

GENERAL TERMS AND CONDITIONS OF PURCHASE

of

OptiMed Medizinische Instrumente GmbH
Ferdinand-Porsche-Str. 11
76275 Ettlingen

As of November 2009

1. Scope of Applicability

- 1.1 All business dealings shall exclusively be governed by the following **Terms and Conditions of Purchase**. Any of Supplier's terms or conditions to the contrary to or deviating from our terms and conditions shall not be valid unless expressly confirmed by us in writing. The same applies to Supplier's provisions that deviate from the statutory regulations to our detriment even if these **Terms and Conditions of Purchase** do not explicitly refer to these statutory regulations. These **General Terms and Conditions of Purchase** shall also apply if we unconditionally accept delivery of Supplier's goods or performance despite being aware of any supplier's terms to the contrary to or deviating from these **General Terms and Conditions of Purchase** or from statutory regulations to our detriment.
- 1.2 These **General Terms and Conditions of Purchase** shall only apply with respect to entrepreneurs, legal entities under public law and public utility funds as defined by section 310 subsection 1 of the German Civil Code (§ 310 Abs.1 BGB).
- 1.3 These **General Terms and Conditions of Purchase** shall also apply to any future business transactions with the supplier.

2. Conclusion and Subject Matter of Contract

- 2.1. If Supplier does not accept our order within one week after its receipt, we shall be entitled to withdraw this order without incurring any costs or liability.
- 2.2. Apart from these **General Terms and Conditions of Purchase** all product specifications contained or referred to in our orders as well as any product specifications contained in any documents attached to such orders including without limitation tender specifications as well as any technical documentation such as drawings, building and construction regulations and regulations as to material shall become integral part of the Contract concluded with us.
- 2.3. Our product specifications have to be strictly complied with; any deviations therefrom require our prior written consent.
- 2.4. Supplier shall be obliged to verify our product specifications with regard to their use for Supplier's own delivery or performance. Supplier shall immediately notify us of any objections to or reclamations concerning our product specifications.
- 2.5. Sub-contracting to third party suppliers or contractors shall only be made with our prior written consent. Any violation of this provision entitles us to revoke the contract – without prejudice to any further statutory rights we may have thereupon.
- 2.6. Any obligation for compensation of damage within the terms of section 122 of the German Civil Code (§122 BGB) requires faulty acting on our part.

3. Rights to our Contractual Documents and Manufacturing Material, Insurance, Confidentiality

- 3.1. Documents and manufacturing material of any kind that we transmit to Supplier within the framework of our orders, such as
 - pictures, calculations, drawings, drafts and manufacturing requirements etc,
 - models, patterns and prototypes,
 - material or parts supplied by us,
 - tools,
 - software

