

# General Terms of Purchase of GEOMED Medizin-Technik GmbH & Co. KG

QM34-B030 Terms of Purchase Revision 03

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## Section 1 Scope, form

(1) These General Terms of Purchase (GTP) apply to all business relations with our business associates and suppliers ('Seller'). The GTP apply only where the seller is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTP expressly apply to contracts on the sale and/or delivery of movables ("goods") without regard to whether the seller itself manufactures the goods or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the version of the GTP in force at the time of the order from GEOMED or, in any event, the version most recently communicated to the seller in text form, shall be in effect as the master agreement, also for similar future contracts, without the need to refer to the GTP in each individual case.

(3) These GTP apply exclusively. Deviating, contrary or supplemental general terms and conditions of the seller shall become a contractual component only when and to the extent we have expressly consented to their applicability in writing. This requirement of consent applies in every case – for instance, even where we, with knowledge of the general terms and conditions of the seller, accept its deliveries without reservation.

(4) Individual agreements that are entered into with the seller (including side agreements, addenda and amendments) have priority over these GTP in every case. Subject to proof to the contrary, a written contract or our written confirmation are determinative of the content of such agreements.

(5) The seller's legally material declarations and notices in reference to the contract (e.g., setting a deadline, admonition, rescission) must be submitted in writing, i.e., in written or text form (such as letter, email or fax). Formal legal requirements and additional proof, particularly where there are doubts about the credentials of the declarant, remain unaffected.

(6) References to the application of statutory provisions are for clarification purposes only. Statutory provisions are applicable even without such a clarification unless they are directly modified or expressly excluded in these GTP.

## Section 2 Contract formation

(1) Our order is considered binding no sooner than its submission or confirmation in writing. The seller must alert us to obvious errors (such as misspellings and miscalculations) and incompletenesses in the order, including the order documents, for purposes of correction or completion before acceptance; otherwise, the contract is considered not entered into.

(2) The seller is obliged to confirm our order in writing within 10 business days or expressly by filling it through shipment of the goods without reservation (acceptance). Late acceptance is considered a new offer and requires acceptance by us.

## Section 3 Delivery time and delayed delivery

(1) The delivery time indicated by us in the order is binding. If the delivery time is not indicated in the order nor otherwise stipulated, it is 4 weeks from contract formation. The seller is obligated to inform us in writing without delay if, for any reason whatsoever, it anticipates that it will not be able to meet the stipulated delivery times.

(2) If the seller does not perform, does not perform within the stipulated delivery time, or is in default, our rights – particularly to rescission and damages – are governed by the statutory provisions. The provisions in (3) remain unaffected.

(3) If the seller is in default, along with further legal claims, we can demand liquidated reimbursement of our damages for default in the amount of 1% of the net price per full calendar week, but altogether not

more than 5% of the net price of the goods that are delivered late. We reserve the right to prove that we have incurred greater loss. The seller reserves the right to prove that absolutely no or only significantly less loss has been incurred.

#### **Section 4 Performance, delivery, passage of risk, default in acceptance**

(1) The seller is not authorised to have the performance owed by it rendered by third parties (e.g., subcontractors) without our advance written consent. The seller bears the procurement risk for its performances unless otherwise agreed in the individual case (e.g., restriction to what is in inventory).

(2) Delivery is 'carriage paid' within Germany to the place indicated in the order. If the destination is not indicated and not otherwise stipulated, the delivery is to be made to our registered office in Tuttlingen. The respective destination is also the place of performance for the delivery and any cure (debt to be discharged at creditor's domicile).

(3) The delivery is to be accompanied by a delivery slip that indicates the date (of issuance and shipment), content of the delivery (article number and quantity) and our order identifier (date and number). If the delivery slip is missing or incomplete, we will not take responsibility for resulting delays in processing and payment. A corresponding despatch note with the same content must be sent to us separately from the delivery slip.

(4) The risk of accidental destruction and accidental deterioration of the goods passes to us upon delivery at the place of fulfilment. If acceptance is agreed to, this is controlling for the passage of risk. In other respects as well, the statutory provisions of the law on contracts to produce a specific work apply accordingly to an acceptance. Delivery is equivalent to acceptance when we are in default of acceptance.

