

# General trade conditions for delivery and service

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## 1. General

- 1.1 Our general trade conditions are only applicable to companies within the legal sense of § 14 of the German Civil Code as well as to the juristic persons of public law and public law assets.
- 1.2 Our general trade conditions are exclusive; we do not acknowledge any opposed terms of the client or any such deviation from our general trade conditions, if not clearly agreed in writing. Our trade conditions also apply if we execute the delivery or service to the client unconditionally, in spite of having knowledge of contradictory or deviating terms of delivery or service to the client.
- 1.3 All agreements made between the client and us with regard to the fulfillment of this contract are put down herein in writing.
- 1.4 Our trade conditions are also applicable for all future transactions with the client

## 2. Field of application

The following terms apply to the delivery of any kind of goods made by biolitec biomedical technology GmbH to the client (specified as 'Delivery') as well as for the provision of other services of biolitec biomedical technology GmbH to the client (specified as 'Services').

## 3. Quotation, Conclusion of the contract, References of quotation

- 3.1 Our quotations are without any obligation as long as it is herein not clearly mentioned otherwise.
- 3.2 The purchase order of the client is qualified as defined by § 145 of the German Civil Code, we can accept it within four (4) weeks.
- 3.3 We reserve all sole rights of ownership and copyright for all our illustrations, drawings, calculations and other documents / records. This also applies for those written documents, which are marked as 'confidential'. The client is not allowed to pass on any such document to third parties, unless approved by us in writing.

## 4. Prices, Terms of payment

- 4.1 Unless otherwise stated, prices mentioned in our quotations will be maintained for a period of four (4) weeks from the date of submitting the quotation.
- 4.2 All prices are quoted 'ex works' (ex factory), exclusive of packing charges; which will be invoiced separately.
- 4.3 All prices and charges are exclusive of Value Added Tax – VAT or other government charges, the Value Added Tax according to the law of the legal provision, will be shown in the invoice separately on the date of the invoicing.
- 4.4 Payments have to be made on the date of maturity as agreed without any deductions, latest within 30 days from the date of the invoice. When settlement is made to our bank account, the date of credit entry is relevant.
- 4.5 Cash discount will not be accepted unless a written prior agreement has been given.
- 4.6 In case the client delays the payment we are entitled to ask for an interest rate of eight (8) per cent over the prime rate p.a. We keep the right to claim the assertion of a higher interest rate or the assessment of further damages.

## 5. Right of rejection of the performance principle, compensation, retaining lien

- 5.1 We may withhold a delivery or rather service in case of the following events: when, after having signed the contract, we recognize that our claim for payment of the price for our delivery or rather service is in danger due to the client's lack of obligation to perform, especially in such circumstances when an essential deterioration of the financial status of the client occurs. Our right of rejection of the delivery / service principle will no longer be applicable, if payment of our delivery or rather service has been made or if a security has been furnished. We reserve the right of all further legal rights, especially the right of withdrawal from the contract under the legal preconditions.
- 5.2 The client is only entitled to claim compensation rights when his counter claims have been established legally binding, uncontested, or admitted by us. Besides, he is entitled to pursue a retaining lien only when his counter claim is based on the same contractual relationship.

## 6. Terms of delivery, Delay in delivery, Partial deliveries

- 6.1 Delivery or rather service terms and dates are only mandatory if we express these in writing.
- 6.2 The adherence of our delivery or rather service obligations implies to duly adequate fulfillment of the commitments of the client and the clarification of all technical questions. The execution terms are extended appropriately, only if a hindrance is represented by the client and / or if the incumbent cooperating action of the client is omitted or it is not furnished within the due time, unless the delay is supported by us.
- 6.3 The period and / or the date of delivery or service extends itself in case of labor disputes, particularly strike and lockout, as well as with the occurrence of unexpected obstacles, that lie out of our control. For example Operational disturbances, delay in the delivery of substantial materials; as far as such obstacles are proved to the substantial influence at the delivery or service time. This does not apply, if hindrance or interruption is caused by labor disputes, which we have encumbered for illegal actions. The previously mentioned regulations also apply, if the circumstances occur with hypo suppliers. The delivery time and / or the date of delivery extends itself according to the duration of such measures and obstacles. The earlier mentioned circumstances will also not be represented by us, if they develop during an already available delay. We will notify the beginning and end of such obstacles as soon as possible to the client.
- 6.4 If we delay with the delivery or service, the client can withdraw from the contract in the context of the legal regulations, as long as the reason of the delay for the delivery or service is supported by us. With irrelevant breach of duty is the withdrawal from the contract impossible. Any change in the burden of proof to the disadvantage of the client is not connected with the previously mentioned regulations.
- 6.5 On our demand, the client is bound to explain within an appropriate period, whether he is withdrawing the contract or if he insists for the delivery or service.

