



## **General Terms and Conditions of Business of Bochem Instrumente GmbH**

### **§ 1**

#### **General Provisions - Scope of Application**

- (1) Exclusively these general terms and conditions of business shall apply; they shall exclusively be applicable to business persons in the terms of §§ 14 and 310 of the Civil Code. Any terms and conditions of the customer contrary to or at variance with our terms and conditions shall not be recognized by us, unless we expressly approve the application thereof. Neither the failure to lodge an objection nor the execution of the customer's order shall constitute recognition of third-party terms and conditions of business. Our General Terms and Conditions of Business shall also apply if we execute deliveries to the customer with knowledge of contrary terms and conditions or terms and conditions of the customer at variance with our own.
- (2) Our General Terms and Conditions of Business shall also apply to the further business relation with the customer; no repeated express agreement shall be required.

### **§ 2**

#### **Offer to Conclude Agreement**

- (1) Our offer shall be subject to change and non-binding, unless the binding nature thereof is expressly confirmed in writing.



- (2) Orders shall be considered as accepted when confirmed in writing or executed by us. In such event, the invoice shall be considered as the order confirmation.
- (3) The information contained in our brochures, catalogs or similar documents and in our offer, particularly depictions, drawings, descriptions, measurements, weights, performance and consumption data as well as delivery periods shall be considered as approximations, unless such information is expressly designated as binding. Minor variations from the description in our offer shall be considered as approved, unless the variation is unreasonable for the customer.
- (4) Typing errors and calculation mistakes shall entitle us to rescind the contract, if the customer refuses an adjustment. Any compensation claims of the customer shall be excluded in such event.

### § 3

#### **Terms and Conditions of Payment**

- (1) The prices current on the date the order is issued shall be applicable. If the customer has not inquired about the price, the customer shall consent through the issuance of the order to the respectively applicable prices.
- (2) All prices shall be ex works, not including the applicable value-added tax, and shall be subject to change. Packing and transport shall be made at the expense and for the account of



the customer. We shall be entitled, though not obligated, to ensure the merchandise for the account of the customer.

- (3) The prices in binding offers or cost estimates shall be valid at maximum for the period of four months after the issue date. If the production costs increase between the issuance of the order and the delivery due to reasons for which we are not responsible, we shall be entitled to adjust the prices correspondingly.
- (4) Unless specified otherwise in the order confirmation, the purchase price shall be due within 30 days from the invoice date. Thereafter, the customer shall be in default with payment, even without a payment reminder. In such event, we shall be entitled to request default interest at a rate of 8% per year above the respectively current base interest rate. If we are able to document higher default damage, we shall be entitled to assert claims to such damage.
- (5) Any default in payment on the part of the customer shall moreover entitle us to retain deliveries until full payment or only to deliver COD.
- (6) We shall be entitled, despite stipulations of the customer to the contrary, to initially credit payments towards old debts. If costs and interest have already arisen, we shall be entitled to initially credit the payment towards the costs and then towards the interest and finally towards the main performance.
- (7) Payment shall first be considered as rendered when we may dispose freely of the amount. In the case of payments by check or bill of exchange, the payment shall first be considered as ren-



dered when the bill of exchange or check has been redeemed. In the case of a protest against the check or bill of exchange, we may request immediate cash payments concurrently to the return of the check or the bill of exchange.

- (8) The customer may only set off claims with undisputed counter-claims or counterclaims recognized by us or declared by non-appealable judgment. This shall also apply to warranty claims. The customer shall be entitled to a retention right if its counter-claim is based on the same contractual relation.
- (9) If legitimate doubt exists about the creditworthiness or willingness of the customer to pay or if an order is not executed due to reasons for which the customer is responsible, we shall be entitled to rescind the contract. The customer must in such case compensate us for the expenses actually incurred by us and pay a lump-sum indemnity of 10% of the net contract price as compensation for the lost profit. In the event we incur higher damage, we hereby reserve the right to request compensation of the higher damage upon provision of proof. The lump-sum indemnity in the amount of 10% of the net contract price shall be reduced to the degree to which the customer documents that no damage has been incurred.

