



## GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

of

**Medicon eG**  
**Gänsäcker 15**  
**78532 Tuttlingen**  
**Germany**

**for international business transactions**

### **1. Scope**

1.1 Our General Terms and Conditions of Delivery and Payment (hereinafter referred to only as "Conditions") only apply to companies, legal persons under public law and special funds under public law (hereinafter referred to as "Customers"). They do not apply to consumers.

1.2 Unless otherwise agreed in writing, all - current and future - deliveries of goods and services (hereinafter referred to only as "Deliveries") to Customers shall be exclusively subject to these Conditions.

1.3 The terms and conditions of our Customers shall not form part of any contract even if we do not expressly exclude them.

1.4 The additional ALZBs of Medicon eG (MDR requirements for distributors in the EU / regulatory requirements for distributors outside the EU) are also a co-applicable document to the currently available version of the ALZB .

1.5 In the event of discrepancies between English language and German version of this document, only the German version shall be applicable.



## **2. Conclusion and Content of the Contract**

2.1 Our offers are non-binding. Unless otherwise specified in the purchase order, the Customer is bound by its purchase order for a period of 14 days from the date on which we receive it. Contracts only come into effect by way of our written order confirmation or delivery. Fax and email are also deemed to constitute the written form.

2.2 Oral ancillary agreements or commitments by our employees which go beyond the content of the written contract or which modify these Conditions in such a way that is disadvantageous to us, are only valid where they are confirmed in writing.

2.3 Any illustrations, drawings and specifications of weight, colour and size, provided by us in connection with the contract, only represent approximate values insofar as a) they are not expressly identified as binding or b) material, and all liability in connection with such documents is hereby expressly excluded insofar as this is permitted by law.

2.4 We reserve all rights of ownership and copyright to cost estimates, drawings, and other documentation which we make available to the Customer. They must not be disclosed to third parties without our prior written consent.

2.5 Where, following conclusion of the contract, changes are made to our products as part of the ongoing development process, we may deliver the changed version insofar as the changes are minor and reasonable for the Customer.

## **3. Price, Payment**

3.1 Unless otherwise specially agreed, prices shall be in EUR and apply FCA our distribution warehouse Incoterms 2020®, net and exclusive of packaging costs and value added tax at the applicable rate in each case.



3.2 If the delivery period is longer than 2 months, we are entitled to increase the agreed prices accordingly where, following conclusion of the contract, there are major changes in the price of energy, supplies or raw materials or staff costs, and we are not responsible for these changes. If the price increase exceeds 10% and the Customer does not agree to it, the Customer is entitled to rescind the contract, in writing, within 2 weeks of receipt of notification of the price increase.

3.3 Unless otherwise specially agreed, payment, without deduction, must clear our bank account within 30 days of delivery and invoice date. In the case of first-time orders and custom-made items, we reserve the right to require payment in advance. Compliance with the payment deadline is determined by the date on which payment arrives in our bank account. Payments are only deemed to have been made to the extent that we have free disposal over them at our bank. We only accept cheques on account of payment and only subject to prior written agreement; bank charges are borne by the Customer. They are due immediately.

3.4 If it is agreed that the Customer must issue an irrevocable and non-transferable documentary credit, via its bank or another bank approved by us, the issuance of the credit must take place in compliance with the ICC ERA 600 "Uniform Customs and Practice for Documentary Credits".

3.5 In the event of failure to comply with the agreed payment deadline, we will charge default interest, without sending a reminder, at a rate of 9% above the base rate applicable at the time, but in any case no less than 10%.

3.6 The Customer is only permitted to assert a right of set-off or retention insofar as its counter-claims are undisputed, recognised or have been upheld by a final court judgement, and provided that the statutory requirements under Art. 120 et seq. Swiss Code of Obligations have been fulfilled. The right of retention is also limited to claims arising from the same contractual relationship.



#### **4. Place of Delivery, Lead Time, Force Majeure**

4.1 Delivery shall be FCA our Tuttlingen plant or distribution warehouse specified in the order confirmation Incoterms ® 2020.

