

bg edelstahltechnik GmbH General Terms and Conditions of Sale in Business Transactions (as at 15.02.2017)

1. Scope of application

1.1 These General Terms and Conditions of Sale (GTCS) apply solely to entrepreneurs (Section 14 of the German Civil Code BGB), legal persons under public law or special funds under public law as defined under Section 310 (1) BGB.

1.2 These GTCS apply specifically to contracts relating to the sale and/or the delivery of moveable items ('Goods') regardless of whether the Goods are produced by us ourselves or purchased from suppliers (Sections 433 and 651 of the German Civil Code (BGB)).

2. General

2.1 Our goods and services are subject to these GTCS alone. Any deviating, contradictory or supplementary Customer General Terms and Conditions shall only be an integral part of the agreement if and to the extent that we have expressly consented to their applicability. This requirement for consent also applies, for example, where we carry out an order without any reservations, but in the knowledge of contrary or differing terms and conditions of the Customer.

2.2 Any specific agreements made with the Customer on an individual case basis (including ancillary agreements, additions and changes) shall have priority over these GTCS in any case. Subject to proof to the contrary, a written agreement or our written confirmation shall be decisive for the content of such agreements.

2.3 Legally significant declarations and notices which are to be submitted to us following conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction), require the written form in order to be valid.

2.4 The transfer of claims against us to third parties is excluded. Section 354 a of the German Commercial Code (HGB) shall remain unaffected.

2.5 The sale, resale and the disposal of goods and services, including any associated technology or documentation, may be governed by German, EU and US export control regulations as well as by the export control regulations of further countries. Resale to embargo countries or restricted persons or persons who use or may use the goods and services for military purposes, NBC weapons or nuclear engineering is subject to approval. By placing an order the Customer agrees to comply with these laws and ordinances and to refrain from directly or indirectly supplying the goods and services to countries that prohibit or restrict the import of these Goods. The Customer agrees to obtain all the necessary permits for export or import.

2.6 References to the validity of statutory regulations are for the purposes of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or explicitly excluded in these GTCS.

3. Information and advice

We supply information and advice in connection with our goods and services based on our previous experience. The values given in this connection, including performance data in particular, are average values ascertained in trials under standard lab conditions. We cannot assume any liability for exact compliance with these values and potential uses. Any potential liability shall be governed by No. 12 of these conditions.

4. Provided documents

We reserve property rights and copyrights to all documents provided to the Customer upon award of the contract, e.g. calculations, drawings, etc. These documents may not be made accessible to third parties unless we grant the Customer our express written consent to do so.

5. Prices

5.1 The prices specified in our order confirmation alone are decisive. Any additional services shall be charged separately.

5.2 All prices are net prices minus VAT, which the Customer must pay at the respective statutory rate.

5.3 In the absence of express written agreement to the contrary, our prices are ex works (from our company headquarters in Oer-Erkenschwick). The Customer must bear additional shipping costs, packaging costs in excess of the customary packaging, public charges (including withholding tax) and customs duties.

5.4 If no fixed price agreement has been made, we reserve the right to make price adjustments due to changes in wage costs, material costs and distribution costs for deliveries occurring three months or later after conclusion of the contract.

5.5 If payment is made within eight days of receiving the invoice we will grant a 2 % reduction on the invoice amount (discount).

6. Delivery

6.1 Unless expressly agreed otherwise, we will deliver ex works from our company headquarters in Oer-Erkenschwick regardless of where the place of fulfilment for the delivery and any potential subsequent fulfilment is. Cross-border deliveries shall take place in accordance with the INCOTERMS, as amended. Unless agreed otherwise, the delivery in line with the above-mentioned INCOTERMS shall, subject to any export permit to be produced by the Customer (see No. 2.5), take place free carrier (FCA) from our company headquarters in Oer-Erkenschwick, Karlstraße 18, 45739 Oer-Erkenschwick (designated place of delivery). The Purchaser shall bear any customs duties, fees, taxes and other public charges.

6.2 In the absence of any expressly binding delivery date, our delivery dates/delivery times remain non-binding information and nothing more. Agreed delivery times begin from the date of order confirmation, however not before explicit clarification of order details and the production of the necessary certificates. They are regarded as fulfilled with the timely notice of readiness for dispatch, even if the Goods, through no fault of ours, cannot be dispatched in time.

