

## **GENERAL TERMS AND CONDITIONS OF SALE BECTON, DICKINSON B.V.**

### **General**

The present General Terms and Conditions of Sale apply to all offers (including offers by way of pro-forma invoices), orders, sales and deliveries by Becton, Dickinson B.V., hereinafter referred to as "BD".

These General Terms and Conditions of Sale shall prevail over any general terms and conditions (of purchase) of the Purchaser, unless otherwise agreed to in writing. These General Terms and Conditions of Sale shall also apply to the employees of BD and its management. The General Terms and Conditions of Sale of BD are deemed to have been accepted by the Purchaser, in the absence of any explicit written objection.

BD reserves its rights to adapt the present General Terms and Conditions of Sale as it sees fit. These modifications will always be communicated in writing by letter, fax or e-mail.

No sale of BD is exclusive nor does such sale confer distribution or agency rights, unless explicitly agreed otherwise.

### **1. Offers, oral statements and amendments**

All offers emanating from BD are based on the specifications provided for by the Purchaser. However, BD reserves its rights to modify these at all times if it deems it necessary. These offers are always confirmed in writing. Each offer of BD is considered as being null and void if it has not been accepted by the Purchaser within the mentioned period, or in the absence of such mention, within 1 (one) month from the offer date.

All documents, descriptions included in advertising documentation, catalogues, leaflets, price lists, oral statements as well as additions or modifications to the General Terms and Conditions of Sale and/or to the documents of the transaction are only valid to the extent that they have been confirmed in writing by BD.

### **2. Prices**

Even if not mentioned in the offer, all prices are net and exclude VAT and all other governmental charges. The price to be paid by the Purchaser for the delivered goods is the price mentioned on BD's current price list and/or in accordance with the agreed price in force on the date of the order and/or pursuant to the price agreement in force on the order date. Prices become final upon receipt of the order or after receipt of written consent of Purchaser.

### **3. Orders**

Each order must be placed in writing in the form of a letter, a fax or an e-mail and must be accepted by BD. An order can also be implicitly accepted by the delivery thereof. The prices of BD include standard packaging and order fees for each order whose value is more than EUR 250 (two hundred fifty), otherwise a minimum amount of EUR 35 (thirty-five) shall be invoiced for transport and administrative costs. For orders placed by wholesalers, resellers and other intermediaries whose order value is less than EUR 2,500 (two thousand five hundred), an amount of EUR 250 (two hundred-fifty) shall be invoiced for transport and administrative costs. Transport costs for each urgent delivery requested by the Purchaser shall also be invoiced to the Purchaser.

### **4. Delivery**

Each delivery by BD shall be carried out 'DDP' (Incoterms 2010) to the indicated destination in the Netherlands. In principle, the goods can be expected to be ready for shipping by the date accepted by BD, and if no specific date was mentioned, within a reasonable period of time. However, the delivery always depends on the production and transport capability of BD. For the sake of clarity: BD shall not intentionally delay deliveries, but in case of delivery issues it is possible that BD has to allocate the available products fairly among several Purchasers.

BD shall under no circumstances be held liable for costs or damages, including direct, indirect, special, accidental or consequential damages, incurred or suffered by Purchaser further to or in connection with a delay in the delivery.

## **5. Guarantee**

All goods delivered meet the applicable specifications during their respective conservation period. The guarantee does not apply to goods damaged during transportation, nor when the Purchaser fails to take delivery thereof. In case of incorrect manipulation, repair or modification of the goods without authorization from BD, the guarantee is void.

From the date of the installation of instruments, BD offers a 1 (one) year guarantee covering all deficiencies due to manufacturing or components defects. This guarantee includes spare parts, as well as labor and transport costs.

If an installation cannot be carried out within 6 (six) weeks following the receipt of the goods for a reason attributable to Purchaser (e.g. premises not available or being renovated or for organizational reasons, etc.), BD cannot be held liable for any delay in the installation and, hence, the guarantee period shall begin on the first working day after expiry of these 6 (six) weeks, and thus not at the time of the installation.

