biohealth
INSPIRING YOUR SUCCESS

GENERAL TERMS AND CONDITIONS

1. Scope

(1) These General Terms and Conditions (GTC) govern the mutual rights and obligations for contracts between BHI Biohealth International GmbH (hereinafter referred to as „BHI“ or „Seller“) for the sale and/or delivery of movable goods („Goods“), regardless of whether BHI manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB).
(2) Any deviating, conflicting, or supplementary GTC of the Buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in all cases, even if the Buyer refers to its GTC in the context of the order and we do not expressly object to this.
(3) Unless otherwise agreed, these General Terms and Conditions shall apply in the version valid at the time of the buyer‘s order or, in any case, in the version last communicated to the buyer in text form as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
(4) This German-language version of the General Terms and Conditions shall also be authoritative in cross-border contractual relationships; English translations are for information purposes only.
(5) Individual agreements (e.g., quality assurance agreements, contract manufacturing agreements) and information in our offers and order confirmations take precedence over the General Terms and Conditions, whereby we point out that BHI employees are not authorized to make verbal side agreements that go beyond the content of a written order.
(6) In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract, unless a deviation is expressly agreed.
(7) Legally relevant declarations and notifications by the parties in relation to the contract (e.g., setting of deadlines, notification of defects, withdrawal, or reduction) must be made in writing. Written form within the meaning of these General Terms and Conditions includes written and text form (e.g., letter, email, fax). Statutory formal requirements and further evidence, in particular in cases of doubt about the legitimacy of the declarant, remain unaffected.

2. Offer and conclusion of contract

(1) Offers made by BHI are always subject to change.
(2) The order is concluded when the client bases its order on the offer sent to it as a result of the jointly agreed arrangements (feasibility test, design patent, etc.) and BHI accepts this order by means of an order confirmation.
(3) The agreements listed in the offer and the associated annexes are decisive for the content of the contractual relationship. The client is advised that changes to the original offer may be made during the coordination process (e.g., as a result of feasibility tests, design samples, recipe changes). The agreements listed in writing in the most recently sent offer are decisive for the content of the contractual relationship.
(4) Samples presented during the contract initiation process are considered type samples and do not constitute the agreed quality for the content of the order.

3. Prices and payments

(1) Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply, ex warehouse, plus statutory sales tax.
(2) Unless otherwise agreed, the buyer shall bear the transport costs ex warehouse as well as any customs duties, fees, taxes, and other public charges. This shall also apply if the transport or other costs to be borne by the buyer cannot be specifically determined at the time of order confirmation.
(3) Unless otherwise agreed, the purchase price is due 7 days after receipt of the invoice and delivery/provision of the goods, depending on what has been agreed between the parties. The delivery/provision of the goods is equivalent to default of acceptance on the part of the buyer. BHI is also entitled, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation; in this case, the purchase price is due 7 days after receipt of the invoice, unless otherwise agreed.
(4) Upon expiry of the above payment period, the buyer shall be in default of payment. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further claims for damages caused by default. Our claim to commercial interest on arrears (§ 353 HGB) against merchants remains unaffected.
(5) The buyer shall only be entitled to set-off or retention rights to the extent that their claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer‘s counterclaims, in particular pursuant to Section 7 (6) sentence 2 of these General Terms and Conditions, shall remain unaffected.
(6) Within the framework of a continuing obligation, BHI is entitled to withhold further deliveries until the buyer has paid outstanding invoices from previous deliveries in full.
(7) BHI shall be entitled to offset payments against the buyer‘s older debts first, notwithstanding any provisions of the buyer to the contrary. In this case, BHI shall inform the buyer immediately of the type and amount of the offset.
(8) If the buyer is more than 14 days in arrears with a payment obligation to BHI, all other existing claims shall become due immediately, regardless of any deferrals of payment that may have been granted.
(9) BHI reserves the right to assign claims against the buyer to third parties within the framework of the statutory provisions.

