

GENERAL TERMS AND CONDITIONS

of Berlin Heart GmbH, Wiesenweg 10, 12247 Berlin, Germany
Effective from May 25th, 2018

1. General, Scope of Application

- 1.1 The following General Terms and Conditions shall exclusively apply to the contractual relationship between Berlin Heart GmbH (hereinafter referred to as "Berlin Heart") and the client (hereinafter referred to as the "Client") regarding the product(s) ("Product(s)") or other service(s) (jointly also referred to as "Service(s)") ordered by the Client from Berlin Heart, provided that the Client is an entrepreneur in the sense of § 14 German Civil Code (BGB), a public law legal entity or a special fund under public law. An entrepreneur in the preceding sense means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of its trade, business or profession.
- 1.2 The Client's differing or additional terms and conditions shall not apply, unless Berlin Heart has expressly consented to their application beforehand. These General Terms and Conditions shall also apply if Berlin Heart unconditionally accepts the Client's order or unconditionally provides its Services to the Client being aware of the differing or additional terms and conditions.
- 1.3 These General Terms and Conditions shall also apply for all future transactions with the Client, even if they are not subject of a further separate agreement.

2. Conclusion of Contract

- 2.1 Unless otherwise specified, e.g. by a validity period, Berlin Heart's offers are non-binding. This shall also apply if Berlin Heart has provided the Client with catalogues, other product descriptions, drawings, photographs, illustrations, performance data, technical data, dimensions, weight or documents (including those in electronic form).
- 2.2 For non-binding offers (see Sect. 2.1) the Client's order shall represent the binding offer. Unless otherwise specified in the order, Berlin Heart shall be entitled to accept this offer within 30 days after reception by Berlin Heart.
- 2.3 The acceptance may either be made in text form (e.g. in writing, per e-mail or fax), by delivery of the Product to the Client or by provision of the Services.

3. Service and Delay

- 3.1 In general, the Services will be provided upon prior agreement with the Client. Unless otherwise specified, delivery and service dates are not binding.
- 3.2 If due to reasons Berlin Heart is not responsible for, Berlin Heart may not meet any binding delivery dates (non-availability of service), Berlin Heart shall immediately inform the Client thereof and, at the same time, notify the new delivery date. If the Service is not available during the new delivery time without Berlin Heart being responsible, Berlin Heart is entitled to withdraw from the contract partly or entirely. In this case, Berlin Heart will inform the Client immediately about the further non-availability and, as the case may be, about the withdrawal. Berlin Heart shall immediately re-deliver any equivalents delivered by the Client. Especially the non-delivery by one of Berlin Heart's suppliers shall be considered a case of non-availability of service, provided that Berlin Heart has concluded a matching cover transaction (binding, timely and sufficient order of the good) and if Berlin Heart is not responsible for the non-delivery of the good in any other way. The statutory

rights of withdrawal and termination and the statutory provisions on the winding up of the contract in the event of an exclusion of the duty of performance (e.g. impossibility or unreasonableness of performance and/or cure) shall remain unaffected.

- 3.3 The date of default in delivery is subject to statutory provisions. However, a warning by the Client is necessary in any case.
- 3.4 Subcontractors may be deployed by Berlin Heart at any time.
- 3.5 If after the conclusion of the contract and due to official or judicial order or change in legislation it is no longer possible for Berlin Heart to fulfill the contract or only under materially changed, in particular economically unreasonable circumstances, Berlin Heart is entitled to withdraw from the contract with a period of 14 days. As for the rest, the statutory provisions shall remain unaffected.

4. Delivery, Transfer of Risk, Examination, Default in Acceptance

- 4.1 The delivery shall be made ex works. Upon Client's request and costs and upon Berlin Heart's consent, the Product shall be delivered to another destination (sales shipment). Unless otherwise agreed upon, Berlin Heart may decide on the manner of shipment (in particular transport company, shipping route, packaging).
- 4.2 The risk of an accidental loss and an incidental deterioration of the Product pass over to the Client upon delivery at the latest. However, in the event of sales shipments, the risk of an accidental loss and an incidental deterioration of the Product as well as the risk of delay pass over with the delivery of the Product to the transport company, the forwarder, the carrier or another person or entity designated to execute the shipment.
- 4.3 If the delivered Product shows recognizable defects or missing items, the Client shall state these facts on the receipt voucher of the transport company upon delivery. The note shall distinctively indicate the defect or missing items (defect notification according to § 438 HGB – German Commercial Code).
- 4.4 If the Client is in delay in acceptance, fails to provide a duty of cooperation or if there is a delay in delivery due to other reasons the Client is responsible for, Berlin Heart may claim compensation for damages resulting thereof, including additional expenditures (e.g. storage costs).