- shall remain our property (reserved property).
- 3.2. Any processing or transformation of material or parts supplied by us shall always be deemed to be on our behalf only. If reserved property is processed with goods which are the property of any person other than us, the product thereof shall be deemed to be owned by us jointly with that other person, our share in the joint property being defined by the ratio of the value of the reserved property (purchase price plus VAT) to the value of the other goods which have been processed or transformed, such value being assessed at the time of their processing or transformation.
- If the reserved property is inseparably mixed or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned by us jointly with that other person, our share in the joint property being defined by the ratio of the value of the reserved property (purchase price plus VAT) to the value of the other goods which have been mixed or combined, such value being assessed at the time of their mixing or combining. If the mixing or combining has been done in such a way that Supplier's product is to be considered to be the main product, it is agreed that Supplier assigns to us co-ownership of such product on a pro rata basis.
- Before their use, material and parts supplied by us shall be stored properly, adequately, apart from property of other persons and duly labeled as our property.
- 3.3. In particular, the parties agree that Supplier shall take our exclusive property or joint property in adequate storage and maintenance at his own expense.
- 3.4. We reserve all rights and title, in particular any copyrights, exploitation rights or other industrial or intellectual property rights, to the reserved property within the terms of no. 3.1. above, unless such rights are licensed or transferred to Supplier for the purpose of the fulfilment of the Contract concluded with us.
- Supplier warrants that we shall have any rights of use or exploitation to the products owned by us in accordance with no. 3.2. above required for the achievement of the purpose of the Contract entered into.
- 3.5. Supplier shall at his own expense insure our reserved property at its purchase value against theft, robbery, burglary and damage by water and by reason of fire. By now, Supplier shall assign to us all rights resulting from such insurance and relating to the reserved property. We herewith accept such assignment.
- 3.6. Supplier shall perform any and all maintenance or repair measures that may be necessary with regard to our tools timely and at his own expense. He shall give notice to us of any malfunctioning immediately. If he fails to do so by his own fault, he shall be liable for any damage incurred by us.
- 3.7. Manufacturing documents and manufacturing material owned by us according to no. 3.1. above, shall not - except for any contractual purposes or other purposes agreed upon - be used, copied, transferred, sold or pledged to third parties nor shall they be made available to third parties. Supplier especially shall be forbidden to produce products for third parties by using these documents or material.
- 3.8. Manufacturing documents and manufacturing material owned by us according to no. 3.1. above, shall be kept confidential. They shall be disclosed to third parties only after our prior written consent. The provisions of no.15 below (confidentiality, no right of use) shall apply accordingly.
- 3.9. If it becomes certain that an order will no longer be placed by us or if an order has completely been processed, Supplier shall immediately upon our request
- return to us any and all copies, pieces etc. of manufacturing documents and manufacturing material in good condition or
 - destroy or otherwise alter the manufacturing material and documents so that they are of no use anymore for the manufacture of products.
- Destruction or alteration shall be proved to us upon our request. The same shall apply to any products or any half-finished parts thereof which were manufactured on the basis of our manufacturing documents or by using our manufacturing material or manufactured for and on our behalf only and which are still left at the end of the Contract. They shall in no event be made available to third parties, even if they are defective and we refused to take them back.

Supplier shall not be entitled to plead a right of retention towards the claim of our rights under no. 3.9. above.

- 3.10. If the value of our securities according to no. 3.2. exceeds the total of the purchase prices of all of our reserved property not yet paid for by more than 10 %, we undertake upon Supplier's request to release these securities. We shall have the right to select the securities to be released at our discretion.

4. Prices, Conditions of Payment

- 4.1. Prices quoted in our orders are binding.

Supplier's reservation to increase prices requires our explicit written consent.

Unless otherwise agreed upon, prices are quoted free place of destination including packaging and other costs.

Return of packaging material requires explicit agreement.

- 4.2. Prices as quoted shall include statutory VAT.

- 4.3. Invoices shall be sent to us in duplicate and must not be included in the respective delivery.

Invoices can only be handled by us in a timely manner if – according to the instructions contained in the respective order – they indicate the **order and identification numbers**. For any consequences resulting out of the failure to observe this obligation, Supplier shall be held liable unless he proves that he is not responsible for such failure.

Turn over tax shall be quoted separately in each invoice.

For any products manufactured outside the Federal Republic of Germany, a certificate of origin or an equivalent declaration by Supplier shall be submitted to us together with the respective invoice at the latest.

- 4.4. Unless otherwise agreed upon in writing, we pay invoices within a period of 14 days upon receipt of delivery and invoice with a 3 % cash discount, or within a period of 30 days upon receipt of invoice.

If we receive invoices during our business holidays and if, as a consequence thereof, we are not able to observe the 14 day period for receipt of the cash discount, we shall nevertheless be entitled to the cash discount if payment is made immediately after the end of our business holidays.

Payments shall be made at our discretion by sending a cheque or by bank or postal cheque transfer. For the observance of the payment period, the date as postmark shall be decisive.

Cash on delivery consignments, postal collection orders and any costs resulting thereof shall not be paid for by us.

- 4.5. We shall have the right to set off payments and the right of retention without limitation as statutorily provided for.

5. Delivery, Date of Delivery

- 5.1. Unless otherwise agreed upon, any deliveries and performances ordered by us shall be made free place of destination.

- 5.2. Dates and terms of delivery, acceptance and putting into operation etc. quoted in the order shall be binding.

