

# General Terms and Conditions of Sale - provita medical gmbh & co. kg

## Content

Preamble .....	2
1. General .....	2
2. Offer - Offer documents .....	2
3. Product Description - Quantity Tolerances.....	2
4. Information about Products and Resale - Special Regulations about Medical Products- References to Medical Devices Act.....	3
5. Prices - Terms of Payment - Price Adjustment.....	3
6. Packaging and Carriage.....	4
7. Trade Mark Rights - Intellectual Property Rights .....	4
8. Assists - Tools - Tooling Costs .....	5
9. Call-Off Order .....	5
10. Default of Acceptance -Transfer of Risk - Cooperation Duties of the Customer .....	5
11. Delivery Period and Defaul .....	6
12. Force Majeure .....	7
13. Liability for Defects.....	7
14. Joint and Several Liability .....	8
15. Indemnification .....	8
16. Reservation of Title.....	9
17. Confidentiality.....	9
18. Place of Fulfillment - Place of Jurisdiction - Applicable Law .....	10
19. Severability Clause .....	10

# General Terms and Conditions of Sale - provita medical gmbh & co. kg

## **Preamble**

provita medical gmbh & co. kg, headquartered Auf der Huhfuhr 8, 42929 Wermelskirchen, represented by the CEO Micha Hilverkus and Remo Pleuser, HRB 36381, district court Cologne, produces medical products and sells them to distributors and business partners in Germany as well as internationally. An intensive and trustful cooperation with specialist suppliers, architects and hospitals enables the development and production of innovative products and solutions.

provita medical gmbh & co. kg also develops customer-specific components (accessories).

The portfolio of provita medical gmbh & co. kg includes, but is not limited to, examination- and reading lights, intravenous poles, mobile transfer carts, hygiene center, ceiling track system and wall rail system.

provita medical gmbh & co. kg delivers exclusively to companies like specialty retailers and wholesaler (B2B sales).

## **1. General**

- 1.1 Our terms and conditions of sale apply exclusively; we do not accept conditions of customers that may conflict with or differ from our terms and conditions of sale, except in case we have explicitly agreed to the customers conditions in writing. Our terms and conditions of sale also apply in the event that we deliver without reserve by knowing the customers divergent conditions.
- 1.2 With general references such as „us“ or „we“, provita medical gmbh & co. kg is meant. With references as „customer“, the explicit purchaser or contracting authority is meant.
- 1.3 All agreements made between us and the customers regarding the performance of this contract are set out in this contract in writing.
- 1.4 Our terms and conditions of sale apply subsidiary to any individual or frame agreements between us and the customer. Individual agreements and frame agreements entered into by the customer and provita medical gmbh & co. kg in the individual case always take precedence over these general terms and conditions of sale.
- 1.5 With „performance“, we describe all forms of our activities, as far as the performance is specified as a product delivery, a service or a work performance.
- 1.6 Our terms and conditions of sale only apply to companies and business clients in accordance to §§ 13, 310 subsection 1 BGB (German Civil Code).
- 1.7 Our terms and conditions of sale apply also to all future contracts with the customer without having to refer to them again in each individual case.
- 1.8 Any reference to the applicability of statutory provisions is only made for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these General terms and conditions of sale.

## **2. Offer - Offer documents**

- 2.1 Our offers are not binding and without obligation, which means that a contract only comes into effect when we confirm the customer's order. If the customer's order is qualified as an offer according to § 145 BGB (German Civil Code), we can accept this offer within two weeks. Acceptance of the order may be declared to the customer in writing, in text form, in electronic form or by delivery in case of a product order.
- 2.2 **Subsidiary agreements relating to our offers and confirmations as well as agreements with our travelling salesmen and representatives have to be confirmed in text form by provita to get valid.**
- 2.3 Solely our confirmation in text form is binding for the content of the contract.

## **3. Product Description - Quantity Tolerances**

- 3.1 The information provided by provita with regard to the object of delivery or performance (e.g. weight, dimensions, utility values, capacity, tolerances and data) as well as provitas descriptions of it (e.g. drawings and pictures) are only approximately applicable unless the usability for the contractually intended purpose requires precise conformity. They are not warranted characteristics of the quality but descriptions or designations of the delivery or performance. Deviations occurring due to statutory provisions or representing technical or medical improvements as well as the replacement of components by comparable parts are permissible unless they affect the usability for the contractually intended purpose.
- 3.2 Agreements with reference to the quantity of goods to be delivered apply with a production-related over- or under-delivery of up to 3% tolerance. In case of custom-built products the production-related over- or under-delivery can amount up to a 10% tolerance. The purchase price will be adjusted proportionally according to the delivery deviation.

