

Terms and Conditions of Purchase



of the firm **Behr Hella Thermocontrol**,
Hansastraße 40, D-59557 Lippstadt

hereinafter called "**BHTC**", and applicable to the supply of all goods and services by the Supplier to BHTC,

hereinafter called the "contractual merchandise", "goods", or "services", intended for use in BHTC products and in motor vehicles all over the world.

1. Delivery Conditions

- 1.1. All orders from BHTC shall take place exclusively according to these terms and conditions of purchase, unless something else is explicitly agreed separately. Terms and conditions of sale of the Supplier which deviate in terms of content shall not become the contract basis even if BHTC does not explicitly contradict these in each case. Changes or additions and other subsidiary agreements must be made in writing.
- 1.2. The specifications, drawings, descriptions and other documents agreed between BHTC and the Supplier shall apply to the execution of the goods or services. The Supplier shall provide its services by applying a quality management system that meets at least the requirements of ISO 9001:2008, and shall undertake to constantly further develop this system according to the state of the art, in order to fulfill the requirements of ISO/TS 16949 (or VDA 6.4 in the case of the delivery of operating equipment) in the valid version at the date of delivery. The environmental management of the Supplier is to be oriented toward the requirements of DIN EN ISO 14001 or EMAS in the valid version at the date of delivery, and is to be verified by a certificate on demand from BHTC.
- 1.3. Furthermore, "Hella Quality Management - Guidelines for Suppliers" (HP-C-509), and "BHTC "Packing and logistics guidelines" (BHTC-525), shall additionally apply in the version applicable at the time of conclusion of the contract. The guidelines named above are available from the BHTC Purchasing Department: Behr Hella Thermocontrol GmbH, K-E, Hansastraße 40, 59557 Lippstadt.

2. Orders

- 2.1. Deliveries shall be made pursuant to written or electronically transmitted individual orders or rolling delivery call-offs from BHTC. The details of the procedure for delivery call-offs are stipulated in "*BHTC Delivery Regulations for Order Processing*" which in its respective version is an integral part of this Agreement.
- 2.2. The Supplier must confirm individual orders in writing immediately after receipt.
- 2.3. When delivery call-offs are placed, the Supplier shall not be required to confirm these separately. The delivery call-offs placed within the binding acceptance period stipulated separately in "*BHTC Delivery Regulations for Order Processing*" shall be deemed to be accepted if the Supplier does not object in writing to the delivery call-off immediately, at the latest however one working day after its receipt.

3. Provided material

- 3.1. Materials and equipment provided free of charge by BHTC to the Supplier shall remain the property of BHTC and the Supplier is obliged to examine the material provided by BHTC to detect

Terms and Conditions of Purchase

any defects noticeable by sight without undue delay. The Supplier must also perform a quantity and identification check. Any differences must be reported to BHTC within one working day.

- 3.2. The Supplier is obliged to treat these materials and equipment with due care and attention and to store them properly.
- 3.3. During the manufacturing process the Supplier is obliged to perform further checks if these have been separately agreed with BHTC or if these are necessary to comply with the Supplier's quality management system. If the Supplier discovers any discrepancies as to quality or quantity, BHTC must be informed without undue delay in order to coordinate any further measures. If the Supplier is responsible for these shortcomings in quality or quantity, for instance during the manufacturing process, the Supplier shall be obliged to order a substitute product at his cost.
- 3.4. The processing of the materials provided by BHTC takes place always on behalf of BHTC. If the value of the materials provided by BHTC exceeds the value of the processing and –if applicable– of the other components of the newly manufactured objects, the newly manufactured objects shall become the property of BHTC and otherwise they shall be jointly owned by BHTC and the Supplier in the ratio of the provided material to the value of the processing and the other components. For the avoidance of doubt: The afore-said shall by no means restrict the obligation of the Supplier to provide BHTC with the unrestricted ownership, free from encumbrances whatsoever, with delivery of the Products.

