

General Terms and Conditions of Delivery and Payment of BMDSys GmbH

I. Scope of application, diverging Buyer terms of purchase

1. The legal relations between Buyer and BMDSys GmbH ("BMDSys") are governed exclusively by these General Terms and Conditions of Delivery and Payment ("GTC"). Any general terms and conditions of Buyer conflicting with or diverging from these GTC shall not be accepted unless accepted in writing by BMDSys in a particular case.
2. In the case of continuous business relations these GTC shall also apply to all future transactions between Buyer and BMDSys. These GTC shall apply only to relations with businesses and legal persons under public law.

II. Written/text form, offers, conclusion of contract, catalogues and documents

1. All orders and declarations of acceptance, amendments and any other subsidiary arrangements and agreements made prior to or at the time of conclusion of a contract must be in written or text form (hereinafter jointly "written form" or "in writing") to become legally effective. The same applies to warranties as to quality.
2. Offers of BMDSys remain subject to change unless expressly defined or agreed as binding. Buyer remains bound by its offer for three weeks, and for one week if the goods are in stock. A contract becomes effective only upon written confirmation of an order received by BMDSys, but at the latest – in deviation from sec. II. 1. - upon Buyer's acceptance of the delivery.
3. Except as agreed otherwise, the illustrations and specifications in catalogues and brochures only represent approximate values and do not constitute a warranty as to quality. BMDSys reserves the right to change the design and model, provided that the change is reasonably acceptable for Buyer.
4. BMDSys reserves unrestricted title and copyright to all documents made available to Buyer (cost estimates, specifications, drawings, illustrations etc.). These documents may not be made accessible to third parties.

III. Prices, ancillary costs, costs of installation and services, price adjustments

1. Unless agreed otherwise the prices of BMDSys will be ex works plus statutory value-added tax as applicable from time to time and plus ancillary costs, including but not limited to postage, freight, packaging, transportation and costs of any necessary construction and installation work. Services will be billed in accordance with the applicable customer services price list.
2. If delivery is effected more than four weeks after the conclusion of the contract and no fixed price has been agreed, BMDSys may, in the event of changes in cost, appropriately adjust the prices in accordance with the change in wages, salaries, material and production costs that has occurred in the meantime.

IV. Delivery periods, partial delivery, default in delivery, force majeure

1. Except where agreed otherwise, delivery deadlines and delivery periods shall be deemed nonbinding. Delivery periods

start from the conclusion of the contract unless Buyer is obliged to make advance payment, in which case the delivery period will start upon receipt by BMDSys of Buyer's counter-performance.

2. Partial delivery and partial billing by BMDSys shall be permitted provided it is reasonably acceptable for Buyer.
3. In the event that BMDSys has not received at all or in due time supply of any goods ordered, BMDSys shall not be in default with the delivery to Buyer unless BMDSys is responsible for having received such supply with delay or not at all. BMDSys is entitled to withdraw from the contract if it is established that BMDSys is not responsible for not having received supply of the goods ordered.
4. In the event of default in delivery the liability of BMDSys will not be limited for intent or gross negligence. In the case of slight negligence the liability of BMDSys shall be limited to foreseeable damage characteristic for the contract, however, to a maximum of 10% of the agreed purchase price of the goods BMDSys is in default with.
5. In cases of force majeure or other unforeseeable circumstances such as, for instance, operational breakdowns, lawful strikes or lock-outs, war, import and export bans, shortage in energy or resources, official orders, which temporarily hinder BMDSys without any fault on its part or imputable to it from delivering the goods by the deadline or within the period agreed upon with or without commitment, this deadline/period shall be extended – also during the time of the delay - in accordance with the duration of the hindrance caused by these circumstances. If such hindrance prevents performance for more than four months, both parties can withdraw from the contract. If delivery becomes completely or partly impossible or cannot be reasonably expected due to the above circumstances, BMDSys shall insofar be released of its duty to deliver and/or entitled to withdraw from the contract. This shall not affect any statutory rights of withdrawal.

V. Passing of risk, dispatch

1. Unless otherwise agreed deliveries shall be effected for the account and at the risk of Buyer. Except where agreed otherwise, the risk shall pass to Buyer once BMDSys has transferred the goods to the forwarding agent, carrier or other person designated to effect the dispatch.
2. If dispatch is delayed for reasons outside the control of BMDSys or if Buyer fails to accept the goods in due time even though they were offered to Buyer, the risk shall pass to Buyer upon receipt of the notification that the goods are ready for dispatch. If the goods are shipped BMDSys shall at Buyer's request and expense effect a transport insurance. Any damage to goods in transit shall be notified to BMDSys and the delivering forwarding agent on delivery in writing and without delay but no later than 5 days after delivery. Buyer shall inspect the goods promptly on receipt for completeness and conformity with the delivery documents and, if necessary, immediately notify any inconsistencies; otherwise the delivery shall be deemed approved to that extent.

