

# GENERAL TERMS AND CONDITIONS BETWEEN ENTREPRENEURS

## § 1 Scope of Application

1. These contract terms (hereinafter referred to as „GTC“) form the exclusive basis for all our (medica Medizintechnik GmbH) contracts with our contractual partners (hereinafter also referred to as “customers”) relating to the deliveries and services offered by us, irrespective of whether we produce the goods ourselves or purchase them from suppliers (Section 433 German Civil Code [BGB], Section 651 German Civil Code [BGB]). The GTC are only applicable to entrepreneurs within the meaning of Section 310 paragraph 1 German Civil Code [BGB].
2. Any deviating terms of the customer or third parties will not be accepted, even if we do not expressly object to their validity in any individual case. Even if we refer to a letter containing the terms and conditions of a customer or a third party or refer to such or carry out delivery without reservations in knowledge of the customer’s terms and conditions, this does not constitute any agreement to the validity of these.
3. All agreements between us and the customer are conclusively governed by the written contract documents as well as these GTC; No verbal side agreements have been made.

## § 2 Offer and Contract Conclusion

1. Unless explicitly indicated otherwise, our offers are non-binding and subject to alteration. We can accept purchase orders or orders within fourteen days of receipt.
2. Information about the object of the contract (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations thereof (e.g. drawings, illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or characterisations of the delivery or performance. Customary deviations and deviations resulting from legal regulations or deviations representing technical improvements as well as the

substitution of components by equivalent parts is permissible insofar as they do not compromise the usability for the contractually intended purpose.

3. We reserve property rights and copyrights to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliary means as well as documents referred to as "confidential". Any disclosing, making accessible, publishing as well as use or reproduction by the customer or third parties is subject to our explicit prior consent.

### **§ 3 Prices and Payment**

1. The prices apply to the scope of services and supply stated in the order confirmation. Additional or special services will be charged separately. The prices are quoted in EURO ex works plus packaging and shipping, if applicable, value-added tax applicable at the time of invoicing, in the case of export deliveries, customs and fees and other public charges.
2. Unless specified otherwise in the order confirmation, the purchase price shall be payable without deduction within 30 days of the invoice date in the case of a purchase agreement. Receipt of payment shall be decisive for the date of payment. Payment by cheque is excluded unless separately agreed upon in an individual case. The statutory rules concerning the consequences for a delay in payment shall apply.
3. Setting off counterclaims of the customer or withholding payments due to such claims is only permitted insofar as the counterclaims are undisputed or have been legally established; furthermore, the counterclaim must be based on the same contractual relationship when exercising a right of retention.

#### **§ 4 Delivery and Delivery Period**

1. Proposed periods and dates for delivery and performance announced by us are non-binding unless a mandatory period or a fixed date has been explicitly agreed upon. If sale by dispatch has been agreed, the time of handover to the forwarding agent, freight forwarder or other third party commissioned with the transport is to be referred to within the deadline.
2. We shall not be liable if delivery is not possible or delivery is delayed, insofar as we are not responsible and it has not been caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. interruption of operations of all kind, difficulties in procuring material or energy, delay in transit, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in obtaining the necessary regulatory approvals, official measures or non-delivery, incorrect delivery or untimely delivery by suppliers). If such events significantly impair our delivery or service or render the same impossible and if the hindrance is not of a merely temporary nature, we shall be entitled to rescind the contract. In the event of temporary hindrances, the delivery and service periods shall be extended or postponed by the period of the impediment plus an appropriate lead time. If the acceptance of the delivery or service is not reasonable for the customer as a consequence of the delay, the customer shall be entitled to rescind the contract by giving us immediate notice in writing.
3. The occurrence of delay in delivery is determined by law. In any case, necessary.

#### **§ 5 Place of Performance, Dispatch, Packaging, Transfer of Risk, Acceptance, Default of Acceptance**

1. Goods are delivered ex works. The place of performance for all obligations arising from the contractual relationship is our place of business, unless agreed otherwise. At the customer's request and cost, the goods will be sent to another place of destination (sale by dispatch). The method of dispatch, choice of the shipping company, packaging etc. is according to our best judgement.