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

### **4. Information about Product and Resale - Special Regulations about Medical Products - References to Medical Devices Act**

4.1 Instructions provided by provita in brochures, instructions for use, signatures or other product information shall be strictly complied with in order to prevent damage. We expressly warn the customer against any use or treatment of the products beyond the defined areas of application. provita shall not be liable for any consequences deriving from any abuse. The customer shall ensure that any further customer or user will be instructed sufficiently. Explaining these instructions and information about products is not meant as a final and closing statement about the complete safety information.

4.2 Our products must not be redesigned or modified by the customer without our prior agreement. If the customer applies his own components or parts to our products without our prior agreement and coordination, the customer shall be liable for any damage resulting from the product modification.

4.3 The customer must not change our products in an inappropriate way or use the products incorrectly. In case of medical technical products the customer must not use any inapplicable reagents. The customer is responsible for any preventive maintenance or he commits his own customers for the correct product maintenance.

4.4 Sale, Re-Sale and disposition of delivery and performance and any technology or documentation can be subjected to German, EU-, or US- export control rights or any other state export rights. A re-sale to embargo-countries or to barricaded persons or to persons, which use or are able to use the delivery and performance militarily, for NBC-weapons or for nuclear technology, requires our approval. The customer approves with his order the compliance with such laws and regulations and he approves that deliveries and performances are not brought to countries that restrict an import of such goods directly or implicit. The customer declares to have all the necessary permissions for export and import.

4.5 **The customer assures that he complies with all regulations according to the product liability Act, the medical devices Act and the Drug Registration and Administration Act in the currently valid version.** The customer commits his customers in the same way.

4.6 The regulations of the medical devices Act provide in particular that who for the first time places a product on the market, has to fulfil special requirements. Should the customer independently modify, redesign or expand our products, the obligation of the first placing on the market is transferred to the customer.

4.7 In case the customer changes or extends our products, he has to attach his own information about the person responsible according to the Medical Product Law. Especially, the customer has to declare his changes on our product to the appropriate authorities and has to obtain their permission.

4.8 **In case the customer integrates our components into his own medical products or in case he manufactures an own product out of our components, the customer must comply with the regulations of the Product Liability Act (ProdHaftG), the Medical Product Law (MPG) and, as far as applicable to the customer, with the Medicines Act (AMG). In case of resale or distribution of our products the customer is obliged to comply with the applicable laws, especially the Act Against Unfair Competition and medical product regulations or pharmaceutical legislation and regulations. The same shall apply if the customer processes, modifies or combines our products with other items.**

4.9 Unless otherwise is agreed between the parties, the customer is obliged to sell or provide our products in whole and completely (including packaging, manuals, warnings, etc.). Clinical packaging is intended for use in hospitals only. It has to be sold only in whole, not in partial quantity and only in original packaging and seal. An exemption from these standards apply only to deliveries within the scope of an officially approved supply contract with pharmacies in accordance to § 14 Pharmacy Act. A delivery of other customers with clinic packaging is permitted only if the customer himself resells only to hospitals or pharmacies in accordance to § 14 Pharmacy Act.

4.10 The customer is in charge that in his company a medical product consultant is available for questions at any time and that the consultant will be trained regularly.

### **5. Price - Terms of Payment - Price Adjustment**

5.1 Unless otherwise stated in the order confirmation, our prices shall apply „ex works“, excluding packaging, customs and insurance. Those will be charged separately.

5.2 We reserve the right to change our prices in case that after conclusion of the contract cost increases occur, especially due to collective wage agreements or material price changes. We inform our customer in advance in writing or in text form about the price adjustment. The customer is entitled to decide whether he wants to continue the contract with adjusted prices or withdraw from the contract. The customer must inform us within 5 working days, whether or not he wants to continue the contract with the new, modified terms and conditions.