4.2 Delivery periods or delivery dates, specified in the order confirmation, or otherwise agreed, are approximate and therefore non-binding.

4.3 The delivery period commences on dispatch of the order confirmation but not before the submission of any documents, permits or clearances necessary for delivery, which must be obtained by the Customer; and not before the receipt of any agreed down payment or payment security; and also not before confirmation of an agreed letter of credit. Any agreed delivery date shall be deferred accordingly where necessary.

4.4 It is not necessary to notify the Customer of successful delivery.

4.5 Where shipment is delayed at the Customer's request, or as a result of other circumstances for which we are not responsible, we shall charge warehouse rent for storage at our plant, of at least 0.5% of the net invoice amount for the stored delivery, for every month or part thereof. This shall be without prejudice to additional statutory rights.

4.6 Requests for changes made by the Customer shall extend the delivery period until we have examined their feasibility and, provided we give our approval, for the period required for implementing the new requirements into the production. Where ongoing production is suspended due to the request for changes, we may bring forward and finish other orders. We are not obliged to keep production capacity free during the period of the delay.

4.7 Compliance with the delivery period presupposes performance of the Customer's contractual obligations.

4.8 Partial deliveries are permitted and must be accepted by the Customer.



4.9 We are entitled to comply with our contractual obligations, even after expiry of the agreed delivery period, provided we have notified the Customer of the overrun and specified a new delivery date. The Customer is entitled, within a reasonable period, to reject delayed performance of the delivery, provided it can show that delayed delivery is of no use to it. We shall be liable only in accordance with Clause 4.10. for any necessary additional expenditure incurred by the Customer as a result of late delivery.

4.10 We shall only be liable for the consequences of late delivery in cases of intent or gross negligence. In all other cases, our liability is excluded insofar as this is permitted by law.

## **5. Right of Retention**

5.1 We may suspend performance of our contractual obligations, in whole or in part, if after conclusion of the contract it becomes evident that the Customer will not fulfil its contractual obligations, either in whole or in part. This applies, in particular, where the Customer fails or partly fails to comply or delays in complying with its payment obligations towards us or a third party. In this case, we can require provision of security or payment in advance.

Where the Customer fails to comply with this requirement within a reasonable time limit, we can rescind that part of the delivery contract which has not yet been fulfilled. The time limit is unnecessary where the Customer is obviously unable to provide security, such as for example where there has been an application to initiate insolvency proceedings against the Customer's assets.

5.2 We are also under no obligation to continue with performance where the Customer provides security, as a guarantee for payment, which is voidable under the applicable insolvency provisions.



## **6. Transfer of Risk, Reservation of Own Supply**

6.1 The risk to price and performance shall pass to the Customer according to Section 4.1 as soon as the goods are made available to the first carrier. This also applies where partial deliveries take place or where we agree to provide other services, e.g. conclusion of the shipping contract, shipping - including by way of our own shipping personnel -, shipping costs or delivery and installation. At the Customer's request, we will insure the shipment at the Customer's expense against transport damage.

6.2 Where shipping is delayed through no fault on our part, the risk shall pass as soon as we have notified the Customer of our readiness for delivery.

6.3 Our delivery obligation is subject to the proviso that we receive on-time and correct delivery from our own suppliers unless incorrect or delayed delivery by our own suppliers has been caused by us, at least as a result of gross negligence. Insofar as we have not caused incorrect or late delivery by our own suppliers, either intentionally or due to gross negligence, we shall not be liable for damages and shall be released from our performance obligation. We are under a duty to notify the Customer without delay about the lack of availability and reimburse any consideration already provided by the Customer.

## **7. Force Majeure**

7.1 Force majeure or other unforeseen and unavoidable events, for which we cannot be held responsible (e.g. strikes or lockouts, operational breakdown, problems in the procurement of material or energy, transport delays, shortages in staff, energy or raw materials, epidemics, official measures or difficulties in obtaining authorisations esp. import or export licences), shall extend the delivery time by the duration of the period of disruption and its effects. This also applies where our own suppliers are subject to hindrance or during an existing period of delay.

