

# General Business Terms and Conditions

of Schwarzer Cardiotek GmbH

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## § 1 General Provisions

- (1) These terms and conditions apply exclusively to the delivery of goods and services (referred to as “delivery” below) by Schwarzer Cardiotek GmbH (referred to as the “vendor” below).
- (2) Deviating or supplementary terms and conditions of the buyer as well as subsidiary agreements are only binding if they are confirmed in writing by the vendor.
- (3) These terms and conditions become part of all contracts with the buyer for delivery by the vendor, even if no specific reference is made to them on a case-by-case basis.

## § 2 Offers, Conclusion of Contract

- (1) The offers of the vendor are generally subject to change without notice in regards to execution, quantity, price, delivery time and ability to deliver.
- (2) Upon receiving a written order from the buyer, a contract is concluded either by issuing a written order confirmation or with delivery by the vendor.
- (3) If the vendor fails to respond to subsequent requests for changes and / or additions, this means such requests are rejected.
- (4) All agreements, whether they are concluded with or after the contract, must be in written form.
- (5) In any case, verbal statements made by the vendor’s personnel are only binding if they are confirmed by the vendor in writing.
- (6) Drawings, illustrations, dimensions, weights, colors or similar performance specifications are only binding if they are expressly agreed upon in writing.
- (7) Should the contract violate international law (e.g. a delivery embargo), the vendor has the right to withdraw from it at any time.

## § 3 Drawings and Other Documentation

All offer documentation, drawings, price lists and other documents remain the sole property of the vendor, retaining all copyrights. Such documentation may not be made accessible to third parties without the consent of the vendor, and must be returned upon request.

## § 4 Shipment and Pricing

- (1) All prices are quoted in EUR and net of VAT. VAT is invoiced as a separate item at the respective applicable rate pursuant to the tax law regulations in effect.
- (2) Prices are FOB Dessau and exclude shipping, transportation and other incidental costs. These are invoiced as separate items.
- (3) Quoted prices are our current selling prices based on the cost of materials and wages in effect at this time. If more than 4 months elapse from the conclusion of the contract to delivery, the prices of the vendor at the time of delivery apply.

## § 5 Payment Terms

(1) All payments must be made immediately upon invoicing without any deductions, free of costs and transaction charges, to the vendor's designated accounts. Payment terms are deemed to have been met if the vendor can dispose of the amount before the payment deadline.

(2) In case of payment arrears on the part of the buyer, in whole or in part, the buyer is required to pay late payment interest from the date of default at the rate of 8% above the prime interest rate annually, unless the vendor provides proof of higher damages. All other rights of the vendor remain unaffected.

(3) Payments can be applied to other outstanding receivables at the discretion of the vendor.

(4) Checks and drafts, insofar as payment by draft is agreed, are only accepted as an undertaking to pay. The vendor must be reimbursed promptly for discounts and collection fees as well as interest.

(5) The right of retention on the part of the buyer, insofar as it is not based on the same contractual relationship, as well as set-off with receivables that are disputed or not legally established, is excluded. The vendor has the right to avoid exercising the right of retention by providing security, including guarantees.

(6) If the buyer ceases making payments, in case of over-indebtedness or if an application is made to commence reorganization or insolvency proceedings, or if the buyer is in default with the redemption of drafts or checks that have come due, all receivables of the vendor come due immediately. The same applies if the economic condition of the buyer otherwise deteriorates significantly. In these cases, the vendor has the right to demand sufficient security or withdraw from the contract.

## § 6 Delivery Terms and Delays

(1) Partial deliveries are permitted.

(2) Delivery dates are only binding if they have been confirmed by the vendor in writing.

(3) Compliance with delivery dates requires the order has been fully clarified, that all permits have been issued and all documents, payments and collateral required from the buyer have been received by the vendor on time. An adequate extension to the delivery date is granted insofar as the preceding requirements are not all met in a timely manner. The delivery date is met if the goods are ready for shipment by the agreed date and a corresponding notice to the buyer has been dispatched.

