

**Behr-Hella Thermocontrol GmbH**  
**Purchasing Conditions**  
**Date of issue: 10/2002**

for all deliveries of goods and services by the supplier to BHTC. The goods or services (hereinafter called "contractual items" or "goods" or "services") are destined for use in products of BHTC for application in motor vehicles worldwide.

**1. Conditions of Supply**

- 1.1 All orders from BHTC are placed solely and exclusively on the basis of these Purchasing Conditions unless expressly agreed otherwise in writing in the specific case. Any conditions of sale of the supplier whose content deviates herefrom shall not be a basis of contract even if BHTC does not expressly reject them in the specific case. Any changes or additions and other additional agreements must be made in writing.
- 1.2 For the execution of the goods or services the specifications, drawings, descriptions and other documentation agreed between BHTC and the supplier shall apply. The supplier shall render its performance using a quality management system conforming to the requirements of EN ISO 9000 ff and shall continuously upgrade this system in line with the state of the art.

**2. Orders**

- 2.1 Deliveries will follow on the basis of individual orders or master orders from BHTC. Orders will be binding if placed in writing or by telefax or by electronic data communication.
- 2.2 Orders shall be confirmed by the supplier without delay after receipt.
- 2.3 In the case of master orders the specific delivery quantities and dates will be fixed in rolling delivery schedules sent regularly by BHTC to the supplier. Calls for delivery lying within the binding period of the delivery schedule shall be deemed to have been accepted if the supplier does not advise to the contrary without delay after receipt of the current delivery schedule.
- 2.3 BHTC may demand modifications in the design and execution of the contractual items to the extent that this can be reasonably expected of the supplier. The consequences, especially in respect of additional or reduced costs and delivery dates, shall be regulated by appropriate mutual consent.

**3. Furnished material**

- 3.1 Materials and fixtures furnished by BHTC for the supplier's performance remain the property of BHTC. The supplier shall be under the obligation to treat them with due care and to store them properly and to insure them against loss or damage at their as-new replacement value.
- 3.2 Before commencing production the supplier shall inspect the furnished material for visibly discernible defects and shall make an identity check. During production the supplier shall make further checks to the extent that they have been specifically agreed with BHTC or are necessary in accordance with its

quality management system. If the supplier discovers quality defects on the materials or fixtures furnished by BHTC, BHTC shall be notified without delay.

3.4 The processing of the materials furnished by BHTC is on BHTC's behalf in all cases. If the value of the material furnished by BHTC exceeds the value of the processing and any other constituents of the newly produced items, the newly produced items shall become the property of BHTC. Otherwise, BHTC and the supplier shall have co-ownership according to the value of the furnished material in proportion to the value of the processing and the other constituents.

3.5 Commercial liens of the supplier pursuant to § 647 BGB (German Civil Code) are excluded.

#### **4. Deadlines, delays in delivery**

4.1 Agreed delivery dates are binding and, unless agreed otherwise, refer to receipt at the unloading point stated in the order.

4.2 The supplier shall notify BHTC of discernible delays without delay.

4.3 In case agreed delivery dates are not met, the supplier shall be liable to compensate BHTC for loss or damages caused by the delay insofar as it is responsible for the delay.

4.4 In case of failure to deliver after setting an additional period of time for delivery, with notice that acceptance of delivery will otherwise be refused, or lapse of interest BHTC shall be entitled to demand damages instead of the performance or to withdraw from the respective order. In case of repeated delays in delivery BHTC shall be entitled, after a prior warning notice, to cancel with immediate effect the entire orders outstanding at that point in time.

#### **5. Transportation, packing, transfer of risk**

5.1 Unless agreed otherwise, delivery shall be made free factory including all incidental costs and customs duties.

5.2 In all cases risk shall not pass until the goods have been delivered at the agreed unloading point. This shall also apply if, by special agreement, the freight costs are borne by BHTC. If transportation is at the expense of BHTC, BHTC's shipping regulations shall be observed.

5.3 Each delivery shall be accompanied by a delivery note in duplicate located in an identified place.

#### **6. Payments and terms of payment**

6.1 Unless agreed otherwise, payments shall be made after delivery on the 25<sup>th</sup> of the calendar month following receipt of the invoice at 3% discount.

