

Terms and Conditions for the Sale of Goods



Revision 3.2
January 2010

1. GENERAL

- 1.1 The following conditions shall apply to all Bentec deliveries. Other conditions shall be binding upon Bentec only, if Bentec has acknowledged them in writing. For services offered by Bentec supplementary separate service conditions shall apply. The following conditions shall also apply, if Bentec executes the delivery without objection in knowledge of customer's conditions which are contrary to these conditions or differ from them.
- 1.2 Amendments, additions and verbal agreements shall be invalid without Bentec's written confirmation.
- 1.3 Cost estimates shall be non-binding. Bentec's offers shall be non-binding unless they are expressly designated as binding. Binding offers shall expire 90 days after the date of the offer, unless they are extended by Bentec in writing.
- 1.4 These conditions shall also apply to all future deliveries to the customer, except when agreed otherwise.

2. INFORMATION, DOCUMENTATION

- 2.1 Details of weights and measures, drawings, explanations, descriptions and illustrations contained in Bentec's brochures or other sales literature shall be approximately authoritative; they shall represent a general description of materials and shall not be construed as part of the offer, unless the corresponding data is expressly included in the contract.
- 2.2 Bentec reserves the right to modify the technical concept on which the offer is based, provided that this has no adverse effect on the performance and quality of the item offered, the price or the delivery date.
- 2.3 Bentec shall retain sole ownership and copyright in respect of all software, drawings and other documentation. The drawings and other documentation may not be made accessible to third parties without Bentec's consent and shall be returned on request.
- 2.4 Orders shall only be binding when they are confirmed by Bentec in writing.

3. PACKAGING, SHIPMENT

- 3.1 Goods shall be shipped EX Works in accordance with Incoterms 2000 from a place to be determined by Bentec.
- 3.2 Unless otherwise specified, prices shall include the costs of a packing based on Ex Works terms (Incoterms 2000).
- 3.3 Transport insurance shall be arranged only at the request and expense of the customer.

4. DELIVERY

- 4.1 Unless expressly specified otherwise, agreed delivery periods shall relate to shipment from Bentec's factory or forwarding department. They do not begin before the customer has fulfilled its obligations to co-operate, in particular by supplying documentation required from it and the agreed advance payments.
- 4.2 Reasonable partial deliveries are permitted.
- 4.3 Delivery periods shall be extended reasonably if the agreed delivery deadlines cannot be met due to Force Majeure or other events beyond Bentec's reasonable control, e.g. mobilisation, war, earthquake, flood, fire or other natural disasters, strikes, lock-out, shortage of materials or power, delivery delays on the part of suppliers, national or international import and export restrictions and the like.

Should Bentec be unable to fulfil an order for longer than 2 months due to the aforementioned events Bentec shall have the right to cancel all or part of the order with no resulting entitlement to compensation on the part of the customer.

- 4.4 Should Bentec be in delay with a delivery and the conditions of § 281 of the German civil code (BGB) have been fulfilled the customer shall upon Bentec's request declare within 5 working days from the date of fulfilment of the aforementioned requirements whether it wishes to claim damages instead of the delivery or insist on delivery. The other rights of the customer remain unaffected. In case the customer elects to claim damages it shall be entitled to claim liquidated damages in an amount of 0.5% of the price of the part of the delivery which is in delay for each completed week of delay. The aggregate amount of liquidated damages must not exceed 5% of the price of the part of the delivery which is in delay.
- 4.5 We reserve the right to prove that the actual damage was lower.
- 4.6 Claims for damages which go beyond the limits mentioned in Section 4.4 shall be excluded in all cases of damages for delay, even after expiration of a grace period which may have been granted to Bentec. This shall not apply in cases of mandatory liability for intentional misconduct or gross negligence.

5. RETENTION OF TITLE

- 5.1 Bentec shall retain the right of ownership of the delivered goods until the fulfilment of all claims to which Bentec is entitled under the terms of the commercial relationship, regardless of the legal grounds on which they are based.
- 5.2 The customer shall be entitled to process Bentec's products or combine them with other products in the course of its normal commercial operations. Bentec shall acquire joint ownership, which the customer shall hereby transfer to us, of the items produced by the processing or combination, as a security for our claims mentioned in Section 5.1.

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5.3 We shall grant our customers a revocable right of resale as part of the customer's normal business operations. This right shall lapse in the event of a cessation of payments. The customer shall hereby assign all claims to which he is entitled from the resale, with all associated rights; we hereby accept this assignment. The assigned debts shall serve as a security for all debts under Section 5.1. The customer shall be entitled to collect the assigned debts unless Bentec has revoked the authorisation for cause (in particular delayed payment). The collection authorisation shall lapse even without express revocation in the event of cessation of payment or insolvency.

