

General Terms and Conditions

of Sale and Delivery

BYTEC Medizintechnik GmbH

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I Conclusion of Contract

1. Our Terms and Conditions of Sale and Delivery shall apply exclusively; we do not accept any terms and conditions of the customer that conflict with or deviate from our Terms and Conditions of Sale and Delivery unless we have expressly agreed to their validity in writing (§ 126 German Civil Code). Our Terms and Conditions of Sale and Delivery shall also apply if we are carrying out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale and Delivery.
2. These terms and conditions shall also apply in case of continuous business relations to future transactions in which no express reference is made to them, provided that only these Terms and Conditions of Sale and Delivery were included in a previous contract.
3. A contract between us and the customer incorporating these Terms and Conditions of Sale and Delivery, which is concluded for the purpose of executing this contract, must be in text form in accordance with § 126 b German Civil Code. This shall also apply if the contract is concluded by means of a reciprocal order as well as an order confirmation based thereon. This also applies to the waiver of the text form requirement. Individual agreements shall remain unaffected by the above provisions.
4. The order confirmation specifies the delivery item and the conditions and is binding if issued on BYTEC forms. It shall be effective without a handwritten signature if so noted on the order form. The delivery item is specified by the BYTEC material numbers listed in the order confirmation or the contract, as well as any documentation prepared for this purpose. A quantity and date commitment for deliveries shall only be created by the delivery schedules or call-off orders issued by us, which may be transmitted to the customer in text form pursuant to § 126 b German Civil Code. If the customer does not object to this immediately after receipt, the delivery schedule or call-off order shall be deemed to have been accepted by the customer without the need for an additional order confirmation.
5. Product changes or conversions in our production which lead to a change in the specification of the drawings or quality standards or which otherwise have an effect on the operational safety and function of the BYTEC products shall only be effective with our prior written consent (§ 126 German Civil Code).
6. These Terms and Conditions of Sale and Delivery shall only apply to entrepreneurs who are acting in the exercise of their commercial or independent professional activity when concluding the legal transaction and to legal entities under public law and special funds under public law.

II Offer – Offer Documents

1. If the order of the customer is to be qualified as an offer according to § 145 Civil Code, we can accept it within 2 weeks.
2. Our offers are non-binding and subject to change. After the customer has placed an order, the contract shall be concluded by our order confirmation in text form. Our order confirmation is decisive for the content of the contract. Amendments to our order confirmation and other agreements and verbal arrangements shall also be confirmed by us in text form.
3. We reserve the property rights and copyrights to illustrations, drawings, calculations, samples, prototypes, and other documents. This also applies to such written documents which are designated as "confidential". They may neither be made accessible to third parties nor used for other purposes, in particular self-production, without our consent. They are to be returned to us immediately upon request.
4. Details of the subject matter of the delivery or service are not guaranteeing the quality of the goods unless they are expressly designated as such.
5. The customer assumes full liability for the correctness of the documents to be supplied/provided by him, such as drawings, gauges, samples, or the like. Verbal information about dimensions, tolerances or the like require written confirmation.
6. Samples or prototypes are only supplied against payment.

III Prices - Terms of Payment

1. Unless otherwise stated in the order confirmation, our prices shall apply "ex works", excluding packaging; this shall be invoiced separately.
2. Unless expressly stated otherwise in the order confirmation, any additional costs incurred, such as material, laboratory, approval, travel, packaging, and transport costs, which are to be or have to be commissioned by BYTEC, shall be charged according to the actual costs incurred. Additional material costs will be invoiced by BYTEC with a surcharge of 10 % (incoming goods and quality inspections etc.) to the purchase costs and external services (laboratories, approval offices etc.) with a surcharge of 5 % (handling costs) to the purchase costs.
3. The statutory value added tax applicable at the time is not included in our prices; it will be shown separately in the invoice at the statutory rate on the day of delivering. In addition, all prices are exclusive of any applicable customs duties, other taxes or levies as well as transport and insurance costs.
4. The deduction of a discount requires a special written agreement.

5. Unless otherwise stated in the order confirmation, the net purchase price (without deduction) shall be due for payment immediately from the invoice date. The statutory rules concerning the consequences of default in payment shall apply.
6. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been accepted by us. Furthermore, the customer is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
7. We reserve the right to change our prices appropriately if cost reductions or cost increases occur after conclusion of the contract, in particular due to changes in material prices or collective wage agreements. We will prove these to the customer upon request.

