

# General Terms and Conditions of Purchase for Production Material of the BHTC Group



## 0. Scope of Application

- 0.1 The following terms and conditions of business ("**Terms and Conditions of Purchase**") shall apply to all orders, assignments placed by Behr-Hella Thermocontrol ("BHTC") and other agreements between BHTC and the Seller ("**Supplier**") for the purchase of production material, i.e., for goods and other contractual items intended for use in automotive business/motor vehicles throughout the world (hereinafter collectively referred to as "**Products**"). Where another BHTC Group company is the contractual partner or uses these Terms and Conditions of Purchase, these Terms and Conditions of Purchase shall apply accordingly. These Terms and Conditions of Purchase shall also apply accordingly to works performed by Supplier (e.g., contract processing).
- 0.2 Any general terms and conditions of business of Supplier shall not apply unless explicitly confirmed by BHTC in writing. BHTC hereby explicitly objects to any deviating or supplementary general terms and conditions of business of Supplier which may be referred to in connection with the conclusion of individual agreements, and such general terms and conditions of business shall be invalid and shall be replaced by these Terms and Conditions of Purchase. This shall apply even if BHTC unconditionally accepts deliveries and services while being aware of contradictory or deviating conditions of Supplier. Except as stated otherwise in the following Terms and Conditions of Purchase, the relevant statutory provisions under the law applicable pursuant Clause 17.9, sentence 1 shall additionally apply.
- 0.3 These Terms and Conditions of Purchase shall be deemed to have been accepted in particular upon acceptance or commencement of a purchase order by Supplier or are agreed if the purchase order or any underlying agreement (e.g., nomination letter, long-term agreement or other supply agreement) refers to these Terms and Conditions of Purchase. When signed in writing, these Terms and Conditions of Purchase shall apply to all future purchase orders placed with Supplier, unless explicitly agreed otherwise in writing with BHTC.

## 1. Applicable Provisions

- 1.1. The Products shall be supplied pursuant to separate purchase orders in accordance with the provisions of these Terms and Conditions of Purchase and the other agreements made. Supplier will perform the deliveries and services itself. Subcontractors may be used only with BHTC's prior written consent, except where BHTC's consent arises from agreements made with respect to deliveries and performance of services (e.g., agreed INCOTERMS) or the use of subcontractors is covered by formal approval process
- 1.2. Supplier will provide Products and services in accordance with a quality management system which at a minimum meets the requirements of ISO 9001, and agrees to continually further develop this system in accordance with state-of-the-art technology in order to conform with IATF 16949 in the version valid at the date of delivery. Supplier's environmental management shall align with the requirements of ISO 14001 or EMAS in the version valid at the date of delivery and certified evidence thereof shall be provided upon request of BHTC. The health and safety management of Supplier shall be based on the requirements of ISO 45001.
- 1.3. Furthermore, the "*BHTC Quality Requirements for Suppliers*" and the "*BHTC Packing and Logistics Guidelines (BHTC-525)*" as valid at the time of the respective purchase order shall apply additionally as an integral part of these Terms and Conditions of Purchase (both can be accessed at: <https://www.bhtc.com/en/company/purchasing>, unless the supply agreement on which a purchase order is based (e.g., nomination letter) provides otherwise.

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## 2. Purchase Orders, Conclusion of Agreements

- 2.1. Deliveries shall be made pursuant to written or electronically transmitted individual purchase orders or rolling delivery call-offs from BHTC. The details of the delivery call-off procedure are set forth in the “*BHTC Delivery Regulation for Order Processing*” (which can be accessed at: <https://www.bhtc.com/en/company/purchasing>) shall apply additionally as an integral part of these Terms and Conditions of Purchase. The version valid at the time of the respective purchase order shall apply, unless the supply agreement on which a purchase order is based (e.g., nomination letter) provides otherwise.
- 2.2. Supplier shall confirm individual purchase orders in writing immediately upon receipt. If an individual purchase order which does not include an acceptance period is not accepted by Supplier within a period of 30 days upon receipt in writing or in text form, BHTC shall be entitled to revoke such purchase order.
- 2.3. When delivery call-offs are placed, no separate confirmation thereof by Supplier shall be required. The delivery call-offs placed shall be deemed to be accepted if Supplier does not immediately object in writing to the respective delivery call-off, at the latest however one working day upon its receipt, stating the reasons for such objection. For the avoidance of doubt, the preceding provision does not constitute a right to object to or to reject call-offs, but rather this aspect is determined exclusively in accordance with the supply agreement concluded (e.g., nomination letter) and the provisions of the BHTC Delivery Regulation for Order Processing.
- 2.4. Supplier shall ensure the delivery of the ordered quantities as well as the agreed capacities in accordance with the agreements made with BHTC (e.g., nomination letter, long term agreement, or other supply agreement).
- 2.5. If Supplier’s expert knowledge causes Supplier to realize that the purchase order placed by BHTC is incomplete or that the intended purpose of the purchase order placed by BHTC cannot be achieved by the delivery, Supplier shall immediately and fully inform BHTC thereof.

