



GENERAL EXPORT CONDITIONS valid from 30.12.2013

Hu-Friedy Mfg. Co., LLC.

3232 N. Rockwell Street | Chicago, IL 60618 | USA

Hu-Friedy Mfg. Co., LLC. German Branch

Kleines Öschle 8, 78532 Tuttlingen, Germany

### **§ 1 General conditions, Scope of Application**

(1) These general export conditions (hereinafter GECs) shall apply in principle to all deliveries, services and offers provided by Hu-Friedy Mfg. Co., LLC, Kleines Öschle 8, 78532 Tuttlingen, Germany (hereinafter referred to as the Vendor) in so far as they are not expressly amended or excluded in writing by the Vendor.

(2) The GECs in their currently valid version shall also serve as a framework agreement for future contracts governing the sale and/or delivery of movable goods concluded with the same Purchaser without the Vendor having to refer to them again in each individual case.

(3) The Vendor's GECs shall apply exclusively. Any divergent, contradictory or supplementary general terms and conditions of business drawn up by the Purchaser shall form part of the contract only if the Vendor has expressly agreed that they shall apply. This requirement for agreement shall apply in all cases, for example even when the Vendor makes the delivery to the Purchaser unconditionally, in full knowledge of the Purchaser's general terms and conditions of business.

(4) Individual agreements concluded with the Purchaser in particular cases (including side agreement, supplements and amendments) shall take priority in all cases over these GECs. As far as the content of such agreements is concerned, a written contract and/or our written confirmation shall prevail.

(5) Legally relevant declarations and notices that have to be issued by the Purchaser to the Vendor after conclusion of the contract (e.g. fixing of deadlines, notices of defects, notice of cancellation or price reductions) shall be valid only if made in writing.

(6) References to the validity of legal regulations are made merely in order to avoid doubt. Even without such references, the legal regulations shall apply in so far as they are not directly amended or expressly excluded in these GECs.

## **§ 2 Conclusion of contract**

(1) The Vendor's offers are subject to change and shall not be binding. This shall apply even when the Vendor has supplied the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards etc.), other product descriptions or documents – including in electronic form – over which the Vendor claims ownership and copyright. With regard to the content of any contract, the Vendor's technical specification shall prevail.

(2) An order for goods placed by the Purchaser shall be regarded as a binding offer of contract. If nothing further ensues from the order, the Vendor shall be entitled to accept this offer of contract within 7 days of taking receipt of it.

(3) Acknowledgement of acceptance can be made either in writing (e.g. by confirmation of order) or by delivery of the goods to the purchaser.

## **§ 3 Delivery time and delivery delays**

(1) Stated delivery times are generally not binding and are binding only when this is expressly agreed in writing. The delivery period begins when the confirmation of order is dispatched but not before the documents, licences, permissions and other formalities to be obtained by the Purchaser have been provided or before any advance payments agreed have been made.

(2) If the Vendor is unable to meet binding delivery dates for reasons for which he is not responsible (non-availability of the product), he shall inform the Purchaser of this without delay and at the same time notify him of the estimated new delivery date. If the item is not available even within the new delivery deadline, the Vendor

shall be entitled to withdraw from the contract wholly or in part; any consideration already furnished by the Purchaser shall be returned by the Vendor without delay. A particular example of the non-availability of a product as defined in this paragraph is the failure by the Vendor's suppliers to make deliveries on time when the Vendor has concluded a matching cover transaction. The Vendor's legal rights to withdrawal and cancellation and the statutory regulations governing performance of the contract in the event of exemption from liability (e.g. impossibility or unreasonableness of contract fulfilment and/or of deferred fulfilment) shall remain unaffected. The Purchaser's rights to withdrawal and cancellation pursuant to § 8 of the present GECs shall also remain unaffected.

