

General Terms and Conditions

of MacroArray Diagnostics GmbH

1. General

- 1.1. These General Terms and Conditions shall apply to the sale and global supply of products by MacroArray Diagnostics GmbH ("MADx"), Lemböckgasse 59/Top 4, A-1230 Vienna, Austria, FN 448974g.
- 1.2. Contracts for the purchase of MADx products shall be brought about by the customer's acceptance of a quotation furnished by MADx. Quotations shall be furnished to the customer in writing or by e-mail. They may be accepted by the customer in writing, by e-mail, orally or by telephone. Unilateral orders furnished – in whatever manner – to MADx shall be dealt with as enquiries only and shall not trigger any obligations on the part of MADx.
- 1.3. In deviation from Item 1.2., contracts with an already existing customer for goods, which the customer has already purchased at least once, can be concluded without a separate quotation from MADx. In this case, unilateral orders by the customer represent an offer by the customer to conclude a sales contract under the conditions of the sales contract for the same goods that preceded the order. The contract is concluded by the transmission of the order confirmation by MADx. With regard to goods that the existing customer has not yet purchased, the order is treated as an enquiry of the customer (see Item 1.2.).
- 1.4. The MADx products shall be intended solely for the use in the customer's health care facilities. Where a product carries a use-by date the customer shall not use or pass on to a third party such product after its use-by date. The customer shall, as a rule, not be permitted to pass on for free or for a consideration any products bought from MADx (for exceptions see Item 7. below).
- 1.5. General terms and conditions as well as provisions of the customer in other documents that regulate the liability of the contractual parties shall not be part of the contracts concluded between MADx and the customer.

2. Delivery

- 2.1. The products shall be delivered DAP pursuant to the Incoterms 2020 except as otherwise provided in these General Terms and Conditions.

- 2.2. The cost of delivery shall be charged in accordance with actual expenses.
- 2.3. The products may be delivered and invoiced as partial deliveries.
- 2.4. MADx shall use its best efforts to comply with the anticipated dates of dispatch; except as expressly agreed otherwise, such periods and dates shall be non-binding and shall be understood to mean the expected date and time of delivery and handing-over to the carrier. The customer may rescind the contract if the date of dispatch is exceeded by at least one week and a reasonable respite of at least four weeks is set. Respite and rescission shall require a notification by registered letter. The right to rescind the contract shall apply only to such part of the shipment which is at fault. Possible delays in delivery after dispatch by MADx shall not entitle to rescind the contract.
- 2.5. In the event that MADx rescinds the contract due to the customer's default in accepting the shipment the customer shall pay a penalty of 50% (fifty percent) of the pre-tax invoiced amount.

3. Payment

- 3.1. Invoices shall be due and payable in full not later than 30 days after their receipt. In the event of payment default the customer shall pay default interest at a rate of 9.2 (nine point two) percentage points p.a. in excess of the Austrian base lending rate.
- 3.2. If partial payments have been agreed, the customer shall be in default of payment if a single partial payment is not made in good time and to the full amount.

4. Reservation of title

- 4.1. The products delivered to the customer shall remain the property of MADx until complete payment of the purchase price and of any further costs payable by the customer. For as long as MADx retains title to the products the customer shall bear the risks for the products. Until title has passed to the customer, the customer shall not be entitled to encumber the products with a lien or other third-party right. In the event of a default in payment MADx shall be entitled to seize the products.

5. Warranty and damages

- 5.1. The warranty period shall be six months after acceptance of the products by the customer. It shall be the customer's responsibility to furnish evidence of a defect. Sections 924 and 933b of the Austrian Civil Code ABGB shall not apply. The customer shall promptly and specifically notify any defect in writing. In case of warranty, MADx

shall be entitled to determine the type of warranty (repair, replacement, price reduction, cancellation of the contract) itself.

- 5.2. The customer shall examine all products in detail immediately upon their receipt. Any claims for incomplete shipments or apparent defects shall be notified specifically and in writing to MADx promptly after receipt of individual shipments failing which the delivery shall be deemed to have been accepted without reservations and no claims for warranty and damages made; the same shall apply if hidden defects are not notified in writing within one week of their discovery. Defects shall be clearly described by type and scope. The customer shall provide temporary storage for rejected products.
- 5.3. With the exception of personal injuries, MADx shall be liable for any loss or damage only when caused intentionally or by gross negligence. Subject to statutory provisions, MADx's liability shall be limited to the amount of the purchase price and becomes time-barred six months after the customer becomes aware of the damage and the damaging party. No compensation shall be made for any consequential damage (from the defect), other property damage, pecuniary loss or loss from third-party claims against the customer.