## 3. Provided Material, Primary Products, Tools

- 3.1. Materials and primary products provided free of charge by BHTC to Supplier shall remain the property of BHTC and Supplier shall be obliged to examine these for any visible defects without undue delay. Supplier shall also perform a quantity and identification check. Any differences must be reported to BHTC within one working day.
- 3.2. Supplier is obliged to treat such materials and primary products with due care and attention and to store them properly.
- 3.3. During the manufacturing process Supplier is obliged to perform further checks if such checks have been separately agreed with BHTC or if such checks are necessary to comply with Supplier’s quality management system. If Supplier discovers any deficiencies in quality or quantity, BHTC shall be informed without undue delay in order to coordinate any further measures. If Supplier is responsible for such deficiencies in quality or quantity, for instance during the manufacturing process, Supplier shall be obliged to order a replacement delivery at Supplier’s cost.
- 3.4. The materials and primary products provided by BHTC are always processed on behalf of BHTC. If the value of the materials and primary products provided by BHTC exceeds the value of the processing and – if applicable – of the other components of the newly manufactured items, the newly manufactured items shall become the property of BHTC, and otherwise they shall be jointly owned by BHTC and Supplier in the ratio of the material and primary products provided to the value of the processing and the other components. For the avoidance of doubt: the aforesaid shall by no means limit the obligation

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of Supplier to transfer the unrestricted, unencumbered title in the Products to BHTC upon delivery of the Products.

- 3.5. Unless agreed otherwise in writing, Supplier shall be obliged to use any provided or newly manufactured tools, equipment, assembly systems, any other consumables and auxiliaries (hereinafter collectively referred to as “**Tools**”) exclusively for the purpose of manufacturing Products for BHTC. If Tools are manufactured in whole or in part for the account of BHTC by Supplier or by any third party, the manufacturing shall be deemed to be carried out on behalf of BHTC, with the consequence that BHTC acquires sole ownership of the manufactured Tools or that such Tools are transferred to BHTC upon acquisition by Supplier, as the case may be. In lieu of the handover, Supplier shall be entitled and obliged to keep possession and custody of the Tools on a loan basis, free of charge, for the duration of the contractual business relationship.
- 3.6. Supplier will keep the Tools visibly separate from Supplier`s own assets and will clearly mark them as property of BHTC or BHTC`s customers. Unless otherwise agreed in writing, Supplier shall maintain and service the Tools at Supplier`s cost. In no event Supplier shall scrap the Tools without BHTC`s prior written consent. Unless otherwise agreed in writing, Supplier shall immediately surrender the Tools to BHTC at any time upon BHTC`s request without having any right of retention.

## 4. Delivery Dates, Place of Delivery, Delivery Note

- 4.1. All delivery dates specified pursuant to Clause 2 shall be binding and must be strictly observed. Supplier shall bear the procurement risk with regard to the delivery of the Products and the components, parts, raw materials and auxiliary materials required therefor.
- 4.2. Supplier shall immediately inform BHTC about any delays in delivery as soon as they become apparent.
- 4.3. Unless agreed otherwise in writing in individual cases, all deliveries shall be made DAP (INCOTERMS 2020) by Supplier to the delivery address stated in the purchase order.
- 4.4. Each delivery shall be accompanied by a delivery note in duplicate at the place indicated for this purpose.

