

## **A. General Terms and Conditions of MTR Plus Vertriebs GmbH, November 2015 version**

### **1 Validity**

1. Offers, services and deliveries by MTR Plus Vertriebs GmbH (hereinafter the Supplier) are exclusively based on these General Terms and Conditions.
2. These General Terms and Conditions only apply if the Client is an entrepreneur within the terms of Section 14 of the German Civil Code, a legal identity under Public Law, or has special funds under Public Law.
3. These General Terms and Conditions are an integral part of all contracts entered into between the Supplier and Clients regarding deliveries or services offered by the Supplier. This also applies where in the event of a new or amended contract these General Terms and Conditions are not separately re-entered into or specified.
4. General Terms and Conditions of the Client or third parties do not apply even if the Supplier does not object separately to their validity on an individual basis. Even a reference or referral by the Supplier to the Client's or a third party's General Terms and Conditions does not represent an implied inclusion of or implied consent to the validity of these General Terms and Conditions.
5. Any addition or amendment to these General Terms and Conditions shall be in writing to be effective. This also applies to amending the requirement to be in writing.

### **2 Quoting**

1. Where details of the scope of performance are agreed by the parties, these details (e.g. dimensions, weight, capacity, tolerances and other technical details) and corresponding visual representations (e.g. plans, drawings and illustrations) are only descriptions or indications of the delivery or service as opposed to guaranteed qualities. Variations customary for the trade and ones due to statutory provisions or technical improvements, as well as the replacement of components by parts of equal value, are permitted provided they do not adversely affect the usability for the purpose under the contract or the usual purpose.
2. The Supplier retains title and copyright to all offers and quotes provided by it as well as plans, drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Client during contract negotiations. Without the express consent of the Supplier the Client may not provide access to the content as such to third parties, disclose it or use or reproduce it itself or allow third parties to do so. On request by the Supplier it shall return these items in full to it and destroy any copies made if no longer required in the course of business as intended or if negotiations do not lead to a contract being entered into.
3. Verbal assurances by the Supplier and its employees prior to entering into this contract are not legally binding, and verbal agreements by the Parties are replaced by the written contract. Where verifiable, individual agreements entered into in individual cases take precedence in accordance with Section 305b of the German Civil Code.

### **3 Scope of performance**

1. Delivery is ex works. Shipping is at the request of and paid for by the Client. Unless otherwise agreed, the method of shipping and packaging is at the discretion of the Supplier.
2. The agreement or assurance of lead times and deadlines does not result in performance by a specific point in time.
3. Where shipment has been agreed, delivery windows and lead times refer to the point in time of handover to the carrier, haulier or third party otherwise tasked with transport.
4. The Supplier is entitled to part deliveries provided these are technically feasible and reasonable for the Client.

### **4 Exclusion of liability in the event of force majeure and other reasons, right to withdrawal, other cases of delays in delivery**

1. The Supplier rules out liability for being unable to deliver or for delays to delivery due to force majeure or other events unforeseeable at the time of entering into the contract (e.g. interruptions to business of any kind, poor weather, difficulties in obtaining materials or energy, transport delays, strikes, lawful lockouts, lack of workforce, energy or raw materials, difficulties with obtaining necessary official permits, official measures, or missing, incorrect or untimely delivery by suppliers) beyond the Supplier's control.
2. In such events that make delivery or performance by the Supplier difficult or impossible and that are not merely temporary, the Supplier is entitled to withdraw from the contract. With temporary obstacles, the lead time or delivery deadline are extended or postponed by the duration of the obstacle plus an appropriate grace period. Where the Client cannot be expected to accept the delivery or service because of the delay, it is entitled to withdraw from the contract by immediately notifying the Supplier in writing.
3. In all other events of delivery being delayed, occurrence of the delivery delay is determined in accordance with statutory provisions. In any event, i.e. including in the event of a binding deadline being arranged, a reminder by the Client is required when the delay occurs.

### **5 Transfer of risk and delay of acceptance**

1. The risk for accidental damage to or accidental deterioration of the goods is transferred to the Client on handing over (the commencement of loading applies here) of the goods to the carrier, haulier or third party otherwise specified for shipment. This also applies with part deliveries or where the Supplier has taken on additional services.
2. Where shipment or handover is delayed by a circumstance caused by the Client, risk is transferred on the day the lead time expires and, in the absence of a lead time agreement, at the end of the day on which the item for delivery is ready for shipment and the Supplier has informed the Client of this.
3. Storage costs after the transfer of risk are borne by the Client. Where storage is by the Supplier, the storage costs amount to 2% of the net price (delivery value) of the delivery items to be delivered per week expired. Proof of extra damage and further legal claims (in particular making good of additional costs, appropriate compensation and termination) remain unaffected. The fixed amount is to be charged to further monetary claims. The Client reserves the right to prove that the Supplier has incurred no loss, or only a significantly lower one than the value of the above fixed amount.

