

1. Scope

- 1.1 The following General Terms and Conditions of Sale (hereinafter referred to as „ **Sale Conditions**“) shall apply exclusively for supplies and services performed by Midas Pharma GmbH (hereinafter referred to as “MIDAS”). Terms and conditions of the party purchasing goods from MIDAS (hereinafter referred to as “Customer”) which differ, conflict or supplement these Sale Conditions shall not become an integral part of the agreement concluded between MIDAS and Customer, irrespective of whether MIDAS explicitly objects such terms and conditions of Customer or if the Customer indicates that only its terms and conditions of sale shall be applicable, as the case may be.
- 1.2 These Sale Conditions shall also apply, in case MIDAS carries out supplies to Customer without reservation and being aware of conflicting or differing terms and conditions of Customer.
- 1.3 However, the terms and conditions of Customer 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 Customer.
- 1.4 The present Conditions of Sale shall apply to any and all future supplies and services by MIDAS to Customer, as long as no new version of the Sale Conditions, succeeding the current one, has been issued and, according to statutory provisions, announced by MIDAS. These Sale Conditions only apply towards businessmen.

2. Offers

- 2.1 All offers of MIDAS are subject to change or written confirmation.
- 2.2 In case the order of Customer can be regarded as an offer according to Section 145 of the German Civil Code (*Bürgerliches Gesetzbuch*), MIDAS may confirm such offer of Customer within two (2) weeks.
- 2.3 All drawings, methods of analyses, standards and other documents provided to the Customer shall remain the property of MIDAS and must not be made available to third parties by Customer without prior written consent of MIDAS.

3. Prices, Payment terms, delayed payment

- 3.1 Prices agreed upon in writing between the parties shall be binding. Prices are net prices. The value-added tax (VAT) will be stated separately in the invoice.
- 3.2 In the absence of differing written agreements prices of MIDAS are to be understood ex-works (INCOTERMS 2000). Customer shall bear all shipping costs, packing costs for packaging made in addition to the customary packing and all taxes and customs duties.
- 3.3 Customer shall pay the agreed upon invoice amount immediately and in full upon date of invoice by MIDAS, unless a written agreement between the parties establishes other payment terms. There will be no cash discounts. The payment by Customer shall be considered as being made in time in case of receipt of the full amount by MIDAS within this period.

- 3.4 Payment has to be made by Customer stating the invoice number, which can be found in the invoice of MIDAS.
- 3.5 Payment has to be made by means of electronic payment transactions. Bank charges of the remitting bank are for the Customer. Payment by cheque is not accepted by MIDAS.
- 3.6 If agreed in writing, the payment shall be made by prepayment of the amount by Customer.
- 3.7 Customer shall have the right to set off own claims only against claims of MIDAS if such claims are undisputed or validated or disputed, but legally recognized by a competent court. Customer may exercise retention rights only insofar as its counter-claim is based upon the same contractual relationship.
- 3.8 In case Customer fails to comply with the payment deadline according to clause 3.3 of this Sale Conditions, Customer automatically is in default. In this case MIDAS will be entitled to claims from Customer an interest rate of 8,0 % above the applicable ECB base rate. Regarding any further consequences of the default of payment by Customer, the provisions of the German Civil Code shall apply.

4. Delivery, Delivery times

- 4.1 The delivery times are non-binding unless otherwise agreed in writing between the parties.
- 4.2 Compliance with delivery commitment by MIDAS is subject to the timely and correct performance of the Customer's obligations regarding the delivery, if any, by Customer. MIDAS expressly reserves the right to claim partial or complete non-performance of contract by Customer in accordance with § 320 German Civil Code.
- 4.3 Partial-deliveries by MIDAS are admissible. In case of partial-deliveries MIDAS may issue partial invoices with separate payment terms stated therein.
- 4.4 In the event that Customer is in default of acceptance, MIDAS shall be entitled to claim for the resulting damages, including additional expenses. The same shall apply in case Customer breaches its contractual obligation to co-operate, if any. MIDAS reserves the right to claim additional indemnities.
- 4.5 In addition, the risk of accidental loss or damage of the goods shall pass to Customer in case of default of acceptance.
- 4.6 In the event that MIDAS is in default of delivery for reasons MIDAS is responsible for, Customer shall be entitled to liquidated damages in the amount of 0,5 %, of the value of the goods to be delivered for each complete week of delay, but in no case more than 2 % in the aggregate. If the default of delivery results from gross negligence or willful misconduct by MIDAS or constitutes a material breach of MIDAS' main contractual obligations, the provisions for liability of the German Civil Code shall apply. MIDAS commits a material breach of main contractual obligations of these Sale Conditions in case MIDAS breaches any of the Sale Conditions' provisions, on whose performance by MIDAS the Customer could reasonably rely, as these provisions are a condition *sine qua non* for the performance of the contract by MIDAS. In case of a negligent breach of main contractual obligations by MIDAS the liability of

MIDAS is limited to direct and foreseeable losses and MIDAS shall not be liable to the Customer for any indirect or consequential damages or lost profits.

