

## **M. Braun Inertgas-Systeme GmbH - General Terms and Conditions of Delivery and Sale**

(Issue Date: February 25, 2002)

### **§ 1 Applicability**

All deliveries, services and offers of M. Braun GmbH are made exclusively on the bases of these Terms and Conditions of Delivery and Sale. In their application, they are also valid for future business relationships in dealings with registered traders. Contrary terms and conditions of the Customer with reference to his/its terms and conditions of business and purchase are hereby expressly rejected.

Contract provisions deviating from these Terms and Conditions of Business are only valid if they have been confirmed by M. Braun GmbH in writing.

### **§ 2 Subject Matter of the Contract**

After the relevant contract has been signed, any changes in the ordered appliances/equipment shall only be binding upon receipt of a detailed written request by the Customer and a written confirmation by M. Braun GmbH.

Delivered machinery and equipment comply in all respects with the EEC Machinery Directive of the Council dated June 14, 1989 (Machinery Directive) (89/ 392/ EEC. 91/ 386/ EEC. 93/ 44/ EEC. 93/ 68/ EEC) and all current supplements and national laws in which they have been implemented.

All amendments or adaptations of appliances/equipment to be produced or their prices have to be notified to the contracting party in writing.

### **§ 3 Price Adjustment**

If more than four months lapse between the order placement and delivery, M. Braun GmbH is entitled to adjust its notified prices accordingly in the event of a change in the prices of its suppliers and/or currency fluctuations or a change in customs or import charges occurring after the present contract is signed. These price adjustments may not exceed 15 % of the original price, however.

### **§ 4 Delay**

If the Customer fails to pay on the due date, he/it shall be in delay without a warning notice. In this case, M. Braun GmbH is entitled to charge default interest at the statutory rate. The enforcement of additional delay damages shall not be excluded as a result.

## **§ 5 Reservation of Title**

All appliances/equipment delivered shall remain the property of M. Braun GmbH pending full and complete settlement by the Customer. If the (co-)ownership of M. Braun GmbH lapses as a result of combinations with other goods, it is hereby agreed that the (co-)ownership of the Customer in the uniform chattel shall pass to M. Braun GmbH on a pro rata value basis.

The Customer is entitled to sell the appliances/equipment belonging to M. Braun GmbH in the ordinary course of business as long as he/it is not in payment default. Pledges or transfers by way of security are inadmissible. The claims arising from the resale of the appliances/equipment or for any other reason are hereby assigned in full by the Customer to M. Braun GmbH by way of security. M. Braun GmbH hereby empowers the Customer to collect assigned receivables in his/its own name and for its own account until further notice. This collection empowerment may only be revoked if the Customer has failed to comply with his/its payment obligations in the proper manner.

## **§ 6 Delivery Dates**

Delivery shall be made on the date specified in the contract. If the collaboration of the Customer is required for executing the contract, especially the submission of irrevocable letters of credit or a guarantee deed, the delivery period shall only commence when the aforesaid collaboration has been effected.

The delivery period shall be regarded as upheld if the delivery in question leaves the production plant of M. Braun GmbH by the specified date. M. Braun GmbH is entitled to make part-deliveries at any time.

In the event of non-compliance with the delivery date, the Customer shall be entitled to set M. Braun GmbH a reasonable period of grace of at least four weeks in writing. In the event of culpable non-compliance with the aforesaid period of grace, the Customer shall be entitled to withdraw from the contract. § 11 of these General Terms and Conditions of Delivery and Sale shall apply accordingly with regard to the enforcement of compensation claims. Facts or circumstances which make delivery impossible or materially complicate delivery for M. Braun GmbH or its suppliers (e.g. strikes, lock-outs, lack of raw materials or energy, transport and operational disruptions, war or civil commotions, etc.) shall interrupt the delivery period for the duration of the impediment.

## **§ 7 Dimensions and Weights**

The Customer has satisfied himself/itself that the carrying capacity of the floor as specified in the contract is correct. He/it has likewise satisfied himself/itself that the access points to the operating areas are sufficiently large for the dimensions specified in the contract for the relevant equipment to be installed.

Liability of M. Braun GmbH for damages caused by the weight of the appliance/equipment to be supplied or the delivery vehicle shall be excluded; § 11 shall apply accordingly.

### **§ 8 Drawings/Specimens/Designs**

All drawings, models and calculations prepared during the execution of the contract shall remain the property of M. Braun GmbH. The Customer shall maintain secrecy thereon, shall not copy or use them for any other purpose and shall immediately return them to M. Braun GmbH upon request.

### **§ 9 Acceptance**

Preliminary acceptance shall include a basic inspection of the technical functions in the works of M. Braun GmbH which are required for the process in question. M. Braun GmbH shall inform the Customer of the possible date for the preliminary acceptance with least one week's notice in writing. Preliminary acceptance shall only be carried out if the Customer confirms the aforesaid date within two days. If no confirmation is received within the aforesaid period, this shall be regarded as a waiver of preliminary acceptance.

