

# General Conditions of Purchase of pfm medical mepro gmbh, Nonnweiler

## 1. Scope

1.1 Our following General Conditions of Purchase 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 in the relevant up-to-date version published on our website at [www.pfmmedical.de/agb](http://www.pfmmedical.de/agb).

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 The place of performance is Nonnweiler [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.

3.3 The Supplier shall be obliged to request from us in due time any documents 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, the batch number 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.

## 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 if the Supplier cannot prove that it is not responsible for the delay. 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.

## 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 has become aware or will become aware in connection with the performance of the contract, even after contractual relationships have come to an end, in 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 Following delivery

6.3° In the event of default of payment, we shall owe default interest in the amount of five percentage points above the base interest rate in accordance with § 247 of the German Civil Code (*BGB*).

## 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 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 undertakes towards us to comply with the obligations incumbent on him as of the date of application of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices. Reference is made in particular to Article 14 thereof. The Supplier shall demonstrate conformity to us upon request by submitting appropriate documents.

8.2 The Supplier shall make reasonable efforts to ensure that its subcontractors meet the obligations incumbent on the Supplier in accordance with paragraph 1.

8.3 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 working days of delivery; of other defects within 5 working 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.

8.4 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.

8.5 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.

8.6 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.

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

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

## **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.

## **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. Force majeure**

Acts of God shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. Within reason, the contractual partners shall be obliged to immediately

provide the necessary information and to adapt their obligations in good faith to the changed circumstances. The statutory rights in this case shall remain unaffected.

## **12. Final provisions**

12.1 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.

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

12.3 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.

12.4 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.

Date: February 2021