

Standard Terms of Doing Business for P.J. Dahlhausen & Co. GmbH Medical Technology

1. Extent of Validity

The domestic and foreign sale and delivery of all products marketed by P.J. Dahlhausen & Co. GmbH (called Dahlhausen in what follows below) occurs exclusively on the basis of these standard terms of doing business. This also holds for future sales and deliveries without requiring a renewed reference to the standard terms of doing business. Contrary references made by the customer to his/her or other standard terms for doing business or purchasing terms are, hereby, contradicted; they are excluded. This does not apply to the case in which they were promptly brought to the attention of Dahlhausen and do not stand in the way of the following terms of doing business. These terms of doing business are considered to have been accepted no later than the receipt of goods by the customer or his/her employee. The content of any individual contracts concluded between the parties remains unaffected by these terms of doing business.

2. Placing an Order and Its Acceptance

All orders which Dahlhausen receives directly from the purchaser or through sales staff must be confirmed by Dahlhausen in writing or by telex/facsimile in order to be considered as accepted, unless the business transaction is conducted in cash. Oral collateral agreements, changes, additions or assurances of special offers or written contracts are only effective upon written confirmation by Dahlhausen. Deviations of ordered or delivered articles in an order, especially with regard to the materials and design, are expressly reserved within the scope of technical progress. For the completion of contracts whose fulfillment occurs in the form of several individual deliveries, each delivery is considered to be a separate transaction.

3. Time of Delivery

If a time of delivery has been agreed upon or is required, the following will apply: The times of delivery indicated by Dahlhausen are non-binding, unless they have been explicitly confirmed in writing by Dahlhausen as a "binding time of delivery". Delivery by Dahlhausen is subject to the reservation of obtaining delivery oneself. Dahlhausen will immediately inform the customer, if an obtaining of supplies oneself does not occur.

If the obtaining of supplies oneself does not occur, the contract is considered to have not been concluded. A risk of procurement assumed by Dahlhausen does not exist. A prerequisite for meeting the time of delivery is the timely fulfillment of the contractual obligations assumed by the customer, especial-

ly the performance of the agreed upon payments and, if necessary, the provision of any arranged securities. Furthermore, in case of a delay that is the fault of Dahlhausen, each customer is not entitled to enforce additional legal rights until a grace period of one month beyond the occurrence of the delay has unsuccessfully elapsed.

Dahlhausen is entitled to make partial deliveries at any time. If the delivery delays are not the fault of Dahlhausen, it is entitled to postpone the time of delivery by the duration of the impairment plus an appropriate start-up period, or to the extent that performance has become impossible as a result of the delay, to withdraw completely or partially from the contract with regard to the not yet fulfilled portion. If the impairment lasts longer than 3 months, the customer is entitled to withdraw from the contract with regard to the not yet fulfilled part of the performance.

4. Shipping

If shipping of the ordered goods is required, this occurs from the corporate domicile of Dahlhausen at the expense and risk of the purchaser. Unless special arrangements are made, Dahlhausen has the right to choose the shipping company and the type of transport medium. The risk of transport also transfers to the purchaser effective with shipping from the corporate domicile of Dahlhausen, if freight prepaid delivery is arranged. If shipping is delayed due to circumstances which are the fault of the customer, the associated risk passes to the customer at the time that the goods are ready to be shipped. Costs which arise as a consequence of the delay (especially storage and fees) are the responsibility of the purchaser. The time at which the readiness to be shipped is communicated is decisive. Dahlhausen is not obligated to insure the shipment against damage during transport or to have it insured, unless Dahlhausen has assumed such an obligation in writing.

5. Liability for Defects

Dahlhausen warrants that its goods are free of production and material defects. If the instructions for use or the notices on the packaging of the goods are not followed or the goods are not properly stored and used, the warranty no longer applies, to the extent permitted by law.

The customer is obligated to examine the goods immediately after delivery and without delay report any existing defects in writing to Dahlhausen (no later than the second business day after delivery). Defects that are claimed too late (i.e., contrary to the existing obligation) are not considered by Dahlhausen and are excluded from

the warranty. Notices of defects are only recognized as such by Dahlhausen if they were communicated in writing. Notices of defects that are asserted against the sales staff, shipping companies or other third parties are not notices that have been given in proper form or in a timely manner. Existing regulations apply as appropriate in the case of complaints by the customer about the quantities delivered. Defective goods must be kept ready and available for viewing by Dahlhausen or an authorized third party and must be in a condition identical to that when the defect was first detected. The required return of goods to Dahlhausen in case of a defect can only be undertaken with prior consent. Returned goods for which such consent has not been obtained beforehand need not be accepted by Dahlhausen. In this case the customer is responsible for the return shipping charges. For the case in which subsequent improvement or a replacement delivery occurs, the conditions pertaining to the time of delivery apply in the appropriate manner. The presence of a confirmed defect of which proper notice has been given is the basis for the following rights of the customer:

a) In case of a defect, the customer has the right to request subsequent fulfillment from Dahlhausen. The elective right to choose whether a redelivery of the goods or a correction of the defect will occur is left to the discretion of Dahlhausen.

