

## Conditions of Sale

### General Terms of Business

October 2006

#### § 1 Scope of the Conditions

These Conditions of Sale apply to the companies listed below:

bene\_fit systems GmbH & Co. KG

Address of the company:

Scharhof 1, 92242 Hirschau, Germany

#### § 2. Applicability of the Conditions

1. All deliveries, services and offers of the Dorfner-Group (hereinafter „Vendor“) shall exclusively be governed by these General Terms of Business. They shall apply to all future business relations, even if this is not expressly agreed upon. These General Terms of Business shall be deemed accepted at the latest at the time delivery of goods has been taken. Contract terms at variance to these General Terms shall not apply even if Vendor has not expressly objected to their application or has, while being aware of said differing contract terms, made delivery to the purchaser without express reservation.

2. Any deviations from these General Terms of Business shall only be binding if confirmed by Vendor in writing. There are no oral side agreements. Any agreements made by representatives for Vendor require written confirmation by Vendor.

#### § 3 Offers and Contract Conclusion

1. All offers made by Vendor are subject to change and non-binding. Declarations of acceptance and all orders require confirmation by Vendor in writing or by Telex/Telefax in order to be binding which is to take place within three weeks following receipt of a purchaser acceptance declaration or order. The same applies to modifications, changes and side agreements.

2. Any details regarding measures, weights, drawings, illustrations or other performance data shall only be binding if expressly agreed upon in writing. Vendor's products are natural goods which may be improved or mixed (also with synthetic products), therefore being subject to fluctuations due to natural factors. Therefore Vendor hereby expressly points out that information given in catalogues, brochures, newsletters, advertisements, illustrations and pricelists regarding weight, measurements, capacity, colours and physical and chemical characteristics or performance can only be considered "approximate".

3. Due to the reasons given under 2. above, a product description shall only be binding if expressly agreed upon between the parties. Purchaser is under the obligation to examine the suitability of the respective product with regard to the use intended by Purchaser; it is furthermore a duty of Purchaser to request information from Vendor regarding margins of tolerance as well as options and experiences regarding the use of the products.

#### § 4. Delivery and Time of Performance

1. Dates and time periods quoted by Vendor are approximate unless expressly agreed upon otherwise in writing.

2. Delivery periods shall commence at the time of conclusion of the contract. However, the delivery time only commences when none of the following hindrances to performance or similar ones are in evidence – documents still required for Vendor performance, required agreement between the contractual parties on the design type and specific product, required clarification of the natural occurring margins of tolerance as well as obtaining official licenses.

3. Given that the implementation of delivery and

performance obligations which have been taken on is aggravated, delayed or made temporarily impossible by circumstances not attributable to Vendor, then the Vendor is entitled to extend the delivery/part delivery or service/part service for the length of time of the hindrance plus an appropriate startup time. Given that implementation of delivery and performance which have been taken on is made permanently impossible by circumstances not attributable to the Vendor, then the Vendor is entitled to withdraw wholly or partially from the contract. The Vendor is not, in particular, responsible for non-culpably occasioned official intrusions, unpredictable operating trouble, strikes, lock-outs, interruptions to work caused by political or economic circumstances, unavoidable scarcity of raw material and operating stock, transportation delays due to traffic hold-ups and unavoidable incidents which arise at the Vendor's, his suppliers or at outside companies on which the Vendor's undertaking absolutely depends. The Vendor undertakes to inform the Purchaser immediately on the impossibility of a delivery or service and to immediately reimburse the "quid pro quo" of the Purchaser faced with no delivery or service.

4. In the event that the obstruction lasts for more than three months, Purchaser shall have the right to withdraw from the contract regarding the portion not yet performed after setting a reasonable grace period.

#### § 5 Manufacture to Specification

1. Products manufactured to specification cannot be taken back. Withdrawal from contracts regarding manufacture to specification is subject to Vendor's express written consent.

2. With regard to samples, drawings and other documentation transmitted for manufacture to specification, Vendor shall not be obliged to verify the legal implications regarding industrial property rights. Purchaser shall be solely responsible regarding said industrial property rights.

