

General Terms and Conditions of Sale (BIOGRUND GmbH & BIOGRUND International AG)

§ 1 Application

(1) These General Sales Conditions ("GSC") are applicable to all of our business relations with our customer ("Buyer"). These GSC shall only apply if the Buyer is an entrepreneur within the meaning of sec. 14 of the German Civil Code (BGB), a legal person under public law or a special governmental estate within the meaning of sec. 310 para. 1 BGB (German Civil Code).

(2) Unless otherwise agreed, the GSC shall apply in the valid version at the time of the Buyer's order, or in any case in the version which was most recently submitted to them in writing as a framework agreement, to future transactions of the same type without us having to refer to these again in each individual case.

(3) Our terms and conditions of sale shall apply exclusively. Deviating, contrary or supplementary General Terms and Conditions of the Buyer shall only then and insofar become a part of the contract to the extent to which we have explicitly approved their validity. This requirement of consent shall apply in all events, even if we unconditionally carry out the delivery to the Buyer with the knowledge of their General Terms and Conditions.

(4) Individual agreements made with the Buyer in individual cases shall, in all events, have precedence over these GSC.

(5) Legally binding declarations and notifications of the Buyer with regards to the contract (e.g. setting of deadlines, notice of defects, withdrawal or reduction declaration) must be submitted in writing, i.e. in written or text form (e.g. letter, email, telefax). Statutory form requirements and further evidence, especially in the case of doubts about the legitimacy of the person making the declaration, remain unaffected.

(6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these GSC.

§ 2 Duties of Contribution and Provision

Apart from the duties of contribution and provision agreed in the individual contracts, we may demand duties of contribution and provision from the Buyer insofar as they are required and must necessarily be carried out by the Buyer for the proper provision of the contractually agreed performance. We will notify the Buyer of the type, scope, time and further details of the duties of contribution and provision to be carried out by the Buyer in due time, unless the respective details are indicated in the individual contract.

§ 3 Offer, Acceptance

(1) All offers provided by us and our agents are subject to change and non-binding.

(2) An order placed by the Buyer constitutes a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within 14 days of our receipt of said offer.

(3) Acceptance can either be declared in writing or by delivering the merchandise to the Buyer.

§ 4 Prices, Payment

(1) Unless otherwise agreed in a particular case our prices current at the time of conclusion of contract shall be valid on the basis ex warehouse or ex works, exclusive of the respective statutory VAT.

(2) In the case of a sale involving the carriage of goods (sec. 6 (1)) the Buyer shall bear the cost of transport ex warehouse or ex works and the cost of any transport insurance. Any possible customs duties, fees, taxes and any other public levies shall also be borne by the purchaser. Shipping and all other packaging according to packaging regulations are non-returnable, with the exception of pallets which are to be sent back by the Buyer or whose value is to be reimbursed by the Buyer.

(3) The purchase price is due and payable within 30 days from invoicing and delivery or acceptance of the goods. However, we reserve the right, also within an ongoing business relationship, to request

an advance payment for carrying out a delivery in whole or in part. We will declare such a reservation at the latest upon the acceptance of the offer.

(4) With the expiry of the aforementioned term of payment the Buyer will be in default. The purchase price shall bear interest at the applicable statutory rate during the period of default. We reserve the enforcement of further default damage.

(5) The Buyer shall be entitled to offset only insofar as the Buyer's counterclaim is undisputed or assessed in a legally binding judgement. The Buyer is entitled to claim retainer rights only to the extent to which such rights are based on the same transaction. In case of defects to the delivery, the opposing rights of the buyer especially according to sec. 9 para. 6 of these GSC remain unaffected.

(6) If there are indications after the conclusion of the contract that our entitlement to the purchase price is at risk through insufficient ability of the Buyer to pay (e.g. by an application for opening of insolvency proceedings) then according to the statutory regulations we are entitled to refuse service and – if applicable after setting a deadline – to cancel the contract (§ 321 BGB). In case of contracts concerning the production of unreasonable objects we can declare the cancellation immediately. The statutory regulations concerning the lack of necessity to set a deadline remain unaffected.

