

GENERAL TERMS CONDITIONS OF DELIVERY AND PAYMENT of the company cymedics GmbH & Co. KG, Würzburg, 97230 Estenfeld (hereinafter referred to as the 'supplier')

I. Exclusivity

(1) Only the following general terms and conditions of delivery and payment apply to or deliveries and services provided the supplier has not consented in writing to an amendment to such terms and conditions in an individual case. The buyer's conditions that are contrary to these general terms and conditions of delivery and payment or the buyer's supplementary conditions shall not have binding force for the supplier.

(2) The buyer's terms and conditions of business shall not apply, including if the supplier does not object to their validity separately in an individual case. Even if the supplier cites a letter containing the buyer's terms and conditions, or refers to such a letter, this shall not constitute any kind of consent to the validity of such terms and conditions of business.

II. Offers and entering into contracts

(1) All the supplier's offers are subject to change without notice and are non-binding provided they are not expressly marked as binding or do not contain a certain acceptance period. The supplier may accept orders or assignments within 14 days following receipt.

(2) Solely the contract of purchase entered into in writing, including these general terms and conditions of delivery, is authoritative for the legal relations between the supplier and the buyer. Such a contract reflects all agreements in full between the contracting parties with regard to the subject matter of contract. Verbal assurances on the part of the supplier prior to entering into this contract are legally invalid, and verbal agreements of the contracting parties shall be replaced by the written contract

(3) Supplementary information regarding and amendments to the agreements that have been entered into, including these general terms and conditions of delivery, are subject to the written form in order to be deemed valid. Forwarding by fax or email shall be deemed to honour the written form requirement.

(4) The supplier's details regarding the subject matter of delivery or service (e.g. weights, measurements, service values, loads, tolerances and technical data) as well as our presentations of these (e.g. drawings and diagrams) are only approximately authoritative provided the use proposed in the contract does not specify that these are to correspond exactly. They do not constitute any warranted characteristics but rather are delivery or service descriptions or identifications. Variations that are customary in the trade and variations that apply as a result of legal requirements or constitute technical improvements, as well as the replacement of components with equivalent parts are permitted provided they do not have a detrimental effect on the use as proposed in the contract.

III. Scope of deliveries and services

(1) The written statements issued by both contracting parties are authoritative for the scope of the deliveries or services, alternatively the supplier's written confirmation of order or alternatively the buyer's written order.

(2) The requirements of the German Association of Electrical Engineers shall apply to all deliveries or services provided they are to be taken into consideration regarding the safety of the deliveries or services. Variations are permitted provided the same safety is guaranteed in another manner.

(3) The supplier reserves ownership and copyright utilisation rights without restrictions to cost estimates, drawings and other documents.

IV. Prices and terms and conditions of payment

(1) The prices apply to the service and delivery scope set out in the confirmation of order. Additional or special services shall be charged separately. The prices are to be understood in euros ex works plus set up or assembly, packaging, statutory value added tax, in the case of export deliveries customs duties and charges and other public levies.

(2) Insofar as the agreed prices are based on the supplier's list prices and the delivery is to be performed more than four months after entering into the contract, the supplier's list prices that are valid upon delivery shall apply (in each case less an agreed percentage or fixed discount).

(3) Payments are to be made without costs to the supplier's paying agent.

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(4) The invoice amounts are payable in advance without any deductions provided nothing to the contrary is agreed upon in writing. Receipt by the supplier is authoritative with regard to the payment date. Cheques are only deemed payment once they have been redeemed. If payment is not made on the due date, the outstanding amounts shall be subject to interest from the due date at 5% above the base lending rate. This does not affect the assertion of higher interest and claims for greater damage in the event of default.

(5) Setting off using the buyer's counter-claims or the retention of payments regarding such claims shall only be permitted insofar as the counter-claims are undisputed or have final and binding effect.

(6) The supplier is entitled to provide outstanding deliveries or render outstanding services only subject to advance payment or the provision of security if, after entering into the contract, knowledge of circumstances is gained that is capable of significantly reducing the buyer's credit standing and which jeopardises payment of the supplier's outstanding claims by the buyer resulting from the respective contractual relationship (including from other individual orders that are subject to the same skeleton agreement).

V. Reservation of title

(1) The supplier reserves the right to ownership of the goods up until all the supplier's claims against the buyer resulting from the business association, including claims arising in the future and from contracts that are entered into simultaneously or at a later date, have been settled. This also applies if individual or all claims have been included in a current invoice and the balance has been struck and acknowledged.