b) Furthermore, if an attempt at subsequent improvement is unsuccessful, Dahlhausen has the right to undertake renewed subsequent improvement, once again at its discretion. Not until the repeated attempt at subsequent improvement fails does the customer have the right to withdraw from the contract or to reduce the purchase price.

c) Only in cases of grossly negligent or intentional violation of the obligation to deliver defect-free goods, can the customer demand compensation for damages or reimbursement of fruitless expenses. He/she must document the damage that occurred with regard to its reason and magnitude. The same applies to the fruitless expenses.

d) This exclusion of liability does not apply to those cases in which Dahlhausen is obligated by product liability law to be liable for personal injuries or material damages.

6. Residual Liability for Breach of Duty by Dahlhausen

Notwithstanding the provisions concerning the warranty as well as other special regulations agreed upon in these provisions, the following holds for breach of duty by Dahlhausen:

The customer must grant Dahlhausen an appropriate time period for subsequent improvement to eliminate the breach of

duty; this must not be less than one month. Only after the time period for subsequent improvement has elapsed unsuccessfully can the customer withdraw from the contract and/or demand compensation for damages.

The customer can claim compensation for damages only in cases of grossly negligent or intentional breach of duty by Dahlhausen. Compensation for damages instead of performance (in case of non-performance § 280 Par. 3 in combination with § 281 BGB) as well as damages due to delay (§ 280 Par. 2 in combination with § 286 BGB) is limited to the negative interest. Damage compensation for non-performance or not properly executed performance (§ 281 BGB) is limited to the magnitude of the purchase price.

Compensation for damages instead of performance through exclusion of the obligation to perform (impossibility of performance § 275 BGB) is prohibited. If the customer is solely or predominantly responsible for circumstances that would entitle him/her to withdraw or if the circumstance leading to a right of withdrawal occurs during the delay in acceptance by the customer, withdrawal is prohibited.

7. Exclusion of Procurement Risk and Warranties

Dahlhausen does not assume any risk of procurement and also does not provide any warranties of this type, unless an explicit agreement in writing concerning this is concluded with the customer.

8. Return of Goods

The return of goods is fundamentally prohibited. Deviations from this policy always require a written special agreement with Dahlhausen. If the return of goods has been agreed upon between the parties, shipping must occur at no cost to Dahlhausen. For goods that are classified by Dahlhausen as resalable (undamaged packaging and undamaged product), a credit will be granted whose magnitude is based on the selling price of the goods less an agreed upon return and restocking fee. Goods that cannot be resold and individually designed products are excluded from being returned.

9. Additional Obligation for Dealers

If the customer is a reseller, he/she is obligated to document the passing on of the product in such a manner that it is possible to clearly trace the product without any gaps all the way to the final customer. The customer must also impose this obligation on the subsequent purchaser, insofar as he/she is not the final consumer.

10. Prices

If not otherwise arranged, prices are expressed from the corporate domicile of Dahlhausen in EUR and do not include the applicable value added tax (VAT) for domestic orders. Dahlhausen delivers goods at the list prices valid on the particular day on which the order is placed. These quoted prices are understood to not include shipping and packaging costs. Additional costs associated with partial shipments that were originally unplanned will be assumed by Dahlhausen.

11. Terms of Payment

All invoices from Dahlhausen must be paid without deductions. The deduction of a cash discount requires a prior written agreement. If the payment deadline is exceeded, interest for late payment in the amount of 8% above the applicable basic interest rate must be paid on the amount due even without first having received a payment reminder. Promissory notes for payment are only accepted after prior written agreement. Expenses associated with the granting of cash discounts are calculated by the customer as of the due date of the payment, irrespective of the time at which the promissory note is accepted. Dahlhausen does not warrant a timely collection of bills or timely protest. If promissory notes or checks are not credited in a timely manner by the drawer, all other existing claims of Dahlhausen against the customer will become due at this time. Other existing times permitted for payment will expire. The same holds for the case in which a debt is not paid when due.