(4) If the vendor is prevented from making the delivery on time due to mobilization, war, unrest, strikes, lock-outs, business disruptions, fire, natural disasters, transportation disruptions, changes to legal regulations, official measures or orders, or the occurrence of other unforeseeable events beyond the control of the vendor, an adequate extension to the delivery date is granted. This also applies if such events affect the vendor's suppliers or their sub-suppliers.

(5) The events mentioned above entitle the vendor to withdraw from the contract in whole or in part to the extent performance is not complete.

In addition, the vendor can withdraw from the contract in whole or in part in case of deliveries from its suppliers that are incorrect and / or not on time through no fault of the vendor.

The vendor is required to notify the buyer promptly when exercising the right of withdrawal. Any consideration that has already been received must be returned. Further claims are excluded.

(6) In case of delays on the part of the vendor, the buyer – insofar as it credibly asserts that it has incurred damages as a result of the delay – can demand compensation for each full week of the delay at the rate of 0.5% up to a total of 5% of the value of the delivery that was delayed. Further claims of the buyer due to late delivery, especially also claims based on culpable breach of contract, unlawful acts due to negligence and consequential damages, are excluded. This does not apply in case of mandatory liability for damages typically foreseeable under the contract for legal reasons in case of intent or gross negligence, assurances or the violation of essential contractual obligations due to simple negligence.

(7) For deliveries in the electro-medical sector, the regulations of the Zentralverband Elektrotechnik und Elektroindustrie (ZVEI) also apply. These terms and conditions take precedence in case of doubt.

#### § 7 Reservation of the Right to Modification

(1) Deviations in structure and color compared to the catalogue images and samples are reserved insofar as these are due to the nature of the materials used.

(2) The vendor has the right to make design or model changes at any time, insofar as these are customary in the trade or constitute deviations that represent minor modifications for the buyer (e.g. minor deviations in color and / or form).

#### § 8 Passing of Risk

(1) In principle, risk is passed to the buyer upon loading. Notification of readiness for shipment is deemed to be equivalent to loading.

(2) In case of shipment delays for reasons beyond the control of the vendor, risk is passed to the buyer with notification of readiness for shipment.

Any related claims for damages against transport companies are assigned to the buyer.

#### § 9 Installation

(1) Prior to the commencement of installation, where this has been agreed upon, the buyer has to provide the necessary information regarding the location of concealed electricity, gas and water lines or similar infrastructure as well as the required statics information, unasked and at the expense of the buyer.

(2) The buyer is responsible for establishing the necessary structural prerequisites for commissioning the devices.

(3) Any required assistants and specialists (e.g. masons, locksmiths etc.) must be engaged by the buyer in a timely manner and at the buyer's expense. The buyer is required to ensure that construction materials and supplies required for all ancillary work in other trades (e.g. excavation, construction, mortising, plastering, painting and scaffolding) are available.

(4) Water and electricity, including the required connections up to the place of use, heating and general lighting must be provided by the buyer and at the buyer's expense.

(5) The buyer is obligated to ensure that rooms of sufficient size which can be locked are available to store machine components, apparatuses, tools etc. of the vendor required during installation.

(6) If setup, installation or commissioning is delayed for reasons beyond the control of the vendor, the buyer bears the costs for wait time including costs for the deployed installation personnel.

#### § 10 Retention of Title

(1) The goods remain property of the vendor until all claims of the vendor against the buyer have been settled in full (goods subject to retention of title), even if payment for specific goods has been received. The assignment or transfer by way of security of the goods subject to retention of title is not allowable.

(2) In case of the resale or rental of the goods subject to retention of title – which is permitted in the ordinary course of business – the buyer, now and in advance, assigns to the vendor all future receivables from the buyer's customers arising from the resale or rental of the goods subject to retention of title until all receivables due to the vendor from the buyer are settled in full. No separate later declaration is required. The assignment also extends to accounts receivable

balances carried forward, which arise under existing open accounts or when such open account relationships of the buyer with its customers are terminated. If the goods subject to retention of title are resold or rented along with other items without agreeing on a separate price for the goods subject to retention of title, the buyer assigns to the vendor – with priority over the remaining receivables – the proportion of the full selling price or full rental amount that corresponds to the value of the goods subject to retention of title invoiced by the vendor. The buyer has the revocable right to collect the assigned receivables arising from resale or rental; however, the buyer does not have the right to otherwise dispose of the receivables, e.g. by means of assignment.

