

# **General Conditions of Sale for Medion AG**

- as of March 2002 -

## **1. Scope of Application**

- 1.1 Medion AG's deliveries and services shall be carried out exclusively on the following General Terms and Conditions, unless otherwise agreed upon in writing. The manufacturers' conditions of licence enclosed with the contractual products are additionally referred to.
- 1.2 Medion AG does not recognise conditions of the Customer that conflict with or deviate from Medion AG's General Terms and Conditions, unless Medion AG has given its express written consent to the applicability thereof. Amendments and supplements to the contract must be in writing. The General Terms and Conditions of Medion AG shall apply, even if Medion AG unconditionally carries out deliveries to the Customer knowing of conflicting or deviating conditions of the Customer. Assurances and collateral agreements shall be subject to Medion AG's written confirmation.

## **2. Deliveries and Services**

- 2.1 Medion AG's tenders shall be subject to change without notice, be non-binding and subject to Medion AG itself being duly supplied by its suppliers. Formation of a contract shall only occur once Medion AG has acknowledged the order in writing, but at the latest by the acceptance of the delivery by the Customer.
- 2.2 In so far as the Customer can be reasonably expected to accept this, Medion AG reserves the right to deviate technically and in terms of design from data given in prospectuses, catalogues and written documents and make alterations to models, designs and materials in the course of technical progress and further development, without the possibility of deriving from this any rights against Medion AG. In particular such deviations shall not constitute a fault in the product.
- 2.3 Medion AG expressly reserves the right to make reasonable part deliveries and invoice these.

- 2.4 Agreed delivery deadlines shall be deemed met, if the contractual product was handed over to the carrier by the agreed delivery deadline, unless otherwise expressly agreed upon in writing.
- 2.5 The delivery deadline shall be agreed upon commensurate with Medion AG's anticipated productive capacity, be non-binding and subject to Medion AG itself being duly supplied in due time and subject to unforeseen circumstances and hindrances, irrespective of whether these occur at Medion AG or the manufacturer, particularly force majeure, government actions, a refusal to grant official permits, industrial disputes of any kind, sabotage, shortage of raw materials and/or late deliveries of materials through no fault of Medion AG. Such events shall extend the delivery deadline accordingly, i.e. even if they occur during a period of default that has already commenced. Any extension of the original period granted by the Customer in this case shall also be extended by the duration of the unforeseen event. If Medion AG defaults in delivery by more than four weeks, the Customer may to the exclusion of further claims cancel the contract after having appropriately extended the original period in writing. The Customer shall not be entitled to damages for a breach of duty in the event of default in delivery in the case of ordinary negligence. In all other respects liability shall be limited to the extent of foreseeable damage, but no more than 5 % of the delivery value. Medion AG reserves the right to cancel the contract, if a delay in delivery brought about by one of the aforementioned events lasts longer than six weeks through no fault of Medion AG.

### **3. Inspection and Passage of Risk**

- 3.1 Upon receipt of the goods the Customer shall without delay check that the goods are complete and consistent with the invoice. In the absence of a complaint within six days, the goods shall be deemed to have been properly and completely delivered, unless a defect not apparent at the time of inspection is involved.
- 3.2 Insignificant defects that do not impair the functioning of the delivery item shall not constitute faults in the product and shall not entitle the Customer to refuse to accept.

- 3.3 Risk shall pass to the Customer at the time the contractual product is handed over to the carrier, its representative or other persons named by Medion AG. If forwarding is delayed or becomes impossible through no fault of Medion AG, risk shall pass to the Customer upon notification of readiness for shipment. The same shall also apply in the event of return shipments to the Customer following the remedying of defects and/or after-sales service work against payment.

#### **4. Prices and Payment Terms**

- 4.1 Prices shall be net ex Medion AG's distribution warehouse. Value-added tax and other statutory levies in the country of delivery as well as packaging, transportation expenses, transportation insurance, flat-rate environmental fees and flat-rate handling fees shall be charged to the Customer additionally.
- 4.2 Medion AG reserves the right to appropriately increase the price, if costs rise following the conclusion of the contract, particularly on account of price increases by suppliers or exchange-rate fluctuations.
- 4.3 Payments shall be due and payable immediately after receipt of the invoice without any deduction. The invoice shall be submitted together with the delivery. Cheques and bills of exchange shall be accepted merely on account of performance.