Withholding payment or a setoff, because of other existing counterclaims of the customer - with the exception of undisputed or legally enforceable claims - is prohibited. Irrespective of any instructions given by the customer, Dahlhausen is entitled to first credit payments to the customer's older debts. If expenses and interest already have accumulated, Dahlhausen is entitled to first credit the payment to the expenses, then the interest and finally to the main services provided. All claims of Dahlhausen against the customer, irrespective of the legal basis, become immediately payable, if the facts indicate that according to legal regulations or contractual provisions Dahlhausen is entitled to withdraw.

12. Reservation of Ownership

All goods delivered by Dahlhausen remain its property until full payment of the selling price and until all other claims arising from the business relationship have been completely satisfied (expanded reservation of ownership). The

disposal by the customer - in whatever form - of goods subject to reservation of ownership is only permitted within the scope of the customer's regular business dealings. Within the scope of regular business dealings, it is never permitted that the ownership of the goods be transferred to third parties as security.

In the case of goods, which are regularly sold within the scope of regular business dealings, the paid purchase price takes the place of the goods. The customer now assigns all rights to any claims arising from a sale of the goods in any form to Dahlhausen. The customer is empowered to collect these claims as long as he/she fulfills all payment obligations, which are owed to Dahlhausen. In light of the expanded reservation of ownership (assignment of future claims for each purchase-money claim) and assignment to third parties - especially a financial institution - is a violation of the contract and, therefore not permitted. Dahlhausen is entitled at any time to examine the sales documents of the customer and to inform his/her purchasers of the assignment. If the claim of the customer has in the process of additional sales been included in a current account, the customer, hereby, assigns his/her claim arising from the current account against the purchaser to Dahlhausen. The assignment occurs in the amount that Dahlhausen has charged the customer for the resold reserved goods. If the goods are legally seized from the customer, Dahlhausen must immediately be informed via a copy of the execution of judgment or a statutory declaration that the attached goods are the ones delivered by Dahlhausen, which are still subject to reservation of ownership.

If the value of securities provided according to the above paragraphs of this number for a foreseeable period of time exceeds the value of still open claims by more than 20%, the customer is entitled to demand a release of securities from Dahlhausen to the extent that such excess is present. The assertion of rights by Dahlhausen stemming from the reservation of ownership does not release the customer from his/her contractual obligations. The value of the goods at the time of their being taken back - if this occurs as agreed - is only credited to the existing claim of Dahlhausen against the customer. If the customer behaves contrary to the contract (especially default in payment), Dahlhausen is entitled, but not obligated to completely or partially take back the reserved goods or to demand the assignment of the customer's rights of recovery against third parties. It is agreed that an occurrence of the reserved goods being taken back or legally seized by Dahlhausen is not a withdrawal from the contract.

13. Right of Withdrawal

Dahlhausen is entitled to withdraw from the contract for the following reasons:

- a) If it is determined, contrary to expectations before concluding the contract, that the customer is not credit worthy. Inadequate credit-worthiness can readily be assumed after one occurrence of a promissory note or check protest, a stop payment initiated by the customer or an unsuccessful attempt at executing a legal judgment at the customer's place of business. Furthermore, this can be assumed when an application to initiate insolvency proceedings has been made. It is not necessary that this involve the relationships between the customer and Dahlhausen.
- b) If it is discovered that the customer has provided inappropriate information about his/her credit-worthiness and this information is of great significance. If the goods from Dahlhausen subject to reservation of ownership are disposed of outside of regular business dealings, in particular through transfer of ownership by way of security or pawning. Exceptions to this only exist insofar as Dahlhausen has declared its consent for the pending measures in writing.

14. Place of Performance and Legal Venue

Insofar as the customer is a businessperson, a legal entity of public law or a public law special fund, the corporate domicile of Dahlhausen is the exclusive legal venue for all disputes arising either directly or indirectly out of the contractual relationship. All obligations arising from the contractual relationship must be pursued at the corporate domicile of Dahlhausen - Cologne. The law of the Federal Republic of Germany applies to these standard terms of doing business and all of the contractual relationships between the parties. The use of UN purchasing law (CISG) is expressly prohibited.

15. General Provisions

All changes to these terms of doing business must be in written form. The same holds true for changing the provision, which necessitates written form. If one of the provisions of these terms of doing business or one of the provisions within the scope of other agreements between Dahlhausen and the customer should be or become legally invalid, then this will not influence the effectiveness of all the remaining provisions and agreements. In each case the invalid provision will be replaced by a permissible one, which most closely expresses the economic sense and purpose of the original. An analogous procedure will be followed in case of a contractual loophole.