5.3 The statutory sales tax (VAT) is not included in our prices. The VAT is stated in the invoice separately at the applicable rate at the

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- date of the invoice. If the VAT changes between delivery and invoice, the VAT in the invoice is applicable. The invoice will be quoted in € (EUR) and the amount has to be paid in € (EUR).
- 5.4 Unless otherwise is stated in the order confirmation, the invoice amount shall be payable within 10 days with a 2% early payment discount or net within 30 days after invoice date.
- 5.5 In case you pay with cheque, we accept it only on account of payment. In those cases we are not responsible for timely presentation or protesting. The costs of discounting, taxation and confiscation are charged to the debit of the customer; he has to refund these amounts immediately on our request. We do not accept bill of exchange.
- 5.6 In case that after the conclusion of the contract we get to know circumstances that lead to doubts about the creditworthiness of the customer we may, at our discretion, request advance payment or security deposit. The same applies if the customer is in default with the fulfilment of an obligation.
- 5.7 In the case of default of payment of the customer, the legal regulations about the default of payment shall apply.
- 5.8 If the customer gets in default of payment, we shall be entitled to charge the statutory default interest at a rate of 9% per annum above the base rate of interest applicable at the time. We are entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by us due to higher borrowing costs, we shall be entitled to charge such interest to the customer. Towards business clients and companies the commercial interest of due according to § 353 German Commercial Code (HGB) stays in effect as well.
- 5.9 In the case of default of payment, the customer shall bear any dunning charges, collection charges, investigation and information charges that incur in connection with collection of the accounts receivable outstanding. Furthermore we shall be entitled to charge a fixed rate of 40,00 EUR in case of default of payment.
- 5.10 Set off rights can only be granted to the customer, if his counterclaims have been stated legally binding, undisputed or recognized by provita. The counterclaim from the same contractual relationship is exempted from the prohibition of set-off, which means that in case of dependent counterclaims a set-off right is permitted.

### **6. Packaging and Carriage**

- 6.1 The packaging will be chosen at our discretion accounting for the means of transportation, unless the customer dictates a special packaging.
- 6.2 The customer bears all costs for a special request regarding the method of shipping.
- 6.3 The customer bears the costs for any special request regarding the method of shipping; this also applies to express (non-standard) and next-day shipping, even if we pay the initial freight charges.
- 6.4 Upon the customer's request, we will cover the shipment by a transportation insurance policy; the customer bears all costs for this insurance.
- 6.5 For returns of packaging, special arrangements apply.
- 6.6 The packaging is chosen by us to the best of our knowledge. We are liable for improper packaging according only to 13.5 to 13.8. A further liability of provita is excluded. In particular we shall not be liable for any improper transport by the freight forwarder or carrier.

### **7. Trade Mark Rights - Intellectual Property Rights**

- 7.1 We reserve the ownership rights and copyrights to the images, cost estimates, drawings, plans, calculations and similar documents and information of either a tangible or intangible nature - including information in electronic form -, as well as to any and all other documents; the same applies for documents that are titled with "confidential". Said items shall only be made available to third parties with the written consent of provita.
- 7.2 We are not liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 7.3 If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the customer shall indemnify and hold us harmless.
- 7.4 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not originating from provita or if the products are used in a manner which we were unable to foresee.
- 7.5 We are not liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published by the European Patent Office.

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- 7.6 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request – insofar as possible – allow provita to conduct the litigation (including non-judicial proceedings).
- 7.7 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall – insofar as the customer allowed provita to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we shall also have a right of rescission. The ruling set forth shall apply accordingly.
- 7.8 We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause even if the breach of property right has not yet been legally determined or acknowledged on our part.
- 7.9 In case we need the technology or Know-How of the customer for the execution of his order, the customer grants us a simple, non-transferable and non-sub-licensable right to this technology/Know-How during the term of use and solely for the purpose of the contract.
- 7.10 Our services may contain products that are subjected to patented or licensing restrictions towards the customer. Details of such restrictions are available in our respective product descriptions, the respective package inlay, or appropriately our internet presence. The restrictions can be requested by the customer before and after conclusion of the contract as well.
- 7.11 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defense against claims by third parties.
- 7.12 Further-reaching claims or claims other than those claims of the customer governed by this clause 7 on account of an infringement of third party industrial property rights are excluded.

