

## **General Terms and Conditions of Sale**

### **1. General provisions**

1. These General Terms and Conditions of Sale (hereinafter called “GTCS”) serve as general terms and conditions within the meaning of Article 384 of the Act of 23<sup>rd</sup> April 1964 – Civil Code (Dz.U. 2020 item 1740, as amended, hereinafter called the “Civil Code”) and apply to sales contracts and delivery contracts concerning any products offered by Mercator Medical Spółka Akcyjna, a joint-stock company based in Kraków at ul. H. Modrzejewskiej 30, 31-327 Kraków, entered into the business register of the Polish National Court Register kept by the District Court for Kraków-Śródmieście in Kraków, 11<sup>th</sup> Commercial Department of the Polish National Court Register under no. KRS 0000036244, Taxpayer’s Identification Number (NIP): 6771036424, National Business Registry Number (REGON): 350967107, having the status of a big entrepreneur within the meaning of provisions of the Act of 8<sup>th</sup> March 2013 on the prevention of excessive delays in sales transactions, with the share capital of PLN 10,647,166 paid in full, hereinafter called the “Seller”, concluded with any entity that buys them for the purpose of its business activity, hereinafter called the “Buyer”, excluding transactions entered into 1) with consumers within the meaning of Article 22(1) of the Civil Code; 2) under a tender procedure conducted pursuant to the provisions of the Act of 11<sup>th</sup> September 2019 – Public Procurement Law (Dz.U. 2021 item 1129, as amended); 3) in the eCommerce sales channel, i.e., via <https://emercator.com> and external sales and auction platforms where products of Mercator Medical S.A. are sold on the basis of principles and conditions set out in the relevant terms of service of the shop or platform.
2. In the case of any discrepancy between conditions resulting from these GTCS and conditions of the sales contract agreed upon between the Seller and the Buyer, particularly by reference to Incoterms, the conditions of sale agreed contractually by the Parties, if such agreements are made, under pain of nullity in documentary or written form shall have priority. The conclusion of a separate sales contract or framework contract excludes the use of GTCS only to the extent regulated therein in a different manner.
3. GTCS are made available to the Buyer through their publication on the Seller’s website ([www.mercatormedical.eu/ows](http://www.mercatormedical.eu/ows)) in a visible place beside the Seller’s contact details allowing the Buyer to place orders along with information about the Buyer being required to read the content of GTCS and about their application to sales contracts concluded between the Seller and the Buyer. By contacting the Seller by phone, fax, post or e-mail, respectively, at the number and address stated in the Seller’s contact details, the Buyer confirms that it obtained access to and read GTCS and that it is aware that they specify conditions of sale of products ordered by the Buyer. The submission of an order by the Buyer or an entity authorised to act on the Buyer’s behalf is tantamount to making a statement of acceptance of GTCS by the Seller.
4. The Seller and the Buyer are always bound by GTCS in the version valid on the day of submission of the order. The provisions contained in GTCS may be amended through the publication of the amended text of GTCS on the Seller’s website ([www.mercatormedical.eu/ows](http://www.mercatormedical.eu/ows)).

### **2. Submission of an order / Conclusion of a contract**

1. The Buyer submits an order by phone, fax, post or e-mail, respectively, to the number and address stated in the Seller’s contact details. The content of the order should specify, in particular, the accurate name of ordered products, their quantity and the address for delivery. The order should be submitted by

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a person authorised to represent the Buyer. The acceptance of the order for fulfilment shall be confirmed by the Seller within 72 hours, with specification of the accurate value (price) of the order including full costs of its fulfilment, by phone, by e-mail, or through issuing and delivery of a pro forma invoice. In the absence of relevant confirmation by the Seller, the order shall be regarded as not accepted for fulfilment.

