

General terms and conditions of VascoMed GmbH

1. Validity of following conditions

- 1.1 The undermentioned general terms and conditions form part of all our contracts. The Customer acknowledges the following conditions for the present Contract and the ensuing deliveries and services. The Customer waives the validity of their own purchasing and/or terms and conditions. On the part of VascoMed, the validity of general terms and conditions of the Customer shall be opposed, even if they are conveyed with a letter of conformation or in another manner.
- 1.2 Agreements deviating from or supplementing the present conditions require our written consent. The ineffectiveness of individual provisions shall not affect the effectiveness of the remaining provisions.

2. Delivery and shipping

- 2.1 Delivery deadlines can only be stated non-bindingly; VascoMed is entitled to partial deliveries. If delivery dates are confirmed, then confirmation shall only apply subject to proper and prompt self-delivery.
- 2.2 VascoMed's offers are subject to change to the extent that nothing else is declared in the offer. Technical modifications to the products of VascoMed shall remain reserved.
- 2.3 In cases of *force majeure* such as production or transport bottlenecks, strikes, civil unrest, customs problems at VascoMed or upstream suppliers for example, VascoMed shall not be obliged to performance for as long as the relevant circumstances of *force majeure* exist. A right to repudiate on the part of the Customer because of a temporary impediment to performance is excluded. If the circumstances of *force majeure* exist for more than three months, each Party shall have the right to repudiate the contract.

3. Payment

- 3.1 Subject to differing agreement, the ordered goods are to be paid for without deduction within 30 days of the invoice date. On payment within 10 days of the invoice date, VascoMed shall grant a discount of 2 % on the net goods price to the extent that this is above € 300.00 per order, and a repair order is not concerned. Payment shall be made regularly by bank transfer. Payment shall be regarded as made if the relevant full amount has been credited irrevocably to the account stated by VascoMed.
- 3.2 Prices are quoted as net prices plus the respective taxes (for example value-added tax) legally stipulated at the time of the delivery or other service.
- 3.3 All stated prices are quoted in euro ex works, including packaging but excluding insurance and shipping costs. To the extent that a separate agreement about prices is not made, prices shall apply as per our price list valid at the time of the order.
- 3.4 Only payments made directly to VascoMed are effective. If several accounts receivable are unsettled, then payments shall initially be made on the interest, then on the costs and ultimately on the account receivable. If several accounts receivable exist, then payments shall be offset against the oldest positions.
- 3.5 The Customer may only offset accounts receivable from VascoMed with positions recognised by VascoMed or bindingly established by a competent court.

4. Retention of title

- 4.1 VascoMed reserves the right to title of the delivered goods until complete payment of all accounts receivable to which it is entitled from the Customer, even if they are from other sales. The retention of title shall exist only insofar as the value of the goods subject to retention of title exceeds 110 % of the value of the accounts receivable still unsettled. In the case of accounts current, the retention of title shall apply up to a ceiling of 110 % of the value of the accounts receivable still unsettled as provision of security on a balance existing in favour of VascoMed.

- 4.2 The Customer shall be entitled to resell the goods within the ambit of proper business operations. In the event of the goods being resold, the Customer shall be obliged to retain the title to the resold goods until complete payment of the purchase price account to which they are entitled *vis à vis* the second purchaser from the resale. The Customer hereby in advance assigns to VascoMed the purchase price account to which they are entitled *vis à vis* the second purchaser in the event of resale.
- 4.3 The Customer shall not be entitled to pledge or assign by way of security to a third party the goods still belonging to VascoMed.

