

bluepoint medical GmbH & Co. KG – General Terms and Conditions

1. Scope of application

The sections 2 to 14 of these General Terms and Conditions apply to all supplies and performances of bluepoint medical GmbH & Co. KG.

2. Terms of payment, set-offs, right of retention

2.1. The payment for supplies and performances of bluepoint medical GmbH & Co. KG abroad may only be made by means of an irrevocable and confirmed letter of credit of a major bank of the Federal Republic of Germany, payable in favour of bluepoint medical GmbH & Co. KG against presentation of the documents to this major bank.

2.2. Bills of exchange, cheques and other means of payment are only accepted on account of performance. For these means of payment the receipt of payment will be that day on which bluepoint medical GmbH & Co. KG. can dispose of the amount.

2.3. All discount and collection charges as well as other payment costs shall be borne by the customer.

2.4. Set-off can only be asserted for those claims, which are not contested or have been declared legally binding.

2.5. Rights of retention can only be asserted, as far as they are based on the same legal relationship.

2.6. 10% of the value of the goods must be additionally paid as tax for the old part value for repair replacement parts (RAT) pursuant to the Value Added Tax Act.

3. Shipment, packaging, passing of risk

3.1. Shipment and transport costs shall be borne by the customer in the absence of any special agreement. The same applies to the packaging, which is supplied according to the experience of bluepoint medical GmbH & Co. KG.

3.2. The risk shall also pass to the customer in cases of deliveries free of charge at the latest with dispatch of the delivery parts even if part deliveries are affected or bluepoint medical GmbH & Co. KG has undertaken to provide other services, e.g. delivery and installation. If dispatch becomes impossible through no fault of bluepoint medical GmbH & Co. KG, the risk will pass to the customer with notification of readiness for dispatch. If bluepoint medical GmbH & Co. KG carries out assembly and commissioning of the supply items in the context of the supply contract, the risk passes to the customer with commissioning; if commissioning is not carried out within twelve (12) days after written notification of completion of assembly for reasons not attributable to bluepoint medical GmbH & Co. KG, then the risk passes to the customer after expiry of that period. If assembly is delayed for reasons for which the customer is responsible, then the risk passes to the customer for the period of the delay.

4. Delivery and delivery time

4.1. Weight and dimension specifications in brochures and offers are only approximate. We reserve the right to reasonable deviations of the design from such specifications as well as reasonable design modifications.

4.2. Any reference to technical standards only represents a performance description.

Only a written confirmation by bluepoint medical GmbH & Co. KG is deemed to grant warranty of a characteristic.

4.3. The period for supplies and performances does not begin before documents, permits or releases to be furnished by the customer have been provided. Compliance with the period for supplies and performances presupposes fulfilment of the contractual obligations of the customer.

4.4. The delivery date shall be deemed to have been met if the delivery item has left the factory by its expiry.

4.5. The delivery period shall be appropriately extended in case of measures within the scope of industrial disputes, in particular strike and lock-out as well as in case of the occurrence of unforeseen obstacles which do not lie within bluepoint medical GmbH & Co. KG's intention, unless the delivery or performance thereby becomes impossible. In such a case of impossibility of supply, bluepoint medical GmbH & Co. KG is released from its obligation to fulfil the contract. The customer is not entitled to claim damages possibly derived from cases of extension of the delivery time and also release of bluepoint medical GmbH & Co. KG from the obligation to fulfil the contract.

5. Withdrawal from contract

5.1. The customer can withdraw from the contract if bluepoint medical GmbH & Co. is finally unable to provide all performances prior to the passage of risk. The same

applies in the event of bluepoint medical GmbH & Co. KG's inability to perform. The customer shall be further entitled to rescind the contract when the execution of a part of the ordered objects of the same type will become impossible, in the presence of a justified interest of the customer to decline a partial supply; if not so, the customer shall be entitled to reduce the valuable consideration.

5.2. In case of a delay of delivery, the customer shall be entitled, after having set a respite in writing to bluepoint medical GmbH & Co. KG, with the express declaration to refuse the supply after that respite, to rescind the contract if this respite is not observed.

