

## General Purchase Conditions (GPC) of BEGECA

### § 1 Components of the Contract

(1) Unless otherwise expressly agreed, these General Purchase Conditions apply to all ordered supplies and services between the Seller and BEGECA. The components of the contract comprise exclusively the written order from BEGECA with all annexes thereto, these General Purchase Conditions, the shipping instructions, the Incoterms of the International Chamber of Commerce, the Contracting Rules for Award of Public Service Contracts entitled 'Vergabe- und Vertragsordnung für Leistungen' (VOL) Part B (the two last-mentioned documents in the version valid at the time the contract is signed) and the offer submitted by the Seller. The valid version of BEGECA's code of conduct is a component of the contract pursuant to § 14 subparagraph (1) hereof.

(2) In the event of discrepancies, the aforementioned components of the contract shall apply in the order stated in subparagraph (1) above.

(3) The Seller's general terms and conditions of business will not be accepted.

### § 2 Quality Inspection and Inspections/Tests Customary in the Seller's Line of Business

BEGECA has the right to inspect the quality of all goods before they are packed or shipped, provided the seller has been informed when the order is placed.

(2) Any defects shall be remedied by the Seller without delay at his/her/its own expense.

(3) The quality inspection shall not in any way prejudice BEGECA's warranty claims.

(4) The quality inspection shall not replace inspections/tests customary in the Seller's line of business; in cases where such inspections/tests are customary, they shall be performed at the Seller's expense; one original and one copy of the customary inspection/test record shall be forwarded by the Seller to BEGECA without delay as soon as the inspection/test has been performed.

### § 3 Packing and Marking

(1) The Seller is responsible for the proper packing with consideration being given to the respective mode of shipment and bears the burden of evidence for this. BEGECA will assume packing costs and other incidental costs only if this has been expressly agreed.

(2) The type of packing must be suitable for the goods being transported, taking into account the mode of shipment used; it must be as environmentally-friendly as possible, appropriate for the climatic conditions and satisfy the legal requirements in the destination and transit countries.

(3) Hazardous goods must be packed and marked in accordance with the laws and regulations applicable to the means of transport in question.

(4) Packages shall be marked as directed by BEGECA or BEGECA's forwarding agent, without specific indication of their content or the company from which they come, and must comply with the regulations of the destination and transit countries. Each package is to be marked at least on two opposite sides, in accordance with BEGECA's shipping instructions, with the gross and net weights, external dimensions and, where appropriate, with symbols for fragile goods, hook attachment points, indications of centre of gravity and potential dangers.

(5) The Seller is liable for damage attributable to inadequate or defective packing or marking.

(6) The forwarding agents contracted by BEGECA are instructed to refuse to accept packages which do not comply with the above conditions, or to arrange for the shortcomings to be remedied at the Seller's expense.

### § 4 Export Procedures

(1) The Seller is required to comply with the pertinent regulations regarding foreign trade and payments as well as customs clearance.

(2) If the goods are supplied by a branch establishment or permanent establishment in the Federal Republic of Germany, the Seller is required to observe BEGECA's notes on export procedures.

(3) The Seller shall be liable vis-à-vis BEGECA for all damage arising as a result of failure to comply with the requirements of subparagraph (1) or (2) above.

### § 5 Main Transportation by BEGECA Forwarder

If the main transportation is arranged by a forwarding agent contracted by BEGECA, the following provisions shall apply:

(1) The forwarder contracted by BEGECA shall be responsible for monitoring deadlines as well as for handling transportation of the goods. When executing the order, including the issuing of any necessary reminders, he/she/it shall act vis-à-vis the Seller on BEGECA's behalf and as BEGECA's agent. The Seller must comply in good time with the forwarder's instructions and with the request for submission of freight declarations so as to permit cost-effective handling of the consignments. Any extra costs incurred as a result of failure to comply with the shipping instructions or the forwarder's instructions shall be borne by the Seller.

