

General terms and conditions of business of Bernd Kraft GmbH

Article 1 General – Scope

- (1) Our terms and conditions of business shall apply exclusively; we shall not acknowledge conditions to the contrary or conditions of the purchaser deviating from our terms and conditions of business, unless their validity is approved in writing. They shall even then apply if we execute delivery to the purchaser without any reservation being aware of conditions to the contrary or conditions of the purchaser deviating from our terms and conditions of business.
- (2) All agreements made between us and the purchaser for the purpose of the execution of this contract have been put down in writing in this contract.
- (3) Our terms and conditions of business shall only apply vis-a-vis companies and juristic persons under public law as defined by Article 310 para. 1 BGB (German Civil Code).

Article 2 Quotation – Quotation documents

- (1) In the event that the customer's order qualifies as a quotation according to Article 145 BGB, Bernd Kraft GmbH shall reserve the right to accept this within 2 weeks.
- (2) Bernd Kraft GmbH reserves the rights of ownership and copyrights of all illustrations, drawings, calculations and other documents. They must not be made accessible to third parties without express written approval being given.

Article 3 Prices – Terms of payment – Set-off restriction

- (1) Insofar as nothing other arises from the confirmation of order, all prices shall be valid "ex works" excluding statutory V.A.T., packaging and despatch; these items shall be invoiced separately. A special written agreement shall be required for a deduction of discount.
- (2) Insofar as nothing other arises from the confirmation of order, the purchase price shall be understood as a net price (without deduction) and shall be due for payment within 30 days from date of invoice. The legal regulations shall apply pertaining to the consequences of default in payment. In the absence of an express agreement, the prices valid on the day of the order in accordance with the official price list of Bernd Kraft GmbH shall be regarded as agreed.
- (3) In the event that a significant deterioration in the financial circumstances of the purchaser arises after conclusion of the contract, allowing the fear that the payment will be endangered or in the event that circumstances of this kind,

already in existence before conclusion of the contract, only become known belatedly, further deliveries shall only be made against cash in advance or provision of security in the amount of 110% of the invoice amount. This shall apply correspondingly if the purchaser should be in default of payment for earlier deliveries. In this case we can, furthermore, demand the immediate payment of all outstanding invoices arising from the trade relation, even if a respite was previously granted in whole or in part for the invoice amounts or these were paid by means of bills of exchange.

- (4) The purchaser shall only be entitled to rights of set-off if his counterclaims have been determined finally and conclusively, are undisputed or acknowledged by us. He shall, furthermore, be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- (5) For contracts with a lead time of more than four months Bernd Kraft GmbH shall be entitled to adapt the prices according to the increase in costs that has taken place in the meantime on account of a general wage increase or increase in material price. Insofar as the increase amounts to more than 5% of the agreed purchase price, the purchaser shall have the right to terminate the contract in writing within 10 days, receipt by Bernd Kraft GmbH, following notification of the increase.

Article 4 Lead time

- (1) Quoted lead times shall be understood as guideline values for want of individual informal contractual agreements. In case of doubt, these (lead times) can be exceeded by up to 3 weeks for reasons that are not exclusively in the sphere of Bernd Kraft GmbH without us defaulting. The beginning of the lead time we quoted calls for the clarification of all technical questions and the timely and proper fulfilment of the obligation of the purchaser. The plea of non-performance shall remain reserved.
- (2) In the event that the purchaser defaults in taking delivery or if he culpably infringes other duties to cooperate, we shall be entitled to demand compensation for the damage we incurred in this respect including any extra expenses. More far-reaching claims shall remain reserved. The hazard of loss by accident or accidental deterioration of the object of sale shall transfer to the purchaser at the point in time he defaults in taking delivery or is mora debitoris.
- (3) Bernd Kraft GmbH shall be liable according to the legal conditions, insofar as the underlying contract of purchase is a transaction at a fixed date as defined by Article 286 para. 2 no. 4 BGB or Article 376 HGB (Commercial Code), if the purchaser, as a consequence of a default in delivery for which it (Bernd Kraft GmbH) is responsible, is entitled to assert that his interest in the further performance of contract has discontinued or the default in delivery is based on intentional or grossly negligent breach of

contract for which it (Bernd Kraft GmbH) is responsible. Insofar as the default in delivery is not based on an intentional breach of contract by it (Bernd Kraft GmbH) or a person employed in performing an obligation for whom he is vicariously liable or insofar as the default in delivery for which he is responsible is based on the culpable infringement of an essential contractual obligation, the liability for damages shall be restricted to the foreseeable damage occurring typically.