If no payment is received within 14 days after receipt of the invoice, the Customer shall be in default without any further reminder.

In the event that the Customer defaults in payment, Medion AG shall without any further reminder be entitled to charge interest on arrears at the rate of 5 % above the base interest rate of the European Central Bank current at the time. The right to claim damages over and above this shall remain unaffected.

- 4.4 Despite provisions of the Customer to the contrary, Medion AG shall be entitled to first of all offset payments against older debts. If expenses and interest have already been incurred as a result of the contract, Medion AG shall be entitled to first of all offset the payment against expenses, then against interest and finally against the principal amounts payable.

- 4.5 The Customer may not offset or claim a right of retention on account of counter-claims that have not been recognised by Medion AG or not been declared to be legally valid.
- 4.6 In so far as the above payment terms are deviated from without a justifiable reason, Medion AG may at any time demand alternatively that the delivery be made contemporaneously against payment in cash, payment in advance or by way of security. All outstanding accounts receivable, including those for which Medion AG has accepted bills of exchange or for which payment by instalments has been agreed, shall be due and payable immediately.
- 4.7 The payment terms granted shall apply in respect of the credit limit granted by Medion AG for every individual order. In the event that the set credit limit prevailing from time to time is exceeded, Medion AG shall reserve the right to request the residual order value as cash in advance. In the event that the Customer's credit standing is subsequently altered, Medion AG shall be entitled to demand that the payment be made contemporaneously with delivery and/or by way of corresponding security and to cancel the contract in the event of non-performance.
- 4.8 Default in payment by the Customer shall entitle Medion AG to cancel the contract without requiring a prior warning.

## **5. Reservation of Ownership**

- 5.1 The contractual product shall remain the property of Medion AG until all claims, including future claims, arising from this contract and moreover from the entire business relationship with the Customer have been satisfied.
- 5.2 Subject to reservation of ownership the Customer shall be revocably entitled to pass on goods under reservation of ownership in the normal course of its business, in so far as the Customer for its part resells under its own reservation of ownership, but the Customer shall not be entitled to pledge as collateral security or transfer ownership by way of security in any form. In the event that a third party seizes goods under reservation of ownership, Medion AG shall be notified without delay.

- 5.3 In the event that goods under reservation of ownership are combined, processed or mixed with goods not belonging to Medion AG, Medion AG shall acquire co-ownership on a proportionate basis in the ratio of the invoiced value of the goods under reservation of ownership to the other goods. Processing of goods under reservation of ownership shall be undertaken for Medion AG as the manufacturer within the meaning of Section 950 BGB [German Civil Code] without committing Medion AG. Co-ownership rights in the processed goods shall accrue to Medion AG within the meaning of the above provisions.
- 5.4 In the event of default in payment, also arising from other deliveries or services and/or future deliveries or services, or in the event that the Customer's financial position significantly deteriorates, Medion AG may assert its reservation of ownership in goods under reservation of ownership to reclaim goods under reservation of ownership or enter the Customer's business premises and take goods under reservation of ownership.
- 5.5 Default in payment by the Customer shall furthermore entitle Medion AG to cancel the contract. In the event of cancellation Medion AG may reclaim goods under reservation of ownership pursuant to Section 448 (2) BGB [German Civil Code]. The assertion of reservation of ownership or the taking of the delivery item in execution by Medion AG shall not be deemed cancellation of the contract, in so far as the Customer is a merchant.
- 5.6 The Customer shall at the time of ordering already assign to Medion AG in advance its claims arising from the passing-on of goods under reservation of ownership in the respective invoiced value of the goods under reservation of ownership. The Customer shall remain entitled to collect accounts receivable even after they have been assigned.

Notwithstanding this, Medion AG shall be entitled to collect accounts receivable in the normal course of its business, but shall only exercise this right in the event of default in payment or in the event that the Customer files for insolvency. At the request of Medion AG the Customer shall name assigned accounts receivable, give necessary information, hand over documents and notify debtors of the assignment. Medion AG may at any time disclose this assignment to secure its claims to payment.

