

**General Terms and Conditions of Purchase of Hamilton Medical AG**

(hereinafter called "Hamilton")

**1. Commencement and scope**

1.1 With effect from August 1, 2016, all purchases and legal agreements concluded by Hamilton with its suppliers shall be subject exclusively to these General Terms and Conditions of Purchase (hereinafter called "the GTP"), insofar as these are not amended by means of individual written agreements. Furthermore, these GTP shall replace the previously valid general terms and conditions of purchase of Hamilton.

1.2 General terms and conditions of business of the supplier (hereinafter called "the Supplier") which contradict these GTP shall be applicable only insofar as Hamilton expressly approves these in writing.

1.3 Hamilton reserves the right to amend these GTP at any time.

**2. Offers made by the Supplier**

2.1 Following an enquiry by Hamilton, the Supplier shall be asked to submit an offer free of charge.

2.2 The offer submitted by the Supplier must comply with the specifications and descriptions of Hamilton, and in the event of deviations must expressly draw attention thereto.

2.3 The offer submitted by the Supplier must detail all secondary costs for taxes, fees, duties, packaging, transportation, royalties etc. which are to be incurred by Hamilton.

2.4 If the Supplier does not expressly stipulate another deadline in his offer, his offer shall be binding for 90 (ninety) days from the date of receipt by Hamilton.

**3. Orders placed by Hamilton**

3.1 If the Supplier issues an order confirmation which deviates from the order, then Hamilton shall not be bound by this order confirmation without express approval.

3.2 Orders, commissions and agreements as well as amendments or additions to the orders shall be binding for Hamilton only if these have been placed in writing or concluded in writing by its authorised in-house managing officers.

**4. Prices and payment**

4.1 The prices listed in the order by Hamilton shall essentially constitute fixed prices and are carriage free Bonaduz.

4.2 General price increases must be reported to Hamilton in writing at least two months before these come into effect. In the case of current orders, no price increases shall be possible.

4.3 Payment shall be performed within 60 (sixty) days following receipt of the product or services. In the event of ascertained defects, Hamilton shall reserve the right to withhold the payment.

4.4 Payment does not mean the delivery or service has been recognised as being contractually compliant. In the event of a faulty or incomplete delivery or service, Hamilton shall to a reasonable extent and irrespective of all other rights be entitled to withhold payments on claims arising out of the business relationship until these have been properly fulfilled.

4.5 Payments shall be performed, unless otherwise agreed, in Swiss francs.

4.6 Existing claims against Hamilton may not be assigned to third parties.

**5. Quality, checks, notice of defects and repairs**

5.1 The Supplier guarantees adherence to the specifications and quality and other characteristics of the components demanded by Hamilton in its order.

5.2 The Supplier is obliged to adhere to the technical data demanded for his goods in accordance with the documents upon which this order is based, such as drawings, technical terms and conditions of delivery, specifications, descriptions or samples.

5.3 Hamilton shall be entitled to audit the Supplier once per annum. Hamilton shall moreover also have the right to conduct client audits and inspections by public authorities at the Supplier without prior notification, and if necessary to extend these to the relevant business premises of the Supplier.

5.4 Should Hamilton ascertain that a change in quality has taken place without prior notification, then Hamilton shall have the right to reject the goods. The Supplier shall be liable for the direct and indirect losses incurred by Hamilton as the consequence of a change in quality which was not reported in good time.

5.5 Product changes must be reported to Hamilton in good time and comprehensibly, and shall be deemed to constitute a contractual amendment request. Hamilton may reject these within the framework of the existing legal agreement.

5.6 Product changes realised without prior notification shall be deemed to be in breach of contract, and shall entitle Hamilton to take the corresponding measures (acceptance refusal, price reduction, compensation, etc.).

5.7 Insofar as these are known to the Supplier, production stops as well as the announced discontinuation of components by subcontractors (manufacturers) must be reported to Hamilton in good time.

5.8 The Supplier shall be obliged support Hamilton on a cost basis (by prior agreement) in conjunction with the rectification of quality problems, or shall be obliged to perform these himself respectively.

5.9 The duty of the ordering party to conduct checks and to issue defect notices immediately pursuant to Art. 201 OR shall be contractually excluded. Defects in the delivered products (in quantitative and qualitative terms) must be reported as soon as these have been ascertained. The Supplier expressly waives the plea of overdue notice of defects or of approval. Hamilton may issue defect notices throughout the entire warranty period.