6.3 Where delivery times and delivery dates are not expressly referred to as binding in the confirmation of order, the Customer can set us a reasonable deadline for delivery/performance two weeks after the expiry of these delivery times and dates. We may only be deemed to be in default after expiry of such a grace period.

6.4 Periods and deadlines shall be extended by the period of time during which the Customer fails to meet its obligations towards us without prejudice to our rights resulting from delayed payments. In the event that we do not comply with our obligations, we shall only be liable for damages in accordance with Number 10 of these Terms and Conditions.

6.5 We reserve the right to have the delivery carried out by our own delivery organisation.

6.6 We are entitled to partial deliveries and partial performances if these are reasonable for the Customer.

6.7 Except when otherwise stipulated, a cancellation of the contract by the customer is only possible under the statutory provisions.

6.8 If the Customer has a contractual right of withdrawal and we set the Customer a reasonable period to exercise it, the right of withdrawal shall expire if the withdrawal is not declared before expiry of this period.

7. Dispatch and transfer of risk

7.1 Unless expressly agreed otherwise, dispatch and transportation take place at the risk of the Customer. The risk is transferred to the Customer as soon as the consignment has been handed over to the person providing the transportation.

7.2 If the dispatch of the goods is delayed for reasons attributable to the Customer, the risk of any accidental deterioration or loss is transferred to the Customer on notification of readiness for shipment. The Customer bears any storage costs following the transferral of risk. Any further claims shall remain unaffected.

7.3 If the Customer is in default of acceptance, we are entitled to demand compensation for costs incurred; upon default of acceptance the risk of accidental deterioration and accidental loss passes to the Customer.

8. Payment

8.1 Unless otherwise agreed, the purchase price is due and payable once we have handed over the Goods to the person providing transportation, or, once we have indicated readiness for shipment as set out in No. 7.2, or, the Customer is in default of acceptance, at the earliest however 20 days from the date of invoice without any deduction. The Purchaser shall be deemed to be in default upon expiry of the above-stated payment term. Section 286 (3) of the German Civil Code (BGB) shall remain unaffected. The timeliness of the payment is determined by the date at which the money is available to us. Bills and cheques count as payment only after they have been cashed and are accepted without obligation of production and protest within the prescribed time.

8.2 We are entitled, once payment is in arrears, to claim - from the due date if you are a merchant - default interest at 9 percentage points above the base rate p.a. without prejudice to the assertion of a higher actual damage.

8.3 The Customer may only withhold payment because of counterclaims or set payments off against any counterclaims if notices of defects or counterclaims arising from the same contractual relationship are asserted, or, such counterclaims are uncontested or legally ascertained.

8.4 All our claims shall be due and payable immediately, regardless of the maturity date of any received and credited bills of exchange in the case of default of payment, bill protest or suspension of payment by the Customer. We shall be entitled in the above circumstances, to make outstanding deliveries against advance payment or security only, and, if no advance payment is made or security granted within a two week period, to rescind the contract without fixing any further time period for compliance. Any further claims shall remain unaffected.

9. Reservation of title

9.1 All Goods delivered by us remain our property (Goods subject to reservation of title) until full settlement of all our current and future claims for payment from the purchase agreement and any ongoing business relationship. The Goods subject to reservation of title can neither be pledged to third parties nor assigned by way of security up until full payment of the secured claims.

9.2 As long as the property has not yet been handed over to it, the Customer is obliged to handle the Goods with the utmost care and to notify us immediately of any damage to or the destruction of the item or any change of place of business or residence or application for the initiation of insolvency proceedings concerning its assets. If maintenance or inspection work needs to be carried out, the Customer must have this carried out in due time and at its own cost.

9.3. We should be informed of any attachments or other third party access to the Goods subject to reservation of title immediately. All costs for intervention, specifically the judicial and extrajudicial costs of initiating proceedings pursuant to Section 771 of the Code of Civil Proceedings (ZPO) shall be borne by the Customers, insofar as they cannot be collected from the third party.

