

# Terms and Conditions of Sales

## 1. Scope

**1.1** These Standard Terms and Conditions for the Sale of Goods ("Terms") shall exclusively apply to contracts for the sale and/or delivery of goods provided by Ncardia AG to a business within the meaning of Section 14 German Civil Code and legal entities under public law ("Buyer"), irrespective of whether Ncardia AG manufacture the goods themselves or purchase them from Third Party ("Sale").

**1.2** Any differing General Terms and Conditions of Buyer, even if not deviating from these Terms, but only supplementing them, shall not become part of the contract, even if they are not expressly objected to.

**1.3** The Buyer may not assign any claims arising from or in connection with the Sale to third parties without Ncardia AG's prior approval in text form.

**1.4** Any typographical, clerical or other error or omission in any sales literature, quotation, price list, and acceptance of offer, invoice or other document of information issued by Ncardia AG shall be subjected to correction without any liability on the part of Ncardia AG.

**1.5** Ncardia AG reserves all intellectual property rights including possible patent rights, copyrights, software and database rights as well as the proprietary right to illustrations, drawings, cost estimates, technical calculations, drafts and other documents. They may not be made available to third parties without Ncardia AG's express written consent and shall be returned immediately upon request or in the event the order is not placed.

**1.6** All products and services purchased from Ncardia underlie the limitations of the applicable Limited Label Use License. Frozen cell products are covered under our warranty if used within the our Limited Label Use License for 12 months from date of purchase. In particular but not limited to, the products cannot be used in in vivo experiments nor for diagnostic purposes. Data from the services cannot be used for diagnostic nor clinical purposes. This Limited Label Use License can be found in the accompanying Manuals or can be requested from Ncardia via mail: [info@ncardia.com](mailto:info@ncardia.com).

## 2. Order

**2.1** Any order or amendment thereto must be in text form and issued by an authorized representative of both the Buyer and Ncardia AG.

**2.2** Ncardia AG reserves the right to make any changes in the specification of the goods which are required to conform to any applicable statutory requirements.

**2.3** The acceptance of orders as well as individual contract arrangements shall require Ncardia AG's express confirmation in text form in order to be effective.

## 3. Prohibition to Resell

Buyer shall not be entitled to resell the goods to any third party.

## 4. Prices

**4.1** Prices are denominated in Euro, unless expressly indicated in another currency.

**4.2** Value-added tax at the respective statutory amount shall be added to the prices.

**4.3** In the absence of any special agreement, payment is to be made in cash without any deductions. Any deduction of discounts shall require a special agreement in text form.

**4.4** Ncardia AG reserves the right not to accept bills of exchange and checks as means of payment. In the event of acceptance, payment shall be considered made only when successfully cashed. Discount charges shall be borne by Buyer.

**4.5** A balance confirmation by Ncardia AG is non-binding, however, it shall be deemed as recognized by Buyer, unless Buyer objects in writing within three weeks from receipt of the balance confirmation and Ncardia AG expressly refers to this consequence when providing the balance confirmation.

**4.6** Buyer shall only be entitled to withhold payments or to offset them against counterclaims, where Buyer's counterclaims are undisputed, recognized or have been determined to be legally binding.

**4.7** Ncardia AG reserves the right to make price increases of up to 5% of the original amount invoiced after the expiry of four months after the conclusion of the contract, if since the conclusion of the contract material costs and/or wages have demonstrably increased in the extent of the price increase.

**4.8** All prices for the goods are exclusive of insurance, taxes and custom duties.

## 5. Delivery

**5.1** Any goods supplied under an order will be delivered ex works (Incoterms 2010) including loading and packing at Ncardia AG's premises.

**5.2** Where the sale of the Goods is to be made by Ncardia AG in bulk, Ncardia AG reserves the right to provide more or up to 3% less than the quantity ordered without any adjustment in the price, and the quantity so received shall be deemed to be in the quantity ordered.

