



# SALES AND DELIVERY TERMS AND CONDITIONS

# Sales and delivery terms and conditions

## 1. Definitions

- 1.1 MediGym Netherlands is part of the Oost Lieveve Company Group and based in Dronten, The Netherlands. MediGym is producer, exporter, distributor and supplier of EPME (Electrically Powered Movement Equipment) for the professional and consumer markets.
- 1.2 Client: The natural person or legal entity who purchases these services and/or products from MediGym Nederland.
- 1.3 Written: By means of a document or a letter, fax message or e-mail message signed by both parties or in any other (digital) form agreed by the parties.
- 1.4 Agreement: The agreement between MediGym Nederland and Client.

## 2. General

- 2.1 The general sales/delivery terms and conditions of MediGym Nederland apply exclusively to all agreements between MediGym Nederland and the Client, as well as to all tenders/quotations on the part of MediGym Nederland. The applicability of the general terms and conditions used by the Client is hereby expressly excluded.
- 2.2 Deviation from these general sales/delivery terms and conditions is possible only if this has been agreed in writing between the parties. The other provisions of these general sales terms and conditions shall always apply, unless agreed otherwise. These terms and conditions apply correspondingly to all agreements with MediGym Nederland whereby the services of third parties are engaged by MediGym Nederland for the implementation.

## 3. Tender

- 3.1 Each tender of MediGym Nederland, in whatsoever form this is made, is in all aspects non-binding and may be withdrawn within five (5) calendar days of acceptance by the client or by MediGym Nederland. The documents/info attached by MediGym Nederland to the tender form an integral part of the tender/quotation.
- 3.2 Each tender/quotation is based on the implementation of the Agreement by MediGym Nederland under normal circumstances and during normal working hours.
- 3.3 The validity term of the tender/quotation is one (1) month.

## 4. Agreement

- 4.1 The Agreement comes into effect in writing only on the day it is signed by both parties, or on the dispatch of a written commission by Client to MediGym Nederland as acceptance of the tender made by MediGym Nederland.

## 5. Implementation of the Agreement

- 5.1 MediGym Nederland shall undertake to fulfil the agreement according to its best insight and capacity, in accordance with the requirements of sound professional skills, all this in accordance with what may be expected in the context of the task entrusted to MediGym Nederland.
- 5.2 MediGym Nederland and Client must inform each other always concerning circumstances and developments, of which the other party should be informed in the context of the correct implementation of the Agreement.
- 5.3 Client guarantees that the data it places at the disposal of MediGym Nederland at the request of a third party are in order and are complete.
- 5.4 In the event that it becomes evident that certain components stated by Client for the realization of the commission cannot/can no longer be delivered to MediGym Nederland, MediGym Nederland must provide Client with a substitute component insofar as such is possible. If Client does not accept this replacement component, or no replacement component is available and Client therefore withdraws (a part of) the commission or cancels the commission, Client must compensate MediGym Nederland for the costs made up to that moment for the implementation of the commission.
- 5.5 After the Agreement has come into effect, it will be incorporated by MediGym Nederland in its planning on the basis of the information available at that time. Client may not derive any rights from this planning. The changes wished by Client in the implementation of the commission must be communicated in writing to MediGym Nederland by Client, after which MediGym Nederland shall inform Client concerning any amendments to the planning. Amendments to the Agreement shall be agreed exclusively in writing with reference to Article 6 of these general sales terms and conditions.
- 5.6 The terms communicated by MediGym Nederland to Client concerning the services to be provided by MediGym Nederland are merely indicative and may never be intended as an expiry date or deadline.
- 5.7 Specifications not given by Client will be carried out according to MediGym Nederland standards that are known to Client, who accords with this.
- 5.8 MediGym Nederland is entitled to have certain services carried out by third parties, without any need for the approval of, or the duty to inform, Client.

## 6. Amendments to the Agreement

- 6.1 If, during the implementation of the Agreement, it is evident that for a correct implementation it is necessary to change or to supplement the activities to be carried out, MediGym Nederland will submit a tender for the changes to Client for acceptance.
- 6.2 If Client during the implementation of the agreement wishes to introduce a change, MediGym Nederland will submit a tender for the consequences of this (not limitative: planning, price, stocks, etc.) to Client for acceptance.
- 6.3 If the parties agree that the Agreement is to be amended or supplemented, the deadline for completion of the implementation may be influenced by this. The implementation of the Agreement that has already been signed will be postponed until the moment that the parties have reached an agreement in writing (or otherwise) concerning any changes to the Agreement.
- 6.4 All changes after the Agreement has gone into effect must be in writing (by means of a new tender).