4. Delivery dates, place of delivery, delivery note

- 4.1. All delivery dates identified pursuant to Clause 2 shall be binding.
- 4.2. The Supplier has to immediately inform BHTC about any delays as soon as they are foreseeable.
- 4.3. Unless otherwise agreed in writing, all deliveries are DAP by the Supplier to the delivery address indicated in the purchase order (INCOTERMS 2010). The specialist department can be contacted directly to clarify import issues: import.hd@hella.com.
- 4.4. Two copies of a delivery note have to be enclosed on a marked place with each delivery.

5. Default in delivery

- 5.1. If the Supplier does not meet the delivery date specified in the individual order or rolling delivery call-off, the Supplier shall be obliged to indemnify BHTC for any damage caused by the delayed delivery, unless the Supplier can demonstrate that it is not responsible for the delay. If the delivery is a fixed-date purchase, BHTC's right to demand said delivery shall only expire if BHTC does not assert its right within a period of 30 days after the delivery date.
- 5.2. In addition if the Supplier has failed to deliver within a last period set by BHTC, or if BHTC is no longer interested in the delivery at a later date, BHTC shall be entitled to cancel the respective order and to receive compensation instead of performance of the delivery. Any possible claims by BHTC for compensation for damage caused by the delay shall remain unaffected by this. If the Supplier is repeatedly in default of delivery, BHTC shall be entitled, after serving the Supplier a warning letter without success, to cancel with immediate effect any orders which at that point in time have not yet been delivered.

6. Payments and payment conditions

- 6.1. Unless the parties have agreed on an individually negotiated regulation regarding the payment period, payment shall be made by BHTC exclusively 30 days following the receipt of the invoice net, if BHTC has already received the goods and otherwise 30 days following receipt of the goods net. Payment shall be made by the means of payment of BHTC's choice.
- 6.2. The weights and quantities determined at the unloading points shall be decisive for calculating and paying for the deliveries. Notwithstanding the provisions in Clause 12, BHTC shall be entitled in the event of defective delivery to retain payment equivalent to the value of missing or defective goods until the order has been properly completed. The Supplier may only claim payments for drafts, drawings and samples if previously agreed in writing with BHTC.
- 6.3. The Supplier shall not be allowed to assign any claims it may have against BHTC to third parties or to allow third parties to collect amounts due from these claims without first seeking the prior written consent of BHTC (such consent not to be unreasonably withheld). If the Supplier is supplied by its own suppliers under prolonged retention of title ("*verlängerter Eigentumsvorbehalt*") BHTC's consent to an assignment to these sub-suppliers of the Supplier shall be deemed to be granted pursuant to the above sentence. Should the Supplier assign its claims against BHTC to third parties in violation of sentence 1 of this Clause 6.3 without obtaining BHTC's prior written consent, the assignment shall nonetheless be effective. BHTC, however, may choose whether to pay the Supplier or the third party, with discharging effect.

7. Force majeure

Industrial disputes, with the exception of strikes limited to the Supplier, civil disturbances, measures implemented by administrative authorities and other unforeseeable, unavoidable and severe events shall release the parties from the contractual obligations for the duration of the disturbance and to the extent that it affects the performance of the obligations. The parties to this Agreement agree to immediately exchange the necessary information and to adapt their obligations to the altered circumstances in good faith.

8. Submission of information and objects/Confidentiality

- 8.1. The Supplier shall keep confidential all information that is not public, in particular specifications, drawings, templates, models, tools, documents, software and other data carriers, which BHTC has made available to the Supplier pursuant to or in connection with this Agreement and shall not pass these on to third parties or duplicate them unless this is absolutely necessary for fulfilling its contractual obligations under this Agreement. The Supplier shall ensure that all of its employees and subcontractors be under the same confidentiality obligation. BHTC retains the right of ownership and all copyrights in the information and objects BHTC discloses to the Supplier pursuant to or in connection with this Agreement.
- 8.2. The Supplier shall only be allowed to advertise its business relationship with BHTC after prior written approval from BHTC.
- 8.3. Products, which are manufactured in accordance with information, specifications, drawings or models provided by BHTC or using tools completely or partially paid by BHTC, may not be offered to third parties, provided as samples or supplied to them without BHTC's prior explicit written approval. The same shall also apply accordingly to drawings, models, samples, etc., provided by BHTC.