Article 5

Transfer of risk – Costs of packaging

- (1) Insofar as nothing other arises from the confirmation of order, delivery shall be agreed "ex works". Despatch shall be for the account and risk of the purchaser ex our forwarding works or warehouse. The risk shall transfer to the purchaser as soon as the consignment has been handed over to the persons carrying out transport. In this connection packaging and despatch shall be commensurate with the safety requirements of the respective valid version of the dangerous goods regulations.
- (2) A lump-sum of 15 € plus V.A.T. shall be charged for postage and packaging for orders up to a commodity value of 50 €, orders over 50 € shall be free of forwarding costs. Special forwarding costs shall apply to deliveries abroad.
- (3) Transport packaging and all other packaging pursuant to the packaging regulations will not be taken back unless otherwise expressly agreed. The purchaser shall be obligated to arrange for disposal of the packaging at his own expense.
- (4) Bernd Kraft GmbH shall arrange transport insurance upon written notification of the express wish of the purchaser; the costs thus involved shall be borne by the purchaser.

Article 6

Liability for defects

- (1) All products shall be commensurate with the specifications according to the imprint on the package label. All details on the labels and in a product certificate as well as all details on application possibilities, pharmacopoeia data etc. shall refer to the condition in conformity with the contract and shall not constitute a feature assurance.
- (2) Claims by the purchaser arising from defects shall imply that he examined the goods immediately upon receipt and is objecting to existing defects or shortages.
- (3) Insofar as a defect exists, the purchaser shall, at his own option, be entitled to subsequent performance in the form of remedial action or to the delivery of a new, faultless item. In the case of remedial action Bernd Kraft GmbH shall be obligated to bear all necessary expenses for the purpose of the remedial action, in particular costs for transport, infrastructure, labour and material insofar as these expenses are not increased due to the object of sale

having been moved to a location other than the place of performance.

- (4) In the event that the subsequent performance fails, the purchaser shall, at his own option, be entitled to demand withdrawal or diminution.
- (5) Bernd Kraft GmbH shall be liable according to the legal conditions inasmuch as the purchaser asserts claims for damages that are based on culpable infringement of an essential contractual obligation or on a deliberate act or gross negligence including deliberate act or gross negligence of our representatives or persons employed in performing an obligation for whom we are vicariously liable. Insofar as it (Bernd Kraft GmbH) is not accused of intentional breach of contract, the liability for damages shall be restricted to the foreseeable damage occurring typically.
- (6) The liability on account of culpable injury to life, body or health shall remain unaffected; this shall also apply to the peremptory liability according to the product liability law.
- (7) Liability shall be excluded unless otherwise arranged above.
- (8) The statutory period of limitation for claims arising from defects shall amount to 12 months calculated from transfer of risk to the purchaser; in the case of a delivery recourse according to Articles 478, 479 BGB the statutory period of limitation shall remain unaffected.

Article 7

Joint and several liability

- (1) More far-reaching liability for damages other than provided for in Article 6 – irrespective of the legal nature of the asserted claim – shall be excluded. This shall apply in particular to claims for damages arising from faults upon conclusion of contract, on account of other breaches of duty or on account of tortious claims to compensation for property damages according to Article 823 BGB.
- (2) Inasmuch as the liability for damages against us is excluded or restricted, this shall also apply with regard to the personal liability for damages by our salaried personnel, workers, employees, representatives and persons performing an obligation for whom we are vicariously liable.

Article 8

Reservation of title – Assignment of claims

- (1) The goods shall remain the sole property of Bernd Kraft GmbH until complete payment has been made. In the event of behaviour by the purchaser in violation of the contract, in particular in the case of default in payment, we shall be entitled to take back the object of sale. After return of the object of sale we shall be entitled to its utilisation, the utilisation proceeds shall be set-off against the accounts payable of the purchaser – minus reasonable utilisation costs.
- (2) The purchaser shall be obligated to handle the object of sale carefully; inasmuch as maintenance and inspection work is necessary,

the purchaser must carry this work out in good time at his own expense.

