

**General Terms and Conditions of Delivery and Business of  
medicap homecare GmbH, Hoherodskopfstrasse 22, 35327 Ulrichstein-Bobenheim**

**§ 1 Scope of Application**

- (1) All deliveries, performances and offers of the Seller shall be made exclusively based on these General Terms and Conditions of Delivery. These shall form an integral component of all agreements closed by the Seller with its counterparties (hereinafter, also the "Customer") concerning the deliveries or performances offered by it. They shall also apply to future deliveries, performances or offers to the Customer, even if not agreed upon separately again.
- (2) Any terms and conditions of business of the Customer or third parties shall not apply, even if the Seller does not separately oppose the application thereof in any specific case.

**§ 2 Offers and Closing of Contracts**

- (1) All offers of the Seller shall be subject to change and non-binding, unless expressly labeled as binding or unless a specific acceptance period is stipulated therein. Orders and assignments may be accepted by the Seller within 10 days after receipt.
- (2) Solely decisive for the legal relations between the Seller and Customer shall be the agreement concluded in writing, including these General Terms and Conditions of Delivery. The agreement shall reflect all arrangements between the parties concerning the subject of contract. Any verbal commitments or arrangements made before the closing of the agreement shall be legally non-binding and shall be replaced by the written agreement.
- (3) Any additions to or modifications of the agreements reached, including these General Terms and Conditions of Delivery, must be made in writing. To respect the requirement for the written form, transmission by fax or e-mail shall suffice, provided a copy of the signed declaration is transmitted.
- (4) Any specifications of the Seller concerning the subject of delivery or performance (e.g. weights, measures, consumption values, load capacity, tolerances and technical data) and our presentations thereof (e.g. drawings and images) shall only be approximate, unless the specifications must conform exactly in order to be applicable for the purpose foreseen by contract. Specifications shall not constitute warranted features but shall describe or identify the delivery or performance. Any variations or deviations occurring based on provisions of law or technical improvements, and the replacement of components with equivalent parts shall be permissible, provided such variations, deviations or replacements do not impair the usability for the purposes foreseen by contract.
- (5) The Seller shall reserve the title and copyright to all offers and cost estimates issued by it and to the drawings, images, calculations, prospectuses, catalogues, models, tools and other documents or aids provided to the Customer. Without the Seller's express approval, the Customer may not make these objects themselves or the contents thereof accessible to third parties, may not disclose such objects or use or reproduce them itself or through third parties. At the Seller's request, the Customer must return all these objects to the Seller and destroy any copies made, unless they are required by the Seller in the ordinary course of business or unless negotiations lead to the conclusion of an agreement.

**§ 3 Prices and Payment**

- (1) The prices shall apply to the scope of performance and delivery listed in the order confirmations. Additional or special performances shall be charged separately. The prices are in EURO, are *ex works* and do not include packing, the applicable value-added tax, customs duties (for exports) or charges and other public levies.
- (2) If the agreed prices are based on list prices of the Seller and the delivery is first to transpire more than four months after the closing date of the agreement, the list prices of the Seller applicable on the delivery date shall apply (less any agreed percentage or fixed discount).

(3) Invoice amounts shall be payable within 30 days without any deductions. If payments are made within 14 days, a 2% cash discount shall apply; if advance payments are made or cash is paid on delivery, a 3% cash discount shall apply. Decisive for the date of the payment shall be the receipt by the Seller. Checks shall first be considered as payment when redeemed. If the Customer does not pay on the due date, the outstanding amounts shall accrue interest as of the maturity date at a rate of 5% p.a.; claims to higher interest and further damage in the event of default shall not be prejudiced hereby.

(4) The Customer may only set off claims or retain payments if its counterclaims are undisputed or recognized by non-appealable judgment.

