

## **General Terms and Conditions of Purchase of Bruker BioSpin AG**

**(12.2014)**

### **§ 1**

#### **Validity of these General Terms and Conditions of Purchase (hereinafter GTCP). Protective clause**

- (1) These General Terms and Conditions of Purchase (GTCP) apply to all our business relationships with our suppliers.
- (2) Our GTCP apply exclusively, even when we place orders without reservations and in full knowledge of the supplier's terms and conditions, accept deliveries or other services, directly or indirectly refer to letters, etc. containing its or a third party's terms and conditions. We recognise conflicting, deviating or supplementary terms and conditions of the supplier's only as far as we have expressly consented to their validity in writing.
- (3) Our GTCP also apply, without the need to make renewed reference thereto, in their current version for all future deliveries, services or offers from the same supplier. We will inform the supplier promptly of any changes made to our GTCP.

### **§ 2**

#### **Conclusion of contract and content. Written form. Reservation of rights. Confidentiality**

- (1) Only those of our orders which are in written form or have been confirmed in writing are binding. If our order, or any related document, contains obvious errors (e.g., misspellings or miscalculations) or is incomplete, this must be pointed out by the supplier for the purpose of correction or completion before acceptance; otherwise the contract will not be considered concluded.
- (2) Any legally significant declarations and notices delivered by the supplier after conclusion of the contract (e.g., fixing of deadlines, reminder notices, cancellation notices) will be invalid unless made in writing.
- (3) The supplier may accept our order within the deadline specified therein, otherwise within four (4) working days (Monday to Friday) from the order date, confirmed in writing. The arrival of the acceptance at our offices is decisive. It is understood that acceptance is unconditional.
- (4) Transmission by fax or e-mail is deemed sufficient to comply with the requirement to be in writing.
- (5) The written contract, including these GTCP, which constitute a portion of the written contract, expresses all the subject matter of the contract agreed between us and the supplier in detail. Verbal agreements made prior to the conclusion of the written contract are not legally binding and will be entirely superseded by the written contract, provided that it is not expressly stated in the contract that they should remain in force.
- (6) The provisions of these GTCP, including this paragraph (6), may only be amended or cancelled in writing, unless expressly stated otherwise in these GTCP.
- (7) With the exception of our directors, authorised representatives and other staff members formally designated as contact persons to our suppliers -respectively authorised to represent us - our employees are not authorised to place orders, enter into contracts, make individual written or verbal agreements or give any other form of consent.
- (8) We reserve all rights of ownership, copyright and intellectual property rights regarding all documents, materials and other items provided to the supplier (such as purchase order documentation, plans, drawings, illustrations, calculations, product descriptions, samples, models and other physical and/or electronic documentation, information and objects). The supplier may not make them accessible, as such or their content, to third parties, or communicate, reproduce or modify them without our prior written consent. It shall use them exclusively for contractual purposes and return them to us in full upon our request and destroy any existing copies (including deletion of electronic copies), insofar as they are no longer needed for the normal course of business or pursuant to regulatory retention requirements. It shall confirm, upon our request, that the return and destruction/deletion have been carried out, or clarify which of the above documents, materials or items it still deems necessary on the aforementioned grounds.

### § 3

#### **"DDP Incoterms (2010)" and other delivery arrangements. Transfer of risk. Acceptance. Default of acceptance. Flat compensation for loss caused by delay**

