

GENERAL CONDITIONS OF SALE AND DELIVERY OF
BHM-Tech Produktionsgesellschaft mbH
Grafenschachen 242
7423 Grafenschachen
Austria
FN: 225220g

As of June 2024

1. Scope of Application

BHM-Tech Produktionsgesellschaft mbH (hereinafter referred to as „BHM“ or „the Seller“) supplies products developed for the medical demand - hearing aid devices, related accessories and spare parts. These General Terms and Conditions of Sale and Delivery shall apply to all contracts on the delivery of goods concluded by an entrepreneur (hereinafter referred to as “Customer“) with the Seller. It is hereby expressly objected to the inclusion of the Customer’s own terms and conditions in the contract, unless otherwise agreed in writing explicitly. Any amendments to and supplementary additions of these GTC shall only be deemed effective, if the Seller’s explicit written consent to the same has been obtained.

Consumer within the framework of these GTC shall mean any natural person concluding a legal transaction for purposes which cannot be attributed primarily to their commercial or self-employed activities.

A commercial entrepreneur within the meaning of these General Terms and Conditions is a natural or legal entity or a judicable partnership that in concluding a legal transaction is acting in the execution of its commercial or independent business activity. BHM shall, therefore, act as a supplier on the basis of these General Terms and Conditions of Sale and Delivery exclusively for entrepreneurs who re-sell the products as distributors. By placing an order, the purchaser confirms that he acts as an entrepreneur as set forth above.

2. Conclusion of Contract

Any offers expressed on the part of BHM shall require the written form in order to be deemed binding.

The Customer may confirm the acceptance of the offer with binding effect by signing and submitting the same either via fax, email or postal mail.

Any subsequent amendments to and additional supplements of the contract shall require a written confirmation to be obtained from BHM in order to be deemed valid.

BHM shall be entitled to the ownership in any copyrights and industrial property rights in the offers as well as any related drawings, pictures, photos and descriptions.

3. Withdrawal from the Contract

The Seller shall reserve the right to withdraw from the contract in case of incorrect or improper delivery carried out by presuppliers. This shall only apply in the event that the Seller cannot be held responsible for the non-delivery and where the Seller has concluded a congruent hedging transaction with the supplier with all due care. In case of non-availability or an only partial availability of the goods, the Customer shall be immediately notified of such circumstance and shall be informed of the new delivery date, and a later delivery or subsequent delivery shall be deemed agreed upon between the parties to the contract.

4. Prices

Unless otherwise agreed in writing, the prices shall be deemed quoted on the part of BHM always ex stock at Grafenschachen, exclusive of packaging, loading, waste disposal costs, transport, insurance policy, shipping charges, handling fees and statutory VAT. In the event of an increase in prices charged by the suppliers or an increase of personnel costs that may arise in connection with training measures etc., BHM shall, furthermore, reserve the right to charge higher prices, if there is a time span of more than 3 weeks between the Customer’s date of order and the agreed date of delivery.

5. Delivery

The delivery period under the agreement shall commence, at the earliest, upon:

- mailing and dispatch of the order confirmation,
- the date on which BHM has actually received the down payment to be made prior to delivery of the goods as agreed upon before with the Customer.

Delivery deadlines agreed upon between the contracting parties shall be subject to unpredictable circumstances or those that lie outside BHM’s sphere of responsibility, e.g. all cases of force majeure, strike, war, riots, natural disasters, local interventions and prohibitions, delay in transport and customs clearance, transport damage, transport locks, IT- based disruptions etc. The aforementioned circumstances shall justify also an extension of the delivery deadline, if they occur with BHM’s suppliers. BHM shall notify the Customer of any delivery delays caused by the aforementioned circumstances as soon as possible.

BHM shall be entitled to carry out and set off/invoice partial or advance deliveries.

Any claims for damages arising as a result of delivery delay may only be asserted, if a separate agreement to this extent has been entered into in writing between the contractual partners, or the delay in delivery can be attributed exclusively to willful or grossly negligent behaviour committed by BHM or their vicarious agents.

6. Performance and Dispatch

Unless otherwise agreed in writing, the delivery on the part of BHM shall be made for the account of or against advance payment and at the risk of the Buyer, without own packaging ex stock (EXW, Incoterms 2010). Unless otherwise agreed, the Buyer shall bear any costs arising in connection with transport, postage, packaging, loading and waste disposal. Any packing shall be invoiced at cost price, inclusive of any disposal and license shares, and shall not be taken back. The Purchaser shall be charged any costs for insurance cover, to be invoiced at a flatrate amount. Should the Customer not opt for an insurance cover, then this request must be communicated in writing, and the Customer shall not be entitled to any further claims arising in connection therewith.

