

# General Conditions of Purchase of Mathys Orthopädie GmbH

Version June 2019

## 1 Scope and Applicability

1.1. The present General Conditions of Purchase (GCP) apply to all purchases made by Mathys Orthopädie GmbH unless otherwise explicitly agreed in writing.

In particular (but without limitation thereto) the provisions of non-disclosure agreements, supply contracts and/or quality assurance agreements take precedence over the provisions below in the event of conflicts.

1.2. General Conditions of Delivery of contracting partners apply to purchases only if and insofar as Mathys Orthopädie GmbH has explicitly recognised them in writing.

1.3. The following Conditions are an integral part of all orders based on the cooperation with the Contracting Partner and will apply to future transactions of the same type as well. They apply exclusively to companies pursuant to § 2 sentence 1, of the German Commercial Code (HGB).

## 2 Offer, Acceptance and Conclusion of Contract

2.1. Orders are binding only if placed in writing by Mathys Orthopädie GmbH. The same applies to supplements of any kind to orders placed.

2.2. The Contracting Partner shall confirm every order in writing within five working days, indicating the price and delivery period. Should no confirmation be received within the five-day period, this silence means consent, and the order and all its details will be deemed confirmed. As part of the confirmation, clear and explicit reference is to be made to any substantial deviations from the content of the order. If a confirmation deviates from an order, Mathys Orthopädie GmbH will be entitled to cancel the order.

2.3. Deliveries are required to conform exactly to the orders; exceptions will apply only when orders issued include provision of material by Mathys Orthopädie GmbH. Differences in quantity on delivery will lead automatically to an adjustment to the purchase price.

2.4. The quality to be complied with is based on the contracts concluded between the Contracting Parties as well as each purchase order text and the documents listed therein, such as materials, specifications, drawings and instructions with the applicable index as listed and valid at that time.

2.5. The Contracting Partner shall establish and maintain a state-of-the-art quality assurance system that is documented and suitable in terms of type and scope. The Contracting Partner shall prepare records, in particular on its quality assurance, and to provide these to Mathys Orthopädie GmbH upon request.

## 3 Subcontracting

3.1. Whenever orders are subcontracted by the Contracting Partner, Mathys Orthopädie GmbH is to be informed unprompted. Mathys Orthopädie GmbH is entitled to decline or approve the subcontracting in writing. In particular, such approval requires the subcontractor to sign and recognise all agreements concerning confidentiality and quality that are in force between Mathys Orthopädie GmbH and the Contracting Partner. The subcontracting partner shall accept performance of audits by Mathys Orthopädie GmbH, an organisation appointed by it, the certifying organisation of Mathys Orthopädie GmbH, or the competent public authorities, respectively.

3.2. In any case, the Contracting Partner is liable without reservation to Mathys Orthopädie GmbH for flawless execution of the contract.

## 4 Terms, Invoicing and Due Date

4.1. The net prices shown in each order are binding plus the applicable statutory value added tax, delivery duty paid (DDP) Mathys Orthopädie GmbH domicile/Incoterms 2010.

4.2. Invoices are to be submitted immediately following delivery with clear reference to the order number, supplier number and, if specified, the project number, to the invoicing address indicated.

4.3. Unless agreed otherwise, payment will be made within thirty days net after the date of receipt of the invoice.

4.4. Payment and discount periods commence on the date of receipt of the invoice, but not before the goods have been received or accepted, respectively, and, if documentation, inspection certificates or similar documents are part of the scope of delivery, not before the same have been handed over to Mathys Orthopädie GmbH as contractually agreed.

4.5. In case of advance payments, the Contracting Partner shall provide appropriate bank or insurance guarantees. The charges will be at the expense of the Contracting Partner.

4.6. Mathys Orthopädie GmbH is entitled to offset any counter-claims.

## 5 Provision / Tools

5.1. Any materials, individual parts and components that Mathys Orthopädie GmbH provides to carry out an order will remain the property of Mathys Orthopädie GmbH even after processing or finishing. Unprocessed materials, individual parts, components and reject parts are to be returned to Mathys Orthopädie GmbH unprompted. Reject parts must be clearly and visibly marked. Documentation describing the reason for the reject must be attached.

5.2. The Contracting Partner shall inspect, mark and store the materials provided carefully. Divergences in quantity, quality, etc., are to be reported to Mathys Orthopädie GmbH immediately. The Contracting Partner is liable for any loss or damage.

