

# General Terms and Conditions for Supply of Goods and Services to Miltenyi Imaging GmbH

## Revision January 2021



### 1. SCOPE

- 1.1. The following standard terms and conditions shall apply to the supply of all goods and services ("Supplies") to us. Any modification thereto or deviation therefrom requires our written confirmation.
- 1.2. Diverging terms and conditions proposed by a supplier of goods or services ("Supplier") shall only be valid if we have expressly agreed thereto in writing. In particular, Supplier's standard terms and conditions shall only be binding upon us if and to the extent that same are equivalent to the corresponding terms and conditions contained herein or have been accepted by us in writing. Acceptance of Supplies as well as payments for Supplies shall not be construed as such acceptance.

### 2. BINDING AGREEMENT

- 2.1. We shall be entitled to withdraw from an order only if Supplier fails to accept our order in writing within two (2) weeks after receipt.
- 2.2. In case of any divergence between our order and Supplier's order confirmation, we shall only be bound by such order confirmation if and to the extent that we have expressly agreed thereto in writing.

### 3. DELIVERY TIMES

- 3.1. **TIMELY DELIVERY IS OF THE ESSENCE.** All Supplies must be delivered on the date(s) specified in the order or otherwise agreed with us in writing. Failure to meet such date(s) constitutes Supplier's material breach of contract. Supplier will immediately notify us if and when a delay is possible.
- 3.2. In case of a delay in the delivery of Supplies, we have all statutory rights. Our acceptance of late Supplies shall not be construed as a waiver of these rights.
- 3.3. Our claim for damages does not result in the extinction of our statutory claim for performance, which shall only cease to exist when the damages have been paid in full.
- 3.4. In addition to damages we shall be entitled to a penalty of 1 % of the net order value every commenced week Supplier is in default regarding Supplies for the installation of new or the extension, adaptation or modification of existing production facilities and equipment, which we have designated as such in our order, but not to exceed a total of 10 % (ten per cent) of the net order value.

### 4. CANCELLATION RIGHT

We shall be entitled to cancel orders pursuant to which Supplies are scheduled for delivery more than three (3) months after the order date by giving at least two (2) months notice subject to a cancellation fee to be negotiated in good faith but not to exceed 10 % (ten per cent) of the net order value.

### 5. PRICES

- 5.1. Prices in our orders are fixed. Changes must be agreed upon in writing.
- 5.2. For orders based on Supplier's quotation, the quoted price shall be binding unless otherwise agreed in writing.
- 5.3. If our order does not state a price, Supplier shall in its order confirmation quote a price including discounts, if any. Unless we object within ten (10) business days of receipt of Supplier's order confirmation, said price shall be deemed accepted.
- 5.4. All deliveries shall be made DDP (ICC Incoterms 2000) to the delivery address we specify and shall include unloading. Packaging shall be free of any charge unless expressly otherwise agreed upon, in which case such packaging will be invoiced as a separate item. We are entitled to return any packaging at Supplier's expense and will receive a credit for all amounts invoiced for returned packaging.

### 6. DELIVERIES

- 6.1. All Supplies shall be delivered in one shipment; partial and early shipments require our prior written approval.
- 6.2. In case of force majeure such as natural disasters, public disorder, government acts, etc. as well as obstruction of transportation, strike, lock-out or other interruptions of our or our suppliers' operations, which cause the interruption or reduction of our production or prevent us from accepting the delivery of Supplies, our contractual obligations shall be suspended for the duration of and to the extent justified by such force majeure, provided that we cannot eliminate the interference using reasonable efforts. In this case, Supplier shall not be entitled to compensation or damages and will at its expense and risk properly store Supplies until we accept delivery.

### 7. ACCEPTANCE OF DELIVERY AND NOTIFICATION OF DEFECTS

- 7.1. We are entitled to inspect all deliveries by random inspection of samples.
- 7.2. Goods that require installation or mounting, non-fungible goods newly manufactured or produced by Supplier and services rendered, which are to bring about a specific result ("Werkleistungen"), are subject to our acceptance. Risk passes to us upon acceptance.
- 7.3. We can notify Supplier of apparent defects within two (2) weeks of delivery and of hidden defects within two (2) weeks of discovery.

### 8. PAYMENT

- 8.1. Payments shall be made by bank transfer and, unless otherwise agreed upon in writing, net within 30 (thirty) days.
- 8.2. The term for payment starts as soon as Supplies have been received as agreed and we have declared acceptance of delivery and received a proper invoice. Every invoice must include Supplier's Value Added Tax Identification Number.
- 8.3. In case of default in payment, we shall be entitled to prove that Supplier has incurred lesser damage than the default interest provided for by statutory law. In the absence of such proof, we shall be liable to pay default interest in the amount of 3 % (three per cent) above the then applicable Base Interest Rate as per Section 247 I BGB (German Civil Code).

