

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF VOMED VOLZER MEDIZINTECHNIK GMBH & CO. KG

### I. AREA OF APPLICABILITY

- These general terms and conditions of sale and delivery (hereinafter referred to as „terms and conditions of business“) shall apply exclusively in relation to entrepreneur as defined in § 310 I of the German Civil Code (BGB). All deliveries and services of VOMED Volzer Medizintechnik GmbH & Co. KG (hereinafter referred to as „VOMED“) in relation to companies on a national and international level shall take place on the basis of these terms and conditions of business, unless otherwise agreed in writing.
- Deviating or conflicting terms of the Buyer shall not be recognised by VOMED, unless VOMED has expressly agreed to their applicability in writing. This shall also apply to annulment of the written form requirement itself.
- These terms and conditions of business shall also apply if VOMED carries out a delivery without reservation in knowledge of conflicting or deviating terms of the Buyer.

Even if these have not been expressly agreed once again, these terms and conditions of business shall also apply to all future transactions with the Buyer.

### II. OFFER AND CONCLUSION OF THE CONTRACT, DETERIORATION OF THE CREDITWORTHINESS OF THE BUYER, COPYRIGHT, COMMERCIAL PROPERTY RIGHTS

- Offers of VOMED shall be subject to confirmation and non-binding. An order shall become binding once it has been confirmed by VOMED in writing, by fax or by email or, at the latest, when VOMED performs the said order.
- The documents transferred in connection with the order allocation and performance, in particular pictures, drawings, explanations and descriptions, including the weight and quantity details contained therein and other product descriptions (hereinafter referred to as „offer documents“) shall only be of an approximate nature, unless these were expressly designated by VOMED as being binding (for example material certificates and similar). In the absence of an agreement to the contrary, no quality agreements or guarantees in respect of the products concerned shall be included in such offer documents.
- VOMED shall retain all ownership rights and copyright in respect of all offer documents. These may not be made accessible to third parties without the written agreement of VOMED and must be returned immediately on request. The same shall apply to commercial property rights.
- Should a significant deterioration in the liquidity or asset position of the Buyer occur following conclusion of the contract, VOMED shall be entitled to rescind the agreement, unless the Contractor provides security immediately following a request or provides advance payment. The same shall apply should such asset positions be present at the time of conclusion of the contract, but VOMED does not become aware of such until after this time.

### III. SCOPE OF DELIVERIES AND SERVICES, AMENDMENTS

- In respect of the contractual scope of service of VOMED, its written order confirmation shall be decisive.

Should the object of delivery be intended to fulfil certain requirements of the Buyer or be usable for certain purposes, this must be expressly stated by the Buyer in the order and be confirmed by VOMED in writing.

Amendment requests on the part of the Buyer in respect of the scope of delivery or service following the issuing of the order shall require written confirmation by VOMED to take effect.

- In respect of the technical concept which forms the basis of the offer, VOMED shall be entitled to carry out construction and form amendments, provided that quality and the service are not impaired as a result and that this can be reasonably expected on the part of the Buyer.
- VOMED shall only be obliged to comply with foreign packaging, supply and customs regulations if the Buyer provides correct and full information in this respect at the time of issuing of the order and this is confirmed by VOMED in writing.

Any associated (additional) expenses shall be borne by the Buyer.

### IV. SET OFF, RIGHT OF RETENTION AND PROVISION OF SECURITY

The Buyer shall only be entitled to a right of set off if its counterclaims have been recognised by a court or are undisputed.

The Buyer shall only be entitled to exercise a right of retention to the extent that its claim refers to the same contractual relationship.

VOMED shall be entitled to defend against the exercising of a right of retention (also in the form of provision of a bank guarantee) by means of the provision of security.

### V. PRICES, PAYMENT TERMS, DEFAULT

- Unless otherwise agreed in writing to the contrary, payments shall be due 30 days net following the date of the invoice. The prices shall be ex factory in euros and subject to the statutory value added tax (currently 19%) or to comparable tax of the country in which the delivery or service is subject to value added tax.

A discount deduction shall only be considered on the terms which are stated by VOMED in writing.