9. Certificate of Origin

Prior to the first delivery of a product, the Supplier hereby undertakes to submit a legally binding Suppliers' Declaration in accordance with the current EC-Regulation and to immediately inform BHTC of any change in the origin features of the delivered products. If necessary, the Supplier shall document its submissions on the origin of goods by means of an information sheet duly confirmed by its responsible Customs Office. The Supplier shall be liable for all and any damages which are sustained as a result of an improper or delayed submission of the Suppliers' Declaration.

10. REACH

- 10.1. BHTC assumes that all substances for use in products delivered to BHTC (e.g. raw materials, process materials, components, assemblies) that require registration in line with REACH (EC directive 1907/2006: **R**egistration, **E**valuation and **A**uthorization of **C**hemicals) have been preregistered by the supplier or sub-supplier and then registered at BHTC for the purpose of application within the time window prescribed by REACH. If, contrary to expectations, this is not the case, BHTC must be informed immediately.
- 10.2. Caused by REACH every supplier of a product (including packaging) has to declare to BHTC all SVHC-substances ((**S**ubstances of **V**ery **H**igh **C**oncern) within the product, which are in a concentration bigger than 0.1 % percent by weight included. SVHC-substances are in a EU publication listed, this list is permanently enlarged. The Supplier must keep himself informed at all times about the current candidate list status.

11. Changes to Products

- 11.1. The Supplier shall inform BHTC as soon as possible about any intended change of Products that are approved for delivery, at the latest however 15 months before its introduction.
- 11.2. The supply of any Product that has been changed in this way always requires the explicit written approval of BHTC, for instance with a new approval of an initial sample. If the Products are manufactured pursuant to instruction from BHTC, this shall also apply to the change itself. The Supplier must assume all costs incurred by BHTC due to these changes, e.g. qualification costs, change costs, test costs, development costs, the costs for a renewed first sample release etc.
- 11.3. In the case of discontinuations of electronic components (PTN process), the Supplier commits to supply BHTC with the original goods for the entire duration of the projects equipped with this component. All changes (PCNs) and discontinuations (PTNs) must be notified globally at least 15 months before the LOD (last order date): pcn@hella.com. All affected BHTC material numbers must be stated in the PCN/PTN notice. In return for the LOD announced by the Supplier, BHTC commits to name the all-time needs. Any necessary all-time stocks will be stored at the Supplier and at the cost and risk of the Supplier.
- 11.4. In the case of electronic components, the Supplier commits to make only 1 change at most (PCN) per component within 24 months. The Supplier moreover commits such that during the entire lifetime of the projects he shall not discontinue any components specially developed for BHTC applications.
- 11.5. The above provisions in Clauses 11.1, 11.2, 11.3 and 11.4 shall apply analog to the change of procurement sources for primary material or parts and a change of manufacturing plants or important changes in the manufacturing processes at the Supplier.

Terms and Conditions of Purchase

- 11.6. BHTC shall be entitled to demand changes to the Products in design and workmanship, as long as this remains equitable for the Supplier. The parties have to agree in good faith on the effects of such changes, in particular with regard to the increased or decreased costs and the delivery dates.

12. Securing of supply

- 12.1. If the Products are goods specially developed for BHTC and in particular if BHTC has directly or indirectly made a contribution to the costs of development and/or for the manufacturing materials, the Supplier warrants to supply BHTC with the Products according to BHTC's needs and to accept orders from BHTC as long as BHTC requires the Products. BHTC shall provide the Supplier in good time with the anticipated supply volume deducted from the forecasts of BHTC's requirements. Without affecting Clause 2 unless explicitly agreed otherwise in writing the Supplier shall not have the right to demand the purchase of a specific quantity of Products by BHTC.
- 12.2. For securing the production of spare parts at BHTC, the Supplier hereby undertakes to ensure the supply of the Products required in connection with the production under this Agreement for at least 15 years (unless otherwise agreed in writing) after the end of series manufacturing of the BHTC products into which the Products are assembled. If the Supplier realizes within this period that it will no longer be possible to ensure this, the Supplier must inform BHTC about the end of the supply possibility without undue delay and, if the Supplier is unable to offer BHTC any other reasonable possibility of supply, to provide BHTC with the opportunity of procuring an all-time requirement 12 months before the production is stopped.