#### **7. Force majeure**

Labour disputes, riots, administrative measures and other unforeseeable, unavoidable and serious events shall release the parties from their obligation to perform for the duration of the disruption and to the extent of its impact. If

the disruption lasts for more than 1 month the parties shall adjust the mutual obligations to the changed circumstances in good faith.

## **8. Passing on information and objects**

- 8.1 The supplier shall be under the obligation to treat all information that is not of an obvious nature of which it acquires knowledge in connection with the execution of orders for BHTC, especially drawings, patterns, models, tools, documents, software and other data media that BHTC has made available to the supplier, confidentially and not to pass it on to third parties unless this is absolutely necessary for the execution of the work to be performed. Any third parties it involves in the execution of the work to be performed shall be placed under a corresponding pledge of secrecy.
- 8.2 Third parties may not be offered, sent samples or supplied with contractual items that are produced to data, drawings or models of BHTC or from tools paid for wholly or in part by BHTC unless BHTC has expressly given its prior written consent.
- 8.3 The supplier may only advertise the business relationship with BHTC's prior written consent.

## **9. Security of supply**

- 9.1 Insofar as the contractual items are goods developed specially for BHTC, especially if BHTC has shared directly or indirectly in the cost of development and/or means of production, the supplier pledges to supply BHTC with the contractual items according to its requirements and to accept orders from BHTC so long as BHTC has a need for the contractual items. The supplier will be notified in good time of the prospective supply volume based on the customer demand forecasts available to BHTC. However, the supplier has no right to demand the offtake of specific quantities unless expressly agreed otherwise.
- 9.2 To safeguard BHTC's production of replacement parts the supplier is willing to guarantee the supply of the contractual items required for this for a period of 15 years after termination of series production of the BHTC products in which the respective contractual items are fitted. If, within this period, the supplier becomes aware that it will no longer be possible for it to do this, the supplier shall notify BHTC without delay about the end of the supply capability and, if no other reasonably acceptable possibilities exist, shall grant BHTC the opportunity to procure a lifetime supply.

## **10. Notification of defects**

BHTC will notify the supplier of defects in a consignment in writing without delay as soon as they are discovered in the normal course of business. To this extent the supplier waives the right to object on the grounds that notice was given late.

## **11. Liability for defects**

- 11.1 If goods delivered are defective, BHTC shall be entitled, after prior consultation with the supplier, to demand replacement or that the defects be

made good. If, as a result of the goods being replaced or made good, BHTC incurs additional costs in order to meet its own delivery deadlines, they shall be borne by the supplier.

- 11.2 If the same goods are delivered repeatedly in defective condition or the efforts to make good the defects fail, BHTC shall be entitled, after written warning notice, upon renewed defective delivery/defective making good to cancel with immediate effect the orders for the scope of supply still outstanding at that time.
- 11.3 BHTC shall be entitled, after prior consultation with the supplier, to sort out and return or scrap defective items at the supplier's expense.
- 11.4 If the supplier fails to comply without delay with BHTC's demand to replace or make good the defects, or is unable to do this, BHTC may withdraw from the order and return the goods at the supplier's risk and expense or, if the legal conditions are fulfilled, claim damages.
- 11.5 In urgent cases and, as far as possible, after prior consultation with the supplier BHTC may, in order to meet its own delivery obligations to the necessary extent, make good defects itself or have defects made good by third parties or possibly procure contractual items in proper condition from third parties. The costs this necessitates shall be borne by the supplier.
- 11.6 If, despite observance of the arrangements set out in Article 10 of this contract, a defect is only discovered after further processing of the contractual items, the supplier shall be under the obligation to bear all the costs, especially inspection, transportation, travelling, labour and material costs, connected with replacing or making good the defective contractual items. This shall also include the cost of a necessary replacement or repair of products in which BHTC has fitted defective contractual items as well as the proven costs for handling and guarantee processing.
- 11.7 In case of a series defect the supplier shall also reimburse the aforesaid costs for the entire series of BHTC products in which the defective contractual items have been fitted. If, in the specific case, a fault analysis is uneconomical or is not possible or is not reasonably acceptable, or an identification of the defective contractual items is not possible in some other way, the reimbursement of costs shall also extend to such BHTC products in which the defective contractual items might be fitted.
- 11.8 Unless the parties expressly agree otherwise in writing, claims on account of defects shall become statute-barred at the end of 48 months after delivery of the parts to BHTC. This period of limitation shall be interrupted by the notice of defect.
- 11.9 Unless regulated differently in the foregoing, liability for defects will be governed otherwise by the provisions of law.