All goods (software, etc.) or appliances not delivered by BD which are connected in whatever way with the instrument/device are not covered by the BD maintenance agreement. The provision of support to resolve issues caused by this adaptation/addition shall be invoiced in accordance with the most recent price list.

Depending on the type of instrument, the Purchaser has the right during this guarantee period to (a) free technical inspection(s). This only applies to instruments for which Purchaser can enter into a comprehensive ("*omnium*") maintenance agreement. The number of inspections corresponds to the number mentioned in the maintenance agreements. During such technical inspection, the working of the instrument is verified as well as all necessary calibrations, adjustments, alignments and spare parts replacements are carried out so that the instrument functions optimally according to the specifications set out by BD.

The abovementioned guarantee is valid provided that the instrument is used in accordance with the instructions for use and for the purposes for which it has been manufactured.

The guarantee, however, is void if:

- the deficiency stems from an improper use or neglect of the instrument;
- repairs of or modifications to the instrument have been carried out by third parties, other than technical engineers approved by BD; or
- a deficiency of the instruments originates from external causes (located outside the instrument) as for instance condensation, freezing, overheating, flood, fire, theft.

The obligation of BD during the guarantee period is limited to the repair of the deficiencies. The only remedy when the guarantee is called upon is the repair or the replacement of the defective good. BD might choose, at its own discretion, either of these remedies. In case of replacement, the Purchaser is bound to return the replaced device to BD and to transfer the title thereof to BD, unless BD provides otherwise.

To the extent allowed by the standards of reasonableness and fairness, all guarantees pertaining to quality, state, durability, negotiability, suitability for a specific purpose, conformity with samples, etc. of goods, which have not been expressly granted in writing are hereby expressly excluded.

Unless otherwise expressly provided for in mandatory legal provisions, including liability for defective products, or in the present Article 5, BD cannot, under any circumstances, be held liable for costs or damages, including direct, indirect, special, accidental or consequential damages incurred or suffered by Purchaser, further to or in connection with a breach by BD of its guarantee obligations set out in Article 5. The obligation of BD to compensate, if any, in accordance with the present Article 5 shall always be limited to the amount of the purchase price of the good or the price of the deficient part of the good.

## **6. Complaints**

The Purchaser is bound to inspect (or to have inspected) the delivered goods as from the time that they have been put at its disposal or, as the case may be, as from the time that the services are performed.

Visible defects, if any, must be notified to BD in writing within 8 (eight) calendar days following the delivery. Latent defects, if any, must be notified to BD in writing immediately and, in any event, no later than 10 (ten) days after the discovery thereof. The notification must include an as complete as possible description of the defect in order to allow BD to react appropriately. In addition to the catalogue number, the description of the good, the batch number and the expiry date, the notification must also mention the deficiencies and the probable cause. The Purchaser must allow BD to investigate the complaint (or to have such complaint investigated).

In the absence of such notification within the abovementioned terms, the goods shall be irrevocably deemed as being accepted in their present state by Purchaser and BD shall be deemed to have fulfilled its obligations. If Purchaser notifies a complaint in a timely manner, it does not suspend its payment obligations. In such case, the Purchaser also remains bound to accept and pay for the ordered goods.

## **7. Terms of payment**

Any outstanding amount shall fall due on the date indicated on the invoice, or in the absence of such indication, within 30 (thirty) calendar days following the date of the invoice. If the Purchaser pays the invoice within 14 (fourteen) calendar days, it shall be entitled to a reduction of 1 (one) percent of the amount invoiced, excluding VAT.

If the Purchaser fails to pay the invoice in a timely manner, it shall automatically be considered as being in default. The Purchaser is then, without prior notice, liable for the payment of an interest of 1 (one) % per month, unless the statutory rate of interest – i.e. the most recent reference interest rate for the main basic refinancing operations of the European Central Bank plus at least 8 (eight) percentage points – is higher; in such case, the statutory rate of interest shall apply. The interest on the amount due shall be calculated from the day on which the Purchaser is in default to the day on which the total outstanding amount due has been paid.

