

General Terms and Conditions (T&Cs)

1 General information & scope of application

- 1.1** These General Terms and Conditions (T&Cs) apply to the products and related services (hereinafter referred to as 'Products') provided by Mainstay Medical Distribution Limited (hereinafter referred to as 'Mainstay') in the context of business relations with its customers (hereinafter referred to as 'Client(s)')
- 1.2** These T&Cs shall also apply to future offers, contracts, deliveries and services in connection with the same Client, even if they are not separately agreed upon again.
- 1.3** Any deviating, conflicting or supplementary general terms and conditions of the Client shall only become an integral part of the contract if and to the extent that Mainstay expressly gives its consent to same (also via e-mail). Such consent shall be required in either case, for instance, even if Mainstay knows the Client's general terms and conditions and makes an unconditional delivery to such Client.
- 1.4** However, any individual agreements entered into with the Client in isolated cases shall take precedence over these T&Cs, provided that such agreements are made in writing and signed by authorized representatives of all parties involved. No Mainstay employee is authorized to make verbal agreements that deviate from these General Terms and Conditions.
- 1.5** Legally relevant declarations and notifications made by the Client after conclusion of the contract, in particular the setting of deadlines, notices of defects, declarations of withdrawal or reduction shall be made in writing in order to be valid.

2 Formation of a contract

- 2.1** A contract will be formed with the Client when an offer issued to the Client by Mainstay is signed and Mainstay receives the Client's declaration of acceptance.
- 2.2** Mainstay reserves the right to make the acceptance of orders for the delivery of Products subject to a documented preliminary consultation with the Client or to the Client's certification for the qualified use of the Product for medical purposes.

3 Prices

- 3.1** Mainstay's deliveries and services to the Client shall be made at the prices and under the terms specified in the offer. The prices stated therein shall be binding.

4 Proper use & Client liability

- 4.1** The Client shall be responsible for using the products according to Mainstay's requirements for application.
- 4.2** The Client shall hold Mainstay harmless against claims by third parties, to the extent that such claims are not based on a product defect for which Mainstay is responsible or a breach of duty by Mainstay, in particular if such claims by third parties were caused by violations of the applicable laws (including the any European or national laws on medical devices) or Mainstay's directions for use

5 Delivery

- 5.1** To the extent that a service according to its nature does not have to be rendered at a location named by the Client, place of performance shall be the producer's plant or the warehouse where the Product is located. The risk shall pass to the Client there.

- 5.2** At the Client's request, the Product shall be delivered to a predetermined location. Mainstay reserves the right to choose the method of delivery, the mode of transportation and the shipping company. Likewise, the Product may be delivered by representatives of Mainstay. If delivery is made by Mainstay directly, the risk shall pass to the Client upon delivery. If delivery is made by a shipping company, a contracting partner of the shipping company or other persons commissioned by the aforementioned, the risk shall pass upon handover of the Product to one of the aforementioned parties.
- 5.3** After acceptance of an order, the delivery period will be one to five working days. A fixed delivery date requires agreement between the parties, provided that Mainstay shall not be liable for achievement of such agreed date.
- 5.4** If a delivery deadline is not met due to an event which is outside of Mainstay's control (including strike and lock-out), the delivery deadline shall be postponed for the duration of the disruption, including a reasonable start-up phase. The Client shall be informed about this immediately.
- 5.5** Mainstay shall be entitled to make partial deliveries provided these are acceptable to the Client.
- 5.6** The point in time when Mainstay will be in default shall be determined according to the statutory provisions. A claim for compensation shall arise only if and to the extent that the Client is able to prove the precise amount of the damage and that the delay was caused intentionally or by gross negligence of Mainstay, its employees, assistants or vicarious agents, or its upstream suppliers. However, a written prior notice by the Client is necessary.
- 5.7** Mainstay shall bear the shipping costs and any possible customs duties up to the place of destination. Mainstay is free to choose the shipping company.
- 5.8** If an urgent delivery is made via an express service or courier within 24 hours upon the Client's request, the Client shall pay the surcharge for the express delivery i.e. such portion of the delivery costs that exceeds the standard delivery costs.

