

## General Purchasing Terms and Conditions of BMDSys Production GmbH

### I. Scope, Deviating Supplier Business Conditions

1. The legal relationships between the suppliers (hereinafter „Supplier“) and BMDSys Production GmbH (hereinafter „BMDSys“) are determined exclusively by these purchasing conditions. General supplier business conditions that contradict or otherwise deviate from these purchasing conditions are not valid unless they have been agreed to in each case by BMDSys.
2. These purchasing conditions apply to current business conditions and to all future business between Supplier and BMDSys.

### II. Written/Text Form, Purchase Orders, Receiving Period, Delivery Cancellation, Changes in Goods, First Time Orders, Quality Review

1. Purchase orders and declarations of acceptance, changes and other collateral understandings and agreements, which are entered into prior to or at the time a contract is entered into, must be in written or text form in order to be valid (hereinafter collectively „in writing“).
2. BMDSys purchase orders shall be immediately confirmed in writing by the Supplier – stating the purchase order number. Where not otherwise indicated or agreed to, BMDSys purchase orders become binding two weeks after their entry. Delivery cancellations become binding when the Supplier does not reject them within one week after entry.
3. Without BMDSys prior approval, Supplier may not make any changes to the goods (i.e. in their design or in their composition). If, during the liquidation of an agreement or during a new delivery, the Supplier changes basic materials in the same goods, then, if such a change can be of significance to BMDSys, he shall be bound to advise BMDSys immediately. Should the Supplier breach this duty, then, unless he is not responsible for the damage, he shall compensate BMDSys for any resulting damage.
4. Prior to the initial delivery or if there are changes as set forth in Object II. 3., clauses 1 and 2, the Supplier shall provide BMDSys, before final finishing, the requested number of sample objects – designated as such. Only after BMDSys written approval of the sample objects, may Supplier begin production.
5. Supplier shall always control the quality of the goods. The contracting parties shall inform each other on quality improvement possibilities.

### III. Delivery Deadlines/Delivery Periods, Pre-/Partial Delivery, Delivery Cancellation, Delay, Duty to Provide Notice, Supplier's Right of Retention/Set-Off

1. Unless otherwise agreed to, the agreed upon delivery deadlines and periods are binding. Pre- or partial deliveries may be permissible if approved by BMDSys or if they conform to an agreement to that effect. Unless Supplier was not responsible for the early delivery, BMDSys shall have the right to discount possible damages arising from early delivery, i.e. storage costs, from the purchase price, where the approval/agreement is lacking. The receipt of the goods at BMDSys shall determine whether the delivery deadline or the

delivery period was complied with. Should delivery not be "free place of delivery" as agreed to in Number IV., 3., then the Supplier shall timely make the goods available considering the usual time for shipment and forwarding.

2. Unless otherwise agreed, BMDSys retains the right to determine individual delivery cancellations or cancellation periods for partial deliveries.
3. The Supplier shall compensate BMDSys for any damages arising from a delay in delivery. Liability limitations and exclusions shall be deemed invalid.
4. Without prejudice to any possible indemnification by him for non-compliance with the agreed upon delivery deadline/period, the Supplier is bound to immediately inform BMDSys in writing when any circumstances arise or become evident from which it can be assumed that the agreed upon delivery deadlines/periods cannot be adhered to. This shall also apply to cases of force majeure, disruption of operations, shortage of raw materials, etc. Unless the failure or delay in providing the notice is not the Supplier's responsibility, Supplier shall indemnify BMDSys for any damages arising from said failure or delay.
5. Supplier may only assert a right of recovery for goods deliveries the claims on which arise from the same contractual relationship and are undisputed, ripe for adjudication, or otherwise deemed legally enforceable. A set-off may only be considered when the Supplier's claim is undisputed, ripe for adjudication, or otherwise deemed legally enforceable.

### IV. Packaging/Marking, Place of Performance, Price Determination, Risk of Loss, Shipping Documents/Invoices, Cross-border Deliveries

1. The to be delivered goods are – unless otherwise agreed – to be packed properly and appropriately according to BMDSys instructions. Unless Supplier is not responsible for packaging or marking the goods inappropriately or contrary to BMDSys instructions, Supplier shall indemnify BMDSys for damages arising due to the goods being packed or marked inappropriately or contrary to BMDSys instructions.
2. Unless otherwise agreed or set forth in the purchase order, the place of performance shall be BMDSys headquarters.
3. Unless otherwise agreed, the prices shall be fixed prices „free place of performance“ according to Number IV. 2. and shall include packaging, transportation, customs, insurance, and additional legally required value added tax. Where place of delivery is not "free place of performance", the Supplier shall choose the most economically efficient method of shipment. Where the prices agreed to do not „include packing“, then the packaging shall be invoiced at cost.
4. Subject to an agreement with varying terms and where the transportation company is not designated by BMDSys or where BMDSys itself performs the transportation, Supplier shall assume the risk of a possible destruction or deterioration of the goods during transportation.
5. Shipment papers, e.g. packaging slips, delivery receipts, etc., shall be supplied with the deliveries. The shipment papers and each invoice must contain the appropriate BMDSys purchase

order number, the object number, as well as the good's origin information. Value added tax shall be stated separately. The Supplier shall compensate BMDSys for any costs arising from non-observance of the above stated rules.

