

General Terms and Conditions for – Business Abroad of bioactiva diagnostica GmbH, Bad Homburg/Germany

1. General

- a) Our Terms and Conditions shall apply to all our deliveries and services, as well as to information and advice provided.
- b) Our Terms and Conditions shall apply exclusively; we will not recognize terms and conditions of the customer that conflict with or deviate from our Terms and Conditions, unless we have given express written consent to their effectiveness. Our Terms and Conditions shall apply even in the event that we perform delivery to any customer without reservation although we are aware of customer conditions that conflict with or deviate from our Terms and Conditions.
- c) All the agreements made between us and the customer for the performance of this contract have been set forth in writing in this contract.
- d) Our Terms and Conditions shall also apply to any future business with the customer.
- e) *Our Terms and Conditions shall only apply to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), provided the contract forms part of the operations conducted by the enterprise, as well as to legal entities under public law and to special public funds within the meaning of BGB Section 310(1).*

2. Offers

- a) Our offers shall be non-binding, unless they have been expressly designated as binding or fixed offers. Our silence in regard to any customer offer sent to us on the basis of a non-binding offer from us shall not be construed as acceptance of the customer's offer.
- b) Our leaflets and price lists shall be for information only. The data contained therein shall not constitute any assurance as to specific characteristics and / or prices and shall be non-binding.
- c) We reserve absolute property rights and copyrights with respect to the exploitation of cost estimates, drawings and other records. Such records shall only be made accessible to any third party if we have given our prior consent. Although due care has been used in the development of the technical data contained therein (including weights and dimensions), such data are subject to error. The same shall apply to any information provided in our marketing records. Such information shall not be construed as a warranty assurance; for any warranty assurance to be applicable, our explicit confirmation shall be required.
- d) The customer's order shall be a binding offer. We shall be entitled to accept such offer within two weeks by sending an order confirmation note or to ship the ordered delivery item to the customer within the announced delivery period. Announced delivery periods are always expected times and non fixed date.
- e) We shall only be required to check our incoming e-mails once a workday. Any email received by us between 9 a.m. and 5 p.m. shall be deemed received at 5 p.m., unless it can be demonstrated that we received it earlier. Any e-mail received outside of these hours shall be deemed received at 5 p.m. on the following workday, unless earlier receipt can be demonstrated. The obligations under *BGB Section 312 e (1) Nos. 1 to 3* shall be deemed eliminated by agreement.
- f) Any samples and specimens shall be non-binding samples for inspection. Any purchase based on samples and / or specimens shall be subject to standard industry or normal production deviations. No guarantee as to properties and durability shall be implied as a result of the delivery of samples and / or specimen, unless such guarantee is expressly specified in the order confirmation note.
- g) Samples and specimens shall be returned in perfect condition within four weeks at the latest. If they are not returned within such period, we shall be entitled to charge, for the sample, the purchase price specified in the current price list or according to a submitted offer.

3. Prices

- a) Unless otherwise agreed upon, prices shall be ex works at Bad Homburg. They shall be based on the costs incurred at the time when the contract is entered into. Should the delivery period exceed four months, we reserve the right to adjust our prices to any cost increases or cost reductions occurring after the conclusion of the contract – even if they come into effect retroactively – notably due to collective agreements or changes in material prices; this shall also apply to changes in cost prices caused by exchange rate fluctuations. Proof of such changes shall be furnished to the customer upon request.
- b) The minimum order value shall be € 250. In consideration of the effort required to handle very small orders, we shall be entitled to invoice a net total of € 35 whenever orders fall below the minimum order value.
- c) Our prices do not include statutory value-added tax; it will be shown separately on the Proforma or invoice on the date of invoicing in its legal amount.
- d) For any cash discount to be deducted, specific written agreement shall be required.
- e) Unless otherwise provided for in the order confirmation note, the purchase price shall be payable net (without deductions) within 14 days of the date of invoicing. This conditions is valid only for orders within Germany, for orders abroad, the payment conditions in our Proforma or order confirmation are applicable. The statutory rules governing the consequences of a delay in payment shall apply.
- f) A monthly service charge of 1.0% will be added to all past due balances.
- g) Payments shall be made in agreed currency, free of postage and charges. Payments shall be made by bank transfer only; payment by bill of exchange or by check shall not be recognized as performance of the obligation to pay. The timeliness of payment shall be judged on the basis of the date on which the money is credited to our bank account. You have performed your obligation to pay if we can use, without any restriction, the amount invoiced and if there are no more restitution reservations. The Parties may agree that the Purchaser shall open an irrevocable documentary credit through his bank or any other bank acceptable to the Seller. In such a particular case, the credit shall be opened in accordance with the General Customs and Practice for Documentary Credits, as applicable, which currently is the *Revision 2007 of ICC Publication No. 600*.
- h) The customer shall only be entitled to offset claims against counterclaims if his counterclaims are final and absolute, are undisputed or have been acknowledged by us. Moreover, he shall be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- i) Should financial circumstances deteriorate significantly after the conclusion of the sales contract or should we subsequently learn that they are considerably worse than we had assumed, we shall be entitled to make delivery contingent on prior performance of all the customer's payment obligations, including those arising from other deliveries made by us. In the event that delivery has already been effected, we shall be entitled to reclaim and hold back the goods until all the payment obligations of the customer and to third parties have been fulfilled. Claims in regard to which bills of exchange carrying later expiry dates were issued shall be immediately due as well. The provisions set forth in this paragraph