**5.3** The delivery period arises from the agreements of the contracting parties. It shall commence with the day of the dispatch of the order acknowledgment. Compliance with the delivery period by Ncardia AG shall require that all commercial and technical questions between the contracting parties have been clarified and Buyer has met all obligations for which Buyer is responsible, such as supplying the required documents, official certificates and approvals, releases, etc. as well as making a separately agreed down payment, if any. If this is not the case, the delivery deadline is accordingly extended.

**5.4** The delivery period shall appropriately be extended, including within an already existing delay, if any, in the event of unforeseen obstacles, which are outside Ncardia AG's control (for example, weather conditions, fire events, floods,

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political events, strikes, lockouts or lack of delivery to Ncardia AG despite a timely and adequate covering transaction) for the duration of the obstacle plus a reasonable start-up period. This shall also apply where such circumstances occur at subcontractors. Ncardia AG shall immediately notify Buyer of the beginning and end of such obstacles. In such events, Buyer shall be entitled to request an explanation from Ncardia AG, as to whether Ncardia AG wants to withdraw or deliver within a reasonable time. If such explanation is not provided within 2 weeks, Buyer may withdraw from the contract. In the event of a withdrawal, Ncardia AG shall immediately reimburse the payments made by Buyer.

**5.5** The delivery period has been respected if the delivered item has left Ncardia AG's premises prior to its expiry and if Buyer has been notified that the item is ready for shipment. If the shipment is delayed upon Buyer's request or for reasons for which Buyer is responsible, the costs incurred by the delay shall be borne by Buyer. This shall include particularly the costs of storage at Ncardia AG's factory. Moreover, Ncardia AG shall be entitled to withdraw from the contract and/or to demand compensation for damages after the fruitless expiry of a reasonable period of time.

### 6. Payment

**6.1** Terms of payment are net thirty (30) calendar days from the date of the invoice issued by Ncardia AG, except as otherwise stated in the order. All bank charges for payment shall be borne by the Buyer.

**6.2** In the event any payment is not made when due, Ncardia AG is entitled to:

- cancel the contract or suspend any further deliveries to the purchase; or
- charge interest on such payment for the time of the default. The interest rate shall be one and one quarter percent (1.25%) per month, or the highest legal rate of interest, whichever is less.

### 7. Warranty

**7.1** In the event of material defects and defects of title of the delivery of new items, Ncardia AG in exclusion of any further claims subject to Section 7 hereof shall provide warranty according to paragraphs a) and b) as follows:

#### a) Material defects:

aa) If the delivery item is defective due to a circumstance which occurred prior to the transfer of risks, at Ncardia AG's discretion it shall subsequently be improved or redelivered, if the selected type of supplementary performance is deemed acceptable to Buyer.

bb) Buyer is to provide Ncardia AG with the required time and opportunity in order to carry out all of the subsequent improvements and substitute deliveries deemed necessary by Ncardia AG. Otherwise, Ncardia AG shall be released from liability for the consequences arising therefrom. This shall not apply if the supplementary performance has failed twice or a supplementary performance is unacceptable to Buyer. Only in urgent cases of threats to the operational safety or to prevent disproportionately large damage, where Ncardia AG is to be notified immediately, or if Ncardia AG is in default with the

rectification of the defect, shall Buyer be entitled to rectify the defect on his own or have a third party do so and to request reimbursement of the necessary costs from Ncardia AG.

cc) Of the costs incurred by subsequent improvement or substitute delivery, where the complaint is justified, the costs of replacement including dispatch shall be borne by Ncardia AG, furthermore, if depending on the individual case it can be justifiably demanded, the costs of the required provision of fitters and supporting staff.

dd) Within the scope of the statutory provisions, Buyer shall only be entitled to withdraw from the contract or to a price reduction, if the supplementary performance fails twice.

ee) If only a minor defect exists, Buyer shall not be entitled to any claims for defects.

ff) If the delivery item, if used improperly by Buyer or by a third party, is put into operation incorrectly, handled incorrectly or carelessly or is not properly maintained, Ncardia AG's warranty is not applicable. The same shall apply in the event of defects due to normal wear and tear and due to the use of unsuitable operating materials.

gg) Ncardia AG shall not be liable for the results of improper subsequent improvement by Buyer or by third parties commissioned by Buyer. The same shall apply to changes in the delivery item, which Buyer undertakes without Ncardia AG's prior consent.