2. If the order is submitted by a person(s) authorised to represent the Buyer not directly on the basis of the business register of the Polish National Court Register or an entry in the Central Register and Information on Business Activity, the Buyer shall be obliged to deliver, together with the order, a relevant document confirming its empowerment to act on behalf of the Buyer.
  3. Subject to the provisions of pt 3.3 of GTCS, the cancellation of the order by the Buyer is possible only upon prior arrangement of the conditions of cancellation of the order with the Seller under pain of nullity, in writing or by e-mail. In such case, however, the Buyer may be charged with actual costs of fulfilment of the order borne by the Seller until cancellation of the order, provided that such costs do not exceed the value of the order.
  4. The Parties may change the order, particularly with regard to its subject-matter, quantity, prices and conditions of delivery. The Parties' consent to the change of the order excludes the possibility of pursuit of any claims in respect of the lack of fulfilment or undue fulfilment of the order with the previously accepted content by any of them.
  5. Unless otherwise agreed, the delivery covers products whose quality meets average requirements for the relevant sort and type of products resulting from the provisions of law or applicable norms. When placing an order, the Buyer is obliged to check if the technical data, quality and quantity of ordered products meet its needs.
3. Price and conditions of payment
1. Unless otherwise stated in the order confirmation expressly referred to in pt 2.1 of GTCS, the price stated in the order confirmation shall be the net price to which the due amount of VAT at the rates applicable on the day of issue of the invoice by the Seller shall be added.
  2. Payment of the price shall be made to the Seller's bank account indicated by the Seller or to the bank account indicated on the pro forma invoice (if issued). The date of payment shall be the date of crediting of the Seller's bank account. In the case of delay in payment of the price, for reasons attributable to the Buyer, the Seller is entitled to charge the Buyer with statutory interest for delay in sales transactions and to suspend the delivery.
  3. If the full price is not paid within the time-limit indicated on the pro forma invoice, the order shall be regarded as cancelled by the Buyer.
4. Delivery
1. Unless otherwise agreed between the Parties, particularly by specifying the method of delivery via Incoterms, the Seller shall deliver the product at the Buyer's cost and risk.
  2. The delivery of the Product shall be made within the time-limit indicated by the Seller.
  3. Unless otherwise agreed between the Parties, particularly by specifying the method of delivery via Incoterms, the Seller shall not be responsible towards the Buyer in respect of delays in delivery or the impossibility of its fulfilment

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arising (directly or indirectly) from reasons attributable to the carrier or for other reasons beyond the Seller's control.

4. At the Buyer's request, the Seller shall submit product-related technical documentation with products to the Buyer.
5. When receiving the delivery of products, the Buyer is obliged to check the condition of the parcel and the quality, quantity and kind of delivered products immediately upon its delivery and in the presence of the carrier's representative. In the case of any inconsistencies or defects of the parcel, the Buyer is obliged to ensure the preparation of a "shipping damage report" by the carrier's representative, take photographs of inconsistencies in the parcel, including damages, inform the Seller immediately about existing inconsistencies and, upon the Seller's request, make it possible for the Seller's representative to check the parcel in the condition in which it was delivered, in consideration of changes in its condition as a result of an inspection. If the Buyer receives the parcel in breach of the above obligations, it is understood that the proper sort of products was delivered in a correct manner, free of damages, in the proper quantity and of adequate quality.
6. The Buyer must not return products delivered in accordance with the order without prior notification of the Seller and arrangement of the time and method of such return with the Seller.
7. Opened packages are non-returnable, unless they contain damaged products subject to replacement according to the rules specified in GTCS.

### **5. Responsibility**

1. Unless otherwise agreed between the Parties, particularly by specifying the method of delivery via Incoterms, the Seller shall not be responsible for the non-fulfilment or undue fulfilment of obligations under the sales contract, particularly for reasons attributable to suppliers of the Seller and the carrier, unless the damage was created as a result of wilful misconduct. Irrespective of the above, the Seller shall not be responsible for lost profits (*lucrum cessans*), damage to reputation and any consequences arising from the possession or use of products, including faulty products.
2. The Seller shall be responsible for the possession of specific characteristics or properties by the product or the possibility of its use for purposes indicated by the Buyer only if it grants the Buyer a written assurance under pain of nullity that the product has specific characteristics or properties or that it may be used for specific purposes.
3. None of the Parties is responsible towards the other Party for the non-performance or undue performance of obligations under the sales contract caused by a force majeure. For the needs of GTCS, the force majeure shall be understood as any event remaining beyond the Parties' control, particularly a fire, an earthquake, a flood or any other natural disaster, an explosion, a strike, a sabotage, an act of terrorism or war, legal changes, acts of state and local government authorities, embargoes, blockades and trade restrictions. In the event of a force majeure, the Party affected by its operation is obliged to notify the other Party about its occurrence within 72 (seventy two) hours from the event.

