

# General terms and conditions

## 1. Scope of application

- 1.1. For the business relationship between Bionic Production GmbH, Vor dem Neuen Tore 18, 21339 Lüneburg – Germany (hereinafter referred to as “BPG”) and the customer (hereinafter referred to as “customer”) exclusively the following general terms and conditions (hereinafter referred to as "AGB") shall apply in the version valid at the time of order.
- 1.2. Conflicting or diverging conditions of the customer shall not oblige BPG, even if they are not expressly rejected by BPG or the conditions of the customer determine that diverging conditions of the supplier shall not apply or only apply after written approval or the delivery to the customer is carried out without reservation.
- 1.3. The applicability of the general terms and conditions shall be agreed with the customer at the first conclusion of contract. They also apply to all future business transactions of the same type, even though they are not explicitly agreed.

## 2. Limitation to business customers

- 2.1. The offer of BPG shall exclusively be addressed to business customers/ corporations and not to consumers. Orders of consumers shall not be accepted by BPG.
- 2.2. A consumer for the purpose of these general terms and conditions is each natural person, who concludes a legal transaction for a purpose, which predominantly can neither be attributed to its commercial nor its self-independent professional activity (§ 13 German Civil Code). Corporations is any natural or legal person or judiciable partnership, which acts at the conclusion of a legal transaction in the exercise of its commercial or self-independent professional activity (§14 I German Civil Code).
- 2.3. With the offer customers declare that they are a business customer and not a consumer.
- 2.4. Within the context of the customer’s order as well as in advance its realization BPG reserves itself the right to check whether the customer is no consumer (e.g. review of address data, the value added tax identification number).

## 3. Quotations, performance specifications and conclusion of contract

- 3.1. Quotations submitted by the BPG shall always remain non-binding and without obligation. The submission of quotation by means of the customer shall not oblige BPG to conclude the contract.
- 3.2. A contract shall only be drawn up upon the written order confirmation by BPG or by the delivery of agreed performances.
- 3.3. If the customer requires any modifications of the agreed performances or if the circumstances disclosed by the customer change after submitting the quotation by BPG, BPG prepares a quotation for additional or reduced expenses, unless a remuneration on the basis of expenses has been agreed or the customer explicitly waives a special quotation. Until the decision to accept or reject the modification quotation made by the customer, BPG stops the work of performances concerned

by the quotation if due to the subsequent acceptance of quotation given by the customer additional expenses would arise. Agreed delivery periods shall be extended adequately.

- 3.4. BPG is bound to submitted quotations for 16 (in words: sixteen) weeks.
- 3.5. All information about weights, content, measurements, color etc. are average values. If certain values have not been agreed in written form or are stipulated in legal provisions, customary and technically unavoidable differences shall be permitted.
- 3.6. Performance specifications in catalogues as well as on the websites of BPG do not have the character of an assurance or guarantee.
- 3.7. All quotations are valid "as long as stocks last", if there are no other notes. Apart from that errors shall be reserved.
- 3.8. To fulfill its obligations BPG has the right to engage subcontractors if necessary and shall indicate this to the customer immediately,.

#### **4. Consultancy performances from Bionic Production GmbH:**

- 4.1. Consultancy performances from BPG consist - if there are no other provisions in the individual case agreed – of independent consultation of the customer free from instructions.
- 4.2. A specific success shall neither be owed nor guaranteed. The customer decides under his sole responsibility on the time as well as type and scope of measures recommended by BPG or agreed procedures with BPG. This even applies if BPG supports the implementation of agreed planning or measures by means of the customer.
- 4.3. The specific content and scope of activity which shall be performed by BPG complying with the order given in writing. If there is the necessity of additional or supplementary activities, BPG shall point this out to the customer. In this case there shall be an extension of order carried out by the customer by requesting the additional or supplementary activity or receiving/ accepting it.
- 4.4. With regard to the information, documents and the numerical data conveyed by the customer within the context of activities BPG assumes that the information delivered by the customer is complete and correct. BPG shall not be obliged to check the correctness and regularity or to carry out own investigations. This also applies if within the context of the order given by BPG plausibility checks or valuations shall be made, which are only connected to the information, data or documents and do not imply their review in terms of content. However, BPG shall inform the customer about obvious errors.
- 4.5. The delivery of legal and/or tax consultant services shall be excluded as contractual content.

