



General Conditions of Purchase GCP

1. Scope of Application

- 1.1 These General Conditions of Purchase, Edition March 2011 ("GCP") of MEDAV GmbH ("Purchaser") shall apply to deliveries and services ("Delivery") provided by a business entity ("Supplier") to the Purchaser on the basis of a contract between the Supplier and the Purchaser ("Contract").
- 1.2 The GCP shall apply exclusively. Other conditions shall only apply if Purchaser expressly agrees to their applicability in its order. The receipt of a Delivery as well as the acceptance of payments by the Purchaser does not constitute an agreement by the Purchaser to the Supplier's terms and conditions.
- 1.3 The GCP shall also apply within the scope of an ongoing business relationship to future business transactions between the Supplier and Purchaser, even if the Purchaser does not expressly refer to the inclusion of the GCP in each individual contract.

2. Offer, Acceptance

- 2.1 Preparation of an offer by the Supplier shall be without charge.
- 2.2 Any commercial confirmation letter from the Supplier which deviates from the content of a previous offer made by the Purchaser shall not be binding unless the Purchaser agrees to the deviation.
- 2.3 The Purchaser may revoke a declaration of intent (e.g. an order) made toward the Supplier, if the Supplier has not accepted it in writing ("Acceptance of Offer") within two weeks upon receipt.
- 2.4 The Supplier shall submit, in good time, an advice of dispatch, delivery certificate and invoices, unless the Purchaser requires otherwise.

3. Duty of Instruction, Information and Care

- 3.1 The Supplier shall notify the Purchaser without delay of any changes or modifications with respect to the composition of materials of the Delivery used if different from a similar or comparable Delivery previously provided by Supplier to the Purchaser. Any such changes or modifications shall require the Purchaser's prior consent.
- 3.2 The Supplier shall bear the material and personnel costs of any proof of material and test certificates in relation to materials of the Delivery.
- 3.3 The Supplier's warranty for defects of material and defects of title shall remain unaffected by any tests of the materials of the Delivery.
- 3.4 Proof of material and the test certificate pursuant to 3.1 and 3.2 shall form part of the Delivery and shall be presented at the time of the Delivery.

4. Delivery, Time of Delivery

- 4.1 The Supplier shall only be entitled to effect partial Delivery with the Purchaser's prior consent.
- 4.2 A Delivery or subsequent performance not involving installation or erection is considered timely when received at the entrance of the place of reception stated by the Purchaser, while a Delivery requiring installation or erection as well as services shall be deemed made or rendered timely when provided for acceptance.
- 4.3 If, and as soon as, the Supplier has reason to believe that a Delivery will be delayed or that it is unable to deliver, the Supplier shall immediately notify the Purchaser without delay and obtain the Purchaser's decision on further action.

- 4.4 In the event of a Delivery to a branch, assembly or construction site, the Supplier shall send a copy of the delivery certificate to the Purchaser's purchase department as proof of the Delivery. The delivery certificate shall specify the recipient, date and time of delivery in legible or block letters.

5. Passing of Risk and Dispatch

- 5.1 For a Delivery involving installation or erection and for services, risk shall pass upon acceptance, for a Delivery not involving installation or erection, risk shall pass upon arrival at the place of receipt stated by the Purchaser.
- 5.2 Unless otherwise agreed upon, transport and packaging costs shall be borne by the Supplier. In the event that the prices are determined Ex Works or from the Supplier's sales warehouse, the Delivery shall be transported, in each case, at the lowest cost, provided that the Purchaser has not prescribed a particular form of transport. Additional costs due to non-compliance with transport or packaging regulations shall be borne by the Supplier. In the event that the prices are determined free recipient including packaging and transport insurance, the Purchaser can determine the method of transport; however, the Supplier shall be entitled to choose the most favourable method of transport for it, if damages in respect of the Delivery are excluded and the confirmed Delivery date cannot be exceeded. Additional costs for a more expeditious method of transport out of necessity and, in order to observe a delivery date, shall be borne by the Supplier.
- 5.3 Each Delivery shall be accompanied by a packing slip, delivery certificate and analysis and inspection certificate and shall be notified to the Purchaser without delay of the dispatch.
- 5.4 Ownership in the Delivery shall pass to the Purchaser upon arrival of the Delivery or full payment of the Delivery, whichever occurs first.