### **8. Assists - Tools - Tooling Costs**

- 8.1 If we need parts for our products and components, that the customer has to make available (assists), the customer is obliged to deliver these parts in a number corresponding to the order quantity plus a reserve of 10% free and along with placing the order at an early stage.
- 8.2 If the customer carries the tool cost shares, he does not gain the right to transfer or handing out the tool. The tool cost shares do not get repaid or redeemed.
- 8.3 We keep the tool for five years, beginning with delivery of the last good that was produced with the help of the customer. Afterwards we get the tool on our free disposal. The customer shall bear the costs incurred during the period of storage for storage and maintenance of the tool. The customer receives a separate bill for these costs.
- 8.4 In case the customer has to carry only a fraction of the tool costs and he purchases not all ordered goods for whatever reason, the customer is nevertheless obliged to carry the whole tooling costs.
- 8.5 In case the customer does not purchase the order, he has to carry the storage costs, the insurance costs and the maintenance costs in connection with the tools.
- 8.6 In derogation from the preceding paragraphs, tool costs are to pay in half immediately after conclusion of the contract and the other half upon presentation of the pattern net without discount.

### **9. Call-Off Order**

- 9.1 In case of call-off orders, the entire quantity of the order is considered as called one month after the expiry of the period agreed upon for the call, in the absence of such an agreement in six months after conclusion of the contract.
- 9.2 If the customer does not perform a classification of the delivery goods within the terms of paragraph 9.1, we are authorized to classify the goods according to our choice and supply them. The customer has to carry the costs. We also reserve the right to withdraw from the contract and to claim damages if the customer does not call the order in time and after deadline expiration.
- 9.3 The call of the ordered goods represents a principal obligation of the customer.

### **10. Default of Acceptance - Transfer of Risk - Cooperation Duties of the Customer**

- 10.1 If the customer is in default of acceptance or culpably violates other duties to cooperate, provita is entitled to give preference to other third-party orders and reasonably extend the delivery period.
- 10.2 The customer supports provita in performing the contractually due performance; the support includes the providing of information, documents, data and materials that might be necessary or useful for the performance of the contract.
- 10.3 The customer has to make sure that the information, documents, data and material that is relevant for performing the contract

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- will be provided to us in time and without the need for a special request and that we get informed about all occurrences and circumstances that are important for performing the contract.
- 10.4 The customer has to inform us about any possible risks that can occur within the examined or manufactured materials or products and explain existing public, operational or regulatory safety regulations and sensitive operational issues to us related to the performance of the contractually owed services.
- 10.5 We shall be entitled, without prejudice to any further-reaching statutory and/or contractual claims, to demand compensation for the damages that originated to provita thus far, including any additional expenditure. Any further rights or claims remain reserved.
- 10.6 If delivery is delayed due to circumstances for which the customer is responsible the risk of accidental deterioration, loss and destruction shall pass to the customer at the time he gets into default of acceptance. In case of default of acceptance the customer has to carry all costs that arise because of the delay. Those costs include in particular, without limitation, costs for storage, insurance and transport of the goods.
- 10.7 The risk is transferred to the customer with the delivery of the goods to a carrier, at the latest by leaving our factory. If the delivery is delayed because of circumstances the customer is responsible for, the transfer of risk occurs already at the moment we first request the customer to perform the required actions.
- 10.8 If dispatch or shipment is delayed at the customer's request by more than one month after notice of the readiness to ship was given, the customer may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the supplies, but in no case more than a total of 5 %. The contractual parties may prove that higher or, as the case may be, lower storage costs have been incurred. More far-reaching claims in cases of default of acceptance shall remain reserved.
- 10.9 The customer has to inform us immediately as soon as he gains knowledge that our products or services violate third party intellectual rights as well as third parties may infringe our intellectual property rights. A corresponding exemption claim as written down in paragraph 7 remains unaffected.
- 10.10 In case the customer finds out incidents relating to our products or services, he has to inform us immediately. The customer has to coordinate any further action or response according to the incident with us.
- 10.11 The customer is not entitled to inform third parties (in particular authorities) and / or the public of incidents in connection with our products and services without prior consultation unless the customer is obligated due to mandatory statutory provisions. In this case, the customer will inform us without hesitation.
- 11. Delivery Period and Default**
- 11.1 The beginning of the delivery period that we stipulate presupposes the clarification of all technical questions.
- 11.2 Performance periods and dates are agreed between the parties or specified by us upon acceptance of the order in the order confirmation.
- 11.3 If no performance period and date has been specified, the period shall depend on the respective average time customary in the sector for such performance and is, if the average time customary in the sector is not shorter, at least eight (8) weeks as from the conclusion of the contract, otherwise the average time customary in the sector applies. If and to the extent the shipping of the products has been agreed upon, the performance periods and dates refer to the time the products are delivered to the carrier, forwarding agent or other third party entrusted with the transportation.
- 11.4 Compliance with the delivery obligation further requires the timely and proper fulfilment of the customers' obligations; the plea of non-performance of the agreement remains reserved. In the event of additional or supplementary agreements entered into at a later point in time, the performance periods and dates respectively are extended or rescheduled accordingly. As long as the customer defaults in performing an obligation vis-à-vis provita, provita's obligation to perform shall be suspended. In case of the Customer's culpable breach of duties to cooperate, HSW shall be entitled to claim compensation of the incurred damage including extra expenses, if applicable. Any further claims are reserved.
- 11.5 In case of default delivery which we are culpably responsible for, we will timely inform the customer about the delay and call a new delivery date. If the customer does not contradict immediately, the new date of delivery / performance is agreed.
- 11.6 We shall be liable according to the statutory provisions, as far as the contract contents a fixed date within the meaning of § 286 section 2 No. 1 BGB (German Civil Code) or of § 376 HGB (German Commercial Code). We shall be liable according to the statutory provisions as well in cases of our default of delivery and if the customer is entitled to assert that his interest in the further fulfilment of the contract has become discontinuance.
- 11.7 Furthermore we shall be liable according to the statutory provisions as far as the default in delivery occurred due to a breach of contract which was caused deliberately or by gross negligence; a negligence of our representatives or vicarious agents is attributable to us. If the delivery delay is based on a negligent breach of contract caused by provita, our liability for damages is