#### **§ 4**

##### **Delivery Period and Default in Delivery; Packing**

- (1) Delivery periods shall be specified by us to our best knowledge and belief, but shall always remain subject to change, unless expressly agreed otherwise in writing. The delivery period shall not



- commence before performance of the cooperative duties incumbent upon the customer. This shall apply particularly in the event of non-performance of any stipulated advance payment.
- (2) The delivery period shall be observed provided to the merchandise leaves our business premises prior to the expiration of the period or the notice of readiness for shipment has been sent. If it is agreed that the customer will pick up or call up the ordered merchandise and a fixed date has been stipulated, the pickup/call-up must be made on such date or, otherwise, within five working days after receipt of our notice of the readiness for shipment. If the customer fails to meet this obligation, the customer shall be in default with acceptance, without need of warning.
- (3) If the customer is in default with acceptance or breaches other cooperation duties, we may request compensation of the damage thereby incurred by us, including any additional expenses. If the customer does not accept the merchandise even after the establishment of a subsequent grace period of 8 days, we shall be entitled, without prejudice to our other rights, to store the merchandise at the cost and risk of the customer or to dispose of the merchandise in another fashion.
- (4) In the event of any delay or non-performance of the delivery as a result of force majeure or other events over which we have no control, both parties may rescind the contract, provided the performance of the contract is unreasonable. In such event, the promised delivery date shall be postponed accordingly, even in the case of default in delivery. No damage compensation claims of the customer shall result therefrom.



- (5) If the customer establishes a reasonable subsequent grace period for us of at least three weeks after we are in default with delivery, the customer shall be entitled after the unproductive expiration of such period to rescind the contract or to request damage compensation in lieu of performance, provided the subsequent grace period was exceeded for reasons other than those specified in Paragraph (4). Any further claims of the customer shall hereby be excluded.
- (6) If we are in default in delivery and the customer incurs damage as a result, our damage compensation obligation shall be limited to 3% of the value of the delayed performance per completed week of default, though to a maximum total of 15% of the value of the delivery.
- (7) Transport-related and other packing in accordance with the Packing Ordinance shall not be taken back, except Euro pallets.

## § 5

### Passage of Risk; Acceptance

- (1) Unless stipulated otherwise in the order confirmation, the delivery shall be "ex works" (INCOTERM 2000: EXW).
- (2) The price and performance risk shall pass to the customer as soon as the merchandise leaves the plant, even if we carry out the transport. If the delivery is ready for shipment and the shipment is delayed due to reasons for which we are not responsible, the price and performance risk shall pass to the customer on the



date the merchandise is ready for delivery. Should the acceptance take place at our business premises, the price and performance risk shall pass to the customer upon receipt of the notice of readiness for pickup. The provisions of this Paragraph shall also apply in regard to those objects of the customer which are or were located at our business premises for purposes of processing.

- (3) The customer shall assure that the acceptance is made by an agent authorized by the customer. The products must be inspected in terms of their correctness, completeness and absence of defects by the customer pursuant to § 377 of the Commercial Code without delay. Any variation must be noted on the delivery slip vis-à-vis the delivery person. In the event an obvious defect is later notified, the defect shall be considered as reported late in the terms of § 377 of the Commercial Code. Any breach of the aforementioned obligation shall result in the loss of all warranty claims, provided the defect would have been discovered upon proper and immediate inspection. Hidden defects must be notified immediately after the detection thereof and the use of the defective object must be discontinued without delay. Defects in parts of the delivered merchandise shall not entitle the customer to protest the entire delivery.

## § 6

### Warranty

- (1) The customer shall be obligated to review the delivery we performed without delay in terms of its accuracy, completeness and the absence of defects. Obvious defects must be reported with-



out delay, though at the latest 14 days after the notice of the readiness for pickup has been received or the objects have left our works; hidden defects must be reported immediately after their detection. Otherwise, the merchandise shall be considered as approved. Defects in part of the delivered merchandise shall not entitle the customer to object to the entire delivery. The assignment of warranty claims to third parties shall hereby be excluded.