(2) The buyer shall only be authorised to sell the reserved goods during the ordinary course of business if the buyer has already hereby assigned to the supplier all claims that arise from the resale against customers or third parties. If reserved goods are reworked or sold following processing or blending with items that are the buyer's exclusive property, the buyer assigns at this point in time to the supplier in full the claims resulting from the resale. If the buyer sells reserved goods following processing/blending with goods that are not the supplier's property, the buyer assigns at this point in time to the supplier the claims resulting from the resale in the sum of the value of the reserved goods including all ancillary rights and priority above all residual creditors. The supplier hereby accepts the assignment. The buyer shall retain the authorisation to collect these claims, including following the assignment. This does not affect the supplier's authority to personally collect the claims. However, the supplier undertakes not to collect the claims as long as the buyer properly honours its payment and other obligations resulting from the contract. The supplier may demand that the buyer disclose the assigned claims and the debtors on such claims, provide all the information necessary for collection, hand over the related documents and notify the debtors about the assignment. The buyer is to inform the supplier without delay of pending or implemented intervention by third parties regarding the reserved goods or the assigned claims.

(3) The buyer shall perform potential processing or finishing of the reserved goods on the supplier's behalf without this resulting in obligations on the part of the buyer. In the case of processing, linking or mixing or blending the reserved goods with other goods that are not the supplier's property, the supplier shall be entitled to the co-ownership share arising in that respect of the new item in the proportion of the value of the reserved goods to that of the other processed goods at the time of processing, linking or mixing or blending. If the buyer acquires sole ownership of the new item, agreement shall be deemed reached that the buyer shall grant the supplier, in the proportion of the value of the processed, linked, mixed or blended reserved goods, co-ownership of the new item, and shall store this gratuitously on behalf of the supplier.

(4) If mutual liability on the part of the supplier is established in conjunction with payment of the purchase price by the buyer, the reservation of title as well as the claim based on this from goods deliveries shall not expire prior to redemption of the bill of exchange by the buyer as the drawee.

(5) If the value of the existing securities exceeds the claim to be secured by more than 20 %, the supplier undertakes to release at the buyer's request.

(6) In the case of conduct on the part of the buyer in breach of contract - in particular default in payment - the supplier shall be entitled to withdraw from the contract and demand the return of the goods.

VI. Period for deliveries or services

(1) The written statements of both contracting parties are authoritative with regard to the period for deliveries or services. Article III(1). applies accordingly. Compliance with the period presupposes the timely receipt of all documents to be made available by the supplier, necessary licenses, releases, the timely clarification and authorisation of the plans, compliance with the agreed terms and conditions of payment and other obligations. The period shall be extended accordingly if these preconditions are not honoured in good time.

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(2) The period shall be deemed honoured

a) in the case of delivery without set up or assembly if the consignment ready for use has been brought shipping to or collected within the agreed delivery or performance period. If the delivery is delayed for reasons that are the buyer's responsibility, the period shall be deemed honoured in the case of providing notification of the retardation within the agreed period;

b) in the case of delivery with set up or assembly as soon as these have been performed within the agreed period.

(3) If the failure to honour the period for deliveries or services is proven to be attributable to mobilisation, war, unrest, strikes, lock-outs or the occurrence of unforeseeable obstructions, the period shall be extended accordingly. In the case of failure to honour the period for reasons other than those stated in sub-section 3, sentence 1, the buyer may - insofar as it shows probable cause that it has sustained damage as a result of the delay - claim compensation for loss occasioned by delay for each week in which the delay continues in the sum of 0,5 % up to the total amount of 5 % of the value of the part of the deliveries or services could not be expediently put into operation because of the failure to manufacture individual appertaining parts in good time. The buyer may also demand payment of the compensation for loss occasioned by delay if the circumstances stated in sub-section 3, sentence 1, only occur following the time at which the originally agreed period is culpably exceeded. The buyer's claims for compensation that exceed the limit stated in sentence 2 in the sum of 5 % are excluded in all cases of delayed delivery, including following expiry of a subsequent period set for the supplier. This does not apply insofar as liability applies by way of mandatory law in cases of intent or gross negligence. This does not affect the buyer's right to withdraw following expiry in vain of a subsequent period set for the supplier.

(4) If the shipping or the delivery is delayed at the buyer's request, storage charges may be imposed on the buyer starting one month following notification of readiness for dispatch in the sum of 0,5 % of the invoice amount for each month that commences in which the storage applies. The storage charge is limited to 5 % unless proof of higher costs is furnished.

VII. Passing of risk

Risk shall pass to the buyer, including if freight-free delivery has been agreed upon:

(1) In the case of delivery without set up or assembly if the consignment ready for use has been rendered ready for shipping to or ready to be collected. Packaging shall be provided with the greatest of care. Shipping shall apply at the supplier's best judgement. At the buyer's request and cost, the consignment shall be insured by the supplier against breakage, transport and fire damage.

