

General Purchasing Terms and Conditions of DiaSys Diagnostic Systems

1. **GENERAL – SCOPE OF APPLICATION**
 - 1.1 To the fullest extent permitted under the applicable laws, the General Purchasing Terms and Conditions of DiaSys Diagnostic Systems GmbH, Holzheim, Germany ("DiaSys") will apply exclusively unless expressly amended by mutual written agreement between the parties. DiaSys does not accept any supplier's terms and conditions deviating from or contrary to those of DiaSys, unless the application of such terms and conditions has been expressly approved by DiaSys in writing. The General Purchasing Terms and Conditions of DiaSys will also apply if DiaSys accepts delivery by the supplier and/or pays the invoice without reservations even though DiaSys knows of supplier's terms and conditions deviating from or contrary to those of DiaSys. These General Purchasing Terms and Conditions will apply to each separate agreement for the supply of goods, works or services to DiaSys which will be entered into at some point in the future and they will apply as of commencement of contractual negotiations and, in any case, to the exclusion of any deviating terms and conditions. The General Purchasing Terms and Conditions of DiaSys will only apply to agreements entered with a company/a businessman in the course of its/his business operations.
 - 1.2 DiaSys is hereinafter also referred to as the "contractor". Under these General Purchasing Terms and Conditions, "supplier" means any third party supplying the contractor with goods, works or services. The terms used in these General Purchasing Terms and Conditions will primarily have the meaning given to them in any of the technical standards, including, without limitation ISO 9000, each as applicable at the time of the conclusion of the relevant agreement.
 - 1.3 Any agreements made between the contractor and the supplier as regards the performance of contractual obligations will be set out in writing in the relevant agreement. There are no oral side agreements between the parties.
2. **CONCLUSION OF AGREEMENTS**
 - 2.1 An agreement establishing obligations binding upon the contractor will have to be based on the contents of a written order placed by the contractor. The contractor may request that the supplier use the order forms provided by the contractor. The supplier is obliged to sign and return an order form immediately, but no later than within ten business days after its being posted by the contractor. The supplier is obliged to notify the contractor of any modifications to the original text of the order form, even though the contractor will not be bound by any such modifications until and unless expressly accepted by the contractor in writing. If the requirement to sign and return an order form immediately is not met or if the supplier fails to notify the contractor of a modification to the original text, the contractor will be entitled to cancel the relevant order. The same will apply, if delivery is confirmed by means other than the contractor's confirmation form, e.g. by the supplier using his own confirmation forms. Order confirmations must not be accompanied by any other documents, such as invoices.
 - 2.2 Being a specialised company, the supplier is obliged to notify the contractor in his offer of any defects or deficiencies that the contractor's letter of inquiry may have, pointing out in particular state of the art requirements under product liability law, environmental law provisions, accident prevention requirements, technical standards, obligations to obtain an official permit, approval or licence, if any, or practicality in technical terms. The supplier will specify the relevant product information no later than upon delivery and without further request. The contractor's approval of designs, drawings or other documentation does not release the supplier from his liability hereunder.
 - 2.3 The trade terms will be construed in line with the INCOTERMS issued by the International Chamber of Commerce in Paris, 2010 edition.
3. **QUALITY MANAGEMENT AND TESTING**
 - 3.1 Upon prior written notice, the supplier may be audited by the contractor at the contractor's discretion and at any time during normal business hours (ISO 9000 – 3.9). In the course of an audit, the supplier will in particular need to provide evidence at the contractor's request of his quality assurance system being in line with the requirements set out under the ISO 9000-9004. The supplier may not rely on a positive outcome of such audit as a means of limiting his liability. Suppliers of ready-made, semi-finished products shall provide evidence at the contractor's request of his quality assurance system being in line with the requirements set out under the ISO 13485.
 - 3.2 At the request of the contractor and prior to delivery of any new or changed goods, the supplier shall provide samples to the contractor for the purposes of inspection and testing. Once a sample has been approved, alterations of the function, appearance, characteristics, material or production method, which may affect the goods, may be done only after written approval from the contractor. Delivery may thereafter be made only after renewed approval of the sample.