#### b) Defects of title:

aa) Where the use of the delivery item led to the infringement of industrial property rights, copyrights or similar rights of third parties in Germany (including rights due to complementary protection of performance), Ncardia AG shall procure at Ncardia AG's own expense the right to continued use for Buyer and shall modify the delivery item in a manner acceptable to Buyer such that the rights infringement no longer exists. If this is not possible under economically reasonable conditions or in a reasonable time period, Buyer shall be entitled to withdraw from the contract. Under these conditions, Ncardia AG shall also be entitled to withdraw from the contract. In addition, Ncardia AG shall indemnify Buyer against claims of the relevant rights holders, which are undisputed or determined to be legally binding.

bb) Ncardia AG's obligations under aforementioned paragraph aa) are final in the event of the infringement of the aforementioned rights. They only exist if

- Buyer immediately notifies Ncardia AG of asserted rights infringements;

- Buyer assists Ncardia AG to a reasonable extent in defending against the asserted claims or permits Ncardia AG to carry out modification measures in accordance with paragraph aa);

- the right to use all defense measures including extra-judicial settlements is reserved to Ncardia AG;

- the defects of title are not based on an instruction given by Buyer and

- the infringement of rights was not caused by the fact that Buyer arbitrarily modified the delivery item or has used it in a manner not in accordance with the contract.

c) An additional liability of Ncardia AG due to

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material or title defects shall exist only in the cases of Section 7 a) hereof.

d) Where the delivery item cannot be used due to Ncardia AG's fault caused by omitted or defective execution of proposals or advice by Ncardia AG or are not used as contractually stipulated because of the infringement of other ancillary contractual obligations by Buyer, the provisions of this Section 6 a) - c) shall apply accordingly under exclusion of additional claims of Buyer.

### 8. Limitation of Liability

**8.1** Claims for damages as a result of lost profit, other property damage, or other damage that was not caused to the delivery items themselves shall be excluded. This exclusion of liability shall not apply where Ncardia AG, its legal representatives or vicarious agents acted with intent or in a grossly negligent manner, fraudulently concealed a defect or in the event of a lack of guaranteed quality of the item, if and to the extent to which the purpose of the guarantee was to secure Buyer against damage that did not occur to the delivery item itself. Any liability for damage arising from the loss of life, bodily injury or damage to the health of a person, which is based on a negligent breach of duty by Ncardia AG, its legal representatives or vicarious agents, is neither excluded nor limited. Furthermore, such liability exclusion shall not apply in the cases of liability under the German Product Liability Act.

**8.2** Notwithstanding the foregoing paragraph, Ncardia AG shall be liable in the event of infringement of material contractual obligations due to simple negligence, however, only for damage, which is typical of the contract and reasonably foreseeable. Material contractual obligations are such obligations, the fulfillment of which allow the proper performance of the contract in the first place and the breach of which endangers the achievement of the purpose of the contract and on the compliance with which Buyer may regularly rely.

**8.3** To the extent to which Ncardia AG's liability is excluded or limited under the foregoing paragraphs, such shall also apply to the personal liability of bodies, employees, representatives and vicarious agents.

### 9. Period of Limitation

**9.1** In the case of the delivery of newly manufactured delivery goods, warranty claims shall become time-barred one year from delivery to Buyer. The provisions of Sections 478, 479 German Civil Code shall remain unaffected.

**9.2** The statutory periods shall apply to intentional and fraudulent behavior of Ncardia AG as well as in the case of tortious claims and claims under the German Product Liability Act.

**9.3** In addition, the period of limitation of paragraph 8.1 with regard to claims for damages shall not apply in the event of breach of duty in gross negligence, in the event of a culpable breach of material contractual obligations within the meaning of Section 7.2 not consisting in the supply of a defective good, in the event of culpable injury to life, body or health. The period

of limitation of paragraph 8.1 shall also apply to compensation of futile expenses.