Upon request by the vendor, the buyer is required to inform its customer of the assignment and to provide the vendor with the documentation such as invoices required to assert its rights against the customer and to provide the necessary information.

All collection and possible intervention costs are borne by the buyer. If the buyer receives drafts based on its authorization to collect the assigned receivables arising from resale, ownership of said documents with the securitized right is transferred to the vendor as security. In lieu of handing over the draft, the parties agree that the buyer accepts it on behalf of the vendor and then delivers it to the vendor promptly and endorsed. In case consideration for receivables assigned to the vendor is received by the buyer or a bank of the buyer in the form of checks, the buyer is obligated to notify the vendor promptly and to remit the amounts received to the vendor. Ownership of checks with the securitized right is transferred to the vendor as soon as they are received by the buyer. In lieu of handing over the checks, the parties agree that the buyer accepts them on behalf of the vendor and then delivers them to the vendor promptly and endorsed.

(3) If the buyer processes or modifies the goods subject to retention of title or combines them with other items, said processing, modification or combination is done on behalf of the vendor. The vendor becomes a direct owner of the items that result from processing, modification or combination. Should this prove impossible for legal reasons, the vendor and the buyer agree that the vendor obtains ownership of the new items at all times during processing, modification or combination. The buyer stores the new items on behalf of the vendor with the care of a reasonable businessman. Items resulting from processing, modification or combination are deemed to be goods subject to retention of title. In case of processing, modification or combination with other items that are not the property of the vendor, the vendor obtains co-ownership in the new items in the amount of the vendor's share, which is determined according to the proportion of the value of the goods subject to retention of title that were processed, modified or combined to the value of the new items. In case the new items are resold or rented, the buyer hereby assigns to the vendor its claims against its customer arising from sale or rental, with all ancillary rights, by way of security. No subsequent declarations are required. However, the assignment only applies for the vendor's invoice value of the goods subject to retention of title that were processed, modified or combined. The proportion of receivables assigned to the vendor takes priority over any other receivables.

(4) If the goods subject to retention of title are combined with land or movable goods by the buyer, the buyer also assigns its receivables due as compensation for said combination to the vendor, with all ancillary rights, by way of security. No subsequent special declarations are required. If the buyer is the owner of the land, or if the buyer is entitled to rent for the land for other legal reasons, said rent is also assigned to the vendor. The preceding section applies correspondingly for the amount of the assigned receivables.

(5) If the buyer is in arrears with its payment obligations or the redemption of drafts or checks as they come due, in whole or in part, in case of over-indebtedness, if the buyer stops making payments or if an application is made to commence reorganization or insolvency proceedings, the vendor has the right to take possession of all goods subject to retention of title immediately; the vendor can also assert other rights associated with the retention of title immediately; the same applies if the economic condition of the buyer otherwise deteriorates significantly. The buyer grants the vendor or its agents access to all its company premises during business hours. A request for release or taking possession does not constitute withdrawal from the contract. The vendor has the right to dispose of the goods subject to retention of title with the care of a

reasonable businessman, and to apply the proceeds to outstanding claims.

(6) If the value of the collateral exceeds the claims of the vendor against the buyer arising from the ongoing business relationship by more than 20%, the vendor upon request by the buyer is obligated to release collateral at its discretion.

## § 11 Guarantee / Defects

(1) Claims for defects expire after one year.

(2) If the purchase and sale is a commercial transaction for both parties, the buyer is required to inspect the goods promptly upon receipt, insofar as this is feasible in the course of ordinary business operations and, should a defect be identified, to notify the vendor promptly in writing. If the buyer fails to notify the vendor, the goods are deemed to have been accepted except in case of defects that were not identifiable upon inspection. Otherwise Sections 377 ff of the German Commercial Code (HGB) apply.