## **7. Drawings, calculations, descriptions, models, equipment etc.; intellectual property**

7.1 Any references of Client to catalogues, images, drawings, statements of measurements and weights and such like data are binding, if and insofar as expressly agreed by the parties in writing, or form part of the Agreement between the parties.

7.2 The intellectual property rights to the drawings, calculations, software, descriptions, models, equipment and such like provided by MediGym Nederland, or concerning the information contained in any of these or at the basis of the manufacturing and construction methods, products, drawings, calculations, designs, models etc., shall always be the property of MediGym Nederland, even if charges have been made for them. Client shall respect the intellectual property rights of MediGym Nederland and, other than for the implementation of the Agreement, shall not copy, distribute, show to third parties or publish (make known) or use such information without the written permission of MediGym Nederland.

## **8. Price**

8.1 The prices are stated on the tender and are in Euros, according to the accompanying specifications per item number, unless agreed otherwise in writing. If Client makes a change to the specifications of MediGym Nederland, a price review will be conducted by MediGym Nederland.

8.2 MediGym Nederland is not bound to uphold an Agreement in the case of a price stated that is clearly based on a printing or writing error.

8.3 The prices agreed are based on the cost factors applying at the time that the Agreement goes into effect. MediGym Nederland reserves the right to charge a Client a proportionate price increase in the case that price increases are introduced by its suppliers and in the case of other changes in the factors that determine the price.

8.4 MediGym Nederland has the right (not the obligation) to adjust the sales price of its products at the moment of invoicing for the following reasons:

a) a change in the exchange rate of the components used which is linked to the foreign currency. The price adjustment will take place by multiplying the foreign currency as stated on the tender by the difference between the exchange rate according to the tender and the exchange rate on invoice date;

b) variations in the exchange rate concerning the value of materials used, such as gold, copper and other raw materials. The price adjustment will be made by multiplying the weight as stated on the tender by the difference between the relevant material price according to the tender and the material price on invoice date;

8.5 One-off costs are costs made by MediGym Nederland on entering into the Agreement or amending the Agreement.

8.6 The prices stated by MediGym Nederland are excluding VAT and other statutory charges and are based on delivery ex-works according to the Incoterms that apply on the date of tender/quotation. Transport costs are invoiced separately. "Works" is to be understood as the establishment of MediGym Nederland.

8.7 Additional work will be charged separately.

8.8 If, in the case of any repeat orders, MediGym Nederland must make new drawings, calculations, descriptions, models or tools and such like, the additional costs will be charged to Client.

8.9 In the case of an order value of less than € 250, MediGym Nederland reserves the right to charge € 75 for administration costs.

## **9. Payment terms and conditions**

9.1 Full payment of the invoices must take place within thirty (30) calendar days of the invoice date, effectively received on the account of MediGym Nederland.

9.2 All payments must be made in the manner stipulated by MediGym Nederland without any deduction or set-off. Objections to the amount of the invoice shall not form a reason to suspend a payment obligation.

9.3 MediGym Nederland has the right to suspend implementation of the Agreement until such moment as it has received the full payment concerning the invoices of which the payment date has expired.

9.4 MediGym Nederland reserves the right to demand financial guarantees and/or securities from Client, even after the partial delivery of the goods or services. In the absence of such, MediGym Nederland is entitled to cancel the Agreement with immediate effect, without being bound to pay any damages compensation. The client is bound to honour the obligations existing at the moment of cancellation.

9.5 The delivered goods continue to be the property of MediGym Nederland until the time that Client has made the full payment of the invoices. In the event that goods have not been paid for on the expiry of a payment term of one month after the date stipulated as the deadline, MediGym Nederland has the right to cancel the Agreement with immediate effect and is entitled to repossess the goods, without prejudice to its right to claim damages compensation. Client shall cooperate in full with MediGym Nederland in order that MediGym Nederland has the possibility to exercise its right to the property by repossessing the object or the goods, including any dismantling that may be necessary.