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- limited to the foreseeable, typically occurring damage.
- 11.8 We shall be liable as well according to the statutory provisions as far as the default in delivery occurred due to a culpable violation of a significant contractual obligation; in these cases our liability for damages is limited to the foreseeable, typically occurring damage.
- 11.9 The liability in the event of delay in delivery shall be limited to 0,1% of the value of the order in the context of a lump-sum compensation for delay, but not more than 1% maximum of the value of the order.
- 11.10 Further legal claims and rights of the customer remain reserved.
- 12. Force Majeure**
- 12.1 If the contractual partners are prevented from delivering due to force majeure, the delivery date shall immediately be extended for the duration of the force majeure, plus an appropriate start-up time. This case shall not constitute as a violation of law or contract.
- 12.2 All conditions which are independent of the will and influence of the parties such as natural disasters, government measures, decisions on the part of the authorities, blockades, war and other military conflicts, mobilization, civil unrest, terror attacks, strikes, lockouts and other industrial unrest, confiscation, embargoes and other unforeseeable, serious conditions which are not the fault of the parties and which arise after the making of the contract/ agreement shall be deemed to be force majeure events.
- 12.3 The contractual parties shall be relieved of liability for partial or full non-fulfillment of their obligations provided that the parties prove that said non-fulfillment was prevented by circumstances beyond the control of the parties and arose upon the signing of any contract.
- 12.4 The contractual parties will do everything they can, in case it is necessary and reasonable, to minimize the extent of the consequences, caused by force majeure.
- 12.5 The party affected by force majeure circumstances or facing circumstances beyond its control shall immediately notify the other party in writing of the occurrence, type and anticipated duration of these circumstances.
- 12.6 Should force majeure circumstances or circumstances beyond the control of the parties continue for more than two months the parties shall agree upon further execution of any contract. If the parties fail to reach a mutual agreement the party that was not affected by said circumstances shall have the right to terminate the contract without applying to the arbitration court.
- 13. Liability for Defects**
- 13.1 Warranty claims of the customer presuppose that the customer has properly fulfilled his obligations of inspection and complaint according to § 377 HGB (German Commercial Code).
- 13.2 In the case of claim we are entitled to examine and proof the complained products. For this purpose we can use a qualified third party. If it turns out that a defect or claim alleged by the customer actually does not exist or was caused by an improper use and/or storage by the customer, we are entitled to invoice any expenses caused by the pursuit of the complaint to the customer, as far as the customer has acted at least grossly negligently.
- 13.3 In case of a defect we reserve the right to choose how to remedy possible defects, either way to correct the defective parts through repair or through exchange, at our discretion. In those cases of removal of defects or replacement delivery we are obliged to carry all expenses required for the purpose of subsequent performance, in particular transport costs, labor costs and material costs, insofar as they do not increase in consequence of transporting the goods to another place than the place of performance.
- 13.4 If the supplementary performance fails, the customer is entitled to demand withdrawal or reduction at its discretion.
- 13.5 We shall be liable according to the legal regulations if the customer asserts claims for damages in cases of intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. As far as we are not accused of an intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage.
- 13.6 We are liable according to the legal regulations if we culpably violate an essential contractual duty; in this case as well, the liability for damages is limited to the foreseeable, typically occurring damage.
- 13.7 Liability for culpable injury to life, body or health shall remain unaffected; this also applies to the mandatory liability under the product liability Act.
- 13.8 Unless otherwise is regulated above, we are excluded from liability.
- 13.9 The limitation of liability does not apply to claims of the customer according to the product liability Act (ProdHaftG), the medical devices Act (MPG) and the medicines Act (AMG).
- 13.10 In particular, we are not liable for the consequences of improper modification or treatment of our products, in case of medical technical equipment we are not liable for damages caused by using unsuitable reagents or the consequences of inadequate

