

Standard Terms and Conditions of Purchasing

1. Application

- 1.1. Any purchase order issued by Brainlab to the Supplier shall be subject to the following Standard Terms and Conditions of Purchasing of Brainlab AG, Kapellenstraße 12, 85622 Feldkirchen.
- 1.2. Conditions stipulated by the Supplier shall be applicable only if confirmed by both parties in written form. Any references to proposal documents of the Supplier by Brainlab shall not imply any acceptance of Supplier's terms and conditions.
- 1.3. Neither acceptance of order confirmations nor acceptance of goods or services shall be construed as an acknowledgement of those terms.
- 1.4. The terms and conditions stated herein are deemed accepted upon first product delivery and shall exclusively apply for all further orders.

2. Placing Of Orders, Order Confirmation

- 2.1. Purchase orders by Brainlab as well as any modifications and amendments are only valid when made in writing. This requirement for written form shall also be deemed fulfilled by purchase orders by e-mail or facsimile. These standard terms and conditions shall form an integral part of the agreement upon acceptance of a purchase order by the Supplier.
- 2.2. Brainlab shall be bound by a purchase order for a period of fourteen (14) days from the date of receipt of the purchase order by the Supplier. Supplier undertakes to issue order confirmations stating a binding date of delivery in written form within fourteen (14) days from receipt of the purchase order.

3. Pricing

- 3.1. Prices as set forth in Brainlab's purchase order shall be binding and shall not include statutory value added tax.
- 3.2. Prices as set forth are delivered duty paid (DDP INCOTERMS 2000) including packaging to Brainlab AG, Kapellenstraße 12, 85622 Feldkirchen, Germany, unless agreed otherwise.

4. Date Of Delivery / Partial Delivery

- 4.1. The delivery date specified in the purchase order shall be binding. The Supplier shall inform Brainlab immediately should any circumstances arise which will or may result in a delay.
- 4.2. In case of a delay in delivery, Brainlab is entitled to demand a penalty of 1 % of the order value for each week after the delivery date; the maximum aggregate penalty shall be 10 % of the total order value, unless Supplier is able to prove that the damage actually occurred is lower. Brainlab further reserves all statutory rights, including but not limited to the right to claim higher damage compensation.
- 4.3. Deliveries shall be carried out delivered duty paid (DDP INCOTERMS 2000) at Brainlab AG, Kapellenstraße 12, 85622 Feldkirchen, Germany, unless agreed otherwise.
- 4.4. Partial deliveries require Brainlab's prior written approval.

5. Terms of Payment

- 5.1. Payment term shall not commence before goods are duly delivered or services are duly completed and Brainlab has received a correct invoice. All invoices are payable net within 90 days from the date of invoice. For payments within 30 days a discount of 2 % shall be granted, for payment within 14 days a discount of 3 % shall be granted.
- 5.2. Supplier shall be entitled to offset claims only if they result from the same contract and relate to the same product as the principal claim.
- 5.3. Supplier shall be entitled to offset only if Supplier's claims are undisputed, or ripe for, or determined by final judgment. The same shall apply for rights of retention.

6. Transportation And Risk Of Loss

- 6.1. Risk of loss and damage to or destruction of the purchased goods shall pass from Supplier to Brainlab as soon as the goods are received at Brainlab's site.

7. Warranty

- 7.1. Receipt or acceptance of goods is made by Brainlab subject to reservation of all rights. In deviation from § 377 HGB (German Commercial Code) it shall be sufficient if Supplier is notified of evident defects within 3 weeks of receipt of delivery or services, of hidden defects within 10 days of their discovery.
- 7.2. German statutory warranty provisions shall apply. In addition Brainlab shall be entitled to remedy defects at the expense of the Supplier in case of urgency.
- 7.3. Neither acceptance of any goods or services, nor temporary use or any payments shall be construed as an acceptance or waiver of any rights by Brainlab.

