

## **GENERAL TERMS AND CONDITIONS OF SALE OF ACIST EUROPE B.V.**

### **Article 1. General**

1.1. These terms and conditions apply to all sale transactions (including offers, quotations, order confirmations and deliveries) of ACIST Europe B.V., with its registered office in Heerlen, the Netherlands, hereinafter to be referred to as: "ACIST", and to all its contracting parties.

1.2. General terms and conditions of ACIST's contracting parties, hereinafter to be referred to as: the "Buyer", however they may be referred to, do not apply and are explicitly excluded. When placing an order with ACIST and/or receiving products pursuant to an order placed with ACIST, the Buyer waives any terms and conditions of its own.

1.3. Additional or different terms and conditions or specifications apply solely if and to the extent that ACIST has accepted them explicitly and in writing.

1.4. These terms and conditions apply to all transactions concluded between ACIST and Buyer, now or in the future, irrespective of whether such transactions have been confirmed in writing.

### **Article 2. Orders and offers**

2.1. Orders placed by the Buyer are only binding upon ACIST once ACIST has accepted and confirmed them in writing.

2.2. Unless determined otherwise in writing, offers or quotations issued by ACIST are valid for 30 days, to be calculated from the date on which they are sent to the Buyer.

2.3. ACIST is allowed to alter or revoke its offer as long as it has not been accepted unconditionally by the Buyer.

### **Article 3. Prices**

3.1. Unless explicitly stated or agreed otherwise, prices are exclusive of tax, import and export duties and levies of any other kind. All taxes, import and export duties and other levies charged to ACIST pursuant to current or future laws and regulations in relation to the sale, purchase, storage, delivery or transport of the sold products are for the Buyer's account, and the Buyer must settle these amounts with ACIST together with the purchase price.

3.2. Prices stated by ACIST or agreed are based on costs that apply at the time of the offer or the conclusion of the agreement. In the event of a cost increase between the time of the offer or the conclusion of the agreement and the time of the delivery, ACIST is entitled to raise the price accordingly unless there is an explicit written agreement to the contrary. A cost increase includes any increase to: transport and storage costs, insurance premiums, taxes, import and export duties or other levies, increases to salaries and employer's contributions (including for social security), changes in exchange rates, and increases to the price of raw materials, fuel and energy.

3.3. Prices in offers are based on a specified minimum quantity of products. If Buyer fails to purchase this specified minimum quantity ACIST has the right to adjust the prices of the items purchased by Buyer.

3.4. All prices must be paid in Euro unless ACIST and the Buyer agree to a different currency. ACIST may at its discretion review the price if the exchange rate of the Euro changes in relation to another agreed currency before delivery.

3.5. In any case ACIST has the right to change the price of its products at least once a year or determined otherwise as per contractual conditions.

### **Article 4. Delivery**

4.1. The delivery or loading times stated or agreed by ACIST apply by approximation and do not constitute deadlines, unless explicitly agreed otherwise.

4.2. Delivery will take place according to the Incoterms 2020. All risks with regard to the sold products are transferred to the Buyer immediately upon delivery of the sold products to any carrier, storage location or warehouse, whichever of these is the first, or immediately upon delivery to any other place or at any other time explicitly agreed in writing, and ACIST will be released from all its delivery obligations on the understanding that such delivery is deemed to be punctual irrespective of the time of departure of the carrier concerned.

4.3. Unless explicitly agreed otherwise in writing, ACIST is entitled to make phased delivery of the sold products. If delivery is phased, each delivery will be deemed to be made pursuant to a separate agreement to which these terms and conditions apply. Payment for each delivery will be due in

accordance with the payment conditions set out in these terms and conditions.

4.4. ACIST will only install the sold products at the Buyer's location when explicitly agreed upon. In such case Buyer will - at its own risk and expenses - be responsible for:

a. a suitable and lockable area near the place of installation where ACIST can store tools, instruments and products during the installation.

b. timely implementation and completion of all works at the place of installation according to the instructions provided by ACIST and in accordance with all applicable (safety) regulations which are required for the installation and functioning of the products at the location.

c. timely obtaining all permits and authorisations required for the installation and functioning of the products.

d. free and unhindered access for any personell designated by ACIST to the premises and location of the installation works.

e. timely assistance in any way to the personell designated by ACIST to perform the installation works.

f. the timely inspection of the installation works and the removal and discharge of all used and leftover materials from the location of the works.

g. providing the necessary network and power connections required for the installation, testing and functioning of the products.

