

General Terms and Conditions of Purchase of pfm medical ag, Cologne ("pfm medical")

1. Scope of application

1.1 The Terms and Conditions of Purchase (hereinafter "GTC Purchase") of pfm medical govern the relationship between pfm medical and the contractor exhaustively and exclusively. Conflicting or deviating terms and conditions of the contractor ("supplier") only apply in lieu of these GTC Purchase if pfm medical has given its explicit written consent or has issued an explicit written acknowledgement.

1.2 These GTC Purchase only apply in legal transactions with entrepreneurs ("Unternehmer") in terms of the BGB (German Civil Code), according to § 310 subs. 1 BGB. These GTC Purchase also apply to transactions of the same or a similar kind entered into with the same supplier.

1.3 These GTC Purchase become part of the order unless pfm medical explicitly consents in writing to a regulation to the contrary.

2. Orders and contract conclusion

2.1 pfm medical is only deemed to be bound in legal terms by written orders, also as regards the scope and object of delivery.

2.2 The order is without engagement for pfm medical if the supplier does not confirm the order bindingly in writing within 5 working days ("Werktage") from the order date, thereby stating the price and delivery time.

2.3 Offers, quotations and cost estimates, if any, of the supplier are at no expense to pfm medical.

3. Prices and terms of payment

3.1 The price stated in the order is binding and is deemed to be the net price for the entire duration of the order.

3.2 Invoices are due 60 days after receipt ("Zugang") of the invoice but no earlier than 60 days after receipt of the goods.

3.3 In the case of defects of the delivered goods, pfm medical is entitled, until their remedy, to withhold payment in whole or in part, in an amount equal to the costs required for the remedy of the defect.

4. Delivery times and passing of risk

4.1 Place of performance ("Erfüllungsort") is the corporate domicile of pfm medical. The parties may agree on another place of performance in writing.

If unloading is done by the supplier or a third party engaged by the supplier or if unloading is done by means of unloading equipment of the supplier or an engaged third party, the risk will only pass to pfm medical after unloading has been completed resp. as soon as the goods have left the unloading equipment.

4.2 The agreed delivery date is deemed complied with if pfm medical has received the goods by that date. Upon request by pfm medical, delivery must be suspended for a reasonable period of time whereby in this case the delivery time is deemed extended by the time of suspension.

4.3 If the supplier, for executing the order, requires documents to be provided by pfm medical, the supplier is obliged in due time to request pfm medical to provide such documents.

4.4 If the supplier becomes aware that he is unable to deliver the goods in time, he will inform pfm medical in writing without undue delay ("unverzüglich") of the reason and the expected duration of the delay. If pfm medical accepts late delivery without reservations, this is not deemed to constitute waiver of the claims to which pfm medical is entitled on grounds of the delay. pfm medical reserves the right to assert further claims.

4.5 If pfm medical so requests, the supplier will collect any accruing outer packaging, transport packaging and sales packaging from the place of performance ("Erfüllungsort").

4.6 The supplier is obliged to enclose with each consignment a delivery note for pfm medical in duplicate. The delivery note is to state the designation of the goods including the corresponding material number of pfm medical, the order number and the intended destination and place of unloading. If any of these documents are missing upon receipt of the goods, any delay in processing caused thereby is deemed not attributable to pfm medical.

4.7 If pfm medical so requests, the supplier will apply GS128 barcodes or HIBC codes on the product label.

5. Confidentiality and reference customer

5.1 The documents pfm medical provides to the supplier in connection with the order must not be used for any purposes other than the execution of the contractually agreed deliveries and services and may only be disclosed or made available to third parties with the prior written consent of pfm medical. pfm medical reserves all property rights and copyrights in all documents.

5.2 The supplier undertakes to keep any and all business, operational, in-firm and technical information of pfm medical that has become or will become known to him in the context of the delivery secret, even after termination of the contractual relationship. This does not apply in the case that any such information has otherwise become publicly known or if pfm medical has waived confidentiality in writing.

5.3 The supplier, after mutual fulfilment of the contract or in the case of non-acceptance of an order, is obliged to return, without undue delay ("unverzüglich") and without an appropriate request being required, any documents provided to him and destroy any copies thereof without undue delay ("unverzüglich").

5.4 The supplier is only allowed to make reference in his advertising to the existing business relationship with pfm medical and name pfm medical as a reference customer with the prior written consent of pfm medical.

6. Late delivery - Contractual penalty

6.1 In the case of late delivery, pfm medical is entitled to contractual penalty amounting to 0.2% of the net order value for each working day during the period of delay following the delivery date, up to a maximum of 5% in total of the net order value. This is without prejudice to the claim to performance. pfm medical is not entitled to contractual penalty if the supplier is able to demonstrate that the delay is not attributable to him ("nicht zu vertreten haben").

6.2 If pfm medical accepts delivery as performance, pfm medical is not deemed to thereby waive claims to contractual penalty, if any. pfm medical may assert its claims until final payment is made. pfm medical reserves the right to assert further claims, in particular pfm medical is entitled to withdraw from the contract and claim damages after a reasonable period granted to the supplier has expired without result.

7. Reservation of title, set-off, right of retention

7.1 Title to the goods is immediately transferred to pfm medical upon their hand-over to pfm medical. pfm medical does not accept any statements or declarations to the contrary regarding the reservation of title unless pfm medical has given its explicit consent in writing.

7.2 The supplier is only entitled to set-off if and to the extent that the counter-claim is undisputed or has been established by a final non-appealable court decision (*res judicata*).

7.3 The supplier's right to retention, if any, is limited to claims that are based on the respective order in question.

8. Product liability

8.1 The supplier indemnifies pfm medical from any and all direct and indirect third-party claims based on product liability ("Produkthaftung") or manufacturer's liability ("Produzentenhaftung") that are due to a defect of the delivered product the cause of which lies in the supplier's sphere of control and organizational responsibility.

