
PARTNERS

Partner terms

For partners who refer orders to BMGE or engage BMGE as a subcontractor for their own projects.

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These terms apply to partners who refer orders to BMGE or engage BMGE as a subcontractor or supplier for their own projects.

§1 Scope

- (1) These terms govern the cooperation between Berger-Münch Engineering, Lda., Estrada Nacional 10, Complexo Industrial Sado Internacional, 283 A, Armazém D23, 2910-828 Setúbal, Portugal (including its permanent establishment in Germany, Eichelberg 15, 93138 Lappersdorf) ("BMGE") and its partners, insofar as (a) a partner refers customers or projects to BMGE (Part A) or (b) a partner engages BMGE as a subcontractor or supplier for its own projects (Part B).
- (2) Partners within the meaning of these terms are exclusively businesses. With private individuals who recommend a contact to BMGE, BMGE may enter into a separate agreement.
- (3) The partner's deviating terms apply only if BMGE accepts them in text form. Individual agreements, in particular a commission agreement based on the model in the annex, take precedence.
- (4) These terms create no obligation to refer or engage and no exclusivity. Each party remains free to work with third parties.

§2 Part A – Referrals: position of the partner

- (1) The partner acts as an independent introducer on a case-by-case basis. It is not permanently entrusted with procuring business for BMGE and is not BMGE's commercial agent.
- (2) The partner may not represent BMGE, make offers, quote prices, dates or other commitments on behalf of BMGE or accept payments for BMGE. It does not present itself as BMGE.
- (3) The partner passes on a prospect's personal data to BMGE only with the prospect's consent or on another legal basis.

§3 Part A – Registration of a customer

- (1) The partner registers a customer or project before or at the first contact in text form (e.g. by e-mail or via the extranet), stating the customer's name, contact person, location and a brief description of the project.
- (2) BMGE confirms the registration within ten working days in text form or informs the partner that it already knows the customer for this project (contact with BMGE within the last twelve months). A customer already known gives no entitlement to commission.
- (3) A confirmed registration is valid for twelve months. If no contract is concluded within this period, it lapses unless extended in text form.

§ 4 Part A – Commission

- (1) If, during the validity of a confirmed registration and as a result of the referral, a contract is concluded between BMGE and the registered customer for the registered project, the partner receives a commission.
- (2) The amount of the commission is set out in the commission agreement with the partner. In the absence of such an agreement, the commission is 5 % of the net remuneration (excluding VAT) actually paid by the customer for the project, including agreed change orders. Commission on follow-up orders from the same customer arises only if agreed.
- (3) Pass-through costs that BMGE re-invoices to the customer without mark-up (e.g. fees, levies, third-party services procured on the customer's behalf) are not subject to commission unless otherwise agreed.
- (4) The entitlement arises only to the extent that the customer pays. If a payment is reclaimed, reduced or refunded, the commission is reduced accordingly; the partner refunds any commission overpaid.
- (5) If the contract is cancelled, withdrawn from or not performed for reasons for which BMGE is not responsible, no commission is due on the unpaid part.

§ 5 Part A – Settlement

- (1) BMGE settles the commission quarterly on the payments received in the past quarter and informs the partner of the basis of calculation.
- (2) On this basis, the partner issues a proper invoice to BMGE; the parties may agree self-billing. The commission is subject to statutory VAT where applicable; for cross-border services the reverse-charge procedure may apply.
- (3) The commission is payable 30 days after receipt of the invoice.
- (4) The commission covers all of the partner's expenses for the referral.

§ 6 Part A – Integrity and disclosure

- (1) If the partner advises or designs for the customer (e.g. as architect, specialist designer, project manager or consultant) or otherwise acts in the customer's interest, it is entitled to commission only if it disclosed the commission to the customer in text form before the contract was concluded and this is compatible with its professional duties.
- (2) The partner may not pass on or promise any commission, benefit or payment to employees, representatives or advisers of the customer.

§ 7 Part B – Engagement of BMGE by the partner

- (1) If the partner engages BMGE for supplies or services for its own projects, BMGE's General Terms and Conditions in the version for business customers apply, supplemented by the following provisions.
- (2) Before placing the order, the partner informs BMGE in text form of the provisions of its contract with the end customer that are material to BMGE's work, in particular deadlines, contractual penalties, acceptance, warranty periods and securities. BMGE is bound by such provisions only insofar as they are expressly agreed in the order placed with BMGE.
- (3) The partner coordinates the interfaces with the end customer and other trades and ensures the end customer's access and cooperation that BMGE requires for its work.

§ 8 Part B – Dealings with the end customer

- (1) BMGE coordinates with the end customer only through the partner, unless otherwise agreed or the partner cannot be reached and a decision is required to avert danger or damage.
- (2) If it is agreed that BMGE acts in the partner's name, BMGE does not use its own advertising towards the end customer. BMGE's obligation to label work clothing, vehicles and documents as required by law remains unaffected.

