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Your Global Partner for **Medical Device Regulatory Compliance**

# General Terms of Delivery

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**Qserve Consultancy B.V.**

## **Art. 1 - General**

### **Definitions and applicability**

- 1.1** In these General Terms and Conditions ("Terms and Conditions") the following are defined as:
- Qserve: Qserve Consultancy B.V, and all the companies affiliated directly and indirectly with aforementioned company;
  - Client: each legal entity with which Qserve negotiates the conclusion of an Agreement and/or concludes an Agreement;
  - Agreement: each agreement that is concluded between Qserve and the Client and pursuant to which the following actions may be performed: services provided by Qserve to the Client, or any alteration thereof or addition thereto, as well as all legal acts for the preparation and execution of the agreement;
  - Services: all services that are the subject of an Agreement;
- 1.2** These Terms and Conditions are part of all Agreements and apply to any relevant and prior acts or legal acts by Qserve and the Client. In the event of any conflict the Agreement shall prevail over these Terms and Conditions.
- 1.3** The applicability of Client's general terms and conditions, by whatever name, is explicitly rejected by Qserve.
- 1.4** Deviations of these Terms and Conditions shall only be valid if and in so far as these were explicitly laid down by Qserve in writing.

### **Art.2 - Conclusion of Agreements**

- 2.1** Offers or price offers are not binding to Qserve and can only be considered as an invitation to place an order. An Agreement is only concluded if and in so far as Qserve accepts an order of the Client in writing, which also includes by email, by means of its order confirmation or by signing any other document in writing, or in the event Qserve started the performance of the services as laid down in the offer.
- 2.2** Any further arrangements or alterations thereof that were agreed between Qserve and the Client for the benefit of the execution of the Agreement, shall only apply if and in so far as they were laid down in writing by Qserve.

## **Art. 3 - Planning**

- 3.1** The work planning shall take place in consultation of the Client. The actual time will only be reserved after the Agreement is concluded and the planning is laid down in writing. Agreed time limits will be observed by Qserve as much as possible, but are in no event final deadlines.
- 3.2** The Client will be solely responsible for providing Qserve with timely, correct and complete general, technical, scientific and/or regulatory data and information needed or desirable for the execution of the Agreement.
- 3.3** The Client shall be available for consultation at the agreed time in respect of the planning and progress of the work.
- 3.4** Upon exceeding the time limit the Client is not entitled to compensation of damages.

### **Art. 4 - Prices and payment**

- 4.1** All rates and expenses quoted in the Agreement, offers, order confirmations or other written documents of Qserve are estimated and do not represent the actual and total price of the Services. Additional charges will be invoiced.
- 4.2** All rates and expenses quoted in the Agreement, offers, order confirmations or other written documents of Qserve are exclusive of V.A.T. and any other government levies, unless expressly stated otherwise.
- 4.3** With respect to claims denominated in foreign currency against debtors located outside of the Netherlands, Qserve will not be liable for any exchange differences, conversion differences and/or transfer problems.
- 4.4** Invoices dispatched by Qserve must be paid by the customer within 14 days of the invoice date.
- 4.5** Yearly price inflation corrections (HICP - Harmonised Index of Consumer Prices) are applicable for all prices.
- 4.6** In case of Qserve acting as an intermediate for invoicing, 7% administration fee will be added to the actual costs and will be invoiced.
- 4.7** All payments must be made without any deduction or set-off and without the Client blocking its accounts by attachment or otherwise.
- 4.8** If the Client fails to pay the outstanding amounts within the term referred to in paragraph 4.4, the Client will be in default by operation of law and without notice from Qserve, being required to pay default interest of 4% per

month, or the rate equal to the statutory (commercial) interest if the latter is higher, on the entire amount outstanding.

- 4.9** In the event of debt collection all judicial and extra-judicial costs incurred by Qserve will be at the Client's expense. This amount will in no event be lower than 20% of the total amount due and payable.
- 4.10** Qserve, at its sole discretion, determines against which outstanding amount the payment by the Client will be applied first.

### **Art. 5 - Force Majeure Qserve**

- 5.1** If Qserve is unable to comply with its obligations towards the Client within the agreed time limits due to force majeure, the time limits will be extended. Force majeure includes at least any circumstance that is independent on the will of Qserve, including but not limited to, natural disasters, shortage of materials, company and/or equipment breakdowns, strikes, measures taken by a government, problems with power supply, and faults by third parties engaged by Qserve.
- 5.2** If the force majeure situation has lasted over two months, or if it is established that it will last over two months, both parties will be entitled to terminate the Agreement with regard to the Services that are not performed yet. In that case, the Client is not entitled to compensation of damages.

### **Art. 6 - Copyright**

All intellectual property rights, including copyrights, to the reports and other written documents prepared by Qserve and the documents resulting from its work, belong to Qserve and shall only be transferred to the Client after it has fully paid everything it owes or will owe to Qserve, for whatever reason. Multiplication will be allowed for internal use. In addition, the first paragraph does not apply to phrases containing facts of general knowledge.