(3) Claims are limited to the rectification of defects or delivery of replacement goods (supplementary performance) at the discretion of the vendor. If supplementary performance fails, the buyer at its discretion has the right to an abatement or to withdraw from the contract.

(4) Further claims of the buyer, especially for consequential harm caused by a defect, are excluded. This does not apply in case of intent, gross negligence or the violation of essential contractual obligations by the vendor, or in case of death, physical injury or the impairment of health. The right of the buyer to withdraw from the contract remains unaffected.

(5) Section 11 also applies to claims for damages. Further claims are excluded.

## § 12 Liability

(1) Unless anything to the contrary has been agreed upon above, the vendor and its assistants and vicarious agents are liable for claims for damages by the buyer arising from positive violations of contractual duties, the violation of obligations during contract negotiations and unlawful acts, as follows:

a) Liability for personal injuries according to the applicable legal provisions.

b) Liability for damage to property limited to EUR 250,000.00 per case of loss and a total of EUR 500,000.00.

c) Liability for financial losses is excluded.

(2) The limitation of liability under (1) b) and the disclaimer of liability under (1) c) does not apply insofar as mandatory liability for typically foreseeable damages under the contract applies for goods used privately according to the Product Liability Act or in case of intent, gross negligence or the violation of essential contractual obligations.

## § 13 Industrial Property Rights

(1) The vendor hereby assures the buyer that the delivery items do not infringe on third-party proprietary rights in the agreed delivery country, and assumes liability in this regard. However, the buyer is obligated to notify the vendor promptly regarding claims arising from proprietary rights asserted against the buyer by third parties, and to proceed in cooperation with the vendor in responding to such claims and asserting the applicable rights. If any of these conditions are not met, the vendor is relieved of its obligation. In case of a violation of third-party proprietary rights for which the vendor is liable, resulting in a legally effective prohibition for the buyer to use the delivery item in whole or in part, the vendor at its own expense and discretion shall either

a) obtain the right to use the delivery item on behalf of the buyer, or

b) make the delivery item free of proprietary rights, or

c) replace the delivery item with another item that performs accordingly but does not violate any

proprietary rights, or

d) take back the delivery item and reimburse the purchase price.

(2) If the buyer modifies the delivery item, installs additional equipment or combines the delivery item with other devices or fixtures, resulting in the violation of third-party proprietary rights, the liability of the vendor is eliminated.

(3) The buyer is not entitled to any other or further claims arising from the violation of third-party proprietary rights. In particular, the vendor is not liable for consequential damages such as lost production, loss of use or lost profits. These limitations of liability do not apply insofar as mandatory liability for typically foreseeable damages under the contract applies in case of intent, gross negligence, violation of essential contractual obligations or the lack of assured characteristics. The right of the buyer to withdraw from the contract remains unaffected.

(4) The buyer does not acquire any claims to use proprietary rights held by the vendor in regards to the interaction of the delivery item with other items.

#### § 14 Place of Fulfillment, Jurisdiction, Final Provisions

(1) If the buyer is a merchant, Heilbronn is the exclusive jurisdiction – also for check and draft proceedings. The same jurisdiction applies if the buyer, at the time legal proceedings commence, does not have a general jurisdiction in the Federal Republic of Germany. However, the vendor has the right to appeal to any court of jurisdiction.

(2) The laws of the Federal Republic of Germany apply. International commercial law does not apply, in particular the Haag Convention of 1 July 1964 regarding uniform laws for international transactions and the United Nations Convention on Contracts for the International Sales of Goods of 11 April 1980.

(3) Should specific provisions of this contract prove ineffective, the remainder of the contract shall remain binding. Should a provision prove ineffective in whole or in part, the contractual partners shall promptly strive to achieve the economic purpose intended by the ineffective provision in another, legally allowable manner.