- 5.7 Medion AG shall be responsible for selecting security to be released. In the case of goods under reservation of ownership Medion AG's net price prevailing at the time of a request to release security shall be applicable to the valuation of the security. In the case of assigned accounts receivable the net invoiced amount less a 30 % security deduction shall be taken as a basis. If are involved accounts receivable where the Customer's customer has already defaulted in payment or facts have become known that give justified reason to assume that non-payment is to be feared, the deduction shall be 50 %. In the case of security existing only in the form of co-ownership due to combining, mixing or processing, the net list price of the goods delivered by Medion AG less a 30 % deduction shall be taken as a basis.
- 5.8 Items delivered for test and demonstration purposes shall remain the property of Medion AG. They may be used by the Customer beyond test and demonstration purposes only on the basis of a separate agreement with Medion AG.

## **6. Warranty**

- 6.1 Medion AG warrants that the contractual products shall not be significantly defective. The contractual products shall be manufactured with due care. However the Parties are aware that it is not possible commensurate with the state of the art to rule out faults in software under all conditions of application.
- 6.2 Medion AG warrants that the contractual products are in general correctly described in the product information and can in principle be used within this framework.

Medion AG does not warrant that programme functions shall meet the Customer's requirements or work together in the selection made by it.

- 6.3 Excluded from the warranty are in particular defects and/or damage due to:

- wear due to operation and normal wear and tear
- improper use
- incorrect operation or negligence on the part of the Customer
- operating with the wrong type of current or voltage and/or connecting to unsuitable sources of electricity
- fire, lightning, explosion or excess voltage due to the network
- moisture of any kind
- wrong or faulty programme, software and/or processing data and any consumption parts, unless the Customer proves that these factors did not cause the defect complained about.

Furthermore the warranty shall be inapplicable, if serial numbers, the name of the model or similar identification marks are removed or rendered unreadable.

- 6.4 The warranty period shall be two years and commence at the time of delivery. This period shall be a statutory period of limitation and also be applicable to compensation for consequential damage caused by a defect, unless tort claims are asserted. Warranty claims shall not be transferable.

The warranty period shall not be extended in the event that the Customer makes a claim under the warranty.

Irrespective thereof, Medion AG shall fully pass on to the Customer any further guarantee and warranty commitments made by the manufacturers, without being liable for these itself.

- 6.5 In the event that the warranty takes effect, Medion AG shall at its option either remedy defects or deliver a replacement. Replaced parts shall become the property of Medion AG. If Medion AG fails to remedy defects within an appropriate additional period set in writing, the Customer shall be entitled to demand that either the contract be cancelled or the purchase price be appropriately reduced.

- 6.6 Medion AG agrees to pay the cost of labour in the event of remedying defects. The Customer shall bear all other costs in connection with remedying defects as well as incidental expenses in connection with delivering a replacement, particularly the cost of transporting the replacement, unless these other costs and expenses are disproportionate to the order value.

- 6.7 If an examination of a notice of defects reveals that the warranty does not apply, Medion AG shall be entitled to demand that all expenses be reimbursed. The cost of examining and repair work shall be charged at Medion AG's after-sales service rates applicable from time to time.
- 6.8 All further claims of the Customer or claims of the Customer other than those provided in these provisions on any legal basis whatsoever are excluded, unless otherwise stipulated in these provisions.

## **7. Industrial Property Rights and Copyrights of Third Parties**

- 7.1 Medion AG does not guarantee that the contractual products shall not infringe industrial property rights or copyrights of third parties. The Customer shall without delay notify Medion AG of all claims made against it in this connection.
- 7.2 In so far as delivered products were manufactured based on drafts or instructions submitted by the Customer, the Customer shall indemnify Medion AG against all claims asserted by third parties on account of an infringement of industrial property rights and copyrights. Any cost of litigation shall be appropriately advanced.