shall also apply if we have taken bills of exchange on deposit and when unfavorable information about the drawee's or drawer's financial situation is brought to our attention.

4. Dispatch, Transport and Insurance

- a) Unless otherwise provided for in the order confirmation note, „ex works“ delivery shall be deemed agreed.
- b) We shall determine the type and mode of transport and the carrier at our own discretion. Transport within Germany shall be free of charge, provided the gross value of the shipment amounts to € 1000 or more. However, a flat rate of € 50, at least, per package shall be charged for deliveries on dry ice within Germany. The cost of transport outside of Germany and in the event of any gross order value of less than € 1000 shall be determined on a case-by-case basis and shall be invoiced to the customer.
- c) Goods shall be transported at the customer's risk. Even if we choose the means of transport, carrier and / or route, the goods shall travel at the customer's own risk, to the exclusion of any liability whatsoever on our part.
- d) If so requested by the customer, we shall take out transport insurance cover for the shipment, with the customer bearing any costs incurred as a result of that.
- e) The purchaser shall be entitled to instruct his own forwarder to pick up the goods. But in this case costs, e.g. Export documents at shipping abroad, must be carried out by the purchaser.

5. Delivery Dates

- a) Unless otherwise expressly agreed upon, any delivery and performance dates shall only be deemed approximations and shall not be binding on us.
- b) Extraordinary situations-such as strike, cessation of operations, cutbacks in operations, disruptions in operations, import and export bans, difficulties in respect to our suppliers, as well as any other event and circumstance unforeseeable to us –which interfere with or prevent, directly or indirectly, delivery or performance, shall relieve us from our obligation to perform for the duration and to the extent of any resultant operational and dispatch disruptions, without giving the customer the right to assert any claim for damages therefrom.
- c) If we fail to meet an agreed binding delivery date, the customer shall be entitled to withdraw from the contract after a reasonable additional period of time to be set by him in writing has produced no result. The customer shall only be entitled to damages if we are at fault and if such additional period has elapsed and produced no result; in the event of minor negligence, damages for each full week of delay shall be limited to 0.5 % of the purchase price of any product that cannot be used because of late delivery, with total damages not exceeding 3 %, however.
- d) Should the customer's failure to perform any act incumbent upon him result in any delay with regard to receipt or acceptance – for instance, in connection with orders or preparatory work or acceptance of the object of purchase or in any other way – the agreed purchase price or the outstanding balance of the purchase price shall be due after a reasonable grace period. Moreover, this shall not affect *BGB Sections 300 to 304* and any claim for further damages that may exist in addition to that. Any interim storage of the object of purchase effected at our discretion shall be at the customer's expense and risk.