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- maintenance of the customer or third parties, as well as for defects, which are based on normal wear and tear or caused by the transport.
- 13.11 The limitation period for claims based on defects is twelve (12) months after transfer of risk. This does not apply for products that are used for a building and caused the defect.
- 13.12 The statutory limitation in case of a recourse acc. to §§ 478, 479 BGB (German Civil Code) remain untouched.
- 13.13 In cases of slight negligence the duty to pay damages for material damage and further pecuniary losses resulting therefrom are limited to the lesser of the order value (in case of framework agreements containing a call-off clause, the value of the quantity called off) or the sum insured under the respective liability insurance even if material contractual duties have been breached. The insured sum per claim amounts to € 3.000.000,00 lump-sum for damage to persons or other damage (material damage or pecuniary loss).
- 13.14 The customer is obliged to take appropriate measures for damage resistance and mitigation. **In particular, the customer has to follow the product instructions and information under paragraph 4 of these terms. If the customer does not follow the instructions under paragraph 4 of these terms and as a result a damage is caused, the customer has to indemnify us from a claim by a third party. The customer therefore is liable for any damage incurred.**
- 13.15 Our products must not be modified without our prior consent. If the customer applies his own components or devices to our products or changes our products of any kind without previously coordinate this with us in writings, we are not liable for any resulting damage.
- 13.16 We warrant that our products dispose of the required product approvals within Germany and the other member states of the European Union. We, however, point out that the operating manuals attached to the products are not available in all languages spoken in the member states of the European Union. We do not accept any warranty regarding the conformity of our products with the statutory provisions applicable in the respective countries if our products are imported to countries not being member states of the European Union.
- 13.17 To the extent our products are not intended for multiple use and/ or resterilization, claims of the customer based on the missing recyclability of these products are excluded.
- 13.18 To the extent our products are not intended for multiple use and/or resterilization, claims of the customer resulting from the multiple use, resterilization and/or other processing of the products are excluded.
- 14. Joint and Several Liability**
- 14.1 A further liability for damages than provided in paragraph 12 is excluded regardless of the legal nature of the asserted claim. This applies in particular to damage claims for negligence upon conclusion of contract, concerning other breaches of duty or tortious claims upon compensation for damage in accordance with § 823 BGB (German Civil Code).
- 14.2 The limitation of passage (1) above shall also apply insofar as the customer claims replacement of useless expenses rather than compensation instead of performance.
- 14.3 Insofar as the liability for damages is excluded or limited, this applies as well regarding the personal liability our employees, workers, staff, representatives and vicarious.
- 15. Indemnification**
- 15.1 The customer undertakes to indemnify, hold harmless and defend us and our affiliates, employees and agents against any and all claims based on an infringement of third party rights arising from the information, documentation, data and material provided by the customer in connection with the contract unless we, our affiliates, employees, officers or directors acted intentionally or grossly negligently. provita is not obligated to carry out an inquiry or review regarding third party rights unless such inquiry or review has been expressly agreed upon by the parties.
- 15.2 We will inform the customer in due time in writing of any third party claims and the customer is entitled to defend himself against such claims at his own expense, to take control of the proceedings and to settle claims by conciliation. We are to participate in any conclusion of a comparison as far as this can have actual or legal effects for us.
- 15.3 The customer undertakes to indemnify provita against any and all third party claims resulting from (a) a damage to the products during handling, storage and use of the products by the customer and /or (b) the improper use of the products unless the damage was caused by a defect of the product for which we are solely or mainly responsible.
- 15.4 Unless provita has provided for multiple use and/or resterilization of its products, the customer shall indemnify us against any and all third party claims resulting from a multiple use of the products, a resterilization of the products and/ or other recycling of them.
- 15.5 The customer is obligated to conclude liability insurance with an adequate insured sum for third party damages caused by the