3. In cases of manufacture to specification, Purchaser shall be liable to Vendor for all losses and damages suffered by Vendor resulting from Vendor unknowingly infringing third parties industrial property rights.

#### § 6. Weights, Moisture Content

1. Irrespective of the means of transport chosen, weight is established based upon the weight of the delivery as determined upon dispatching it from the factory using Vendor's or Vendor supplier's scales. Evidence of the weight shall be provided by presenting the weight slip.

2. In cases of dispatch of wet goods, variations regarding the moisture content resulting from weather conditions constitute no grounds for claims of defect by Purchaser.

3. Goods delivered in sacks shall be delivered and invoiced based on the gross weight (including packaging). A variation in the gross weight of up to three percent (3%) shall not be considered a defect.

#### § 7. Orders on Call, Block Orders

1. Orders on call require a written agreement between Vendor and Purchaser. Delivery dates shall be confirmed by Vendor in writing.

2. Unless expressly agreed upon otherwise, goods shall be available for a time of up to 26 weeks. Purchaser shall place calls for goods and classification of sorts for substantially equal monthly instalments, as far as reasonably possible. Calls are subject to at least four weeks notice.

3. In the event that Purchaser fails to place the call on time, Vendor shall have the right to withdraw from the contract and to claim damages, providing that a grace period set by Vendor has expired.

#### § 8. Dispatch; Passing of Risk

1. If it has been agreed for the goods to be sent to a location specified by the Purchaser, the risk of accidental loss, destruction or deterioration shall pass to Purchaser as soon as the goods have been handed over to the person in charge of transportation, however, no later than the goods leaving the storage area.

2. If Purchaser is to collect the goods, the risk of accidental loss and accidental deterioration shall pass to Purchaser as soon as the goods have been made available for collection and a corresponding notification has been given to Purchaser; in these cases, the foregoing shall apply instead of §8.1, above. The foregoing shall apply accordingly to partial deliveries.

3. Vendor shall obtain transportation insurance upon specific request of Purchaser and at Purchaser's expense.

4. In the event that delivery is to be carried out by a freight carrier instructed by Vendor, Purchaser shall ensure that the point of delivery is accessible for tractor-trailer-trucks with a gross weight of up to 40 tons. Purchaser shall be liable for all damages to vehicles and trucks as well as consequential damages if Purchaser has failed to provide such facilities.

#### § 9 Prices

1. Prices quoted in offers of Vendor shall only be binding within the stated period of validity of the offer.

2. Prices quoted are ex-works or ex-storage area of Vendor. Prices are quoted net of VAT at the current rate and net of costs for transport, postage, packaging, insurance, customs or other charges.

3. Unless agreed upon otherwise, Vendor shall be entitled to adjust agreed prices/remunerations to increases in costs of wages, materials and raw materials. The foregoing shall not require the consent or approval by Purchaser. If prices have been expressly agreed upon, such adjustment shall only be permissible if a period of more than six weeks has passed between the date of conclusion of the contract and delivery of the goods and if the increase in costs has occurred after the conclusion of the contract.

#### § 10 Payment

1. Unless agreed upon otherwise, payment shall be due immediately and shall be payable in full without deductions within 30 days of date of the invoice or 30 days after delivery.

2. Despite possible declarations of Purchaser to the contrary, Vendor shall be entitled to apply any payments of Purchaser to Purchaser's existing earlier debts. In the event that costs have been incurred and interest has accrued, Vendor shall have the right to apply a payment to existing debts in the following order: a) costs, b) interest, c) principal amount.

3. Payment shall be deemed made once the full amount is at Vendor's free disposal. Wire transfers, cheques and bills of exchange shall only be accepted in lieu of payment, any collection fees and discounting charges shall be borne by Purchaser.

4. Discounts granted due to purchase of a larger quantity (volume discounts) are given under the condition of timely payment and execution of the full delivery. In case of returns of goods to which Vendor has expressly agreed upon without being under a legal obligation to do so, volume discounts granted shall be cancelled with regard to the whole delivery. In such event, Purchaser shall make a corresponding supplementary payment.