7.2 Where the obstruction is not purely temporary, both parties to the contract are entitled to rescind. The right to claim damages is excluded in the cases referred to in Clause 7.1.



## **8. Reservation of Title**

8.1 We reserve title to the delivery item until full payment of the purchase price and any ancillary claims. This also applies where our claims have been recorded, altogether or individually, on a running account and the balance has been drawn and acknowledged. The Customer shall, at its own expense, sufficiently insure the delivery item, at the replacement value, against loss and damage. The insurance policy and evidence of payment of the premiums must be submitted to us on request. The Customer hereby assigns to us any claims under the insurance policy, subject to the condition subsequent that title passes to the Customer. We hereby accept the assignment.

8.2 Where a third party substantiates or asserts a right to the reserved goods, the Customer shall notify us of this without delay. The costs arising as a result of any defence against a third-party attachment of the reserved goods shall be borne by the Customer insofar as they cannot be recovered from the third party.

## **9. Liability for Non-conformity of Delivered Goods**

9.1 Within a short time after delivery pursuant to Clause 4.1., the Customer shall examine the goods as to non-conformity with the contract and give us written notice within no more than 14 days of becoming aware of the non-conformity or of the non-conformity becoming identifiable. At the same time, the Customer must precisely specify the non-conformity.

9.2 Where a notification of non-conformity fails to comply with these requirements, the Customer may only rely on the recourse to which it is entitled under these provisions if we positively knew of the facts substantiating the non-conformity and fraudulently failed to disclose them to the Customer.



9.3 In the case of goods which do not conform to the contract (material defects and defects in title), we provide the Customer with a warranty in accordance with paragraphs a. to g. below. Clauses 9.4. and 9.5 apply where we have given guarantees and indicated guaranteed characteristics.

- a) Customary deviations in quantity of up to 10% and technical improvements to the goods shall not constitute non-conformity.
- b) We accept liability under Art. 42 CISG for the fact that the goods are free from any third-party rights based on industrial or other intellectual property, only with regard to infringements in the Federal Republic of Germany. We are unaware (without special verification) of any breaches of intellectual property rights in other countries.
- c) In the case of a legitimate complaint, the Customer may exclusively demand that the goods be repaired or, if this is not possible, delivery of substitute goods conforming to the contract.
- d) Cancellation of the contract, a reduction in the purchase price and the assertion of claims for damages are excluded, provided it is lawful to do so.
- e) Statements by us relating to the non-conformity complained of by the Customer serve only to clarify the situation and shall not constitute any recognition either that there has been non-conformity or that there has been any proper notification of non-conformity.
- f) Insofar as the non-conformity arises from an essential third-party product, we are initially entitled to restrict our liability to the assignment of rights of recourse to which we are entitled as against the supplier of the third-party product, unless satisfaction by way of the assigned right fails or cannot be obtained for some other reason.



- g) If the Customer or a third party makes inappropriate changes or repairs to the delivery item without our prior written approval, we shall not be liable for the resulting consequences.

9.4 Where a guarantee has been given, we shall be liable for the existence of the guaranteed characteristics of the goods within the scope of the guarantee.

9.5 Guaranteed characteristics are only those characteristics which we expressly indicate as guaranteed. Our liability for the lack of guaranteed characteristics is excluded provided this is permitted by law.

9.6 Claims by the Customer based on the delivery of goods which do not conform to the contract, shall lapse 12 months after transfer of risk pursuant to Clause 4.1, unless we have fraudulently concealed non-conformity, or caused such non-conformity intentionally or by gross negligence, or we are liable under guarantee, or due to death, physical injury or damage to health caused by the non-conformity.

## **10. Damages**

10.1 Unless otherwise specified in Clause 9.2 and 10.2, we shall be liable, irrespective of the legal basis, for loss incurred by the Customer only where the loss is due to intentional or grossly negligent conduct on our part. In all other cases, our liability is excluded insofar as this is permitted by law.

10.2 Our liability for death, physical injury, and damage to health, and under guarantees issued by us, remains unaffected.

10.3 Claims against us for damages under Clause 4.10 and Clause 10.1 shall lapse 12 months from commencement of the statutory limitation period.



