

**1. Placing of Order:**

1.1 These purchase conditions ("Terms & Conditions of Procurement") shall apply to any and all orders placed by BENTELER– including future orders. Any conflicting business conditions of the Contractor shall not be accepted by BENTELER unless acceptance is provided in writing by BENTELER.

Orders by BENTELER shall only be valid if made in writing. Any orders provided electronically shall only be valid if BENTELER and the Contractor enter into a framework agreement.

1.2 In relation to any agreed commercial clauses, the version of the ICC Incoterms effective at the time of the order shall apply.

**2. Acceptance of Order:**

In the event BENTELER sends an order confirmation, the Contractor shall return the signed order confirmation form to BENTELER within seven calendar days. If the signed order confirmation does not reach BENTELER within this time, BENTELER is permitted to cancel the order.

**3. Delivery Regulations/ Transport:**

3.1 Contractor shall deliver goods to the delivery address printed on the front of the order. In the event Contractor fails to adhere to these and other delivery instructions, Contractor shall be liable to BENTELER we will charge the supplier with the costs BENTELER incurs as a result of such failure.

For deliveries Ex-Works shall apply:

- Small packages with a load of max. 30 kg: Assignment of the best-price parcel service with standard tariff
- Deliveries with a load of > 30 kg: Assignment of responsible transportation service according to our document "Shipping Instructions" (available at [www.benteler.com](http://www.benteler.com))

3.2 The Contractor must deliver goods during ordinary delivery times (Monday - Friday from 7:00 a.m. to 2:30 p.m.) unless otherwise agreed to by BENTELER in advance. If deliveries are sent from countries not belonging to the European Union ("EU") or from a free zone in the EU, the Contractor shall require the transportation service to declare the goods at the customs. The accompanying customs documents shall be attached to the delivery twice, including our order data.

**4. Deliveries:**

Only those quantities ordered shall be delivered. Any additional quantities may be returned by BENTELER at the expense and risk of the Contractor without any prior notification and with a corresponding reduction of the invoice. Contractor is permitted to deliver partial goods or services only after prior agreement with BENTELER. Our right to demand partial deliveries will remain unaffected. BENTELER shall submit payment for deliveries within the agreed-upon time period after delivery. In the event of a deviation in the amount, weight or chemical composition of the goods (as determined by our Goods Inwards Departments), BENTELER reserves the right to withhold or offset payment for deliveries according to Section 7 below.

**5. Delivery Dates/Delay:**

5.1 The delivery date provided in the order is binding. Contractor shall promptly communicate any anticipated delays in delivery or performance to BENTELER without undue delay. In the event of delivery earlier than the provided delivery date, or as otherwise agreed, BENTELER reserves the right not to reject such delivery and/or to store the goods at the cost and risk of the Contractor.

5.2 In the event Contractor cannot or will not meet delivery deadlines, the Contractor shall promptly communicate to BENTELER a plan to deliver the goods as closely to the delivery date as possible at Contractor's expense. Our right to terminate the contract before due date according to the regulatory rules will remain unaffected.

**6. Acceptance Provisions for Machinery, Equipment or Tools:**

Where Contractor will supply of machinery and equipment or tools, all provisions of the law on contracts for work and services that regulate acceptance shall apply.

**7. Invoicing, Assignment, set-off and withholding:**

7.1 Immediately after delivery, invoices shall be sent separately from the delivery to BENTELER Steel/Tube GmbH & Co KG, Residenzstraße 1, 33104 Paderborn in duplicate, and shall include all of the details of the order. Invoices will be regarded as having been received only if they comply with the terms of this Section 7. In the case of delivery to several plants, separate invoices shall be issued. The measurements, weights and quantities determined by BENTELER shall be used for the purpose of invoicing unless the Contractor prove that its own calculations are correct.

7.2 For assignment of debts and for transfer of collection of debts against BENTELER, the Contractor shall first secure BENTELER's prior written approval. A collection of accounts receivables by Contractor is only applicable for debts being undisputed or otherwise established as final and absolute. BENTELER shall only give a right of retention to Contractor's creditors if the corresponding amount is undisputed or established as final and arises from the same contract obligations with BENTELER.

**8. Payments:**

Payment shall rendered after the receipt and approval of the goods or services according to our agreement. In the event of any partial delivery, the payment deadline shall be calculated for the entire delivery from the day following the date of the entire order is delivered. The choice in the means of payment will be made at BENTELER's discretion. For prepayments, BENTELER may require Contractor to provide debt securities. BENTELER is entitled to rights of retention and set-off according to the legal regulations.

**9. Defects:**

9.1 The Contractor shall undertake quality controls during the production and shall carry out a check at the dispatch and accordingly shall check parts supplied. BENTELER shall give notice of any defects as soon as commercially reasonable after such defects are detected.. The Contractor waives any objection in this regard based on a late notification of defect.

