

**General Terms and Conditions of Sale and Delivery of Hamilton Medical AG**

(hereinafter called "Hamilton Medical")

**1. Commencement and scope**

- 1.1 With effect from October 1, 2016, all goods sales and deliveries performed by Hamilton Medical shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (hereinafter called "the GTS"), insofar as these are not amended by means of individual written agreements. Furthermore, these GTS shall replace the previously valid General Terms and Conditions of Sale and Delivery of Hamilton Medical.
- 1.2 General terms and conditions of business of the contracting Party which contradict these GTS shall be applicable only insofar as Hamilton Medical expressly approves these in writing. The following GTS apply to all goods sales and deliveries performed by Hamilton Medical, insofar as the wording of the order confirmation does not contain different provisions, or insofar as different provisions have not been agreed between the parties on an individual contractual basis.
- 1.3 Hamilton Medical reserves the right to amend these GTS at any time.

**2. Price lists and offers**

- 2.1 Price information and other terms and conditions shown in catalogues, brochures and price lists merely represent invitations to submit offers; they are time-limited pursuant to the information printed therein, and may be amended without prior notification once this period has expired.
- 2.2 The validity of the Hamilton Medical offers is limited to 60 (sixty) days from the date of the offer, although at the most to the duration of the respective relevant price lists.
- 2.3 The offers are applicable only to the respective addressees.

**3. Prices and order volumes**

- 3.1 Deliveries and sales prices are shown ex works in Swiss francs, unless otherwise agreed. The prices are applicable plus statutory taxes, fees and duties.
- 3.2 Orders placed by the contracting Party shall be subject to the prices and conditions which are valid on the day on which the order is recorded.
- 3.3 If the net value of the order fails to reach the minimum order value of CHF 200.00, Hamilton Medical shall impose a minimum quantity surcharge of CHF 25.00.
- 3.4 Hamilton Medical shall impose a handling fee for all deliveries amounting to CHF 12.00 (Europe) or CHF 25.00 (rest of the world) per delivery or partial delivery. In individual cases Hamilton Medical may however refrain from imposing this fee.

**4. Payment, offsetting**

- 4.1 Payment must be performed within 30 (thirty) days of the invoice date. Cheques shall be deemed to have been received only once they have been credited.
- 4.2 Hamilton Medical does not accept bills of exchange, WIR credit notices and other non-standard means of payment.
- 4.3 Hamilton Medical may at any time demand advance payment or an irrevocable documentary credit, or may insist upon other payment procedures. The resulting costs shall be borne by the contracting Party.
- 4.4 The contracting Party may by means of a written declaration only

offset a claim brought by Hamilton Medical if his counterclaim is uncontested or if a legally-binding ruling has been made; in other respects the contracting Party shall be expressly prohibited from offsetting.

- 4.5 Hamilton Medical is entitled to refuse to perform the delivery if it becomes apparent following the conclusion of the agreement that its entitlement to payment for the delivery is jeopardised by the inability of the contracting Party to pay. This right to refuse to withhold the performance shall be waived if the payment is performed or if the contracting Party provides adequate collateral. Hamilton Medical is entitled to impose a reasonable deadline upon the contracting Party within which the contracting Party must either perform the payment contemporaneously upon delivery, or must provide collateral for the delivery. Following the fruitless expiry of the deadline, Hamilton Medical shall be entitled to withdraw from the agreement without delay, without this having any compensatory consequences for Hamilton Medical.

**5. Payment default and collection**

- 5.1 The contracting Party shall be deemed to have fallen into arrears at the time of the expiry of the payment period specified in Section 4.1. In this event, 6% default interest shall be owed each day from this time onwards.
- 5.2 In addition, Hamilton Medical must be reimbursed for the costs which it incurs collecting the outstanding sums, including the legal and court expenses of Hamilton Medical.
- 5.3 The default of the contracting Party shall moreover entitle Hamilton Medical to stop all open deliveries of all types as well as all further performances, to withdraw from the agreement, to demand the return of the delivered products or following written notification to collect these products with immediate effect, and to rescind any possible associated legal agreements without further formalities, and to demand compensation for further losses.