#### **5. Participation and written form**

- 5.1. In case of deviations the contractual parties confidently cooperate and immediately inform each other about the agreed procedure or doubts regarding the correctness of the procedure of the other party. Participation services and contributions from the customer shall be carried out free of cost for BPG.

- 5.2. The customer shall ensure that BPG submits all necessary documents and data in time, all information is given to BPG and BPG is informed about all processes and circumstances concerning the order. This also applies to documents, processes, which only become known during the activities of BPG. On request of the customer BPG appoints a contact to receive documents, data and information indicated under sentence 1.
- 5.3. All agreements shall be recorded in written form at the point of concluding, others than the recorded have not been made. The written form also applies to collateral agreements, assurances and subsequent modifications, including the cancellation of agreement. This shall also apply to the cancellation of requirement for written form.

## **6. Prices and shipping costs**

- 6.1. All prices are quoted in Euro and net, which means plus the respectively valid legal value added tax and plus shipping costs, packaging costs and customs duties.
- 6.2. Even though a fixed price agreement has been made, adequate price modifications remain reserved due to changed raw material, energy and sales costs for deliveries, which are fixed three (3) months or later after concluding the contract.

## **7. Delivery and availability**

- 7.1. Delivery or performance deadlines shall only be binding, if these have been agreed in written form. They are appropriately extended, if the customer himself delays or refrains from necessary or agreed participation actions. Also modifications initiated by the customer for the products which shall be delivered imply an adequate extension of the delivery deadline.
- 7.2. If an advance payment has been agreed, the delivery is made at the earliest after receiving the invoice amount. In case of untimely payment the delivery time agreed is postponed by the corresponding time period, by which the payment was delayed. For the production of parts not kept in stock the customer grants BPG an adequate production deadline.
- 7.3. If not all ordered products are available in stock, BPG shall be entitled to make partial deliveries if this is reasonable for the customer and BPG carries the arising additional costs. In addition to this, on request of the customer partial deliveries are possible when he takes over the corresponding costs. By receiving a partial order a corresponding partial invoice amount shall become due.
- 7.4. Information given about delivery time is subject to punctual proper self-delivery. Operational, traffic disruptions as well as lockouts and other cases of force majeure in connection with the self-delivery of BPG, exempt BPG for its duration from observing the delivery obligation. BPG shall immediately inform the customer when such events occur. During the duration of this obstruction the customer shall be exempt from his contractual obligations, as well, in particular the payment. If the customer cannot be expected to accept such a delay, he can withdraw from the contract after an adequate deadline, which has been set by him in written and with the threat of withdrawing after the expiry of the deadline by means of a written declaration.

- 7.5. If BPG does not observe the indicated time of performance, the customer can withdraw from the contract, after he has set an appropriate extension of time for BPG in written form and BPG has not kept this.
- 7.6. If BPG gets into delivery delay, the customer shall be authorized, if he demonstrates that he has thereby incurred damage, to claim for each completed week of delay a flat-rate compensation for delay to an amount of 0.5 per cent from the delivery value, however, in total not more than 5 per cent of the delivery value. Further damage and expense compensations of the customer due to delivery delay shall be excluded from these general terms and conditions according to clause 14 (“liability limitation”) of these general terms and conditions.
- 7.7. Any risk of accidental destruction or accidental deterioration of the delivery shall be transferred to the customer as follows: a) in case of delivery with the transfer to a forwarding agent or freight carrier, at the latest when leaving the delivery warehouse, also if the delivery is carried out by an own vehicle. On request and at expense of the customer deliveries of BPG are insured against common transport risks; b) in case of delivery with the installation and assembly on the day of transfer to the customer.