IV Delivery

1. The start of the delivery period stated by us presupposes the clarification of all technical questions. Furthermore, the delivery dates stated by us are not fixed dates unless this has been expressly agreed in writing (§ 126 German Civil Code). Unless otherwise stated in the order confirmation, the delivery time refers to completion at the factory. Compliance with our delivery obligation further presupposes the timely and proper fulfillment of the customer's obligation. We reserve the right to plead non-performance of the contract.
2. If we are obliged to perform in advance under a contract and it becomes apparent after conclusion of the contract that our claim is jeopardized by the customer's inability to perform, e.g. due to an unfavorable financial or asset situation of the customer or due to the customer's default with other claims arising from the business relationship, we shall be entitled to withhold our delivery. This right to withhold performance shall not apply if the counter-performance is affected or security is provided for it. We shall be entitled to set a reasonable period of time within which the customer must, at his discretion, effect counter-performance or provide security concurrently with performance. After unsuccessful expiry of this period, we shall be entitled to withdraw from the contract. § 323 German Civil Code shall apply accordingly.
3. If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. In particular, the customer shall bear any storage costs incurred. They shall be set higher or lower if we prove a higher damage or the customer proves a lower damage. We reserve the right to assert further claims.
4. Insofar as the prerequisites of para. 3 exist, the risk of accidental loss or accidental deterioration of the object of purchase shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
5. Reasonable partial deliveries which are acceptable to the customer are permissible without special agreement.
6. Events of force majeure entitle us to postpone the delivery for the duration of the obstruction and a reasonable start-up time, or to withdraw from the contract in whole or in part due to the part not yet fulfilled. Force majeure shall be deemed to include strikes, lockouts or unforeseeable, unavoidable circumstances, e.g. operational disruptions, which make it impossible for us to deliver on time despite reasonable efforts; we must provide proof of this. This shall also apply if the aforementioned obstructions occur during a delay or at the sub-supplier. The buyer may request us to declare within two weeks whether we wish to withdraw from the contract or deliver within a reasonable period of grace. If we do not declare our intention, the buyer may withdraw from the unfulfilled part of the contract. We shall notify the buyer without delay if a case of force majeure as set out above occurs.

V Transfer of Risk - Packing Costs

1. Unless otherwise stated in the order confirmation, delivery is agreed "ex works". The risk of accidental loss or accidental deterioration of the delivery item shall pass to the customer upon handover to the carrier, even in the case of carriage paid delivery.
2. Section V paragraph 1 and Section IV paragraph 4 shall also apply in the case of partial deliveries or if we undertake other services, e.g. shipping. In this respect, Incoterms 2000 shall only apply as a cost clause.
3. Unless otherwise specified by the customer, the goods shall be packaged at our discretion in a manner customary in the trade.
4. Transport packaging and all other packaging in accordance with the German packaging Act (Verpackungsgesetz) will not be taken back, unless BYTEC is the distributor within Germany. Pallets will be taken back. The customer is obliged to dispose of the packaging at his own expense.
5. If the customer so desires, we shall cover the delivery by transport insurance; the costs incurred in this respect shall be borne by the customer.
6. The choice of the transport route and the means of transport shall, in the absence of a special agreement, be made at our best discretion without any liability for cheaper transport or shorter route.