5. Prices and Payment Conditions

- 5.1 Except as otherwise agreed upon in the individual case, the prices shall apply as valid at the time of the respective order, and that ex works, plus statutory VAT, if applicable. In the case of a sales shipment (Sect. 4.1) the Client shall be responsible for the transportation costs for a shipment ex works. Eventual customs, fees, taxes or other public charges shall be additionally borne by the Client.
- 5.2 Berlin Heart reserves the right to demand reasonable price adjustment in text form if subsequent to the contract's conclusion prices increase due to increase of prices by Berlin Heart's suppliers or due to currency fluctuations. Such a price adjustment shall only be valid if the Client has agreed to the demand of increase. If the Client does not grant its approval within one week after reception of the request for price adjustment also in text form, Berlin Heart is entitled to withdraw from the contract within a period of one further week.

- 5.3 The price shall be payable and paid within 30 days from reception of the invoice and provision of the Services. Subsequent to the conclusion of the contract Berlin Heart is entitled to demand an advance payment of the price. The advance payment shall be payable and paid with 30 days after the invoice's receipt.
- 5.4 During the period of delay the respectively applicable statutory interest rate on the price shall be paid. Berlin Heart retains the right to claim a further going compensation for damages due to delay. Towards merchants, Berlin Heart's right to claim the commercial maturity interest (§ 353 HGB) shall remain unaffected.
- 5.5 The Client is only entitled to set-off rights or rights of retention to the extent to which his claim is uncontested or has been finally adjudicated. For defects of the Product Sect. 8.7 shall remain unaffected.
- 5.6 If after the contract's conclusion it is perceptible that Berlin Heart's right to payment is endangered by the Client's lack of performance (e.g. by request to open insolvency proceedings), Berlin Heart may refuse performance and may withdraw from the contract (§ 321 BGB) – after reminder as the case may be – subject to the statutory provisions. Prior to the exercise of a right to withdrawal, Berlin Heart may also demand immediate payment of all claims issuing from the business relationship with the Client.

6. Retention of title

- 6.1 The delivered Product shall remain in Berlin Heart's property until full payment.
- 6.2 Until the transfer of ownership the Client shall handle the Product with care. Until this date the Client shall immediately inform Berlin Heart in the written form if the Product has been distrained or is subject of other interferences of any third parties. To the extent to which the third party is not able to compensate Berlin Heart's judicial and extrajudicial costs of a law suit according to § 771 ZPO (German Civil Procedure Code), the Client shall be liable for Berlin Heart's losses, except if the Client has shown all reasonable efforts to hinder the Product's distraint and has immediately informed Berlin Heart or is not responsible for the non-immediateness of the information.
- 6.3 The Client may sell the Product subject to retention of title in the normal course of business. Hereby, the Client assigns the receivables resulting from the selling of the Product subject to retention of title to Berlin Heart in the amount of the invoice's grand total (including VAT) agreed with Berlin Heart in regard of the respective Product. The Client shall remain entitled to collect the receivables even subsequent to this assignment. Berlin Heart's right to collect the receivables shall remain unaffected. However, Berlin Heart will not collect the receivables as long as the Client does not default in payment and in particular no application for opening insolvency procedures has been filed.
- 6.4 Berlin Heart shall release the securities provided upon the Client's request to the extent to which its value exceeds the receivables to be secured by more than 20%.

7. Client's Cooperation, Product Lifespan, Patient Data

- 7.1 The Client shall assure that any user familiarizes himself with the delivered manuals or instructions for use and complies with the respective instructions set forth therein.
- 7.2 The Client shall (i) familiarize himself with any product documents or information Berlin Heart provides under its product stewardship program, including training, (ii) follow safe handling, use, setting, storage, transportation and disposal practices, including special practices as the use of the Product requires it and instruct his staff members, contractors, agents, customers, patients and the care-

taking relatives in these practices and (iii) take appropriate measures to avoid ecologically harmful effects and all dangers to persons or property. The Product shall only be used in the intended and officially certified manner.