5.3. Mathys Orthopädie GmbH retains ownership of tools and equipment required to carry out an order. The Contracting Partner is obliged to use the tools solely for the orders of Mathys Orthopädie GmbH, even if Mathys has not paid for them in full, and to insure the tools belonging to Mathys Orthopädie GmbH at their value as new at its (the contractor's) own expense.

## 6 Delivery, Delays and Contract Penalty

6.1. Agreed delivery dates are binding. The delivery date is met when the goods ordered, including the agreed documents (certificates, drawings etc.) to be provided, have arrived at the incoming goods department of Mathys Orthopädie GmbH at the place of fulfilment within the agreed delivery period. The Contracting Partner shall inform Mathys Orthopädie GmbH in writing immediately about possible delivery delays, their durations and causes.

6.2. The Contracting Partner may invoke the absence of necessary documentation or supplementary items and/or individual parts to be supplied by Mathys Orthopädie GmbH only if it has requested these in writing in good time or, if dates have been agreed, if a written reminder has been sent for the shipment.

6.3. In case of a delayed delivery, Mathys Orthopädie GmbH is entitled to require the Contracting Partner to pay a contractual penalty regardless of negligence or fault, in addition to its claim for fulfilment plus further damages. The contractual penalty will be 2% of the net value of the order for every full week of delivery delay.

In case of a delay on the part of the Contracting Partner of more than three weeks, Mathys Orthopädie GmbH has the right to cancel the contract and issue the order to another party, while still being entitled to the contractual penalty and full damages. In this case, the Contracting Partner shall immediately return all material(s), tools and other items and documentation provided for use in carrying out the contract.

6.4. Acceptance of the delivery as fulfilment in cases of delay does not imply a waiver of any claims to contractual penalties, even without any explicit reservation.

The claims may be asserted until final payment is made and offset with any due counter-claims for deliveries of goods by the Contracting Partner. Damages claims will remain unaffected by this.

6.5. If and insofar as due and proper fulfilment of the contract is disrupted by force majeure, Mathys Orthopädie GmbH will be released from the obligation to accept goods for the duration of the disruption and be entitled to cancel the contract if due to force majeure the need for fulfilment of the contract has verifiably ceased to exist or been considerably reduced.

## 7 Packaging, Transport, Documentation, Benefit and Risk

7.1. In the absence of any other shipping instructions to the contrary, deliveries are to be sent delivery duty paid (DDP) domicile/Incoterms 2010.

7.2. The Contracting Partner is liable for any damage due to improper packaging.

7.3. The Contracting Partner shall send to Mathys Orthopädie GmbH the relevant regulations concerning products that must be stored in accordance with specific regulations.

7.4. The Contracting Partner is liable for all costs and disadvantages arising from failure to follow the instructions of Mathys Orthopädie GmbH relating to transport of the delivery or contractual products.

7.5. Each shipment is to be accompanied by a detailed delivery slip with a dispatch note (certificate / company certificate / drawings, if required) that contain the references of Mathys Orthopädie GmbH. All correspondence must include the order number of Mathys Orthopädie GmbH, the supplier number, and the description of the goods. Any delays due to absence of documentation or details in accepting the goods will be at the expense of the Contracting Partner.

7.6. Should the required shipping documents, including the agreed documents to be attached to a delivery (certificates, drawings etc.) accompanying a delivery, not be supplied as required, the invoice amount will not be due for payment until the omission has been corrected.

7.7. Unless otherwise agreed, benefit and risk will pass to Mathys Orthopädie GmbH upon acceptance of the delivery at the agreed place of delivery.

## 8 Acceptance, Warranty and Claims for Defects

8.1. The Contracting Partner owes fault-free delivery and performance in accordance with the contractual agreements and representations.

8.2. The Contracting Partner guarantees and represents that the delivered goods

- a) have the stipulated characteristics;
- b) conform to the prescribed parameters and specifications;
- c) have no defects that might impair their value or fitness for the intended use;
- d) comply with the relevant legislation and regulations, are state-of-the-art, comply with the general technical and occupational health regulations, the relevant medical technology regulations and – where appropriate – pharmaceutical safety regulations and any applicable statutory provisions. Unless otherwise agreed, the warranty will be valid for 24 months. Mathys Orthopädie GmbH is entitled to complain about defects during the entire warranty period.