9.6 If invoices are not settled not within the stipulated term, MediGym Nederland is entitled to impose an interest charge for late payment of eight (8) percent over the outstanding invoice sum per month, whereby in the case of a part of a month, the interest over the whole month will be charged with a minimum of € 100 due to additional administration costs.

9.7 In the case of liquidation, bankruptcy, seizure or suspension of payments of Client or if Client loses in any other way the free control or the free power to dispose of its property, the claims of MediGym Nederland on Client shall come into effect immediately.

9.8 If, due to non-payment by Client, MediGym Nederland is obliged to take measures in order to nevertheless obtain payment, the extra legal costs incurred shall be paid by Client. The extra legal costs shall be fixed at fifteen (15) percent of the invoice sum, with a minimum of € 150, all this to be increased with the statutory interest.

9.9 Payment of a certain cash sum is intended in the first place as a reduction of the costs, subsequently as a reduction of the interest due in the past and finally as a reduction of the capital sum and the current interest due, notwithstanding if on making the payment the Client gives a different indication.

## 10. Delivery and transport of goods

10.1 Delivery takes place ex works.

10.2 Any transport costs shall be charged to Client.

10.3 The goods are shipped for the risk of Client, irrespective of who pays the transport costs, even if the goods are delivered carriage paid.

10.4 The goods are packed in consultation with Client, or in accordance with what has been agreed between the parties. The goods are packed for the risk of Client.

10.5 Stated delivery times are to be considered intended times.

10.6 The term for delivery commences at the following times:

a) the day the Agreement comes into effect;

b) the day of receipt by MediGym Nederland of the documents, data, permits and such like, required for the implementation of the Agreement;

c) the day of fulfilment of the formalities required for the start of activities;

d) the day of receipt by MediGym Nederland of the sum that according to the Agreement must be paid as prepayment before the start of the activities.

10.7 The delivery time is based on the work circumstances pertaining when the Agreement comes into effect and on timely delivery of the materials ordered by MediGym Nederland for the implementation of the work. If any delay occurs due to a change of work circumstances referred to that is not the fault of MediGym Nederland or because the materials ordered for the implementation of the work are not delivered on time, the delivery time will be extended insofar as such is necessary.

10.8 Any exceeding of the delivery time grants Client the right to cancel the Agreement in whole or in part only if such is attributable to deliberate intent or gross negligence on the part of MediGym Nederland.

## 11. Risk

11.1 At the time that the goods are delivered or the work delivered and accepted, Client bears the risk of the goods and/or the work and of all direct and indirect damage that may occur to the goods or the work.

## 12. Complaints and Guarantee

12.1 Client must check the delivered goods in the packaging. Hereby, the Client must check whether the delivered goods correspond to the Agreement, i.e.:

a) whether the goods delivered comply with the quality requirements, that can be set for standard use and/or trading purposes, based on a visual inspection of the delivered goods;

b) whether the goods delivered as far as quantity is concerned (number, quantity, weight) comply with what was agreed.

12.2 If the goods are delivered to a third party, who stores them for Client, Client is obliged to carry out the inspection or have the inspection carried out as referred to in clause 1 on the day of delivery, taking into account the complaint period.

12.3 If Client wish to complain, he/she must do this as soon as possible after discovering the fault or after he/she could reasonably have been expected to discover it but at the very latest within fourteen (14) calendar days of delivery of the goods. If this term has expired without the report of any founded complaints, the goods or the services are considered to have been accepted.

12.4 If Client notes that there is a situation of minor deficiencies, in particular those which do not, or only slightly, impinge on the intended use of the object or the work, the object or the work is considered accepted irrespective of these deficiencies. MediGym Nederland will deal with the deficiencies as soon as possible.

12.5 Client is bound to take good care of the goods at all times, as a careful debtor. Complaints are not admissible, if Client does not take, or has not taken, the necessary care that may be expected after the delivery of the goods.

12.6 Client is bound, before he/she proceeds to use the goods, to study the accompanying user manual of the goods purchased and Client is bound to use the delivered goods in accordance with what has been stipulated in the user manual.

12.7 If it is evident that a product has not been used in accordance with what has been stipulated in the user manual the complaint is not admissible and is MediGym Nederland not bound to handle with the complaint, let alone replace or repair the delivered goods.

