GENERAL TERMS AND CONDITIONS OF Abbott GmbH

I. GENERAL PROVISIONS

1 Scope of application

Sales, deliveries and other services provided by Abbott GmbH, Max-Planck-Ring 2, 65205 Wiesbaden, Germany (hereafter referred to as “ABBOTT”) shall be governed solely by the following General Terms and Conditions (hereafter referred to as “the General Terms”) which shall be deemed accepted by the Customer upon placing the order or by accepting the delivery. They also apply to all future business with the Customer. The application of the Customer’s disclaimers or supplementary agreements shall be excluded, even if ABBOTT does not expressly object to such terms and conditions.

2 Subject matter of the contract, conclusion of contract

2.1 The offers of ABBOTT are without obligation. A contract is only concluded when ABBOTT issues a written order confirmation or if ABBOTT executes the order and this contract is exclusively oriented to the content of the order confirmation and these General Terms. Oral agreements or undertakings shall require confirmation in writing from ABBOTT in order to be deemed valid.

2.2 ABBOTT reserves all rights to the offer documents (in particular images, drawings and details of weights and dimensions) and any patterns. They shall not be made available to third parties and must be returned to ABBOTT immediately on demand. Such documents may only be made accessible to third parties after prior consent by ABBOTT.

2.3 The information provided by ABBOTT in its sales catalogues or with the offer - e.g. descriptions, drawings or pictures - only serves as a description of the products and is only approximately relevant unless such information has expressly been qualified as binding in writing.

3 Deadlines and dates of delivery

3.1 Times or terms of delivery and place of delivery are only binding in individual cases after written confirmation from ABBOTT and if the Customer has provided or made available all information and documentation required to carry out the delivery or service in good time. ABBOTT and has made any payments agreed in the manner agreed. Any times agreed shall commence on the date of ABBOTT’s order confirmation. Delivery periods shall be extended correspondingly in the event of additional or supplementary orders issued later.

3.2 Events which are unforeseeable, unavoidable and lie beyond the sphere of influence of ABBOTT and for which ABBOTT is not responsible, such as acts of god, war, natural catastrophes and labor disputes, release ABBOTT from its undertaking to make punctual delivery or performance for their duration. Agreed deadlines extend for the duration of the disruption; the Customer will be informed in an appropriate manner that the disruption has occurred. If the end of such disturbance is not foreseeable or should it continue for a period longer than two months, each party is entitled to rescind the contract.

3.3 If ABBOTT is in default with its delivery or service, the Customer shall not be entitled to rescind the contract until a reasonable grace period set by the Customer has expired.

4 Prices, terms and conditions of payment

4.1 If the contracting parties have not agreed on a specific price, the price will be determined according to ABBOTT’s price list which applies on the date the contract is concluded which ABBOTT submits to the Customer upon his request provided that the Customer has not been made aware of it.

4.2 With the scope of contractual obligations such as current supply contracts or service agreements ABBOTT reserves the right to make reasonable price increases. ABBOTT shall notify the Customer of any increase in prices at the time of reference of the increase comes into force. The Customer has the right to annul the contractual obligations within four weeks after receipt of notification of the price increase.

4.3 All prices of ABBOTT shall be ex ABBOTT’s warehouse exclusive of respective statutory turnover tax, possible customs duties, transportation and/or shipment costs which will be calculated separately.

4.4 The contracting parties agree that all obligations to pay resulting from this contract will be valid in Euro.

4.5 Each invoice shall be due for payment within 30 days from the date of invoice, without deduction. If this period cannot be changed, ABBOTT may require the payment of the contractually agreed purchase price minus any money saved on expenditure.

4.6 In the event that the Customer is in default (cf. article I. 4.5), ABBOTT shall be entitled to demand default interest on arrears as required by law. This shall be without prejudice to the assertion of further default damages.

4.7 Bills of exchange and cheques in fulfilment of payment shall only be accepted by ABBOTT if expressly permitted thereof in the order or in the written agreement.

4.8 The Customer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract, is uncontradicted or is legally binding.

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4.10 Should ABBOTT become aware of the risk of poor performance on the part of the Customer following its order, ABBOTT reserves the right to suspend ABBOTT’s entitlement to performance. ABBOTT shall be entitled to make outstanding deliveries or perform outstanding services against pre-payment only or in return for the provision of security. Should this not be possible, ABBOTT may, notwithstanding other rights, partially or completely rescind the contract.

