

General Terms and Conditions of Purchase of Mathys Ltd Bettlach

Version March 2018

1 Scope and Applicability

- 1.1 The present General Terms and Conditions of Purchase (hereinafter referred to as "Terms") apply to all purchases by Mathys Ltd Bettlach unless anything different or deviating has been expressly 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 Any general terms and conditions of sale of the Contractor apply to purchases only if and insofar as Mathys Ltd Bettlach has expressly accepted them in writing.

2 Offer, acceptance and conclusion of contract

- 2.1 The Contractor shall acknowledge each purchase order in writing within five working days, indicating the price and delivery time. If no acknowledgment is received within this time of five working days, silence shall be deemed consent, and the order shall be deemed acknowledged including all indications therein. Any substantial deviation from the purchase order shall be expressly and clearly indicated in the acknowledgment. In the event of a deviating acknowledgment, Mathys Ltd Bettlach is entitled to cancel the order.
- 2.2 The delivery quantity shall correspond exactly to the specifications in the purchase order. Quantitative deviations at delivery automatically lead to adjustment of the purchase price.
- 2.3 The required quality is based on the agreements concluded between the Contracting Parties, as well as the respective order text and the documents listed therein, such as material specifications, drawings and instructions, with the valid index indicated at that date.
- 2.4 The Contractor shall establish and maintain a documented, state-of-the-art quality assurance system of an appropriate type and scope. The Contractor shall keep records, in particular of its quality inspections, and shall make these available to Mathys Ltd Bettlach upon request.

3 Subcontracting

- 3.1 Mathys Ltd Bettlach shall be informed unprompted of all subcontracting of orders on the part of the Contractor. Mathys Ltd Bettlach has the right to either refuse or accept such subcontracting in writing. Such consent requires the Subcontractor to sign and accept in particular all existing agreements concerning confidentiality and quality between Mathys Ltd Bettlach and the Contractor. The Subcontractor accepts the conducting of audits by Mathys Ltd Bettlach, an organization appointed by it, the certification body of Mathys Ltd Bettlach, or the competent authorities.
- 3.2 The Contractor is in all cases unconditionally liable to Mathys Ltd Bettlach for proper performance of the contract.

4 Terms, invoicing and due date

- 4.1 The net prices shown in the respective purchase order are binding prices exclusive of the statutory value-added tax at the rate respectively in force, DDP Mathys Ltd Bettlach domicile/Incoterms 2010.
- 4.2 Invoices shall be sent to the billing address indicated after the delivery, clearly quoting the purchase order number, supplier number and, if applicable, the project number.
- 4.3 Payment shall be made net within 90 days from the date of receipt of the invoice.
- 4.4 Times for payment commence on the date of receipt of the invoice, but not before receipt of the goods or acceptance of the goods, as applicable, and if documentation, test certificates or similar documents are included in the scope of delivery, not before they have been delivered to Mathys Ltd Bettlach as per the contract.
- 4.5 Mathys Ltd Bettlach has the right to offset any counterclaims.

5 Provisions of items/tools by Mathys Ltd Bettlach

- 5.1 Material, parts and components provided by Mathys Ltd Bettlach for the execution of a purchase order remain the property of Mathys Ltd Bettlach even after processing. Unused material, parts, components and scrap must be returned to Mathys Ltd Bettlach unprompted.
- 5.2 The Contractor shall carefully examine, label and store the materials provided. Any deviations in terms of quantity, quality, etc. shall be reported to Mathys Ltd Bettlach without delay. The Contractor is liable for any loss or damage.
- 5.3 Mathys Ltd Bettlach retains title to tools and instruments needed for the execution of a purchase order. The Contractor shall use the tools exclusively for [fulfilment of] the purchase orders of Mathys Ltd Bettlach, even if they have not been fully paid for by the latter, and shall at its own expense insure the tools belonging to Mathys Ltd Bettlach at replacement value.