## 5. Delay in Delivery

- 5.1. If any delivery dates specified in the individual purchase orders or rolling delivery call-offs are not met, Supplier shall be obliged to indemnify BHTC for any damage caused by the delayed delivery, unless Supplier can demonstrate that it is not responsible for the delay. If the delivery is a fixed-date purchase within the meaning of Section 376 of the HGB [German Commercial Code], BHTC`s right to performance shall only expire if BHTC does not assert such right within a period of 30 days upon expiry of the delivery date.
- 5.2. After a grace period has been set and expired unsuccessfully, BHTC shall additionally be entitled to withdraw from any affected purchase order in whole or in part and to demand damages in lieu of performance. Any potential claim of BHTC to demand compensation for damage caused by the delay shall remain unaffected. In the event of repeated delays in delivery, subject to prior warning, BHTC shall be entitled to terminate any existing supply agreements with immediate effect and to withdraw from any purchase order not yet delivered without setting any further deadline.
- 5.3. Supplier shall be obliged to immediately notify BHTC of any delay, stating the reasons and the anticipated duration thereof, as soon as any circumstances which prevent Supplier from meeting the

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agreed delivery time become foreseeable. Acceptance of a delayed delivery shall not constitute a waiver of any rights that BHTC may have, even if no such reservation was explicitly stated before. Partial deliveries and corresponding partial invoices shall only be permitted upon explicit written consent of BHTC.

## 6. Payments and Terms of Payment

- 6.1. Unless explicitly agreed otherwise in writing, payment will be made net by BHTC 30 days after receipt of the invoice, provided the Products have also been received by BHTC; otherwise, 30 days after receipt of the Products net. Payment will 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 the deliveries. In the event of non-conforming deliveries, BHTC shall be entitled to retain payment in an amount equivalent to the value of the non-conforming deliveries until proper fulfillment. Drafts, drawings and samples will only be paid for if previously agreed in writing with BHTC.
- 6.3. Without the prior written consent of BHTC, which may not be unreasonably withheld, Supplier shall not be entitled to assign its claims against BHTC to any third party or to have any third party collect amounts due from such claims. If Supplier is supplied by its own suppliers under prolonged retention of title [*“verlängerter Eigentumsvorbehalt”*], the consent for the assignment to such sub-suppliers within the meaning of the preceding sentence shall be deemed to be granted. If Supplier assigns its claims against BHTC to any third party in violation of sentence 1 of this Clause 6.3 without the prior written consent of BHTC, the assignment shall nonetheless be effective. However, BHTC may choose whether to pay the Supplier or the third party, with discharging effect.

## 7. Force Majeure

- 7.1. “**Force Majeure**” means any severe external event beyond the control of the parties, caused by elementary forces of nature or acts of third parties, by which a Party is wholly or partially prevented from fulfilling its obligations, provided that the event was not foreseeable and could not have been prevented even by exercising the utmost diligence (e.g., natural disasters, riots, official measures as well as labor disputes, to the extent that these are not limited to the business of Supplier). Supply difficulties and other performance disruptions on the part of Supplier's sub-suppliers shall only be deemed to be a Force Majeure event if, in addition to the sub-supplier, Supplier is also prevented through a Force Majeure event from rendering the performance owed. If Supplier is already in default of delivery, its liability shall not cease to exist due to a Force Majeure event occurring during such time.
- 7.2. Circumstances of Force Majeure shall release the affected Party from their respective performance obligations for the duration of the disruption and to the extent of its effect. The parties are obliged to adapt their obligations to the changed circumstances in good faith within the scope of what is reasonable. If grounds for Force Majeure exist which merely prevent Supplier from fulfilling its performance obligations in full, Supplier undertakes to provide BHTC with partial deliveries on an equal basis with other customers, including OEMs. The right of BHTC to make covering purchases from alternative suppliers for the purpose of minimizing damage shall remain unaffected.
- 7.3. The affected Party shall immediately notify the other Party of the occurrence as well as the cessation of the Force Majeure and shall use its best efforts to remedy the Force Majeure and to limit its effects as far as is possible. If circumstances of Force Majeure exist for a period of more than 30 days, BHTC shall be entitled to withdraw from the underlying agreement in whole or in part without the Supplier being entitled to any claims for compensation.

