

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. SCOPE, PURPOSE**

- 1.1** These General Terms and Conditions (hereinafter "General Terms and Conditions of **Purchase**") shall apply to all deliveries and services ordered by Befesa Salzschlacke GmbH (hereinafter "**Befesa**") and rendered by the contractual partner (hereinafter "**Supplier**").
- 1.2** These General Terms and Conditions of Purchase shall apply to all (including future) transactions between the parties, even if their validity has not been expressly agreed again in individual cases.
- 1.3** These General Terms and Conditions of Purchase govern the contractual relationship between Befesa and the Supplier exclusively. Conflicting, supplementary or deviating terms and conditions of the Supplier shall not become part of the contract unless Befesa has expressly recognised the applicability of such terms and conditions instead of these General Terms and Conditions of Purchase in writing in individual cases.
- 1.4** Individual agreements concluded between the parties shall take precedence over these General Terms and Conditions of Purchase. Verbal agreements shall be confirmed in text form (e-mail is sufficient). Befesa is entitled to make changes to the General Terms and Conditions of Purchase, which Befesa will announce to the Supplier in writing in advance. If amendments concern already existing contracts, the Supplier has a right of objection, about which Befesa will inform the Supplier in the written announcement. The intended changes shall enter into force unless the Supplier expressly objects to them within five (5) working days after receipt of the corresponding announcement. In the event of an objection by the Supplier, Befesa reserves the right to terminate the contract with a reasonable notice period.

### **2. TERMS AND CONDITIONS**

#### **2.1 Conclusion of contract**

- (i) All enquiries from Befesa are non-binding and constitute an invitation to  
The Supplier is obliged to submit a binding offer to Befesa. In its offer, the Supplier must indicate the corresponding enquiry number of Befesa.
- (ii) Any offer made by the Supplier in response to an enquiry from Befesa shall reflect all details of the enquiry. Any deviations must be clearly labelled and highlighted by the Supplier. The Supplier's offer is free of charge and does not imply any obligations for Befesa.
- (iii) The placing of an order by Befesa (hereinafter referred to as "Order") constitutes the acceptance of the offer submitted by the Supplier. Binding orders by

Befesa are placed in text form (e.g. fax, letter or e-mail) and contain an order number. Verbal or telephone orders must be confirmed in text form.

- (iv) The Supplier is obliged to confirm each order immediately (i.e. without undue delay) in writing. If Befesa places an order without a prior offer by the Supplier and Befesa does not receive an order confirmation from the Supplier within fourteen (14) days (or twenty-one (21) days for orders placed abroad) after placing the order, Befesa shall be entitled to cancel the order. The Supplier shall treat each order, including the related correspondence, individually.

## **2.2 Prices and terms of payment**

- (i) The price agreed upon conclusion of the contract is binding. Unless expressly agreed otherwise in the contract, all prices are fixed prices. Packaging costs as well as customs clearance and customs formalities are included in the price or shown as a separate item on the invoice.

If an order does not contain a price, the supplier's current price list at the time of the order shall apply, including all discounts. Price quotations do not constitute an agreement on the place of fulfilment.

- (iii) Unless expressly agreed otherwise in writing, invoices shall be sent to Befesa within fifteen (15) days after the date of actual delivery and shall be paid by Befesa within forty-five (45) days after receipt of the invoice and complete delivery.

- (iv) Invoices are to be sent to Befesa after the service has been rendered in full. Transmission by e-mail is preferred. Invoices must be sent to the e-mail inbox set up for this purpose [rechnungseingang.bsg@befesa.com](mailto:rechnungseingang.bsg@befesa.com) set up for this purpose. Invoices sent to other e-mail inboxes cannot be processed by the system. Only one PDF file containing the invoice and all documents such as proof of performance, customs documents, etc. may be sent per e-mail. If the e-mail contains several attachments, these will not be recognised by the system.

This e-mail inbox is used exclusively for the receipt of invoices and invoice credits. Other documents sent to this mailbox will not be processed by the system.

If an order is the basis for invoicing, the order number "Order number BEXXXXXX" must be stated on the invoice. Invoices that have been sent to us by e-mail should not be sent to us again by post.

Befesa may withhold payment until the complete and correct invoice has been submitted.

