

# Standard Terms and Conditions of Purchase of the German respectively Austrian Synthes undertakings of the Johnson & Johnson Family of Companies

## 1. Definitions

- 1.1 **STC** – these Standard Terms and Conditions of Purchase of the German respectively Austrian Synthes undertakings of the Johnson & Johnson Family of Companies.
- 1.2 **Ordering Party** – the German respectively Austrian undertaking of the Johnson & Johnson Family of Companies that is identified on the order, in particular the undertakings Synthes GmbH (Umkirch, Germany), Synthes Tuttlingen GmbH (Tuttlingen, Germany) und Synthes Österreich GmbH (Salzburg, Austria).
- 1.3 **Order** – an instruction from the Ordering Party to the Supplier for the manufacture, purchase, and/or delivery of goods and/or the performance of services. An order includes the prices of the goods/services ordered and an order value. In these STC, the term “order” shall also be understood to refer to invoice instruction document.
- 1.4 **Supplier** – the other contracting party that is identified on the order and provides the services or manufactures, sells, or delivers the goods identified on the order.
- 1.5 **Services** – activities or services that the Supplier performs for the Ordering Party on the basis of an order.
- 1.6 **Intellectual Property** – copyright, trademark, patent, and license rights, as well as know-how.
- 1.7 **Invoice instruction document** – an order that does not contain the prices of goods/services ordered or an order value. In these STC, the term “order” shall also be understood to refer to invoice instruction document.
- 1.8 **Confidential Information** – information, materials, data, inventions, methods, know-how, trade secrets, and/or materials concerning research and development, products, finances, the strategy, the business or other matters of the Ordering Party, of which the Supplier obtains knowledge or possession in connection with the order or to which the Supplier otherwise gains access. This also applies to confidential information of all other undertakings of the Johnson & Johnson Family of Companies or their clients, customers, or employees.
- 1.9 **Goods** – movables that the Supplier manufactures and/or delivers for the Ordering Party on the basis of an order.

## 2. Conclusion of Contract

- 2.1 These STC shall apply to the order between the Ordering Party and the Supplier and shall become an integral part of the contract upon placement of the order by the Ordering Party.
- 2.2 Deviating or additional terms of the Supplier, in particular, general terms of delivery of the Supplier, shall only be valid if the Ordering Party expressly acknowledges them in writing as an amendment or addition to the STC within five (5) business days.
- 2.3 Other agreements between the Ordering Party and the Supplier may also apply besides these STC, provided that such agreements are made in writing.

- 2.4 Orders shall be made either via the ordering system or in writing (via fax, mail, or e-mail). Only orders placed in this manner by the Ordering Party shall be binding. In exceptional cases, the Ordering Party may place orders by telephone but must submit them in writing as soon as possible thereafter.
- 2.5 The Ordering Party must be notified immediately in writing of any change in the subject of the contract against earlier deliveries or specifications. Any change entitles the Ordering Party to change or cancel the order.
- 2.6 Every order must be confirmed in writing by the Supplier within five (5) business days. For orders totaling less than EUR 10'000 (or equivalent) Suppliers are only obliged to confirm if there is a deviation from our order.

## 3. Prices, Invoicing, Payment

- 3.1 Unless otherwise agreed between the Parties, the prices in the order (this does not apply to invoice instruction document) shall be understood to be fixed prices and include, even in the case of extraordinary circumstances, all costs until such time as the Ordering Party accepts the goods and/or services.
- 3.2 All correspondence from the Supplier to the Ordering Party (e.g. delivery notes, order confirmation, invoice, etc.) must include the order number indicated by the Ordering Party when placing the order.
- 3.3 Unless otherwise agreed, the Supplier must invoice the Ordering Party electronically. Additional information can be found at: [www.jnjgbs.com](http://www.jnjgbs.com).
- 3.4 If electronic invoicing is precluded by mandatory local law, the Supplier must send the invoice to the address indicated on the order.
- 3.5 The Supplier must deliver the invoice for the order to the Ordering Party within a reasonable time after the delivery or partial delivery has been made.
- 3.6 Furthermore, the invoice for the order must fulfill the following requirements:
  - (a) It must include the Ordering Party's address, including the name of the division, as indicated in the order;
  - (b) It must contain the details of the order: goods or services ordered, order number as well as the associated order line;
  - (c) It must include the VAT numbers of the Ordering Party and the Supplier applicable to the order (if available);
  - (d) All orders must be stated in the currency agreed upon in the order;
  - (e) Any taxes must be identified separately.
- 3.7 Unless otherwise agreed, the Ordering Party shall not pay the invoice to the Supplier until such time as:
  - (a) the Ordering Party has accepted the goods or services at the destination,
  - (b) the Ordering Party has been properly invoiced, and
  - (c) the Ordering Party has received all requested documents.