- 7.3 Berlin Heart may withdraw from the contract if the Client does not comply with the aforementioned duties within an adequately set deadline. Claims for damages against the Client shall remain unaffected.
- 7.4 Berlin Heart indicates that the respective product lifespan is specified in the manual. It begins with the delivery of the Product to the Client. Spare parts, accessories and individual components of the Products (e.g. pumps, cannulas, extra-corporal driving and control units, batteries, power supply units, and monitoring stations) will be stored and offered for purchase by Berlin Heart only for this product lifespan. The Client shall use the Product only for the product lifespan and, as the case may be, provide for a replacement and/or retrofitting in good time. The Client's warranty rights for defects shall remain unaffected.
- 7.5 The Client shall provide Berlin Heart with all documents being necessary or useful for the performance of the Services under this contract.
- 7.6 To provide patients with the best possible care, it may be necessary that the Client discloses personal data to Berlin Heart. In this case and in particular upon Berlin Heart's request, the Client shall seriously endeavor to procure the written consent of those patients who – by virtue of its purpose – come into contact with the Product (i) to the disclosure of their personal data and (ii) to the Client's release in this respect from differing statutory or contractual duties (in particular the duty to treat medical records confidential). In this case the Client shall explicitly inform the patients about which of the patients' data will be disclosed and for what purpose, as well as the fact that the data is disclosed to Berlin Heart. The Client shall ensure that the patients' written consent complies with all legal requirements. If a patient refuses to consent to the disclosure of his or her data to Berlin Heart, the Client shall inform Berlin Heart accordingly in an anonymous form.
- 7.7 Berlin Heart shall in any case pseudonymize patients' data it has received and process them subject to the consent and to the statutory provisions. Further details of the processing are included in the Privacy Policy published on the Berlin Heart website. The Client shall indicate that to the patient and provide the patient with any documents transmitted by Berlin Heart to this end.

8. Client's Claims for Defects

- 8.1 For purchase contracts and contracts for work, the Client's rights for defects as to quality and title (including wrong and short delivery as well as improper mounting or defective assembly instruction) shall be subject to statutory provisions, unless otherwise specified hereinafter.
- 8.2 Berlin Heart's responsibility for defects is based on the agreed specification for the Product (quality agreement). All product descriptions, being explicitly subject of the individual contract shall be considered as an agreement on the Product's quality. Berlin Heart shall not be responsible for public statements made by the manufacturer or any other third party (e.g. advertisements).
- 8.3 The Client's claims for defects presupposes that he has satisfied his statutory duties for examination and notification of non-conformity (§§ 377, 381 HGB) if he is a merchant. If the defect is revealed during the examination or later, the Client shall immediately inform Berlin Heart in the written form. The notification is immediate if Berlin Heart receives it within two weeks, whereby to comply with the time limit, dispatch on good time is sufficient.
- 8.4 Without prejudice to the preceding duty for examination and notification of non-conformity the Client shall, even if he is not a