**6. Scope of delivery, delivery deadline, partial deliveries and taking back the packaging**

- 6.1 The scope of the delivery does not include further technical specifications, assembly, fitting, intellectual property rights of all kinds, environmental tests or other tests which go beyond the normal Hamilton Medical standard tests, certification and packaging which goes beyond the Hamilton Medical standard packaging. Additional charges shall be imposed in respect of performances rendered by Hamilton Medical in these fields.
- 6.2 Oral delivery deadlines are not binding. They shall only be binding insofar as they have been confirmed by Hamilton Medical in writing.
- 6.3 The contracting Party shall not acquire any rights against Hamilton Medical arising out of delays or non-delivery, irrespective of the causes.
- 6.4 Information provided by Hamilton Medical about the weight and dimensions of the products represent merely approximate values.
- 6.5 Partial deliveries are permitted; these shall be charged once they have been performed.
- 6.6 Hamilton Medical is willing to take back the packaging which it has delivered; the corresponding costs shall be borne by the contracting Party.
- 6.7 Unless otherwise agreed, the contracting Party shall always bear the delivery costs.

**7. Transport**

- 7.1 The contracting Party is responsible for the transport as well as for transport documents, means of transport and transport routes.

- 7.2 The contracting Party shall be responsible for insuring the transport.
- 7.3 The cost of the transport (incl. loading and unloading) shall be borne by the contracting Party.
- 8. Transfer of risk and adherence to control regulations**
- 8.1 The risk of destruction, of loss or damage of the goods shall be transferred to the contracting Party as soon as the goods have been sent out for transport/dispatch (Ex Works, Incoterms 2010). If the goods are returned to Hamilton Medical for any possible reason, then the risk and liability shall be retained by the contracting Party until these have been unloaded at Hamilton Medical in Bonaduz. In the event of the delayed acceptance of the contracting Party, the risk shall be transferred at the latest at the time of the commencement of the delay.
- 8.2 Insofar as the respective applicable law does not stipulate otherwise on a mandatory basis, the contracting Party shall in all cases be exclusively responsible for adhering to all export, import, transit and control regulations and formalities.
- 9. Checks and notice of defects**
- 9.1 The contracting Party must check the products (quality and quantity) at his own expense.
- 9.2 In the event of visible defects, the contracting Party must report these to Hamilton Medical in writing without delay following receipt of the products, although at the latest within 10 (ten) days following receipt of the goods (or in the case of assembly or fitting performed or commissioned by Hamilton Medical, immediately following the completion of these works), describing the defects in detail. Transport damage and delivery shortfalls must also be reported immediately to the haulage contractor and to the forwarding agent in writing.
- 9.3 Concealed defects must be reported in writing immediately following their discovery, although at the latest within 10 (ten) days following the ascertainment of the defects, describing the defects in detail.
- 9.4 If the contracting Party fails to issue the correct notice of defects, then the product shall be deemed to have been approved without reservation.
- 9.5 In the event of defective goods, Hamilton Medical may initially at its own choice perform repairs or subsequent deliveries (subsequent fulfilment). Hamilton Medical shall be entitled to repeat a subsequent fulfilment which has failed to produce the desired effect. Hamilton Medical may refuse to perform the subsequent fulfilment if this entails disproportionate costs.
- 9.6 Claims brought by the contracting Party on account of defects shall be excluded in the case of minor material defects. If the subsequent fulfilment has failed to produce the desired effect, has been refused or is unreasonable, or if the contracting Party fruitlessly granted Hamilton Medical a reasonable grace period for subsequent fulfilment, then the contracting Party shall be entitled to demand a price reduction or to withdraw from the agreement.
- 10. Force majeure, contractual obstacles**
- 10.1 Force majeure of all kinds, unforeseeable operating, transport or consignment disruptions, fire damage, flooding, unforeseeable fuel, energy, raw material or auxiliary material shortages, lawful strikes, lawful lockouts, official decrees or other hindrances for which the Party which owes the performance is not responsible, which delay or prevent the manufacture, the dispatch, the delivery or the acceptance, or which render these unreasonable, shall free the respective Parts from the obligation to perform the delivery or the acceptance for the duration and scope of the disruption. This shall also apply if the circumstances occur in relation to the suppliers.
- 10.2 The Party which owes the performance shall also not be deemed responsible for the aforementioned circumstances if these occur during an already existing default. If the delivery or acceptance is delayed for more than 8 (eight) weeks as a result of the disruption, then both Parties shall be entitled to withdraw, and to this extent no compensation claims shall be established.
- 11. Warranty**
- 11.1 Hamilton Medical guarantees that its products are free of material and manufacturing defects.
- 11.2 Warranty shall be 12 (twelve) months for equipment and 3 (three) months for other products. The time period of warranty starts with the date of delivery of the goods.
- 11.3 Excluded from this warranty are disposable and consumable products, which by their nature are of single-use or limited life and need regular replacement. For these items, only out-of-box failures can be claimed for. An out-of-box failure is defined as a failure of a product or a product function that becomes obvious immediately at the time of taking these items in use.
- 11.4 In the event of replacement or repair, no new warranty shall commence; instead, only the remaining part of the original warranty period shall apply.
- 11.5 The contracting Party shall lose his claims:
- if the products or their parts were not connected, assembled, fitted, deployed, utilised or serviced properly or as intended and in accordance with the details set out in the operating instructions and/or the material safety data sheets or in accordance with their specifications;
  - if the damage was caused by the impact of force (e.g. accident);
  - if the products or their parts (incl. electronics and software) were not set, amended, repaired or services by Hamilton Medical or by specialists authorised by Hamilton Medical;
  - if non-original Hamilton Medical parts were used when replacing parts;
  - if serial numbers have been amended, deleted or removed.
- 11.6 Whosoever asserts a warranty claim must demonstrate that the product defect was caused by material or manufacturing defects.
- 11.7 If the contracting Party asserts a warranty claim, then he must inform Hamilton Medical in writing about the product, its serial number, date of dispatch and the nature of the problem, enclosing a copy of the original invoice. Once this has been done, the instructions issued by Hamilton Medical for the settlement of the matter must be adhered to. In addition, the following provisions shall apply:
- If the product is to be sent back to Hamilton Medical, the contracting Party shall be responsible for packaging the product properly; he shall bear the risk during the transport. Hamilton Medical shall organise the transport in both directions, and shall assume the corresponding costs as follows: full vis-à-vis end customers, one half vis-à-vis distribution partners. If the contracting Party wishes for a special means of transport to be used (e.g. express consignment), then he shall be required to cover the resulting additional costs.
  - Hamilton Medical shall not accept any return consignments which do not contain a copy of the original invoice and prior product Return Goods Authorisation (RGA). The product