4. Delivery and default

(1) The delivery period will be specified individually for each order when the order is accepted by BHI. If a delivery period cannot be defined at this point in time, an estimated delivery date will be specified first, which will be adjusted during the production process.
(2) If the seller is unable to meet the delivery deadlines it has communicated for reasons for which it is not responsible (non-availability of the service), it shall inform the buyer of this immediately and at the same time notify the buyer of the expected new delivery deadline.
(3) If the service is still not available within the new delivery period, BHI shall be entitled to withdraw from the contract in whole or in part; BHI shall immediately reimburse the buyer for

any consideration already paid.
(4) Unavailability of the service shall be deemed to exist, for example, in the event of late delivery by the supplier, if BHI has concluded a so-called „congruent covering transaction," as well as in the event of other disruptions in the supply chain, for example due to force majeure.
(5) The occurrence of a delay in delivery on the part of the seller shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the buyer is required.
(6) The buyer is responsible for the correct classification and treatment of the goods in terms of customs, tax, and food law, as well as for other duties and any permits. Delivery delays and/or non-deliveries due to any customs, tax, or other official approval processes (e.g., export and import permits) are not the responsibility of BHI and do not constitute a delay in delivery. Delivery delays due to the buyer's failure to fulfill its obligations to cooperate in a timely manner (provision of raw materials, packaging, etc.) shall be borne by the buyer and shall not result in a delay in delivery.
(7) The place of performance is always the BHI factory premises in Münchberg, Germany. The parties shall agree separately on the delivery conditions for each delivery. When referring to Incoterms trade clauses, e.g., „ex works" (EXW) or „free carrier" (FCA), the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract shall apply, which shall be interpreted in accordance with the ICC application notes.
(8) The seller bears the risk of loss and damage to the goods until the time of provision (EXW) or loading (FCA) of the goods on the BHI premises. From this point on, the risk of price, loss, and damage to the goods is transferred to the buyer. If the buyer fails to provide a carrier or other person to transport the goods on the notified delivery date (pick-up or loading date), or if the carrier or other person designated by the buyer to transport the goods fails to take delivery of the goods on the agreed date, the buyer shall be in default of acceptance and shall bear all risks of price, loss, and damage from the time specified by BHI as the pick-up or loading date.
(9) If the buyer is in default of acceptance, fails to cooperate, or if delivery is delayed for other reasons for which the buyer is responsible, BHI shall be entitled to demand the purchase price and compensation for any resulting damage.
(10) Costs for a new delivery after the occurrence of default in acceptance shall be borne by the buyer.
(11) The rights of the buyer pursuant to Sections 7 (Liability for defects) and 8 (Other liability) of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

5. Obligations of the buyer / indemnification

(1) The buyer bears sole responsibility for the goods with regard to marketability (recipe, labeling, best-before date, etc.), advertising, compliance with all legal regulations (e.g., customs, tax, and food law classification), and observance of third-party property rights.
(2) In the case of raw materials and other materials provided, the buyer shall bear sole responsibility for the marketability and suitability of the raw materials and/or materials provided.
(3) The buyer assures and confirms to BHI that, where necessary, it holds all necessary industrial property rights and that the order with BHI and the resulting manufacture of the goods do not infringe any third-party rights. BHI is not obliged to check for any legal violations arising from the manufacture of the products.
(4) In the event that BHI is held liable for any legal violations arising from the manufacture, delivery, and export of the products, the buyer shall indemnify BHI against all costs incurred in defending and settling claims and undertakes to compensate BHI for any damage incurred as a result of the claim. This also applies to any legal and court costs incurred. This provision shall also apply insofar as the manufacturing or marketing of the respective product infringes the property rights of third parties (e.g., patent rights) or customs, tax, and food regulations, in particular in the event of the buyer exporting the goods to areas outside the Federal Republic of Germany.

6. Confidentiality

(1) Both parties undertake to maintain confidentiality regarding the know-how and other confidential information of the other party (e.g., recipes, etc.) that becomes known to them within the scope of this contract. Confidential information includes all transmitted information, data, records, statements, analyses, and forecasts that were marked as confidential by the relevant contracting party at the time of transfer or whose confidentiality is apparent from the circumstances.
(2) Information that is not confidential in the above sense is information that
- was public knowledge or known to the parties at the time of transmission or has become so subsequently;
- has been made available to the parties by third parties without any breach of law;
- was developed by the parties themselves without the use of confidential information.
(3) Manufacturing or testing specifications provided remain the property of the party providing them and must be returned to that party upon termination of the contract. Information exchanged in connection with this contract prior to its conclusion is subject to the confidentiality provisions agreed in this clause.
(4) The confidentiality obligation shall not be affected by the termination of this contract.