(5) The Seller shall be entitled to make still outstanding deliveries or performances contingent on advance payments or the provision of security if the Seller becomes aware of circumstances after the closing of the agreement that are suited to significantly lower the Customer's creditworthiness and jeopardize the payment by the Customer of outstanding claims of the Seller based on the relevant contractual relation (including based on other individual contracts to which the same framework agreement applies).

#### § 4 Delivery and Delivery Period

(1) Deliveries shall be made *ex works*.

(2) Periods and deadlines for deliveries and performances proposed by the Seller shall always only be approximations, unless a firm period or deadline is expressly promised or agreed. If shipment has been agreed, delivery periods and deadlines shall relate to the date of the handover to the forwarding agent, carrier or other third party commissioned with the transport.

(3) Without prejudice to its rights based on default by the Customer, the Seller may demand from the Customer that the delivery and performance periods or deadlines be extended or postponed by the length of time in which the Customer fails to meet its contractual obligations towards the Seller.

(4) The Seller shall not be liable for the impossibility of the delivery or for delivery delays, if these have been caused by *force majeure* or other events not foreseeable as of the closing date of the agreement (e.g. operating disruptions of any type, troubles with material or energy procurement, transport delays, strikes, lawful lockouts, labor, energy or raw material shortages, difficulties in the procurement of necessary administrative permits or measures, inaccurate or untimely delivery by suppliers), for which the Seller is not responsible. If such events significantly impede or make the delivery or performance impossible for the Seller and the hindrance is not merely temporary, the Seller shall be entitled to rescind the agreement. In the event of hindrances of a temporary nature, the delivery or performance periods or deadlines shall be extended or postponed by the period of the hindrance plus a reasonable startup period. If the Customer cannot be reasonably expected to accept the delivery or performance as a consequence of the delay, the Customer may rescind the agreement by immediate written declaration to the Seller.

(5) The Seller shall only be entitled to render partial deliveries if:

- the Customer can use the partial delivery within the framework of the defined contractual purpose;
- the delivery of the residually ordered merchandise is assured; and
- the Customer does not incur any significant additional expenses or costs as a result (unless the Seller is prepared to assume such costs).

(6) If the Seller is in default with a delivery or performance or if a delivery or performance becomes impossible for the Seller for any reason, the liability of the Seller for damage compensation claims in accordance with § 8 of these General Terms and Conditions of Delivery shall be restricted.

#### § 5 Place of Performance, Shipping, Packing, Passage of Risk, Acceptance

(1) The place of performance for all obligations based on the contractual relation shall be Ulrichstein, unless stipulated otherwise. If the Seller also owes the installation, the place of performance shall be the place where the installation is to occur.

(2) The type of shipping and the packing shall be subject to the Seller's discretion after a due assessment of all circumstances.

(3) The risk shall pass to the Customer at the latest upon handover of the object of delivery (i.e. the start of the loading procedure) to the forwarding agent, carrier or other third party determined to execute the shipment. If the shipment or handover is delayed as a consequence of any circumstances for which the Customer is responsible, the risk shall pass to the Customer as of the day on which the delivery object is made ready for shipping and the Seller has notified the Customer thereof.

(4) The shipment shall only be insured by the Seller against theft, breakage, transport, fire and water damage and other insurable risks at the express request and cost of the Customer.

(5) If an acceptance is to take place, the purchase object shall be considered as accepted when

- the delivery and, if the Seller also owes the installation, the installation have been completed;
- the Seller notifies the Customer thereof, referring to the fictional acceptance in accordance with § 5(5) and requesting the Customer to make the acceptance;
- [14] working days have transpired since the delivery or installation and the Customer has begun to use and operate the purchase object; and
- the Customer has desisted from the acceptance within this period for reasons other than due to a defect reported to the Seller which makes the use of the purchase object impossible or significantly impedes such use.

#### § 6 Warranty, Material Defects

(1) The warranty period shall be one year from the delivery or, if an acceptance is necessary, from the acceptance.