(3) Delivery contracts without any specific delivery date ('on call' deliveries) can be concluded only on the basis of a contractual agreement and only as exceptional cases. The Vendor shall confirm the date on which the delivery is to take place. Unless expressly agreed otherwise, the goods for delivery on call shall be available for a maximum period of 26 weeks. At least 2 weeks' notice is to be given for on call orders.

(4) The point at which a delivery to be made by the Vendor is deemed to be late shall be determined on the basis of the statutory provisions. In any event, a reminder from the Purchaser is required.

#### **§ 4 Delivery, transfer of risk, acceptance, delay in acceptance**

(1) The delivery shall take place 'ex works' from the Vendor in Tuttlingen (FCA Incoterms 2010). Tuttlingen is also the place of performance. Any divergent clauses are to be agreed and interpreted in accordance with the currently valid version of the Incoterms of the International Chamber of Commerce, Paris.

(2) At the Purchaser's request and cost, the goods will be dispatched to a different destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, the Vendor shall be entitled to determine the type of dispatch (and in particular the choice of transport company, dispatch route, packaging and insurance).

(3) Part deliveries are permissible.

(4) All equipment, accessories and aids delivered shall be assembled by the Purchaser. If it is further and expressly agreed that the Vendor shall take responsibility for assembly and/or commissioning, the Vendor's General Conditions of Assembly shall apply.

(5) The risk of accidental loss of or damage to the goods shall be transferred at the latest when said goods are handed over to the Purchaser. In the case of sales by delivery to a place other than the place of performance, however, the risk of accidental loss of or damage to the goods as well as the risk of delay shall be transferred as soon as the goods are handed over to the haulage contractor, forwarding agent or any other person or organization appointed to take charge of the shipment.

(6) Should the Purchaser be late in accepting the delivery or neglect to provide the necessary assistance or if the delivery to be made by the Vendor is delayed for other reasons for which the Purchaser is responsible, the Vendor shall be entitled to claim compensation for any loss arising as a consequence as well as reimbursement of any additional expenses (e.g. storage costs). The Vendor will charge a flat-rate expense allowance of 30,00 EUR per calendar day, beginning at the end of the agreed delivery day or, in the absence of an agreed delivery day, with the notification that the goods are ready for dispatch.

Proof of greater loss and the Vendor's legal claims (in particular reimbursement of additional expenses, appropriate compensation and termination of contract) remain unaffected; however, the flat-rate expense allowance is to be deducted from any further claims. The Purchaser reserves the right to prove that the Vendor has not suffered any loss at all or a considerably smaller loss than the flat-rate expense allowance stipulated above.

## **§ 5 Prices and terms of payment**

(1) Our prices are quoted inclusive of VAT and, unless otherwise agreed, exclusive of packaging, dispatch, transport and customs duties.

For deliveries and goods and services provided within the EU, the Purchaser must, prior to completion of the sale, inform the Vendor of the VAT identification number

under which he pays VAT within the EU. In the case of deliveries and goods and services provided from Germany to countries outside the EU that are not carried out or originated by the Vendor, the purchaser must provide the Vendor with the evidence of exportation required by the tax authorities. If that evidence is not provided, the Purchaser shall additionally be required to pay the VAT that would be levied in Germany on the invoice amount.

(2) In the case of sales by delivery to a place other than the place of performance (§ 4 para. 2), the Purchaser shall pay the transport costs ex store as well as the costs of any transit insurance the Purchaser might wish to take out.

Any customs duties, fees, taxes and other public charges and levies shall be paid by the Purchaser. In accordance with the packaging ordinance, the Vendor will not take back any transit or any other packaging. All such packaging becomes the property of the Purchaser and is to be disposed of by the Purchaser in accordance with the regulations.

(3) Unless otherwise agreed, all payments are to be made in advance or by presentation of a confirmed credit order (or bank guarantee) at the latest 6 weeks before the delivery date. The 'Uniform Customs and Practices for Documentary Credits' of the International Chamber of Commerce Paris (UCP600) shall apply. All payments shall be made in Euros to the Vendor's designated account without consideration for any possible exchange rate fluctuations, without deductions and free of transaction charges.