## **8. Acceptance and withdrawal**

- 8.1. The customer is obliged to approve products that are delivered on schedule and shall create all prerequisites required for this himself. Delivered products shall be approved by the customer, even if they show unessential complaints.
- 8.2. Withdrawal from an order given, exchange of goods and return of goods are not possible outside the legally obliging cases. By means of a computer-based production the orders are already immediately recorded at the day of entry and processed in partial sectors. If BPG approves a withdrawal from the order, the costs already incurred for BPG shall be compensated until the respective status of production.
- 8.3. If the customer gets into default of acceptance or if he culpably violates other obligations to cooperate, BPG shall be entitled to claim compensation for damages incurred, including possible additional expenses. Further claims shall remain reserved. In this case the risk of accidental destruction or an accidental deterioration at the time shall be transferred to the customer, in which he got into approval or debtor’s default.

## **9. Payment modalities**

- 9.1. Within the context and before concluding the ordering process the customer can select from the available methods of payment.
- 9.2. In case of orders from abroad customs duties as well as banking charges can arise for the bank transfer, which shall be carried by the customer.
- 9.3. If the payment by invoice is possible, the payment shall be made within 14 (in words: fourteen) days after receiving the products and the invoice. For all other methods of payment the payment shall be carried out in advance without any deduction.
- 9.4. A discount is not given, unless it is expressly pointed out, and requested at a later date by BPG at arbitrary deduction.

- 9.5. For special productions, which reach a value of goods of 5,000.00 Euro net, an advance payment of 50 per cent is necessary when concluding the contract.
- 9.6. If the fulfillment of payment claim of BPG is at risk due to objectively justified reasons, like for example, (preceding payments not received or known economic difficulties of the customer), BPG shall be entitled to carry out outstanding deliveries only against cash before delivery and to claim guarantees or other securities to a sufficient amount due to all claims. If a claimed security is not provided, all claims of BPG immediately become due. In addition to this, BPG has a right of retention with regard to delivery obligations not yet fulfilled, until the security has been provided.
- 9.7. In individual cases or when rejecting the payment by credit institutes or provider of the respective payment method, BPG reserves the right to carry out the order only against payment either by cash on delivery or prepayment. In this case the customer can accept this or withdraw from his order. Checks shall only be accepted by customers who are corporations by way of provisional performance and can be given back at any time.
- 9.8. If third-party providers are commissioned with the payment transaction, e.g. Paypal, their general terms and conditions shall correspondingly apply.
- 9.9. BPG shall make available the invoice to the customer electronically or by mail.
- 9.10. If the due date of payment is subject to the calendar, the customer shall already get into arrears due to failing to meet the time limit. In this case the customer shall pay the legal default interests. The obligation of the customer to pay default interests shall not exclude the assertion of further default interests by BPG.
- 9.11. Costs incurred due to reminders or chargeback of a payment transaction for the lack of coverage or due to data wrongly transmitted by the customer, shall be charged to the customer.
- 9.12. The customer shall only be entitled to offset if his counterclaims have been legally established or acknowledged by BPG and if no claims for production or remedial action are concerned. The customer shall only exercise a right of retention if the claims result from the same contractual relationship.

## **10. Retention of title**

- 10.1. Until complete payment the delivered products (herewithin referred to as "reserved goods") remain the property of BPG.
- 10.2. The customer is obliged to treat the reserved goods with care. The processing or reshaping of reserved goods by means of the customer shall always be conducted for BPG.
- 10.3. If the reserved goods are processed with other objects, not belonging to BPG, BPG shall acquire the joint ownership of the new matter in the ratio of the value of reserved goods to the other processed objects at the time of processing. For the matter arising due to processing the same applies as for the reserved goods. The customer also assigns BPG the claim to secure claims against him, which arise from connecting the reserved goods with a property against a third party. Accesses of third parties to the goods which are the property or joint property of BPG shall be immediately pointed out by the customer. Costs arising by such interventions for

- a third party opposition complaint or costs for out-of-court surrenders shall be borne by the customer.
- 10.4. The customer shall be entitled to further sell the reserved goods in the proper course of business. The claims resulting from further sales or other legal reason with regard to the reserved goods (including all balance claims resulting from current account) are fully assigned by the customer at the conclusion of contract as a precaution to BPG. BPG revocably entitles the customer to collect claims assigned to BPG on its behalf and in his name. This direct debit authorization shall be revoked if the customer does not properly fulfill his payment obligations. BPG obliges itself to waive the securities of the customer on his request to such an extent to which the realizable value of securities exceeds the claims which shall be secured by more than 10%; BPG is responsible for the selection of securities which shall be waived.

