

# **General terms and conditions of business of MIDES Handelsgesellschaft für Medizin- & Entsorgungstechnik mbH and MIDES Health Care Technology GmbH**

## **1. Area of applicability**

1.1 These general terms and conditions of business in their respectively valid version shall apply to all deliveries and services of MIDES Handelsgesellschaft- für Medizin- und Entsorgungstechnik mbH and MIDES Health Care Technology GmbH (hereinafter jointly referred to as "MIDES") in relation to its customers, as well as the resulting rights and obligations.

1.2 Any conflicting or deviating terms of the Customer shall only apply if they are expressly recognised by us in writing. The general terms and conditions of business of MIDES shall therefore also apply if we provide deliveries and services without reservation in knowledge of conflicting or deviating terms of the Customer.

1.3 These general terms and conditions of business shall also apply to future transactions between the Contracting Parties, even if these are not referred to once again.

## **2. Offer and conclusion of the contract**

2.1 Offers made by MIDES shall not be binding in relation to the Customer, unless a contract is subsequently concluded.

2.2 The contents and concepts of the offer made by MIDES shall remain the intellectual property of MIDES which shall be solely entitled to all rights of use. Should no contract come into existence with MIDES, the Customer shall be obliged to return all project documents and drafts. Also in case of a contract coming into existence, the Customer may not duplicate the offer and other project documents or make these accessible to third parties without the express written agreement of MIDES. In return, MIDES may not forward the contents and concept of the offer to third parties.

2.3 A contractual relationship shall come into existence when MIDES issues the Customer with a written order confirmation following the receipt of an order or engagement, or once the delivery has taken place.

2.4 In respect of the contents and scope of the order, only the written offer and, if applicable, the written order confirmation and the related written agreements between the parties shall be solely decisive. Statements at Online Shop, in prospectuses, catalogues and other sales materials shall only be binding on MIDES if these are expressly referred to in the order confirmation. MIDES shall not be responsible for any characteristics of the subject matter of the contract which go beyond this. Representations at Online Shop, in test programmes, product and project descriptions and in presentations and similar shall not represent an undertaking concerning characteristics. Undertakings concerning characteristics shall require an express written confirmation.

2.5 Amendments and additions to the contract shall only be effective if MIDES issues its express written agreement in this respect. Should additional costs be incurred due to such amendments or due to circumstances of which

MIDES was not aware at the time of issuing of the order, these shall be charged to the Customer additionally.

## **3. Performance of the contract**

3.1 The Customer shall fully inform MIDES of the relevant data and other information for the performance of its service, shall make these available at its own expense and obtain any necessary third party consent. Should changes arise in this respect during the performance of the contract, the Customer shall be obliged to immediately inform MIDES of such. MIDES shall not be obliged to check the data, information or other services made available by the Customer for completeness and correctness and shall not incur liability for losses due to defective or incomplete information on the part of the Customer.

3.2 All notifications to MIDES on the part of the Customer must take place in writing.

3.3 The Customer must immediately inform MIDES in writing of changes to its name or address. Should no amendment notification be made, correspondence shall be deemed to have been received by the Customer once it has been sent to its last known address. Amendment enquiries in relation to invoice may not delay beyond the due date for payment.

3.4 Following the prior agreement of the Customer, MIDES shall be entitled to engage third parties in its own name and at its own expense in respect of performance of the contract or individual contractual services, whereby the interests of the Customer may not be impaired as a result. MIDES shall incur liability for the actions of the third parties engaged by it in the same manner as for its own actions.

## **4. Fee, invoicing**

4.1 Unless otherwise agreed, the agreed prices shall be deemed to be net prices in euros ex factory in Graz, exclusive of packaging, loading, disposal and insurance. Should duties be payable in connection with the delivery, these shall be paid by the Customer. Should supply including delivery be agreed, this shall be charged separately to the Customer, along with any transportation insurance requested by the Customer.

4.2 The compliance with the agreed prices shall be subject to the positions which form the basis of the agreement remaining unchanged and being able to be provided without any hindrances for which MIDES is responsible. Subsequent unforeseeable extensions and changes which lead to additional costs shall be paid additionally by the Customer. Should duties or other external costs which are included in the agreed price change more than two months after conclusion of the contract (for example costs of the suppliers of MIDES, wage costs, taxes and similar), MIDES shall be entitled to amend the price to the corresponding extent.

4.3 Agreed fees, i.e. also agreed deposits and advance payments, as well as the remainder of the purchase price shall be due for payment immediately following receipt of the invoice,

whereby the Customer shall bear the cost of the payment procedure.

