

General terms and conditions

- To be used vis-à-vis
- any persons acting in performance of their commercial and self-employed professional activities (entrepreneurs) upon conclusion of the agreement;
 - legal entities under public law or a public-law special fund.
- General**
 - The following terms and conditions between BGS Beta-Gamma Service GmbH & Co. KG, 51674 Wiehl, Germany, BGS Beteiligungs GmbH 51672 Wiehl, Germany, and BGS Beta-Gamma-Service GmbH Produktbestrahlung, 76646 Bruchsal, Germany, hereinafter collectively referred to as BGS and their customers shall apply to all business relationships, unless again expressly agreed otherwise.
 - BGS shall render services within the production process of the customer by irradiating the ordered dose rate onto the goods to be treated, and thus services pertaining thereto.
 - Contractual work and services shall not constitute the subject matter of this agreement. In particular, the purpose of the services shall not be deemed to bring about any intended success such as the sterilization or radiation crosslinking of the goods to be treated.
 - The terms and conditions of the customer or third parties shall not apply, even if BGS has not again expressly objected to them and, in particular, shall not be tacitly accepted. Deviating, contradicting or supplementary provisions contained in the terms and conditions of the customer shall only apply if BGS has expressly consented to their validity in individual cases.
 - Conclusion of the agreement**
 - All offers of BGS are subject to change and without obligation, unless they are expressly designated as binding or include a specified period for acceptance.
 - All orders and service requests shall be made in writing, whereby remote data transmission also satisfies the written form requirement. Any alterations or amendments, even if they are only marginal, shall also require prior mutual coordination.
 - If confirmation of the order has been made in writing or services performed, the order of the customer shall be deemed accepted.
 - The description of the specific scope of services shall be subject to the individual agreement. BGS shall render services pursuant to the individual agreement and in conformity with the current state-of-the-art technology at the time of the conclusion of the agreement.
 - If BGS does not accept an order within two weeks following its receipt, the customer shall be entitled to revocation.
 - Cooperation**
 - The scope and quality of the services rendered by BGS are decisively dependent on the properties and quality of the goods and/or packaging to be treated and the cooperation of the customer. In this respect, the customer shall support BGS to an appropriate extent in its efforts to render services. In particular, it shall make available all necessary information and operating instructions in good time and full detail and comply with the requirements of BGS regarding the technical processability thereof.
 - The customer shall bear the costs for additional expenses arising in case the works must be repeated, are delayed (e.g. delayed production) or become necessary (e.g. revalidation, reexamination, new samples) as a result of delayed, incorrect or incomplete specifications or other improper acts of cooperation. BGS shall be entitled to additionally invoice such incurring extra expenses, even if a binding fixed or maximum price is agreed.
 - BGS shall not pay compensation for any damage or expenses caused by faulty or incomplete advance performance or insufficient acts of cooperation of the customer, resulting from modifications of the validated processing parameters for subsequent services in contradiction to the customer's obligation to inform pursuant to clause 2.2 or due to the customer's waiver of validation (e.g. irradiation of individual samples).
 - Payment / terms of payment**
 - Unless otherwise agreed with the customer, the prices specified by BGS in the binding offer shall apply pursuant to clause 2.1, in all other respects, the prices agreed between the parties and confirmed by BGS shall apply upon acceptance pursuant to clause 2.3, and are in EUR plus the applicable value added tax but without packaging.
 - Payments shall be due without deduction immediately upon receipt of invoice and addressed to one of the paying offices of BGS. In the event that BGS accepts cheques or bills of exchange, they shall only be accepted on account of performance. Any costs relating thereto shall be borne by the customer. The day of performance for payments of any kind shall be deemed the date on which BGS can dispose of the amount.
 - Setting off with counterclaims of the customer or the withholding of payments due to such claims shall only be permissible to the extent that the counterclaims are undisputed or legally non-appealable.
 - Objections to the invoice of BGS and the reasons therefor shall be notified to BGS in writing within a preclusive time limit of 30 days following receipt of invoice.
 - If payments are in arrears, interest shall be charged as of the due date on the outstanding amounts at a rate of 5% p.a. (section 353 German Commercial Code - § 353 HGB). The right to claim higher interest and compensation for further damage in the event of default shall remain unaffected. BGS may suspend its services until the date of payment of all outstanding claims. In this respect, the agreed dates for the provision of services shall be extended accordingly.