## **11. Material defect warranty and guarantee**

- 11.1. The customer shall be obliged to revise the products for defects, also in the case of further sale and to immediately reprimand possible obvious defects at the longest within eight (8) working days after receiving the product in written form. Transport defects shall be indicated within 48 hours in written form. If the defects are not indicated in time, the products and their delivery apply as approved.
- 11.2. The customer shall be obliged to revise possible preliminary and interim results received for correction with regard to their contractual compliance immediately and to reprimand complaints in written form at once. By means of their waiver the risk of possible errors shall be assigned to the customer if these are no errors which have occurred after production following the waiver or if these could be respectively recognized. The same applies to all other waiver declarations of the customer for the further production or dispatch.
- 11.3. If the products designated as prototypes in the quotation, BPG expressly points out that these, if there are no other written assurances made in written form by BPG, only serve as illustration or experimental services and are not suitable due to their property as prototypes for the serial operation, the close-to-series test or the transfer to third parties. For these cases the warranty for prototypes shall explicitly be excluded in this respect.
- 11.4. BPG especially points out that the 3D-printing process shall not represent a standardized or regulated procedure. Even at utmost care deviations with regard to material quality, tinting, dimensions and the like can occur for the production procedures applied by BPG, which shall be reserved for that reason. Deviating measurements resulting from shrinkage or stretch of the used materials or geometry of data shall remain reserved. These circumstances shall be taken into consideration by the customer in particular in such a case if these criteria are relevant for the utilization of the products, e.g. as vehicle or machine parts or possible resale of the products.
- 11.5. For changes, which occur subsequently due to external influences (weather conditions, light, humidity and the like), liability shall be taken over to such an extent, as these are caused by improper work of BPG.

- 11.6. If products are delivered according to designs or data of the customer, the warranty shall be excluded to such an extent as the delivered products have been manufactured in accordance with the designs and data.
- 11.7. BPG is not liable for the fact that the delivered products shall be suitable for special purposes provided by the customers, unless these purposes have become contractual content. In this respect, all warranty claims, also for reduction, shall be excluded.
- 11.8. The quantities indicated in the order acceptance shall be observed by BPG, if possible. Customary differences are permitted if they do not exceed 10 per cent.
- 11.9. There is only a guarantee for the products delivered by BPG if this has explicitly been submitted and at the conditions mentioned in the warranty certificate. Customers are informed about the warranty conditions before initiating the order process.
- 11.10. If there is a defect for which BPG is responsible, BPG is entitled to remove defects and deliver compensation at its choice (respectively freight paid), whereas the customer is entitled in case of failure of improvement or subsequent delivery, to reduce the purchase price or to withdraw from the contract at his discretion. Compensated products shall be transferred into the property of the BPG.
- 11.11. If repairs or modifications are made by the customer or third party without any written approval of BPG for the delivered product, each kind of warranty shall expire if the customer cannot prove that the defects concerned have not been caused by modifications carried out by him or third parties.
- 11.12. The limitation period for warranty claims shall be one year.
- 11.13. For products which – on the basis of standards of the client – are manufactured by BPG, the client exempts BPG particularly with regard to operational capability, usability and suitability of products for the provided purpose from all claims, particularly of third parties as well as legal defense costs necessary and reasonable for legal defense at first request.

## **12. Intellectual property**

- 12.1. BPG assigns the customer the utilization rights of products for the respective contractual purpose (e.g. of possible follow-up works of 3D-models).
- 12.2. If the customer provides drawings, programmes, samples or models, he guarantees that he has the necessary patent and copyright performance protection and utilization rights as well as other required commercial protective rights or claims of third parties are not opposed to a utilization, application and/ or processing. BPG is not responsible for the examination/ review obligation.
- 12.3. The customer exempts BPG from all claims and shall deliver compensation for a possibly arising damage. The exemption also comprises the required and reasonable legal costs.
- 12.4. BPG shall use the products for self-advertising if this is usual in the industry and appropriate and no confidentiality concerns which shall be indicated by the customer are opposed.