## 8. Transfer of Information and Objects / Non-Disclosure

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- 8.1. Supplier shall treat as confidential all not publicly accessible information, including, without limitation, specifications, drawings, templates, models, tools, documents, software, as well as other data carriers provided to Supplier by BHTC or by its affiliated companies, shall not use it for any purpose other than the purpose of the Agreement and shall not pass it on to any third party or reproduce it, except where absolutely necessary for the performance of the contractual services. Affiliated companies within the meaning of Section 15 of the AktG [German Stock Companies Act] shall not be deemed to be third parties.
- 8.2. Confidential Information under Clause 8.1 above shall also include information obtained by Supplier as a result of observing, examining, deconstructing or testing a sample, model or prototype provided by BHTC or its affiliated companies in connection with the purpose of the agreement. To the extent such parts are not yet available on the open market, Supplier shall not examine them by reverse engineering or similar activities.
- 8.3. Supplier will ensure that its employees, its vicarious agents and other third parties to whom disclosure of information subject to non-disclosure is permitted by way of exception in accordance with Clause 8.1 or on the basis of the written consent of BHTC shall be bound accordingly by a written non-disclosure obligation. In such cases, Supplier shall be liable for any violation by the third-party recipient. BHTC reserves all property rights and copyrights in and to all confidential information and objects made available to Supplier.
- 8.4. Supplier shall be obliged to put appropriate technical and organizational measures in place to prevent information subject to non-disclosure from becoming accessible to third parties. Such technical and organizational measures shall appropriately take into account the level of IT security agreed upon pursuant to Clause 8.5 hereof.
- 8.5. Supplier shall be obliged to ensure that the criteria for certification in accordance with TISAX (currently available at: <https://portal.enx.com/de-de/TISAX/>), as valid from time to time, are met in its company or organization throughout the term of an agreement. The same shall apply to any sub-suppliers used by it insofar as their activities are to be classified at least under "Normal Protection Requirement" in accordance with Section 6.1.1 of the VDA-ISA (Information Security Assessment of the Verband der Automobilindustrie e.V. [German Association of the Automotive Industry], Version 5.0.4, download from the website of the VDA; see: [www.vda.de](http://www.vda.de)); should the definitions, numbering or versions of the VDA-ISA change during the term of the agreement, this shall apply accordingly in each case to the then current version. If it is not possible for Supplier to meet the TISAX criteria, Supplier shall, subject to the written consent of BHTC, at a minimum, demonstrate implementation of the information security standards in accordance with the requirements of the VDA-ISA. Supplier may also ensure compliance with this Clause 8.5 by providing evidence of other equivalent certifications or by otherwise demonstrating that its information security complies with VDA-ISA.
- 8.6. BHTC shall be entitled to verify Supplier's compliance with the information security standards pursuant to Clause 8.5. For this purpose, Supplier shall be obliged to provide BHTC with the necessary information, such as certifications or IT security reports. If BHTC has doubts about the documentary evidence, BHTC shall be entitled to carry out the verification on site at Supplier's premises during business hours upon giving reasonable prior notice and Supplier shall be obliged to assist BHTC with the on-site verification. Supplier shall bear the cost of the verification if BHTC identifies any material breach of IT security. Supplier shall ensure that a review of its sub-suppliers is also possible.
- 8.7. Supplier may advertise its business relationship with BHTC only upon prior written consent of BHTC.
- 8.8. Products which have been manufactured in accordance with information, in particular, application-specific design, specifications, drawings or models provided by BHTC or from Tools paid by BHTC in whole or in part, may neither be offered nor provided as samples or supplied to any third party unless



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BHTC has explicitly granted its prior consent in writing. The same shall also apply accordingly to any drawings, models, samples, etc., provided by BHTC.

- 8.9. Insofar as a special non-disclosure agreement has been concluded with Supplier in relation to the business relationship or a specific project, such non-disclosure agreement shall remain unaffected by the provisions of Clause 8, except as stated otherwise in the following. In the event that the special non-disclosure agreement does not permit the disclosure of confidential information to customers or sub-suppliers in a supply relationship, i.e. after conclusion of a supply agreement (e.g., nomination letter), in deviation from and in addition to the provisions of the special non-disclosure agreement, the passing on of confidential information shall be deemed permissible to the extent that this is absolutely necessary for the performance of the contractual services. In such cases, the respective Party shall be liable for any breach of confidentiality by the third-party recipient and shall ensure that the third-party recipient is bound by a written non-disclosure agreement in accordance with these Terms and Conditions of Purchase prior to the transmission of the information. In the event that the term of a special non-disclosure agreement expires, the rules on non-disclosure agreed under this Clause 8 shall continue to apply unchanged to any confidential information transmitted on the occasion of any agreement governed by these Terms and Conditions of Purchase.