- (1) The "DDP Incoterms (2010)" (in relation to the delivery address specified in our order or, if such is not explicitly specified, the delivery address of the ordering facility), will apply to all deliveries, unless otherwise agreed.
- (2) The delivery time (delivery date or term) specified in our order (or otherwise fixed in these GTCP) is binding. The supplier shall notify us immediately in writing if it anticipates being unable to comply with a delivery term and specify for what reason and how long the delay is likely to last.
- (3) Early deliveries and/or partial deliveries are permitted only with our prior written consent.
- (4) The risk shall only pass to us on handover to us in the place of performance (§17 of these GTCP). This shall also apply if, contrary to paragraph 1, a mail order sale or a delivery earlier than under the "DDP Incoterms (2010)" was agreed. Insofar as acceptance of goods has been agreed, the risk will only be transferred on successful handover; the provisions of the law on contracts for work and services will apply accordingly to the acceptance of goods. The statutory provisions on the transfer of risk concerning any default of acceptance by us (see paragraph 7 for default of acceptance) remain unaffected.
- (5) Supplier is responsible to have quality assurance measures installed that ensure that we do not need to perform goods-receipt inspections that go beyond checking for external, obviously appearing damages (visual inspection).
- (6) Should the supplier be unable to provide its goods/service, or unable to provide them within the agreed delivery time, or be in default, then our rights - in particular with regard to cancellation and compensation - shall be defined by the statutory regulations. In the event of default, liquidated damages will be added as per the following paragraph. Where it is possible to determine from the contract the day by which, at the latest, the delivery should have been made, the supplier will be in default at the end of that day, without any requirement for us to send a reminder; the statutory requirement to set a deadline (extension) prior to cancellation or entitlement to damages rather than performance of the service remains unaffected (and accordingly, the presumption in Art. 190 OR will not apply).
- (7) If the supplier falls behind schedule (paragraph 6), we are entitled to claim flat rate compensation for our loss incurred in the amount of 5% of the net price of the delayed delivery of the net price - in addition to further statutory claims and the performance of the delayed delivery. We reserve the right to provide proof of greater loss, and the supplier retains the right to provide evidence that we have incurred no or significantly less damage.
- (8) Concerning default of acceptance on our part, the statutory provisions will apply; default of acceptance only arises when the supplier formally offers us its services; this also applies, if for an operation we were supposed but failed to undertake in good time, a date in the calendar had been set.

### § 4

#### **Prices, invoices, payment terms and default. Offsetting and right to withhold payment**

- (1) The price indicated in our order is binding and fixed. It is understood as "DDP Incoterms (2010)" (see §3(1) of these GTCP), and statutory value added tax will be added at the applicable rate.
- (2) Unless otherwise agreed, the price shall be inclusive of all services and ancillary services of the supplier (e.g., design/assembly, mounting, installation, commissioning, set-up/adjustments) as well as all extra costs (e.g., proper packaging, transport, insurance of goods), taxes (however, see paragraph 1 for value added tax), customs and miscellaneous fees. The supplier shall take back the packaging material upon our request and at its own expense.
- (3) All order confirmations, delivery documentation and invoices must contain our order number, the order date, the item description, delivery quantity and delivery address. The supplier shall supply us with invoices and delivery documentation in triplicate. In the event of any delay in processing due to missing information, our payment deadline will be extended by the period corresponding to the delay.
- (4) We will pay within 60 days without deduction after complete delivery and upon receipt of the final invoice or an equivalent payment schedule. If our payment is made within 30 days, we shall be entitled to 3% discount on the net amount of the invoice. For the meeting of the deadline, the date of receipt of our transfer order by our bank will be decisive.
- (5) Default interest is five (5) percent annually. In the event of default of payment on our part, the statutory provisions will apply, except that in each case a written reminder notice by the supplier will be required.

- (6) We have the right to offset, to withhold payment (including under the so-called Defence of Precariousness clause in Art. 83 OR) as well as the right to defence by reason of non-fulfilment of contract (Art. 82 OR, incl. the so-called compulsory right of retention) within the statutory limits. We are entitled in particular to withhold payments as long as we still have such a claim against the supplier due to incomplete or poor performance, even when our claim is based on contracts connected on a purely economic basis with the contract under which the payment is due (e.g., various contracts in the context of an ongoing business relationship).
- (7) The supplier shall be entitled to offset and to the enforcement of the right to withhold payment (incl. under the so-called defence of precariousness clause in Art. 83 OR) as well as the right to defence by reason of non-fulfilment of contract pursuant to (Art. 82 OR, incl. the so-called compulsory right of retention) only insofar as its counterclaim supporting this is either undisputed or legally binding.

