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## General Terms and Conditions of Sale (GTCS) as of September 12, 2016

### I. Scope of application, general terms and conditions of the contractual partner, oral agreements

1. All deliveries, services and offers of BETE DEUTSCHLAND GmbH (hereinafter referred to as BD) are exclusively made/provided on the basis of the present GTCS. They shall form a part of all contracts which BD concludes with its contractual partners (hereinafter also referred to as "Customers") regarding the deliveries or services offered by BD. They shall also apply to all future deliveries, services or offers, even if they are not the subject of a further separate agreement.
2. Terms and conditions of the Customer or of third parties shall not apply, even if their validity is not expressly objected by BD in individual cases. The afore-mentioned regulation shall also apply if BD makes reference to a letter which contains general terms and conditions of the Customer or of third parties or in which it is referred to such general terms and conditions. Such a reference shall not constitute any agreement to the validity of such general terms and conditions.
3. Individual agreements made with the contractual partner in specific cases - including side-agreements, amendments, changes - shall in any case take precedence over the present GTCS. Subject to proof to the contrary, a written contract or the written confirmation issued by BD shall be decisive with respect to the content of any such agreement with the contractual partner.

### II. Offers and conclusion of contract

1. Offers of BD shall be made in writing and are subject to change, if not explicitly marked as binding or containing a concrete term of acceptance. With respect to goods from stock, BD reserves the right to prior sale.

First offers are generally submitted free of charge. Additional offers and design work shall only be made free of charge if a delivery agreement becomes effective between BD and the contractual partner.

2. Any errors in offers, calculations, order confirmations, invoices etc. including calculation and typing errors shall not bind BD in any form. BD does not assume any responsibility for the consequences of delayed forwarding of delivery notes, statements etc.
3. BD can accept orders or contracts within a period of 14 days of receipt thereof.
4. With the exception of managing directors or company officers with general commercial power of representation, the employees of BD are not entitled to make oral agreements. The content of such agreements must be set forth in a written contract or requires the written confirmation of BD.
5. Orders placed with BD shall only become effective upon written confirmation issued by BD.
6. BD retains the ownership or copyright in all offers and cost estimates issued by BD as well as in all drawings, illustrations, calculations, brochures/catalogues, models, tools and other documents and resources that were made available to the Customer. Without the express consent of BD, the Customer may not make these objects – neither in form nor content – available or known to third parties, use or reproduce them or have them used or reproduced by third parties. On request of BD, the Customer shall return these objects to BD in their entirety and, where applicable, shall destroy any copies made thereof if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.

### III. Scope and provision of the contractual services

1. The scope of the deliveries shall be determined by the written order confirmation issued by BD.



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2. When executing the order, BD shall be entitled to presume that the facts cited by the contractual partner, in particular figures and provided documents, are accurate and complete. A review of the provided documents and figures for accuracy, completeness and correctness shall only form a part of the contractual services if this has been expressly agreed in writing.
3. The contractual partner shall timely provide BD with all documents required for the execution of the order. On request, the contractual partner shall confirm to BD in writing the completeness of the provided documents and information.
4. The documents provided by BD (e.g. illustrations, drawings, weights and measurements) are only approximately binding, unless the usability for the contractually stipulated purpose requires full conformity. They are no guaranteed characteristics of constitution, but descriptions or identifications of the delivery or service. BD reserves the right to commercial deviations and deviations that are caused by legal regulations or based on the nature of construction and manufacturing, and which do not affect the usability.
5. The scope of a normal delivery does not contain protective equipment. Protective equipment is only included in the delivery if this has been specifically agreed.

#### **IV. Documents of the contractual partner and storage thereof**

1. If, for the purpose of execution of the contract, BD obtained documents from the contractual partner, the contractual partner shall be obligated to take back those documents at his own expense upon termination of the contract execution.
2. If, upon termination of the contract execution, the documents are not taken back immediately, BD shall only be obligated to store such documents for a period of six months. During this time BD shall only be responsible for the diligence usually applied in own matters. After expiration of the six months, BD may destroy the documents in its possession. Any destruction costs shall be borne by the contractual partner.

