

General Terms of the Humanitarian Procurement Centre BEGECA (GT HPC)

1. Subject and scope

The responsibilities of BEGECA and the NGO client are ruled by the General Terms and Conditions of the Humanitarian Procurement Centre¹ / Humanitarian Central Buying Office² (HPC/HCBO) BEGECA as laid down in the latest version published on www.begeca.de

Services and products provided by BEGECA are limited to assisting non-governmental organizations and international Development Organisations, hereafter called NGO clients, engaged in the implementation of Development and Humanitarian Aid Programs. BEGECA reserves the right to accept or reject any request for services. The HPC BEGECA works in full compliance with the requirements and procedures for Humanitarian Procurement Centres laid down by DG ECHO.

2. Ethics

BEGECA shall endeavour to the best of its abilities to adhere to the principles laid down in the Humanitarian Procurement Centres Charter in its latest version, published by DG-ECHO.

The NGO client shall endeavour to the best of its abilities to adhere to the principles laid down in the Framework Partnership Agreement in its latest version, published by DG-ECHO.

The NGO clients agree not to re-sell on the commercial market products purchased from BEGECA. Such products may not be distributed or re-sold other than for public or humanitarian use.

3. Obligations of BEGECA

3.1 BEGECA shall supply goods and services up to delivery at destination as specified in the NGO clients Purchase Order.

3.2 BEGECA shall inform the NGO client on a regular basis of the status of execution of the Purchase Order.

3.3 BEGECA shall immediately inform the NGO client if and when deliveries, deadlines and budgets cannot be adhered to. BEGECA shall then advise the NGO client, to the best of its knowledge, on further implementation steps possible.

3.4 BEGECA shall ensure that commodities handed over to the consignee comply with contractual specifications.

4. Obligations of the NGO client

4.1 The NGO client shall register with BEGECA before the first purchase order can be executed.

4.2 The NGO client agrees to fulfill timely its financial obligations, deriving from a Purchase Order, towards BEGECA.

4.3 The NGO client shall inform BEGECA in writing about the source of financing of the program and any special conditions related to procurement applying to the action. If the NGO client does not provide BEGECA with such information, BEGECA will apply its standard procurement procedures.

4.4 The NGO client authorises BEGECA to take all measures, which are indispensable for the unhindered delivery of supplies and services and shall compensate BEGECA for the incurred related costs.

4.5 The NGO client shall arrange the availability of warehousing and handling capacity at the place of delivery in accordance with the volumes and delivery schedules of the purchase order.

4.6 The NGO client shall be responsible for the importation (port and customs clearance) in the country of destination and will pay all related cost. If the consignee is exempted from import duties, it is the responsibility of the NGO client to ensure the availability of a valid Duty Free Import License, before the loading of the goods at origin.

4.7 For local procurement, where sales tax (VAT) is being applied, it is the obligation of the NGO client to achieve tax exemption from local tax authorities. Tax payments due to non-availability of such exemptions shall be for the account of the NGO client.

4.8 The NGO client shall inform BEGECA immediately, at the latest within 48 hours after arrival at destination, of damages or losses of cargo insured by BEGECA.

4.9 The NGO client is obliged to confirm taking over of cargo to BEGECA within 5 days after arrival in writing.

4.10 If the insurance of cargo is the responsibility of the NGO client, the latter shall address any claim directly to the transport company or his insurance company.

4.11 The NGO client shall be responsible for the commodities delivered by BEGECA once handed over at the agreed place of delivery and will assume liability for commodity damage and losses and deterioration after the commodities come under its physical control or possession.

4.12 The NGO client bears full and sole responsibility for the implementation, interim and final reporting towards the institution, which is financing the action.

5. Quotation

On request of the NGO client, BEGECA shall provide the NGO client with price quotations. The quotation includes the purchase price and the HPC handling fee. Quotations are provided free of charge. All quotations provided by BEGECA are valid only for the product, quantity, packing, marking, delivery terms, delivery time and validity period specified in the quotation.

The calculation of courier cost is based on one single mailing of documents as a rule. Additional mailings will be debited to the NGO-client.

6. Purchase Order

6.1 The Purchase Order shall be issued by the NGO client in writing.

A written order confirmation of BEGECA constitutes a legally binding contract.

6.2 If a Purchase Order is received after the validity period or different in terms of product, quantity, packing, marking, delivery terms and delivery time, BEGECA reserves the right to reject the Purchase Order and to modify the conditions of the quotation according to current market conditions. The NGO client shall accept or reject the revised quotation in writing.

7. Terms of Delivery

7.1 The applicable delivery conditions are the latest version of the ICC Incoterms.

7.2 If BEGECA is responsible for arranging insurance coverage for damages and risks during transport, BEGECA will handle the claims procedure in case of losses or damages before or at the taking-over point. BEGECA shall not be responsible for any loss or damage to the goods beyond the obligation to insure them.

