

**BioGents GmbH, Regensburg**  
**General Terms & Conditions of Sale & Delivery**  
**1 June 2006**

**1 General**

- (1) The present General Terms and Conditions of Sale and Delivery of BioGents shall form part of the contract between BioGents and customers of BioGents and shall apply only in relation to merchants.
- (2) Mosquito and/or fly traps and/or lures sold by BioGents to customers shall be sold exclusively on the basis of the following General Terms and Conditions of Sale and Delivery in relation to merchants, in the version valid at the time the order is placed.

**2 Scope and Requirement for the Written Form**

- (1) These Terms and Conditions of Sale shall only apply in relation to companies and merchants, legal entities subject to public law and trustees of public funds, as respectively defined in § 310, para. 1 BGB (German Civil Code). BioGents shall not accept any conditions presented by customers which contradict or deviate from the Terms and Conditions of Sale of BioGents, unless expressly agreed to in writing by BioGents.

**3 Offer and Contract Agreement**

- (1) All offers from BioGents are without obligation.
- (2) All orders, irrespective of whether they are submitted to BioGents or representatives of BioGents in written form, electronically or verbally, shall only be deemed to be binding for BioGents if they have been confirmed in writing by BioGents or if the goods have been delivered and the order is thereby fulfilled. All changes – including changes to orders which have already been received - and supplementary agreements shall only be valid if confirmed in writing by BioGents. The contract of sale shall only come into effect when BioGents has confirmed the order either by E-mail or fax. If the goods are delivered immediately without confirmation of the order, the invoice shall be deemed to count as the order confirmation at the same time.
- (3) Where an order is submitted in electronic form, the provisions of § 312 e para.1, clause 1, No.1 - 3 BGB (obligations in relation to electronic transactions) shall be precluded. BioGents shall be under no obligation to provide confirmation of receipt of the order by electronic means. Incoming E-mails received by BioGents

on workdays between 9.00 a.m. and 4.00 p.m. shall be deemed to have been received at 4.00 p.m., unless the customer can furnish evidence that they were called up earlier. E-mails received by BioGents outside these times shall be deemed to have been received on the following workday at 4.00 p.m., unless the customer can furnish evidence that they were called up earlier.

- (4) Where an order is deemed to be an offer within the meaning of § 145 BGB, BioGents shall be entitled to accept it within 2 weeks.

#### **4 Prices, Payment and Terms of Payment**

- (1) The prices specified by BioGents are ex works prices excluding packaging, freight, all costs associated with the method of payment of the customer and statutory value added tax, which has to be added at the valid applicable amount. The costs of packaging, freight and costs associated with the method of payment of the customer shall be invoiced separately. Any additional taxes and/or customs duties shall be paid by the customer.
- (2) The purchase price shall be paid only to the account specified in the invoice and only in the currency used in the invoice. No discounts shall be deducted unless agreed to separately in writing. Any ancillary charges shall be borne by the customer. In the case of exported goods, all costs associated with the incoming payment shall be borne by the customer where any such costs are incurred in the customer's country.
- (3) Unless agreed otherwise, an advance payment of 35% of the invoice sum shall be due for payment upon acceptance of the order by BioGents and shall be paid no later than 10 calendar days after acceptance of the order by BioGents. The remaining 65% of the invoice sum shall be due for payment no later than 20 calendar days after the goods have been delivered. BioGents shall be entitled to interest on payments due and in arrears at normal bank rates of interest on debit balances, but at a minimum level of at least 8% above the current applicable base interest rate in accordance with § 247 BGB, plus exchange losses if overseas payments are concerned; this shall not affect BioGents' entitlement to assert further rights or damages in relation to payments due and in arrears. The customer shall be entitled to furnish proof that BioGents suffered no damage or suffered damage to a lesser degree. Where the customer fails to make payment, BioGents shall be entitled to cancel the order by notifying the customer accordingly in writing instead of asserting all rights and damages in relation to payments due and in arrears.
- (4) Notwithstanding the above, other methods of payment can also be agreed. In such case, BioGents shall reserve right to restrict the selected method of payment to the present conditions again at any time.
- (5) The acceptance of orders and fulfillment of deliveries can be made subject to the provision of security or pre-payment.

