



## General Terms and Conditions of Sale of Bisquiva GmbH & Co. KG (GTCS)

### Section 1 Scope of applicability, formation of a contract

- (1) The legal relationship between us and the customer for all current and future offers, deliveries and other services shall be based exclusively on these General Terms and Conditions of Sale (GTCS). These terms of sale shall be recognised when an order is placed.
- (2) Any General Terms and Conditions of the customer that differ from, contradict or add to this contract shall only become a constituent part of this contract if Bisquiva has expressly agreed to their application in writing. This shall also apply in the case that any deviating terms and conditions are conveyed to Bisquiva by means of confirmation letters.
- (3) All offers by Bisquiva are subject to change. Any ancillary agreements are only binding if confirmed by Bisquiva in writing. The placement of an order to Bisquiva shall be deemed to be a binding contractual offer on the part of the customer. Unless otherwise agreed in the order, Bisquiva is entitled to accept this contractual offer within two weeks following receipt thereof at Bisquiva. Acceptance of the order can either be provided in writing (e.g. by means of an order confirmation) or by delivering the goods to the customer.
- (4) The contract is entered into by Bisquiva on the proviso that Bisquiva receives proper and punctual delivery from its own suppliers. This shall only apply if the failure to deliver is not attributable to Bisquiva.
- (5) All agreements reached between Bisquiva and the customer relating to the execution of this contract must be set out in writing within this contract. Legal declarations and notices that the customer is required to submit to Bisquiva following signing of the contract (e.g. deadlines, notices of defects, declarations of withdrawal or reduction) shall only be effective in written form.
- (6) Our conditions of sale shall only apply to companies in accordance with Section 14 of the German Civil Code (BGB) as well as to legal persons governed by public law or a separate legal entity under public law. The current version of the GTCS shall also apply, as a framework agreement, to future contracts with the same customer without us having to refer to these again in each individual case.  
The current version of these GTCS can be found here: [http://www.bisquiva.com/downloads/BQ\\_AVB\\_ENG.pdf](http://www.bisquiva.com/downloads/BQ_AVB_ENG.pdf)

### Section 2 Place of performance, transfer of risk

- (1) The place of performance for the services to be provided by Bisquiva is the agreed point of receipt.
- (2) The risk shall, in accordance with the agreed Incoterms, be transferred with the handover of the goods to the forwarder, carrier or other persons charged with the task of performing shipment.

### Section 3 Type of delivery, packaging

- (1) Delivery shall take place in normal commercial packaging chosen by Bisquiva. Bisquiva shall be under no obligation to take back the packaging material. The customer undertakes to dispose of the packaging material associated with a delivery made by Bisquiva at its own expense.
- (2) If the delivery is made on standard pallets, these shall remain the property of Bisquiva and shall be replaced one-for-one as part of the trade relationship between Bisquiva and the customer. In all other cases, Bisquiva shall charge the customer accordingly.  
Bisquiva is entitled to partial performance if (i) partial performance can be used by the customer in the context of the contractually agreed intended use, or (ii) the customer incurs no significant additional effort or costs as a result. Item (ii) shall not apply if Bisquiva has already declared it will accept these costs. The invoices issued relating to partial performance are to be paid irrespective of the whole delivery.
- (4) The minimum acceptance quality per order is ten unmixed full pallets unless otherwise agreed.



## Section 4 Delivery deadlines

Where fixed delivery dates are not expressly agreed in writing between Bisquiva and the customer, the specified delivery dates shall be understood to be intended delivery dates that are not binding.