§ 5 Delivery Period and Default in Delivery

(1) The delivery period is individually stipulated or indicated by us when accepting the order. If this is not the case, the delivery period is approximately 3 weeks from conclusion of contract.

(2) Insofar as we cannot observe binding delivery deadlines for reasons for which we are not responsible (non-availability of the service) we shall inform the Buyer hereof immediately and at the same time inform them of the expected, new delivery period. If performance remains unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we shall immediately reimburse the Buyer for any counter-performance already realised. Deemed as case of non-availability of the service within this meaning is in particular

- the late self-delivery by our suppliers if we have concluded a congruent hedging,
- if neither we nor the supplier are at fault, or
- if we are not obliged in an individual case for procurement.

(3) The occurrence of our delay in delivery is determined according to the statutory regulations. In any case, however, a reminder of the Buyer is necessary. If we default on delivery, the Buyer may claim a flat reimbursement for the damaged caused by delay. The lump-sum compensation shall be 0.5% of the net price (delivery value) per complete calendar week's default, subject to a maximum of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has not suffered any damages, or that their damages are substantially less than the aforementioned lump sum.

(4) The rights of the Buyer according to sec. 10 of these GSC and our statutory rights, especially if we are no longer obliged to perform our obligations (e.g. for impossibility or unreasonableness of performance and/or supplementary performance) remain unaffected.

§ 6 Delivery, Passing of Risk, Default in Acceptance

(1) The delivery is carried out ex warehouse or ex works and this is also the place of fulfilment for the delivery and a possible supplementary performance. At the request and expense of the Buyer, the goods may be shipped to another destination (Versendungskauf - sales shipment). Where not agreed otherwise, we are authorised to specify the manner of shipment (especially carrier, shipment route and packaging) independently. We will protect the Buyer's interests when shipping and pack the merchandise in a manner that avoids damages in transit.

(2) The risk of a potential loss or deterioration of goods shall be transferred to the Buyer upon delivery at the latest. However, in the case of sale by delivery to a place other than the place of performance, the risk of a potential loss or deterioration of goods and the risk of delays shall already be transferred when the goods are handed over to the carrier, haulier or other person or institution responsible for the dispatch. If an acceptance procedure has been agreed on, this is authoritative for the passing of risk. The statutory provisions of the law on contracts for services shall apply analogously in other respects to an agreed acceptance. Default of acceptance by the Buyer shall be equivalent to delivery or acceptance.

(3) If the purchaser is in default in acceptance, omits to carry out an act of co-operation or causes the delivery to be delayed for other reasons imputable to the Buyer, this shall entitle us to demand compensatory damages including additional expenses (e.g. warehousing costs). For this purpose, we will charge a lump sum compensation amounting to 0.5 % of the net price (delivery value) per calendar week, up to a maximum of 5%, starting from the delivery term or - if there is no starting term - with a notification of readiness of the dispatch of the goods.

(4) The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the lump sum compensation is to be offset against further monetary claims. The Buyer may prove that we have not suffered any damages, or that our damages are substantially less than the aforementioned lump sum.

§ 7 Retention of Title

(1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and the current business relationship (secured claims).

(2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral before the full payment of the secured claims. The Buyer shall inform us forthwith in writing if an application is made for opening insolvency proceedings and insofar as there are any accesses of third parties (e.g. seizures) to the goods which belong to us.

(3) In the event of contract-breaching behaviour by the Buyer, in particular failure to pay the purchase price due, we shall be entitled according to the provisions of law to withdraw from the contract and/or to reclaim the goods on the basis of the retention of title. Reclaiming does not at the same time constitute a declaration of withdrawal; instead we shall be entitled simply to reclaim the goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may assert these rights only if we have first set the Buyer an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law.

