

**GENERAL TERMS AND CONDITIONS OF SALES SULZER MIXPAC AG  
(SURGERY) SWITZERLAND**

These Terms and Conditions can be found on the Internet under [www.medmix.swiss](http://www.medmix.swiss).

**1. GENERAL INFORMATION**

- 1.1. The following General Terms and Conditions of Sales (hereinafter "Seller General Terms and Conditions") shall govern the relationship between Sulzer Mixpac AG (hereinafter "Seller") and ordering entity (hereinafter "Buyer"). They shall apply for all deliveries by Seller to Buyer and for all project work that Seller performs for Buyer.
- 1.2. Differing terms and conditions of Buyer shall not be valid unless Seller has accepted such terms and conditions explicitly and in writing.
- 1.3. Buyer's purchase order shall constitute a binding offer. Previously issued statements by Seller are not offers, but instead serve only to initiate contractual negotiations. An order shall come into effect when an order confirmation is sent by Seller via post, fax, or e-mail (such contractual relationship shall hereinafter be referred to as "Contract").
- 1.4. In the event of inconsistencies or contradictions between multiple relevant documents, the following sequence of priority shall apply:
  - Written order confirmation issued by Seller
  - Seller' quotation
  - System diagrams from Seller
  - Specifications from Seller
  - Seller General Terms and Conditions
  - Written purchase order from Buyer.

**2. SUBJECT MATTER AND SCOPE OF PERFORMANCE OF MIXPAC**

- 2.1. The subject matter and scope of the performance owed under the Contract shall be determined based exclusively upon the written order confirmation from Seller. Amendments or supplements to the scope of performance must be made in writing.

- 2.2. The Seller General Terms and Conditions of Business shall also apply for all subsequent purchase orders and subsequent deliveries under a Contract.
- 2.3. The Contract may not be canceled or amended without the written consent of Seller.

**3. DELIVERY BY SELLER**

- 3.1. Seller' deliveries shall be Ex Works (Incoterms 2020).
- 3.2. Products shall be deemed delivered when they are made available Ex Works or when Buyer is notified that the products are ready for shipment.
- 3.3. In case of transactions calling for advance payment or remote transactions, the delivery of products shall be initiated only after receipt of payment or after Buyer's submission of a debit authorization.
- 3.4. A surcharge for smaller quantities or a flat fee may be charged in the case of small orders.

**4. COLLABORATION BY BUYER AND FULFILLMENT BY THIRD PARTIES**

- 4.1. Buyer shall support Seller, to the extent reasonable and necessary, in a timely manner and at its own expense, in fulfilling the purpose of the Contract, whether this involves resources, information, access to its facilities, etc.
- 4.2. Seller shall be authorized to bring in third parties for fulfillment of the Contract, or to delegate some or all of its obligations to third parties. Seller shall notify Buyer in advance if all or a majority of its obligations under the Contract is to be delegated to a third party.

**5. BUSINESS AND TRADE SECRETS**

Seller shall allow third-party access to business and trade secrets of Buyer disclosed to Seller only to the extent that Seller is bringing in these third parties for fulfillment of the owed performance or is delegating the performance of its obligations to such parties. Seller shall conclude nondisclosure agreements with third parties in order to protect these business and trade secrets.

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**6. COMPLIANCE WITH REGULATIONS**

- 6.1. Prior to the issuance of an offer, Buyer must notify Seller in writing and in a timely manner regarding the regulations and standards relevant to the performance by Seller.
- 6.2. In the absence of any arrangement to the contrary, the performance by Seller shall be in compliance only with such regulations and standards as are specified in the offer from Seller.

**7. PRICES**

- 7.1. Subject to agreement to the contrary, all prices are understood to be in Swiss francs, exclusive of VAT.
- 7.2. Buyer shall be responsible for all transportation costs, taxes, insurance, charges, fees, and customs duties incurred in connection with the delivery or, if Seller has been required to pay such costs, must reimburse Seller against appropriate documentation.
- 7.3. Buyer's right of offset shall be precluded.

