

General Terms and Conditions of Sale and Delivery

of BYK-Gardner GmbH (BYK-Gardner) (AVLB 2014/E)

1. GENERAL

- 1.1 The General Terms and Conditions of Sale and Delivery of BYK-Gardner shall apply only in relation to customers which are enterprises in terms of § 14 of the Civil Code (BGB) of the Federal Republic of Germany (hereinafter called "Customer").
- 1.2 In the event that BYK-Gardner's General Terms and Conditions of Sale and Delivery are introduced into a transaction with the Customer, such General Terms and Conditions of Sale and Delivery shall also apply to all further transactions between the Customer and BYK-Gardner unless agreed otherwise in writing.
- 1.3 BYK-Gardner's General Terms and Conditions of Sale and Delivery shall apply exclusively. Any conditions of the Customer which are at variance hereto or which conflict with BYK-Gardner's General Terms and Conditions of Sale and Delivery shall only apply if expressly accepted by BYK-Gardner in writing.
- 1.4 In the event that future technical developments result in changes to the goods after the conclusion of the contract, BYK-Gardner is entitled to deliver the technically altered goods. BYK-Gardner is entitled to deviate from illustrations, drawings, descriptions, colours and dimensions, weight, quality and other details, to the extent that such is reasonable for the Customer taking into account the interests of both parties.
- 1.5 BYK-Gardner is entitled to make partial deliveries and to claim separate payment in respect thereof.

2. OFFERS, ORDERS, CHARACTERISTICS OF GOODS

- 2.1 BYK-Gardner's offers are subject to change and are non-binding unless expressly stated otherwise. Such offers are merely an invitation for the Customer to submit a binding order on this basis. A contract will be formed, also in relation to ongoing business transactions, only if the Customer's order is confirmed by BYK-Gardner in writing (including per fax or e-mail) or, if the goods are delivered. BYK-Gardner's order confirmation shall determine the conditions of the contract. In case of immediate delivery BYK-Gardner's order confirmation may be replaced by an invoice.
- 2.2 The obligation to deliver an item only the category of which has been defined shall not encompass the assumption of a procurement risk. BYK-Gardner shall not be deemed to have granted a guaranty unless BYK-Gardner has specified a guaranteed property in writing.
- 2.3 In case of the electronic transmission of an order, the provisions of § 312e section 1, sentence 1, nos. 1 to 3 Civil Code (BGB) (Duties in Electronic Transactions) are hereby excluded. BYK-Gardner shall not be obliged to confirm the receipt of any order by electronic means. Any e-mails received by BYK-Gardner on business days between 0:00 and 16:00 h shall be deemed to have been received as of 16:00 h unless earlier receipt can be proven. E-mails received by BYK-Gardner between 16:01 and 23:59 h shall be deemed to have been received at 16:00 h on the next business day, unless earlier receipt can be proven.

3. PAYMENT CONDITIONS, SECURITY

- 3.1 Unless otherwise agreed, invoiced amounts are due for payment without any deductions within 30 days after the date of invoice. In case payment is received within 14 days after the date of invoice, BYK-Gardner grants a deduction of 2 %. Payments shall be deemed settled as soon as the payment in Euro has been credited on one of BYK-Gardner's bank accounts. Any further expenses shall be borne by the Customer. In case of goods being exported, any costs related from the transfer or payments of moneys shall be borne by the Customer to the extent that such arise in the country of the Customer. If payment is not made within the stipulated period, it shall be deemed to be in arrears without previous notice thereof.
- 3.2 Any acceptance of an order and the performance of delivery may be made subject to requirements of security deposit or prepayment. BYK-Gardner is also entitled to demand payment concurrently with the delivery of the goods.
- 3.3 In the event that there is any substantial deterioration in the financial situation of the Customer after concluding the contract, such as by way of filing for insolvency proceedings by the Customer, the commencement of insolvency proceedings, an application for a declaration of insolvency or an arrest warrant or, if there is a cessation of payment or similar, which is not based on any right of retention or other rights, BYK-Gardner may, in addition to BYK-Gardner's rights under Art. 3.2, withdraw from the contract at any time.

- 3.4 Any rights of retention or set-off on the part of the Customer shall only exist in relation to those counterclaims which are undisputed or have been determined by final legal judgement unless the counterclaim relates to a breach of a substantial contractual duty (for definition see section 9.1) on BYK-Gardner's part. Any rights of retention may be exercised by the Customer, only if its counterclaim arises from the same contractual relationship.