6. Reservation of Title

- a) We shall retain title to the goods supplied by us until payment has been made of any and all of the claims arising for whatever reason, particularly, without limitation, from any previous mutual business. In the event of continuous settlement, the title reserved shall be deemed a security for our balance receivables. We shall have the right to determine to which parts of total liabilities the customer's payments on account are to be credited.
- b) If the goods delivered are combined with other movable objects in such a way that such goods are to be considered essential components of the new objects, the customer shall, already now, assign to us proportional co-ownership of the new objects. The customer shall exercise ownership of the new objects on our behalf.
- c) Unless the customer is in arrears in his payments of the purchase price, he may resell the delivery item in the ordinary course of business against cash payment or payment by bills of exchange, subject to reservation of title. While the reserved goods are with the customer, he shall keep them in custody for us, exercising the diligence of a prudent businessman. The customer shall hereby assign to us any rights and claims, including any ancillary rights, accruing to him from such resale or any other cause in law relating to the reserved goods – including those resulting from damages or insurance benefits – in the amount of the total claims we hold against him at the time of such resale.
- d) If the customer sells reserved goods together with other goods, he shall hereby assign, in full, the claims accruing from the resale of the reserved goods; in the event of any prior processing or treatment or mixing of such goods with goods we do not own, he shall assign to us the value of the reserved goods processed. If such sale is effected at a total price, the customer shall hereby assign to us his purchase price claim in the amount equivalent to the value of the reserved goods being the subject matter of the sales contract.
- e) If we so request, the customer shall notify the third-party debtor of such assignment to us, indicating the value of our claim. The customer shall be obliged to provide to us any information and records that may be required for the assertion of our rights. In the event that the value of the claims assigned to us exceeds our total outstanding claim against the customer by more than 10 %, we shall be obliged – with the right to choose – to reassign such excess portion if the customer so requests.
- f) The pledging, security transfer and security assignment of our reserved goods and of any rights we are entitled to, as well as any other dispositions by the customer adversely affecting any other rights we have shall be prohibited. The customer shall advise us promptly of any third-party act affecting any reserved goods, claims assigned to us or the rights constituted in the paragraphs above and transmit to us any record that may be required for intervening. Any cost incurred in connection with such intervention by us shall be borne by the customer.
- g) The assertion of the reservation of title and the taking back of reserved goods by us shall not be deemed a withdrawal from the contract, but as steps to secure our claims.

General Terms and Conditions for – Business Abroad of bioactiva diagnostica GmbH, Bad Homburg/Germany

7. Use of Our Products

- a) Unless expressly stated otherwise, our products may be used for research purposes and professional use through physicians only.
- b) Use of our products, notably in diagnostics or for commercial purposes, may affect third-party property rights.

8. Liability for Defects

- a) If our performance exhibits a defect in material or title (hereinafter referred to as „defect“) before the shelf life limit is reached, whose cause already existed at the passage of risk, the customer shall be entitled to subsequent performance, which, at our option, may take the form of rectification or replacement, with the proviso that we shall always be entitled to two rectification attempts.
- b) Whenever a defect is remedied, we shall be obliged to bear all the expenses required for remedying the defect, notably transport costs, travel expenses, labor and material costs, provided such expenditure is not increased as a result of the fact that the purchased item was shipped to a location other than the place of performance.
- c) Whatever the case, a prerequisite for our liability for defects shall be that the customer carefully examined the goods delivered for completeness and propriety immediately after their arrival at his location, even if samples or specimens had been sent previously. Defects shall be reported in writing immediately, with the proviso that such notification shall not be sent later than eight workdays after receipt of the delivery item at the destination, or – if such defects were not detectable through a proper examination – within seven workdays following their detection.
- d) The following shall apply to transport damage: When it comes to defects detectable upon delivery, including defects in quantity and weight detectable upon delivery, we shall only be liable if the customer raises complaints to the carrier about such defects upon receipt of the goods and if the customer has the carrier acknowledge such complaint in writing and notifies us of such complaint in writing without delay. In the event that damage is detected after delivery, a definite prerequisite for our liability shall be that the customer reports the complaint to the carrier in writing immediately after detecting the damage – but not later than 14 days after taking delivery – and advises us of such complaint in writing without delay. If damaged goods arrive late, we shall be liable only if the carrier is notified within 7 days after the goods have been made available to the customer. In such a case, we shall also be advised of the complaint in writing without delay. Complaints shall contain a description of the defects, which shall be as detailed as possible.
- e) In the event of complaints, payments by customers may only be withheld to an extent which is in reasonable proportion to the expected defect removal costs. Again, such retention shall be permissible only if the customer's claims are undisputed or final and absolute. Whenever such complaint is unjustified, we shall be entitled to ask the customer to reimburse us for the expenses incurred.
- f) In the event of any complaint, the purchaser shall not be entitled to effect any changes or rework at our costs without our consent. Parts under complaint shall become our property. Liability for rectifications made or replacement parts delivered shall only extend to the date on which claims arising from defects for the original delivery become statute-barred. The provisions governing reservation of title shall also apply to subsequent deliveries.
- g) If rectification or subsequent delivery fails (e.g., because it is impossible, is unsuccessful twice or fails to succeed within a reasonable period of time), the purchaser may demand an annulment of the contract.
- h) Claims arising from defects shall elapse after 12 months commencing on the date of delivery.