If the Purchaser fails to fulfil its obligations in a timely manner, all reasonable and extrajudicial collection costs incurred to receive satisfaction shall be borne by the Purchaser. BD is, automatically and without prior notice, entitled to compensation of EUR 40 (forty) for its own collection costs. The judicial and execution costs incurred, if any, shall also be charged to the Purchaser. The Purchaser shall also be liable for interest on such collection costs.

Notwithstanding the provisions of the law of 13 December 2012 modifying Book 6 of the Civil Code ("*Boek 6 van het Burgerlijk Wetboek*") and some other laws relating to the implementation of Directive 2011/7/EU of the European Parliament and of the Council of 23 February 2011 on combating late payment in commercial transactions, in the absence of timely payment, the Purchaser shall be liable for the payment of a lump sum indemnity amounting to 10 (ten) % of the amount due, with a minimum of EUR 50 (fifty), without prior notice.

The Purchaser is never entitled to set off what it owes to BD. Disputes relating to the amount of an invoice do not suspend the payment obligation.

### **8. Return of goods**

No goods may be returned, for whatever reasons, after a period of 30 (thirty) calendar days following the delivery.

Goods that are refrigerated, frozen, radioactive or dangerous shall under no circumstances be returned nor replaced. Goods, sterilized or not, that are in their original packaging and are not damaged can in exceptional instances be returned or replaced in accordance with the procedure in force at that time, and only upon written acceptance and approval by BD. In such case, the return of the goods shall be organized by BD, and the condition of the goods will be assessed upon their arrival. In such case, a credit note, with a reduction of at least 10 (ten) % of the amount invoiced, shall be issued to the Purchaser.

### **9. Retention of title and transfer of risks**

All goods delivered by BD remain the property of BD until the Purchaser has duly fulfilled all obligations resulting from the agreement(s) entered into with BD. However, the risks of loss or destruction of a purchased good pass to the Purchaser when the purchased good is delivered to it.

1. All goods delivered by BD, falling within the scope of the clause of retention of title cannot be resold or used as a means of payment.
2. The Purchaser is not entitled to pledge or encumber in any other way the goods covered by the clause of retention of title.
3. The Purchaser always has the duty to do everything that can be reasonably expected from it to safeguard the ownership rights of BD.
4. In case third parties seize the goods covered by the clause of retention of title, or wish to establish or assert rights on these goods, the Purchaser must immediately inform BD thereof.
5. With respect to the goods covered by the clause of retention of title, the Purchaser undertakes to insure and keep those goods insured against fire, damages due to explosion or flood as well as against theft; this insurance policy must be made available to BD upon first request. In case of indemnification, if any, by the insurance company, BD shall be entitled to these amounts. In so far as necessary, the Purchaser undertakes in advance to assist BD in this framework with respect to all that is or seems necessary or desirable.
6. If BD wishes to exercise its ownership rights described in the present clause, the Purchaser irrevocably and unconditionally authorizes in advance BD or any third parties appointed by BD to access the premises where the goods owned by BD are located and to collect such goods.

### **10. Compliance with commercial legislation**

Goods, technologies or software delivered pursuant to the present agreement shall not be exported, re-exported, sold or transferred, except to the extent authorized by the U.S. Export Administration Regulations, the U.S. Department of Treasury economic sanctions regulations, and any other applicable legal provisions. Any direct or indirect use, sale, or distribution must be in compliance with all applicable legal provisions. The diversion of goods in violation of U.S. law is prohibited.

BD and the Purchaser undertake to comply with all applicable legal provisions, including, but not limited to, the laws on export control relating to cross-border sale, resale, shipping and transfer of goods. BD's obligation to deliver the goods to the Purchaser is dependent on obtaining the required licenses.

If a license or an authorization from a government or any authority is required for the acquisition of the goods, the Purchaser must obtain such license and authorization at its own expense and, should BD submit such request, provide BD with a proof thereof. The failure to obtain such license or authorization does not give the right to the Purchaser to withhold or delay the payment of the price of the goods. The costs or charges, if any, incurred by BD in furtherance of such failure shall be borne by the Purchaser.

