

## **Delivery and Business Terms and Conditions**

### **1. General**

**1.1** Our delivery and payment terms and conditions shall apply for all services and performances rendered based upon the respective agreement. Upon the initial acknowledgment of the Customer, but no later than with our written order confirmation, these delivery and payment terms and conditions shall become a contractual component and be acknowledged by our Customer. Other terms and conditions, e.g., purchasing terms and conditions of our Customer, shall only then become a contractual component if they have been expressly agreed upon in writing with us. In the event of conflicts, the statutory provisions shall apply.

**1.2** Oral ancillary agreements shall only then become effective if we have confirmed them in writing. Oral or written agreements with representatives or other third parties who act on our behalf are likewise only effective if we have confirmed them in writing.

**1.3** With respect to merchants, juridical persons under public law or special funds under public law, our delivery and payment terms and conditions as amended shall apply for all future business dealings.

### **2. Offer and Scope of the Delivery**

**2.1** Our offers are non-binding.

**2.2** Orders shall be considered as having been accepted if we have confirmed them in writing.

**2.3** Our written order confirmation shall be prevailing for the scope of the delivery. Any collateral agreements and amendments require our written confirmation. If no separate order confirmation is prepared, the delivery note or invoice shall be considered to be the order confirmation.

**2.4** We retain the ownership- and copyright-related rights of exploitation to the cost estimates, drawings, model devices and other documents in unrestricted fashion; they may not be made accessible to third parties. Drawings, model devices and other documents related to the offers must be returned immediately upon request if we are not awarded the order.

**2.5** We reserve the right to make deviations of an immaterial nature from submitted models, further developments in production and model modifications, provided that they are reasonable for the Customer while taking its interests into account.

### **3. Prices**

**3.1** In the absence of a special agreement, prices shall be considered to be ex works, excluding packaging and assurance.

**3.2** Packaging shall be billed at cost. Provided that we, in accordance with Paragraph 4 of the packaging regulations, are obliged to take back the packaging used in transport, the Customer shall assume the costs for the return transport of the packaging used.

**3.3** The value-added tax shall be included in the price in the respectively valid statutory amount.

### **4. Payment**

**4.1** Payment must be made free cost center within 30 days from the receipt of the invoice with no deductions and in the agreed-upon currency. Payments for repairs are immediately due and payable with no deductions. The timeliness of the payment shall be based upon when we receive the monies; if payments are made by check, the payment shall only then be considered to have been made when the check is cashed.

**4.2** In the event that payment timeframes are not met, payment default interest shall be charged at rates customary for banks, but nonetheless 8% above the Seite 2 von 5 Stand: 11.01.2008 BEHA Innovation GmbH respective base lending rate of the Europäischen Zentralbank [European Central Bank] (EZB). The assertion of any more substantial payment default damages is not hereby excluded.

**4.3** Settlement of invoices by check and bills of lading shall be made only for payment purposes and requires our prior approval for bills of lading. The Customer shall assume all costs associated with bills of lading and checks. We shall assume no liability for the timeliness of our objections to the payment method used by the Customer.

**4.4** If the Customer enters into default with regards to the payments it is obliged to make in accordance with this agreement or its financial situation subsequently deteriorates, we shall only render further performances contingent upon the immediate settlement of our payment claims or against the provision of valuable securities. If the Customer rejects the demand for the provision of appropriate security, we shall be entitled to withdraw from the agreement after the expiration of an appropriate notice period.

**4.5** The Customer is not permitted to withhold payments or to offset against its payment obligations due to any of the Customer's counterclaims which we dispute and have not been legally upheld.

## 5. Delivery Timeframe and Delivery Hindrances

**5.1** Deadlines for deliveries and performances are only binding if we have expressly confirmed them in writing. The delivery timeframe begins with the sending of the order confirmation, but nonetheless not before the submission of the documents which the Customer is required to provide.

**5.2** The delivery deadline shall be considered to have been met if the goods have been sent in a timely manner or timely notification of the readiness to ship the goods has been made.