## 9. REACH, Compliance with Other Provisions

- 9.1. Supplier will ensure that all substances used in the Products (e.g., raw materials, auxiliary and operating materials, components, assemblies) that are delivered to BHTC and that require registration in line with REACH (EC Regulation 1907/2006: Registration, Evaluation and Authorization of Chemicals) have been pre-registered by Supplier or its sub-suppliers and then registered for the purpose of application at BHTC within the time frame prescribed by REACH. If, contrary to expectations, this is not the case, BHTC shall be immediately informed thereof.
- 9.2. If the Products delivered to BHTC (including packaging) contain SVHC substances (**S**ubstances of **V**ery **H**igh **C**oncern) with a concentration greater than 0.1% by mass, such Products must be declared to BHTC. The respective current SVHC substances are listed in the candidate list published by the EU, which is continuously supplemented. Supplier shall keep itself informed of the current status of the candidate list at all times.
- 9.3. Additionally, Supplier warrants that the delivery of Products complies with the relevant statutory provisions and government regulations and standards. In the event that Supplier imports the Products, or its components, materials or primary products (e.g., into the European Economic Area), Supplier guarantees that these have previously been properly transferred into free circulation of goods in accordance with customs law.

## 10. Changes to Products

- 10.1. Supplier will notify BHTC as soon as possible of any intended technical change to Products that are approved for delivery, at the latest however 15 months before the introduction of such change.
- 10.2. The supply of any Product that has been changed in this way shall always require the prior explicit written consent of BHTC, for instance in the course of the new approval of a first sample. If the Products are manufactured pursuant to BHTC specifications, this shall also apply to the change itself. Any and all costs incurred by BHTC due to such changes, e.g., qualification costs, change costs, test costs, development costs, the costs for a renewed first sample release, etc., shall be borne by Supplier.
- 10.3. In the event of a termination of electronic components (PTN process), Supplier undertakes to supply BHTC with the original goods for the entire duration of the projects equipped with such components.

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In the event of component terminations by sub-suppliers, Supplier shall keep appropriate alternative solutions available. In general, the solution that is cost-neutral for BHTC as well as backwardly compatible is to be implemented.

- 10.4. With respect to electronic components, Supplier undertakes to make a maximum of one change (PCN) per component within 24 months. Supplier also undertakes not to terminate any components that have been specially developed for BHTC applications during the entire life cycle of the projects.
- 10.5. All changes (PCNs) and terminations (PTNs) of electronic components must be notified globally at least 15 months before the LOD (last order date): [pcn@hella.com](mailto:pcn@hella.com). All impacted BHTC material numbers must be stated in the PCN/PTN notification. If a specific LOD was agreed with BHTC or is permissible for any other reason, BHTC will endeavor, in consultation with the respective customers, to state the all-time needs until the LOD notified by Supplier. Any all-time inventories that may need storage will be stored at Supplier's at the cost and risk of Supplier.
- 10.6. The above provisions in Clauses 10.1, 10.2, 10.3, 10.4 and 10.5 shall apply *mutatis mutandis* to the change of procurement sources for primary material or components as well as to the change of the production facility or significant changes in the manufacturing process of Supplier.
- 10.7. BHTC may, within the scope of what may reasonably be expected from Supplier, demand changes to the design and workmanship of the Products. The effects thereof, in particular with regard to the additional and reduced costs as well as the delivery dates, shall be mutually agreed in an appropriate manner.

## 11. Supply Assurance

- 11.1. 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 of the manufacturing equipment, Supplier undertakes to supply BHTC with the Products according to BHTC's needs and to accept purchase orders from BHTC as long as BHTC requires the Products. The anticipated supply volume pursuant to the demand forecasts will be notified to Supplier well in advance. Supplier shall however not be entitled to demand the purchase of specific quantities by BHTC, unless explicitly agreed otherwise in writing.
- 11.2. In order to ensure the production of spare parts, Supplier undertakes to guarantee the supply of the Products for the period of 15 years after the end of the series production of the BHTC products in which the respective Products are installed.
- 11.3. Supplier shall be obliged, upon request by BHTC, to provide all information or disclosures necessary to comply with legal requirements or as part of diligent and fore-sighted risk management of the supply chain, in particular to assess the security of delivery and supply and to meet customer requirements. Supplier shall also provide corresponding support in the event of an audit of its suppliers and their sub-suppliers by BHTC or its customers, or by a third party assigned by BHTC or its customers.

