

GENERAL TERMS OF PURCHASE

Berlin Heart GmbH, Wiesenweg 10, 12247 Berlin

Valid from 1 June 2007

1. General, scope of application

1.1. The contractual relationship between Berlin Heart GmbH ("Berlin Heart") and the supplier ("Supplier") of the products ordered ("Products") and services is subject solely to the following General Terms and Conditions of Purchase ("Purchase Conditions") which the Supplier shall accept on conclusion of the contract. Any terms and conditions which differ from those contained in these Purchase Conditions shall not apply unless Berlin Heart has given its prior written consent beforehand. These Purchase Conditions shall apply even if Berlin Heart accepts order confirmations or deliveries of the Supplier or pays therefor without reserve knowing that the conditions of the Supplier differ from or conflict with its own. Berlin Heart may withdraw from the contract if the Supplier protests against these Purchase Conditions. If this occurs the Supplier is not entitled to any claims against Berlin Heart.

1.2. All offers made by the Supplier and all orders placed by Berlin Heart, amendments and additions to orders or offers, and additional agreements must be made in writing in terms of § 126b German Civil Code (*Textform*). This shall also apply to any waiver of this requirement.

1.3. These Purchase Conditions shall apply to all future transactions with the Supplier even if this has not been expressly agreed upon.

2. Offer, offer documents, responsibility

2.1. The Supplier shall be bound by its offer for three months unless the parties have agreed otherwise. Orders are only legally binding if they have been confirmed in writing unchanged by the Supplier. Berlin Heart reserves the right to revoke the order if it does not receive this confirmation within ten working days. The Supplier shall execute the order in strict accordance with the specification, the wording of the order and associated documents. Any material or non-material departure from the order and the associated documents must be reported to Berlin Heart and are subject to its written consent.

2.2. The Supplier shall examine the data provided in the text of the order, in drawings and other documents before manufacturing the Products for objective accuracy and functional feasibility with regard to their suitability for their intended use. It shall alert Berlin Heart to any potential defects and/or any modifications which the Supplier intends to make in writing without undue delay. The Supplier shall bear responsibility for any modifications which it makes without the prior written consent of Berlin Heart. The same shall apply if the Supplier fails to notify Berlin Heart of any defects.

2.3. Berlin Heart reserves its property rights and copyright in illustrations, drawings, calculations, samples or other documents made available to the Supplier for the purpose of making an offer or manufacturing the ordered product; they may not be used for any other purpose. Documents of this type must be kept secret from third parties, they shall not be made available or disclosed in any other manner without the prior written consent of Berlin Heart. Once the order has been executed they shall be returned without undue delay and without any specific request to this effect unless the parties have expressly agreed otherwise. This confidentiality obligation shall continue to apply after the contract has been executed in as far as it does not concern knowledge

which is generally available. If the Supplier culpably infringes this confidentiality obligation it shall pay Berlin Heart a contractual penalty of EUR 50,000 for each individual infringement. This shall not preclude the assertion of a higher loss or claim to cease and desist; the contractual penalty shall be offset (*anrechnen*) against the compensation.

2.4. If Berlin Heart gives its consent to drawings, calculations and other documents this shall have no effect on the sole responsibility of the Supplier for the product ordered. This shall also apply to proposals, recommendations and other forms of cooperation on the part of Berlin Heart.

3. Prices, terms of payment

3.1. The price stated in the order shall be binding. It shall include all expenses associated with the obligations to be rendered by the Supplier. It shall not include VAT. If there is no written agreement indicating otherwise, the price is delivery "carriage paid" including standard commercial packaging. Packaging will only be accepted back subject to separate written agreement. Any reservations regarding price increases require Berlin Heart's express written consent.

3.2. Berlin Heart can only process invoices if these comply with the requirements stated in the order and bear the order number; the Supplier shall bear any consequences associated with failure to fulfil this obligation.

3.3. Unless otherwise written agreed Berlin Heart will pay within 14 days of handover and transfer of title in the Products ordered and receipt of an invoice pursuant to 3.2 of these Purchase Conditions and all documents specified in the contract less 3% discount, or net within 30 days of receipt of invoice. Invoices shall not be due for payment before expiry of this period. Default on payment is conditional on receipt of a written reminder. In as far as the Supplier is required to render a service under the contract this shall not be due for payment until the service has been rendered in full unless the parties have expressly agreed otherwise.