### **6 Prices and payment**

1. The scope of delivery and performance set out in the invoice applies for the price. Additional or special performance is calculated separately. Prices are in EURO ex works plus carriage.
2. Invoiced amounts are to be paid within no later than 30 days without deduction. The payment date on the invoice applies. The date of receipt of payment into the Supplier's account is decisive for meeting the deadline.
3. The Client may only resort to offsetting or the withholding of payments for such claims that are undisputed or legally binding.
4. If after entering into the contract the Supplier becomes aware of circumstances that are likely to significantly affect the creditworthiness of the Client and that will jeopardise pending payments under the respective contract by the Client to the Supplier, the Supplier is entitled to only perform or provide outstanding deliveries or services against payment in advance or security.

## **7 Retention of title**

1. The Supplier retains title to the goods until payment in full of all current and future receivables under the contract.
2. Goods subject to retention of title may be neither pledged to third parties nor assigned as security before payment in full of the secured receivables. The Client shall inform the Supplier immediately in writing if and to what extent third parties have access to the goods.

## **8 Warranty rights**

1. Unless otherwise subsequently agreed, the Supplier provides a warranty in accordance with statutory provisions.
2. The Supplier's claims for defects require its duties to inspection and notification of defects in accordance with Articles 377 and 378 of the German Commercial Code to have been complied with. The Client must inform the Supplier in writing of identified defects immediately and to sufficient extent. To do this it has a deadline of one week from delivery of the goods. Otherwise the goods are regarded as accepted.
3. The Supplier is able to opt for subsequent performance by rectification of the defect (repair) or by delivery of a defect-free item (replacement delivery).
4. The Client must allow the time and opportunity for subsequent performance, in particular to make the rejected goods available for the purpose of inspection.
5. If during subsequent performance it becomes apparent that the request by the Client to rectify defects was unjustified, the resulting costs are to be borne by it.

## **Part B: Specific agreement regarding resale**

Devices produced by the Supplier are medical products within the terms of Article 2 of the German Medical Products Act (implementation of Guideline 90/385 EEC, last amended by 93/68 EEC and 93/42 EEC, last amended by 2001/104/EC). It follows specific rights and obligations apply to the parties as listed and agreed below.

## **9 Legal status with onward distribution**

1. The Client resells the devices under its own name and on its own behalf.
2. The Supplier assigns to the Client the right to distribute for an individually agreed distribution area. In the absence of an individual distribution area agreement, Germany is regarded as the distribution area. The distribution area agreement also applies to the distribution of replacement parts, accessories and consumables.

## **10 Specific features of onward distribution**

1. The Client shall also provide instruction manuals for the devices in the appropriate official language in its distribution area.
2. The type and design of the devices will not be modified in any way by the Client. Specific production specifications for the planning phase must be expressly agreed.
3. The Client is not entitled to distribute the devices under its own brand names. Any agreement deviating from this is to be agreed expressly between the parties.

## **11 Duty to report to the Supplier as manufacturer and duty to inform customers**

1. By appropriate training of its staff the Client shall guarantee that patients as end users are sufficiently and safely instructed in using the devices.
  2. The Client undertakes to set up a system allowing it to identify its customers to whom it has sold devices in order to locate or trace the devices at any time. Only by means of such a system for identifying customers is the Supplier as the manufacturer of the devices able to undertake a recall in accordance with the German Medical Products Act.
  3. The Client undertakes to inform the Supplier of any incident with its customers subject to the duty to report.
- In particular, this duty to report immediately concerns any circumstance having led directly or indirectly to the deterioration in the health of the user (incident subject to mandatory reporting within the terms of the German Medical Products Act). In these events the Client must request customers and other users to cease continuing to use the device until the defective function has been definitively cleared up.

## **12 Closing provisions**

1. German Law applies to these General Terms and Conditions.
2. Jurisdiction lies with the courts of Berlin.
3. The parties undertake to neither exploit nor disclose to third parties confidential information and business and trade secrets of the other party disclosed during the business relationship without the written consent of the party affected. This also applies to the period following termination of the business relationship.
4. One or more of the provisions of these General Terms and Conditions becoming invalid in part or in whole, or this agreement containing a gap, does not affect the validity of the remaining provisions.