- (v) In the event of defective or insufficient delivery, Befesa is entitled to withhold payment on a pro rata basis until the delivery is free of defects and complete.

The payment of an invoice does not constitute an acknowledgement that the delivery is in accordance with the contract or that the invoice is correct.

- (vi) If Befesa makes an advance payment, Befesa may request a bank guarantee as adequate security.

### **2.3 Delivery, transfer of risk**

- (i) Unless otherwise agreed, delivery shall be at the Supplier's expense and risk. The Supplier shall bear the risk of accidental loss and accidental deterioration of the goods until delivery of the goods to the place of receipt/use specified by Befesa.
- (ii) Deliveries must be made using standard commercial packaging. Goods must be carefully packed to avoid damage in transit. The supplier's obligation to take back packaging material shall be governed by the statutory provisions.
- (iii) If the parties have agreed in writing, notwithstanding Clause 2.20), that packaging costs are not included in the price, Befesa shall be entitled to return packaging material in good, reusable condition at its own expense against reimbursement of two thirds of the value of the packaging material.
- (iv) Any agreed certificates of material testing or other certificates are an integral part of the delivery and shall be handed over to Befesa together with the delivered goods.
- (y) On delivery notes, bills of lading, invoices and all other documents, the Supplier must indicate Befesa's order number.

### **2.4 Delivery dates, delay, force majeure**

- (i) The agreed delivery dates are binding. Decisive for compliance with a delivery date or a performance period in connection with a delivery obligation is the receipt of the goods in accordance with the contract at the place of receipt/place of use specified by Besesa.
- (ii) If it is foreseeable for the Supplier for justified reasons that he will not be able to fulfil his contractual obligations in whole or in part, he is obliged to inform Befesa immediately in writing, stating the justified reasons - and in the case of a foreseeable delay in delivery also stating the estimated duration of the delay.
- (iii) The Supplier shall be liable for the non-fulfilment of contractual performance obligations in accordance with the statutory provisions.
- (iv) In the event of late delivery and after expiry of a reasonable grace period, Befesa shall be entitled to demand a contractual penalty of 0.1 % of the order value for each working day of delay, but not exceeding a total of 5 % of the order value. This shall not apply if the Supplier is not responsible for the delay in performance. The contractual penalty may be claimed until payment of the corresponding invoice, irrespective of whether Befesa has reserved the right to claim the contractual penalty upon acceptance of the delayed delivery. If Befesa is entitled to claim damages, Befesa may claim the

contractual penalty as a minimum amount of damages. The assertion of further damages is not excluded.

- (v) Neither party shall be liable for the delayed fulfilment or non-fulfilment of its contractual obligations if and as long as this is due to force majeure. Force majeure includes all circumstances and circumstances beyond the control of the parties, in particular natural disasters, decisions by governments or authorities, blockades, war and military conflicts, mobilisation, civil unrest, terrorist attacks, strike, lockout or other forms of work stoppage, enforcement/confiscation, embargo or other circumstances which are unforeseeable and beyond the control of the parties and which occur after the conclusion of this contract. This shall not affect the Supplier's obligation to take reasonable precautions to minimise the negative effects of force majeure events. The parties are obliged to inform the other party immediately of the obstacle that has occurred, including the foreseeable duration and old relevant circumstances. If the Supplier is prevented from fulfilling its contractual obligations due to force majeure, Befesa shall be entitled to withdraw from or terminate the contract.
- (vi) The parties undertake to adapt their obligations to the changed contractual circumstances in good faith within the scope of what is possible and economically reasonable. Befesa is, however, entitled to withdraw from the contract in whole or in part or to terminate it if the acceptance of the service is no longer economically justifiable for Befesa because the usability of the goods is no longer ensured.
- (vii) In the event of a not only slightly premature delivery, Befesa reserves the right to return the goods or to temporarily store them at the Supplier's expense. During interim storage, the Supplier shall bear the risk until the agreed delivery date. Befesa shall be obliged to pay at the earliest on the agreed delivery date and only after receipt of the corresponding invoice, irrespective of a premature delivery.
- (viii) Befesa shall only be obliged to accept partial deliveries upon prior written agreement. If a partial delivery has been agreed, the Supplier shall indicate the outstanding delivery quantity in its delivery note.