9.4 In the event of conduct on the part of the Customer in violation with the contract, specifically in the event of non-payment of the purchase price due or a violation on the part of the Customer against its obligations under No. 9.2. or its disclosure obligation under No. 9.3, we are entitled, under statutory provisions, to rescind the contract and to demand the return of the Goods on the basis of the reservation of title and the rescission.

9.5 The reservation of title covers, at their full value, products which the Customer has produced by processing, mixing or combining our goods, whereby we are deemed the manufacturer. In the event of the processing, mixing or combination of our goods with products of a third party, the title of which is retained, we shall acquire co-ownership of such Goods in the proportion of the invoice value of our reserved Goods to the value of the other goods used. If our ownership ceases to apply as a result of processing, combination or mixing, then the Customer shall hereby transfer to us its property rights to the new stock or item to the amount of the value of the reserved Goods and safeguard them for us free of charge. The subsequently arising co-ownership rights shall be considered reserved title goods as defined under No. 9.1.

9.6 The Customer shall be entitled – subject to the restrictions set out under No. 9.7 P. 4 – to continue to process the reserved title goods, combine and mix these with other items or to resell these, provided this takes place in the ordinary course of business and we have not revoked authorisation for this. We are entitled to revoke authorisation if the Customer fails to

properly fulfil its payment obligations towards us. Any other disposal of the reserved goods is inadmissible.

9.7 Claims of the Customer arising from the resale of reserved Goods shall hereby be assigned to us in full or in a sum equal to any co-ownership share which we acquire; we accept this assignment. The assigned claims shall serve as security to the same extent as the reserved Goods. Sections 9.1, 9.2 (1) and 9.3 shall apply correspondingly for claims assigned. The Customer is only entitled and authorised to resell the reserved Goods if it has been assured that the claims arising from this will be transferred to us.

9.8 If the Goods under reservation of title are sold by the Customer together with other goods not supplied by us at an all-inclusive price, the assignment of the claims from this sale is equal to the amount of the invoice value of our respectively sold Goods under reservation of title.

9.9 If an assigned claim is included in a current account, the Customer shall immediately assign to us that part of the balance which is equivalent to the amount of such claim, including the final balance from current account operations.

9.10 The Customer is authorised to collect claims assigned to us until revocation of this authorisation by us. We are entitled to revoke authorisation if the Customer fails to properly fulfil its payment obligations towards us. If the conditions for the exercise of the right of cancellation exist, the Customer must, at our request, immediately inform us of the assigned claims and their debtors, provide all information necessary for the collection of the claims, surrender to us the associated documentation and inform the debtor of the assignment. We are also entitled to inform the debtor of the assignment ourselves.

9.11 If the realisable value of the securities exceeds the total value of our claims by more than 10%, we shall be required at request of the customer in this respect to release of securities at our discretion.

10. Rights to software

10.1 All software programs shall remain our property. Programs, documentation and subsequent enhancements may not be made accessible to third parties without our prior written consent, nor may they - even for own purposes, except for a backup copy - be copied or otherwise duplicated.

10.2 The Purchaser is granted a non-exclusive non-transferable right of use for programs and their associated documentation and subsequent enhancements, for internal use with the products for which the programs are supplied. The Purchaser shall be granted individual licenses for end customers in the desired quantity within the scope of a non-exclusive and non-transferable right of use for programs and documentation produced on the instructions of the Purchaser and supplied by us.

10.3 Source programs are generally not made available, these are only released on the basis of a separate written agreement.

11. Warranty

11.1 The rights of the Customer concerning material defects and defects of title (including incorrect and under-deliveries as well as improper installation or inadequate operating installation instructions) are subject to the statutory provisions as long as no alternative is defined hereinafter. Special legal requirements for the final delivery to a consumer (supplier's re-

course under Sections 478 and 479 of the German Civil Code (BGB)) shall remain unaffected in any case.

11.2 The warranty rights of the Customer require that the same has properly fulfilled its duties to inspect the goods and submit a notice of defect as stipulated under Sections 377 and 381 of the German Commercial Code (HGB).

