

# GENERAL TERMS AND CONDITIONS FOR SUPPLY, DELIVERY AND PAYMENT OF SUTTER MEDIZINTECHNIK GMBH (FOR EXPORT)

## § 1 – Binding Effect of the Terms and Conditions

- 1.1 Our Terms and Conditions shall be part of all offers and contracts for the supply of our goods and services in ongoing and future business relationships.
- 1.2 Clauses deviating from our Terms and Conditions as well as potential general conditions of purchase of our Customer shall be binding only if and to the extent that these have been expressly confirmed by us in writing. Upon the acceptances of our goods and/or services our Terms and Conditions shall be deemed accepted.

## § 2 – Offers

- 2.1 Our offers shall be non-binding unless they are expressly marked as binding. Oral or written orders shall be deemed to be accepted by us upon the issuance of our written order confirmation or upon our delivery within an appropriate period.
- 2.2 Statements in advertisements, catalogues and other types of marketing materials as well as appendices to our offers, such as photos, drawings, statements of weight or dimension, description of performance or qualities, as well as other information regarding our products and services shall be understood to be approximate, unless we have declared them specifically in our offer to be agreed-upon qualities of our products and services. The descriptions in our offers of the contractual qualities shall not constitute a guaranty of these qualities unless they have been expressly identified as a contractual guaranty.
- 2.3 We shall remain the owner of preliminary estimates of cost, drawings and other documents, and our copyright is expressly reserved. They must not be made accessible to third parties.

## § 3 – Scope and Specification of Supplies

- 3.1 The scope of our supplies shall be determined in accordance with our written order confirmation, in the event of a binding offer with timely acceptance said offer. Additional clauses and modifications shall be valid only upon our written confirmation.
- 3.2 The ordering party shall warrant and be liable for the accuracy of the factual information and drawings which it may provide, as well as for the right to use these. We shall be under no obligation to examine or verify this. Such factual information shall become part of the contract only in the event of a written agreement to this effect.

## § 4 – Prices

- 4.1 Price lists and other general statements of prices shall be non-binding.
- 4.2 Unless expressly agreed otherwise, all prices shall be understood to be ex works (EXW) as defined in INCOTERMS 2000. Such prices shall hence be net of value added tax, other indirect taxes, customs duties and other charges, which shall be added and borne by the Customer.

## § 5 – Terms and Conditions of Payment

- 5.1 All invoices shall be due and payable with their full amount within 30 days from the date of the invoice. The deduction of discounts, rebates and the like shall be permissible only in the event of an express written agreement to this effect.
- 5.2 In no event shall we be under an obligation to accept promissory notes; if we do accept a promissory note in a given case, this shall only be by way of provisional performance and our Customer's payment obligation shall be deemed fulfilled only when the note on honored. This shall apply mutatis mutandis for cheques. Regardless of the acceptance of a promissory note, we shall always have the right to claim payment of the initial claim against release of the promissory note.
- 5.3 When exceeding the payment term, the Customer shall be deemed in default. If and when the Customer defaults on any payment and/or cessation of payments, all pending claims, whether or not due, shall become payable immediately without any deductions. This shall apply even if we have granted an extension in prior cases. We shall have the right to claim from the due date default interest at 8%-points per year above the base rate of the European Central Bank.

- 5.4 Our Customer shall not have the right to withhold payments or to set-off payment with counter-claims unless and to the extent that such counter-claims are not contested by us or have been upheld by a final and binding judgment not subject to any appeals.

## § 6 – Time of Delivery

- 6.1 Periods of time and dates shall be binding only if we have expressly confirmed them as binding. They shall commence only upon receipt by us of all information and/or services to be supplied by the Customer.
- 6.2 In consequence of the ex works (EXW, Incoterms 2000) clause, the period is deemed to have been kept if we have advised the Customer of the goods' readiness for shipment or collection within the agreed performance or delivery period. If the delivery is delayed for reasons for which the Customer is responsible, the period/date shall be deemed kept if we have advised the Customer of the goods' readiness for shipment within that period/before that date.
- 6.3 If non-compliance of the period is proven to be the result of mobilisation, war, riot, strike, lockout or the occurrence of unforeseen events, which are beyond our reasonable control, the time and date of delivery shall be adequately extended.
- 6.4 If the time and date has been exceeded due to our gross negligence, the Customer shall have the right to compensation of proven damage up to the maximum amount of the value of the individual delivery or service. This shall not affect the Customer's right to rescind the agreement. Other damage claims and/or rights of the Customer shall be excluded in all cases of delay, even upon expiry of any extension granted to us by the Customer.
- 6.5 If the dispatch or delivery is delayed at the request of Customer, storage charges may be invoiced in the amount of 0.5% of the invoiced ex works amount for each month begun, commencing one month after readiness for shipment has been advised; storage charges are limited to 5% of the invoiced ex works amount unless higher costs are proven.

