General Purchasing Terms and Conditions of BEG Bürkle GmbH & Co. KG

§ 1 General provisions, scope

(1) These General Purchasing Terms and Conditions (AEB) apply to all our business relations with our business partners and suppliers ("Vendors"). The AEB only apply if the Vendor is an entrepreneur (sec. 14 German Civil Code (BGB)), a legal person under public law or a special fund under public law.

(2) The AEB apply in particular to contracts for the sale and/or supply of movable things ("Goods") irrespective of whether the Vendor manufactures the Goods itself or buys them from subcontractors (§§ 433, 651 BGB). Unless otherwise agreed, the AEB in the version valid at the time when the order is placed by us or in the version last notified to the Vendor in text form shall also apply as a framework agreement to similar future contracts without our having to refer to them again in each individual case.

(3) These AEB apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the Vendor shall only form a component part of the contract if and to the extent that we have explicitly consented to the application thereof. This requirement of consent shall apply in any event, for example even if we accept supplies of the Vendor without making a reservation although we had knowledge of the general terms and conditions of business of the Vendor.

(4) Any individual agreements entered into with the Vendor in an individual case (including ancillary agreements, addenda and amendments) shall take precedence over these AEB in any case. A contract in writing and/or confirmation by us in writing shall be authoritative for the content of such agreements subject to proof to the contrary.

(5) Declarations and notices relevant in law to be delivered to us by the Vendor after conclusion of the contract (e.g. setting time limits, reminders, declaration of revocation [*Rücktritt*]), must be made in written form in oder to be effective.

(6) References to the application of statutory provisions shall be significant only for the purpose of clarification. Even without such clarification, the statutory provisions therefore apply except to the extent directly amended by or explicitly excluded in these AEB.

§ 2 Conclusion of the contract

(1) Our purchase order shall be considered to be binding at the earliest when placed or confirmed in writing, whereby such placing or confirmation by telefax or email suffices. The Vendor shall advise us any obvious errors (e.g. typographical or arithmetical errors) and omissions in the purchase order, including the order documentation, prior to acceptance for the purpose of correction or completion, otherwise the contract shall be deemed not concluded.

(2) The Vendor is required to confirm our purchase order in writing within a time limit of five (5) working days indicating the binding prices and delivery periods, or to perform the purchase order as

agreed by sending the Goods without reservation (order acceptance). Delayed order acceptance is deemed to constitute a new offer and requires acceptance by us.

§ 3 Delivery time and default in delivery

(1) The delivery time indicated by us in the purchase order is binding. The Vendor is obliged to notify us in writing without undue delay if it is to be expected that the Vendor will be unable to comply with binding delivery times for whatsoever reasons.

(2) If the Vendor fails to perform or fails to perform within the agreed delivery time or if it is in default, then our rights – in particular our rights to revocation and damages [*Rücktritt* and *Schadensersatz*] – shall be determined in accordance with the provisions of statute. The provisions of section 3 shall remain unaffected. Acceptance of delayed delivery is not deemed to constitute a waiver of rights to compensation.

(3) If the Vendor is in default, we can claim – in addition to further statutory claims – a flat rate for compensation of our damage due to default in an amount equal to 1% of the net price for each completed calendar week of default, but not exceeding, on aggregate, 5% of the net price of the Goods delivered late. We reserve the right to evidence that greater damage was incurred. The Vendor reserves the right to evidence that no damage at all or considerably less damage was incurred.

§ 4 Performance, delivery, passing of the risk, default of acceptance

(1) Unless given our prior consent in writing, the Vendor does not have the right to have performance owed by the Vendor carried out by third parties (e.g. subcontractors). The Vendor shall bear the procurement risk for its performance unless otherwise agreed in an individual case (e.g. by an agreement on a limitation to the Vendor's own stocks).

(2) Delivery within Germany shall be "free domicile" ["*frei Haus*"] to the place indicated in the purchase order. If no place of destination is indicated and unless otherwise agreed, delivery shall be made to our registered office in Herrenberg. The respective place of destination is also the place of performance for delivery and for any supplementary performance (obligation to be performed at the obligee's place of business [*Bringschuld*]).