6 Provision

- 6.1** The Client shall use best efforts to ensure that Mainstay representatives are allowed to accompany the attending physician during the treatment of patients. This includes the implantation procedure and adjustments of the implant. Furthermore, the Client shall use best efforts to ensure that the physician fulfils all obligations to inform the patients with respect to the German data protection legislation.

7 Services

- 7.1** In order to provide the Client with the ordered services, Mainstay shall follow the Client's time requirements and, in case of scheduling problems, consult with the Client in a timely manner.
- 7.2** Once the Client has been certified for a qualified use of the Product, it will no longer be necessary for Mainstay employees to provide the services. Should the Client continue to make use of such services, Mainstay reserves the right to invoice same according to an offer.
- 7.3** Mainstay reserves the right to invoice the services in full according to the offer even if the client canceled the services, in which case Mainstay shall deduct any amount saved by not having rendered the services. This in particular applies to cases where an employee travels to the Client's site for a confirmed appointment but without being able to render the services due to a cancellation of the service request by the Client on short notice.

8 Terms of payment

- 8.1** Unless otherwise agreed in an individual case, the purchase price shall be payable without deduction within 30 days after invoicing. Unless otherwise agreed, payments shall be made to the bank account specified on the invoice.
- 8.2** The Client will be in default if no payment has been made within the aforementioned period. In the event of default, statutory interest on the purchase price shall be charged, however at least five (5) percentage points

above the LIBOR interest rate applicable during the time of default. Mainstay reserves the right to claim further damage caused by default unless the Client is able to prove that a lower or no damage was incurred.

- 8.3** The Client shall be entitled to offset counter-claims or withhold payment because of such claims only if the counter-claims are uncontested or have been established as final and absolute.
- 8.4** Mainstay shall be entitled to make or render outstanding deliveries or services only against full advance payment or the furnishing of a security, if, after conclusion of the contract it learns of circumstances which are very likely to reduce the Client's creditworthiness (e.g. an application for the institution of insolvency proceedings).
- 8.5** Mainstay hereby provides notice to the Client that Mainstay and/or its affiliates have charged and assigned absolutely in favour of IPF Fund I SCA SICAV-FIS (the 'Lender') all of its present and future benefit, right, title and interest in and to its present and future book debts and other debts, revenues and claims relating to the sale or transfer of its products to customers (including any such debts or claims which Mainstay and/or its affiliates has arising from its contracts with the Client), as security for the payment and discharge of the obligations of Mainstay's affiliates for indebtedness to the Lender. Notwithstanding the foregoing, the Client shall make payment to Mainstay as provided herein unless specifically instructed otherwise by Mainstay and/or the Lender (whose instructions the Client is hereby authorized to follow).

9 Retention of title

- 9.1** All Products delivered to Client shall remain Mainstay's property until all outstanding amounts from the purchase agreement and the current business relationship have been paid in full. The Client shall inform Mainstay immediately about any seizures, impoundments or other dispositions or interventions by third parties. If the Client is in breach of duty, particularly in case of default of payment, Mainstay shall be entitled to rescind the purchase agreement and take back the Product which is subject to retention of title; the Client shall be obliged to surrender same. Enforcement of the retention of title does not require Mainstay to rescind the purchase agreement. These actions or the seizure of the Product subject to retention of title by Mainstay do not constitute a rescission of the contract unless Mainstay has expressly declared its rescission in writing.