(4) When the payment deadline stipulated above expires, the Purchaser will be in arrears. The Vendor may then exercise his right of retention and defer performance of the contract.

(5) Custom-made products can be supplied in a minimum consignment of 50 units provided the development costs are borne by the Purchaser. In the case of customer-specific (custom-made) products or variants of the same, the Vendor is in principle entitled to an advance payment of two thirds of the agreed purchase price, payable at the latest 3 weeks before production start-up. The Purchaser is not entitled to return custom-made products.

(6) The Purchaser has rights of offset and retention only in so far as the claim asserted by him has been established in law or is uncontested. § 7 paragraph 6 remains unaffected in the event of defects in the delivery.

(7) If it becomes evident after conclusion of the contract that the Vendor's claim to the purchase price is being put at risk by the Purchaser's lack of capacity (e.g. following submission of an application for the opening of insolvency proceedings), the Vendor is entitled according to the statutory provisions to refuse performance and – if necessary after setting a deadline – to withdraw from the contract (§ 321 of the German Civil Code). In the case of contracts for the manufacture of non-substitutable items (one-off products), the Vendor may declare withdrawal immediately; the statutory provisions on waiving the need to set a deadline remain unaffected.

## **§ 6 Retention of title**

(1) Until all the Vendor's present and future claims arising out of the contract of sale and a current business relationship (secured claims) between the parties to the contract and between the Vendor and companies associated with the Purchaser have been paid in full, the Vendor shall retain title in the goods sold. Bills of exchange or checks presented by the Purchaser shall not be regarded as payment until they have been encashed or discharged.

If the validity of the retention of title is subject to special conditions or legislation in the destination country, the Purchaser shall be responsible for compliance with those conditions or legislation. It is also his responsibility to inform the Vendor of this.

(2) Goods subject to retention of title may be neither pledged to third parties nor assigned as security until all secured claims have been paid in full. The Purchaser shall support the Vendor in taking any measures that may be necessary to protect his property in the country in which the goods have been placed as instructed by the purchaser. The Purchaser shall inform the Vendor in writing and without delay when and to what extent officials and other third parties will have access to the goods belonging to the Vendor.

The Purchaser shall, at his own expense, insure the delivered goods against theft, damage by fire and water and other risks for the period until the purchase price has been paid in full

(3) If the Purchaser behaves contrary to contract, and in particular if he fails to pay the due purchase price, the Vendor shall be entitled, in accordance with the legal regulations, to withdraw from the contract and/or reclaim the goods on the ground of retention of title. A demand to reclaim the goods does not imply a declaration of withdrawal; rather, the Vendor is entitled merely to reclaim the goods and to reserve the right to withdraw. If the Purchaser fails to pay the due purchase price, the Vendor may not enforce these rights unless he has previously unsuccessfully set an appropriate deadline for payment or the setting of such a deadline is unnecessary according to the legal regulations.

(4) The Purchaser is entitled, in the regular course of business, to sell on and/or put to use the goods subject to retention of title. In this case, the following provisions shall additionally apply:

(a) The retention of title shall include, to their full value, all items produced through the use, amalgamation or linking of our goods, with the Vendor being regarded as the manufacturer. If, in the case of use, amalgamation or linking with the goods of third parties who have retained title over those goods, then the Vendor shall acquire joint title in proportion to the invoice values of the used, amalgamated or linked goods. For the rest, the same applies to any items produced as to the goods delivered under retention of title.

(b) All claims against third parties arising out of the sale of the goods or the items produced shall be assigned as securities by the Purchaser to the Vendor either in full or in proportion to the Vendor's share of the joint title as defined in the previous paragraph. The Vendor shall accept the assignment. The Purchaser's obligations as set out in paragraph 2 above shall also apply to the assigned claims.