(3) A delivery note indicating the date (of issuance and dispatch), content of the consignment (article number and quantity) and our purchase order number (date and number) shall be included with the consignment. If the delivery note is missing or incomplete, we shall not be responsible for any resultant delays in processing or payment. A corresponding dispatch note with the same content shall be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon handover at the place of performance. If a conformity acceptance procedure (conformity acceptance [*Abnahme*]) has been agreed, this is authoritative for passing of the risk. In the event of conformity acceptance, the statutory provisions of the law relating to contracts for work and services shall

also apply accordingly in other respects. If we are in default of acceptance, this is tantamount to handover and/or conformity acceptance.

(5) The provisions of statutes shall apply to the occurrence of our default of acceptance. The Vendor must, however, also explicitly offer us its performance even if a specific or specifiable calendar time is agreed for an act or collaboration (e.g. provision of material) by us. If we are in default of acceptance, the Vendor can demand reimbursement of its extra expenses in accordance with the statutory provisions (sec. 304 BGB). If the contract relates to a non-fungible thing to be manufactured by the Vendor (custom made), the Vendor shall only have further rights if we had committed ourselves to collaboration and are responsible for the failure to collaborate.

§ 5 Prices and terms of payment

(1) The price stated in the purchase order is binding. All prices are deemed inclusive of value added tax (VAT) unless this is itemized separately.

(2) Unless otherwise agreed in an individual case, the price includes all services and ancillary services of the Vendor (e.g. assembly, installation) and all incidental costs (e.g. correct packaging, transport costs inclusive of possible transport and third party liability insurance).

(3) The price agreed shall be payable within 30 calendar days after full delivery and performance (including any conformity acceptance that may have been agreed) and receipt of a correct invoice. If we make payment within 14 calendar days, the Vendor shall grant us a 3% discount on the net invoice amount. If payment is made by bank transfer, payment is made punctually if our bank receives the transfer order prior to expiry of the payment term; we are not responsible for delays by the banks involved in the payment transaction.

(4) We do not owe any interest from the due date. The provisions of statute apply to default of payment.

(5) We have the right of offset and the right of retention and the defense of an unperformed contract to the extent provided by law. In particular we have the right to withhold payments that are due as long as we are still entitled to claims against the Vendor on grounds of incomplete or defective performance.

(6) The Vendor has a right of offset or a right of retention based only on counterclaims that have been decided by a final and non-appealable judgment or are undisputed.

§ 6 Confidentiality and retention of title

(1) We reserve the copyrights and title in and to illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documents. Such documents shall be used solely for the contractual performance and returned to us after completion of the contract. The documents shall be kept secret with respect to third parties and this shall continue to apply after termination of the contract. The obligation to observe secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become public knowledge.

(2) The Vendor shall also treat in strict confidence all the business and technical information disclosed by us, even after the date of termination of the contractual relationship with us, irrespective of whether such information has been disclosed orally, in writing or by electronic transmission, and shall fully return such information to us on first demand and/or delete information stored on storage media or destroy it.

(3) The above provisions shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and to other items which we provide the Vendor with for manufacturing. As long as such items are not being processed they shall be kept separately at the Vendor's expense and insured against loss and destruction to an appropriate extent.

(4) Any processing, mixing or combining (further processing) by the Vendor of items provided shall be performed for us. The same shall apply in the event of further processing by us of the Goods delivered so that we are considered to be the manufacturer, and at the time of further processing at the latest we shall acquire title to the product in accordance with the provisions of statute.

(5) The transfer of title to the Goods to us shall be effected unconditionally and regardless of whether the price has been paid. If, however, in an individual case, we accept an offer of transfer of title by the Vendor that is conditional upon payment of the purchase price, the Vendor's retention of title shall expire, at the latest, upon payment of the purchase price for the Goods. In the normal course of business we remain entitled to on-sell the Goods even prior to payment of the purchase price, subject to the advance assignment of the future claim ensuing herefrom (alternatively, application of the simple right of retention of title and, with respect to the on-sale, of the extended retention of title). Excluded herefrom are thus, in any case, all other forms of retention of title, in particular the expanded, the transferred and the retention of title extended to cover the further processing.