## **12. Warranty**

- 12.1 Unless a different liability arrangement is provided for elsewhere in these Conditions, the supplier's obligation to indemnify damages that BHTC incurs directly or indirectly as a result of defective delivery, breach of official safety regulations or other legal grounds attributable to the supplier shall be solely and exclusively as follows.
- 12.2 As a general principle the obligation to indemnify damages only applies if the supplier is at fault for the damages it causes.
- 12.3 If recourse is had to BHTC on account of liability not based on fault under law that is not modifiable in relation to third parties, the supplier shall subrogate BHTC to the extent that it would if it were directly liable.
- 12.4 For the indemnification between BHTC and the supplier the principles of § 254 BGB (German Civil Code) shall apply accordingly. This shall also apply in the event of direct recourse to the supplier.
- 12.5 Claims by BHTC are excluded to the extent that the damages are due to breaches of operating, maintenance and installation instructions, unsuitable or improper use, faulty or negligent treatment, natural wear or defective repair that are attributable to BHTC.
- 12.6 The supplier shall be liable for measures undertaken by BHTC or its customers to avert damages (e.g. recall campaigns) to the extent that it is legally obligated.
- 12.7 If BHTC intends to make claim on the supplier under the foregoing arrangements, it shall inform and consult with the supplier without delay and exhaustively. It shall allow the supplier the opportunity to examine the matter. The parties shall consult each other on the action to be taken, especially in the negotiation of voluntary settlements.
- 12.8 The supplier undertakes to take out product liability insurance for all deliveries and services it performs with a policy cover commensurate with the risks in the automotive industry of at least € 5,000,000.- (in words: five million euros) for property damages and personal injury including coverage of recall costs, and to maintain such cover for a period of at least 15 years after delivery/service performance. Upon request, BHTC shall be furnished with suitable proof of the nature and scope of the insurance cover including the name of the third-party liability insurer.

## **13. Property rights**

- 13.1 The supplier shall be liable for ensuring that no third-party industrial property rights and copyrights are infringed by its deliveries. It shall hold harmless BHTC and its customers from any claims resulting from the use of such property rights.
- 13.2 Liability shall fall away if the supplier has produced the contractual items to BHTC instructions. This shall not apply if the supplier knows or, by gross

negligence, does not know that third-party property rights are thereby infringed.

- 13.3 If BHTC has contributed to the cost of developing the contractual items, BHTC shall be conferred, without prejudice to any further-reaching rights under a separate agreement with the supplier, an unlimited as to time and place, free, non-exclusive right to use the inventions employed in the contractual items or the copyrights thereto for all purposes including the right to sublicense them. If the creation of software is an integral part of the supplier's performance, the supplier shall, if so requested, make the source code including the software documentation available to BHTC.

#### **14. Tools**

- 14.1 To the extent that the supplier produces the contractual items using tools, fixtures, machines or other manufacturing aids (means of production) whose cost is borne wholly or partly by BHTC, BHTC shall acquire, at the latest upon payment of the costs, title thereto or co-ownership title thereto according to the share of the costs borne by BHTC.

#### **15. General provisions**

- 15.1 If either party suspends payments or institutes bankruptcy proceedings or court debt composition proceedings in respect of its assets, the other party shall be entitled to withdraw from the orders for the scope of supply outstanding at that time.
- 15.2 BHTC will store the data required for order handling and invoice control in electronic form.
- 15.3 To the extent that these Conditions require that notices or declarations by the parties must be made in writing, this requirement will also be fulfilled if the declaration is transmitted by telefax.
- 15.4 If a provision of these Conditions is, or should become, inoperative, the validity of the other provisions of these Conditions shall not be affected thereby. The parties shall be under the obligation to replace, by mutual consultation, the inoperative provision with an arrangement that comes as close as possible to it in its business intent.
- 15.5 Place of performance is Lippstadt or the receiving point BHTC specifies in the order.
- 15.6 Governing law shall be solely and exclusively the law of the Federal Republic of Germany with the exception of the choice-of-law rules.
- 15.7 Place of jurisdiction for all disputes in connection with these Conditions and the deliveries performed under the governance of these Conditions is Lippstadt or, in the case of suits filed by BHTC, any other competent court.