(c) The Purchaser, as well as the Vendor, is authorized to collect the amounts due. The Vendor undertakes not to collect the amounts due so long as the Purchaser fulfils his payment obligations towards him, does not fall into arrears, no application

is made for the opening of insolvency proceedings and his financial capacity is not deficient in any other way. If this is the case, however, the Vendor can demand that the Purchaser informs him of the assigned claims and their debtors, issues all the instructions necessary for collection, delivers the corresponding documents and informs the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds the Vendor's claims by more than 10%, the Vendor shall, at the Purchaser's request, release securities at the Purchaser's option.

### **§ 7 Purchaser's claims for defects**

(1) Unless specified otherwise below, the Purchaser's rights in the event of defects in quality and title (including incorrect and short delivery as well as incorrect assembly or inadequate assembly instructions) shall be governed by the statutory provisions. In all cases, the statutory special provisions on final delivery to a consumer (Supplier's Redress pursuant to §§ 478, 479 of the German Civil Code) remain unaffected.

(2) The basis of the Vendor's liability for defects lies primarily in the agreement concerning the condition of the goods. All product descriptions that are the object of the individual contract shall be deemed to constitute an agreement on the condition of the goods; in this regard, it makes no difference whether the product description originates with the Purchaser, the manufacturer or the Vendor.

The Vendor's instructions regarding the further processing/handling or use of the products that are the object of the contract are to be observed by the Purchaser. Should the purchaser not obey these instructions and damages arise as a result, then these are to be borne by the Purchaser himself.

(3) In so far as no agreement on the condition of the goods has been agreed, a judgment as to whether or not a defect exists shall be made in accordance with the statutory provisions (§ 434 paragraph 1 sentences 2 and 3 of the German Civil Code). However, the Vendor shall not accept any liability for public statements made by the manufacturer or any other third party (e.g. advertising statements).

(4) The Purchaser's claims for defects presuppose that he has fulfilled his duty to



examine and notify (§§ 377, 381 German Commercial Code). If a defect is observed on examination or subsequently, the Vendor is to be notified of it in writing without delay. Notification shall be deemed to have taken place without delay if it occurs within 2 days. The decisive factor in meeting the deadline is the timely arrival of the written notification.

However, the Purchaser shall accept any discrepancies in volumes, measures, quality, weights that are regarded as customary in the trade. The Vendor reserves the right to make equivalent modifications to the design.

Should the Purchaser fail to carry out an examination according to the regulations and/or to report any defects, the Vendor shall not be liable for the unreported defect.

(5) If the delivered item is defective, the Vendor may first choose whether to remedy the defective delivery by eliminating the defect (rectification) or by delivering an item free of defects (replacement delivery). His right to reject the chosen type of remedy in accordance with the statutory conditions remains unaffected. The Vendor has the right to make repeated but no more than three attempts to remedy the defect.

(6) The Vendor is entitled to make remedy of the defect dependent on payment by the Purchaser of the due purchase price. However, the purchaser is entitled to withhold part of the purchase price commensurate with the extent of the defect.

(7) The Purchaser shall give the Vendor the time and opportunity necessary to remedy the defect, and in particular shall hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Purchaser shall return the defective item to the Vendor in accordance with the statutory provisions.

(8) The expenditures required to remedy the defect, and in particular transport, travel, labor and material costs, shall be borne by the Vendor if a defect is indeed present. However, if the Purchaser's demand for remedy of a defect proves to be unjustified, the Vendor can demand that the costs incurred as a result be reimbursed.

(9) In urgent cases, e.g. if operational safety is endangered or in order to avert disproportionate damage, the Purchaser has the right to remedy the defect himself and to demand compensation from the Vendor for the expenditures objectively

required to do so. The Vendor is to be informed without delay, if possible beforehand, of any such self-help measures. The right to take self-help measures does not exist if the Vendor is entitled to refuse supplementary performance in accordance with the statutory provisions.

(10) If the supplementary performance is unsuccessful or if an appropriate deadline set by the purchaser for the supplementary performance has expired without success or can be dispensed with according to the statutory provisions, the Purchaser may withdraw from the contract or reduce the purchase price. However, there is no right of withdrawal in the event of an insignificant defect.