- (6) Should any major doubt be cast on the credit standing of the customer after the conclusion of the contract, either because of a file for the institution of insolvency proceedings, the institution of composition proceedings, a file for the making of a statutory declaration or an order for arrest, or similar, BioGents shall be entitled, at its choice, to demand pre-payment or the provision of security within a reasonable deadline. BioGents shall be entitled to withhold performance until fulfillment. Once the deadline has expired, BioGents shall be entitled to rescind the contract if the customer has failed to make the pre-payment or provide the security. For the purposes of clarification, it can be assumed that major doubt shall be cast on the credit standing of the customer if the customer is in arrears with more than two payments.
- (7) BioGents expressly reserves the right to refuse bills of exchange. They shall only ever be accepted on account of performance. Discount and bill charges shall be borne by the customer and shall be due for immediate payment. The acceptance of bills shall be without any guarantee in relation to correct presentation and protest. Cheques shall also only be accepted on account of performance.

#### **5 Set-off and Rights of Retention**

- (1) The customer shall not be entitled to any rights of set-off, unless his counter-claims have become legally effective or are uncontested. The customer shall only be entitled to assert an entitlement to set-off if the customer's counter-claim is based on the same contractual relationship.

#### **6 Time of Delivery**

- (1) The time of delivery for each order shall be agreed with the customer individually.
- (2) BioGents shall deliver as quickly as reasonably possible. Times of delivery or delivery deadlines shall be specified in writing. Transactions for delivery by a fixed date must be expressly identified as such and confirmed by BioGents.
- (3) The beginning of each time of delivery to be agreed shall be subject to the customer duly fulfilling his duties in a timely and proper manner. The defence of non-performance of the contract remains unaffected.
- (4) Where the customer is in default with regard to acceptance of the goods or is in culpable violation of any other obligation to cooperate, BioGents shall be entitled to demand compensation for damages incurred by BioGents, including compensation for all additional effort and costs incurred. This shall not preclude any further rights that BioGents might have. Where the aforementioned circumstances apply, the risk of accidental loss, destruction or deterioration of the goods shall pass to the customer at the time such default with regard to acceptance of the goods or debtor's delay arises.

- (5) Where production, procurement or delivery is obstructed or delayed as a result of force majeure or any other unforeseeable and exceptional event beyond the influence and control of BioGents, e.g. a shortage of raw materials, interruption of operations or industrial action (strikes and lockouts) at the BioGents plant, among BioGents' suppliers or among BioGents' transportation companies, the time for delivery shall be extended by a reasonable amount accordingly. Should it become impossible or unreasonable for BioGents to make the delivery or fulfill performance because of the aforementioned circumstances, BioGents shall be entitled to withdraw from the duty to deliver.
- (6) Where BioGents is otherwise in delay with delivery, the customer shall not be entitled to any claims for damages in accordance with § 286 BGB in relation to the delay, unless BioGents is being held liable for damages caused intentionally or by gross negligence. All claims for damages shall be restricted to typically foreseeable damages which would not generally exceed the purchase price of the goods ordered.
- (7) In all cases where 6 (6) does not apply and with the exception of circumstances falling under 6 (5), where BioGents is in delay with delivery for reasons not caused by intent or gross negligence on the part of BioGents, BioGents shall be liable for a fixed level of compensation for delay amounting to 2% of the delivery value for each completed week of delay, but not exceeding a maximum of 10% of the delivery value.
- (8) This does not affect any other statutory claims and rights which the customer may have in relation to delay in delivery.

#### **7 Dispatch and Transfer of Risk upon Dispatch**

- (1) The goods shall be delivered to the address specified by the customer either by parcel service or forwarding agency, depending on the size of the order. On request, the customer may also collect the goods himself.
- (2) Unless agreed otherwise, the goods shall be loaded and dispatched ex works or ex distribution warehouse without insurance and at the risk of the recipient. If the goods are delivered to the customer at the customer's request, the risk of accidental loss, destruction or accidental deterioration shall pass to the customer upon dispatch to the customer and at the latest when the goods leave the works/warehouse. This shall apply irrespective of whether the goods are dispatched from the place of performance and irrespective of who bears the costs of transportation.