(2) If the main transportation is to be carried out by sea-going ship, the forwarder shall call for the consignment from the Seller in good time. Should no suitable option be available to ship the goods on the agreed delivery date, the Seller shall be obliged to store the goods ready for calling, at his/her/its own expense and risk, until the departure of the next possible ship, but at the longest for one month. The Seller shall also be liable for any damage occurring as a result of simple negligence during such storage. The Seller shall reimburse BEGECA for any costs incurred as a result of goods being delivered to

the seaport before the specified date, delivered in a form unsuitable for calling, or unsolicited.

(3) Consignments to be transported by air will be called for by the forwarding agent.

(4) If the main transportation is to be carried out by rail or truck, the Seller will be notified of the delivery address by the forwarding agent contracted by BEGECA. Early deliveries may be made only with the consent of this forwarder.

### § 6 Exclusion of Part Deliveries and C.O.D. Consignments

(1) Part deliveries may be made only with the written consent of BEGECA. They must be identified as such in all shipping and delivery documents, as well as in the marking on the packages, and must be consecutively numbered. BEGECA may refuse to accept unauthorised part deliveries.

(2) Cash On Delivery (C.O.D.) consignments are not permitted.

### § 7 Delivery Documents and Technical Documentation

(1) The Seller shall make available the documents listed below and those specified in the shipping instructions in good time before the goods are shipped. Costs incurred in connection with procurement of the documents are deemed to be covered by the purchase price of the goods and will not be refunded separately.

(2) Two copies each of the necessary operating and assembly instructions in German or English and in the language commonly used in the recipient country shall be included with the consignment free of charge. If additional foundation layout plans and circuit diagrams are required to permit preparations for installation to be made, such documents are to be submitted to BEGECA in duplicate, quoting the BEGECA order number, as soon as the order has been placed. Technical inspection certificates or official approval certificates are to be submitted at the latest with the other delivery documents.

(3) The packing list or confirmation of contents shall be drawn up in the language of communication in the country of destination; in addition to quoting the BEGECA order number, it must state the precise content, the gross and net weights and the complete markings of each package. An additional copy of the list is to be included with each package.

(4) In addition to the documents specified, the shipping instructions may require the Seller to supply further documents, in some cases certified and in foreign languages.

(6) The Seller is obliged to supply together with the consignments the accompanying documents required by law (e.g. legislation pertaining to foreign trade and payments, customs legislation, regulations concerning hazardous goods). Unless otherwise agreed, these documents are to be handed over to the forwarder contracted by BEGECA; an additional

copy of each document is to be forwarded to BEGECA.

#### **§ 8 Maturity of the Purchase Price**

(1) The purchase price shall be paid within the agreed period for payment upon submission of a proper itemised commercial invoice made out as stated in subparagraph (2) below, the delivery documents specified in § 7 above and evidence of shipment. If part deliveries not authorised as stated under § 6 (1) above are made, the total purchase price shall not be due until the requirements of sentence 1 above are satisfied, the goods have been delivered in full and the commercial invoice for the last part delivery, together with the aforementioned annexes, has been received by BEGECA.

(2) The commercial invoice must be made out to BEGECA; it must quote the full BEGECA order number and state the number of packages, their gross and net weights and their markings. Where turnover tax is charged, it must be specified separately. A separate commercial invoice is to be made out for each consignment.

(3) Depending on the mode of main transportation used, the following documents will be recognised as evidence of shipment: acknowledgements of receipt issued by the forwarder contracted by BEGECA, ocean bills of lading, duplicate railway bills of lading, post office receipts, and FIATA combined transport bills of lading, air waybills or road haulage bills of lading made out by the respective carrier; certificates of receipt issued by the preliminary forwarder will not be accepted in the case of FCA or FOB deliveries.

(4) Discount periods do not commence until the contract has been fulfilled in its entirety, i.e. all agreed documents have been received; in the case of non-authorised part deliveries they do not commence until all documents for the entire consignment have been received by BEGECA.

(5) BEGECA shall be entitled to withhold 15 % of the amount invoiced until the statutory limitation period for lodging warranty claims has expired if composition or bankruptcy proceedings have been instituted against the Seller, or a petition to this effect has been filed, at the time when payment is due.