## **§ 5**

### **Supplier's retention of title clause**

- (1) The transfer of ownership of goods to us is unconditional and regardless of our payment of the purchase price. In the absence of an agreement to the contrary, the time of transfer of ownership shall be the time of delivery to us at the place of performance (§17 of these GTCP).
- (2) If in an individual case, contrary to paragraph (1), a supplier's retention of title clause is deemed valid by agreement, then, in any case, all forms of supplier's retention of title that have been (a) expanded, (b) extended on the grounds of resale, processing or remodelling, or (c) transferred will be excluded, so that the retention of title clause will be effective only until payment is made for the relevant goods delivered to us, and for those goods exclusively.

## **§ 6**

### **Manufacturer's clause**

- (1) As manufacturer, we will carry out the processing and remodelling of products as well as combining and blending products delivered to us in our own name and at our own expense, so that we acquire ownership at the latest at that time, subject to the relevant statutory provisions.

## **§ 7**

### **Nature of the products. Quality assurance system. ISO 9001 certification. Traceability. Supplier's declaration**

- (1) The supplier warrants that its products comply with the legal provisions of the country in which the products are made, as well as the country of destination, the state of the art at that time and the agreed product specifications.
- (2) The supplier warrants that its products meet the requirements of Regulation no. 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation). This is applicable even if the supplier is not established in the EU; in this case it shall appoint a natural or legal person who is based within the EU to fulfil, as its sole representative to fulfil the obligations on importers (see Article 8 of the REACH Regulation). The materials contained in the supplier's products shall be pre-registered or registered, insofar as required under the provisions of the REACH Regulation. The supplier shall comply with all obligations applicable under the REACH Regulation, in particular, if applicable, making available at its own initiative all necessary safety data sheets and information as per Art. 31 et seq of the REACH Regulation. The supplier's products shall not contain any substances of very high concern (SVHC) according to Article 57 of the REACH Regulation, and no substance on the current list of substances subject for inclusion in Annex XIV (the so-called candidate list) as per Art. 59 of the REACH Regulation. The supplier shall inform us promptly of its own accord, in writing, whether any ordered and/or already delivered goods - for whatever reason - contain such respective substances including the concentration as a weight fraction.
- (3) The supplier shall set up and maintain a proven quality assurance system of a suitable type and scope and meeting the latest state of the art. It shall keep records, in particular concerning quality tests, which it will make available to us promptly upon our request.
- (4) The supplier must be the holder of a regularly updated ISO 9001 certification and shall provide evidence thereof to us upon request.
- (5) The supplier shall ensure the traceability of its products at all times. Furthermore it shall also ensure the immediate identification of other products which may be affected when detecting a fault involving one of its products, by means of appropriate measures.
- (6) The supplier is required to provide the supplier's declaration within the meaning of Regulation (EC) no. 1207/2001 and to confirm the preferential origin status of the products. Specifying the country of origin in the invoice is not sufficient for this purpose. The supplier guarantees the accuracy of the

supplier's declaration and will be liable to us for any damages. The submission of a long-term supplier's declaration is permissible; in any case, however, a supplier's declaration shall be provided upon our request.

