

MMM General Terms of Sales and Delivery (04/2018)



I. General

1. All deliveries and services are subject to these conditions as well as additional contractual agreements if existent. Deviant purchase conditions of the buyer do not become part of the contract when accepting the order. Offers are non-binding. The contract is valid only after written order confirmation of the supplier.

2. The supplier reserves all property and copy rights of samples, quotations, drawings and similar information of physical and immaterial or electronic nature; they must not be displayed to third parties. The supplier will reveal confidential information and documents of the buyer to third parties only with approval of the buyer.

II. Scope of Delivery, Modifications and Cancellation

The scope of delivery is determined by the written order confirmation of the supplier. Any orders and additional agreements or modifications with representatives or agents become valid only after written confirmation of the supplier.

If not explicitly stated as binding, any pictures, drawings, indications of weight, volume, capacity, heating surfaces, steam supply and power input are proximate indications.

The supply of electronic equipment is subject to the general conditions of the electronic industry. Costs for modifications or cancellation induced by the buyer after contract conclusion will be charged. In case of return deliveries which the supplier is not responsible for, a processing fee of up to 40 % of the value of the goods is charged in addition to any expenses incurred.

III. Price and Payment

1. If not agreed otherwise, prices are ex works including loading on the ground of works, but excluding packaging and unloading. 2. If a period of 10 months or more lies between the quotation of the supplier and issuing the invoice and if during this period changes in the costs of more than 3 % of the agreed price have occurred, the amount due is reduced or increased according to the index changes recorded by Federal Statistical Office. The Fachserie 17, Reihe 2, prices and price indices for commercial products, section „Medizintechnische Erzeugnisse“ (No. 754) applies.

3. If not agreed otherwise, payment is to be effected without deduction on the account of the supplier as follows:

33 % down payment on receipt of the order confirmation
57 % on notification to the buyer that the main parts are ready for shipment,

the remaining amount is due after transfer of perils – except for justifiable acceptance rejection – or one month after delivery date provided for in the order confirmation of the supplier at the latest. If delivery, installation or acceptance is delayed without the supplier's fault, e.g. due to incomplete construction works, payment is nevertheless due at the dates provided for at first.

4. The buyer has the right to withhold payment or to balance the payment with counterclaims only if such counterclaims are undisputed or legally assessed.

IV. Delivery time

1. The delivery time results from the agreement between the contracting parties. Observance of which by the supplier requires the clarification of all commercial and technical questions between the contracting parties and the fulfilment of the buyer's obligations for example regarding the providing of the necessary official certificates and approvals or the payment of down payments. If this is not the case, delivery time is prolonged adequately, unless the supplier is responsible for the delay.

2. Observance of the delivery time is reserved to correct and timely supply of the supplier.

3. The time of delivery is observed, if by the end of the delivery period of the goods have left the works of the supplier or if the supplier has notified the buyer that the goods are ready to be shipped. If an acceptance is required – except for justified refusal of acceptance – the date of the acceptance determines the observance of the delivery date or alternatively the notification of the readiness for acceptance.

4. If the shipment or the acceptance of the goods is delayed for reasons, which the buyer is responsible for, the buyer will be charged with any costs incurred by the delay, starting one month after notification of readiness for shipment or acceptance.

5. If non-compliance with the delivery time is due to force majeure, industrial conflict or other events beyond the sphere of influence of the supplier, the time of delivery is prolonged accordingly. The supplier will inform the buyer of the beginning and the end of such circumstances as soon as possible.

6. The buyer may withdraw from the contract without stating a deadline, if the supplier cannot render the full performance prior to

transfer of perils. The buyer may also withdraw from the contract, if on placing the order the execution of parts of the delivery is impossible and if the buyer has a justified interest in rejecting a partial delivery. If this is not the case, the buyer must pay the price relating to the partial delivery. Above this, chapter VIII.2 applies.

If impossibility of performance occurs during a delay in acceptance or if the buyer is predominantly responsible for such circumstances, the buyer remains obliged to payment.

7. If the supplier is delayed and if the buyer grants an adequate period – taking the legal exceptional cases into account – for rendering the performance and if this period is not observed, the buyer is allowed to withdraw from the contract within the limits of the legal regulation. Further claims from delay in delivery are determined exclusively in chapter VII.2 of this conditions.

V. Transfer of perils, acceptance

1. Perils are transferred to the buyer, once the goods have left the works, also in case of partial deliveries or if the supplier has accepted other services such as costs of shipment or delivery and installation. If acceptance is required, this determines for the transfer of perils. It must be carried out promptly on the date of acceptance or alternatively upon notification of the supplier that the goods are ready for acceptance. The buyer must not refuse acceptance unless the goods are substantially defective.

2. If delivery or acceptance is delayed or if shipment is delayed or stopped due to circumstances, which the supplier is not responsible for, perils are transferred to the buyer on the day of notification of readiness for shipment or acceptance. The supplier is obliged to contract the insurance specified by the buyer, at the costs of the buyer.