- 5.3. Deliveries must arrive at the place of destination at the agreed date of delivery or respectively be ready for acceptance or putting into operation at the place of destination at the agreed date of acceptance or putting into operation. Performances shall be performed at the agreed date of performance.

- 5.4. If circumstances occur which might impede a timely fulfilment of the Contract in the quality agreed upon or if Supplier becomes aware of any such circumstances, he shall give immediate notice thereof to us in writing stating the reasons for such circumstances. Any damages incurred due to delayed notice, incomplete notice or failure to give notice at all shall be compensated for by Supplier.

- 5.5. As for the conditions and legal consequences of default or delay in delivery or performance, the statutory provisions shall apply. In particular, we shall be entitled to claim damages in lieu of the performance of the Contract provided that we previously had set Supplier a reasonable period for fulfillment of the Contract and Supplier had failed to observe this period. Should we claim damages, Supplier shall be entitled to prove that he is not responsible for the delay or default in delivery.

- 5.6. If delivery or performance is not effected in time, we shall be entitled to revoke the Contract, even if no fault or responsibility can be attributed to Supplier provided that we previously had set Supplier a reasonable period for delivery or performance and Supplier had failed to observe this period. Section 323 of the German Civil Code (§ 323 BGB) shall apply.
- 5.7. We shall be entitled to claim damages within the terms of no. 5.5. above in addition to the exercise of the right of revocation under no. 5.6. above.

6. Transportation, Passing of Risks, Documents, Packaging

- 6.1. If in individual cases we exceptionally agreed to bear transportation costs, Supplier shall choose the most economic way of transportation. Costs in excess thereof will be reimbursed by us only if they are due to specific packaging or transportation requirements issued by us.
- 6.2. Supplier shall be liable for any losses or damage occurring during transportation including the unloading procedure up to the point when delivery is handed over or accepted respectively. Supplier shall insure any deliveries at his own costs against transportation damage, if the deliveries contain material or parts supplied by us. By now, Supplier assigns to us all claims against the insurer to the amount of the purchase price of the material and parts supplied by us, we herewith accept such assignment.
- 6.3. All transportation and delivery documents as well as any other documents regarding our orders shall contain the full information (**order and identification numbers**) that is contained in the orders. Notices of dispatch shall be transmitted to us in duplicate immediately upon dispatch of the goods. Each delivery shall contain a delivery note additionally stating the order date. In case of a partial delivery only, the remaining amount to be delivered shall be indicated. The address on the package shall also state our purchase order number.
If Supplier fails to observe the above labeling requirements, we must not be held responsible for potential delays resulting therefrom.
- 6.4. Without specific agreement to that respect, we shall not be obligated to store packaging material or return it to Supplier.

7. Taking Delivery, Acceptance

- 7.1. If we are not able to take delivery or declare acceptance or to perform our duties to examine delivery and give notice of any defects due to circumstances of Force Majeure or any other impediments that occur after conclusion of the Contract or which we learn of without fault attributable to us only after conclusion of the Contract, and that could demonstrably not have been foreseen by us or avoided even with the utmost diligence, we shall be released from such obligations for the term and the extension of the effect of such circumstances and impediments. The above-mentioned circumstances or impediments- i.e. occurrence or faultless learning of such circumstances only after conclusion of the Contract, unforeseen and unavoidable occurrence as proven by us- shall include without limitation the following:
Legitimate labour struggle (strikes and lock-outs), stoppages or breakdowns, lack of material or personnel.
We shall report to Supplier immediately about the nature and the causes of such impediments.
- 7.2. We are entitled to refuse taking or accepting delivery prior to the date of delivery or acceptance agreed upon. Goods delivered prior to such date may be returned to Supplier or stored at third parties, at Supplier's risk and expense.
- 7.3. If there are any deliveries or performances by Supplier under a contract for work and services (Werkvertrag) and only a prospective date for delivery or performance was given, Supplier shall give us the date of acceptance at least 14 days in advance of the acceptance inspection. Upon our request, Supplier shall prepare an inspection protocol including any necessary material certificates in duplicate, according to which protocol the acceptance inspection shall be carried out and which shall include any defects detected during inspection. After signature by both parties this protocol shall serve as acceptance certificate. If Supplier is also obligated to assemble the goods, acceptance inspection shall not take place until the goods were put into operation at the place of destination.
With respect to software Supplier shall upon our request grant us a reasonable period of time before acceptance of the software for the testing of its requirements and functions agreed upon (trial period).