4. DELIVERIES AND SHIPMENTS

- 4.1 All binding delivery dates and terms shall require an express written agreement in order to be valid. If non-binding or approximate delivery dates or terms have been specified, BYK-Gardner will use their best efforts to comply with these specifications. Any unilateral requirements stipulated by the Customer shall not be binding on BYK-Gardner unless BYK-Gardner expressly agreed to their validity in writing. Transactions for fixed delivery dates must expressly be designated as such and confirmed by BYK-Gardner in writing.

- 4.2 In the event that BYK-Gardner does not receive any deliveries or services from its subcontractors, or does not receive them properly or in time, for reasons beyond BYK-Gardner's control and despite a reasonable stock being maintained, or in case of any event of force majeure, BYK-Gardner shall inform its Customers timely in writing or in text form. In such case, BYK-Gardner is entitled to delay delivery for the period of the hindrance or to withdraw from the contract in whole or in part in relation to the non-performed part provided that BYK-Gardner met its obligation to inform its Customers and BYK-Gardner has not assumed any risk of procurement. Force majeure includes strikes, lock-outs, actions of authorities, scarcity of energy and raw materials, legal national and international regulations regarding embargo, fight against terrorism or any other regulations, transport difficulties which are not culpably caused by BYK-Gardner, any hindrances to operations which are not culpably caused by BYK-Gardner, for example, as a result of fire, water and machine damage; and any other hindrances which in objective terms have not been culpably caused by BYK-Gardner. In the event that a delivery date or delivery deadline is agreed in a binding manner and as result of any event under this section 4.2 such agreed delivery date or delivery deadline is not met, the Customer may, after the expiry of a subsequent further reasonable deadline, withdraw from the contract with respect to the non-performed part of such contract, if it would be objectively unreasonable for the Customer to continue to be bound by such a contract. Any further rights to claim on the part of the Customer are excluded in such case.

In the event that the prevention should continue for more than six months or should the delivery become impossible, both parties are entitled to rescind the contract.

- 4.3 Any claims for damages due to delays in delivery shall be limited to a maximum amount of 0.5 % of the net delivery price for the goods delayed per completed week of delay, but totalling no more than a maximum of 5 % of the net delivery price. In case such delay relates to a wilful act or gross negligence or a breach of a substantial contractual duty (for definition see section 9.1), the statutory liability shall apply, however such liability shall be limited to the foreseeable damage in the event of a negligent breach of a substantial contractual duty.
- 4.4 If a Customer sets a reasonable subsequent deadline after a delay in delivery and such deadline expires without performance, the Customer may withdraw from the contract; the Customer shall be entitled to claim damages due to non-performance to the amount of the foreseeable damage only if such non-performance relates to a wilful act or gross negligence or is a breach of a substantial contractual duty (for definition see section 9.1); in all other cases any liability for damages shall be limited to 50 % of the damage incurred.
- 4.5 The limitations of liability in accordance with sections 4.3 and 4.4 shall not apply in so far as a commercial contract where time is of the essence is agreed; the same applies if the Customer may claim that as the result of the delay for which BYK-Gardner is responsible, an immediate claim for damages should apply instead of performance (§281, section 2 Civil Code (BGB)).
- 4.6 BYK-Gardner shall not be in default delay for as long as the Customer is in default of performance of any obligations it may have towards BYK-Gardner, even if resulting from other contracts.
- 4.7 Unless agreed otherwise, any loading and dispatching takes place on an uninsured basis at the risk of the Customer ex works, i.e. EXW Geretsried according to the Incoterms in the latest version.
- 4.8 BYK-Gardner shall determine the means of transport and the transport route. BYK-Gardner will, however, attempt to take into account the Customer's

General Terms and Conditions of Sale and Delivery

of BYK-Gardner GmbH (BYK-Gardner) (AVLB 2014/E)

preferences in regard to means and route of transportation; however, any additional costs resulting therefrom – also in relation to agreed free freight delivery – shall be borne by the Customer.

5. PRICES

- 5.1 Any orders placed with BYK-Gardner shall be performed at the list prices valid on the delivery date in Euro including packaging. These prices are quoted exclusive of the statutory value-added tax, as amended. Unless agreed otherwise, the contract prices shall be quoted ex works, i.e. EXW Geretsried according to the Incoterms in the latest version.
- 5.2 BYK-Gardner is entitled to reasonably increase prices unilaterally (§ 315 Civil Code (BGB)) in case of any increase in material procurement or production costs, taxes, wage or salary or social security costs as well as energy costs and costs for environmental protection provided that the time between the concluding of the contract and delivery is greater than four months. Any increase in terms of the above is not possible in so far as the increase of costs of any of the above named factors is set off by a decrease in costs of any of the above factors in relation to the total cost burden for the delivery.