## 8 Reservation of title

- (1) BioGents shall retain the title to the delivered goods until it has received full payment of all accounts receivable in relation to the contract for delivery, where this is permissible under the law governing the purchased goods. This shall also apply to all future deliveries, even if not specifically stipulated separately each time. BioGents shall be entitled to demand the return of the goods if the customer is in breach of contract.
- (2) If the reservation of title expressly agreed herein is not accepted under the law of the country to which the object of delivery is delivered or is only accepted if certain conditions are fulfilled, the customer shall be required to advise BioGents of this fact by the time of the agreement of the contract at the latest. If the law does not permit the reservation of title or extended reservation of title but does permit BioGents other rights which serve the purposes of providing security in a similar form as the reservation of title in respect of the object of delivery, BioGents declares herewith that it shall make use of these rights. The customer shall cooperate with all measures required to fulfill the above (in particular, compliance with formal requirements).
- (3) For the duration of the period of reservation of title the customer shall be required to insure the goods owned by BioGents against fire, water, theft and burglary. The customer shall herewith assign to BioGents all his rights to compensation from insurance companies to which he may be entitled in relation to damages of the aforementioned nature or any other claims for damages, the amount being the amount of the outstanding accounts payable to BioGents. BioGents accepts this assignment. If the customer is in breach of his duties under any contracts agreed with BioGents or is default with regard to fulfillment, BioGents shall be entitled to disclose the assignment for security purposes to the final customer and collect the outstanding accounts payable directly.
- (4) The customer shall not be entitled to pledge the goods, transfer them by way of security or be entitled to any other similar form of disposition without the express prior written permission of BioGents.
- (5) Until ownership has finally transferred to the customer, the customer shall ensure that the goods are handled with proper care. Until ownership has finally transferred to the customer, the customer shall advise BioGents immediately in writing if the object of delivery is ever seized, destroyed, damaged, stolen or is subject to any other intervention by a third party. If the third party concerned is not in a position to pay the court and out-of-court costs of BioGents in relation to the pursuit of legal action in accordance with § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the losses incurred by BioGents.
- (6) The customer shall be entitled to resell the conditional commodities within his ordinary course of business. The accounts payable to customer from the resale of the conditional commodities shall be herewith assigned to BioGents, to the amount of the total invoice sum agreed with BioGents (including value added tax). This

assignment shall apply regardless of whether the goods were reworked into a new form or not reworked into new form before being resold. The customer shall continue to be entitled to collect the accounts payable even after the aforementioned assignment of the accounts payable. This shall not affect BioGents' right to collect the accounts payable itself. However, BioGents shall refrain from collecting the accounts payable as long as the customer meets his duties to make payment from the sums collected, is not in default of payment and, in particular, has not filed a petition for the institution of insolvency proceedings and has not suspended the making of payments.

- (7) Where BioGents' goods are commingled with other objects which are not owned by BioGents, BioGents shall acquire co-ownership of the new object, the share of ownership being commensurate with the objective value of the BioGents' goods relative to the value of the other objects at the time of commingling. Where the commingling results in the customer's object being deemed to be the main object, it shall be agreed that the customer shall transfer proportional co-ownership to BioGents and shall hold the sole ownership or co-ownership so created in safe custody for BioGents.
- (8) If the conditional commodities are taken back, this shall not constitute the cancellation of the contract unless this is expressly declared to be the case.

#### **9 Warranty, Notice of Defects and Recourse/Manufacturer Liability**

- (1) All warranty rights of the customer are subject to the condition that the customer properly complies with his duties under the terms of § 377 HGB (German Commercial Code) in respect of examinations of the goods and submission of notice of defects.
- (2) The warranty in respect of defective products is based on the provisions of the statutory regulations, unless stipulated otherwise. The warranty obligation shall not apply to any damages arising as a consequence of improper handling, storage, installation or other external influences.
- (3) The limitation period for claims based on defects shall be 12 months after delivery of the goods supplied by BioGents to BioGents' customer. The aforementioned provisions shall not apply where longer periods are an imperative requirement under the provisions of the law as required by § 438 para. 1 No. 2 BGB (Built structures or objects for built structures), § 479 para. 1 BGB (Right of recourse) and § 634a para. 1 BGB (Construction defects). If the goods are to be returned, BioGents must agree in advance.
- (4) The customer shall examine the delivered goods for defects in terms of quantity and characteristics immediately upon receipt, by test working as far as this is reasonably possible, and shall immediately notify the seller of any defects, otherwise the goods shall be deemed to have been accepted. Any defects not found during this examination but discovered later shall be notified to BioGents immediately upon their discovery.

All complaints shall be submitted in writing and include reference to all order details and the invoice and consignment number.

