

General Purchasing Terms and Conditions of Endo-Flex GmbH

As of June 2021

1. Scope of application, general

- 1.1 Our General Purchasing Terms and Conditions have exclusive applicability. We do not acknowledge any conflicting or deviating terms and conditions of the contractual partner ("Contractor") unless express written consent has been given.
- 1.2 These General Purchasing Terms and Conditions shall also apply to future similar transactions. Pursuant to Section 310 Subsection 1 of the German Civil Code (BGB), they shall apply exclusively in respect of entrepreneurs.
- 1.3 These terms and conditions shall become part of the order. Orders and all thereto-pertaining declarations shall only have binding effect if stipulated in writing. Deviations from these General Purchasing Terms and Conditions shall require the express consent of Endo-Flex GmbH in the written form. The latter also applies to the waiver of the said requirement of the written form.
- 1.4 The Contractor commits, at our request, to issue a long-term supplier's declaration free of charge and to send it to us.

2. Offer and acceptance

- 2.1 Offers and cost estimates of the Contractor are free of charge for us.
- 2.2 The Contractor shall confirm each and every order in writing, with reference to our order number and stating the price and delivery time in a binding manner. If we do not receive the confirmation within 8 calendar days, then we shall be entitled to cancel the order.

3. Delivery

- 3.1 A delivery of 90% up to 110% of the ordered quantity of goods against a pro rata adjustment of the purchase price is accepted as fulfilment of the delivery obligation.
- 3.2 Unless indicated otherwise in the order, our place of performance shall be the delivery address as specified on a case-by-case basis. This can be Rohrdorf OT Achenmühle (Germany), Hranice (Czech Republic), Velen (Germany) or Voerde (Germany).
- 3.3 The stipulated delivery date shall have binding effect. The stipulated delivery / performance dates are fixed arrival / completion dates. The receipt of the goods at our point of receipt shall be decisive for compliance with the stipulated delivery date. We are entitled to have the delivery interrupted for a reasonable period of time. As the occasion arises, the delivery time shall be extended by the period of the interruption.
- 3.4 The Contractor is held to request documents to be provided by us for the performance of the order in a timely fashion.

- 3.5 If the Contractor becomes aware that the delivery cannot take place in a timely fashion then the Contractor shall inform us accordingly in writing without delay. In this respect the Contractor shall state the reason and the expected duration of the delay. The unconditional acceptance of a delayed delivery shall not constitute a waiver of the claims to which we are entitled on account of the delayed performance. This shall apply until the final payment for the relevant performance. Further claims for damages shall remain unaffected.
- 3.6 The Contractor shall, at our request, collect or arrange for a third party to collect any and all external, transport and sales packaging from the location where the Contractor is held to deliver the performance.
- 3.7 The Contractor is held to enclose a delivery note in duplicate for us with each and every delivery of goods, with reference to the order number, the designation of the goods with any existing associated material number of Endo-Flex GmbH and the intended place of receipt and unloading location. Otherwise, we shall not be responsible for the resulting delay in the processing.

4. Contractual penalty

In the event of a delayed delivery, we shall be entitled, in addition to the claim for performance, to payment of a contractual penalty in the amount of 0.2% of the net order value per calendar day that the delivery date is exceeded up to a total of 5% of the net order value, unless the Contractor can demonstrate that the Contractor is not responsible for the delay. The acceptance of a delivery as performance does not imply a waiver of any claims arising from contractual penalties, not even with an express proviso. The claims can be filed up to the final payment. Further claims for damages shall remain unaffected.

5. Confidentiality

- 5.1 We reserve the property rights and copyrights in respect of any and all documents made available in connection with the order. They cannot be disclosed to third parties without our written consent. They are to be used exclusively for the delivery of the contractual performances and are to be returned to us immediately after conclusion of the agreement or in the event of non-acceptance of an order within the meaning of § 2, without being requested to do so; any copies must be destroyed immediately.
- 5.2 The Contractor commits to observe confidentiality in respect of any and all business, operational and technical matters of Endo-Flex GmbH that have come or shall come to the knowledge of the Contractor in connection with the delivery, even beyond the end of the contractual relationship, as long as and insofar as the said information has not become available in the public domain in any other way or Endo-Flex GmbH has waived the confidentiality in writing.
- 5.3 The Contractor can only refer to the existing business relationship in advertising expressions with our written consent.

