

# GENERAL CONDITIONS OF SALE AND SUPPLY OF NOVUQARE PELVIC HEALTH B.V.

*Notwithstanding great care has been taken in translating the Dutch General Conditions, differences between the English and Dutch text may occur. In cases of disputes or discrepancies the Dutch text shall prevail.*

## Article 1 Definitions

In these conditions, the following terms will be used with the following meaning, unless expressly stated otherwise:

1. 'Acceptance': the acceptance by the Buyer of Novuqare's Offer, which qualifies as the unilateral legal act of acceptance within the meaning of article 6:217 Dutch Civil Code ('DCC'), by virtue of which an Agreement within the meaning of article 6:217 DCC is formed. This acceptance does not have to be made In Writing.
2. 'Agreement': the purchase agreement entered into between the Parties, which may be in the form of a signed order confirmation.
3. 'Buyer': the legal entity who accepts an Offer made by Novuqare or else an (exclusive or other) distributor appointed by Novuqare, in the matter of the supplying of Products.
4. 'Delivery Time': the period of time stated in the Agreement within which, or the day on which, the Products will in principle be delivered by Novuqare.
5. 'General Conditions': the most recent version of the General conditions of sale and supply of Novuqare Pelvic Health B.V in question.
6. 'In Writing': by post (on paper documents) or via e-mail.
7. 'Novuqare': Novuqare Pelvic Health B.V., the party that is selling.
8. 'Offer': Products offered by, and quotations issued by, Novuqare, which qualifies as the unilateral legal act of offering within the meaning of article 6:217 DCC (Dutch Civil Code).
9. 'Parties': Novuqare and the Buyer.
10. 'Product': supplied products and services offered by Novuqare.

## Article 2 Applicability

1. The General Conditions are applicable to all Offers made by Novuqare, as well as to its quotations, mandate confirmations, all negotiations between Novuqare and the Buyer and to all Agreements that Novuqare has entered into or will enter into with the Buyer and to their execution.
2. In the event of conflict between the text of the General Conditions and the Agreement, the provisions of the Agreement will prevail.
3. If Novuqare fails at any time to exercise its rights under the Agreement and/or the General Conditions at all or else fails to do so without delay then this will not affect its right and option to do this (including to still do this) for reasons of its own.
4. If one of the provisions from the Agreement or these General Conditions proves to be invalid or nullifiable then the rest of the Agreement and the General Conditions will continue to apply in full. The Parties will then consult with each other in order to agree a new provision to replace it, which provision must correspond as far as possible with the purpose and meaning of the invalid or nullified provision.

## Article 3 Amendments

1. Amendments to the Agreement and the General Conditions must be expressly agreed In Writing beforehand by the Parties. If amendments are passed on in another way then the risk relating to the implementation of the amendment will be borne by the Buyer.
2. Novuqare reserves the right to revise the text of the General Conditions at any time and will inform the Buyer about any amendments.

## Article 4 Offers

1. All Offers made by Novuqare are entirely without obligation and are made on the basis of the prices, rates and specifications that applied at the time of the Offer. Offers are based on the delivery/execution of the work under normal circumstances during normal working hours.
2. If an Offer without obligation is accepted by the Buyer then Novuqare is entitled to withdraw the Offer no later than 5 working days after receipt of the Acceptance.
3. Novuqare reserves the right to make changes to the Products that are depicted in its webshop, catalogue, brochures and other promotional material and to remove the Products in question from its product range.

## Article 5 Agreement

1. The Agreement between Novuqare and the Buyer is formed by the Buyer accepting Novuqare's Offer. An Agreement with Novuqare is also formed as soon as Novuqare starts to execute it.
2. Novuqare may assume that the information provided by the Buyer is correct and complete.
3. By entering into the Agreement, the Buyer warrants that he is sufficiently creditworthy to be able to fulfil his obligations. In this context, Novuqare is authorised to obtain information from third parties in respect of the Buyer's creditworthiness and, if the latter proves to have insufficient creditworthiness, to attach consequences to this, which may include prepayment or different payment arrangements, which the Buyer agrees to beforehand.
4. The documents sent to the Buyer by Novuqare after the formation of the Agreement may be considered to be mandate confirmation.
5. Verbal and other arrangements made before or after the formation of the Agreement are only binding on Novuqare after it has confirmed them In Writing to the Buyer.
6. Novuqare is authorised to bring in third parties for the execution of the Agreement.
7. Arrangements made with or commitments made by employees of Novuqare or by third parties it brings in will only be binding on Novuqare if it has confirmed these arrangements or commitments In Writing to the Buyer.

