

# General Conditions of Delivery 12/2017

## 1. General

1.1. These General Conditions of Delivery 12/2017 ("Conditions") apply to all orders, deliveries and sales to buyers being entrepreneurs within the meaning of Section 14 BGB [German Civil Code] ("Buyer").

1.2. All deliveries and services provided by DiaSys Diagnostic Systems GmbH ("Supplier") are subject to these Conditions. The Supplier hereby contradicts any terms and conditions of the Buyer contrary or supplemental to these Conditions. 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 being fully aware of the Buyer's purchasing terms.

1.3. In the case of deviations between these Conditions and possible separate contractual agreements between the Supplier and the Buyer in the context of a separately concluded purchase agreement, the provisions of the purchase agreement shall prevail.

1.4. 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 in writing or by delivering the goods to the Buyer.

2.4. The purchase order and the order confirmation of the Supplier are decisive for the content and scope of a purchase agreement. Supplementary agreements shall only be effective if they are expressly confirmed in writing by the Supplier for the individual order.

## 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. The delivery periods agreed upon commence on the date of the order confirmation.

3.2. Delivery dates and/or deadlines shall be deemed to have been adhered to with timely notification of the dispatching of the goods. 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.

3.3. If the parties have agreed that the Buyer collects the goods himself or by a freight forwarder, freight carrier or other third parties

commissioned to transport, the Buyer is obligated to immediately call up and collect the goods declared ready for dispatch. If this does not happen, the Buyer is in default of acceptance.

## 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 labelling costs required for shipments of hazardous goods are subject to an adequate surcharge. The minimum surcharge is EUR 50.00 per shipment.

4.2. Prices in catalogues, price lists or comparable documents are free and non-binding. 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 four 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 as far as the price adjustment is based on circumstances beyond the control of the Supplier, this price adjustment was not already foreseeable at the time of the respective conclusion of the contract between the Supplier and the Buyer for the order and the increase is reasonable. Circumstances beyond the control of the Supplier means, in particular, changes of (i) custom duties, taxes or duties; (ii) material, wage, non-wage labour, financing or manufacturing costs; (iii) transportation costs; or (iv) any fees charged by the Supplier for third parties involved in the service provision. The Buyer is entitled to withdraw from the contract if the adjusted price exceeds the price originally agreed upon by more than 5%; this right can only be declared to the Supplier in written form immediately after notification of the price adjustment.

4.3. Each order 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 works Supplier's factory from Holzheim, Germany, which is also the place of fulfilment. The place of fulfilment 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.

5.3. If the ordered goods are not in stock in the desired quantities, the Supplier is entitled in consultation with the Buyer to provide the Buyer with partial and subsequent deliveries if reasonable.

5.4. If an ordered product is not available because the Supplier has not been supplied by his subcontractor under no fault of the Supplier although the subcontractor is contractually obliged, the delivery time may be extended. The Supplier shall inform the Buyer promptly thereto.

## 6. Payment

6.1. Invoices shall be due and payable without any deduction within 30 days after date of invoice. 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 and receipt of an invoice. The purchase price is subject to a valid default interest in the amount of nine percentage points above the base interest rate. In addition, the Supplier is entitled to a lump sum of EUR 40.00 in the case of the Buyer's default. The Supplier reserves the right to assert further default damages.

6.4. The Buyer is only entitled to set withhold payments off if its counterclaims are uncontested or were found to be legally valid. A right of retention of the Buyer is excluded unless the Buyer's counterclaim comes from the same contractual relationship and is undisputed or established as legally binding.

## 7. Claims and Warranties

7.1. The statutory provisions shall apply to material and legal defects in the delivery, unless otherwise stipulated in the following.

7.2. 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. Transport damages must be reported immediately to the forwarder at the time of delivery and must be noted on the delivery note. 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.

7.3. 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.

7.4. The Supplier shall, at his own discretion, either repair the defective goods free of charge or replace them.

7.5. 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, if possible, in advance.

7.6. The Buyer shall be entitled to withdraw from a purchase contract within the framework of the statutory provisions if the supplementary performance has finally failed, the Supplier has allowed a reasonable deadline for the repair or the replacement to expire fruitlessly or such deadline was not necessary according to the statutory provisions. If there is only a minor defect, the Buyer is only entitled to a price reduction. Otherwise, the right to price reduction is excluded. This does not apply if the Supplier has maliciously concealed the defect or has assumed a guarantee.

