

## **GENERAL CONDITIONS OF PURCHASE OF EXIAS MEDICAL GMBH**

### **1 Applicability**

#### **1.1**

These conditions of purchase shall exclusively apply to all agreements for sale, contracts for work labor and service agreements concluded by EXIAS. In addition, they shall also apply all contracts independent of their name and/or title, and also without specific reference thereto in the order form Provided that specific terms are attributed only to a specific contract type, the conditions of purchase are to be applied correspondingly and analogously for these contracts.

#### **1.2**

If the term supplier is used in these conditions of purchase, EXIAS specifically means a contract partner instructed with a delivery, an act or a service agreement.

By accepting an order / by accepting an instruction the supplier agrees to the current valid version of the conditions of purchase. This also applies to all future business dealings with the supplier.

**1.3** Supplier's differing terms and conditions or deviations shall only apply, if explicitly accepted by EXIAS in writing in the individual case. They shall then only apply for the particular business matter.

Should there be no information on the documents sent to EXIAS, e.g. delivery slips, invoices, etc., does this by no means mean that different conditions of purchase are to be applied. The conditions of purchase of EXIAS will also be valid when EXIAS

- a) accepts a delivery implicitly, knowing about conflicting conditions and/or
- b) settles open payments without contradiction.

### **2 Orders and instructions**

#### **2.1**

Orders and their changes need to be done in writing and will only be valid as such (letter or email).

## **2.2**

Call-offs from EXIAS will become binding if the supplier does not deliver a written confirmation of the order within 14 days and / or begins with the completion of the order. Should this happen, the supplier does not qualify to put in a claim against EXIAS.

## **2.3**

Any change in the source of the goods to be supplied as well as the involvement of any sub-contractors requires the express written consent of EXIAS. Should the supplier violate this condition, EXIAS is authorized to cancel this very order without substitution. Continuing claims remain unaffected.

## **2.4**

If a petition in bankruptcy is handed in by the supplier and as such rejected, EXIAS is authorized to cancel the order immediately.

## **2.5**

Before the supplier starts to manufacture the goods ordered, EXIAS is authorized to hand in and demand changes regarding these ordered goods, particularly regarding specifications, drawings, design, construction, time and place of delivery, package, quality, quantity and means of transportation. It is the supplier's duty to propose changes regarding statutory provisions and / or any other reasons he/she may find necessary and advisable. Should such a change affect costs and / or delivery times, it is the supplier's duty to inform EXIAS immediately. EXIAS will issue an adapted order in consideration of the supplier's interests. The adapted order will be affective should the supplier fail to hand in a written objection within 14 days.

## **2.6**

Until delivery, EXIAS is authorized to withdraw from the contract when substituting the actual expenses incurred. This does not include loss of profit.

### **3 Quality Management and documentation required**

#### **3.1**

Regarding quality and security, the following standards are to be maintained regardless of any eventual deviations (e.g.: technical data, quality attributes) defined in the order itself: compulsory legal regulations, the specialist rules and state of the art technology and science.

### **3.2**

Provided that there are customary and contractual obligatory documentation requirements, it will be the supplier's duty to provide the corresponding records. In addition, the supplier has the duty to keep these records for inspection for 7 years after the completion of the last delivery. Longer periods of record-keeping may be negotiated if necessary. The duties aforementioned are to be transferred to possible sub-suppliers. EXIAS reserves the right to inspect the provision of services within the premises of the supplier at any time or after giving a 10 days advance notice. providing an advance notice of 10 days, reserves the right to inspect the value performance.

### **3.3**

Safety data sheet: The supplier will transfer a mandatory safety data sheet to EXIAS for materials and goods which may be, due to their nature and condition, able to endanger the life and health of human beings, the environment and physical products. Due to regulations, these goods require a special treatment regarding packaging, transport, storage and waste disposal. Therefore, a safety data sheet is essential.

### **3.4**

Models, samples and specifications documents remain property of EXIAS. Third party usage is not allowed.

### **3.5**

Complete maintenance guidelines, instructions manuals and service instructions for machines, instruments, equipment and / or components have to be included either as hardcopy or in electronic form without additional costs.

### **3.6**

According to § 1168a ABGB, it is the supplier's duty to warn the purchaser mentioned on the PO in writing, in time and thoroughly.

## **4 Delivery**

### **4.1**

Place of delivery for goods / performances will be the destination point, as mentioned in the PO.

For lack of a written agreement, the place of delivery (=destination point) will always be the place of business of EXIAS Medical GmbH, Kratkystasse 2, 8020 Graz, AUSTRIA. The delivery of goods to the receipt of the particular destination point has to occur from Monday – Thursday, 08:00 am until 04:00 pm, and Friday from 08:00 am until 12:00 am.