- 3.8 Unless otherwise agreed, the Ordering Party shall pay the invoice within 45 days of the invoice date.
- 3.9 As long as the invoice fails to fulfill the requirements of this Art. 3, the Ordering Party is not obligated to pay the invoice.
- 3.10 If, notwithstanding Art. 3.1, the Parties have agreed that invoicing shall be done based on actual hours worked instead of on fixed prices, then irregular work hours (including but not limited to night work, weekend work, and work on holidays) shall be compensated according to the Ordering Party's terms (which it must convey to the Supplier separately), provided that the Ordering Party has agreed to this arrangement in advance.

#### **4. Place of Performance, Transportation and Packaging, Benefit and Risk**

- 4.1 Unless otherwise agreed in the order, the place of performance is the address of the Ordering Party, as indicated in the order.
- 4.2 Unless otherwise agreed, transportation is subject to the terms DDP address of the Ordering Party INCOTERMS 2010. In case of deviation from these terms, the preferred parcel service, customs agent, etc. must be arranged with the Ordering Party's purchasing department in advance and without fail.
- 4.3 Packaging materials must be used to the extent necessary to ensure that transportation is safe and free of damage. Only environmentally friendly packaging may be used. The Supplier's duty to take back the packaging depends on the applicable legal provisions. The Supplier has the duty to carry out its deliveries in an environmentally sound manner.
- 4.4 In case goods are shipped on **wood pallets** to the ship to location as defined in this PO, the supplier shall ensure that such wood pallets comply with the following: Wood pallets must be constructed from lumber sourced from countries that prohibit the treatment of wood with any form of halophenol based chemicals (including but not limited to 2, 4, 6 trichlorophenol, 2, 4, 6 tribromophenol, any of the tetrachlorophenols, any of the tetrabromophenols and pentachlorophenol). Wood pallets used must have been heat treated only, in accordance with the Heat Treatment standards set forth in International Standards for Phytosanitary Measures Publication No. 15, 2009 Revision (ISPM 15). Additionally, the sourced lumber or finished pallets shall not be shipped or stored with pallets or materials that may contain the chemicals mentioned above. While ISPM 15 currently provides for the use of Methyl Bromide (MB), the use of pallets fumigated with Methyl Bromide is also prohibited. All wood pallets must be labeled with the HT stamp in accordance with ISPM 15 Annex II.

**Non-wood pallets** are to be certified that they are free of Polybrominated diphenyl ethers (PBDEs) flame retardants – specifically penta-, octa-, and deca-brominated diphenyl ethers (BDEs).

These requirements are effective immediately. Failure to meet the above requirements of this paragraph may lead to rejection of shipments at supplier's expense.

- 4.5 The benefit and risk shall pass to the Ordering Party as soon as the ordered goods have been duly accepted at the place of performance.

#### **5. Date of Delivery, Default in Delivery, Contractual Penalty**

- 5.1 The dates of delivery or performance indicated in the order, order confirmation, or other agreement shall be understood to refer to dates of arrival at the place of performance.
- 5.2 The dates of delivery or performance are fixed dates. Therefore, no additional warning is required in order for the Supplier to be deemed in default of performance.
- 5.3 The Supplier is obligated to inform the Ordering Party immediately in writing upon the occurrence or detection of circumstances that indicate that the agreed-upon delivery date cannot be met.
- 5.4 In the event of default of delivery by the Supplier, the Ordering Party has the right to claim a contractual penalty in the amount of 0.15% of the net order value for each day of default or fraction thereof, not, however, to exceed 5% of the net order value in total. The Ordering Party reserves the right to assert additional statutory and contractual claims as well. Furthermore, the Ordering Party may demand the contractual penalty in addition to the statutory and other contractual claims. If the Supplier is in default concerning a partial delivery, then the contractual penalty shall be calculated based on the price of the total unit that is to be provided by the Supplier and the use or operation of which is impaired by the default of the partial delivery.

#### **6. Warranty**

- 6.1 Upon confirmation or acceptance of the order, the Supplier warrants that its product complies with the relevant provisions of German respectively Austrian law and meets the specifications and requirements defined in the order.
- 6.2 The Supplier warrants the faultless condition and suitability of its goods for the usual purpose known to the Supplier or for the performance of the service in a diligent manner or otherwise in compliance with the order.
- 6.3 The Supplier agrees to provide the Ordering Party, at the Supplier's own expense, with a sufficient number of any and all declarations of conformity and other documentation required or agreed upon. The Supplier is also prepared to grant the Ordering Party access to the documentation regarding risk analyses and the security concept for the order at any time upon request (if applicable).
- 6.4 The Supplier warrants to the Ordering Party that no rights of third parties, including but not limited to Swiss or foreign patent and other proprietary rights, are infringed by the manufacture and/or delivery and use of the goods or the performance of services. The Supplier shall indemnify the Ordering Party and hold it harmless against third-party claims for damages that are based on the infringement of third-party rights by the Supplier's goods or services.
- 6.5 The Ordering Party is not obligated to inspect the Supplier's goods or services for defects at the time of acceptance.
- 6.6 The Supplier grants the Ordering Party a period of 24 months from acceptance of the goods or services by the Ordering Party in which to notify the Ordering Party of any defects and to assert the corresponding warranty claims. In the event of a full replacement of goods or services under warranty, the period of 24 months shall restart from the beginning.
- 6.7 Contracts for services, whether or not they involve assembly obligations, shall be subject to the corresponding rules of German respectively Austrian law in lieu of this Art. 6.