6 Delivery dates, default and penalty

- 6.1 Agreed delivery dates are binding. The delivery date is deemed met if the goods ordered have reached the incoming goods department of Mathys Ltd Bettlach at the place of performance within the agreed delivery time, including the documents (certificate, drawings, etc.) stipulated to be enclosed. The Contractor shall promptly inform Mathys Ltd Bettlach in writing about possible delivery delays, their duration and reasons.
- 6.2 The Contractor may invoke the absence of necessary documents or supplementary items or parts to be provided by Mathys Ltd Bettlach only if the Contractor has requested them in writing in good time or, where dates were stipulated, if it promptly sent a written reminder to supply them.
- 6.3 In the event of late delivery, Mathys Ltd Bettlach is entitled, in addition to the claim for performance, to require the Contractor to pay a penalty regardless of any negligence or fault of its own, plus any further loss. The contractual penalty shall be 2% of the net order value for every full week of delay in delivery.
- 6.4 If the Contractor defaults by more than three weeks, Mathys Ltd Bettlach is entitled to withdraw from the contract, claiming the contractual penalty and full compensation, and place the order elsewhere. In this case, the Contractor shall immediately surrender all materials, tools and other items provided for use for performance of the contract, and all documents.
- 6.5 Even without an express reservation, acceptance of a late delivery as performance does not imply waiver of any claims based on contractual penalties. The claims may be asserted up to the final payment, and may be offset with the Contractor's due counterclaims from deliveries. This does not affect damage claims.
- 6.6 If and insofar as proper performance is disrupted by force majeure, Mathys Ltd Bettlach is exempt from the obligation of acceptance for the duration of the disruption, and is entitled to withdraw from the contract if the need for performance has demonstrably ceased to exist, or has been significantly reduced, due to force majeure.

7 Packing, transport, documents, benefit and risk

- 7.1 Deliveries are to be shipped DDP domicile/Incoterms 2010.
- 7.2 The Contractor is liable for any damage due to inadequate packing.
- 7.3 In the case of products that have to be stored according to specific rules, the Contractor shall supply Mathys Ltd Bettlach with those rules.
- 7.4 The Contractor shall be liable for all expenses and detriment arising from failure to follow instructions by Mathys Ltd Bettlach concerning transport of the delivery or products.
- 7.5 A detailed delivery note with advice of dispatch (certificate/factory certificate/ drawings, if requested), comprising the references of Mathys Ltd Bettlach, must be enclosed with each shipment. All correspondence must quote the Mathys Ltd Bettlach purchase order number, the supplier number, and a description of the goods. Any delays in accepting delivery of goods due to missing documents or information shall be at the expense of the Contractor.
- 7.6 The benefit and risk pass to Mathys Ltd Bettlach upon acceptance of the delivery at the stipulated place of delivery.

8 Acceptance, warranty and warranty claims

- 8.1 The Contractor owes delivery and performance free of defects in accordance with the contractual agreements and warranties.
- 8.2 The Contractor guarantees and represents that the delivery item
- has the contractually warranted qualities,
 - fulfils the stipulated performances and specifications,
 - has no defects impairing its value or suitability for the intended use,
 - complies with the relevant laws, regulations, state of the art, the general technical and occupational health-related as well as the relevant medical and, if applicable, pharmaceutical safety regulations and legal provisions in force. Unless otherwise agreed, the warranty period is two years. Mathys Ltd Bettlach is entitled to notify defects at any time during the warranty period.
- 8.3 The goods shall be inspected before delivery. Incoming goods inspection takes place only with regard to obvious defects in the external packing, damage in transit, completeness and identity of the goods.
- 8.4 Mathys Ltd Bettlach reserves the right to further inspect the delivery, without being obliged to do so. Any deviation from the contractual obligation is qualified as defect in legal terms. The Contractor shall be informed about defects found promptly following their discovery. The Contractor waives immediate notification of defects and the defense of late notification of defects. The decision on further action and on the financial consequences shall be taken by Mathys Ltd Bettlach.
- 8.5 In the case of defects within the warranty or guarantee period, the Contracting Parties stipulate that the relevant causality already existed at passing of risk. The presumption can be rebutted only by evidence of the contrary. The onus of proof lies with the Contractor.
- 8.6 Should it become apparent during the warranty period that the shipment or any part thereof is defective, the Contractor shall, at the discretion of Mathys Ltd Bettlach, either remedy or have a third party remedy the defects on the spot, without delay and at its own expense, or deliver a replacement free of defects to Mathys Ltd Bettlach without charge.
- 8.7 In the context of defect removal, the Contractor shall take into account the operative interests of Mathys Ltd Bettlach.
- 8.8 If supplementary performance is not possible for legal reasons or inability to perform, Mathys Ltd Bettlach has all statutory warranty claims, including those for damages. Mathys is entitled to invoke the provisions of Art. 97 et seq of the Swiss Law of Obligations concerning breaches of contract instead of its warranty rights under the contract of sale or contract for services. In this case, Mathys Ltd Bettlach also has the right to remedy the defect by itself or have a third party do so at the Contractor's expense and risk. Any costs incurred shall be at the Contractor's expense. Rectification of defects and subsequent deliveries start fresh warranty and guarantee periods.
- 8.9 In the event of disagreements concerning the quality values, the result of sample controls, measurements or tests carried out by independent, legally recognized test institutes shall be decisive. The expenses of such tests shall be at the expense of the Contracting Party found to be wrong.