**5.3** A date or a timeframe specified in the contractual documents for deliveries or performances merely refers to the time the delivery becomes due. If such delivery timeframes or deadlines are not met, the Customer shall be entitled to set an extension period in accordance with § 323 I BGB [Civil Code] and to subsequently avail itself of its rights originating from these provisions. The parties are in agreement that an extension period of three weeks is appropriate. Fixed deadlines or timeframes must be agreed upon by the parties in writing and in plain terms.

**5.4** For the delivery timeframes, all reservations shall apply which may be derived from unforeseeable hindrances, both in our own factory as well as in those of our own suppliers as well as due to force majeure. Included among these are all unforeseeable events such as, for example, governmental interventions, operational disruptions, labour struggles, delays in incoming deliveries and production, war, catastrophes, etc. In these cases, we shall be entitled to postpone the delivery and/or other performances for the duration of the hindrance in addition to an appropriate start-up period or to withdraw from the agreement without the Buyer being entitled to demand damage compensation for this. If the hindrance lasts longer than three months, the Customer shall be entitled, after an appropriate extension period has been set, to withdraw from that portion of the agreement that has not yet been fulfilled.

**5.5** Partial deliveries of a reasonable scope are permitted.

**5.6** If the deliveries are not accepted in a timely manner, we shall be entitled to immediately bill for the delivery and any additional costs incurred (for example, through storage). Call-off orders shall be for a maximum term of one year and must be accepted within this timeframe. The minimum call-off order timeframe is 30 days.

## 6. Transfer of Risk and Shipping

**6.1** Risk shall be transferred to the Customer no later than the sending of the delivery portions and certainly also then if partial deliveries are made or we have taken on still more performances, e.g. the shipping costs or transport.

**6.2** If the shipment is delayed due to circumstances for which the Customer is responsible, then the risk shall be transferred to the Customer from the date that the goods are ready for shipping.

## 7. Complaints/Warranties

**7.1** A warranty for products is provided for a period of 12 months from the time delivery is made, with the exception of parts subject to wear and tear. A warranty for repairs is provided for a period of 6 months on parts and labor from the time delivery is made, with the exception of parts subject to wear and tear.

**7.2** A warranty liability shall only then apply if we are immediately notified in writing of a defect after its discovery. The item about which a notification of defects has been made must be turned over to us for inspection or made available to us at any time.

**7.3** The Customer shall be obliged to immediately inspect the goods upon their receipt and to make written notification of any defects within 10 calendar days of the receipt of the goods.

**7.4** If such objections are justified, we shall have the choice of making a rectification or a replacement delivery. Covering purchases are excluded. The Buyer shall not be entitled to rescind the agreement or make reduced payments as long as we fulfil our obligation to eliminate defects and the rectification has not been unsuccessful. The Customer shall bear the burden of proof for the unsuccessfulness of an attempt at rectification.

**7.5** Replacement deliveries shall be made contingent upon the return of the original delivery. If this is not possible for the Customer, then it shall be obliged to provide compensation for lost value instead of making the return in accordance with § 346 II, III BGB. Furthermore, the Customer shall be obliged to return the benefits and advantages received from the goods provided in accordance with § 347 I BGB.

**7.6** Return shipments may be made only with our approval.

**7.7** We assume no liability for the consequences of any modifications of or repairs to the delivered goods which

have been improperly made by the Customer or third parties without our prior approval.

## 8. Other Claims, Liability

**8.1** Provided that nothing to the contrary is stated in the following, any more substantial claims of the Customer against us are excluded. This shall apply particularly for damage compensation claims due to violations of obligations, default, impossibility of performance and tortious acts. We shall not be liable for damages which are not to the delivered goods themselves. We shall not be liable particularly for lost profits or other financial losses of the Customer.

