

## 1. APPLICATION AND INTERPRETATION

These general terms and conditions alone govern all contractual relations between BOSANA Medizintechnik GmbH (hereafter referred to as "*BOSANA*") and the purchaser. The general and special conditions of the purchaser are not enforceable with respect to BOSANA. Conclusion of any contract between the parties shall automatically mean acceptance of these general terms and conditions. Only the special conditions specified in the contract or agreed in writing between the parties may depart from them.

Depending on the context and except in the event of a stipulation to the contrary, (i) the term "*purchaser*" in these general conditions shall be interpreted as also meaning any prospect, buyer, customer, importer, distributor, licensee or any party entering into an agreement with BOSANA; (ii) the term "*contract*" as also any offer, proposal, order form, sales, delivery, distribution contract or any agreement between the parties; (iii) the term "*product(s)*" also as any medical device, equipment, tool, product, item, packaging, box and other accessories manufactured and/or supplied by BOSANA. These terms shall be interpreted as being either plural or singular.

## 2. ORDERS AND CONFIRMATIONS

All offers are made without engagement. Offers are valid for a maximum period of 30 days from the date of the offer, unless otherwise explicitly agreed. Any specification or data contained in BOSANA's product information, material, price lists or any other documents are given for information only. Product specification and prices can be modified at any time without prior notice.

All orders made in writing or orally shall be confirmed by BOSANA in writing (letter, fax or mail). No order will be registered without complete references of the purchaser (name of the company, address, phone number, fax number, V.A.T. number, delivery address, name of a contact person).

## 3. PRICE, PAYMENT AND BILLING

Prices are computed EX Works (EXW – Incoterm Codes 2010), excluding VAT, taxes, special packaging and any cost that are not expressly specified in the contract.

Except otherwise agreed by the Parties, payments shall be made in euros by IBAN and/or BIC / SWIFT wire transfer to such account specified on the invoices, within 30 days from the dates of the invoices. Checks are not accepted as mean of payment.

Any payment – which is not paid on the due date, nor in accordance with the conditions specified in the contract or invoices – shall accrue interest at a rate of 1 % per month, with a minimum of 250 EUR per breach, without prejudice to the right to reimbursement of the costs or compensation for any higher actual damage. In case of no payment on the due dates, BOSANA reserves the right to suspend any of its own obligations until all payment due to BOSANA is made by the purchaser; or to terminate the contract, and keep all installments or payments already made by the purchaser to BOSANA, without prejudice to the right to reimbursement of the costs or compensation for any actual direct or indirect damage resulting from a delay of payment suffered by BOSANA, its customers, or by a third party.

## 4. TITLE

Title of the product(s) shall pass from BOSANA to the purchaser once the purchaser has paid the price in full, although the product(s) may have been already delivered. The purchaser shall not dispose of, nor transform, nor sell, nor use them as caution, nor transfer the product(s) to a third party as long as all sums due have not been paid in full amount to BOSANA.

## 5. DELIVERY

Except otherwise agreed by the parties, the product(s) shall be delivered to and received by the purchaser at BOSANA's premises in Dorsten, Germany (EXW – Incoterm Codes 2010).

BOSANA shall deliver the product(s) on the dates and according to the conditions agreed by the parties. These delivery dates are not strictly the rule. BOSANA shall be liable only if the delay is the exclusive and direct consequence of a gross and willful misconduct of BOSANA. The purchaser has no right to refuse the product(s), to claim for damages or to terminate the contract because of a delivery delay which is not unreasonably long considering the circumstances.

In the event that the purchaser refuses or delays loading or receiving the product(s), it shall make the payment(s) in accordance with the terms and conditions initially agreed by the parties, and reimburse to BOSANA all costs caused by the refusal or delay of loading or reception (storage, transport costs...).

BOSANA has the right to suspend its own obligation to deliver the Products or to make them available, in the event there is any evidence of insolvency problem of the purchaser.

## 6. CONFORMITY AND WARRANTY

Except otherwise specified in the contract, the product(s) is/are manufactured according to the German and European regulations and to the specifications agreed in the contract or in any written agreements made afterwards by the parties. Any additional costs related to changes required by the purchaser, including compliance to local rules and regulations of the purchaser's country, shall be borne by the purchaser and may extend the delivery terms.

BOSANA reserves the right to make changes in specifications of the product(s) without prior notice or agreement as long as such changes do not affect the quality or performance of the product(s).

Except in case any imperative law concerning consumers' rights imposes a longer warranty period, BOSANA warrants, for a period of **twelve (12) months** from the date the product(s) at the purchaser's disposal, that the product(s) will be free from hidden defects due entirely and exclusively to a fault of BOSANA provided however that such defects are not due to external cause, wear and tear, alteration, abuse, negligence, misuse, non-reasonable use, transport, loading/downloading, abnormal conditions of temperature or humidity, dirt, or in an otherwise improper manner, either intentional or otherwise, caused by the purchaser or by a third party.

As soon as the product(s) is/are ready and available, the purchaser shall inspect carefully and test the product(s) and shall immediately raise, in writing and within **eight (8) calendar days** following the availability of the product(s), any relevant and precise complaint in case of lack of conformity (notifying the number and date of the invoice). After such period of eight days, any apparent defect that was not notified to BOSANA will be considered as being definitively accepted by the purchaser. In any case, the purchaser may not refuse the product(s) for minor or futile reasons.