VI. Payment, setoff / retention, default in payment, deterioration of financial situation, assignment

1. Unless defined or agreed otherwise, the purchase price falls due upon delivery of the goods and is payable within 14 days

after delivery and receipt of the invoice. If payment is not made within the specified time limit Buyer will be in default.

2. Buyer may assert rights of setoff against BMDSys only on the basis of claims that are uncontested, ready for decision or established by final enforceable judgment. Rights of retention may be asserted against BMDSys only on the basis of counterclaims from the same contractual relationship that are uncontested, ready for decision or established by final enforceable judgment.
3. Bills of exchange or cheques will be accepted only upon special agreement and only on account of performance. All charges, bill of exchange taxes and discounts will be borne by Buyer.
4. In the event of default in payment, interest at a rate of 8% above the base rate will be charged on the outstanding claim. Nothing in this affects the right to assert a higher damage caused by the default.
5. If it becomes apparent after the conclusion of the contract that the claim of BMDSys for counter-performance is at risk due to lack in performance capacity on Buyer's part, BMDSys may refuse performance until Buyer has provided counter-performance or a security for it. BMDSys may set a reasonable period within which Buyer, at Buyer's choice, has to counter-perform or provide security concurrently with the performance. Upon expiration of the period, BMDSys will be entitled to withdraw from the contract and / or claim damages or reimbursement of expenses if the statutory requirements are fulfilled.
6. Any assignment of claims against BMDSys is excluded. Nothing in this shall affect Sec. 354 a HGB (*German Commercial Code*).

VII. Reservation of title

1. All goods delivered will remain the property of BMDSys until all claims under the contractual relationship and other claims BMDSys may subsequently acquire against Buyer in direct relation to the goods delivered – on whichever legal grounds – are fully settled. Until then any interference with the equipment is prohibited.
2. Further, the goods will remain the property of BMDSys as reserved goods until all other claims BMDSys acquires against Buyer now or in the future, on whichever legal grounds (including all unsettled balances from current account). In the case of continuous account the reserved goods serve as security for the unsettled balances of BMDSys.
3. Buyer is entitled to resell the goods in the regular course of business. As long as BMDSys remains the owner of the reserved goods, BMDSys is entitled to retract the authorisation to resell the goods if there is an objectively justified reason. Buyer hereby assigns to BMDSys all claims, including all ancillary rights, arising for Buyer from the resale of the goods; BMDSys accepts this assignment.
4. Buyer is authorised to collect the assigned claims until this authorisation is revoked. BMDSys may revoke the authorisation to collect the claims for an objectively justified reason. Buyer has no right to otherwise dispose of the claims, e.g. by assignment. BMDSys is authorised to collect the claims but is obliged to not collect the claims as long as Buyer properly meets its payment obligations.
5. If Buyer fails to meet its payment obligations with the consequence that BMDSys is authorised to collect the claims, Buyer will hand over to BMDSys on request a list of all goods that remain subject to reservation of title of BMDSys, the

assigned claims and the names and addresses of the debtors including the amounts of the claims. On request Buyer is obliged, and BMDSys is entitled, to notify the debtors of the assignment of the claims.

