

## **Conditions of Sale**

Provided that no other written agreement is made, the following conditions of sale shall apply. If there is another agreement between supplier and purchaser, the following terms and conditions shall apply to the extent not in conflict with the other written agreement. Where there is a conflict between the following terms and conditions and the terms and conditions in the other agreement, the terms and conditions in the other agreement shall control. Modifications to these conditions shall only be binding when written acceptance of the modification is obtained from B-K Medical hereinafter called "the supplier".

### **1) Quotations**

Quotations shall be valid for a maximum of 90 days. Specifications, printed descriptions, drawings, photographs and other documentation attached to a tender shall be binding. However the supplier reserves the right to make minor modifications.

### **2) Force Majeure**

Orders are accepted on the condition that the following circumstances shall be considered as cases of relief for the supplier if they impede the performance of the contract or make performance unreasonably onerous: Industrial disputes and any other circumstances beyond the control of the supplier such as fires, war, general mobilization or unforeseen military mobilization to a similar extent, requisition, seizure, currency- restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in use of power and defects or delays in the deliveries by subcontractors caused by any such circumstance referred to in this clause.

### **3) Prices**

The prices quoted are Ex-works supplier's facility (re: incoterm 2010) according to the then-current supplier price list or as otherwise agreed by supplier and purchaser, and include packaging. The packaging supplied is non-returnable.

### **4) Right to Possession**

The supplier preserves the right to possession of the goods supplied until payment has been met in full, either to the supplier or to the supplier's authorized representative.

### **5) Transport**

All transport of goods supplied shall be effected at the purchaser's own expense and at its own risk. If so requested by the purchaser, transport insurance cover can be provided by the supplier at the purchaser's expense.

### **6) Time of Delivery**

The time of delivery is reckoned from the date the order is received provided all necessary information is available. This time of delivery shall be observed as far as possible. In no circumstances shall the supplier accept any liability for delayed delivery, nor shall any such delay be allowed as grounds for cancellation of the order.

### **7) Payment**

Payment for the goods supplied shall be made to the supplier, the supplier's authorized representative, or the supplier's bank, at supplier's direction. In cases where payment is not made on or before the due date, the supplier reserves the right to charge interest on the amount outstanding at the prevailing minimum lending rate of the United States National Bank plus 6%. The withholding of payments as surety for possible claims by the purchaser against the supplier shall not be allowed.

### **8) Returns and Repairs**

Purchaser shall have no right to return goods unless agreed to in writing by supplier. Goods sent for repair shall only be accepted in accordance with the terms agreed beforehand, and only when sent carriage paid and at the purchaser's own risk to the supplier or the supplier's authorized representative and received in undamaged condition.

### **9) Guarantee**

New and recertified goods delivered directly by the supplier or by the supplier's authorized representatives shall carry a guarantee subject to the following conditions: New goods are guaranteed for one year from the date of delivery. Recertified goods are guaranteed for the specified time period derived from the age of the goods.

This shall be taken to mean that the supplier will correct without further charge defects in the goods arising from faulty manufacture or deficient materials or components provided that the goods are returned carriage paid to the supplier or to the supplier's authorized representative before the expiry of the guarantee period together with a full account of the defects. The cost of packaging and shipping the repaired goods back to the purchaser shall be met by the purchaser.

N.B. For products which are not manufactured by the supplier and which appear as products of other manufacturers, the guarantee of the individual manufacturers shall apply. This guarantee is usually given in the form of a certificate, but if this is not the case, it can be obtained from the supplier on request.

### **10) Guarantee on Software and Firmware**

The supplier guarantees that its software and firmware for use in its own products, or in other manufacturer's products designated by the supplier, will execute programming instructions when properly installed in the designated product.

This guarantee cannot be taken to imply that the operation of the software and firmware together with the designated products will be free from interruption or error under all combinations of conditions. In this context the term "software" means sequences of program instructions supplied for a fee and delivered in either machine-readable form or in the form of documentation; "firmware" means sequences of program instructions supplied embedded in hardware.

The supplier makes no other express or implied guarantee of any kind. The supplier does not guarantee the marketability nor fitness for any particular purpose of its software or firmware products. The supplier shall not be

held liable for any consequential loss attributable to these products.

#### **11) Limitation of Liability**

The supplier does not accept any liability whatsoever related to faults and defects and will not honor claims for replacement, compensation nor damages of any kind, especially not indirect loss, loss of profit or consequential damages by the purchaser or third party.

#### **12) Product Liability**

The supplier shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of the supplier or others for whom he is responsible.

The supplier shall not be liable for damage to property occurring whilst the goods are in the possession or the purchaser, nor shall the supplier be liable for damage to products manufactured by the purchaser, or to other products of which the purchaser's products form a part. Apart from these limitations the supplier shall be liable for damage to property on the same conditions as for personal injury.

The supplier shall in no circumstances be liable for loss of production loss of profit or any other consequential damage and indirect loss. To the extent the supplier might incur product liability towards any third party, the purchaser shall indemnify the supplier as far as the supplier's liability has been limited by the three preceding sub-paragraphs.

If a claim for damage as described in this clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof. The supplier and the purchaser shall be mutually obliged to let themselves be summoned to the court examining claims for damages lodged against one of them on the basis of damage allegedly caused by the goods.

The above limitations in the supplier's liability shall not apply where the supplier is shown to have been guilty of gross misconduct. The supplier will, however, only accept liability for property damage shall correspond to the damage realized, but can never exceed either USD 40,000 or the purchase price of the injurious product should the latter amount be greater than USD 40,000.

#### **13) Agreements**

Agreements and contracts, express or implied, made by telephone, telex, telefax or e-mail between the purchaser and the supplier or the supplier's authorized representative shall be valid only after being confirmed in writing by the supplier.

#### **14) Product safety**

All products delivered and/or sold by the supplier comply with internationally recognized safety standards, normally IEC or CEE standards, or national standards as stated in the relevant documentation.

The majority of the electronic measuring instruments for non-medical uses complies with IEC Publication 348, *Safety of Medical Electrical Equipment*. The purchaser shall use the equipment in accordance with the information and warnings given in the instruction manual delivered together with each instrument.

#### **15) Jurisdiction and Law applicable**

Validity, interpretation, performance, and all other issues relating to this Agreement shall be governed by and determined in accordance with the laws of the State of New York, without regard to the portion of such laws having to do with conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. All actions arising out of, related to, or connected with this Agreement must be filed, and shall be conducted, either in the Massachusetts state courts with jurisdiction in Essex County, Massachusetts, or in the United States District Court for the District of Massachusetts, except that actions seeking a temporary restraining order, preliminary or permanent injunction, or other equitable relief may be filed in any court of competent jurisdiction.