

# GENERAL TERMS AND CONDITIONS OF PURCHASE

## **Medcor Specials B.V.**

Artemisweg 105F  
8239 DD Lelystad  
Netherlands

Chamber of Commerce

No.: 66265517 0000

## **Definitions**

*Other party:* Every natural person or legal entity from whom Medcor Specials B.V. (hereinafter referred to as: MEDCOR) in any way purchases goods, with whom it enters into purchase agreements, to whom it issues orders or otherwise;

*Goods:* Everything that MEDCOR purchases from the other party, being goods, services or otherwise.

## **1. General**

1.1 These General Terms and Conditions of Purchase are applicable to all (request for quotes, offers or acceptances relating to) agreements whereby MEDCOR purchases goods or services from a third party or otherwise issues an order to that third party (hereinafter referred to as: "the other party"), such being in the broadest sense of the word.

1.2 The applicability of alternative or additional general terms and conditions or other provisions referred to by the other party in its quote, order confirmation, correspondence, invoice or otherwise is explicitly rejected, except insofar as the relevant terms and conditions are accepted explicitly in writing by MEDCOR.

## **2. Quote; Formation**

2.1 A quote, estimate or other offer issued by the other party is deemed to be an irrevocable offer. Unless stated explicitly otherwise by MEDCOR every request for quote, offer or estimate that it issues is revocable.

2.2 MEDCOR is in only bound by an order it issues if it is issued or confirmed in writing by a duly authorised member of the MEDCOR staff.

2.3 If the other party delivers a performance or makes preparations for such before a written order or order confirmation is received from MEDCOR as referred to Article 2.2 it does so at its own expense and risk.

## **3. Prices; Payment**

3.1 Unless agreed otherwise in writing, all agreed prices are exclusive of VAT, are fixed and include all costs for the performance of the agreement including costs for transport, insurance, packaging and any return of packaging by the third party, as well as the costs relating to import and export.

3.2 Price changes shall only take effect 60 days after written acceptance from MEDCOR.

3.3 The other party must invoice in the language in which the order has been drawn up, the invoice must be sent to the address stated on the order and the invoice must state the creditor number, order number and a detailed breakdown of the goods supplied or the order that has been fulfilled.

3.4 Payment shall be made, after delivery and after receipt of the invoice, no later than 30 days after the final approval of the goods, services and/or works, and no sooner than 30 days after receipt of the invoice, whichever of these two is the latest to fall due.

3.5 For orders for which MEDCOR is jointly and severally liable for the payment of contributions for employee and national insurance and wage tax, MEDCOR has the right to withhold the relevant amounts from the agreed price and to pay this directly to the implementing agency or the collector of taxes.

#### **4. Performance; Guarantee and Safety**

4.1 The other party shall permit an agreement concluded with MEDCOR strictly and without deviations. The goods supplied, the works undertaken and the orders fulfilled shall conform to the agreement and possess the promised properties and quality. Without the prior written and explicit permission of MEDCOR, under no circumstances shall the other party deviate from the requirements specified in the agreement nor shall it in any other way deviate from the specifications.

4.2 During the agreed guarantee period or, in the event that this is lacking, the guarantee period common in the sector, the other party guarantees that there are no visible or invisible defects whatsoever. The guarantee period shall be extended by a period that is equal to the period(s) during which the goods are not in use or during which they cannot be fully used as a result of a defect as referred to in this provision. New guarantee periods equal to the aforementioned shall be applicable to the replacement goods that are provided and have been replaced and to repaired parts of those goods, including those parts of the goods on which replacement or repaired parts can have an effect..

4.3 If a defect occurs during the guarantee period MEDCOR has the right to either return the goods and demand immediate repayment of the payment made for the goods or demand that the other party, on first notice from MEDCOR, repairs defects arising during the guarantee period and/or replaces the defective components of these defective goods at its own expense and risk, such being without prejudice to MEDCOR's right to compensation for further damage (including consequential damage) and damage suffered by third parties.

4.4 The other party shall comply with statutory regulations – however they may be entitled – as applied by the testing bodies and which have to be taken into account during the performance of the agreement in relation to quality, the environment, safety and health for example.