8.2 The supplier is liable to reimburse pfm medical for all expenses and costs which, in the cases described in subs. 1, are incurred as a result of necessary measures (e.g. public warning or recall). pfm medical will inform the supplier without undue delay ("unverzüglich") of any such measures taken.

8.3 The supplier is obliged to take out sufficient business liability and product liability insurance including cover of at least EUR 10 million per liability case and at least EUR 20 million per year and maintain such insurance during the term of the contract (and also during the applicable limitation periods). The supplier, upon request, is obliged to present to pfm medical a copy of the insurance policy or an appropriate confirmation of insurance coverage.

8.4 pfm medical reserves the right to assert further claims.

8.5 The provisions of No. 8.1 and No. 8.2 apply accordingly to liability under the Arzneimittelgesetz (German Drugs Act).

9. Warranty

9.1 The supplier is liable for defects in quality and the existence of warranted qualities according to the statutory provisions unless stipulated otherwise hereinafter.

9.2 The supplier's liability includes but is not limited to the supplier's warranty that the delivered goods and services provided are in conformity with the state of the art, the generally accepted technical and occupational health safety regulations and, if applicable, the relevant medical engineering and pharmaceutical safety regulations issued by authorities and trade associations and are in conformity with the applicable legal provisions. The requirements under the special safety regulations applicable at the time of contract performance for machines, devices, plants and installations must be satisfied. If and to the extent required by the applicable provisions, a CE marking must be affixed to the delivered goods.

9.3 pfm medical carries out an inspection of incoming goods within 7 days from delivery only with a view to obvious defects, damage incurred during transport, completeness and identity of the goods. pfm medical gives notice of any such defects to the supplier within 2 days from detection. pfm medical gives notice of defects other than the aforesaid within 5 days from detection. Such other defects fall within the scope of the supplier's inspection of outgoing goods. The supplier insofar waives the right to raise the defence of late notice of defect.

9.4 The limitation period for claims for defects, regardless of their legal basis, is at least 3 years from the passing of risk, unless longer limitation periods are provided for by contract or law.

9.5 pfm medical is entitled to claim subsequent performance ("Nacherfüllung") according to the statutory provisions. The supplier bears the costs of the specific kind of subsequent performance chosen. The supplier, when providing subsequent performance, will observe and act in accordance with the operational concerns of pfm medical. If subsequent performance is impossible for any of the reasons provided for by law, pfm medical will be entitled to assert the other statutory rights to which it is entitled in the case of defects. This is without prejudice to any further claims to which pfm medical may be entitled.

9.6 pfm medical may remedy the defect by itself or have it remedied by third parties at the supplier's expense and risk if the supplier fails to fulfil its duty to provide subsequent performance ("Nacherfüllung") within the period granted to him for such purpose. This does not apply in the case that the supplier is entitled to refuse subsequent performance. pfm medical is entitled to claim from the supplier an advance payment on account of the expenses required for the remedy of the defect.

9.7 If pfm medical, as a result of the delivery of defective goods, incurs costs for an inspection of incoming goods that goes beyond the agreed resp. the usual scope, the supplier has to bear the appropriate reasonable costs.

9.8 If the supplier, in the context of subsequent performance ("Nacherfüllung"), delivers new or subsequently improved ("nachgebesserte") parts, the limitation period starts to run anew even if the same cause of defect is concerned.

9.9 If pfm medical sells the goods without making substantial changes to the goods by itself or through third parties, the supplier will indemnify pfm medical from warranty claims under sales law including under the law governing the sale of consumer goods ("Verbrauchsgüterkaufrecht") provided such claims are attributable to the supplier.

10. Defects in title / Industrial property rights of third parties

10.1 The supplier represents and warrants that the deliveries and services rendered by him, to his knowledge, are free of third-party rights and pfm medical, while using the goods in accordance with the contract, does not infringe industrial property rights of third parties (such as patents, trademarks, utility models, designs and copyrights).

10.2 If the use or exploitation of the delivered goods constitutes an infringement of existing industrial property rights of third parties and if this impairs the use or exploitation of the goods, the supplier is obliged, within a reasonable period and at his expense, either to obtain the appropriate permission or authorization or, in consideration of the contractual agreement entered into with pfm medical, change or exchange the parts of the delivery concerned in the way that the use or exploitation of the delivered goods is no longer contrary to third-party industrial property rights.

10.3 If and to the extent that the infringement of third-party industrial property right is caused by the delivered goods, the supplier will ward off at his sole expense any third-party claims that third parties assert against pfm medical for infringement of industrial property rights. The supplier indemnifies pfm medical from any and all claims arising from the use of such industrial property rights provided such claims are attributable to him. The limitation period for such claims is three calendar years, computed from the delivery of the goods.

11. Final provisions

11.1 Contracts entered into under these GTC Purchase are governed by the law of the Federal Republic of Germany with the exception of the laws on the international sale of goods.

11.2. If any provision of these GTC Purchase should be or become void, this will be without prejudice to the validity of the remaining provisions hereof.

11.3 The competent Amtsgericht (local court) or Landgericht (regional court) in Cologne has exclusive jurisdiction over all disputes arising out of or in connection with deliveries made under these GTC Purchase which the parties are unable to settle in an amicable way. pfm medical may also sue the supplier before the court that has jurisdiction over the supplier's business domicile.

Cologne, 24 November 2016

¹ An invoice or other document is deemed received ("Zugang" in terms of German law) if and as soon as it has come into the sphere of the recipient in the way that the recipient can reasonably be expected to take note of it.