#### **V. Delivery, delivery period and default of acceptance**

1. Deliveries are made ex works Bochum.
2. Any deadlines and dates for deliveries and services that are proposed by BD shall always be only approximate, unless a fixed deadline or a fixed date has explicitly been approved or agreed upon.
3. The delivery period shall commence on the date on which the order is accepted by BD, yet not before all details of the execution of the order have been agreed.
4. The delivery period is regarded as met provided the contractual partner is notified in time that the goods are ready for dispatch, if the timely dispatch is not possible without BD or the supplier being responsible for that.
5. The agreed delivery period shall - notwithstanding BD's rights arising from a default by the contractual partner - be extended by the period of time which the contractual partner is in default of his obligations under the respective contract.
6. BD shall not be liable for the impossibility of delivery or delays in delivery where these are caused by force majeure or by other events that were not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring material or energy, transport delays, strikes, legal lockouts, lack of manpower, energy or raw materials, difficulties in obtaining the necessary official approvals, official measures or non-delivery, incorrect or delayed delivery by suppliers) and for which BD is not responsible. As far as such incidents make delivery or performance of services substantially more difficult or impossible for BD, and provided



that the obstacles are not only of a temporary duration, the contractual partner shall be entitled to withdraw from the contract. In the case of obstacles of a temporary duration, the terms for delivery and performance shall be extended or the date of delivery and performance shall be postponed by the period of the obstruction plus an appropriate start-up period. If, due to the delay, the contractual partner cannot reasonably be expected to accept the delivery or performance, he shall be entitled to withdraw from the contract by way of an immediate written notification to BD.

7. If BD is in default of performance, the contractual partner shall be entitled to withdraw from the contract if he has set an adequate grace period for BD in writing beforehand and if the goods have not been reported to the contractual partner as ready for dispatch until expiration of the grace period.
8. BD shall be entitled to make partial deliveries, provided that the partial delivery can be used by the contractual partner within the framework of the contractually intended purpose, the delivery of the remaining goods is guaranteed and no significant additional effort or additional costs will be incurred by the contractual partner.
9. If the contractual partner is in default of acceptance, if he fails to perform a necessary act of cooperation, or if the delivery or performance of BD is delayed for other reasons for which the contractual partner is responsible, BD shall be entitled to request compensation for the damages resulting therefrom including additional expenses (e.g. storage costs). In this case BD will charge a lump-sum compensation for every full week of the delay in the amount of 0.5 %, however not exceeding a total of 5 % of the value of that part of the total delivery that is affected by the delay, beginning with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch. BD reserves the right to prove higher damages and to assert further statutory claims, whereby the lump sum compensation is to be offset against further monetary claims. The contractual partner is entitled to prove that BD has not suffered any damage at all or that the damage suffered by BD is considerably lower than the afore-mentioned lump sum.
10. In case BD is in default of delivery or performance or if, for whatever reason, a delivery or performance becomes impossible for BD, a liability of BD shall be limited in accordance with the provisions of the Section XIV. of the present GTCS.

## **VI. Shipping and risk assumption**

1. Shipment is effected at the risk and expense of the contractual partner. The risk shall be transferred to the contractual partner at the point of time where he is notified by BD that the goods are ready for dispatch. This shall also apply if BD has taken over the loading and/or the costs of transport or has advanced them for the contractual partner.
2. If shipment is effected by BD, this shall be done in its due discretion and with its own customary due diligence without any obligations on the part of BD, unless the contractual partner has provided BD with any specific instructions regarding the shipping. The shipment shall only be insured against theft, damages caused by breakage, transport, fire or water or other insurable risks at the express request and costs of the contractual partner.

## **VII. Prices**

1. Unless any other agreement has been made, the prices are quoted ex manufacturer's works, subject to additions for packaging, loading and unloading, transport and installation, the statutory VAT and, in the case of export deliveries, customs duties as well as fees and other public duties.
2. Inasmuch as the order confirmation does not contain any other agreement, the packaging costs shall be charged at cost price.



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3. The quoted prices correspond to the cost factors which are valid at the time of the offer. In case these are changed during the delivery period, BD reserves the right to proportionately consider such price changes. When calculating possible price increases, this will be based on price increases for materials as well as on the increase of basic wages for workers in the chemical industry. In the case of an increase of the total price by more than 5 %, the contractual partner shall have an extraordinary right to terminate the contract.
4. Any subsequent charges, price increases and duties that are permissible at the time of delivery are considered as agreed. This in particular also includes subsequent charges for proven cost increases during the time of order execution.