5.10 If Hamilton returns defective goods, then Hamilton shall be entitled to reverse debit the invoice sum plus a flat-rate administrative charge of 5% of the price of the defective goods or at least CHF 100.00. Hamilton reserves the right to demonstrate that it incurred overheads were higher. Hamilton reserves the right to demonstrate that it incurred lower or no overheads.

**6. Delivery conditions**

6.1 The delivery must be performed on the agreed delivery deadline at the place of performance, although at the earliest 3 (three) working days before. The place of performance for all reciprocal obligations is the registered domicile of the company Hamilton Medical AG in Bonaduz, Switzerland.

6.2 Unless otherwise agreed on a case-to-case basis, deliveries shall be performed DDP (Incoterms 2010).

6.3 Excess deliveries or delivery shortfalls, partial deliveries or premature deliveries shall be subject to the prior approval of Hamilton.

6.4 Hamilton may at any time with immediate effect and irrespective of its further rights withdraw from the Agreement and refuse to accept the delivery if:

- a) the delivery date confirmed by the Supplier is not adhered to;
- b) the specifications defined by Hamilton are not adhered to.

#### **7. Packaging, delivery note, insurance, transfer of title**

7.1 The Supplier shall bear responsibility for the proper packaging, and must draw attention to any special circumstances pertaining to the removal thereof.

7.2 A delivery note must be enclosed with each consignment, and this must contain at least the Hamilton order and article number(s).

7.3 Transportation must be performed in accordance with the instructions of Hamilton.

7.4 Title, benefits and risk of the delivered products shall be transferred to Hamilton within 10 (ten) days following the acceptance. In the event of deliveries involving installation or fitting, the risk shall be transferred only at the time of the successful acceptance by Hamilton. If the products are returned to the Supplier for any possible reason, the risk and liability shall be transferred to the Supplier once the products are ready for transport.

7.5 Any extended or widened reservation of title is excluded.

7.6 Insofar as the respective applicable law does not stipulate otherwise on a mandatory basis, the Supplier shall in all cases be exclusively responsible for adhering to all export, import, transit and control regulations and formalities.

#### **8. Safety and environmental protection**

8.1 Delivered goods and rendered services must comply with the statutory provisions, in particular safety and environmental protection provisions.

8.2 In the case of deliveries and the rendering of services, the Supplier shall have sole responsibility for adhering to the accident-prevention regulations. Protective equipment as well as any possible instructions of the manufacturer which are required under such regulations must be included with the delivery free of charge.

#### **9. Guarantee and warranty**

9.1 The Supplier guarantees – in addition to the quality and characteristics – that the delivered product is free of material and production faults, is fully-operational, corresponds to all regulations in force at the place of destination and that the necessary certificates of conformity, approvals, permits etc. have been obtained.

9.2 The guarantee period shall last 24 (twenty four) months from the date of delivery in Bonaduz. The same full guarantee period shall in each case apply to replacement deliveries, subsequent rectifications and spare parts.

9.3 If a product exhibits defects, then Hamilton shall be entitled to choose from amongst the following rights: conversion, compensation for the reduced value, delivery of defect-free replacement products and subsequent rectification. In urgent cases or if the Supplier fails to perform the correction demanded by Hamilton within the deadline imposed by Hamilton, Hamilton

may procure a replacement for another source or may rectify the defect or may cause these to be rectified.

9.4 If Hamilton has evidence that a similar defect affects all delivered products, then Hamilton may arrange for these to be replaced, even if the guarantee period has already expired.

9.5 The costs resulting from the exercise of the rights shall be borne by the Supplier. Claims for compensation remain reserved in all cases.

#### **10. Liability**

10.1 If the products damage Hamilton, its managing officers or employees, then the Supplier shall be obliged to provide comprehensive compensation.

10.2 In the event of a claim being brought against Hamilton in conjunction with a product delivered by the Supplier, in particular on the grounds of a product liability law (incl. Switzerland, EU and USA), then Hamilton may without further ado disclose the name of the Supplier to the claimant. In addition, Hamilton shall be entitled to claim full compensation and recourse vis-à-vis the Supplier arising out of all expenses incurred in conjunction with any such claims. The Supplier shall procure satisfactory insurance cover.

#### **11. Intellectual property**

11.1 The Supplier guarantees that the products delivered by him and the utilisation thereof do not breach any third-party intellectual property rights. He shall be comprehensively liable for all consequences – whether relating to Hamilton or its customers – arising out of any such claimed or actual breach.

11.2 Instructions issued by Hamilton in respect of the utilisation of Hamilton company designations and trademarks as well as the affixation thereof to the products must be adhered to.