6. Delay

- 6.1 If the Delivery is delayed due to the Supplier, unless the Supplier did not act culpably, the Purchaser shall be entitled, irrespective of its other rights, to claim liquidated damages calculated at the rate of 0.5% of the order value for each commenced week of delay up to a maximum of 5% of the order value. This provision shall be without prejudice to any further claims including a higher amount of damages; in the event that a claim is made for higher damages, any liquidated damages already paid shall be deducted there from. The Supplier may provide evidence that the Purchaser sustained lower damages or no damages.
- 6.2 If the fulfilment of the Contract is prevented or impossible due to force majeure, strike on the part of the Purchaser and/or the Supplier or its vicarious agents including every unavoidable event for which the Purchaser and/or the Supplier or its vicarious agent are not liable, the affected party shall be released from its obligations for the duration and scope of the disruption. Should one or more of the aforementioned events occur, such shall be notified to the Purchaser in writing without delay.
- 6.3 The risk for any delay on part of the Supplier's sub-supplier shall be borne by the Supplier.

7. Invoices

- 7.1 Invoices shall be submitted in original and in duplicate and must contain, at least, the following information:
 1. the Purchaser's order number and position number,
 2. the Supplier's number and the invoice number (Supplier's number),
 3. article number,



4. description (text of order),
 5. quantity,
 6. price and any additional charges on the price with a specific separate reference to VAT,
 7. transport and packaging costs,
 8. VAT or sales tax identification number,
 9. date of the Delivery,
 10. any other indications due to applicable tax law.
- 7.2 Invoices which do not contain the information set out in 7.1 shall not be due for payment. Duplicates of invoices shall be marked "Duplicate".

8. Terms of Payment

- 8.1 Unless otherwise agreed upon, payments shall be effected:
1. within 14 days with a discount of 3%; or
 2. within 30 days net.
- 8.2 The time limit for payment shall begin to run as soon as the Delivery is completely fulfilled and invoice is received by the Purchaser. A prerequisite for complete Delivery is the receipt of material tests, inspection records, quality documents or other documents. Discount may be deducted even where the Purchaser offsets or withholds certain sums due to faults or defects; in this circumstance, the time limit for payment shall commence upon removal of the defect.
- 8.3 The Purchaser shall only be in default of payment if the Purchaser does not pay after receipt of a reminder from the Supplier after the due date for payment has expired.
- 8.4 A defective Delivery shall be set off by way of a debit note and shall be debited to a credit account. Other legal, contractual rights or judicial remedies of the Purchaser shall remain unaffected.
- 8.5 Payments shall not signify an acknowledgment that the Delivery is in compliance with the Contract.

9. Prices

- 9.1 For the term of the Contract, the Supplier's prices relevant at the time of entering into the Contract shall be fixed prices including company inspection records. Price changes shall only be possible with the confirmation of the Purchaser.
- 9.2 If advance payments have been agreed, the Supplier shall provide security in the form of an absolute bank guarantee ("selbstschuldnerische Bürgschaft"), waiving the defence of voidability and set off from a German admitted credit institute or credit insurer.
- 9.3 In case of Purchaser withdrawing or rescinding from the contract, any pre-payments already made by the Supplier must be reimbursed. Beginning with the date of receipt of the payment by the Purchaser, any interest, which is legally applicable between two businesses, shall be included.

10. Security for Payment

As security for claims and rights in respect of defects of material in the Delivery ("Sachmängel"), the Purchaser is entitled to retain 5% of the gross order value during the term of the Liability for Defects as to Quality / Material Defects pursuant 14.1, 14.6 or 14.7, however no longer than five (5) years after passing of risk pursuant to 14.1, if the retention monies are paid into a blocked account which only allows the Purchaser and the Supplier to jointly effect transactions. In the event that the retention is released by the Purchaser to the Supplier, any interest shall accrue in Supplier's favour. To the extent that security has not been used, the Supplier may demand payment, insofar as it provides a bank guarantee of a bank, permitted to do business in Germany, in an amount equal to the security owed.