6. Data protection

- 6.1. MADx processes the following data of the customer as the controller: customer number, name, Company Register number or other register or ID number (like VAT and tax number), if any, address, contact information (such as telephone number, fax number, e-mail address), data on order management and invoicing (such as date of order, products, quantities, prices, shipping and invoicing data), product details (such as LOT, batch or serial number, production and use-by date, UDI, etc.), errors, damage, accidents or complaints in connection with the product as well as name and data of contacts at the customer's.
- 6.2. These data are processed for the following purposes:
- execution of contracts (Art 6 (1) (b) GDPR);
 - preservation of evidence (legitimate interest within the meaning of Art 6 (1) (f) GDPR);
 - compliance with obligations under the applicable medical device law or related regulations, in particular the Medical Device Regulation. This concerns, for example, processing for the purposes of market surveillance, traceability and risk

management after placing on the market (legal obligation as defined in Art 6 (1) lit (c) GDPR);

- contact data for the purpose of establishing promotional contact by e-mail, mail, fax or telephone (consent in accordance with Art 6 (1) (a) GDPR (Section 6.7.) and legitimate interest within the meaning of Art 6 (1) (f) GDPR).

6.3. MADx receives this data either from the customer himself or from a distributor through whom goods are purchased.

6.4. The mentioned data will be processed for the duration of the contractual relationship and will be erased, due to statutory obligations to preserve commercial records, not later than seven years after termination of the contractual relationship, except when more extensive obligations for preservation apply. Contact data will be used for advertising purposes until such time as consent is revoked or for a maximum of three years after termination of the contractual relationship or the last customer contact. Data for compliance with the obligations of medical device law and related regulations will be processed for the duration of the life cycle of the products or, if necessary, beyond that, if this is necessary for the above-mentioned purposes.

6.5. The above data will not be disclosed to any third party. Excluded from this are:

- distributors who are entrusted with the execution of the contract, for this purpose as well as for establishing contact or for purposes of market surveillance and traceability of the goods in accordance with medical device law and related regulations;
- competent authorities in enforcement of medical device law and related regulations, in particular in the context of vigilance;
- service providers of MADx who process customer data as processors within the meaning of the GDPR exclusively under the instructions of MADx (e.g. for hosting purposes or for sending newsletters etc.).

6.6. The customer shall promptly inform MADx of any changes in the data required for the contract. The customer has the right to information about the data processed by MADx concerning him or her and – to the extent defined by law – to demand rectification or erasure or restriction of their processing or to object to processing and the right to data portability. Moreover the customer shall be entitled to file a complaint with the Austrian Data Protection Authority (Datenschutzbehörde).

- 6.7. **The customer consents to being informed by MADx of products and other offers by e-mail or by telephone and to having MADx process the requisite e-mail address and telephone number for this purpose.** Such consent is not necessary for rendering the contractual works and services and may be revoked at any time without stating any reasons by sending an e-mail to office@macroarraydx.com.
- 6.8. Data processing within the scope of providing other services or using MADx software and products is regulated in the respective special agreements or conditions concerning these.

7. Special provisions for distributors

- 7.1. The following provisions shall apply to contracts between MADx and customers contractually purchasing products for the purpose of reselling them ("distributors"):
- 7.2. The ban on reselling as provided in Item 1.3. above shall not apply.
- 7.3. Such products shall be delivered FCA as provided in the Incoterms 2020, except as otherwise provided in these General Terms and Conditions. Item 2.1. above consequently shall not apply.
- 7.4. Distributors shall be entitled to resell products which are under reservation of title as provided for in item 4 above. However, this shall not apply to products the purchase price of which has not been fully paid for by the distributor in spite of being due and payable. Until complete payment has been effected, the distributor shall assign, on account of payment, to MADx any and all claims and security interests due to the distributor from the resale. In the event of a default of payment, MADx shall be entitled to inform the customer of the distributor of the assignment and demand the payment to be made to MADx.
- 7.5. Distributors shall ensure that the resale of the goods of MADx takes place exclusively under contractual basis and acceptance of the General Terms, Terms of Service or other conditions of MADx applicable to the respective goods or their use.
- 7.6. Distributors shall also ensure that customer data in the sense of the above Item 6.3. is passed on to MADx, that this passing on is permitted and that customers are informed in accordance with Art 13 and 14 GDPR about the processing of their personal data by MADx in accordance with Item 6. of these General Terms and Conditions.

7.7. Distributors shall be liable without limitation for any damages, including indirect and consequential damages, that MADx incurs due to a violation of Items 7.5. and 7.6.

8. Applicable law and venue

8.1. Any and all legal transactions entered into under these General Terms and Conditions shall be governed by Austrian law, excluding the United Nations Convention on Contracts for the International Sale of Good (CISG) and private international law.

8.2. The sole place of jurisdiction for all disputes arising directly or indirectly out of or in connection with a contractual relationship governed by these Terms and Conditions shall be the Commercial Court of Vienna.

9. Miscellaneous

9.1. In the event that any provision(s) of these General Terms and Conditions should be or become legally ineffective or unenforceable this shall not affect the legal effectiveness of the remaining provisions. The contracting parties shall replace such legally ineffective or unenforceable provision(s) by a legally effective and enforceable provision which is as close as possible in content and purpose to the legally ineffective and unenforceable provision.

9.2. No agreement to deviate from these General Terms and Conditions nor any change of or addition to a contract shall be valid except when made in writing. The same shall apply to any deviation from the above requirement for the written form.

9.3. Claims by MADx shall not be offset by counterclaims of any kind whatsoever.