

# General Terms and Conditions of Delivery

## Wilhelm Bilstein GmbH & Co. KG Overath

**1. Scope:** The following General Terms and Conditions of Delivery apply to all sales and deliveries of products ("products") by Wilhelm Bilstein GmbH & Co. KG Overath („Bilstein“), unless explicit written contract clauses replace them in whole or in parts. Purchaser's terms and conditions do formally not apply, likewise, if they were referred to at the conclusion of the contract or if they are delivered in written form after the conclusion of the contract, without regard if this later reference to other terms and conditions is rejected expressly by Bilstein subsequently or not. The General Terms and Conditions of Delivery exclusively apply to entrepreneurs, corporate bodies under public law, or special funds under public law as defined in § 310, paragraph 1 of the German Civil Code.

**2. Conclusion of contract:** Contracts between Bilstein and purchasers are considered to be concluded upon purchaser's order at the time Bilstein sends out a written confirmation of the order.

### **3. Delivery term:**

3.1 The delivery term is – notwithstanding a different explicit agreement – the later of the following points in time:

3.1.1 Date of the conclusion of contract under lit. 2 (Date of dispatch of the confirmation of order).

3.1.2 If prepayment is agreed, the date on which the prepaid amount is obtained by Bilstein.

3.2 In case of a delivery delay not caused by Bilstein's default, the contract parties settle a reasonable prolongation of the delivery term.

**4. Prices:** The prices in our offers are prices without taxes and customs duties and costs for packing and transport and insurance fees.

### **5. Payment:**

5.1 Purchaser shall pay according to the agreed conditions of payment. Payment shall be carried out within 7 days from delivery and reception of an invoice. Otherwise purchaser is assumed to be in default without any further notice from Bilstein, if no other modalities of default are agreed. Bilstein offsets payments on account against the purchase price. Bilstein does not accept payment by acceptance.

5.2 If purchaser fails to pay in time, Bilstein shall retain the performance of the contract until due payment. The interest rate upon defaults in payment is 8 %. The right to allege a damage caused by default remains unaffected.

5.3 If purchaser is in default in payment, Bilstein shall set an adequate term for payment in order to terminate the contract if purchaser does not pay before the time limit expires. Bilstein generally sets a term of two months.

**6. Set-off, right of retention:** Purchaser is only allowed to set off with a clear title or with a claim which has become res judicata. Purchaser has no right of retention, unless his counterclaim is caused by the same specified delivery.

### **7. Transport / Passing of risk:**

7.1 The products are considered to be sold at the place of Bilstein's business. Bilstein shall notify to the purchaser the point of time for taking delivery of the products in written form. Notifying this point of time, Bilstein gives purchaser a reasonable term for preparing the collection of the products. If purchaser does not take delivery at the notified point of time, the risk of accidental loss, destruction or deterioration of the products passes to purchaser.

7.2 If Bilstein and purchaser stipulate expressly that the products shall be delivered by Bilstein, all products shall be at the purchasers risk immediately at the time of handing over to a forwarder for transportation, irrespective of any agreement about which contract party bears the forwarding costs.

7.3 If 7.1 or 7.2 do not apply, the passing of risk is ruled by the agreed Incoterms.

### **8. Acceptance of the products:**

8.1 If purchaser does not accept the products at the due point of time, this does not affect his obligation to pay. In case of default of acceptance Bilstein shall store the products at the purchaser's risk and costs. Bilstein shall effect an insurance by request. If purchaser is not in default in disacceptance Bilstein shall store the products in its own expense, if the storage is possible without any disruption of operational procedures.

8.2 In case of default of acceptance, Bilstein shall call purchaser in written form to accept the products within reasonable time. If purchaser does not accept within this term – in default or not –, Bilstein shall terminate the contract in whole or partially for the non executed part in written form or alternatively claim purchaser's liability for damages.

### **9. Retention of title:**

9.1 All rights to and titles in the products are retained by Bilstein until full payment is received by Bilstein for all receivables at the time of acceptance and all receivables arising later and resulting from the supply relationship between the parties.

9.2 With conclusion of the sales contract with us, purchaser shall assign to us all claims arising from the resale or from another legal ground against his customer including all ancillary rights as collateral security in the full amount of the invoice value.

9.3 The retention of title extends to products at their full value which are created as a result of the processing (§ 950, German Civil Code), mixing (§ 948, German Civil Code), or combining (§ 947 of the German Civil Code) of our goods, whereby we shall be deemed the manufacturer. If the ownership rights of third parties remain in existence after the processing, mixing, or combining of their goods, we shall acquire co-ownership in proportion to the invoice value of the processed, mixed, or combined goods. The objects created by processing, mixing, or combining shall be subject to the same provisions as the goods delivered under retention of title.

9.4 If the value of the goods which serve as security for us and which are delivered under retention of title exceeds our total receivables by more than 20%, we shall release excess securities at the request of the purchaser.

### **10. Liability:**

10.1 Bilstein is not liable for the fact that attributes of the products (as weight, seize, volumetric capacity, price, output etc.) differ from specifications in catalogues, brochures, advertisements etc. Specifications about the products only are binding, if there is referred to explicitly in the contract.

10.2 Purchaser shall inspect the products upon receipt of the products and if a defect is discovered, notification of alleged defect shall be made by purchaser to Bilstein in writing, e.g. by email or fax, without undue delay. Failure to give such written notification shall be deemed to be an acceptance of the products, unless a defect cannot be reasonably discovered during purchaser's inspection. Such alleged latent defect shall, upon its discovery, be notified to Bilstein in writing without undue delay, otherwise the products shall also be deemed to be accepted.