- 3.3 If the contractor rejects a sample, the supplier shall take all necessary measures to render the goods free from any defect and he shall subsequently provide the contractor with a new sample. The supplier is obliged to reimburse the contractor for any costs incurred for testing additionally provided samples.
- 3.4 The contractor's final approval of samples shall not affect the supplier's liability for any defects in the goods.
4. **DELIVERY, TRANSFER OF RISKS, TRANSPORT, ACCEPTANCE OF DELIVERY**
 - 4.1 Delivery dates and deadlines agreed between the parties are binding. The relevant date for determining whether or not such dates or deadlines have been met is the date on which the goods, in the condition specified in the relevant agreement, or the services have been delivered or should have been delivered to or at the contractor's premises or another location specified by the contractor. The supplier will not be excused for delays caused by disruptions of his own supply, production and distribution services. This does not apply to disruptions caused by force majeure events, including, without limitation: acts of God, natural disasters, terrorist attacks, acts or orders of public authorities or industrial actions, if and to the extent that the supplier cannot be held responsible for such disruptions. The supplier is obliged to inform the contractor immediately in writing upon occurrence of circumstances which will result in a delay in delivery or upon his becoming aware of such circumstances. The duty to meet dates and deadlines agreed will remain unaffected except as set out above (force majeure). This applies regardless of any existing legal provisions to the contrary.
 - 4.2 In deviation from the above, the contractor hereby reserves the right to claim liquidated damages, amounting to 1% of the value of the goods to be delivered, for each week the delivery is delayed, but not exceeding 10%, should the supplier be in default. The supplier will be entitled in such cases to submit evidence to the effect that the damage actually caused by his being in default is substantially below the liquidated damage or that no damage was caused at all. An unreserved acceptance of delayed goods or services does not imply a waiver of the contractor's right to claim damages based on such delay. Any additional legal or equitable rights will remain unaffected. In particular, the contractor reserves the right to claim damages exceeding the amount of the liquidated damages.
 - 4.3 Unless expressly agreed differently, delivered duty paid (DDP) applies to all deliveries. In any event, transport of the goods, including returns, will be effected at the supplier's risk. Risk in the goods shall not pass to the contractor until delivery to the contractor's premises or another location specified by the contractor.
 - 4.4 All goods must be adequately protected against damage and deterioration in transit and their packaging must bear the description and quantity of the contents, any special handling or storage requirements, any hazards in relation to the goods (including but not limited to flammability, toxicity, corrosiveness etc.) and the contractor's order number. If the packaging is defective, the delivery will be deemed to be defective as well.
 - 4.5 Goods to be delivered and services rendered will be deemed to be ready for acceptance only if they are delivered or rendered accompanied by the statutory, appropriate or usual inspection documentation.
 - 4.6 The supplier is not entitled to effect partial deliveries, unless the contractor has expressly approved of such partial delivery and the contractor's approval is sufficiently evidenced. In the event that the supplier delivers a quantity in excess of the contractual agreement, the contractor shall not be responsible for taking delivery of, storing or maintaining such excess quantities and shall further be entitled to return any such excess quantities to the supplier at the supplier's expense. Quantities, measures and weights established on checking the incoming deliveries are relevant for determining whether or not a partial or excess delivery has occurred.
 - 4.7 If a formal acceptance in line with the law on contracts for works and services is required, minutes of acceptance need to be prepared and signed by both parties. Works will be deemed to be ready for acceptance only if accompanied by the agreed documentation and relevant product information. In cases where the supplier is not present for a formal acceptance in spite of having been given a week's notice, acceptance will be deemed to have been made when the contractor signs the minutes of acceptance. With regard to cases where the contractor accepts works even though the contractor is aware of minor defects, the contractor reserves the right to assert all legal and equitable warranty claims.
 - 4.8 The supplier is obliged to ensure that spare parts will be available for a period of at least fifteen years as of delivery.
5. **ORIGIN VERIFICATION, LONG-TERM SUPPLIER'S DECLARATION, PRODUCTION FOR AN AUTHORIZED ECONOMIC OPERATOR (AEO)**
 - 5.1 The Supplier commits himself to the annual issue of a long-term supplier's declaration, specifying the country of origin of articles supplied. In case an article's country of origin changes in the course of the existing