## § 7 – Passage of Risk and Acceptance

- 7.1 In accordance with the ex works (EXW, Incoterms 2000) clause, risk shall pass to Customer at the latest upon the tender of the goods to be delivered to the transporting company; this shall also apply if partial deliveries are conducted or if we have assumed additional services such as cost of shipment or delivery.
- 7.2 If a delivery is delayed due to circumstances for which Customer is responsible, risk shall pass to Customer from the day of readiness for shipment; we shall however upon the request and at the cost of Customer underwrite the insurance demanded by Customer.
- 7.3 Delivered goods must be accepted by Customer even in case of minor defects, notwithstanding the rights under § 8.1.
- 7.4 Partial deliveries shall be permissible.
- 7.5 The aforementioned provisions on passage of risk shall also apply if works on the goods to be delivered still have to be carried out at Customer's place of business, e.g. particular assembly works, or if it is agreed that acceptance is to take place there.

## § 8 – Warranty, liability for defects

We shall be liable for material and legal defects only according to the following provisions:

- 8.1 All those goods and/or services shall at our discretion and at no cost be repaired, newly delivered or newly performed which, within 12 months from the date of passage of risk and due to circumstances prior to passage of risk – which shall be proven by competent evidence – are unfit for use or substantially impaired in their usability, in particular owing to defective construction, bad materials or inadequate performance. Customer shall advise us without delay in writing of any defects which Customer becomes aware of.
- 8.2 To the extent that for a specific product item supplied hereunder a maximum number of uses has been agreed (e.g. surgical operations followed by reprocessing, sterilization and the like) and that number has been reached prior to the end of the period stipulated in §§ 8.1, 8.4 hereof, the liability for breach of warranty

shall end on the date when the agreed maximum number of uses has been reached.

- 8.3 Customer shall allow the necessary time and opportunity required at our reasonable discretion to remedy any defects. If this is refused to us we shall be exempt from liability.
- 8.4 The statute of limitations for claims arising from defects shall be 12 months from the date of passage of risk. Exception hereof is made for HF-/RF-generators, where the period shall be 18 months from the date of passage of risk (§ 7.1).
- 8.5 The warranty period shall run anew for replaced or repaired parts and shall last (i) 6 (six) months from the date of replacement, completion of repair and/or from acceptance.
- 8.6 No warranty shall be provided for unsuitable and/or improper use, defective and/or improper installation and/or dismantling and/or commissioning by Customer and/or third parties, natural wear and tear due to ageing or waste, defective or negligent treatment, in particular due to the omission of the required regular maintenance, defective preliminary work of all kinds, chemical, electrochemical and/or electric influences. However, this warranty shall apply if any of the foregoing is due to our fault.
- 8.7 For deliveries and services from subcontractors designated by Customer, we shall provide warranty only within the scope of warranty obligations of the respective subcontractors.
- 8.8 **CUSTOMER SHALL HAVE NO RIGHTS AND CLAIMS EXCEPT FOR THOSE EXPLICITLY MENTIONED IN §§ 8.1 TO 8.7 HEREOF FOR DEFECTS IN MATERIALS, CONSTRUCTION OR PERFORMANCE AS WELL AS FOR THE ABSENCE OF GUARANTIED QUALITIES.**
- 8.9 For claims of Customer due to inaccurate advice and the like, or due to violation of any accessory obligations, we shall be liable only in case of intent or gross negligence.

#### **§ 9 – Failure to perform, defective performance and their consequences**

- 9.1 In all cases of defective performance or failure to perform at all not explicitly addressed in these Standard Terms, in particular if we start the performance of deliveries and/or services without reason so late that a punctual completion can no longer be anticipated and/or an execution in breach of contract attributable to our fault must be anticipated with certainty, and/or if deliveries and/or services have been performed by us in breach of contract, Customer shall have the right with regard to the goods and/or services concerned to grant us a reasonable extension combined with a warning to rescind the agreement in the event that the defects are not cured within the extension period. In case this extension expires without the defect having been cured due to our fault, Customer shall have the right as regards deliveries and services executed in breach of contract, or whose execution in breach of contract must be anticipated with certainty, to rescind the agreement and to claim the restitution of payments already made which are attributable to this.
- 9.2 In this event the provisions of § 10.2 shall apply as regards a potential claim for damages by Customer to the exclusion of additional liability. The claim for damages shall be limited to 10% of the ex works purchase price of the deliveries and/or services for which the rescission is made.

