

**Terms & Conditions of Purchase of Smiths Medical Deutschland GmbH
(August 2009)**

All orders placed by us shall be subject to these Terms & Conditions of Purchase (TCs of Purchase). Any other terms and conditions shall not be applicable even if we do not expressly object to such terms and conditions.

1. Acceptance of Purchase Orders and Completeness

- 1.1 Supplier shall acknowledge our purchase order within 10 days of the date of the order. The agreement concluded in writing, including these TCs of Purchase, shall exclusively govern the legal relations between us and the Supplier. The written agreement fully reflects all of the terms and conditions agreed between the parties regarding the subject-matter of the agreement.
- 1.2 Our purchase orders may be cancelled at any time prior to receipt of the confirmation of the order. In the event a price or delivery date is not indicated in our purchase order and Supplier includes such omitted information in Supplier's confirmation of the order, a binding agreement shall come into being only if we do not cancel our purchase order within 10 days of receipt of the confirmation of the order.

2. Prices and Terms of Payment

- 2.1 Unless otherwise agreed all prices are inclusive of value-added tax, customs duties, packing, insurance and shipping and inclusive of all services and any supplementary work (e.g. installation, erection of work).
- 2.2 The prices agreed upon shall be fixed prices, i.e. not be subject to change. Price increases during the term of the agreements are excluded.
- 2.3 Unless otherwise agreed, we will settle invoices either within 45 days with a 2% cash discount or within 60 days net. The period for computing payment shall not begin before the agreed upon delivery date. We will pay the price and cost of moulds and tools only after parts have been produced therefrom which we have examined and which are free from defects.
- 2.4 Supplier shall not be entitled to assign claims against us to third parties without our written consent.
- 2.5 In the event of any delay in payment we shall owe default interest in the amount of five percentage points above the base interest rate ("Basiszinssatz").

- 2.6 The Supplier shall have a right of set-off or a right of retention only if the counter-claims have become final and absolute or are undisputed.

3. Delivery Dates

- 3.1 Delivery shall be made at the delivery date or within the delivery period agreed upon for each individual purchase order. The delivery date or the delivery period shall always be binding. The goods shall arrive at the point of reception designated by us within the delivery period. Delivery periods shall commence on the date of our purchase order.
- 3.2 In the event Supplier cannot comply with a delivery date or can only make partial delivery on the delivery date, Supplier shall immediately inform us and specify both the reasons for any such delay and the anticipated duration of the delay.
- 3.3 In the event of default in delivery ("Verzug"), we shall be entitled to demand a lump-sum compensation for the damage caused to us due to delay in the amount of 0.5% of the agreed price for the delivery, but no more than 5%, for each day of delay. We shall prove any damage suffered in excess of that amount. The foregoing is without prejudice to any other statutory rights. The Supplier shall be entitled to prove that we incurred no damage whatsoever or considerably less damage.
- 3.4 We are not obliged to accept delivery before the agreed upon delivery date.

4. Shipment, Passing of Risk

- 4.1 Goods shall be shipped at the risk and expense of Supplier. In the event shipping costs are to be paid by us pursuant to a special agreement, Supplier shall choose the most favourable mode of dispatch for us. Supplier shall bear any additional costs as well as responsibility for any disadvantages.
- 4.2 Supplier shall send us notice of shipment for each individual shipment on the day of shipment. In addition, each individual shipment shall be accompanied by a delivery note in duplicate.
- 4.3 The point of delivery shall be the point of reception designated by us for each individual purchase order. Risk of loss or damage shall pass to us upon completion of unloading at the point of delivery. If it has been agreed that Supplier's performance requires our acceptance, said acceptance shall be relevant for the passing of risk. In the event we cannot take delivery because of a business interruption due to an internal or external labor dispute or because of force majeure, the risk of loss or

damage shall not pass to us until the causes of the disruption have been eliminated and the goods are made available to us at the point of delivery. We shall immediately inform Supplier accordingly in the event such reasons for disruption occur or are to be expected.