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

improper storage and/or improper use of the products. Evidence of the insurance coverage is to be furnished at our request.

### **16. Reservation of Title**

- 16.1 We reserve title to the delivered goods until full settlement of all debts due arising from current business relations, preventative we reserve title for the delivered goods until the purchase price of the whole delivery contract has been paid in full.
- 16.2 In case of a breach of contract caused by the customer, including but not limited to the event of a default in payment, we are entitled to take back the object of purchase. By taking back the purchased goods, the consequence is a withdrawal from the contract. After retraction of the goods we are entitled to undertake their liquidation. The liquidation proceeds will be imputed to the liabilities of the customer, minus reasonable realisation costs.
- 16.3 The customer is obliged to handle the goods carefully; he is obligated to insure them adequate at his own expense against fire, water and theft at replacement value. If maintenance and inspection work is required, the customer has to do this at his own expense and on schedule.
- 16.4 The customer must inform us immediately in writing about distraints or other legal restrictions, so that we can take legal action under § 771 ZPO (German Code of Civil Procedure). If the customer is not able to carry the costs of the judicial or non-judicial intervention under § 771 ZPO (German Code of Civil Procedure), he is liable for the deficiency.
- 16.5 The customer is entitled to resell the goods in the ordinary course of his business; he however assigns at this point all claims amounting to the final invoice amount (including VAT) which accrue to him from the resale against his consumers or third parties, regardless of whether the goods have been sold without or after processing. The customer remains entitled to collect this claim even after the assignment. Our authorization to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the customer fulfills his payment obligations from the proceeds, as long as he gets not in default of payment and as long as there is no application to open composition or insolvency proceedings or final payment default. If these cases turn to real, we can require that the customer names us the assigned claims and their debtors, gives us all the necessary information, documents and notifies and informs the debtors (third parties) of the assignment.
- 16.6 The processing or transformation of the products throughout the customer is always done for us. If the product gets processed with other goods and items, that are not belonging to us, we shall acquire co-ownership of the new item in proportion of the value of the goods (final invoice amount, including VAT) to the other processed objects at the time of processing. For the product resulting from the process the same conditions apply as for the delivered products under reservation of title.
- 16.7 If our product will be inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the goods (final invoice amount, including VAT) to the other mixed objects at the time of mixing. Is mixing done in a way that the item of the customer is seen as the main part of the product, it shall be deemed agreed that the customer transfers the co-ownership proportionately to us. The customer shall keep the created sole property or joint property for us.
- 16.8 The customer assigns the claims which arise through the connection of the purchased goods with a plot against third parties to secure our claims against him.
- 16.9 We are obliged to release the securities granted to us upon request of the customer if the value of the security exceeds the amount of our receivables by more than 20%. We can select the securities that will be released.
- 16.10 In cases of breach of contract by the customer, if payment is delayed, unauthorized disposal of the goods, at a substantial deterioration in the financial position of the customer, in cases of bill of exchange or cheque protests as well as the customer himself or a third party requests the opening of insolvency proceedings over the assets of the customer or the opening of such proceedings is rejected due to a lack of mass, we are entitled to prohibit the handling and processing as well as the sale of the goods. We are also entitled to take the goods into possession and to enter the customer's business for this purpose, to obtain relevant information and to search his files if necessary.

