

## General Purchase Conditions for the Purchase

of Raw Materials and Similar Materials from BHI Biohealth International GmbH

### § 1 Scope of Application, Form

- (1) These General Purchase Conditions for the purchase of raw materials and similar materials from BHI - Biohealth International GmbH, Heinrich-Wirth-Str. 13, 95213 Münchberg, represented by the director Stefan Gebhardt – set out below, shall apply to the exclusion of all other terms and conditions. The General Purchase Conditions shall, in particular, apply to contracts relating to the purchase and/or delivery of raw materials and similar materials (below, also, the “Goods”) irrespective of whether the Supplier manufactures the Goods itself or purchases them from subcontractors (ss. 433, 650 BGB1). In the absence of any agreement to the contrary, these General Purchase Conditions shall serve as a framework agreement and shall apply, in the version applicable at the time, from the first order that is placed with BHI and for all subsequent orders without BHI having to refer to them on each occasion. Any delivery conditions of the Supplier that conflict with or diverge from these General Purchase Conditions shall only become a part of the relevant contract if they are expressly agreed to in writing by BHI. These General Purchase Conditions shall also apply in the event that BHI performs the supply or service to the Supplier unconditionally, despite its knowledge of any Supplier conditions that conflict with or diverge from these General Purchase Conditions. Any acceptance of or payment for Goods delivered by the Supplier shall not imply any acceptance of such divergent delivery conditions.
- (2) These General Purchase Conditions shall only apply with respect to entrepreneurs as set out in s.14 BGB, legal entities that are subject to public law and to special funds subject to public law, but not to consumers as set out in s.13 BGB.
- (3) These General Purchase Conditions shall apply to every aspect of the future business relationship between BHI and the Supplier and shall replace any other, earlier General Business Terms or General Purchase Conditions of BHI.
- (4) Any individual agreements that have been separately agreed with the Supplier (e.g. framework agreements, quality assurance agreements, ancillary agreements, additions or amendments) shall in each case take precedence over these General Purchase Conditions. Any such agreement must either be made in writing or confirmed in writing by BHI.
- (5) Any material declarations and notifications by the Supplier in relation to the contract (e.g. regarding deadlines, reminders and cancellation) must be made in writing. For the purpose of this paragraph (5), “in writing” shall include any written or text form (e.g. letter, e-mail or fax). Legal requirements regarding form and further evidence, in particular where there is doubt about the legitimacy of the person making the relevant statement, shall remain unaffected.

### § 2 Conclusion of contracts/ Prices and payment terms/ Price maintenance

- (1) Orders shall only be binding if they have been made by BHI in writing. Any verbal orders must be confirmed in writing by BHI in order to become effective.
- (2) The Supplier shall confirm in writing all orders received from BHI or shall execute them unconditionally by delivering the relevant Goods within 5 days (in either case, an “Acceptance”).
- (3) A delayed Acceptance shall be considered a new offer and shall require acceptance by BHI.
- (4) Where a cost estimate is produced, and an order is made in reliance on it, such estimate shall be binding for the duration of its validity.
- (5) Where a delivery is made before the agreed delivery date or before expiry of the agreed delivery period and accepted by BHI at its own discretion, this shall not affect the agreed payment terms associated with such delivery date or delivery period.
- (6) The price specified in the order is binding and cannot be unilaterally increased by the Supplier following the conclusion of the contract. Any attempt by the Supplier to pass on to BHI price increases incurred in its transactions with subcontractors following the conclusion of the contract shall not be permitted, and BHI shall not be under any obligation to bear such price increases. All prices shall be understood to include statutory VAT unless separately shown. In the absence of any individual agreement to the contrary, all prices shall include incidental costs (e.g. appropriate packaging, transport costs and any transport and liability insurance).  
In the absence of any other agreement in writing, payments shall be made within 30 days of delivery and receipt of a proper invoice showing – if applicable – the statutory VAT.
- (7)

### § 3 Obligation to keep stock available for call-off contracts, delivery period and delays in delivery, damage compensation, force majeure