return authorisation number must be clearly specified on the packaging and on the forwarding documents. All costs resulting from unilateral steps undertaken by the contracting Party shall be borne by the contracting Party.

- c) If the products or parts are radioactively, microbiologically or otherwise contaminated, then this must be correspondingly declared and these products or parts must be decontaminated before these are returned. If this has not been properly performed, then Hamilton Medical may – at the expense of the contracting Party – send the products or parts back, or may decontaminate these itself; in this event the contracting Party shall furthermore be obliged to pay all consequential damages.

## 12. Liability

- 12.1 Liability on the part of Hamilton Medical – irrespective of the legal grounds upon which this is asserted – shall be established only if the loss was caused by the breach of an essential contractual obligation, or is attributable to gross negligence or intent on the part of Hamilton Medical. Hamilton Medical shall not be liable in cases of slight negligence.
- 12.2 Insofar as the liability of Hamilton Medical is excluded or restricted, this shall also apply to the personal liability of its employees, representatives, vicarious agents and other possible substitutes.
- 12.3 Hamilton Medical shall not be liable for the consequences of the improper amendment or treatment of the goods, and in the case of technical medical equipment in particular not for the consequences of faulty maintenance performed by the contracting Party or any third party, as well as for defects which were based upon normal wear or which were caused by the transport.
- 12.4 Defect claims brought against Hamilton Medical shall in particular be excluded in respect of losses and consequences resulting from the fact that the contracting Party used delivered hardware or software together with incompatible hardware, software or other components, or with hardware, software or other components which had not been tested and correspondingly approved by Hamilton Medical. The same shall apply to alterations made to the hardware or software delivered by Hamilton Medical. Hamilton Medical shall moreover not be liable for any loss of data attributable to the improper utilisation of the hardware and software and the lack of reasonable data backup precautions.
- 12.5 Should a party issue an order while deputising for a third party, then he shall be jointly and severally liable along with the third party for all claims issued by Hamilton Medical arising out of this order.
- 12.6 Any material warranty or legal warranty or warranty in respect of losses of all kinds (i.e. direct and indirect losses) which go beyond the warranty and liability provisions shall be excluded – insofar as this is permitted by law. Hamilton Medical shall not assume any liability that its products are suitable for the purpose intended by the contracting Party.
- 12.7 The contracting Party is obliged to ensure that the products can be traced to the end customer. The customer furthermore undertakes to adhere to the procedures prescribed by public authorities for the commissioning, the operation and the maintenance of the product (operating instruction, EC type-examination certificate), as well as the reporting and recall procedures. Hamilton Medical rejects any liability for losses or operating interruptions which result from failure to adhere to these regulations. The customer shall be responsible for ensuring that

