

# General Conditions of Delivery 07/2010

## 1. General

1.1 These General Conditions of Delivery 07/2010 ("Conditions") only apply to Entrepreneurs within the meaning of Section 14 BGB [German Civil Code].

1.2 All deliveries and services provided by DiaSys Diagnostic Systems GmbH (hereinafter „Supplier“) are subject to these Conditions as well as any separate contractual agreements, respectively. Any contrary or supplemental conditions of purchase by the Buyer shall not become part of the contract unless specifically agreed upon by the Supplier in writing. This explicit written agreement requirement also applies in particular, if the Supplier delivers to the Buyer without any reservations and fully aware of the Buyer's purchasing terms.

1.3 References to legal requirements are only made for the avoidance of doubt. All legal requirements apply even in the absence of such clarifications, provided these legal requirements are not specifically amended or excluded by these Conditions.

## 2. Offer and Acceptance

2.1 All quotations made by the Supplier are made without obligation, provided they are not specifically characterized as binding.

2.2 The Buyer's order shall be deemed a binding offer of contract. In the absence of any provisions to the contrary on the order form, the Supplier may accept the offer within 14 days of receipt.

2.3 The Supplier may confirm acceptance either in writing by issuing an order confirmation or by delivering the goods to the Buyer.

2.4 Any amendments or addenda to the agreements that were entered into, including these Conditions, must be made in writing. With the exception of managing directors or duly authorized signatories, the Supplier's employees are not authorized to enter into oral agreements that deviate from these Conditions. The written form requirement is also fulfilled by fax transmissions.

## 3. Deadlines and Dates

3.1 Any delivery dates provided by the Supplier shall be deemed as approximate, unless the Supplier has specifically guaranteed a fixed deadline or date.

3.2 The delivery periods agreed upon commence on the date of the order confirmation. If the parties have agreed upon shipment, the delivery periods and dates refer to the date on which the goods are handed over to the shipper, freight carrier, or other third parties used for transportation.

## 4. Prices

4.1 Unless otherwise agreed upon in writing, all prices stated by the Supplier are ex works including packaging and loading, plus VAT at the applicable rate. The Buyer shall be liable for any other charges, including freight charges, taxes, duties, or other costs associated with the delivery. The Buyer shall also be liable for any costs relating to the transfer or registration of the goods in the destination country of the goods.

Additional packaging and labeling costs required for shipments of hazardous goods are subject to an adequate surcharge. The minimum surcharge is EUR 50 per shipment.

4.2 The prices are based on the Supplier's price list valid upon the date of conclusion of the contract. If the parties have agreed on a delivery date which is more than 4 months from the contract conclusion date, and if the Supplier's production costs have changed within that period, the Supplier is entitled to adjust the prices agreed upon accordingly. The Buyer is entitled to withdraw from the contract if the adjusted price exceeds the price originally agreed upon by more than 5%.

4.3 Orders shall have a minimum value of EUR 1,500.00. Orders below this value are subject to a surcharge of EUR 150.00.

## 5. Delivery

5.1 Provided no provisions to the contrary were agreed, deliveries are made ex Supplier's factory from Holzheim, Germany, which is also the place of fulfillment. The place of fulfillment is also the Supplier's factory, if delivery freight paid was agreed upon. If requested by the Buyer, the goods shall be shipped to a different destination (drop shipment). If not agreed upon otherwise, the Supplier shall be entitled to select the shipment method (in particular shipping companies, type of dispatch, packaging).

5.2 The risk of accidental damage or theft is transferred, at the latest, when the goods are handed over to the Buyer. In the event of drop shipments, the risk of accidental damage or theft, as well as the risk of delays, is transferred to the Buyer at the time the goods are handed over to the shipping company charged with the shipping of the goods. In case the shipment is delayed for reasons the Buyer is responsible for, the risk shall be transferred to the Buyer at the time the goods are ready for shipment.

## 6. Payment

6.1 Invoices shall be due and payable without any deduction within 30 days after date of invoice and delivery and/or acceptance. Payments shall be deemed as having been rendered on the date on which the amount is at the Supplier's disposal. For payments received within 14 days of the date of invoice, the Supplier shall allow a discount of 1.5% on the amount paid, unless there are still older invoices to be paid.

6.2 Unless otherwise agreed in writing, payments shall be made in Euros.

6.3 The Buyer shall be deemed in default after the 30-day terms of payment provided for in Section 6.1. The purchase price is subject to the legally valid default interest valid at the time. The Supplier reserves the right to assert further default damages.

6.4 The Buyer is only entitled to withhold payments or to set them off against counterclaims if its counterclaims are uncontested or were found to be legally valid. This provision does not apply in the event the Supplier violated its obligations in a grossly negligent manner.