5 Limitations on liability and claim for damages

5.1 ABBOTT shall pay compensation for damages

(i) caused to body, life and health of the Customer;

(ii) if ABBOTT has provided a guarantee concerning the particular quality of the contractual product or performance, the ability to procure them or any other guarantee, for damages arising from the non-fulfilment of said guarantee;

(iii) for willful or grossly negligent damages caused by ABBOTT or persons employed to perform his obligation;

(iv) in lieu of performance in the event of defective deliveries and performance based on considerable breaches of contract by ABBOTT;

(v) in the event of the violation of material contractual obligations due to slight negligence, but limited to the foreseeable damage typical to such contract;

(vi) in the event of other material contractual obligations due to gross negligence or other mandatory liability provisions;

(vii) if the performance due to a culpable breach of a non-material contractual duty if it would no longer be reasonable for the Customer to accept the performance or if the delivery or performance is impossible for ABBOTT.

5.2 In case that none of the provisions in article I. 5.1 is applicable, ABBOTT is not liable for damage compensation

5.3 The provisions in article 5.1 shall apply to all claims to compensation for damages, irrespective of the legal grounds, and especially to liability in tort and for liability due to default during contract negotiations.

5.4 The Customer shall be obliged to take appropriate measures to protect against damage and reduction in value.

5.5 ABBOTT will not assume any liability for loss of data during service and/or repair works arising out the Customer, although requested to do so, not observing in terms of data protection its duty to collaborate.

6 Right of modification, General rules

6.1 ABBOTT reserves the right to modify these General Terms at any time at its sole discretion. ABBOTT shall inform the Customer in writing of any modifications to the General Terms at least eight weeks before the change takes effect. Provided the Customer does not object in writing to these modifications within 14 days, the amendments shall be deemed to have been approved.

6.2 Should any provision of these General Terms be fully or partially voided, this will not affect the effectiveness and enforceability of the remaining provisions.

6.3 If the Customer is a merchant, a legal person under public law or a special fund under public law, the exclusive jurisdiction for all disputes arising in connection with this contract shall be Wiesbaden.

6.4 The laws of the Federal Republic of Germany shall apply to this contractual relationship with the exclusion of the UN Sales Convention (OSG).

II. SPECIFIC RULES FOR THE SALE OF PRODUCTS

1 Modification, price increase, shipment, transfer of risk, insurances, default of acceptance, partial delivery

1.1 ABBOTT is entitled to modify the composition, the design and/or the appearance of the contractual product in so far as it is necessary for medical or technical reasons, it does not affect the product’s functionality and if this is not considered unreasonable to the Customer.

1.2 In case the delivery date agreed upon is more than four (4) months after the conclusion of the contract and in case ABBOTT has incurred cost increases with regard to the delivery product which were unforeseeable upon conclusion of the contract, ABBOTT is entitled at equitable discretion to increase the price agreed upon accordingly.

1.3 The place of fulfilment for all obligations resulting from the contractual relationship is Wiesbaden. Unless the Customer has not provided otherwise, shipment shall be effected on an appropriate shipping route and packed to commercial standards.

1.4 The risk shall pass to the Customer no later than when the delivery product is handed over to the carrier or with the dispatch to the Customer. If the transfer or shipping is delayed for reasons due to the Customer, then risk is transferred to the Customer on the date that the Customer is informed that the delivery product is ready for shipment.

1.5 Insurance cover shall only be taken out at the Customer’s request and expense.

1.6 ABBOTT is entitled, should the Customer delay acceptance or infringe other duties to cooperate, to store the contractual products appropriately at the risk and the expense of the Customer. Without prejudice to its other rights, ABBOTT is entitled to rescind the contract if a reasonable grace period set by ABBOTT for the acceptance of delivery has expired without success. If the purchaser is in default of acceptance and during the default period the expiry date of the ordered product lapses, and without prejudice to ABBOTT’s other rights, ABBOTT may require the payment of the contractually agreed purchase price minus any money saved on expenditure.