6. Buyer is obliged to handle the goods subject to reservation of title with care and insure them against fire, other material damage and theft at replacement value and to maintain the insurance coverage. On request the insurance policy will be transmitted to BMDSys for inspection. Buyer hereby assigns to BMDSys the claims against the insurance to the extent they relate to the property of BMDSys; BMDSys accepts this assignment. BMDSys will reassign the claims to Buyer on the condition that the reassignment becomes effective when and as soon as the reservation of title expires by full settlement of all claims of BMDSys.
7. As long as the reservation of title remains valid, any pledging, assignment by way of security, lease or other transfer or change of the reserved goods impairing the security of BMDSys will require the prior written consent of BMDSys. This shall not affect Buyer's right to resell the goods in the regular course of business at the aforementioned conditions. Buyer will immediately notify BMDSys in writing of any attachment by third parties, e.g. execution measures, and inform the third party of the reservation of title of BMDSys.
8. If Buyer has suspended payments not only temporarily, petitions the opening of insolvency proceedings against its assets, or insolvency proceedings are opened against Buyer's assets, Buyer, on the request of BMDSys, will be obliged to return to BMDSys the reserved goods still owned by BMDSys. Furthermore, in the event of Buyer acting in breach of the contract, in particular in the event of default in payment, BMDSys is entitled to claim the reserved goods back from Buyer. The taking back of the reserved goods is considered a withdrawal from the contract only if expressly declared so by BMDSys.
9. Any processing or transformation of the reserved goods shall be done on behalf of BMDSys and such that BMDSys is considered the manufacturer in accordance with Sec. 950 BGB (*German Civil Code*). In the event of the reserved goods being processed, combined or mixed by Buyer with other goods not owned by BMDSys, BMDSys is entitled to co-ownership of the new product in the relation of the invoice value of the reserved goods to the invoice value of the other goods at the time of the processing, combining or mixing. BMDSys hereby offers to grant Buyer a contingent right to the joint ownership share that is created. Buyer accepts this offer. If the reserved goods are sold together with other goods after processing, combining or mixing, the assignment of the claim from the resale shall extend only to the amount of the invoice value of the goods delivered by BMDSys.
10. On Buyer's request, BMDSys at its option is obliged to either waive the reservation of title and/or release securities from assignments by way of security and assignments of future claims if Buyer has fulfilled all claims relating to the reserved goods or if the realisable value of all securities granted by BMDSys under reservation of title, assignment by way of security and assignment of future claims exceeds the total amount of claims against Buyer by more than 10 %.

VIII. Defects, Warranty

If the cause of a defect existed already at the time of the passing of risk in accordance with sec. V., BMDSys will be liable for defects only at the terms and conditions set out below:

1. Buyer has to fulfil its duties of inspection under Sec. 377 HGB. Obvious defects must be reported to BMDSys in writing without

delay but at the latest 10 days after receipt of the goods. Hidden defects must be notified to BMDSys in writing without delay but at the latest 10 days upon discovery. If no such notification is made the delivery will be deemed free from defects and approved.

2. If Buyer reports a defect in due time in accordance with sec. VIII.1 above, Buyer is entitled to, at the option of BMDSys, free-of-charge rectification of the defect or delivery of a defect-free product (subsequent performance). BMDSys may refuse certain types of subsequent performance or subsequent performance as a whole if it would incur unreasonable expenses. If the defect affects software, BMDSys has the right to work around any defect that may occur if the defect itself can be remedied only with unreasonable effort and if the workaround solution does not unreasonably impair the operability of the system.
3. If subsequent performance according to sec. VIII.2 fails, Buyer may, at its choice, withdraw from the contract or reduce the remuneration. This applies also if subsequent performance is unreasonably delayed, unjustifiably refused or impossible and/or unacceptable for Buyer. If Buyer chooses to withdraw from the contract due to a defect, Buyer will not be entitled to additionally claim damages based on the defect. Subsequent performance shall be deemed failed at the earliest after three unsuccessful attempts.
4. Warranty shall be excluded if and to the extent defects are caused by inexpert modifications or maintenance work to the delivered goods carried out by Buyer or by a third party on Buyer's behalf. BMDSys will not assume any liability in the case that Buyer does not follow the instructions for use and maintenance of BMDSys or uses the goods for purposes other than those intended by the contract.
5. Warranty shall be excluded in the case of merely insignificant divergence of the quality of the delivered goods from the agreed quality, of only irrelevant impairment of the usability, of natural wear and tear, and of defects that occurred after the passing of risk due to improper or careless handling or use (e.g. unsuitable or inappropriate storage and use, incorrect installation and/or putting into service by Buyer or a third party, improper or careless handling, excessive use, unsuitable means of operation and special external influences that are not preconditions in accordance with the contract).
6. Warranty claims become time-barred 12 months after the delivery of the goods unless the defect was maliciously concealed or is covered by a warranty as to the quality of the goods.
7. Buyer is entitled to claim damages based on defects only where the liability of BMDSys is not excluded or limited in accordance with sec. IX. hereof. Further claims or claims other than those stipulated by this sec. VIII. based on a defect are excluded.

IX. Infringement of property rights, indemnification

1. If a third party asserts any justified claims against Buyer based on the infringement of property rights by the software provided by BMDSys and if the use of the software is impaired thereby, sec. VIII. shall apply analogously. At its option and expense, BMDSys will either modify or replace the software such that it no longer infringes the property right but essentially conforms to the agreed functional and performance features in a manner acceptable for Buyer, or indemnify Buyer against the payment of royalties for the use of the software to the right-holders, where this is acceptable for Buyer.

