

General Conditions of Purchase for Plants, Machinery, Tools and Building Modifications of pfm medical mepro gmbh, Nonnweiler-Otzenhausen

1. Scope

1.1 Our following General Conditions of Purchase for Plants, Machinery, Tools and Building Modifications shall apply to suppliers pursuant to section 310(1) of the German Civil Code (*BGB*). These General Conditions shall also apply to future contracts and commercial contacts, unless a more up-to-date version is attached to our purchase order.

1.2 These General Conditions of Purchase shall apply exclusively. No other General Conditions of Purchase of our contractual partners ("Suppliers") shall be accepted, even if they are forwarded to us in a letter of confirmation or in some other way. With its unconditional acceptance of these General Conditions, the Supplier agrees to their validity, also for any future business.

1.3 These General Conditions shall become an integral part of the purchase order. Orders and all associated statements are only binding if they are made in writing. Any deviations from these General Conditions of Purchase must be acknowledged by us in writing. This shall also apply to the waiver of this requirement for written form.

2. Quotations and acceptance

2.1 Any quotations and cost estimates from the Supplier shall be provided to us free of charge.

2.2 For lack of written agreement to the contrary, the price shall include delivery and transport to the shipping address mentioned in the contract, including packaging.

2.3 The Supplier shall confirm every purchase order giving binding details of price and delivery time in writing. Should we not receive confirmation within 8 days, we shall have the right to withdraw from the purchase order.

2.4 We shall have the right to withdraw from the contract at any time by setting out the reason in a written statement if we are unable to use the ordered products in our business operations, or only with considerable expense, because of circumstances that arose after the contract was concluded and for which the Supplier is responsible (e.g. the failure to meet statutory or regulatory requirements); similarly, if the Supplier's financial circumstances deteriorate to such an extent after concluding the contract that delivery under the terms of the contract may no longer be expected.

3. Delivery

3.1 Incoterms 2020 (DDP) shall apply. The place of performance is Am Söterberg 4, 66620 Nonnweiler-Otzenhausen [Germany], unless the parties have agreed otherwise in writing.

3.2 The delivery date agreed shall be binding. Early deliveries will only be accepted following written agreement. For the delivery date to be met, goods must be received at the agreed receiving and unloading point by then.

3.3 The Supplier shall be obliged to request from us in due time any documents and components that we are required to supply for the purchase order to be fulfilled.

3.4 If the Supplier recognises that it will be unable to make timely delivery, it shall notify us of this immediately in writing, also setting out the reason and the likely duration of the delay. The unconditional acceptance of a late delivery shall not constitute a waiver of any claims to which we are entitled because of late performance. This shall apply up to final payment for the contractual service in question. Any other claims for damages shall remain unaffected by this.

3.5 When required by us, the Supplier shall collect all resulting outer, transport and sales packaging from the delivery site or arrange for it to be collected by a third party.

3.6 With any delivery of goods, the Supplier shall be obliged to enclose a delivery note in duplicate from which the purchase order number, description of the goods with the associated pfm medical mepro gmbh material numbers and the intended receiving and unloading point can be clearly seen. Otherwise, we shall not accept any responsibility for any delays in processing that may result.

3.7 The Customer has the right to use the supplied deliverables from the time of delivery, even if these still have defects and no formal acceptance has taken place. The Supplier shall be liable for any damages incurred by the use of the equipment because of defects. Use shall not constitute acceptance of the supplied deliverables in accordance with the contract.

4. Contract penalty

In the event of a delayed delivery, we shall have the right, alongside performance, to payment of a contract penalty of 0.2% of the net order value per working day of delay up to a total of 5% of the net order value following prior written warning to the Supplier. Such claims may be applied up to the final payment. Any other claims for damages shall remain unaffected by this. The contract penalty shall be offset against the damage caused by delay which is to be paid by the Supplier. In addition, the Customer shall be entitled to invoice all additional costs it incurs for the increased outlay involved in manufacturing the affected products that were to be processed with the ordered items from the delivery date until the item can be used and is fully operational at the place of use.