6. RETENTION OF TITLE

- 6.1 BYK-Gardner reserves the title of ownership to all goods supplied by BYK-Gardner (hereinafter referred to generally as “retention of title goods”), until all claims of BYK-Gardner arising from the business connection with the Customer, including any future claims from contracts concluded at a later time, have been settled. This shall also apply to any balance in favour of BYK-Gardner, if any specific individual claim or all claims by BYK-Gardner are included in a current invoice (current account) and a balance is drawn.
- 6.2 The Customer shall insure all retention of title goods adequately in particular against fire, water and theft. Any claims against an insurer arising out of a case of damage affecting retention of title goods shall hereby be deemed to have already been assigned to BYK-Gardner to the amount of the value of the retention of title goods.
- 6.3 The Customer is entitled to resell the delivered goods in the normal course of business. Any other form of disposal by the Customer, and in particular any pledging or granting of any security rights shall not be permitted. If the retention of title goods are not paid for by a third party immediately during the course of resale, the Customer shall sell such only subject to retention of title. Any entitlement to resell retention of title goods shall be extinguished automatically, if the Customer ceases to make payment or is in default with any payment in relation to BYK-Gardner. The same shall apply correspondingly if the Customer is part of a group of companies and/or if one of the circumstances described in the above sentence occurs in relation to the parent company or a holding company of the Customer.
- 6.4 The Customer hereby assigns to BYK-Gardner in advance all claims, including any securities and supplementary rights, which it is entitled against any final purchasers or third parties as a result of or in connection with the resale of retention of title goods. The Customer shall not enter into any agreement with its customers which exclude or limit BYK-Gardner’s rights in any manner whatsoever or which render void the advanced assignment of claims. In case of the sale of retention of title goods together with other items, the claim against the third party purchaser shall be deemed to have been assigned to BYK-Gardner to the amount of the delivery price agreed between BYK-Gardner and the Customer, to the extent that the individual amounts attributable to the relevant goods cannot be determined from the invoice.
- 6.5 The Customer shall remain entitled to collect any claims which have been assigned to BYK-Gardner until such right is duly revoked by BYK-Gardner to which revocation BYK-Gardner is entitled at any time. Upon request, the Customer shall provide BYK-Gardner with the information and documentation necessary to collect any assigned claims and, insofar as BYK-Gardner does not do so itself, the Customer shall inform its customers immediately about the assignment of the claims to BYK-Gardner.
- 6.6 If the Customer includes any claims from resale of retention of title goods in a current account relationship with its customers, it hereby assigns to BYK-Gardner in advance any recognised final balance in its favour which corresponds with the total amount of the claim from the resale of BYK-Gardner’s retention of title goods.
- 6.7 If the Customer has already assigned any claims from the resale of goods delivered or to be delivered by BYK-Gardner to a third party, in particular on the basis of non-recourse factoring or recourse factoring or any other agreements, on the basis of which BYK-Gardner’s current or future rights of security

in accordance with this section could be limited, it shall notify BYK-Gardner of such without undue delay. In case of recourse factoring BYK-Gardner is entitled to withdraw from the contract and to demand restitution of any goods already delivered. The same shall apply in case of non-recourse factoring, if the Customer is unable to freely dispose of the purchase price of the claim under the contract with the factor.

- 6.8 In case of any contractual breach, in particularly in case of default in payment, BYK-Gardner is – without BYK-Gardner having to withdraw from the contract beforehand – entitled to recover all retention of title goods; the Customer is in such case automatically obliged to release such goods to the extent that not only a breach of a minor duty has occurred. In order to be able to determine the stock of goods delivered by BYK-Gardner representatives of BYK-Gardner may at any time during the normal hours of business enter the business premises of the Customer. Recovering retention of title goods shall qualify as withdrawal from the contract only if BYK-Gardner declares such expressly in writing or if such is required by the mandatory provisions of law. The Customer shall notify BYK-Gardner without undue delay in writing of any access of third parties to the retention of title goods or claims assigned to BYK-Gardner.
- 6.9 If the value of the securities available to BYK-Gardner under the above provisions exceeds the secured claims in total by more than 10 %, BYK-Gardner shall, if requested by the Customer, release any security at BYK-Gardner’s choice to such extent.
- 6.10 From the time of cessation of payment by the Customer or in case of the issuing of an application for insolvency of the Customer, the Customer shall no longer be entitled to sell any retention of title goods. The Customer shall in such case undertake separate storage and labelling of retention of title goods without undue delay and shall further keep for BYK-Gardner on a fiduciary basis any moneys received from assigned claims arising from the delivery of goods.
- 6.11 If the above agreed retention of title is not recognised or is only recognised under certain preconditions under the law of the country into which the goods are delivered, the Customer shall notify BYK-Gardner of such at the latest upon the concluding of the contract. If the laws of such country do not allow for retention of title or an extended retention of title, but would allow BYK-Gardner other rights in similar manner to a retention of title for security purposes, BYK-Gardner hereby declares, that BYK-Gardner shall use such rights in relation to the delivered goods. The Customer shall assist in undertaking all necessary measures (in particular compliance with formalities).