- (1) If BHI and the Supplier enter into a framework purchase agreement with a call-off period, the Supplier must take care to keep sufficient Goods in storage so that it may make the agreed deliveries to BHI.
- (2) Any agreed delivery dates and delivery periods are binding. If delivery is made prior to the agreed date, BHI shall be entitled to reject such delivery until it becomes due. Partial delivery shall not be permitted unless BHI has expressly agreed to it. In order to enable BHI to produce a reliable production schedule, the Supplier shall provide BHI with a confirmation of the actual delivery date within two days following receipt of an order.
- (3) The Supplier shall notify BHI immediately in writing if circumstances – in particular, insufficient availability of the contracted Goods – mean or if it becomes aware that it will be unable to make a delivery by the agreed date or within the agreed period, giving the reasons for the delay, its likely duration and an alternative delivery date. BHI reserves the right, following the notification of a likely delay in delivery, to cancel the order, if BHI is no longer able to fulfil the manufacturing order to which the delivery relates as a result of the delay.
- (4) In the event of a delay in delivery, BHI shall be entitled to make the customary statutory claims. If, following a reasonable notice period, delivery has still not been made, BHI shall be entitled to claim damages instead of delivery and to cancel the contract. The Supplier shall be responsible for the faults of its subcontractors and any agents that it has appointed as well as its own. The unconditional acceptance by BHI of a delayed delivery shall not preclude BHI from making any claim for damages that it is entitled to; the same shall be true until complete payment of all monies due for the relevant delivery has been made. The provisions of paragraph (5) shall remain unaffected.
- (5) If the Supplier is delayed, BHI shall be entitled – in addition to other statutory claims – to claim flat rate compensation for damages caused by such delay in the amount of 1% of the net price of the delayed Goods per complete calendar week, such amount not to exceed 5% of the net price. BHI reserves the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damages or significantly lower damages have been incurred.
- (6) In the event that, as a result of a force majeure event as defined in paragraph (7), BHI is prevented from fulfilling its contractual obligations to the Supplier or from fulfilling them in a timely manner (e.g. if such event leads to a slump in sales or to restrictions on the availability of raw materials for BHI), it shall be released from such obligations for the duration of the force majeure event. BHI shall not hold the Supplier responsible for damages resulting from a non-performance or delayed performance of the contract if the same is due to a force majeure event.
- (7) Force majeure means any external event that affects BHI, that is caused by natural forces or the acts of third persons, that would have been unforeseeable on the basis of human judgement and experience, that could not have been avoided or rendered harmless using reasonable economic means, even using the greatest care that could reasonably be expected under the circumstances, and that could not have been anticipated by BHI due to its frequency of occurrence. This shall include natural catastrophes, war, terrorism, strikes, epidemics and measures taken by governments, court or public authorities (regardless of their legality) such as embargoes or transport restrictions.
- (8) In the event of a force majeure event, BHI shall notify the Supplier without delay, providing the reasons for the event and its likely duration. BHI shall make every effort to ensure, using all possible technical and economically reasonable means, that it will be able to resume fulfilment of its contractual obligations as soon as possible.

### § 4 Processing of Deliveries

#### § 4a General

- (1) If no alternative agreement has been reached, BHI shall determine the place of receipt of each delivery (the “Place of Fulfilment”). If no express stipulation is made by BHI, the Place of Fulfilment shall be the registered office of BHI. The Supplier must have the receipt confirmed by BHI in writing.
- (2) BHI accepts deliveries at the following times:  
Monday - Thursday 7.00 am to 4.30 pm and Friday 7.00 am to 4.00 pm.  
Any deliveries outside the above times and any changes to agreed delivery dates must be notified immediately to the department of BHI that is responsible for the relevant purchase; in the absence of notification, BHI may refuse to accept delivery.