## **2.5 Energy efficiency**

Befesa is certified in accordance with DIN ISO 50001. For all new construction projects, Befesa explicitly undertakes to consider the new investments under the conditions of the new Energy Saving Ordinance as early as the planning stage. The supplier undertakes to check and take these requirements into account when submitting its offer.

## **2.6 Claims for defects, warranty**

- (i) The Supplier undertakes to deliver the goods to Befesa free of defects. In particular, the Supplier undertakes to deliver goods that are
- the contractually agreed provisions (e.g. with regard to the intended use);
  - the state of the art at the time of the delivery date;
  - legal requirements, in particular the provisions of the Product Safety Act and the Chemicals and Hazardous Substances Act as amended, the currently valid safety regulations and safety requirements as well as the provisions on occupational safety and accident prevention; and
  - the latest provisions, regulations and instructions from authorities, trade associations and professional organisations.

In the event of a repeat order of goods, the Supplier also undertakes to agree in writing with Befesa in advance all deviations from the goods ordered earlier. This also applies if such deviations do not lead to a deviation from the service description.

- (ii) The Supplier is obliged to observe Befesa's existing instructions and guidelines on occupational safety and other safety aspects.
- (iii) If in individual cases, in the opinion of the supplier, deviations from the above If the fulfilment of the requirements mentioned under (i) is necessary, the client must obtain Befesa's prior written consent. Befesa's statutory warranty rights shall remain unaffected by such consent. Deviations are not permitted if they contradict mandatory law, e.g. with regard to safety regulations.
- (iv) The Supplier is obliged to carry out an appropriate quality control in accordance with current standards prior to delivery and to provide Befesa with corresponding evidence upon request. Upon Befesa's request, the parties shall conclude a corresponding agreement on quality assurance.
- (v) The Supplier shall be liable for the environmental compatibility of the delivered goods and their packaging material and for damages resulting from violations of statutory regulations on product disposal. At Befesa's request, the Supplier shall issue a quality certificate for delivered goods.
- (vi) According to clause (iv), the supplier is obliged to take quality control measures in order to avoid or detect defects. Against this background, the parties agree that the obligation to give notice of defects pursuant to Section 377 (1) and (2) of the German Commercial Code (HGB) only applies to obvious defects. Befesa must give notice of obvious defects within fourteen (14) calendar days after delivery.
- (vii) Notwithstanding any further rights, Befesa may remedy defects itself after the fruitless expiry of a reasonable period for subsequent fulfilment (or if the Supplier refuses subsequent fulfilment) and demand compensation for the

necessary expenses. In urgent cases in which Befesa cannot reasonably be expected to set a period for subsequent fulfilment, in particular if substantial defects are imminent, as well as in the event of a failed subsequent fulfilment or if the offered subsequent fulfilment is not acceptable to Befesa, Befesa may remedy the defect at the Supplier's expense without setting a period for subsequent fulfilment. This shall not apply if the Supplier rightfully refuses subsequent fulfilment.

- (viii) The limitation period for claims for defects is 36 months, unless a longer limitation period applies by law. The limitation period shall commence upon commissioning or commencement of the intended use of the goods, but no later than six (6) months after delivery to the place of receipt/use specified by Befesa.
- (ix) If the defect is remedied within the scope of subsequent fulfilment by rectification, the limitation period shall recommence with regard to the remedied defect; with regard to other defects, the limitation period shall be extended by the period between notification of the defect and rectification of the defect or failure or refusal of rectification. If the defect is remedied within the scope of subsequent fulfilment by subsequent delivery, the limitation period for claims for defects shall begin anew. In the case of a partial subsequent delivery, this shall only apply to the newly delivered items. This clause (ix) shall not apply if the supplier undertakes subsequent fulfilment expressly as a gesture of goodwill.
- (x) If Befesa is liable under statutory safety regulations, product liability law or other regulations in connection with defective goods of the Supplier or a product manufactured using defective goods of the Supplier, Befesa may demand indemnification from the Supplier against the claims asserted against Befesa and/or compensation for damages if the claims and/or damages are based on a negligent or intentional breach of duty by the Supplier. Costs for a necessary recall of goods shall constitute damages. In case of repeated delivery of defective goods, Befesa shall be entitled to terminate the respective contract for good cause. This shall only apply if Befesa has notified the Supplier of the defective delivery and further defective goods have nevertheless been delivered.
- (xi) If similar defects occur in more than 10% of the delivered goods over a period of more than 6 months, all goods manufactured during this period shall be deemed defective (serial defect), unless the supplier proves otherwise.
- (xii) The Supplier undertakes to agree the above provisions with regard to claims for defects also with its subcontractors. At Befesa's request, the Supplier shall assign its claims for defects against subcontractors to Befesa on account of fulfilment.