12.8 For the guarantee term and the compensated guarantee costs for defects as a consequence of material or production faults, MediGym Nederland does not grant more than the factory guarantee of two (2) years.

12.9 For the activities or services it provides, MediGym Nederland gives a guarantee term of one (1) year. This guarantee comprises the replacement and/or repair of goods that are used for the implementation of the services. The replacement or repair costs that occur within this first year may never be higher than the invoiced value of the goods.

12.10 Excluded from the guarantee are normal wear and tear and defects attributable to faulty use of the goods.

12.11 If Client, without the prior written approval of MediGym Nederland proceeds, or commissions disassembly, repair work or other activities relevant to the goods, any claim based on the guarantee is excluded.

12.12 If Client fails to fulfil properly and on time any obligation ensuing from the Agreement or to a connected agreement, any claim based on the guarantee is excluded.

12.13 Any alleged non-compliance of MediGym Nederland concerning its guarantee obligations does not release Client from any obligation ensuing for him/her from the Agreement or any connected agreement.

## 13. Liability and indemnity

13.1 MediGym Nederland is vis-à-vis Client liable only for loss that is the direct consequence of a defect that is attributable to MediGym Nederland in the fulfilment of the Agreement, if and insofar as the loss could have been avoided with normal professional knowledge and experience and taking into account normal caution and professional conduct.

13.2 MediGym Nederland may be held liable only to the maximum loss sum amounting of the purchase sum of the goods in question, or the invoice sum for the implementation of the services.

13.3 Nor may MediGym Nederland may ever be held liable, if the loss is the consequence is of unprofessional or incorrect use of the goods, use of the goods in a manner contrary to what has been stipulated in the user manual or if, without the written permission of MediGym Nederland, changes have been made by Client or a third party or attempts have been made to introduced changes to the goods delivered.

13.4 MediGym Nederland is not liable for loss caused by carelessness or lack in the information provided by or on behalf of the Client.

13.5 MediGym Nederland may never be held liable for errors in the manufacture that are the consequence of defects, lack of clarity, wrong numbering, of errors in item numbers or order numbers on manufacturing or order documents of Client.

13.6 MediGym Nederland may never be held liable for indirect loss, including consequential loss, foregone profits, missed savings, loss due to industrial stagnation, damage caused to the goods being worked on or to goods in the vicinity of the location of the work, by or during the implementation of the work taken on, or damage caused by deliberate intent or the gross negligence of assistants.

13.7 Client indemnifies MediGym Nederland for any claims of third parties, who in connection with the implementation of the Agreement suffer a loss, the cause of which is attributable not to GC but to another party.

13.8 In the event that, based on this, MediGym Nederland should have a claim against it by any third party, Client is bound to support MediGym Nederland, both legally

and extra legally and to do immediately all that may be expected of it. If Client should be in default in taking adequate measures, MediGym Nederland is entitled to proceed, without the need for any notice of default. All costs and losses on the part of Client and third parties that are caused by this shall be entirely for the account and risk of Client.

## 14. Termination of the Agreement

14.1 The Agreement terminates legally on the expiry of the term referred to in the Agreement and on conclusion of the activities cited in the Agreement or the delivery of the goods, as long as all invoices of MediGym Nederland have been paid.

14.2 If the parties do not reach an accord over an amendment to the Agreement, the Agreement may be terminated prematurely by either of the parties. In the case of such termination of the Agreement, Client is bound to compensate MediGym Nederland for the part of the Agreement already fulfilled by MediGym Nederland (according to the Agreement).

14.3 If Client wishes to terminate an Agreement with MediGym Nederland, this termination must be in writing. In the case of a premature termination of the Agreement by Client and acceptance by MediGym Nederland, MediGym Nederland reserves the right to demand loss compensation for the losses incurred and to be incurred, composed of:

- a) remaining order sum + fifteen (15) percent;
- b) outstanding invoices;
- c) remaining material + ten (10) percent;
- d) outstanding hours;
- e) any additional settlements for tooling, developments and/or machines.