All other costs, in particular those of insurance, packaging, shipment and dispatch, customs duties, consulate or other fees, also due to regulations outside of the duties and fees charged by Germany, shall be borne by the Buyer unless a written agreement to the contrary has been concluded.

Payment deadlines shall be deemed to have been complied with if VOMED has the invoice amount at its disposal by this time.

- Should no fixed price have been agreed, VOMED shall expressly reserve the right to carry out reasonable price amendments due to changes in wage, materials and sales costs for

deliveries which take place 4 months or later following conclusion of the contract.

- The minimum order value shall be 100.00 EUR net per order. Orders which are below the minimum value shall require an additional contribution to the processing costs to a reasonable amount.
- All costs connected to money transfer shall be borne by the Buyer. Should money transfer not be possible at the due time from the country from where payment is to be made, the Buyer shall pay the invoice sum owed into a bank account nominated by VOMED on time.
- The default interest shall amount to 8 percentage points above the base rate of interest of the European Central Bank (ECB) per annum. The assertion of further default claims shall be expressly reserved.
- Payment by bill of exchange shall be excluded.

### VI. NO RESCISSION BY THE BUYER IN CASE OF SPECIAL PRODUCTIONS AND STERILE PRODUCTS

Unless a defect for which VOMED is responsible is present, the rescission of contracts connected to special productions or sterile products shall be excluded.

### VII. DELIVERY DATES, DELIVERY DEADLINES, FORCE MAJEURE/ DISRUPTIONS, RIGHT OF RESCISSION

- Delivery dates and delivery deadlines shall only be deemed to be binding if these have been confirmed as such by VOMED in writing.

A delivery deadline shall commence on sending of the order confirmation, however not prior to fulfilment by the Buyer of all co-operation obligations which are relevant to the contract, in particular the provision of the documents, materials and work materials, objects, permits and approvals which are to be obtained by the Buyer, as well as compliance with the agreed (advance) payment obligations / deposit payments and/or the provision of securities. Otherwise, the delivery deadline shall be extended accordingly.

The plea of non-fulfilment of the contract shall be reserved.

- The delivery deadline shall have been complied with if the object of delivery has left the factory prior to its expiry or readiness for dispatch has been notified.
- In case of force majeure or other unforeseeable hindrances, such as civil commotion, operational disruptions, strikes, blockades, fire, natural disasters, transportation problems, changes to statutory regulations which are relevant to the contract, official measures and ordinances or the occurrence of other events over which VOMED has no control, the delivery time shall be reasonably extended according to the extent of the effect and its duration.
  - The same shall apply in case of delays in the availability of essential work materials, should this significantly influence the completion and/or delivery of the object of delivery and provided that VOMED is not responsible for the delay.
  - Should the disruption as outlined above last for more than 60 days, both parties shall be entitled to rescind the contract.
- Should the dispatch be delayed at the request of the Buyer or should it fail to provide performance for reasons for which it is responsible, VOMED shall be entitled to store the goods at the risk and expense of the Buyer.

### VIII. PARTIAL DELIVERIES

VOMED may provide partial deliveries at any time, which shall be remunerated separately within the framework of the above mentioned payment deadlines and modalities. Should the payment of a partial delivery be delayed, VOMED shall be entitled to suspend the further performance of the order.

### IX. TRANSFER OF RISK

- Unless otherwise stated in the order confirmation, the risk of possible destruction, loss and damage of the goods („risk“) shall be transferred to the Buyer at the time of these being made available for collection from the factory in Tuttingen and notification that these are ready to be collected.

Any shipping shall always take place at the risk of the Buyer. In the absence of an express written agreement to the contrary, this shall also apply even if VOMED bears the cost of shipping in exceptional cases.

- Should the shipping be delayed for reasons for which VOMED is not responsible, the risk shall be transferred to the buyer from the day of notification of readiness for dispatch.

### X. RESERVATION OF OWNERSHIP, RESELLING PRIOR ASSIGNMENT, RELEASE OF SECURITIES, RESCISSION

- Unless otherwise agreed in writing, the delivered goods shall remain the property of VOMED until the Buyer has fulfilled all claims against it to which VOMED is entitled.
- The Buyer shall be obliged, at its expense, to immediately carry out all measures in respect of a necessary registration of the reservation ownership under foreign legal ordinances.

