

General Terms and Conditions

MSI MedServ International Deutschland GmbH

§ 1 Exclusive Application of our General Terms and Conditions

- 1.1 Our General Terms and Conditions are applicable to all present and future business relations with companies, even if they are not expressly agreed upon anew. Our General Terms and Conditions are deemed accepted with the receipt of the goods or services at the latest.
- 1.2 Our deliveries, offers, and services are governed exclusively by these terms and conditions of business. We repudiate adverse or deviating terms and conditions of the ordering party, unless we expressly agreed to them in writing.
- 1.3 Entrepreneurs as defined by the terms and conditions are natural and legal persons or partnerships having legal personality with whom business relationships are established and who pursue an industrial or self-employed occupational activity.

§ 2 Offer, Conclusion of Contract

- 2.1 Our offers are not binding, except when otherwise stipulated in the order confirmation. Technical specifications as well as the form, colour, size, and / or weight are subject to change within the bounds of reasonableness.
- 2.2 We reserve our property rights and copyrights for documents such as illustrations, drawings, and sample packages belonging to the offer; they must not be made accessible to third parties. Our products are partly protected by patents and utility models. Unauthorized reproductions will be prosecuted under criminal and civil law.
- 2.3 Orders are binding offers. We can accept such an offer at our own option within 14 days by sending an order confirmation or by sending the ordered goods to the ordering party within this period.

§ 3 Ordering Party's Instructions for Execution

If the ordering party specifies the design and composition features of the delivery item in a way that does not comply with our production, it shall bear responsibility that no third-party rights are infringed. The ordering part shall release us from any third-party claims.

§ 4 Terms for Delivery, Dates of Delivery

- 4.1 Terms for delivery and dates of delivery shall only be binding if they are expressly agreed upon or confirmed by us as being binding. The term for delivery commences with the dispatch of the order confirmation. The term for delivery is complied with if the goods or the services rendered by us are furnished by the end of this term.
- 4.2 If we are in default with the delivery / services, the ordering party may withdraw from the contract after a reasonable period of at least 90 days in case the goods have not been announced ready for shipment by the end of the term.
- 4.3 We are entitled to carry out partial deliveries and partial performances.
- 4.4 Compliance with our delivery commitments requires that the ordering party has fulfilled the obligations incumbent on it orderly and in due time.
- 4.5 In all cases in which the production or delivery is not possible or not possible in time for reasons we are not responsible for (e.g. force majeure, strike, lock-out, lack of raw and operating materials, etc.), the term for delivery shall be extended appropriately. If a term of delivery was agreed upon, we shall only be in default if the ordering party granted us a grace period of 14 days. In case of non-acceptance of the delivery or dispatch offer, we are authorized to grant a grace period of 14 days. Thereafter, we can withdraw from the contract and claim damages.
- If the goods cannot be dispatched for reasons which the ordering party is responsible for, we are entitled to place the goods in storage at the ordering party's risk and expense. In such cases, the date of storage shall be considered as the delivery date, the warehouse warrant shall replace the documents of the contract.

§ 5 Passing of Risk

- 5.1 Goods are delivered "ex works", unless otherwise expressly stipulated in the order confirmation.
- 5.2 The risk passes to the ordering party as soon as the consignment has been handed over to the person performing transport, however, at the latest after it has left our company. This also applies in case of partial deliveries or if we have also taken over other services, e.g. forwarding costs.
- 5.3 The handing-over shall be treated in the same way, if the ordering party is in default of acceptance.