14.4 MediGym Nederland may terminate the Agreement with Client with immediate effect, without prejudice to the other rights of MediGym Nederland based on the legal provisions, if:

- a) Client has ceased to exist or has been dissolved, has been converted to a different legal form, legally merged or legally split;
- b) The company of Client has been closed down or the company of Client has been transferred to a third party;
- c) A limited right or attachment is imposed on one or more shares of Client in the capital of a company with a limited right of attachment and that right of attachment has not been cancelled within thirty (30) days;
- d) Client is declared bankrupt, suspension of payments is granted to him/her, irrespective of whether this is provisional, due to sequestration, due to placement under legal control or loss in any other way of the free authority to dispose of their capital, all this irrespective of whether the relevant legal ruling has become irrevocable, or Client has offered a settlement to its creditors outside bankruptcy;
- e) Client has been remiss in the fulfilment of any obligation ensuing from the Agreement, after MediGym Nederland has served him/her a notice of default and if after expiry of a reasonable (recovery) term, fails in the fulfilment of the Agreement. For the application of this section, a notice of default is to be understood as any communication from which it is unambiguously clear that MediGym Nederland requires fulfilment;
- f) After the Agreement has gone into effect, MediGym Nederland has been informed of circumstances that give sound reasons to suppose that Client will not comply with the obligations;
- g) A change of control takes place within the company of Client.

## 15. Force majeure

15.1 The parties are not bound to the fulfilment of any obligation, if they are hindered in this as a consequence of circumstances beyond their control, and nevertheless in pursuance of the law, a legal case or interpretations applying in commerce are charged to them.

15.2 In these general sales/delivery terms and conditions, force majeure is to be understood as in addition to what is understood in this context in the law and jurisprudence, all external causes, foreseen and unforeseen, in respect of which MediGym Nederland cannot exercise any influence, but due to which MediGym Nederland is not in a position to fulfil its obligations. This includes strikes in the company of MediGym Nederland.

15.3 As soon as it is clearly impossible for one of the parties to fulfil its obligations due to the existence of the situation of force majeure or as soon as the situation of force majeure continues for longer than six (6) weeks, either party is entitled to dissolve the Agreement.

15.4 Insofar as MediGym Nederland at the time of the start of the force majeure had in the meantime fulfilled its obligations ensuing from the Agreement in part or is able to fulfil these, MediGym Nederland is entitled to invoice separately the part fulfilled or the part to be fulfilled. Client is bound to settle this invoice as if it were a separate agreement.

## 16. Other provisions

16.1 The nullification and/or possibility to annul one or more provisions, as incorporated in these general sales/delivery terms and conditions, shall not affect the validity of the other non-annulled or voidable provisions in these general sales/delivery terms and conditions. The parties shall in such a case confer in order to agree on new provisions as a replacement of the nullified or voided provisions, whereby if, and as far as, possible the goal and the intention of the original provision is taken over.

16.2 MediGym Nederland reserves the right to amend these general sales/delivery terms and conditions unilaterally. Any change shall not come into force earlier than fourteen (14) calendar days after notification of that change to Client. The notification may be in any chosen form. If Client does not accord with the change, he/she has the right to cancel the Agreement as of the date on which the change comes into effect with the upholding of all rights and duties ensuing from the Agreement.

16.3 The parties are not permitted to transfer the rights and/or obligations based on the Agreement to any third party except if they have received the express written permission of the other party.

16.4 The Vienna Convention does not apply to the Agreement, unless the parties agree such in writing.

16.5 These sales/delivery terms and conditions are translated into various languages. If any lack of clarity should exist concerning the content and/or interpretation of Articles in these terms and conditions, the Dutch text shall prevail.

## **17. Applicable law/Choice of forum**

17.1 The laws of the country in which (the relevant company of) MediGym Nederland, as selling party, has its registered office shall apply to the Agreement(s), unless agreed otherwise in writing.

17.2 Any dispute that may ensue from Agreements, that MediGym Nederland enters into with Client or any other agreements as implementation of this agreement, shall be settled exclusively by the authorized judge of the Court in the district in which (the relevant company of) MediGym Nederland, has its registered office, unless agreed otherwise in writing.

17.3 Notwithstanding what has been stipulated under Article 17 clause 2 of these general sales/delivery terms and conditions, MediGym Nederland reserves the right to serve a writ on the client before the authorized legal authority in the place of residence or of the registered office of client.