4.5. In case the requirements mentioned above are not met in time and ACIST is therefore forced to interrupt or postpone the installation, Buyer will be liable for any extra costs incurred by ACIST.

4.6. ACIST is not liable and does in no way guarantee the suitability of the premises and its facilities for the storage, use and functioning of the products.

### **Article 5. Force Majeure**

5.1. In the event of force majeure, ACIST's obligations will be suspended until the force majeure no longer applies. If a situation of force majeure lasts longer than three months, ACIST will be entitled to terminate the agreement, wholly or in part, without judicial intervention. ACIST is in no event liable for any damage sustained by the Buyer or its customers in the event of force majeure.

5.2. A situation of force majeure is considered to exist if the performance of any contractual obligation incumbent upon ACIST is obstructed or prevented, wholly or in part, due to a cause that should reasonably be considered to be beyond ACIST's control, as well as in circumstances as a result of which ACIST cannot reasonably be expected to perform its contractual obligations, regardless of whether such cause or circumstances could be foreseen at the time the agreement was concluded.

5.3. ACIST may in any case invoke force majeure in the event of strikes, lock-outs, employment disputes, sabotage, storms, floods or other natural phenomena, explosions, accidents, fire, terrorist acts, war or acts of war, civil war, riots, rebellion, epidemics, quarantine, sickness of staff, embargoes, mobilisation, non-delivery or delayed delivery by ACIST's suppliers, a lack of suitable transport loading or unloading facilities, transport or unloading obstructions or delays, seizures of any sort whatsoever, energy shortages, shortages of raw materials, business interruptions, import or export restrictions or bans, quota schemes and/or other measures or acts by any public authority, with ACIST also being able to invoke force majeure if ACIST's suppliers or sub-contractors are subject to such circumstances.

5.4. The provisions of this article also apply if there is any delay in the performance of ACIST's obligations at the time that a situation of force majeure arises.

### **Article 6. Payment**

6.1. Unless explicitly agreed otherwise, payments must be made by bank transfer to the bank account mentioned by ACIST within 30 days after the day the invoice has been sent, without any deduction, set-off, compensation or suspension, irrespective of any claims the Buyer has against ACIST or of any dispute between the parties.

6.2. Before delivering and/or shipping the products, ACIST is entitled to demand, at its discretion, that the purchase price be paid in advance or that security and/or guarantees be provided for such payment. If the Buyer defaults in this regard, ACIST will be entitled, at its own discretion and notwithstanding its other rights, either (a) to suspend delivery and to store the



products at the Buyer's risk and expense, or (b) to terminate the agreement, wholly or in part, without judicial intervention or liability towards Buyer.

6.3. If payment of any amount owed to ACIST is overdue, the Buyer will owe interest to ACIST equal to the statutory commercial rate pursuant to Article 6:119a of the Dutch Civil Code without any demand being required, and notwithstanding any other lawful claims of ACIST in this regard.

6.4. ACIST is allowed to compensate a due payment from the Buyer with any sum owed by ACIST or by its affiliated companies to the Buyer.

6.5. ACIST will be entitled to charge the Buyer for any costs incurred for collecting overdue amounts and the interest owed on them including - and not limited to - the full compensation of attorney and court fees.

#### **Article 7. Complaints and defects**

7.1. The Buyer must inspect products delivered by ACIST after receiving them. The Buyer must inspect installation works performed by ACIST after completion.

7.2. Defects and complaints about the quality or quantity of the products delivered by ACIST or (if applicable) its installation by ACIST must be notified to ACIST immediately, by fax, email or registered letter, with reasons given, failing which any claim in this regard will cease to have effect or at least:

- no later than 3 days after receipt of consumables and
- no later than fourteen (14) days after installation of systems at Buyer's facility.

7.3. From the moment of acceptance of the products by the Buyer or - if earlier - from the moment the products are first used by the Buyer, ACIST will no longer be liable for any defect which was known or should have been known to the Buyer within the period mentioned above. ACIST is not liable for any defect or shortcoming in its installation works which was known or should have been known to the Buyer within the period mentioned above but was not reported to ACIST.

7.4. In the event of a defect or a complaint, the Buyer must allow ACIST and/or an expert designated by ACIST every opportunity to investigate and test the products and installation works and if necessary repair or replace it.