- 4.7 The agreed upon delivery period of MIDAS will be extended by a reasonable additional period, in case events outside Midas' reasonable control prevent MIDAS from fulfilling its contractual obligations. Such events shall include, but not be limited to unusual shortages in or rationing of raw materials, delay in the delivery of essential components or materials by suppliers, import or export bans, official or governmental measures, unusual delays in transportation, riots or strikes or other concerted acts of work-men, lock-outs or acts of god. Should MIDAS not be able to fulfill its contractual obligations within such appropriate period of time, Customer and MIDAS are entitled to withdraw from the agreement. In such case claims for damages by Customer are excluded.
- 4.8 In addition, MIDAS reserves the right to withdraw from the contract in case of a lack of delivery by MIDAS' own supplier.
- 4.9 In the event MIDAS defaults on delivery, Customer is entitled to set a reasonable deadline for performance of the obligations by MIDAS. After the expiry of this period, Customer may withdraw from the contract with MIDAS. Customer shall only be entitled to damage claims for non-performance in the amount of the foreseeable damages in case the default of MIDAS results from willful misconduct or gross negligence by MIDAS. In all other cases, the liability for damages of MIDAS shall be limited to fifty percent (50 %) of the resulting damages.
- 4.10 This limitation of liability shall not apply if and to the extent of an agreement between the parties for a fixed date (*Fixgeschäft*). Moreover, such limitation of liability shall not apply in cases where Customer is entitled to immediately claim for damages instead of performance.
- 4.11 Further statutory rights or claims of Customer shall remain unaffected.

5. Passing of risk, Transport insurance, Return of packaging

- 5.1 In the absence of a different statement in the confirmation order, delivery shall take place ex works manufacturer (EXW INCOTERMS 2000).
- 5.2 MIDAS undertakes to take out transportation insurances at Customer's cost, in the absence of an opposite written notice of Customer.
- 5.3 A possible return of packaging is subject to separate agreements.

6. Warranty for defects

- 6.1 The warranty rights of Customer require that Customer has fulfilled its obligations to examine the delivered goods and notify MIDAS in case of defects according to Section 377 of the German Commercial Code (*Handelsgesetzbuch*).
- 6.2 In case the delivered goods are found to be defective in quality, Customer shall be entitled to demand from MIDAS at its own option, either to remedy such defects or to replace those quantities by supplying the product free of defects as supplementary performance. MIDAS will bear all necessary expenses in connection with such supplementary performance; to the extent that the expenses are not increased by the

fact that Customer has brought the delivered goods to a place different from the place of delivery. Beyond that, MIDAS reserves the right to reject the type of supplementary performance chosen by Customer according to statutory provisions.

- 6.3 In case the supplementary performance by MIDAS fails, Customer has the right either to withdraw from the contract or to reduce the purchase price according to statutory provisions.
- 6.4 As far as such defects are caused by willful misconduct or gross negligence of MIDAS, MIDAS' liability shall comply with the applicable legal regulations.
- 6.5 MIDAS shall fulfill its obligations at the current state-of-the-art of science and technology at the time of conclusion of the contract. MIDAS shall not be liable for any damages or losses which result from any substantial changes in the corresponding requirements after the time of conclusion of the contract.
- 6.6 In case MIDAS negligently breaches one of its main contractual obligations, the liability of MIDAS shall be limited to the damages which are typical for this type of contract. Apart from that, the liability of MIDAS shall be excluded according to clause 6.7 hereunder.
- 6.7 Beyond that, further claims and rights of Customer, due to any legal cause, are excluded. For this reason, MIDAS shall not be liable for damages which arise outside of the sale and delivery of the contractual goods. In particular, MIDAS shall not be liable for lost profits or other financial losses of Customer.
- 6.8 Warranty claims are time-barred after 12 months, counted from the passing of the risk.

7. Liability

- 7.1 All other liability for damages, beyond the remedies provided for in clauses 6.4, 6.6 and 6.7 of this Sale Conditions, shall be excluded.
- 7.2 The limitation of liability set out in clause 7.1 of this Sale Conditions above, shall not apply in case of claims arising from Sections 1 and 4 of the Product Liability Act (*Produkthaftungsgesetz*) or for death or personal injury. In addition, clause 7.1 shall not apply in case of initial inability or impossibility of MIDAS to perform its contractual obligations for which MIDAS is responsible as set forth in Section 311 a of the German Civil Code.
- 7.3 In case the limitation of liability according to clause 6.6 of these Sale Conditions is not applicable regarding claims for property damages resulting from the manufacturer's liability according to Section 823 of the German Civil Code, MIDAS' liability shall be limited to the indemnification by MIDAS' General liability insurance. If and to the extent MIDAS' General liability Insurance does not indemnify MIDAS, MIDAS' liability shall be limited to the maximum cover by the general Liability Insurance.
- 7.4 Personal liability of employees, agents and vicarious agents of MIDAS is limited or excluded to the same extent as the liability of MIDAS is limited or excluded.

