

GENERAL TERMS OF PURCHASE

Berlin Heart GmbH - Wiesenweg 10 -12247 Berlin - Germany

Effective from September 15, 2013

1. General, Scope of Application

- 1.1 The following General Terms of Purchase shall exclusively apply for the contractual relationship between Berlin Heart GmbH (hereinafter referred to as "Berlin Heart") and the supplier (hereinafter referred to as the "Supplier") regarding the products ("Product(s)") or other services (jointly also referred to as "Service(s)") ordered by Berlin Heart from the Supplier, provided that the Supplier is an entrepreneur in the sense of § 14 German Civil Code, public law legal entities 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. The application of additional conditions presented by Berlin Heart remains unaffected.
- 1.2 The Supplier's differing or additional terms and conditions shall not apply, unless Berlin Heart has expressly consented to their application beforehand. These General Terms of Purchase shall also apply if Berlin Heart unconditionally accepts the Supplier's order confirmation, invoices or deliveries or pays the remuneration being aware of the differing or additional terms and conditions. Berlin Heart may withdraw from the contract if the Supplier objects to these General Terms of Purchase.
- 1.3 These General Terms of Purchase shall also apply for all future transactions with the Supplier, even if they are not subject of a further separate agreement.

2. Contract Conclusion, Examination Duties, Change Requests

- 2.1 The Supplier shall be bound by his offer for a period of four weeks following its receipt of Berlin Heart, except if the circumstances of the individual case do not justify a longer period (e.g. if a broad examination of the offer is necessary) or if otherwise agreed by the Parties.
- 2.2 Orders shall only be binding for Berlin Heart if they have been confirmed by the Supplier in writing and unaltered. Any significant or insignificant deviations from the order and/or the associated documents shall be indicated to Berlin Heart and require Berlin Heart's prior explicit consent. The Supplier shall execute the order in strict accordance with its specification and wording as well as with the documents associated thereto. Berlin Heart reserves the right to revoke the order if it does not receive the aforementioned confirmation within ten (10) working days.
- 2.3 Prior to the production of the Products and/or the performance of its Services, the Supplier shall examine the data contained in the order text, in drawings and other documents provided to him for accuracy and functional feasibility with regard to the communicated use. In this respect, he shall inform Berlin Heart in text form without undue delay about any potential uncertainties and/or any modifications which the Supplier intends to make. The Supplier shall be responsible for any modifications he makes without Berlin Heart's prior consent. The same shall apply if the Supplier fails to notify Berlin Heart of any uncertainties.
- 2.4 Berlin Heart's consent to drawings, calculations and other documents shall have no effect on the responsibility of the Supplier for the agreed Services. This shall also apply to Berlin Heart's proposals, recommendations and other forms of cooperation.
- 2.5 In case of contracts for work and of service contracts Berlin Heart may request changes to the Services until their complete performance. The Supplier shall only be entitled to an additional remuneration if – due to the changed Services – he incurs additional costs. The Supplier shall immediately comment on the change request in a qualified manner and submit an offer that at

least includes traceable conclusions with regard to (i) existence of a change request, (ii) description of the functional changes from the Supplier's perspective, (iii) expected effects on the Services' specifications, works and agreed timetables, (iv) costs for the implementation of the change request, (v) suitable alternatives for the realization of the change request if the Supplier is not able to implement the change request. If Berlin Heart accepts the offer within 14 calendar days after its receipt, the contract shall be deemed amended. In any other case the offer shall be deemed declined and the contract shall continue with the originally agreed Services.

- 2.6 The Supplier may use sub-contractors only after Berlin Heart's prior consent that shall not be unreasonably withheld.

3. Prices, Payment Terms, Assignment

- 3.1 The price stated in the order shall be binding. Any reservations regarding price increases require Berlin Heart's explicit prior consent. The price shall include all expenses associated with the obligations to be rendered by the Supplier. Without prejudice to any differing provision, the price shall be understood without applicable VAT.
- 3.2 Unless otherwise agreed upon, the price shall include delivery to Berlin Heart's premises and standard commercial packaging. The obligation to return packaging requires an additional agreement.
- 3.3 Berlin Heart is only able to process invoices if they bear the order number shown in the order and if they comply with statutory provisions for proper invoices.
- 3.4 Berlin Heart pays accounts within 14 calendar days after the contractual Services have been fully rendered by the Supplier (for work performances not before acceptance) and reception of an invoice satisfying the conditions set forth in Sect. 3.3 with a 3% discount or within 30 calendar days without discount. Prior to the expiry of this period, invoices shall not become due.
- 3.5 Any of Berlin Heart's payments are subject to a reserve of any rights, in particular due to any defective delivery and/or performance. If the Supplier has been informed about defects and if they have not been cured within a reasonable period of time, Berlin Heart may withhold payment to a reasonable extent. Berlin Heart's statutory rights shall remain unaffected. In particular, Berlin Heart shall have the unrestricted right to offset or to assert rights of retention.
- 3.6 Claims against Berlin Heart may only be assigned with Berlin Heart's prior consent. This shall not apply to assignments associated with extended reservation of title. § 354a German Commercial Code shall remain unaffected. The Supplier may only set off undisputed or final and absolute counterclaims against claims of Berlin Heart.
- 3.7 Disputes on the amount of remuneration due to the Supplier do not entitle the latter to cease his obligations under the contract in whole or in part, not even on a temporary basis.

