



General Terms of Business MESA Medizintechnik GmbH (GTB) Rev.A09-2023

1. Scope

The scope of MESA Medizintechnik GmbH (MESA in the following) is development, manufacturing, distribution and service of medical devices with accessories and medical products. Additionally, MESA provides consulting and other services within the field of medical technology. Therefore, MESA is running a Quality Management System in accordance to EN ISO 13485:2016. MESA offers these services through permanent staff or experienced subcontractors as well as through accredited cooperation partners. All offers by MESA are based on the following general terms of business which refer to all services by MESA and are regarded as accepted after starting a business. If there are possible different interpretations of translations of this general terms of business or other corresponding requirements compared to the German original the current German issue is valid. Other terms of business which are in contradiction to these requirements can only become part of the contract if they have been accepted by MESA in writing. Silence on the part of MESA is not sufficient.

2. Offers, contents of the services based on scope

Offers always refer to the information available at the time of issue and they are subject to confirmation. Content and range of duties of both parties to the scope result from mutual written documents. If there is still no document concluded the written confirmation of an order is valid. If this is not available as well, the application of the business partner is relevant.

3. Duties of the business partner

The business partner provides all required documents to MESA. The business partner commits to submit his official commercial registration. The business partner has to inform MESA about all processes, decisions and facts that could be important for the business. In sending in products the business partner guarantees to send them in an appropriate way and to pay attention to the relevant rules for dispatching. If there are special risks to consider with the products (e.g. explosive, toxic, contaminated, special requirements for storing) the business partner has to make MESA aware of this circumstance by marking the products or enclosing relevant notes. If he does not so the business partner is liable for any material damages and personal injuries. If there are not enough copies of documents handed in or the business partner wants them to be sent back before the end of the retention period, MESA can copy the documents on the business partner's expenditures.

4 Prices, obligation to take delivery, return of goods and payment

4.1 Sales shall be made at the current daily prices and the current price lists plus the applicable statutory value added tax.

4.2 Default of acceptance on the part of the customer shall entitle us to withdraw from the contract or to claim damages for non-performance after the fruitless expiry of a reasonable period of grace with appropriate warning. Our claim for damages shall amount to 30 % of the net value of the goods of the order without proof. This shall not exclude the assertion of a higher claim for damages.

4.3 We grant a 14-day right of return after the invoice date for goods returned to us which are in perfect condition and in their original packaging. A credit note will be issued for the purchase price less the shipping costs. If the goods are damaged, the reduction in value can also be deducted from the credit note. Any shipping and packaging costs incurred by us may also be deducted from the credit note. The deduction for administrative expenses shall be set higher or lower if the seller proves a higher expense or the buyer proves a lower expense.

4.4 The return delivery requires prior agreement and must be made free domicile including original packaging. The return consignor shall bear the transport risk.

4.5 Unless expressly agreed otherwise, payment shall be made within 14 days of the invoice date without any deduction or within 8 days of the invoice date less 2% discount.

4.6 We reserve the right to offset payment against the oldest claim. Cash discount deduction is not possible if there are due open claims. In the case of repair orders, no cash discount shall be granted as a matter of principle.

4.7 If agreed accordingly, we accept discountable or properly taxed bills of exchange on account of performance.

4.8 On account of performance. Credit notes for cheques or bills of exchange shall be made subject to receipt, with deduction of cheque and bill of exchange costs, with value date of the day on which we can dispose of the equivalent value.

4.8 In individual cases, we reserve the right to make delivery only against cash payment, cash on delivery or payment in advance.

4.9 Claims shall become due immediately, irrespective of the term of any bills of exchange accepted and credited, if facts become known which make the creditworthiness of the customer appear doubtful.

4.10 In the event of default in payment, we shall be entitled to charge interest on arrears at a rate of at least 8% above the base interest rate applicable at the time without having to prove any damage caused by default. After the last reminder, we are entitled to charge reminder fees.

4.11 Offsetting against counterclaims of the customer disputed by us is not permitted. If a notice of defect is asserted, payments may only be withheld to an extent that is in reasonable proportion to the defects that have occurred. However, this shall only apply if there is no doubt whatsoever as to the justification of the asserted notice of defects.

5. Carrying out of the orders

MESA carries out the orders by the help of trained staff, experts as well as accredited cooperation partners according to the Quality Management process descriptions, to the Medical Directives and the agreed business conditions. MESA is obliged to choose, supervise and train all personnel carefully.

6. Dealing with documents and test products

The delivered documents and products for testing will be marked and have to be stored according to the required storing conditions. After the end of the business relationship documents will be stored by MESA for ten years or following the expiry of the test products and they to be given back to MESA. The business partner has to store the supplied documents and test samples by the time given by MESA.