7. Liability for defects

(1) Unless otherwise specified below, the statutory provisions shall apply to the buyer's rights in the event of material defects and defects of title (including incorrect and short delivery).
(2) The basis for liability for defects is the agreement on product requirements specified in the offer and, if applicable, modified in writing at a later date. Only product requirements specified in writing shall be deemed to constitute an agreement on quality. BHI shall be responsible for the existence of this agreement on quality at the time of transfer of risk. Excess or short deliveries of up to 10% of the order volume are customary in the industry and do not constitute a defect.
(3) The buyer is responsible for the correct legal classification, labeling, and marketing of the goods. BHI is not obligated to check the goods to be manufactured with regard to the marketability of the products or any infringement of third-party property rights.
(4) In the case of raw materials or other materials provided, the buyer is obliged to send clear and up-to-date identification documents and is responsible for ensuring that the raw materials or materials provided do not deviate from these. BHI is not obliged to check

whether the materials provided correspond to the identification documents. However, such a check can be commissioned at a charge. BHI is not liable for defects attributable to raw materials and/or materials provided by the customer.

(5) The buyer is responsible for the correct tax and customs classification of the goods. Incorrectly issued preferences and supplier declarations or the classification of goods in customs tariff numbers do not constitute material defects or defects of title in the goods.

(6) If the goods are to be filled into containers supplied by the buyer, BHI accepts no liability for this. BHI is not obliged to check the suitability of the packaging materials supplied. If BHI nevertheless points out the unsuitability of the containers (e.g. because it is obvious) and the buyer does not send suitable packaging within a reasonable period set by BHI, BHI is entitled to use suitable material at the customer‘s expense, whereby BHI will take the buyer‘s wishes and interests into account as far as possible. Any delays in delivery caused by this shall be borne by the buyer. In such cases, BHI shall indicate a delayed delivery period.

(7) BHI shall not be liable for defects that the buyer is aware of at the time of conclusion of the contract or is unaware of due to gross negligence.

(8) Minor deviations or fluctuations that are customary for natural products, e.g., in appearance, color, smell, taste, etc., are not grounds for complaints. They are due to different harvests or processing methods and do not constitute a reduction in quality.

(9) Claims for defects by the buyer require that they have fulfilled their statutory obligations to inspect and notify (§§ 377, 381 HGB). In the case of goods intended for further processing, an inspection must always be carried out immediately before processing.

(10) If a defect becomes apparent during delivery, inspection, or at any later point in time, the buyer must report this in writing without delay.

(11) In the event of transport damage caused by a forwarding agent, the buyer must also have the damage noted on the consignment note; in the case of rail transport, a railway certificate must be issued.

(12) Obvious defects in the goods must be reported in writing immediately, but no later than eight working days after delivery. Defects that are not apparent during the initial inspection must be reported to BHI in writing within the same period after discovery.

(13) If the buyer fails to carry out the proper inspection and/or notification of defects, BHI‘s liability for the defect that was not reported or not reported in a timely or proper manner is excluded in accordance with the statutory provisions. In the case of goods intended for further processing, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the buyer shall have no claims for reimbursement of the corresponding processing costs.

(14) If the buyer gives notice of a defect, they are obliged to demonstrate that the defect was already present at the time of the passing of risk. As the causes of defects arising subsequently can be manifold (subsequent changes to the product attributable to the buyer; measurement errors by the laboratory; contamination during the analysis process, etc.), the buyer does not sufficiently fulfil their obligation to provide evidence by merely submitting a single analysis result in this regard. Rather, in such cases, the buyer is obliged, in the event of justified objections from BHI (e.g. negative results from the retained samples, etc.), to provide further evidence to dispel the objections raised. In this context, BHI is entitled, in the event of defects arising subsequently, to demand up to three independent analyses from different laboratories in order to validly rule out measurement errors and contamination. The costs of determining the cause shall be borne by BHI if it is confirmed that the defect originates within BHI’s sphere of responsibility, and by the buyer in all other cases.

(15) Returns of defective goods must always be agreed with BHI. Any independent return and/or destruction of the defective goods is at the buyer‘s risk.

(16) If the delivered item is defective, BHI may first choose whether to provide subsequent performance by remedying the defect (repair) or by delivering a defect-free item (replacement delivery). If the type of subsequent performance chosen by BHI is unreasonable for the buyer in individual cases, the buyer may reject it. The seller‘s right to refuse subsequent performance under the statutory conditions remains unaffected.

(17) In the event of a replacement delivery, the buyer must return the defective item at BHI‘s request in accordance with the statutory provisions; however, the buyer has no right to demand a return. BHI is entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.

