

Terms & Conditions

General Supply Conditions of BOGEN Electronic GmbH,
Potsdamer Str. 12-13, D - 14163 Berlin, Germany
(as of 1st January 2011)

I. General Provisions

1 The present general supply conditions (hereinafter "GSC") apply to all types of legal business, including offers, supplies and services (hereinafter collectively "Supplies") transacted between BOGEN Electronic GmbH (hereinafter "BOGEN") and the Purchaser. They apply to any future business between the Parties without further reference.

2 General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by BOGEN. If the parties, in exceptional cases and with respect to particular Supplies, agree in writing on deviating conditions, the present GSC shall apply as a subordinate supplement to such deviating conditions.

3 BOGEN sales staff is not entitled to enter into oral agreements.

4 Unless otherwise expressly provided, offers for Supplies and for prices submitted by BOGEN are subject to confirmation. Orders placed will become binding on BOGEN only upon written confirmation or by BOGEN actually providing Supplies or issuing an invoice.

5 BOGEN herewith reserves any industrial property rights and/or copyrights of use pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without BOGEN's prior consent and shall, upon request, be returned without undue delay to BOGEN if the contract is not awarded to BOGEN. Sentences 1 and 2 apply *mutatis mutandis* to Documents of the Purchaser; these may, however, be made accessible to third parties to whom BOGEN may rightfully transfer Supplies. Business or trade secrets must be treated strictly confidentially.

6 The Purchaser has the non-exclusive right to use standard software and firmware, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy of standard software without express agreement.

7 Documents, models and/or samples, including technical data and descriptions in specific product references or advertising materials pertaining to the offer are without engagement and for information purposes only. They cannot be construed to constitute a quality guarantee or durability guarantee of the Supplies to be provided by BOGEN.

8 Partial Supplies are allowed, unless they are unreasonable to accept for the Purchaser.

9 "Claim for damages" as used in the present GSC also includes claims for indemnification for useless expenditure.

II. Prices, Conditions for Payment and Set-off

1 Prices are net, ex works and exclude packaging; value added tax is added at the then applicable rate.

2 If BOGEN is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. travel costs, costs for transport as well as allowances.

3 All prices refer to the individual type and the individual order; prices are not revised if quantities ordered are subsequently increased. The same shall apply to subsequent orders. BOGEN reserves the right to make partial Supplies; the prices applicable shall be the price agreed for each such partial Supplies.

4 Invoices issued by BOGEN are payable within 14 days after the date of the invoice with a 2 per cent early payment discount or within 30 days net payment office, without deduction by transfer into the bank or postal giro accounts of BOGEN. Invoices for repair work are payable net immediately upon receipt in the same manner. The Purchaser shall pay for any banking fees related to cheques that are accepted as payment subject to being honoured or bill of exchange tax related to bills of exchange that are accepted as payment subject to their eligibility for discount.

5 The Purchaser may set off only claims that are undisputed, have been acknowledged by BOGEN or against which no legal recourse is possible. The same applies *mutatis mutandis* with respect to set-off rights.

6 BOGEN is entitled to charge interest for late payment in the amount that is customary in the industry, however no less than 8 (eight) percentage points above the relevant basic interest rate, if the Purchaser defaults in payment. BOGEN is entitled to claim the full amount if it can prove that the damage caused by the default is higher.

7 If the Purchaser defaults in payment or if, after the contract date, circumstances come to light compromising its creditworthiness, BOGEN will be entitled to claim all remaining payments from the Purchaser immediately in their entirety, demand pre-payment or the provision of a security, or withdraw from the contract upon expiry of an appropriate grace period set without prejudice to any other rights BOGEN may have. The Purchaser's creditworthiness is deemed compromised in particular if the Purchaser fails to make its payments on time or suspends payment, if the assets of the Purchaser are made subject to administration, or if a petition for insolvency has been filed and rejected for lack of funds. Any previous claims based on default or on Supplies provided remain unaffected.

8 Any assignment of rights arising out of this contract requires the prior written approval of BOGEN. The Purchaser has no claim to demand that such an approval be granted. The provisions of Sec. 354a of the German Commercial Code HGB remain unaffected.