7.5. In case of preventive maintenance, the Buyer must allow ACIST and/or an expert designated by ACIST every opportunity to investigate and test the products and perform the maintenance.

#### **Article 8. Warranty**

8.1. ACIST only provides warranty as set forth in this article. Any other claims for warranty are excluded. Warranty is only available for the original Buyer of the product.

8.2. Unless otherwise explicitly agreed in writing, ACIST warrants that its products and installation works are free of defects and function properly for a period of one (1) year to be calculated from the date of delivery of the product or the date of completion of the installation works. In the case of consumable products ACIST warrants that the product is free of defects in material and workmanship until the expiration date as indicated on the product.

8.3. The aforementioned warranty only applies if defects have not been caused by:

- a. incorrect use of the product or use by unqualified (medical) personnel;
- b. improper handling or storage of the product;
- c. modifications or repairs by the Buyer;
- d. incorrect maintenance by the Buyer;
- e. the use of software and/or products not provided by ACIST;
- f. misuse, neglect, accidents or damage which has not been caused by actions of ACIST;
- g. faults or defects in the premises in which the Buyer stores, operates or uses the product;
- h. malfunctioning, viruses and computer hacking as a result of connecting the product to a network not operated by ACIST;
- i. the use of parts, materials, accessories or peripherals not approved by ACIST;

8.4. The warranty does not cover routine wear and tear of the product.

8.5. Due to biological differences in human patients and because ACIST has no control over the conditions under which products are used, diagnosis of the patient, the method of use or administration of the product or the handling of the product after it leaves ACIST's possession, ACIST does not warrant either a good effect or against ill effect following the use of the product and ACIST makes no warranty as to whether or not any particular or desired result is obtainable by application or use of the product.

8.6. Buyer must report any defects which might be covered by the aforementioned warranty to ACIST immediately after discovery and Buyer must provide ACIST with all the information, (technical) data and documentation required to test, repair or replace the product or its installation works. Buyer must allow ACIST and/or a third party designated by ACIST every opportunity to investigate, test, repair or replace the product and/or its installation works.

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

9.1. Title of ownership regarding the products delivered by ACIST remains vested in ACIST or as per agreed Incoterm.

9.2. Notwithstanding the retention of title referred to in the preceding sentence, the Buyer is permitted to use the products in the course of its normal business operations. The Buyer may not carry out any other acts of disposition, which includes transfer of title or the creation of security rights. If the Buyer remains in default of its obligations to ACIST, ACIST will be entitled to withdraw the permission granted above.

9.3. Until the ownership of the products has been transferred to the Buyer, the Buyer is obliged to use them carefully and to insure them, for the benefit and in the name of ACIST but at its own expense, against all customary risks.

#### **Article 10. Intellectual property and confidentiality**

10.1. Unless agreed otherwise in writing, by selling the products ACIST grants the Buyer a non-exclusive and non-transferrable limited licence based on ACIST's relevant intellectual property rights. This licence may only be used for using products delivered by ACIST.

10.2. The Buyer may not copy, modify, adapt, alter, convert or create derivatives of ACIST's products to the extent that this is not required in order to use the products delivered by ACIST.

10.3. The Buyer will maintain confidentiality with regards to all technical, commercial and financial information that ACIST discloses or provides to the Buyer in the context of the agreement concluded with the Buyer. The Buyer may not disclose any of this confidential information to third parties or use it for any purpose beyond the scope of the agreement concluded between the parties without ACIST's consent.

10.4. If the confidential information concerned is no longer required for the use of the products delivered by ACIST or for the performance of an agreement concluded with ACIST, the Buyer will be obliged, at ACIST's first request, to return that confidential information to ACIST or to destroy it without retaining any copies of it.

#### **Article 11. Liability**

11.1. If products or installation works turn out to be defective within one (1) year after being delivered or completed by ACIST and ACIST is notified of this promptly in accordance with article 7 and 8 above, or if ACIST does not in any other way perform its obligations, or does not perform them properly, under an agreement concluded with the Buyer, then ACIST will be obliged, at its discretion, to:

- a) repay the purchase price if and to the extent it has been paid, with the products being returned if ACIST has already delivered them, or
- b) replace the defective products with products that are in conformity with the contractual specifications or redo the defective installation works, or
- c) grant a reasonable price deduction, to be determined by ACIST.

