

**Terms and Conditions of Sale**  
**of**  
**Biodur Products, Dr. Angelina Whalley, Rathausstr. 11, 69126 Heidelberg**

Last update: December 2006

**1. Scope**

- 1.1 Our Terms and Conditions of Sale as set forth herein shall apply to all goods and services provided by us now and in the future. Any terms of Buyer deviating from our Terms and Conditions of Sale or providing otherwise shall not be effective, even if we have not expressly excluded them.
- 1.2 Our Terms and Conditions of Sale shall apply exclusively to enterprises within the meaning of § 310, Section 1 BGB (German Civil Code).

**2. Quotation, documents, contract, confidentiality**

- 2.1 Our quotations shall not be binding. A contract shall not come into effect unless we have confirmed the order in writing. Our order confirmation shall prevail for the content and scope of the contract.
- 2.2 We reserve ownership and copyright in quotations, illustrations, drawings and any other documents. Buyer shall treat such information confidentially. Buyer may not disclose any such information to any third party without our express consent.
- 2.3 We may change the design of the ordered goods provided that no such change will result in a substantial change of the goods' function or Buyer furnishes evidence that such change is intolerable.
- 2.4 We guarantee the quality of goods only as expressly guaranteed in our order confirmation or advertisements.

**3. Delivery time**

- 3.1 Our compliance with delivery dates and times shall be subject to correct and timely deliveries made by our suppliers.
- 3.2 Should Buyer desire changes after placing the order, or should circumstances beyond our control prevent any deliveries, the delivery time shall be reasonably extended.

#### **4. Prices and terms of payment**

- 4.1 Prices shall be ex-stock distribution center plus statutory VAT. Packing, insurance, shipment costs and duties will be charged separately to Buyer. We do not take back packaging. We reserve the right to reasonably adjust our prices after contract conclusion in the event of cost reductions or increases which are in particular due to design changes under the terms of Clause 2.3 or caused by material price changes. We will provide evidence for such adjustments at Buyer's request.
- 4.2 Invoices shall become due without deduction immediately after receipt of goods and invoice. The statutory regulations regarding the consequences of default in payment shall apply.
- 4.3 Payments shall be made exclusively by transfer to our account (account No. 190 1636 00, Commerzbank AG Heidelberg, BLZ 672 400 39, SWIFT Code COBADEFF672) or by check to the above stated address.
- 4.4 We add a surcharge of € 15.00 for small orders worth less than € 100.00 net. Furthermore, we reserve the right to add a surcharge if packaging units are partially opened.

#### **5. Passage of risk - insurance**

- 5.1 Unless the order confirmation provides otherwise, shipments will be made "ex distribution center". The risk shall pass to Buyer when goods are collected by the carrier, or at the latest when goods leave the plant or distribution center. This provision shall also apply when we use our own transport services, or when goods are sent carriage paid.
- 5.2 Buyer shall undertake to sufficiently insure goods as long as we retain title to the goods. Nevertheless we may - but shall not be obliged to - arrange for a transport insurance for the goods to be shipped to Buyer and to charge Buyer with the costs incurred.

#### **6. Notification of defects, claims, period of limitation**

- 6.1 Buyer undertakes to inspect the goods immediately upon receipt. Buyer shall give notification of defect in writing immediately after receipt of goods and at the latest within two weeks after receipt. The same period shall apply for latent defects following discovery of such defect. Failure to notify us about defects in due time may result in Buyer's loss of right to have the defect remedied.
- 6.2 In the case of justified complaints we will remedy the defect or deliver a replacement at our discretion. Should we fail to remedy the defect within a reasonable period of time or after no more than two attempts, or fail to deliver a replacement, Buyer shall have the right to rescind the contract, or to demand an abatement of the purchase price. Buyer may not rescind the Agreement if our breach of obligations was negligible.

6.3 The period of limitation for claims arising from defects is one year for new goods delivered to entrepreneurs. The period of limitation shall commence upon delivery of the goods.

6.4 Warranty claims will not be considered for defects occurring after transfer of risk due to unsuitable or improper use, wrong assembly or start-up by Buyer or third parties, invalid mode of operation, normal wear and tear and improper maintenance. If Buyer or third parties rectify defects with improper remedies, we shall not be liable for the resulting consequences. The same shall apply for any changes to the delivery item without our prior written consent.

## **7. Retention of title**

7.1 Deliveries are always made under retention of title. The goods shall remain our property pending full settlement of all claims arising from the business relationship with Buyer. In the case of an open account, retained title to the goods shall serve as security for our outstanding account balance.