7. RIGHTS OF USE REGARDING SOFTWARE

- 7.1 Any Software which is transferred to the Customer or made available by download represents a copyright work by BYK-Gardner and/or its licensors. All rights of the Software in relation to the Customer appertain exclusively to BYK-Gardner and/or its licensors.
- 7.2 BYK-Gardner transfers to the Customer a simple, non-exclusive, non-sublicensable, and non-transferable right to use the Software exclusively for his own purposes in his company. The Customer is entitled to use the Software as a whole or partly on a data processing instrument. The simultaneous use on several data processing instruments is excluded.
- 7.3 In case the Software is transferred to the Customer together with other goods purchased from BYK-Gardner, the Customer may use the Software only to the extent and for the purpose, necessary for the operation of the goods purchased from BYK-Gardner.
- 7.4 Especially, the Customer shall not copy the Software, except for a back-up copy for security purposes.
- 7.5 The Customer is not entitled to change, to disassemble or to further develop the Software.
- 7.6 Indications regarding the owner of the rights of the Software and of the documentation shall not be removed.
- 7.6 In case goods from BYK-Gardner which contain Software are resold, the above mentioned rights to use and obligations arising from this right are transferred to the buyer.

8. WARRANTY, NOTIFICATION OF DEFECT

- 8.1 The Customer shall immediately inspect the goods delivered upon delivery, where appropriate, for any defects regarding their quantity and quality, by a trial process, and shall notify BYK-Gardner of any defects without delay, but not later than within 7 days upon receipt of the goods; otherwise, the goods shall be deemed to have been approved. BYK-Gardner shall be notified of

General Terms and Conditions of Sale and Delivery

of BYK-Gardner GmbH (BYK-Gardner) (AVLB 2014/E)

any defects not detectable by such an inspection immediately, however, not later than 7 days upon their discovery. Any complaints shall be filed in writing specifying the order data and the invoice and shipping numbers.

A complaint not filed in time shall bar the Customer from asserting any claims of non-compliance on grounds of inferior performance.

Any hidden defects shall be notified by the Customer immediately after they have become detectable, but not later than within the period of limitation indicated in Article 9.6. Complaints for defects shall always be accompanied by a reasonably detailed description of the defect.

The warranty period is 24 months after delivery to the Customer.

- 8.2 Any notice of defect under section 8.1 must be in writing.
- 8.3 In case the Customer returns the goods within Germany or the EU, the goods shall be sent to BYK-Gardner's registered office in Geretsried if possible in original packaging by delivery prepaid. After completion of the order BYK-Gardner shall return the goods to the Customer by delivery prepaid.

In case of return shipment by airfreight, the goods shall be sent if possible in original packaging to Munich Airport (CPT Incoterms 2010). After repair the goods shall be returned to the Customer's nearest airport (CPT Incoterms 2010). Customs clearance in Customer's country shall be taken over by the Customer.

- 8.4 If justified defects have been notified in time, BYK-Gardner shall at its choice rectify the defect itself or by third parties free of charge or deliver defect-free goods (subsequent performance). In case of any delivery recourse (§§ 478, 479 Civil Code (BGB)), the Customer shall have the right of choice. Before sending back any goods, BYK-Gardner's permission is to be obtained. Any replaced goods shall become the property of BYK-Gardner. If BYK-Gardner does not rectify any defect or does not provide a replacement delivery for the defective goods within a subsequent reasonable deadline set, or if any subsequent performance is not successful (whereby BYK-Gardner is permitted to make two attempts), or if BYK-Gardner refuses to provide subsequent performance or if such is not reasonable for BYK-Gardner, the Customer may in accordance with the provisions of law withdraw from the contract, reduce the price, claim compensation for expenses as well as damages within the terms set out in section 9. Any right to withdraw from the contract or right for a price reduction shall only apply in case of defects which are not insignificant.
- 8.5 BYK-Gardner's liability in accordance with section 9. shall not be affected hereby.
- 8.6 BYK-Gardner warrants that the Software has been developed according to the current state of the art, has been carefully checked and substantially conforms to the applicable product documentation. The warranty does not include the confirmation that the Software answers the Customer's requirements or is compatible with other programs selected by the Customer.