- Supplier has the duty to timely provide BMDSys with required customs' country of origin declarations. Supplier assumes responsibility for the correctness of the declaration of the goods where Supplier has his headquarters in a foreign country or he imports the goods. Where required, Supplier shall confirm his statements regarding the goods' country of origin by providing a certificate of confirmation from the Customs administration at his location. He agrees to indemnify for all disadvantages that arise for BMDSys through Supplier's negligence in the improper or untimely filing of Supplier declarations.

#### **V. Notice of Defects**

- Obvious defects in delivered goods are to be notified to the Supplier by BMDSys within 14 days after delivery, hidden defects at the latest within 14 days of discovery.
- Payments that are made on the purchase price or receipt of the goods by a BMDSys representative prior to defects being ascertained, shall not be deemed an acknowledgment that no defects exist and shall not release Supplier from his duty to indemnify for defects.

#### **VI. Quality, Safety Regulations, Documentation**

- For his deliveries, Supplier shall comply with the recognized rules of engineering and the agreed upon technical data.
- The Supplier is bound to observe the safety laws and other regulations involving security which apply to each object delivered, such as trade inspection department claims and union regulations governing work and accident prevention. He shall indemnify BMDSys from any negligence arising from public or private law demands relating to breaches of these regulations. All required test certificates and affidavits are to be voluntarily provided by the Supplier with any delivery.

#### **VII. Payment, Price Increase, Right of Retentions, Set-Off, Prohibition against Transfer, Reservation of Title, Processing**

- Unless otherwise agreed in writing, payment shall be by wire transfer or cheque purely net, 30 days after delivery of the goods as well as receipt of a proper and verifiable invoice (compare Number IV., 5.). The Supplier shall grant BMDSys a 2% cash discount for payments made within 14 days after delivery of goods as well as the receipt of a proper and verifiable invoice (compare Number IV., 5.). The day the new and proper invoice is received shall then determine the beginning of payment and cash discount periods. Where deliveries are early, the agreed upon delivery date shall supersede the receiving date under Number VII. 1.
- Supplier may not increase prices once the agreement is entered into. Supplier's escalation and similar clauses are deemed not valid.
- To the extent permitted by law, BMDSys retains against the Supplier the rights of set-off and retention.
- Without prejudice to the rules of § 354a HGB (German Commercial Code), Supplier shall not have the right to assert his claims against BMDSys without the latter's written

approval, nor may he debit third parties directly or provide them with security interests. This shall not apply where and insofar the Supplier has granted his suppliers in the ordinary course of business an extended reservation of title. In the event where certain demands are pledged, Supplier shall notify BMDSys thereof without delay.

- Title shall transfer to BMDSys upon payment for the delivered goods. BMDSys does not recognize any expanded or extended reservation of title.
- BMDSys shall have the right in the ordinary course of business to process, alienate, or otherwise dispose of the delivered goods even prior to the transfer of title.

#### **VIII. Defects**

Unless otherwise agreed, Supplier guarantees that the goods shall possess the agreed upon qualities, be newly manufactured, be unused and not second-hand as well as free from defects, and that they conform to the state of the art at the time of delivery. BMDSys claims for defects shall be determined by the law as modified by the following conditions.

- Supplier shall bear all expenses incurred in ascertaining and removing defects even insofar as they accrue to BMDSys.
- Unless otherwise agreed to in writing, and subject to No. VII., 3. below, the limitations period for defect claims shall be 36 months after delivery of the goods to BMDSys.
- Substituted deliveries for delayed fulfillment shall have as their limitations period 36 months following the fulfillment of the duty to remedy the delayed fulfillment, provided that the replacement delivery is based on the express and implied recognition of the duty to remedy the defect and not, for example, due to a trade accommodation or in the interest of continuing the delivery relationship.

Refurbishments made within the delayed fulfillment period shall have as their limitations period the period of 36 months for parts refurbished after the duty to remedy the delayed fulfillment, insofar as refurbished defects or defects in refurbishment are involved and the refurbishment is based on the express and implied recognition of the duty to remedy the defect and not, for example, due to a trade accommodation or in the interest of continuing the delivery relationship.

#### **IX. Indemnification, Limitations Period, Product Liability, Insurance**

- Unless otherwise provided by these delivery conditions, indemnification and periods of limitation shall be determined according to the law.
- In the event of a claim for product liability, Supplier shall, subject to any further rights, hold BMDSys harmless from third party claims where the cause lies in Supplier's control or area of operations and he himself indemnifies as regards to third parties. This indemnification shall also apply to expenses which BMDSys incurs, or could have assumed, in order to ascertain and avoid or alternatively mitigate a product liability risk.
- Supplier is bound to obtain coverage at adequate levels and over the course of the business relationship for product liability risks and to provide BMDSys, upon request, with verification of insurance policies and premium payments.