## **7. Non-Performance or Faulty Performance**

- 7.1 In the event of default of delivery as described in Art. 5, a warranty claim pursuant to Art. 6, or any other non-compliance with the order or the STC, the Ordering Party is at liberty to cancel the order (cancellation), reduce the price of the order (reduction), or demand that the Supplier correct, free of charge, the goods delivered or services provided or that the Supplier deliver/provide other, equivalent goods or services. The Ordering Party also has the right to assert any other direct or consequential damages as well.
- 7.2 In lieu of asserting the rights set forth in Art. 7.1, the Ordering Party may waive performance of the order and demand compensation for the entire loss directly or indirectly incurred by it as a result of the non-performance or faulty performance.

## **8. Insurance, Product Liability**

- 8.1 The Supplier is obligated to obtain an adequate product-liability insurance policy that is valid worldwide and an adequate transportation insurance policy for the goods to be delivered in accordance with the order. The Ordering Party has the right to inspect the insurance policies at any time.
- 8.2 The Supplier is obligated to inform the Ordering Party immediately and in writing as to any and all risks and problems associated with its goods or with delivery of the same.
- 8.3 In so far as the Supplier is liable for a product defect, the Supplier is obligated, in particular, to indemnify the Ordering Party and hold it harmless, upon first request, against losses incurred by the Ordering Party as a result of the product defect or against compensation claims brought by third parties. The Supplier is liable for consequential damages in so far as they are attributable to a product defect in the goods delivered by the Supplier.

## **9. Drawings, Tools, Models, Materials**

- 9.1 Drawings, tools, models, materials that the Ordering Party makes available to the Supplier shall remain the property of the Ordering Party. The Supplier may only use these drawings, tools, models and materials with the consent of the Ordering Party and shall not make them available to any third party without the written consent of the Ordering Party.
- 9.2 Tools, equipment, gauges, etc. that have been paid for by the Ordering Party are the property of the same. The Supplier must label these items as "Property of the Ordering Party", store them appropriately, keep them in good repair and fully insure them, at its own expense, against all types of damage. Tools must be inventoried separately, and the stock of tools must be reported in writing to the Ordering Party at the end of the year.
- 9.3 At any time, the Ordering Party may request that the items described in Art. 9 be returned to it, and it is not obligated to state the reasons for making this request.

## **10. Confidentiality**

- 10.1 The Supplier shall not disclose any confidential information of the Ordering Party and shall refrain from making such information available to any third party.
- 10.2 If the order is assigned to a third party (subsupplier or subcontractor) pursuant to Art. 12.2, then the Supplier must require its subsuppliers or subcontractors to sign contracts in which they likewise are bound by the duties of confidentiality set forth in this Art. 10.

- 10.3 The duty of confidentiality shall survive the termination of the contractual relationship or the cooperation between the Ordering Party and the Supplier, without limitation.

## **11. Intellectual Property**

- 11.1 If, in the course of executing the order, the Supplier develops intellectual property that is based on confidential information of the Ordering Party and/or on drawings, tools, models, and/or materials of the Ordering Party, as described in Art. 9, then the Supplier must immediately notify the Ordering Party of this situation and must transfer to the same all rights and claims to such intellectual property irrevocably, free of encumbrances and free of charge.
- 11.2 The Ordering Party shall bear all reasonable costs associated with the transfer of the aforementioned intellectual property.

## **12. Subsuppliers and Subcontractors**

- 12.1 The Supplier shall be liable for its subsuppliers and subcontractors to the same extent as the Supplier itself is liable.
- 12.2 The Supplier shall not assign the order to any third party (subsupplier or subcontractor) without the prior written consent of the Ordering Party.

## **13. Special Duties of the Supplier**

### **13.1 Quality Assurance**

As agreed with the Ordering Party, the Supplier must establish and maintain a documented, state-of-the-art quality assurance system of suitable type and scope. The Supplier must prepare records, in particular, concerning its quality tests, and it must make these available to the Ordering Party upon request. During regular business hours and hours of operation, the Ordering Party has the right to conduct quality audits at the Supplier's premises upon prior notice. The purpose of these audits is to verify the efficiency and accuracy of the quality assurance system. Inspections are conducted by employees of the department in charge of quality assurance who are bound by confidentiality vis-à-vis third parties. Each Party shall bear the expenses incurred by it in connection with the audit.