7.3 In cases where inspection of supplies on quality and quantity is applicable, BEGECA shall arrange for a pre-loading inspection of quality at the suppliers' place of loading, and if applicable a final inspection of quality and quantity at the supplier's contractual delivery point. The inspection company shall be contracted and

nominated by BEGECA. The expenses for the inspection shall be paid by the NGO client.

7.4 BEGECA shall inform the NGO client of discrepancies reported by the inspection company in the quantity and quality of supplies. BEGECA shall advise the NGO client when such discrepancies are, in its opinion, insufficient reason to reject the goods, but can be accepted subject to repair by or a commercial solution agreed with the supplier. The acceptance or rejection of the supplies shall be mutually agreed between the NGO client and BEGECA.

7.5 Delivery dates provided by BEGECA are indicative. BEGECA will make every effort to meet the delivery dates communicated to the NGO client. It is the obligation to inform the NGO client when delivery dates cannot be adhered to, as described in Article 3.3. However, the NGO client may not use a delay in delivery as a pretext for cancelling an order, refusing to accept the goods, or claiming compensation.

8. Taking-Over of supplies

8.1 The consignee nominated in the Purchase Order is obliged to take over the goods at the destination, after which the goods are the sole responsibility of the NGO client. If the consignee refuses to take over the cargo, BEGECA will inform the NGO client and take immediate action to resolve the situation. All cost and damage deriving from a refusal to take over the cargo have to be borne by the NGO client. This does not apply to cases of damages or loss, which shall be dealt with as described in Article 13.

8.2 The NGO client, respectively the consignee, is obliged to confirm taking over of cargo by email to BEGECA within 5 days after arrival. Any observations with regards to deviation in quality and quantity and any damages must be reported.

9. Payments

9.1 As non-profit organization BEGECA does not pre-finance orders. Thus advance payment is the standard payment term applicable to NGO clients. Invoiced amounts are payable to the indicated bank accounts swift. Receipt of payment within 14 days is considered to be timely.

9.2 In the case of non-payment or only partial payment of an invoice on the due date, BEGECA has the right to apply the following:

- All amounts outstanding will be subject to an automatic annual interest rate of 12% without any previous formal warning or notification;
- All payment facilities agreed to by BEGECA will become null and void
- BEGECA informs DG-ECHO

9.3 In the case of non-payment or only partial payment of an invoice on the due date, notwithstanding the stipulations of article 9.2, BEGECA reserves the right without prior formal warning or notification or judicial intervention to consider any existing agreements to be wholly or partially cancelled or to suspend their application, in whole or in part, without relinquishing BEGECA's right to compensation for the damages incurred.

10. Property rights

The transfer of ownership of the goods delivered is effective upon the receipt of full payment of the total amount of the order, all costs and any other charges included. Until such time the products remain the legal property of BEGECA.

11. Cancellation of Orders.

11.1 In case of cancellation of the purchase order or any changes before shipment, the NGO client shall pay all cost deriving from the cancellation or changes of the purchase order, including penalties, payable by BEGECA, if any.

¹ As per DG ECHO

² As per DG EuropeAid

11.2 Should the NGO client fail to fulfill one or more of his obligations; should he be declared bankrupt; should he be put into receivership; or should his assets be totally or partially confiscated, BEGECA reserves the right to consider the contract, or that part of the contract not yet completed, as automatically cancelled, without recourse to legal intervention, and to claim restitution of goods on which payment remains outstanding, without prejudice to costs or damages and interests.

12. Currency and bank account

BEGECA will operate and account for in € (Euros). In case of purchases and/or services, which are payable in foreign currencies, the conversion to Euro will be calculated on the basis of the realised rates of exchange.

13. Claims

13.1 Claims concerning damage to or loss of cargo insured by BEGECA, shall be acceptable only if addressed to BEGECA in writing within 48 hours after the delivery, and in any case before use, modification and onward dispatch.

13.2 Claims relating to problems not apparent at the time of delivery shall, to avoid refusal of the said claims, be made in writing and addressed to BEGECA within five days of their discovery, or at the time when they should have been noticed.

13.3 BEGECA guarantees the goods delivered according to the specifications and conditions stipulated by the manufacturer, it being understood that, in the case of a justifiable claim being accepted, BEGECA's responsibility is strictly limited to the repair or replacement of the defective items (to be decided by the manufacturer or BEGECA), and does not include any compensation for loss of income or indirect damages.

13.4 Under no circumstances does the guarantee cover wear and tear, normal deterioration or any repairs resulting from incorrect or inadequate maintenance of equipment delivered. Incorrect utilization automatically cancels the guarantee.