## **11. Liability**

BD cannot be held liable for damages, irrespective of their nature, originating from the fact that BD based itself on incorrect or incomplete data communicated by or on behalf of the Purchaser.

If BD was to be held liable for any damage, such liability is limited to the invoice value of the order that relates to the liability.

Except for mandatory provisions contained in the applicable legislation, BD, its employees and those involved by BD in the performance of the agreement, shall only be liable for direct damage, provided that this damage is attributable to a wilful or serious fault of BD or its execution subordinates. Under direct damages must exclusively be understood the reasonable costs to determine the origin and the size of the damage, to the extent that the determination relates to damage in the sense of the present terms and conditions, the potential reasonable costs incurred to remedy the defective execution of the agreement by BD, to the extent they can be attributed to BD, and the reasonable costs, incurred to prevent or limit the damage, to the extent that the Purchaser demonstrates that the costs led to a limitation of the direct damage in the meaning of the present general terms and conditions.

BD shall never be held liable for indirect damage, including consequential damage, loss of profits, economic damages, missed savings and damages by business stagnation. BD, its employees and those involved by BD in the performance of the agreement shall under no circumstances be held liable for any damage if it cannot be excluded that this damage is the consequence of a fault or a negligence of Purchaser or (any of) its appointees; even not for the application of Clause 5 (guarantee) above.

The exclusions and/or limitations of liability provided by the present Article shall not apply:

- to the extent such damages are concerned by Clause 5 (guarantee) above;
- if such liability cannot be excluded or limited due to applicable mandatory legal provisions, including the law on liability for defective products; or
- if the damage is caused intentionally by or is the result of the gross negligence of BD or its execution subordinates.

## **12. Hold harmless**

The Purchaser shall hold BD harmless from any potential claims brought by third parties having suffered a damage in connection with the performance of the agreement and the cause of which is attributable to another than BD.

If for such reason, BD is held liable by third parties, the Purchaser shall assist BD on both judiciary and extra-judiciary levels and shall immediately do all that can be reasonably expected from it under such circumstances. If the Purchaser fails to take the appropriate actions, BD can take such actions, without prior notice. All costs incurred and damage suffered by BD and third parties shall be fully borne by the Purchaser.

### **13. Force majeure**

BD shall not be bound to perform any obligation whatsoever towards the Purchaser if such performance is impeded by circumstances not attributable to its fault or to any of its obligations pursuant to the law, a legal transaction or generally prevailing conceptions.

None of the parties shall be held liable for breach of an agreement governed by the General Terms and Conditions of Sale, to the extent that such breach is caused by force majeure.

These circumstances include for the application of the present General Terms and Conditions of Sale, among others, but not limited thereto, strikes, work-to-rule, lock-outs, acts of public authorities, fire, floods, natural disasters, pandemics, epizootic diseases, extreme weather, (civil) war, riots, acts of terrorism of any kind whatsoever, shortage of raw materials, energy, means of transportation, irrespective of the foreseeability of such circumstances.

BD can, during the force majeure period, suspend the obligations stemming from the agreement. If this period lasts for more than 6 (six) months, each party can terminate the agreement, without any obligation to indemnify the other party.

To the extent that BD, at the time that the force majeure materializes, has meanwhile already fulfilled in part or will be able to fulfil the obligations laid upon it pursuant to the agreement, and that a distinct value is attributed to the part already performed or to be performed, BD can invoice separately the part that has already been performed or is to be performed. The Purchaser is bound to pay this invoice as if it were a separate agreement.

### **14. Intellectual property**

Unless otherwise agreed in writing, all goods shall be sold or resold in the parcels or packages in which they have been delivered by BD, and, under no circumstances, can a trademark other than the trademark borne by the goods at the time of the delivery be affixed or modified by the Purchaser on these goods.

No right or license is granted to the Purchaser under the agreement by virtue of a patent, a trademark, a copyright, a registered design or any other intellectual property rights, except the right to use or resell the goods.