the operating instructions in paper form are enclosed with the product, drawn up in at least in one of the in official languages of the country in which the product is to be installed.

- 12.8 The contracting Party shall be responsible for ensuring the fulfilment of legal requirements before the goods sold by Hamilton Medical abroad are commissioned.
- 12.9 The contracting Party shall take every reasonable action to avoid possible damages or to reduce the degree of existing damage.
- ## 13. Withdrawal and compensation in place of the performance
- 13.1 Should Hamilton Medical fail to render a due performance, or should Hamilton Medical fail to render this in accordance with the contractual provisions, then the contracting Party shall only be entitled to withdraw from the agreement or to demand compensation in place of the performance
- a) if this constitutes a not-insignificant breach of contract on the part of Hamilton Medical;
- b) if he demands in writing that Hamilton Medical renders the performance within a reasonable period of at least 14 days, and
- c) if Hamilton Medical has not already rendered the performance within this deadline.
- 13.2 If Hamilton Medical has still not rendered the performance within the deadline imposed by the contracting Party, or has not rendered this performance in accordance with the contractual provisions, then Hamilton Medical may demand that the contracting Party declares, within a reasonable deadline, whether he continues to insist upon the rendering of the performance. Hamilton Medical shall not be obliged to render the performance before the contracting Party has communicated his decision.
- ## 14. Orders and return consignments of wrongly-ordered goods
- 14.1 Hamilton Medical requires the following information for orders:
1. Customer number (in the case of existing customers);
  2. Names of the company and of the responsible person;
  3. Telephone and fax numbers of the ordering party;
  4. Order date and order number;
  5. Product designations and Hamilton product numbers;
  6. Quantities;
  7. Prices;
  8. Invoice address and delivery address;
  9. Additional information, e.g. relating to delivery data or partial deliveries.
- 14.2 Should it become apparent that the contracting Party has ordered the wrong goods, then Hamilton Medical shall take these back if the contracting Party reports his error within 10 calendar days following the date of dispatch. Notwithstanding this, the contracting Party shall be responsible for the return transportation and for the insurance, and shall bear the incurred costs and the risk.
- 14.3 Hamilton Medical shall however not take back any custom-made items or products which have been manufactured especially for the contracting Party, nor shall it take back any radiologically, microbiologically or otherwise contaminated products.
- 14.4 Hamilton Medical shall credit 80% of the charged price to the contracting Party, insofar as the products are received by Hamilton Medical within 30 calendar days from the date of the original dispatch by Hamilton Medical, in flawless condition,

bearing the RGA number, and enclosed with a copy of the original invoice. The cost of ascertaining the condition shall be borne by the contracting Party.

#### 15. Utilisation restrictions

- 15.1 Goods delivered by Hamilton Medical may contain products whose use by the contracting Party is subject to statutory patent or licensing restrictions.

#### 16. Intellectual property

- 16.1 All intellectual property (such as e.g. trademarks or the company designation) shall be retained by Hamilton Medical.
- 16.2 The contracting Party may not use the intellectual property of Hamilton Medical without the prior written approval of Hamilton Medical. The use of Hamilton Medical advertising material remains reserved.
- 16.3 Should third parties claim that their intellectual property is being breached by Hamilton Medical products, then the contracting Party must inform Hamilton Medical thereof in writing without delay. The contracting Party must to the best of his ability, and in accordance with Hamilton Medical's instructions, help Hamilton Medical defend itself against such claims. Hamilton Medical shall not be liable vis-à-vis the contracting Party for any possible damages resulting from such claimed or actual breaches.
- 16.4 If the contracting Party ascertains a possible impairment of Hamilton Medical intellectual property, then he must inform Hamilton Medical thereof in writing without delay, and must to the best of his ability, and in accordance with Hamilton Medical's instructions, help Hamilton Medical safeguard its rights.
- 16.5 The contracting Party guarantees that the manufacture of products in accordance with the specifications, designs, technical data or instructions stipulated by the contracting Party shall not cause Hamilton Medical to breach any intellectual property rights. He shall be comprehensively liable for all consequences arising out of any such claimed or actual breach.

