

# GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of the B.M.P Group  
(valid as from December 1<sup>st</sup>, 2015)

## **General terms and conditions**

These sales and delivery conditions shall apply to all contracts concluded between the companies of the B.M.P. Group (**B.M.P.**) specified in Clause 1.1 with a client (**Purchaser**) concerning the sale and delivery of goods of B.M.P.

### **1. General**

#### **1.1**

**B.M.P. Bulk Medicines & Pharmaceuticals GmbH**

**B.M.P. Pharma Trading AG**

**BMP Biotec GmbH**

**Alpha Trading GmbH**

#### **1.2**

The following General Terms and Conditions of Sale and Delivery shall form the basis of all, and all future sales contracts, concluded by B.M.P. as Vendor. The Purchaser acknowledges that these conditions shall apply exclusively to all existing and future contracts for the purchase of goods. Terms and conditions of the Purchaser shall be expressly rejected by B.M.P. This shall equally apply to finalising contract conditions of agents/brokers. The conclusion of the contract on these terms shall remain effective even if the Purchaser has failed to return the countersigned sales confirmation document. Business conditions, clauses or amendments by the Purchaser or agent shall only become part of the contract if these have been accepted in writing by B.M.P. In addition, the current version of INCOTERMS shall apply.

#### **1.3**

The contents of the contract are based on the written sales confirmation of B.M.P., together with these conditions. In the event of a conflict between these conditions and the special conditions contained in the written sales confirmation, the latter conditions shall apply. Verbally agreed additional agreements of any kind shall require written confirmation by B.M.P.

#### **1.4**

Objections, rescission notices, cancellations and deadlines of any of the contractual parties shall be invalid unless made in writing with signature and forwarding of the document as original or in text form (fax/e-mail).

### **2. Quotations, finalising contracts and prices**

#### **2.1**

Verbal quotations, commitments, contractual amendments and agreements on the part of the Vendor's employees, with the exception of managers and authorised representatives, are subject to alteration and shall be non-binding. These require written confirmation in order to be effective. This requirement may only be waived in writing. Only commitments or finalising of contracts confirmed in writing or in text form (fax/e-mail) shall be binding.

#### **2.2**

Descriptions of goods and statements regarding quality as well as information provided by the Vendor concerning suitability and applicability of the goods shall not be regarded as an assurance or guarantee of quality. B.M.P. supplies goods of a quality customary in the trade. The assurance of a characteristic feature shall only be given if and insofar as B.M.P. has guaranteed the characteristic feature expressly in writing.

Unless otherwise agreed, the Vendor shall deliver the goods as raw material without effect as to their intended purpose. Use of the goods shall be the sole responsibility of the Purchaser. If the use of the goods should be subject to specific legal provisions or requirements, the inspection and treatment of these goods shall be the sole responsibility of the Purchaser. The Vendor shall be under no obligation to provide advice or clarification.

### **2.3**

The weight at the time of dispatch shall apply to the calculation of the purchase price.

### **2.4**

If additional unforeseeable production costs such as increased charges and energy costs, insurance premiums or hardship allowances should arise following conclusion of the contract, B.M.P. shall be entitled to adjust the price subsequently to include these additional production costs.

Unless otherwise explicitly agreed in the relevant delivery conditions, the Purchaser shall bear additional freight expenses, costs for packaging that exceed the standard of packaging that is customary for the trade as well as ancillary fees, public taxes and customs duties.

All agreed prices are deemed to be untaxed, which means they will be subject to the energy and valued added tax as well as additional relevant taxes and duties.

If further-reaching or new obligations affecting the contractual conditions should arise as a result of sovereign or official regulations introduced after the conclusion of the contract, the consequences and additional costs incurred as a result of these regulations shall be an integral part of the contract and shall be borne by the Purchaser.

## **3. Delivery and performance/deadlines**

### **3.1**

Delivery shall take place within the agreed delivery time at the choice of B.M.P. In the event of the delivery time extending over several months, delivery – unless otherwise agreed – shall take place in approximately equal monthly instalments. B.M.P. shall be entitled at any time to deliver goods of equivalent quality to those specified in the contract, however, only upon condition that the goods are in every respect of a similar or better quality standard. Delivery may – with reciprocal offsetting of freight differences – take place from locations other than those specified in the contract.

### **3.2**

B.M.P. may at its own discretion tender the goods at any time within the agreed delivery time. Tendering must take place at least five (5) working days before loading day.