9. Claims for Damages and Compensation for Expenses

- a) We shall be liable under the applicable law if the customer claims damages for willful intent or gross negligence, including willful intent and gross negligence committed by our representatives or vicarious agents. Insofar as we are not blamed for any willful breach of contract, liability for damages shall be limited to foreseeable, typical damage.
- b) We shall be liable under the applicable law if we breach a material contractual obligation in a culpable way, with damage liability being limited in such a case to the foreseeable, typical damage. Material contractual obligations are those obligations that must be fulfilled to make proper execution of the contract possible and on whose fulfillment the contracting parties can regularly rely.
- c) The liability for any culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.
- d) Any further liability shall be excluded, irrespective of the legal nature of the claim asserted. In particular, this shall apply to claims for liability culpa in contrahendo, to any other breach of duty or to claims in tort for compensation in the event of property damage *under BGB Section 823* and for damage not caused to the delivery item itself, such as loss of profit and other property damage sustained by the customer.
- e) Any claims by the customer for damages arising from the application and interpretation of analytical results obtained through the use of our products shall be excluded.
- f) The limit defined under Paragraph (e) shall also apply if the customer demands compensation for useless expenses instead of compensation for the damage. Furthermore, the customer's claims shall be limited to the amount of the interest he holds in the performance of the contract.
- g) If liability for damages towards us is excluded or limited, such limitation shall also apply with respect to the personal liability for damages of our employees, workforce, staff, representatives and vicarious agents.

10. Place of Performance, Place of Jurisdiction and Governing Law

- a) The place of performance for delivery and payment shall be Bad Homburg..
- b) The contract shall be governed by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISC) and the rules of private international law shall not apply.
- c) In the event of any dispute arising out of or in connection with the present contract, we shall be entitled to choose between recourse to general courts of law and to arbitral tribunals. Should any claim be asserted against us as a result of any dispute arising out of or in connection with the present contract, we shall be obligated to exercise our option within a reasonable period of time prior to the start of legal proceedings if the other Party so requests in due course. Only in the event of a refusal to choose or a late choice do we waive the defense of arbitral jurisdiction already now.
- d) If recourse to arbitration proceedings is chosen, the following shall apply: Any disputes arising out of or in connection with this contract or its validity shall be finally decided

pursuant to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) in force on the date when the contract is concluded and without recourse to the ordinary courts of law. The arbitral tribunal shall be composed of three arbitrators.

The place of arbitration shall be our place of business. The procedural law of this place shall be applied if the Rules of DIS do not provide for any relevant regulations. The language of the arbitral procedure shall be German. The substantive law of the Federal Republic of Germany shall apply without reference to any other law. The application of the United Nations Convention on the International Sale of Goods – U.N. Sales Convention (CISC) – and the reference regulations of the private international law shall be excluded.

The reasons for the arbitration award shall be given in writing. The court of arbitration shall also decide on the costs of the proceedings and Parties necessarily incurred expenses.

- e) If recourse to general courts of law is chosen, the following shall apply: The place of jurisdiction shall be our place of business. However, we shall also be entitled to sue the customer at any other legal venue.
- f) If individual provisions of the above Terms and Conditions are or become invalid, the validity of the remaining provisions and of the contract shall not be affected thereby in any way. The contracting Parties shall then implement the contract with a valid substitute provision, which shall be as close as possible to the economic purpose intended by the eliminated provision

bioactiva diagnostica GmbH
 Louisenstr. 137
 61348 Bad Homburg
 Germany
 Tel.: +49 6172 17102-0
 Fax: +49 6172 1710229
 Email: bioactiva@bioactiva.de
 web: www.bioactiva.de