5. Warranty

- 5.1 Supplier warrants ("gewährleistet") that all goods are free from defects, conform with all specifications agreed upon and incorporate the most recent state of the art, in particular with respect to relevant regulations, standards and guidelines, safety and accident prevention regulations and common technical norms (e.g., DIN, VDE).
- 5.2 In the event a product ordered by us (hereinafter referred to as "product") does not conform with all specifications agreed upon or is otherwise defective, then, in accordance with the statutory provisions, we may choose whether to have a replacement delivery, repair or a reduction of the purchase price, or we may cancel the purchase order. The right to claim damages shall remain unaffected thereby. In the event of repair or replacement, Supplier shall bear all expenses incurred.
- 5.3 The warranty period is 3 years and shall commence upon the passing of risk. If it has been agreed that Supplier's performance requires our acceptance, the limitation period shall commence upon acceptance. The foregoing is without prejudice to longer statutory warranty periods. The warranty period shall begin anew for replaced defective parts. We shall also have unlimited warranty claims if we remained ignorant of the defect when the agreement was concluded as a consequence of gross negligence.
- 5.4 Obvious defects shall be reported within 5 working days and other detectable defects within 14 working days.
- 5.5 Irrespective of contractual warranty rights, Supplier shall indemnify us against all claims of third parties arising from defects in services rendered or goods delivered by Supplier unless such claims cannot be attributed to negligence or willful intent on the part of Supplier.
- 5.6 In the event of claims against us based on product liability, Supplier shall indemnify us to the extent Supplier would itself be directly liable. In any such event, Supplier shall reimburse us for expenses incurred by us through measures taken to limit damage (e.g. recalls): this shall also apply where there is a sign or threat of serial defects. This shall be without prejudice to any more far-reaching statutory

rights. Supplier shall obtain insurance to cover product liability risks and provide us with such coverage upon our request.

5.7 The warranty of Section 5 shall also apply to parts produced by subcontractors.

6. Other Obligations of Supplier

6.1 Supplier shall personally perform all obligations arising from this agreement. Supplier shall not delegate the performance of Supplier's obligations in whole or in part without our prior written approval.

6.2 Where conditions exist under which there may be any risk to health and safety, Supplier shall immediately bring such conditions to our attention in writing and shall provide free of cost adequate information about such conditions and the safeguards which should be observed to ensure that the goods can be transported, stored, processed and/or used safely and without risk to health.

6.3 In the event Supplier's agents or representatives perform any work on our premises or on the premises of one of our customers, Supplier shall instruct any such person to comply with accident-prevention regulations and regulations of the VDI as well as with our existing company instructions. Supplier shall be liable for all damage resulting from a violation of regulations on our premises or on the premises of one of our customers unless Supplier is not responsible for ("vertreten") such violation. Supplier shall upon request document the existence of adequate liability insurance.

6.4 Supplier shall provide our complete purchase order numbers on all delivery notes and invoices and in all correspondence. If one or more of said details is missing and processing by us in the normal course of business is thereby delayed, the payment periods stipulated in Clause 2.3 shall be extended by the duration of the delay.

6.5 Supplier shall be liable for all damage and costs incurred by us by reason of the fact that, in executing the order placed with him, the Supplier has intentionally or negligently infringed intellectual property rights of third parties in Germany and - to the extent he has been notified thereof - in the country of destination and in that case Supplier agrees to indemnify us and our customers against all claims arising from any violation of such rights. Supplier shall not be at fault in the event Supplier supplies goods produced according to drawings, models, other descriptions or instructions provided by us. If we learn of such an infringement we shall be entitled to revoke an order, which we have already placed.

7. Reservation of Title

Supplier shall be entitled to retain title to goods delivered to us until payment is received. We are, however, entitled to dispose of the goods in the course of our normal business activities, in particular to sell such goods and to process them. Supplier may not make advance assignment of our claim known to our customers unless Supplier's claim and the amount thereof are undisputed and payment has not been made despite a reminder notice and expiry of a four-week grace period.

8. Confidentiality

Supplier agrees to treat with strict confidence, not to divulge to third parties and to use exclusively for our benefit any documents or information on goods to be delivered, final products and business processes involving the purchase orders received from us or our agent. This shall apply whether or not we expressly designate documents and information as confidential or secret and whether or not such documents and information represent business secrets in the legal sense. Supplier shall also oblige all employees and agents who by reason of their activities may obtain knowledge of the relationship between the parties to respect the confidentiality of such documents and information.