- (2) If a claim based on liability for defects is not excluded in accordance with Paragraph 1 above, such claim shall expire one year from the date of the passage of risk, except in the case stipulated in § 7(1), Sentences 2 and 3.
- (3) We hereby warrant that at the time of the passage of risk our performances shall not be encumbered with defects in material or processing which negate or reduce their performance during normal use. Moreover, we shall not assume any warranty for circumstances outside our sphere of control at the time of the passage of risk, e.g. defects in the information and documents provided to us by the customer. We shall assume no warranty for damage which has arisen through unsuitable and improper use or changes in the merchandise by the customer or third parties, natural wear and tear, defective or negligent treatment, and extraordinary external influences for which we are not responsible, unless the customer documents that such circumstances did not cause the notified defect.
- (4) For the determination of our warranty duty, the merchandise may, at our choice, either be inspected at the customer's premises or must be sent back or delivered by the customer to us.





- (5) We shall, at our choice, subsequently improve products which are defective at the time of the passage of risk or deliver replacements in exchange, provided we are responsible for the defects. If the subsequent improvement or replacement delivery fails, the customer may rescind the contract or request a reduction of the compensation.
- (6) Further claims of the customer based on defects in the delivered merchandise, such as to damage compensation based on consequential damage from defects shall be excluded hereby, subject to the provisions in § 7. Subject to the provisions in § 7, we shall not be liable for damage not inflicted on the merchandise itself, particularly for lost profits or other pecuniary damage of the customer.
- (7) Subject to § 7, our warranty shall be limited to the amount of compensation charged by us for the performance or delivery rendered.
- (8) The above provisions shall apply accordingly to claims of the customer which arise through proposals or advice followed within the framework of the order or through the breach of ancillary contractual duties.
- (9) Notices of defects shall not affect the due date of our payment claim, unless the defects have been recognized by us in writing or have been declared by non-appealable judgment.



## § 7

### General Limitation of Liability

- (1) Damage compensation claims based on any legal grounds whatsoever shall hereby be excluded, unless stipulated otherwise in these General Terms and Conditions of Business. This shall not apply if the cause of damage is attributable to intentional action or gross negligence. The exclusion of liability shall furthermore not apply to any breach of material duties that define the contractual relation, to claims based on injury to life, limb or health or in the cases where mandatory liability is established in accordance with the Product Liability Act. Any breach of duty on the part of our legal representatives or vicarious agents shall be equivalent to a breach of duty on our part.
- (2) Insofar as our liability for damage compensation has been excluded or restricted, this shall also apply to the personal liability for damage compensation of our employees, collaborators, representatives and vicarious agents.
- (3) In the event we should be obligated to pay damage compensation due to simple negligence, our compensation duty shall be limited to material damage or personal injury in the coverage amount of our liability insurance.

## § 8

### Customer's Liability

- (1) In the event of defective, false or delayed provision of information or documents, the customer shall bear the costs thereby



incurred by us and must compensate us for the damage arising therefrom.

- (2) We cannot review in detail whether any third-party property rights have been infringed upon through the production and delivery of merchandise made in accordance with samples or drawings of the customer. The customer shall bear this risk. The customer shall release us upon request from all claims asserted against us in this relation. Moreover, the customer must bear all costs incurred by us in this regard.

## § 9

### **Obligations Based on the Electrical and Electronic Equipment Act**

- (1) The customer shall assume the duty to properly dispose of the delivered merchandise after the cessation of use at its own cost in accordance with the provisions of law. The customer shall indemnify us against any obligation pursuant to § 10(2) of the Electrical and Electronic Equipment Act (duty of manufacturer to take back merchandise) and related third-party claims.
- (2) In the event the customer passes the merchandise on to commercial third parties, the customer shall obligate such third parties by contract to properly dispose of the merchandise after use at their own costs pursuant to the provisions of law. If the customer fails to obligate third parties to whom it passes on the merchandise accordingly, the customer must take back the delivered merchandise after use at its own cost and dispose of it properly in accordance with the provisions of law.