Final acceptance shall be made within 14 days after the relevant installation and start-up and shall include a complete inspection of the technical functions required for the process.

Defects which are identified during the preliminary acceptance or final acceptance shall be documented in a list of defects to be signed by both contracting parties.

### **§ 10 Claims and Rights re Defects**

Claims and rights regarding (legal and quality) defects shall be limited to those defects in the appliance/equipment which are not attributable to natural wear and tear as part of the contractual use within the meaning of Section 1 of the contract or improper handling/use. The limitation period for defect-related claims and rights shall be one year for newly manufactured goods or contract services and six months for second-hand goods. This shall not prejudice § 438, para. 1, no. 2 and § 634a, para. 1, no. 2 of the German Commercial Code (BGB). A reduction of the limitation period shall not apply for liability attributable to wilful or fraudulent intent. § 11 of these Terms and Conditions of Delivery and Sale shall apply with regard to any other compensation claims.

If operational or maintenance instructions of M. Braun GmbH are not observed, or if any changes are made to the products, if parts/components are changed or if auxiliary materials are used which do not comply with the original specifications, all claims for any defects caused as a result shall lapse.

The limitation period for defect rights shall commence on the date of acceptance. Defects which are identifiable within the limitation period for defects rights shall be notified to the Contractor immediately.

Defect claims shall be initially based on rectification in the form of appropriate repairs or replacement of the rejected appliance/equipment. M. Braun GmbH shall in this respect be entitled to insist on the defective appliance/equipment being returned at its cost for repairs together with a subsequent return to the Customer or that the Customer retains the defective appliance/equipment and a service mechanic of M. Braun GmbH is sent to the Customer in order to carry out the necessary repairs.

If such a repair attempt is also abortive after a reasonable period of grace has been set by the Customer, the latter shall be entitled to receive a reasonable reduction in the purchase price or to withdraw from the contract.

All claims and rights relating to defects presuppose that the Customer is not in delay with his/its contractual payment obligations. This shall exclude the statutory retention rights.

If the appliance/equipment to be produced by M. Braun GmbH is integrated in a processing sequence at the Customer, such as a production line for example, the parties are in agreement that claims and rights relating to defects shall only relate to the parts/components produced by M. Braun GmbH. No warranty shall be assumed for the proper functioning of other parts/components of the processing unit or the processing unit as a whole. Warranty for the proper functioning of the relevant interfaces shall only be assumed if the Customer has not deviated from his/its details and particulars relating to the aforesaid interfaces. Claims and rights for defects shall only accrue to the direct Customer and are non-transferrable. The statutory rulings shall apply in the event of a purchase of consumable goods as defined in §§ 474 et seq. of the German Commercial Code.

### **§ 11 Exclusion of Liability for Damage Compensation**

As a supplement to § 10 of these Terms and Conditions of Delivery and Sales, claims by the Customer for damage compensation are excluded. This shall exclude damages arising from injury to life, limb and health if M. Braun was responsible for the relevant breach of obligations and for other damages based on wilful or grossly negligent breaches of obligations by M. Braun GmbH.

A breach of obligations by M. Braun GmbH's legal representative shall be equivalent to a breach of obligations by M. Braun GmbH. If the breach of obligations is attributable to M. Braun GmbH, the Customer shall be entitled to withdraw from the contract in line with the relevant statutory prerequisites unless a defective appliances/equipment are involved as defined in § 1 of the Purchase Contract.

The statutory provisions shall apply in the event of a purchase of consumable goods within the meaning of §§ 474 et seq. of the German Civil Code. If damage compensation claims are valid in accordance with the above, these shall only accrue to the direct Customer and shall not be assignable.

## **§ 12 Secrecy and Confidentiality**

If no separate secrecy and confidentiality agreements have been concluded, the parties hereby undertake to use the knowledge and experience acquired during the planning and implementation of the present contract exclusively for executing the present contract. The parties shall be committed to absolute secrecy and confidentiality towards third parties in respect of internal matters and the acquired knowledge and information in the broadest sense which comes to their attention during the execution of the present contract, especially data, regulations, specimens, drawings and designs.

## **§ 13 Miscellaneous**

All amendments and supplements to the present contract must be made in writing in order to be valid.

Any invalidity of individual contract provisions shall not affect the validity of the other contractual provisions. Invalid contractual provisions shall be replaced by provisions which come as close as possible to the original economic intention of the invalid provision. The same shall apply for any contract gaps.

The legal venue for all disputes arising from the present contractual relationship shall be Munich for both contracting parties. The laws of the Federal Republic of Germany shall apply exclusively for any disputes or litigation. The provisions of the Convention of the United Nations on Contracts for the International Sale of Goods (CISG) shall not apply.