VI. Reservation of proprietary rights

1. The supplier reserves ownership of the goods until receipt of payment stipulated in the contract.

2. The supplier is entitled to ensure the goods against theft and damage from breakage, fire, water and other, at the costs of the buyer, if the buyer does not furnish proof of an insurance concluded by himself.

3. The buyer must not dispose of, pawn or convey as security the goods. In case of garnishment or confiscation or other provisions by third parties, the supplier must be notified immediately.

4. If the buyer acts contrary to the contract, particularly in case of delay of payment, the supplier is allowed to take the goods back after sending a reminder and the buyer is obliged to deliver. The claiming of the reservation of proprietary rights as well as garnishment of the product by the supplier, are not considered as withdrawal from the contract.

5. The commencement of an insolvency proceedings is a justified reason for the supplier to withdraw from the contract and to demand immediate surrender of the goods.

VII. Warranty

The supplier warrants for defects in title and quality excluding any further claims – notwithstanding chapter VIII – subject to the following provisions:

1. All parts which have proven defective due to an incidence prior to the transfer of perils must be repaired or replaced (to be chosen by the supplier) free of charge. The supplier must be informed immediately in writing of the identification of such defects.

2. The buyer must allow sufficient time and opportunity for the supplier to carry out the necessary repairs and replacement shipment. If not, the supplier is exempt from any liability for the resulting consequences. Only if operating safety is at hazard or if damage of large extent must be prevented, in which case the supplier must be notified immediately, only then, the buyer has the right to remedy the defect by him- or herself or by third parties and claim for refund of the expenses.

3. If justified, the supplier bears the costs for repair or replacement including forwarding expenses and appropriate costs for installation as well as labour costs of mechanics and assistants. The latter only if reasonable in respect of the defect.

4. According to legal regulations, the buyer has the right to withdraw from the contract if the supplier – taking legal exceptional cases into account – does not take any action within an appropriate period for repair or replacement. In case of a minor defect, the buyer has only the right to reduce the contract price. Otherwise, the right of price reduction remains excluded.

5. The supplier does not assume warranty particularly in the following cases:

Unsuitable or incorrect utilization, faulty assembly or putting into service by the buyer or third parties, natural wear, unsuitable media, poor construction work, unsuitable building ground, chemical,

electrochemical or electrical impacts, faulty or negligent treatment, unduly maintenance – provided the supplier is not responsible for such circumstance. Incorrect maintenance is given, if the maintenance intervals prescribed by the manufacturer are not observed or if maintenance is done by people not authorised by the manufacturer. Furthermore, in case of faulty or incorrect repair by people not entrusted with by the manufacturer.

6. If the buyer or third party repairs incorrectly, the supplier does not accept warranty for any resulting consequences.

The same applies, if the goods are modified without prior approval of the supplier.

7. The supplier is not liable – irrespective of legal basis – for automatic electronic archiving of batch protocols generated by sterilizers or disinfectors, if such data are transferred within a network. The operator is responsible for correct transmission of the protocols to an archive, particularly for malfunctions of the network connection and assumes the onus of proof.

VIII. Liability

1. Regulations stated under chapter VII apply, excluding any other claims of the buyer, if the goods cannot be used by the buyer as specified in the contract due to faulty or non-execution of proposals and advice made prior to or after conclusion of the contract or due to an infringement of other contractual secondary obligation – particularly instructions for operation and maintenance of the goods.

2. The supplier is liable for damage to objects that are not directly part of the delivery item – irrespective of legal basis – only in case of

- purpose
- gross negligence of the proprietor/bodies or executives
- in case of culpable violation of life, body and health
- in case of defects, that have been maliciously concealed by MMM, or the absence of which had been guaranteed by MMM
- damage to people and objects caused by privately used items (according to the Product Liability Act).

Any further claims are excluded.

IX. Period of limitation

All claims of the buyer – irrespective of legal basis – fall under the statute of limitations after 12 months. In case of intentional or malicious behaviour as well as in case of claims according to Product Liability Act, legal periods will apply. They also apply for defects of a building or for objects supplied, which are used for a building according to their usual use and have caused defects of a building.

X. Software utilization

If the scope of delivery contains software, the buyer has the non exclusive right to use the software supplied including documentation. It will be made available for utilization on the goods designed for it. Utilization of the software on more than one system is not allowed. The buyer is allowed to copy, adapt, translate or change it from the object code to the source code of the software only to the extent as legally allowed (§§ 69 ff. UrhG). The buyer is obliged not to remove or to change indications of the manufacturer – particularly the copyright sign – without prior approval of the supplier. All other rights concerning the software and documentations including copies remain with the supplier or the supplier of the software. The placing of sub-licenses is not allowed.

XI. Applicable law, place of jurisdiction

1. All legal relations between the supplier and the buyer are subject to German law. The United Nations Convention on contracts for the International Sale of Goods (CISG) will not apply.

2. Place of jurisdiction is Munich. The supplier is also allowed to take action at the place of headquarters of the buyer.