

## General Terms of Sale

### Preamble

These general terms of sale shall apply exclusively. We shall not acknowledge any opposing conditions of the customer or such as deviate from these terms of sale. These shall only apply if we expressly acknowledge them in writing for the conclusion of the respective contract. These terms of sale shall also apply if we deliver the goods to the customer without reservation in the full knowledge of opposing conditions of the customer or those which deviate from these terms of sale.

We may correct any inadvertent errors and oversights in our sales brochures, price lists, offer documents or other documentation without being held liable for any losses resulting from these errors.

These terms of sale shall only apply towards companies in the meaning of § 310 BGB [German Civil Code].

These terms and conditions shall supersede all other agreements that the parties may have entered into previously, either orally or in writing, which shall cease to be effective with the signature of these terms and conditions. These terms of sale shall also apply for all future business with the customer.

### I. Offer and conclusion of contract

1. Our offers are subject to change. All agreements shall only become effective when confirmed by us in writing. We reserve the right to make changes, insofar as these are reasonable for the customer. If the order may be classed as an offer according to § 145 BGB, we are entitled to accept it within two weeks.
2. We reserve sole title and copyright to offers, cost estimates, figures, drawings and other documents. These are only intended for use by the customer.

### II. Confidentiality

1. Each party shall use any documents (including designs, models and data) and knowledge obtained as part of the commercial relationship for the agreed purposes only, and will keep them secret from third parties with the same care as its own documents and knowledge, where the other party identifies them as confidential or has an obvious interest in keeping them secret.
2. This obligation shall not apply to documents and knowledge that are generally known or were already known to the party in question when they were received, without that party being bound to secrecy, or which were passed to it by an authorised third party without any breach of confidentiality, or which were developed by the receiving party without the use of confidential documents or knowledge from the other party.

### III. Prices

1. Unless stated otherwise in the order confirmation, prices shall be quoted EXW (INCOTERMS 2000), with the addition of statutory value-added tax. Where we are prepared to transport the goods to a different location in a specific case, and nothing different has been agreed, the customer shall bear the costs of transport, packaging, insurance, customs duty and the necessary import and export documents.
2. Costs for changes to orders shall be borne by the customer.
3. Orders for which no fixed prices have expressly been agreed shall be invoiced at the list prices valid on the date of delivery, plus as the case may be any alloy surcharges. We shall be entitled to adjust the price accordingly in the event that decisive price factors (e.g. wage, material or energy costs, or statutory provisions) change by the date of delivery.
4. In the case of refinishing orders the value of scrap, swarf and other order-related waste shall be included in the remuneration.
5. Agreed prices are not binding for follow-up orders.

### IV. Payments

1. Payments shall be due and payable immediately. The deduction of a cash discount requires a separately written agreement. The customer shall only be granted off-set rights if his counterclaims have been determined res judicata, are undisputed or acknowledged by us. In addition to this, the customer shall only be authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship.
2. Bills of exchange and cheques shall only be accepted on account of payment without responsibility for protest and only by arrangement on condition that they can be discounted, insofar as the customer pays all expenses for these immediately in cash. Credits for this shall be applied subject to receipt minus all expenses with the value of the date upon which we may dispose of the countervalue without reservation.
3. It may be agreed between the parties that the customer should open an irrevocable documentary credit with his bank. In this specific case, it is agreed that the letter of credit should be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 edition, ICC Publication No. 600.
4. In the case of delay by the customer we shall be entitled to charge interest at the amount of the respective bank rates for overdraft facilities, but at no less than 8 % above the respective base lending rate.
5. Our claims shall become due and payable immediately if terms of payment are not satisfied or we should become aware of any circumstances which may reduce the creditworthiness of the customer. We shall in this case be entitled to complete outstanding deliveries and services only against advance payment or provision of

security. If the advance payment is not made or security is not provided within two weeks we shall be entitled, without setting a new deadline, to demand damages for non-performance or to withdraw from the contracts.

6. The customer hereby declares that he agrees that his claims may be off-set against liabilities towards us. If that claims or liabilities are due and payable on different dates, settlement shall be carried out on the value date.