#### **§ 10 – Exclusion of additional liabilities**

- 10.1 All claims by Customer shall be excluded except for those explicitly mentioned in these Standard Terms, regardless of their legal basis, in particular any claims for damages, reduction of the purchase price/service fee or rescission of the agreement. There shall in no event be any claims by Customer for compensation of damages which have not arisen in the delivered item itself, such as loss or production, losses of usage, loss of orders, lost profits as well as other direct or indirect damages. These limitations shall not apply in case of intent or gross negligence of those persons whom we use to discharge our obligations.
- 10.2 In the event of delay a lump sum penalty of 0.5% of the ex works invoiced price shall be due per full week of delay unless we prove that Customer has suffered no damage at all or lesser damages. No penalty shall be due for the first three full weeks of delay.

#### **§ 11 – Title reserve**

- 11.1 We shall retain title to the goods delivered until the purchase price has been paid and all claims existing from the business relationship and those still to arise in connection with the item of purchase as well as all claims arising in the future while we still have title have been settled; this shall also apply if individual claims are included into a current account by us and the balance is drawn and accepted.
- 11.2 If the Customer is in default of payment (§ 5.3 hereof) we shall have the right to repossess the title reserved goods and the Customer shall be obliged to surrender them.
- 11.3 If a title reserved good is processed by the Customer into a new mobile good, the processing shall be for our account without creating any obligations for us. We shall have title in the new mobile good. In case of processing, mixing or blending with goods in which we do not have title, we shall acquire joint title in the new good according to the proportion of the value of our title reserved goods to the overall value. If a title reserved good is sold by the Customer in the ordinary course of business, the Customer hereby presently assigns the corresponding accounts receivable to us.
- 11.4 The Customer shall have the right and authority to resell, further process, or install, the title reserved goods only within the ordinary, regular course of business and on condition that claims within the meaning of § 11.3 actually transfer to us. The Customer shall not have the right to dispose of title reserved goods otherwise, in particular the right to pledge or to transfer them as a security shall be excluded.
- 11.5 We authorize the Customer to collect claims assigned to us in accordance with § 11.3; we reserve the right to revoke this authorization. We shall make no use of our own powers of collection as long as Customer meets its payment obligations, including those due to third parties. Customer shall upon request disclose the debtors of claims assigned to us and notify them of the transfer; we shall also have the right to notify debtors of the transfer ourselves.
- 11.6 Customer shall immediately notify us of enforcement proceedings by third parties as far as title reserved goods or transferred claims are concerned, providing all documents necessary for us to intervene in that process to reserve our rights. Intervention costs shall be reimbursed to us by Customer.
- 11.7 The right to resell, use or install title reserved goods and the right to collect assigned claims shall expire upon suspension of payment, application to, or opening of, insolvency proceedings and/or composition proceedings as well as in case of a protest of a bill of exchange or cheque.
- 11.8 To the extent that the value of the securities granted exceeds claims by more than 20% we shall be obliged to retransfer or release securities at our discretion. With the settlement of all claims from the business relationship the title in the title reserved goods and the assigned claims shall pass to Customer.
- 11.9 Customer shall be obliged to co-operate to the extent necessary to protect our title; Customer in particular shall authorize us upon closure of the agreement to execute the entry or registration of the title reserve at the expense of Customer in public registers, books and the like in accordance with the national laws concerned and to fulfil all formalities related thereto.

#### **§ 13 – Return policy for used surgically invasive goods**

When returning used surgically invasive products, they must be cleaned and sterilised prior to the return shipment. A sterilisation protocol must be enclosed with the delivery. The products must be packaged carefully and sufficiently to prevent injuries of personnel during shipping and handling. The packaging must ensure adequate protection. In case of non-compliance, the Sutter Medizintechnik GmbH reserves the right to not accept the goods.

#### **§ 14 – Final Provisions**

- 14.1 The contractual relationship between ourselves and the customer shall be subject to Swiss law. The United Nations Convention on the International Sale of Goods (CISG) and choice of law rules shall not apply.
- 14.2 In the event that one or several of the provisions contained herein are invalid, this shall not affect the validity of the remaining provisions.
- 14.3 Place of execution for all supplies of goods (even in the event when we bear all cost of transport, insurance and the like) shall be our respective place of production.

14.4 Place of jurisdiction shall be the court of our statutory seat. We shall however have the right to take legal action at the statutory seat of the Customer.

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