**8. TERMS OF PAYMENT**

- 8.1. Unless otherwise agreed in writing, deliveries shall be invoiced directly. Completed project work and deliveries shall be invoiced monthly by means of a partial or final invoice.
- 8.2. All project work and deliveries shall be billed based upon the degree of completion and/or the status of the work performed. This shall apply in particular for stipulated indicative prices, fixed prices, or services based upon a rough cost estimate.
- 8.3. Unless otherwise stipulated, invoiced amounts shall be payable within 30 days after invoicing, net without deductions. If payment is not remitted within 30 days, Buyer shall be in default without issuance of a notice and must pay the statutory interest on arrears. Seller reserves the right to assert additional claims for damages.
- 8.4. Unless otherwise explicitly stipulated by the parties in writing, payments must be remitted to the domicile of Seller in Swiss Francs, without deduction of bank charges or other similar charges.

- 8.5. If advance payments or deposits are not made as arranged, Seller shall be immediately entitled to rescind the respective Contract. The right to assert claims for damages remains reserved in any case.
- 8.6. Should Buyer be in delay with a payment for any reason, Seller shall be authorized, immediately and without restriction of its statutory rights, to suspend further fulfillment of the respective or other pending Contracts until payment is remitted in full or new terms of payment are agreed upon, and Seller has received sufficient sureties for continued fulfillment of the Contract. If such an agreement cannot be reached within 30 days, or if Seller does not receive sufficient sureties, Seller shall be entitled, without prejudice to its statutory rights, to rescind the respective Contract or demand the return of already delivered products. The right to assert claims for compensatory damages remains reserved in any case.
- 8.7. Payment by credit card can be accepted in exceptional cases. A debit authorization with specification of credit card information is necessary for this purpose.

**9. RETENTION OF TITLE, TRANSFER OF OWNERSHIP, BENEFITS AND RISKS**

- 9.1. Products manufactured or ordered for Buyer shall remain the property of Seller until payment in full is remitted by Buyer.
- 9.2. Benefits and risks related to the products shall be transferred to Buyer pursuant to delivery Ex Works (Incoterms 2020).
- 9.3. Buyer must support any actions taken by Seller to protect its property. In particular, Seller shall be authorized to record entries or priority notices related to the retention of title in public registers, books, or the like pursuant to the relevant national laws, and to perform all formalities in this regard. Buyer shall take all necessary measures to ensure that the retention of title is fully accomplished and can be neither canceled nor impaired.
- 9.4. Buyer shall maintain delivered products at its own expense during the term of retention of title and shall immediately insure the delivered products against all risks.

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**10. INSPECTION AND ACCEPTANCE**

- 10.1. Buyer must inspect as quickly as possible every performance, particularly every work result received, every delivered work, every received item, and every obtained result, interim result, and test result, and must immediately issue a written and substantiated complaint regarding any breach of the duty of care and any defects. Should Buyer fail to report defects in a timely manner, the performance by Seller shall be deemed to be accepted.
- 10.2. In the case of project work, payment of the final invoice or start of live operation (whichever comes first) shall be implicitly deemed to constitute acceptance. In any event, acceptance shall be deemed to have occurred six (6) months after delivery of the work.
- 10.3. Should hidden defects subsequently become evident, Buyer must issue a written and substantiated complaint to Seller immediately after discovery of the defect. Should Buyer fail to do so, the performance by Seller shall be deemed to be approved with respect to these defects as well.

**11. WARRANTY, LIABILITY, AND INDEMNIFICATION**

- 11.1. All warranty claims and claims for damages by Buyer against Seller shall conform exclusively to the following provisions. No further legal remedies or rights exist vis-à-vis Seller.
- 11.2. In the event of reported breaches of the duty of care and detected defects, Seller shall remedy the reported defect within an appropriate period of time, which shall be at least 8 weeks. If Seller issues a warranty for a specific period of time, Seller shall remedy defects in performance by Seller at no charge during this period of time, so long as Seller is responsible for these defects. Seller may, at its own discretion and with discharging effect, supply replacement product instead of performing a repair. In order to prevent supply bottlenecks, Buyer shall be required to maintain appropriate stocks.