### 9. ASSIGNMENT

Any transfer of rights and duties resulting from the contractual relationship, especially of claims against us, is subject to our prior written approval. Supplier will promptly notify us if and when it wishes to assign a claim against us in connection with an extended reservation of title imposed on Supplier by one of its suppliers.

### 10. WARRANTIES

- 10.1. Supplier has to deliver all Supplies free of defects of material and title. Our warranty claims with respect to defective Supplies and the limitation of such claims shall be as stipulated by statutory law.
- 10.2. All requirements regarding Supplies, which we have advised Supplier of, shall be deemed contractually agreed upon.
- 10.3. A delivery is defective in its entirety if random samples taken from the Supplies delivered are defective.
- 10.4. Supplier may only reject the type of subsequent performance we choose for reasons of disproportionate costs, if the costs of such subsequent performance are more than double the original price of the defective Supplies.
- 10.5. If Supplies are delivered when Supplier is already in default and we have a significant interest in the immediate repair, we shall be entitled to -without notice - repair or have repaired defective Supplies at Supplier's expense.
- 10.6. In case of fraudulent non-disclosure of a defect, we shall be entitled to claim damages instead of performance even in case of successful subsequent performance.

### 11. TRANSFER OF TITLE

Until fully paid for, all Supplies remain Supplier's property. Supplier authorizes us to process and resell unpaid Supplies in our normal course of business. If we process (manufacture, mix, combine) unpaid Supplies, we shall convey to Supplier an undivided interest in the new product on a pro rata basis; in case we (re)sell the Supplies or the new product before the Supplies have been fully paid for, we hereby convey to Supplier an undivided interest in our claim resulting from such (re)sale on a pro rata basis up to the amount of Supplier's claim against us.

### 12. DESIGN PROTECTION AND CONFIDENTIALITY

- 12.1. Drawings, samples, formulas, tools and other documents and tangibles, which we provide, deliver, pay for or are invoiced for in order for Supplier to bid for or perform a contract, remain our property, may not be copied nor used for purposes other than the contract and must be returned to us after refusal of the bid respectively performance of the contract. Supplier shall properly maintain, keep free of liens and at its expense insure such items for their replacement value. With the exception of normal wear and tear, Supplier shall be liable to replace such items in case of loss or depreciation.
- 12.2. For a period of five (5) years from disclosure, Supplier agrees not to disclose to any third party nor use for purposes other than the contract any information received from us, which we designate as confidential or proprietary, without our prior written consent. Supplier agrees to obligate its employees accordingly.

### 13. INTELLECTUAL PROPERTY RIGHTS ("IP RIGHTS")

- 13.1. Supplier guarantees that the Supplies or their use do not violate any third party's IP Rights in Germany and/or abroad and must indemnify us against all claims which are made against us on the basis of violation of IP Rights. In addition to claims for damages, the violation of IP Rights also entitles us to all statutory and contractual claims; this also applies to parts of Supplies, which Supplier procured from third parties.
- 13.2. If Supplier grants us a license or sublicense it must ensure that we have the right of use in all countries, in which corresponding IP Rights exist.
- 13.3. Supplier grants us a worldwide right of use regarding its IP Rights pertaining to Supplies, if any, free of additional charge.
- 13.4. All IP Rights pertaining to products or processes developed by Supplier on our behalf are vested exclusively in us. Supplier agrees to on delivery hand over to us all samples, drawings, formulas, tools, software including source code, etc. Supplier further agrees to on delivery assign to us all IP Rights arising therefrom, if any.

# General Terms and Conditions for Supply of Goods and Services to Miltenyi Imaging GmbH

## Revision January 2021



### 14. ASSISTS

- 14.1. If and as agreed upon, we will provide Supplier with goods, which it needs for the delivery of Supplies ("Assists").
- 14.2. Supplier will store Assists separately and mark them as our property.
- 14.3. Unless expressly authorized by us, Supplier may use Assists only for the Supplies we ordered; we will be considered manufacturer and thus owner of the new product. In case of several such supplier clauses coinciding, we shall be considered co-manufacturer and thus co-owner of the new product on a pro-rata basis as per the value of the Assists in comparison to the total value of all supplies of other suppliers.
- 14.4. Excess Assists must be returned by Supplier on its own initiative or may be fetched by us at any time. Furthermore, Supplier may call Assists, which third parties supply on our behalf and account, only for delivery to its own or the address specified by us; in this case title to such Assists passes directly to us upon delivery to Supplier and such Assists will be stored on our behalf.