## Article 6 Delivery Time and standard delivery

1. The Delivery Time stated by Novuqare is always an estimate, unless expressly agreed otherwise In Writing. Novuqare will comply with the Delivery Time as far as possible but there is no strict deadline.
2. If the Delivery Time is exceeded then this will not imply any default or liability on the part of Novuqare. In the event of a delay in the delivery then Novuqare will inform the Buyer of this without delay and tell him the new Delivery Time.
3. The Delivery Time commences at the latest of the following times:
  - a) the day of formation of the Agreement;
  - b) the day of receipt by Novuqare of the information needed for the execution of the Agreement (records, data, permits, certificates and the like);
  - c) the day of receipt by Novuqare of any prepayment that has to be made by the Buyer under the Agreement.
4. Delivery is made Ex Works as standard.
5. The moment at which the Products are provided to the Buyer Ex Works is considered to be the moment of transfer of title and the moment at which the risk in respect of the Products passes from Novuqare to the Buyer. This applies unimpaired if the Buyer refuses to or fails to take delivery.
6. If the Buyer has not taken delivery of the Products by the time that the Delivery Time expires then they will be stored for his disposal, this at his expense and risk. Novuqare will not make the Products available to the Buyer until the Buyer has paid the additional costs of transportation and storage. If the Buyer has not taken delivery of the Products by a time four weeks after the original delivery then Novuqare is entitled to resell or destroy them. The Buyer will not be able to institute a claim against Novuqare in this regard.

## Article 7 Delivery

1. Delivery to an address to be designated by the Buyer that departs from the preceding Article will only take place if the Parties have reached agreement beforehand about the additional costs and conditions that go hand in hand with this.
2. The costs of delivery will be stated separately by Novuqare when the Agreement is entered into. If this is not possible then Novuqare will provide the Buyer with information that the latter can use to calculate the shipment costs.
3. If the Buyer does not provide Novuqare with any more detailed information in this regard then the method used for packing, transportation, shipment and similar will be decided by Novuqare, although without Novuqare accepting any liability in this regard apart from its statutory obligation to pay compensation.
4. In the case of delivery by Novuqare or by a carrier that it appoints then the risk relating to the item already passes to the Buyer at the moment of delivery. This applies unimpaired if the delivery attempt is unsuccessful.
5. In the case of delivery by a carrier appointed by the Buyer, the risk relating to the item already passes to the Buyer as soon as Novuqare hands the item over to this designated carrier.

## Article 8 Quotes and quotations

1. The prices in the quotes made by Novuqare will be decisive, subject to any price changes.
2. All quotes made by Novuqare are without obligation, unless stated otherwise In Writing by Novuqare.

3. In principle, Novuqare's prices are:
  - a) based on the purchase prices, wages, wage costs, national insurance contributions and government levies, freight costs, insurance premiums and other costs at the time of the date of the Offer or formation of the Agreement;
  - b) based on delivery Ex Works;
  - c) exclusive of VAT, unless explicitly stated otherwise;
  - d) quoted in euros (with any exchange rate fluctuations being passed on).
4. If - after the Agreement has been formed but before its full or after its partial execution - price increases occur in respect of Novuqare's cost factors, including in any case but not limited to changes in the cost of materials (including raw materials), transportation prices, energy prices and exchange rates then Novuqare is entitled to increase the price owed by a proportionate percentage.
5. The Buyer cannot derive any rights from any bonuses and/or discounts granted by Novuqare in the past.
6. The Buyer will be expected to handle bonuses and/or discounts discreetly and to refrain from sharing information about them with third parties.