**8.2** The aforementioned liability restrictions shall not apply in the event of intentional wrongdoing, gross negligence upon the part of our legal representatives or management personnel as well as in the event of the culpable violation of essential contractual obligations. In the event of the culpable violation of essential contractual obligations, we shall be liable – except in the case of intentional wrongdoing or gross negligence upon the part of our legal representatives or management personnel – only for contractually typical, reasonably foreseeable damages.

**8.3** Furthermore, the liability restriction shall not apply in cases in which liability exists for personal injury or property damage to privately used objects in the event of defects of goods supplied in accordance with the Product Liability Act. It shall also not apply in the absence of guaranteed quality features if and to the extent that the assurance was intended to safeguard the Customer against damages which are not to the supplied goods themselves.

**8.4** If our liability is excluded or restricted, this shall also apply for the personal liability of our salaried personnel, employees, workers, legal representatives and vicarious agents. The statutory provisions regarding the burden of proof shall remain unaffected.

## 9. Retention of Ownership

Until the purchase price payment claim is settled, the goods we have supplied shall remain our property (retention of ownership).

**9.1** We have the right to demand the return of the goods, to sell them elsewhere or to otherwise dispose of them if the Buyer enters into default in the payment of the purchase price.

**9.2** As long as the purchase price has not been paid in full, the Customer must hold the goods in trust for us and maintain the goods separately from its ownership and the ownership of third parties as well as to properly store, safeguard and insure the reserved goods.

**9.3** Until payment in full is made, the Customer may use or resell the goods in customary business dealings. However, any compensation must be retained on our behalf and held separately from the assets of the Customer as well as third parties. The Customer shall already now assign to us any payment claims originating from the resale of the goods. We hereby accept this assignment.

**9.4** In the event of attachments or other interventions upon the part of third parties with respect to the reserved goods, the Customer must immediately notify us so that we can assert our rights to the reserved goods. If the Customer does not fulfil this obligation, it shall be liable for any damages incurred.

## 10. Violations of Third-Party Proprietary Rights

**10.1** If we must make deliveries based upon drawings, models or samples of the Customer, then the Customer must ensure that the objects produced in accordance with its documents do not violate the industrial property rights of third parties. If a third party forbids us from producing or supplying the products while availing itself of proprietary rights belonging to it, then we shall be entitled, without being obliged to examine the legal situation, to discontinue the production or delivery and demand compensation for any costs incurred. If, in such a case, we suffer any damages due to the violation of proprietary rights or the assertion of proprietary rights, then the Customer must provide compensation to us.

## 11. Further Rights of Rescission upon the Part of the Customer

**11.1** The Customer may withdraw from the agreement if the entire performance ultimately becomes impossible for us before risk is transferred. The same shall apply in the event of our inability to render performance. The Customer may also then withdraw from the agreement if, in the event that similar goods are ordered, the execution of a portion of the delivery becomes impossible based upon the quantities involved and it has an entitled interest in the rejection of a partial delivery; if this is not the case, then the Customer may correspondingly reduce the counterperformance.

**11.2** If the impossibility occurs during the period of default in delivery acceptance or due to the fault of the Customer, then the Customer shall remain obliged to render counter-performance.

#### **12. Place of Performance and Legal Venue**

The place of performance for the delivery and the payment is the commercial residence of the Seller. If the Customer is a merchant who has been entered into the Commercial Register, a juridical person under public law or a special fund under public law, the exclusive legal venue for all disputes arising, directly or indirectly, from the contractual relationship shall be the commercial residence of the Seller. In addition, the Seller shall be entitled to, in its discretion, take legal action in the commercial residence of the Buyer or any other court which may hold jurisdiction under national or international law.

#### **13. Applicable Law**

This agreement shall be subject exclusively to German law as well as the amended Incoterms 2000. The provisions of the Vienna UN Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) are excluded.

#### **14. Severability Clause**

In the event that a provision of these business terms and conditions should be invalid or null and void, then the validity of the remaining provisions shall remain unaffected. Amendments of these contractual terms and conditions and collateral agreements must be in writing. This shall also apply for the repealing of the written form requirement.

#### **BEHA Innovation GmbH**

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