### **4.2**

If the supplier and EXIAS have agreed on special Incoterms (only current valid version), the regulations of these Incoterms are valid. Otherwise, "carriage free incl. unloading" will be valid (within the meaning of Incoterms 2010:DDP) regardless of the means of transportation. Without the explicit and written consent of EXIAS to use different terms, a delivery using different terms is excluded.

### **4.3**

It is the supplier's duty to ensure proper packaging, all packages must be dispensed via Altstoff Recycling Austria Aktiengesellschaft. The supplier is responsible for shipment costs, packaging costs and transport insurance. Every delivery has to include all the required shipping documents (especially specific summaries), otherwise EXIAS has the authority to refuse acceptance of the delivery.

### **4.4**

As mentioned in passage 4.3, proper packaging needs to be ensured by the supplier. This means that the supplier has to pack the goods in a certain way to ensure safe and adequate transport and delivery. Packaging material has to be chosen with consideration of all peril of transportation.

In order to identify the delivered goods and to arrange for a quick and uncomplicated determination of quantity, the supplier has to care for packing slips, labels and hangtags.

### **4.5**

Appointed dates of delivery are fixed and agreed. To comply with this, the arrival at the destination point is crucial.

Early deliveries and performances, as well as partial deliveries and performances require the explicit and written consent of EXIAS. Terms of payment only start with the agreed delivery date.

In the event of a delay on part of the supplier, EXIAS is entitled to demand compensation for each full calendar week of delay at 1% of the net amount of the invoice up to a maximum of 15% of the net amount of the invoice. Any further statutory claims shall remain unaffected.

**4.6**

Should the supplier not deliver in time, EXIAS can withdraw from the contract after 14 business days after the missed deadline and without explicitly stating this very additional respite. In case a fixed delivery date has been negotiated, the contract loses its validity after the supplier's exceedance, unless EXIAS demands fulfilment within 14 business days after the missed deadline.

**4.7**

The acceptance of the goods delivered will happen with reservations in terms of quantity and quality. The ascertained data gained by EXIAS at the goods receipt are relevant for measures, weight and quantity of a delivery.

**4.8**

The following information must be stated on every delivery paper (delivery note, invoice, etc.): order number, delivery note number, position number. In case these specifications are missing, the invoice will not be accepted.

**4.9**

Regardless of the reasons, reconsignments will be paid by the supplier. In addition, the supplier also carries the risk of the reconsignment.

**5 Prices and payments**

**5.1**

Should there not be any other written agreement, prices are fixed and unchangeable (until the complete fulfilment / delivery, with exception of sales tax) according to the order form, scope of supply and services, taxes and fees, and packaging and transport. Should there be taxes or any other fees to be deducted apart from the sales tax, the agreed price has to be amended.

**5.2**

All invoices must be sent electronically to: [invoice@exias-medical.com](mailto:invoice@exias-medical.com). The invoices have to follow Austrian / European law regarding input tax reduction and customs. Performance analyses are to be handed in with time tables and material transluents.

**5.3**

Should there not be a special agreement, payment will be made within 60 days (NET60). Period allowed for payment will begin after receipt of delivery and / invoice, depending on which moment comes later. This is valid for both net payments and cash discount payments.

**5.4**

Payments do not mean acceptance of goods without reservation.

**5.5**

The supplier does not have the right to accumulate claim against claim.

**5.6**

Should there be a flaw but a warrantee in this regard, EXIAS has the right to postpone the payment until the flaw has been eliminated in due form.

**5.7**

Ownership and risk to the goods and services to be provided by the supplier shall only pass to EXIAS upon EXIAS's complete acceptance thereof at the place of delivery. Partial deliveries and partial performances, like for instance the bringing into service or putting into use, shall never cause a transfer of risk, even if these partial deliveries and performances have been agreed upon contractually.

**5.8**

EXIAS explicitly does not agree with the supplier's declaration of retention of ownership. EXIAS's acceptance of goods and services provided by the supplier under reservation of ownership shall not constitute EXIAS's consent to supplier's reservation of ownership.

**5.9**

The preparation of quotes, plans, calculations etc. by the supplier will be carried out free of charge.

### **5.10**

The supplier pledges to provide a delivery / a performance without the property right of third parties. The supplier guarantees that when executing the contract and when using the delivered goods / services, the property rights of third parties are not violated. Regarding the violation of property rights of third parties, it is the supplier's duty to hold EXIAS harmless and unripening.