III. Reservation of Title

1 The things pertaining to the Supplies (hereinafter "Retained Goods") remain the property of BOGEN until each and every claim BOGEN has against the Purchaser on account of the business connection has been fulfilled. If the combined value of the security to which BOGEN is entitled exceeds the value of all secured claims by more than 20 %, BOGEN shall release a corresponding part of the security if so requested by the Purchaser; BOGEN shall be entitled to choose what security it wishes to release.

2 During the validity of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment. BOGEN is entitled to revoke such right to resale if the Purchaser suspends its payments, the Purchaser defaults in payment, or if facts indicate a deterioration of the financial standing after the contract date, or if other matters exist after the contract date justifying the assumption that BOGEN's claim to receive valuable consideration is put at risk because of lacking ability to perform. With respect to the goods of which BOGEN is a (co-)owner, the Purchaser herewith assigns to BOGEN by way of security any of its claims resulting from a resale or other legal grounds in the amount of the value invoiced for the corresponding item delivered. BOGEN herewith accepts the assignment. Upon request, the Purchaser shall provide BOGEN with written statements of assignment. The Purchaser shall have the revocable right to collect claims in its own name in its ordinary course of business. Revocation of the right to collect claims is subject to the same conditions as the right to resale items in the ordinary course of business.

3 Any combination, amalgamation or processing of items delivered is deemed made on behalf of BOGEN as its manufacturer, without any obligation ensuing on its part. If the (co-)title lapses as a result of the combination, amalgamation or processing, the Parties herewith agree that BOGEN is then to acquire (co)ownership in the new thing in proportion to the amounts invoiced for the combined, amalgamated or processed articles. The Purchaser shall store the (co-)owned things free of charge for BOGEN. The new things are considered as Retained Goods within the meaning of the present provision. If Retained Goods are sold and/or assembled to fulfil a contract, the Purchaser herewith assigns to BOGEN any resulting claims for payment of the purchase price or the price for work and labour, irrespective of whether the Retained Goods are forwarded to one recipient or more recipients, prior of after processing, and/or separately or together with other things. Ancillary claims related to the Retained Goods, including without limitation, insurance claims, are to be assigned to the same extent. BOGEN herewith accepts the assignment.

4 The Purchaser shall inform BOGEN forthwith of any measure related to compulsory execution, seizure or other act of intervention by third parties to enable BOGEN to seek legal recourse, if appropriate.

5 Where the Purchaser fails to fulfil its duties, including failure to make payments due, BOGEN shall be entitled to take back the Retained Goods and/or also cancel the contract in the case of continued failure following expiry of a reasonable grace period set; the statutory provisions that a time limit is not required remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

6 The fact that BOGEN takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless BOGEN so expressly declares.

7 The Purchaser shall insure the Retained Goods against the risk of fire, water and theft; it is obliged to prove to BOGEN upon request that it has actually taken out appropriate insurance cover.

IV. Time for Supplies; Default

1 Supply periods are without engagement unless otherwise agreed in writing. Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. Delivery periods do not start before all these requirements are satisfied. Where these requirements are not fulfilled in time, the periods are extended accordingly.

2 The supply period approved by BOGEN shall be extended accordingly if non-adherence to the period is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, or any other circumstance not attributable to BOGEN, particularly also in the case of scrap of an important work piece or lack of supplies from the Purchaser. BOGEN is released from its delivery duty if it becomes impossible for BOGEN to provide the agreed Supplies or the agreed performance due to one of the above-mentioned events related to force majeure; furthermore, the rules on withdrawal and cancellation shall apply. BOGEN is obliged to notify the Purchaser immediately if a force majeure event occurs. Events of force majeure within the aforementioned meaning shall release BOGEN also from its agreed obligations if such events start to produce their effects on BOGEN's obligations after default has occurred.

3 The supply period is deemed observed if, upon its expiry, the goods have left the works or the goods' readiness for dispatch has been notified, unless otherwise agreed in writing. If agreed, BOGEN endeavours to effect dispatch of the goods as soon as possible.