(18) BHI shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor, and material costs in accordance with the statutory provisions and these General Terms and Conditions, insofar as a defect actually exists. Otherwise, BHI may demand reimbursement from the buyer for the costs incurred as a result of the unjustified request to remedy the defect if the buyer knew or could have recognized that no defect actually existed.

(19) In urgent cases, e.g., if operational safety is at risk or to prevent disproportionate damage, the buyer has the right to remedy the defect itself and to demand reimbursement from BHI for the objectively necessary expenses incurred in doing so. BHI must always be notified of such self-remedy. The right to remedy the defect oneself does not apply if BHI would be entitled to refuse corresponding subsequent performance in accordance with the statutory provisions.

(20) If a reasonable period of time set by the buyer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal in the case of an insignificant defect.

(21) Claims by the buyer for reimbursement of expenses pursuant to Section 445a (1) of the German Civil Code (BGB) are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB).

(22) Claims by the buyer for damages or reimbursement of futile expenses (Section 284 BGB) shall also only exist in the event of defects in the goods in accordance with the following Sections 8 (Other Liability) and 9 (Limitation Period) of this contract.

8. Other liability

(1) Unless otherwise specified in these General Terms and Conditions, including the following provisions, BHI shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) BHI shall be liable for damages – regardless of the legal basis – within the scope of fault-based liability in cases of intent and gross negligence. In cases of simple negligence, BHI shall be liable, subject to statutory limitations of liability (e.g., diligence in its own affairs; insignificant breach of duty), only

a) for damages resulting from injury to life, limb, or health,

b) for damages resulting from the breach of an essential contractual obligation (an obligation whose fulfillment is essential for the proper execution of the contract and on whose fulfillment the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall also apply to third parties and in the event of breaches of duty by persons (including for their benefit) for whose fault we are responsible in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee has been given for the quality of the goods, or to claims by the buyer under the Product Liability Act (Produktsicherheitsgesetz).

9. Limitation period

(1) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title is one year from delivery.

(2) The above limitation periods under sales law also apply to contractual and non-contractual claims for damages by the buyer based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.

(3) Claims for damages by the buyer pursuant to Section 8 (2) of this contract and under the Product Liability Act (Produktsicherheitsgesetz) shall become time-barred exclusively in accordance with the statutory limitation periods.

(4) Other special statutory provisions on the statute of limitations (in particular § 438 (1) No. 1, (3), §§ 444, 445b BGB) shall also remain unaffected.

10. Retention of title

(1) BHI retains title to the goods sold until all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may not be pledged to third parties or transferred as security before the secured claims have been paid in full. The buyer must notify BHI immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g., garnishments) access the goods subject to BHI‘s retention of title.

(3) In the event of breach of contract by the buyer, in particular non-payment of the purchase price due, BHI shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for surrender does not simultaneously constitute a declaration of withdrawal; rather, BHI is entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the buyer fails to pay the purchase price due, BHI may only assert these rights if the buyer has previously been set a reasonable deadline for payment without success or if such a deadline is dispensable under the statutory provisions.

(4) Until revoked in accordance with (c) below, the buyer is authorized, but not obligated, to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:

(a) The retention of title extends to the full value of the products resulting from the processing, mixing, or combination of our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing, or combination with goods of third parties, their ownership rights remain in force, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The buyer hereby assigns to us as security all claims against third parties arising from the resale of the goods or the product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We hereby accept the assignment. The obligations of the buyer mentioned in paragraph 2 also apply with regard to the assigned claims.

(c) The buyer remains authorized to collect the claim alongside BHI. We undertake not to collect the claim as long as the buyer meets its payment obligations to us, there is no deficiency in its ability to pay, and we do not assert our retention of title by exercising a right in accordance with paragraph 3. If this is the case, however, BHI may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents, and informs the debtors (third parties) of the assignment. In addition, we shall be entitled in this case to revoke the buyer‘s authority to resell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10%, BHI shall release securities of our choice at the buyer‘s request.

11. Choice of law and place of jurisdiction

(1) These General Terms and Conditions and the contractual relationship between BHI and the buyer are governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Münchberg. However, BHI shall in all cases also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the buyer‘s general place of jurisdiction. Overriding statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

(3) Should individual provisions of this contract be or become invalid in whole or in part, or should there be a loophole in this contract, this shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced or the gap filled by an appropriate provision which, as far as legally possible, comes closest to what the parties intended or would have intended according to the meaning and purpose of this contract if they had considered the point.