- business relationship, a negative statement must be issued and sent to us by separate mail.
- 5.2 The supplier commits himself to produce, store and transport the goods at safe manufacturing facilities and at safe transshipment locations and to thus protect them from being taken hold of by unauthorized third parties. The supplier assures that the staff members used for production, storage, processing, loading transport and take-over of such goods are reliable and were selected properly. Furthermore, the supplier assures that business partners acting on his behalf have been properly informed that they have to make sure the above-described supply chain is not interrupted.
6. **CERTIFICATES OF ORIGIN, VAT CERTIFICATES, EXPORT RESTRICTIONS**
- 6.1 The supplier will inform the contractor immediately if a delivery, as a whole or in part, is subject to export restrictions under applicable law.
- 6.2 At the contractor's request, the supplier will provide the contractor with certificates of origin, duly signed and containing all the relevant details. The same shall apply to VAT certificates required for deliveries abroad or in other member states of the European Union.
- 6.3 The supplier will be liable for all damage and costs incurred by the contractor due to the supplier's non-compliance with transport instructions or provisions of tax law.
7. **INVOICING, CONDITIONS OF PAYMENT, PRICES**
- 7.1 Invoices will always be issued in two copies for each order with a separate statement of the contractor's order number and of the order date without delay after the shipping of the goods and will be sent to the contractor exclusively by mail. In the event that delays occur due to a different form of sending the invoices, the contractor's rights, in particular the right to apply discounts, remain in effect.
- 7.2 The term of payment and any discounts contractor shall receive from supplier for paying any issued invoices within a defined period of time after receiving an invoice shall be agreed upon between contractor and supplier on an individual basis.
- 7.3 In the event that the contractor has justified objections to the goods delivered or works performed by the supplier, payment maturity dates will be suspended. As regards payments in advance, the contractor is entitled to request that security be provided or that existing security be supplemented. Bank guarantees to be provided to the contractor must be payable at first written demand and must be irrevocable and absolute guarantees, with a waiver of the defence of set-off, the plea of unexhausted remedies, of lapse of time and of voidability. All costs incurred in connection with the issue of a bank guarantee will be borne by the supplier.
- 7.4 The contractor chooses the currency. Unless otherwise agreed, the Euro will be the relevant currency.
- 7.5 The contractor is entitled to all legal and equitable rights of set-off and retention.
- 7.6 The assignment of claims against the contractor is subject to the contractor's consent. The supplier will not be entitled to set-off payments against counterclaims, unless such counterclaims are undisputed or subject to a legally binding court decision.
- 7.7 The contractor makes an effort to supply his customers with products of the highest possible quality and at the lowest possible costs. Therefore any goods to be delivered by the supplier must, at least, match products of competitors as regards quality and price. If the contractor becomes aware of a competitor offering any goods at better conditions as regards quality and/or price, he may notify the supplier in writing. Within 30 days after the receipt of such notice, the supplier shall provide the contractor with a new offer matching the competitor's offer. If no such offer is submitted, the contractor is entitled to cancel the relevant contract taking the supplier's interests into account.
8. **WARRANTY CLAIMS AND RECOURSE**
- 8.1 The supplier warrants (i) that the goods delivered by him will be new, unused, of merchantable and satisfactory quality, fit for any purpose made known to the supplier whether expressly or by implication, and free from all defects and deficiencies whether in design, material or workmanship, (ii) that the goods and any work performed under the contractor's order will conform with the specifications, drawings, samples or other descriptions contained or referred to in the contractor's order, (iii) that the goods and any work performed under the contractor's order comply upon delivery with all applicable standards, codes, laws, regulations, and with the state of the art as regards their environmental compatibility, and (iv) that the supplier will exercise all reasonable skill, care and due diligence and shall carry out all work in accordance with good engineering and professional practice.
