

# General Terms and Conditions

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## §1: Application

- (1) These terms and conditions shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
- (2) These terms and conditions shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.
- (3) These terms and conditions shall only apply vis à vis merchants, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

## §2: Acceptance of Order

- (1) Our offers given electronically, written or oral are not offers in terms of sec. 145 BGB. They are only invitations to the purchaser to submit an order.
- (2) A contract between the purchaser and us is concluded either with a written order confirmation or, with latest, with the dispatch of the goods.
- (3) Our offers and written confirmations of order are conditionally to a positive credit assessment of the purchaser and to a correct and punctual supply to ourselves.

## §3: Prices and Payment

- (1) The price of the goods shall be our quoted price or, where no price has been quoted, the price listed in our published price-list current at the date of acceptance of the order. In case of export, our published export price-list shall apply. We reserve the right, by giving notice to the purchaser at any time before delivery, to increase the price of the goods to reflect increases in the costs to us, which are beyond our control. We will prove such increases in costs if requested by the purchaser. For an order with the amount <100€ a processing fee of 30€ is charged.
- (2) All our prices are ex-works. Unless otherwise stated in our quotation the price is exclusive of any applicable taxes, charges for transport, packaging, insurances and export documents.
- (3) The payments to be made by the purchaser are without any further pre-condition due for payment as stated in our written order acknowledgement or, if not stated:
  - Payments due within 30 days from the date of the invoice without deduction.
  - From the due date interest in the amount of 8% above the respective base interest rate p.a. shall accrue. We reserve all rights to claim further damages for delay.
  - In case of delay, all open receivables are due immediately.
- (4) The purchaser shall be entitled to offset only insofar as the purchaser's counterclaim is acknowledged undisputed or assessed in a legally binding judgement. The purchaser is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

## §4: Condition of Goods, Delivery

- (1) The characteristics of the goods as well as time and amount of delivery shall be solely specified in our written agreements. Additional agreements and changes require the written form to be valid.
- (2) Any delivery date is an approximate indication only, subject to the availability of goods, conditions of shipping and transport.
- (3) In case the purchaser demands shipment of the goods the delivery date is the date we pass the goods on to the carrier. The risk of loss or damage to the goods passes to the purchaser upon dispatch, unless such loss or damage is caused by negligence of us.
- (4) Packing and protecting material and transportation aims remain with the purchaser who shall bear the costs of disposal.
- (5) In case of default in acceptance or other breach of duties to cooperate by the purchaser we are entitled to claim any resulting damage including but not limited to additional

expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the purchaser at the time of such default or breach of duty to cooperate.

- (6) Should shipment of the goods be delayed at the request of the purchaser by more than two weeks following notification of readiness to ship, the seller may charge a storage fee of
  - € 48,-/ pallet or
  - € 25,-/ packet for each week or part thereof.
- (7) If an order is not accepted within 6 weeks after completion (packaging) of the order, it will be canceled and a cancellation processing fee of 5% of the value of the order, or a minimum expense reimbursement of € 2,000.00 will be charged.

## §5: Examination of Goods

- (1) The purchaser shall examine the goods immediately after receipt and will notify us immediately by written notice of any complaints.
- (2) If the purchaser does not notify us within 8 business days upon delivery in case of any obvious defects or otherwise within 8 business days from the day when the defect has been identified, the goods shall be deemed to be approved.
- (3) Damages in transit or shortfalls distinguishable by delivery shall be indicated on the notice of receipt within the meaning of § 438 HGB (German Commercial Code).

## §6: Retention of Title

- (1) We retain title to the goods until receipt of all payments in full. In case of breach of contract by the purchaser, including, without any limitation, default in payment, we are entitled to take possession of the goods.
- (2) The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.
- (3) As long as the purchase price has not been completely paid, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.
- (4) The purchaser may resell goods subject to the above retention of title only in the course of his regular business. For this case, the purchaser hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us. Notwithstanding our right to claim direct payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.
- (5) Insofar as the above securities exceed the secured claim by more than 10%, we are obligated, upon our election, to release such securities upon the purchaser's request.