VI Granting of Rights in Development Contracts

1. In the event that development or consultancy orders are the subject of the contract, the following regulations shall apply:
2. To the extent that pre-existing IP capable of being protected (Background IP) is used by us in the performance of the service and is inseparably merged with newly created IP (Foreground IP) and/or is required for the exploitation of the results, the customer shall receive a non-exclusive, free of charge, worldwide, perpetual, and sub-licensable right to use such Background IP for the development result. This applies in particular to the components of the BYTEC Library, insofar as parts thereof are used for the development project.
3. We are generally entitled to use open-source software (OSS) in the project. In this case, if OSS becomes part of the development result, we will provide the customer with all necessary license texts, copyright notices, disclaimers, the necessary source codes, build scripts and all other necessary objects, documents, information, and data relating to the OSS components made available to the customer together with the respective assignment to the individual OSS components. In an attachment to be prepared after completion of the development, the information on the respective components, in particular the name of the associated OSS component, the URL of origin and the version number relevant for the respective OSS component and the relevant license conditions shall be summarized and handed over to the customer.
4. Insofar as new Foreground IP is created by us during the performance of the development work, this shall be due to the customer and shall be transferred to the customer in full for the area of use of the development result. Insofar as know-how is concerned, we grant the customer a non-exclusive right to use the know-how for the development result for the area of use.
5. In the event that Foreground IP consists of works protected by copyright, we shall transfer to the customer the non-exclusive, transferable and sub-licensable right of use, unlimited in time and space, for the area of use of the development result. This right of use includes in particular the reproduction, distribution, marketing, sub-licensing in all known types of use including the right to edit and further develop these copyrighted works contained in the Foreground IP and their use of the results created to the aforementioned extent.
6. If inventions are made during the execution of a development order, we shall transfer the customer of this immediately in writing. In this case, we shall claim the inventions from the inventors without restriction and subsequently transfer the rights to the inventions to the customer without restriction and against reimbursement of the inventor's fees to be paid by us in the individual case, limited to a maximum amount of EUR 2,500.00 per individual case.
7. Patent searches and the examination of the FTO (freedom to operate) are the responsibility of the customer. Any costs are not covered by the price for the contractual services. Insofar as necessary, we shall support the granting and maintenance of these property rights by means of the declarations requested by the customer to a reasonable extent and against corresponding compensation for expenses on the part of the customer.

VII Liability for Defects

1. Claims for defects on the part of the customer presuppose that the customer has properly fulfilled its obligations to inspect and give notice of defects in accordance with § 377 German Commercial Code (HGB).
2. In the event of a justified notice of defect, we shall only be obliged, at our discretion, to remedy the defect or to deliver a defect-free item. If we do not fulfill this obligation within a reasonable period of time or if a rectification fails despite repeated attempts, the customer is entitled to reduce the purchase price or to withdraw from the contract. Further claims, in particular claims for reimbursement of expenses or damages due to defects or consequential damages, shall only exist within the framework of the provisions in the following Section VIII.
3. Unless otherwise agreed, the limitation period for claims for defects shall be 12 months from the transfer of risk.
4. The limitation period in the event of a delivery recourse according to §§ 478, 479 BGB remains unaffected. Claims under a right of recourse in accordance with §§ 478, 479 of the German Civil Code shall only exist if the claim by the consumer was justified and only to the statutory extent, not, however, for goodwill arrangements not agreed with us and presuppose the observance of the party entitled to recourse's own obligations, in particular the observance of the obligations to give notice of defects.
5. Liability for guarantees of quality or durability as well as liability in the event of fraudulent concealment of defects, intent, gross negligence and injury to life, limb or health shall not be affected by the above provisions (in particular Section IV). In these cases, the statutory provisions or warranty periods shall apply.
6. In the case of products manufactured from material provided by the customer, we shall only be liable for our share of the product. If the customer provides defective material and the defect can only be detected during subsequent processing, the customer shall bear the costs incurred up to that point. Insofar as we carry out the processing of components provided by the customer or selected by the customer on behalf of the customer and are obliged to deliver a finished product to the customer, the customer shall be liable for infringements of property rights resulting from the insertion of these components. If the use of these components within the delivery item leads to the infringement of property rights in the country of the place of delivery, the customer shall indemnify us against undisputed or legally established claims of the relevant property right holders. This shall also apply if the customer obliges us to purchase the components selected by the customer directly from the manufacturer by way of abbreviated delivery for the purpose of installation in the delivery item.
7. Upon delivery and payment of the software implemented in electronic components, the customer shall receive a non-transferable and non-exclusive right to use this software. The warranty for the software is limited to the replacement of defective data carriers. We do not warrant that the software is free of defects, but only for the component electronics developed and produced by us. In particular, liability is excluded if the software does

not meet the requirements and purposes of the customer or does not work together with other programs selected by the customer, unless the above has been expressly guaranteed. Furthermore, we are not liable for the loss or inaccuracy of data.