### V. Terms of delivery

1. Terms of delivery shall commence on the date the order is confirmed, but not before all details of the order have been clarified, and especially not before the necessary assistance has been rendered by the customer. They shall be deemed as having been complied with if the goods have left our plant or notification has been given by us that the goods are ready for dispatch by the end of the period of delivery. This shall be extended by a reasonable period of time taking into account our total planning if the customer does not satisfy his obligations towards us or undertakes changes to the order.
2. Even where a fixed calendar day for delivery has been agreed, this shall not be construed as a transaction for delivery where time is agreed to be of the essence as specified in § 376 (1) HGB [German Commercial Code]. This shall require the further agreement of the parties that, where the terms of delivery are not complied with, the contract may be terminated and, where we are at fault in not complying with the terms of delivery, compensation may be claimed.
3. Terms of delivery are subject to correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for the non-delivery, in particular upon conclusion of a congruent hedging transaction with our suppliers. The customer shall be informed of the non-availability of the service immediately, generally within a week.
4. Force majeure, industrial disputes, unrest, official measures and other unforeseeable, unavoidable and serious events shall release the parties from their obligations for the duration of the disruption to the extent that it affects these obligations. This shall also apply where these events occur at a time when the party in question is in default, unless it has caused the delay by wilful misconduct or by gross negligence. The parties must make every reasonable effort to provide each other with the necessary information immediately, generally within one week, and adjust their obligations to the changed circumstances in good faith. If the hindrance persists for longer than 3 months, either party may withdraw from the contract with respect to the as yet unfulfilled portion.
5. We shall be entitled to part-deliveries if these are deemed reasonable for the customer.

### VI. Quality

1. The composition, quality and dimensions of the materials shall be determined according to the corresponding EN and DIN standards or material data sheets, insofar as foreign standards have not been agreed in writing.
2. All details on our products are approximate and only average values. They are not a guarantee of quality or condition („Beschaffheitsgarantie“). We shall not be responsible for examining the suitability of the materials and their properties for an intended use of which we are notified.

### VII. Quantities

1. Deviations in dimensions and quantities customary for the industry are permitted. Weight-related bills may be prepared according to the theoretical weight, as per approved standards and tables.
2. Excess quantities or shortfalls in quantities are permitted in case of special productions for each semi-finished product +/- 10 %, in the case of pipes at least one production length. It is agreed that the quantity of goods delivered as specified above shall be considered to comply with the contract and that the price need not be adjusted.

### VIII. Dispatch

1. Unless stated otherwise in the order confirmation, delivery shall be agreed EXW (INCOTERMS 2000) Butting CryoTech GmbH, D 84508 Burgkirchen, Germany.
2. Faulty goods must be accepted by the customer without prejudice to his rights.
3. Packaging will be taken back according to the respective valid packaging regulations. Packaging which is dirty and not sorted according to material, shall only be taken back against reimbursement of costs.

### IX. Transfer of risk

1. Where the goods are delivered on our premises, the risk of damage to or loss of the goods (transfer of risk) shall pass to the customer at the time of handover or, where the customer is in default of acceptance, at the time when we inform the customer that the goods are ready for collection.
2. Where the goods are not delivered on our premises, the risk of damage to or loss of the goods (transfer of risk) shall pass to the customer at the time of handover or, where the customer is in default of acceptance, at the time when we offer to hand the goods over to the customer.