- 6.6 Partial deliveries and partial services are permissible within the time of delivery indicated by us, as long as disadvantages for the use do not result.

## **7. Passing of the risk, Acceptance, Transport insurance**

- 7.1 If not mentioned otherwise, the delivery "ex factory" is agreed upon.
- 7.2 If the client wishes we would cover the delivery with transport insurance, the client will have to bear the cost according to the offer.
- 7.3 If acceptance is required, it is authoritative for passing of the risk. It must promptly be carried out on the acceptance date by the client, after notifying us about the acceptance readiness. Because of irrelevant defects, the acceptance cannot be denied.
- 7.4 If the client comes into default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand the insofar-occurring damages to be replaced including possible additional expenditures. In this case also the danger of a coincidental loss or a coincidental degradation of delivery or service during this time goes over to the client, with this the client falls into the acceptance or turns out to be the debtor. On going demands, remain reserved.

## **8. Warranty – Casualty defects**

- 8.1 If with passing of the risk, a lack of the delivery or service was present; according to our choice we are entitled for the remedy of defects.
- 8.2 In case of after fulfillment, we are obligated to all expenditures for the purpose of the after fulfillment particularly transport -, roads -, work and material costs, as long as these do not get increased that the delivery has to be made to another place and not to the mentioned destination.
- 8.3 In case of failure of the after fulfillment according to point 10 of this general trade conditions the client, irrespective of any claims for damages can reduce the payment or withdraw from the contract.
- 8.4 Defect claims do not exist in case of insignificant deviation from the agreed condition, only with insignificant damage of the usefulness, with natural wear and tear or damage. Which after the contract are not presupposed and develop after the passing of the risk due to incorrect or careless treatment, over loading, unsuitable operational supplements or special influences and as well as not reproducible software failures. If the client or any third party makes inappropriately changes or repairs, no claim exist for these damages and from it developing consequences.
- 8.5 The warranty period for the claims from the client against us due to failing of delivery or service amounts to, with the exception of cases § 438 Para.1 No.1 , and No. 2 German Civil Code, and § the 634a Para.1 No. 2 and No. 3 German Civil Code, twelve months starting from the legal period. This short cut of the guarantee period does not apply to harmful injury of life, body or health, with a deliberate or rough neglect of duty or with a culpable injury of substantial contractual obligation by us. It continues not to apply, if we fraudulently would keep silent about a defect or have taken over a warranty for the condition of the delivery or service. Eventually demands / requirements of the client from § 479 German civil code are untouched.
- 8.6 As far as data loss is concerned, the liability is limited to the typical re-establishment cost, which would have occurred during regular and danger-appropriate data protection by the client.
- 8.7 Point 10 of this general trade conditions is applied for damage and claim reimbursement expenses against us. More or other than in point 8 mentioned demands / claims from the client against us and our liabilities are ruled out.

## **9. Commercial property rights and copyrights - defective titles**

- 9.1 If not otherwise agreed, we are obligated to render the delivery to the country of the place of delivery without any / free from commercial property rights and copyrights.
- 9.2 If a third party raises demands for breach of industrial property rights against us, we are liable to contradict the client as in point 8, Para. 5 of these general trades conditions mentioned as follows: We have according to our choice the right to either procure the necessary royalty concerning the alleged violated rights or to provide the client a changed delivery item or part; if the damaged delivery article or its part is exchanged, the breach allegation concerning the delivery article is eliminated. Failing the after fulfillment, the client is entitled to the legal rights; he is particularly entitled, according to his choice to reduce or withdraw from the contract. In all other cases, the regulations of point 8 of these general trade conditions apply according to infringement of industrial property rights. Our obligation for the service for compensation is in accordance with point 10 of these general trade conditions.
- 9.3 The mentioned obligations exist for us only till then as long as the client does not acknowledge a violation and all preventive measures and measures out of court remain reserved with us.
- 9.4 Demands / claims by the client are not accepted, as long as he is representing the infringement of an industrial property right.
- 9.5 Demands / claims by the client are further not accepted, as long as the infringement of an industrial property right through special guidelines and use by the client, which is not predicted by us or what causes it and the delivery by the client is changed / modified or used with other products which were not delivered by us.
- 9.6 By presenting other defective titles, the regulations of point 8 and point 10 of these general trade conditions are applicable.
- 9.7 More or other demands / claims by the client against us and our liabilities as regulated in point 9 because of defective title are not accepted.