## 7. Claims and Warranties

7.1 The Buyer's claims for defects require that the Buyer has complied with his legal inspection and notification duties (Sections 377, 381 HGB [German Commercial Code]). If a defect is found during the inspection or at a later date, the Supplier shall be notified without delay in writing. The notification is considered as having been issued without delay if sent within a period of one week; the time requirements shall be deemed as fulfilled if the notification was mailed during this period of time. Regardless of this inspection and notification obligation, the Buyer shall inform the Supplier of all obvious defects (including incorrectly shipped goods, wrong deliveries or wrong quantities) within one week upon receipt of the goods in writing. In such case, the notification is also considered as having been issued in good time if it is issued within a period of one week; the time requirements shall be deemed as fulfilled if the notification was mailed during this period of time. If the Buyer does not inspect the shipment or notify the Supplier in a timely manner, the Supplier shall not be liable for the respective defect. This provision does not apply in the event the Supplier fraudulently concealed the defect.

7.2 If requested by the Supplier, the Buyer shall return the respective item to the Supplier at his own expense. If it is found that the Buyer's claim was valid, the Supplier shall reimburse the Buyer for the costs of the most cost-

effective shipping method. This does not apply, if the shipping costs were higher, because the item was at a location other than the location of its intended use. In this case, the Supplier shall reimburse the Buyer only for the cost of the most cost-effective shipping method from the location of intended use to the Supplier.

7.3 The Supplier shall, at his own discretion, either repair the defective goods free of charge or replace them. The Buyer shall provide the Supplier with the required time and opportunity to do so. If this is not successful, i.e. if the Supplier feels that it is impossible or unreasonable to repair or replace the goods, or if the Supplier refuses to do so or if the Supplier could only do so within an unreasonable delay, the Buyer may withdraw from the contract or lower the purchase price. To protect himself against unreasonably high damages or if the Supplier is in default with remediating the defect, the Buyer shall be entitled to repair the defect himself or to have it repaired by third parties, and to require the Supplier to reimburse him for the required expenses. In this event, the Buyer shall notify the Supplier in writing immediately or, if possible, in advance.

## 8. Liability

8.1 The Supplier's liability with regard to damages is, regardless of their legal grounds, limited by the following provisions, provided they require the Supplier's culpability.

8.2 The Supplier shall be liable for all damages regardless of their legal grounds in accordance with the legal provisions in the event of intent and gross negligence.

8.3 In the event of simple negligence, the Supplier shall only be liable for

- injuries to life, body, and health and
- damages resulting from the violation of essential contractual obligations. Essential contractual obligations are obligations, the fulfillment of which is required for the due execution of the contract, and those for which the Buyer should have reasonable trust and confidence that they shall be fulfilled. Essential contractual obligations are, in particular, the obligation to consign the merchandise on time and free from fundamental defects, as well as the advisory, protective, and custodial care obligations that are to enable the Buyer to use the goods in the contractual manner, or the purpose of which is to protect the health and life of the Buyer's employees from severe injuries or death or to protect the Buyer's property from severe damages; in this case, the Supplier's liability is, however, limited to the replacement of the damages that are foreseeable and typical, if the goods are used for their intended purpose.

8.4 The foregoing liability exclusions and restrictions equally apply to the executives, legal representatives, employees, and other vicarious agents of the Supplier.

8.5 The liability exclusions and limitations of this Section 8 do not apply

- if the Supplier fraudulently concealed a defect,
- if the Supplier warranted the attributes of a particular merchandise, and
- in terms of the Buyer's claims under product liability laws.

These cases fall under the Supplier's legal liability without any restrictions.

## 9. Statute of Limitations

9.1 The statute of limitations for warranty claims and the Buyer's contractual and non-contractual claims for damages based on defective goods is 12 months upon delivery or, if acceptance is required, upon acceptance. This provision shall not apply if the application of the normal legal period of limitation would result in a shorter period of limitations. In this case, the legal statute of limitations applies.