## Section 5 Delay in delivery, default in acceptance

- (1) Bisquiva cannot be held liable should a delivery prove impossible or in the case of delays in delivery due to force majeure or other events that were unforeseeable upon formation of the contract (e.g. any kind of disruption to operations, complications in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of staff, energy or raw materials, difficulties obtaining the necessary approvals from authorities, official sanctions or the failure of suppliers to deliver the correct goods on schedule or at all), and for which Bisquiva is not responsible. To the extent that such events make the delivery or service significantly more difficult or impossible for Bisquiva and the hindrance is not only of temporary duration, Bisquiva is entitled to withdraw from the contract. If the disruption is of a temporary nature, delivery times shall be extended or the delivery dates postponed to take account of the period of disruption. If such a delay makes acceptance of delivery unreasonable for the customer, the latter shall be entitled to withdraw from the contract by issuing Bisquiva immediate written notice.
- (2) If the customer is in arrears with the acceptance of goods, Bisquiva may refuse any further deliveries until the customer has met its existing obligations vis-à-vis Bisquiva arising from the agreed delivery. Any claims to compensation shall remain unaffected.
- (3) Bisquiva may make any further deliveries dependent on advance payment of the purchase price or of a security deposit without granting the customer the right to withdraw from the signed contract.

## Section 6 Terms and conditions of payment

- (1) The invoice date is the day of shipping. Predating is not permitted.
- (2) Payments must be made to Bisquiva without any deductions no later than 30 days after the invoice date. If the customer has issued Bisquiva with an appropriate mandate to pay via the SEPA Direct Debit scheme, Bisquiva shall provide the specified pre-notification no later than five days before collection.
- (3) If the payment is not made on time within the agreed payment period, this shall be deemed a default on payment. In the event of such a default, default interest of five percentage points above the basic interest rate per year shall be charged and invoiced to the customer. Bisquiva is furthermore entitled to claim any additional or further losses.
- (4) The customer may only offset claims against Bisquiva whereby these claims are undisputed or have been legally determined. Item 7.3 shall not be affected by any defects in delivery.

## Section 7 Warranty

- (1) Bisquiva shall guarantee subsequent performance or replacement delivery for any defects in the delivered goods.
- (2) The customer's warranty rights are conditional upon the customer having duly met their inspection and notification of defects obligation in accordance with Sections 377, 378 of the German Commercial Code (HGB) and subject to any defects found being reported no later than within one week after receiving the goods. If the customer fails to inspect the goods or provide notification of defects in good time, the delivered goods shall be deemed approved unless the defect could not be detected during the inspection. Any notification of defects must be provided in writing. This also applies to any incorrect deliveries or differences in quantities.
- (3) Bisquiva is entitled to make the necessary subsequent performance dependent upon the customer paying the owed purchase price. The customer is entitled to withhold a portion of the purchase price in accordance with the extent of the defect.
- (4) Expiry of the minimum shelf life after delivery does not entitle the customer to return the goods.
- (5) With regard to the proper nature of the goods, the product description agreed between Bisquiva and the customer shall count as agreed. In addition to Bisquiva's product description, public statements and promotions do not constitute an independent indication of the nature of the goods.



- (6) If the subsequent performance is not successful or if the reasonable deadline for the subsequent performance set by the customer passes without success or is superfluous according to legal regulations, the customer can withdraw from the contract or reduce the purchase price. However, the right to withdraw shall not apply if the defect is insignificant.
- (7) At Bisquiva's request, the customer shall declare within a reasonable time frame whether they intend to withdraw from the contract owing to the defect or still insist on delivery.
- (8) The customer's claims to damages or the reimbursement of wasted costs shall only exist to the extent of the provisions in Item 8 and are otherwise excluded.
- (9) Notwithstanding Section 438(1) no. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects or defects of title is one year from performance of the contract. Any special legal regulations regarding third-party rights to demand surrender (Section 438(1) no. 1 BGB), the fraudulent concealment of defects by the seller (Section 438(3) BGB) and recourse claims from the final delivery to the consumer shall remain unaffected. Where Bisquiva fails to expressly recognise any claims to defects by the customer (Section 212(1) no. 1 BGB), any new deliveries and subsequent performance of the delivery item shall be a goodwill gesture and shall not imply acceptance of a performance obligation.

## Section 8 Liability

- (1) For slightly negligent breaches of primary contractual obligations, Bisquiva's liability shall be limited to the average foreseeable direct damages under a typical contract, based on the type of goods. This shall also apply to slightly negligent breaches of obligations by legal representatives or vicarious agents of Bisquiva.
- (2) Liability under the German Product Liability Act shall remain unaffected by the above limitations of liability. The same applies to liability for losses arising from loss of life, physical injury or damage to health if Bisquiva has deliberately concealed a defect or has provided a guarantee for the condition of the goods.
- (3) The limitation period specified in Section 7(9) shall also apply to the customer's contractual and non-contractual claims to compensation related to defective goods unless the application of the ordinary legal limitation period (Sections 195 and 199 German Civil Code (BGB)) leads to a shorter limitation period on a case-by-case basis. The limitation periods of the German Product Liability Act shall remain unaffected in all cases.