9 Product liability

- 9.1 If the Contractor is responsible for a product defect, it is obliged to indemnify and hold harmless Mathys Ltd Bettlach upon first request from and against losses or any compensation claims brought by third parties, which incurred Mathys Ltd Bettlach as a result of the product defect. The Contractor is liable for consequential damages if and insofar as they are attributable to a product defect in the delivery items. All expenses and costs, including without limitation internal and external expenses, e.g. expenses incurred for recalls, press releases and the expenses of the necessary legal representation of Mathys Ltd Bettlach for defense and consultation in relevant matters, shall be at the Contractor's expense.
- 9.2 The Contractor shall take out adequate public and product liability insurance and shall provide Mathys Ltd Bettlach with a copy of the policy or a certificate of insurance upon request. The liability insurance shall be maintained for the term of the contract and for a period of three years after termination of the contractual relationship. Losses not covered by insurance, as well as other possible damage claims, shall be directly at the Contractor's expense and shall be unaffected by possible insurance benefits.
- 9.3 The Contractor is obliged to inform Mathys Ltd Bettlach immediately and in written form of all and any risks or problems

associated with the delivery item, its procurement, manufacturing or delivery.

10 Confidentiality

- 10.1 The Contractor shall treat the purchase order and the associated work, information or deliveries as confidential.
- 10.2 Information, drawings, models, samples, tools, etc., provided to the Contractor by Mathys Ltd Bettlach for the preparation of the offer or the manufacture of a delivery item may not be used for any other purposes, copied, or made accessible to third parties. The Contractor acknowledges that the products shall be manufactured according to the specifications, drawings and instructions of Mathys Ltd Bettlach, and that therefore all intellectual property rights (patents, designs, know-how, copyrights, trademarks, etc.) in connection with any products provided by Mathys Ltd Bettlach, as well as any improvements to the products, are owned by Mathys Ltd Bettlach.
- 10.3 The Contractor undertakes to assist and support Mathys Ltd Bettlach, insofar as the latter may request such assistance or support, in connection with the registration and/or defense of any intellectual property rights. All documents shall be surrendered to Mathys Ltd Bettlach without delay upon request. If delivery does not go ahead, the Contractor shall return the documents to Mathys Ltd Bettlach unprompted; likewise upon termination of the contract. Any copies, including such in electronic form, must be destroyed without delay. The obligation to maintain secrecy extends, without a time limit, beyond the duration of the contractual relationship, unless the relevant information has become known in another way or Mathys Ltd Bettlach waives maintenance of secrecy in writing.
- 10.4 Documents in physical or electronic form provided with the purchase order shall not be disclosed to third parties without the express consent of Mathys Ltd Bettlach.
- 10.5 In cases of notified and approved subcontracting, the Contractor shall contractually bind the Subcontractor with respect to the existing secrecy agreements, and shall furnish Mathys Ltd Bettlach with a copy of the same upon request; this also applies in relation to the present Terms of Purchase.
- 10.6 The Contractor shall not refer to the existing business relationship towards third parties without the consent of Mathys Ltd Bettlach; this also applies to advertising measures.

11 Intellectual property rights of third parties

- 11.1 The Contractor shall not infringe any intellectual property rights. That applies in particular to existing patents, trademarks, design, utility patents, and copyrights.
- 11.2 The Contractor shall inform Mathys Ltd Bettlach without delay about any claims by third parties alleging that the manufacture or sale of the products infringes any third party rights. In this case, the further action shall be taken consensually under appropriate agreements.
- 11.3 If the Contractor or the delivery items infringe any third party's intellectual property rights, the Contractor shall at its own expense fend off such third party claims, notify the corresponding infringements and/or raise them against Mathys Ltd Bettlach. The Contractor shall indemnify and hold harmless Mathys Ltd Bettlach and its affiliated companies from and against all claims arising from the use of such intellectual property rights if and insofar as it is liable for them.

12 Reservation of unilateral changes

- 12.1 Mathys Ltd Bettlach reserves the right to unilaterally change the present General Terms of Purchase. Mathys Ltd Bettlach shall inform the Contractor about any change, notifying the wording of the amended provisions, to the Contractor's last known e-mail address. The change becomes part of the contract unless the Contractor objects to its inclusion into the contractual relationship to Mathys Ltd Bettlach within four weeks from receipt of the change notice.

13 Place of performance, applicable law and legal venue

- 13.1 The place of performance is CH-2544 Bettlach.
- 13.2 Should any provisions of the present Terms of Purchase be or become ineffective, the other provisions hereof shall remain unaffected.
- 13.3 The legal relationship shall be governed exclusively by Swiss substantive law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 13.4 The place of jurisdiction is CH-2544 Bettlach. However, Mathys is also entitled to sue the supplier at the latter's registered office.