- (3) The Goods must be delivered in the customary manner. All legal requirements, particularly those concerning occupational safety and environmental protection, must be observed. The delivery must be made in accordance with the accepted rules of engineering. If the Supplier is entitled to the return of the packing material used in the delivery, then this should be explicitly noted on the delivery documents. In the absence of such an indication, BHI shall dispose of the packaging at the cost of the Supplier; in this case any claim by the Supplier for the return of the packaging shall be extinguished.
- (4) Any retention of title in favour of the Supplier or a third party is excluded. The Supplier shall transfer and assign the Goods to BHI free of all third-party rights and free of any rights held by the Supplier.
- (5) Any declaration of deliveries made in consignment notes, delivery notes, bills of lading or other delivery documents must be complete and must correspond to the requirements applicable at the time. Any costs or damages incurred as a result of an incorrect, incomplete and/or missing declaration shall be for the account of the Supplier. The Supplier shall hold BHI harmless from all claims made by third parties against BHI on the grounds of incorrect, incomplete and/or missing declarations.
- (6) If the Supplier makes any statements concerning the origin, purity or quality, or marketability of the Goods, it shall enable the inspection of such Goods by the relevant authorities or by a third party and shall produce any necessary information and any certifications that might be required. In the event that the stated origin of the Goods is not acknowledged by the relevant authorities or the third party as a consequence of incorrect certification or because it is impossible to verify, the Supplier shall compensate BHI for any resulting damage and shall indemnify BHI from any resulting claims made by third parties.
- (7) The transport and import of the Goods ordered by BHI must take place in compliance with all statutory provisions applicable at the time, in particular the GGVSE2 and all customs regulations. If the Supplier fails to comply with these provisions, BHI shall be entitled to take the necessary measures to ensure such compliance at the cost of the Supplier.
- (8) In carrying out the delivery, the Supplier or their appointed transport company must follow all the instructions provided by the BHI staff, in particular with regard to any hygiene requirements that must be observed by BHI.

#### **§ 4b Loading Unit Requirements**

- (1) The delivery must be made using Euro pallets. Deliveries using other loading units cannot be accepted; in particular, any delivery using disposable pallets or other non-standard pallets will be rejected.
- (2) The Euro pallets used may not exceed the maximum unit height of 2 m. If the pallets are higher than the maximum height, BHI reserves the right to charge the Supplier a blanket fee of Euro 25 per pallet for the costs incurred in unpacking the Goods.
- (3) The maximum weight of 1400 kg per pallet may not be exceeded. The load may not protrude over the edge of the Euro pallet.
- (4) If the pallets are damaged and, as a result, straightforward transportation is no longer possible, BHI reserves the right to charge the Supplier a blanket fee of Euro 25 per pallet to cover the costs incurred in relocating the Goods and securing them in transport.
- (5) The packaging of the Goods must be sufficient to protect the Goods themselves and prevent other Goods from becoming damaged. All packaging must be securely sealed. All loads must be secured in order to guarantee the stability of the pallet.

#### **§ 4c Labelling**

Every unit of packaging (e.g. bag, box) must be clearly labelled on one of its front or longitudinal sides with a description of the item, indication of quality, Supplier, lot number, best before date and description of contents. For organic products, the organic control number must also be printed on each unit of packaging. For packing materials, a lot number is sufficient.

#### **§ 4d Delivery notes and shipping documents**

- (1) Any items delivered to BHI must be accompanied by a bill of lading as well as any documents required by law. A separate delivery note must be included with the shipping documents for each job number, even in the event of partial deliveries. The following information must be included in the delivery note:
  - Sender and recipient
  - Job number and job date
  - Order number and BHI item number
  - Scheduled delivery date
  - Detailed item description
  - Delivery quantity in kg/ pc and number of packaging units
  - Lot number, best before date and quantity
  - For organic products: organic control number
- (2) For any raw materials that are delivered, BHI will require a detailed specification (e.g. certificates of analysis, REACH documentation, safety data sheets).
- (3) In the event that the necessary delivery notes or shipping documents are missing or incomplete, BHI shall not be liable for any resulting delay in processing or payment.

#### § 4e Invoices

A separate invoice must be produced for each job placed with BHI. All invoices addressed to BHI must include at least the following information in order to be accepted:

BHI- Biohealth International GmbH  
Heinrich-Wirth-Str. 13  
95213 Münchberg

Details to be included in each invoice:

- Job number and job date
- BHI order number
- Delivery note number and schedule delivery date
- Description of item and BHI item number
- Delivery quantity in kg/pc and number of packaging units
- For organic products: organic control number
- VAT identification number
- Legal status of Supplier and position of representative (e.g. Managing Director, Executive Board Member, etc.)