### **17. Confidentiality**

- 17.1 The contracting parties both agree to maintain strict confidentiality of confidential information, in particular about any operating and trade secrets, manufacturing processes, distribution channels, customer lists, spreadsheet and calculation basics, business software and comparable information during the term of the contract and after its completion.
- 17.2 The obligation of confidentiality does not extend to such knowledge which is accessible to anyone or if the passing can be seen without any disadvantage for the other party. In case of doubt however technical, commercial and personal processes and conditions that are known to the parties in the context of their cooperation are to treat as business secrets. In such cases the respective contracting party is obliged to obtain an instruction is obliged to obtain an instruction of the management of the other contracting party, whether a certain fact is to keep confidential or not, prior to the disclosure to third parties. The duty of

## General Terms and Conditions of Sale - provita medical gmbh & co. kg

- confidentiality extends as well to matters of other companies with which the contractual partner is economically or organizationally connected.
- 17.3 The obligation of confidentiality is extended on relatives of the contracting party or subsidiaries, unless those concerned people have to receive such messages because of their status.
- 17.4 If we present pictures, drawings, sketches, samples, calculations or other documents during the execution of this contract or during the initiation of the contract, we reserve the property rights and copyrights of these documents; they may be not disclosed to third parties without our express written consent. After execution of the contract they have to be returned to provita without being asked to. They are to keep secret towards third parties. The documents are not to reproduce. They have to be handled carefully, to be stored and after fulfillment of the contract, they have to be returned to us immediately, cost-free and completely.
- 17.5 The contracting parties will take all necessary measures to ensure that all persons to whom confidential information are communicated to or made available for, proceed with these information in the same way as the parties do relating to this agreement.
- 17.6 Preceding paragraphs do not apply for the parties if and to the extent that the parties are required by law to disclose confidential information or to publish that information. In this case the contracting party will take appropriate ways to reduce any resulting damage prior to dissemination or publication of confidential information in consultation with the other party.
- 17.7 All business or technical information of provita (including features that can be collected from given objects and any other knowledge or experience) are to be kept secret to third parties as long and as far as they are not demonstrably publicly known or determined by provita for resale by the customer and made available only to such persons in the customer's factory that must necessarily use this information and that are also obliged to maintain secrecy. The information is exclusive property of provita.
- 17.8 Such information may not be reproduced or commercially used without prior written consent of provita.
- 17.9 provita reserves all rights to the above information (including copyright and the right to registration of industrial property rights, such as patents, utility models, semiconductor protection, etc.).
- 17.10 The customer acknowledges that these terms and conditions neither intend nor can be interpreted as that any rights or licenses to the know-how or other intellectual property rights of provita have been given to the customer. Apart from the validation of the technology, the customer is not entitled to use the expertise for his own purposes or for the purposes of third parties. As well the customer is not allowed to register intellectual property rights for the know-how or parts thereof. The customer acknowledges that solely the communication about information is no warranty for the preciseness of the information, the exposure of any intellectual property, the transfer of an intellectual property right or the commitment of provita to close a contract later.
- 17.11 Each party's obligation to protect the other party's confidential information expires ten (10) years after the date of the conclusion of the respective contract.
- 18. Place of Fulfillment - Place of Jurisdiction - Applicable Law**
- 18.1 Exclusive place of jurisdiction with respect to contracts with business clients shall be the competent court at our seat of business. However we are also entitled to sue the customer at the location of his own residence or place of business.
- 18.2 The present contract and all disputes arising from or in connection with it shall be governed by and are subject to the jurisdiction of the Federal Republic of Germany;
- 18.3 Unless otherwise stated in the order confirmation, the place of performance is our registered office.
- 18.4 In case of conflicts between the German and the English version of these general terms and conditions, the German version shall prevail.
- 19. Severability Clause**
- 19.1 If a court or other competent authority declares that one or more provisions of these general terms and conditions are invalid, void, inoperative or unenforceable wholly or partly, the effectiveness, validity or execution of all remaining provisions, as well as of the non-affected rest of this provision, shall remain unaffected thereby.
- 19.2 In place of the ineffective, invalid, void or unenforceable provision, a provision automatically applies that corresponds closely to the economic purpose at which is valid and enforceable.

Status as of 04.09.2015