In case of claim of the purchaser, the fulfillment of BOSANA's obligation of warranty shall be limited, at BOSANA's option, to replacing the defective parts or product(s) or to crediting the purchaser for these defective product(s) within a reasonable delay.

The replacing product(s) will be sent back to the purchaser within a reasonable period of time. In case the purchaser is a distributor, an importer or a recurrent buyer, the replacing product(s) will be delivered to the purchaser together with the next order of products made by him, except otherwise agreed by the parties.

BOSANA may suspend its obligation of warranty as long as the purchaser does not execute entirely its own obligations. Such suspension does not extend the initial warranty period.

## 7. USE AND HANDLING OF THE PRODUCT(S)

The purchaser acknowledges that the product(s):

- are medical device(s) that shall not be placed in another area, nor be used for a longer daily period of time, nor used for any other purposes than what is strictly specified in the manual;
- are fragile items that must be handled carefully and must be stored in their cover, in a dry and clean space.

## 8. DISCLAIMER OF LIABILITY

If any liability is implied for whatever reason, BOSANA's liability shall be strictly limited to direct and foreseeable damages suffered by the purchaser, that are the exclusive and direct consequences of a gross and willful misconduct of BOSANA, excluding any loss of earnings, of profit, of savings or of clientele, increase of costs and expenses or any indirect damage and loss. Any compensation due by BOSANA shall ever exceed 30% of the value of the contract.

Nevertheless, this provision does not limit mandatory BOSANA's product liability imposed by the applicable law.

## 9. FORCE MAJEURE

The parties are not liable for the non-performance of any one of their contractual obligations when this non-performance is due to a force majeure event, beyond their control and when it cannot reasonably be expected of them to take it into consideration at the time of making the contract or to prevent or overcome it, even when this event does not make the performance of the contract totally impossible but only substantially more difficult or more onerous, particularly in the event of fire, strike, accident, illness, natural disaster, destruction of installations or equipment, general lack of supplies or of means of transport, delay with or non-performance of the obligations of BOSANA's suppliers or sub-contractors, computer bugs, any technical problems whatsoever and a legal or administrative procedure which delays the fulfilment of BOSANA's obligations.

The defaulting party in these circumstances must warn the other party of this as soon as possible, in writing, including proof of the case of force majeure. The obligations of the parties whose performance has become impossible due to a case of force majeure can be suspended provisionally or renegotiated. In the event that the force majeure lasts for more than 6 months, the contract will automatically be terminated, without indemnity, save for agreement to the contrary by the parties.

## 10. CONFIDENTIALITY

Any documentation or technical information provided by BOSANA in any form including without limitation, information manuals, drawings, specifications, designs of the products or parts thereof, software, operating procedures shall remain the sole property of BOSANA

The purchaser shall keep strictly confidential and not disclose to any third party(ies) nor use any business or manufacturing information, technique, process, experimental work, trade secret or other confidential matter that was disclosed or shown by BOSANA or found in the product(s), except to the extent required to ensure the appropriate performance of the contract. This obligation shall survive cancellation, termination or nullity of the contract and shall continue to apply for an unlimited period of time.

## 11. TERMINATION

BOSANA reserves the right to terminate the contract or suspend its own obligations and to recuperate the products, anytime, without prior notice nor damages for the purchaser, and without prejudice to the right to reimbursement of the costs or compensation for any actual direct or indirect damage resulting from it, including loss of earnings, suffered by BOSANA, its customers, or by a third party, for the following reasons :

- In the event of late or non-performance of the purchaser's obligations, or if it becomes reasonably certain that one or more obligations of the purchaser will not be performed on time or according to the terms of the contract;
- In the event of the incapacity, bankruptcy, insolvency, protest, seizure, death, cessation of payments, application for a payment moratorium, amicable or compulsory composition, or any other event demonstrating financial difficulties on the part of the purchaser.
- In the event of BOSANA ceasing or changing its professional activities;
- In the event of force majeure lasting more than 6 months.

In case of termination by the purchaser not caused by a gross and willful misconduct of BOSANA, all installments already paid by the purchaser shall be considered to be definitively acquired by BOSANA. The remaining installments shall be paid by the purchaser, but their amounts shall be reduced by the projected costs and expenses not incurred by BOSANA and reasonably evaluated by BOSANA, without prejudice to the right to compensation in the event that actual damage is more important for BOSANA.

## 12. VALIDITY

If a provision of the contract or these general terms and conditions is to be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, enforceable and economically equivalent to the said provision for both parties. The legality, validity and enforceability of the remaining provisions shall not be affected thereby.

## 13. APPLICABLE LAW AND COMPETENT JURISDICTION

This contract shall be governed by and constructed in all respects in accordance with the laws of Germany.

Any disputes relating to the contract and these general terms and conditions shall be settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law, by one arbitrator designated in conformity with those rules (www.dis-arb.de). The arbitration proceedings will be held in Cologne, Germany and conducted in German in case the purchaser is German-speaking or otherwise in English.

Nevertheless, in case the purchaser is a non-professional consumer, the proceedings may be adapted in accordance with the applicable imperative laws protecting the consumer rights.