- 8.2 Taking into account the conditions and circumstances under which the goods are delivered, the contractor is, upon delivery, only obliged to inspect the delivered goods for any obvious discrepancies in identity or number or for damage visible on the outside. The contractor may issue notices of defect if he discovers defects in the course of the manufacturing process or upon start of operation (start of use), but no later than twelve months after delivery. In this regard, the supplier waives the plea of delayed notice of defect.
- 8.3 The contractor is fully entitled to all legal and equitable warranty claims. In any event, if defects are discovered or if wrong products or quantities are delivered, the supplier will be under an obligation to remedy the defect at the contractor's request (repair or replacement) and within a period set by the contractor. If any period set by the contractor for the purpose of repair/replacement expires without the defects being remedied, the contractor is entitled to remedy the defects at the costs of the supplier, to have them remedied by a third party or to procure replacements. In urgent cases, in particular in order to avoid greater damage or in cases of imminent danger, the contractor is entitled to carry out all required measures by himself or to have them carried out by third parties at the costs of the supplier prior to expiration of or without any period set by the contractor.
- 8.4 The supplier is obliged to compensate the contractor for any damage and consequential damage caused due to defects or deliveries of wrong products or quantities.
- 8.5 If a defect in quality becomes obvious during the first six months as of the passing of the risk, it is assumed that the relevant item was already defective upon the passing of the risk, unless this assumption is incompatible with the type of item or damage.
- 8.6 Warranty claims related to deliveries and works become time-barred after four years at the earliest. If the law provides for longer limitation periods, these statutory periods will apply. Limitation periods commence to run as of the delivery of the goods or upon formal acceptance of the works, unless otherwise stipulated below or by law. When repair or replacement is requested and carried out within the period of limitation in order to remedy warranty claims asserted by the contractor, the period of limitation for the relevant delivery or works starts to run anew at the point in time the supplier has completely fulfilled the contractor's claims for repair/replacement.
- 8.7 If in the event of the manufacture and/or sale of a newly manufactured movable item, the contractor was obliged to take such item back due to its defectiveness caused by the defectiveness of goods delivered by the supplier, and, if in such an event, the purchase price paid to the contractor was reduced, or if any other claims in this respect were asserted against the contractor, the contractor reserves the right to take recourse against the supplier. In such an event the contractor is not required to set any deadline for the supplier to remedy defects. The contractor is entitled to compensation from the supplier for all costs incurred by the contractor in connection with such an event.
- 8.8 The claims under clause 7.7 become time-barred at the earliest after the end of a period of four months as of the point in time at which the contractor fulfilled any claims, which a customer asserted against the contractor, however, five years as of the delivery of the goods by the supplier at the latest.
- 8.9 The supplier warrants that all deliveries are free from third parties' rights, that he has the relevant goods at his free and unrestricted disposal and that the import, sale and/or conventional use of the goods do not infringe any third party's intellectual property rights. The supplier is obliged to notify the contractor of any extended retention of title and of the holders of such rights. If any claims are asserted against the contractor by third parties, the supplier is, upon the contractor's first written request, obliged to indemnify and hold the contractor and his customers harmless with respect to any such claims; the contractor is not entitled to make any understandings, and in particular to reach a settlement with a third party asserting such claims without the consent of the supplier. The supplier's obligation to indemnify and hold the contractor and his customers harmless covers all necessary expenses that the contractor incurs due to or in connection with any claims asserted against him by a third party. The supplier is obliged to provide the contractor, without delay and at no cost, with all information and documentation, which the contractor considers necessary for the defence against such claims. If claims are asserted against the contractor, the maturity dates of any claims of the supplier under the agreement will be suspended until the relevant matter is finally and absolutely settled.