5.3. With regard to further claims, section 9 of these General Terms and Conditions applies.

6. Retention of title

6.1. The supplied and/or installed items (goods subject to retention of title) remain property of bluepoint medical GmbH & Co. KG until complete settlement of all, also future claims, regardless of the legal ground, also if payments are made for particularly designated claims. The reserved ownership shall be security for the current account claims of bluepoint medical GmbH & Co. KG. Machining or processing of the goods subject to retention of title is considered to be carried out on behalf of bluepoint medical GmbH & Co. KG, who shall be considered the manufacturer pursuant to § 950 German Civil Code (BGB), and shall retain title to its products at any time and processing stage during the processing. This machining or processing shall be deemed to be free of charge and without obligation for bluepoint medical GmbH & Co. KG. In the event that goods subject to retention of title are processed, combined or mixed with moveable items not belonging to bluepoint medical GmbH & Co. KG, bluepoint medical GmbH & Co. KG shall be entitled to co-ownership of the new item at a ratio of the invoiced value of the goods subject to retention of title to the value of the other items used by the customer at the time they were processed, combined or mixed. Otherwise, the same shall apply for the new goods created from the processing, combining or mixing as for the goods subject to retention of title. They are regarded as goods subject to retention of title in compliance with these General Terms and Conditions.

6.2. Any claims of the customer arising from a further sale of the reserved goods subject to retention of title are assigned to bluepoint medical GmbH & Co. KG already now as security for all present and future claims of bluepoint medical GmbH & Co. KG arising from the business relationship, regardless of whether the goods subject to retention of title are resold without or after processing and whether they are resold to one or more buyers. The customer shall be authorised to collect these assigned claims also after the assignment, unless he continues his payments or bluepoint medical GmbH & Co. KG revokes this authorisation for collection. This does not affect the authority of bluepoint medical GmbH & Co. KG to collect the assigned claims directly. On request the customer shall notify bluepoint medical GmbH & Co. KG immediately in writing, to whom he has sold the delivery items, which claims have arisen as a result of this sale and to hand over all documents necessary for collection.

6.3. The customer is only entitled and authorised to resell the goods subject to retention of title on account of a sales contract, work contract, contract for labour and materials or other contract, if the customer reserves title of bluepoint medical GmbH & Co. KG to the delivered goods vis-à-vis any such third party until the goods have been paid in full by such third party. The customer is not entitled for other disposals of the goods subject to retention of title in particular pledging and security transfer. At the request of bluepoint medical GmbH & Co. KG, the customer shall be obligated to disclose to his buyer the assignment for payment to bluepoint medical GmbH & Co. KG.

6.4. If the value of the existing securities for bluepoint medical GmbH & Co. KG exceeds the secured claims by a total of more than 20%, bluepoint medical GmbH & Co. KG shall be obliged, upon request of the customer or a third party affected by the supplier's over-securing, to release securities to this extent at the option of bluepoint medical GmbH & Co. KG.

6.5. In the event of pledging, confiscation or other restraints by third parties, the customer shall notify bluepoint medical GmbH & Co. KG without delay.

7. Notice of defects and acceptance

7.1. The customer is obligated to unpack supplies immediately after receipt to determine shortfalls and transport damages. In case of damage caused during transport, a damage protocol must be drawn up immediately to secure possible claims for damages against the transportation company (post office, railway, carriers etc.). A defect of the goods can only be asserted within one week after receipt of the

goods, unless the defect concerned is not immediately apparent. Unsatisfactory performance of work must be communicated to bluepoint medical GmbH & Co. KG immediately after this has been determined, in order to avoid loss of the right to rework.

7.2. The period for acceptance and the period for making a notification of defects according to the preceding section shall be extended to an appropriate extent insofar as the customer is prevented by strikes or lock-out to accept the goods.

8. Warranty

8.1. bluepoint medical GmbH & Co. KG warrants for defects and for lack of guaranteed qualities on supplied new items, repair replacement parts (RAT) or rendered performances according to the following provisions:

8.2. The warranty obligation shall last 12 months from the day of completion of the performances, in the case of delivery items from the day of shipment from the factory. Deviating from this, the warranty period for motors of all kinds, pumps, compressors, electro-chemical sensors and for parts made of rubber/plastic/glass and ceramics is 6 months from the day of shipment from the factory. The warranty for delivery articles only concerns absence of defects at shipment from bluepoint medical GmbH & Co. KG, in the case of rendered performances, the absence of defects at the time completion and/or acceptance.