#### **§ 9 Offsetting of Claims**

The Seller may offset only against such claims as are undisputed or established as having legal force.

#### **§ 10 Contractual Penalty in the Case of Late Delivery**

Should the Seller be late in delivering the goods, BEGECA is entitled to impose a contractual penalty amounting to ½ % of the agreed purchase price for every full week of the delay and to 1/12 % for every working day in a partial week of delay, up to a maximum of 10 % of the agreed purchase price (including packing and freight costs, plus value-added tax where applicable). The contractual penalty may be invoked by BEGECA up to the time at which the purchase price is paid, even if this right was not

reserved upon acceptance of the goods. Other claims for damages shall not be prejudiced hereby. However, the contractual penalty shall be deducted from such claims for damages.

#### **§ 11 Characteristics of the Goods**

(1) The goods must possess the characteristics stated in the contract, satisfy the agreed environmental and energy-specific requirements and be suitable for the conditions (in particular, climatic, technical and legal conditions) prevailing at the location in the country of use, of which the Seller was informed in the enquiry.

(2) The Seller is liable for the goods and services delivered being free of any rights of third parties. At first request the Seller shall indemnify BEGECA against claims by third parties arising from any infringements of rights.

#### **§ 12 Warranty**

(1) Unless otherwise agreed below, the Seller is liable in accordance with the statutory provisions for defects of title or quality.

(2) The consignee must examine the goods without delay upon their delivery to the recipient in the country of use insofar as this is possible in the ordinary course of business.

(3) Complaints regarding defects must be lodged with the Seller without delay as soon as such defects are discovered.

(4) The issue of receipts and effecting of payments by BEGECA shall not be construed as a waiver of any possible claims and rights.

(5) If the Seller fraudulently conceals a defect, he/she/it may not plead that BEGECA breached its obligation to lodge a complaint in respect of defects. The same shall apply if the Seller was unaware of the defect at the time of delivery due to gross negligence.

(6) Where replacement goods are provided to replace defective goods, BEGECA shall return the defective goods at the contractually stipulated location of use. If it is necessary to transport the goods from this location back to the Seller's registered office, then the Seller shall bear these costs.

#### **§ 13 Damage Incurred by the User**

BEGECA is also entitled to lodge claims vis-à-vis the Seller in respect of damage incurred by the user of the goods as a result of defects in the goods or failure on the part of the Seller to comply with other contractual obligations. 4

#### **§ 14 Integrity and Social Standards**

(1) BEGECA employees are obliged to observe the Code of Conduct that applies within BEGECA. The Seller undertakes to respect the rules and guidelines contained in the Code of Conduct in its dealings with BEGECA employees.

(2) The Seller undertakes to refrain from agreeing any restraints on competition with other bidders.

(3) The Seller and his/her/its employees and representatives are obliged to observe the statutory regulations for fighting corruption and not to offer, grant or accept from BEGECA employees, their family members or other close associates any gifts or other advantages in connection with the implementation of the order.

(4) In the case of infringement against one of the standards specified in subparagraph 1 - 3, BEGECA shall be entitled to demand a penalty of 10% of the agreed purchase price. Further claims for damages shall not be prejudiced hereby. However, the contractual penalty shall be deducted from such claims for damages.

(5) In the case of infringement against one of the standards specified in subparagraph 1 - 3 BEGECA shall be entitled to terminate the contract without notice or rescind it.

#### **§ 15 Applicable Law**

The law of the Federal Republic of Germany shall apply with the exception of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980.

#### **§ 16 Place of Performance, Jurisdiction**

(1) The place of performance for all payments shall be Aachen. BEGECA shall be obliged to return the goods following rescission of the contract at the contractually agreed place of delivery.

(2) The sole place of jurisdiction for all disputes arising from this contract shall be Aachen. BEGECA is also entitled to bring legal action against the Seller before the courts at the location of his/her/its registered office or at the location of the branch establishment which concluded or executed the contract.

#### **§ 17 Written Form**

Supplements and amendments to the contract are effective only when made in writing.

Aachen, 01.08.2011