§ 6 Warranty for Defects

- 6.1 At the ordering party's option, we warrant for defects of the goods or other services, in particular for defects which are due to fault in material, constructional defects, bad workmanship, or considerable impairment of the usability by remedying defects or delivering replacements. The warranty obligation shall lapse, if the goods or the services respectively are changed, handled, or stored improperly.
- 6.2. The ordering party is obliged to grant us reasonable time and opportunity for carrying out repairs or delivering replacements or spare parts. If the ordering party refuses this, we shall be exempt from liability for defects. The ordering party is obliged to keep the rejected goods available to us.
- 6.3 If we are not prepared or not able to remedy defects / deliver replacements, or if this work is delayed beyond reasonable terms for reasons which we are responsible for, or if we fail to remedy defects / deliver replacements in another way, the ordering party is entitled at its option to withdraw from the contract or to demand an appropriate reduction of the purchase price.
- 6.4 Obvious defects are to be reported in writing within a period of 14 days from receipt of the sales item; otherwise the assertion of warranty claims shall be excluded. Timely dispatch shall suffice for compliance with the term-limit. The full burden of proof lies with the ordering party for all conditions of entitlement, in particular for the defect itself, for the time of ascertainment of the defect and for the timeliness of the notice of defects.
- 6.5 We guarantee that our products or services are free from defects for a period of 24 months. For repairs we guarantee for a period of 6 months. If the items have been used, liability for material defects shall be excluded.
- 6.6 On principle, only the manufacturer's product description shall be considered as agreed upon with regard to the condition of the goods. Public statements, commendations, or advertising made by the manufacturer in comparison shall not constitute information about the condition of the goods according to contract.
- 6.7 Standard commercial tolerances with respect to dimension, quantity, weight, quality, colour, etc. shall not give rise to complaints.

§ 7 Liability

- 7.1 In case of slightly negligent violations of duty by us or our performing agents or vicarious agents, our liability shall be limited to the contract-typical, foreseeable, direct average damage. We shall not be liable in case of slightly negligent violation of inessential contractual duties.
- 7.2 We shall not be liable for claims for damages from culpa in contrahendo or due to tortious claims for compensation of property damage pursuant to § 823 of the German Civil Code (BGB).
- 7.3 The limitation on liability shall also be applicable insofar as the ordering party demands compensation of useless expenditures rather than performance instead of a claim for compensation of the damage.
- 7.4 The limitation shall not apply to claims resulting from product liability, in case of bodily injury and detriment to health or in case of loss of life attributable to us.
- 7.5 Claims for damages due to defects shall become statute-barred after 12 months from the date the goods were delivered. This shall not apply if we can be blamed for fraudulent intent.
- 7.6 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 performing agents.

§ 8 Retention of Title

- 8.1 The goods are delivered subject to retention of title.
- 8.2 We retain title to the delivery items until the ordering party's payment obligation resulting from the business relation has been settled in full.
- 8.3 The customer is obliged to handle the goods with care. If maintenance work and service work are required, the customer has to carry these out at regular intervals and at its own expense.
- 8.4 The customer is obliged to notify us immediately of third-party access to the goods, for instance in case of a seizure, as well as possible damage or destruction of the goods. The customer shall notify us immediately of a change in ownership of the goods or of the customer's own transfer of residence.
- 8.5 In case of the customer's conduct in violation of the contract, in particular in case of default in payment or violation of an obligation according to items 3 and 4 of this provision, we are entitled to withdraw from the contract and to demand the return of the goods.

- 8.6 Until revoked, the ordering party may only sell the goods delivered subject to retention of title in ordinary course of business at its usual terms and conditions of business and only as long as it is not in default of payments. The ordering party's claims from the resale of the goods subject to retention of title are already assigned to us now. It serves the security to the same extent as the goods subject to retention of title themselves. If the goods under retention of title are sold by the ordering party together with other goods not bought from us, the assignment of the claim from this resale shall only be valid for the amount of the resale value of the goods subject to retention of title. We accept the assignment.
- 8.7 As long as the retention of title exists, the delivery item shall be dealt with and / or processed and combined with other items for us without us herewith being put under an obligation and without our property being lost because of this. If the ordering party processes or combines the delivery item with other goods, we are jointly entitled to the new goods in proportion of the value of the delivery items to the other processed or combined goods at the time of processing or combination. The new goods resulting from the processing are considered as goods subject to retention of title insofar as within the meaning of these terms and conditions.
- 8.8 In case of resale of the goods subject to retention of title, the ordering party is entitled to collect claims through us up to a cancellation permissible at any time. Cancellation shall only be effected, if the ordering party does not fulfill its payment obligations properly or circumstances become known which are appropriate after a due assessment of the circumstances to reduce the ordering party's creditworthiness. In case of a cancellation, the ordering party is obliged to inform its buyers immediately of the assignment and deliver the information and documents required for the collection to us.
- 8.9 We are obliged to release securities assigned to us at the request of the ordering party insofar as the realizable value of our securities exceeds the secured claims by more than 10 %; the choice of the securities to be released shall be incumbent on us.

