

# Framework Supply Agreement

on the manufacture and delivery of goods and spare parts

between

**Gerd Bär GmbH**  
Pfaffenstraße 7  
74078 Heilbronn  
Germany

- hereinafter referred to as „BÄR“ -

and

**SUPPLIER**

- hereinafter referred to as „SUPPLIER“ -

- hereinafter collectively referred to as „Parties“ -

## Preamble

BÄR is one of Europe's leading supplier of tail lifts. Amongst the development and manufacturing of tail lifts for professional use, the company focuses on maintenance, repair and supply of spare parts. BÄR requires the Supplier's Products to perform these activities.

Within the scope of material and personal possibilities, SUPPLIER is willing to assume work which in different ways - but best possible - will be accomplished ahead of the state of the art.

To govern the ongoing business relationship between the Parties, the Parties intend to enter into a Framework Supply Agreement consisting of the terms and conditions set out below.

## **Section 1: Production and delivery of Products and Spare Parts**

### **§ 1. Scope of application**

This Framework Agreement shall govern the production and delivery of the products and spare parts (contractual products) which SUPPLIER manufactures and delivers according to instructions from BÄR contained in a delivery schedule or individual order. BÄR shall be entitled to extend the supply relationship to cover further products.

Each delivery of products shall require a separate order form BÄR as per delivery schedule or individual order.

SUPPLIER shall ensure on time delivery of the ordered products according to the respective order document of BÄR, namely in the exact quantity and quality stated in the specification of services, drawings and in potential separate agreements and/or through a sample for this individual product.

Insofar as this Agreement does not contain any particular stipulation, the BÄR General Terms of Purchase shall be applicable for the production and delivery of products based on this Agreement. The currently valid version is as attached as Appendix C.

## **§ 2. Orders from BÄR**

**§ 2.1** The delivery of the contractual products shall be performed according to the quantities, dates and deadlines specified in the delivery schedules, delivery call-offs and individual orders. SUPPLIER undertakes to ensure exact adherence to deadlines and quantities for the scheduled deliveries to BÄR. Orders and delivery call-offs shall be conveyed either in writing or by way of remote data transmission. Only the text of the order placed by BÄR shall apply.

**§ 2.2** The delivery call-offs placed based on the delivery schedule or the orders shall become binding at the latest if SUPPLIER does not contradict them within three (3) working days after receipt thereof.

**§ 2.3** For the initial purchase of contractual products, SUPPLIER shall be obliged to send a written declaration to BÄR according to the template in Appendix D. The result of the export control check (according to EU law) performed beforehand by SUPPLIER shall be visible in the declaration. This declaration shall also be required in case of changes to the parts or in the origin.

## **§ 3. Delivery, delivery note**

**§ 3.1** Unless otherwise agreed SUPPLIER shall deliver DDP (Incoterms 2010) to the delivery address stated by BÄR.

**§ 3.2** Delivery note and packaging shall comply with the specifications stated in BÄR "General logistics demands for deliveries" (Appendix E). If there are any specific packaging requirements existing, SUPPLIER is obliged to apply them.

**§ 3.3** In case of culpable exceeding of an agreed delivery deadline (delivery date for goods receiving / receiving deadline according to order), beginning with the first day of delay in delivery, SUPPLIER shall pay to BÄR as a contractual penalty two (2) percent of the order value up to a maximum of twenty (20) percent or - in case of delivery call offs - the value of the delivery call-off. BÄR shall be entitled to require further damages if the actual damages exceed the aforementioned values. BÄR shall be entitled to withhold and retain the contractual penalties that are due from its ongoing payment obligations to SUPPLIER.

## **§ 4. Prices**

**§ 4.1** The prices for the contractual products shall be as set out in the price sheet (Annex A).

**§ 4.2** The prices shall be binding for a period of twelve (12) months unless otherwise agreed. This period shall successively be extended by further twelve (12) months if the Parties have not agreed on other prices by then. SUPPLIER shall provide a forecast of the price development no less than four (4) months prior to a price change. A price increase shall only become effective with the prior consent of BÄR.

**§ 4.3** The purpose of the cooperation between BÄR and SUPPLIER is a continuous price reduction / profit maximization. For this reason, SUPPLIER undertakes to continually examine the production process for measures to rationalize and reduce the prices, and to take such measures whenever possible. Savings achieved by SUPPLIER this way shall be passed on to BÄR adequately. SUPPLIER shall provide proof of actions that have been take to achieve a three (3) percent cost reduction per year for series production. Upon request of BÄR, SUPPLIER shall disclose its action planning per year as well as its calculations as to how SUPPLIER intends to achieve the stated cost reduction. This includes a disclosure of the calculations up to the acquisition price.

BÄR and SUPPLIER shall negotiate a price adjustment if changes in the specifications reduce the production work and costs of SUPPLIER or if rationalization and cost-reducing measures are possible. Such prices changes must be agreed in written.

## **§ 5. Warranty, guarantee and liability**

SUPPLIER warrants that all products supplied by it

- a) comply with the specifications, samples, drawings and all other relevant contractual or statutory requirements;
- b) are free of deficiencies
- c) comply with the acknowledged state of the art.