(4) Until revoked according to (c) below, the Buyer is authorised to resell and/or to process the goods subject to retention of title in the ordinary course of business. In this case the following provisions shall additionally apply.

(a) Retention of title extends to the full value of the products created by processing, mixing or combining our goods, in which context we shall be deemed the manufacturer. If in the case of processing, mixing or combining with third party goods the latter's retention of title still applies, we shall acquire joint ownership in proportion to the invoice values of the processed, mixed or combined goods. In other respects, the same rules shall apply to the product created as to the goods delivered subject to retention of title.

(b) The Buyer here and now assigns to us as security the claims against third parties arising from resale of the goods or product, in total or, if applicable, in the amount of our joint ownership share according to the previous clause. We accept the assignment. The Buyer's duties according to para. 2 shall also apply with regard to the claims assigned.

(c) The Buyer remains authorised to collect the claim alongside us. We undertake not to collect the claim as long as the Buyer fulfils their payment obligations

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towards us, their ability to pay is not otherwise impaired and we do not assert the retention of title by exercising any of the rights set out in para. 3. However, if this is the case we can demand that the Buyer provides us details of the claims assigned and the debtors, supplies all the information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case we shall furthermore be entitled to revoke the Buyer's authorisation to the further sale and processing of the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, upon request from the Buyer we shall release securities at our discretion.

§ 8 Product Information

Unless agreed otherwise, the contractual properties of the goods are specified exclusively in our product descriptions in their respectively current version. In this context it makes no difference whether the product specifications originate from the supplier or from us. Any information on properties, durability and other data shall represent guarantees only if it is expressly agreed and indicated by us as such in writing. Written and verbal information about our goods, equipment, plant and processes is based on research and our experience in the field of applied engineering. We provide this information, which is accurate to the best of our knowledge, and reserve the right to make modifications and upgrades to it, but assume no liability in respect of it other than as agreed in the terms of an individual contract. The aforesaid shall not release the Buyer of their obligation to verify the quality and suitability of our goods and processes for the use intended by the Buyer. This shall also apply to the protection of third parties' intellectual property rights as well as applications and processes.

§ 9 Warranty Claims

(1) Statutory regulations shall apply to the Buyer's rights regarding material defects and defects of title if not specified differently below. Special statutory provisions on final deliveries of products to a consumer shall in any case remain unaffected (supplier's recourse under sec. 478 BGB (German Civil Code)).

(2) The basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions that are the subject of the individual contract or which have been published by us (especially in catalogues or on our internet homepage) shall be deemed the agreement concerning the condition of the goods.

(3) If no condition was agreed, the presence or absence of a defect shall be determined based on the statutory regulations (sec. 434 para. 1 sentences 2 and 3 BGB (German Civil Code)).

(4) The Buyer's claims arising from a defect require that the Buyer has fulfilled their legal duty to examine the goods and to give notice of defects (sec. 377, 381 HGB (German Commercial Code)). If a defect is determined on delivery, during the inspection or at any later point in time, then this is to be reported to us immediately in writing. In any case, evident defects have to be indicated in writing within a term of 5 working days from delivery and for defects not detectable during the examination within 5 working days from discovery of the defect. If the Buyer fails to carry out the proper inspection and/or report of defects, our liability for the defect which was not reported, not reported properly or not reported on time is excluded according to the statutory provisions.

(5) If the delivered object is faulty we shall provide subsequent performance by delivery of a faultless object (substitute delivery). Our right to refuse the subsequent performance under the statutory prerequisites remains unaffected.

(6) We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. The Buyer is however entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(7) The purchaser shall allow us the necessary time and opportunity for due subsequent performance and shall in particular hand over the goods for examination purposes. In the case of replacement, the

Buyer shall return the faulty object to us in accordance with the statutory provisions.

(8) We shall bear the expenses for examination and supplementary performance, especially the transport, travel, work and material costs when a defect actually exists. However, should a customer demand for repair be proven unjustified, then we can demand the incurred costs (especially examination and transportation costs) to be reimbursed by the customer, unless the lack of a defect was not discernible for the Buyer.