(2) In the case of delivery with set up or assembly on the day of assumption at the buyer's own premises. Insofar as trial operations have been agreed upon following the trouble-free trial operations. In that respect it shall be assumed that the trial operations or the assumption at the own premises follows the set up or assembly ready for use. If the buyer does not accept the offer of trial operations or assumption at its own premises, following expiry of 14 days following such an offer risk shall pass to the buyer for the period of the delay.

(3) If the shipping, set up or the start or the conducting of the set up or assembly are delayed at the buyer's request or for reasons that are the buyer's responsibility, risk shall pass to the buyer for the period of the delay. However, the supplier undertakes at the buyer's request and cost to bring about the insurance policies it has requested.

VIII. Set up and assembly

The following provisions apply to all kinds of set up and assembly provided nothing to the contrary is agreed upon in writing:

(1) The buyer is to assume this at its cost and where necessary make assistants and aids available in good time.

(2) Article X.(8) applies with regard to the supplier's liability for work performed by its assembly personnel or other vicarious agents.

IX. Acceptance

(1) Supplied items are to be accepted apart from in cases of significant complaints.

(2) Partial deliveries are permitted.

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X. Warranty claims, liability, compensatory damages regarding culpability

(1) Subject to an agreement to the contrary, the buyer's rights regarding a defect shall fall under the statute of limitations within one year from the passing of risk.

(2) Claims for material defects do not apply in the case of defect that are attributable to

- Inappropriate use or storage,
- Unusual use or utilisation that is not customary,
- Chemical and / or electrical influences or other environmental conditions,
- Intervention by the buyer or third parties not authorised by the supplier,
- Inappropriate operation or inadequate servicing,
- Influences from external equipment or external software,
- Natural wear-and-tear.

Liability for material defects shall furthermore be inapplicable if series numbers, type description or markings are removed or rendered illegible.

(3) The buyer is to provide written notification of defects regarding the supplied items without delay.

(4) The subject matter of delivery comprises exclusively items containing the characteristics and specifications that arise from the supplier's product description. Other quality descriptions shall only be deemed agreed upon if they have been confirmed in writing by the supplier.

(5) The buyer's claims for subsequent performance are limited to the rectification of a defect. The supplier is reserved the right to supply a fault-free item to provide subsequent performance. The buyer is reserved the right in the event of failed subsequent performance at its discretion to withdraw from the contract or reduce the purchase price. In the case of subsequent performance by way of rectifying a defect, the buyer is to inform the supplier prior to the forwarding of the items. The supplier shall organise the subsequent performance to rectify the defect without delay at its own cost. All expenses required for the purpose of providing subsequent performance, in particular transport incl. customs fees etc., road toll, work and material costs for shipment to supplier shall be borne by the buyer. The items shall be reviewed with due care in respect of the claim asserted about the defect. The buyer shall be invoiced for the arising costs provided the defect for which notification is provided is not confirmed. Insofar as a defect that is the supplier's responsibility is identified during the review, such a defect shall be rectified by the supplier and the items shall be sent free of charge to the buyer once the defect has been rectified or - at the buyer's request - made ready for collection or set up ready for use subject to a separate charge. The supplier shall be granted a period of at least two weeks from the availability of the items in which to rectify the defect. The supplier shall inform the buyer in the event that a defect cannot be rectified within this period due to the type of repairs to be performed. The period for rectifying the defect shall be extended accordingly in such a case.

(6) Repairs requested by the buyer and for which the warranty claims do not exist shall be performed subject to charges for the incurred expenses. A cost estimate shall be drawn up at the buyer's request. This is subject to remuneration, including if the repair is performed afterwards.

(7) In the case of subsequent performance by way of delivery of a fault-free item or withdrawal, the buyer undertakes to return the faulty item and contrary to Section 346(2), Sentence 1, No. 3, 2nd half sentence, BGB (German Civil Code), is to provide compensation for deterioration that arises as a result of use of the item as per agreement. This does not apply if the deterioration is exclusively attributable to the review of the item. Furthermore, the buyer is to remunerate the derived use. Insofar as the buyer does not furnish proof of less use or the supplier does not furnish proof of greater use, the contracting parties shall assume that remuneration for use in the following amount shall apply:

In the case of a useful life of

- more than one to three months 10% of the sales value
- more than three to six months 20% of the sales value
- more than six to twelve months 30% of the sales value.

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(8) Claims for damages, in particular compensation for consequential damage, are excluded. This exemption from liability does not apply to intentional or gross negligent violations of obligations on the part of the supplier, its representatives or vicarious agents, including if the damage is based on a circumstance for which the supplier has provided a quality or service life guarantee. Similarly, the exemption from liability similarly does not apply to the supplier's liability regarding the loss of life, physical injury or detrimental effects on health or liability in accordance with the German Product Liability Act.