8.3. The warranty comprises free reworking or at the option of bluepoint medical GmbH & Co. KG replacement delivery. If the reworking fails or the replacement delivery is inadequate, the customer can assert his right to reduce the payment or to rescind the contract. With regard to further claims, section 9 of these General Terms and Conditions applies.

8.4. If the customer has asserted the warranty claim within 6 months from the day of completion of the performances, in the case of delivery items from the day of shipment from the factory, then bluepoint medical GmbH & Co. KG is obligated to bear the costs of the expenditures necessary for reworking, in particular transportation, travelling and labour costs. This does not apply, as far as the expenditures mentioned are increased by the fact that the delivery item was transported after the supply to a location other than the domicile or the place of business of the customer, unless the transfer corresponds to the designated use of the object.

8.5. The customer is obligated to permit bluepoint medical GmbH & Co. KG to rework in order to fulfil the warranty obligation and at the request of bluepoint medical GmbH & Co. KG to send the delivery item to bluepoint medical GmbH & Co. KG or to a workshop specified by bluepoint medical GmbH & Co. KG. If the customer fails to comply with this obligation, bluepoint medical GmbH & Co. KG shall be released from any warranty obligation.

8.6. The warranty does not apply for defects caused by interventions of the customer or third parties; furthermore, it does not apply if the delivery item has not been stored according to the enclosed respective conditions. Furthermore, the warranty does not cover natural wear.

8.7. If bluepoint medical GmbH & Co. KG renders warranty, the warranty period shall be suspended for the period in which it is impossible for the customer to use the delivery item due to the activities of bluepoint medical GmbH & Co. KG.

8.8. All warranty claims including any reworking and replacement delivery claims are excluded for used delivery items, with the exception of repair replacement parts (RAT).

9. Other liability

Contractual and non-contractual claims against bluepoint medical GmbH & Co. KG and its vicarious agents for compensation for damage of any kind, and also of damage that has not occurred to the delivery item itself shall be excluded. The exclusion is not valid in cases of intent or gross negligence by bluepoint medical GmbH & Co. KG or its vicarious agents and in cases where a product liability law stipulates liability for personal injury or material damage for goods in private use. The exclusion is equally not valid for the lack of expressly warranted properties if assuring them is specifically aimed at indemnifying the customer against damage the goods themselves have not sustained.

10. Copyright

In drawings, technical papers and other expertise, bluepoint medical GmbH & Co. KG reserves itself ownership and copyright exploitation rights without reservation; they may not be disclosed to third parties.

11. Data protection

In accordance with the §26 Federal Data Protection Act, bluepoint medical GmbH & Co. KG advises that it will store and process received customer data insofar as it relates to the commercial relationship with the customer for own purposes of bluepoint medical GmbH & Co. KG.

12. Safety regulations

All relevant safety regulations should be observed, such as e.g. the Medical Devices Regulation of 14/01/1985, or regulations for the prevention of industrial accidents. In the case of deliveries made abroad, if legal regulations relating to safety apply in the customer's country, in particular with regard to the approval, maintenance and handling of the delivery items, the customer has sole responsibility for complying with these regulations. The customer shall exempt bluepoint medical GmbH & Co. KG from all claims arising from such regulations.

13. Medical devices observation and reporting obligation

The customer is obligated to observe the relevant provisions of the German Act on Medical Devices in particular § 29 on the medical devices observation and reporting obligation and to inform bluepoint medical GmbH & Co. KG immediately of appropriate occurrences.

14. Area of jurisdiction and applicable law

14.1. The area of jurisdiction shall be Schwerin, if the customer is a commercial businessman (however not a commercial businessman pursuant to § 4 HGB (German Commercial Code)), legal entity of public law or public special estate. However, in these cases, bluepoint medical GmbH & Co. KG is entitled at its discretion to also file a claim at the court with jurisdiction for the domicile of the customer.

14.2. The law of the Federal Republic of Germany applies. The application of the United Nations Convention on Contracts of the International Sale of Goods is excluded.

15. Final provisions

Deviations from the above General Terms and Conditions always require the written and legally signed confirmation of bluepoint medical GmbH & Co. KG. to be effective. Any conditions of the customer diverging from the above provisions shall only be valid if bluepoint medical GmbH & Co. KG has expressly accepted them in writing.