2. The risk shall pass to the customer at the latest when the delivery item is handed over to the forwarding agent, freight forwarder or other third party engaged with carrying out dispatch; the start of the unloading process is to be referred to in this respect. This shall also apply if we are also performing other services (e.g. dispatch, installation or final technical inspection). In the event of a delay in dispatch or handover for which the customer is responsible, the risk shall pass at the point in time when the goods are ready for dispatch and we have informed the customer of this.
3. If the customer is in default of acceptance or if there is a delay in delivery due to reasons for which the customer is accountable, we shall be entitled to charge the storage cost incurred in the amount of 0.25 % of the invoice amount of the delivery items to be stored per week elapsed. The right of enforcing and substantiating additional or lower storage costs as well as any statutory claims extending beyond that shall remain reserved.
4. The consignment will only be insured against theft, breakage, damage in transit, fire and water damage or other insurable risks upon the customer's express request and at the customer's cost.

## **§ 6 Warranty, Claims of the Customer Based on Defects**

1. Claims of the customer based on defects require the customer to have fulfilled its duty to examine and to give notice of defects in due form pursuant to § 377 German Commercial Code [HGB].
2. If the purchased item contains a defect in the case of sales agreements, the customer is entitled at our option to subsequent performance in the form of a rectification of the defect or the delivery of a new item free of defects. In the case of a rectification of the defect or replacement delivery, we are obliged to bear any expenditures, in particular transport, tolls, labour and material costs necessary for subsequent performance, provided these costs are not increased by the goods having to be delivered to a place other than the place of performance.

3. If the subsequent performance fails, the buyer shall be entitled at its option to demand rescission from the contract or a reduction of the purchase price.
4. We shall be liable according to statutory provisions insofar as the customer claims for damages that are based upon intent or gross negligence, including intent or gross negligence of a representatives or vicarious agents of the seller. Provided that no intentional breach of contract is implied, the liability for damages shall be limited to the foreseeable typically occurring damage.
5. Our liability shall also be limited to the compensation of the foreseeable, typically occurring damage insofar as the customer is entitled to claim for damages instead of performance on the grounds of negligent breach of duty.
6. The liability resulting from a culpable injury to life, body or health shall remain unaffected; this shall also apply to the mandatory liability pursuant to the German Product Liability Act.
7. Unless arranged otherwise hereinbefore, liability shall be excluded.
8. The limitation period for claims for defects is 12 months from the passing of the risk. This period is not valid for the customer's claims for damages resulting from injury to life, limb or health or wilful or grossly negligent breach of duties by us or our vicarious agents which shall each become statute-barred according to legal regulations.
9. Any further liability for damages other than that provided for in § 6 - regardless of the legal nature of the asserted claim - shall be excluded. This shall apply in particular to claims for damages from culpa in contrahendo, due to other breaches of duty or on the account of tortious claims for compensation of property damage pursuant to § 823 German Civil Code [BGB].
10. Insofar as the liability for damages against us is excluded or restricted, this shall also apply with regard to the personal liability for damages of our staff, employees, personnel, representatives, and vicarious agents.

