

Delivery Terms of MEIJI SANGYO EUROPE GmbH (“MEIJI”)

1. Applicability of these terms:

(1) These purchase and delivery terms shall be applicable exclusively to business operators (within the meaning of Sec. 14 of the German Civil Code or “BGB”). They shall apply to all subsequent transactions and business relationships at present or in the future regarding deliveries or services by MEIJI.

(2) All offers, agreements, deliveries and services shall be carried out on the basis of and in accordance with the following terms. Contradictory or conflicting general terms, especially purchase terms, shall not be binding upon MEIJI, unless MEIJI has expressly declared its approval. In case two letters of confirmation are crossing, which contain conflicting terms, the letter of MEIJI is binding.

(3) All Agreements and orders require the written form in order to be legally valid. Oral side agreements do not exist. Proof to the contrary is not excluded.

2. Prices and payment:

(1) Prices are binding and EXW registered seat of MEIJI (Incoterms 2010). They are quoted in EURO and exclude the respective VAT, as well as the expenses for packaging, freight, transportation, transport insurance, duties and dispatch. In case of delivery to a foreign country, MEIJI shall not be liable for the taxes and charges thereby incurred. If no fixed prices have been agreed, the respectively current list prices are applied.

(2) The charging of claims from the same contract or of counterclaims from other business operations between the parties is not admissible, unless the claim has become res judicata in court or is not contested by MEIJI.

(3) Invoices shall be paid within 10 days from date of invoice. MEIJI reserves the right to deliver only against prepayment, cash or cash on delivery, especially in the case of first orders or in case of default of payment.

3. Delivery conditions:

Delivery dates are not binding, unless expressly agreed as “binding delivery date”. These provisions are always under condition of correct and complete delivery to MEIJI. The transfer of risk shall take place registered seat of MEIJI. If, the goods being ready for dispatch, the delivery or the take-over is delayed due to reasons for which MEIJI is not responsible, the risk is transferred to the customer with the arrival of the information of readiness for dispatch.

(2) The transport shall only be insured by MEIJI if explicitly wished by the customer. The eventual expenses shall be assumed by the customer. By expressing his wish to have the transport insured, the customer entitles MEIJI to execute the necessary declarations.

(3) Binding delivery periods shall be fixed separately and individually. Partial deliveries are admissible. The delivery period is prolonged adequately in case of unpredictable, extraordinary events, which in spite of the necessary and reasonable care applied according to the circumstances of the case, could not be prevented. Such events are, e.g., business disruption, strike or lockouts, a ban on imports or exports, a refusal to issue or the revocation of authorizations or permissions or other administrative measures; this does also apply, should such an event strike a supplier or other producer.

4. Retention of title:

The delivered goods remains property of MEIJI until the complete payment of all claims from the business operation, including a possible current account balance (so far as it has been accepted by the customer). In case of default or other breaches of duty, MEIJI is entitled to rescind the contract and to take back any the goods subject to the retention of title, provided a suitable grace period has elapsed.

5. Liability

Should the goods or service provided by MEIJI be deficient, which includes the lack of the quality contractually agreed upon, MEIJI may, at its own discretion, either deliver a substitute or repair the defect; at least two attempts of repair or of substitute deliveries must be permitted. Place of performance is the registered seat of MEIJI.

(2) Perceptible deficiencies of the goods and/or service have to be communicated in written form immediately after receipt.

(3) If the customer receives a faulty instruction, MEIJI is only obliged to deliver a correct instruction and this only if the deficiency of the instruction is opposed to a state of the art implantation

(4) The limitation period for any claims in case of defects is one year. It begins with the handover of the goods to the customer. It is not prolonged or renewed by healing of defects.

(5) Warranty („Gewährleistung“) shall be granted by MEIJI without limitation according to legal provisions, as far as MEIJI or one of its representatives are responsible for a deliberate or grossly negligent breach of contract, or as far as an injury to life, body or health has ensued or if MEIJI has assumed a guarantee. The liability for a slight negligence is excluded, unless an essential contractual obligation (obligation which enables the proper performance of the contract and on which the creditor may rely and has relied, and whose culpable non-fulfillment endangers the purpose of the contract) has been violated. In this case, the liability is financially restricted to the predictable damage typical of the contract. These limitations of liability do likewise not apply, for claims according to §§ 1,4 Produkthaftungsgesetz.

6. Severability Clause:

Should any provision of this agreement be or become entirely or partly invalid, the validity of the contract and of the other terms of purchase, delivery and payment shall not be affected thereby. The parties are obliged to replace invalid or impracticable conditions or contractual terms by valid provisions, which, to the extent possible, implement the intent pursued by the invalid provision.

7. General provisions:

As far as the customer is a business operator, an incorporated entity of public law or a (special) estate of public law, Duesseldorf/Germany is the sole court of jurisdiction for all legal disputes arising directly or indirectly from the contract. However, MEIJI is also entitled to sue at the customer’s registered office. The same rule applies to customers without a general court of jurisdiction in Germany or whose permanent or usual residence at the time the suit is filed is unknown. The place of fulfilment is the registered office of MEIJI.

(2) The contractual relationship is governed exclusively by German law (especially BGB und HGB) under the explicit exclusion of its collision rules and the UN Convention on the Sale of Goods (CISG).