### **3.3**

The Purchaser must place the shipping order at least five (5) days before the desired delivery date. Should the Purchaser fail to place a shipping order within ten (10) working days after tendering, B.M.P. shall be entitled take the following action after expiry of an appropriate grace period:

- continue to demand fulfilment and claim for damages due to delay
- withdraw from the contract or from the part of the contract that has not yet been fulfilled and claim for damages
- claim for damages in lieu of performance
- demand immediate payment made against his own delivery receipt or a warehouse warrant issued by the warehouse operator

If the Purchaser fails to issue an executable shipping order at due date, the goods shall be stored by B.M.P. or by a warehouse operator commissioned by B.M.P. at the Purchaser's expense and risk.

The grace period according to 3.3 shall be at least 8 working days.

If claims for damages should be demanded in lieu of performance, the claims assessment, if possible according to current local law, may also be effected by a self-help sale or price determination by a third party (agent). The reference date shall be the first working day following expiry of the grace period.

### 3.4

In the case of a delay in delivery, the Purchaser shall not be entitled to claim damages due to delay if the delay has not been caused by intent or gross negligence. In any event, in case of slight negligence, the claim for damages shall be limited to typical foreseeable damage due to delay.

### 3.5

B.M.P. shall endeavour at all times to observe the agreed delivery dates and times. However, B.M.P. shall be exempt from observance of contractually agreed delivery dates and times in the event of circumstances arising either at home or abroad, which significantly impede the provision of the service (**significant impediment to performance**). Significant impediments to performance include all difficulties, which regardless of their nature, domain or point in the supply chain in which they have originated, significantly impede the execution of the contract. These include in particular force majeure and natural phenomena (e.g. volcanic eruptions, flooding or low water, ice, delays/destruction of harvests), import and export restrictions, problems with the acquisition of raw materials, operational stoppages (e.g. due to fire, machine breakdowns, strikes, measures resembling strikes, states of war or emergency situations and transport) as well as loading difficulties.

This shall also apply if such circumstances arise after the Vendor is already in delay. The Vendor shall not be obliged to reimburse costs incurred through unforeseeable delays of this kind.

### 3.6

In the event of significant impediments to performance existing, B.M.P. shall be entitled to withdraw from the contract without compensation or to extend the agreed delivery period by the duration of the impediment, however, no longer than five (5) months. B.M.P. shall be entitled but not obliged to deliver equivalent goods for one of the agreed goods within the period of extension. Following expiry of the period of extension, the contract may be cancelled at the request of one of the parties. If it should already become clear prior to expiry of the extension period that it would be unreasonable for one of the parties to abide by the contract, this party may withdraw from or terminate the contract.

### 3.7

All sales shall be subject to the correct and punctual delivery by the Vendor's primary supplier as well as the safe arrival of the goods to be delivered. Likewise, the Vendor's stock reserve contract may include the clause relating to self-supply.

### 3.8

The Vendor shall be entitled to make partial deliveries in quantities deemed reasonable for the Purchaser in commercial transactions. The Purchaser shall be obliged to pay for the corresponding partial shipments. All partial shipments of a contract shall be regarded as special business operations.

### 3.9

The contractual performance on the part of B.M.P. shall be subject to the proviso that this is not in conflict with national or international provisions of foreign trade law or embargos and/or other sanctions. In the event of fulfilment of the contract being impeded or becoming impossible retroactively due to the amendment of foreign trade provisions, embargos or other sanctions, B.M.P. shall be entitled to withdraw from the contract without compensation.

Furthermore, the Purchaser shall be obliged to observe the relevant export provisions of the European Community or individual member states of the European Community and the USA, insofar as he himself or a third party commissioned by him should export goods from the customs area of the European Community. Insofar as

B.M.P. should be obliged to pay duties or make other payments due to the infringement of one of the incumbent obligations of the Purchaser in connection with the export, the Purchaser shall exempt B.M.P. from these obligations on first demand.

#### **4. Payment, arrears, offsetting/right of retention**

##### **4.1**

If the Purchaser should fail to pay on the due date, he shall be in default without warning. This shall not apply if he immediately verifies that he is not responsible for the delayed payment. In the event of a delay in payment, the Vendor shall be entitled to charge interest on arrears to the amount of 10 percentage points above the current base lending rate of the European Central Bank. Proof of a higher amount of damages shall be permitted.

##### **4.2**

The Purchaser shall not be entitled to offset or to assert a right of retention against claims of the Vendor, unless his counterclaim has been found to be undisputed or legally binding.

