

# **GENERAL TERMS AND CONDITIONS**

## **of**

### **Myriad International GmbH**

## **I. General provisions**

### **1. Scope**

Sales, deliveries, product hire and other services of Myriad International GmbH (hereinafter: "MYRIAD") are carried out exclusively in accordance with the following terms and conditions (hereinafter: "Terms and Conditions"), which the customer acknowledges with the submission of an order or the acceptance of the contract item. They also apply to all future business with the customer. The validity of deviating and supplementary terms and conditions of the customer is excluded even if MYRIAD does not expressly object to them.

### **2. Conclusion and contract item**

- 2.1. Offers made by MYRIAD are subject to change. A contract comes into effect only with the confirmation in writing of the order by MYRIAD and is solely based on the content of the order confirmation and these Terms and Conditions. Oral agreements or commitments are not effective without written confirmation by MYRIAD.
- 2.2. MYRIAD reserves all rights to the offer documentation (in particular images, drawings, information on weights and dimensions) and any samples. They may be not disclosed to third parties and are to be returned immediately to MYRIAD on request. Such documents may be disclosed to third parties only with the prior consent of MYRIAD.
- 2.3. The information provided in the catalogues or the offer from MYRIAD, such as descriptions, drawings or illustrations, serves only to describe the material and, unless expressly designated in writing as authoritative, is only approximately authoritative.

### **3. Deadlines and schedule**

- 3.1. Delivery and performance schedules and deadlines only become binding if they have been confirmed in writing by MYRIAD and the customer has in a timely manner communicated or, as the case may be, made available to MYRIAD all the information, documents and permissions required for the execution of the

delivery or performance and paid any agreed advance payments in accordance with the agreement. Agreed deadlines begin on the date of the order confirmation. In the case of additional or extension orders submitted at a later date, the deadlines will be extended accordingly.

- 3.2. Unforeseeable and unavoidable events beyond the control of MYRIAD and for which MYRIAD is not responsible, such as force majeure, war, natural disasters and strikes, will for their duration release MYRIAD from its obligation to timely delivery or performance. Agreed deadlines will be extended by the duration of the event; the customer will be informed in an appropriate manner of the occurrence of the event. If the end of the event cannot be foreseen or the event should last longer than two months, each party will be entitled to withdraw from the contract.
- 3.3. If MYRIAD should fail to observe a delivery or performance deadline, the customer will be entitled to withdraw from the contract only once a reasonable period of grace set by it has elapsed without result.

### **4. Prices and payment terms**

- 4.1. If the parties have not agreed on a specific price, the price will be determined according to the MYRIAD price list applicable at the time of conclusion of the contract, which, if it is not already known to the customer, MYRIAD shall send it to the customer at the latter's request.
- 4.2. In the context of continuing obligations, such as ongoing supply and service contracts, MYRIAD is entitled to increase its prices appropriately. MYRIAD shall inform the customer of the planned price increase not later than eight weeks prior to said increase. The customer is entitled within a period of four weeks of receipt of the notification of the price increase to terminate the continuing obligations in question.
- 4.3. All MYRIAD prices are quoted ex stock net of VAT at the statutory rate, any customs duties and dispatch and/or transport costs, which are to be invoiced separately.
- 4.4. The parties agree that all payment obligations arising from this contract will be payable in Euro.

- 4.5. Each invoice is due for payment without deductions within 30 days of the invoice date; a payment will be deemed in arrears once this period has expired without result (§ 286 (3)(1) of the German Civil Code (BGB)). Payments made by the customer will be deemed to have been effected only once MYRIAD has the funds at its disposal.
- 4.6. If the customer should default on payment, (see section I. 4.5) MYRIAD will be entitled to charge default interest in the statutory amount applicable at the time. The additional right to claim for further damage caused by delay is unaffected.
- 4.7. Bills and cheques are accepted on account of performance only by special agreement and free of charge to MYRIAD.
- 4.8. The customer is entitled to set-off only if his counterclaim is undisputed or has been legally established by declaratory judgement.
- 4.9. The customer may assert a right of retention only if his counterclaim is based on the same contract and is undisputed or has been legally established by declaratory judgement.
- 4.10. Should MYRIAD become aware after the conclusion of the contract of a risk of lack of ability to perform on the part of the customer which significantly threatens the entitlement to payment on the part of MYRIAD, MYRIAD will be entitled to refuse to carry out any outstanding deliveries or services without advance payment or a security deposit; if these are not provided even after a reasonable grace period, MYRIAD may fully or partially withdraw from the contract without prejudice to other rights.

