

WITH THE POWER OF 500% MORE OXYGEN

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BIONIC Vertriebs GmbH

Terms and Conditions of Sale and Delivery

§ 1 Scope of Application:

- (1) The following terms and conditions shall govern all supplies and services of BIONIC. These Terms shall also apply to future transactions.
- (2) The customer's contradictory commercial terms and conditions, including but not limited to terms and conditions of purchase, shall not apply. BIONIC is not required to object to these terms.
- (3) These Terms may be changed only in writing. Placing an order for or accepting a supply shall be construed as an acknowledgement of these Terms in any event.

§ 2 Offer, Acceptance, Acknowledgement Notice:

- (1) BIONIC'S offers are without engagement.
- (2) Except for finished products, BIONIC will accept orders through a written acceptance notice. Should BIONIC'S acceptance notice derogate from the terms and conditions of an order, the transaction will be closed at BIONIC'S terms and conditions, unless the customer objects by giving written notice immediately after receipt of an acceptance notice.

§ 3 Prices:

- (1) Prices are net prices ex works. Unless otherwise agreed, the prices valid on the delivery date shall apply.
- (2) Should prices have been agreed and there is a change in costs on which such prices were based, BIONIC may adjust the prices to reflect that cost change.
- (3) If delivery is made at a later point in time for reasons within the customer's control, BIONIC may determine correspondingly higher prices to compensate higher costs resulting from such delay. This shall not affect BIONIC's right to a compensation of damage it may otherwise incur.
- (4) Any taxes, customs duties and other levies the customer may have to pay for taking over the shipment shall be borne by the customer, unless BIONIC has issued an express written commitment to pay for these.

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§ 4 Place of Performance, Delivery:

- (1) Place of performance shall be the relevant BIONIC supplying plant.
- (2) Deliveries take place EXW place of performance Incoterms, as amended on the contract execution date. Shipment and transport therefore takes place for the account and at the risk of the customer. Any risk shall pass to the customer as soon as the shipment is offered to the customer at the place of performance. Customer's refusal to accept a shipment shall constitute a default in acceptance. Also, BIONIC shall be deemed to have made delivery and BIONIC is entitled to store the goods at the customer's cost and expense. The resulting storage costs shall promptly be reimbursed to BIONIC.
- (2) BIONIC may also make partial deliveries; these partial deliveries are fully governed by these Terms.
- (3) If BIONIC is unable to deliver on the agreed date due to unforeseeable circumstances BIONIC is unable to control (force majeure, delays in delivery by sub-suppliers etc), BIONIC shall be entitled to deliver on the next possible date, provided that the customer can be reasonably expected to accept the shipment on that date. Otherwise, BIONIC shall be entitled to rescind the contract. BIONIC shall be liable for any other delay in delivery only in case of its own gross negligence and intent.
- (4) The customer shall not be released from performance in the event the customer is not able to obtain an import license.

§ 5 Warranty and Liability:

- (1) BIONIC warrants that the goods are consistent with agreed specifications and in line with mandatory legislation applicable to the items in the European Union. BIONIC warrants that the goods may be distributed within the European Union. It shall be the customer's responsibility to clarify whether these goods may also be marketed outside the EU (e.g. food law, labelling provisions).
- (2) BIONIC does not warrant for defects caused by improper storage, custody, use or transport. If the customer claims that such defects exist, he shall be required to prove proper storage, custody, use or transport of the goods. Unless otherwise stated on the items' packaging or in business papers, proper storage etc means that the items are stored and transported under clean and dry conditions at not more than normal room temperature and not outdoors.
- (3) BIONIC does not warrant for information given about products in catalogues, advertising letters, brochures or menus etc.
- (4) The customer is required to examine the items carefully upon acceptance and shall assert defects, if any, by written notice, accompanied by a sample of the purportedly defective item or any other evidence (e.g. digital photograph) within five work days; otherwise, any claims, also claims from consequential damage, shall be excluded. At BIONIC's request, the customer shall make possible and allow an expert nominated by BIONIC or a third party to inspect the items. If a notice of defect is given in due time and if that defect - should BIONIC so request - be inspected by an expert, BIONIC will at its election either rectify that defect by improving or exchanging the relevant item, take back the defective item and credit the purchase price, or grant a price reduction. The customer shall not be entitled to assert any other claims.

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- (5) The warranty period for an item is consistent with its minimum durability and commences as soon as that item is offered to the customer at the place of performance.
- (6) The customer may not withhold payments due to warranty claims or any other claims whatsoever.
- (7) BIONIC shall not be liable for damage in case of slight and simply gross negligence. BIONIC shall not be liable either for consequential damage, including but not limited to lost profit.
- (8) Incriminated goods may be returned only with BIONIC's prior express consent at the customer's cost and risk. Customer shall also pay for any ancillary costs arising in connection with the return of goods (e.g. storage, demurrage for railway or containers). If these goods are returned without BIONIC's prior consent, BIONIC may refuse to accept the returned goods and return these to the customer at his cost and expense.
- (9) Samples may derogate from the delivery in terms of quality and packaging.