10.3 In case of a defect of a product is alleged, Bilstein has a right to rectify the defect. Termination of the contract, compensation of damages or a reduction of the due prices is excluded until Bilstein has had the opportunity twice for the rectification of the defects. Spare parts used for the rectification of the defects are not subject to any specific warranty other than the warranty of the product itself.

10.4 Bilstein shall be liable for damage caused by intentional misconduct, by gross negligence, by an intentional breach of a cardinal obligation or by actions of Bilstein's legal representatives or its executive employees according to the applicable law. For damage not arising from intentional misconduct, Bilstein's liability shall be limited to the reasonably foreseeable and typically occurring damage. Bilstein shall be liable for a damage arising out of any injury of life, body or health of a person caused by Bilstein's fault. Bilstein shall also be liable according to the peremptory provisions of the German "Produkthaftungsgesetz". Unless otherwise regulated in the foregoing provisions in an explicit manner, any liability on our part is excluded.

10.5 Bilstein is not liable for defects of the products caused by material or construction guidelines by the purchaser.

10.6 In case of breach of contract by the purchaser including, without limitation, default in payment, we shall be entitled to take the goods back. Purchaser is obligated to handle the goods with due care, provide for adequate insurance, and, to the extend necessary, service and maintain the goods.

**11. Plans and material:** Bilstein expressly retains all titles in and rights on all plans or technical material, which Bilstein submits to purchaser before or after the conclusion of the contract. Purchaser is not allowed to use, copy, show to others or publish these documents without the Bilstein's express consent.

**12. Prototypes, know-how:** If Bilstein submits a prototype for testing purposes, purchaser assigns all know how resulting from the use of the prototype to Bilstein. Purchaser is not entitled to register any intellectual property rights resulting from the use or the improvement of the prototype. With regard to the case that the purchaser obtains any registered rights disregarding his obligations arising from this section, purchaser assigns now these rights to Bilstein, who accept this offer. If this assignment is not valid by any reason, purchaser gives to Bilstein by the conclusion of the contract an exclusive, unlimited, open-ended, free licence on these rights.

### **13. Applicable law, place of venue**

13.1 This agreement shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

13.2 The parties agree that the exclusive legal venue for all disputes arising from or in connection with this contract is Bergisch Gladbach.

# General Terms and Conditions of Purchase

## Wilhelm Bilstein GmbH & Co. KG Overath

### 1. Scope

The following General Terms and Conditions of Purchase apply to all purchases of Wilhelm Bilstein GmbH & Co. KG Overath („Bilstein“), unless explicit written contract clauses replace them in whole or in parts. Vendor's terms and conditions do formally not apply, likewise, if they were referred to at the conclusion of the contract or if they are delivered in written form after the conclusion of the contract, without regard if this later reference to other terms and conditions is rejected expressly by Bilstein subsequently or not. The General Terms and Conditions of Purchase exclusively apply to entrepreneurs, corporate bodies under public law, or special funds under public law as defined in § 310, paragraph 1 of the German Civil Code.

### 2. Delivery

Deliveries to Bilstein have to be carried out according to the order or these terms and conditions.

Amendments of the order require written form, even if the order has been made verbally. Written form is also required for amendments of this clause.

### 3. Delivery term

If vendor does not deliver in time, Bilstein shall settle a reasonable prolongation of the delivery term, and, if delivery is not proceeded by the end of this term, allege compensation of damages or termination of the contract, even if the delay is not caused by vendor's default. In case Bilstein accepts the late delivery of goods, vendor shall compensate damages due to delay in performance.

### 4. Shipment

Vendor has the absolute liability for incorrect shipment or an incorrect consignment note. All deliveries have to be shipped stamped, even if freight charges shall be borne by Bilstein. Bilstein will not pay freight charges in advance.

The place of performance for deliveries is Overath. Vendor bears the risk of accidental loss, destruction or deterioration of the goods in the course of shipment. In case freight insurance is stipulated, all insurance costs are borne by vendor.

Vendor notifies dispatch without undue delay by separate notice for each department. Freight documents have to display the order number and other order specifications.

### 5. Prices

All agreed prices are fixed. If continuous delivery is agreed, Bilstein is entitled to allege reexamination of prices, if the price index „Index der Erzeugerpreise gewerblicher Produkte“ which is officially set by the „Statistisches Bundesamt in Wiesbaden (D) is fixed – referring to the base year 2000 = 100 – three basis points below the index at the point of time of the agreement about the price.

### 6. Payment

Payment is due at the date, at which the goods are delivered and an invoice is submitted to Bilstein.

Invoices have to be submitted in duplicate.

Invoices for monthly deliveries have to be submitted at the fifth day of the following month at the latest. In case of submission beyond this date of the invoices covering monthly deliveries, payment shall be due 30 days after receipt of the invoice at unchanged conditions and without any interest payment.

### 7. Notification of Defects; IP Infringement

Pursuant to § 377 HGB defects of the products are alleged in time, if Bilstein notifies them to the vendor within two weeks from their discovery. § 377 Abs. 3 HGB is unaffected. Vendor warrants that use of the delivered goods do not infringe any intellectual property rights.

### 8. Confidentiality

Vendor will keep all information confidential, which is expressly labelled as confidential or which has to be assumed as confidential. Vendor will use this information exclusively for delivery. Vendor declares to keep the information confidential after delivery for an unlimited period.

### 9. Applicable law, place of venue

This agreement shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The exclusive legal venue for all disputes arising from or in connection with this contract is Bergisch Gladbach.