#### 17. Confidentiality

- 17.1 The contracting Party must – including after the end of the business relationships – treat all details of his business relationships with Hamilton Medical as well as its business secrets in a strictly confidential manner. He shall also impose this obligation upon his managing officers, employees as well as lawfully involved third parties. The offers made by Hamilton Medical shall in particular also be deemed to be of a confidential nature. Any breach of this obligation shall entitle Hamilton Medical to demand compensation and to withdraw from the legal agreement with immediate effect.

#### 18. Reservation of title

- 18.1 The title to all sold products shall be retained by Hamilton Medical until Hamilton Medical has received the full purchase price. The title held by Hamilton Medical also extends to the new products created by processing the goods which are subject to reservation of title. The processing shall be performed for Hamilton Medical in the capacity of a manufacturer. In the event of any processing, connection or blending or mixing with items which do not belong to Hamilton Medical, Hamilton Medical shall acquire co-ownership thereof in proportion to the invoice value of its goods which are subject to the reservation of title relative to the invoice values of the other materials.
- 18.2 The contracting Party must treat the goods which are subject to the reservation of title with due care. He is obliged to insure the goods which are subject to the reservation of title adequately at

his own expense against all risks at their new value, and shall in advance assign to Hamilton Medical his claims for compensation arising out of these insurance agreements.

- 18.3 If the products remain in Switzerland, then Hamilton Medical shall be entitled to arrange for a corresponding entry to be made in the responsible register of goods which are subject to reservation of title.
- 18.4 If the products are sent abroad, then the reservation of title shall be subject to the law of the country of destination.
- 18.5 If an invoice is due, but not yet fully paid, then Hamilton Medical shall be entitled to demand the return of all products delivered in accordance with this invoice, or may take these back itself, without this giving rise to any possible claims on the part of the contracting Party.
- 18.6 If Hamilton Medical asserts its reservation of title and demands the return of the products – or takes these back accordingly – then any possible partial payment which has already been performed by the contracting Party in respect of the products shall be forfeited to Hamilton Medical within the meaning of a contractual penalty.

#### 19. Place of performance

- 19.1 The place of performance for all of the obligations of the contracting Parties is Bonaduz, Switzerland.

#### 20. Miscellaneous provisions

- 20.1 All agreements concluded between Hamilton Medical and the contracting Party pertaining to the execution of the goods sales must be made in writing in order to be valid (validity requirement).
- 20.2 The contracting Party may not assign his claims vis-à-vis Hamilton Medical to any third party.
- 20.3 Hamilton Medical may draw upon the services of third parties for the purpose of fulfilling its obligations.
- 20.4 In the event of differences between the various language versions of these GTS, the German version shall prevail.
- 20.5 Communications must be addressed to Hamilton Medical AG, Via Crusch 8, 7402 Bonaduz, Switzerland.
- 20.6 All legal relationships between Hamilton Medical and the contracting Party are governed by Swiss law, whereby the UN Sales Convention shall be excluded.

#### 21. Severability clause

- 21.1 Should any of the individual provisions contained in this Agreement prove to be wholly or partially invalid or unenforceable, or should they subsequently become invalid or unenforceable as a consequence of changes in legislation which take place following the conclusion of the Agreement, then this shall not affect the other contractual provisions and the validity of the Agreement as a whole. Such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which approximate as closely as possible to the meaning and purpose of the invalid provisions. Should the Agreement prove to contain omissions, then the provisions shall be deemed to have been agreed which correspond to the meaning and purpose of the Agreement and which would have been agreed if this matter had been considered.

The ordinary courts at the legal seat of Hamilton Medical shall have exclusive jurisdiction for the judicial assessment of all disputes between the contracting Party and Hamilton Medical. Hamilton Medical shall however also be entitled to bring claims against the contracting Party before any other responsible court of law.