- 11.3. If Seller fails to remedy within an appropriate period of time breaches of the duty of care and/or defects that were reported in a timely manner by Buyer, Buyer shall have the right, under exclusion of all further claims, to deduct from the owed price an amount corresponding to the reduced value. Demands for refund of previously remitted payments shall be precluded.
- 11.4. Buyer shall be responsible for payment of the full agreed price, even if it asserts a warranty claim. Deductions are not permitted except in cases of price reduction.
- 11.5. Both parties shall have the right to demand a review at their own expense by a neutral expert of the performance by Seller or alleged defects.
- 11.6. Should Buyer demand developments that exceed the application of generally accepted technical standards, Buyer shall refrain from asserting claims against Seller, and shall indemnify Seller against third-party claims for losses resulting from the use of technologies that were not yet generally accepted at the time of fulfillment of the Contract.
- 11.7. Notwithstanding the foregoing provisions, no warranty claims and claims for damages shall apply with regard to prototypes, pilot production items, initial batch items, etc. In addition, Buyer must sufficiently test such prototypes, pilot production items, initial batch items, etc. In the event of a breach of this duty, Seller shall be released from any and all liability. In particular, Buyer shall bear sole responsibility for the risks associated with premature serial production. In the event of a dispute, Buyer must provide evidence that it has performed the tests pursuant to this clause.
- 11.8. Seller shall not be liable to Buyer for the consequences of a violation of Seller's operating procedures or requirements (such as usage instructions, technical data sheets, definition of operational or production environment requirements, recommended sterilization procedures, etc.).

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- 11.9. Liability for defects shall not apply in the event of improper handling or storage of the products. In particular, Buyer shall be responsible for material compatibility between the products and the biomaterials placed into them, as well as biocompatibility. Buyer must establish the foregoing by means of suitable tests.
- 11.10. The suitability of the mechanical and hydraulic functions of the goods for a specific intended use must be determined in writing by Buyer and shall be Buyer's responsibility.
- 11.11. Buyer shall be responsible for sterilization of the products. Seller shall not be liable for the sterility of the products.
- 11.12. Seller also issues no guarantee and assumes no warranty for any properties of the products, particularly for a specific intended use. Buyer shall be responsible for determining the intended use.
- 11.13. Depending on the use of certain raw materials or manufacturing processes, it cannot be excluded that the products feature minor optical or other variations. Seller shall not be liable for such variations, provided they do not affect the use and safety of the products.
- 11.14. Buyer also acknowledges its sole responsibility for fulfillment of the regulatory requirements for the products. Seller shall deliver the products to Buyer as an OEM manufacturer, without CE marking or other certification. Buyer shall act as the party placing the products on the market and shall assume sole responsibility for compliance with all relevant regulations.
- 11.15. Changes on products are reserved. Buyer is informed prior to the execution of the change if there is a valid agreement between Seller and the Buyer. A possible agreement can be the so called "Buyer Release". This product-specific agreement can be requested from Seller.
- 11.16. Buyer declares that it is liable for all instructions that it issues in connection with the fulfillment of the Contract and shall indemnify Seller to the extent as Seller is not responsible for its own gross negligence.
- 11.17. Buyer must purchase appropriate liability insurance and disclose evidence of such insurance to Seller upon demand.
- 11.18. Defects may be remedied by Seller only. Should Buyer attempt to remedy any defects itself, or should it involve third parties for this purpose, Seller's responsibility shall be precluded. Should changes or repairs be made to contractual products without the consent of Seller, all liability shall be precluded unless Seller is at least responsible for gross negligence with respect to the occurrence of the defect and/or loss.
- 11.19. The warranty shall expire if Buyer fails to undertake all appropriate actions to reduce loss upon the occurrence of a defect and fails to give Seller an unrestricted opportunity to remedy the defect.
- 11.20. All warranty and liability claims of Buyer shall expire at the end of one year. The warranty period and the statute of limitation shall each begin upon performance or partial performance by Seller. A performance or partial performance shall be considered as completed with each shipment and/or transfer or delivery to Buyer of a work result, a work, an item, or a result, interim result, or test result.
- 11.21. Seller shall be liable for performance by third parties only to the extent of the warranty and liability of the third-party service provider, but its liability shall not exceed the scope defined in this Clause 11. Seller's liability for its agents and servants shall be completely precluded.
- 12. LIMITATION OF LIABILITY**
- 12.1. Notwithstanding anything to the contrary in the Contract, or any other document making part thereof and to the maximum extent permitted by law, in no event shall Seller be liable to the Buyer for any indirect, punitive, special, incidental or consequential damages in connection with the Contract, including but not limited to, loss of profits or interruption of production, loss of opportunity or business, any and all costs relating to delay, or claims by Buyer's customer for such damages, whether such liability is based on contract, tort (including negligence), statute or any other basis of legal liability with respect to any contract, indemnity, tort (including negligence),