VIII Liability

1. In all cases in which we are obliged to compensate for damages or expenses on the basis of contractual or statutory claims, we shall only be liable insofar as we, our executives and vicarious agents are guilty of intent, gross negligence or injury to life, body or health. Liability without fault in accordance with the Product Liability Act or for a given guarantee remains unaffected. Liability for culpable breach of essential contractual obligations shall also remain unaffected; liability in this respect shall, however, be limited to the foreseeable damage typical for the contract except in the cases of clauses 1 and 2. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.
2. Insofar as our liability is excluded in accordance with para 1, this shall also apply in favor of our employees in the event of direct claims against them by the customer.
3. In the event that we are obliged on the basis of an individual agreement to provide the delivery free of industrial property rights and copyrights of third parties (hereinafter "property rights") in the country of the place of delivery, the following paragraphs 4 to 6 shall apply.
4. If the use of the delivery item leads to the infringement of property rights in the country of the place of delivery, we shall in principle procure the right to further use for the customer at our expense or modify the delivery item for the customer in a reasonable manner so that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the customer shall be entitled to the statutory rights of withdrawal or reduction.
5. Furthermore, we shall indemnify the customer against undisputed or legally established claims of the relevant property right holders.
6. Subject to section VIII paragraph 1, our aforementioned obligations are conclusive for the case of infringement of property rights and also apply accordingly to other defects of title. However, they shall only exist if
 - the customer informs us immediately of any asserted infringements of property rights or rights,
 - the customer supports us to a reasonable extent in the defense against the asserted claims and/or enables us to carry out the modification measures in accordance with section VIII paragraph 4,
 - we reserve the right to all defensive measures including out-of-court settlements,
 - the defect of title is not based on an instruction of the client,
 - and the infringement of the property right was not caused by the fact that the customer modified the delivery item without authorization or used it in a manner not in accordance with the contract.

IX Retention of Title

1. We reserve title to the object of sale until receipt of all payments arising from the delivery contract. In addition, we reserve title to the delivery item until complete fulfillment of all claims to which we are entitled against the customer from the entire business relationship. In the case of a current account, the reserved ownership of the deliveries (reserved goods) shall be deemed security for our balance invoice.
2. In the event of conduct by the customer in breach of the contract, in particular in the event of default in payment, we shall be entitled to take back the object of sale after setting a reasonable deadline, unless this is dispensable in the individual case. Our taking back of the object of sale shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to realize it, whereby we shall be entitled to sell the goods on the open market or have them auctioned. The proceeds of realization shall be credited against the customer's liabilities - less reasonable realization costs. We reserve the right to make further claims for damages, in particular for loss of profit.
3. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to pay us the court and out-of-court costs of an action in accordance with § 771 ZPO, the customer shall be liable for the loss incurred by us.
4. The customer is entitled to resell the object of sale in the ordinary course of business; however, he already assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim, which accrue to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. We hereby already accept the assignment. The customer remains authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents, informs the debtors (third parties) of the assignment and refrains from any disposal of the claim.
5. During the period of retention of title, the goods owned by us shall be sufficiently insured by the customer at its own expense against fire, water, theft, and burglary at the replacement value. The customer hereby assigns to us the rights arising from this insurance. We hereby accept this assignment.

X Place of Jurisdiction – Place of Performance

1. If the customer is a merchant, a legal entity under public law or a special fund under public law, our place of business shall be the place of jurisdiction; however, we shall also be entitled to sue the customer at the court of his place of residence.
2. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.

XI Final Provisions

1. Subsidiary agreements, assurances, amendments or supplements to these terms and conditions or the contract must be in writing and must be expressly marked as such.
2. Rights arising from the contractual relationship may only be assigned with our prior written consent.
3. Should individual provisions of these terms and conditions be void or ineffective or not be implemented by mutual agreement between us and the customer, the validity of the remaining provisions shall not be affected. The same shall apply in the event of a loophole. In place of the invalid or unenforceable provision or to fill the loophole, the parties shall find a provision that comes closest to the economic purpose of the provision to be replaced in a legally permissible manner.
4. The customer's data necessary for the business transaction shall be stored and treated confidentially in compliance with the Federal Data Protection Act (BDSG) and the General Data Protection Regulation (DGSVO). The customer is advised that we collect, store, process and use the data received in connection with the contractual relationship to the extent necessary for proper order processing and information.