEK or its agents immediately access to the goods to which title is retained and surrender these goods. After a timely warning to this effect, BEK may use the goods to which title is retained in another manner for the settlement of its accounts receivable due from the customer.
- (5) Any processing or transformation by the customer of the goods that are subject to this retention-of-title clause will be deemed made on behalf of BEK. The customer's right to acquire ownership of the goods to which title is retained continues to exist as a right to acquire ownership of the processed or transformed item. If the goods are processed, combined or mixed with items not owned by BEK, BEK acquires a co-ownership interest in the new item that is equal to the ratio of the value of the goods supplied to the value of the other items processed at the time of processing. The customer will store the new items on behalf of BEK. In all other

respects, the item created by processing or transformation shall be governed by the same provisions as the goods that are subject to this retention-of-title clause.

- (6) If so requested by the customer, BEK is obliged to surrender the security interests to which BEK is entitled to the extent that the realizable value of these security interests exceeds BEK's accounts receivable arising from the business relationship with the customer by more than 10% upon deduction of the mark-downs customary in the banking business. For this purpose, the goods to which title is retained are to be assessed at their invoice value, and the accounts receivable are to be assessed at their nominal value.
- (7) In the event that goods are delivered to destinations with other legal systems in which the retention of title pursuant to paragraphs (1) to (6) above does not offer the same degree of protection as in the Federal Republic of Germany, the customer hereby grants BEK an according security interest. If the creation of this security interest requires further declarations or actions, the customer will make these declarations and perform these actions. The customer will assist with all measures required for, and conducive to, the validity and enforceability of such security interests.

Section 9 Product Liability

- (1) The customer may not modify the goods; in particular, the customer may not modify or remove existing warnings of risks of an improper use of the goods. If the customer violates this obligation, it must indemnify BEK internally against all product liability claims asserted by third parties to the extent that the customer is liable for the defect giving rise to liability.
- (2) If BEK must carry out a product recall or issue a product warning because of a product defect of the goods, the customer will assist BEK and take all measures ordered by BEK, provided that these do not pose an unreasonable burden on the customer. The customer is obliged to bear the cost of the product recall or product warning as far as the customer is responsible for the product defect and the damage sustained according to the principles of product liability law. This does not affect additional claims of BEK.
- (3) The customer will notify BEK without undue delay of any risks resulting from the use of the goods and possible product defects of which the customer becomes aware.
- (4) If BEK is held liable by a third party in accordance with the provisions of the German Product Liability Act, the customer must indemnify BEK against these claims for damages because the customer has examined the goods after the handover and has placed them on the market as goods being free of defects.

Section 10 Force Majeure

- (1) If BEK is prevented by force majeure from performing its contractual obligations, in particular from delivering the goods, BEK will be released from its obligation to perform for the duration of the impediment and a reasonable start-up period without being liable to the customer for damages. The same applies if the performance of its obligations by BEK is unreasonably impeded or becomes temporarily impossible because of unforeseeable circumstances for which BEK is not responsible, especially because of industrial action, acts of public authorities, energy shortage, delivery problems on the part of a supplier or major disruptions of operations.
- (2) BEK is entitled to withdraw from the contract if such an impediment continues for more than four months and the performance of the contract is no longer of interest to BEK as a consequence of the impediment. At the request of the customer, BEK will declare after the expiry of this four-month period whether BEK makes use of its right to withdraw from the contract or whether BEK will deliver the goods within a reasonable period of time.

Section 11 Confidentiality

The contracting parties agree to maintain for an unlimited period of time the confidentiality of any and all information received or learned from the respective other party that is designated as confidential or can be recognized as constituting trade or business secrets in any other manner, and they further agree not to record or pass on or exploit such information. The contracting parties will ensure by means of suitable contractual arrangements with their employees and agents that these persons, too, refrain for an unlimited period of time from any exploitation for their own purposes, transfer or unauthorized recording of such trade or business secrets.

Section 12 Industrial Property Rights and Copyrights

- (1) If a delivery comprises software or other intellectual property, this software or other intellectual property is provided to the customer on the terms of the copyright license or license to use, as set forth in the license agreement enclosed with the software or the other intellectual property. These terms grant no rights and no license to use such software or other intellectual property in a manner or for a purpose not expressly permitted by the license agreement.
- (2) Unless otherwise agreed, the obligation of BEK to make a delivery that is free of industrial property rights and copyrights of third parties shall be limited to the country where the place of delivery is situated.

Section 13 Export, Export Control

- (1) The goods supplied are supposed to remain in the country of delivery agreed upon with the customer. Signments of goods that are subject to embargo provisions may not be exported by the customer
- (2) The goods supplied are, in particular, subject to German, European and American export controls and embargo provisions. It is the responsibility of the customer to

inquire about according export and/or import regulations or restrictions and to obtain according permits, where necessary.

- (3) The customer will impose the same obligation on its employees.

Section 14 Miscellaneous

- (1) The assignment of rights and obligations of the customer to a third party is permissible only with the written consent of BEK.
- (2) The legal relationships between the customer and BEK shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (3) Exclusive place of jurisdiction for all disputes arising out of the business relationship between BEK and the customer shall be the seat of BEK. BEK may sue the customer additionally at the customer's seat.
- (4) Place of performance for all obligations to be performed by the customer and BEK shall be the seat of BEK.
- (5) If a provision of this agreement is invalid or impracticable in whole or in part, or if there is a gap in this agreement, this shall not affect the validity of the remaining provisions hereof. The invalid or impracticable provision shall be deemed replaced with such valid or practicable provision as comes closest to the purpose of the invalid or impracticable provision. If there is a gap in this agreement, such provision shall be deemed agreed upon as corresponds to what the contracting parties would have agreed upon according to the purpose of this agreement had they considered this matter from the beginning.