### **6. Guarantee and warranty**

1. The Seller's responsibility under the warranty for damages is excluded. The products sold may be covered by a guarantee of the Seller or their producer, with the terms of the guarantee specified in a guarantee document attached to the delivery of products.

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2. The Buyer may file a complaint by e-mail to: [Reklamacje@pl.mercatormedical.eu](mailto:Reklamacje@pl.mercatormedical.eu) or via complaint form available on the Seller's website (<https://pl.mercatormedical.eu/formularz/reklamacja/>). A complaint may concern quantitative (the incorrect quantity of products) or qualitative defects. When filing a complaint, the Buyer shall submit the following data:
  - 1) the subject-matter of the complaint (product name, reference code),
  - 2) the production batch (lot) number,
  - 3) the accurate quantity of products covered by the complaint, stated in units indicated on the invoice,
  - 4) a description of the submitted problem,
  - 5) photographs showing the defect (if justified),
  - 6) the name of the Buyer and the entity reporting the complaint and contact details, including the e-mail address,
  - 7) the invoice number and the date of delivery,
  - 8) the Buyer's expectations concerning the suggested method of handling the complaint.
3. The necessary condition for the consideration of a complaint concerning the inconsistency of the transport of products is the fulfilment of obligations set out in pt 4.5 of GTCS by the Buyer, particularly the preparation of a "shipping damage report" by the carrier's representative and taking photographs of existing defects.
4. The complaint shall be handled within 3 (three) working days from the date of ascertaining the inconsistency of the delivery or product, but in no event later than within 3 (three) days from the day on which the Buyer could have ascertained the inconsistency at the earliest date using highest professional care.
5. The confirmation of registration of the complaint is the submission of the reference number of the complaint given by the Seller to the person submitting the complaint.
6. The Buyer is obliged to refrain from the use and distribution of defective products, to protect defective products and to keep them until their replacement or return in original packages. The Buyer is obliged to make available to the Seller samples of defective products necessary to carry out expertises, to make it possible for products covered by the complaint to be examined on the spot, and to submit necessary information concerning conditions in which products were used.
7. Immediately upon receipt of the complaint, the Seller shall estimate its completeness, in particular whether it contains all necessary information indicated in pt 6.2 of GTCS. If the consideration of a complaint requires a supplement to information indicated in pt 6.2 of GTCS or the undertaking of additional actions by the Buyer, such as sending samples of products, or a photograph or copy of a damaged product package, or performing another action indicated by the Seller, the Seller shall immediately notify the Buyer thereof by e-mail to the e-mail address stated in the complaint by the Buyer.
8. The Seller shall consider the complaint within 30 (thirty) working days from the date of receipt of all necessary information and materials indicated in pts 6.2 and 6.6 of GTCS and then it shall inform the Buyer about its acknowledgement or rejection by e-mail to the e-mail address stated in the complaint by the Buyer.
9. In the case of acknowledgement of the complaint, the Seller shall immediately take action in order to fix the reported problem, i.e., it shall replace the product

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with a damage-free counterpart, propose a replacement to the Buyer or refund the price to the bank account number indicated by the Buyer at its own choice.

10. The submission of a complaint shall not suspend the Buyer's obligation to make payment for the fulfilment of the order.
11. The Parties exclude the Buyer's possibility of making any deductions from the payment due to the Seller. This does not exclude the Seller's possibility of offsetting its own receivables against the Buyer's receivables.

### **7. Assignment**

1. The transfer of any rights and obligations of the Buyer towards the Seller resulting from the order, contract or GTCS requires the prior written consent of the Seller.
2. When giving its consent to the transfer of rights and obligations referred to above, the Seller may make this action conditional upon the fulfilment of specific conditions by the Buyer.

### **8. Settlement of disputes**

Any disputes that may arise between the Parties shall be considered by the court having jurisdiction over the Seller's registered office.

### **9. Final provisions**

Any explanations, notifications and reports made by the Seller and the Buyer in connection with the fulfilment of orders may be submitted only in writing or by e-mail. Subject to the foregoing, notifications, explanations or reports made in any other form shall not be binding.