## **§ 8**

### **Material defects, defects of title and other breaches of duty. Procurement risk**

- (1) In terms of our rights regarding material defects and defects of title concerning the goods and other breaches of duty by the supplier, the statutory provisions are applicable without limitation and in addition the following regulations, as well as § 9 and 10 of these GTCP. Only to the extent covered by provision §8, 9 and 10, shall the provisions of the GTCP replace the statutory provisions.
- (2) In respect of our duty of examination and notification of defects, the provisions of this paragraph and subsidiarily the statutory provision (pursuant to Art. 201 or 367/370 OR) shall apply. Our obligation to examine the goods shall be limited to defects that become apparent during our incoming goods control by means of external examination, including delivery documents (e.g., transport damage, wrong and short deliveries). Insofar as acceptance has been agreed, the obligation to examine the goods is not compulsory. Our obligation to notify defects which are discovered later remains unaffected. Our notification of any defects will be deemed to have been made in good time if submitted by us within seven (7) working days following the completion of the inspection of incoming goods (clause 2) or following the detection of a defect (clause 4).
- (3) If the goods are defective, we may - in addition to enforcing our statutory rights - demand the elimination of the defect (repair) or delivery of a defect-free item (replacement). If the supplier fails to meet the obligation to repair or replace the faulty item within an appropriate period of time set by us, we may correct the defect by ourselves (self-remedy) and will be entitled to demand reimbursement of the expenses incurred or a commensurate advance payment. In the event that the supplier fails to repair or replace the goods, or if this is unacceptable to us on specific grounds (e.g., due to particular urgency, posing a hazard to industrial safety or imminent occurrence of disproportionate damage), no (where applicable, renewed) notice will be required; we will inform the supplier promptly of such circumstances, where possible, before carrying out any self-remedy.
- (4) Expenses incurred by the supplier for the purpose of inspection and supplementary performance - including possible removal and installation costs - shall be borne by it, even if no defect is actually found. Our liability for damages in the event of an unjustified request to eliminate a defect remains unaffected; however, we will only be liable if we were aware, or we were not aware due to gross negligence, that a defect would not be found.
- (5) The supplier shall bear the procurement risk for its services, unless expressly agreed otherwise (e.g. supply debt).
- (6) We do not acknowledge any warranty or liability limiting clauses of the supplier's.

## **§ 9**

### **Infringement of third party intellectual property rights**

- (1) The supplier shall ensure in accordance with paragraph 2 that no intellectual property rights of third parties in countries of the European Union (EU) and the European Economic Area (EEA), Switzerland, the USA, Canada and other countries where its products are made, are infringed by products supplied by it.
- (2) The supplier has an obligation to indemnify us against all claims made against us by third parties that may arise from an infringement of intellectual property rights under paragraph 1, and shall refund us for all necessary expenses in relation to such claims. The indemnity obligation is effective on our first demand. Claims under clause 1 will not be valid if the supplier is able to prove that it is neither responsible for the infringement of intellectual property rights nor was able, despite carrying out the due diligence of a prudent businessman, to know of or foresee any infringement at the time of delivery.
- (3) Our claims concerning defects of title remain, apart from that, unaffected.

## **§ 10**

### **Limitation period**

- (1) The limitation period is governed by the statutory regulations, unless otherwise defined below.
- (2) By way of derogation from Art. 210 paragraph 1 or Art. 371 para. 1 clause 1 OR, the general limitation period for contractual claims relating to material defects (on movables that, according to their purpose, have not been integrated into an immovable work) is three (3) years from the date of delivery to us at the place of performance (§17 of these GTCP). Insofar as acceptance has been agreed, the limitation period always commences only at the time of acceptance.

- (3) Claims for compensation due to claims by third parties resulting from alleged infringements of intellectual property rights do not expire as long as the third party may assert its right against us.
- (4) Non-contractual claims due to material defects and defects of title are subject to the ordinary statutory limitation period under Art. 60 OR; however, if the limitation period for contractual claims is longer as a result of the law or pursuant to a contractual agreement (paragraph 4), this shall then apply.