## **10. Other claims for damages**

- 10.1 We are liable according to the legal regulations for harmful injury to life, body or health.
- 10.2 We are liable according to the legal regulations for damages, which are based on a deliberate or rough negligent breach of duty by us or by our representatives or assistances. As long as we are not deliberately accused of breach of duty the damage compensation is limited to the predicable, typical occurred damage.
- 10.3 We are liable according to the legal regulations if we culpably violate the substantial contractual obligations. However, in this case the damage compensation is limited to the predicable, typical occurred damage.
- 10.4 We are liable according to the legal regulations if we fraudulent would keep silent about a defect or have taken over a warranty for the appearance and workmanship of the delivery or service.

- 10.5 The same applies as long as the liability is compelled due to the regulations of the product liability law.
- 10.6 More damage and expenditure compensation demands from the client against us are not accepted whatsoever the reason. This particularly applies to a violation of a legal action.
- 10.7 As long as the damage compensation liability against us is restricted or excluded, it also applies to the personal damage compensation liability of our employees, Staff, Coworker, Representative and assistances.
- 10.8 A change in the burden of proof for the disadvantage of the client is not connected with the present regulations.

#### **11. Retention of title**

- 11.1 We retain the right of property for the delivery of articles / items until all outstanding accounts from the business relationship with the client is completed, whatsoever the reason. The retention of the right applies also to outstanding amounts from earlier and future legal transactions and for outstanding account balance from a possibly existing current account relationship.
- 11.2 The client is entitled to further sell / dispose the delivery articles in a fair business process; he however now is assigned a claim to all outstanding amounts of the delivery price agreed between us and the client (including value added tax), which arise from the resale to his customers or third party, irrespective of whether the delivery article was sold without or after converting / working upon. The given assigned book account by the client relates to approved / accredited balance as well as in the case of the insolvency of the customer on the then existing "causal" balance. We accept the transfer, however, independent of it, we can intersperse our requirements directly against the client. The client is authorized to collect the payment request / amount after their transfer. Our authority to collect the outstanding balance remains unaffected by it. However, we commit ourselves not to collect the outstanding balance as long as the client discharges all the payment obligations on time, does not delay the payment and does not propose insolvency proceedings. If this is the case, we can demand that the client discloses the assigned book account and their debtors, gives all collection data along with the corresponding documents and informs the debtors (third party) about the transfer.
- 11.3 The client cannot mortgage or transfer the safety of the delivery articles. Executory officer and / or Third Party have to refer our ownership.
- 11.4 The converting or remodeling of the delivery articles for us is always made by the client. If the delivery articles are worked upon with other articles, which do not belong to us, we will acquire the co-ownership for the new things / articles in percentage of the value of the delivery articles (inclusive of value added tax) for the other converted articles at that time. For the happened cause / state, which resulted from the processing, the same applies for the articles supplied under retention.
- 11.5 If the delivery articles are inseparably mixed with other articles, which do not belong to us, we will acquire the co-ownership for the new things in percentage of the value of the delivery articles (inclusive of value added tax) at the time of the mix up. If the mix up takes place in such a way that it is regarded a main matter it applies as agreed upon that the client proportionately transfers the co-ownership to us. The client keeps the developed sole property or the co-ownership for us.
- 11.6 The client is obligated to handle the delivery articles with care; he is especially obligated to insure the original value of these against fire, water and theft at his own expenses. If maintenance and inspection work are necessary, the client must on time carry out these at his own expenses.
- 11.7 With mortgage or other interferences from a third party the client has to inform us immediately in writing, so that we can raise a complaint in accordance with § 771 code for civil actions. If the third party is not able to refund us the judicial and out of court complaint costs in accordance with § 771 code for civil actions, the client is responsible for our developed loss.
- 11.8 With an attitude of contrary to contract by the client, especially in delay of payment we are entitled to cancel the contract according to the lawful regulations and withdraw the delivery articles. The assertion of claims for damages remains unaffected.
- 11.9 Upon the request of the client we commit ourselves to release the to us entitled securities mentioned in point 11. If realizable value of our securities exceeds the securing balance amount for more than 10 %, the choice to release the securities incumbents on us.

#### **12. Nondisclosure / Secrecy**

- 12.1 The parties are obligated to keep strict secrecy about all confidential documents and information as well as all commercial and technical details that are connected with the business. Such information may only be revealed to the third party in the manner expressly consented to the other contracting party. The secrecy obligation applies also after completion of the present contract. The obligation is not applicable if and as long as the knowledge contained in the documents and information or commercial and technical details without violating the contract of the other party were already known to the other party.

#### **13. Court / place of jurisdiction, Applicable law, Severability clause, Translations of these trade conditions**

- 13.1 If the client is a buyer, legal entity of the public right or public law assets even then is our official place of business the exclusive place of jurisdiction. However, we are also entitled to sue the client at the court of his official place of business.
- 13.2 Only the laws of the Federal Republic of Germany apply under exclusion of the international purchase right, even if the client has his company headquarters in a foreign country.
- 13.3 If one regulation should be or become ineffective, the remaining regulations will remain valid.

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