5. Warranty

- 5.1 The warranty period shall be one year from delivery or, insofar as an acceptance inspection is required, from the acceptance inspection.
- 5.2 Goods subject to complaint are to be protected from access by third parties and sent to VascoMed for examination.
- 5.3 If a product is defective, then the Customer may demand only one correction and only then if the defect was already present at the time of the product being handed over to the Customer, and the defect substantially impairs the fitness for purpose of the product. VascoMed shall be free to carry out a replacement delivery instead of correction. If VascoMed chooses the rendering of a replacement delivery, then all warranty and replacement claims of the purchaser shall be discharged. To the extent that an improvement fails after several attempts, despite an appropriate deadline set in writing, the Customer may demand an appropriate lowering of the purchase price or repudiate the purchasing contract regarding the defective delivery.
- 5.4 The warranty shall be inapplicable if the Customer makes impossible or difficult defect detection by VascoMed, for example by not providing the relevant operational report to VascoMed within 30 days of the respective use of the device. The same shall apply if the product has been tampered with by the Customer or a third party.

6. Liability

- 6.1 VascoMed shall be liable for damage – for whatever legal reasons – only in the case of intent and in the case of gross negligence on the part of the bodies and employees of VascoMed, as well as in the case of culpable injury to life, body and health. Insofar as liability is excluded, this shall also apply to staff members, vicarious agents or representatives.
- 6.2 Further rights are excluded. Also excluded is liability for indirect damage, consequential damage and loss of profit.
- 6.3 The liability of VascoMed pursuant to the *Produkthaftungsgesetz* (Product Liability Act), as well as for the existence of guaranteed characteristics, shall remain unaffected.

7. Termination

VascoMed shall have the right to terminate without notice existing associations to the extent that the Customer has made incorrect statements about facts determining their creditworthiness, or proceedings for them to make a statutory declaration in lieu of oath are pending, or insolvency or bankruptcy proceedings have been commenced on their property, or proceedings comparable in their effect have been commenced, or an application for the commencement of such proceedings has been made.

8. Traceability

- 8.1 Observing the pertinent data protection law provisions, the Customer shall guarantee the traceability of the delivered products by keeping a data overview that contains information on the product type and the serial number, the date of delivery, a further purchaser where applicable, the date of use and the name of a patient.

- 8.2 The Customer shall ensure that, in an emergency, the relevant data can be conveyed within five days. Emergencies are for example recalls.
- 8.3 In the event of a product being subject to complaint, the customer shall inform VascoMed in writing or in text form (letter, fax, e-mail) without delay, on no account later than three days after it becoming known, of the cause of the complaint.
- 8.4 The Customer shall ensure that any customers of their own observe this obligation and that, as for the rest, the pertinent notices of the applicable legislation will be observed.

9. Secrecy

- 9.1 The Parties undertake, also extending beyond the end of the Contract, to treat as confidential all information gained by the respective other Party before or on performance of the Contract, irrespective of whether it is marked as confidential or not, and irrespective of the form of its conveyance (concrete or electronic), and to make it available only to such staff and consultants who are reliant upon access to the relevant information for the purpose of discharging their duties and have submitted to an appropriate obligation of confidentiality.
- 9.2 The aforesaid obligation of confidentiality shall not apply to such information that is already known to the public on conclusion of this agreement or subsequently becomes rightfully known or is relinquished to third parties after consent of the conveying party or must be disclosed due to binding official or court order.

10. Export

The Customer undertakes to adhere to all applicable export/import provisions, as well as to any associated embargo provisions, trade embargos and sanctions. The Customer undertakes particularly, in the absence of a relevant official authorisation or order, to export technical data and software (including products that arise from such data or software) neither directly nor indirectly to a proscribed destination or a proscribed country as may arise from the pertinent provisions cited above, and not to export or re-export (including passing on to nationals of one of these countries, irrespective of their location).

11. Place of performance and place of jurisdiction/applicable law

- 11.1 The place of performance for all obligations arising from this or future contracts is Binzen.
- 11.2 The local place of jurisdiction for all disputes – also in the summary procedure based on documents - is Zürich, Switzerland. The Parties agree that the Zürich Commercial Court shall be materially competent.
- 11.3 In the event of a legal dispute, Swiss material law shall be applicable, with the notices of purchasing law of the United Nations being excluded.

NOTE

With acknowledgement of the present conditions, the Customer gives their consent, until revoked, to the storage and processing of their data in electronic form insofar as this is required for the proper handling of contractual relations.

Binzen, July 2008