## **2.7 Insurance**

- (i) The supplier is obliged to insure himself sufficiently at his own expense against damage caused by him, his legal representatives, executives or vicarious agents.
- (ii) The supplier is obliged to take out adequate insurance against risks in connection with product liability, including the risk of a possible recall of goods.
- (iii) Proof of insurance cover must be provided to Befesa upon request.

## **2.8 Third party rights**

- (i) The Supplier shall provide the services free of third-party rights and warrants that the delivery and use of the goods do not in any way infringe patents, copyrights, trademarks, licences and other rights or know-how of third parties.
- (ii) Should third parties assert claims against Befesa due to the infringement of rights, the Supplier shall indemnify Befesa against such claims upon first request. This shall not apply if the Supplier has not acted culpably.

## **2.9 Confidentiality**

- (i) The enquiry, the order, the conclusion of the contract and all other business-related information which the parties make available to each other in connection with contracts under these General Terms and Conditions of Purchase shall be deemed to be "**Confidential Information**" unless it is expressly marked otherwise, has (become) publicly known without a breach of this Section 2.9, has been freely and lawfully received from a third party for non-confidential use or has already been determined by the receiving party prior to receipt without recourse to the Confidential Information. The existence of one of these exceptions must be reported to the other party in writing without delay.
- (ii) The parties undertake to keep Confidential Information confidential and to use it solely for the provision of the Services. The Supplier may only refer to its business relationship with Befesa with Befesa's prior written consent. Suppliers must be obliged to do the same.
- (iii) Both parties are released from the obligation of confidentiality if they are obliged to disclose information due to legal regulations or official orders. In such cases, however, the other party must be informed immediately in writing prior to such disclosure in order to give it the opportunity to take legal action to prevent disclosure.

- (iv) The obligation of confidentiality shall end five (5) years after the termination of any business relationship between the parties based on these General Terms and Conditions of Purchase.

### 3 Further obligations of the supplier

- (i) The Supplier shall ensure that it (a) performs the Contract with the utmost care and does not cause any injury to persons or damage to movable or immovable property of Befesa or any third party; (b) complies with all legal and regulatory requirements and industry standards (hereinafter collectively referred to as "**Provisions**").
- (ii) The Supplier shall immediately inform Befesa in writing if it has discovered or expects a violation of the provisions.
- (iii) The Supplier is obliged to obtain and maintain all licences, authorisations, consents etc. which may be necessary for the performance of the contract. Befesa is entitled to request copies of documents and any correspondence with authorities for the proof of such licences, authorisations etc. copies of documents and any correspondence with authorities.
- (iv) Any breach of the provisions of this clause shall constitute a serious breach of this contract. The Supplier shall bear all costs incurred in order to comply with these provisions.
- (v) **Waste law obligations:** The supplier/contractor is obliged to comply with all relevant obligations under waste legislation. In particular, the provisions of the Closed Substance Cycle Waste Management Act (KrWG), the Commercial Waste Ordinance (GewAbfV) and the Ordinance on Waste Recovery and Disposal Records (NachwV) must be observed.

- **Construction and demolition waste**

In accordance with Section 8 GewAbfV, producers and owners of construction and demolition waste must collect and transport the individual waste fractions (glass, plastic, metals, wood, insulation material, bitumen mixtures, gypsum-based building materials, concrete, bricks, tiles and ceramics) separately and prioritise preparation for reuse or recycling.

The separate collection obligations do not apply if they are technically impossible or economically unreasonable in individual cases. In this case:

- immediately feed mixtures containing mainly plastics, metals, including alloys, or wood to a pre-treatment plant and
- Mixtures containing predominantly concrete, bricks, tiles or ceramics must be sent immediately to a treatment plant.



According to general case law, the waste producer of construction and demolition waste is not the company commissioned with the construction and demolition work, but the client, i.e. Befesa Salzschlacke GmbH. This must be noted in particular in the documents required under waste legislation, such as delivery and weighing notes and, for hazardous waste, in the acceptance and consignment notes and proof of disposal.

