

## General Conditions of Sale

### **1. Generally**

- 1.1 No variation from these General Conditions of Sale, especially the acceptance of conditions of purchase of Purchaser, shall be valid for us unless and until we confirm this expressly in writing.
- 1.2 All our quotations are made without any legal obligation. Orders are valid only if confirmed by us in writing or if recognized by us through the act delivery. Unless confirmed in writing, any additional verbal agreements are null and void.

### **2. Default**

- 2.1 Unless otherwise agreed, any dates quoted for delivery are approximate only.
- 2.2 Our obligation for damage caused by default is strictly limited to the invoice value of the defaulting products. In case of slight negligence we shall be liable only in case we have violated essential contractual obligations.
- 2.3 If normal unloading times are exceeded, we reserve the right to invoice the Purchaser for any costs and hire charges we have to pay, due to a delay in the return of loading equipment, rental tanks and tank or bulk wagons.

### **3. Prices**

- 3.1 Unless otherwise expressly agreed, prices are quoted „ex works“, excluding packaging.
- 3.2 The prices valid on the day of dispatch shall apply. Should the later be higher than the contractual price, the Purchaser is entitled to cancel the contract with regard to the quantities still to be delivered. Cancellation shall be made within 14 days after notification of said price increase.
- 3.3 The prices are quoted without V.A.T. (value added tax).

### **4. Force Majeure**

- 4.1 Force Majeure comprises all circumstances and occurrences that are beyond the control of the contracting parties, despite all due managerial diligence. Said circumstances and occurrences shall suspend the contractual obligations of each party for the period of the disturbance and to the extent of its effects. Should the delays caused exceed a period of 6 weeks, both parties shall be entitled to rescind the contract, with respect to the contractual performance effected by such delays. No other claims exist.

### **5. Payment**

- 5.1 Our invoices shall be due and payable within 30 days as from the invoice date, without any deduction. Payment shall be in Euro (€) to our bank account listed overleaf.
- 5.2 If a due date of payment has been exceeded, interest for default shall be due and payable at the usual debit interest rates, and be at least 3 % of the current discount rate of the Central European Bank. We reserve the right to claim further damages.
- 5.3 Should Purchaser be in arrears with payment or should there be reasonable doubts as to Purchaser's solvency or credit rating, we are – without prejudice to our other rights - entitled to require payment in advance for deliveries not yet affected, and to require immediate payment of all our claims arising from the business relation.
- 5.4 Only uncontested or legally proved claims shall entitle the Purchaser to compensation or retention.

### **6. Quality**

- 6.1 All our data, especially data relating to product suitability, processing and use, as well as to technical support, have been compiled to the best of our knowledge. The buyer, however must still perform his own inspections and preliminary trials.
- 6.2 The Purchaser undertakes to examine the goods immediately after delivery with respect to any defects concerning quality and suitability of purpose. Production tests should also be performed if feasible. Failure to proceed in aforesaid manner shall result in the goods being regarded as accepted.

- 6.3 Complaints must be made within 8 days after receipt of the goods. In case of hidden faults, however, complaints are to be made immediately on discovery, or within 6 months after receipt, at the very latest. Said claims shall only be taken into consideration if and when made in writing and with the relevant documentation attached.

- 6.4 Any goods claimed as defective shall be returned only upon our express consent.

- 6.5 The properties of the goods shall only be deemed guaranteed if such guarantee has been given by us expressly in writing.

### **7. Damages**

Our obligation to payment of damages, whatever legal reason for, shall be limited to the value of the goods directly having caused those damages. This does not apply where, due to compulsory statutory legislation, we are liable for willfulness or gross negligence respectively have expressly guaranteed any properties of the goods in writing and where, due to compulsory statutory provisions of the German Produkthaftungsgesetz (Product Liability Act), we are liable.

### **8. Reservation of Ownership**

- 8.1 The goods that have been sold remain the property of BorTec GmbH & Co. KG until all outstanding debts arising from the business connection with the Purchaser have been paid in full. The Purchaser has power of disposal of the purchased goods in the ordinary course of business, or he may use the goods in a manufacturing process until revocation by us.

- 8.2 Reservation of ownership and power of disposal, as laid down in clause 8.1, also apply to the full value of the manufactured goods produced by processing, mixing and blending or coming our goods. In each case we qualify as the manufacturer. In cases where goods of a third party are also processed, mixed and blended, or combined, and where ownership is likewise reserved, then we acquire ownership in proportion to the invoice value of those manufactured goods. If security rights of a third party are in fact or in law below that share, the difference will be to our benefit.

- 8.3 If the Purchaser resells our goods to third parties he hereby assigns the resulting payment claim to BorTec GmbH & Co. KG. However, the Purchaser shall be entitled to collect such payment claim on behalf of BorTec GmbH & Co. KG until BorTec GmbH & Co. KG revokes such right which shall be in the sole discretion of BorTec GmbH & Co. KG.

- 8.4 The Purchaser shall immediately give written notice to BorTec GmbH & Co. KG if any third party raises any claim with respect to such goods or claims which are owned by BorTec GmbH & Co. KG.

If BorTec GmbH & Co. KG enforces its rights resulting from this Agreement such enforcement shall not be deemed that BorTec GmbH & Co. KG will cancel any agreement or will waive any right which may rest with BorTec GmbH & Co. KG under any agreement.

- 8.5 If the value of the collateral exceeds our account receivable by more than 20 %, resp. 44% according to the new „Insolvenzordnung“ (German Insolvency Law), then we will release collateral on demand and at our discretion.

- 8.6 If the laws of the country in which the goods are located after delivery, do not permit the Vendor to retain the title to said goods, but allow the retention of other rights, similar in purpose, we hereby declare that we shall avail ourselves of such other rights. The Purchaser undertakes to assist us in the fulfillment of any formalities required for such purpose.

### **9. Place of Fulfillment and Jurisdiction**

- 9.1 The originating point of the goods shall, in each case, be the place of fulfillment for the delivery. Hürth shall be the place of fulfillment of payment.

- 9.2 All sales contracts shall be governed by the laws of the Federal Republic of Germany, the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The place of jurisdiction shall be Hürth.