- merchant subject to law, inform Berlin Heart about obvious defects (including wrong and short delivery) within two weeks after delivery in the written form, whereby again dispatch on good time is sufficient to meet the time limit.
- 8.5 A liability for defects is excluded in the event of (i) defects caused by negligence, improper use or storage, lack of care or accidents, (ii) housing openings, attempts to repair, repair, maintenance or modification of the Product, that have not been made by Berlin Heart or third parties explicitly authorized by Berlin Heart, (iii) an incorporation of third party products not released by Berlin Heart, (iv) use of spare parts or consumables not manufactured or released by Berlin Heart, (v) deployment of the Product by untrained users and (vi) non-compliance with maintenance intervals set forth in the manual or the instructions for use. This exclusion shall not apply if the Client provides evidence that the aforementioned actions have not caused or contributed to the defect.
- 8.6 If the delivered item is defective Berlin Heart may choose to cure by remedy of defect (remedy) or by delivery of a new item (replacement delivery). Berlin Heart's right to refuse the provision of the chosen kind of cure according to the statutory provisions shall remain unaffected.
- 8.7 Berlin Heart is entitled to make the due kind of cure contingent upon the Client's payment of the payable price. However, the Client may retain a part of the price being reasonable in relation to the defect.
- 8.8 The Client shall provide Berlin Heart with sufficient time and opportunity for the due kind of cure, especially to provide Berlin Heart with the objected Product for examination reasons. In the event of a replacement delivery the Client shall return the defective item to Berlin Heart subject to the statutory provisions.
- 8.9 Berlin Heart shall bear the expenditures required for the purpose of examination and cure, in particular transport, travel, work and materials costs if effectively a defect has occurred. If the Client's claim for remedy of defects turns out to be unjustified, Berlin Heart may claim compensation of the costs resulting thereof from the Client.
- 8.10 In the event of the cure's failure despite at least two attempts or of an unsuccessful expiry of a period for cure to be specified by the Client or being dispensable according to the statutory provisions, the Client may withdraw from the contract or reduce the purchase price. There shall be no right to withdraw in the event of a negligible defect.
- 8.11 Even if the statutory provisions are met, a self-remedy shall only be provided by third parties authorized by Berlin Heart, unless Berlin Heart fraudulently concealed the defect or has assumed a quality guarantee. However, as well in these cases the self-remedy shall be provided by sufficiently qualified or, where applicable, certified third parties.
- 8.12 The Client's claims for compensation of damages and for compensation of unsuccessful expenses are exclusively subject to Sect.8 and 10 and are excluded in all other respects.
- 8.13 With regard to industrial property rights, in particular patents, Berlin Heart shall ensure that in the production of the Product no industrial rights granted in the country of production shall be violated. The Client shall be solely responsible for the use of Product with a design, trade name or trademark he has requested. However, the Client has no right to demand such a labeling.
- 8.14 If the Client is entitled to damages in lieu of performance or to withdraw from the contract, he shall – upon Berlin Heart's request – declare within a reasonable time if and in which manner he will exercise these rights. If the Client does not declare himself within this period of time, he may only exercise these rights after fruitless expiration of an additional adequate grace period.
- ## 9. Prescription
- 9.1 The general prescription period for claims deriving from defects as to quality and title shall be one year.
- 9.2 If applicable, special statutory provisions for defects related to buildings (§§ 438 para. 1 No. 2, 634a para. 1 No. 2 BGB), to rights in rem (§ 438 Abs. 1 Nr. 1 BGB), to fraudulent intent (§§ 438, 634a Abs. 3 BGB) or to claims subject to supplier's recourse for final delivery to a consumer (§ 479 BGB) shall remain unaffected.
- 9.3 The preceding prescription periods shall also apply to the Client's contractual or non-contractual claims for compensation, relying on a Product's defect, unless the application of the general statutory prescription (§§ 195, 199 BGB) in the individual case would result in a shorter prescription period or if Sect. 10.1 is applicable.
- ## 10. Liability
- 10.1.1 Berlin Heart shall be liable without restriction according to the statutory provisions for the User's damages caused by Berlin Heart's intentional or gross negligent conduct or by its vicarious agents as well as for personal injury and for damages according to the German Product Liability Act.
- 10.1.2 As for the rest, Berlin Heart's liability for damage claims is restricted in accordance with the following provisions – irrespective of the legal grounds – unless a guarantee assumed by Berlin Heart provides otherwise.
- 10.1.3 Berlin Heart shall only be liable for slight negligence if the damages have been caused by the violation of a material contract obligation (cardinal duties). Cardinal duties are such contractual obligations whose performance is required for the proper implementation of the contract and upon whose compliance the Client could rely on. To the extent Berlin Heart is liable for slight negligence, its liability is restricted to the typically foreseeable damages.
- 10.1.4 Berlin Heart's liability for loss of data and/or programs caused by slight negligence is limited to the typical cost of restoration, which would have been incurred in case of regular and appropriate data backup by the Client.
- 10.1.5 Berlin Heart's liability for damages due to delay and resulting from slight negligence is restricted to the typically foreseeable damages.
- 10.2 The provisions of the above paragraphs apply correspondingly to the limitation of damages for unsuccessful expenses (§ 284 of the German Civil Code [BGB]).
- 10.3 The aforementioned liability restrictions shall also apply to Berlin Heart's vicarious agents.
- ## 11. Confidentiality
- 11.1 The Client shall treat as confidential all information (material and immaterial) provided by Berlin Heart and shall not disclose such information to any third party or publish it, shall only use such information for the execution of the contract and store the information at a place secured against the access of third parties. This shall not apply to information published by Berlin Heart or which is generally known without violation of duties under this contract or which the Client has received from a third party without any obligation to confidentiality or which the Client has independently developed.
- 11.2 This duty shall apply for a period of five (5) years after the contract's termination, respectively after receipt of the last confidential information, depending on which condition is fulfilled last.

- 11.3 The Client shall oblige any employees, representatives, agents, sub-contractors or other third party that are entrusted with the execution of this Agreement in the same manner.
- 11.4 Any further going confidentiality agreements concluded between the Parties shall remain unaffected.

12. Indemnification

- 12.1 The Client shall indemnify, defend and hold harmless Berlin Heart and its respective director(s) from and against any claims and expenses (including reasonable attorneys' fees) asserted by third parties against Berlin Heart and its respective director due or related to any alleged violation of third parties' rights or of this contract.
- 12.2 Berlin Heart may decide at its sole discretion whether to lead defense by itself or to let the Client overtake such defense on his own costs.

13. Final Provisions

- 13.1 The Client is not entitled to assign any rights under this contract without Berlin Heart's prior consent.

- 13.2 All of the Client's offers and orders as well as modifications or amendments of offers, orders and contracts as well as side agreements must be made in text form (§ 126b BGB, e.g. letter, fax and e-mail) to be effective. This also applies to the waiver of the above form requirement.
- 13.3 The contractual relationship between Berlin Heart and the Client and any claims arising out of or in connection with this contract is subject to German law excluding the United Nations Convention on the International Law of Sales (CISG). The place of performance is Berlin Heart's registered office.
- 13.4 The registered office of Berlin Heart shall be the venue for all current and future claims from a business relationship with merchants, public law legal entities or special public law funds if no other exclusive venue is set by law. The same venue applies if the Client does not have a domestic general venue, moves his residence or usual place of abode to another country during the term of the contract or his residence or general abode is unknown at the time a suit is filed. However, Berlin Heart may sue the Client at his general venue.