BD reserves all its rights and prerogatives under the copyright law and other laws or regulations in the field of intellectual property. BD is entitled to use the information that it collected in the framework of the performance of an agreement to other purposes, provided that, by doing so, no strictly confidential information relating to the Purchaser are communicated to third parties.

### **15. Termination**

BD can terminate with immediate effect all agreements governed by the General Terms and Conditions of Sale, with no obligation to pay any reparation or compensation, if:

1. the Purchaser fails to pay in a timely manner and BD is not obliged to observe a term of notice; or
2. the Purchaser is in material violation of any of the clauses of the General Terms and Conditions of Sale and has not remedied such violation within 15 (fifteen) calendar days as from the notification of such violation; or
3. the Purchaser is, or threatens to become, bankrupt or insolvent, or if one of the following procedures is initiated against him or by him: debt restructuring, (request for a) moratorium on payments or bankruptcy, procedure pursuant to the legislation pertaining to insolvency or procedures of reorganization, sequestration, liquidation, dissolution, or change of ownership.

Receivables held by BD against the Purchaser are in that case immediately due.

### **16. Modifications**

With respect to previously existing agreements pertaining to orders already placed, the General Terms and Conditions of Sale cannot be changed nor modified except by written agreement duly signed by BD and the Purchaser. With respect to agreements pertaining to new orders, BD reserves its right to modify at any time the present version of the General Terms and Conditions of Sale. The modified versions shall enter into force as soon as they are circulated.

### **17. Severability**

Should any part, term or provision of the General Terms and Conditions of Sale be declared by a court to be or be accepted by the parties as being in conflict with the law or unenforceable, the validity, and enforceability of the remainder of the General Terms and Conditions of Sale shall not be affected thereby. The part, clause or condition at issue shall be replaced by an enforceable and valid clause or condition of which the economic intent comes as close as possible to the economic intent of the initial clause or condition.

### **18. Environmental tax**

According to Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE), an environmental tax shall be levied on each delivery of electronic devices as from 13 August 2012. The amount of this tax, which clearly appears on our invoices, depends on the weight of the devices and shall be transferred in full to the Association "NVMP". This tax does not include the dismantlement of the devices nor the transport within the hospital.

### **19. Protection of personal data**

BD collects, uses and discloses personal data for the purposes that are in connection with the agreement, e.g. processing of orders, payments, etc. These personal data may have been retrieved from individuals or other (e.g. publicly available) sources. In order to operate efficiently as a member of the global corporate group Becton, Dickinson and Company, BD can, to these ends, transfer these personal data to every country in the world where BD companies or third party service providers that process personal data on our behalf (e.g. centralized data centers) are established, including the United States. Laws and practices in the field of personal data protection can differ, and it might be that such laws do not offer the same level of protection outside the European Economic Area. By performing the transaction, the Purchaser consents with such use, disclosure and transfer of personal data, for the exceptional instances where such consent is

necessary, in its own name and in name of all its employees, which the Purchaser shall duly inform. These persons have the right to access the personal data held by BD and to correct, complete or delete these personal data. For more information, please contact the local BD office.

**20. Applicable law and jurisdiction**

Dutch law exclusively shall be applicable to all legal relationships to which BD is a party, notwithstanding whether an obligation is performed in full or partly in a foreign jurisdiction or whether a party concerned by the legal relationship has its residency in such foreign jurisdiction. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Sales Convention) is excluded. Possible disputes shall – to the extent that they fall within the scope of the competences of a court and to the extent that mandatory legal provisions have not deemed another court to be competent – fall within the competence of the court of Zeeland-West-Brabant.

**21. English translation**

The original version of the present General Terms and Conditions of Sale have been drafted in Dutch. Should any discrepancy or inconsistency exist between the current English translation of the General Terms and Conditions of Sale and the original Dutch version thereof, the latter shall prevail in all circumstances.

(These terms and conditions of sale were filed with the Clerk's office of the Commercial Court of Zeeland-West-Brabant – filing number [42/2013]).

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