4. Delivery, Delay in Delivery

- 4.1 The delivery time stated in the order is binding. Early delivery and/or part deliveries require Berlin Heart's explicit prior consent.
- 4.2 The Supplier shall notify Berlin Heart without undue delay in writing if it becomes apparent that the stated delivery time cannot be met. This notification shall state the reasons for and the probable duration of the delay. If the Supplier fails to notify Berlin Heart, he may not refer to the obstruction even in the event of

force majeure, except if he is not responsible for the failure of notification.

- 4.3 In the event of a delay in delivery, Berlin Heart is entitled to demand a lump sum compensation for delay amounting to 0.5% of the order price per full week (but no more than a total of 5% thereof), unless the Supplier is not responsible for the delay. This shall not affect any further going statutory rights. In particular, Berlin Heart is entitled to withdraw from the contract in whole or in part if a reasonable period has elapsed without success and/or to demand compensation in lieu of performance whereas a paid lump sum compensation for delay shall be deducted.

5. Passage of Risk, Documents

- 5.1 The Supplier shall bear the risk of accidental loss and accidental deterioration until arrival of the Products at Berlin Heart or any other recipient identified by Berlin Heart.
- 5.2 Delivery notes shall always be sent together with the Product. The documents shall contain detailed order data. The costs due to incorrect or missing data shall be borne by the Supplier.
- 5.3 If Berlin Heart demands that the Supplier to provide material testing certificates, the Supplier shall send these certificates without any further request and at his own cost to Berlin Heart.

6. Warranty for Defects, Examination, Quality Control, Recourse, Prescription

- 6.1 The Supplier shall supply the Products to Berlin Heart free of material defects and defects of title. He shall be liable therefore as provided for by law unless otherwise stated in these General Terms of Purchase.
- 6.2 The Supplier is aware of the fact that Berlin Heart produces and distributes medical products which support human heart activity and that this also places high demands on the Supplier and his Services in terms of quality, safety and reliability. For this reasons, the Supplier warrants that the Services he renders comply with acknowledged rules and actual technological standards, the relevant legal and official provisions and instructions as well as with the agreed specifications.
- 6.3 Berlin Heart shall examine the Product within a reasonable period of time for any discrepancy with regard to quality or quantity and – if necessary – report these discrepancies to the Supplier; in any case reports of defects pursuant to § 377 German Commercial Code shall be deemed to have been made in good time if received by the Supplier within ten working days after delivery or, in the event of hidden defects, ten working days after discovery, by fax, letter, email or telephone.
- 6.4 Berlin Heart accepts delivery of the Products (handover in terms of §§ 446, 651 German Civil Code) reserving all of its rights, in particular regarding defective or delayed delivery.
- 6.5 Upon Berlin Heart's request, the Supplier shall assign to Berlin Heart any of his rights against sub-suppliers or other third parties due to or in connection with a defect of the delivered Product. In such an event he shall provide Berlin Heart with all documents required to assert such rights.
- 6.6 By derogation from statutory provisions, any contractual warranty claims of Berlin Heart against the Supplier shall become statute-barred three years after handover or acceptance of the Product. Prescription of other, especially tortuous claims shall remain unaffected.
- 6.7 After reasonable prior notice to the Supplier, Berlin Heart may delegate representatives to the premises of the Supplier or its sub-suppliers during their respective operating hours for execution and quality control. The Supplier shall inform his sub-suppliers accordingly. Any resources, materials and auxiliary staff necessary for the inspection shall be provided at no extra cost by the Supplier. If the parties have agreed upon a preliminary acceptance test, any ascertained defects shall be

remedied by the Supplier using its own resources and at its own costs. The agreed delivery dates shall be honored even under such circumstances. Inspection by Berlin Heart prior to handover of the Product does not relieve the Supplier from its warranty obligations or its responsibility for risk pursuant to Sect. 5.1 of these General Terms of Purchase. Proposals and information of persons acting on behalf of Berlin Heart in connection with production inspection or preliminary acceptance do not relieve the Supplier from his obligation to duly perform his contractual duties.