Should the reservation of ownership not be effective according to the laws of the destination country, the Buyer shall co-operate in the substantiation of an effective lien which is equivalent in qualitative terms in favour of VOMED prior to delivery of the goods.

3. For the duration of the reservation of ownership, the Buyer shall be obliged to treat the delivered item carefully and to insure it to the replacement value at its expense against fire, water and storm damage and theft.
4. Should the delivered objects be resold or handed over to third parties by other means in accordance with the regulations in the course of ordinary business dealings prior to the time of the full settlement of all claims of VOMED against the Buyer, the Buyer hereby assigns to VOMED all claims accrued by it or which remain to be accrued by it which are connected to the resale or handover to the third party in relation to the Buyer of the goods which are subject to reservation of title with all ancillary rights. VOMED hereby accepts the said assignment
5. On first request of VOMED, the Buyer shall be obliged to immediately disclose the said assignment to its debtor, should it enter payment default, have suspended payment or should other detrimental changes to its asset or liquidity position occur. On first request, the Buyer shall notify VOMED of the names and addresses of the respective debtors and shall hand over all necessary documents and receipts for the enforcement, as well as provide information.

All treatment and processing of the objects of delivery shall take place free-of-charge to VOMED.

In cases where a new item of a significantly higher value comes into existence by means of the treatment or processing, VOMED shall acquire co-ownership in the said item to a proportion which corresponds to the relationship of its delivered objects with the value of the newly manufactured item.

6. The Buyer may not pledge the object of delivery, or hand it over as security. The Buyer must immediately inform VOMED of an attachment, seizure or other disposition.
7. The Buyer may collect the assigned claims itself, provided that it properly complies with its obligations in relation to VOMED. Should the value of the goods subject to reservation of title together with the other securities granted to VOMED exceed the claim against the Buyer by more than 10%, VOMED shall be obliged to release securities of its choice on the request of the Buyer.
8. In case of payment default of the Buyer, VOMED shall be entitled to rescind the contract, following the setting of a reasonable period of grace. Following the declaration of rescission, the Buyer shall be obliged to return the delivered goods. The assertion of the rights under the reservation of ownership shall, as is the case with a surrender demand, not be deemed to represent rescission of the contract.

#### XI. GUARANTEE, WARRANTY EXCLUSIONS

1. VOMED shall provide a guarantee that the delivered goods are suitable for use in accordance with the contract and are free from defects.
2. All obvious defects to the objects of delivery must be asserted to VOMED in writing within 2 weeks of receipt of the goods. In case of hidden defects, the defects must be asserted at the latest 2 weeks following their discovery. Otherwise the goods shall be deemed to have been properly and completely delivered.

Damage to the goods or packaging which is discovered at the time of receipt of the goods must be immediately complained to the shipping company or carrier. The requirements of § 438 of the German Commercial Code (HGB) must be complied with when reporting damage.

3. Should defects in the objects of delivery be present, VOMED shall be entitled to choose between providing improvement or a replacement delivery. Should improvement be chosen, the defective parts must be sent to the place of business of VOMED. No improvement at the place of use of the defective part will take place. In case of failure of improvement or replacement delivery, the Buyer shall be entitled to reasonably reduce the purchase price or to choose to rescind the contract. In order to carry all improvements and replacement deliveries which VOMED considers necessary at its discretion, the Buyer must hand over the goods to VOMED and grant a reasonable period of time.
4. The right of the Buyer to assert claims connected to defects shall lapse within one year of the time of transfer of risk.
5. No guarantee is provided for damage caused by the following reasons: Unsuitable or incorrect use or storage, defective assembly or putting into operation by the Buyer or a third party, normal wear and tear, contamination, defective or negligent treatment - in particular overloading - unsuitable operation and cleaning materials, replacement materials, chemical, electrochemical or electrical influences, unless these are due to fault on the part of VOMED. The same shall apply if numerical identification (series or article number, type designation) provided by the manufacturer are removed or made unreadable.
6. VOMED shall not incur liability for defects which refer to construction prescribed by the Buyer or which are due to materials delivered or prescribed by the Buyer.
7. The liability for defects to the delivery shall not be extended by improvement or replacement deliveries. A new warranty period shall not commence as a result.
8. No liability will be accepted for advice and proposals of VOMED which are not directly connected to a delivery and which are not stated as being binding. This shall also apply to operating and maintenance instructions which are not stated as being binding.
9. These warranty provisions shall apply accordingly to the provision of work services by VOMED.
10. The warranty shall not be limited by the clauses above, should a quality agreement or a guarantee have been declared by VOMED.

