

### **1. Scope**

- 1.1 The following General Terms and Conditions of Purchase (hereinafter referred to as "Purchase Conditions") shall apply exclusively for orders placed by the Midas Pharma GmbH (hereinafter referred to as „MIDAS“). Terms and conditions of the party selling goods to MIDAS (hereinafter referred to as "Supplier") which differ, conflict or supplement these Purchase Conditions shall not become an integral part of the agreement concluded between MIDAS and Supplier, irrespective of whether MIDAS explicitly objects such terms and conditions of Supplier or if Supplier indicates that only its terms and conditions of supply shall be applicable, as the case may be. For avoidance of doubt, acceptance or payment of supplied goods by MIDAS without expressly objecting the terms and conditions of Supplier will not be regarded as recognition of such terms and conditions.
- 1.2 However, the terms and conditions of Supplier shall apply in the event and only to the extent that MIDAS has given its prior written consent to the application of such terms and conditions of Supplier.
- 1.3 In addition, if MIDAS and Supplier have reached written agreements with regard to the conditions of purchase prior to the date of this Purchase Conditions and to the extent that such agreements differ from these Purchase Conditions, the validity of such agreements will remain unaffected.
- 1.4 The present Purchase Conditions shall apply to any and all future orders made by MIDAS to Supplier, as long as no new version of the Purchase Conditions, succeeding this current one, has been issued and, according to statutory provisions, announced by MIDAS.

### **2. Conclusion of Contract**

- 2.1 Purchase orders from MIDAS and subsequent modification of such purchase orders shall only be binding on MIDAS if made in writing.
- 2.2 Orders made in oral or any other form must be confirmed in writing by MIDAS in order to become effective. Confirmation of orders may be issued by mail, facsimile or e-mail.
- 2.3 All drawings, methods of analyses, standards and other documents provided to the Supplier shall remain the property of MIDAS and must not be made available to third parties by Supplier without prior written consent of MIDAS.

### **3. Confirmation of orders, modification of orders**

- 3.1 Every order made by MIDAS has to be promptly confirmed in writing by Supplier. Such confirmation by Supplier shall include the following details: binding delivery time, order number, price, quality /specifications of product and date of purchase order.
- 3.2 MIDAS may cancel its order if Supplier has not confirmed acceptance of the order in writing within ten (10) days from order.
- 3.3 Increase in supply prices will only be accepted by MIDAS in cases where Supplier has informed MIDAS accordingly in its order confirmation as set forth in clause 3.1 and MIDAS has accepted such possible increase in writing.

### **4. Prices, Payment terms**

- 4.1 Prices agreed upon in writing between the parties shall be binding. In the absence of other written arrangements such prices shall include free delivery and packaging.
- 4.2 Any and all invoices shall be mailed under separate cover and addressed to MIDAS as follows: Rheinstrasse 49, D-55218 Ingelheim, Germany, irrespective of any other address stated in a purchase order of MIDAS.
- 4.3 MIDAS shall pay the agreed upon purchase price within sixty (60) days from date of receipt of invoice and delivery by Supplier, unless a written agreement between the parties establishes another procedure. The payment by MIDAS shall be considered as being made in time, if the corresponding transfer order is forwarded to the bank within this period.
- 4.4 The invoice shall bear the following compulsory information: BIC/SWIFT and IBAN number, name and seat of the bank to which MIDAS shall remit the amount. Supplier shall be liable for any incomplete or incorrect information. Any costs and losses resulting from such incomplete or incorrect information will be charged to Supplier by MIDAS.
- 4.5 Supplier is not entitled to assign its claims against MIDAS to a third party.
- 4.6 MIDAS shall have the retention rights and the right to set off own claims against the claims of Supplier provided for in statutory law. Supplier may only set off its claims in the event that such claims are undisputed or legally recognized by a competent court.

