

### **1. Scope of application**

1.1 The deliveries and services of Micromed Medizintechnik GmbH (hereafter: Micromed) are supplied exclusively in accordance with the following General Terms and Conditions.

1.2 General Terms and Conditions of the customer shall not apply even if the customer refers to such terms in connection with its order and Micromed does not oppose them. Commitments, confirmations, ancillary agreements and any amendments and additions to the General Terms and Conditions must be made in writing. This shall also apply to any change in this written form requirement.

### **2. Orders, deliveries and performance of services**

2.1 Offers made by Micromed are non-binding and without obligation. A contract takes effect only when an order is confirmed in writing, per order confirmation from Micromed by fax or by e-mail, for the latest however by acceptance of delivery by the customer or upon the provision of services.

2.2 Orders shall take place only in writing, telephone orders are executed at the risk of the customer.

2.3 In the absence of any other written agreements between the contracting parties, the contents and scope of the products and services owed by Micromed shall be derived from the order confirmation of Micromed.

2.4 Reasonable partial deliveries are admissible and may be invoiced separately.

2.5 Micromed reserves the right to modify products, in particular in the course of new or further development, provided the performance data agreed upon are achieved.

2.6 Delivery and service dates are not binding. Micromed shall at any event only be deemed in default if the delay is the responsibility of Micromed, if service is due and if the customer has set Micromed a reasonable extended deadline in writing (of at least 14 days) to no avail.

2.7 Delivery and service dates shall be reasonably extended for Micromed in the event of disruptions due to force majeure or other impediments for which Micromed is not responsible, e.g. disruptions in production or in receiving materials from suppliers, strikes, lockout, operational disturbances etc. Micromed reserves the right to rescind the contract if the delay in delivery and services caused by such events continues for more than six weeks.

2.8 The customer's entitlement to claim compensation for default in delivery and services is excluded in case of slight negligence, unless the delay in delivery and services is caused by a deliberate violation of the contract by Micromed.

2.9 The customer shall provide a suitable environment for the rendering of services on time and within the sphere of his operational area. The customer assumes responsibility in case a suitable environment is not provided and services cannot be rendered due to this negligence. Micromed is not liable in this respect.

The customer shall support Micromed in rendering the agreed services to the best of his powers and free of charge and without being asked provide all information and documents required for the rendering of the said services. Micromed is not committed to its services if the customer violates the obligation to cooperate.

2.10 If the customer is in default concerning the acceptance of the delivery or services offered by Micromed or if the customer fails to cooperate in due form, the customer shall compensate any arising additional work and expenses or the damage resulting from the default or the failed cooperation.

2.11 Micromed reserves the ownership and copyrights of all provided materials. Disclosure or passing on of material to a third party requires the consent of Micromed.

### **3. Examination of goods and passing of risk**

3.1 Immediately upon receipt of the goods the customer shall check that these are complete and in conformity with the delivery papers and examine them for defects. If no written complaint is made within eight days of the date of the delivery note, the goods shall be deemed to have been duly and fully delivered except in case of a defect which was not evident upon the examination.

3.2 The risk of damage or loss of the contractual product shall pass from Micromed to the customer when handing it over to the carrier.

3.3 If the goods delivered show evident defects or deficient quantities, this must be noted by the customer in writing on the certificate of receipt of the carrier upon delivery. This note must provide a sufficiently clear description of the damage or deficient quantity (notice of defect pursuant to Section 438 German Commercial Code [HGB]).

### **4. Prices and payment terms**

4.1 Prices are as given in the order confirmation or invoice of Micromed.

4.2 Prices are ex distributing warehouse of Micromed plus VAT at the statutory rate. The customer shall be charged separately for further ancillary services and costs of carriage, in particular shipping costs, packaging and insurance.

4.3 Invoices are to be paid within 30 days after date of invoice or as prepayment without discount. All payments must be free of charge for the recipient. Micromed reserves the option of demanding advance payment or securities.

4.4 Micromed reserves the right to raise the price appropriately in the event of cost increases, occurring after the contract is entered into, in particular as a result of wage agreements or price increases by the suppliers.

4.5 If the customer fails to pay within the period allowed, interest shall be due without further notice at a rate of 8 % p.a. above the respective base interest rate of the European Central Bank calculated on the purchase price. The foregoing shall not affect the right to claim additional damages.

4.6 Micromed shall have the right, despite stipulations by the customer to the contrary, to first apply payments received against the customer's older debts. If costs and interest have already been incurred due to default, Micromed shall have the right to first apply any payment against the costs, then against the interest and finally against the principal performance.

4.7 The customer may only off-set undisputed claims or claims which have been determined non-appealable by a court of law. The customer may only exercise a right of retention with respect to counterclaims based on the same contractual relationship.