(5) The statutory provisions apply for the onset of our default of acceptance. However, the seller must also expressly offer us its performance if an act or involvement on our part (e.g., provision of material) is a stipulated specific or determinable calendar date. If we fall into default of acceptance, the seller can demand reimbursement of its extra expenses in accordance with the statutory provisions (Section 304 BGB). If the contract involves an item manufactured by the seller (custom-made item) which is unacceptable, the seller is entitled to further rights only if we have committed to cooperate and are responsible for the lack of cooperation.

#### **Section 5 Prices and payment terms**

(1) The price indicated in the order is binding. All prices are understood to include statutory value-added tax unless this is shown separately.

(2) Unless otherwise agreed in the individual case, the price includes all performances and additional services of the seller as well as all incidental costs (e.g., proper packaging, transportation costs including any transportation and liability insurance).

(3) Payment of the agreed price is due within 30 calendar days from the complete delivery and performance (including any stipulated acceptance) and receipt of a proper invoice. When we pay within 14 calendar days, the seller will grant us a 3% discount on the net amount of the invoice. In the case of a bank transfer, payment is made on time if our remittance order arrives at our bank before expiry of the payment deadline; we are not responsible for delays through the banks involved in the payment transaction.

(4) We owe no interest on payments. The statutory provisions apply to default in payment.

(5) We are entitled to the statutory extent of offset and retention rights as well as the defence of non-fulfilment of contract. We are expressly entitled to withhold payments that are due as long as we still have claims against the seller for incomplete or deficient performances.

(6) The seller has an offset or retention right only for legally established or undisputed counter claims.

#### **Section 6 Confidentiality and retention of ownership**

(1) We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, operating instructions, product descriptions and other documents. Such documents are to be used exclusively for

the contractual performance and must be returned to us upon completion of the contract. The documents must be kept confidential with respect to third parties, even after contract termination. The confidentiality obligation does not expire unless and until the knowledge contained in the supplied documents has become generally known.

(2) The above provision applies accordingly to substances and materials (e.g., software, finished and semi-finished products) as well as to tools, templates, samples and other objects we provide to the seller for the production. As long as they have not been processed, such objects must be stored separately at the seller's expense and insured in a reasonable amount against destruction and loss.

(3) Processing, commingling or combination (further processing) of supplied items is performed for us by the seller. The same applies when we further process the delivered goods with the result that we are deemed the manufacturer and acquire ownership in accordance with the statutory provisions not later than the time of the further processing.

(4) The goods must be transferred to us unconditionally and without regard to payment of the price. However, if in an individual case we accept an offer from the seller that conditions transfer on payment of the purchase price, the seller's retention of ownership expires, at the latest, upon payment of the purchase price for the delivered goods. Even before payment of the purchase price, we remain authorised to resell the goods in the ordinary course of business with advance assignment of the resulting amount receivable (alternatively, applicability of the basic retention of ownership through extension to the resale). In any event, all other forms of retention of ownership are thereby excluded, particularly the augmented and the transferred retention of ownership as well as the retention of ownership which is extended through the reprocessing.

## **Section 7 Defective delivery**

(1) Unless otherwise provided below, the statutory provisions apply to our rights in the case of material defects and defects of title to the goods (including improper and short delivery) and in the case of other breaches of duty by the seller.

(2) The seller is expressly liable under the statutory provisions for ensuring that the goods have the stipulated qualities when risk passes to us. The qualities deemed agreed to are, in any event, those product descriptions which – particularly through description or reference in our order – are the object of the particular contract or which were included in the contract in a similar manner to these GTP. For this, it makes no difference whether the product description originates from us, from the seller or the manufacturer.

(3) We are not obligated to inspect the goods or to make special inquiries about any defects at contract formation. In partial deviation from Section 442 (1) second sentence BGB, we are therefore also entitled to make claims for defects without limitation if we are unacquainted with the defect at contract formation due to gross negligence.

(4) The statutory provisions (Sections 377, 381 of the German Commercial Code (HGB)) apply to the duty to inspect and give notice, subject to the following: Our duty to inspect is limited to defects that openly come to light during our incoming goods inspection through external examination, including of the delivery documents (e.g., transport damage, improper or short delivery), or are discernible through sampling during our quality control. If acceptance is stipulated, there is no duty to inspect. Apart from that, it depends on the extent to which an inspection is feasible in the ordinary course of business in consideration of the circumstances in the individual case. Our duty to give notice for subsequently discovered defects remains unaffected. Irrespective of our duty to inspect, our complaint (notification of defects) is considered prompt and timely in any event if dispatched within 14 business days from discovery or, in the case of patent defects, from delivery.