## 8. Force Majeure

The Supplier is not liable for the non-fulfilment or the delayed delivery of obligations arising from the purchase contract, if this is based on events which are beyond the Supplier's reasonable sphere of influence and the Supplier is not responsible for them, such as illegal strikes, disturbances, insurrections, fires, floods, storms, explosions, natural events, war, terrorism or earthquakes ("**Force Majeure**"). This does not apply if the Supplier has assumed a guarantee. In the event of Force Majeure, the Supplier shall be released from his obligation to perform for the duration of the event, provided the Supplier continues to make reasonable economic efforts to provide the service. The Supplier shall be entitled to withdraw from a purchase contract if the event constituting Force Majeure lasts longer than 30 days.

## 9. Liability

9.1. The Supplier's liability with regard to damages is, regardless of their legal grounds, limited by the following provisions:

9.2. In the event of gross negligence, liability is limited to the typically foreseeable damages at the point of time the contract has been

concluded. However, the above limitation of liability shall not apply insofar as damages are caused by the Supplier itself (i.e. from the legal representatives of the Supplier), by senior management employees of the Supplier or by vicarious agents or by a serious organizational fault of the Supplier. Furthermore, the above limitation of liability shall not apply in case of a breach of the contractual duties due to gross negligence if (i) the fulfilment of the contractual obligations enables the proper execution of the contract at all, (ii) the breach of these contractual obligations jeopardizes the achievement of the purpose of the contract and (iii) on whose fulfilment the other contracting party may ordinarily rely ("**Essential Contractual Obligation**").

9.3. In the case of simple negligence, the Supplier shall only be liable for the violation of Essential Contractual Obligations. In the event of breach of an Essential Contractual Obligation, liability shall be limited to such damages which must typically be expected in the course of the transfer of the goods.

9.4. The Supplier shall be liable in the event of (i) intent, (ii) claims under the Product Liability Act, (iii) fraudulent non-disclosure of a defect, (iv) assumption of a quality guarantee and (v) in the event of injury to life, body or health in accordance with the respective statutory provisions, without the liability limitations in accordance with Sections 9.2 and 9.3 above intervening. The above shall apply mutatis mutandis to actions of a vicarious agent of the Supplier.

## 10. Statute of Limitations

10.1. 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.

10.2. 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).

10.3. With regard to all other Buyer claims for damages, for which the Supplier shall be liable as per Section 9, only the legal statutes of limitations shall apply.

10.4. The statutes of limitations of the product liability laws shall not in any case be affected and are not limited by this Section 10.

## 11. 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.

## 12. Retention of Title

12.1. The Supplier retains title to the goods until the Buyer has paid the purchase price for the

respective goods in full (fulfilled). This retention of title also applies to all other outstanding claims arising from the business relationship with the Buyer, i.e. the Supplier retains title to the goods until all his claims arising from the business relationship with the Buyer have been settled, including all current account balance claims. The Buyer must treat the reserved goods with care.

12.2. Any processing or transformation carried out by the Buyer on goods the title of which is retained is carried out on behalf and for the account 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.

12.3. 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 take back 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.

12.4. 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. If the goods are not paid for immediately, the Buyer is obliged to resell the goods only under retention of title. 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.

12.5. 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.

- The Supplier shall be entitled to select the collateral to be released.
- 12.6. 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.
- 12.7. 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.
- 12.8. If so requested by the Buyer, the Supplier shall be obligated to release collateral to which he is entitled if:
- a) 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
  - b) 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%.
- 12.9. 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 and shall take all measures necessary to safeguard the rights of the Supplier.
- 12.10. 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.
- 13. Severability Clause**
- 13.1. Should one or more provisions of these Conditions be or become invalid, the validity of the remaining provisions shall not be affected thereby.
- 13.2. An ineffective provision or loophole in these Conditions shall be replaced by a valid provision which the contracting parties would have agreed upon in accordance with the economic objectives of the contract and the purpose of these Conditions if they had been aware of the loophole or ineffectiveness of a clause.
- 14. Applicable Law; Jurisdiction**
- 14.1. The laws of the Federal Republic of Germany apply with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.2. Exclusive place of jurisdiction for legal action by the Buyer is Frankfurt am Main. The Supplier is entitled to bring legal action against the Buyer both in Frankfurt am Main and at any other competent court.
- 15. Miscellaneous**
- 15.1. Deviating agreements to these Conditions as well as deviations from this clause must be made in writing. The transmission by fax is sufficient for compliance with the written form.
- 15.2. The assignment of the rights and/or the transfer of the Buyer's obligations under the contract with the Supplier shall require the prior written consent of the Supplier.