### **5. Cancellation charges, return shipments**

5.1 In the case of the customer's cancellation of the contract, Micromed has the right to claim 10% of the purchasing price for costs that arise due to the order processing and for the loss of profit.

5.2 The customer has no right to rescind the contract if he ordered customized articles, sterile products and implants. This does not apply if it is rescinded due to a defect of the above mentioned articles for which Micromed is responsible.

### **6. Packaging**

Unless otherwise stipulated, Micromed determines kind and scale of packaging. The choice of packaging is done taking into account the necessary caution to the best of Micromed's judgement. Disposable packaging becomes property of the customer.

### **7. Data processing**

The customer gives his explicit consent to the processing of data which become known to Micromed within the scope of contractual relationships and which are necessary for the processing of the order. Furthermore the customer agrees for Micromed to make use of such data obtained from the customer in connection with the business relationship with the customer, also within Micromed for business purposes within the meaning of the German Data Protection Act (Bundesdatenschutzgesetz – BDSG).

### **8. Reservation of title, rights of lien**

8.1 The products delivered shall remain the property of Micromed pending performance of all obligations due under the contract, including future obligations, and, in addition, with respect to the entire business relationship with the customer.

8.2 The customer has the right to resell the goods with reserved title in the normal course of business subject to reservation of title. As security the customer hereby assigns to Micromed his future claims arising from the resale of such goods with reserved title in the amount of the respective invoice value, pending payment in full of all claims.

The customer is entitled to collection of the claim also after the transfer. Micromed's right to collect claims remains unaffected by this provision. Micromed undertakes not to collect the claim as long as the customer meets his payment obligations, is not in default and particularly does not file for the opening of insolvency proceedings or ceases to pay. However, if this should be the case, the customer is obligated, at the request of Micromed, to provide Micromed with the names and addresses of his respective customers and advise of the type and scope of the claims the customer has against them. Micromed must be provided with all corresponding data; the respective customers must be notified of the transfer of the claim.

8.3 The customer is not allowed to pledge or assign as security the goods with reserved title. In the event of attachment by third parties of the goods with reserved title or in the event of filing for the opening of insolvency proceedings concerning the assets of the customer, the customer shall indicate that these are the property of Micromed and advise Micromed thereof in writing immediately.

8.4 Any combination, amalgamation, processing or transformation of the goods with reserved title shall be effected exclusively for Micromed. In such a case Micromed shall acquire a joint ownership share in the finished

goods or the new product corresponding to the value of the goods with reserved title in proportion to the value of the finished goods or new product.

8.5 In the event of behavior contrary to the contract, particularly with default in payment, including payments due on other and future products or services supplied to the customer by Micromed or if there is any cause to suspect a deterioration in the financial circumstances of the customer, Micromed is entitled to recover the goods with reserved title. The exercise of the rights from the retention of title or the demand of recovery do not constitute a rescission from the contract. Without prejudice, Micromed reserves the right to claim compensation for damages and to rescind the purchase contract. The entire costs of recovery and utilization shall be borne by the customer. To enforce these rights Micromed may demand the assignment of the customer's rights to recover possession from his customers.

8.6 The customer is obliged to handle the goods with reserved title carefully. The customer is particularly obliged to insure the goods with reserved title appropriately in accordance with the replacement value against damages due to fire, water, burglary and theft. Articles supplied for testing and demonstration purposes remain the property of Micromed. The customer is obliged to ensure proper storage of the articles; the articles may only be used for purposes reached to this effect with Micromed.

#### **9. Warranty**

9.1 Micromed warrants that the contractual products are free from defects and that they are suitable for the use presupposed in the contract and/or for normal use.

9.2 The customer is responsible for inspecting and guaranteeing the quality (e.g. constituency, accuracy of measurements etc.) of material furnished for processing. The purchaser will supply the relevant material free of charge. Micromed will just perform an incoming control of the material supplied to us, checking the number of items, identity of items and a visual inspection for obvious transportation damage. Micromed is obligated to merely to check that the material complies with the specifications provided by the purchaser if there are obvious reasons to do so. We have no obligation to carry out further inspections. An inspection can be expressly agreed, in which case the purchaser will bear the costs of the same.

9.3 All consulting services, data and information on the suitability and application of our goods are not binding and do not exempt the purchaser from performing his own inspections and tests. The purchaser is responsible for complying with legal and public authority requirements when using our goods. Any liability for the functionality of or between the products is excluded.

9.4 Normal wear and tear is exempt from liability.

9.5 Claims on account of defects do not exist in the following cases:

- if the product is modified, improperly installed, serviced, repaired, used or exposed to ambient conditions by the customer or third parties which do not correspond to the manufacturer's installation requirements, unless the customer can prove that these circumstances were not the cause of the defect complained of
- if the serial number, type reference or similar identification marks are removed or rendered illegible.