#### **Article 9 Payment**

1. Unless agreed otherwise In Writing, payments to Novuqare must be made no later than 30 days after invoice date, which deadline will be considered to be a strict deadline. Neither the Buyer's failure to take delivery of the Products nor his submission of a complaint will affect his obligation to pay.
2. All payments made by the Buyer to Novuqare will be designated in order of them becoming due and payable as payment for (1) costs, (2) interest and (3) principals.
3. If the Buyer fails to pay Novuqare by the set deadline the sum that he owes Novuqare then Novuqare will arrange for a demand In Writing to be sent to the Buyer that states a 14-day deadline by which the Buyer can still pay the amount due.
4. Once the 14-day period has elapsed unused then the Buyer is in default and must pay Novuqare an interest payment equal to the statutory commercial interest rate as set down in Article 6:119a DCC plus all extrajudicial costs for the claim's collection, which extrajudicial costs are set at a minimum of 15% of the amount due, including interest, this with a minimum of € 250.
5. If the Buyer fails to fulfil his payment obligations due either to his unwillingness or inability to pay then Novuqare is authorised to suspend the deliveries or to terminate the Agreement, this without prejudice to Novuqare's right to full compensation. Unlike Novuqare, the Buyer is not authorised to set off Novuqare's claim on this Buyer against all that which the Buyer may claim from Novuqare, whether due and payable or not. The Buyer is not authorised to suspend his payment obligations towards Novuqare if he is disputing a claim.
6. If the Buyer is in default or in the case of liquidation or granted or requested insolvency or if the Buyer is permitted to perform statutory debt adjustment under the statutory debt management for natural persons (*Wet Schuldsanering Natuurlijke Personen (WSNP)*) or if the Buyer is placed under guardianship or if the Buyer is subject to a seizure or actual or provisional payment moratorium then from that point in time onwards all outstanding claims that Novuqare has on the Buyer become due and payable immediately.

#### **Article 10 Suspension / termination**

1. Novuqare is entitled to terminate the Agreement in whole or part In Writing with immediate effect and without judicial intervention or to suspend it without being obliged to pay any compensation, and without prejudice to Novuqare's right to demand performance instead of termination or suspension and without prejudice to its right to compensation, if:
  - a) the Buyer fails to fulfil the obligations that lie with him and such a failure is not rectified by a time 14 days after the date on which the notice of default was sent;
  - b) after the entering into of the Agreement, circumstances come to Novuqare's attention that give good grounds for fearing that the Buyer cannot fulfil his obligations under the Agreement;
  - c) the Buyer applies for or is granted a payment moratorium;
  - d) the Buyer's insolvency is applied for or declared;
  - e) the Buyer applies to become subject to the statutory debt management for natural persons (*Wet Schuldsanering Natuurlijke Personen (WSNP)*) or else his application for this is granted;
  - f) a significant portion of the Buyer's assets are seized;
  - g) the Buyer proceeds to discontinue his business activities or else transfers all or a major part of his business, this including contributing his business to a company that is to be founded or that is already in existence or else proceeds to change his business's object;
  - h) the Buyer dies.
2. If Novuqare terminates or suspends the Agreement by virtue of this Article then all claims that Novuqare has on the Buyer become due and payable immediately.

#### **Article 11 Retention of title**

1. As long as the Buyer has failed to fully fulfil any commitment towards Novuqare then pursuant to article 3:92 DCC supplied Products remain the property of Novuqare, and this at the Buyer's expense and risk. In this case, the Buyer is deemed to be holding the Products for Novuqare until such time as he has fully fulfilled his obligations towards Novuqare.
2. As long as the ownership of the Products has not passed to the Buyer, he is not entitled to in any way sell or rent out the Products or encumber them with a security interest, apart from and in so far as this relates to the normal conducting of the business, and after Novuqare has consented to this In Writing, in which case the Buyer hereby assigns his claim on third parties to Novuqare and will provide Novuqare with the deed of assignment at the latter's initial request. Novuqare can choose whether to also additionally demand the establishment of an undisclosed right of pledge beforehand.
3. As long as the Buyer has Products in his possession that are subject to Novuqare's exercising of its retention of title then the Buyer is obliged - at Novuqare's initial request and without judicial intervention being required - to hand over the Products to Novuqare. Novuqare and its employees are then entitled to enter the Buyer's premises to acquire actual possession of the supplied Products.
4. The Buyer undertakes to secure Novuqare's interests in connection with the retention of title. The Buyer undertakes to reimburse this interest in the event of a contingency and when first asked to do so to assign his claim on his insurers to Novuqare. At Novuqare's initial request, the Buyer will provide Novuqare with details of the insurance company/ies and insurance conditions concerned.