2. BMDSys will defend, indemnify and hold harmless Buyer from and against all justified claims that are asserted by third parties, provided that (i) Buyer promptly notifies BMDSys of any such claim in writing, (ii) BMDSys has exclusive control of the defence against any such claim and all related settlement negotiations, and (iii) Buyer provides the necessary information and powers of attorney.

X. Overall liability

1. BMDSys is unrestrictedly liable for intent and gross negligence. In the event of a slightly negligent breach of a major obligation or an accessory obligation whose breach puts the achievement of the contractual purpose at risk or whose fulfilment is essential to the due and proper implementation of the contract and on whose fulfilment Buyer could reasonably rely on ("essential accessory obligation"), the liability of BMDSys shall be limited to damage characteristic for the contract and foreseeable at the time of conclusion of the contract.
2. BMDSys will not be liable for a slightly negligent breach of accessory obligations which are not essential accessory obligations as defined in sec. X.1 above.
3. The above exclusions of liability do not apply in the event of malicious concealment of defects or a warranty as to quality, to the liability for claims under the Product Liability Act and to claims based on injury to life, limb or health. This shall not entail a reversal of the burden of proof to Buyer's disadvantage.
4. Where the liability of BMDSys is excluded or limited, this also applies to the personal liability of the BMDSys employees, other members of staff and vicarious agents.
5. With the exception of claims based on tortious acts, Buyer's claims for damages, for which liability is limited under this section, become time-barred within one year, calculated from the beginning of the statutory limitation period.

XI. Setup, installation, putting into service

Unless separately agreed otherwise Buyer will be responsible for the setup, installation and putting into service of the delivered goods.

XII. Disposal of the goods delivered

Buyer is obliged to properly dispose of the delivered goods after they are put out of use, at Buyer's expense and in accordance with the applicable legal provisions. In this respect, Buyer releases BMDSys from the obligations under Sec. 10 (2) ElektroG (*German Act governing the Sale, Return and Sound Disposal of Electrical and Electronic Equipment*) (manufacturers' duty to take back the goods) and any related claims of third parties.

If the goods delivered by BMDSys are resold in the course of business Buyer will make appropriate contractual arrangements to ensure either that Buyer's customer sees to the proper disposal of the goods in accordance with the applicable legal provisions after they are put out of use and/or assumes responsibility towards its customers for the proper disposal, or that Buyer sees to the proper disposal of the goods for Buyer's customer.

If a third party asserts a claim against BMDSys for the disposal of the delivered goods after they are put out of use, Buyer will properly dispose of the goods and indemnify BMDSys from and against all claims of third parties relating to the obligations under Sec. 10 (2) ElektroG.

The claims of BMDSys against Buyer for the assumption of the duty of disposal and/or release from the obligations under Sec. 10 (2)

ElektroG will not become time-barred until one year after the definite end of the use and awareness of BMDSys of the end of the use.

XIII. Place of performance, place of jurisdiction, arbitration, governing law, severability

1. The place of performance for all payment and delivery obligations shall be the domicile of BMDSys if Buyer is a merchant.
2. If BMDSys does not exercise the right to initiate arbitration proceedings defined in sec. XIII.3 below and if Buyer is a merchant or legal person under public law, the ordinary court of law at the domicile of BMDSys shall have exclusive jurisdiction. However, BMDSys also has the right to sue at Buyer's domicile.
3. Instead of proceedings before an ordinary court of law according to sec. XIII.2, BMDSys alternatively may initiate arbitration proceedings in accordance with the terms and conditions below, while recourse to the ordinary courts of law will be excluded in that case.

If Buyer has asserted any claims against BMDSys and intends to initiate court proceedings, BMDSys has the right to choose between ordinary court proceedings and arbitration proceedings within a period of 21 days after receipt of a pertinent written request from Buyer. If BMDSys does not exercise the option at all or in due time, Buyer has the right to choose between ordinary court proceedings and arbitration proceedings.

In the event of an arbitration proceeding all disputes will be definitely settled in accordance with the Arbitration Rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V. - DIS*), while recourse to the ordinary courts of law is excluded. The forum of arbitration will be the domicile of BMDSys. The arbitration panel will be composed of three arbitrators if the value in dispute exceeds EUR 50,000, and of one arbitrator in all other cases. The language of arbitration proceedings will be German.

4. These GTC shall be governed by German law with the exclusion of the UN Sales Convention.
5. If any provision of these GTC is or becomes wholly or partially invalid, nothing in this shall affect the validity of the remaining provisions of these GTC.

Status: November 2007