4.4 Any agreed discount shall always be related to the net invoice amount and shall be subject to the full settlement of all due liabilities of the Customer at the time of granting of the discount. Unless otherwise agreed, discount deadlines shall commence on the date of the invoice.

4.5 In case of payment default, also in relation to agreed partial payments, MIDES shall be entitled to charge the Customer all necessary costs of the proportional legal process, as well as default interest to the amount of 12% per annum beginning on the due date. All open claims (including those which are deferred or not due) shall be due for payment immediately. In addition, MIDES shall be entitled to make the provision of further deliveries and services under an ongoing contract dependent on an advance payment by the Customer or the provision of bank securities.

4.6 Furthermore, in case of payment default, MIDES shall be entitled to rescind the contract in respect of orders which have not yet been performed and to demand a cancellation fee to the amount of the loss incurred, however at least 30% of the gross factor value, which is not subject to a judge's discretion concerning reduction, as fixed damages. The cancellation fee shall also apply in case the Customer rescinds the contract without justification.

4.7 Objections concerning the invoiced claims must be lodged by the Customer within 30 days of the invoice date, otherwise the claim shall be deemed to have been recognised.

4.8 The Customer shall not be entitled to set off with open claims against MIDES, unless MIDES becomes incapable of making payment or the counterclaim is recognised or has been determined by a court.

4.9 The Customer shall not be entitled to retain or reduce payments due to alleged claims against MIDES.

4.10 The Customer shall not be entitled to the plea of uncertainty or the plea of non-fulfilment of the contract in accordance with § 1052 of the Austrian Civil Code (ABGB).

## **5. Reservation of ownership, assignment of rights and obligations**

5.1 MIDES shall retain ownership of the contractual service until full payment has been made by the Customer. The Customer shall be obliged to take all legal measures for the safeguarding and protection of MIDES property, in particular a pledging, transfer of security or other disposal shall be prohibited.

5.2 The assignment to third parties of rights and obligations under the contract by the Customer, as well as the assignment of the whole contract to a third party shall require the express prior agreement of MIDES in writing. The same shall apply to other granting of rights, for example the issuing of a licence, as well as any other disposal of an actual or legal type concerning the contract in full or in part. The Customer shall immediately inform MIDES of any pledging or

other impairment by a third party of the goods which are subject to reservation of ownership.

5.3 Should MIDES have agreed to further use of the provided service by a third party, the respective rights and obligations shall be assigned to the said third party. Regardless of the above, the Customer shall remain responsible in relation to MIDES for all liabilities prior to the time of the assignment. In addition, the Customer shall hold MIDES free and harmless in case of a breach of the contract by the third party and hereby now assigns to MIDES all claims resulting from the assignment, including all securities against the consumer of the Customer in order to secure the payment claim.

5.4 MIDES hereby authorises the Customer to collect the assigned claims in reservation of the right of revocation. MIDES shall not make use of its own power of collection, provided that the Customer complies with its payment obligations. On the request of MIDES, the Customer shall name the debtors of the assigned claims and notify these of the assignment. MIDES shall be authorised to also notify the debtors of the claims itself.

5.5 For claims which exist due to a further sale or processing of a contractual object, a part thereof or a processing object, an absolute prohibition of assignment shall be deemed to be agreed.

5.6 Should the Customer be in default with one or more payments in full or in part or should insolvency proceedings have been applied for against its assets, MIDES shall be entitled to revoke the power of further sale, which has been issued, and to rescind the contract, without having to set the Customer an advance deadline to provide performance.

## **6. Delivery, dispatch, transfer of risk**

6.1 Delivery dates which have not been expressly agreed as binding shall be non-binding. The Customer shall also be obliged to undertake acceptance in case of an earlier delivery.

6.2 MIDES shall not enter default until the Customer has issued a warning to MIDES stating a reasonable deadline for performance (at least four weeks), the said deadline has expired without success and the additional statutory default requirements are present.

6.3 Should the Customer enter default concerning the acceptance of the goods or services or should the Customer refuse to undertake acceptance, the Customer shall be obliged to reimburse MIDES in respect of the costs incurred.

6.4 The place of performance for deliveries of MIDES shall be its place of business. The place of performance for the services provided by MIDES shall be in accordance with the contents of the respective contract.

6.5 In case of force majeure, the contractual obligations of both Contracting Parties shall be suspended for the duration of the hindrance which has occurred. Labour disputes, transportation delays, machine breakdowns, product related failures, official measures and

other circumstances for which MIDES is not responsible shall also be deemed to be cases of force majeure, regardless of whether they arise in the operation of MIDES or that of a supplier. Should the delivery or service become impossible due to the named circumstances, the Contracting Parties shall no longer be bound by the contract.