## **5. Damages and limitation of liability**

- 5.1. MYRIAD is liable for compensation
- (i) for damage to life, limb and health for which it is culpable;
  - (ii) if MYRIAD has undertaken to warrant a specific condition of the contract item or the object of performance, or MYRIAD's ability to supply it, or to provide any other warranty, and damage has resulted from the non-fulfilment of such a warranty;
  - (iii) for damage caused by premeditated or grossly negligent conduct on the part of MYRIAD or its vicarious agents;

- (iv) in place of the entire performance for defective deliveries or services in the event of significant breaches of duty;
  - (v) in the case of a slightly negligent breach of essential contractual obligations, which is, however, limited to the foreseeable damage typical of this kind of contract;
  - (vi) pursuant to mandatory statutory liability provisions;
  - (vii) in place of performance due to a culpable breach of secondary obligations, if it is unreasonable to expect the customer to accept performance or if a delivery or the performance of a service by MYRIAD is impossible.
- 5.2. If none of the groups of cases from paragraph I. 5.1 applies, MYRIAD is not liable for damages.
- 5.3. Sections I. 5.1 and I. 5.2 apply to all claims for damages, regardless of the legal reason, in particular also for liability for tort and fault in contract negotiations.
- 5.4. The customer is obliged to take appropriate measures to prevent and reduce damage.
- 5.5. MYRIAD assumes no liability for data loss in the case of service or repair work if such loss can be ascribed to the fact that the customer has, in spite of calls to do so by MYRIAD, failed in its previously determined duty of cooperation in respect of the backing-up of data.

## **6. Change reservation, general provisions**

- 6.1. MYRIAD reserves the right to change these Terms and Conditions at its reasonable discretion. MYRIAD shall inform the customer thereof in writing at least eight weeks before the entry into force of the changes. The changes will be deemed to have been approved if the customer does not object to them in writing within four weeks of receipt of the written notification from MYRIAD.
- 6.2. If any one provision of these Terms and Conditions should be ineffective in whole or in part, the validity of the remaining provisions will remain unaffected. The parties undertake in this case to replace the invalid provision by that valid provision which approximates most closely to the intended commercial results of the invalid provision.
- 6.3. If the customer is a merchant, legal entity under public law or a special fund under public law,

the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the registered office of MYRIAD.

- 6.4. The laws of the Federal Republic of Germany apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **II. SPECIAL PROVISIONS FOR THE SALE OF PRODUCTS**

### **1. Change, price increase, shipping, transfer of risk, insurance, delay in acceptance, part-deliveries**

- 1.1. MYRIAD is entitled in this respect to change the composition, construction, design and/or appearance of the contract item ordered if there are reasons for doing so, the functionality of the object of the contract is unimpaired and such changes are acceptable to the customer.
- 1.2. MYRIAD is entitled in this respect to change the composition, construction, design and/or appearance of the contract item ordered if there are reasons for doing so, the functionality of the object of the contract is unimpaired and such changes are acceptable to the customer.
- 1.3. With regard to deliveries of goods, MYRIAD may increase the sale price to a reasonable extent if the agreed delivery date is more than four months after conclusion of the contract and unforeseeable cost increases occur at MYRIAD after the conclusion of the contract with regard to the contract item.
- 1.4. In the absence of any provision on the part of the customer, shipment of the goods will take place using an appropriate means of delivery in the usual packaging.
- 1.5. The risk passes to the customer at the point of handover of the contract item to the transport company or the customer itself. Should the handover or shipment be delayed for reasons for which the customer is responsible, risk will pass to the customer on the day on which the latter is notified of the readiness for despatch of the contract item.
- 1.6. Insurance cover will be taken out only at the request and expense of the customer.