#### **Article 12 Warranties and complaints**

1. Novuqare warrants the soundness of the Products it has supplied in accordance with that which the Buyer may reasonably expect by virtue of the Agreement, during the following period of time and under the following conditions.
2. Unless stated otherwise In Writing, the warranty period is 12 months in duration and commences on the date of delivery that is stated on the purchase note.
3. The warranty period is not extended by work carried out under warranty and/or by replacement deliveries carried out in the context of the warranty.
4. The Buyer can only make a claim under a warranty granted if there is a justified complaint within the meaning of this Article.
5. As soon as they are delivered, the Buyer is obliged to check the Products that originate from Novuqare for conformity.
6. Complaints made by the Buyer that relate to the Products supplied by Novuqare failing to comply with the Agreement will only be taken up by Novuqare if and in so far as these complaints are submitted to Novuqare In Writing within an appropriate period of time, including a description of the nature of the defect, whereby 'an appropriate period of time' is considered to be a period not exceeding 48 hours in duration following the taking delivery of the goods or at any rate a period of time that ends at the latest 48 hours after the defect was observed.
7. If the Buyer is of the opinion that the Product supplied by Novuqare does not comply and he intends to submit a complaint, then from the moment in time onwards when he discovered the alleged defect he is expressly no longer permitted to use the Product in the context of the conducting of his profession and business, this in anticipation of further investigation of the alleged defect.
8. Complaints relating to the calculated prices and other complaints relating to invoices must be submitted to Novuqare In Writing within a reasonable period of time that is a maximum of 8 days after the invoice date; such a complaint must include a description of the nature of the complaint. Complaints submitted after this deadline about the calculated prices and invoices will not be accepted.
9. In the event of a complaint within the meaning of this Article, the Buyer must make it possible for Novuqare to carry out further investigation into the validity of the complaint no later than 8 days after the report of the defect; if the Buyer fails to do this then any right to a warranty expires.

10. Complaints will not be taken up if:
  - a) there are minor deviations in the materials, dimensions or colours or other deviations that are deemed acceptable in the medical sector;
  - b) if the Product differs from a depiction in Novuqare's catalogue, brochures or other promotional material;
  - c) the Buyer has repaired, processed or opened up the Product either himself or else has had this done by third parties;
  - d) the supplied Product is exposed to abnormal conditions in the broadest sense of the term, or else is otherwise used carelessly or contrary to Novuqare's maintenance instructions and other instructions.
11. In the event of justified complaints, Novuqare is free to decide whether to replace the supplied Products free of charge or to provide a credit note to set off the amount for the returned Products.
12. Return shipments may only be made after the express consent of Novuqare has been given and will be undertaken at the Buyer's expense, unless agreed otherwise. Novuqare will charge 25% of the net invoice amount for those return shipments that have been made for a reason that is not Novuqare's fault; the Buyer may provide evidence that the actual loss suffered is smaller. This last point does not apply when Novuqare has consented to the return shipment.

#### **Article 13 Liability**

1. In the case of an attributable failure by Novuqare to perform, its liability is limited to the amount of the net invoice value (excluding VAT) of the Agreement in question. Novuqare's liability is in any case limited to the cover provided by the insurance policy, with a maximum liability for Novuqare of € 10,000 per event or per series of events with the same cause applying too.
2. Novuqare is not liable for indirect loss, this expressly but not exclusively including: trading losses, lost profits, consequential loss, losses caused by business interruption, intangible losses, financial loss and personal injury, including all possible third-party claims in the broadest sense of the term.
3. The Products supplied by Novuqare must solely be used for the agreed purpose and by a person trained and certified to this end. The information and advice set out on Novuqare's website also assumes that the Products will be used by a person trained and certified to this end.
4. The Buyer is obliged to indemnify Novuqare against all possible third-party claims regarding alleged losses that arise from whatever cause due to or in connection with the Agreement or the supplied Products.
5. Any claim made against Novuqare, apart from those recognised by Novuqare, will lapse by the mere passage of a period of 12 months after the arising of the claim.