4.5 The personnel and/or servants and agents engaged by the other party for the performance of the agreement shall comply with the special requirements set by MEDCOR and if these are lacking they shall comply with the general requirements of professional competence and expertise.

4.6 When performance is to take place on MEDCOR premises or those of third parties the other party must in any event pay due regard to the safety regulations applicable at those premises, including the instructions issued by MEDCOR or those issued by third parties.

#### **5. Delivery**

5.1 Unless agreed otherwise in writing, the other party is not allowed to make part deliveries or part performances. Without prior notice, MEDCOR has the right to return non-agreed part deliveries and/or surplus goods that have been delivered and to do so at the expense and risk of the other party.

5.2 Goods are to be delivered free domicile (DDP location MEDCOR in accordance with Incoterms 1990), in accordance with MEDCOR's transport instructions, at a time stipulated by MEDCOR and to a place stipulated by MEDCOR and in sound packaging together with all required documents, such as carriage note, government approvals and government documentation, packing note and export documents. The outside of the packaging must clearly state the order number, the department to which the goods have to be delivered and all other relevant information.

5.3 Return packaging is to be returned to the other party at the expense and risk of the other party. The other party is obliged to take receipt of the returned packaging and/or waste free of charge.

5.4 MEDCOR has the right to refuse acceptance of the goods to be delivered if the aforementioned instructions and provisions are not adhered to.

5.5 Unless specified otherwise in writing, the agreed delivery or performance term is a strict deadline. If it is foreseeable that this cannot be achieved on time the other party must notify MEDCOR of this immediately. In that case MEDCOR has the right to terminate the agreement without prior notice and without the need for a notice of default, or to set an extended term for the delivery, such being without prejudice to its right to compensation for damage. If the other party fails to provide this notice it shall lose its right to rely on force majeure and it shall be bound to delivery on the agreed date.

## **6. Risk; Transfer of title**

6.1 The risk in relation to goods to be delivered shall first transfer to MEDCOR on delivery, provided that the goods have been approved by MEDCOR and the agreement has been complied with. Damage caused during transport, loading or unloading shall at all time be at the expense of the other party.

6.2 The title to the goods shall transfer to MEDCOR at the moment of delivery, provided that the goods are approved and the agreement has been complied with. The other party guarantees full and unencumbered title in respect of the goods delivered.

## **7. Documentation; Instruction**

7.1 Simultaneous with the delivery of the goods and/or completion of the works the other party must hand over all of the following relating to the goods and/or work: quality and guarantee certificates, test details, (Dutch language) user instructions, instruction books, drawings, specifications, technical and revision information and - if necessary – an EC declaration of conformity as well as the relevant record. These documents form part of the delivery.

7.2 If MEDCOR considers it to be desirable due to the nature of the goods delivered the other party shall provide instruction to MEDCOR free of charge.

## **8. Testing; Inspection**

8.1 MEDCOR has the right at all time, though is not obliged, to ascertain through inspection(s) and testing (tests) the nature of and the progress of the production process, the deliveries or the performance of the agreement and the machinery and raw materials used in that process. MEDCOR has the right to return rejected goods at the expense and risk of the other party.

8.2 The other party shall provide full assistance for an inspection or test by or on the request of MEDCOR. On first request by MEDCOR the other party shall provide a statement of the content or components of the goods to be delivered and used and of the packaging and the progress of the production process.

8.3 If the outcome of an inspection of the goods as undertaken by an independent testing institute is negative the costs of the inspection shall be at the expense of the other party.

8.4 Inspections in the sense of this Article do not release the other party from any obligation or liability.

## **9. Intellectual property**

9.1 The other party guarantees that the agreed performance to be delivered and the normal use of it, such being in the broadest sense of the word, does not infringe any patent right, copyright, brand right, model right or other absolute right vested in third parties. The other party indemnifies MEDCOR against claims in this respect.