3.4. Any payments by Berlin Heart shall be subject to reservation of rights on the grounds of defective delivery or performance. In as far as defects are known when the amount is due for payment Berlin Heart shall be entitled to withhold payment to a reasonable extent. This shall have no effect on Berlin Heart's statutory rights. In particular Berlin Heart shall have the unrestricted right to offset (*aufrechnen*) or to assert rights of retention.

3.5. Claims against Berlin Heart may only be assigned with Berlin Heart's prior written consent. This shall not apply to assignment associated with extended reservation of title. This shall have no effect on § 354 a of the German Commercial Code (*Handelsgesetzbuch*). The Supplier may only set off undisputed or final and absolute counterclaims against claims of Berlin Heart.

3.6. Disputes on the amount of remuneration due to the Supplier do not entitle the Supplier to cease discharging its obligations under the contract in whole or in part even on a temporary basis.

4. Delivery time, delay in delivery

4.1. The delivery time stated in the order is binding. Early delivery and/or part deliveries require Berlin Heart's express written consent.

4.2. The Supplier shall notify Berlin Heart without undue delay in writing if it becomes apparent that the stated delivery time cannot be met. This notification shall state the reasons for and the probable duration of the delay. If the Supplier fails to notify Berlin Heart it may not cite the obstruction in its defence even in the event of force majeure.

4.3. In the event of a delay in delivery Berlin Heart is entitled to demand a lump sum compensation (*pauschalierter Schadensersatz*) for delay amounting to 0.5% of the price of the order per full week, but no more than a total of 5%. This shall not affect any broader statutory rights. In particular Berlin Heart is entitled to withdraw from the contract in whole or in part if a reasonable subsequent deadline has passed without success and/or to demand compensation in lieu of performance (*Schadensersatz statt der Leistung*) whereby the compensation for delay shall be offset (*anrechnen*).

5. Passage of risk, documents

5.1. The Supplier shall bear the risk of accidental loss (*zufälliger Untergang*) and accidental deterioration (*zufällige Verschlechterung*) until the products have been delivered to Berlin Heart or to another specified recipient.

5.2. Delivery notes must always accompany the goods. The documents must contain detailed order data. The costs due to incorrect or missing data shall be borne by the Supplier.

5.3. If Berlin Heart demands that the Supplier provide material testing certificates the Supplier shall send these without any further request and at its own cost to Berlin Heart.

6. Warranty, inspection for defects, recourse

6.1. The Supplier shall supply the products to Berlin Heart free of material defects and defects of title. It shall be liable herefor as provided for by statute unless otherwise stated in these Purchase Conditions.

6.2. The Supplier is aware that Berlin Heart produces and distributes medical products which support human heart activity and that this places high demands on the Supplier in terms of quality, safety and reliability. For this reasons the Supplier guarantees that the services which it renders comply with acknowledged rules and the latest technological standards, the relevant legal and official provisions and presettings) and the agreed conditions (*vereinbarte Beschaffenheit*).

6.3. Berlin Heart shall inspect the goods within a reasonable period for any discrepancy with regard to quality or quantity and if necessary report these to the Supplier; in any case reports of defects pursuant to § 377 German Commercial Code shall be deemed to have been made in good time if they reach the Supplier within ten working days of delivery or, in the event of hidden defects, ten working days of discovery, by fax, letter, e-mail or telephone.

6.4. Berlin Heart may delegate someone to the premises of the Supplier or its sub-suppliers during normal operating hours to inspect execution and quality. Any resources, materials and auxiliary staff necessary for the inspection shall be provided at no extra cost by the Supplier. If the parties have agreed to a preliminary acceptance test any defects ascertained shall be remedied by the Supplier using its own resources and at

its own cost. The agreed delivery dates shall be honoured, even under such circumstances.

Inspection by Berlin Heart prior to handover of the product does not relieve the Supplier of its warranty obligations or its responsibility for risk pursuant to 5.1 of these Purchase Conditions. Proposals and information of persons acting on behalf of Berlin Heart in connection with production inspection or preliminary acceptance do not relieve the Supplier of its obligation to duly perform its contractual duties.

6.5. Berlin Heart takes receipt of the Products (handover in terms of §§ 446, 651 German Civil Code) subject to reserve of all rights, in particular regarding defective or delayed delivery.

6.6. At the request of Berlin Heart the Supplier shall assign Berlin Heart any rights it may have against sub-suppliers or other third parties in connection with a defect on the Products by way of performance (*erfüllungshalber*). In such an event it shall provide Berlin Heart with all documents required to assert such rights.