## **8. Liability and Further Warranty**

- 8.1 Unless otherwise stipulated in these provisions, further claims of the Customer on any legal basis whatsoever are excluded.  
Therefore Medion AG shall not be liable for damage that has not arisen on the delivery item itself. In particular Medion AG shall not be liable for lost profits or other financial losses of the Customer. The exclusion also particularly applies to claims on account of culpa in contrahendo, a breach of secondary duties and product liability pursuant to Section 823 BGB [German Civil Code].
- 8.2 This release from liability shall not apply, if damage was caused due to intent or gross negligence. Furthermore it shall not apply, if the Customer asserts damage claims for non-performance on account of any lack of a quality assurance covering the risk of consequential damage.

- 8.3 In so far as Medion AG negligently breaches a significant contractual duty, Medion AG's obligation to compensate for property damage and personal injury shall be limited to compensation under its product-liability insurance. In all events the obligation to compensate shall be limited to damage foreseeable at the time of conclusion of the contract.
- 8.4 The above exclusions of liability and limitations do not apply to claims under the Produkthaftungsgesetz [Product Liability Act] or impossibility through the fault of Medion AG. In so far as liability is excluded or limited by Medion AG, this shall also apply to the personal liability of employees, workers, staff members, representatives and persons employed to perform an obligation.

## **9. Export and Import Permits**

- 9.1 Products delivered by Medion AG and technical know-how are intended to be used and remain in the country of delivery agreed upon with the Customer. The re-exportation of contractual products (individually or in system-integrated form) shall be subject to approval for the Customer and in principle be subject to the foreign trade regulations of the Federal Republic of Germany and/or the other country of delivery agreed upon with the Customer. The Customer must independently find out about these regulations at the Bundesausfuhramt [German Export Agency], 65760 Eschborn/Taunus under German regulations and at the US Department of Commerce, Office of Export Administration, Washington, D.C. 2030, under US regulations. Irrespective of whether or not the Customer names the final destination of the contractual goods delivered, the Customer itself shall be responsible for obtaining any necessary permit from the appropriate foreign trade authorities from time to time before it exports such products.
- 9.2 Every redelivery of contractual products by the Customer to a third party with or without the knowledge of Medion AG shall require that the conditions concerning export permits be transferred at the same time. The Customer shall be liable for due compliance with these conditions in relation to Medion AG.

## **10. EC Turnover Tax on Imports**

- 10.1 In so far as the Customer is domiciled outside of Germany, it shall be obliged to comply with the European Union regulation concerning turnover tax on imports. In particular this includes notifying Medion AG of its turnover tax identification number without being separately asked to do so. The Customer shall be obliged to give on request necessary information in respect of its capacity as an entrepreneur, in respect of the use and transportation of the goods delivered as well as in respect of Medion AG' duty to report for statistics.
- 10.2 The Customer shall be obliged to reimburse every expense, particularly a processing fee, that Medion AG incurs as a result of inadequate or incorrect data given by the Customer relating to turnover tax on imports.
- 10.3 Every liability on the part of Medion AG resulting from data given by the Customer relating to turnover tax on imports and/or relevant data in this connection is excluded, unless Medion AG acted with intent and/or gross negligence.

## **11. General Provisions**

- 11.1 The Customer shall not be entitled to assign its claims arising from this contract.
- 11.2 Essen is the place of performance and jurisdiction, if the Customer is a fully qualified merchant. However Medion AG shall be entitled to take legal action against the Customer at any other place of statutory jurisdiction.
- 11.3 The law of the Federal Republic of Germany is applicable. The Vienna UN Convention on International Trade (UNICITRAL) is excluded.
- 11.4 The order shall be handled within the Medion AG Group with the aid of automatic data processing. The Customer hereby gives its express consent to the processing of data that becomes known to Medion AG in the course of the contractual relations and is necessary for handling the order. The Customer also agrees that Medion AG may use for its business purposes, also within the Medion AG Group, data received from the business relationship with the Customer within the meaning of the Datenschutzgesetz [Data Protection Act].

11.5 If one or more provisions of these General Terms and Conditions are or become invalid or the wording of this contract contains a loophole in any provision, the Parties shall replace or supplement the invalid or incomplete provision by appropriate provisions that are consistent as far as possible with the purpose of the intended provision in economic terms.

This shall not affect the validity of the other provisions.

Essen, March 2002