#### § 5 Shipping, Packaging and Transfer of Risk

- (1) All shipping costs (e.g. packaging, transport, insurance, customs and other charges) shall, unless otherwise specified in writing, be for the account of the Supplier.
- (2) The Supplier shall bear the risk of delivery until the Goods are transferred to BHI or to a third party nominated by BHI at the place of receipt.

#### § 6 Defective Delivery

- (1) In the event of any defects in quality of or title in the Goods (including incorrect or insufficient delivery) and other breaches of duty by the Supplier, the statutory provisions shall apply, together with the following additions and clarifications, which are for the sole benefit of BHI.
- (2) The Supplier shall guarantee (on the basis of fault-based liability) that its delivery shall have the agreed quality and shall fulfil the intended purpose. The agreement regarding quality shall include any relevant product descriptions that are part of the relevant contract – in particular by description or reference in the order placed by BHI – or that have been incorporated into the contract in the same manner as these General Purchase Conditions. In the event that BHI incurs expenses or costs as a result of defective delivery, e.g. transport and travel costs, employment costs, materials costs, contractual penalties or damages, then such costs must be borne by the Supplier; furthermore, in this event the Supplier shall also bear any demurrage charges that arise as a result of the complaint. If laboratory investigations of the Goods indicate any deviations from the contractually agreed quality, the Supplier shall bear the cost of such investigations.
- (3) BHI shall have no obligation to investigate the Goods or make any particular enquiries about defects at the time of conclusion of the contract. In a partial deviation from the provisions of s.442 (1) sentence 2 BGB, BHI shall therefore retain the right to make unlimited claims in relation to a defect, even if it remains unaware of the defect at the time of conclusion of contract as a result of gross negligence.
- (4) BHI shall carry out an incoming goods inspection of the delivered Goods to identify any defects within a reasonable time. BHI shall only be obliged to carry out such inspections on a random basis. If a defect is detected, the resulting notification shall be deemed to have been made in a timely manner if made to the Supplier by email, in writing or by telephone within a period of 10 business days (excluding Saturdays), calculated from the date of delivery to the place of receipt or, in the event of hidden defects, from discovery by BHI or a customer of BHI. The Supplier waives its right to object to delayed notification of defects (ss. 377, 381(2) HGB3) except where the defect is obvious.
- (5) The Supplier shall immediately remedy all defects notified within the limitation period, so that no costs are incurred by BHI. All costs for the rectification of defects or for replacement deliveries/services including all incidental costs (e.g. transport) shall be borne by the Supplier in accordance with the statutory provisions. BHI shall be entitled to make the statutory claims for defects and warranties in full; in each case, BHI shall be entitled, at its discretion, to ask the Supplier for either rectification (repair) or for the delivery of defect-free Goods. If the Supplier fails to fulfil its repair obligation within a reasonable time as stipulated by BHI, then BHI may rectify the defect itself and demand a repayment by the Supplier for any costs incurred in so doing or a corresponding advance payment. The statutory rights to withdrawal, purchase price reduction and damage compensation shall remain unaffected.

- (6) BHI shall be entitled to repair the defect itself or through a third party at the cost of the Supplier in the event of imminent danger or where there is particular urgency.
- (7) The Supplier shall bear the costs required for investigation and rectification, in particular transport and travel costs, employment costs, material costs, and if appropriate, dismantling and installation costs, even if it transpires that there was in fact no defect. The liability for compensation owed by BHI in the event of an unwarranted request to rectify a defect shall remain unaffected; in this respect, however, BHI shall only be liable if it recognised or was grossly negligent in failing to recognise that there was no defect.