5. Confidentiality

5.1 We shall retain all property and intellectual property rights to all documents submitted in connection with the purchase order. They must not be made available to third parties without our written consent. They shall be used solely for the contract performance and shall be returned to us promptly and unsolicited following completion of the order, or if an order is not accepted, as set out in paragraph 2; any copies shall be destroyed straight away.

5.2 The Supplier shall be obliged to keep confidential all business, operational and technical matters relating to pfm medical mepro gmbh of which it becomes aware in connection with the performance of the contract, even after contractual relationships have come to an end, if and insofar as this information has not already become public knowledge or we have waived confidentiality in writing.

5.3 In advertising, the Supplier may only make reference to the existing business relationship with our written consent.

6. Prices and payment terms

6.1 The price shown in the purchase order shall be binding.

6.2 The payment terms are:

30% upon design approval

40% following successful preliminary acceptance including test run and delivery

20% following successful final acceptance including successful test runs of all products

10% after rectifying all defects, supplied final documentation including all undertaken changes (even after delivery) and production of two months of stock without any problems.

Relevant for the corresponding approvals are the approval documents signed by the Customer's specialty departments. Payment by the Customer shall not constitute any acknowledgement of the account.

7. Retention of title, offsetting and assignment

7.1 The goods shall become our property immediately upon handover. The Supplier's retentions of title shall only apply insofar as they relate to the payment obligation for the products for which the Supplier reserves ownership. No extended or renewed retentions of title shall be permitted.

7.2 The Supplier shall only be entitled to offset with undisputed or legally enforceable receivables. The Supplier shall only be entitled to exercise retention rights with undisputed or legally enforceable receivables that arise from the same legal relationship.

7.3 Claims made against us may not be assigned. This shall not apply to the scope of section 354a German Commercial Code (*HGB*).

8. Physical defects and warranty

8.1 The Supplier shall set up and maintain a documented state-of-the-art quality assurance system that is appropriate in terms of nature and scope. It shall maintain records, in particular about its quality checks, and make these available to the Customer upon request.

8.2 The Supplier hereby consents to quality audits to assess the effectiveness of its quality assurance system by the Customer or by the representative it appoints, if required with the involvement of the Customer's customer.

8.3 The Supplier shall be responsible for the deliverables and performance being free from defects and for their guaranteed features. In particular, the Supplier warrants that the deliverables and performance of the contract meet state-of-the-art technology, the generally recognised technical and occupational health and, if applicable, the authorities' and trade bodies' relevant medical technology and pharmaceutical safety requirements and comply with the legal regulations in force. If the deliverables are machines, devices or plants, they must also meet the requirements for machines, devices and plants applying at the time of contract performance, and have CE marking. The Supplier shall demonstrate conformity to us upon request by submitting appropriate documents.

8.4 An incoming goods inspection is only carried out with respect to visible defects, transport damage, integrity and identity of the goods. The Supplier shall be notified of such defects within 5 days of delivery; of other defects within 5 days of being discovered. Such other defects are the object of the Supplier's outgoing goods inspection. In this respect, the Supplier waives the right to claim late notice of defects.

8.5 Irrespective of the legal grounds, warranty claims shall lapse 36 months following the transfer of risk at the earliest. This shall not affect more lengthy contractually and statutory limitation periods.

8.6 If a defect emerges within the limitation period, it will be assumed that this was already present before the transfer of risk, unless such assumption is not consistent with the type of the item or defect. In the event of defects, we are entitled to demand supplementary performance as prescribed under the law. The choice of the type of supplementary performance shall be at our discretion; the costs of such supplementary performance shall be borne by the Supplier. The Supplier shall comply with our operational requirements when transacting supplementary performance. Should supplementary performance be impossible because of one of the reasons referred to in the law, we shall be entitled to further statutory rights in the event of defects. This shall not affect our rights arising from legal provisions and from any guarantees.