§ 7 Defective delivery

(1) The provisions of statute apply to our rights in the event of defects as to quality and defects of title of the Goods (including incorrect deliveries and short shipment, incorrect assembly, defective assembly, operating or usage instructions) and in the event of any other violations of obligations by the Vendor except insofar as otherwise provided hereinbelow.

(2) In accordance with provisions of statute, the Vendor is liable, in particular, for the Goods having the agreed quality upon passing of the risk to us. An agreement on the quality is deemed to be, in any event, those product descriptions which, in particular by means of designation or reference in our purchase order, form the subject matter of the respective contract or, in the same manner as these AEB, have been incorporated in the contract. In this connection it makes no difference whether the product description originates from us, the Vendor or the manufacturer.

(3) In derogation from section 442 (1) sentence 2 BGB, we have an unrestricted right to claims for defects even if, as a result of gross negligence, we had no knowledge of the defect at the time when the contract was entered into.

(4) The statutory provisions (sec. 377, sec. 381 German Commercial Code (HGB)) shall apply to our commercial obligation to examine the Goods and object to defects subject to the following condition: Our obligation to examine the Goods shall be limited to defects which become manifest during an external appraisal in our incoming Goods inspection also of the shipping papers and during our quality control in random sample checks (e.g. transport damage, incorrect deliveries and short shipment). There is no examination obligation insofar as conformity acceptance has been agreed. In all other respects the relevant issue is the extent to which an examination is appropriate in the normal course of business taking account of the circumstances of the individual case. Our obligation to notify of defects in the Goods discovered at a later date shall remain unaffected. In all cases our notification of defects (defect notice) shall be deemed given without undue delay and in a timely manner if it is received by the Vendor within 8 working days.

(5) The costs expended by the Vendor on examination and supplementary performance (including any possible dismantling and installation costs) shall be borne by the Vendor even if it should transpire that no defect actually existed. Our liability for damages shall remain unaffected in the event of an unjustified request for rectification of defects; to this effect we shall, however, only be liable if we realized that there was no defect or failed to do so due to gross negligence.

(6) If, within a reasonable time limit set by us, the Vendor fails to comply with its supplementary performance obligation – at our election by rectifying the defect (rectification [*Nachbesserung*]) or by supplying a defect-free thing (delivery of a replacement [*Ersatzlieferung*]) – we can rectify the defect ourselves and demand compensation from the Vendor for the expenditures required in this respect or a corresponding advance payment. If the supplementary performance by the Vendor should have failed or be unreasonable for us to accept (e.g. on account of special urgency, endangering operating safety or impending occurrence of disproportionate damage), setting a time limit is not required; we shall notify the Vendor of such circumstances without undue delay, if possible in advance.

(7) Otherwise, in the event of a defect as to quality or a defect of title, we have the right, in accordance with the provisions of statute, to reduce the purchase price or to revoke the contract [*Minderung* or *Rücktritt*]. In addition, pursuant to statutory provisions, we have the right to claim damages and reimbursement of expenses.

§ 8 Recourse against the supplier

(1) In addition to claims for defects, we have an unlimited entitlement to our statutory rights of recourse within a supply chain (recourse against the supplier pursuant to sec. 478, sec. 479 BGB). In particular, we have the right to demand of the Vendor precisely that type of supplementary performance (rectification or delivery of a replacement) which we owe to our customer in an individual case. Our statutory right to choose (sec. 439 (1) BGB) is not restricted as a result of this.

(2) Before we recognize or perform a claim for defects brought by our customer (including reimbursement of expenses sec. 478 (2), sec. 439 (2) BGB) we will inform the Vendor, provide a brief description of the facts and circumstances and request a written statement. If the statement is not provided within a reasonable period of time and if no mutually-acceptable solution is brought

about either, then the defect claim actually granted by us is deemed owed to our customer; in this case the Vendor has the burden of providing evidence to the contrary.

(3) Our claims based on recourse against the supplier shall also apply if, before the Goods were sold to a consumer, they were further processed by us or by one of our customers, e.g. by being fitted into another product.