9.2 If a material defect becomes apparent within six months after the transfer of risk, it shall be presumed that the item was already defective at the time of the transfer of risk, unless this presumption is incompatible with the nature of the item or the defect.

9.3 The Contractor accepts the statutory warranty for defects occurring within 36 months of delivery as far as no other mandatory legal deadlines apply. § 434, section 1, sentences 2 and 3 of the German Civil Code (BGB) shall also apply to any goods or services contracts.

9.4 BENTELER is entitled to claims relating to legal defects and damages without any deductions, including all extra expenses, like the costs for disassembly and assembly of the defective goods, as well as any necessary transport to a location other than the place of performance. The Contractor shall indemnify, hold harmless and defend BENTELER against any third-party-claims resulting from the delivery of the Contractor to the extent that the Contractor is itself liable to BENTELER.

9.5 To counter any imminent risk of serious damage BENTELER may, at the expense of the Contractor and without any notice or setting a deadline in relation to the Contractor, correct any defect itself, have the defect corrected, or obtain a replacement, provided that because of the special urgency it is no longer possible to inform the Contractor of the defect and the possible damage and it is no longer possible to give the Contractor the opportunity to correct such defect.

**10. Penalty Clause:**

In the case the parties agree to penalty clause, BENTELER may request and receive from Contractor the payment of the forfeited penalty clause if BENTELER does not claim the penalty payment at the time it is incurred. The penalty must be claimed byt the time of final payment.

**11. Loaned Material/Fringe benefits:**

Any models, drawings, samples, tools, gauges, software or hardware or other technical equipment or documents made available to the Contractor, or produced by the Contractor as specified by BENTELER, shall not be disposed of, pledged or transferred to third parties or used in any other way without the written approval of BENTELER. The same shall apply to any objects produced with the help of such production equipment. All the named materials and objects shall remain the tangible and intellectual property of BENTELER and shall be returned upon the ending of the contract, without any need for such being requested. Insofar as production takes place according to the specifications of BENTELER, BENTELER shall become the owner upon full payment.

**12. Retention of Title:**

Any extended or enlarged retention of title by the Contractor is excluded.

**13. Hazardous and Substances Requiring Notification:**

In the course of its performance hereunder, the Contractor shall comply with the applicable statutory regulations of the European Union and the Federal Republic of Germany, e.g. Reach Regulation (EC) No. 2020/878, End-of-life Vehicle Act and Electrical and Electronic Equipment Act. If the goods to be delivered are hazardous substances in terms of the Chemical Act, the statutory safety data sheets shall be enclosed in accordance with RL 91/155/ECC or Reach Regulation (EC) No. 2020/878. Immediately after any revision of this data, the Contractor shall send BENTELER the changed version without any need for BENTELER to request such. The Contractor shall also provide without undue delay details of any relevant changes to the goods, in the ability to supply, in application possibilities or in the quality caused by legal regulations, and in particular the Reach Regulation, and the Contractor shall consult with BENTELER as to suitable measures in each case. The same shall apply as soon as and to the extent that the Contractor becomes aware, or should have become aware, that such changes will take place.

**14. Data Protection/Confidentiality/Advertising:**

The Contractor shall treat as a trade secret all details, regardless of the form of such, of an apparently commercial or technical nature of which it becomes aware from the business relationship with BENTELER. The Contractor shall refer to its business relationship with BENTELER in its advertising only if BENTELER has expressly agreed to such in writing. BENTELER may digitally process and store any data related to the Contractor in terms of the German Federal Data Protection Act.

**15. Proprietary Rights:**

The Contractor shall indemnify, hold harmless and defend BENTELER against any claims of third parties based on infringement of proprietary rights as well as any resulting costs to BENTELER, insofar as the Contractor or any of its agents or vicarious agents culpably cause such infringement. The parties shall notify each other without undue delay if any claim is made against a party based on infringement of proprietary rights.

**16. Force Majeure:**

In case of any force majeure event, including but not limited to, strikes, lockouts, unrests, any acts of the authorities or any other unforeseeable, unavoidable events beyond the responsibility of BENTELER, BENTELER may postpone the performance of any acceptance duty by the period of such hindrance and a reasonable preparation period. If the performance of the contract becomes unreasonable for a contract partner as a result, the contract partner may withdraw from the contract. The right of withdrawal for the contractor presumes, that the event is not caused by the contractor and the contractor has not been in delay. Any such delay of acceptance duties or any such withdrawal from the contract shall not allow the Contractor to claim compensation.