A warranty period of three (3) years shall be stipulated in accordance with the special requirements of the automotive industry, insofar as no longer limitation period is provided for by law. The warranty period commences on the date on which the vehicle is registered or a spare part is installed. In instances of subsequent performance for cure or rectification, the warranty period shall be extended by the period of time during which the contractual product cannot be used.

In case of delivery of defective goods, SUPPLIER shall be liable in accordance with the stipulations of BÄR's General Terms of Purchase and the statutory provisions.

Notwithstanding the foregoing, SUPPLIER guarantees that, for the duration of three (3) years (guarantee period) beginning with the date of delivery or the withdrawal from consignment stock, the products

- a) comply with the specifications, samples, drawings and all other relevant contractual or statutory requirements;
- b) are free of deficiencies
- c) comply with the acknowledged state of the art.

SUPPLIER shall indemnify BÄR from and against all claims, including domestic and foreign product liability claims, made against BÄR by its customers, end users of products or other third parties, irrespective from the legal basis, insofar as these claims are attributable to a breach of duty by SUPPLIER.

## **Section 2: Other agreements**

### **§ 1. Term of validity**

The Agreement shall be valid for an unlimited period.

### **§ 2. Termination of the Agreement**

The Agreement may be terminated by either Party to the end of a month by giving twelve (12) months prior notice.

### **§ 3. Exceptional right of termination**

In addition to statutory rights to termination for good cause, BÄR shall be entitled to terminate his Agreement and/or any individual order in conjunction with it, in whole or in part and with immediate effect, by written declaration to SUPPLIER, without SUPPLIER being entitled to any compensation, if

- a) SUPPLIER breaches an essential obligation of this Agreement and/or of a respective individual order and does not remedy such violation within thirty (30) days after notification of such breach of obligation.
- b) SUPPLIER ends its business activities, becomes insolvent or if an application to initiate insolvency proceedings pertaining to the assets of SUPPLIER has been filed.
- c) There is an essential change in ownership structure or the organization of SUPPLIER.

#### **§ 4. Publication, advertising**

**§ 4.1** BÄR shall be entitled to publish the results of the project. BÄR shall inform SUPPLIER about such publication prior to its publication if possible.

**§ 4.2** BÄR shall use the results for advertising purposes by expressly naming SUPPLIER only with its approval.

**§ 4.3** SUPPLIER shall only be entitled to publish the result of the respective project and the know-how in conjunction with the project after having received the prior written consent of BÄR. This also includes that SUPPLIER shall only be entitled to use the BÄR logo and cite BÄR as a reference customer after having received the prior written consent of BÄR.

#### **§ 5. Confidentiality and Data Protection**

The requirements according to the BÄR Non-Disclosure Agreement (Appendix B) apply.

#### **§ 6. Changes and amendments to the Agreement**

Any change and amendment to this Agreement shall be in written form. This shall also be valid for changes to this written form requirement itself.

#### **§ 7. Transfer to third parties**

The transfer of rights and obligations from SUPPLIER to third parties shall only be possible with the written consent of BÄR.

#### **§ 8. Insurance**

SUPPLIER is obligated to take out business and product liability insurance for personal injury and property damage, including inspection, installation and removal costs and recall cost regulation with a minimum coverage of EUR 10,000,000 per claim without annual limitation. This insurance must be maintained in full without interruption during the term of this agreement

BÄR is in possession of copies of the corresponding insurance documents of SUPPLIER at the time of conclusion of this Agreement.

#### **§ 9. Place of performance**

The place of performance of the service performance shall be at the BÄR headquarters.

#### **§ 10. Severability clause, choice of law**

If specific provisions of this Agreement prove to be invalid or if their performance is not possible or if they contain any omissions, the validity of all other provisions shall thereby remain unaffected.

In this case, BÄR and SUPPLIER undertake to promptly replace the invalid provision with a valid and enforceable provision whose content most closely resemble the original intent. The same shall apply in case of an omission in the Agreement.

The laws of the Federal Republic of Germany, under the exclusion of the UN Convention on Contracts for the International Sale of Goods (Vienna UN Sales Convention), shall govern this Agreement. The exclusive place of jurisdiction shall be, insofar as legally permissible, at the headquarter of BÄR.

**Gerd BÄR GmbH**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**SUPPLIER**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Appendix A - Price sheet**

- see following pages -

**Appendix B - Signed version of Non-Disclosure Agreement**

- see following pages -

## **Appendix C - General Terms of Purchase**

- see following pages -



**Appendix D - Export Control Declaration Supplier**



**Supplier:** \_\_\_\_\_

Item	Part-number	Part description	Purchase Order number	Delivery note number	HS code	EC Export Control Y / N	If „Y“: Add list No.	Country of origin
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**Date:** \_\_\_\_\_

**Stamp:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

## **Appendix E - General Logistics demands for deliveries**

- see following pages -

**Appendix F - Bonus Agreement in the scope of the Framework Supply Agreement**

SUPPLIER shall grant BÄR an annual bonus based on the following net sales volume:

Net sales volume in EUR per calendar year	Annual bonus in %

The applicable net sales volume for the bonus agreement shall be calculated based on the net value of the invoices received in the assessment period.

The calendar year shall constitute the assessment period.

Determination of the annual bonus shall be performed retroactively at the end of each calendar year. SUPPLIER shall issue a corresponding credit to BÄR at the latest by 15<sup>th</sup> January of the following year.

**Gerd BÄR GmbH**

**SUPPLIER**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_