13. Notice of defects

BHTC will promptly notify the Supplier of any defects of the delivery once those have been discovered within the course of a proper business procedure. BHTC's inspection of Products received shall be restricted to a visual inspection of the transport packaging with regard to damages in transit, as well as a check of quantity and an identification check based on a comparison of the delivery documents with the order documents. Any further checks, in particular measuring inspections are not required. BHTC shall carry out inspections during manufacturing in accordance with its quality assurance management system. The Supplier insofar waives any objections on the basis of late notice of defects.

14. Liability for defects

- 14.1. The Supplier shall ensure that the Products are free of any defects and that the agreed specifications and the generally accepted technological standards have been complied with.
- 14.2. If BHTC approves specifications, drawings, calculations or other documents of the Supplier, this shall not affect the sole responsibility of the Supplier for the Products. This shall also apply to proposals, recommendations or other cooperative actions of BHTC regarding the performance of the Supplier.
- 14.3. If the Supplier is able to realize on the basis of its know-how that the order placed by BHTC is incomplete or that the purpose pursued by BHTC when it placed the order cannot be fulfilled, the Supplier must inform BHTC promptly and in full.
- 14.4. If defective Products are supplied, BHTC shall be entitled to demand immediate remedy by delivery of a replacement or rectification of the defective Products. BHTC shall be entitled to

Terms and Conditions of Purchase

determine (at its sole discretion) the details of the remedial actions to be undertaken by the Supplier after consultation with the Supplier.

- 14.5. Should the defective delivery result in increased costs for BHTC in meeting its own delivery deadlines (for instance costs of sorting out defective Products, increased inspection effort and costs in manufacturing, etc.), these costs shall be borne by the Supplier.
- 14.6. BHTC shall be entitled to cancel the order and return the Products to the Supplier at the risk and cost of the Supplier or to reduce the price if the Supplier does not fulfill his obligation for remedy of the defects within a reasonable period set by BHTC. In addition, BHTC shall have the right to compensation for damages. The setting of a time period by BHTC shall be superfluous if the fulfillment of the remedy of the defects is practically or economically impossible.
- 14.7. BHTC shall be entitled to return defective Products at the cost of the Supplier or, after previous agreement with the Supplier, to sort out the defective Products and, if necessary, scrap them at the cost of the Supplier.
- 14.8. BHTC shall be entitled in urgent cases, if possible after previously informing the Supplier if the Supplier can be reached to carry out rectification of defects on its own or to let it be carried out by third parties and to procure the Products without defects from third parties in order to fulfill its own supply obligations. The Supplier shall bear the necessary appropriate and evidenced costs for these rectifications or procurements.
- 14.9. Should a defect only be discovered after further processing of the Products despite observance of the provisions in Clause 13 of this Agreement, the Supplier shall be obliged to bear all the costs in connection with the exchange or rectification of defective Products, in particular the costs of inspection, transportation, labor and material, regardless of whether these costs are incurred at the Supplier, at BHTC or at third parties. These costs shall also include all costs of any exchange or repair of products into which BHTC has fitted defective Products.
- 14.10. Should a recurrent failure make it necessary to replace a whole series of Products or BHTC products into which the Products have been assembled, for instance because an analysis of defects in each individual case is not economical, not possible or not reasonable, the Supplier must also bear the above-mentioned costs also to the part of the affected series that does not show any technical defects.
- 14.11. Unless the parties have explicitly stipulated otherwise in writing, BHTC's claims arising from liability for defects shall be time barred after a period of 54 months after delivery to BHTC. However, the period of limitation shall be shortened accordingly if the claims of BHTC's customers arising from liability for defects are already time barred at an earlier time.
- 14.12. BHTC shall inform the Supplier about the warranty agreements that exist between BHTC and its customers and to allow inspection of appropriate documents on demand of the Supplier insofar as this is necessary for the implementation of this Agreement and legally permissible for BHTC.
- 14.13. Products that are relevant for exhaust emissions and safety, the time period for the Supplier's liability for defects shall equal the respective statutory regulations of the individual countries to which BHTC exports its products, if the statutory time bars in these countries exceed 54 months.
- 14.14. Unless otherwise provided in the preceding provisions the liability for defects shall be governed by the applicable statutory regulations.

