

# General Conditions of Sale, Delivery and Payment of BEKO TECHNOLOGIES LTD

## 1 Validity of conditions

- 1.1 The terms and conditions of trade and delivery of BEKO Technologies (in the following referred to as "BEKO") shall apply exclusively. Any conditions of the other contracting party (in the following referred to as "Purchaser") conflicting with or deviating from these Conditions of Sale, Delivery and Payment shall not be recognized unless BEKO has expressly agreed in writing to the validity of the deviating conditions. These terms and conditions of trade and delivery shall also apply if BEKO has carried out the delivery to the Purchaser without objecting despite being informed about the Purchaser's conditions conflicting with or deviating from BEKO's own terms and conditions of trade and delivery
- 1.2 The terms and conditions of trade and delivery shall also be valid for all future transactions with the Purchaser.
- 1.3 The terms and conditions of trade and delivery shall only be applicable to entrepreneurs.

## 2 Offer and acceptance

- 2.1 All offers submitted by BEKO are subject to confirmation. BEKO reserves the right to cancel an article, exclude an article from delivery or change the price. The scope of BEKO's supply commitment is determined by BEKO's acknowledgement of the order or offer. Verbal agreements, direct or by telephone, only become effective after written confirmation.
- 2.2 If the order is to be qualified as an offer according to § 145 BGB (German Civil Code), BEKO may accept this within a period of 4 weeks. At the latest, the contract shall commence with the shipment of the goods ordered or with the shipment of the first supply in the case of partial shipment.
- 2.3 The drawings, statements of weight and dimensions, patterns, etc., contained in the offer documentation are only approximations and do not represent standard characteristics. BEKO is entitled to deviate from the descriptions in the offer in so far as these deviations are not of a fundamental or essential nature and the contractual purpose is not restricted thereby.
- 2.4 Where BEKO manufactures parts on the basis of the customer's drawings, sole validity shall be accorded to the drawings prepared by BEKO and approved by the Purchaser. Any deviations from approved drawings shall be agreed separately and any extra costs arising therefrom shall be remunerated.
- 2.5 Individual cost estimates requested by the Purchaser shall be remunerated. In the case of order placement, the corresponding charges shall be included in the purchase price.

## 3 Protective rights

- 3.1 BEKO reserves the property right and copyright to all representations, drawings, calculations and other documentation. This applies in particular to any written documentation marked as "confidential". The Purchaser may only make such documentation available to third parties after previously obtaining BEKO's written agreement.
- 3.2 If deliveries are based on drawings or other information supplied by the Purchaser and if this results in protective rights being claimed by a third party, the Purchaser shall, within the internal relationship, absolve BEKO from all liability.

## 4 Prices and payment

- 4.1 Unless otherwise agreed, prices are valid ex works, including loading at the works, but excluding packing; the latter is charged separately on the invoice.
- 4.2 Our price lists, price quotations and cost estimates are non-binding.
- 4.3 The stated prices always apply to a concrete order, specifying both the quantity and the delivery time.
- 4.4 All prices are net prices to be understood plus value-added tax.
- 4.5 Payment shall be effected within 30 days after date of invoice without deduction.
- 4.6 BEKO is entitled, even in the case of the Purchaser's contrary terms of payment, to credit any payment initially against the oldest, not specifically defined debt. If cost has already arisen or interest is already due, BEKO shall be entitled to credit any payment initially against the cost, subsequently against the interest and finally against the main account.
- 4.7 Any extra expenditure due to subsequent requests for changes can be charged by BEKO to the Purchaser.
- 4.8 The Purchaser shall only be entitled to offset amounts due if and in so far as his counterclaims have been found to be legally effective and are undisputed or have been acknowledged by BEKO in writing. The Purchaser's right of retention shall be restricted to claims arising from the contractual relationship.

## 5 Delivery time

- 5.1 Delivery periods and delivery dates shall only be regarded as binding agreements if the offer expressly contains such a promise in writing. BEKO shall not be obliged to observe the delivery date or delivery deadline if the Purchaser does not carry out his duties (payment on account, supply of the necessary documents, etc.) in time. The defense of non-performance of contract shall be maintained.
- 5.2 Delivery periods shall commence at the earliest on the day on which the contract was concluded in writing. Prior clarification of all technical questions is a precondition of commencement.
- 5.3 Partial shipments are permissible.
- 5.4 If the Purchaser subsequently requests changes, BEKO shall not be obliged to observe the delivery date or delivery period.
- 5.5 The delivery time shall be regarded as observed if the item to be shipped has left BEKO's works before expiration of said time or if BEKO has communicated that the item is ready for shipment.
- 5.6 In the event of delays in delivery not due to intent or gross negligence on the part of BEKO, the Purchaser shall not be able to put forward claims. This applies in particular to delays in delivery due to force majeure. In such a case, the agreed delivery date or delivery period shall be extended by the duration of the conditions preventing delivery.
- 5.7 If shipment is delayed at the request of the Purchaser, the cost due to storage shall be charged to the Purchaser as from one month after communicating readiness for shipment; in the case of storage at our works the charge shall be ½ percent of the invoice amount for every month of storage. However, after setting a reasonable deadline and fruitless expiration of this period, BEKO shall be entitled to make other arrangements for the delivery item or to supply the Purchaser within a reasonably extended period of time.