- 9.2 Notwithstanding Section 9.1, the respective legal period of limitation shall apply in case the Supplier fraudulently concealed the defect (Section 438, para. 3 BGB).
- 9.3 With regard to all other Buyer claims for damages, for which the Supplier shall be liable as per Section 8, only the legal statutes of limitations shall apply.
- 9.4 The statutes of limitations of the product liability laws shall not in any case be affected and are not limited by this Section 9.
- 10. Order Cancellations/Returns**
- In the absence of any legal or contractual reasons to withdraw from or contest an order, the Buyer shall only be entitled to cancel orders or to return merchandise after having obtained the Supplier's respective written approval in advance. The Supplier shall not be obligated to give his approval. If the Supplier approves of the cancellation or return, the Supplier shall be entitled to charge the Buyer for all additional reasonable costs incurred by the cancellation and return.
- 11. Retention of Title**
- 11.1 The Supplier retains title to all delivered goods until the Buyer has met all claims the Supplier is or will be entitled to, including all outstanding balance claims from current business. The Buyer shall be obligated to take proper care of these goods.
- 11.2 Any processing or transformation carried out by the Buyer on goods the title of which is retained is carried out on behalf of the Supplier. If these goods are processed together with other items to which the Supplier is not entitled, the Supplier acquires joint ownership of the new goods in proportion to the ratio between the value of goods the title of which was retained (final invoice amount including VAT) and the other processed items at the time they were processed. If these goods are mixed or joined together with other items to which the Supplier is not entitled in a manner that makes it impossible to separate them, the Supplier acquires joint ownership of new goods in proportion to the ratio between the value of goods the title of which was retained (final invoice amount including VAT) and the other mixed or joined items at the time they were mixed or joined. If these goods are joined or mixed so that the Buyer's goods should be considered to be the main component element, the Buyer and the Supplier agree in advance that the Buyer shall assign the prorated joint ownership to this object to the Supplier. The Supplier accepts this assignment. The Buyer shall safeguard the resulting sole or joint ownership in an object on behalf of the Supplier. Objects that are the result of processing, joining, or mixing are subject to the same provisions as goods subject to retention of title.
- 11.3 In the event the Buyer violates the contract, and in particular, if the Buyer is late in making a particular payment, the Supplier shall be entitled to recover these goods after having first extended an appropriate grace period. The Buyer shall be responsible for any shipping costs incurred for the return of the goods. The recovery of these goods through the Supplier constitutes a withdrawal from the contract. The Supplier shall be entitled to liquidate these goods. The proceeds from the liquidation are offset against the amounts owed to the Supplier by the Buyer, after the Supplier has subtracted a reasonable amount for the liquidation costs.
- 11.4 The Buyer may use the goods subject to retention of title and resell these within the course of normal business, provided he is not in default of payment. For safeguarding reasons, the Buyer fully assigns all its compensation claims against buyers involved in the resale of such good and all its claims based on other legal grounds against third parties (in particular claims due to illegal acts and receivables from insurances) and including all outstanding balance claims from current business to the Supplier. The Supplier accepts this assignment.
- 11.5 The Buyer may collect these receivables assigned to the Supplier at his own expense, provided the Supplier does not revoke this authorization. The Supplier's right to collect these receivables himself shall not be affected; the Supplier shall, however, not assert these rights and shall not revoke his collection authorization as long as the Buyer duly complies with his payment obligations.
- 11.6 The Buyer shall not assign the receivables assigned to the Supplier to a third party (factor) in order for the third party to collect the receivables from the debtors by way of factoring, unless the Buyer irrevocably obligates the third party (factor) to render the payment directly to the Supplier, as long as the Buyer still owes the Supplier.
- 11.7 If the Buyer violates the contract, and especially, if the Buyer is in default with a compensation payment, the Supplier may request the Buyer to inform him of all assigned receivables and the respective debtors, to inform the debtors of the assignment, and to provide the Supplier with all documents and information required to assert the claims.
- 11.8 If so requested by the Buyer, the Supplier shall be obligated to release collateral to which he is entitled if
- with regard to goods provided as collateral, their estimated value, i.e. their estimated market value at the time the release is requested, or alternatively, its purchase or manufacturing price, and
  - with regard to claims provided as collateral, their nominal value exceeds the amount of unpaid receivables to be paid by the Buyer by more than 50%.
- The Supplier shall be entitled to select the collateral to be released.
- 11.9 If the goods subject to retention of title are seized by third parties or if third parties gain access to these goods in another manner, the Buyer shall inform the third party that these goods are owned by the Supplier, and shall immediately inform the Supplier of such seizures or other type of access in writing.
- 11.10 If the goods subject to retention of title are seized by a third party or if a third party gains access to these goods in another manner, and if the Supplier asserts or enforces its ownership vis-a-vis the third party, the Buyer shall be obligated to reimburse the Supplier for the legal or extrajudicial expenses incurred for the assertion of its property rights, insofar as the third party does not pay for them.
- 12. Severability Clause**
- In the event one or several provisions of these Conditions are or become invalid, the validity of the remaining provisions shall not be affected. An invalid provision in these Conditions shall be replaced by a valid provision that most closely represents the economic result of the invalid provision.
- 13. Applicable Law, Jurisdiction**
- 13.1 The laws of the Federal Republic of Germany apply as relevant for the legal relation between domestic parties among each other, with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). However, the laws applicable at the place of storage of the goods shall apply to the conditions and effects of the retention of title referred to in Section 11 in those cases where the choice of German law is inadmissible or invalid.
- 13.2 If the Buyer is an entrepreneur, a legal person subject to public law, or a special asset under public law, the exclusive place of jurisdiction shall be Frankfurt am Main, Germany. The Supplier is, however, entitled to file suit against the Buyer at any other competent court.