## VIII. Payments

1. The following terms of payment shall apply with respect to all deliveries:
2. Invoice amounts are payable within 30 days from the invoice date without any deduction, unless any other written agreement has been made.
3. Payment has to be made irrespective of the receipt of the goods and irrespective of any possible notifications of defects. The payments are regarded as effected as soon as the equivalent value of the deliveries has been credited to one of the accounts of BD. The relevant date of payment is the date on which it is received by BD. No discount will be granted.
4. The set-off against claims of BD or a retention based on such claims shall only be permissible in the case of undisputed or legally determined claims. The right to assign claims against BD is excluded.
5. In the case of withdrawal, termination or cancellation from/of the contract, BD shall be entitled to a compensation for all expenditures incurred by BD until that date as well as to the payment of a remuneration covering the performances hitherto accomplished. Further claims for damages shall remain unaffected.
6. BD will only accept discountable bills of exchange as payment on the basis of explicit agreement. Credit notes for bills of exchange or cheques are always subject to the receipt and irrespective of an earlier due date of the purchase price in the case of a default by the contractual partner. Any credit shall be assigned with the value determined on the date on which BD is able to dispose of the counter value. In the case of delayed payment, interest and costs will be charged in accordance with the respective bank rates for short-term loans.
7. Should the contractual partner fail to effect payment when due, an interest of 9 % p.a. above the respective base rate will be charged on the outstanding amounts as from the due date. The right to claim higher interest and to claim further damages caused by default of performance shall remain unaffected.
8. BD is entitled to only conduct or provide outstanding deliveries or performances against advance payment or a respective security deposit if BD, after conclusion of the contract, becomes aware of circumstances that may substantially reduce the creditworthiness of the contractual partner and which may put at risk the payment of outstanding claims by the contractual partner from the respective contract relationship, including from other individual orders for which the same framework contract applies.

## IX. Acceptance

The acceptance inspection is carried out at BD's plant after prior agreement.

As soon as the goods have left the manufacturing plant, they shall also be regarded as manufactured and delivered in accordance with the agreed terms if, despite a respective agreement, the acceptance was not carried out





at the manufacturing plant for specific reasons. The personal acceptance costs shall be borne by the contractual partner.

#### **X. Retention of title**

1. All delivered goods shall remain property of BD until full payment of all current and future claims from the purchase contract and a current business relationship (secured claim). This shall also apply if the contractual partner has paid the purchase price for specially designated claims. In the case of open accounts, the reserved property is deemed to be a security for the balance claim of BD. The contractual partner shall be entitled to resell and/or further process the goods that are subject to the retention of title in the ordinary course of business. The retention of title extends to the full value of any products that arise from the processing, mixing or connection of BD's goods, whereby BD is deemed to be the manufacturer. The processed goods shall serve BD as a security in the amount of the invoice value of the goods that are subject to retention of title.
2. Prior to full payment of the secured claims, the goods that are subject to a retention of title may neither be pledged to third parties nor assigned as a collateral. The contractual partner shall immediately inform BD in writing if and when any third parties have access to the goods that are subject to retention of title.
3. In the case of processing with other goods not belonging to BD by the contractual partner, BD shall - to the extent that third party property rights continue to exist - be entitled to joint ownership of the new item in proportion of the value of the goods that are subject to retention of title to the other processed goods at the time of processing. The new item resulting from the processing shall be regarded as a product that is subject to retention of title within the meaning of this Section X.
4. The contractual partner shall irrevocably assign as a security to BD all claims and demands arising from the resale of the goods that are subject to retention of title, irrespective of any possible further processing and irrespective of whether the goods are sold to one or several recipients, either in full or, where applicable, in the amount of a possible co-ownership share of BD. BD accepts this assignment. The obligations of the contractual partner as cited in Par. 2 shall also apply with respect to the assigned claims.
5. Besides BD, the contractual partner shall remain entitled to collect the receivables. BD will not collect the receivables as long as the contractual partner meets his payment obligations towards BD, is not in default of payment, no application is filed for the opening of insolvency proceedings and no other lack of his financial capacity occurs. Should this happen, BD shall be entitled to demand that the contractual partner notifies BD of the assigned claims and the corresponding debtors, provides all particulars necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
6. Should the realizable value of the securities held by BD exceed its claims by more than 10 %, BD shall, at the contractual partner's request, release securities of its own choice.
7. In the case of commission processing, BD shall, with delivery of the goods, acquire the partial ownership to the entire material in the amount of its invoice value. By applying the previous provisions, the partial ownership shall be maintained until complete payment of BD's claims.
8. In the case insolvency proceedings are opened over the assets of the contractual partner, BD shall be entitled to withhold material already processed by BD as well as any not yet converted stocks of material as a security for its total claims until the claims have been completely satisfied.
9. If the contractual partner is in breach of contract, in particular in the event of non-payment of the purchase price due, BD shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand that the goods be returned on the basis of retention of title and of the effected withdrawal. In case the contractual partner does not pay the purchase price due, the aforesaid shall only apply if BD has at first set him



a reasonable time limit for payment or if the setting of such a time limit is dispensable according to the statutory provisions.