#### **Article 14 Confidentiality and intellectual property**

1. All information, in the broadest sense of the term, this to include but not be confined to business information that relates to specific characteristics of the item or business of Novuqare (including its work processes, procedures or pricing) that Novuqare provides the Buyer with in the context of negotiations or the Agreement, is strictly personal and confidential and must not be disclosed to third parties by the Buyer unless Novuqare has consented to this disclosure In Writing and in so far as this is necessary for the execution of the Agreement.
2. If negotiations between the Parties do not result in an Agreement then the Buyer is not entitled to make use in any way of the information - this in the broadest sense of the term - that Novuqare provides, and the Buyer will return to Novuqare all information and all data carriers (in the broadest sense of the term), as well as all depictions, drawings, sketches, photos, prototypes, models etc. and will immediately destroy all copies made of them.
3. All intellectual property rights relating to Products originating from Novuqare, as well as items, designs, work methods, presentations, advice, models, depictions, drawings, sketches, photos, prototypes, models, printed matter, files, websites, brochures and catalogues etc. are solely accorded to Novuqare, the above irrespective of the share in their creation that stemmed from the Buyer or from third parties brought in by the Buyer.
4. The exercising of the rights of intellectual property, including the publication, transfer, reproduction and distribution of information, all this in the broadest sense of the term, is expressly and solely reserved for Novuqare, both during and after the execution of the Agreement.

#### **Article 15 Force majeure**

1. The Parties are not liable for a delay or failure in the performance of the Agreement if this is the result of force majeure and accordingly cannot be attributed to the Party in question.
2. The Parties undertake to inform each other as soon as possible should a force majeure situation arise.
3. Considered to be a non-attributable failure on the part of Novuqare is any circumstance that is independent of Novuqare – even if it was already foreseeable at the time the Agreement was formed - that makes performance of the Agreement permanently or temporarily impossible, this in any case to include but not be confined to:
  - a) losses arising from natural disasters and/or severe weather conditions (storm damage);
  - b) war, war risk and/or any other form of armed conflict including actual or threatened terrorism in the Netherlands and/or other countries as a result of which the supply of goods or raw materials is obstructed;
  - c) work strikes, forced business closure, uprising and every other form of disruption and/or obstruction caused by third parties that obstructs the supplying of goods or raw materials;
  - d) loss of or damage to goods during their transportation;
  - e) sickness of one or more employees who are difficult to replace;
  - f) legislative or administrative measures by the authorities that obstruct deliveries, this to include import bans and export bans;
  - g) defects and/or faults in means of transport, production equipment or power supply;
  - h) fire or accidents within Novuqare's business;
  - i) suppliers' failure to supply Novuqare on time or at all;
  - j) standstill in the supply of goods, raw materials and/or energy.
4. While the state of force majeure exists, Novuqare is entitled to suspend the obligations that it is subject to.
5. If Novuqare is prevented from executing the Agreement at all or any further due to force majeure of a temporary nature (longer than 3 months in duration) or permanent nature then Novuqare is entitled to terminate the Agreement without judicial intervention and without any obligation to pay compensation.
6. If a state of force majeure exists and Novuqare has already performed part of its obligations then the Buyer must pay Novuqare the price owed for this part.

#### **Article 16 Penalty clause**

For each violation of the Articles of these General Conditions, the Buyer will forfeit to Novuqare, without further notice of default or judicial intervention being required, an immediately due and payable penalty that cannot be set off or mitigated that is €950 per violation plus €200 for each day that the violation continues, this without prejudice to Novuqare's right to full compensation for the losses that result from the Buyer's violation.

#### **Article 17 Applicable law and competent court**

1. All negotiations and Agreements with Novuqare, and the Agreements' execution, are solely governed by Dutch law.
2. All disputes, including those that only one of the Parties considers to be a dispute, that arise from or in connection with the negotiations, Agreement and/or General Conditions, whether relating to facts or legal matters, will be submitted to the competent court of Oost-Brabant, location 's-Hertogenbosch (NL).