(11) Any claims by the Purchaser for damages or the reimbursement of wasted expenditure shall remain valid only in accordance with § 8 and will not otherwise be considered.

### **§ 8 Other liability**

(1) In so far as nothing to the contrary ensures from these GECs, including the provisions set out below, the Vendor shall be liable if his contractual and non-contractual obligations pursuant to the relevant statutory provisions are not fulfilled.

(2) The Vendor shall be liable for damages – regardless of the cause in law – in the event of premeditation or gross negligence. In the event of simple negligence, the Vendor shall be liable only

a) for damages arising out of injury to life, body or health,

b) for damages arising out of violation of a fundamental contractual obligation (an obligation whose fulfilment is an essential precondition for proper performance of the contract and on compliance with which the contractual partner routinely relies and is entitled to rely); in this case, however, the Vendor's liability shall be restricted to compensation for the predictable damage that typically occurs.

(3) The limitations on liability arising out of paragraph 2 above shall not apply if the Vendor has fraudulently concealed a defect or furnished a guarantee for the condition of the goods. The same applies to the Purchaser's claims pursuant to the Product Liability Act.

(4) In the event of a violation of obligations that does not constitute a defect, the Purchaser may withdraw from or cancel the contract only if the Vendor is responsible for the violation of an obligation. The Purchaser shall not have an unrestricted right to cancel (particularly as defined in §§ 651, 649 of the German Civil Code). For the rest, the statutory provisions and legal consequences shall apply.

### **§ 9 Limitation of claims**

(1) Notwithstanding § 438 paragraph 1 no. 3 of the German Civil Code, the general period of limitation for claims arising out of defects in quality and title is one year from handover.

(2) The statutory special regulations on real claims for the restitution of the property of third parties (§ 438 paragraph 1 no. 1 of the German Civil Code), on fraudulent intent on the part of the Vendor (§ 438 paragraph 3 of the German Civil Code) and on claims arising out of supplier's recourse in the case of final deliveries to a consumer (§ 479 of the German Civil Code) remain unaffected.

(3) The aforesaid periods of limitation set down in commercial law shall also apply to contractual and extra-contractual claims for damages by the Purchaser arising out of a defect in the goods, unless application of the normal statutory period of limitation (§§ 195, 199 of the German Civil Code) would lead to a shorter period of limitation in an individual case. The periods of limitation laid down in the Product Liability Act shall remain unaffected in any event. In other respects, claims for damages by the Purchaser pursuant to § 8 of the present contract shall be governed solely by the statutory periods of limitation.

### **§ 10 Fixtures, plans, sales documents, confidentiality**

(1) The Vendor is entitled to dispose of fixtures manufactured for special (customized) parts at his discretion within one year after completion of the last order. This also applies to any portion of the cost for which an invoice has been

issued.

(2) All rights to fixtures, drawings, designs and plans produced by the Vendor, and in particular patent rights, copyrights and rights to inventions, shall be assigned exclusively to the Vendor. All sales documents, such as catalogues, pattern books, price lists etc., that are made available to the purchaser shall remain the property of the Vendor and are to be returned on request.

(3) The documents forming part of a tender, such as drawing, sketches, indications of weights and dimensions, descriptions of performance and other properties and other information on other contractual products and services, are only approximate. All property rights and copyrights in information originating from the Vendor – including in electronic form – shall remain with the Vendor.

(4) The parties to the contract agree to keep all the commercial and technical details of their mutual business relationship secret if those details have been characterized as confidential and provided they have not become public knowledge. This also applies to the things listed in §§ 10 paragraph 2 and paragraph 3, which may not be copied or disclosed or otherwise made accessible to third parties without authorization.

(5) The parties to the contract shall impose on their own suppliers the same obligations to maintain confidentiality as described in § 10 paragraph 4.