6.6 The Customer shall immediately take possession of goods which have been notified as being ready for dispatch, otherwise MIDES shall be entitled to store them at the expense and risk of the Customer or, following a corresponding agreement with the Customer, to resend them at the expense and risk of the latter. Unless otherwise agreed, MIDES shall select the means of transport and the transport route.

6.7 The risk shall be transferred to the Customer on handover to the shipping company or on commencement of storage.

6.8 Should the dispatch or delivery at the request of the Customer be delayed due to reasons for which it is responsible for or due to force majeure, the risk for the time of delay shall be transferred to the Customer from the date of readiness for dispatch.

6.9 Delivered goods must be accepted, even if these display defects; partial deliveries shall be permitted.

6.10 Should contractual objects be intended for export, the Customer shall be responsible for compliance with the decisive statutory import and export regulations and shall, in particular, be responsible for obtaining the relevant export permit at its own expense.

## **7. Intellectual property rights**

7.1 Any available know-how, ideas, inventions and patents which are present and brought into the development of the respective contractual service or developed in the course of the contractual service shall remain the exclusive intellectual property of MIDES.

7.2 All recordings, documents, plans and other documents which concern the project and which were transferred to the other Contracting Partner, regardless in which form, shall remain the exclusive property of the disclosing partner. These shall be treated confidentially by the receiving partner, shall only be used for the work during the contractual period and shall be immediately returned following a request by the other partner. The secrecy obligation shall end five years after termination of the respective business relationship. Should MIDES engage third parties in respect of the provision of the contractual service, it shall also impose the above-mentioned confidentiality obligation on the latter.

7.3 Should details, documents or plans of the Customer or an associated third party form the basis of a service provided by MIDES, the Customer shall be obliged to ensure the granting of all copyright which is necessary for the use of the work.

7.4 On fulfilment of its financial obligations under the contract, the Customer shall receive, for the term of the agreement, a non-exclusive,

non-transferable work use authorisation for the use of all ideas, know-how and inventions of MIDES which are relevant to the fulfilment of the contract, regardless of whether these are patented or not, for the fulfilment of the contractual purpose, however not for other purposes.

7.5 The Customer shall not be entitled to any other form of use, in particular the publication, forwarding or making available to third parties who are not authorised to use such items, as well as sublicensing in consideration of a fee or free-of-charge. The compliance with the above provision represents an essential contractual obligation. In case of breach of the above provision, the Customer shall be obliged to pay a contractual penalty to the amount of ten times the order value, which cannot be reduced by a judge.

7.6 The Customer shall be obliged not to remove, process, change or make unreadable any ownership notices, brand names, or network identifications which are placed on the delivered contractual objects or which are attached to them.

7.7 MIDES hereby guarantees that it is not aware of any circumstances, in particular third party property rights, which make the development and production of the contractual objects difficult or unlawful.

7.8 Should a claim be brought against the Customer due to breach of third party property rights in the course of usual use of the contractual object, it must immediately inform MIDES of such in writing (within two working days). The Customer shall refrain from all statements, recognitions or even regulatory proposals in relation to the claimant. MIDES shall defend the claim or amend the contractual object accordingly. Should the Customer be prohibited from using the product in accordance with the contract due to a permanent infringement of existing third party property rights, according to economic efficiency, MIDES shall:

- modify the contractual object in such a way that no legal breach takes place;
- acquire for the Customer the necessary rights in respect of the breached property rights

7.9 Regardless of the provision above, MIDES shall not assume any liability for agreements or settlements which the Customer has concluded without the express written agreement of MIDES, as well as in relation to procedures which (also) concern products which are not sold or manufactured by MIDES.

7.10 The Customer shall hold MIDES free and harmless in respect of breaches of third party property rights in relation to:

- contractual objects which were exclusively produced on the basis of drawings, plans or other guidelines of the Customer;
- components, parts, etc. which were made available to MIDES by the Customer;
- claims due to the installation, use or development of or amendment to the contractual object by the Customer or a third party engaged by it.

## 8. Data protection

8.1 The Customer hereby declares its agreement to the data provided by it being saved and processed by MIDES. The said consent may be revoked by the Customer at any time in writing.

## 9. Warranty

9.1 MIDES shall provide a guarantee that the respective contractual object is in a state of operational readiness on the day of delivery and that it possesses the characteristics which are expressly stated in the contract and that are otherwise usually required.