9. LIABILITY, EXCLUSION AND LIMITATION OF LIABILITY

- 9.1 BYK-Gardner shall be generally liable only for any wilful act or gross negligence by BYK-Gardner or its legal representatives or vicarious agents. BYK-Gardner's liability and that of its legal representatives and vicarious agents for minor negligence is excluded only insofar as such does not relate to (1) a breach of a substantial contractual duty, (2) breach of any duty in terms of § 241, section 2 Civil Code (BGB), if it would no longer be reasonable for the Customer to accept BYK-Gardner's performance, (3) any injury to life, personal injury or injury to health, (4) the acceptance of any guarantee for the quality of any performance, for the successful performance or for any risk of procurement, (5) deceit, (6) initial impossibility, (7) claims in accordance with the German Product Liability Act (Produkthaftungsgesetz) or (8) any other cases of mandatory legal liability.

"Substantial contractual duty" is any duty which contractually protects the substantial legal position of the Customer, such being entitled to be protected in terms of the content and purpose of the contract; substantial duties also refer to those contractual duties, which must be performed in order to allow the due performance of the contract itself and the compliance with which the Customer regularly relies on, and may rely on.

- 9.2 To the extent that BYK-Gardner cannot be made liable for intentional breach of obligations and there is no case of injury to life, personal injury or injury to health or any other case of mandatory legal liability, BYK-Gardner shall be only liable for typical and foreseeable damage.
- 9.3 Any liability for indirect damage and consequential damage is hereby excluded insofar as such is not the result of a wilful act or gross negligence or a breach

of a substantial contractual duty (for definition see section 9.1).

- 9.4 Any further liability for damages other than that set out in the above sections shall be – regardless of the legal nature of such – excluded. This shall apply in particular for any claims for damages resulting from fault at the time of the concluding of the contract, due to any other breaches of duties or any claims under torts for compensation for damage in terms of § 823 Civil Code (BGB).
- 9.5 Any exclusions or limitations of a liability in terms of the above sections 9.1 to 9.4 shall apply to the same extent in favour of BYK-Gardner's managers and non-managerial employees as well as its vicarious agents and subcontractors.
- 9.6 Any claims of the Customer for damages arising out of this contractual relationship may be made only within a period of one year from the commencement of the statutory limitation period. The same shall apply for any competing claims arising out of torts as well as any claims for consequential damage. This shall not apply in case of deceit, gross negligence or wilful acts on the part of BYK-Gardner. The limitation period in case of any recourse for delivery in accordance with §§ 478, 479 Civil Code (BGB) shall not be affected.
- 9.7 The above provisions shall not constitute a reversal of the burden of proof.

10. JURISDICTION AND APPLICABLE LAW

- 10.1 The place of jurisdiction for any and all disputes arising out of this contract shall be Munich, Germany.
- 10.2 The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.3 If any of BYK-Gardner's order confirmations contains a clause from INCOTERMS, the respective applicable provision of INCOTERMS in the latest version shall apply unless otherwise stated in BYK-Gardner's respective order confirmation.

11. SEVERANCE CLAUSE

In the event that individual provisions hereof should be invalid for any other reason than those in §§ 305 – 310 Civil Code (BGB) the remaining provisions shall not be affected. Any invalid provision shall be deemed to have been replaced by a valid substitute provision which most closely reflects the originally intended commercial purpose.

Note:

In accordance with the provisions of the German Federal Data Protection Act (Bundesdatenschutzgesetz) BYK-Gardner must inform the Customer that purchase orders are processed on IT-systems and that data received from the Customer on the basis of the commercial relationship will be electronically recorded and stored.

BYK-Gardner does not process any inquiries or orders from persons, companies, organizations or countries that are listed on any national or international official list of sanctions and embargos and will immediately cancel any confirmed orders.

The Customer commits to use the goods exclusively according to the rules and to abide by the valid and applicable European Union regulations regarding international commercial law (dual use, embargo).

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