- 1.7. If the customer should delay in acceptance or be in breach of other duties to cooperate, MYRIAD will be entitled to store the contract item appropriately at the risk and expense of the customer. MYRIAD is entitled without prejudice to its other rights to withdraw from the contract if a reasonable period of grace set for the buyer for acceptance of the delivery should elapse fruitlessly. If the customer delays in acceptance and the expiry date for an ordered product expires during this period, MYRIAD may without prejudice to its other rights require payment of the agreed purchase price minus any expenses saved.

- 1.8. MYRIAD can make partial deliveries for legitimate reasons if this is acceptable to the customer.

### **2. Rights to the contract item ordered**

- 2.1. MYRIAD grants the customer the non-exclusive right of use for its intended purpose of the contract item ordered in all the countries of the European Union (EU) and the European Free Trade Association (EFTA). The customer is not allowed to export or commission third parties to export the contract item ordered to non-Member States of the European Union.

### **3. Warranty, duty to inspect, statute of limitations**

- 3.1. Information given in catalogues, price lists and other information material and information describing the product made available to the customer by MYRIAD in no case constitutes any kind of warranty for a particular quality of the object of the contract; such quality warranties must be expressly agreed in writing.
- 3.2. Without prejudice to any possible warranty rights pursuant to the following provisions, the customer is obliged to accept a contract item even if it demonstrates insignificant defects.
- 3.3. The assertion of warranty rights by the customer presupposes that it examines the contract item after handover and informs MYRIAD of any defects in writing without undue delay, in any case no later than two weeks after handover. MYRIAD must be informed of hidden defects in writing immediately after their discovery.

- 3.4. In any case of complaint, MYRIAD is entitled to view and examine the contract item about which the complaint has been made. The customer shall grant MYRIAD the necessary time and opportunity to do so. MYRIAD may also require the customer to send the rejected contract item back to MYRIAD at the expense of the same. Should a notification of defect on the part of the customer prove unjustified, either by intention or through gross negligence, it shall reimburse MYRIAD for all expenses incurred by the latter in this connection.
- 3.5. MYRIAD is entitled at its own discretion to remedy warranty defects by carrying out remedial work free of charge to the customer or by replacing the defective part or the entire contract item.
- 3.6. MYRIAD shall bear the material, shipping and labour costs for the remedial work or replacement unless section II. 2.4(4) is invoked.
- 3.7. The customer shall grant MYRIAD the time and opportunity required for the remedial work or replacement delivery, where this period may not exceed 14 days. In urgent cases, e.g. if operational safety is at stake or in order to avoid disproportionate damage or if MYRIAD is too slow to rectify the defect, the customer has the right, having notified MYRIAD without undue delay, to remedy the defect itself or commission third parties to do so and to demand compensation from MYRIAD for any necessary expenses in this context.
- 3.8. Parts replaced by MYRIAD become the property of MYRIAD.
- 3.9. MYRIAD assumes no liability for damage brought about by unsuitable or improper use, faulty storage, incorrect transportation, faulty assembly, incorrect operation, insufficient maintenance, incorrect handling or incorrect installation by the customer, by the use of unsuitable accessories or by normal wear and tear, insofar as MYRIAD is not culpably responsible for the damage.
- 3.10. Should the rectification of a warranty defect by means of remedial work or replacement fail or be unacceptable to the customer, or should MYRIAD refuse to carry it out in pursuance of § 439 (3) BGB, the customer can at its own discretion rescind the contract concerning the defective item or demand an appropriate reduction in price or simple compensation for

damage or compensation for damage in place of performance or compensation for expenses incurred in vain.

- 3.11. The period of limitation for warranty claims is twelve months after the point of transfer of risk. If a contract item is sold as intended by the customer or by direct or indirect contractual partners of the customer to a consumer, the provisions of section 479 BGB concerning a longer period of limitation remain unaffected for possible rights of recourse.
- 3.12. Any further claims of the customer are excluded unless section I. 5 or sections 478, 479 BGB provide for something different.