### **5. Delivery**

- 5.1 MIDAS is obliged to accept the ordered quantities, but reserves the right to refuse acceptance of partial-deliveries or delivery of goods which are supplied in excess of MIDAS' requirements as stated in the order.
- 5.2 Supplier shall attach to each and every delivery the corresponding shipping documentation, including the date of order, order number and the respective batch number(s). The aforementioned shipping documentation must be handed to carrier for the purpose of handover to MIDAS or alternatively be easily accessible and clearly visible fixed to the delivered goods.
- 5.3 The scope of services rendered by Supplier comprises of sending any agreed upon or statutory documents to MIDAS in original copy, if customary. These documents shall include, but not be limited to the Material Security Data Sheet (MSDS) in the version in effect at the time of delivery and the batch specific certificate of analysis. In addition, the certificate of origin and, if applicable, the Supplier's declaration. Freight documents (road, sea, or air transport) are always to be enclosed in the original version.
- 5.4 If applicable to the respective supply of goods and not otherwise agreed upon between MIDAS and Supplier in a Quality Agreement (QA), Supplier shall send batch specific reference samples directly to MIDAS, Attn.: Quality Management, Rheinstrasse 49, D-55218 Ingelheim, Germany.  
The term "reference sample" shall mean, in accordance with Annex 19 of the current valid EC Directive on the good manufacturing practice (GMP), a separate and sufficient amount of the supplied goods to carry out at least two analytical tests pursuant to the

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documentation for Marketing Authorization of the respective product. Such amount is to be obtained by means of standardized procedures subject to the EC Directives in effect at that time.

- 5.5 Supplier shall promptly notify MIDAS in writing of any changes to the manufacturing procedures for the supplied products.
- 5.6 Packaging of the consignment shall take place as specified in the purchase order of MIDAS. If not already stipulated in the QA between MIDAS and Supplier, consignment shall be packed wound and on new EUR Pallets in accordance with the rules and standard of the European Pallet Association (EPAL).
- 5.7 In case of transportation of hazardous substances, Supplier is obliged to pack, mark and dispatch such substances in compliance with the relevant EC Directives as amended from time to time within the supply chain to recipient of those goods. In addition, the provisions of the Ordinance of Hazardous Substances in the relevant version shall be observed by Supplier. Supplier shall safeguard in particular, that the goods are labeled in accordance with the relevant regulations; and that the appropriate safety data sheets are supplied. In addition, the CE symbol and the GS symbol must be visibly shown on the delivery. The provisions concerning the passing of the risk stipulated in INCOTERMS 2000 of the International Chamber of Commerce, Paris (ICC) shall not apply with regard to this specific obligation of Supplier.
- 5.8 In case of transportation of dangerous goods, Supplier undertakes to comply with all relevant national and international rules and regulations.
- 5.9 Supplier is obliged to mandate only forwarding agencies for the execution of orders by MIDAS, which conform to the standards of Good-Storage-Practice (GSP), the Good-Transportation-Practice (GTP) and/or to the Good-Distribution-Practice (GDP), if applicable.
- 5.10 In the absence of a differing written agreement between MIDAS and Supplier, place of fulfillment shall be the delivery address stated in the purchase order of MIDAS. The transfer of any risk shall be upon delivery/receipt of goods at such delivery address or designated place of receipt, as the case may be.
- 5.11 The delivery times specified by MIDAS are binding. For compliance, the ordered goods must be delivered by Supplier on the delivery date and at the place of delivery as indicated in the purchase order of MIDAS.
- 5.12 Where any delay in delivery can be anticipated by Supplier, Supplier shall notify MIDAS immediately upon becoming aware of such delay. Notwithstanding such aforementioned notification of MIDAS, Supplier shall be liable for compensating MIDAS for any damages, losses, liabilities, costs or expenses resulting from delay as long as Supplier cannot prove by competent evidence that he is not responsible for such delay. Acceptance of delayed consignment by MIDAS may not be considered as a waiver of any claim for compensation MIDAS is entitled to due to the delay of delivery.
- 5.13 This applies in particular, but shall not be limited to MIDAS' right to withdraw from the contract with Supplier and to claim for compensation.