At Bentec's request, the customer shall inform Bentec immediately in writing of the recipient of the sold goods and of the payments due to it as a result of the sale, and shall provide us at its own expense with publicly authenticated documentation relating to the assignment of the claim. Furthermore Bentec may, following prior warning and allowing a suitable period of grace, disclose the assignment and realise the ensuing claims.

5.4 The customer shall not be entitled to otherwise dispose of the items in which Bentec retained the title or for which the corresponding debts were assigned to Bentec. The customer shall inform Bentec immediately of any third-party attachments or other legal impediments.

5.5 In the event of a breach of essential contractual duties attributable to the customer, in particular in case of delay in payments or, in the event of a substantial deterioration of the customer's financial situation, Bentec shall be entitled at any time to cancel the contract and to demand the return of the goods.

6. SOFTWARE, USER RIGHTS

6.1 The customer shall be granted a non exclusive and non transferable right to use the standard software with the agreed performance features in unchanged form on the equipment agreed upon.

6.2 Ownership and/or all other rights to the software shall be retained by us. Programs may neither be reproduced or modified or be disclosed to third parties without our prior written consent.

7 TRANSFER OF RISK

7.1 The delivery shall be carried out "ex works" (in accordance with Incoterms 2000) unless a different delivery term has been agreed between the Parties.

7.2 The risk shall pass to the customer upon delivery or, in case of delivery including installation, upon taking into operation or, if so agreed, after successful trial operation.

7.3 If dispatch, delivery, beginning or execution of the assembly, taking into operation or trial operation is delayed for reasons attributable to the customer or the customer fails to

accept delivery in good time, then the risk shall pass to the customer with the beginning of the delay.

8. COMPLAINTS AND NOTIFICATION OF DEFECTS

8.1 The customer shall promptly upon receipt check the goods and notify us in writing, at the latest within 7 working days of receipt of the goods of any apparent defects. Carton stickers, contents labels or control slips enclosed with the shipment must be enclosed with the notification. The customer shall notify us of any other defects in writing promptly after discovery. The receipt of the notification by us shall be taken into account when considering the timeliness of the notification.

8.2 If a customer's defect notification is found to be without merit, we shall be entitled to claim damages from the customer to cover costs incurred by us due to the unjustified complaint.

8.3 In case the customer fails to provide us with a timely notification of a defect, subsequent warranty claims based upon such defect shall be excluded.

8.4 The customer shall be responsible for the costs of transportation of the defective goods to Bentec. The repaired or replaced goods shall be shipped to the customer at Bentec's costs. When the goods are repaired on the location of operation, then the costs for boarding, lodging and transportation from customer's place to the location and back shall be borne by customer.

9. RECEIPT

The customer may not refuse receipt of deliveries because of defects.

10. DEFECTS

10.1 Warranty claims for defects of new products expire after 12 months (warranty period). The preceding provision shall not apply in cases where law stipulates longer warranty periods, in which case the shortest legally possible period shall apply. Used Products are sold on an as-is-where-is-basis without any warranty.

10.2 The warranty period starts with the transfer of risk.

10.3 In case a defect occurs and the cause thereof was set already in the time before the transfer of risk, Bentec may at its discretion either repair the defect or re-supply a defect free product. The repair may, at Bentec's discretion, be performed at Bentec's premises or at the location, where the goods are operated.

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- 10.4 The performance of warranty work does not trigger a renewed warranty period to commence.
- 10.5 If the warranty work should fail, the customer may withdraw from the contract or claim for a reduction of the original purchase price..
- 10.6 The customer's claims for recovery of costs suffered because of the warranty work, particularly cost for transportation, logistics, time and material costs shall be excluded to the extent these costs occurred or were increased because the object of the delivery has been brought to an other place than the branch office of the customer subsequent to the delivery, unless this change in place corresponds to its agreed use.
- 10.7 Warranty claims shall be excluded in cases where there is only an insignificant deviation of the qualities agreed upon or only an insignificant impairment of the usefulness.
- 10.8 The following are not defects and thus not covered under the warranty conditions:
- natural wear and tear;
 - Defects of the product or damages which occurred after the transfer of risk and which result from the non-observance of installation and treatment guidelines or excessive use or because of improper treatment, storage or placement;
 - Defects of the product or damage, due to force majeure or which arise due to particular external influences which were not provided for in the contract, or due to the use of the product outside the use which was provided for in the contract or outside its ordinary use;
 - costs for the opening or disassembling of other items to reach the defective goods
 - costs for transportation of the goods or transport of personnel to repair the goods when the goods are operated in remote areas
- Defect claims are excluded, if the product is changed by third parties or by installation of parts from third parties, unless there is no causal link between the defect and the change.
Bentec shall not be liable for qualities of the product which are due to the construction or the choice of material for the product, if the customer has ordered the construction or the material.
- 10.9 We accept warranty claims of the customer against Bentec only as far as the customer has not made any agreements with its potential own customer in excess of the legal warranty obligations.
- 10.10 Subsections 10.3, 10.6, 10.7 shall not apply as far as it can be proven that our product was sold to a consumer by the customer or customer of the customer without processing or installation into another product.