§ 9 Part B – Remuneration, acceptance and defects

- (1) BMGE's remuneration falls due regardless of whether and when the end customer pays the partner.
- (2) BMGE's work is accepted by the partner. Acceptance is governed by BMGE's General Terms and Conditions and does not depend on acceptance of the overall work by the end customer.
- (3) Claims for defects and liability are governed by BMGE's General Terms and Conditions. The partner forwards the end customer's notices of defects to BMGE without delay in text form and enables BMGE to remedy them.

§ 10 Part B – Customer protection for the partner

- (1) During the cooperation on the project and for 24 months thereafter, BMGE will not actively solicit end customers it came to know exclusively through an order from the partner for work that is the subject of the project.
- (2) If such an end customer approaches BMGE on its own initiative during this period, BMGE informs the partner. The parties agree whether the partner is involved or receives a commission under Part A; failing agreement, § 4 (2) applies accordingly.

§ 11 Confidentiality and non-circumvention

- (1) Both parties treat as confidential all non-public information of the other party, in particular customer data, prices, calculations, technical concepts and supplier relationships, and use it only for their cooperation. This obligation applies until three years after the end of the cooperation; for trade secrets, for as long as they remain secret.
- (2) During the cooperation on the project and for 24 months thereafter, the partner will not, circumventing BMGE, engage suppliers, subcontractors or specialist designers it only came to know through BMGE in a joint project for work that is the subject of the project. During this period neither party will actively poach the other party's employees.
- (3) If a party culpably breaches paragraph 2 or § 10, it owes a contractual penalty to be determined by the other party at its reasonable discretion of up to 15 % of the net value of the affected order, at least EUR 2,500. In the event of a dispute, its appropriateness may be reviewed by the competent court. Several breaches arising from the same matter count as one breach. The penalty is credited against any damages; both parties may prove higher or lower damage.

§ 12 Liability

- (1) § 18 of BMGE's General Terms and Conditions (version for business customers) applies accordingly to BMGE's liability; under Part A, BMGE is not liable for the customer's performance of or payment under the contract.

- (2) The partner indemnifies BMGE against third-party claims based on incorrect information or unauthorised commitments by the partner.

§ 13 Data protection and compliance

- (1) Each party processes personal data under its own responsibility in accordance with applicable data protection law. If one party processes data on behalf of the other, the parties conclude an agreement under Art. 28 GDPR.
- (2) Both parties comply with applicable rules against corruption, money laundering and undeclared work as well as sanctions regulations.

§ 14 Term and termination

- (1) These terms apply for an indefinite period to all referrals and engagements between the parties. Either party may terminate the cooperation with three months' notice to the end of a month in text form; the right to terminate for good cause remains unaffected.
- (2) Commission claims for contracts concluded before the end of the cooperation on the basis of confirmed registrations remain. Ongoing orders under Part B are completed. The confidentiality and non-circumvention obligations continue to apply.

§ 15 Final provisions

- (1) Portuguese law applies. German law applies to cooperation with the German permanent establishment (registration, order or order confirmation via the German establishment). The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (2) The exclusive place of jurisdiction is Setúbal, Portugal, and for cooperation via the German permanent establishment Regensburg, Germany.
- (3) Notices, registrations and confirmations require text form; notices via the extranet suffice.
- (4) If any provision is invalid, the remaining provisions remain valid; the invalid provision is replaced by the statutory provisions.
- (5) BMGE may amend these terms with effect for the future. BMGE notifies amendments in text form at least six weeks before they take effect; if the partner does not object before they take effect, they are deemed accepted, which BMGE points out in the notification. In the event of an objection, either party may terminate the cooperation with effect from that date.
- (6) These terms are available in German, Portuguese and English. The version in the language in which the cooperation was agreed prevails.

Annex – Model commission agreement

Between Berger-Münch Engineering, Lda. ("BMGE") and the partner:

_____ (company, address, tax number)

BMGE's Partner terms and Purchasing and subcontracting terms in their current version apply. In addition, the following is agreed:

1. Commission paid by BMGE to the partner for referred orders: ____ % of the net remuneration paid by the customer (Partner terms, Part A).

2. Commission paid by the partner to BMGE for projects referred by BMGE: ____ % of the net remuneration paid by the customer to the partner (Purchasing and subcontracting terms, Part

C).

3. Follow-up orders from the same customer within ____ months are ☐ subject to commission
☐ not subject to commission.

4. Scope: ☐ all customers and projects ☐ only the following customers/projects:

5. Settlement: ☐ quarterly ☐ monthly ☐ self-billing

6. Other: -----

Place, date: _____ Signature BMGE: _____ Signature
partner: _____