**6. Notification of Defects**

- 6.1 Immediately upon receipt of the delivered goods MIDAS shall examine whether the delivery corresponds to the quantity and type of products ordered.
- 6.2 If MIDAS discovers any deficiencies or defects in the course of its inspection of the consignment, MIDAS will inform Supplier timely, but not later than eight (8) working days after the respective discovery in writing of such deficiencies. The time of mailing shall be decisive for meeting its obligations of notification under this subsection.
- 6.3 In case MIDAS later discovers a hidden defect, complaints shall be regarded timely, if raised by MIDAS not later than six (6) working days after discovery of such hidden defects. Timely mailing of the complaint shall suffice.
- 6.4 Within the scope of direct business where the Supplier delivers the goods to the customers of MIDAS, MIDAS shall be entitled to transfer the obligation of inspection upon receipt as stipulated in clause 6.1 to such supplied customer. The notification of Supplier according clauses 6.2 and 6.3. shall be deemed sufficient, if performed either by MIDAS or by supplied customer.
- 6.5 In case a defect of quality is discovered within six (6) months from passing of the risk, it is assumed that the supplied goods has already been defective at the time of the passing of the risk, unless this assumption is inconsistent with the nature of such product or type of defect.
- 6.6 In case the supplied goods are found to be defective, MIDAS shall be entitled, at its own option, to demand from Supplier to remedy such defects or to replace those quantities by supplying the product free of defects. In this connection, Supplier shall bear the necessary expenses of the supplementary performance, in particular the shipping costs, labor costs and costs of materials.
- 6.7 In addition, MIDAS is entitled to any and all further statutory rights in case of defects of quality or title. In particular, MIDAS` right to claim for compensation of damages, even instead of completion of order by Supplier, shall not be affected.
- 6.8 To the extent, that the supply has to be conducted by Supplier in accordance with the relevant GMP standards, MIDAS reserves the right to withdraw from the contract, in case Supplier fails to comply with those standards even after repeated audits by MIDAS, the customers or the governmental authorities have taken place. Pursuant to such withdrawal from the contract on this account, Supplier is compelled to take back the delivered goods, at its own expense.
- 6.9 The period of warranty shall be 36 months, counted from the passing of the risks.

**7. Product liability**

- 7.1 As far as Supplier is responsible for a defect of the supplied goods, Supplier is obliged to indemnify and hold MIDAS free and harmless from and against any such third party claims on first request, if and to the extent that the cause for such defect lies in the Supplier`s domain and sphere of organisation and authority and is liable according to its external relations.
- 7.2 Within this scope, Supplier is also obliged to reimburse MIDAS all costs and expenses according to Sections 677, 683, 670 of the German Civil Code (BGB), which are resulting

from a product recall carried out by MIDAS, unless this title is not already given according to Sections 830, 840 in conjunction with Sections 426, 254 of the German Civil Code. MIDAS will inform Supplier, as reasonably possible, about the scope and content of such product recall and give Supplier the opportunity to comment on this matter.

### **8. Intellectual Property Rights**

- 8.1 Supplier shall be liable, and in any way responsible, in case of violations of third party intellectual property rights within the Federal Republic of Germany in connection with the supply of goods to MIDAS, unless Supplier provides proof that he is not liable for such breach of its obligations.
- 8.2 Supplier shall indemnify MIDAS from and against any and all loss, liability, demand and damages whatsoever arising from or resulting of any third party claims for the infringement of third party intellectual property rights as mentioned above in 8.1., upon first written request of MIDAS. MIDAS is not entitled to make arrangements or agree on a settlement with such third party, without the prior consent of Supplier.
- 8.3 The obligation of Supplier to indemnify MIDAS relates to any and all necessary expenses arising from or in connection with such third party claims.