11. Spare Parts and Availability

- 11.1 The Supplier shall supply spare parts for a period equivalent to the anticipated service life of the Delivery on reasonable conditions which shall not be less than ten years commencing upon passing of risk pursuant to 5.1.
- 11.2 In the event that the Supplier intends to discontinue the production of spare parts, Supplier shall grant the Purchaser an opportunity to place a final order and / or at the Purchaser's request, Supplier shall supply the Purchaser with the requisite equipment and documentation and shall grant the right to use such equipment and documentation free of charge.

12. Quality Assurance

The Supplier shall maintain quality assurance measures which meet the requirements of current technical norms and standards and shall document its results and shall make such available to the Purchaser for inspection. At the Purchaser's request, Supplier shall conclude a quality assurance agreement with the Purchaser.

13. Receiving Inspections

- 13.1 The Purchaser shall inspect the Delivery upon receipt to check whether externally recognisable damage occurred during transit or other externally recognisable defects are present.
- 13.2 Defects which the Purchaser discovers at the time of the receiving inspection shall be notified to the Supplier. Defects which the Purchaser discovers later shall also be notified.
- 13.3 Complaints can be made within one month (1) from receipt of the Delivery or, (2) to the extent that the defects were first noticed upon handling or processing or being put into use, at the time when such defects were determined.
- 13.4 The Purchaser is not obliged to conduct further inspections nor to provide further notifications other than those aforementioned.

14. Liability for Defects as to Quality / Material Defects

- 14.1 Defects as to Quality / Material Defects ("Defects") of the Purchaser shall expire in three years unless the law prescribes longer time periods. The limitation period shall commence upon passing of risk (5.1). For a Delivery to the Purchaser's customers, the limitation period shall begin with acceptance of the Delivery by the Purchaser's customers.
- 14.2 Supplier's technical specifications if any, shall not constitute a conclusive agreement as to characteristic composition e. g. within the context of § 434 para. 1 sentence 1 BGB (German Civil Code) or § 633 para. 2 sentence 2 BGB (German Civil Code).
- 14.3 The Supplier warrants diligent and appropriate fulfillment of the Contract, in particular observance of the agreed specifications and other performance regulations of the Purchaser according to the newest state of the art and technology, and the quality and the fitness for the purpose of the Delivery concerning material, construction and execution of documents related to the Delivery (manuals, drawings, plan etc.).
- 14.4 Defects which are determined prior to or at time of passing of risk or occur during the limitation period shall, at the Purchaser's option, be either repaired or replaced with a non defective Delivery by the Supplier at its costs. This shall also apply to a Delivery in respect of which the inspection was limited to random sampling. The Purchaser shall exercise its option at its reasonable discretion.

- 14.5 In the event that a joint control is necessary as a result of a defective Delivery which exceeds the requisite scope of the receiving inspection in accordance with 13., the Supplier shall reimburse the Purchaser's costs for the joint control.
- 14.6 To the extent that the Supplier remedies a Defect by re-delivery, the limitation period according to 14.1 shall recommence from the passing of risk (5.1). For a Delivery to the Purchaser's customers, the time limit shall recommence upon acceptance of Delivery by the Purchaser's customers.
- 14.7 To the extent that the Supplier remedies a Defect by repair, the limitation period according to 14.1 shall not recommence from the passing of risk (5.1) unless the repair was defective. In this case, the new limitation period according to 14.1 for defects shall recommence insofar from the passing of risk (5.1). For a Delivery to the Purchaser's customers, the time limit shall recommence upon acceptance of Delivery by the Purchaser's customers.
- 14.8 In the event that the remedy of the Defect by repair or re-delivery fails, or if the Supplier states that it is unable to carry out the remedy of the Defect or a replacement within a reasonable period of time, the Purchaser is entitled to
1. withdraw or rescind from the Contract in whole or in part without compensation; or
 2. demand a reduction of the price; or
 3. repair or re-deliver the Delivery by the Purchaser or arrange for repair or re-delivery at the Supplier's cost; and
 4. claim damages instead of performance
- § 281 para. 2 and § 323 para. 2 BGB (German Civil Code) shall remain unaffected.
- 14.9 In the event that the Purchaser claims damages instead of performance, the Purchaser reserves its right to the Delivery until the Supplier has provided damages in the full amount.
- 14.10 If due to need to avoid a default by the Purchaser towards third parties, or due to other urgency, the Purchaser has an interest in immediate repair of a Defect and has informed the Supplier of the Defect and set a time limit for the remedy, the Purchaser has the right, after expiration of the time period, to effect the repair at Supplier's cost. 14.8 shall remain unaffected.
- 14.11 In the event that the defective Delivery from the Supplier is not taken back despite the Purchaser's request, such Delivery can be disposed of at Supplier's cost or returned "freight collect" on the Supplier's account. The Supplier shall bear the risk of returning the defective Delivery.
- 14.12 Further claims by the Purchaser in particular claims relating to recourse to a company (§478 BGB) and replacement of useless incurred processing costs shall remain unaffected.
- 15. Proprietary Rights**
- 15.1 The Supplier shall ensure that the Delivery is free of defects of title, in particular free of proprietary rights or applications for proprietary rights ("Proprietary Rights") of third parties.
- 15.2 The Supplier shall hold the Purchaser and/or its customers harmless from any action taken against it in or out of court due to a violation of Proprietary Rights. Where legal action is taken, the Supplier shall, upon request, provide legal Counsel. The Supplier shall further be liable for any damage suffered by the Purchaser and /or its customers on account of their having trusted in the unrestricted usability of the Delivery.