8.10 The contractor's claims under clause 7.9 become time-barred after the end of a period of four years as of the time at which such defects in title have become known or should have become known. Otherwise, such claims become time-barred ten years as of the delivery of goods or the formal acceptance of works at the latest.

9. PRODUCT LIABILITY AND RECALL, INSURANCE

9.1 In the event that product or manufacturers' liability claims are asserted against the contractor, the supplier is, at the contractor's first request, obliged to indemnify and hold the contractor harmless with respect to all claims for damages asserted by third parties if the damage has been caused due to the defectiveness of any goods delivered by the supplier or if the damage was caused by another circumstance within the supplier's scope of influence or responsibility. In such an event, the supplier is not entitled to claim that periods for the purpose of taking recourse have expired. The supplier is obliged to assist the contractor in the defence against any claims. This includes, in particular, the submission of all papers and documents that the contractor considers necessary for defending against any claims and for providing evidence. The supplier bears the costs incurred in connection with the defence against claims to the extent that the relevant claims have arisen due to his fault.

9.2 Within the scope of his liability for damages as referred to in clause 8.1, the supplier is also obliged to reimburse any expenses incurred by the contractor due to or in connection with any product recall being made by the contractor.

9.3 The supplier is obliged to keep the documentation relating to products for at least 15 years as of the receipt of delivery at the contractor's premises and the supplier will submit such documentation in any case upon the contractor's first written request. The contractor's right to assert any further claims is not affected thereby.

9.4 In the event of any claim referred to in clause 8.1 being asserted, the contractor and his insurer are entitled to conduct the defence against such claim and, if considered appropriate, fulfil the relevant claims. This is, however, not to be understood as acknowledgement of any responsibility in this respect.

9.5 The supplier is obliged to take out and maintain sufficient insurance covering all potential liabilities under the agreement and as provided for by law. At the contractor's request, the supplier shall produce evidence of such insurance, stating the nature of the insurance, any exemptions and the duration of guarantees. The supplier shall notify the contractor immediately of any modifications, suspension or termination of his insurance policies.

10. DOCUMENTS, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIALITY

10.1 The contractor remains the owner of any drawings, models, patterns, tools, specifications of delivery or other documents, which the contractor provided to the supplier. Without the contractor's explicit consent, such documents may not be used for the supplier's own purposes or for any other purpose or made available to third parties and may serve only for the purpose of the delivery of goods and performance of services to the contractor. The contractor may request at any time that such documents be returned to him. The supplier is not entitled to refuse the return of such documents and must not retain any copies thereof.

10.2 The supplier is obliged to keep any knowledge or information gathered in connection with the business relationship with the contractor confidential, in particular, knowledge about the contractor's know-how, manufacturing methods and procedures. This does not apply to facts coming into the public domain other than by reason of the supplier's breach of confidentiality. The supplier is obliged to impose this obligation of confidentiality in writing also on any third party, including his employees, the services of which are used by the supplier in connection with the performance of his duties. The supplier is liable vis-à-vis the contractor for any damage arising due to the breach of such obligation of confidentiality. The obligations of confidentiality will remain effective as independent legal duties beyond the completion of any individual contract or transaction.

10.3 The supplier may not make public the business relationship of the parties through advertising or in any other written way without prior written consent of the contractor.

11. RETENTION OF TITLE

The contractor becomes the owner of the goods when they are delivered to the contractor's premises or another location specified by the contractor. The supplier is not entitled to retain title to the goods on any further conditions.

12. PLACE OF JURISDICTION AND PLACE OF PERFORMANCE

12.1 If the supplier is a businessman/company the contractor's place of business (registered office) shall be the place of jurisdiction; however, the contractor is entitled to sue the supplier in any courts having jurisdiction.

12.2 Unless otherwise provided for in any understanding made with respect to an individual contract or transaction, the place of performance is the contractor's place of business.

13. FINAL PROVISIONS

13.1 Should any provision of these General Purchasing Terms and Conditions be or become invalid, the validity of the remaining provisions will not be affected thereby. If any provision is invalid, the contractor and the supplier are obliged to agree on a valid provision that comes as close as possible to the original provision in legal and economic terms.

13.2 The legal relationship between the parties will be governed exclusively by local laws applicable at the contractor's place of business (registered office), without recourse to the rules on conflict of laws. For the avoidance of doubt, the UN Convention for the International Sale of Goods (CISG) does not apply.

14. SUPPLEMENT TO THE GENERAL PURCHASING TERMS AND CONDITIONS

14.1 Applicable to agreements governed by German law

14.1.1 If the supplier provides securities in terms of clause 6.3, he must also waive the right to deposit money in court.

14.1.2 In deviation from clause 10, the supplier has the right to make the passing of ownership contingent on the purchase price being fully paid. Any form of prolonged or extended retention of title to any goods is excluded in any event.