##### **4.3**

Should, following conclusion of the contract, the Vendor become aware of circumstances that call into question the creditworthiness of the Purchaser or his ability to fulfil his obligations or if the Purchaser should be more than 14 days in arrears with regard to his cooperation or payment obligations despite the setting of a deadline, the Vendor shall be entitled to postpone the fulfilment of his obligations until all outstanding claims have been paid and to demand advance payment of all claims in connection with all contracts concluded with the Purchaser, including bills of exchange presented by the Purchaser.

B.M.P. shall in particular be entitled within the framework of the contract to refuse performance if

- the Purchaser should be in arrears with acceptance of a shipment or with the payment resulting from this contract or contract concluded with a B.M.P. company
- doubts should arise with regard to the Purchaser's ability or willingness to pay
- the Purchaser's company has entered liquidation or has been transferred to a competitor of B.M.P.
- the commercial credit insurance of B.M.P. no longer grants the credit for delivery of the goods

In such cases B.M.P. may demand advance payment subsequent to giving an appropriate grace period of at least 5 working days or demand provision of a bank guarantee in cooperation with B.M.P. If the grace period should expire without result, B.M.P. shall be entitled to withdraw from the contract or from the part of the contract which has not yet been fulfilled, without any obligation to indemnify. In this case, all claims by B.M.P. companies against the Purchaser shall be due payable without delay.

##### **4.4**

If the Purchaser should fail to comply with the demand for advance payment, justified according to Clause 4.3, within 5 working days, the Vendor shall be entitled to refuse fulfilment of contracts not yet performed and, in addition, to claim for damages in the case of withdrawal.

##### **4.5**

The B.M.P. company, which is concluding this contract, shall be entitled, even without permission of or notification to the Purchaser, to assign all contractual rights and obligations to another company of the B.M.P. Group (s. Clause 1.1) and to transfer all contractual payment claims to another company of the B.M.P. Group or to a third party.

#### **4.6**

The acceptance of and the request for the agreed delivery are a fundamental primary obligation of the Purchaser.

### **5. Right of retention and assignment of claims**

#### **5.1**

The delivered goods shall remain, as goods subject to the right of retention, the property of the Vendor until complete settlement of the purchase price demands, as well as future demands, demands not yet due or contingent demands resulting from mutual trading relations, including any possible claims from bills of exchange.

#### **5.2**

The processing or treatment of goods subject to the right of retention shall be performed at all times on behalf of the Vendor, without any liabilities thereby accruing for the Vendor, who shall gain title to the newly-created item. If goods subject to the right of retention are processed, treated, blended, mixed or compounded with other items that are not the property of the Vendor, the Vendor shall be entitled to co-ownership of the new items in the ratio of the invoice value of the goods subject to the right of retention to the other goods at the time of processing, treatment, etc. The Purchaser shall transfer to the Vendor, here and now, his co-ownership rights within the meaning of the preceding sentence up to the amount of the invoice value of the goods subject to the right of retention. The new goods shall be retained free of charge by the Purchaser for the Vendor. The goods which subsequently come under the co-ownership of B.M.P., shall apply as goods subject to the right of retention pursuant to Clause 5.1.

#### **5.3**

The Purchaser shall be entitled, subject to Clause 5.7 – as long as he is not in default – to sell the goods subject to the right of retention within the scope of the proper course of business retaining the right of retention; however, he shall be prohibited from transferring title to the goods or from pledging them. The Purchaser hereby assigns to the Vendor all claims entitled to him from any resale of the goods subject to the right of retention or to any such goods arising from their processing, treatment, blending, mixing, or compounding in accordance with Clause 5.2. This shall also apply in cases where goods are sold for a total price together with other goods that are not the property of the Vendor. If, due to statutory obligations, a third party has acquired ownership or co-ownership rights to the goods as a result of processing, treatment, blending, mixing, or compounding, the Purchaser shall assign to the Vendor, here and now, in advance, the claims due to him from the third party. Assignments within the meaning of this paragraph shall always be limited to the amount of the invoice value of the goods subject to the right of retention. The same shall apply to any other claims that take the place of the goods subject to the right of retention, e.g. insurance claims or claims in tort. The Purchaser shall be entitled, until revoked by the Vendor, to call in the assigned claims. Revocation of authorisation to call in claims shall only be admissible in the event of enforcement. If the Purchaser should defer the purchase price to his customer, he must reserve right of ownership over his customer to the goods subject to the right of retention under the same conditions reserved by B.M.P. when the goods subject to the right of retention were delivered.

#### **5.4**

The value of the goods subject to the right of retention within the meaning of the above paragraphs shall always to be considered as the price the Vendor has charged the Purchaser for the goods (invoice value).

#### **5.5**

If so demanded by the Purchaser, the Vendor shall be obliged to release his securities as it chooses and in as far as their value exceeds the secured demands by more than 10%.