#### **12. Means of production**

12.1 All means of production (tools, drawings, models, etc.) which Hamilton makes available to the Supplier at its own expense are the property of Hamilton and must be designated correspondingly. These may be deployed only on behalf of Hamilton. Hamilton shall have the sole right of disposal over these items, and the Supplier must adhere to the instructions issued by Hamilton.

12.2 To the extent that the means of production which have been wholly or partially paid for by Hamilton are in the possession of the Supplier, the Supplier shall be liable for the risk of their loss, destruction and damage. If the Supplier breaches his obligations, then Hamilton shall be entitled to dissolve all legal agreements with the Supplier with immediate effect. In addition, Hamilton shall be entitled to claim compensation as well as demand the surrender of the benefit (gross) generated by the Supplier.

12.3 Further details shall be regulated separately on a case-by-case basis.

#### **13. Execution plans, manufacturing and maintenance documents**

13.1 Before production commences, the execution plans must be submitted to Hamilton upon request for approval. Approval by Hamilton shall not release the Supplier from his responsibility for the complete suitability and feasibility thereof.

13.2 The definitive manufacturing and maintenance documents (execution plans, maintenance and operating regulations, lists of spare parts, etc.) must be held for safekeeping throughout the production term (max. 10 (ten) years after the final delivery), and

must be placed at the disposal of Hamilton without pecuniary consideration in the event of the cessation of the production or the dissolution of the legal agreement. This applies to all manufacturing and maintenance documents.

**14. Confidentiality**

- 14.1 All technical documents (means of production, data, drawings, software, etc.) which Hamilton makes available to the Supplier for the purpose of manufacturing the product, as well as all commercial documents (e.g. orders and the associated details) must be treated in a confidential manner and may be used only for the specific cooperation. This also applies to products which have been developed specially for Hamilton. All rights pertaining thereto shall be held exclusively by Hamilton. Upon request, all documents together with all copies and reproductions thereof must be surrendered to Hamilton without delay.
- 14.2 The Supplier must treat his business relationship with Hamilton and all details pertaining thereto in a confidential manner.
- 14.3 The Supplier shall also impose the aforementioned confidentiality obligations on his managing officers, employees and lawfully engaged third-parties.
- 14.4 The aforementioned obligations shall also be applicable within the framework of contractual negotiations and following the end of the agreement. If the legal agreement is not concluded, or after the legal agreement has ended respectively, all presented or created documents of all kinds pertaining to the specific project must automatically be returned to Hamilton without delay.
- 14.5 The Supplier herewith gives its consent that data processing according to Art. 10a FADP may be conducted provided Hamilton ensures that the third party guarantees data security.

**15. Force majeure**

- 15.1 The Supplier shall not be liable for the non-performance or the poor performance of the legal agreement if this is attributable to events of force majeure.
- 15.2 If the Supplier invokes force majeure, then he must inform the other Party without delay about the occurrence and the expected duration thereof. If he fails to do so, then he may not invoke force majeure.
- 15.3 Upon request, the Supplier must provide Hamilton with written confirmation of the circumstances which in his view establish a case of force majeure.

**16. Miscellaneous provisions**

- 16.1 The Supplier shall be obliged to inform Hamilton in writing without delay if significant changes to his control structure or ownership occur relative to the circumstances in force at the time of the conclusion of the legal agreement.
- 16.2 In the event of differences between the various language versions of these GTS, the German version shall prevail.
- 16.3 Communications must be addressed to Hamilton Medical AG, Via Crusch 8, 7402 Bonaduz, Switzerland.
- 16.4 All legal relationships between Hamilton and the Supplier are governed by Swiss law, whereby the UN Sales Convention shall be excluded.

**17. Severability clause**

- 17.1 Should any of the individual provisions contained in this Agreement prove to be wholly or partially invalid or unenforceable, or should they subsequently become invalid or unenforceable as a consequences of changes in legislation which take place following the conclusion of the Agreement, then this shall not affect the other contractual provisions and the validity of the Agreement as a whole. Such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which approximate as closely as possible to the meaning and purpose of the invalid provisions. Should the Agreement prove to contain omissions, then the provisions shall be deemed to have been agreed which correspond to the meaning and purpose of the Agreement and which would have been agreed if this matter had been considered.

<p>The ordinary courts at the registered domicile of Hamilton shall have exclusive jurisdiction for the judicial assessment of all disputes between the Supplier and Hamilton. Hamilton shall however also be entitled to bring claims against the Supplier at the latter's registered domicile.</p>
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