7.4. Products to be delivered are to be packed properly. If packaging and transportation instruction required by us are not observed, we shall be entitled to refuse taking delivery of the Products without incurring the consequences of delay in taking delivery.

8. Quality Requirements for Products, Defect Detection, Warranty, Prescription

8.1. All deliveries shall be compliant with all statutory or public authority provisions valid at the time of delivery for their distribution and use, in particular with any regulations regarding the production of medical devices, quality management, worker protection, accident prevention and other security requirements, such as included in DIN norms, UVV requirements, VDE regulations, CE standards, the Act on Machine Protection (Maschinenschutzgesetz), the GAA regulations, the technical standards of TÜV, the applicable fire prevention standards as well as any provisions applicable at the place of use for the avoidance of pollution, and shall conform with all acknowledged technical standards. Supplier shall inspect the contractual products before shipment and, upon our request, shall issue an inspection certificate.

Furthermore, all protection equipment necessary for the observance of the applicable accident prevention requirements shall be delivered together with the actual shipment without our explicit request to do so.

8.2. Our rights and claims with respect to warranty for defects are subject to the applicable statutory provisions without limitation, unless otherwise provided for in these present **General Terms and Conditions of Purchase**.

8.3. We are entitled to give notice of any apparent defects within 5 working days upon receipt of the respective product and of any hidden defects within 5 working days upon their detection.

8.4. Any warranty rights and claims shall be prescribed within the statutory terms of prescription.

8.5. Notwithstanding our further statutory rights and claims, in case of a defect of the product, we shall be entitled to send back the defective product at Supplier's risk and costs and shall furthermore be entitled to choose remedy of the defect either by repair of the defect or by delivery of a substitute product by Supplier at our discretion. Supplier shall bear any and all costs and expenses necessary for the purpose of repair or substitute delivery.

We reserve the right to claim damages, in particular damages in lieu of performance.

8.6. If we previously had set Supplier a reasonable period for remedy of the defect and Supplier failed to observe this period or if there is an urgent case of imminent danger we shall be entitled to repair any detected defects or substitute any defected products ourselves or have them repaired or substituted by a third party at Supplier's costs.

8.7. Supplier shall inform us about all considerable defects or potential or actual risks of defects resulting from his deliveries or performances, that occurred at his other customers or their customers.

9. Product Liability, Product Recall Liability, Product Insurance

9.1. If we are held liable under statutory product liability in accordance with national or foreign law, Supplier shall hold us free and harmless on first demand from any and all claims for damages, costs and expenses, as far as such claims are justified due to reasons within the Supplier's sphere of responsibility and as far as Supplier is himself liable in relation to the claimant.

9.2. In case of liability in accordance with 9.1. above, Supplier shall also be obligated to compensate for any and all costs incurred by us in accordance with sections 683, 670 of the German Civil Code (§§ 683, 670 BGB) as well as sections 830, 840 and 426 of the German Civil Code (§§ 830, 840 and 426 BGB) which may result out of or in connection with any product recall measures performed us. We shall inform Supplier about the contents and extent of such product recall measures as far as this is possible and may be reasonably expected from us and we shall give him the opportunity to comment on them. Further statutory rights and claims remain unaffected.

9.3. Supplier shall, for the term of the Contract with us including the period until prescription of any warranty claims, maintain an adequate product liability insurance with a coverage sum of Euro 1,000,000.00 per each single case of damage to a person or to property. Should we have any further claims for damages under law, such claims shall remain unaffected.

