



# General Terms of Sale of Med & IT Trading GmbH (hereinafter „MIT“)

## I. Scope of application

MIT shall only carry out sales, deliveries and performances (hereinafter collectively „deliveries“) according to the following terms. These terms shall be applicable towards businessmen, legal entities under public law and special assets under public law (hereinafter „Customer“). Customer shall agree to these terms without any objection and shall agree to their exclusive application for each delivery as well as for all follow-up transactions. MIT will not accept contradictory or differing terms of Customer unless MIT has agreed to those in writing. The following terms shall also apply, if MIT is aware of contradictory or differing terms of Customer but carries out deliveries without reservation.

## II. Offers and Conclusion of Contract

1. Offers of MIT shall always be not binding and subject to confirmation, i.e. in any case they should be considered as invitation to offer; the right for interim sale being reserved. Orders shall only be deemed accepted by MIT, when they have been confirmed in writing or - in case equipment has been delivered - have been accepted under an implied contract. In this case the delivery note or invoice shall be considered as confirmation of order.
2. MIT shall undertake to provide customer with the equipment listed in the invoice and to transfer ownership of the equipment to Customer. The equipment sold under the present terms is used equipment.
3. Customer shall be obliged to pay the agreed purchase price to MIT and to accept the equipment.

## III. Prices and Payment Conditions

1. The shown prices are – as far as nothing else is indicated – Euro-prices plus legally valid VAT, plus delivery costs “ex ramp location” in case customer picks up the equipment himself. The purchase price shall fall due immediately without any deduction after receipt of invoice and prior to picking up the equipment. Differing payment conditions need to be confirmed in writing separately.
2. Evident miscalculations or typing errors shall entitle MIT to correct invoices; this shall also apply for already issued and settled invoices, which showed the miscalculated amount and were already paid by Customer. Verbal agreements need to be confirmed by MIT in writing.

## IV. Prices, Payment, Default in Payment

1. Prices are indicated exclusive legal VAT, external packing and delivery costs.
2. Invoices issued by MIT have to be paid immediately without any deduction. The receipt of payment shall be relevant for customer’s compliance with terms of payment.
3. In case of default in payment interest to the amount of 8 per cent yearly above the respective base interest rate (§ 247 BGB) shall fall due. The right to prove further damage caused by the default shall be reserved.
4. MIT shall be authorized to carry out deliveries only subject to advance payment or subject to other securities, if customer is in arrears with agreed payment terms even after a reasonable grace period has been given, or circumstances have become evident that give reason to doubt customer’s payment ability in line with bank standards.
5. Only undisputed or legally ascertained claims shall entitle Customer to offset. Customer may only assert a right of retention as far as this right shall be founded on claims arising from the same contract.
6. Every delivery shall be carried out subject to a reservation of title; title to the equipment shall be transferred to Customer earliest with full payment of the invoice amount. Up to this point of time the equipment may neither be pledged, nor assigned to third parties for security reasons nor made subject to any other right of third parties. Any rights and duties arising from the contract may only be transferred by Customer with MIT’s written consent. Until settlement of outstanding debts title to the equipment shall be reserved in order to secure MIT’s balance claim.

## V. Delivery, Shipping, Packing, Transfer of Risk

All cases of force majeure, strike, lock-out, not sufficient supply of material, raw material or energy, lack of transportation possibilities and other similar, unforeseeable events not lying in MIT’s operational sphere shall release MIT from its obligation to comply with this contract as long as these obstacles will not have been overcome. This shall also apply for similar circumstances occurring at the location of suppliers or sub-suppliers of MIT. Customer shall be informed by MIT about start and end of such events as soon as possible.

MIT shall determine the packing material eligible for transportation of the equipment. Customer shall not be entitled to assign part of or all his delivery rights to third parties.

Deliveries abroad are made according to the Incoterms CFR, CIF, or EXW. The buyer is solely responsible for import processing and all associated costs. MIT cannot be held liable for failed imports; any resulting costs incurred by the seller (re-import, etc.) must be reimbursed by the buyer.

Delivery to EU countries and other foreign countries takes place under consideration of taxfree deliveries according to § 6a UStG and only with previous written agreement under the regulations of § 25a UStG.

## VI. Reservation of Title

1. MIT shall reserve title to all equipment already packed for transport. MIT shall be the unrestricted owner of delivered equipment until all debts – also future debts – will be settled together with interest and other costs.
2. Customer shall be entitled to resell, reprocess or change the reserved equipment in the course of his business until further notice of MIT; this revocation shall be admissible at any time and without giving explicit reasons. For this case Customer shall already herewith assign all purchase price debts to MIT. If the reserved equipment is resold together with other parts not delivered by MIT, the assignment shall only apply for the amount indicated in the respective invoice for equipment reserved by MIT. Customer shall be entitled to collect the assigned outstanding debts up to the point of time when MIT revokes, which shall be admissible at any time and without giving explicit reasons. Upon MIT’s request Customer shall be obliged to indicate this pre-assignment to his customers and to provide MIT with all information and documents necessary to assert MIT’s claims.
3. If the value of securities on behalf of MIT exceeds the amount of outstanding debts of MIT by more than 20%, MIT will release corresponding securities upon customer’s request. Customer shall not be entitled to any other dispositions of the reserved equipment (pledging, assignment for security reasons) or other assignments of the outstanding debts as indicated in Cl. VI. 2.
4. Customer shall be obliged to insure the reserved equipment at his own expense against all standard risks, in particular against fire, break-in and water damage, and to properly maintain the equipment and duly store it.