If the dispatch is delayed by circumstances which can be attributed to the Purchaser’s part, then the delivery of the items shall be deemed to be fulfilled when the notification of the readiness for shipment has been submitted. The ordered goods shall then be withheld by BHM at the Purchaser’s expenses and risk. If delivery on call is agreed upon, then the ordered goods shall be deemed called off at the latest one year after the order was placed. The terms of payment agreed upon between the contractual partners shall not be modified through such delay of acceptance. Unless otherwise agreed in writing, the ordered goods shall be delivered in the original packaging used by BHM’s suppliers.

7. Warranty and Liability

The Seller's information with a view to use and maintenance as well as the instructions for use and the user manual must be observed in any case (otherwise all warranty claims shall become nil and void).

Any further claims going beyond, in particular claims for damages, lost profit or compensation for consequential damages arising as a result of slight or gross negligence shall be excluded, unless blatant gross negligence can be proven. The warranty shall expire, if the Purchaser himself or third parties carry out any modifications, attempts of repair, overhauls or maintenance work on the delivered goods. Upon acceptance of repair orders, modifications or reworking, no warranty shall be assumed. Furthermore, entrepreneurs and business entities shall be obliged to comply with the requirement to give notice of defects pursuant to Section 377 of the Austrian Company Code (i.e. § 377 UGB); otherwise warranty claims, claims for damages related to the defect itself or due to an error on the absence of defects of the item may not be asserted any more.

Any further use of the goods must be discontinued immediately after the discovery of the defect and any accidental or unintentional use must be avoided by means of a corresponding labelling, and BHM must be notified of such measures in due course; no liability shall be assumed for any damage caused by a continuous use of the goods after the defect has been discovered.

8. Payment

The invoices issued by BHM shall, unless otherwise agreed in writing, become due and payable upon receipt, without any deductions, strictly net and free of expenses, unless otherwise agreed upon between the contracting parties.

In the event of default in payment, Section 456 of the Austrian Company Code (i.e. § 456 UGB) shall apply accordingly; BHM shall charge the statutory default interest of 9.2 % above the base rate (the applicable base interest rate may be accessed at www.oenb.at).

Any default in payment shall entitle BHM (at its own discretion alternatively or cumulatively) to defer discharging its own contractual obligations or withhold the same until all outstanding payments or other performances have been settled, or to extend the delivery period in a reasonable manner, to declare the entire outstanding amount of the purchase price due and payable, and, in case of Customer's failure to fulfil its payment obligations within a reasonable period of grace, to a withdrawal from the contract.

9. Retention of Title

In respect of entrepreneurs and business entities, BHM retains ownership title in the delivered goods until all claims resulting from an ongoing business relationship have been settled in full.

The Seller shall be entitled to a resale of the conditional commodity within the course of the proper business operation. Any claims resulting thereof towards third parties shall be assigned in advance by the Customer towards the Seller in the amount of the respective invoice value (including VAT). This assignment shall apply irrespective of whether the goods subject to retention of title were resold without or after processing. Even after assigning them, the Customer shall remain entitled to enforce and collect the claims. The Seller's entitlement to collect the claims himself shall remain unaffected by the foregoing provision. The Seller shall, however, refrain from collecting the claims and receivables himself as long as

the Customer meets its payment obligations towards the Seller, does not become delinquent with payments, is not in arrears with payment, and in particular no petition for the opening of insolvency proceedings is filed.

10. Test devices

BHM provides the opportunity of free-trial test devices which may be used for a period of 21 days. If the device is not returned within the free-trial period of 21 days, i.e. is not received back by BHM, then the same device shall be deemed to have been purchased by the Customer to whom will then be sent an invoice. Should, upon receiving back the device, any damage or defect be found, then the Customer shall be charged for the same or in relation with any related costs which may incur for the repair.

11. Place of Performance and Legal Venue

The place of performance for the delivery and the payment shall be deemed to be Eisenstadt. The entire legal relationships between the parties shall be governed by Austrian law excluding the provisions governing the United Nations Convention on Contracts for the International Sale of Goods (CISG).

It is hereby agreed upon between the contracting parties that the sole place of jurisdiction shall be the place where the Seller has its registered business seat.

12. Final provisions

No verbal collateral agreements shall be deemed to exist.

Any alterations, amendments and supplements to the concrete General Terms and Conditions and/or the underlying contract shall require the written form in order to be deemed effective; the aforementioned provision shall also apply to any agreement wherein a departure from such written form might be contained. Any deletions shall require a separate reference to the deleted point(s)/clause(s) as well as the apposition of the date of deletion and the signature of both contractual partners.

Should an individual or several provision(s) of these General Terms and Conditions and/or the underlying contract be or become ineffective, this shall not affect the validity of the remaining provisions. The contractual partners shall replace in such case the invalid provision by another provision, the contents of which comes closest to the immaterial and/or economic purpose of the provision to be replaced in an admissible manner.