(5) The seller bears the necessary expenditures for purposes of the inspection and cure, even if it turns out that there was in fact no defect. Our responsibility to pay damages in the case of an unjustified request to remedy defects remains unaffected; however, we are liable in this respect only if we have recognized, or through gross negligence have failed to recognize, that no defect existed.

(6) The following applies irrespective of our legal rights and the provisions in paragraph (5): if the seller fails to meet its obligation to cure – through, at our option, correction of the defect (repair) or delivery of a defect-free article (replacement) – within a reasonable period set by us, we can remedy the defect ourselves and request either reimbursement from the seller for the necessary expenditures therefor or appropriate advance payment. If the cure by the seller has failed or is unreasonable for us (e.g., due to

special urgency, threat to operational safety or imminent onset of excessive damages), it is not necessary to set a grace period; we will promptly notify the seller of such circumstances, in advance if possible.

(7) Apart from that, in the case of a material defect or defects of title, we are entitled to reduce the purchase price or to rescind the contract in accordance with the statutory provisions. Additionally, we have a right to recover damages and reimbursement of expenditures in accordance with the statutory provisions.

## **Section 8 Recourse against suppliers**

(1) Besides the claims for defects, we have unrestricted entitlement to our statutorily defined rights of recourse within a supply chain (recourse against suppliers under Sections 445a, 445b, 478 BGB). We are expressly entitled to demand precisely the type of cure (repair or replacement) from the seller that we owe our customer in the given case. This does not limit our statutory right to choose (Section 439 (1) BGB).

(2) Before we recognize or satisfy a claim for a defect asserted by our customer (including reimbursement of expenditures pursuant to Sections 445a (1), 439 (2) and 3 BGB), we will notify the seller, give it a brief explanation of the facts and ask it for a written opinion. If no substantiated opinion follows within a reasonable time and no amicable resolution is effectuated, the claim for a defect that is actually allowed by us is considered owed to our customer. In such case, it is the responsibility of the seller to provide proof to the contrary.

(3) Our claims under the recourse against suppliers also apply when the defective goods were further processed by us or another contractor – for example, through installation into a different product.

## **Section 9 Manufacturer liability**

(1) If the seller is responsible for a product defect, it must indemnify us against third-party claims to the extent that the cause resides in its domain and organisational area and it is individually liable in relation to third parties.

(2) As part of its indemnification obligation, the seller must reimburse expenditures pursuant to Sections 683, 670 BGB which arise from or in connection with the utilisation of third parties, including recall campaigns conducted by us. To the extent possible and reasonable, we will inform the seller about the content and scope of recall measures and give it an opportunity to comment. Further legal claims remain unaffected.

## **Section 10 Limitation of actions**

(1) Unless otherwise provided below, the mutual claims of the parties lapse in accordance with the statutory provisions.

(2) In deviation from Section 438 (1) no. 3 BGB, the general limitation period for claims for defects is three years from the passage of risk. If acceptance is agreed to, the limitation period begins upon acceptance. The three-year limitation period also applies accordingly to claims arising from defects of title, although the statutory limitation period for third party in rem claims for the return of purchased items (Section 438 (1) No. 1 BGB) remains unaffected; in addition, claims arising from defects of title in no event lapse while the third party can still assert the right against us – particularly absent lapse.

(3) The limitation periods of the sale of goods law, including the above extension, apply in the statutory scope to all contractual claims for defects. To the extent we are also entitled to claim non-contractual damages due to a defect, the regular statute of limitations applies to this (Sections 195, 199 BGB) unless application of the limitation periods of the sale of goods law results in a longer limitation period in the given case.

## **Section 11 Choice of law and judicial venue**

(1) The law of the Federal Republic of Germany, with the exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods, applies to these GTP and the contractual relationship between us and the seller.

(2) If the seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive, also international, judicial venue for all disputes arising from the contractual relationship is the locale of our registered office in Tuttlingen. The same applies if the seller is an entrepreneur within the meaning of Section 14 BGB. We are, however, in all cases, also entitled to institute legal proceedings at the place of performance for the delivery obligation pursuant to these GTP or an overriding individual agreement or at the general judicial venue of the seller. Overriding statutory provisions, particularly on exclusive jurisdictions, remain unaffected.