(9) The above liability exemptions and restrictions apply to the same extent in favour of the executive bodies, legal representatives, white-collar workers and other vicarious agents of the supplier.

(10) Insofar as the supplier, its executive bodies, legal representatives, white-collar workers and other vicarious agents provide technical information or render consulting services, and such information or consulting are not part of the scope of services to be rendered by the supplier as per agreement, such services shall be rendered gratuitously and by way of exclusion of any kind of liability.

(11) In the case of defects in components of other manufacturers that the supplier cannot rectify due to license law or actual reasons, the supplier shall, at its discretion, assert its guarantee claims against the manufacturers and suppliers on the account of the buyer or assign these to the buyer. Guarantee claims against the supplier shall only apply in the case of such defects under the other preconditions and in accordance with these general terms and conditions of delivery if asserting the above-mentioned claims against the manufacturer and suppliers was unsuccessful in court or, for example, has no prospects of success as a result of insolvency. The period of limitations of the buyer's affected guarantee claims against the supplier shall be suspended during the period of the legal dispute.

(12) The guarantee shall be inapplicable if the buyer alters the delivery item or makes arrangements for third parties to alter it without approval by the supplier and rectifying the defect is impossible or is hampered as a result of such alteration. In any case, the additional cost of rectifying defects attributable to the alteration shall be borne by the buyer.

(13) A delivery of used items agreed upon with the buyer in an individual case shall apply by way of exclusion of any guarantee for material defects.

XI. Property rights

(1) In accordance with this Article XI., the supplier shall ensure that the delivery item is free of third party commercial property rights or copyrights. Each contracting party shall inform the other contracting party without undue delay in writing if action is taken against them because of the infringement upon such rights.

(2) In the event that the delivery item violates a third party property right or copyright, the supplier shall, at its own discretion and cost, amend or replace the delivery item such that third party rights are no longer violated, the delivery item however continues to provide the functions as per agreement or the buyer is granted the right of use by way of entering into a licensing contract. If the supplier fails to achieve this within a reasonable period, the buyer shall be entitled to withdraw from the contract or appropriately reduce the purchase price. The buyer's potential claims for damage are subject to the limitations of Article XII. of these general terms and conditions of delivery.

(3) In the event of rights infringements on the part of products of other manufacturers supplied by the supplier, the supplier shall, at its own discretion, assert its claims against the manufacturers and suppliers on the buyer's account or assign them to the buyer. In such cases, claims against the supplier shall only apply in accordance with this provision XI. if the assertion in court of the above-mentioned claims against the manufacturers and suppliers was unsuccessful or, for example, has no prospects of success due to insolvency.

XII. Impossibility, contractual adjustment

(1) The procurement risk shall be borne by the buyer. The supplier need not supply the item in the event that it is not available. However, the supplier is entitled to supply an item that is equivalent in terms of quality and price. In other respects, the statutory regulations apply to performance hindrances with the following condition:

If the impossibility is attributable to culpability on the part of the supplier, the buyer shall be entitled to claim for damages. However, the buyer's claim for damages shall be limited to 1% of the value of the part of the delivery or performance that cannot be expediently put into operation because of the impossibility. The buyer's claims for damages that exceed the stated limit of 1% are excluded. This does not apply insofar as liability applies by way of mandatory law in cases of intent or gross negligence. This does not affect the buyer's right to withdraw from the contract.

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(2) Insofar as unforeseeable events within the meaning of Article VI.(3) Sentence 1 considerably change the economic significance or the content of the delivery or performance, or have a considerable effect on the supplier's operations, the contract shall be adjusted accordingly provided this is in line with good faith. If this is economically unacceptable, the contractor shall be entitled to withdraw from the contract. If the supplier intends to exercise this right to withdraw, it is to provide the Buyer with notification of such an intent without delay after establishing the extent of the event, including if an extension of the delivery time had initially been agreed upon with the buyer.

XIII. Place of jurisdiction

(1) The supplier's principal place of business or branch is deemed the sole place of jurisdiction at the supplier's discretion if the buyer is a general merchant in the case of any disputes resulting directly or indirectly from the contractual relationship.

(2) German law applies to the contractual relations by way of exclusion of the UN Convention on Contracts for the International Sale of Goods.

XIV. Binding force of the contract

In the event of the legal invalidity of individual points, the remaining parts of the contract shall remain valid. This does not apply if sticking to the contract would constitute unacceptable hardship for a party.

Note:

The buyer takes note of the fact that the supplier saves data from the contractual relationship in accordance with Section 28 of the German Federal Data Protection Act for the purpose of data processing, and reserves the right to forward the data, where necessary to execute the contract, to third parties (e.g. insurance companies).

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