(2) The delivered objects are to be carefully inspected immediately after delivery to the Customer or the third party determined by the Customer. In relation to obvious defects or other defects which would have been detectable upon immediate careful inspection, the delivered objects shall be considered as approved by the buyer if the Seller does not receive written defect claims within 7 working days after delivery. In relation to other defects, the delivered objects shall be considered as approved by the buyer if defect claims are not received within 7 working days after the date on which the defects became evident; if the defects were already evident to the Customer during normal use at an earlier point in time, such earlier point in time shall determine the start of the period to lodge defect claims. At the Seller's request, any delivered object that is protested is to be sent back to the Seller free of freight charges. If the defect claims are justified, the Seller shall reimburse the costs of the most cost-effective means of transport; this shall not apply if the costs increase because the delivered object is located at a place other than the place of the intended use.

(3) In the event of material defects in the delivered objects, the Seller shall initially be obliged and entitled, as it chooses within a reasonable period of time, to make a subsequent improvement or deliver a replacement. Should this fail, i.e. in the event of the impossibility, unreasonableness, refusal or inappropriate delay in the subsequent improvement or replacement delivery, the Customer may rescind the agreement or reduce the purchase price accordingly.

(4) If a defect is based on the negligence of the Seller, the Customer may request damage compensation under the conditions determined in § 8.

(5) In the event of defects in components of other manufacturers which cannot be remedied by the Seller for licensing reasons or in actual fact, the Seller shall at its choice assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against the Seller shall only exist with respect to such de-

fects under the other conditions in accordance with these General Terms and Conditions of Delivery if the aforementioned claims were asserted unsuccessfully against the manufacturers and suppliers or such claims have no prospect of success, e.g. due to insolvency. The limitation period of the relevant warranty claims of the Customers against the Seller shall be interrupted throughout the lawsuit.

(6) The warranty shall no longer be applicable if the Customer alters the delivered object or has such altered without the Seller's approval and the remedy of the defect is rendered impossible or is unreasonably impeded as a result. In all cases, the Customer must bear the additional costs arising for the defect remedy through the alteration.

(7) If the delivery of used objects is agreed with the Customer in any specific case, any warranty for material defects shall be excluded.

### § 7 Property Rights

(1) The Seller guarantees in accordance with this § 7 that the delivered object is free of third-party industrial property rights or copyrights. Each contractual partner shall notify the other without delay in writing if claims are asserted against it due to the infringement of such rights.

(2) In the event the delivered object infringes a third-party industrial property right or copyright, the Seller shall, at its choice, modify or replace the delivered object at its own cost to ensure that no third-party rights are infringed upon any further but the delivered object still fulfills the contractually stipulated functions, or procure a license for the Customer by concluding a license agreement. If the Seller fails to do this within a reasonable period, the Customer shall be entitled to rescind the agreement or to reduce the purchase price appropriately. Any damage compensation claims of the Customer shall be subject to the restrictions in § 8 of these General Terms and Conditions of Delivery.

(3) In the event of rights infringements due to products of other manufacturers delivered by the Seller, the Seller shall, at its choice, assert its claims against the manufacturers and preliminary suppliers for the account of the Customer or assign such claims to the Customer. Any claims against the Seller shall only exist in the events under this § 7 if the aforementioned claims were asserted unsuccessfully against the manufacturers and preliminary suppliers or such claims have no prospect of success, e.g. due to insolvency.

### § 8 Liability for Damage Compensation Claims Due to Negligence

(1) The liability of the Seller for damage compensation, irrespective of the legal ground, particularly based on impossibility, default, defect or mistaken delivery, breach of contract, breach of duties during contractual negotiations and tortious action, shall be restricted in accordance with this § 8, if negligence is concerned.

(2) The Seller shall not be liable in the case of simple negligence on the part of its officers, legal representatives, employees or other vicarious agents, unless a breach of material contractual duties is concerned. "Material contractual duties" shall mean the obligation to deliver and install the delivered object on time, free of defects that could impair its operability or fitness for use in more than a minor fashion, as well as duties to provide advice, protection and care intended to enable the Customer to use the delivered object as agreed or to protect the lives and limbs of the Customer's personnel or to protect the Customer's property from significant damage.