## **XI. Warranty, statute of limitation**

1. The warranty period is one year from delivery or, as far as an acceptance is necessary, from acceptance. The aforesaid limitation period shall also apply to contractual and non-contractual claims for damages of the contractual partner which are based on defective goods, except if the application of the regular statutory limitation (§§ 195, 199 BGB (German Civil Code)) would result in a shorter limitation period in the individual case. Mandatory statutory special provisions with respect to limitation, in particular with respect to claims under the Product Liability Act or the claims as mentioned in Section XIV., Par. 7, shall remain unaffected.
2. No warranty shall be assumed in case the contractual partner has provided erroneous or incomplete information regarding the actual application of the suitable products of BD when placing the order.
3. If a performance is guaranteed by BD, the guarantee shall still be deemed to have been fulfilled if the performance actually achieved lags behind the guaranteed performance by not more than 10 %.
4. The delivered goods shall be inspected carefully immediately after delivery thereof to the contractual partner or to a third party designated by him. With respect to obvious defects or other defects which could have been detected during an immediate careful inspection, the goods are considered as being accepted by the contractual partner if BD does not receive a written notification of defects within 10 working days after effected delivery of the goods at the place of destination. With respect to other defects, the delivery items are considered as being accepted if BD does not receive a notification of defects within 10 working days from the moment in which the defect was first detected. If, during normal use of the goods, the defect has become evident to the contractual partner already at an earlier point in time, this earlier point in time shall be decisive for the calculation of the period allowed for sending a notice of defect. Upon request of BD, a rejected delivery item shall be returned to BD free of carriage charges. Any claims of the contractual partner for the compensation of reasonable transport costs in the case of a justified notice of defects shall remain unaffected.
5. In the case of material defects of the delivered items, BD shall, at its own discretion and within a reasonable period of time, be obligated and entitled to at first provide rectification or a compensation delivery. In the event of failure, i.e. in the case of impossibility, unreasonableness, refusal or undue delay of the rectification or compensation delivery, the contractual partner shall be entitled to withdraw from the contract or reduce the purchase price appropriately. The supplementary performance does neither include the disassembly of the defective item nor the re-assembly if BD was originally not obligated to carry out the assembly.
6. If a defect indeed exists, BD shall bear all costs incurred with respect to the inspection and supplementary performance, in particular transport costs, infrastructure costs, labour costs and material costs (not: costs for disassembly and assembly). Otherwise, BD shall be entitled to request the contractual partner to reimburse the costs incurred due to the unjustified demand for rectification of a defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable for the contractual partner.
7. If a defect was caused by a fault of BD, the contractual partner may demand a damage compensation under the conditions mentioned in Section XIV. and the liability limitations cited therein.
8. In the event of defects in components provided by other manufacturers, which cannot be remedied by BD due to license-related or actual reasons, BD shall at its discretion enforce its rights against the manufacturers and suppliers for the account of the contractual partner or assign its claims to him. In the case of such defects, warranty claims against BD shall only exist under the other conditions and in accordance with the present GTCS if the legal enforcement against the manufacturer and supplier was unsuccessful or, for example due to insolvency of



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such manufacturer or supplier, is futile. During litigation, the limitation of all relevant claims of the contractual partner against BD is suspended.

9. The warranty shall lapse if the contractual partner modifies the delivery item or has the delivery item modified by third parties without the consent of BD, thus making the rectification of defects impossible or unreasonably difficult. In any case, the contractual partner shall bear the additional costs for rectification of defects which were caused by the modification. The right of the contractual partner to rectify the defect himself in urgent cases, e.g. where operational safety is at risk or in order to avoid unreasonable loss or damage, and to demand compensation of the objectively required expenses from BD shall remain unaffected. BD shall immediately be informed about such a substitute performance, if possible beforehand. The right to rectify defects himself does not exist if BD would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.
10. Any products replaced by BD shall become the property of BD and shall be sent to BD upon request. For replaced and/or renewed parts, the original warranty shall continue to apply with respect to its scope, beginning date and duration.
11. A supply of used items as agreed with the contractual partner in individual cases shall exclude any warranty for material defects.
12. A notification of defects shall not lead to a suspension of the statute of limitation.

## **XII. Long-term transactions**

In the case of concluded contracts which include a continuous delivery, BD shall be provided with call-forward notices and corresponding delivery schedules. If the call-forward notices or delivery schedules are not provided in time, BD shall, after having unsuccessfully set a grace period, be entitled to make allocations itself and to deliver the goods, or to withdraw from the part of the contract which has not yet been fulfilled and/or to claim damage compensation due to non-fulfillment.