11.3 The rejected Goods should be returned to us for inspection in the original or equivalent packaging. In case of justified complaints within the prescribed period, we shall, at our option, take remedial action by rectifying the defect or supplying non-defective Goods; we shall bear only the costs necessary for the remedial action.

11.4 According to statutory provisions, we are entitled to refuse supplementary performance. Supplementary performance may also be refused if the Customer fails to send us, at our request, the rejected Goods.

11.5 In the case of fraudulent concealment of a defect or in the case of the acceptance of a warranty for the condition of the Goods in terms of Section 444 of the German Civil Code BGB (the seller's declaration that the object of purchase has a certain property upon the passing of risk and that the seller, independent of negligence, is prepared to take responsibility for all consequences of his defects), the Customer's rights shall be governed exclusively by the statutory provisions.

11.6 All our product details, in particular the illustrations, drawings, weight, dimension and performance data contained in our quotations and brochures are to be regarded as approximate average values. These do not constitute any quality guarantee, they merely serve the purposes of description and designation.

11.7 Unless limitations for deviations have been expressly established in the confirmation of the order, the normal industry variations shall be permissible.

11.8 Warranty for defects in the Goods supplied caused by normal wear and tear is excluded, provided we have not assumed any guarantee of durability.

11.9 If the Customer fails to follow our operating or maintenance instructions, makes changes to the goods or services, replaces parts or used consumables that do not correspond to the original specifications, any warranty shall become void, unless the Customer can demonstrate that the defect is not attributable to this.

11.10 Complaints and notices of defects should be made in writing.

11.11 Claims of the purchaser for compensation or the reimbursement of alleged expenses shall only, even in the event of defects, exist in line with No. 12.1 to 12.3 and shall otherwise be excluded.

11.12 If the Customer acquires used products from us, we shall deliver under the exclusion of any liability for material defects, unless we have come to an express written alternate arrangement with the Customer. This shall not apply in the event that a guarantee is assumed for the quality of the object as defined under Section 444 of the German Civil Code BGB (see No.11.5), in the event of the fraudulent concealment of a defect nor for claims under No. 11.11. Our sales representatives are not authorised to conclude warranty agreements with Customers for used devices.

12. Limitation of liability for damages claims and reimbursement of expenses

12.1 In the case of a breach of obligation, including the delivery of defective goods or tortuous conduct, we shall - subject to any other contractual or statutory conditions for liability - only be liable to pay damages or compensation if such a breach was caused intentionally or by gross negligence or, in cases of minor negligence in the breach of an essential contractual duty (a duty the fulfilment of which enables the proper execution of the contract in the first place and upon compliance with which the contractual partner may regularly rely). Our liability in the event of the breach of a material contractual obligation based on slight negligence shall however be limited to damages that are foreseeable at the time the contract is concluded and that are typical for such contracts.

12.2 In cases of slight negligence, we shall only be liable for damages due to default up to 5 % of the purchase price negotiated with us.

12.3 The liability exclusions and restrictions contained in No. 12.1 to 12.2 shall not apply in the event that a guarantee is assumed for the quality of the object as defined under Section 444 of the German Commercial Code BGB (see No. 11.5), nor shall it apply to the fraudulent concealment of a defect, to damages arising from injury to life, body and health nor to damages compensation claims under the German Product Liability Act (ProdHaftG).

12.4 If the product being supplied is software, we shall assume liability for any loss or modification of data caused by the program, but only to the extent that this would have been unavoidable in spite of the Customer's compliance with its duty to secure such data at appropriate intervals, at least once a day at the very least.

13. Limitation period

13.1 Provided a material defects exclusion for used products as defined under No. 11.12 is not already in place, the general period of limitation for claims resulting from defects and defects of title is, contrary to Section 438 (1) No. 3 of the German Civil Code BGB, one year from delivery.

13.2 If the goods constitute a building or an object typically used in the construction of a building and which has caused the defect of the building itself (building material), the limitation period under statutory provisions is five years from delivery (Section 438 (1) No. 2 of the German Civil Code BGB).

13.3 Section 438 (1) No. 1 of the German Civil Code BGB (limitation of certain material defects) shall remain unaffected.