- 10.11 Bentec's liability for damages is further regulated by Section 11. The rights and remedies set out in this Section 10 shall be the customers sole and exclusive remedies for defective products.
- 10.12 Legal deficiencies in the products supplied by Bentec shall be governed also by the provisions set out in this Section 10, unless the deficiency consists in a third party intellectual property right infringement.
- 10.13 In the event, Bentec manufactures or modifies Products in accordance with the plans or specifications furnished by Customer, then Bentec only warrants the proper performance of the manufacturing or modifying process, but not the product itself, and the warranty provisions as per this Clause 10 shall only apply when defects in the products are caused by Bentec's not manufacturing according to the customers plans and/ or specifications or deficiencies in the manufacturing process.

11. OTHER CLAIMS FOR COMPENSATION

- 11.1 Unless something different is set out in these Terms and Conditions of Sale, Bentec shall be liable for damages and compensation of incurred costs (hereinafter referred to as "damages") due to breach of contractual or extra-contractual obligations only in case of wilful misconduct or gross negligence of Bentec's legal representatives or agents, in case of personal injury or death, in case Bentec has extended a guarantee or taken over the risk to achieve specific results, in case of a breach of essential contractual duties, in case of strict liability under the product liability act or any other form of strict liability. The liability for breach of essential contractual duties is limited, however, to foreseeable damage typical for such a contract, as far as there is no intentional misconduct or gross negligence of Bentec's legal representatives or agents or any liability because of personal injury or death or because Bentec has extended a guarantee or taken over the risk to achieve specific results. A change of the burden of proof to the disadvantage of the customer is not intended with the preceding provisions.
- 11.2 After the transfer of the risk as per Clause 7, Customer shall indemnify and hold Bentec harmless from and against any and all claims, charges, demands, damages, causes of actions, expenses (including reasonable attorney's fees and court costs) or suits at law or in equity, against it on account of, relating to, or arising from, or connected with, (i) injury to death of any person or persons whomsoever, (ii) damage to or destruction of any personal or real property (including subsurface property or property rights), resulting from or alleged to result from, directly or indirectly, the manufacture, use or sale of the products, except in the event of wilful misconduct or gross negligence on the side of Bentec.

12 INTELLECTUAL PROPERTY RIGHTS; COPYRIGHTS

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- 12.1 Bentec shall be liable for claims which arise from the violation of intellectual property rights and copyrights only, if the intellectual property right or copyright is not or was not property of the customer or a company which was directly or indirectly controlling, controlled by or under common control with the customer, the customer notified us promptly after becoming aware of any risk of infringement or (alleged) case of infringement and afforded us at our request – as far as possible – the opportunity to conduct any legal disputes (also out of court) and in case of registered intellectual property rights only where at least one registered intellectual property right out of the property right family concerned has been published either by the European Patent Authority or in one of the following states: Germany, France, United Kingdom, Austria or USA.
- 12.2 At Bentec's discretion Bentec may either for the benefit of the customer procure a license for the product (allegedly) infringing an intellectual property right or copyright, or modify the product such that it does not infringe the intellectual property right or copyright anymore or replace it by a product which is similar and does not infringe the intellectual property right or copyright anymore. Should this prove unfeasible for us on adequate terms or in an adequate period, the customer is entitled to withdraw from the contract, provided that he has afforded us the opportunity to modify the product. Under the same conditions Bentec shall be also entitled to withdraw from the contract. The provision of Subsection 10.9 shall apply correspondingly. Bentec reserves the right to take the measures provided for in this Subsection 12.2 Sentence 2 even if an infringement of an intellectual property right or copyright has not been finally determined by a court or such an infringement has not been recognised by Bentec.
- 12.3 Furthermore claims of the customer are excluded if the products are manufactured in accordance with the specification or the instructions of the customer or the (alleged) infringement of the intellectual property right results from the use in combination with another object which did not originate from Bentec or the products are used in a way which Bentec couldn't foresee.
- 12.4 Bentec's liability for damages is further regulated by Section 11.
- 12.5 Subsections 10.1 and 10.2 apply correspondingly to the time barring for claims due to infringement of intellectual property rights and copyrights.
- 12.6 This Section 12 sets forth the sole and exclusive remedies of the customer for infringement of third party intellectual property rights and copyrights.
- 12.7 In the event, Bentec manufactures or modifies Products in accordance with the plans or specifications furnished by Customer, then Customer shall indemnify and hold Bentec harmless from and against any and all claims, charges, demands, damages, causes of actions, expenses (including reasonable attorney's fees and court costs) or suits at law

or in equity, against it, on account of, relating to, or arising from, or connected with, the infringement or alleged infringement of any patent, design, or other intellectual property rights arising out of, directly, or indirectly, the manufacture, use or sale of the Products.