## Section 9 Retention of title

- (1) Bisquiva shall retain title to the delivered goods until full payment of all receivables has been made.
- (2) The customer shall be permitted to re-sell or process the goods handed over to them in the course of ordinary business. If the customer stops payment, they shall cease to dispose of the goods already supplied to them.
- (3) The customer undertakes to inform Bisquiva immediately of any access by third parties to the goods supplied under retention of title and to provide the required information and hand over the corresponding documents required to assert Bisquiva's rights.
- (4) From placement of the order up until full payment of all receivables arising from the business relationship with Bisquiva, the customer hereby assigns to Bisquiva all receivables that have accrued or are still to accrue to them from resale or further processing with respect to their third parties together with all ancillary rights. Bisquiva accepts this assignment. The customer shall furthermore ensure that they have not already disposed of the receivables assigned to Bisquiva elsewhere. Bisquiva is entitled to collect the receivable itself if the customer does not duly meet their payment obligations vis-à-vis Bisquiva and falls into arrears.
- (5) The customer is only entitled to reassign any claims arising from resale to third parties after prior written consent from Bisquiva. Any claims made by Bisquiva under Sections 47 and 48 of the German Insolvency Statute (InsO) shall be subject to change.
- (6) In the event of any outstanding payment, Bisquiva shall retain the right to return of the property. Returning the goods shall not be deemed withdrawal from the contract unless withdrawal is specified in writing by Bisquiva.



## Section 10 Rights, presentations of innovations

- (1) All rights to the work results and the content of presentations (including the concepts, designs, prices, conditions, plans, etc. contained therein) shall remain exclusively with Bisquiva, along with any knowledge on which the presentation is based and regardless of whether the presentation includes any copyrights, rights of use or ownership rights.
- (2) Bisquiva shall not grant any rights to the work results together with the presentation and/or the handing over of presentations. Any use, exploitation, duplication, processing or passing onto third parties in any way is not permitted and requires a special agreement by the parties.
- (3) All content of the presentations is subject to strict confidentiality.
- (4) Items 1-4 shall apply accordingly to all further documents which have been presented or handed over with the presentation and/or delivery.

## Section 11 Compliance, sustainability

- (1) The customer is fully familiar with the Corporate Compliance regulation of the Bahlsen Group, in particular the Code of Conduct, in the current version, and shall fully comply with the provisions therein. The Code of Conduct can be found (in German) at <https://www.thebahlsenfamily.com/int/> and shall be sent on request.
- (2) The Bahlsen Group understands sustainability to be a continuous learning and change process for the entire company. For Bisquiva, sustainability does not mean producing a definitive result, but describes a path which responsible companies can follow. The customer undertakes to comply with the specifications in the sustainability guideline and to take sustainability into consideration by means of suitable measures. The sustainability guideline shall be sent on request.
- (3) At Bisquiva's request, the customer shall prove the implementation of compliance and/or sustainability specifications. If the customer breaches the above provisions and does not assist with the breach within an appropriate time period set by Bisquiva, Bisquiva is entitled to withdraw from the contract in full.

## Section 12 Place of jurisdiction, place of performance, applicable law

- (1) The place of jurisdiction for both parties is our head office in Hanover, Germany, if our contractual partner is a merchant. However, we are also entitled to file proceedings at the place of performance of the delivery obligation or at the contractual partner's general place of jurisdiction.
- (2) The place of performance for the deliveries is the agreed point of receipt.
- (3) The applicable law is agreed as the law of the Federal Republic of Germany with the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods. Requirements and effects of the retention of title shall be subject to the law of the respective storage location of the items, insofar as the choice of law made in support of the German law is incorrect or ineffective.

Bisquiva GmbH & Co. KG  
Hanover, Germany, dated 16th September 2019