## **5.6**

If cooperation of the Purchaser should be required for the right of retention to take effect, as in the case of registrations required by the law of the Purchaser's country, the Purchaser must take immediate action accordingly. This is a fundamental contractual obligation.

## **5.7**

If the Purchaser should be in arrears with payment, the Vendor may prohibit him from selling or removing the goods subject to the right of retention or from processing, treating, compounding, blending or mixing such goods with other goods, and may demand that the Purchaser hand over the goods subject to the right of retention or the goods subject to the right of retention that have been processed and treated. The Purchaser shall be required to give immediate notification of seizures by third parties of goods to which the Vendor has rights under the above provisions. The same shall apply with regard to claims which have been assigned according to the above paragraphs. Costs of intervention of any kind shall be borne and reimbursed by the Purchaser. Furthermore, the Purchaser shall provide immediate notification of the ownership of B.M.P. to third parties who have seized the goods subject to the right of retention by way of pledge. In the event that the third party should be unable to reimburse B.M.P., the judicial or out of court costs within this context, the Purchaser shall assume liability in this respect.

## **5.8**

In the event of conduct on the part of the Purchaser in contravention of this contract, in particular payment arrears, the Vendor, after granting an appropriate grace period, shall be entitled to take back the sold goods.

## **5.9**

The assertion of a right of retention, in particular a demand for the return of the goods, shall constitute withdrawal from the contract. The Vendor shall also be entitled, regardless of withdrawal, to claim damages according to the general provisions.

## **6. Guarantee/Complaints/Risk assumption**

### **6.1**

The consignee shall be obliged to examine the goods carefully before acceptance/acknowledgement. Inspection of the goods must be carried out immediately following delivery at the agreed place of delivery wherever possible and reasonable. The findings of the respective haulage operators shall supply refutable proof of the assessment of quantity, even for the relationship of the parties among one another.

Prior to the start of processing, the consignee/Purchaser must clarify whether the delivered goods are suited for their intended purposes, in particular further processing. With the commencement of treatment, processing, mixing, or compounding of the goods together with other items, the delivered goods shall be deemed as approved by the Purchaser under the contract. Subsequent claims for damages shall be excluded. This shall apply correspondingly in the event of goods being forwarded from their original destination.

### **6.2**

Insofar as defects cannot be established by a commercial or sensory inspection, the Vendor shall take representative samples and/or commission an authorised expert to conduct an urgent examination.

#### **6.3.1**

The Purchaser shall make his objections known to the Vendor without delay, insofar as deficiencies or deviations could be established without an authorised expert, within 3 working days at the latest in the case of German domestic business, and within 8 working days at the latest after delivery or clearance at the agreed destination in the case of international business. Should it be necessary to enlist the services of an authorised expert, the samples must be supplied to the authorised expert within 3 working days after delivery in the case of German domestic trade, and within 8 working days after delivery in the case of international trade. Complaints must be made within 3 working days at the latest after receipt of the inspection results by the Purchaser and within 3

weeks at the latest following arrival of the goods at their contractual destination, insofar as the inspection period of the authorised expert did not need to be extended.

### **6.3.2**

Notice of deficiencies shall be invalid unless made in writing, by telefax or e-mail with an exact description of the individual defects which are the subject of the complaint. The rejected goods must be retained in their shipping containers at the place of delivery, to enable B.M.P. to examine the legitimacy of the claims.

### **6.4**

Guarantee and damage claims against the Vendor shall be excluded in the case of recognisable deficiencies or those established by an authorised expert, if the Purchaser, prior to the determination of the assessment of damages or deficiencies by the Vendor (with the exception of taking samples for the purposes of inspection), has handled all or part of the goods supplied, removed the goods from the place of inspection, or processed, handled or otherwise modified or forwarded them.

### **6.5**

The Purchaser shall be obliged to make claims against the respective haulage operator by ensuring timely entry of the complaints in the transport documents or to submit the complaints in writing by some other means, as well as, if possible, having these confirmed by the driver. In the event of culpable breaches of these obligations or failure to present the documents concerning the complaint against the haulage operator to the Vendor within 2 weeks after being demanded to do so, the claims of the Purchaser based on the specific complaint shall be forfeited.

### **6.6**

If payment against documents has been agreed, the assertion of complaints shall not entitle the Purchaser to refuse or to delay acceptance of the documents or payment of the purchase price.

### **6.7**

If a deficiency is discovered, the Vendor shall be entitled to choose the form of supplementary performance either in the form of a replacement delivery or rectification of the deficiency. In both cases the Vendor shall be obliged to bear all necessary expenses, in particular transport and return shipment costs as well as road, labour and material costs, provided these are not increased by the purchased item being taken to a place other than the place of performance.