## 6 Passage of risk/packaging

- 6.1 The risk passes to the Purchaser at the latest upon dispatch of the delivery items, even in the case of partial shipments. BEKO shall only insure the goods against insurable risks if this is expressly desired by the Purchaser.
- 6.2 Returned transport or other packaging shall not be accepted, apart from pallets. The Purchaser shall be obliged to dispose of the packaging at his own expense

## 7 Installation & mounting

- 7.1 BEKO's offers do not include installation & mounting. In so far as contractually agreed with BEKO, installation & mounting shall be charged to the Purchaser separately. In such a case, the Purchaser shall ensure that the site allows reasonable access and is suitable for use. Furthermore, the Purchaser shall be responsible for unloading.
- 7.2 The Purchaser shall provide a power connection.

## 8 Reservation of ownership

- 8.1 BEKO retains the ownership title to all items supplied until receipt of all payments arising from the supply agreement. In the case of conduct not conforming to contract, in particular delay in payment, BEKO shall be entitled to repossess the purchased item.
- 8.2 During the period of reservation of ownership the Purchaser shall be obliged to treat the items supplied carefully and to insure them at reinstatement value, at his own expense, against any type of destruction or loss.
- 8.3 Costs for maintenance and inspection work shall also be borne by the Purchaser during the period of reservation of ownership; this also applies when this work is carried out by BEKO.
- 8.4 In the case of attachments or other interference by third parties, the Purchaser shall inform BEKO immediately in writing so that BEKO may lodge a third-party action against execution. If the third party is unable to reimburse the judicial and extrajudicial costs of such an action, the Purchaser shall be liable for these costs.
- 8.5 If the Purchaser's conduct does not conform to contract, in particular in the case of delay in payment, BEKO shall be entitled to recover possession after demand for payment while the Purchaser shall be obliged to give up possession.
- 8.6 The Purchaser is entitled to resell the purchased item in the ordinary course of business. However, prior to this all accounts receivable from the Purchaser's buyers or third parties as a result of this resale shall be assigned by the Purchaser to BEKO up to the final invoice amount (incl. value-added tax) of BEKO's claim, irrespective of whether the purchased item was sold without or after further processing. The Purchaser shall remain entitled to collect this account even after delivery. BEKO's right to collect the account shall remain unaffected thereby. However, BEKO undertakes not to collect the account provided the Purchaser fulfills his payment obligations out of the proceeds collected, does not delay his payment and, in particular, provided an application for insolvency proceedings or cessation of payments has not been filed.
- 8.7 If the goods supplied are inextricably mixed or interconnected with other articles not belonging to BEKO, BEKO shall become co-owner of the new or interconnected object to the extent of the value of the goods supplied (final invoice amount, incl. value-added tax) in relation to the other article or other articles at the time of mixing or interconnection. The Purchaser shall hold the resulting sole ownership or co-ownership in safe custody for BEKO.
- 8.8 Herewith the Purchaser also assigns to BEKO the account receivable from third parties in order to secure BEKO's receivables arising from the connection of the goods supplied to a piece of real estate.
- 8.9 BEKO undertakes to release the receivables due to BEKO upon request if the realizable value exceeds BEKO's receivables by more than 20 %. BEKO shall be able to choose the type of security.

## 9 Liability for defects/liability

- 9.1 BEKO is not liable for damage due to misuse, wear and tear, storage or other actions by the Purchaser or third parties. This applies in particular to wearing parts.
- 9.2 Legal entitlements arising from the liability for defects shall become statute-barred two years after delivery of the goods. This does not represent a durability guarantee.
- 9.3 The Purchaser shall be obliged to fulfill his duty to examine the goods according to § 377 HGB (German Commercial Code) even if they are to be resold.
- 9.4 BEKO shall be entitled to choose between remedy of the defect and supply of a replacement.
- 9.5 The Purchaser's right of recourse against BEKO due to liability for defects in the case of claims against the Purchaser by his buyers shall be excluded if the customer has not fulfilled his duty to examine the goods and give notice of defects or if the goods have been modified by processing.
- 9.6 BEKO's liability according to the legal regulations concerning damages shall be unrestricted if a violation of duty attributable to BEKO is due to intent or gross negligence. In so far as the violation of duty attributable to BEKO is due to ordinary negligence and an essential contractual duty has been culpably breached, the liability for damages shall be restricted to the foreseeable damage which typically occurs in similar cases. Otherwise liability is excluded.
- 9.7 Liability according to the provisions of the product liability law shall remain unaffected. Equally unaffected shall be the liability for injury to life, body and health.

## 10 Product liability

- 10.1 The Purchaser may only use the goods in accordance with the intended application and must ensure that these goods are only resold to persons familiar with the hazards and risks of the product.
- 10.2 If the Purchaser uses the goods as a basic material and sub product of his own products, his duty to warn when putting the final product into circulation shall also extend to the goods supplied by BEKO. Within the internal relationship the Purchaser shall absolve BEKO, upon first demand, from the assertion of claims in the case of non-observance of this duty.

## 11 Other/final provisions

- 11.1 Place of performance shall be Neuss, Germany.
- 11.2 Place of jurisdiction for all disputes arising from the contract shall be Neuss, Germany. However, BEKO shall also be entitled to sue the Purchaser at the court seat where the Purchaser has his general place of jurisdiction or at the court seat where the Purchaser has a branch establishment.
- 11.3 Applicable shall be German law only with the exclusion of UN purchase law.
- 11.4 In so far as individual provisions of the contractual relationship are invalid, the validity of the other provisions shall not be affected thereby. The parties shall try to replace the invalid provision by a valid one corresponding as closely as possible to the commercial purpose of the contract.