5. In the event that terms of payment are not met or if Vendor becomes aware of circumstances which severely diminish Purchaser's creditworthiness - applying banking standards - and which in view of Vendor endanger realization of Vendor's claim, Vendor hereby expressly reserves the right to demand payment of the entire outstanding amount. The foregoing shall apply

accordingly to acceptance of cheques or bills of exchange. Vendor shall furthermore be entitled to withdraw from existing agreements if Purchaser, upon request of Vendor, fails to provide Vendor with advance payment or another type of security.

6. Purchaser shall only be entitled to exercise a right of set-off or right of retention in the event that the corresponding counterclaims of Purchaser are undisputed or have been finally decided by the competent court. Purchaser agrees to Vendor setting off Purchaser's claims to Purchaser's liabilities.

7. In case of Purchaser exceeding dates of payments agreed upon previously, Vendor shall be entitled to interest in the amount of 8% above the basic interest rate in keeping with Section 247 BGB/German Civil Code; the foregoing shall not require the issuance of a formal reminder/default notice. Vendor shall be entitled to claim any higher damages resulting from the delay.

8. Purchaser payments effected by direct debiting are considered as being approved given that Purchaser does not countermand the debit entry within 7 working days.

#### **§ 11. Warranty**

1. Purchaser is to immediately reprimand any obvious variations in type, property and quantity between the ordered and delivered goods. In the case of defects that are not obvious, a notice to that effect is to be posted within the telling warranty periods. Companies, legal entities under public law or public law trusts are to immediately admonish any non-obvious defect on it being recognised as such.

2. The Purchaser can demand that any goods supplied by the Vendor which are defective be put right. Under this requirement for subsequent fulfilment, the Purchaser is entitled to demand that the defect is either eradicated or goods free of defects are delivered. The Vendor can refuse to accept the selected form of subsequent fulfilment when it involves disproportionately high costs. Given rejection by the Vendor of the type of fulfilment selected by the Purchaser, then the claim that the Purchaser has is restricted to the other type of subsequent fulfilment. The Vendor is liable to the same extent for substitute deliveries as for the original item of supply.

3. Given that the neither an eradication of the defect nor additional delivery come to fruition, the Purchaser is entitled – to the exclusion of further-reaching claims – to either a reduction of the purchase price or cancellation of the contract.

4. In the event of a justifiable subsequent fulfilment claim, the Vendor is committed to defray the expenditure required for subsequent fulfilment purposes – this applies especially to transportation, road, work and material costs. Subsequent fulfilment costs which had to be undertaken at a different location to that of the contractual place of fulfilment are to be charged to the Purchaser.

5. Further-reaching claims of the Purchaser – whatever the legal background – are ruled out. The Vendor is not liable for damage not arising directly on the item of delivery. In particular, the Vendor is not liable for eluded earnings or other financial losses on the part of the Purchaser.

6. Purchaser warranty rights elapse one year from delivery of the goods unless an instance associated with § 438, Paragraph 1, Section 2 BGB (German Civil code) arises.

#### **§ 12 Reservation of Title**

1. Title of the goods delivered shall remain with Vendor until the purchase price and all open claims resulting from the business relation between Vendor and Purchaser have been paid in full.

2. Goods covered by this retention of title shall not be pawned, assigned for security or otherwise encumbered. Purchaser shall be entitled to resell the goods or

combine them with other movables within the ordinary course of business. In the event that Vendor loses its title as a result of union of said goods with other movables, Purchaser hereby agrees in advance to procure that Vendor shall become co-owner of the resulting good in proportion to the respective value of the goods concerned.

3. Purchaser shall procure that the retention of title agreed herein will be upheld to the extent possible; Purchaser hereby assigns to Vendor the purchase price claim resulting from the resale of the good in full respectively in an amount proportionate to the proportion of ownership of Vendor to Vendor. Vendor hereby accepts the assignment. Purchaser shall be entitled to collect the claim. Vendor reserves the right to collect the claim itself as soon as Purchaser fails to pay its debts when due. In such event, Purchaser shall, upon request of Vendor, provide Vendor with the names of its customers and shall provide to Vendor any documentation required to collect the claims assigned hereunder.