**17. Insolvency:**

If the Contractor suspends the performance of its duties and a provisional insolvency administrator is appointed, an insolvency proceeding is started, or the start will be refused for lack of assets, BENTELER is entitled to terminate an agreement or order partially or in the whole, without Contractor asserting claims against BENTELER.

**18. Liability:**

- 18.1 For damages caused by intentional misconduct or gross negligence, as well as for damages resulting from injury to life, body and health ("personal injury"), Contractor shall be liable to BENTELER without limitation in accordance with applicable statutory provisions.
- 18.2 In the event of a simple negligent breach of essential contractual obligations which are indispensable for the achievement of the purpose of the contract and on whose strict compliance the Contractor must therefore be able to rely, we shall be liable - unless personal injury is involved - in accordance with the statutory provisions, BENTELER's liability shall be limited to such damages as were foreseeable to BENTELER in terms of type and scope at the time the contract was concluded; in the event of default in payment, this shall also include the statutory default interest rate.
- 18.3 In all other respects, fault-based claims of the Contractor for compensation for direct or indirect damage - irrespective of the legal grounds, including any claims for compensation for breach of pre-contractual obligations and tort - shall be excluded. Liability based on fault shall remain unaffected. In all other respects, the Supplier shall be liable in accordance with the statutory provisions.
- 18.4 In the event that claims are asserted against BENTELER by a customer or other third party due to product liability, the Contractor shall indemnify BENTELER against such claims upon written request, insofar as the damage was caused by a defect in the deliveries/services provided by the Contractor. In cases of fault-based liability, this shall only apply if the Contractor is at fault. The Contractor shall also be obliged to reimburse us for any expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with a recall action.

**19. counterfeit, fraudulent and suspect Items (CFSI)**

The Contractor undertakes to protect BENTELER from the delivery of counterfeit, fraudulent or suspect products and services within the scope of its agreed services and installs appropriate processes for the prevention, observation, detection and internal reporting of counterfeit and fraudulent products and services.

**20. Insurance:**

- 20.1 The Contractor shall secure, at its own expense, third party liability insurance and extended product liability insurance to cover claims of third parties arising from defective goods or services. This includes property damage, personal injury, and financial loss such as, including but not limited to further processing costs, assembly and disassembly costs, testing costs and sorting costs.
- 20.2 For any Goods that will ultimately be used in the production of vehicles/vehicle parts, the Contractor shall provide insurance for recalls which covers the costs of notification, inspection, sorting, storage, removal, installation and destruction.
- 20.3 The Contractor shall maintain the insurance throughout the term of the contract and shall ensure that after the ending of the contract any damage, which was caused at least in part during the term of the contract, remains insured.
- 20.4 The amount of coverage for the above-named insurance shall be respectively at least EUR 5 million for any one occurrence and in the annual aggregate, in case of 20.2 min. 10 million Euro.
- 20.5 The Contractor, either itself or through its insurer, shall provide BENTELER written evidence of the effecting and continuation of the insurance described above.
- 20.6 If the Contractor fails to provide the necessary written proof of insurance coverage, BENTELER may, but is not obliged to do so, purchase the requisite insurance for the Contractor at fair market conditions at the expense of the Contractor.

## **21. Export Controls and Customs Requirements**

- 21.1 The Contractor shall notify BENTELER of permit requirements or restrictions for re-export or export of its Goods in accordance with German, European, and U.S. export and other customs laws and regulations, as well as the export provisions of the country of origin of the Goods. For Goods requiring authorization, the Contractor must provide and send the following information to BENTELER in timely manner before the first delivery:
- BENTELER-material number
  - Goods description
  - All applicable list numbers according to EG DUAL-USE VO including Export Control Classification Number according to U.S. Commerce Control List (ECCN)
  - Trade-policy place of origin of goods
  - Customs-tariff number (HS-code)
  - A contact person in its organization for the clarification of any queries.
- 21.2 The Contractor shall notify BENTELER immediately on licensing requirement changes related to the Goods due to technical, legislative changes or governmental statements.
- 21.3 Mail address of Exportcontrol-Department at BENTELER Steel/Tube GmbH & Co. KG:  
exportkontrolle.sr@benteler.com

## **22. Jurisdiction:**

For all rights and obligations arising out of the contract, the delivery address given in the order applies as the place of performance for both parties. The exclusive venue is Paderborn. However, instead of the afore mentioned court, BENTELER is entitled to appeal to any other court that is competent according to the statutory provisions.

## **23. Applicable Law:**

This contract shall be subject to the law of the Federal Republic of Germany and shall exclude the private international law and United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN-purchase law).

## **24. Partial Invalidity:**

Should individual parts of these Terms and Conditions of Purchase be legally ineffective, the effectiveness of the remaining provisions shall not be affected thereby.

**The English translation is for convenience only. In case of discrepancy, the German version of these Purchase Conditions shall prevail**