## **13. Assisting objects and archiving**

- 13.1. The property as well as commercial protection and copyrights for work documents, electronic data and recordings, data records, correction models or tools, which are generated by BPG within the context of order processing (herewith referred to as “assisting objects”) remain at BPG.
- 13.2. Data records of the customer, work documents as well as other objects required for reuse as well as semi-finished and finished products acquired by the customer shall only be kept after previous agreement and against special remuneration going beyond the delivery deadline and apart from that, if the customer does not take them back upon request, can be destroyed within four (4) weeks. If the previously mentioned objects shall be insured, this shall be made by the customer.

#### **14. Liability limitation**

- 14.1. For liability of BPG concerning compensation the following liability exclusions and restrictions shall apply without prejudice to other legal claim prerequisites.
- 14.2. BPG is liable to an unlimited extent if the cause for damage is based on intention or gross negligence.
- 14.3. In addition to this, BPG is liable for simple negligent breach of essential obligations, the violation of which endangers the achievement of contractual purpose, or for the violation of obligations, the fulfillment of which basically facilitates the implementation of contract, and in which the customer regularly has confidence. In this case, however, BPG is only liable for predictable, contractually typical damage. BPG shall not be liable for the simple negligent breach of others than the obligations mentioned in the preceding clauses.
- 14.4. The preceding liability limitations do not apply in case of violation of life, body and health, for a defect after taking over warranty regarding the quality of product and for maliciously concealed defects. The liability in accordance with product liability law remains unaffected.
- 14.5. As far as the liability of BPG is excluded or restricted, this shall also apply to the personal liability of the employees, representatives and vicarious agents.

#### **15. Data protection**

- 15.1. BPG processes personal data of the customer for a specific purpose and according to legal provisions.
- 15.2. The personal data indicated for the purpose of order (as for example name, e-mail address, mailing address, payment data) are applied by BPG to fulfill and process the contract. These data are treated confidentially and not forwarded to third parties, who are not involved in ordering, delivering and payment processes.
- 15.3. On request the customer is entitled to get information about personal data free of charge, which was saved by BPG through him. Furthermore he is entitled to correct incorrect data, to block and delete his personal data if there is no legal retention obligation.
- 15.4. Further information about type, scope, place and purpose of survey, processing and utilization of the necessary personal data by means of BPG can be finding in the data protection declaration.

#### **16. Assignment**

- 16.1. BPG is entitled to wholly or partly assign its contractual rights, particularly payment claims, to third parties at each time without any previous notification of the customer, including serious financing providers and to reveal the required contractual information towards the transferee and possible third parties, who have a legal interest in the transferee or transfer, if necessary for the assignment.
- 16.2. The customer shall not assign the rights and obligations resulting from the business relationship without the approval of BPG.

**17. Place of jurisdiction, applicable law, contractual language**

- 17.1. This contract and the entire legal relations of the contractual parties shall be governed and construed in accordance with the law of the Federal Republic of Germany excluding the UN-purchase right (CISG).
- 17.2. The place of fulfillment for all liabilities as well as the place of jurisdiction is Hamburg if the customer is a merchant, a legal entity of the public law or special public-law property and another place of jurisdiction is not subject to statutory liability. With customers from abroad the international competence by means of German courts has been agreed. BPG is entitled to file a suit at the business seat of the customer.
- 17.3. The contractual languages are German and English, in case of doubt the German-language version is relevant
- 17.4. If individual provisions of this contract are or become ineffective or contain a gap, the other regulations remain unaffected from this. The contractual parties oblige themselves to arrange such a legally admissible regulation in lieu of the ineffective provision, which comes closest to the economic purpose of the ineffective provision or closes this gap.

Status: 30 June,2017