10. Third Parties' Protection Rights

- 10.1. Supplier shall guarantee that in connection with his products or performances no third party's rights are being infringed within the Federal Republic of Germany or within any of our export countries known to Supplier at the time of conclusion of the Contract.
Supplier in particular shall ensure by way of corresponding agreements with his employees, agents or representatives, as may be necessary, that the purpose of our Contract, in particular the agreed scope of use of any software licenses, will not be infringed by potential co-copyrights or other intellectual property rights. Upon our request Supplier shall prove to us the conclusion of such agreements with all persons taking part in the engineering of software programmes.
- 10.2. If we are held liable by a third party for infringement of his rights, Supplier shall be obligated to hold us free and harmless from such liability on first written demand; however, we shall not be entitled to enter into any kind of agreement with such third party, in particular any settlement of claims without Supplier's consent.
- 10.3. The above obligation to hold free and harmless from liability shall cover any and all costs and expenses, that we may necessarily incur out of or in connection with any third parties' claims. As the case may be, Supplier shall provide judicial support to us or shall upon our request enter into any judicial proceedings at his own expense.
- 10.4. We reserve the right to claim damages from Supplier.
- 10.5. The term of prescription for any claims under no. 10.1. to 10.4. above shall be ten years commencing with the conclusion of the respective contract.

11. Guarantee of Procurement

- 11.1. Supplier shall be liable without limitation and regardless of any fault attributable to him for the procurement of any ancillary deliveries or performances necessary for the deliveries and performances ordered (full liability for the procurement risk).
- 11.2. Supplier shall be liable in any event – even without fault attributable to him – for any ancillary deliveries or performances procured by him as if they were his own deliveries or performances. This shall apply also with regard to any defects.

12. Liability

- 12.1. If according to statutory law we may be liable due to faulty action or omission, the following shall apply, subject to no. 12.4. below:
- In case of gross or ordinary negligence our liability shall be limited to the foreseeable damage specific to the type of contract.
 - In case of ordinary negligence we shall only be liable if we breached a fundamental contractual obligation.
- 12.2. The limitation and exclusion of liability according to no. 12.1. above shall apply to any claims for damages regardless on what legal grounds; it shall apply in particular to claims for damages due to faulty acting/omission on completion of contract, to claims due to breach of obligations as well as to claims of tort for compensation of damage to property within the meaning of section 823 of the German Civil Code (§ 823 BGB).
- 12.3. As far as our liability is excluded or limited according to no. 12.1. and 12.2. above, such limitation or exclusion shall also apply to the personal liability of our employees, agents or representatives.
- 12.4. Our liability for faulty damage to life, body or health of a person shall remain unaffected, as well as our mandatory liability in accordance with the Product Liability Code (Produkthaftungsgesetz).

13. Right to Set Off, Right of Retention, Assignment

- 13.1 Supplier shall be entitled to set off his claims against ours only if his claims are connected with our business relationship and are undisputed, legally established or expressly acknowledged by us.
The same shall apply to his pleading of any rights of retention.
- 13.2 Any assignment of claims requires our written consent.