4 If the promised Supplies cannot be provided because BOGEN has not received supplies from its subcontractor, BOGEN will be entitled to render performance in an equivalent quality and price. If this, too, is impossible, BOGEN will be entitled to withdraw from the contract. In such a case, BOGEN will notify the Purchaser immediately of the non-availability and forthwith refund any payments already made by the Purchaser.

5 Purchaser's claims for damages due to delayed Supplies or claims for damages in lieu of performance are excluded in all cases of delayed Supplies even upon expiry of a statutory time-limit applicable to the provision of the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to an injury to life, limb or health. Other than in the case of a defect of quality, the Purchaser may withdraw from the contract only if BOGEN is guilty of a breach of duty. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

6 At BOGEN's request, the Purchaser shall declare within a reasonable period of time whether the Purchaser rescinds the contract due to the delayed Supplies or insists on the Supplies to be carried out.

7 If dispatch or shipment is delayed at the Purchaser's request by more than one month after notification of the

readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5%. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

V. Transfer of Risk

1 Unless otherwise expressly agreed, the risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser, even in the case of freight-free Supplies or if the cost of transport is to be borne by BOGEN, at the times specified hereinafter:

(a) if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. BOGEN shall not be liable for damage in transit unless evidence proves that the damage is attributable to improper packaging. Upon request of the Purchaser, BOGEN shall insure the Supplies against the usual risks of transport at the expense of the Purchaser;

(b) at the time when the completed goods are ready for dispatch, unless delivery is effected at some later time upon the request of the Purchaser. If so requested by the Purchaser, BOGEN shall take out adequate insurance cover for the Purchaser's account;

(c) if the Supplies include assembly or erection, at the day of handing-over in the own works or, if so agreed, after a fault-free trial run.

(d) at the time of dispatch, shipping, the start or performance of assembly or erection, the handing over in the own works or the trial run if delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise culpably failed to accept the Supplies.

VI. Quality Defects

1 The Purchaser shall not refuse to receive Supplies due to minor defects. Sec. 377 HGB shall apply with the proviso that defects that are apparent or that become apparent only upon proper inspection must be notified in writing within a period of no more than 8 (eight) days after the goods have been handed over to the Purchaser. Hidden defects shall be notified in writing no later than 8 (eight) days after they have been detected.

2 Claims based on defects are subject to a limitation period of 12 months calculated from the time when the risk passes. This does not apply in the case of an injury to life, limb or health and/or an intentional or grossly negligent breach of contract on the part of BOGEN as well as in the case of fraudulently concealed defects.

3 As a first step, parts or Supplies showing a quality defect during the liability period are, at the discretion of BOGEN, repaired, replaced or provided anew free of charge, provided that the reason for the defect had already existed at the time when the risk passed. In the case of defective software, provision of an update or of an upgrade are deemed to constitute appropriate means of rectification ("subsequent performance").

4 If subsequent performance is unsuccessful, the Purchaser will be entitled to rescind the contract or reduce

the remuneration, irrespective of any claims for damages it may also have according to Article VII.

5 Claims based on defect are excluded in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear, or of damage arising after the transfer of risk from faulty or negligent handling, use of unsuitable equipment, defective civil works, overvoltage, stroke of lightning and/or other external influences, as well as inappropriate modifications or repair work performed and inappropriate maintenance according to the operation manual.

6 If a defect has been notified, the Purchaser may withhold payments only to a reasonable extent taking into account the defect occurred. Unjustified notifications of defect shall entitle BOGEN to have its expenses reimbursed by the Purchaser.

7 The Purchaser shall have no claim with respect to expenses incurred in the course of subsequent performance, including costs of travel and transport, labour and materials, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the use of the Supplies specified in the contract.

8 The Purchaser's right of recourse against BOGEN pursuant to Sec. 478 of the German Civil Code BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on defects.

9 Furthermore, claims for damages are subject to the provisions of Art. VIII (Other Claims for Damages). Any other claims of the Purchaser against BOGEN or its agents or any such claims exceeding the claims provided for in this Article VII, that are based on a defect, shall be excluded.

VII. Industrial Property Rights and Copyright; Defects in Title

1 Unless otherwise agreed, BOGEN shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR regarding the Supplies made by BOGEN, that were used in conformity with the contract, then BOGEN shall be liable to the Purchaser within the time period stipulated in Article VI No. 2 as follows:

(a) BOGEN shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR, or replace them. If this would be unreasonable to demand from BOGEN, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.