§ 9 Producer liability

(1) If the Vendor is responsible for a product defect, the Vendor shall indemnify us from and against third party claims to the extent that the cause lies in its sphere of control and organization and the Vendor is liable itself in the relationship to third parties.

(2) In the context of its indemnification obligation, the Vendor shall reimburse expenses pursuant to Secs. 683, 670 BGB which arise from or in connection with a claim brought by third parties, including any recall action conducted by us. We shall advise the Vendor of the content and scope of recall action – insofar as is possible and reasonable – and give the Vendor the opportunity of making comments. Further statutory claims shall remain unaffected.

(3) The Vendor shall take out and maintain product liability insurance with a lump sum coverage amount of at least EUR 5,000,000.00 per personal injury/property claim.

§ 10 Protective rights, software

(1) The Vendor warrants that no third-party protective rights are infringed in connection with its delivery or performance.

(2) The Vendor is obliged to indemnify us from and against all claims brought against us by third parties on account of any infringements of protective rights in accordance with paragraph 1 above and to reimburse to us all costs and expenses necessary in connection with any claim. This entitlement exists irrespective of any fault on the part of the Vendor.

(3) In respect of software which forms part of the scope of performance, the Vendor shall grant us a non-exclusive right and unrestricted right of use.

§ 11 Statute of limitations

(1) The reciprocal claims of the contract parties shall become statute-barred in accordance with the provisions of statute unless otherwise provided hereinbelow.

(2) In derogation from sec. 438 (1) no. 3 BGB, the general limitation period for claims for defects shall be three (3) years from the date of passing of the risk. Insofar as conformity acceptance has been agreed, the limitation period shall commence upon conformity acceptance. The three year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for real rights of a third party for return (Sec. 438 (1) no. 1 BGB) shall remain unaffected; in addition, claims arising from defects of title shall on no account be statute-

barred as long as the third party can still assert the right against us – in particular because it is not yet statute-barred.

(3) The limitation periods of sale of goods law [*Kaufrecht*], including the above extension, shall apply –to the statutory extent – to all contractual claims for defects. Insofar as, on account a defect, we are also entitled to non-contractual claims for damages, the regular statutory limitation period (secs. 195, 199 BGB) shall apply to this unless in the individual case the application of the limitation periods of sale of goods law gives rise to a longer limitation period.

§ 12 Spare parts

(1) The Vendor is obliged to hold stocks of spare parts for the products supplied to us for a period of at least five years after the delivery.

(2) If the supplier intends to discontinue the production of spare parts for the products supplied to us, the supplier shall notify us thereof without undue delay and supply us with spare parts still required by us against separate remuneration.

§ 13 Compliance with public law regulations / child labor

(1) The Vendor is obliged to comply with all relevant regulations and, in particular, with the provisions of the German Electrical and Electronic Equipment Act [*Elektro- und Elektronikgerätegesetz*] and with the additionally applicable provisions concerning electronic goods. The Vendor shall keep us informed of changes concerning the classification or handling of its products.

(2) Even insofar as Goods are not directly covered by the area of application of the aforementioned provisions, the Vendor shall guarantee the conformity of the Goods supplied by the Vendor with the terms of these provisions if the Goods are used in the production of items which are covered by these provisions.

(3) The Vendor undertakes itself, and warrants for its subcontractors in this respect, that the products to be supplied to us are manufactured without exploitative child labor as defined in the Conventions of the International Labour Organization (ILO) no. 182 and no. 138 and that all obligations ensuing from these Conventions, from the implementation thereof and under any additional national regulations to combat exploitative child labor are complied with.

§ 14 Choice of law and jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these AEB and to the contractual relationship between us and the Vendor, excluding uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Vendor is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the courts with jurisdiction for Herrenberg, Germany, shall have exclusive and international jurisdiction for all disputes arising out of the contractual relationship. This shall apply *mutatis mutandis* if the Vendor is an entrepreneur within the

meaning of sec. 14 BGB. However, in all cases we also have the right to bring an action at the place of performance of the supply obligation in accordance with these AEB or with a prior-ranking individual agreement or at the Vendor's general place of jurisdiction. Prior-ranking statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.