#### **§ 6a Supplier's Recourse**

- (1) In addition to the defect claims, BHI shall have unrestricted recourse to the expenditure and recourse claims within a supply chain that are determined by statute (supplier's recourse in accordance with ss. 478, 445a, 445b BGB). In particular, BHI shall be entitled to request the type of subsequent performance (rectification or replacement delivery) from the Supplier that BHI owes its customer on each occasion. This will not limit the statutory right to choose to which BHI is entitled (s. 439 (1) BGB).
- (2) Before BHI acknowledges or fulfils a defect claim (including reimbursement of expenses in accordance with ss. 445a (1), 439 (2, 3, 6) sentence 2, 475 (4) BGB) brought by one of its customers, BHI shall notify the Supplier and having given a brief account of the facts, ask it to provide a written statement. If a substantiated statement is not provided within a reasonable time and no amicable solution is suggested, then the defect claim actually granted by BHI shall be deemed to be owed to the customer of BHI. In this case the Supplier will be obliged to provide evidence to the contrary.
- (3) The claims by BHI under supplier's recourse shall be effective even if the defective goods have been attached to another product or processed in some other way by BHI, its customer or a third party.

## **§ 7 Exclusion of/ Release from Liability**

- (1) Other than damages arising as a result of injury to life, body and health, BHI shall only be liable for damages to the extent that they are based on an intentional or grossly negligent act or a culpable breach of an essential contractual obligation (e.g. payment for delivery of Goods) by BHI, its employees, persons engaged in the fulfilment of its obligations and other vicarious agents. The same shall apply for damages arising from the breach of obligations in connection with contractual negotiations and engaging in unauthorised acts. Any further liability for damage compensation is excluded.
- (2) Other than in the event of injury to life, body and health, or in the event of an intentional or grossly negligent act by BHI, its employees, persons engaged in the fulfilment of its obligations and other vicarious agents, liability shall be limited to damages that were typically foreseeable at the time of conclusion of the contract and to the average amount of damages that would be typical for this type of contract. This shall also apply to indirect damages, especially loss of profits.
- (3) In the event that claims for damage compensation or reimbursement of expenses are brought against BHI by third parties as a result of the delivery by the Supplier, the Supplier shall indemnify BHI in full for such claims at its first request and shall, in particular, undertake to pay any fines or penalties incurred by BHI in addition to reasonable lawyers' and court fees.

## **§ 8 Manufacturer's Liability**

- (1) If the Supplier is responsible for a product defect, it shall indemnify BHI against any claims from third parties to the extent that the cause of the defect lies within the Supplier's own sphere of authority and organisation, and it is itself liable in relation to third parties.
- (2) As part of its obligation to indemnify, the Supplier shall, in accordance with ss. 683 and 670 BGB, refund all expenses that are incurred out of or in connection with any claim by any third party including a product recall carried out by BHI. BHI shall – to the extent that this is possible and appropriate – inform the Supplier about the content and extent of any recall measures and shall give it the opportunity to state its position. Any further statutory claims shall remain unaffected.

## § 9 Confidentiality and Retention of Title, Referencing

- (1) BHI shall retain ownership and copyright in all illustrations, plans, drawings, calculations, instructions, product descriptions and other documents (e.g. formulations). Such documents are to be used exclusively for the performance of the contractual services and shall be returned to BHI or deleted following completion of the contract. The documents shall be kept confidential from third parties even following the end of the contract. The confidentiality obligation will only expire when and to the extent that the information contained in the documents provided has become a matter of common knowledge. The Supplier shall ensure that its employees, persons engaged in the fulfilment of its obligations and other vicarious agents are bound by similar obligations. Any special confidentiality agreements and statutory provisions regarding confidentiality shall remain unaffected.
- (2) The provisions set out at paragraph (1) shall also apply to any operational processes, facilities and equipment of BHI and its customers that come to the knowledge of the Supplier in connection with its contractual activities for BHI, even following the submission of the relevant offer or the completion/fulfilment of the relevant contract.
- (3) The Supplier shall process, mix or combine (further processing) the supplied items for BHI. The same shall apply in the event of further processing of the delivered Goods by BHI, so that BHI shall be deemed to be a manufacturer and acquire ownership in the product at the time of such processing, at the latest, in accordance with the relevant statutory provisions.
- (4) The transfer of ownership of the Goods to BHI must be made unconditionally and regardless of whether the purchase price has been paid or not. If, in an individual case, BHI nonetheless accepts a proposal by the Supplier to transfer ownership on payment of the purchase price, the retention of title by the Supplier shall be extinguished at the latest on payment of the purchase price for the delivered Goods. BHI shall remain authorised, even before payment of the purchase price, to sell the Goods on in the ordinary course of its business, by making an advance assignment of the resulting claim (or alternatively, the simple retention of title extended to the resale shall apply). However, this shall exclude all other forms of retention of title, in particular any retention of title that has been extended, transferred or prolonged to include further processing.
- (5) The Supplier may only advertise the joint business relationship with the prior written consent of BHI.