13.5 The guarantee does not cover any repair to equipment required as the result of accident, theft, attempted theft, fire, intentional damage, lightning strike, short circuit or, generally speaking, any damage caused by an external agent.

13.6 Should the NGO client, without the prior consent of BEGECA, proceed with, or have a third party proceed with, any repairs or modifications, or should he fail to meet the payments due, the guarantee is considered to be null and void. The NGO client does not have the right to refuse payment on the pretext that BEGECA has not, has not yet, or has only partially fulfilled his obligations under the guarantee.

14. Warranty

14.1 BEGECA will pass on any warranty offered by the manufacturer or supplier to the NGO client. Where no such warranty is available, BEGECA offers no replacing warranty, express or implied, that the goods are merchantable or fit for any particular purpose.

14.2 BEGECA will not accept the return of goods procured on behalf of the NGO client. BEGECA is not directly responsible for correcting any material malfunction, which may arise on site of the goods, supplied through BEGECA, but will, on request by the NGO client, intervene with the supplier to obtain a satisfactory solution. BEGECA is not responsible for any costs involved in correcting malfunctions.

15. Liability

15.1 BEGECA shall perform the services mandated to it by the NGO client with due diligence. BEGECA can only be held liable for losses, damages and deterioration of

commodities delivered by BEGECA if the NGO client can prove that such damages were the result of intent or gross negligence on the part of BEGECA.

15.2 Suppliers contracted by BEGECA shall be held liable for timely delivery and, in justified cases, can be penalized for late delivery according to contractual terms between BEGECA and the supplier. BEGECA is not liable towards the NGO client for delays and consequences thereof caused by suppliers.

15.3 The liability of BEGECA shall be limited to and will not exceed the liability of the suppliers and service providers for supplies and services contracted by BEGECA.

15.4 BEGECA, in its function of HPC/HCBO, accepts full responsibility versus the European Commission as well as to the Beneficiary of the Grant Agreement/Contract for compliance with EC requirements and appliance of relevant procedures for the contracting of supplies and services and shall be liable for any risks and costs incurred by the Beneficiary that are resulting from non-compliance with such requirements and procedures.

16. Indemnification

The NGO client agrees to indemnify BEGECA and any third party engaged by BEGECA and to hold BEGECA and such third party harmless against any demands, claims or actions made by third parties in connection with the tasks falling under the responsibility of the NGO client, unless these claims are a result of intent or gross negligence on the part of BEGECA, or such third party.

17. Force Majeure

17.1 Both parties have the duty to inform the other without delay if, due to the existence of dangerous circumstances or for reasons of force majeure, either BEGECA or the NGO client cannot perform any or part of the agreed obligations. In such an event, the party faced with force majeure will inform the other party of the nature, probable duration and foreseeable effects of the problem, and take any measure to minimize the possible damage.

17.2 Force majeure principally, but not exclusively, covers: war, riots, strikes, lock-outs, epidemics, cancellation of transportation, absence of raw materials, breakdown of machinery or tools, impediments resulting from regulations imposed by the Authorities on import or export trade, exchange or internal economic regulations, accidents or any other cause leading to interruption of work of all or any of the sites concerned.

17.3 Any unforeseen situation or case of force majeure gives BEGECA the right to suspend current contracts, whether temporarily or definitively, or to delay their execution. Under no circumstances may the NGO client use a delay in delivery as a pretext for cancelling an order, refusing to accept the goods, or claiming compensation or damages.

18. Intellectual property rights

All intellectual property rights applied to all drawings, sketches, projects, publications and other documents issued by BEGECA, or the relevant manufacturer of the equipment, or of the product, shall remain the exclusive property of BEGECA or the manufacturer. These documents may not be transmitted to a third party without BEGECA's prior written consent.

19. Range of conditions

19.1 Unless constrained by legal impositions to the contrary the NGO client automatically agrees, upon placing the order, to the present general terms and conditions, and renounces the application of any of his own general conditions.

19.2 The fact that BEGECA may not necessarily apply one or other clause written in its favour shall not be interpreted as a renouncement of the said clause on its part.

20. Settlement of dispute

The NGO client and BEGECA shall do everything possible to settle amicably any dispute arising between them. In the event no amicable settlement can be found, any dispute between BEGECA and the NGO client, which arises from the implementation of this Agreement, shall be referred to the arbitration commission of the ICC in Paris and only in cases where ICC arbitration is not successful the case may be referred to the district court in Aachen.

21. Applicable Law

These Terms and Conditions are subject to the Law of Germany.

22. Place of Jurisdiction

22.1 The place of performance for all payments shall be Aachen.

22.2 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.

23. Written Form

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

Aachen, 03.02.2015