6.7. Any contractual warranty claims which Berlin Heart may have against the Supplier shall become statute-barred three years after handover of the product, notwithstanding statutory provisions. This shall have no effect on the limitation period for other claims, especially tortious claims.

7. Product liability, indemnity and insurance cover

7.1. In as far as the Supplier is responsible for damage attributable to the product which it has manufactured it shall indemnify Berlin Heart from any third-party claims at first request.

7.2. The Supplier shall reimburse Berlin Heart for any expenses which it incurs, in particular for product recall. The Supplier shall be notified of the content and extent of such product recall activities – in as far as this is possible and reasonable. This shall have no effect on any broader contractual or statutory rights.

7.3. The provision of 7.2 shall apply accordingly in as far as damage is attributable to defective performance of Supplier's suppliers or sub-contractors.

7.4. The Supplier shall maintain product liability insurance with appropriate cover. Evidence of this insurance cover shall be presented to Berlin Heart on request at any time in the form of the policy and proof of payment. Berlin Heart reserves the right to demand conclusion of such an insurance policy with a certain minimum insurance cover. This shall not affect Berlin Heart's option to claim for a loss in excess of the insurance cover.

8. Property rights

8.1. The Supplier is responsible for ensuring that none of the patents, licences or other third-party property rights or copyrights associated with supply of the product are infringed either in Germany or abroad.

8.2. In the event that claims should be filed against Berlin Heart on the grounds of an infringement of the type described in 8.1 the Supplier shall indemnify Berlin Heart at first written request from these claims and from any necessary expenses incurred by them such as legal costs. This shall have no effect on any other broader rights, in particular the right to withdraw from the contract.

9. Retention of title, tools

9.1. In as far as Berlin Heart provides the Supplier with parts for the production of components Berlin Heart retains title in such parts. Processing or re-working by the Supplier is always carried out on behalf of Berlin Heart. If any of the parts covered by this retention of title are processed with

other parts which are not the property of Berlin Heart, Berlin Heart shall acquire co-title in the new item pro rata as a ratio of the value of the components provided by Berlin Heart (purchase price + VAT) to the value of the other items processed at the time of processing.

9.2. Unless otherwise expressly agreed any tooling, fixtures and models manufactured by the Supplier for the purposes of the contract from materials provided by Berlin Heart are manufactured for Berlin Heart as manufacturer with the result that Berlin Heart then becomes the owner of such items. If such items are manufactured for the purposes of this contract without Berlin Heart having provided the necessary materials, the Supplier shall transfer title in such items to Berlin Heart in as far as Berlin Heart has financed the purchase of the materials in whole or predominantly or states that it is willing to purchase the item in question and title has not already been transferred according to 9.2 sentence 1 of these Purchase Conditions. For this purpose the Supplier shall mark the items in question as the property of Berlin Heart.

9.3. Any tooling, fixtures, parts and models provided by Berlin Heart shall remain the property of Berlin Heart; the Supplier shall use the tooling solely for production of the goods ordered by Berlin Heart and insure them at new value at its own cost against fire, water damage and theft and keep them carefully. The Supplier shall carry out any necessary maintenance and inspection work at its own cost in a timely manner. It shall notify Berlin Heart immediately of any faults.

9.4. The Supplier shall utilise, store or otherwise use the parts and items mentioned in 9.1, 9.2 and 9.3 with the care of a diligent businessman (§ 347 (1) German Commercial Code).

9.5. The Supplier shall return the tools, fixtures and models owned by Berlin Heart on request in a good condition.

10. Final provisions

10.1. Berlin Heart reserves the right to amend these Purchase Conditions at any time.

10.2. In as far as the Supplier is a businessman, a legal person under public law or a special public fund the place of jurisdiction shall be the domicile of Berlin Heart. Berlin Heart may sue the Supplier at the court which has jurisdiction for the Supplier's domicile.

10.3. Unless otherwise agreed in a specific case the place of performance shall be the domicile of Berlin Heart.

10.4. This contract and any claims arising therefrom shall be subject to the law of the Federal Republic of Germany excluding United Nations Conventions on Contracts for the International Sale of Goods (CISG).

10.5. Should individual provisions of these Purchase Conditions be or become invalid in whole or in part, or should these Purchase Conditions contain a lacuna, this shall have no effect on the validity of the remaining provisions. In place of the invalid provision a valid provision shall be agreed upon which reflects the meaning and purpose of the invalid provision and, in particular, its economic intention. If there is a lacuna, the parties shall agree on the provision which they would have agreed on with regard to the meaning and purpose of this contract if this point had been considered from the start.