## §7: Patent Rights and Copyright

- (1) We point out that circuit diagrams, drawings, sketches, specification, all software and similar documents might be object to copyright/ industrial property rights of the manufacturer/ licensor. Any indication to industrial property rights on the goods must not be covered or removed by the purchaser.
- (2) We are not responsible for damages resulting from the infringement of patent rights or other rights protected by law except if we knew or should have been aware of the existence of such conflicting rights and if there are any third party claims affecting the buyer. The extent of liability is limited to the invoice value.

## §8: Representations and Warranties

- (1) medin® warrants to partner that Products supplied hereunder will meet specifications, will be free from defects in materials, design and workmanship, will be merchantable, will be fit for their intended purpose and will be properly packed and labeled.
- (2) This warranty shall apply for a period of 24 (twenty-four) months for devices.
- (3) The warranty period starts with the delivery day.

- (4) Partner will have 30 (thirty) days after the delivery date to notify medin<sup>®</sup> in writing of any deficiencies or objections to the Product with respect to quality or quantity of the Product which can be reasonably observed by visual inspection of the outer packaging of the Product.
- (5) In case of hidden defect to the Product discovered by partner, which cannot be inspected by visual survey, partner will have 30 (thirty) days after the discovery, to notify medin<sup>®</sup> in writing, but at the latest one year after delivery.
- (6) Defective items returned prior to the expiration of the warranty period shall be replaced by medin<sup>®</sup> without undue delay.
- (7) Partner shall at its own expense, ship to medin<sup>®</sup> a specimen of any and all items alleged to be defective, so that medin<sup>®</sup> can examine and determine the merits of partner's assertion.
- (8) medin<sup>®</sup> shall send on its own costs the substitute item to partner's address. Costs for spare part assembly, delivery to customer et cetera shall be on partner's expense.
- (9) This warranty shall not apply, if:
  - a) the Product has not been installed and connected in accordance with the instructions furnished by medin<sup>®</sup>.
  - b) there is evidence of access to the instruments or ancillary items electronics by persons other than by partner's personnel or personnel authorized by partner.
  - c) the serial number has been altered, effaced or removed.
  - d) no evidence is present that the occurrence of damage or repair is within the certified warranty period.
  - e) Product has been operated in any way other than its intended use.
  - f) other replacement parts than medin<sup>®</sup> replacements parts were used.
  - g) the defects are arising from misuse, negligence or accidents, or from repair, adjustment, modification or replacement made outside medin<sup>®</sup>'s factories or other than an authorized service person

The warranty does not include: physical damage, environmental damage (e.g. particles, water or grease in the device connection, excessively high voltage), improper use (e.g. excessively high gas feed pressure) as well as consumables (e.g. oxygen cells, filters, batteries) and maintenance

#### **§9: Liability**

- (1) In case of intent or gross negligence on our part or by our agents or assistants in performance we are liable according to the provisions of applicable law. The same applies in case of breach of fundamental contract obligations. To the extent the breach of contract is unintentionally our liability for damages shall be limited to the typically predictable damage.
- (2) Our liability for culpable damage to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.
- (3) Any liability not expressly provided for above shall be disclaimed.

#### **§10: Miscellaneous clause**

Verbal agreements are not valid. This applies also to any agreement to dispense with written agreement. If any of the foregoing clauses are ineffective or invalid, the contract itself as well as the other clauses will remain in force.

#### **§11: Place of Performance, Place of Jurisdiction and Applicable Law**

- (1) Place of performance and exclusive place of jurisdiction for deliveries, services and payments is Olching, Germany.
- (2) Place of jurisdiction for all disputes arising out of or in connection with this contract shall be Munich, Germany. Still, we are entitled to bring suit at the purchaser's domicile.
- (3) This contract shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

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