(3) If the Seller is liable on the merits to pay damage compensation pursuant to § 8(2), the liability shall be limited to damage which the Seller foresaw upon the closing date of the agreement as a potential consequence of a breach of contract or which the Seller should have foreseen had it exercised due diligence. Indirect and consequential damage as a consequence of defects in the delivered object shall only be compensated provided such damage can normally be anticipated when the delivered object is used as intended.

(4) In the event of liability for simple negligence, the compensation duty of the Seller for material damage and the resulting pecuniary damage shall be limited to the amount of EUR 1.000.000,- per damage event (in accordance with the current coverage amount of its liability or product liability insurance policy), provided a breach of material contractual duties is concerned.

(5) The above liability exclusions and restrictions shall apply to the same degree in favor of the officers, legal representatives, employees or other vicarious agents of the Seller.

(6) If the Seller provides technical information or advice that does not pertain to the contractually agreed scope of performance owed by it, this shall be done free of charge and to the exclusion of any liability.

(7) The restrictions in this § 8 shall not apply to the liability of the Seller due to intentional action, for warranted features, due to injury to life, limb or health or in accordance with the Product Liability Act.

#### § 9 Reservation of Title

(1) The object delivered by the Seller to the Customer shall remain the property of the Seller until the full payment of all secured claims.

(2) The Customer shall maintain custody of the reserved merchandise free of charge for the Seller.

(3) The Customer shall be entitled to sell the reserved merchandise until the occurrence of a realization event (Paragraph 7) in the course of ordinary business. Pledges and chattel mortgages shall not be permitted.

(4) In the event of the resale of the reserved merchandise, the Customer hereby assigns to the Seller in advance by way of security the resulting claim against the buyer. This shall also apply to other claims arising in lieu of the reserved merchandise or otherwise in relation to the reserved merchandise, e.g. insurance claims or claims based on tortious action upon loss or destruction. The Seller irrevocably authorizes the Customer to collect the claims assigned to the Seller in its own name. The Seller may revoke this authorization to collect claims only in a realization event.

(5) If a third party takes action related to the reserved merchandise, particularly in the form of an attachment, the Customer shall inform the third party of the Seller's title and inform the Seller about such action in order to enable the Seller to enforce its ownership rights.

(6) The Seller shall release the reserved merchandise and the things and claims in lieu thereof when the value of the reserved merchandise or things and claims in lieu thereof exceed the amount of the secured claims by more than 50%. The Seller shall be responsible for choosing the objects then to be released.

(7) If the Seller rescinds the agreement in the event of a breach of contract by the Customer (e.g. default in payment) ("realization event"), the Seller shall be entitled to demand the return of the reserved merchandise.

#### § 10 Final Provisions

(1) If the Customer is a merchant, a legal person in public law or a public-law special fund or if the Customer has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes from the business relation between the Seller and the Customer shall be Ulrichstein or the Customer's registered office, at the Seller's choice. However, for actions against the Seller in these cases, Ulrichstein shall be the exclusive place of jurisdiction. Any compulsory legal provisions concerning exclusive places of jurisdiction shall not be prejudiced by this provision.

(2) The relations between the Seller and the Customer shall be exclusively subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) If the agreement or these General Terms and Conditions of Delivery contain contractual gaps, those legally valid provisions shall be considered as agreed upon to close such gaps which the parties to the agreement would have agreed upon in accordance with the financial goals set out in the agreement and the purpose of these General Terms and Conditions of Delivery had they been aware of the contractual gaps.

(4) The Customer takes note that the Seller will store data from the contractual relation in accordance with § 28 of the Federal Data Protection Act for data processing purposes and that the Seller reserves the right to transmit the data to third parties (e.g. insurance companies) if necessary for the fulfillment of the agreement.