## § 10 Assignment, Offsetting, Right of Retention

- (1) The Supplier shall not assign, pledge or otherwise transfer to any third party or allow any third party to collect its contractual claims against BHI. However, this shall not apply to any claim that has been legally established or is undisputed.
- (2) The Supplier shall only have a right to offset a claim or a right of retention with respect to claims that have been legally established or are undisputed.
- (3) BHI shall be entitled to a right of set-off and a right of retention as well as a right to claim non-performance to the extent permitted by law. Furthermore, BHI shall be entitled to withhold any payments due as long as it has any pending claim against the Supplier on the grounds of incomplete or defective services.

## § 11 Limitation Period

- (1) In the absence of any subsequent agreement to the contrary, the reciprocal claims of the parties shall become time-barred in accordance with the statutory provisions.
- (2) In deviation from s. 438 (1) no. 3 BGB, the general limitation period for defect claims shall be three years from transfer of risk. The 3-year limitation period shall also apply to claims regarding defects in title, whereby the statutory limitation period for third party claims in rem for the restitution of property (s 438 (1) no. 1 BGB) shall remain unaffected; moreover, claims regarding defects in title shall in no case become time-barred as long as the third party can still assert its right – in particular, in the absence of limitation – against BHI.
- (3) The limitation periods under the law governing the sale of goods, including the extensions set out above, shall apply – within the scope of the law – to all contractual defect claims. If BHI is also entitled to non-contractual claims for damages as a result of a defect, then the regular statutory limitation periods shall apply (ss. 195, 199 BGB), unless the application of limitation periods set out in the law governing the sale of goods gives rise to a longer limitation period in a particular case.



## § 12 Applicable Law/ Contract Language/ Written Form

- (1) All legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980, as amended from time to time.
- (2) The contract and negotiation languages shall be German and English.
- (3) Any amendments and additions to these General Purchase Conditions must be made in writing. This shall also apply to any amendment of this provision requiring the written form. Electronic documents in text form do not satisfy the requirement for the written form.

## § 13 Place of Jurisdiction

If the Supplier is a merchant as set out in the HGB, a legal entity subject to public law or a special fund subject to public law, then the exclusive – including international – place of jurisdiction for all conflicts arising as a result of the contractual relationship shall be the registered office of BHI. The same shall apply if the Supplier is an entrepreneur as set out in s.14 BGB. However, BHI shall also be entitled in all cases to bring claims at the Place of Fulfilment of the delivery obligation in accordance with these General Purchase Conditions or an individual agreement that takes precedence over them or at the general place of jurisdiction of the Supplier. Any overriding statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

## § 14 Severability

If one or more of the provisions of these General Purchase Conditions are or become void, ineffective or unenforceable, this shall not affect the effectiveness of the remainder of the General Purchase Conditions. The parties shall immediately replace any ineffective or unenforceable provisions of these General Purchase Conditions with effective provisions that are as close as possible to the economic objective of such ineffective provisions. The provisions of the preceding two sentences shall also apply mutatis mutandis in the event that there is a matter that is required but is not addressed by these General Purchase Conditions.

Bitte senden Sie uns für jeden bestellten Artikel eine Langzeitlieferantenerklärung (LLE) sowie die Warentarifnummer zu. Falls es sich um Rohstoffe handelt, für die keine Langzeitlieferantenerklärung ausgestellt werden kann, so nennen Sie uns bitte das Ursprungsland mit dem Hinweis „keine LLE“ möglich.