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7. Mutual information duties

MESA informs the business partner about business conditions changing in form of written documents. Furthermore, MESA has to inform the business partner about facts that could endanger the business conditions. The business partner has the same responsibility.

8. Complaints and objections

Complaints and objections must be addressed to MESA in written form. Complaints and objections to MESA are treated in a levelled procedure, according to the subject of the complaint or objection, to assure a fair and rapid dealing.

9. Invoices and payment conditions

Invoices are based on the valid and corresponding offer formerly given to the business partner. Stated but not invoiced services and deliveries will be invoiced based on the MESA price list or offers valid at the ordering date. Specific additional services will be charged based on the MESA price list or offer at the date of providing the services. Invoices are issued after services fulfilled. MESA can charge advances for services and deliveries. If not noted differently all payments become due right after the reception of the invoice or after a request for payment if not agreed upon otherwise. Invoices have to be transferred without any deduction and with quotation of the invoice number as well as free of charge to the account mentioned. After the expiry of the period of time allowed for payment which is mentioned on the invoice the business partner gets into default and MESA is entitled to charge interests payable on arrears in the height of common bank interests. If an invoice will not be paid after a reminder and a reasonable extension MESA is entitled to conduct measures like judicial collection proceedings, the suspension and withdrawal of the business relationship or the cancellation of a contract. If MESA does not receive any written objections concerning invoices within 14 days after receipt of the invoice the invoice is regarded as accepted. To set payments off against the claims of MESA is only permitted if the counter demand is undoubtedly or legally valid.

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10. Guarantee including after sales and latent defects

MESA guarantees a guarantee period of 24 months on the medical products if not defined otherwise f.e. for disposable or consumable medical products or in case an expiration date is labelled on the product. If the carrying out of the order shows any shortcomings the business partner has to set a deadline for MESA to eliminate them. If MESA accepts certain services and deliveries as not sufficient MESA will correct them or if not possible start them again at MESA's expenses. If the correction is not satisfying as well the business partner can reduce the invoice or cancel the contract. Further claims for Compensation can only be asserted if it is judicially determined that MESA is guilty of negligence or acted with intent. If a correction is not possible there is no deadline necessary. Claims for guarantees are to be claimed in written form to MESA.

11. Delays during the carrying out of the order

MESA does everything to guarantee a carrying out of the order according to a certain time schedule, but not especially in cases of acts of God or delays that are caused by the business partner. If the delay is caused by MESA the business partner has the right to cancel the order if he had set a deadline for working on the corrections after shortcomings and MESA has missed this deadline.

12. Liability

The business partner is liable according to the general legal requirements. If not stated differently in the specific business agreement MESA is only liable for damages caused by breaches of duty against the business agreement if intent or negligence can be laid to MESA's charge.

13. Exemption of liability

The business partner exempts MESA of all claims of third parties resulting of personal injuries caused by products delivered and defined by MESA as test products.

14. Validity of business relationship and cancellation

Business agreements are valid until the expiry of the time schedule defined in the referring document, unless otherwise agreed during the offer process or the order process. The business partner and MESA are entitled to withdraw from the business relationship if after three months after the order no fundamental progress has taken place without MESA's responsibility. The business partner is obliged to pay for all services done up to then. MESA is entitled to cancel a contract because of important reasons at any time. Such reasons could be the misrepresentation of facts by the business partner during the business relationship or in fundamental changes of the requests of the applicable laws. In the case mentioned last MESA immediately offers the continuation of the business relationship according to modified conditions. A cancellation has to be handed in as certified letter with an acknowledgement of receipt.

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15. Secrecy

MESA is obliged to use all documents and information only for the process of a mutual and prosperous business relationship. They can be made available for third parties only after the business partner's agreement. Documents and information made available by subcontractors of MESA or the business partner or others involved in the business are also subject to confidentiality and are accessed to MESA or the business partner only after the agreement of the provider of information. Excluded is the legal obligation to give information to the competent authorities, Notified Bodies or other authorities in case of violation of the Medical Directives. All employees and third parties involved into the business relationship are also bound to keep all information about the business secret.

16. Place where a contract is to be fulfilled, court of jurisdiction

The place where the contract is to be fulfilled and only court of jurisdiction is the respective place of business of MESA (Munich - Germany).

17. Applicable law

The business or any contract between MESA and the business partner is subject only to German law.

18. Ineffectiveness of certain parts

As far as one part of the contract between MESA and the business partner or of this General Terms of Business is or will not be valid or ineffective because of any reason the validity of the remaining parts are not touched. The parties are obliged to replace the ineffective part by an effective one that comes as close as possible to the interests of both parties.

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