### **9. Retention of title**

- 9.1 In case MIDAS provides Supplier with individual components for products to be manufactured by supplier prior to the delivery to MIDAS, the property in such components shall not pass to Supplier. Further processing or transformation of the components by Supplier is always effected for MIDAS. In the event the components subject to retention of title are processed together with other goods which are not property of MIDAS, MIDAS will have joint ownership on the newly manufactured goods in proportion to the value of the component subject to retention of title to the value of the other processed goods at the time of processing.
- 9.2 In the event the components provided by MIDAS are inseparably compounded with other goods which are not property of MIDAS, MIDAS will have joint ownership on the newly manufactured goods in proportion to the value of the component subject to retention of title to the value of the other compounded goods at the time of compounding. If the compounding is carried out in such a manner that the goods of Supplier are to be regarded as main item, Supplier shall transfer to MIDAS joint ownership on such item in proportion to the value of the component subject to retention of title; Supplier holds the goods being in sole ownership of MIDAS or in joint ownership of MIDAS and Supplier in custody.
- 9.3 Any extended retention of title in favour of Supplier is excluded.

### **10. Miscellaneous**

- 10.1 Supplier shall not transfer any purchase order of MIDAS, or assign the corresponding rights to third parties, without the prior written consent of MIDAS.
- 10.2 These Purchase Conditions are governed and construed in accordance with the laws of the Federal Republic of Germany without giving effect to the choice of law principles

(EGBGB) thereof. The Convention on Contracts for the International Sales of Goods (CISG 1980) shall not apply.

10.3 *Applicable to Suppliers having their principal place of business within member states of the European Economic Area (EEA), including Switzerland:*

Exclusive place of jurisdiction shall be the competent court of Mainz. MIDAS shall also be entitled to start legal proceedings against Supplier at the court of law responsible for the place of business of Supplier.

*Applicable to Suppliers having their principal place of business outside the member states of the EEA, including Switzerland:*

Any and all disputes, controversies, claims and differences arising out of or relating to the supply of goods by Supplier and these Purchase Conditions, or any breach thereof, which cannot be settled through correspondence and mutual consultation of the parties hereto, shall be finally settled by arbitration in accordance with the Arbitration Rules of the German Institution for Arbitration (DIS e.V.) 1998 or as in effect at the time of applying for arbitration.

The arbitration proceedings shall be held by three arbitrators. Upon the written demand of either of the Parties concerned, the Parties each shall appoint a single arbitrator within 30 days. The arbitrators chosen by the Parties then shall appoint a presiding arbitrator within a period of 30 days after their nomination. If they cannot agree on a third arbitrator in time, then the third arbitrator shall be appointed by DIS e.V.. The presiding arbitrator of the panel of arbitrators shall be a fully qualified lawyer of sound knowledge of the laws of Germany.

Arbitration proceedings shall be held in Frankfurt/Main, Germany. The decision of the arbitrators shall be final and binding upon the Parties hereto, not subject to appeal and shall deal with the questions of costs of the arbitration and all matters related thereto. The arbitrators shall use German adjective law regarding to procedural matters, not exclusively governed by the above Arbitration Rule. Dissenting opinions shall not be expressed in the arbitrators' judgement or decision. The proceedings, all pleadings, documents, correspondence and the arbitration award shall be in English. Application may be entered in any court having jurisdiction thereof for a judicial recognition of the award or an order of enforcement thereof, as the case may be. Notwithstanding the above, the parties shall be entitled to seek injunctive relief or a temporary court order at any competent ordinary court of justice.

10.4 Modifications and amendments to a purchase order by MIDAS or to this Purchase Conditions must be made in writing.

10.5 No side letters or subsidiary agreements to this Purchase Conditions exist.

10.6 Should an individual provision of this Purchase Conditions be or become unenforceable or invalid, the remaining provisions shall remain unaffected. The parties shall negotiate in good faith and replace such unenforceable or invalid provision by a valid and enforceable provision which comes closest to the original intention of the parties.