4. Purchaser shall insure the goods sold under retention of title against the usual risks including fire, water and theft at its own cost. In the event that Purchaser fails to fulfil the obligation to insure the goods despite of a reminder of Vendor, Vendor shall have the right to insure the goods at Purchaser's expense, advance the insurance premium and collect said premium as part of the claims under the agreement. In the event that an insurance contingency occurs, Purchaser hereby assigns to Vendor all claims against the insurer or the responsible third party. Vendor hereby accepts this assignment.

5. In the event of breach of contract by Purchaser, in particular in the event of delay in payment or if the assets of Purchaser are subjected to composition or insolvency proceedings, Vendor shall be entitled to take back the goods and Purchaser shall return the goods without being entitled to any right of retention. Taking back goods sold under retention of title by Vendor shall not be construed as a withdrawal from the respective agreement. Purchaser shall bear all costs associated with the taking back of the goods.

6. In the event that the actual value of the goods subject to retention of title exceeds the total claims of Vendor by more than 20%, Vendor shall re-assign / re-transfer corresponding securities to Purchaser.

#### **§ 13 Limitation of Liability**

1. Liability of Vendor in cases of contractual mandatory infringements and slight negligence shall be limited to deliberateness and gross negligence. This does not apply to compensation claims in case of damage to life, body and health. Unaffected by this are statutory liability commitments stemming from culpable-independent liability.

2. The Purchaser can only claim compensation instead of performance on the basis of the statutory requirements of § 281 BGB, §282 BGB and §283 of BGB. The Purchaser cannot claim indemnification for failed expenditure in keeping with § 286 BGB.

3. The Purchaser can only demand compensation on account of default in Vendor performance under the statutory requirements of § BGB 286. At all events the Vendor is not in default to the extent that the lack of performance is due to a circumstance which the Purchaser is answerable for.

4. Given that the liability of the Vendor is ruled out or restricted, then this limitation also holds good for liability with actions of vicarious agents and employees of the Vendor.

5. Unless other written arrangements have been agreed to, Vendor shall not be liable for materials, components, shipping instructions, processing instructions etc. provided by Purchaser. Vendor shall not be under the obligation to examine the foregoing materials with regard to compliance with product liability law and/or the German Civil Code. In these cases, Purchaser shall be fully liable and shall indemnify Vendor from and against any claims of third parties.

#### **§ 14 Industrial Property Rights**

1. Vendor shall be the exclusive owner of all rights relating to drawings, drafts and plans produced by owner, including, without limitation, patents, copyright

and inventors rights. Sales material such as catalogues, sample books, pricelists etc. which are made available to Purchaser shall remain property of Vendor and shall be returned to Vendor upon request.

2. Trademarks, trade names or other marks and property rights of manufacturer or Vendor may only be used by Purchaser while observing the interests of Vendor, such use being subject to Vendor's prior written consent.

3. Purchaser shall be solely responsible that its instructions regarding forms, measurements, colours, weights etc. do not result in an infringement of third parties rights. Purchaser shall indemnify Vendor from and against all claims of third parties regarding an infringement of aforementioned industrial property rights, including all costs incurred in as well as out of court.

#### **§ 15 Data Protection**

Vendor shall have the right to process and store personal data of Purchaser, subject to and within the limits set by applicable data protection laws.

#### **§ 16 Applicable Law; Place of Jurisdiction; Escape Clause**

1. These General Terms of Business as well as the entire business relation between Vendor and Purchaser shall be subject to the laws of Germany excluding the conflict of laws; the UN Convention on the International Purchase and Sale of Goods (CISG) shall not apply.

2. If contract partner is a merchant, public law entity or public law trust, venue for all claims resulting from the contractual relationship shall be the court competent for Vendor's seat. Vendor shall, however, also be entitled to file a claim at the seat of Purchaser.

3. To the extent permissible by law, place of performance for all claims resulting from the agreement shall exclusively be the registered seat of Vendor in the country in which the respective contract was concluded.

4. In the event that a provision contained in these General Terms of Business or other agreements shall be or become invalid, the validity of all remaining provisions or agreements shall remain unaffected. In such event, Vendor and Purchaser shall replace the invalid provision by a valid provision which comes as closely as possible to the economic purpose of the invalid provision.