9.6 In the event of a defect Micromed shall either initially repair or replace the goods concerned at its discretion. Replaced parts are disposed of by Micromed. If Micromed is unable to repair or replace the goods, if disproportionate costs are involved or if Micromed fails to rectify the defects within a reasonable extended deadline set in writing, the customer shall have the right either to rescind the purchase contract or to reduce the purchase price. If Micromed supplies a replacement product for the purpose of subsequent performance, the customer must return the defective product.

9.7 These warranty provisions apply in compliance with the rendering of work performances. In particular, Micromed shall either eliminate the defect or render a new performance at its own option as far as the agreed work does not show the contractual functions or characteristic features. If the subsequent performance fails, the customer is not entitled to a deduction of the compensation or refund of the expenses in case the defect had been eliminated by the customer himself. Rescission from the contract and claims for refund of the expenses after elimination of defects by the customer himself are excluded where minor defects are concerned.

9.8 If the Product forms part of a purchase of consumables [Verbrauchsgüterkauf], the rights of the customer under Sections 478, 479 BGB (German Civil Code) shall remain unaffected. In case of doubt, the customer must prove to Micromed that the purchase in question was a purchase of consumables. Claims on account of defects are only transferable with the consent of Micromed.

9.9 All further claims by the customer or claims by the customer other than those provided for in these Terms and Conditions shall be excluded irrespective of the legal ground therefore, save as otherwise provided for under the terms hereof. This shall not affect the statutory provisions on the purchase of consumer goods [Verbrauchsgüterkauf].

#### **10. Repairs and other services**

10.1 Repairs of products beyond the liability for material Defects are subject to a service charge.

#### **11. Industrial property rights and copyrights**

11.1 The customer may neither remove, alter, conceal or otherwise obliterate references on the contractual products relating to copyright, trademarks or other property rights. Only with the prior written consent of Micromed is the customer entitled to translate for Commercial purposes the documentary material Supplied with the products.

11.2 Micromed provides no warranty that the contractual products do not infringe third party industrial property rights or copyrights. The customer shall inform Tech Data without delay of all and any claims raised against it on such grounds.

11.3 Insofar as the products delivered were produced in accordance with the customer's designs or instructions, the customer shall not hold Micromed liable for any claims raised by third parties on the grounds of an infringement of industrial property rights and copyrights.

#### **12. Liability**

12.1 Except otherwise provided in the provisions stated as below, further-reaching claims by the customer are excluded, on any legal grounds whatsoever.

Micromed is not liable for damages which occurred not on the delivered goods themselves, or for lost profits or other property damages incurred by the customer.

12.2 If the liability of Micromed is excluded or limited, such exclusion or limitation shall also apply to the personal liability of personnel and employees, co-workers, representatives and agents employed in the performance of services.

12.3 In any case the liability for damages referred to Micromed is limited to the amount of coverage of the business liability insurance and product liability insurance taken out by Micromed.

#### **13. Purchase tax / Import turnover tax**

A customer with residence outside of Germany has to adhere to his local regulations concerning purchase tax and import turnover tax when purchasing products. He must produce his vat-identification number without being reminded to do so and must be willing to provide all required information. The customer is liable if any damages / expenses occur due to disregard in this matter.

#### **14. Export and import**

14.1 All contractual products and technical know-how supplied by Micromed are supplied in compliance with the provisions of the German Act on Foreign Trade and Payments (AWG) / the German Foreign Trade and Payments Regulation (AWV) / the EC Dual Use Regulation and the US export provisions currently in force and effect and are intended for use, and to remain in the country of destination, as agreed with the customer.

14.2 The customer is obligated to obtain details of the provisions and regulations currently in force by his own initiative. Irrespective of whether the customer indicates the final destination of the contractual products supplied, the customer shall bear responsibility to obtain any license or permit which may be necessary from the relevant foreign trade authorities responsible prior to exporting such products. Micromed has no duty to provide information.

14.3 Any handover of contractual products to third parties by the customer with or without the knowledge of Micromed shall require the simultaneous transfer of the export license conditions. The customer shall be fully liable in case of non-compliance with the relevant regulations.

14.4 If Micromed supplies purchasers outside of USA/Canada and said purchasers then export the supplied products to USA/Canada, they shall take out and maintain a product liability insurance policy with minimum coverage of 5 million Euros and accept liability for these products within the USA/Canada.

#### **15. Court of Jurisdiction, Place of Performance, Miscellaneous**

15.1 The customer has no right to assign his claims arising out of the contract.

15.2 The place of performance and jurisdiction is Rottweil or Tuttlingen.

15.3 The contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

The application of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods – UNCITRAL) is excluded.