8.7 If the Supplier fails to fulfil its obligation to supplementary performance within the reasonable period of time set without having the right to refuse supplementary performance, we shall be entitled to remedy the defect ourselves or have it rectified by third parties at the Supplier's expense and risk. We may demand an advance payment from the Supplier for the expenses required to remedy the defect.

8.8 If, as a result of the defective delivery, we incur costs for an incoming goods inspection that exceeds the agreed or customary scope or ongoing process control, such costs shall be borne by the Supplier.

8.9 The Supplier shall again be liable for any reworked and/or newly delivered parts being free from defects based on the statutory provisions.

8.10 In urgent cases, or if the Supplier delays in rectifying the defect, the Customer may carry out the necessary measures itself or have them carried out by a third party at the Supplier's expense. The Customer shall notify the Supplier before carrying out the measures. If this is not possible, the measures required to prevent damage may be taken without prior notification in urgent cases. In such cases, the Customer shall provide notification as soon as possible thereafter. This shall not affect the Supplier's obligation to assume liability for defects. Excluded from this are defects which are due to measures carried out by the Customer or a third party.

8.11 If a defect cannot be rectified, or the Customer cannot reasonably be expected to accept such rectification, the Customer may withdraw or abate the purchase price.

9. Product liability

9.1 Insofar as the cause was established within its sphere of control and organisation, the Supplier shall indemnify us against all direct and indirect claims of third parties arising from product and producer liability that are attributable to a defect in the deliverables.

9.2 The Supplier shall also reimburse us for the expenses and costs we incur in the cases referred to in paragraph 1 as a result of the corrective measures required, e.g. public warnings or recalls. We shall inform the Supplier immediately of the implementation of such measures. This shall not affect any further statutory claims.

9.3 The Supplier shall be obliged to take out sufficient company and product liability insurance with a sum insured of at least EUR 10 million for each insured event and at least EUR 20 million per annum, and to maintain such during the term of the contract including the limitation periods. Upon request, the Supplier shall provide a copy of the insurance policy or a corresponding confirmation of insurance. Any other claims shall remain unaffected by this.

Date: December 2020

10. Third-party property rights

10.1 In accordance with para. 2 of this Section 10, the Supplier shall ensure that no third-party property rights are infringed by the products it supplies in European Union countries or other countries in which it manufactures or has the products manufactured. This shall include, in particular, patents, trademarks, utility models and designs, as well as copyrights.

10.2 If our use of the supplied items is prejudiced by existing third-party property rights, the Supplier shall either acquire the appropriate approval at its own expense within a reasonable period of time or change or replace the affected parts of the delivery so that third-party property rights do not preclude use of the deliverables and that such use also meets contractual agreements.

10.3 Insofar as a breach of third-party property rights is attributable to the supplied goods, the Supplier shall, at its own expense, defend against third-party claims that are brought against us because of the breaches of third-party property rights due to the Supplier's goods and services. The Supplier shall indemnify us against all claims arising from the use of such property rights, insofar as it is responsible for these.

10.4 This shall not affect our other statutory claims due to defects of title in respect of the products supplied to us.

11. Final provisions

11.1 These General Conditions and the entire legal relationship between the parties shall be subject to German substantive law. The United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

11.2 Standard commercial clauses shall be interpreted in accordance with the Incoterms in their version valid at the time the contract was concluded.

11.3 For all disputes arising out of or in connection with this contract, the parties shall endeavour to settle the dispute by amicable negotiations. Should this not be possible, the parties shall agree to Cologne as the exclusive place of jurisdiction. Notwithstanding, we shall be entitled to make a claim against the Supplier at its general place of jurisdiction.

11.4 The invalidity of provisions in these General Conditions of Purchase or any other provision agreed between the parties shall have no bearing on the validity of the remaining provisions of these General Conditions of Purchase or other agreements. In the case of any other provisions agreed between the parties, the parties shall be obliged to replace the invalid provisions with such effective provisions that are as close as possible to the meaning of the invalid provisions.