#### XII. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

The place of performance and exclusive place of jurisdiction for all disputes under or in connection with this contract shall be the respective competent court for the place of business of VOMED. However, VOMED shall be entitled to bring a lawsuit against the Buyer at the place of jurisdiction of its place of business or at any other permitted place of jurisdiction.

#### XIII. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

The Buyer hereby agrees that its relevant data for the processing and fulfilment of the contract will be saved and processed by VOMED.

#### XIV. LIABILITY

1. The liability of VOMED as well as that of its legal representatives and vicarious agents shall be limited to intent and gross negligence, unless a breach of essential contractual obligations is present.  
  
The liability for financial losses shall be limited to that which is foreseeable and typical of the contract.  
  
The liability for loss profit, as well as liability for damage which was not caused to the objects of delivery, shall be excluded.
2. The limitations of liability above shall not apply to damages claims of the Buyer due to injury to life, body and health, as well as to mandatory claims under the German Product Liability Act (Produkthaftungsgesetz) and the German Medicines Act (Arzneimittelgesetz).

#### XV. SECRECY

1. The Buyer shall be obliged to maintain the strictest secrecy in respect of all confidential information of which it becomes aware in connection with the business relationship and the delivery, in particular such information of a technical, operational or other type. The above obligation shall continue to apply following termination of the contractual relationships.
2. By means of suitable contractual agreements with their employees and representatives, the Parties shall ensure that such persons permanently refrain from exploiting, forwarding on or making unauthorised records of such business and operational secrets.
3. This non-disclosure obligation shall not apply if and to the extent that VOMED has agreed to a disclosure, the confidential information can be proven to be generally known or the Buyer is obliged to disclose such information within the framework of official or court proceedings.

#### XVI. BREACH OF THIRD PARTY PROPERTY RIGHTS /RELEASE, UNJUSTIFIED RETURNS, OTHER

1. Should the contractual products be manufactured in accordance with instructions or drafts of the Buyer, it shall release VORMED from all claims in case of a breach of commercial property rights or third party copyrights
2. Should the contractual products be re-exported by the Buyer to a country other than the original country of delivery, the Buyer shall be solely responsible for compliance with all export regulations and other ordinances.
3. In case of further delivery of the goods to the USA or Canada by the Buyer, it shall be obliged to conclude product liability insurance to a sufficient amount and to maintain such insurance for the duration of the limitation periods.
4. In case of unjustified returns of goods, VOMED shall reserve the right to charge a processing fee to the amount of 10% of the net invoice value per return, however to a minimum amount of 25 EUR.

#### XVII. EXCLUSION OF ASSIGNMENT, CHOICE OF LAW, CONTRACTUAL LANGUAGE, SEVERABILITY CLAUSE

1. The assignment of rights and obligations under this contract to third parties by the Buyer shall only be possible with the prior express written agreement of VOMED.
2. The law of the Federal Republic of Germany shall apply to the legal relationships between the Buyer and VOMED, to the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
3. The contractual language shall be German. Should translations into other languages be provided, these shall only serve the purpose of improved understanding. In case of doubt, the German version shall be decisive.
4. Should one of the provisions of these general terms and conditions of business be or become ineffective, the effectiveness of the remainder of the contract shall not be affected thereby. In place of the ineffective provision, the Parties shall be obliged to newly agree such a clause which comes as close as possible to the original economic intent of the ineffective provision.



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