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12.2. The remedies of Buyer set forth herein are exclusive and Seller's liability with respect to any contract, indemnity, tort (including negligence), under any warranty, strict liability or otherwise shall not exceed the net value of the products delivered, which were the cause of the damage or to CHF 25'000.00 (Twenty Five Thousand Swiss Francs) whichever is higher. This limitation of liability shall not apply in the event and to the extent to which the Seller is responsible for gross negligence or willful misconduct.

**13. FORCE MAJEURE**

13.1. Seller shall not be liable for delays or omissions if and insofar as these are caused by an obstacle that is outside the control of Seller or its suppliers (Force Majeure). Such obstacles shall include acts of God, complete or partial destruction of production-design facilities, etc., defects in production materials, war or civil war, revolutions, strikes, political instability, fire, epidemics, quarantine, extraordinary weather conditions, embargoes or trade restrictions, or any other obstacles that are deemed to be Force Majeure events according to international practice.

13.2. Upon occurrence of a Force Majeure event, Seller shall notify Buyer as quickly as possible, and shall inform Buyer of the foreseeable effects on the subject matter of the Contract (including fulfillment date and price).

**14. INTELLECTUAL PROPERTY**

All intellectual property and know-how related to the products, as well as associated manufacturing processes and methods, shall remain the sole property of Seller.

**15. WARRANTED CHARACTERISTICS**

The only warranted characteristics shall be those that are explicitly designated as such in the offer or order confirmation from Seller. The assurance of characteristics shall be valid, at the latest, until expiration of a warranty period, where applicable. The characteristic shall be deemed to be present if Buyer did not report its absence upon acceptance of the performance by Seller.

**16. RIGHT OF RECOURSE OF SELLER**

If actions or omissions by Buyer or its agents and servants cause injury to persons or damage to property of third parties, and if complaints are filed against Seller for this reason, Seller shall have the right of recourse against Buyer.

**17. AUDIT**

17.1. Audits can be carried out with Seller and their suppliers under appointment.

17.2. One audit-day will be charged of CHF 6'000, provided that the annual turnover of CHF 30'000 has not been reached.

17.3. The audit charges can be reclaimed by the customer if he reaches the annual turnover of CHF 30'000 within the period of 12 months after the audit appointment.

17.4. Audits have to be registered in advance for 8 weeks.

17.5. The audit program is released by Seller and a nondisclosure agreement has to be signed.

**18. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION**

The place of performance for deliveries of products and exclusive place of jurisdiction for all proceedings between the parties shall be Haag (Switzerland).

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**19. FINAL PROVISIONS**

- 19.1. Amendments, deviations, and supplements to the Seller General Terms and Conditions or other contractual arrangements between the parties must be in writing in order to be valid.
- 19.2. The non-assertion of a right or claim under the Seller General Terms and Conditions or the other contractual agreements between the parties shall not be deemed to constitute a general waiver of this right or this claim.
- 19.3. These General Terms and Conditions or a Contract do not establish a partnership, an unregistered association, a joint venture or any other equivalent relationship between the parties.
- 19.4. Should a provision of the Seller General Terms and Conditions or other contractual agreements between the parties be or become invalid, this shall not affect the validity of the remaining contractual provisions. The parties agree to replace the invalid provision with a legally valid arrangement that achieves the economic purpose of the invalid provision to the extent possible. The same procedure shall be followed in the event that a gap discovered is in the provisions.
- 19.5. Subject anything to the contrary in the Seller General Terms and Conditions, the rights and duties under the Seller General Terms and Conditions or a Contract may be assigned to third parties only with the prior written consent of the other party.
- 19.6. All legal relations between Buyer and Seller shall be governed by Swiss substantive law. The UN Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980, shall not apply.