15. Liability

Should BHTC or a third party incur damages because of a defect of a Product or the breach of this Agreement by the Supplier, the Supplier shall compensate BHTC in full for the resulting damages pursuant to the regulations provided by statutory law.

16. Intellectual property rights

- 16.1. The Supplier represents and warrants that its products, goods and services do not infringe any intellectual property rights and copyrights of third parties. The Supplier shall indemnify BHTC and its customers and keep BHTC and its customers indemnified in full for all claims, demands, liabilities, losses, damages, costs (including, without limitation, legal costs) and expenses arising from the use of such intellectual property rights or copyrights.
- 16.2. The liability is not applicable if the Supplier has manufactured the Product pursuant to mandatory instructions from BHTC.
- 16.3. If BHTC has contributed to the development of the Products – notwithstanding any further-reaching rights on the basis of special agreements with the Supplier – BHTC shall obtain the costfree, non-exclusive right of use, unrestricted in time and place and including the right to sublicense the inventions used in the Products or the copyrights pertaining to said inventions. If the services provided by the Supplier include the production of software, the Supplier has to make the source code available to BHTC, if requested, including the software documentation.

17. Compliance

The Supplier is obliged to abstain from any act or omission which may cause a criminal offense for fraud or embezzlement, bankruptcy offenses, offenses against competition, granting an undue benefit, advantage taking, bribery, corruption or comparable offenses of the supplier's employees or third Parties. In the event of a breach of such obligation, BHTC shall be entitled to extraordinary terminate or withdraw from all existing legal transactions with the Supplier and to terminate any and all negotiations in place with the Supplier. Notwithstanding the foregoing, the supplier is obliged to comply with all laws and regulations applicable to him and the business relation to BHTC.

18. Miscellaneous

- 18.1. In case one of the parties ceases payments or if an application for opening insolvency proceedings against the assets of this party is made or if such an application is rejected because of insufficient assets, the other party shall be entitled to withdraw from the Agreement concerning any orders that have not yet been delivered or performed at that point in time.
- 18.2. The Supplier hereby agrees that BHTC shall be allowed to store any information in electronic files that is necessary for the purpose of order processing and the checking of invoices. BHTC shall undertake to comply with statutory data protection regulations in this regard.
- 18.3. BHTC shall be entitled to rights of setoff and retention to the extent provided by law. The Supplier shall only be entitled to offset with his own claims if his counterclaims have been judicially determined as non-appealable, are legally uncontested or have been acknowledged by BHTC. The Supplier shall only be entitled to exercise a right of retention insofar as his counterclaim arises from the same contractual relationship.

Terms and Conditions of Purchase



- 18.4. Insofar as this Agreement requires that notifications or statements must be made in writing, this is being complied with if notifications or statements are received by fax.
- 18.5. BHTC and the Supplier each acknowledge that BHTC has entered into this Agreement for the benefit of itself and each member of the BHTC Group. Accordingly, BHTC and the Supplier agree that (in addition to BHTC's rights to enforce this Agreement) any company of the BHTC Group may enforce any term of this Agreement.
- 18.6. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall not be affected thereby. In such case the parties are obliged to replace the void and/or illegal and/or enforceable provision by a relative provision coming as close as possible to the economic purpose of this Agreement. This shall also apply to any possible omissions in this Agreement.
- 18.7. The place of performance shall be the registered office of BHTC respectively the location BHTC designates for receiving the goods. The parties may agree upon another arrangement for the payment.
- 18.8. The laws of the Federal Republic of Germany shall exclusively apply with the exception of the German conflicts of law rules.
- 18.9. Legal venue for all disputes arising out of or in connection with this Agreement and for all deliveries made in accordance with this Agreement shall be the court at the location of BHTC's registered office or, for legal actions by BHTC, any other competent court.