10 Warranty

- 10.1** Unless otherwise stated below, the statutory provisions shall apply to the Client's rights in relation to material defects and defects of title including deliveries not in compliance with the order and shortfalls deliveries as well as incorrect assembly.
- 10.2** The written specifications of Mainstay for the Products shall provide the basis for any liability for defects. All product descriptions, which are the subject of an individual contract shall be considered agreements regarding the quality regardless of who prepared these product descriptions.
- 10.3** If no particular specification has been agreed upon it shall be assessed according to the statutory provisions whether a defect exists or not. Mainstay will not, however, assume any liability for public statements made by third parties (e.g. advertising messages).
- 10.4** No warranty will be granted for wear and tear or defects caused by (a) use or operation in a manner not intended or in an application or environment not recommended by Mainstay, (b) maintenance work done by individuals not employed by Mainstay or when Mainstay has not given its written consent, (c) use of products that are not compatible with Mainstay Products, (d) modifications to the Products (particularly due to replacement parts or consumables which do not meet the original specifications), or (e) any other actions which do not meet Mainstay's specifications (particularly instructions for use, operation and maintenance). The warranty will also not apply if the Client, without Mainstay's consent, modifies the Product or has a third party modify the Product and the removal of defects is hereby rendered impossible or made unreasonably difficult. In either case, the Client shall bear the additional costs for removing the defects caused by the modification.
- 10.5** Immediately after delivery to the Client or the third party appointed by the Client, the Products shall be inspected carefully by or on behalf of the Client. The Products are considered accepted unless Mainstay receives a written notice of defects regarding obvious or other defects which could be detected in an

immediate and thorough inspection, within seven (7) working days following delivery of the Product, or else within seven (7) working days after the defect has been discovered or such point in time at which the defect could be identified by the Client during normal use of the delivered Product without any closer inspection. Upon Mainstay's request, the defective item shall be returned. Such returns shall always be coordinated with Mainstay in advance. If the notice of defect is justified, Mainstay will reimburse the costs for the lowest-priced means of shipping; this shall not apply if the delivered Product is located in a place other than the place of its normal use

- 10.6** If the delivered Product is defective, Mainstay may, at its sole discretion, correct the defect (correction) or deliver a Product free of defects (replacement, replacement or correction also referred to as warranty performance). In case of replacement, the Client shall return the defective Product in accordance with the statutory provisions. To the extent possible, for instance if the Products have not been implanted yet, the Client shall afford Mainstay the time and opportunity necessary for warranty performance, in particular it shall make the defective Product accessible for test purposes or hand it over.
- 10.7** The necessary costs for inspection and warranty performance, which in particular include shipping costs, travelling expenses, labor and material costs (but not consulting and service fees) shall be borne by Mainstay provided that the defect is found prior to delivery or within one year thereafter, and provided that these costs were not increased because the Product was relocated after delivery. Should it turn out that the warranty claim was not justified, in particular because there was no defect, Mainstay reserves the right to demand reimbursement of its costs from the Client.
- 10.8** The expenses necessary for testing and warranty performance, in particular the shipping costs, travelling expenses, labor and material costs shall be borne by Mainstay if an actual defect exists. However, if the Client's demand to remove a defect turns out to be unjustified, Mainstay shall be entitled to ask the Client for reimbursement of the costs incurred.
- 10.9** Warranty claims shall become time limited one year after delivery. Product liability claims remain unaffected.

11 Liability

- 11.1** Unless otherwise stipulated in these Terms and Conditions, Mainstay shall be liable for damages due to a breach of contractual or non-contractual duties only in case of intent or gross negligence.
- 11.2** Mainstay assumes no liability in case of minor negligence of its bodies, legal representatives, employees or other vicarious agents.
- 11.3** The aforementioned limitations of liability shall not apply to Mainstay's liability due to deliberate or grossly negligent conduct, due to injury to life, body or health, or resulting from product liability.
- 11.4** The Client may rescind or terminate the contract due to a breach of duty which does not constitute a defect only if Mainstay is responsible for such breach of duty.

12 Applicable law and place of jurisdiction

- 12.1** Place of jurisdiction for any disputes arising from the legal relationships between Mainstay and the Client and/or from these T&Cs shall be Ireland.
- 12.2** The relations between Mainstay and the Client resulting from the sale of the Product and these T&Cs shall exclusively be governed by the law of Ireland, excluding its conflict of law provisions. The UN CISG shall not apply.

13 Confidentiality

- 13.1** The Client shall undertake to treat as confidential, even after the end of the contract, all materials, equipment, documents, and information which are legally protected or contain business or trade secrets of Mainstay or which have been marked as confidential that were made available to it by Mainstay prior to or during the performance of the contract, unless they have become publicly known without a violation of this obligation to confidentiality by the Client.