## **6 Warranties**

### **6.1**

It is the supplier's duty to guarantee, fulfill and deliver the order according to all the respective and applicable laws and the ÖNORMS (Austrian Standards), provided that nothing else subsequently arises. Particularly, the supplier has to answer for the delivery's consistency with the agreed contract as well as the samples that have been taken as a basis. The supplier must check the norms, rules of action and specifications and should there be obstacles regarding these, the supplier must inform EXIAS before value performance and delivery (duty to warn).

### **6.2**

Warranties only begins with complete delivery, not partial delivery. Should improvement work be necessary, the warranty period will be constrained until the fault is either repaired or has failed. EXIAS will always have the choice between improvement, exchange, reduction of price and redhibition. However, redhibition will only be allowable should there be heavy faults.

### **6.3**

Should parts have been exchanged or repaired within the framework of the valid warranty, a new warranty guarantee will be valid for 24 months.

### **6.4**

EXIAS will not be affected by investigations and reporting responsibilities. Especially, the investigation and reporting responsibility after §§ 377 ff UGB (Austrian Law) is excluded.

### **6.5**

For hidden faults which are not to be detected when accepting the order, the warranty will begin only when the fault is detected.

### **6.6**

Should there be cases in which the supplier does not comply with his warranty duties within a specific time frame, although he has been informed, EXIAS will have the right to either have the fault repaired by a third party or to repair it itself at supplier's expense. Should this not be possible, EXIAS has the right to obtain substitution elsewhere.

## **7 Liabilities**

### **7.1**

The supplier is responsible for all damages. This includes subsequent damages and / or loss of profit that EXIAS may suffer should a delivery arrive late and / or faulty and should it be the supplier's or his subworker's fault.

### **7.2**

Should EXIAS as manufacturer of the final product be affected with a damage that can be traced down to a faulty part delivered by the supplier, it is the supplier's duty to have EXIAS indemnified and held harmless. It is also the supplier's duty to perform full recourse, which includes costs of assertion of rights.

## **8 Confidentiality**

### **8.1**

Everything EXIAS allocates to the supplier to fulfill his contractual commitments, e.g.: samples, models, drawings, printing plates and other devices, will remain intellectual property of EXIAS and EXIAS can access this intellectual property always and freely. All the samples, models, etc. will only be used to perform the contract agreed with EXIAS and will never be made available and / or given to third parties without EXIAS' consent. It is not allowed to copy or save the samples, models, etc. The supplier will not keep any record of the samples whatsoever. Once the contract has been fulfilled, the samples, models, etc. must be returned to EXIAS free of charge.

### **8.2**

Should there be damage, loss or sinking of basic material given by EXIAS (half-finished products, affusions, rough-worked materials, etc.), it is the supplier's duty to substitute the replacement costs.

### **8.3**

It is the supplier's duty to ensure that all EXIAS' business and trade secrets made known to him because of a contract, are kept a secret. It is also the supplier's duty to comply with the protection of data privacy. The duty to keep business and trade secrets continues after the contract has been fulfilled and the business relationship has come to an end. Should it be absolutely essential to extend information to third parties in order to fulfill the contract, it is the supplier's duty to also extend the obligation to maintain confidentiality to this third party bindingly. Everything that goes beyond all of this need the explicit and written consent from EXIAS.

### **8.4**

For every violation of the obligation of secrecy a contract penalty, amounting to EUR 50.000,00, is understood. The enforcement of a damage that goes beyond this remains untouched of this clause.

### **8.5**

The supplier will only use EXIAS' brands, plans and other company symbols with explicit and written consent from EXIAS. In addition, the mentioning of business relationships to EXIAS, information regarding these and naming EXIAS as a reference will also and only be allowed with explicit and written consent from EXIAS.

## **9 Act of nature beyond control**

### **9.1**

Should the supplier not be able to fulfil a contract agreed upon because of acts of nature beyond control, EXIAS must be informed immediately.

### **9.2**

Should a delivery be made impossible or last longer than four weeks because of an act of nature beyond control, EXIAS can cancel the contract with immediate effect.

## **10 Final clauses**

### **10.1**

All agreements, later supplements and sub-agreements need to be in writing.

### **10.2**

Austrian law will apply to this agreement (except its reference provisions and the United Nations Convention on Contracts for the International Sale of Goods).

### **10.3**

It is agreed that possible disputes will be handled by the responsible department of the justice of Graz. Should there be the possibility to consider more justices, the respective prosecutor will be able to choose his/her justice of choice.

### **10.4**

Should there be objections between these General Conditions of Purchase and the order form of EXIAS, the order form will be valid. Should single provisions of a contract be invalid, the validity of the other provisions and of the contract in general remain untouched.

Should this be the case, a provision will be agreed upon which conforms most with the legal and economic purpose of the invalid provision.

### **10.5**

The German version of these conditions of purchase is binding and will prevail in case of inconsistencies between the English translation and the German original.