## **XIII. Industrial property rights of third parties**

1. In accordance with the present Section, BD guarantees that the delivery item is free of industrial property rights or copyrights of third parties. Each contractual party shall immediately inform the respective other contractual party in writing in case third party claims are asserted against it based on the infringement of such rights.
2. In case a delivery item infringes an industrial property right or copyright of a third party, BD shall at its discretion and expense modify or replace the delivery item in such a way that it no longer infringes any third party rights, but that the delivery item continues to fulfill its contractually agreed functions, or obtain a usage right for the contractual partner by concluding a license contract. In case BD does not manage to do so within a reasonable period of time, the contractual partner shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damage compensation of the contractual partner shall be subject to the limitations of Section XIV. of the present GTCS.
3. In the case of infringements caused by products of other manufacturers that were delivered by BD, BD may at its discretion assert claims against the manufacturers and pre-suppliers for the account of the Customer or assign its claims to him. In these cases, claims against BD shall only exist under the other conditions and in accordance with the present Section XIII. if the legal enforcement against the manufacturer and supplier was unsuccessful or, for example due to insolvency of such manufacturer or supplier, is futile.



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## **XIV. Liability**

1. BD's liability for damages, irrespective of the legal basis, in particular due to impossibility, default, defective or incorrect delivery, breach of contract, infringement of duties during contract negotiations and tort, shall, to the extent that this involves culpability, be limited in accordance with this Section XIV.
2. BD shall not be liable in the case of simple negligence of its management bodies, statutory representatives, employees or other vicarious agents, to the extent that it does not involve a breach of essential contractual obligations. Essential contractual obligations are the timely delivery and installation of the delivery item, its freedom from defects which more than insignificantly impair its functionality and usability, as well as duties of consultation, protection and care which shall enable the contractual partner to use the delivery item in accordance with the contract or which shall serve to protect life and limb of the contractual partner's personnel or to protect his property from major damage.
3. To the extent that BD is liable for damages on the merits pursuant to the provisions of the present Section XIV., the said liability shall be limited to damages which BD anticipated as a possible consequence of a breach of contract when concluding the contract, or which BD should have anticipated when applying due care and attention. Furthermore, indirect damages and consequential damages resulting from defective delivery items shall only be eligible for compensation if such damage can typically be expected when the delivery item is used in conformity with its intended purpose.
4. In the case of liability for simple negligence, the liability of BD for material damages and further financial losses resulting therefrom is limited to an amount of EUR 5 million per claim (corresponding to the current coverage of its product liability insurance or third party liability insurance), even if it involves a breach of essential contractual obligations.
5. The afore-mentioned exclusions and limitations of liability shall to the same extent apply to the benefit of the management bodies, statutory representatives and employees as well as other vicarious agents of BD.
6. To the extent that BD provides technical information or consultancy services, and if such information or consultancy is not a part of the contractually agreed scope of services owed by BD, this is done free of charge and with the exclusion of any liability.
7. The limitations of the present Section XIV. shall not apply to the liability of BD for willful conduct, guaranteed characteristics of state, injury to life, body or health as well as to the liability under the product liability law.
8. The liability of BD is excluded for any damages resulting from the condition of the supplied materials or damages resulting from natural wear, incorrect or improper handling, excessive operational demands as well as chemical, thermal and/or mechanical influences, to which the used material is resistant according to the information and knowledge available at the time of conclusion of the contract. Furthermore, no liability is assumed for delivery parts which are subject to premature wear due to their material characteristics or type of use.

## **XV. Applicable law, place of performance, jurisdiction**

1. The present contract and its implementation shall exclusively be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The preconditions and effects of retention of title in accordance with Section X. shall be governed by the law in force at the place where the goods are stored if, under that law, the choice of German law would be inadmissible or invalid.
2. As far as legally permissible, the agreed place of performance and (international) place of jurisdiction shall be Bochum. However, BD shall also be entitled to file a suit at the place of general jurisdiction of the contractual partner.





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## XVI. Omissions

In case the contract or the present GTCS contain any omissions, a legally valid provision is presumed to be agreed upon which comes closest to what the contractual partners would have agreed upon with respect to the economic objectives of this contract and with respect to the purpose of the GTCS if they had been aware of the omission.

### **Note in accordance with § 28 BDSG (Federal Data Protection Act)**

The contractual partner takes note of the fact that BD will store data from the contractual relationship in accordance with § 28 BDSG (Federal Data Protection Act) for the purpose of data processing and that BD reserves the right to transmit the data to third parties (e.g. forwarding agents, insurance companies), inasmuch as this is necessary for the fulfilment of the contract.

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