11.2. Except for cases of wilful misconduct or gross negligence by ACIST's management or executive officers, ACIST and its affiliated companies are never liable for any compensation of damage resulting indirectly (consequential damage) from the defectiveness of the delivered products or installation works or from any other shortcoming or tort (including negligence) by ACIST, its affiliated companies or third parties enlisted by ACIST. Consequential damage includes - without limitation - loss of goodwill or reputation, work stoppage and loss of profit.

11.3. In any event ACIST and its affiliated companies rule out liability of any kind whatsoever that exceeds the insurance coverage provided by ACIST's insurance policy. ACIST will provide information regarding its insurance policy to the Buyer at request. In case of liability not covered by ACIST's insurance policy, ACIST and its affiliated companies are only liable to a maximum of 200% of the price paid by the Buyer.

11.4. Any claim that the Buyer has against ACIST or its affiliated companies ceases to have effect following a period of one (1) year after the date of delivery or the date of completion of the installation works, irrespective of



whether the Buyer could reasonably have been aware of the claim and/or the liable person.

11.5. The Buyer indemnifies ACIST and its affiliated companies against all claims by third parties that relate to products delivered by ACIST to the Buyer, installation works performed by ACIST or that have any connection, directly or indirectly, with any agreement concluded between ACIST and the Buyer which arise (directly or indirectly) out of or in connection with any negligent act, omission or wilful misconduct of the Buyer, its employees, agents or subcontractors.

#### **Article 12. Termination**

12.1. Notwithstanding the provisions of the preceding articles, the Buyer will automatically be deemed to be in default if it does not perform any obligation it has pursuant to any agreement concluded with ACIST, or does not perform any such obligation properly or in good time, or if the Buyer becomes bankrupt or insolvent or petitions for bankruptcy or insolvency, is granted a suspension of payments or applies for one, or is liquidated or terminated, or if it is put into administration or placed under guardianship or management, or if it proposes a composition to its creditors, and ACIST will be entitled, without issuing any notice of default and without judicial intervention, to suspend performance of the agreement and/or to terminate the agreement wholly or in part, at its discretion, without ACIST being liable for any compensation, notwithstanding ACIST's entitlement to compensation as a result of the Buyer's breach of contract and/or to termination. In these cases, any claim that ACIST has or acquires against the Buyer will be immediately and fully due and payable.

12.2. ACIST is entitled to suspend further performance and to demand security from the Buyer in any instance in which there is reasonable doubt about the Buyer's solvency.

#### **Article 13. Use and return policy**

13.1. The Buyer shall not actively resell or promote the resale of products sold by ACIST in any geographical area, located in the European Economic Area (EEA) or Switzerland, in which ACIST has exclusively reserved the sale of its

products to a distributor, to itself or to an affiliated company. Outside of the EEA and Switzerland the Buyer shall not resell any product sold by ACIST.

13.2. ACIST does not accept any return of products for credit, replacement or refund without prior written authorisation from ACIST. Authorisation can be obtained by contacting the ACIST Customer Service Team. Unless provided otherwise, costs and risks of shipment for returned products are for the account of the Buyer.

13.3. Any product returned without ACIST authorisation is done at Buyers own risk. ACIST does not accept any liability for such unauthorised returns.

#### **Article 14. Applicable law and disputes**

14.1. All sale transactions, offers and agreements by and with ACIST are governed solely by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention CISG) is excluded.

14.2. All disputes arising from or relating to sale transactions, offers and agreements by and with ACIST will be settled by the District Court of Limburg, located in Maastricht, Netherlands, on the understanding that ACIST is entitled, at its discretion, to submit disputes for settlement to the competent court in the country in which the Buyer is established or in which the Buyer de facto runs its business.

#### **Article 15. Other provisions**

15.1. If, according to the competent court or on the basis of statutory rules, one or more provisions of these terms and conditions is/are no longer valid or cannot be enforced, this will not affect the validity or enforceability of the other provisions to the extent that these other provisions are not inextricably linked to the invalid or unenforceable provision(s).

15.2. The invalid or unenforceable provision concerned will be deemed to be removed from these general terms and conditions and to be replaced by a provision of similar purport that reflects the original intention of the provision, to the extent permissible by law.

15.3. Amendments to these terms and conditions and any offer or agreement to which they apply are only valid if agreed in writing.