- (3) The purchaser shall make immediate notification in writing of levies of execution or other intervention by third parties. Inasmuch as the person executing levy should not be in a position to reimburse us for the judicial and extrajudicial costs of a lawsuit according to Article 771 ZPO (Code of Civil Procedure), the purchaser shall be liable for the loss we incurred.
- (4) The purchaser shall be entitled to sell the object of sale in the ordinary course of business; he shall, however, already now assign to us all accounts receivable in the amount of the final invoice amount (including V.A.T.) of our account receivable. The purchaser shall remain authorised to collect this account receivable even after assignment. Bernd Kraft GmbH shall undertake not to collect the account receivable itself as long as the purchaser is not in default of payment or as long as application for the opening of insolvency proceedings has not been made. Should this be the case, the purchaser shall disclose the assigned accounts receivable and the debtors, provide all necessary details for collection, hand over the associated documents and immediately inform the debtors (third parties) of the assignment.
- (5) Processing, mixing or remodelling of the object of sale by the purchaser shall always be carried out for Bernd Kraft GmbH. In the event that the object of sale is processed or mixed with other items that are not owned by it (Bernd Kraft GmbH), it shall thus acquire joint ownership of the new item in proportion to the value of the object of sale (final invoice amount including V.A.T.) to the other processed items at the time of processing. As for the rest, the same shall apply to the item arising due to processing as to the object of sale delivered under reserve.
- (6) Upon request by the purchaser Bernd Kraft GmbH shall undertake to release the securities to which he is entitled inasmuch as the realisable value of the securities exceeds the accounts payable to be secured by more than 10 %; the choice of the securities to be released shall be incumbent on Bernd Kraft GmbH.

Article 9

Special features for online sales

- (1) The contract shall be realised – subject to cancellation according to paragraph 3 - if the order form duly completed by the purchaser has been confirmed by e-mail. Price details shall be given to the best of our knowledge. In the event of obvious errors, e.g. typing or arithmetic errors, we reserve the right to charge the actual price. In this case the purchaser shall be granted an immediate right of cancellation.
- (2) The order shall be subject to correct and timely availability of goods inasmuch as the lack of availability is based on non-delivery for which Kraft GmbH is not responsible. In the event of non-

availability of the goods the purchaser shall be informed immediately and any counter-performance reimbursed that has already been rendered.

- (3) The order quotation can be cancelled by a consumer within two weeks without stating reasons vis-a-vis Kraft GmbH, Stempelstrasse 6, 47167 Duisburg in writing, by e-mail or by returning the goods pursuant to Article 312 d BGB in connection with Articles 355, 357 BGB insofar as the goods concerned have not been produced according to customer specification or tailor-made to his special requirements. Timely despatch of the cancellation satisfies compliance with the time limit. In the case of foil-packed goods the right of cancellation shall expire as soon as the packaging has been opened. After exercising cancellation you shall be obligated to return the goods in full for our account and risk. The purchaser shall bear the costs of the return consignment for an order to the value of up to € 40.00, unless the delivered goods are not commensurate with those ordered. The purchase price will be reimbursed after receipt of the goods.
- (4) The personal data necessary for the handling of the business will be saved and handled confidentially in consideration of the Federal Data Protection Act (BDSG) and the Teleservice Data Protection Act (TDDSG). It is drawn to your attention that Kraft GmbH will collect, store, process and use the data received in connection with the contractual relationship insofar as this is necessary for orderly order handling and information.
- (5) Insofar as password-protected online shopping access has been made available, Kraft GmbH shall not be liable for abusive use of the password inasmuch as the customer has negligently made this possible.

Article 10

Final provisions

- (1) Insofar as the purchaser is a businessman or a juristic person under public law Duisburg shall be the jurisdictional venue for all claims arising from this contract; we shall, however, be entitled to also bring action against the purchaser at his place of business.
- (2) The law of the Federal Republic of Germany shall be applicable; the validity of the UN right of purchase shall be excluded.
- (3) Duisburg shall be the place of performance insofar as nothing other arises from the confirmation of order.
- (4) All presentations and texts on the home page of Kraft GmbH including the above general terms and conditions of business are protected by copyright. Applications of any kind, in particular duplications, imitations or similar, are prohibited without the express prior approval of Kraft GmbH.