9.2 The Customer is aware of the essential functional characteristics of the contractual object. The Customer has informed itself of all necessary circumstances, possible risks generally and those which concern the concrete project, as well as any legal regulations which concern the application of the contractual object. In case of questions of doubt, the Customer has obtained the advice of MIDES employees or a specialist third party prior to conclusion of the contract. Therefore, the Customer shall bear the risk as to whether the contractual object corresponds to its wishes and requirements.

9.3 The Customer shall be obliged to immediately inspect the contractual object for defects following receipt and to raise a detailed complaint to MIDES in writing within 14 working days in respect of any defects. Any complaints relating to hidden defects which are subsequently discovered must be raised immediately. In case of non-compliance with the inspection and complaint obligation, the claims of the Customer concerning a guarantee, damages due to the defect, as well as an error concerning the freedom from defects of the item shall be forfeited.

9.4 In case of objections, the Customer must immediately provide MIDES with the opportunity to inspect the goods in respect of which a complaint has been raised. On the request of MIDES, the goods in respect of which a complaint has been raised must be returned at its expense. In case of unjustified objections, the Customer shall be obliged, following a request by MIDES, to reimburse MIDES in respect of the costs connected to the inspection of the goods (transportation, inspection expenses).

9.5 Deviations in quality, colour, size of the equipment or design, which are customary in the trade or are of a minor technical or optical nature and cannot be avoided shall not represent a defect and shall therefore not give rise to any warranty or damages claims.

9.6 Should a defect be present for which MIDES is responsible, MIDES shall deal with this either by means of improvement or exchange, depending on its choice. Conversion and price reduction shall be excluded.

9.7 The limitation period shall be twelve months from the time of handover.

9.8 The Customer shall bear the burden of proof that the defect was present at the time of handover (also with the first 6 months following handover). The reversal of the burden of proof in accordance with § 924 Sentence 2 of the

Austrian Civil Code (ABGB) shall therefore be excluded.

9.9 Any warranty claims of the Customer, which go beyond this regulation shall be excluded, in particular claims to the reimbursement of losses which are not connected to the contractual object itself. This shall not apply in cases of intent, gross negligence or lack of assured characteristics where mandatory liability is incurred.

9.10 In all cases, no guarantee is provided in case of:

- unsuitable or improper putting into operation, use or treatment,
- non-compliance with the installation requirements and operating conditions,
- natural wear and tear and overuse,
- use of unsuitable operating materials and processing with products of a different origin by the Customer,
- breach of third party property rights due to MIDES having manufactured and delivered in accordance with drawings and instructions handed over by the Customer,
- damage during transportation.

9.11 The warranty shall immediately lapse if the Customer carries out changes, repairs or adaptations by itself or has these carried out by a third party, which it is not expressly authorised to do so without the express written permission of MIDES. Invoices in this respect shall not be recognised.

## 10. Liability

10.1 MIDES shall only incur liability for damage to the delivered goods themselves and in case of intent, gross negligence or culpable breach of significant contractual obligations, however, not for losses which are due to behaviour on the part of MIDES or its agents, which is of a simply negligent nature. Other and further reaching claims of the Customer against MIDES, in particular due to loss of profit, lost savings, consequential losses, pecuniary losses, loss of interest and losses connected to third party claims, also under product liability, shall be excluded in all cases.

10.2 The liability to pay damages shall be limited to three times the order value. The order value shall be the remuneration for the delivery of the contractual object.

10.3 The liability for personal injury and the statutory product liability shall not be affected by the liability provision above.

10.4 In particular, MIDES shall not incur liability for losses due to force majeure (see 6.5).

10.5 Should the liability be limited, this shall also apply to the personal liability of the workers, employees, representatives and vicarious agents of MIDES.

10.6 The damage claims shall lapse by the deadline stated in 9.7. In cases of intentional or grossly negligent breach of obligations and in case of the fraudulent concealment of defects, as well as in case of damages claims in accordance with the Product Liability Act (PHG), the statutory limitation periods shall apply.

## 11. Place of performance, place of jurisdiction, applicable law, severability clause

11.1 The place of performance for both Contracting Parties shall be the place of business of MIDES.

11.2 The place of jurisdiction for all disputes under contracts with the Customer shall be the objectively competent court in Graz. MIDES shall also be entitled to bring a lawsuit against the customer at its general place of jurisdiction.

11.3 Austrian law shall apply exclusively. The United Nations Convention concerning the International Sale of Goods and the international conflict of law rules shall be excluded.

11.4 All agreements between the Parties shall require written form; the same shall apply in respect of the waiving of the written form requirement.

11.5 Should any individual provisions of this contract be or become ineffective, the validity of the remaining clauses shall not be affected thereby. Such clauses which come closest to the economic purpose of the contract and the reasonable consideration of the mutual interests shall take the place of the ineffective provisions.