9. Special Conditions relating to Tools, Documents and Parts

9.1 If we provide the Supplier with machinery, equipment, tools, moulds, devices etc., (hereinafter referred to as "Tools"), samples, models, drawings or other documents etc. (hereinafter referred to as "Documents") or parts for the manufacture of the contractual products (hereinafter referred to as "Parts"), said Tools, Documents and Parts shall remain our property and we reserve the copyright in them.

9.2 If said Tools, Documents and Parts are produced according to our instructions and in return for separate consideration they shall become our property, when we fully paid for them. They shall be treated confidentially. Supplier shall return any such Tools, Documents and Parts to us after completion of the purchase order or retain them for future purchase orders if requested to do so by us. Any such Tools, Documents and Parts shall not be disclosed or made available to third parties without our prior written consent and shall be used exclusively for our benefit. Any goods produced with our Tools, Documents or Parts may only be delivered to third parties with our express written consent. Any right to retain any such Tools, Documents and/or Parts is excluded.

- 9.3 Supplier shall be obliged to mark the Tools, Documents and Parts provided as our property, to treat them with care and to protect them against damage and theft. Supplier shall further be obliged upon request by us to prepare an inventory as per 31 December of all Tools, Documents and Parts provided by us and to hand over said inventory to us no later than by the end of January of the following year.
- 9.4 Any processing, mixing or combining of Tools, Documents and Parts, which we provide the Supplier with for the purposes of manufacture, by the Supplier is done on our behalf. If processed, mixed or combined with goods belonging to third parties, and said third parties' title remains, we shall acquire joint title to the new good in the proportion which the value of the goods provided by us has to the other goods.
- 9.5 Supplier shall be obliged to insure the Tools, Documents and Parts belonging to us as new at its own cost against damage by fire, water and theft. At the same time Supplier hereby already assigns all rights to damages arising out of said insurance; we hereby accept said assignment. Supplier shall be obliged to carry out any maintenance and repair work to our Tools and Parts that may become necessary. Unless otherwise agreed, Supplier and we shall bear the costs of this 50:50; however, insofar as said costs are attributable to improper use by the Supplier, his employees or vicarious agents, said costs shall be borne solely by the Supplier. Supplier shall promptly notify us of any and all damage to said property that is not only minor.
- 9.6 We may at our option purchase from Supplier at market value and take possession of any Tools, Documents and Parts that are made especially for the production of goods ordered by us and which have not become our property pursuant to Clause 9.2.

10. Visits to the Supplier's Premises

Our duly authorized representative and/or our customer shall upon reasonable notice be given access at reasonable times to the Supplier's premises and shall be permitted to inspect, examine and test materials used in the manufacture of the goods or during their manufacture. The Supplier shall supply the results of all inspections and test in such a form as we or our customer may require.

11. Code of Conduct

Smiths Medical Deutschland GmbH (“Smiths”) is committed to conducting its business ethically and lawfully. To that end Smiths, through its ultimate parent company, Smiths Group plc, maintains a Code of Business Ethics and mechanisms for reporting unethical or unlawful conduct. Smiths expects that Supplier also will conduct its business ethically and lawfully. If Supplier has cause to believe that Smiths or any employee or agent of Smiths has behaved unethically or unlawfully under, or in connection with, this Agreement, Supplier is encouraged to report such behaviour to Smiths or to Smiths Group plc. Smiths Group plc’s Code of Business Ethics and mechanisms for making such reports are available on www.smiths-group.com.

12. Jurisdiction, Governing Law

- 12.1 All disputes arising out of this agreement shall be subject to the jurisdiction of the competent courts for Grasbrunn, Germany. We may, however, at our option, also assert our claims against the Supplier before the courts of the Supplier’s principal place of business or have all disputes arising out of or in connection with these claims finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 12.2 Grasbrunn, Germany, or any other place designated by us shall be the place of delivery.
- 12.3 This agreement shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 12.4 In the event any provision of this agreement is determined to be invalid or unenforceable, then this shall not affect the validity of all other terms and the validity of the agreement. Provided it is not a general term and condition, the invalid provision shall be replaced by a provision which comes closest to the economic effect of the invalid provision. The same shall apply in the event of an omission.