6. Prices, terms of delivery and payment

- 6.1 The price quoted in the order shall have binding effect.
- 6.2 The statutory value added tax is not included in the price of the order.
- 6.3 The payment of the invoice, with the order number to be indicated on the same, shall be made within 60 calendar days after delivery and receipt of the invoice, and the latter without deduction, unless separately stipulated otherwise.
- 6.4 If payment is made within 30 calendar days, then the Contractor shall grant a 2% discount on the net amount of the invoice.
- 6.5 The delivery shall take place DDP, in accordance with the Incoterms 2020.
- 6.6 Claims on account of our orders cannot be transferred to third parties.

7. Reservation of title and set-off

- 7.1 The goods shall become our property immediately upon handover to us; we do not acknowledge any reservation of title on the part of the Contractor.
- 7.2 A set-off against the counterclaim is only permissible insofar as it is undisputed or has become a legally established fact.
- 7.3 We reserve the title of the tools made available by the Contractor if they were fully or partly paid by Endo-Flex GmbH. The Contractor is held to use the tools exclusively for the manufacture of the goods ordered by us. The said tools shall be made available by the Contractor with the clear indication that they are the property of Endo-Flex GmbH. The Contractor is moreover held to ensure the tools belonging to us at replacement value against damages due to fire, water and theft and the latter at its own expense as also to carry out all necessary maintenance and inspection work at its own expense in a timely fashion. The Contractor shall notify us immediately of any malfunctions; if it imputably fails to do so then claims for damages shall remain unaffected.

8. Defects and warranty

- 8.1 The Contractor warrants that the deliveries and performances are free from defects and that warranted features are present. The Contractor shall in particular warrant that the delivered goods and performances comply with the state of the art, the generally accepted technical and occupational medical as well as, where applicable, the relevant medical and pharmaceutical safety regulations of authorities and professional associations as also with the applicable statutory provisions. If machinery, equipment or installations are the subject of the performance then they must also comply with the requirements of the special safety regulations for machinery, equipment and installations in force at the time of implementation of the agreement and bear a CE mark.

- 8.2 An incoming goods inspection shall only take place with regard to obvious defects, transport damage, completeness and identity of the goods. These kinds of defects shall be notified to the Contractor within 5 days after the delivery, other defects within 5 days after their discovery. The said other defects are subject to the Contractor's outgoing goods inspection. In this respect, the Contractor waives the objection of delayed notification of defects.
- 8.3 Claims on account of defects shall be subject to the statutory period of prescription at the earliest 36 months after the transfer of risk, irrespective of the respective legal grounds; longer contractual or statutory periods of prescription shall remain unaffected.
- 8.4 In the event of defects, we shall be entitled to demand subsequent performance in accordance with the statutory provisions; the choice of the type of subsequent performance shall be at our discretion, the costs of subsequent performance shall be borne by the Contractor. The Contractor shall be guided by our operational interests when handling the subsequent performance. If subsequent performance is not possible due to one of the reasons stated in the law then we shall be entitled to the further statutory rights in the event of defects. Our rights pursuant to statutory provisions and any warranties shall remain unaffected by this.
- 8.5 If the Contractor does not comply with its obligation to deliver the subsequent performance within the reasonable period set, without being entitled to refuse the subsequent performance, then we shall be entitled to remedy the defect ourselves or to have it remedied by third parties at the expense and risk of the Contractor. We may demand an advance payment from the Contractor for the expenses necessary to remedy the defect.
- 8.6 If, as a result of the defective delivery, we incur costs for an incoming goods inspection exceeding the stipulated or usual scope, then the Contractor shall bear the said costs.
- 8.7 For parts newly delivered or repaired by way of subsequent performance by the Contractor, the prescription period shall recommence insofar as it regards the same cause of the defect.