9.2 All industrial and intellectual property rights on or relating to goods or processes that have been designed and/or produced specifically for or on the instructions of MEDCOR, and those that relate to drawings, texts, models handbooks, samples, devices, calculations, software and other document and data carriers produced for that purpose by MEDCOR or the other party, shall be vested in MEDCOR. The other party undertakes, insofar as necessary, to assist with the transfer of the aforementioned (intellectual) property rights and undertakes that after fulfilment of the order it shall hand over to MEDCOR the (auxiliary) products. The other party shall not use the aforementioned information, goods and procedures for any purpose other than for the performance of the agreement with MEDCOR and shall not make any transcripts or copies of these without the written permission of MEDCOR.

## **10. Obligation to provide information; Confidentiality**

10.1 If the other party foresees or should reasonably foresee that it will fail to meet one or more obligations, including failure to deliver and/or incorrect delivery and/or late delivery, as well as in the case of every change to the composition or properties of the goods to be delivered the other party is obliged to immediately notify MEDCOR of this in advance, stating the reasons and the likely duration of the delay.

10.2 Both during and after the end of the agreement, the other party undertakes to maintain confidentiality about the existence and content of the agreement and also in respect of all knowhow and information received from MEDCOR, and shall impose the same written confidentiality obligations on the (employees and/or) third parties it involves in the performance of the agreement.

## **11. Obligations relating to social insurance laws and wage tax**

11.1 The other party is not authorised to arrange for a third party to undertake any part of the agreement or to make use of ("hired in") labour made available by third parties unless MEDCOR has given its prior written approval for this. The other party indemnifies MEDCOR against all claims that an implementing body or bodies and/or the collector of taxes may make on the basis of recipients' liability and/or vicarious tax liability.

11.2 The other party guarantees MEDCOR the timely compliance with all of its obligations arising under tax and social legislation in respect of the employees that are or shall be employed by it or by a third party it engages within the framework of performing the agreement.

11.3 On first request before and/or after the start of the performance of the agreement, the other party is obliged to notify MEDCOR in writing, with regard to the performance of a job, the name and address of the implementing body with whom the other party is registered, the registration number under which the other party (as evidenced from a valid proof of registration) is registered with the implementing body as well as its tax withholding number. The other party is also obliged, on first request and when asked to provide MEDCOR with a copy of the permit as referred to in Article 16a paragraph 2 sub a of the Netherlands Social Security (Coordination) Act ("CSV").

11.4 Each time, on first request, the other party is obliged to hand over to MEDCOR a recent declaration from the implementing body and the tax authority regarding payment behaviour. This declaration may not be older than three months.

11.5 On first request, before the performance of the agreement and from week to week during the performance of the agreement, the other party must provide MEDCOR with a written statement of all employees who are or will be employed by the other party or by third parties it engages for the performance of the work, such statement containing their last name, first names, address and town of residence, date and place of birth and Sofi (tax and national insurance) number, as well as – for all of these employees - a copy of a document as referred to in Article 1 of the Netherlands Compulsory Identification Act (Bulletin of Acts and Decrees 1993, 660). For employees who do not have a nationality of one of the members states of the EU the other party should also provide a copy of their work permit as well as their terms and conditions of employment. For employees from an EU member state the other party must provide a secondment certificate.

11.6 Each time, on first request, the other party shall provide MEDCOR with the wage slips of the aforementioned employees for inspection purposes, as well as – from week to week – a written statement of the place(s) where work is performed by those employees and the number of hours worked by those employees at that /those place(s). The other party guarantees that its employees and/or the employees of a third party engaged by the other party for the performance of the agreement shall at all times be able, when requested, to show valid identification to MEDCOR.

11.7 The other party shall have to be able to demonstrate, to the satisfaction of MEDCOR, that it or a third party engaged by the other party for the performance of the agreement, operates adequate administration from which it can be clearly derived what amount for wage tax and for the relevant contributions under the National Insurance Acts is owed for the employees engaged for the performance of the agreement.

11.8 In the event that, on the basis of the current tax or national insurance legislation, MEDCOR is held liable for the contributions or taxes owed by the other party or if there is a risk that this may arise, the other party is obliged to provide MEDCOR with full information so that MEDCOR is able to prove that the non-payment of those debts is not the fault of MEDCOR, the other party or any subcontractor engaged by the other party.