- (5) Where, in spite of the care taken, the delivered goods should have defects which were present at the time of the transfer of risk, and justified notice of defects is submitted in due time, BioGents shall choose between either remedying the defects or replacing the goods. In the case of delivery recourse (§§ 478, 479 BGB), the customer shall have the right to choose. Replaced goods shall become the property of BioGents. BioGents shall always be granted the opportunity for remedial performance within a reasonable time. This provision does not affect the customer's rights to recourse in any way.
- (6) Where remedial performance (either remedying the defects or replacing the goods) fails, the customer shall be entitled – without any effect on any rights to claims for damages – to cancel the contract or to demand a reduction in the price.
- (7) No liability shall be accepted for claims for damages based on defects where such claims are based on insignificant deviations from agreed characteristics, insignificant impairment of usability, natural wear and tear, or damage arising after the transfer of risk as a result of misuse or negligent use, excessive stress or loading, unsuitable operating equipment, defective building work, unsuitable building ground, or as a result of exceptional external influences not foreseen by the contract. No liability for damages shall be accepted for any modifications or unprofessional repair work undertaken by the customer or a third party, or for the consequences of such work.
- (8) No liability shall be accepted for claims for damages from the customer in respect of costs arising in relation to remedial performance, in particular costs of transportation, travel, work or material, where the increased cost is the result of the goods delivered by BioGents being transferred retrospectively to a location which is different to that of the place of business of the customer, unless the transfer conforms with the proper use of the goods.
- (9) BioGents shall not accept claims for recourse from the customer where these are based on claims relating to terms of delivery agreed between the customer and his customer which exceed the imperative rights to claims based on defects provided by law. In addition, the scope of claims for recourse by the customer against the supplier shall be subject to the provisions of **Para. 8** analogously.
- (10) Where, at the time of the transfer of risk in accordance with § 444 BGB, a defect is fraudulently concealed or a guarantee regarding a quality is provided, customer's rights shall be based solely on the statutory provisions of the law.
- (11) Where the customer is a merchant, the submission of notice of defects shall have no effect on the due date for payment of the purchase price, unless agreed to in writing by BioGents or recognized by legal judgement.

- (12) All warranty rights shall be subject to a limitation period of one year after delivery of the goods, unless provided for otherwise by law.
- (13) The customer shall not be permitted to assign the warranty rights to any third parties.
- (14) Where the customer resells goods purchased from BioGents to a third party, the customer shall not be permitted to refer that third party to BioGents in relation to the associated statutory and/or contractual warranty rights.
- (15) Liability for all damages arising in relation to slight negligence shall be restricted to damages to the goods ordered. This shall also apply to the personal liability of BioGents' employees, representatives and persons employed in performing an obligation for BioGents.
- (16) No liability shall be accepted for any other claims for damages, unless these are based on intent or gross negligence. This shall not apply to claims based on injury to life, body or health caused by the negligent breach of a duty on the part of BioGents or the intentional or negligent breach of a duty by a statutory representative of BioGents or person employed in performing an obligation for BioGents. Furthermore, the limitation on liability shall not apply to claims made pursuant to the Product Liability Law either.

#### **10 Other Guarantees**

- (1) BioGents expressly disclaims any liability for its products, including the BG Sentinel, in respect of resistance to rain; the customer is aware that none of the products have this property.

#### **11 Relationships with third parties**

- (1) The customer shall agree not to negotiate any exclusive terms of delivery with his customers.

#### **12 Other Provisions**

- (1) The place of performance for delivery shall be Regensburg.
- (2) The laws of the Federal Republic of Germany shall apply both to this contract and to all legal relationships between the contractual parties, to the exclusion of the U.N. Law on the Sale of Goods (CISG), even where the order is made from another country or the goods are delivered to another country.
- (3) Where the customer is a merchant, a legal entity subject to public law or a trustee of public funds, Regensburg shall be the place of jurisdiction for any disputes arising from or in connection with the contractual relationship, where legally permissible.

- (4) Any changes and supplements to this contract must be made in writing. This also applies to any changes to this provision on the requirement for the written form. No verbal agreements have been made.
  
- (5) The invalidity or lack of any provision in this contract shall not affect the validity of any other provision. The parties to the contract shall replace the invalid provision or insert a new provision which is legally valid and comes as close as possible to the commercial intentions of the previous invalid or missing provision.