§ 9 Prices, Payments

- 9.1 Our prices in EURO are quoted ex works plus packing, loading, freight, and the like, plus the legal value added tax valid in each case.

- 9.2 The prices are indicated on the price lists valid at the time the contract is concluded. Previous price lists automatically become invalid when new price lists come into force.
- 9.3 Unless agreed upon otherwise, payment is to be effected immediately after receipt of the invoice without any deductions (discount).
- 9.4 If the ordering party is in default, we are entitled to claim the damage caused by default. After granting of a reasonable grace period we are also entitled to withdraw from the contract or to claim damages. The assertion of a further damage caused by default shall also remain reserved in this case. If the time-limit is exceeded, we are entitled to claim default interests amounting to the sum defined in § 288 of the German Civil Code (BGB).
- 9.5 The ordering party can only claim rights of set-off if its counterclaims were either determined by legal force or were acknowledged by us.
- 9.6 The ordering party can only exercise a right of retention if its counterclaim is based upon the same contractual relationship.
- 9.7 If we obtain knowledge after conclusion of the contract of a considerable deterioration in the ordering party's financial circumstances, we are entitled to demand prepayment and to hold back services not yet performed.
- 9.8 If our services are rendered as agreed upon later than 6 months after conclusion of the contract, we may adjust the price proportionately to the corresponding changes in material or labour costs occurred since conclusion of the contract up to the delivery.

§ 10 Repairs

- 10.1 Insofar as not agreed upon otherwise, we will first of all prepare and send an estimate for the repairs considered necessary after receipt of an instrument. The estimate will be prepared on the basis of an instrument that is not or only partly dismantled. We shall be bound by the estimate for a month. We will not carry out the repairs until the customer has confirmed the order for the performance of the repair work in accordance with the estimate. If it turns out during the performance of the repair work that the costs mentioned in the estimate do not suffice due to further defects or additional expenditure, we are authorized to continue the repair work if the estimated costs are not exceeded by more than 15 %. If it is foreseeable that the costs will exceed 15 %, we have to submit a supplementary estimate to the ordering party with regard to the

additional costs arising and we will not continue with the repair work until a further written order has been placed. A separate share for shipping costs will be invoiced for repairs subject to a charge.

- 10.2 At the request of the ordering party we shall make available a replacement instrument on a rental basis. When a repair order is placed, the ordering party shall pay a lump sum of € 109.00 plus the value-added tax valid in each case which will be invoiced with the repair work. The ordering party must return the replacement instrument immediately at the end of the rental term (receipt of the repaired instrument). If use is continued, we reserve the right to demand an additional replacement for use of € 48.00 per day plus the value-added tax valid in each case.
- 10.3 If no repair order is placed, the instrument will be sent back unrepaired and a handling fee of € 80.00 plus the value-added tax valid in each case and shipment will be charged. If a repair order is not placed, we charge a rent of € 48.00 per day plus the value-added tax valid in each case for requested replacement instruments.
- 10.4 Damage to the replacement instrument, for which the ordering party is responsible, or accessories of the replacement that are not sent back will be invoiced to the ordering party.

§ 11 Place of Performance, Jurisdiction, Partial Nullity

- 11.1 These terms and conditions are subject to the law of the Federal Republic of Germany. The provisions of the UN Sales Convention shall not apply.
- 11.2 The place of performance for all obligations resulting from the contractual relationship with the ordering party shall be 88630 Pfullendorf, Germany. The place of jurisdiction for all disputes arising from or in connection with this contract shall also be 88630 Pfullendorf, Germany. This also applies if the ordering party has no place of general jurisdiction in Germany or if the domicile or usual place of residence is not known at the time of institution of legal proceedings. We are entitled to legally claim against the ordering party at its general place of jurisdiction.
- 11.3 If single or several provisions of the contract including these General Terms and Conditions are or become void in whole or in part, the validity of the other provisions shall remain unaffected thereof. The regulations that are void in whole or in part shall be replaced by a regulation the economic success of which comes as close as possible to that of the void ones.

Effective: 01.01.2013

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