8.3. The goods are to be delivered only after inspection. Incoming goods inspections will be made only with regard to obvious defects, transport damage, completeness of the order, and identity of the goods.

Mathys Orthopädie GmbH reserves the right to inspect the delivery further, without being obliged to do so. Should it discover any deviations from the specifications, it will inform the Contracting Partner promptly, within five working days following discovery. The Contracting Partner waives immediate notification of defects and the defence of delayed notification of defects. The further action and costs will be decided on by Mathys Orthopädie GmbH.

8.4. Where defects are discovered during the statutory or extended warranty period, the Parties agree that the cause will be deemed to have existed already upon transfer of the risk. This conjecture can be refuted only by proof to the contrary; the onus of such proof will be incumbent upon the Contracting Partner.

8.5. If during the statutory warranty period the delivery or parts thereof should be found to have defects, the Contracting Partner is obliged, at the discretion of Mathys Orthopädie GmbH, to remedy the defects or have them remedied immediately on site at its own expense, or to supply Mathys Orthopädie GmbH, free of charge, with a flawless replacement.

8.6. Regarding its repair or supplementary fulfilment, the Contracting Partner is required to comply with the operational requirements of Mathys Orthopädie GmbH.

8.7. If subsequent performance is ruled out for statutory or subjective reasons, Mathys Orthopädie GmbH continues to be entitled to

all further statutory rights for defects, such as cancellation, damages or price reduction.

In this case, Mathys Orthopädie GmbH will likewise be entitled to remedy the defect(s) at the expense and risk of the Contracting Partner, or have this done by third parties. Costs incurred will be at the expense of the Contracting Partner.

8.8. Where quality levels give rise to differences of opinion, the result of control samples, measurements and investigations carried out by independent and legally recognised testing institutes will be decisive. The costs of these samples will be at the expense of the Party at fault.

8.9. Improvements and subsequent deliveries will restart the guarantee and warranty deadlines to their full extent.

## 9 Product Liability

9.1. If the Contracting Partner is responsible for damage to a product, it shall indemnify and hold harmless Mathys Orthopädie GmbH from and against any damages claims by third parties. All costs, including the costs of any recall campaigns, will be at the expense of the Contracting Partner. This will apply to the extent that product liability originates from the control and organisational area of the Contracting Partner.

9.2. The Contracting Partner undertakes to take out sufficient company and product liability insurance with a minimum coverage of EUR 6 million for each claim, and to provide a copy of the policy or an insurance certificate to Mathys Orthopädie GmbH upon request. The liability insurance policy is to be maintained both during the term of the contract and after the end of the contractual relationship for a period of three years after the agreed products have been released onto the market by Mathys Orthopädie GmbH. Any damage not covered by insurance, as well as further possible additional claims for damages, will be at the direct expense of the Contracting Partner and will remain unaffected by any possible insurance benefits.

9.3. Expenses incurred that result from possible claims against Mathys Orthopädie GmbH due to product or manufacturer's liability and caused by the Contracting Partner will be at the expense of the Contracting Partner. These include costs incurred for recall campaigns, press publications and the costs of necessary legal representation of Mathys Orthopädie GmbH for legal defence and counsel in relevant matters. Further statutory claims will remain unaffected. The Contracting Partner will be informed directly of any corresponding measures.

## 10 Confidentiality

10.1. The Contracting Partner shall treat the order and the related work, information or deliveries as confidential.

10.2. Specifications, drawings, models, tools etc. that Mathys Orthopädie GmbH makes available to the Contracting Partner for preparing the quote or manufacturing a product may not be used, duplicated for any other purposes, or made accessible to third parties. The Contracting Partner recognises that the contractual products are to be manufactured according to specifications, drawings and instructions by Mathys Orthopädie GmbH, and hence Mathys Orthopädie GmbH holds all immaterial property rights (patents, designs, know-how, copyrights, trademarks etc.) related to all products by Mathys Orthopädie GmbH, and to improvements to the products of Mathys Orthopädie GmbH. If and insofar as Mathys can demand this, the Contracting Partner undertakes to support Mathys Orthopädie GmbH in connection with the registration and defence of this intellectual property and all intellectual property rights. Upon request, all documents are to be surrendered to Mathys Orthopädie GmbH immediately. If no goods are delivered, the Contracting Partner shall return the documents to Mathys Orthopädie GmbH unprompted; the same shall apply after the end of the contract. Any copies, including in electronic form, are to be destroyed immediately. The confidentiality obligation persists infinitely beyond the duration of the contractual relationship, if and insofar as corresponding information has not become publicly known in any other way and Mathys Orthopädie GmbH does not waive the confidentiality in writing.