#### **4. Retention of title**

- 4.1. The contract items delivered remain the property of MYRIAD until such time as all accounts receivable by MYRIAD arising from the business relationship with the customer have been paid in full.
- 4.2. For open accounts, the retention of title serves as collateral for the outstanding balance.
- 4.3. The customer is permitted to dispose of the products subject to retention of title (hereinafter: "Reserved Products") only in the context of proper business transactions. The customer is not entitled to pledge the Reserved Products, to transfer them by way of security or to dispose of them in any way that would endanger the property of MYRIAD: the customer hereby assigns the accounts receivable arising from the resale to MYRIAD; MYRIAD hereby accepts this assignment. Should the customer sell the Reserved Products after their combination with other goods or together with other goods, it is agreed that the assignment of the claim will apply only in the amount of that part which corresponds to the price agreed between the MYRIAD and the customer plus a safety margin of 10% of this price. The customer is revocably authorised to collect the accounts receivable assigned to MYRIAD in its own name in a fiduciary capacity. MYRIAD may revoke this authorisation and the authorisation to resell if the customer should default on essential obligations vis-à-vis MYRIAD, such as payment.
- 4.4. The customer shall at any time when called to do so give all requested information concerning the Reserved Products or claims assigned to MYRIAD pursuant to this contract. The customer

shall immediately report any seizure of or claims on Reserved Products by third parties to MYRIAD and provide the required documents. The customer shall at the same time inform the third party of the retention of title by MYRIAD. The customer shall bear the costs of defence against such seizures and claims.

- 4.5. The customer undertakes to treat the Reserved Products carefully for the duration of the retention of title.
- 4.6. Should the realisable value of the collateral exceed the total value of the claims of MYRIAD to be secured by more than 10%, the customer is entitled to require release.
- 4.7. Should the customer default on essential obligations to MYRIAD, such as payment, MYRIAD can without prejudice to any other rights take back and otherwise exploit the Reserved Products for the purpose of satisfaction of any due claims against the customer. In this case, the customer shall immediately grant MYRIAD or its authorised agents access to the Reserved Products and surrender them.
- 4.8. In the case of deliveries to other jurisdictions in which the foregoing regulations governing reservation of title do not have the same effect of securing rights as they do in Germany, the customer shall do everything it reasonably can to create the corresponding rights of security for MYRIAD without undue delay. The customer shall assist in all measures such as registration, publication and so on that are necessary and beneficial for the validity and enforceability of such security rights.
- 4.9. At the request of MYRIAD, the customer undertakes to take out appropriate insurance for the Reserved Products, to furnish MYRIAD with the appropriate proof of insurance cover and to assign the claims arising from the insurance contract to MYRIAD.

## **5. Product liability, return, prohibition of assignment**

- 5.1. For medical reasons the customer may change neither the delivered contract goods nor their instructions, equipment or packaging; it shall in particular neither change nor remove existing warnings about dangers associated with improper use of the contractual items and instructions concerning applications, contraindications, interactions and metering instructions. The contract items may be offered and/or sold only in their unmodified original packaging and not in partial quantities. Should the customer violate the above provisions, it will, if responsible for the error triggering the liability, exempt MYRIAD in the internal relationship from any product liability claims of third parties.
- 5.2. Should a product defect among the contract items give MYRIAD cause to recall products, the customer, if it is a reseller, shall support MYRIAD and take all reasonable measures ordered by MYRIAD. MYRIAD shall in this case refund the customer for all expenses incurred in this connection.
- 5.3. Non-defective contract items will be taken back or replaced only after express prior agreement, which MYRIAD is under no obligation to grant. With regard to any defective contract items which are returned unsolicited, MYRIAD reserves the right to store the contract item appropriately at the risk and expense of the customer. Acceptance of returns of contract items which require refrigeration will be considered only if proof of an uninterrupted cooling chain is provided.
- 5.4. If the customer is not a reseller, it is not entitled to assign its delivery claims arising from the contract.