7.2 As a general rule, Buyer may not resell or make available the goods to third parties without our prior express written consent.

7.3 Buyer may not pledge or charge by way of security any of the retained goods.

7.4 Buyer hereby assigns to us all claims and all ancillary rights arising for Buyer from the resale of the goods. This provision shall apply irrespective of whether Buyer sells the retained goods without processing them, after processing them, or combined with other goods. Should Buyer sell the retained goods together with goods that are not our property, the assignment shall correspond to the amount resulting from the sale of the retained goods. This amount shall be calculated on the basis of our sales prices.

7.5 The retained goods shall be processed for us as manufacturers at all times within the meaning of § 950 BGB (German Civil Code), however, without any obligations arising for us. Processed goods shall be regarded as goods sold under retention of title within the meaning of these provisions. Should the retained goods be joined with or inseparably mixed with other goods not owned by us, we shall acquire co-title to the new goods based on the ratio of the retained goods' invoice value to the invoice value of the other goods thus joined or mixed. Within the meaning of these provisions the resulting co-title to said goods shall be regarded as retained goods. Upon our request, Buyer shall be obliged to inform any purchasers of retained goods about our title in said goods.

7.6 Buyer shall be authorized to collect any receivables arising from the resale of goods without prejudice to our authority to collect. Provided that Buyer meets its payment obligations, we will not assert any claims. At our request Buyer shall disclose the debtors of the assigned claim and notify said debtors of the assignment. Our right to independently inform garnishees about said

assignment shall not be affected. Buyer may not assign the claim against garnishees to third parties or agree with the garnishees to prohibit the assignment of claims.

- 7.7 Buyer undertakes to advise us without delay and as soon as possible of any attachment or any other impairment of our security interests by third parties. Buyer undertakes to furnish all records that we require to protect our rights and to reimburse any expenses we might incur due to a necessary intervention.
- 7.8 Should the realizable value of the securities exceed our claims by more than 10%, we will, at Buyer's request, select and release securities to this extent.
- 7.9 Should Buyer act contrary to the terms of the contract concluded hereunder, in particular by defaulting in payment, we may cancel the Agreement and repossess the goods delivered under retention of title, and Buyer shall be obliged to return said goods.
- 7.10 As long as we retain title in the goods Buyer undertakes to keep the goods in proper condition and to perform any scheduled maintenance and required servicing work by contracting a specialist workshop which we have authorized for the care and maintenance of the contractual goods.

## **8. Force Majeure - right of rescission**

- 8.1 Should we be seriously prevented from meeting our delivery commitments due to the occurrence of Force Majeure or any other circumstances beyond our control, or should our performance of obligations become intolerable due to such reasons, we may extend the delivery time or rescind the Agreement. This includes in particular strikes, lock-outs, shortage of raw materials and auxiliaries, power supply problems, and acts of any government. This provision shall apply no matter whether the events, circumstances or reasons affected us or one of our upstream suppliers.
- 8.2 Buyer shall not have any claim for damages against us on account of such rescission. Even if we initially notified Buyer of an extension of delivery time we may still rescind the Agreement. Following the extension of the delivery time Buyer may rescind the Agreement within an appropriate period of time.

## **9. Limitation of liability**

- 9.1 In the event of injury of life, body or health attributable to us we shall be held liable under the provisions of law.
- 9.2 The following shall apply for any other damages:

- a) We shall be liable under the provisions of law for any damages caused by our gross breach of duty or a willful or gross breach of duty by our legal representatives or vicarious agents.
- b) For any damages due to a material breach of contractual obligations caused by slight negligence by us, our legal representatives or vicarious agents, liability shall not exceed the foreseeable damage that may typically arise under contracts of this kind.
- c) We will not be liable for any claims or damages arising from the breach of collateral duties or non-essential duties caused by slight negligence.

9.3 Limitation or exclusion of liability shall not apply in the event of us having fraudulently concealed defects, or assumed guarantee responsibilities for the quality of goods.

9.4 Buyer's claims to reimbursement of wasted expenditure in lieu of indemnity, and liability pursuant to the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

#### **10. Non-assignment**

Unless expressly agreed otherwise with Buyer, Buyer may not assign its rights hereunder to any third parties without our consent.

#### **11. Governing law, jurisdiction**

11.1 This Agreement shall be governed exclusively by German law, to the exclusion of the CISG.

11.2 Heidelberg shall be the exclusive venue for resolving disputes between the Parties. We may also bring charges against Buyer at its place of registered office.

11.3 Heidelberg shall be the place of performance for any obligations arising from the contracts we concluded with Buyer.