## **§ 11 Force majeure**

(1) Neither party shall be held responsible for non-fulfilment of one of their obligations if the non-fulfilment is the result of an obstacle outside of their control, or in particular is due to one of the following reasons:

fire, natural catastrophe, war, impoundment, export prohibition, embargo or other measure imposed by authority, general shortage of raw materials, restrictions on energy use, labor disputes or breaches of contract on the part of suppliers for one of the reasons listed above.

(2) Either party may terminate the contract by giving notice in writing if performance of the contract is impeded for more than 6 months in accordance with No. 11.1.

### **§ 12 Responsibilities under the terms of the Medical Products Act**

The contracting parties have to fulfill all the responsibilities for their respective areas of responsibility as laid down in the Medical Devices Directive 93/42/EEEC and in their national legislation such as, for example, market observation, mutual information and traceability of the delivered products through to the end user.

### **§ 13 Compliance with legislation**

In so far as products manufactured in Germany are being exported, the Vendor is responsible for compliance with the provisions of the German legislation that is applicable except where otherwise provided by agreement. The provisions of the relevant U.S. legislation shall prevail in the case of products manufactured in the United States of America.

Adherence to and implementation of the relevant provisions governing foreign trade (e.g. import licences, authorization to transfer foreign currency) and any other legislation in force outside of the Federal Republic of Germany falls within the Purchaser's sphere of responsibility.

### **§ 14 Data processing**

The Vendor and the companies associated with him are entitled to store and process data connected with commercial transactions in accordance with the provisions of German law.

### **§ 15 Intellectual property rights**

(1) The Purchaser may make use of intellectual property (trade marks, trade names, logos, drawings, patents, brand names and industrial designs) only after obtaining the Vendor's prior permission in writing and only in the Vendor's interests.

(2) The Purchaser is responsible for ensuring that his behavior in connection with the use of the Vendor's goods acquired by him does not cause the intellectual property rights of third parties to be infringed. The purchaser shall absolve the

Vendor of any responsibility with regard to all claims made by third parties concerning infringements of intellectual property rights, including all legal and non-legal costs, and if requested support the Vendor in any legal dispute.

**§ 16 Choice of law, place of jurisdiction, written form and safeguarding clause**

(1) All contracts concluded by the contracting parties under the terms of the present Export Conditions shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and of private international law.

(2) All disputes arising in connection with contracts based on these GECs shall be conclusively settled at the Vendor's option either before the general courts of law of the Federal Republic of Germany or, if recourse to the general courts of law is excluded, in accordance with the arbitration code of the International Chamber of Commerce Paris (ICC) by an arbitrator appointed in accordance with the said code. The place of arbitration shall be 78532 Tuttlingen, Germany.

(3) In so far as a dispute involves a purchaser whose registered office is in one of the member states of the European Union or in the European Free Trade Area (EFTA – except Lichtenstein – particularly in Iceland, Norway or Switzerland), the Vendor's right to choose with regard to recourse to the courts is restricted in that, instead of the court of arbitration referred to in paragraph 2 above, the competent state court in Germany shall have sole power to settle the dispute. In so far as it is legally permissible, it is agreed that 78532 Tuttlingen, Germany shall be the place of jurisdiction.

(4) All previous general export conditions are hereby rescinded.

(5) Amendments and additions to these general export conditions, including their rescission, must be made in writing, in so far as no further formal requirements have to be fulfilled.

(6) Should one or more provisions of these general export conditions become null and void, invalid or inexecutable, in whole or in part, the validity of the remainder of the contract and of the remaining provisions shall not be impaired. The null and void, invalid or inexecutable provision shall be replaced by a provision which in form,

content, time, extent and scope comes closest to what the parties intended by the commercial meaning and purpose of the null and void, invalid or inexecutable provision. The same shall apply to any gaps in these General Export Conditions.

Hu-Friedy, Mfg. Co., LLC.

German Branch

Kleines Öschle 8, 78532 Tuttlingen, Germany

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