7. Recall of Products, Product Liability, Insurance Cover

- 7.1 The Supplier shall reimburse Berlin Heart any expenses incurring for product recalls, unless the Supplier is not responsible for the default in performance leading to the recall. The Supplier shall be notified of the content and extent of such product recall activities – to the extent to which this is feasible and reasonable. Any further going contractual or statutory rights shall remain unaffected.
- 7.2 Sect. 7.1 shall apply correspondingly to the extent to which damages are based on defaults in performance of the Supplier's sub-suppliers or sub-contractors.
- 7.3 Upon Berlin Heart's request, the Supplier shall take out a product liability insurance with an appropriate insurance coverage, maintain such insurance thereafter and evidence it at any time in the written form by presenting the policy and proofs of payment. In the individual case, Berlin Heart retains the right to demand such insurance with a defined minimum coverage. However, Berlin Heart's right to demand damages beyond the minimum coverage shall remain unaffected.

8. Industrial Property and Use Rights

- 8.1 The Supplier shall ensure that the use of the contractual Services is free of any opposing patents, licenses or other third-party industrial property rights or copyrights and does not infringe such rights, either domestic or foreign.
- 8.2 Sect. 11 shall apply if claims should be asserted against Berlin Heart on the grounds of an infringement as described in Sect. 8.1. Any further going rights, in particular the right to withdraw from the contract, shall remain unaffected.
- 8.3 To the extent to which copyright protected works are subject of the Supplier's Services, he shall grant to Berlin Heart the non-exclusive, transferable, sub-licenseable right to use such works, unrestricted in time, place and manner. This grant of rights shall include all kinds of use, whether known or unknown. The remuneration shall cover the aforementioned grant of rights. §§ 32a-32c German Copyright Act shall remain unaffected.

9. Berlin Heart's Material and Documents

- 9.1 To the extent to which Berlin Heart provides the Supplier with parts for the execution of his Services, in particular the production of the Products, Berlin Heart retains title in such parts. Processing or re-working by the Supplier shall always be carried out on behalf of Berlin Heart. If any of the parts covered by this retention of title are processed with other parts which are not the property of Berlin Heart, Berlin Heart shall acquire co-ownership in the new item pro rata according to the ratio of the value of the parts provided by Berlin Heart (purchase price plus VAT) to the value of the other items processed at the time of processing.
- 9.2 Unless otherwise expressly agreed upon, any tooling, fixtures and models manufactured by the Supplier for the purposes of the contract and with material provided by Berlin Heart are manufactured for Berlin Heart as manufacturer with the result that Berlin Heart then becomes the owner of such manufactured items. If such items are manufactured for the purposes of this contract without Berlin Heart having provided the necessary materials, the Supplier shall transfer title in such items to Berlin Heart if Berlin Heart has financed the purchase of the materials in whole or predominantly or states that it is willing to purchase

the item in question and title has not already been transferred according to the above provisions. For this purpose the Supplier shall label the said items as property of Berlin Heart.

- 9.3 Any tooling, fixtures, parts, models or other material provided by Berlin Heart shall remain in its property; the Supplier shall use the material solely for providing the Services ordered by Berlin Heart and insure tooling at new value at its own cost against fire, water damage and theft and store them safely. The Supplier shall immediately notify any malfunctions to Berlin Heart.
- 9.4 The Supplier shall utilize, store or otherwise use the parts and items mentioned in Sect. 9.1, 9.2 and 9.3 with the care of a diligent businessman (§ 347 para. 1 German Commercial Code).
- 9.5 Berlin Heart reserves its rights, in particular property rights and copyrights, in illustrations, drawings, calculations, samples or other documents made available to the Supplier for the purpose of making an offer or providing the Services; they shall not be used for any other purpose.
- 9.6 The Supplier shall return material and documents to Berlin Heart in good condition and immediately after termination or execution of the contract as well as upon request and shall always coordinate such return with Berlin Heart.

10. Liability

- 10.1 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.
- 10.2 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.
 - 10.2.1 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 Supplier could rely on. To the extent Berlin Heart is liable for slight negligence, its liability is restricted to the typically foreseeable damages.
 - 10.2.2 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 Supplier.
 - 10.2.3 Berlin Heart's liability for damages due to delay and resulting from slight negligence is restricted to the typically foreseeable damages
- 10.3 The provisions of the above paragraphs apply correspondingly to the limitation of damages for unsuccessful expenses (§ 284 German Civil Code).
- 10.4 The aforementioned liability restrictions shall also apply to Berlin Heart's vicarious agents.

11. Indemnification

- 11.1 The Supplier 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.
- 11.2 Berlin Heart may decide at its sole discretion whether to lead defense by itself or to let the Supplier overtake such defense at his own costs.

12. Confidentiality

- 12.1 The Supplier 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 Supplier has received from a third party without any obligation to confidentiality or which the Supplier has independently developed.
- 12.2 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.
- 12.3 The Supplier 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.
- 12.4 Any further going confidentiality agreements concluded between the Parties shall remain unaffected.

13. Final Provisions

- 13.1 All of the Supplier'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 German Civil Code, e.g. letter, fax and e-mail) to be effective. This also applies to the waiver of the above form requirement.
- 13.2 The place of performance is Berlin Heart's registered office.
- 13.3 The contractual relationship between Berlin Heart and the Supplier 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).
- 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 Supplier 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 Supplier at his general venue.