### 15. SPARE PARTS

Supplier agrees to supply spare parts for Supplies for use in a production facility for at least ten (10) years and for other Supplies for at least five (5) years after delivery.

### 16. LIABILITY

- 16.1. Supplier's liability will be as stipulated by law.
- 16.2. If we are held liable on the basis of product or environmental liability or because of a violation of government or other safety regulations or standards, Supplier shall indemnify us against any such claim to the extent Supplies have caused the damages.
- 16.3. In accordance with §§ 683, 670 BGB (German Civil Code), Supplier must also reimburse all costs, which result from or in connection with any product recall we initiate. As far as reasonably possible, we will inform Supplier of the content and scope of any planned recall and provide Supplier the opportunity to comment.
- 16.4. For dangerous goods (e.g. acids), Supplier must in writing inform us of the dangers originating from these goods, in particular in which applications they may not be used and with which products they may not be joined or mixed.

### 17. PRODUCT LIABILITY INSURANCE

Supplier must provide evidence of adequate product liability insurance coverage on our request. In case of no or insufficient product liability insurance coverage we shall be entitled to rescind the contract.

### 18. PRODUCT SURVEILLANCE

Supplier must observe the goods and services it supplies on an ongoing basis and must promptly inform us in writing should defects occur at Supplier's or a third party's site.

### 19. SAFETY AND ENVIRONMENTAL REGULATIONS

When entering our premises, Supplier must independently comply with our safety and environmental regulations and on our request provide evidence thereof.

### 20. SUBSUPPLIERS

Supplier shall procure materials for the Supplies from subsuppliers specified by us in writing. Procurement from other sources entitles us to rescind the contract.

### 21. COMPLIANCE; EXPORT CONTROL REGULATIONS

- 21.1. In performing the contract, Supplier shall comply with all applicable laws, ordinances, rules and regulations.
- 21.2. Supplier shall comply with all foreign export control laws and advise us of such local and foreign export control regulations to be abided by for products containing Supplies.

### 22. MINIMUM LEGAL WAGE

- 22.1. By accepting an order from us, Supplier confirms that its employees are paid the minimum legal wage. On request, Supplier will provide appropriate documents in proof thereof.
- 22.2. Upon first demand, Supplier will indemnify us against any and all third party claims related to a violation of the obligation to pay the minimum legal wage.
- 22.3. Supplier will place every subsupplier, if any, under the obligation to provably pay the minimum legal wage and to indemnify us to the same extent Supplier is obligated to in accordance with Sec. 22.1 and 22.2 and to ensure that all further subsuppliers, if any, are placed under a corresponding obligation.
- 22.4. Supplier is liable to us for any and all third party claims and costs, which arise from the obligation to pay the minimum legal wage being violated by subsuppliers.

### 23. SUPPLIER STATEMENT

On our request, Supplier shall free of charge provide us with supplier statements for goods with or without preferential origin in accordance with the definitions used by the tax authorities at that time and on demand provide the customs authorities with evidence regarding its statements. In addition, Supplier shall on our request and free of charge provide us with a list of all substances contained in the Supplies.

### 24. MOST FAVORED CUSTOMER

By confirming an order received from us, Supplier guarantees that the agreed terms and conditions for the Supplies are at least equivalent to those granted other customers for the same or similar goods or services in the same or lesser quantities. Supplier shall keep us informed on price reductions, if any. In case Supplier reduces a price for Supplies, we are entitled to reduce the price for all outstanding deliveries of Supplies accordingly.

### 25. GRATUITIES

Supplier guarantees that it has not offered or given and will not offer or give to any of our employees, agents, or representatives anything of value with a view toward securing any business from us or influencing such person with respect to the terms, conditions or performance of an order from or any contract with us.

### 26. GENERAL PROVISIONS

- 26.1. Place of performance is the address for delivery or performance we specify.
- 26.2. Venue is Konstanz, Germany, for business-to-business (B2B) contracts. We may, however, choose to sue Supplier at its principal place of business.
- 26.3. The laws of the Federal Republic of Germany shall apply with the exception of its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 26.4. Should one of these terms and conditions or a part of one of these terms and conditions be or become invalid, the remaining terms and conditions or parts of one of these terms and conditions shall remain valid.
- 26.5. The above is a convenience translation of the German version of our "Allgemeine Bedingungen für Lieferungen und Leistungen an Miltenyi Imaging GmbH" ("General Terms and Conditions for Supply of Goods and Services to Miltenyi Imaging GmbH"). In the event of a dispute between the parties only the German language version shall prevail.

Revision January 2021

Subject to change