## § 7 Retention of Title

1. The retention of title hereinafter agreed upon serves as security for all our existing and future claims against the customer arising out of the supplier relationship between the contractual partners.
2. The goods we delivered to the customer shall remain our property until all secured claims have been paid in full. The goods as well as any goods replacing them according to the provisions below and subject to the retention of title shall hereinafter be referred to as "goods subject to retention of title".
3. The customer shall store the goods subject to retention of title for us at no charge. The customer shall be obliged to handle the goods with care and to insure them at his own expense against damage caused by fire and water, and theft. The customer has to carry out any required maintenance and inspection work in due time and at his own expense.
4. The customer is entitled to sell the goods subject to retention of title in the normal course of business until the occurrence of an enforcement event (paragraph 9). Pledging and transfer by way of security are not permitted.
5. If the goods subject to retention of title are inseparably mixed with other objects that do not belong to us or are combined to form a uniform item, we shall acquire co-ownership of the new item in a ratio as per paragraph 5 page 1. If the combining or mixing takes place in a way that the customer's item is to be considered the main item, it is hereby agreed that the customer shall assign co-ownership to us proportionally. The customer shall hold the sole or joint property thus produced on our behalf.
6. In the event of a resale of the goods subject to retention of title, the customer herewith assigns to us by way of security the arising claim against the purchaser. If we are co-owners of the goods subject to retention of title, the assignment shall take place proportionally to the co-ownership share. The same shall apply for any other claims replaced by the goods subject to retention of title or otherwise arise with regard to the goods subject to retention of title, as for example insurance claims or tort claims resulting from loss or destruction. The customer shall remain

revocably authorised to collect the assigned claim; our power to collect the claim ourselves shall remain unaffected thereof. However, we undertake not to collect the claim as long as the customer fulfils his payment obligations arising from the proceeds obtained, does not default in payment and in particular no application for the initiation of composition or insolvency proceedings has been filed or payments are suspended. If this is the case, we can demand that the customer inform us of the asserted claims and the respective debtors, provide all information required for collection, handover the pertinent documents and notify the debtors (third parties) of the assignment.

7. If third parties take hold of the goods subject to retention of title, in particular through pledging, the customer shall immediately inform the third parties about our ownership and notify us in order to enable us to enforce our proprietary rights, in particular an action as defined by Section 771 German Code of Civil Procedure [ZPO]. Should the third party not be in a position to reimburse us for the judicial or extra-judicial expenses incurred, the customer shall bear such costs.
8. We shall release the goods subject to retention of title and the items or claims taking their place provided that the value exceeds the amount of secured claims by more than 50 %. The choice of the items to be released is within our scope of responsibility.
9. If we rescind the contract (enforcement event) due to a breach of the contract by the customer – in particular in the event of default in payment –, we shall be entitled to demand restitution of the goods subject to retention of title and to revoke the direct debit authorisation according to paragraph 6.

## **§ 8 Rental Agreements; Pay-Per-Use Agreements**

The following applies additionally for rental agreements and pay-per-use contracts:

1. Upon receipt of the equipment, the customer has to inspect the contractual item for obvious defects and operational readiness and report any complaints without delay. The customer is obliged to do so even before a final technical inspection by us.

Upon acceptance without any complaints of defects, the customer acknowledges that the contractual item is free of defects and ready for operation.

2. With the surrender of the contractual item, all risks from a violation of the duty of care with regard to the contractual item shall pass to the customer, especially the risk of destruction, loss, theft, deterioration, damage and premature wear. The customer is obliged to take out the required insurance and to maintain such for the term of the contract.
3. With the exception of defects undisputed or legally established on our part, the customer is prohibited from reducing ongoing rental payments, the possibility of restitution for unjust enrichment shall remain unaffected.
4. The customer always has to handle the contractual item with care and use it in accordance with the instruction manual.
5. The customer shall be liable for damage to and loss of the rented item provided that this results from a fault on his part, in particular a culpable breach of his obligation to handle the rented item with care. The customer's fault is equal to that of his vicarious agents. We are to be notified immediately of any damage. We shall be entitled to satisfy ourselves of the condition of the item at any time in person or through an agent and to have any damage eliminated.
6. The customer shall be obliged to keep the rental property in orderly and functional condition, unless this duty is transferred to us by way of a separate maintenance/service agreement. The scope of the maintenance obligation is determined by the respective current version of the instruction manual of the rental property. We particularly point to the fact that any alterations carried out by the customer may lead to a loss of warranty and/or guarantee claims.
7. The regulations defined by § 7 item 3 page 2 (insurance and maintenance obligation) shall apply accordingly for rental or pay-per-use agreements.
8. Any alterations or even improvement of the rented items or pay-per-use items require our prior consent.
9. Unless agreed otherwise, the rental property may be used exclusively by the customer within the scope of the intended purpose; any surrender to third parties



(sublease) requires our prior consent. If a location has been agreed upon for using the rental property, any changes in location require our prior consent. If we deny our consent, the customer shall not be entitled to extraordinary termination.