## 12. Notice of Defects

BHTC shall notify Supplier promptly of any defects of the delivery once these are discovered in the course of a proper business procedure. The incoming goods inspection at BHTC shall be limited to a visual inspection of the transport packaging for externally visible damage, e.g., transport damage, a quantity-based inspection and an identity check based on a comparison of the delivery documents with the order documents. Any further checks, in particular measuring inspections, shall not be required. BHTC shall carry out inspections during manufacturing in accordance with the requirements

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of its quality assurance management system. Insofar, Supplier waives any objections based on late notice of defects.

## 13. Liability for Defects

- 13.1. Supplier warrants that the Products conform to the agreed characteristics (e.g., specifications) and are otherwise also free of defects, in particular that
- the Products as well as their materials and workmanship are of impeccable characteristics and of a quality customary in the market, respectively industry;
  - the Products comply with the state of the art in science and technology as well as applicable product safety regulations and are free from any third-party rights.
- 13.2. Compliance with test requirements or approvals on the part of BHTC shall not release Supplier from the obligation to deliver Products that are free of defects. If BHTC consents to any specifications, drawings, calculations or other documents of Supplier, this shall also not affect Supplier's sole responsibility for the Products. This shall also apply to any proposals, recommendations or any other acts of cooperation of BHTC.
- 13.3. In the event of delivery of defective Products, BHTC shall in particular be entitled to demand immediate subsequent performance.
- 13.4. To the extent that any customers of BHTC use a reference market procedure or similar procedure customary in the automotive industry to determine and account for warranty claims and invoke such procedure against BHTC due to any defect in BHTC products which result from defects in Products of Supplier, such procedure will also be applied to the supply relationship between Supplier and BHTC. If no such procedure to determine and account for warranty claims is applied and no other agreement has been concluded between BHTC and Supplier in that respect, defective Products shall be made available – to the extent actually and legally possible – to Supplier upon request and at Supplier's expense and risk. BHTC shall be entitled to dispose of defective Products not requested by Supplier at Supplier's expense.
- 13.5. If Supplier permanently refuses subsequent performance or if Supplier does not comply with BHTC's request for subsequent performance despite setting a reasonable deadline and if there is a threat of supply shortages in the supply chain or if, under consideration of the interests of both parties, BHTC may not reasonably be expected to accept subsequent performance by Supplier for any other reason (e.g., in urgent cases to prevent further damage), BHTC may, without setting a deadline, at its option (i) carry out any possible rectification itself or arrange for it to be carried out by third parties to the extent necessary to comply with its own delivery obligations, (ii) procure defect-free products from third parties, (iii) reduce the purchase price, or (iv) waive replacement delivery by charging back the invoice value of the defective Products. The (additional) costs incurred in this respect shall be borne by Supplier.
- 13.6. Supplier shall be obliged to reimburse all defect-related expenses, in particular travel and transport costs (including freight and packaging), labor and material costs, including expenses for the removal of the defective Product and the installation of a defect-free Product or the replacement of defective software as well as necessary testing and sorting costs (e.g., in case of extended incoming goods inspection), irrespective of whether such costs were incurred by Supplier, by BHTC or by third parties. In the event that BHTC uses its own personnel or internal resources for necessary testing and sorting activities in lieu of third parties assigned for this purpose, the corresponding evidenced time expenditure may be invoiced to Supplier on the basis of an appropriate internal hourly rate.



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- 13.7. In the event of series damage (accumulation of Product defects with the same cause), to the extent that a defect analysis is uneconomical, not possible or not reasonable in individual cases, Supplier shall also reimburse the above-mentioned costs for such part of the affected series which technically has no defect. In this respect as well Supplier shall be obliged to subsequently deliver defect-free Products.
- 13.8. Unless the parties have explicitly agreed otherwise in writing, claims arising from the liability for defects shall become statute-barred upon expiry of 54 months of delivery to BHTC.
- 13.9. In case that the statutory basis of claims for damages, costs and reimbursement of expenses requires fault on the part of the Supplier, this shall not be excluded by the preceding provisions of this Clause 13. In the event of contributory cause and contributory negligence on the part of BHTC, Section 254 of the German Civil Code (BGB) and the existing obligations to mitigate damages in this respect shall apply.
- 13.10. Unless stipulated otherwise in the foregoing or in a separately concluded warranty agreement, liability for defects shall additionally be governed by the statutory provisions. Further claims for expenses and damages due to the delivery of defective Products shall not be affected by this Clause 13.