13. EXPORTATION

- 13.1 Unless the goods delivered by Bentec have been installed into a larger system, they may be exported to other countries only with Bentec's written consent. This shall not apply to re-exportation within the EC.
- 13.2 In the case of violations Bentec shall be entitled to claim damages besides the right to withdraw from current orders.
- 13.3 The customer undertakes to adhere to the German export control regulations, to the US Export Control Administration Regulations as well as any other export control regulations which may apply, whenever exporting products supplied by Bentec.

14. TERMS OF PAYMENT

- 14.1 Prices are quoted ex works (INCOTERMS 2000 apply) including customary packaging, excluding the applicable value added tax (VAT); charging of the VAT shall only be waived in case the prerequisites for tax exemption of exportation deliveries are met and documented by the customer.
- 14.2 Payments shall be made in accordance with the terms of payment set by Bentec; as a rule, payment shall become due within 30 days after delivery. Bentec is authorised to allocate payments to the oldest, payable invoice. In the case of a currency exchange rate deterioration of the amounts paid in a currency not agreed upon between the Parties, the customer shall compensate for the shortfall by additional payment.
- 14.3 As far as Bentec's payment claim is jeopardised due to circumstances which cause a substantial deterioration of the customer's financial situation, Bentec is authorised to declare all payment obligations arising under the business relationship as immediately due and payable; this shall also apply for deferred payments or acceptance of bills of exchange or checks. Under such circumstances Bentec shall also be entitled to demand advance payments or payment securities for all regular business. The legal remedies for delay in payment shall not be affected by this provision.
- 14.4 The customer may only make use of any retention rights or use the right to set off in connection with undisputed or finally adjudicated demands.
- 14.5 Invoicing shall be made in EUR. If foreign currency amounts are indicated in the invoices besides the EUR amount, the EUR amount shall govern. Amounts received in foreign currency shall be credited with the proceeds obtained in EUR from them.

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We are also be entitled to bring action before the court which has jurisdiction over the location of the head office or a branch office of the customer.

15. CONFIDENTIALITY

The contracting parties undertake not to make any information received by the other contracting party including this contract accessible to third parties either directly nor indirectly verbally or written or in any other way with the exception of members of their respective corporate group. The obligation for confidentiality does not apply in case information is disclosed to the third party with the express written consent of the disclosing contracting party. The disclosing party reserves all rights for its information.

16. TERMINATION OF CONTRACT

- 16.1 In the event that either party commits a material breach of this contract the non-defaulting party shall give the defaulting party written notice of the alleged breach and a reasonable time within which to remedy the alleged breach. In the event that the defaulting party fails to remedy the alleged breach within such period the non-defaulting party may upon giving 14 days written notice to the defaulting party (without affecting any other claim or remedy) immediately terminate the Contract (and the license granted herein) or any part thereof.
- 16.2 Termination for any reason shall not discharge the customer from performing any obligation or from payment of any sums already due or becoming due at the date of termination.
- 16.3 If either party files for bankruptcy or goes or is put into liquidation (other than solely for amalgamation or restructuring) or if a receiver is appointed over any part of the party's business or if the party suffers the seizure of any property for non-payment of debt, then the other party may regard any such circumstances as grounds for immediately terminating the contract (and in the event that Bentec is the terminating party, any license granted therein) without notice.

17. PLACE OF PERFORMANCE, VENUE, APPLICABLE LAW

- 17.1 Place of performance is the forwarding location chosen by Bentec.
- 17.2 Venue shall, at Bentec's discretion, be Nordhorn or the location of the business unit carrying out the order, if the customer
- Is a merchant in the meaning of § 1 HGB, or
 - has no general venue in Germany, or
 - following the conclusion of the contract, has relocated his domicile or normal place of residence from Germany or his domicile or his normal place of residence is not known at the time when the action is brought.

- 17.3 The contract shall be governed by and construed in accordance with the laws of Germany. German rules on conflict of laws as far as they refer to a foreign law, the Hague uniform law of sales, the UN uniform law of sales or other international conventions about sales laws shall not be applicable.

18. SUPPLEMENTARY PROVISIONS

Should a provision of these conditions and the further agreements concluded between the parties be or become invalid, then the validity of the remaining provisions shall be unaffected by such partial invalidity.