8. Export, Reexport

- 8.1. Supplier warrants (i) to comply with all export regulations applicable for the products delivered by Supplier and (ii) that no violation of embargos or any obligation to obtain an export permit has occurred.
- 8.2. Supplier shall provide Brainlab with all information necessary for compliance with export and reexport regulations, including but not limited to information on list categories, ECCN or other list numbers.

9. Drawings, Designs, Samples

- 9.1. Brainlab retains title to all provided drawings, designs, samples, information about the production method and other documents and information. Supplier shall use the provided information only for the purpose such information was provided for, in particular any reproduction, copying or disclosure to any third party shall be prohibited.

10. Intellectual Property

- 10.1. Supplier warrants that all delivered goods are free from any third party rights, in particular free from any trademarks, patents, copyrights and any other intellectual property rights of third party's. Supplier will indemnify, hold harmless and defend Brainlab against any action for infringement of intellectual property rights brought against them by a third party.

11. Liability

- 11.1. Supplier shall be liable according to the statutory provisions.
- 11.2. Supplier shall carry an adequate product liability insurance and shall evidence the existence of such insurance promptly on demand.

12. Confidentiality / Data Protection

- 12.1. Supplier shall keep in confidence all information, which is readily and reasonably identifiable as confidential based on its nature and/or the circumstances of its disclosure, unless such information is publicly known or already rightfully known by the Supplier.
- 12.2. Supplier undertakes to comply with all applicable data protection regulations.

13. Protection Of Environment

- 13.1. Supplier shall be required to take back transport packaging of products free of charge and to dispose of these pursuant to any applicable regulations.

14. Miscellaneous

- 14.1. Brainlab will not acknowledge reservation of title of delivered goods.
- 14.2. Parties shall not assign or subcontract rights or obligations under any purchase order or any interest therein, in whole or in part, to a third party without prior written approval of the other Party.

15. Compliance

- 15.1. Supplier warrants to Brainlab that it will comply with applicable statutory regulations, policies and guidelines in connection with its performance under these terms and conditions, including but not limited to anti-bribery and anti-trust laws.
- 15.2. Supplier shall contact Brainlab's Compliance Officer should substantiated suspicions arise about questionable behavior of a Brainlab employee in connection with the purchase contract, these terms and conditions, the purchase order or delivery.
- 15.3. In the event that Supplier is not in compliance with the obligations under 15.1. or 15.2., Supplier shall be liable for any damage, indirect or direct, incurred by Brainlab as a result of such non-compliance.

16. Termination

- 16.1. For purposes of termination for cause of a purchase contract by Brainlab, a breach of these terms and conditions shall be deemed material if, without limitation, Brainlab can show that Supplier, on one or several occasions, was not in compliance with 15. above.

17. Applicable Law / Arbitration / Partial Invalidity

- 17.1. These terms and conditions as well as all contractual and other legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods as of April 11, 1980 and also excluding conflict of laws provisions.
- 17.2. Any claim or controversy arising out of or relating to these standard terms and/or any other legal relationship between the parties shall be settled in Munich, Germany by arbitration in accordance with the arbitration rules of the International Chamber of Commerce.
- 17.3. The dispute shall be heard and determined by one arbitrator, unless any party's claim exceeds EUR 1 million, exclusive of interest and attorneys' fees, in which case the dispute shall be heard and determined by three arbitrators.
- 17.4. Language of the arbitration shall be English.
- 17.5. The arbitration tribunal shall not award punitive damages.
- 17.6. The arbitration shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement.
- 17.7. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration.
- 17.8. Nothing in this agreement shall prevent Brainlab from seeking injunctive relief or other legal remedy to prevent unauthorized copying, disclosure, use, retention, or distribution of Brainlab's intellectual property.
- 17.9. If any part of the terms and conditions is held void or unenforceable, such part will be treated as separable, leaving valid the remainder of these terms and conditions.
- 17.10. The invalid clause will be replaced by the valid clause that generally comes closest to the commercial intention of the invalid clause.
- 17.11. Changes of or amendments to these standard terms and conditions of purchasing and any supplementary stipulations, including the written form requirement set forth in this clause, must be in writing.