1.7 ABBOTT may make partial deliveries for good reasons if the partial delivery is usable for the Customer within the framework of the contractual stipulation of purpose and the Customer does not accrue any material additional expenditures or additional costs hereby.

2 Warranty, inspection duty, limitation for claims

2.1 Details in catalogues, price lists, descriptions of the products and any other information material provided by ABBOTT to the Customer shall not be understood as guarantees for special qualities of the contractual product; such guarantees must be explicitly and in writing.

2.2 The Customer must take delivery of forwarded contractual products even if they exhibit minor defects, without prejudice to its warranty rights.

2.3 Customer’s warranty rights shall require that it inspects the products upon delivery without undue delay and notifies ABBOTT thereof in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to ABBOTT in writing without delay upon their discovery.

2.4 In the event of notifications of defects ABBOTT shall be entitled to inspect and test the respective contractual product. The Customer shall give ABBOTT the necessary period of time and opportunity for inspection. ABBOTT may also demand of the Customer that the respective product be returned to ABBOTT on ABBOTT’s account. Should a notification of defects by the Customer turn out to be willfully grossly negligent or unwarranted, the Customer shall be obliged to compensate ABBOTT for all losses incurred in this connection.
If the contractual products have defects which are covered by warranty, ABBOTT shall be entitled, at ABBOTT’s option, to remedy the defects or make a free-of-charge replacement delivery of the faulty part or the whole product.

Material, shipment and working costs in connection with the remedy of defects or replacement shall be borne by ABBOTT, unless article II. 2.4, sentence 4 applies.

The Customer has to give ABBOTT the necessary time and opportunity to remedy the defects or make a replacement delivery within 14 days. Only in urgent cases of endangering the safety of the business or for the purpose of averting disproportionately large damage or if ABBOTT is in default of remedying the defects, the Customer has the right upon prior notification to ABBOTT to carry out the remedy himself or have it done by a third party and demand compensation for the necessary costs from ABBOTT.

Parts replaced by ABBOTT are passed into the property of the Customer.

3.1 ABBOTT shall not assume any warranty for damages caused by inappropriate or improper use, incorrect warehousing, incorrect transport, faulty assembly, faulty operation, insufficient maintenance, incorrect handling, improper installation by the Customer, the use of inappropriate accessories or spare parts and natural abrasion.

3.2 If the elimination of a defect under warranty by repair or replacement fails, it is unacceptable for the Customer or ABBOTT refuses such subsequent performance according to section 439 (3) German Civil Code ("BGB") then the Customer has the right to cancel the purchase or demand an appropriate reduction in the purchase price or demand compensation or demand compensation instead of performance or reimbursement of vain expenses.

3.3 The limitation period for the statutory warranty claim for the products shall be twelve (12) months from the date of the passing of risk. This limitation shall not apply to claims for damages arising from wrongful death, personal injury or health impairment or for losses arising from a malicious or grossly negligent breach of duty on the part of ABBOTT or by its legal representative or its vicarious agents shall become statute-barred in accordance with the legal provisions. In case the contractual product is sold for the intended use by the Customer or its indirect contractual partner to a consumer the recourse claims considering a longer limitation period according to section 479 BGB shall remain unaffected.

3.4 Any other claims of the Customer shall be excluded, provided article I. 5 or sections 478, 479 BGB do not prescribe anything to the contrary.

Retention of title

3.1 The delivered products shall remain ABBOTT’s property until all receivables resulting from the business relationship with the Customer have been fully paid.

3.2 In case of current accounts, this retention of title shall only be limited to regulations of the U.S. Department of Commerce, Bureau of Industry and Security, which regulate the export of technical products as well as technical information and support is subject to export control regulations of the European Union and U.S. statutes and regulations, including but not limited to the Export Administration Act of 1979 and its amendments, and subsequent laws and provisions of the Department of Commerce and Bureau of Industry and Security, which regulate the licensing and supply of technologies and products to foreign countries of those individuals falling within the jurisdiction of the United States.

3.3 The Customer undertakes to cooperate with ABBOTT to observe all export control regulations applicable in this respect.

3.4 In the event of breaches of this chapter 5 ABBOTT shall be entitled to terminate all delivery contracts concluded with the Customer with immediate effect and reserves the right to cancel any order that has already been confirmed. In this case, the Customer does not have any claims for damage.