With respect to damage suffered by the Purchaser's customers, the Supplier shall only be liable where the customer asserts any claim against the Purchaser.

- 15.3 The Supplier shall not be held liable where it has manufactured the Delivery solely in accordance with the Purchaser's drawings and models and the Supplier did not, and could not, reasonably be expected to be aware that it was infringing any rights thereby as set out in the preceding paragraph.
- 15.4 Upon request, the Supplier shall specify any Proprietary Rights applied for and used in connection with the Delivery. Where the Supplier becomes aware of any infringement of Proprietary Rights, the Supplier shall immediately notify the Purchaser thereof of his own account.

16. Liability

The regulations pursuant to German law shall apply.

17. Product Liability

In the event that a third party makes a claim against the Purchaser due to faults in a Delivery from the Supplier, the Supplier shall immediately hold the Purchaser harmless from such claims.

18. Sub-contracting

The Supplier may not sub-contract the work to be performed under these GCP without the Purchaser's prior written consent, otherwise the Purchaser is allowed to rescind the Contract in whole or in part and to claim damages.

19. Items provided by the Purchaser

- 19.1 Materials or products of any kind whatsoever provided by the Purchaser to the Supplier ("Material") shall remain the Purchaser's property and the Supplier shall store, free of charge, any Material etc. provided by the Purchaser separately and shall identify the Purchaser's property rights to the Material itself and administer it. The Material shall be used exclusively in or for the performance of the Delivery ordered hereunder. In the event of depreciation in value of the Purchaser's property or loss, the Supplier shall bear the cost of replacement of the Purchaser's property. This clause shall also apply to Material which is provided to the Supplier in return for payment.

- 19.2 To the extent that any Material provided by the Purchaser is processed, converted or transformed by the Supplier to form a new product, the Purchaser shall forthwith be deemed to be the owner of such new product. If such is not possible for legal reasons, the Purchaser shall acquire joint title and ownership in the new product in the ratio of the value of the Materials provided by the Purchaser to the new product. The Supplier shall be responsible for secure storage of the new product for the Purchaser, free of charge to the Purchaser, with the care and diligence of a prudent business man.

20. Models, Tools, Moulds, Samples

- 20.1 All models, tools, moulds and samples provided by the Purchaser (collectively referred to as "Models etc.") for the execution of purchase orders, shall be made available for use by Supplier on loan. The Supplier shall secure the Models against unauthorized inspection or use. The Supplier shall waive all rights, in particular, a right of retention of title, to the Models etc. which could hinder any request by the Purchaser for their return. Models etc. may not be disposed of or sold without the Purchaser's prior written consent.



20.2 All Models etc. shall be treated by the Supplier with the utmost care and shall be insured for an amount equivalent to their replacement cost. Any modifications and repairs shall only be permitted subject to the Purchaser's prior written consent. The Supplier shall maintain the Models etc. in original condition free of any modifications or alterations.