The Client acknowledges that paragraphs or parts of reports and/or other written documents prepared by Qserve constitute a coherent whole. The Client is not allowed to publish and/or disclose and/or make public parts of the reports and other written documents prepared by Qserve without written consent of Qserve. This article also applies in

the event the intellectual property rights are transferred to the Client under the conditions of article 6.1.

In the event of breach of the ban set out in this Article 6, the Client will forfeit a penalty of 100% of the total price as mentioned in the Agreement (including variations in the amount of work) payable to Qserve for each breach, without prejudice to Qserve's right to claim payment of the damage incurred or to invoke any other right(s).

### **Art. 7 - Complaints**

- 7.1** The Client is obligated to immediately check the rendered Services and to determine as far as possible whether they are in conformity with the Agreement. In the event the Client believes the rendered Services do not comply with the Agreement, the Client shall inform Qserve as soon as possible, and in all instances within eight days of rendering of the Services, or of the time when it was reasonably possible to determine non-conformity, at the risk of forfeiting all relevant claims.
- 7.2** In any case, complaints must be reported within three months after the rendering of the Services, at the risk of forfeiting all relevant claims.

### **Art. 8 - Liability and Indemnity**

- 8.1** Qserve will perform its Services to its best knowledge but does not take on an obligation of result. For the avoidance of doubt the Client is solely responsible for designing, development, classification, registration and marketing of its products.
- 8.2** Qserve is not liable for any indirect damages suffered either by the Client or third parties.
- 8.3** Qserve's liability or any other compensation with respect to the Client and/or third parties is limited to the sum or the sums that will be paid out by Qserve's liability insurance.
- 8.4** In the event Qserve's liability insurer does not pay out under the insurance, Qserve's liability for damages or any other compensation with respect to the Client and/or third parties is in any event limited to the invoice value of the Services that caused damage, with a maximum of EUR 20,000.
- 8.5** The exclusions and limitations as referred to in the previous paragraphs of this article will lapse if and in so

far as the damage is the consequence of intention or wilful recklessness by Qserve or its company management.

- 8.6** The Client will indemnify Qserve for any claims by third parties, that are directly or indirectly related to the Services and it will compensate any damages to Qserve that Qserve may suffer as a consequence of such claims.

#### **Art. 9 – Non solicitation**

- 9.1** During the term of the Agreement and during twelve (12) months thereafter the Client shall not employ or have work for him or for third parties the staff of Qserve, on penalty of a direct fine of € 15,000. per violation, plus an amount of € 1,000. - for each day that the violation of this article continues, without prejudice to Qserve 's right to claim payment of the damage incurred or to invoke any other right(s).

#### **Art. 10 – Default and Termination**

- 10.1** If the Client does not, timely or properly, comply with its obligations that ensue from the Agreement, Qserve is entitled to suspend the Agreement immediately, without a notice of default or judicial intervention being required, or to terminate ('ontbinden') it partly or fully by means of a written notification, without Qserve being obliged to compensate any damages, all of this without prejudice to any of its other rights.

- 10.2** In case the Client :

- is declared bankrupt, or requests its own bankruptcy or moratorium;
- goes on strike or proceeds to transfer its company or part thereof, including the transfer of the company into a newly to be founded or existing company, or if it proceeds to change the purpose of its company; Qserve shall be entitled to fully or partly terminate ('ontbinden') the Agreement with the Client immediately, without a notice of default or judicial intervention being required, by means of a written notification, all of this without prejudice to any of its other rights.

- 10.3** Notwithstanding the provisions above in this article, parties agree that if the parties' opinions differ about the Services rendered by Qserve, or the collaboration between parties in general and parties believe that further collaboration would not lead to the desired

outcome as formulated in writing beforehand, both parties shall be entitled to give notice to terminate ('opzeggen') the Agreement at the end of the month, subject to a one-month notice period. If Client gives notice to terminate the contract subject to the above, it shall nevertheless undertake to refund the costs incurred and yet to incur by Qserve in the context of the terminated.

#### **Art. 11 – Applicable Law and Jurisdiction**

- 11.1** Dutch law shall apply exclusively to these Terms and Conditions, as well as to the Agreement. The General Terms and Conditions and the Agreement express and describe Dutch legal concepts in English and not in their original terms. Consequently all words, terms and expressions used herein are construed and interpreted in accordance with Dutch law.

- 11.2** In the event the Client is established in a country that is a participant in the 'Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters', or in a country that participates in any other enforcement convention with the Netherlands, all disputes that may arise following the Agreement or these Terms and Conditions, must be submitted to the competent District Court in the Province of Gelderland, location Arnhem, the Netherlands, subject to the provision that Qserve is entitled to submit claims on the Client to other judicial institutions that are entitled to take cognizance of such claims.

- 11.3** In the event the Client is not established in a country that participates in 'Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters' nor in a country that participates in another enforcement convention with the Netherlands, all disputes that may arise following the Agreement or these Terms and Conditions, must be resolved in accordance with the Rules of the Netherlands Arbitration Institute, with the Netherlands as venue.

*These Terms and Conditions are filed with the Chamber of Commerce in Arnhem, The Netherlands with number 37117707 on April 21, 2017.*