## X. Retention of title and its special forms

- All delivered goods shall remain our property (reserved goods) until satisfaction of all claims from the business relationship. This shall also apply if payments are made on specially designated claims. In the case of a current account the reserved property shall apply for securing our balance claim.  
In the event of conduct on the part of the customer which is contrary to the contract, in particular in the case of default of payment, we shall be entitled to take the delivered goods back. When we take the goods back it shall be deemed as a cancellation of the contract. After taking the goods back, we shall be entitled to reuse them. The proceeds of reuse shall be credited against the outstanding liability, minus reasonable reuse costs.
- Reserved goods shall be processed on our behalf as a manufacturer in the meaning of § 950 BGB without this placing us under any obligation. Processed goods shall be deemed as reserved goods. If reserved goods are combined and mixed with other goods we shall be entitled to co-ownership of the new object in proportion to the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In the event that our title lapses through combining or mixing, the customer hereby assigns to us already his own rights of title to the new asset or object to the extent of the invoice value of the reserved goods. The customer shall store these free of charge on our behalf. The accrued co-ownership rights shall be deemed as reserved goods.
- The customer undertakes to store our reserved goods with due care at his own expense and to insure them against fire and water damage and theft at their replacement value. The customer may only sell reserved goods in the ordinary course of business and in compliance with our terms of payment. These claims are hereby already assigned to us in the extent to which we are entitled. We accept this assignment. In the case of sales of goods in which we own a share, the assignment shall apply in the amount of our share.
- The customer undertakes to retain title in the reserved goods towards his customers in each resale on the same conditions on which we retain title upon delivery of the reserved goods to the customer. No other disposals of the reserved goods are permitted. We are to be informed immediately of any attachments or other access to the reserved goods, so that we may take action pursuant to § 771 ZPO [German Code of Civil Procedure]. If the customer does not meet this obligation, he shall be liable for any costs arising to us as a result. All costs for intervention shall be borne by the customer, insofar as they cannot be collected from the third party and the third party proceeding has been filed justifiably.
- The customer is authorised, until we revoke our consent, to collect the claims assigned to us. We shall be entitled to revoke this authorization if the customer does not meet his obligations towards us or if we become aware of circumstances which significantly reduce his creditworthiness. At our request the customer must undertake to inform his own customers immediately of the assignment and to give us the information and documents necessary for collection.
- The customer must retain for us any remuneration in the meaning of Section X para. 5, including any insurance payments, and keep the monies separate from his own assets and those of third parties.
- In the event that the nominal value of the existing securities exceeds the secured claims by a total of more than 10%, we undertake to release securities if requested by the customer to do so. We shall choose the securities to be released.
- Insofar as the customer is entitled to claims against insurance companies or other third parties owing to damage, reduction, loss or destruction of reserved goods or for any other reasons, these shall also be assigned to us with immediate effect in the extent to which we are entitled. We accept this assignment.

## XI. Notice of defects and warranty

- Warranty claims of the customer presume that he inspects the delivered goods for completeness and accuracy after receipt at the place of destination, even if samples or specimens have been sent in advance; he must check that the goods match the samples and specimens where applicable. The goods shall be deemed to be approved if no notice of defect has been given to us in writing within seven days after receipt, or if the fault was not recognisable in a proper inspection, within seven days after it is discovered.
- Deviations of the delivered goods from the order confirmation which are customary for the industry shall in no way be deemed as defects.
- The customer undertakes to give us an immediate opportunity to convince ourselves of the defect, and particularly at our request to send or otherwise make available the rejected goods or samples thereof for immediate inspection. The customer must give us the necessary time and opportunity to inspect the goods and if applicable meet our obligation under warranty.
- In the case of justified complaint we undertake, at our discretion, to subsequently complete the contract through rework or replacement delivery. In the event that the fault is corrected we shall only pay the expenses up to the amount of the purchase price and insofar as these are not increased due to the fact that the goods are taken to another location than the place of performance. Should we not meet our obligation for subsequent performance the customer may demand that the price be reduced or the contract cancelled with regard to the faulty part. The customer undertakes to first set us a reasonable grace period of at least six weeks, informing us of the consequences, unless this is unnecessary in accordance with the legal provisions. In the event that the contract is cancelled the customer shall be liable for any deterioration, destruction and services not used, not just for his own customary due care and attention, but for any case attributable to customer.
- We shall only be liable for all other claims for damages or expenses to which the customer is entitled due to or in connection with defects of the delivered goods, on