§ 6 Reservation of Title

- (1) BIONIC shall retain title to the items (conditional goods) pending satisfaction by the customer of all his obligations, particularly until complete payment of the purchase price.
- (2) The customer may resell the conditional goods. This right will expire if the customer is in default with payment or must have concerns that he may not be able to fully pay BIONIC's claims upon maturity.
- (3) Should the customer resell the conditional goods, the customer is assigning to BIONIC already now any claims he may have from such resale or any other realization up to the amount of the purchase price payable to BIONIC. He undertakes to make a note of this assignment in his books and records. The customer may collect the assigned claims on his own behalf and for the account of BIONIC, until further notice. The customer shall be obliged to retain for himself title to the conditional goods in the event conditional goods are resold on loan.
- (4) The customer assigns to BIONIC any insurance benefits or damages to which he may be entitled by virtue of the destruction of or damage to the conditional goods.
- (5) The conditional goods may not be subject to a lien or transfer of ownership rights for security purposes.

§ 7 Payment and Default:

- (1) Place of performance for payments shall be BIONIC's corporate seat.
- (2) Bills of exchange and checks are accepted only on account of payment and only in reliance on a written agreement.
- (3) The purchase price must be received by BIONIC within 14 days from the invoice date in the currency stated on the invoice, free and clear of any deduction.

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(4) If payment is not made when due, BIONIC may:

- ◆ postpone the fulfilment of its obligations pending payment of these arrears,
- ◆ claim a reasonable prolongation of the delivery or service period,
- ◆ accelerate the payment of the entire outstanding purchase price,
- ◆ charge all dunning and collection fees and statutory default interest, or
- ◆ in case of non-compliance with a reasonable grace period, rescind the contract; should the service be divisible, BIONIC may also rescind the entire contract. In case of BIONIC's rescission, the customer shall pay a cancellation fee equal to 10% of the price, which is due and payable immediately, and shall compensate any damage in excess thereof along with lost profit.

(5) If foreclosure proceedings are conducted with respect to the customer's assets or if his ability to pay is doubtful, BIONIC may

- ◆ immediately accelerate all claims notwithstanding their maturity,
- ◆ retain all deliveries and any performance under not yet performed contracts and perform only against advance payment. If the customer refuses to make advance payments, BIONIC may rescind the contract and assert damages also for lost profit.

(6) If case of the customer's delay in acceptance, the purchase price shall immediately be due and payable.

(7) Payments will also be credited towards the oldest debt and resulting interest and costs, even if earmarked otherwise.

(8) Credits with respect to empty containers returned by the customer shall be subject to agreed payment terms. These credits will be effective not until after these payment terms have expired.

§ 8 Place of Jurisdiction and Applicable Law:

(1) All legal relationships between BIONIC and the customer shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.

(2) Within the scope of application of the Lugano Convention or the Brussels I Convention, all disputes shall exclusively be referred to the courts in Feldkirch, Austria. Disputes not falling within that scope of application shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna. The place of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings is German. If the contract is executed in a language other than German, the language to be used in the arbitral proceedings shall be English. However, in all cases, BIONIC may sue the customer also before another court having jurisdiction for the customer.

§ 9 Final Provisions:

(1) The customer may not set off claims he may have against BIONIC against the purchase price payable to BIONIC. The customer shall not have any right of retention.

(2) The customer may not assign to others his claim to delivery of the items.

(3) The customer may not challenge a contract on the grounds of error.

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- (4) Any documents or information about BIONIC, its products, distributors or other customers that are made available to the customer or of which the customer becomes otherwise aware may be disclosed or otherwise made available to third parties, including but not limited to BIONIC'S competitors, only with BIONIC'S written consent. This also includes documents such as templates, cost estimates, promotional materials, price lists, listing agreements or contracts that were delivered to the customer or of which he become otherwise aware of. BIONIC is entitled to claim all rights to those documents.
- (5) BIONIC retains title to empty containers made available to the customer (containers for circulation including bottles, boxes, post-mix containers, pallets etc), promotional materials and items made available to the customer (e.g. umbrellas) as well as the inventory made available to the customer for shops (e.g. refrigerators, shelves); upon termination of the business relationship for any reason whatsoever, these shall be returned to BIONIC without request and at the customer's cost and expense. This applies also if insolvency proceedings are initiated with respect to the customer's assets. The customer will be reimbursed for returned empty containers at BIONIC's rate applicable on the return date.
- (6) If exchange pallets are delivered, BIONIC will take back pallets of the same or a higher quality. Should the customer not return equal-quality pallets, BIONIC will charge the customer for the delivered exchange pallets at applicable prices.
- (7) If any term hereof is or becomes invalid or unenforceable, this shall not affect the remaining terms hereof. These invalid or unenforceable terms shall be replaced by valid and enforceable terms which closest reflect the intended economic purpose (severability).
- (8) If a contract is executed in German and in another language, that contract and these Terms shall be construed according to the German text.