21 Development Orders

The following additional rules shall apply to the undertaking of development orders:

- 21.1 A conclusive agreement as to the characteristic composition of the object to be developed shall be made in writing in a requirement specification. In the event that the Purchaser fails to make such a requirement specification, or if such is insufficiently detailed, or if such cannot be performed technically, or is technically conflicted, the Supplier shall write, within a reasonable time after receipt of the order, details of the services of the object to be developed and shall send them to the Purchaser. These details shall replace the requirement specification upon written authorisation by the Purchaser of these details of the services. Further to the characteristic composition listed in the requirement specification, the specification in the offer of the Supplier shall apply as a contractually agreed characteristic composition of the development service and/or of the object to be developed, in any case.
- 21.2 The Purchaser shall provide the Supplier with complete and sufficient information which serve the development.
- 21.3 The Supplier shall continually inform the Purchaser about the status of development.
- 21.4 The Supplier shall take into account the Purchaser's written wishes concerning the performance of development work. In the event that this taking into account of the Purchaser's wishes interferes with the achievement of the development aims, or leads to the exceeding of the foreseen scope of the development work, the Supplier shall inform the Purchaser in writing about such as soon as it becomes aware. In case the Purchaser insists that its wishes shall be taken into account, the Purchaser shall bear the responsibility therefore. As far as exceeding the costs is concerned, the wish will be only be binding after the parties have made a special written agreement concerning reimbursement for the Supplier's resulting additional costs and additional services.
- 21.5 The Supplier shall seek the Purchaser's prior written consent if the Supplier would like to involve third parties, unrelated to the Supplier's business including freelance workers, in the performance of the order and the third parties shall be given access to the development task or a major part of such.
- 21.6 The Supplier shall keep all business details private and confidential of which it becomes aware.
- 21.7 The Purchaser is entitled to demand a copy of the scientific and technical documents (function drawings, systems drawings, circuit diagrams, etc) which were created during the performance of the Contract and a copy of a preliminary manual as far as they are necessary for an appropriate test and analysis of the development result. No extra costs shall be charged for the return of these documents, they are included in the costs of development.
- 21.8 The Purchaser shall retain the sole and exclusive right in all developments ordered. The use of the development by the Supplier requires the written consent of the Purchaser.

22. Withdrawal and Rescission

Regardless of its other rights of withdrawal and rescission, the Purchaser shall be entitled to withdraw or rescind from the Contract if bankruptcy proceedings or a legal case for reorganisation are filed against the Supplier's assets or if the Supplier ceases, more than temporarily, to make payments.

23. Origin of Goods / Certificates of Origin / Export Regulations

- 23.1 The Supplier shall submit such proof (e.g. certificates of origin) necessary for obtaining customs or other benefits, and customs clearance as well as associated procedures, operations, etc.
- 23.2 The Supplier shall inform the Purchaser, in the order confirmation, about the components, assemblies, equipment, installations, etc. which are subject to export or re-export restrictions according to the German Federal Foreign Trade and Payments Regulations or, if applicable, the "US Export Regulations".

24. Confidentiality

The Supplier shall not pass tools, moulds, samples, models, profiles, drawings, standard sheets and other technical documentation, irrespective of the data medium ("Documents"), including knowledge, information and subsequently manufactured products to third parties without the written consent of the Purchaser, nor use them for purposes other than for the execution of the Contract. These Documents shall be safeguarded against unauthorised access and use. Regardless of other rights, the Purchaser may require the immediate return of the Documents in the event that the Supplier is in breach of its obligations.

25. Insurance

- 25.1 The costs of insuring the Delivery, in particular, the carrier's insurance, shall not be borne by the Purchaser.
- 25.2 The application of the German General Conditions for Forwarders (Allgemeine Deutsche Spediteurbedingungen (ADSp)) is excluded.
- 25.3 The Supplier shall take out adequate liability insurance at its own cost to cover damage caused by the performance of Delivery. The Supplier shall maintain business liability insurance to cover product liability risks, which shall include financial loss caused by damage to products (extended liability insurance covering personal injury and property loss, damage outside of Germany and the costs of product recall). Proof of the amount of the insurance covered shall be disclosed to the Purchaser at its request. The scope of legal liability shall not be restricted by the conclusion and evidence of a liability insurance policy.

26. Assignment of Claims

Claims may only be assigned with the Purchaser's prior written consent.

27. Applicable Law

German substantive law shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

28. Place of Jurisdiction

Exclusive place of jurisdiction shall be Nuremberg, Germany.

w711od.0m8