9. Product liability

- 9.1 The Contractor shall indemnify us against any and all direct and indirect claims by third parties arising from product and manufacturer's liability that are attributable to a defect in the delivered good, insofar as the cause was within its sphere of control and organisation.
- 9.2 The Contractor shall also reimburse us for the expenses and costs incurred by us in connection with the instances as intended in paragraph 1 due to corrective measures required in terms of type and scope, e.g. public warnings or recall campaigns. We shall forthwith inform the Contractor of the implementation of these kinds of measures. Further statutory claims shall remain unaffected.
- 9.3 The Contractor is held to take out sufficient business and product liability insurance with an insured sum of at least EUR 10 million per insured event and at least EUR 20 million per annum and to maintain the said insurance during the term of the agreement, including the prescription periods. Upon request, the Contractor shall submit a copy of the insurance

agreement or a corresponding certificate of insurance. Any further claims for damages shall remain unaffected.

- 9.4 The provisions set forth in articles 9.1 and 9.2 shall equally apply to liability pursuant to the German Medicines Act (Arzneimittelgesetz).

10. Third-party property rights

- 10.1 The delivery and its utilisation by us may not infringe any third-party property rights. This includes, in particular, patents, trade marks, utility models and designs, as well as copyrights.
- 10.2 If the utilisation of the delivery on our part is impaired by existing industrial property rights of third parties then the Contractor shall within a reasonable period of time and at its own expense either acquire the corresponding authorisation or modify or replace the affected parts of the delivery in such manner that the utilisation of the delivery no longer infringes any industrial property right of third parties and at the same time complies with the contractual arrangements.
- 10.3 Insofar as an infringement of property rights of third parties can be attributed to the delivered goods, the Contractor shall at its own expense put forward a defence against claims of third parties, which the latter assert against us due to infringements of property rights on account of the deliveries and performances of the Contractor. The Contractor shall indemnify us against any and all claims arising from the use of the said industrial property rights, insofar as the Contractor is responsible for the same. The prescription period for these claims amounts to three calendar years, effective from the delivery of the goods.

11. Force majeure

Circumstances that lead to a disruption or a discontinuation of the business foundation shall release us from the obligation of timely acceptance during the relevant duration and shall entitle us to withdraw from the agreement insofar as our requirements are considerably reduced due to the events. The statutory rights, as the occasion arises, shall remain unaffected.

12. Security standard in the supply chain (AEO)

The Contractor warrants that

- 12.1 Goods produced, stored, transported, delivered to us or taken over by us in our capacity as an Authorised Economic Operator (AEO)
- (a) are produced, stored, handled or processed and loaded at secure premises and at secure handling locations;

- (b) are protected from unauthorised access during production, storage, treatment or processing, loading and transport;
- 12.2 the staff employed for the production, storage, handling or processing, transport and acceptance of the said goods are reliable;
- 12.3 business partners acting on behalf of the Contractor are informed that they must also take measures to secure the aforementioned supply chain.

13. Final provisions

- 13.1 Our place of business is Rohrdorf OT Achenmühle
- 13.2 The contractual relationship is governed by the laws of the Federal Republic of Germany.
- 13.3 Customary provisions shall be interpreted in accordance with the Incoterms as applicable at the time of the conclusion of the agreement. If the Contractor or a third party hired by the same fully or partly undertakes the unloading of the goods or if the unloading of the goods is carried out whilst using unloading facilities of the Contractor or a hired third party then the risk shall only pass after completion of the said activities or as soon as the goods have left the unloading facilities.
- 13.4 For any dispute arising out of or in connection with this agreement, the parties shall endeavour to settle the dispute through amicable discussions. If this is not possible then the parties agree that the place of jurisdiction for all claims arising from and in connection with this agreement shall be the local or regional court having jurisdiction for Rohrdorf. However, we are also entitled to institute proceedings against the Contractor at the place of jurisdiction of its place of business.