 - BGS shall be entitled to withhold its services and/or render its services only against advance payments and/or provision of securities, if payments are in arrears or in the case that after the conclusion of the agreement BGS becomes aware of circumstances that are likely to substantially reduce the creditworthiness of the customer. In this case, claims for damages of the customer shall be excluded.
 - Time limits for the provision of services, performance dates**
 - The agreed time limits for the provision of services shall only be binding, if they are explicitly referred to in writing as binding. The agreed time limits shall be suspended, if acts of cooperation are not carried out in due time. The assertion of further rights by BGS shall remain subject to reservation.
 - The time limit for the provision of services shall commence only on the day, on which the order confirmation is dispatched, all commercial and technical prerequisites for the fulfillment of the order are clarified with the customer, the goods to be treated are delivered, any required permits and releases are granted and agreed prepayments are made.
 - The time limit for the provision of services shall be deemed complied with, if by the date of its expiry the customer has been notified about the readiness for shipment of the treated goods and/or the treated goods are handed over as instructed to the forwarding agent or any other person designated to carry out the shipment.
 - BGS shall not be liable for any impossibility or default of performance, to the extent that such non-compliance is caused by force majeure or other unforeseeable occurrences at the date of conclusion of the agreement (e.g. disturbances of operation of any kind, strikes, legal lock-outs, shortages of workforce, energy or raw materials, difficulties with the procurement of material or energy supply or the obtaining of necessary regulatory permits, official measures), for which BGS cannot be held responsible. If such occurrences significantly impede the fulfillment of services of BGS or even render the performance impossible and such impediment is not only temporary, the parties shall be entitled to withdraw from the agreement by written statement. In the case that impediments are of temporary nature, the time limits for the provision of services shall be extended by the amount of time equivalent to the duration of the impediment plus an adequate start-up period.
 - BGS shall be entitled to partial performances, if they are useful and reasonable for the customer within the scope of the contractually intended purpose.
 - If BGS is in default with any services or the rendering of any services becomes impossible for BGS for whatever reason, the liability for damages shall be limited in accordance with clause 8 of these general terms and conditions.
 - Delivery and transportation, passing of risk**
 - The customer shall deliver the goods to be treated at its own cost and risk, if necessary duty paid, in due time. The customer shall ensure that the goods are in conformity with the underlying parameters of the validation. These include in particular the underlying specifications required by BGS, e.g. the basis weight and/or dimensions such as diameter, thickness etc.
 - The goods to be treated shall be delivered in packaging material that allows easy and secure treatment by BGS and is suitable for reuse upon return. The customer shall reimburse BGS for any expenses in the event that repacking and/or interim storage of the goods to be treated become necessary. BGS may exclude unsuitable goods from treatment and unsuitable packaging from reuse without the customer being entitled to derive any claims therefrom.
 - If the goods to be treated are not delivered in due time at the date set for irradiation according to a binding agreement between the customer and BGS due to reasons for which the customer can be held responsible, the customer shall reimburse any damage resulting from late delivery. In this case, BGS shall be entitled to claim liquidated damages at a rate of 1.5% of the agreed net invoice amount per each working day of default, however no more than 10% of the agreed net invoice amount. The customer shall reserve the right to furnish proof for significantly less damage. BGS shall reserve the right to claim compensation for damage exceeding the flat rate.
 - BGS shall be obliged to keep the delivered goods in safe custody for the customer with the same due care that it normally applies to its own affairs. In this respect, BGS shall only be liable for willful intent and gross negligence. The liability of BGS shall be limited to the amount of the actual production costs in the case of damage to the goods of the customer, including packaging. The customer shall be obliged to specify the value of the goods at the time of placing the order and no later than upon their delivery. If the value is specified too low, the liability of BGS shall be limited to the specified value. If no values are specified, damages shall be limited to costs tenfold the amount of irradiation for the particular goods.
 - The customer shall collect the treated goods including packaging at its own cost and risk. If the goods are shipped upon its request, the risk of accidental loss of the goods shall pass to the customer as of the date on which BGS has handed over the goods to a forwarding agent or any other designated organization to carry out the shipment. The customer shall bear the transportation costs. It shall be the sole responsibility of the customer to take out an insurance covering breakage and transportation risks.
 - In the event that the collection or the requested shipment is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer as of the date on which the treated goods are ready for collection and/or shipment and BGS has notified the customer thereof.
 - The customer shall bear the storage costs after the passing of the risk. In the case that the goods are stored by BGS in its own plant, the storage costs shall be invoiced separately (separate price list, subject to change).