10. The right of both contractual parties to extraordinary termination of the contract for cause shall remain unaffected. Good cause shall mean in particular if insolvency proceedings are initiated in respect of a contractual partner's assets or the initiation of insolvency proceedings is rejected due to lack of cost-covering assets.
11. Upon termination of the rental contract, the entire rental property is to be handed over to us at our domicile at the customer's expense and risk.

### **§ 9 Service Agreements**

The following shall apply additionally for service/maintenance agreements:

1. Services utilised due to the culpable behaviour of the customer, in particular due to improper use, authorise us to charge for these services separately.
2. The scope of services only comprises repairs and maintenance, but not improvements of the contractual item due to software updates or the like. Services in this connection also have to be paid for separately by the customer.
3. We are entitled to extraordinary termination or contractual adjustments if the product support for the contractual item or components thereof has been discontinued (end of support).

### **§ 10 Quality Assurance Agreement**

4. Customer is obligated to know and follow all required by law regulations, standards and guidelines when placing the products on the market or using them.
5. Maintenance and repairs on products must be carried out in accordance with medica's instructions and may only be performed by suitable persons or bodies (based on their professional training and qualification). Maintenance and repairs marked as critical may only be carried out by persons specially trained by medica.
6. Customer may not change and/or modify medica products.

7. Customer shall inform medica immediately of any defects, deficiencies or complaints about medica products or any incidents with medica products.
8. For traceability of medica products, customer is obliged to keep detailed records (e.g. location, article number, serial number) of the whereabouts of medica products, to keep these records for 10 years and to make them available if required.
9. Customer shall inform medica immediately about inquiries from authorities (including Notified Bodies) regarding medica products.

## **§ 10 Final Provisions**

1. If the customer is a merchant, a legal person under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the contractual relationship shall be, at our option, the courts responsible for our domicile or the customer's domicile. This also applies for international disputes. However, for actions against us, the competent courts at our domicile shall have exclusive jurisdiction in such cases. Mandatory statutory provisions relating to exclusive jurisdictions shall remain unaffected of this regulation.
2. The relationships of the parties to the contract shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. If the contract or these terms and conditions contain loopholes, those legally effective regulations which the contractual partners would have agreed upon according to the economic goal of the contract and for the purpose of these GTC shall apply to fill these loopholes if they had been aware of the loophole. The validity of the remaining conditions shall not be affected by this.

## **§11 Miscellaneous**

1. In the case of delivery of steel, the Seller is obliged to provide ZPV with a proof by a recognised testing centre of the steel grade and/or the degree of galvanisation at

the Seller's cost. Furthermore, ZPV may demand UL or DIN certification at the Seller's cost. Eventually ZPV can demand random samples to be made available.

2. The Seller shall be responsible for ensuring that no third-party rights are infringed in connection with the Seller's delivery. If claims are asserted against ZPV by a third party due to an alleged infringement, the Seller shall be obliged to indemnify ZPV from these claims upon first request in writing. The Seller's duty to indemnify shall refer to all applications that ZPV necessarily incurs as a result of or in connection with claims arising from a third party.
3. If single provisions of these GTC are or become ineffective in whole or in part, the validity of the other provisions shall remain unaffected thereof. The parties have to replace the ineffective provision by an effective provision which corresponds as far as possible to the economic purpose of the ineffective condition. The same shall apply to possible loop holes in the contract.
4. These GTC and their contents are subject to German law and are to be interpreted according to German legal understanding. Should the English legal meaning deviate from the German legal meaning, the German meaning has precedence.