14. Ownership of Products, Ownership of Documents and Material Produced or Procured upon our Request and at our Expense

- 14.1. As early as at the time of production, Supplier shall transfer to us ownership of all products made for us and on our behalf according to our manufacturing documents and/ or made with the help of our manufacturing material.
No. 3.2. and 3.3. as well as 3.10 above shall apply accordingly.
- 14.2. Documents and material of any kind, that are produced or procured by Supplier upon our request and at our expense shall become our property by the time we pay for them at the latest.
- 14.3. Any expanded or prolonged reservation of ownership by Supplier shall explicitly be excluded.
15. **Copyrights, Exploitation Rights, Industrial and Intellectual Property Rights and Rights of Use**
- 15.1. The following provisions shall refer to any manufacturing material and products made by Supplier on the basis of our manufacturing documents, prototypes, models and samples as well as the contractual documents (drawings, construction plans etc.), manufacturing material or products, including software, that are made or developed for us, on our behalf and at our expense.
- 15.2. We exclusively reserve any and all industrial and intellectual property rights, copyrights and exploitation rights as well as rights of use to the manufacturing material and products within the meaning of no. 15.1. above.
We shall be able to use the aforementioned manufacturing materials and products in any way to the greatest possible extent, whether altered or not, whether within our own company or by transfer to third parties, while excluding Supplier from any use.
This shall also include the exclusive right to freely exploit any developments or inventions made for us or at our expense free of any additional royalty or compensation.
- 15.3. Concerning software, we shall be granted the exclusive, unlimited (as to time and location) right to use programmes and documentation in any way, amongst others the right to run programmes in our own or any other company in any way, to copy them and to distribute them to third parties, to disclose them in public or to transfer them by user-to-user connection or by wireless transfer. This shall also include the right to work on the programmes and documentation at our own discretion without Supplier's further consent or to alter them in any other way and to use the results thereof in the same way as the original version of the programmes or documentation. We shall be free to grant exclusive and non-exclusive licenses to third parties without Supplier's consent and to transfer licenses wholly or in part to third parties.
Supplier shall ensure that any potential rights under sections 12, 13 and 25 of the Copyright Act (§§ 12, 13 and 15 Urhebergesetz) are not asserted.
After acceptance we shall be entitled to request from Supplier at any time that he hands out to us all original and copy versions of the programmes (including source code), the documentation and other documents relevant in connection with the engineering of the programmes and that he confirms in writing the fulfillment of this obligation; as far as copies are kept on Supplier's data carriers that are mechanically readable, Supplier shall be obliged to destroy or delete such carriers instead of handing them out to us. We shall be entitled to make the above request with the exception, that Supplier shall remain entitled to keep one copy each at a safe place for the exclusive purpose of evidence and fulfillment of warranty obligations towards us.
Under all and any circumstances Supplier shall be prevented from transferring the programmes and documentation in whole or in part in the original or in a merely insignificantly altered version. In addition, he shall keep confidential all knowledge about the way we use these programmes.
- 15.4. Products and manufacturing material within the terms of no. 15.1. shall be kept confidential upon our request. The provisions of no. 3.8. and 16 shall apply accordingly.
- 15.5. Supplier shall be free to use any know-how or knowledge that he has already been aware of prior to execution of any contract with us.
In case of a reasonable interest on our side, we shall be entitled to request from Supplier to keep confidential and not to use, neither for own nor for third party's purposes, any know-how or knowledge about products and manufacturing material within the terms of no. 15. 1. above, that he gained during the execution of any contract with us. In such case, the provisions of no. 16 below shall apply accordingly.
- 15.6. If inventions are made during development works by employees of Supplier, Supplier shall assert his employer's claim to such inventions in time and transfer the rights herein to us.

16. Confidentiality, Non-use Obligation

- 16.1. Supplier agrees to keep confidential for an indefinite period of time and – except for the purposes of the Contract – not to document nor to transfer to third parties or use in any other way any and all information and documents, that he gains access to in connection with the Contracts concluded with us, and that are expressly marked as confidential or otherwise can be identified as our business secret.
- 16.2. This obligation shall not apply to information, that the public had access to at the time of the conclusion of the Contract or that became accessible to public without Supplier's fault as well as to information, that already was in Supplier's possession at the time of conclusion of the Contract.
- 16.3. Supplier shall inform all his employees, agents or representatives who have access to the information and documents to be kept confidential about the obligations under this Contract and shall bind them by way of adequate contractual agreements to confidentiality for an indefinite period of time; he further shall thereby ensure, that for an indefinite period of time they refrain from using, transferring or copying such information or documents without authorization to do so.

17. Place of Performance

Place of performance for deliveries shall be the place of destination stated by us, which shall be our place of business unless otherwise determined; place of performance for payments shall also be our place of business.

18. Place of Jurisdiction, Applicable Law, Miscellaneous

- 18.1. If Supplier is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – herein included liabilities from cheques and bills of exchange – shall either be our principal place of business or, at our sole option, the location of Supplier. This agreement as to the place of jurisdiction shall also apply for Suppliers having their location in a foreign country.
- 18.2. To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between Supplier and us, German law, excluding the United Nations Sales Convention (CIS Convention on contracts for the international sale of goods of April 11, 1980) shall apply exclusively.
- 18.3. Should individual provisions of these General Terms and Conditions of Purchase or individual provisions of other agreements concluded between the parties be or become invalid, this shall not affect the validity of the other provisions or agreements.