10.3. Documentation transmitted in physical or digital form when the order is placed may not be made accessible to third parties without the explicit approval of Mathys Orthopädie GmbH.

10.4. In cases of notified and approved subcontracting, the Contracting Partner shall bind the subcontractor to a contract in respect of existing confidentiality agreements and submit a copy to Mathys Orthopädie GmbH upon request. This shall also apply in respect of these Conditions of Purchase.

10.5. The Contracting Partner may mention the existing business relationship to third parties only with the approval of Mathys Orthopädie GmbH. This also applies to advertising activities.

### **11 Intellectual Property Rights of Third Parties**

11.1. The Contracting Partner may not violate any industrial property rights. This applies in particular to existing patents, trademarks, samples and copyrights.

11.2. The Contracting Partner shall inform Mathys Orthopädie GmbH immediately about any claims by third parties alleging that production or sale of the contractual products infringes rights of third parties. In this case, further action will be coordinated by mutual agreement.

11.3. If the infringement of industrial property rights held by third parties is attributable to actions of the Contracting Partner, the Contracting Partner will at its own expense defend against any claims by third parties that complain formally about the breaches in question and/or institute legal action against Mathys Orthopädie GmbH. The Contracting Partner will hold harmless and indemnify both Mathys Orthopädie GmbH and any companies associated or affiliated with it (Mathys Orthopädie GmbH) from and against all claims arising from the use of such industrial property rights if it (the Contracting Partner) is responsible for the claims.

11.4. If Mathys Orthopädie GmbH is responsible for the infringement of industrial property rights, the Contracting Partner shall obtain the necessary approvals in due time, so that no further industrial property rights are violated in the use or execution of the order in future. In this case, further action is to be coordinated with Mathys Orthopädie GmbH.

### **12 Data Protection**

12.1 If and insofar as for the purposes of the contract the definitions laid down in Article 4 of Regulation (EU) 2016/679 (General Data Protection Regulation) apply, the Contracting Parties undertake to fulfil at all times any obligations under the valid data protection laws.

12.2 The Contracting Partner knowingly consents to Mathys Orthopädie GmbH's storage of the personal data necessary to process orders on data carriers. The Contracting Partner expressly consents to the collection, processing and use of its personal data. The personal data stored shall be treated confidentially by Mathys Orthopädie GmbH and stored in compliance with the applicable data protection regulations (Section 33 German Federal Data Protection Act [BDSG] / Article 14 General Data Protection Regulation).

12.3 If and insofar as in the course of due contract performance the Contracting Partner comes into contact with personal data pertaining to Mathys Orthopädie GmbH, the Contracting Partner shall conclude a formal agreement regarding contract data processing as stipulated by data protection requirements (Article 28 of the General Data Protection Regulation).

12.4 The Contracting Partner has the right to revoke its consent at any time with effect for the future.

### **13 Reservation of Unilateral Changes**

13.1 Mathys Orthopädie GmbH reserves the right to unilaterally change the present General Terms of Purchase. Mathys Orthopädie GmbH shall inform the Contracting Partner about any change, notifying the wording of the amended provisions to the Contracting Partner's latest known email address. The change becomes part of the contract unless the Contracting Partner objects to its inclusion into the contractual relationship to Mathys Orthopädie GmbH within four weeks from receipt of the change notice.

### **14 Place of Fulfilment, Applicable Law and Legal Venue**

14.1. Unless otherwise agreed in writing, the place of fulfilment is D-07646 Mörsdorf, Germany.

14.2. Should any provisions in the present Conditions of Purchase be or become invalid, the remaining provisions of the same shall not be affected thereby.

14.3. The laws of the Federal Republic of Germany apply, to the exclusion of the provisions of the UN Convention on the International Sale of Goods (CISG 1980).

14.4. The legal venue is Jena, Germany. Mathys Orthopädie GmbH is also entitled to institute legal action against the Contracting Partner at the location of the partner's registered office.