## **14. Liability and Indemnification**

- 14.1. Where BHTC incurs any damage due to defective Products or a “product defect” (in the sense of the applicable product liability legislation) or breach of duty by Supplier, Supplier shall compensate BHTC for any damage caused thereby within the scope of the statutory provisions.
- 14.2. Within the scope of liability pursuant to Clause 14.1, Supplier shall hold harmless BHTC upon request against any claims of third parties arising from and in connection with damages to life, body, health and property damage.
- 14.3. In the event of any action taken by BHTC or its customers to prevent damage (e.g., recall or other customer service action), Supplier shall reimburse BHTC for all costs, expenses and damages incurred thereby, unless the action taken does not result from the defectiveness of the Products or a “product defect” (in the sense of the applicable product liability legislation) or any other breach of duty by Supplier.
- 14.4. If a third party asserts claims against BHTC or its customers relating to the infringement of industrial property rights or copyrights by the use of Supplier’s Products, although used in accordance with their intended purpose, Supplier shall indemnify BHTC against all claims, expenses, damages and costs, including reasonable legal expenses.
- 14.5. Supplier and BHTC shall inform each other without undue delay of existing risks of infringement and possible cases of infringement pursuant to Clause 14.4 and shall in mutual agreement defend each other against corresponding claims. Upon request, Supplier shall support BHTC to a reasonable extent in the clarification of, and defense against, claims of third parties and, at the request of BHTC, shall assume the legal defense against such third-party claims at its own expense.
- 14.6. Supplier shall maintain product liability insurance of an appropriate sum providing insurance cover for damages to persons, property damage and product-related financial losses, plus a product recall insurance. The liability of Supplier and the provisions of these Terms and Conditions of Purchase shall not be affected by the conclusion or existence of such insurance or the occurrence of an insured event thereunder; in particular, contractual and statutory claims shall not, as a result of this Clause 14.6, be limited to amount of insurance.

## 15. Rights of Use

- 15.1. If the use of industrial property rights and copyrights of Supplier is required for the use of the Products by BHTC, its customers or other third parties, Supplier shall grant BHTC the non-exclusive, irrevocable right, unlimited in time, place and content and free of charge, to use, repair or otherwise utilize or resell the Products itself or through third parties at its sole discretion. Upon BHTC's request, Supplier shall notify BHTC of the use of published and unpublished, proprietary or licensed, industrial property rights and applications for industrial property rights in and to the Products.
- 15.2. To the extent that BHTC contributes to the costs for the development of the products, whether by means of a one-time payment or via the unit price, BHTC shall receive, without prejudice to any further rights based on a separate agreement with Supplier, a free of charge, non-exclusive right of use for all purposes, including the right to sublicense, unlimited in time, place and content, to the results of development and to the inventions used in the Products or to the industrial property rights and copyrights pertaining thereto. As far as Supplier's performance involves the creation of software, Supplier shall make the source code available to BHTC upon request, including the software documentation.

## 16. Compliance

- 16.1. Supplier must ensure, by means of an appropriate organization and corresponding processes in its company, compliance with all laws and regulations concerning Supplier and its business relationship with BHTC. In particular, it shall not commit any act or omission which may result in criminal prosecution for fraud or breach of trust, insolvency offenses, competition offenses, granting of benefits, acceptance of benefits, bribery, corruptibility or comparable criminal offenses by persons employed by Supplier or by any other third party. In the event of violation of the above, BHTC shall be entitled to rescind or terminate all existing legal transactions with Supplier without notice and to break off all negotiations. Any further claims of BHTC shall remain unaffected.
- 16.2. The "Code of Conduct for Suppliers and Service Providers of the BHTC Group" (available at: [www.bhtc.com/de/unternehmen/einkauf](http://www.bhtc.com/de/unternehmen/einkauf)), which is an essential prerequisite for the establishment and continuation of the business relationship with the Supplier, shall apply as an integral part of these Terms and Conditions of Purchase. Supplier shall be obliged to observe and comply with the principles set out in the Code of Conduct in its business activities and shall provide, without being requested, an annual confirmation that the requirements of the Code of Conduct are met.
- 16.3. BHTC shall be entitled to change and revise the "Code of Conduct for Suppliers and Service Providers of the BHTC Group" at its own discretion to the extent necessary. The amended Code of Conduct shall become part of these Terms and Conditions of Purchase unless Supplier objects to its inclusion in writing within one month of the revised document being made available or accessible. Confirmation of compliance with the requirements of the amended Code of Conduct within the framework of the annual confirmation pursuant to Clause 16.2 shall also be deemed to constitute consent.
- 16.4. At the beginning of each year, without being requested, Supplier will provide BHTC with financial information in the scope that is necessary. BHTC shall provide Supplier with the format requested for the compilation of the financial information.