### **13.2 Safety and the Environment**

For matters regarding the environment, safety, and industrial hygiene in connection with the manufacture and/or delivery of goods or the performance of services, the Supplier must (a) comply with all applicable national, cantonal, and local laws and regulations, (b) inform the Ordering Party immediately concerning all significant adverse events (such as fire, explosions, accidents and the like), (c) inform the Ordering Party immediately concerning any accusations or determinations of violations of applicable legal provisions that are made against the Supplier and (d) immediately take any and all reasonable corrective measures requested by the Ordering Party, including but not limited to implementing reasonable and significant elements of programs that the Ordering Party itself utilizes in its own operations regarding environmental protection, safety, and industrial hygiene.

### **13.3 Anti-corruption Provisions (FCPA)**

The Parties expressly state that they comply with all applicable laws, directives and regulations, including applicable anti-corruption laws, such as the "Foreign Corrupt Practices Act" ("FCPA") and the substantive provisions of the applicable anti-corruption laws, in particular, those enacted in order to enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of November 21, 1997 and the appendixes to the same ("Convention"). Neither of

the Parties shall make payments or offer items of value to any government official (public official) and thereby violate the FCPA or the Convention.

#### **13.4 Policies on the Hiring of Minors**

These policies apply to suppliers that hire persons under the age of 18 (“**Minors**”) who work in the manufacture of goods or components of goods or who provide services worldwide.

- (a) *Age, health, and safety* – No person under the age of 16 may be hired. No person between the ages of 16 and 18 may be hired unless this hiring complies with the health, safety and ethical provisions of the “International Labour Organization Convention 138” on the minimum age for admission to employment.
- (b) *Working hours* – No minor may be asked to work more than 48 hours a week and more than 12 hours of overtime on a regular basis or to work more than six days a week.
- (c) *Laws and provisions* – No minor may be hired if this hiring fails to comply with all laws and provisions in force concerning age, working hours, compensation, health and safety.

#### **14. Miscellaneous Provisions**

##### **14.1 Services/Installations on Site**

Outside companies and tradesmen (suppliers, subcontractors/subsuppliers and their employees) that perform work on the Ordering Party’s premises (buildings, spaces, rooms, etc.) must conduct themselves in accordance with the Ordering Party’s policies, which are to be communicated separately. The documents indicated in the policies must be submitted to the Ordering Party before work begins. The employees of the outside companies and tradesmen must likewise be informed of these policies before work begins.

##### **14.2 Asbestos**

The application or use of asbestos-containing material in any form is prohibited by law. This prohibition applies equally to all of the Supplier’s subcontractors/subsuppliers.

##### **14.3 Chemicals**

In accordance with Commission Directive 2001/58/EC, every delivery of chemicals for production, servicing and maintenance must be accompanied by an appropriate material safety data sheet. Any alteration of container labeling (text, color, size, appearance) must be reported in writing to the Ordering Party prior to delivery.

##### **14.4 Other Regulated Substances**

Before delivering narcotics or other substances that are prohibited by law or subject to special regulations, the Supplier must contact the Ordering Party’s purchasing department in order to clarify whether and to what extent a permit is required.

##### **14.5 Cleanliness and Freedom from Residue**

Surfaces of new parts (valves, dampers, gauges, etc.) that are in contact with the product must essentially satisfy the following conditions:

- (a) the parts must be visually clean and free of particles;
- (b) no oil or grease is present on the surface of the parts;
- (c) the parts are free of any manufacturing residue.

Upon request, the Supplier shall issue a certificate showing that the foregoing items have been inspected. This provision may also apply if the Ordering Party classifies one or more parts as particularly critical (GMP aspects, compliance, moving parts).

#### **14.6 Notices**

All notices required in connection with this order and these STC must be given in writing. Notices must be delivered by registered mail or via a courier service that can verify delivery to the address indicated in the order.

#### **14.7 Severability Clause**

If any individual provision agreed upon in these STC is invalid or impracticable, whether in whole or in part, then this shall not affect the validity of the remaining provisions hereof.

#### **14.8 Governing Law, Place of Jurisdiction**

The present STC and the orders to which they apply, including the jurisdiction clause, shall be governed and interpreted in accordance with German (in case of orders placed by a German Ordering Party) respectively Austrian (in case of orders placed by an Austrian Ordering Party) law without regard to the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG).

The competent courts of the Ordering Party’s principal place of business shall have exclusive jurisdiction over all disputes arising from or in connection with these STC and the orders.

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