13.4 Other claims regarding expenses and damages in the form of contractual warranty claims under Section 437 No. 3 of the German Civil Code (BGB), i.e. tortuous and non defect-related claims for expenses and damages, shall be subject to the statutory limitation periods.

13.5 Claims for damages by the Purchaser in case of intent or gross negligence by the user as well as in the case of damages arising from injury to life, body and health and damages compensation claims under the German Product Liability Act shall, contrary to No. 13.4, be subject solely to the statutory limitation periods in any case.

13.6 If the Customer is an intermediary seller of the Goods supplied to it and the final purchaser of the Goods is a consumer, then the statutory provisions regarding the Customer's time limits for legal recourse against us shall apply.

14. Industrial property rights and copyright

14.1 In the event that claims are brought against the Customer for breach of industrial property right or copyright based on the use of our goods/service in the manner contractually stipulated, we undertake to provide the Customer with the right of further use. This is provided that the Customer informs us of such third party claims immediately in writing and all defence measures including any out-of-court settlements remain reserved to us. Should continued utilization of our goods/service on such conditions not be economically viable, it shall be deemed agreed that we, at our own discretion, shall either alter/replace the goods/service to remedy the defect of title or take back the goods/service and refund the purchase price paid to us, less an amount reflecting the age of the goods/service.

14.2 The Customer shall not be entitled to further claims for property right or copyright breaches, provided no material contractual obligations have been violated or other contractual duties intentionally or grossly negligently breached. We shall not be subject to any obligations under No. 14.1 if infringements are caused by our goods/service not being used in the manner contractually stipulated or by these being used in conjunction with goods/services other than ours.

15. Disposal

15.1 The Customer must observe our accompanying information for the disposal of the Goods and ensure that the Goods are disposed of properly and in line with the statutory provisions.

15.2 The Customer is under obligation to undertake disposal at its own costs. If these Goods or their components are resold, the Customer shall transfer this obligation to the next purchaser. In the event of a disposal of electrical or electronic devices supplied by us, proof of destruction must be sent to us immediately.

16. Reporting requirements and resale

16.1 Customers purchasing a medical product as defined under the German Medical Products Act, e.g. a bedpan washer, are under obligation to inform us of any incidents or near-incidents with any of our relevant products, and this regardless of whether there is a requirement to report these to the authorities under the respectively applicable regulations for medical products.

16.2 Customers purchasing a product as defined under No. 16.1 must inform us, without delay, of any resale or other transmission of our products, specifying the purchaser and/or recipient, or, ensure by other suitable means that we always have access to information about the whereabouts of our products.

16.3 In the event of a resale of our products as defined under No. 16.1, the Customer must ensure, by suitable means, that all respectively applicable statutory provisions, specifically those for medical products, are adhered to during and after the sale.

17. Confidentiality

17.1 Unless any other arrangement has been explicitly agreed in writing, the information provided to us in connection with orders is not deemed confidential unless the confidential nature is obvious.

17.2 Please be advised that we store personal data that is related to our business relationship with you.

18. Other

18.1 In the case the Customer is merchant in the sense of the German Commercial Code (HGB), a legal person under public law or special fund under public law, then the sole venue of jurisdiction – on international level too – for all disputes arising directly or indirectly from the contractual relationship is our registered office in Oer-Erkenschwick. The same applies if the Customer is an entrepreneur in the sense of Section 14 of the German Civil Code (BGB). We shall however also be entitled to bring an action at the place of fulfilment for the delivery commitment as set out under these General Terms and Condition of Sale and/or any overriding individual agreement, or, at the Customer's general place of jurisdiction. Overriding statutory provisions, specifically those concerning exclusive jurisdictions, shall remain unaffected.

18.2 These contract terms and the contractual relationship between us and the Customer shall be governed by the law of the Federal Republic of Germany, under exclusion of the International Uniform Law, specifically the UN Purchasing Law (Agreement of the United Nations concerning contracts) (CISG), and the Rules of Conflict of Law for German International Private Law.

18.3 The German version of these General Terms and Conditions of Sale shall be authoritative.

18.4 In the event that individual sections of these terms should be wholly or partially invalid, this shall not affect the validity of the remaining sections or the remaining parts of such sections.

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