11.9 MEDCOR is authorised to suspend observance of every obligation towards the other party, for whatever reason, in the event that MEDCOR has well-founded reasons to suspect that the other party is not or has not complied with its obligations as referred to in this Article. MEDCOR is at all times entitled to offset its debts to the other party against its recourse action on the other party as referred to in Article 16g of the CSV or Article 56 of the Netherlands Collection of State Taxes Act 1990, irrespective of whether this legal claim is due and payable or eligible for actual settlement.

## **12. Breach; Termination; Liability; Insurance**

12.1 If the other party fails to comply with one or more obligations under the agreement MEDCOR shall have the right, without the need for prior notice, notice of default or legal intervention, and without being liable for any form of compensation, and without prejudice to all of its other rights, to terminate the agreement in full or in part with immediate effect by means of a statement to that effect and/or to oblige the other party to either re-do the

performance itself and at its own expense or to have the performance remedied at its own expense and risk, or to allow MEDCOR to re-do this or have this remedied at the other party's expense and risk. The authorities referred to in this Article shall not be impeded by force majeure or the lack of culpability of the other party with regard to the breach.

12.2 In the event of bankruptcy, suspension of payment, shut down or liquidation of the other party or transfer of its business, as well as if a major part of the assets of the other party are seized and such seizure is not discontinued within a reasonable period of time, then without being liable for any form of compensation, MEDCOR shall have the right to terminate the agreement with immediate effect by means of a statement to that effect and without the need for legal intervention.

12.3 Without prejudice to its other rights, in the situations described in Article paragraphs 12.1 and 12.2 MEDCOR has the right to suspend its obligations under an agreement concluded with the other party.

12.4 Product liability with regard to goods that are supplied or used, whether or not these are processed, rests entirely with the other party. The other party indemnifies MEDCOR against claims by third parties that arise from or which relate to the goods delivered or used and/or service provided by the other party.

12.5 The other party is liable for and shall indemnify MEDCOR against every claim from third parties relating to damage that is the direct or indirect consequence of an attributable failure on the part of the other party to comply with its obligations towards MEDCOR or unlawful acts or omissions on the part of the other party. The other party provides this indemnity in respect of its own actions or omissions as well as those of its own personnel and those of third parties engaged for the performance of the agreement.

12.6 The other party shall insure itself adequately against the liabilities arising under these General Terms and Conditions of Purchase.

### **13. Penalty; Costs**

13.1 Without prejudice to that which is stipulated in Article 12, in the event of an attributable failure in compliance, the other party shall owe MEDCOR an immediately due and payable penalty of 10% of the total amount of the order or, in the case of late compliance, 0.5% of that amount per day that the delay continues, all of which is without prejudice to MEDCOR's right to further compensation for damages.

13.2 All costs, both extrajudicial and judicial, including though not limited to the costs of legal assistance that MEDCOR incurs to enforce its rights against the other party shall be paid by the other party.

### **14. Transfer of rights and obligations**

14.1 Without the prior written permission of MEDCOR the other party is not permitted to transfer the agreement or its obligations under the agreement to third parties, or to have the agreement performed by third parties. The other party remains fully responsible and liable for actions undertaken by third parties in relation to the order.

14.2 The claims by the other party against MEDCOR may not be assigned or pledged.

### **15. Governing law and jurisdiction**

15.1 The agreement is governed by Dutch law. The applicability of the United Nations on Contracts for the International Sale of Goods 1980 (CISG/Vienna Convention) is excluded.

15.2 The court in the place of domicile of Medcor is exclusively authorised to take cognizance of disputes unless the law contains alternative mandatory provisions. Nevertheless, Medcor has the right to bring the dispute before the court that is deemed competent in law.

15.3 The parties shall only first refer to the court after they have made every effort to settle the dispute through mutual dialogue.

### **16. Location and changes to terms and conditions**

1. These terms and conditions are lodged with the Chamber of Commerce in Lelystad under number 66265517 0000.

2. The latest version or the version applicable at the time of the formation of the legal relationship with Medcor shall always be applicable.

3. The Dutch text of the general terms and conditions is decisive for their interpretation.