## **§ 11**

### **Product liability and manufacturer's liability**

- (1) In the event that a claim is brought against us by a third party for personal injury or property damage under the product liability and/or manufacturer's liability rules, and such damage can be attributed to the supplier's product, the supplier – as far as it is liable in relation to third parties – shall indemnify us against such a claim. This indemnity obligation is effective on our first demand.
- (2) Should we be obliged to carry out a recall due to a defect in a product of the supplier's, and due to a hazard posed by this product to people and/or property, the supplier shall also bear the entire cost of the recall. Further statutory claims remain unaffected. We shall inform the supplier of any recall operations – insofar as this is feasible and reasonable – in good time and provide it with the opportunity to comment.
- (3) If the supplier has reason to believe that the recall of one of its products, which we have ordered, may be necessary, it must inform us immediately and furnish us with adequate documents.
- (4) The supplier is obliged to maintain product liability insurance on standard terms at its own expense, which is not required to cover recall risk or punitive or similar damages. Upon our request, it shall provide us with an insurance certificate and/or other insurance documents as proof of insurance.

## **§ 12**

### **Spare parts**

- (1) The supplier has an obligation to supply spare parts for the products delivered to us for a period of at least ten (10) years after delivery.
- (2) Should the supplier intend to cease the production of spare parts for the products delivered, it shall inform us forthwith. Nevertheless, its obligations pursuant to paragraph (1) will remain.

## **§ 13**

### **Obligation to inform of official measures**

In the event that official measures are taking place at the supplier's or being taken against the supplier in connection with products ordered by us, it shall inform us immediately, in writing.

## **§ 14**

### **Special right to termination in the event of suspension of payments, etc.**

We are entitled to terminate the contract in the following cases: (a) the supplier suspends its payments to its creditors; (b) the supplier applies, at its own initiative, for insolvency proceedings; (c) an application for insolvency proceedings concerning its assets has been lawfully filed by us or by another creditor; (d) such proceedings – even preliminary – have been opened; or (e) an application for bankruptcy has been dismissed for lack of assets.

## **§ 15**

### **Non-assignment clause, except for monetary claims**

The supplier is not entitled to assign its claims against us, resulting from the contractual relationship, to a third party. This will not apply in the case of monetary claims.

## **§ 16**

### **No sub-contractors or other third parties**

The supplier is not entitled to engage third parties to render services (e.g., subcontractors) without our prior written consent.

## **§ 17**

### **Place of performance**

Place of performance for all deliveries and services is the destination specified by us (that is the delivery address indicated in our purchase order) or, if such is not stated explicitly, the address of the respective ordering facility.

**§ 18**  
**Anti-corruption**

We abide by the respectively applicable (where applicable, also foreign, such as American) statutory regulations against corruption and require the same of the supplier.

The supplier pledges that its boards of directors, managers, employees, officers, agents and other organs, representatives or deputies will abide by the respective applicable (also where applicable foreign, such as American) statutory regulations against corruption. The supplier is responsible for obtaining information and legal advice on the statutory provisions at its own discretion and at its own expense.

The supplier shall inform us promptly, if an administrative action has been launched against it or one of the aforementioned persons on the basis of suspicion of an act of corruption that is directly connected with the business relationship with us.

**§ 19**  
**Choice of Law, place of jurisdiction and place of debt collection**

The business relationship between us and the supplier shall be exclusively governed by Swiss substantive law. The applicability of the UN Convention on the International Sale of Goods (CISG) is expressly excluded.

The courts of Uster exclusively shall have local jurisdiction for all disputes arising out of or in connection with this contract.

If the supplier's registered office is abroad or if it should move its registered office abroad, in order to meet its commitments, it shall choose Uster as its special domicile within the meaning of Art. 50 SchKG.

**§ 20**  
**Severability clause**

If any provisions of these GTCP should be wholly or partly void or invalid, such invalidity shall not affect the validity of the remaining provisions. If a competent court holds that the provisions are not deemed to be part of the contract or invalid, then these provisions shall be replaced by a provision which the parties would have negotiated in good faith and in light of the remaining provisions of these GTCP, if they had been aware of the invalidity of the provision in question.