- whatever legal grounds, according to the provisions in Section XII. Warranty Claims against us shall become statute-barred no later than one year after handover of the goods to the customer or delivery to the place of delivery named by him.
- This warranty does not cover any defects in the product caused by faulty installation or commissioning or inappropriate or improper use by the customer or third parties, or by normal wear and tear, or by incorrect handling by the customer or third parties. Nor does this warranty cover the effects of any improper changes or maintenance activities carried out by the customer or third parties without our consent. The same shall apply to material defects that only reduce the value or usability of the goods to an insignificant extent.
- Our liability does not extend to parts, materials or other items of equipment provided by or on behalf of the customer. We accept no liability for defects in the goods attributable to a description or specification originating from the customer.
- Warranty claims due to fraudulent concealment of a defect or express assumption of a guarantee of quality or condition („Beschaffenheitsgarantie“) are measured exclusively according to the statutory provisions.
- If the end-customer for the goods is a consumer then the customer shall be entitled to recourse according to the statutory provisions of §§ 478, 479 BGB under the prerequisites of § 377 HGB, however, he shall only be entitled to claims for damages and expenses according to the regulations in Section XII.

## XII. Exclusion and limitation of liability for compensation of damages and reimbursement of expenses

- We shall only be liable for claims for damages and reimbursement of expenses for culpable acts, on whatever legal grounds, including breach of duty, tort, producer's liability, except for possible liability under the Product Liability Act, in the event of minor negligence with a breach of cardinal obligations which poses a risk for the purpose of the contract and only for the typical foreseeable damages. In general, our liability for minor negligence is excluded. In the event of liability owing to grossly negligent behaviour we shall only be liable for the typical foreseeable damage. Furthermore, any strict liability is excluded, as is any liability for consequential losses, including loss of production or loss of profit.
- The exclusion and limitation of liability contained in paras. 1 and 4 shall not apply in case of liability for injury to life, body or health or violation of cardinal obligations („wesentliche Vertragspflichten“), as well as in case of assumption of a guarantee of quality or condition („Beschaffenheitsgarantie“) or in the case of fraudulent concealment of a fault.
- All claims for damages and expenditure, no matter on what legal grounds, shall become statute-barred one year after the transfer of risk, in the event of tort from knowledge or grossly negligent lack of knowledge of the circumstances justifying the claim or of the person obliged to pay compensation. This shall not apply in the case of wilful misconduct, the cases stated in para. 2 and with an object, which has been used for a building according to its customary method of use and which caused its faultiness. If the end-customer is a consumer the statutory provisions shall apply for the statute of limitations.
- If we are in default in delivery, any compensation for losses resulting from this delay and caused by simple negligence shall be limited to 5% of the value of our contractual service. Any extended strict liability for accidental damage is generally excluded. Further claims by the customer shall remain unaffected.
- The provisions of this section shall also apply for the benefit of our employees, legal representatives and vicarious agents.

## XIII. Production according to the customer's specifications

- In the case of production according to a customer's drawings, samples or other instructions we shall assume no warranty and liability for the functionality of the product or for other faults, insofar as these circumstances are based on customer instructions. The customer shall indemnify and hold us harmless from any claims of third parties, including those based on product liability, asserted against us due to the damages caused by the goods unless we caused the damages by wilful misconduct or gross negligence.
- The customer hereby affirms and warrants that no third-party rights are infringed by the production and sale of these goods. The customer must indemnify and hold us harmless against all losses and damages arising in this regard from the assertion of third-party rights.

## XIV. Place of jurisdiction

The place of performance for all obligations from the contractual relationship shall be Burgkirchen. The place of jurisdiction, also for documents, bills of exchange and cheque proceedings, shall be at our choice either our registered office or the registered office of the customer, or any other court that is competent to rule under national or international law.

## XV. Applicable law

The law of the Federal Republic of Germany shall apply for all legal disputes between us and the customer and third parties who are liable for satisfying the obligations of the customer. The UN Convention on the International Sale of Goods (CISG) is excluded.

## XVI. Partial ineffectiveness

In the event that any parts of these provisions should prove invalid as a result of statutory regulations it is agreed that the invalid parts of the provisions so affected shall be replaced by the admissible statutory provision.