(b) BOGEN's liability to pay damages is governed by Article VIII.

(c) BOGEN shall only be bound to the obligations described above provided that the Purchaser has immediately notified BOGEN in writing of the claims asserted by the third party, that it has not acknowledged infringement and that all counter-measures and settlement

negotiations are reserved to BOGEN. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.

2 Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.

3 Claims of the Purchaser are excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not foreseeable by BOGEN or by the Supplies being modified by the Purchaser or being used together with products not provided by BOGEN.

4 The Purchaser's claims in the case of an IPR infringement are provided for in paragraph 1 (a) above. Furthermore, the provisions of Article VI shall apply *mutatis mutandis*.

5 Where other defects in title occur, the provisions of Article VIII shall apply *mutatis mutandis*.

6 Any other claims of the Purchaser against BOGEN or its agents or any such claims exceeding the claims provided for in this Article VII, based on a defect in title, are excluded.

VIII. Other Claims for Damages; Prescription Period

1 The Purchaser has no claims for damages and reimbursement of expenses, based on whatever legal reason, including breach of duty arising in connection with the contract or tort. This applies also to claims based on tort at the time when the contract was concluded.

2 The above does not apply to claims under the German Product Liability Act ("*Produkthaftungsgesetz*"), in the case of intent or gross negligence on the part of BOGEN or its agents, in the case of injury to life, limb or health, or due to fraudulent concealment of a defect or breach of a fundamental condition of contract. However, damages for breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury to life, limb or health. Fundamental conditions of contract refer to obligations that make the orderly execution of the contract possible in the first place and which each of the parties is ordinarily expected to be able to rely on.

3 BOGEN products must not be used for medical or aviation purposes, unless a written approval has been obtained.

4 Where BOGEN's liability is limited or excluded, such limitation or exclusion shall also apply to the personal liability on the part of employees, staff, representatives and agents used by BOGEN.

5 Claims for damages on the part of the Purchaser according to this Article VIII shall be time-barred upon expiry of the limitation period applicable to defects pursuant to Art. VII No. 2. This does not apply in the case of Article VIII No. 2 1st sentence. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply. The provisions of Sec. 479 BGB remain in effect unchanged.

6 The above provisions do not imply a change in the burden of proof to the detriment of Purchaser.

IX. Taking back of Goods; Cancellation Policy

1. Products from Supplies that have been effected as ordered are not taken back. In the case of individual exceptions agreed in writing, costs related to engineering and administrative expenditure incurred by BOGEN when taking back the products shall be taken into account in the credit note.

2. Cancellation of a confirmed purchase order is subject to cancellation fees based on the level of completion and related costs. Orders of goods may be cancelled if the products ordered have not yet been delivered. Such a cancellation constitutes a breach of contract. If the buyer cancels the order before or during its execution, then BOGEN is entitled to a lump sum claim for damages or a pro rata remuneration in the amount of 20% of the confirmed order value. The buyer is left to prove a lesser damage of BOGEN. The assertion of further legal rights, in particular the specifically lost remuneration claim, remains reserved.

X. Place of Performance; Venue; Applicable Law

1. Unless otherwise agreed, the place of performance shall be Berlin, Germany.

2. If the Purchaser is a business or a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be Berlin, Germany. However, BOGEN may also bring an action at the Purchaser's place of business.

3. Any legal relations existing in connection with this contract shall be governed by German substantive law alone and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. BOGEN stores data of its Purchasers and customers from the mutual business relationship pursuant to the German Federal Data Protection Act ("*Bundesdatenschutzgesetz*").

XI. Binding Force of the Contract

The legal invalidity of one or more provisions of this contract in no way affects the validity of the remaining provisions. This does not apply if it would be grossly unreasonable for one of the parties to be obligated to continue the contract. All information contained in catalogues, brochures, price lists, on the internet or in any other form of BOGEN promotion materials are indicative only; they have been specified by BOGEN with the greatest care and efforts. All information is subject to change without notice.

Berlin, January 2011



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