The waste owner, on the other hand, is the party who has actual control over the waste, i.e. the aforementioned obligations must be observed by the construction and demolition company and, in the further course of disposal, by the contracted carrier and disposal company.

In order to fulfil the documentation obligations pursuant to the Commercial Waste Ordinance, the Contractor shall provide Befesa Salzschlacke GmbH with evidence of each individual disposal process, e.g. by means of weighing slips.

In contrast to the waste arising from the construction and demolition project, waste from the contractor's area, such as

- Waste from the operation of construction machinery (greases, oils)
- Waste from construction site equipment (waste similar to household waste, used protective work clothing, etc.)
- Packaging materials from building materials used (including empty paint cans) must be disposed of by the contractor.

• **Hazardous waste:**

When disposing of hazardous waste, the provisions of the Ordinance on Waste Recovery and Disposal Records (NachwV) must be observed. Among other things, it is pointed out that

- it is forbidden to mix hazardous waste
- hazardous waste must be temporarily stored in suitable containers/bags at a location determined jointly with Befesa's personnel

Hazardous waste with a total quantity > 20 t per waste code and calendar year requires a proof of disposal in accordance with § 3 NachwV prior to disposal, which must be created electronically in dialogue between the disposal company and Befesa Salzschlacke GmbH. Subsequently, a consignment note in accordance with § 10 NachwV must be created for each individual transport and signed by Befesa as the producer and by the carrier. After acceptance by the disposal company, the consignment note is signed by the latter and sent back electronically to all parties involved.

The waste producer **number** to be entered in the aforementioned documents is **CAA 941000**.

If it is ensured that the total quantity does not exceed 20 tonnes per calendar year, the hazardous waste can be recovered or disposed of in the course of a collective disposal. In this case, the collector, who is also the carrier, shall draw up a takeover certificate in accordance with § 12 NachwV, which shall be signed by him and Befesa in the course of taking over the waste, with one copy remaining with Befesa.

#### **4. OTHER PROVISIONS**

##### **4.1 Subcontracts, instructions**

The use of subcontractors requires the prior written consent of Befesa. Befesa is authorised to assign the contract or rights under the contract to an affiliated company pursuant to Section 15 et seq. German Stock Corporation Act. The Supplier shall not be entitled to assign its claims in connection with this contract without Befesa's prior written consent. Befesa may not unreasonably withhold such consent. § Section 354a of the German Commercial Code shall remain unaffected.

##### **4.2 Amendments, written form**

Unless otherwise agreed in these General Terms and Conditions of Purchase, all amendments and/or additions to these General Terms and Conditions of Purchase require the written consent of both parties to be effective. This also applies to amendments and/or additions to this clause 4.2.

##### **4.3 Notifications, messages**

All notices by the Supplier to Befesa required or permitted under these General Terms and Conditions of Purchase shall be made in text form to the address indicated by Befesa, stating the order number indicated by Befesa in the order, unless the written form requirement applies (i.e. a physically signed document is required). All notices by Befesa to the Supplier required or permitted under these General Terms and Conditions of Purchase shall be sent in text form to the address indicated by the Supplier in its offer, unless the written form requirement applies (i.e. a physically signed document is required).

##### **4.4 Severability clause**

Should individual provisions of these General Terms and Conditions of Purchase be or become invalid, this shall not affect the validity of the remaining provisions. The same shall apply to any unintended loopholes.

##### **4.5 Applicable law and place of jurisdiction**

- (i) These General Terms and Conditions of Purchase as well as all legal relationships between the Supplier and Befesa shall be governed by the laws of the Federal Republic

of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

- (ii) The exclusive place of jurisdiction for all disputes between the parties shall be the registered office of Befesa, Hanover, or, at Befesa's option, the registered office of the Supplier.

#### **4.6 Code of Conduct for Suppliers**

Befesa promotes and expects business integrity, compliance with applicable laws and adherence to internationally recognised environmental, social and corporate governance standards within our own organisation and among our business partners. The result of such a commitment is this [Supplier Code of Conduct](#).

This Supplier Code of Conduct applies to all suppliers who must comply with its contents in order to do business with Befesa.