## 17. General

- 17.1. If an application for the opening of insolvency proceedings or comparable proceedings under foreign law is filed with respect to the assets of Supplier or if such application is rejected for lack of assets or if insolvency proceedings or comparable proceedings under foreign law are initiated, BHTC shall be

# General Terms and Conditions of Purchase for Production Material of the BHTC Group



entitled to withdraw from the purchase orders with respect to the scope of delivery not yet fulfilled at that point in time as well as to terminate existing supply agreements with immediate effect.

- 17.2. Supplier agrees that, for the purpose of order processing and invoice verification, the necessary data will be stored in electronic files by BHTC in compliance with the requirements of data protection law.
- 17.3. BHTC shall have the rights of set-off and retention to the extent provided by law. Supplier may only set off its own claims or retain any performance owed if its counterclaims have been legally established with final force and effect, are undisputed or have been acknowledged by BHTC. Supplier shall only be entitled to exercise its right of retention to the extent that its counterclaim is based on the same legal relationship.
- 17.4. Where, in these Terms and Conditions of Purchase, the written form is required for notifications or declarations of the parties, this form requirement can also be fulfilled in accordance with Clause 17.5, sentence 4 and 5. The transmission of unsigned notifications and declarations in textual or electronic form shall not be sufficient to fulfil the written form requirement.
- 17.5. No verbal ancillary agreements have been made. Any modification of, or amendment to, these Terms and Conditions of Purchase shall only be valid if made in writing. This shall also apply to any modification or removal of this requirement of the written form. The written form requirement can also be fulfilled via transmission of signed declarations by telecommunication (e.g., transmission of the signed document by fax or as attachment to an email). An electronic signature using a certificate-based digital ID of a service provider (e.g., DocuSign, Adobe Acrobat Sign) may replace the handwritten signature required for the written form.
- 17.6. Should any provision of these Terms and Conditions of Purchase be or become invalid, the validity of the remaining Terms and Conditions of Purchase or of any agreement which is governed by these Terms and Conditions of Purchase shall remain unaffected. The parties shall be obliged in mutual agreement to replace the invalid provision with a provision that most closely approximates its economic effect. This provision shall also apply to any gap of these Terms and Conditions of Purchase or any agreement which is governed by these Terms and Conditions of Purchase may contain.
- 17.7. Place of performance shall be the place of the registered office of BHTC or the delivery address specified by BHTC. The parties may agree otherwise with regard to the payment.
- 17.8. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall always be excluded.
- 17.9. Unless explicitly agreed otherwise in writing in the supply agreement underlying a purchase order (e.g., nomination letter), these Terms and Conditions of Purchase as well as any and all agreements concluded on the basis hereof shall be exclusively governed by the law of the Federal Republic of Germany. The exclusive place of jurisdiction for all disputes arising out of or in connection with the business relationship between BHTC and Supplier shall be Lippstadt, Germany.
- 17.10. If Supplier's registered office is outside of the Federal Republic of Germany, then, deviating from sentence 2 of Clause 17.9, BHTC shall be entitled to have any disputes arising out of or in connection with the business relationship between BHTC and Supplier finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. In lawsuits where BHTC is the defendant, BHTC will in the event of a dispute upon written request by Supplier exercise its right of election no later than within 14 days upon receipt of such request. If BHTC does not exercise its right of election within such period despite the request, the ordinary court of law referred to in sentence 2 of Clause 17.9 shall be competent for the dispute. The arbitration tribunal shall be composed of three arbitrators. The seat of the arbitration shall be Lippstadt, Germany, the language of the arbitration proceedings shall be English.

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