## **X. Intellectual Property Rights**

1. Supplier shall deliver BMDSys the goods free from third party claims. He shall hold BMDSys harmless from any infringement of the preceding Clause arising from third party demands on the use of such intellectual property rights, provided, however, that Supplier was not responsible for the infringement. Supplier's release obligation relates to all expenses which BMDSys necessarily incurs from or in relation to such an assertion by third parties, especially litigation defense costs. Should BMDSys be found responsible for Supplier's infringement of the intellectual property rights, then Supplier shall be bound to indemnify BMDSys for the costs of litigation.
2. Supplier shall not provide indemnification under No. X., 1., where he manufactured the delivered objects exclusively according to BMDSys drawings and models and he did not know, nor should have known, that their manufacture caused an infringement as previously described.
3. Intellectual property rights that are based in the development of special contracts, or which are jointly developed with the Supplier, shall belong to BMDSys unless otherwise provided in a different agreement where such rights are exclusively based on BMDSys own know-how and/or if BMDSys bears the entire development costs. Should the assignment of the thus created intellectual property rights to BMDSys not be possible, then BMDSys shall be granted an exclusive use right corresponding to the purpose of the development.
4. Supplier grants BMDSys a simple, cost-free, and irrevocable license for the repair, remodeling, and introduction of the delivered goods to a different location. BMDSys shall have the right to grant sublicenses.
5. Supplier shall notify BMDSys of all intellectual property filings which he exercises in connection with the delivered or to be delivered objects. Supplier shall immediately notify BMDSys if Supplier ascertains any injury to the intellectual property rights.

## **XI. Tools, Objects and Documents, Drawings, Access, Insurance**

1. Should Supplier create tools in compliance with the contract at BMDSys cost – regardless whether they are specifically incurred or included in the full price – the parties agree that these tools become, upon payment, BMDSys property. Transfer of title shall be substituted by Supplier having the right to use the tools on a loan basis until the contract is completed.

Supplier shall not have the right to use the tools to complete other orders by third party purchasers. Upon BMDSys request and completion of the contract, he shall be bound to return the tools to BMDSys.

2. Subject to a different written agreement, all BMDSys objects and documents in any form (e.g. tools, samples, drawings, plans, drafts, etc.) provided Supplier by BMDSys, shall remain BMDSys property. BMDSys objects and documents that are relinquished are only made available as a loan to complete the contract. This shall be true also for objects that BMDSys Supplier obtains at BMDSys costs in order to complete the contract.

The objects and documents that are made available shall be used exclusively for the completion of the contract with BMDSys. They are to be returned to BMDSys without delay upon completion of the contract as well as upon receipt.

3. Supplier shall bear the risk of loss and damage to BMDSys property and otherwise relinquished objects but not, however, for normal usage. The property and objects shall be properly stored, treated with care, and maintained on BMDSys behalf at Supplier's cost and, where required, identified as BMDSys property. Unless otherwise agreed to by BMDSys in advance and in writing, the property and objects may not be removed from Supplier's business or alternatively from their agreed upon location or otherwise assigned, made subject to a security interest, or pawned, etc.
4. BMDSys shall have access to Supplier's business premises during regular business hours, and following confirmation by Supplier, in order to review BMDSys property and the objects relinquished to Supplier and any documents related thereto.
5. Supplier shall insure at his own cost the BMDSys property and objects relinquished to him. Claims for payment are hereby assigned by Supplier to BMDSys. BMDSys accepts such assignment.

## **XII. Confidentiality, Advertising**

1. The contracting partners bind themselves to treat as business confidential all non-public business and technical details which become known to them in the course of the business relationship. Sub-suppliers and employees are to be appropriately bound.
2. Drawings, models, templates, samples, and similar objects may not be handed to or otherwise made available to unauthorized third parties. The duplication of such objects is only permitted within the scope of business requirements and conditions of copyright.
3. The contracting parties may advertise their business relationship only upon prior written authorization.

## **XIII. Replacement Parts**

Subject to appropriate conditions, Supplier is bound to supply replacement parts for the period of the usual technical use of the delivered objects but at least however for ten years after the last delivery. Should Supplier discontinue the supply of the replacement parts after the expiration of the limitations period set forth in Clause 1 or discontinue the delivery of the delivery object prior to the expiration of this limitations period, then he shall provide BMDSys with the opportunity to place a final order.

## **XIV. Applicable Law, Venue, Partial Invalidity**

1. German law, to the exclusion of the UN Convention on the Sale of Goods, shall apply.
2. Should Supplier be a merchant, then venue shall be BMDSys headquarters location. BMDSys retains the right to sue Supplier in any other court with jurisdiction.
3. Should individual conditions of these purchase conditions or parts hereof fully or partially be deemed invalid, then the validity of the other purchase conditions shall not be affected thereby.

**Effective: October 2007**