## § 10

### Retention of Title

- (1) Until the full payment of all our claims resulting from this or earlier business relations, the merchandise shall remain in our property (retained merchandise). In the event of conduct on the part of the customer in breach of contract, particularly in the event of default in payment, we shall be entitled to take back the retained merchandise. Our taking back retained merchandise shall not constitute any rescission of the contract, unless this is expressly declared in writing. After taking back retained merchandise, we shall be empowered to sell the merchandise; the proceeds from the sale, less the selling costs, shall be credited towards the liabilities of the customer.
  
- (2) The customer shall be obligated to treat the retained merchandise with due care; in particular, the customer shall be obligated to sufficiently insure the retained merchandise at the replacement value at its own cost. The rights from such insurance policies shall be assigned to us; we hereby accept such assignment.
  
- (3) The customer shall be obligated to store and designate the retained goods separately. In the event of any attachments or other interventions by third parties, the customer must make the third party aware of our title and notify us without delay in writing, so that we may initiate the necessary action to safeguard our rights. If the third party is not in the position to compensate us for the in- and out-of-court costs associated with action pursuant to § 771 of the Civil Procedure Code, the customer shall be liable for the loss incurred by us.



- (4) The customer shall be entitled to resell the retained merchandise in the course of ordinary business; the customer hereby assigns to us in advance all claims against any of its customers or third parties (in the final invoice amount, including value-added tax) which accrue to the customer based on the resale, irrespective of whether the retained goods have been resold with or without processing. We hereby accept such assignment.
  
- (5) Until further notice, the customer shall remain authorized to collect claims, even after this assignment. This authorization may only be revoked if the customer is in default with payment or a petition for the initiation of insolvency proceedings is filed. In such event, we may furthermore request that the customer notifies us of the assigned claims and the claim debtors, provides all information necessary for collection, hands over the related documents, and notifies the debtor (third party) of the assignment.
  
- (6) Any processing or restructuring of the retained merchandise by the customer shall always be undertaken on our behalf. If the retained merchandise is inseparably joined with other objects which do not belong to us, we shall acquire joint title to the new thing in proportion to the value of the purchased object (final invoice amount, including VAT) to the other joined objects at the time the objects are joined. Otherwise, that which applies to the purchased object delivered subject to retention of title shall also apply to the object arising through processing. If the objects are joined in such fashion that the object of the customer is to be viewed as the main object, the parties agree that the customer shall transfer us joint title on a prorated basis. The customer shall



keep the sole or joint property which has arisen in this fashion on our behalf.

- (7) We hereby agree to release the collateral to which we are entitled at the customer's request provided the realizable value of our collateral exceeds the claims to be secured by more than 20%. We shall be responsible for selecting the collateral to be released.

### **§ 11 Return / Exchange**

Returns are only accepted for deliveries within the current fiscal year by prior arrangement and must be delivered free of charge. The goods must not be used or damaged. Credits are calculated at 15% processing cost, but at least 10,00 EUR.

### **§ 12 Copyright**

We shall retain the property rights and the copyright to all information and documents provided to the customer in connection with the contractual relation, particularly public instruments, drawings, prospectuses, etc. The customer must return to us all documents which we are not contractually obligated to deliver to the customer after conclusion of the contractual relation or, if no contract comes about, without delay and without need of request. The information in these documents may not be made available to third parties or used in any fashion other than that agreed by contract.



## § 13

### Miscellaneous Provisions

- (1) Our registered office in Weilburg/Lahn shall be the place of jurisdiction. However, we shall be entitled to sue the customer at its place of business. This shall also apply to actions related to checks and bills of exchange.
- (2) Unless stipulated otherwise in the order confirmation, our place of business shall be the place of performance.
- (3) Exclusively the law of the Federal Republic of Germany shall apply to all business relations between the parties, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (4) Any claims based on this agreement of any type whatsoever may not be assigned or transferred to another party either in whole or in part without our written approval.
- (5) Should any provision of these Terms and Conditions of Business be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected thereby. The parties hereby undertake in such event to reach an agreement which most closely approximates the invalid provision in economic terms.
- (6) Any variation from these Terms and Conditions of Business must be made in writing. This covenant requiring the written form may likewise only be modified in writing.

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