 - BGS presumes that the customer has insured its goods against burglary, vandalism, damage and damage caused by tap water and external water.
- Qualitative default in performance**
 - In the event that services owed pursuant to clause 1.2 are not rendered in accordance with the agreement or performed defectively and for which BGS is responsible, the customer may only request subsequent performance free of charge for the time being. The prerequisite therefore shall be the complaint of the customer, which must be reported immediately according to section 377 German Commercial Code.
 - In the case that the contractually agreed rendering of services by way of putting the radiation dose onto the goods to be irradiated, as specified by the customer in its order, even within the reasonable grace period to be explicitly set by the customer, fails in essential parts due to reasons, for which BGS is responsible, or is impossible or unacceptable for factual reasons or BGS allows the grace period to elapse without results, the customer shall be entitled to withdraw from the agreement or may demand a reduction in payment. Further claims shall be subject to clause 8.
 - BGS shall not be liable for any modification of the goods to be irradiated, so that no claims regarding any liability for defects may be asserted on the basis of the modification of the goods to be irradiated or consequences therefrom, irrespective of whether it is foreseeable or not. In particular, BGS shall assume no liability for:
 - unsuitability or only limited suitability of the goods to be treated with radiation, in particular, if it is not obviously recognizable as such for BGS in the normal business operation,
 - undesired modifications,
 - chemical, electro-chemical, electrical or optical influences, to the extent that they are not caused by any negligence of BGS.
 - For the same reason, BGS shall not be liable for any infringement of industrial property rights or copyrights arising from the treatment of the goods with the specified dose of radiation.
 - The limitation period for such claims arising from liability for defects shall be one year. The time period shall commence on the date of the passing of risk.
 - Liability**
 - Claims for damages and compensation for expenses of the customer for whatever legal reason, in particular, for breach of duties arising from the contractual obligation and from tortious acts shall be excluded.
 - This shall not apply, to the extent that liability is mandatory, e.g. in cases of willful intent, gross negligence, injury to life, body or health, breach of material contractual obligations.
 - In case of breach of material contractual obligations, indirect and consequential damage - such as lost profits, damage resulting from interruption of operations or recalls - the liability shall be limited to the foreseeable damage typical for the agreement as a possible consequence arising from a breach of contract at the time of conclusion of the agreement. In such cases, any claims for damages shall be limited to the tenfold net invoiced amount as per calculation unit of the damaged product.
 - To the extent that the customer is entitled to claims for damages pursuant to this clause, these claims shall lapse after the expiry of one year following the passing of risk, unless longer limitation periods are mandatorily required by law.
 - To the extent that BGS assumes liability in addition to other parties as a joint and several debtor, it shall always only be liable in the second degree in the final ranking position.
 - The limitations of liability in favour of BGS shall also be applicable to its employees, executives and organs in the same way.
 - Termination**
 - An agreement may be terminated at any time up to the beginning of the radiation treatment. Thereafter, it shall be terminated only for good cause. The notice of termination shall be made in writing.
 - If the customer terminates the agreement, BGS shall be entitled to payment of a flat rate of 10 % of the net invoice amount up to the beginning of the radiation. The customer shall retain the right to furnish proof that the damage was in fact lower than the agreed flat rate. In the event of later termination, BGS shall be entitled to claim payment for the actual services rendered, including the imputed profit resulting therefrom.
 - In the case of termination by BGS for good cause without notice, the customer shall reimburse BGS with the costs incurred by BGS resulting from the termination without notice. Good cause exists in particular, if the customer fails to perform the required acts of cooperation pursuant to clause 3, legal insolvency proceedings over the assets of the customer are initiated or the customer is in default of payment for more than one month.
 - Final provisions**
 - Place of performance shall be the place where the services are rendered. In all other respects, it shall be at the place of business of BGS in Wiehl, Germany.
 - Place of jurisdiction shall be the place of business of BGS. BGS shall also be entitled to sue at the principal place of business of the customer.
 - The law of the Federal Republic of Germany shall apply exclusively under exclusion of all other international legal systems.
 - Oral agreements shall be confirmed in writing in order to be effective. Alterations and amendments, including a change of this written form requirement, shall be made in writing to be effective.
 - If any provisions are or become invalid in whole or in part, the validity of the remaining provisions shall not be affected thereof. Any legally invalid provision shall be replaced by such valid provision permitted by law that comes as close as possible to the intended commercial purpose of the invalid provision.

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