8. Retention of title

- 8.1 Services rendered by MIDAS for Customer are subject to retention of title until MIDAS has received full payment from Customer with regard to their business relationship.
- 8.2 In case of breach of its contractual obligations, in particular in case of default of payment by Customer, MIDAS is entitled to retract the goods delivered to Customer. Retraction of delivered goods by MIDAS shall not constitute a withdrawal from the contract, unless MIDAS gives an express and written notice of such withdrawal. However, a seizure of the delivered goods by MIDAS shall always constitute a withdrawal from the contract. After retraction of the delivered goods the same may be utilized by MIDAS. The proceeds of such utilisation shall be deducted from the liabilities of Customer, less reasonable utilisation costs incurred by MIDAS.
- 8.3 Customer undertakes to deal carefully with the delivered goods. In particular, Customer shall adequately insure the delivered goods, at its own cost and at replacement value, against fire, water and theft. As far as maintenance or inspection services become necessary, such services shall be carried out at the own expense of Customer.
- 8.4 In case of an attempt of seizure of property or other interferences by third parties, Customer shall notify MIDAS immediately. If and to the extent such third party is not able to reimburse MIDAS with the court fees and all other costs in connection with a claim according to Section 771 German Code of Civil Procedure (*Zivilprozessordnung*), Customer shall be liable for such losses of MIDAS.
- 8.5 Customer is entitled to resell the delivered goods in the regular course of business. However, at the time of conclusion of such contract, Customer shall transfer to MIDAS any and all outstanding claims the Customer has against the Customer's clients, up to the amount invoiced to Customer by MIDAS (including VAT). Such transfer of claims shall be made irrespective of whether the goods delivered by MIDAS are sold without or after being further processed.
- 8.6 Customer remains authorized to collect the debts of his clients, even after transfer to MIDAS according to clause 8.5 of this Sale Conditions. Notwithstanding the above, MIDAS shall also be entitled to collect such debts itself. However, MIDAS undertakes not to collect such debt as long as Customer complies with its payment obligations towards, is not in default of payment, and has not filed for the opening of insolvency proceedings. In case Customer is in default, has filed for insolvency or stopped payment, MIDAS shall be entitled to demand from Customer to disclose the transferred claims and the corresponding debtor and all other information and documentation required. In addition Customer must notify the debtors of the assignment to MIDAS.
- 8.7 Further processing or transformation of the delivered goods by Customer is always effected for MIDAS. The remainder (*Anwartschaftsrecht*) of Customer on the delivered goods will continue on the processed goods. In the event the delivered goods are processed together with other goods not owned by MIDAS, MIDAS will have joint ownership on the newly processed goods in proportion to the value of the goods (invoice amount including VAT), delivered by MIDAS and to the value of the other goods processed at the time of processing. For the newly processed goods the same provisions as for the delivered goods which are subject to retention of title.

- 8.8 In the event the delivered goods are inseparably compounded with other goods not owned by MIDAS, MIDAS will have joint ownership on the newly manufactured goods in proportion to the value of the goods delivered by MIDAS 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 Customer have to be regarded as the main item, Customer shall transfer to MIDAS joint ownership on such item. Customer shall hold the compounded goods in its custody, irrespective if they are sole property of Midas or in joint ownership of Customer and Midas.
- 8.9 If and to the extent the value of the collaterals which can be realized by MIDAS exceed the claims of MIDAS against the customer by more than 10 % or exceed the nominal amount of such claims by more than 50 %, MIDAS shall be obliged to release such collaterals to the extent they exceed the claims by MIDAS by more than 10 % respective 50% as provided above. MIDAS shall be free to decide which of the collaterals will be released.

9. Miscellaneous

- 9.1 These Sale 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.
- 9.2 *Applicable to Customers having their principal place of business within member states of the European Economic Area (EEA), or within Switzerland:*
Exclusive place of jurisdiction shall be the competent court of Mainz. MIDAS shall also be entitled to start legal proceedings against Customer at the court of law responsible for the place of business of Customer.
- 9.3 *Applicable to Customers having their principal place of business outside the member states of the EEA, or outside Switzerland:*
Any and all disputes, controversies, claims and differences arising out of or relating to the supply of goods to Customer by MIDAS and these Sale 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.

- 9.4 Modifications and amendments to a purchase order by Customer or to this Conditions of Sale must be made in writing.
- 9.5 No side letters or subsidiary agreements to this Sale Conditions exist.
- 9.6 Should an individual provision of this Sale 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.