5. If Customer defaults on his payments, MIT shall be entitled to take back equipment after fruitless expiry of a grace period even if MIT has not withdrawn from the contract.

## VII. Guarantee, Liability

1. MIT shall not sell to consumers as they are defined by §§ 13, 474 BGB. The sale of used equipment shall be carried out under the exclusion of liability subject to an individual written guarantee agreement. MIT gives to commercially acting endusers (such as doctors, etc.) a function guarantee of one to six (1-6) month as of pick-up of the equipment. If something different has than before mentioned guarantee period has been stated in the offer the buyer has accepted those terms with his order. Differing guarantee periods will also be stated in invoice. MIT does not give any guarantee on consumption material like toner, ink, battery and the like and to defect or damaged devices. Sales into or for foreign countries are without any warranty; except otherwise agreed in writing.
2. The exclusion of liability shall not apply for the lack of a guaranteed quality, the fraudulent nondisclosure of a defect or if and as far as a guarantee has been given.
3. As far as the exclusion of liability shall not be applicable, the guarantee shall cease one month as of day of delivery, unless a defect has been fraudulently concealed. If the equipment has defects, MIT shall be entitled to choose either to repair the equipment or to replace it. In this case Customer has to request MIT’s statement whether the equipment shall be repaired or replaced. MIT shall notify this to customer as soon as possible. Customer shall only be entitled to either withdraw from the contract or to request an abatement of the purchase price, if after MIT’s notification Customer has given a reasonable time limit for repairing or replacing the equipment and this time limit has expired fruitlessly or MIT rejects any repair or replacement. No damage claims exist, if a defect is based on the fact, that customer or any other third party has changed, improperly used or improperly repaired the equipment without MIT’s consent. The same shall apply in case the equipment has not been installed, operated or maintained according to the manufacturer’s instructions.
4. If necessary, customer has to make separate backup copies on separate data carriers of the system software, applications and all data run on the equipment before sending equipment in for repair. As well he has to deactivate all passwords on the hardware. MIT does not accept any liability for loss of data.
5. Customer shall be obliged to immediately inspect the equipment for defects caused by transportation and to notify those immediately to the delivery service company (post, parcel service, transport company, etc.) and to MIT; Customer has to note these defects on the delivery note/acknowledgment of receipt. An objection can not be accepted at a later point of time.
6. Customer shall be obliged to inspect the delivered equipment at once for obvious defects, which a normal person can ascertain without any special knowledge; this shall also apply for the completeness of delivery. Obvious defects and shortfall of a delivery are to be reprimanded in writing. If Customer infringes inspection and reprimand obligations the equipment shall be considered accepted regarding the respective defect. The stipulations for inspection and reprimand for businessmen according to § 377, § 378 HGB shall hereby not be affected.
7. Any compensation claims for any kind of damage, caused by improper treatment, change, assembly and/or operation of the delivered equipment or caused by false consultation shall be excluded unless MIT has to take responsibility for them.
8. On return of purchased goods which show no defects or malfunctions within 14 days after receipt, only 85% of item purchase price will be refunded. No refund on packing, shipping and transport insurance costs or later return.

## VIII. Liability

1. MIT shall be entirely liable for damages caused by deliberate action or gross negligence. MIT shall only be liable for destruction of data in case of gross negligence and only in case that Customer has ensured that those data can be restored with reasonable effort by the help of data material kept on hand in machine-readable form.
2. In case of simple negligence MIT shall only be liable for violation of important contract obligations (cardinal duties). Further MIT shall be liable for simple negligence, if the damage claim is founded on a risk that solely MIT can control. In both cases damage claims shall be limited with respect to legal grounds and size of amount only to those claims, which MIT could have reasonably foreseen under the given circumstances at the time of conclusion of the contract. Compensation of pure financial damage, i.e. loss of production or lost earnings shall be limited by the general principles of good faith, for example in cases of a disproportion between size of compensation and size of damage.
3. In case of simple negligence any personal liability of MIT’s legal representatives, its assistants or employees shall be excluded.
4. Irrespective of MIT’s fault MIT shall be entirely liable in case of a fraudulent nondisclosure of a defect or in case MIT has given a guarantee.
5. For competing liabilities in tort the regulations of this paragraph shall apply correspondingly. Any further liability on MIT’s side shall be excluded.
6. Liability restrictions according to § VIII shall not apply in case of harm of life, body or health, as well as for any damage claims asserted under the product liability law.
7. MIT formally advises the customer to follow before usage of any medical device the German Medicine Product Law (MPG) as well as the Medical Device Operators Ordinance (MPV) and if required to undertake a technical security control (STK) at his own costs. For the abidance by the law the customer on his own is responsible. Any liability for damages to humans or animals due to appearing failures, defect after take over or start of operation of the purchased device is excluded by MIT.

## IX. Choice of Law, Stipulation as to Venue

1. German law shall be exclusively applicable for the legal relationship of domestic contract parties; the application of CISG shall be excluded. The German General Terms do overrule the English version.  
For all disputes arising from this contract venue shall be Landshut, Germany as far as the Customer represents a businessman, a legal entity under public law or special assets under public law or has no general venue in Germany; this shall also apply for legal proceedings concerning bills, legal documents and checks. However, MIT shall be entitled to sue Customer at his general venue as well.