In the event of failure of 2 or more attempts to effect replacement delivery or supplementary performance, or if the Vendor should unreasonably delay execution of replacement delivery or rectification, the Purchaser shall be entitled to his general legal rights, without a further grace period having to be set. In the case of a correct replacement delivery, claims for damages shall be excluded, insofar as these do not concern the costs incurred by the Purchaser in connection with return shipment or supplementary performance.

## **7. Clarification and limitation of liability, limitation period**

### **7.1**

The reasons for and the scope of claimed damages arising out of or in connection with the contract of sale, shall be based on the statutory provisions, if

a) they are based on a wilful or negligent breach of contract on the part of the company's management or its senior executives; in the case of non-intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage;

b) the Vendor can be accused of the violation of fundamental contractual obligations; in this event, the liability for damages shall be limited to the foreseeable, typically occurring damage;

c) the Vendor has given a special guarantee or in the event of fraudulent assurance of quality or fraudulent withholding of information, or

d) the claims are based on mandatory legal provisions, in particular the Product Liability Law or the principles of Entrepreneur's Recourse (§ 478 German Civil Code).

Otherwise liability for damages of the Vendor and his agents, in particular for his and their employees, shall be dependent on blame and excluded in the case of slightly negligent violation or liability unrelated to blame.

## **7.2**

Insofar as the Vendor should be liable, the liability, with the exception of liability in accordance with 7.1 (b), in all cases of gross and slight negligence, shall be limited to the damage that, considering the circumstances that he recognised or should have recognised, could have been typically foreseen as a result of the breach of contract, up to the maximum amount of the purchase price agreed with B.M.P. In the event of damages resulting from delays, liability of B.M.P. shall be limited to 5% of the agreed purchase price.

Liability for indirect damages and subsequent damages, in particular loss of profit, shall be excluded except in the case of intention.

## **7.3**

Guarantee and/or damage claims against the Vendor, arising from or in connection with the concluded contract, shall be subject to a maximum statutory limitation period of one year following complete/partial delivery of the goods to the Purchaser. This shall not apply to claims based on injury to life, the body, health or freedom and under the proviso of Clauses 7.1 (a), (c) and (d). If the goods should fail to be accepted immediately after release or other notification of possibility to take delivery, the statutory period of limitation shall begin on the date of receipt of the notification to the Purchaser.

## **8. Data privacy**

Within the scope of business relations, B.M.P. stores personal data of the customer. Storage, however, is limited to data required for business purposes.

B.M.P. is entitled to record, store, use and process data and information about the customer as well as to pass this information on to third parties, insofar as this is necessary for the fulfilment of the contract or the safeguarding of justified interests of B.M.P. and provided it is not in conflict with the legitimate interests of the customer. B.M.P. is entitled to pass this data on for the purposes of debt collection or debtor management. If requested, we will provide information on the stored data at any time.

## **9. Compliance**

The customer is obliged to observe the valid laws, regulations and directives as well as all other anti-bribery and corruption regulations including the relevant legislation of the USA and Great Britain (FCPA and UK Bribery Act). The customer must also refrain from activities involving the offer, promotion, promise, approval, giving or receipt of unlawful payments or other advantages which constitute an offence according to the aforementioned regulations. The customer undertakes to inform B.M.P. without delay of any circumstances which may represent an infringement of the aforementioned provisions.

Any violation of this clause represents a fundamental breach of contract, which entitles B.M.P. to terminate the contract without notice. B.M.P. will not be liable for claims, losses or damage incurred by the customer as a result of failure to comply with these provisions. The customer is obliged to indemnify and hold harmless B.M.P. from all claims, losses or damage resulting from the violation of this clause.



## **10. Place of performance, choice of law, court of jurisdiction**

### **10.1**

Place of performance for the delivery shall be the agreed place of delivery or loading, or unless otherwise agreed, the depot specified by the Vendor: Norderstedt and, for payment of the purchase price, Hamburg.

### **10.2**

The currently valid law of the Federal Republic of Germany shall apply. The law concerning the United Nations Convention on Contracts for the International Sale of Goods (CISG), dated 11 April 1980, or other laws possibly superseding it, shall be excluded.

### **10.3**

All disputes arising out of or in connection with this contract including such as affect the validity or conclusion of the contract, shall be subject to the jurisdiction of the ordinary courts in Hamburg. The Vendor shall also be entitled to bring legal action against the Purchaser at the place of his registered office.