## **11. Liability for Auxiliary Persons**

Contractual liability for auxiliary persons shall be excluded provided this is permitted by law. This applies in particular in connection with guarantees, guaranteed characteristics, other defects, transportation, and delay.

## **12. Samples and consigned goods**

12.1 Samples supplied to the Customer and goods which the Customer resells in its own name on our account (consigned goods), are stored at the Customer's risk. The Customer must notify us, in writing and without delay, of any damage to, or loss of, the samples or consigned goods as well as incidents which could be detrimental to our property. In the case of damage to the samples or consigned goods, which is accidental or caused by the Customer, the Customer shall bear the cost of repair or, where this is not possible, the cost of replacement at our prices applicable at the time. We must be notified of any defects pursuant to Clause 9.1.

12.2 At the Customer's request, we shall accept the return of samples and consigned goods, within 3 months of delivery, pursuant to Clause 13. Unless otherwise agreed, goods stored by the Customer for longer than 3 months after delivery are deemed to have been sold to the Customer. They will be invoiced accordingly. These Conditions shall apply to such a sale contract subject to the proviso that the purchase price is due immediately without deductions.



**13. Conditions for accepting return (other than in the case of liability for non-conforming goods)**

13.1 Unless goods are returned because they do not conform to the contract, goods can only be returned with our express written consent. Consent is deemed to have been given in the case referred to in Clause 12.2. The Customer must provide proof of the delivery date of the goods to be returned.

13.2 In the following cases, in particular, return is generally prohibited:

- a) where products have been custom-made for the Customer, or modified or do not fall within our standard product range;
- b) where packaging units have been damaged, opened or marked;
- c) where products are used or damaged;
- d) where products are past their use-by or expiry date;
- e) where packaging for implants has been opened;
- f) where products risk compromising hygiene standards.

13.3 The value to be refunded to the Customer on return of the goods depends on their age, condition, and the capacity for resale. Where we are not responsible for the reason for returning the goods, we are also entitled, in addition to the cost of removing unwanted labelling, to charge a handling fee of up to 20% of the original value of the goods.

13.4 Goods are returned DDP our Tuttlingen plant Incoterms<sup>®</sup> 2020.



#### **14. Validity, Written Form, Language**

14.1 Where any provision of these Conditions is or becomes invalid, or where the Conditions contain an omission, this shall not affect the legal validity of the remaining provisions. In place of the invalid provision, a valid provision is deemed to have been agreed which comes closest to the meaning and purpose intended by the Parties.

14.2 Amendments, additions, and any agreement to cancel the contract must be in writing in order to be valid. The same applies to other declarations by the contracting parties which are necessary for the substantiation, safeguarding or exercise of their rights, particularly notifications of defects, setting of deadlines or unilateral declarations of annulment of the contract. Fax, remote data transmission (RDT) and email are also deemed to constitute the written form. The sender can only invoke notifications which have been received by the recipient.

14.3 Any communication between the Parties and any declaration by the Parties must be in German or English.

#### **15. Place of Performance, Dispute Resolution, Applicable Law**

15.1 Unless otherwise agreed, the place of performance for all obligations under the contractual relationship with the Customer shall be our head office in Tuttlingen.

15.2 Dispute resolution for Customers based within the European Economic Area (EEA)

The courts of Basel-Stadt in Switzerland shall have jurisdiction for all disputes arising from and in connection with the contractual relationship. We are also entitled to bring proceedings in the courts in the location of the Customer's registered office.



15.3 Dispute resolution for Customers based outside the EEA.

All disputes, differences of opinion or claims arising under or in connection with the contractual relationship with the Customer, including in relation to its validity, invalidity, breach or cancellation, shall be decided by way of arbitration proceedings pursuant to the Swiss International Rules of Arbitration of the Swiss Chambers' Arbitration Institution. The arbitration rules in force on the date on which the arbitration proceedings are instituted shall apply. The location of the arbitration proceedings is Zurich. The arbitration proceedings shall be conducted in German or English.

15.4 Swiss law applies including the provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).