(9) If the subsequent performance has failed or a reasonable deadline which is to be set by the Buyer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations, the Buyer can cancel the purchase contract or reduce the purchase price. This right of withdrawal does not exist in the case of an insignificant defect.

(10) Claims of the Buyer for damages or replacement of unsuccessful expenses only exist, also in the case of defects, on the basis of sec. 10 and are excluded for the rest.

§ 10 Liability

(1) Save as otherwise provided in these GSC including the provisions below, in case of breach of contractual and non-contractual duties we shall be liable in accordance with the relevant statutory provisions.

(2) We shall be liable for damages – no matter for what legal grounds – on the basis of fault-based liability in case of wilful intent and gross negligence. In the case of simple negligence, subject to a lower standard of liability according to statutory provisions, we shall only be liable

(a) for damage resulting from physical injury or harm to human health,

(b) for damage resulting from the not insignificant breach of an essential contractual obligation (an obligation whose proper fulfilment makes fulfilment of the agreement possible at all and on whose observance the contractual partner regularly relies and may rely); in this case, our liability is restricted to foreseeable and typically occurring damage.

(3) The liability restrictions which can be derived from para. 2 shall also apply to breaches of duty by or in favour of such persons whose fault we are to represent according to statutory provisions. They shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the goods. The same shall apply to claims of the Buyer according to the Product Liability Act.

(4) The Buyer may withdraw or cancel on the grounds of a breach of duty that is not a defect only if we are responsible for the breach of duty. The free right of termination of the Buyer (in particular according to sec. 650, 648 BGB (German Civil Code)) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

§ 11 Limitation Period

(1) Notwithstanding sec. 438 para. 1 No. 3 BGB (German Civil Code) the general statute-of-limitations for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed, the statute-of-limitations shall begin with the acceptance.

(2) The aforementioned limitation periods of commercial law also apply to the Buyer's contractual and extra-contractual claims for damages based on a defect in the goods, unless the application of the regular statutory limitation period (sec. 195 and 199 BGB (German Civil Code)) would result in a shorter limitation period. Claims for damages by the Buyer according to sec. 10 para. 2 clauses 1 and 2 (a) as well as according to the Product Liability Law come under the statute-of-limitations according to the statutory limitation periods exclusively.

§ 12 Compliance with Statutory Regulations, Rescission

(1) Unless otherwise agreed in writing with the Buyer in individual cases, the Buyer shall be responsible for compliance with legal provisions and government requirements for the import, transport, storage, and use of the goods.

(2) Where a statutory or regulatory approval requirement applies to the export of our goods at the time of delivery and such approval is not granted upon request, we shall be entitled to rescind the contract.

(3) We are also entitled to rescind the contract in the event a product registration obligation applies and registration at the time of delivery has not been applied for or granted.

§ 13 Declaration of Preferential Origin

If the purchased goods are subject to customs preferences due to their preferential origin, all declarations regarding the preferential origin of the goods (supplier's declaration, invoice declaration) will be automatically generated and issued by us, valid without signature. We confirm that the declaration of preferential origin will be issued to the purchaser in accordance with our obligations set forth in Art. 5 par. 3 Council Regulation (EC) No. 1207/2001.

§ 14 Applicable law, Jurisdiction

(1) These GSC and all contractual relations between us and the Buyer shall be governed by the law of the Federal Republic of Germany excluding the international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Customer is a merchant as defined by the Commercial Code, a legal entity under public law or a public law special fund, the exclusive venue, including in international matters, for all disputes arising indirectly or directly from the contractual relationship shall be our registered office in Wiesbaden. The same applies if the Buyer is an entrepreneur in the sense of sec. 14 BGB (German Civil Code). However, we shall also be entitled to take action at the general legal venue of the purchaser in any case. Primary statutory provisions, especially on exclusive jurisdiction, shall remain unaffected.