**9.4** The foregoing provisions shall apply accordingly to claims for damages not made in connection with a defect.

### 10. Retention of Title

**10.1** Ncardia AG reserves title to the delivery good until the complete fulfillment of all claims under the business relationship with Buyer. The retention of title shall also extend to the recognized balance within the meaning of Section 3.5 hereof, if Ncardia AG has receivables against Buyer in current account (current account reservation).

**10.2** Buyer shall be entitled to process the delivery good in ordinary business transactions. In the event of seizure, confiscation or other third-party dispositions, orders or interventions with respect to the delivery goods owned by Ncardia AG, Buyer is to notify the Supplier immediately in text form so that Ncardia AG, where necessary, may file a legal complaint in accordance with Section 771 German Code of Civil Procedure. Where the third party is not able to reimburse the judicial and extrajudicial costs of a lawsuit in accordance with Section 771 German Code of Civil Procedure, the customer shall be liable for the loss incurred by Ncardia AG.

**10.3** In the event of legitimate interests, in particular as regards default of payment, cessation of payments, initiation of insolvency proceedings, protest of a bill of exchange or justified indications for excessive indebtedness or impending insolvency of Buyer, Ncardia AG shall be entitled to revoke Buyer's right to collect outstanding debts. In addition, Ncardia AG, after giving prior warning and observing a reasonable period of time, may disclose the assignment for security, exploit the assigned claims and request Buyer to disclose to Buyer's customers the assignment for security.

**10.4** Processing and transformation of the delivery good shall occur for Ncardia AG as manufacturer. If the retained title expires as a result of combination, it is hereby agreed that Ncardia AG obtains joint ownership in the newly created object.

**10.5** In the event of Buyer is violating the contract, particularly in the event of default in payment and in the event of protested bills of exchange and checks, Buyer's right to processing the delivery goods shall end. In such events, Ncardia AG shall be entitled to take back the delivery goods after unsuccessful prior warning and to freely dispose of it after written notification with a reasonable grace period. In such events, Buyer shall be obligated to return the delivery goods immediately upon request.

**10.6** Where an application is made to initiate insolvency proceedings on Buyer's assets, Ncardia AG shall be entitled to withdraw from the contract and to request the immediate return of the delivery goods.

### 11. Indemnity

The goods provided by Ncardia AG must only be used for their designated purpose which is for pre-

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clinical research, only. Further, the goods may only be used in accordance with the regional regulatory framework applicable.

Buyer will indemnify and hold harmless Ncardia AG from and against any and all third party losses, claims, damages, or liabilities, to the extent caused by, arising from or in connection with any illegitimate use or use not in compliance with these Terms or the order, including but not limited to clinical and/or diagnostic applications.

Buyer will further indemnify and hold harmless Ncardia AG from and against any and all third party losses, claims, damages, or liabilities, to the extent caused by, arising from or in connection with any sale or transfer by Buyer to any third party of any product.

This Indemnity of this Section 11. shall not apply if and to the extent the damage is caused by or arises from gross negligence or willful misconduct of Ncardia AG.

### 12. Force Majeure

Neither party shall be liable for any delay or failure in performance of its obligations under the contract if such delay or failure is due to an act or other occurrence beyond its reasonable control, including but not limited to, acts of nature, fire, flood, strikes, lockouts, labor troubles, in ability to procure raw materials, failure or curtailment of power or any other utility service, restrictive governmental law or regulations, riots, insurrection, war or other reason of like nature ("Force Majeure"). Any inability to make payments due under the contract shall in no event be considered as an event of Force Majeure.

### 13. Technical Advice

All technical advice and recommendations of Ncardia AG rendered to the Buyer, if any, are intended for use by persons having the appropriate education and skill to use such technical advice and/or recommendations. Ncardia AG shall not be liable for any use or non-use of such advice and/or recommendations.

### 14. Severability

If any provision hereof or set out in the contract document shall be determined to be invalid or unenforceable, such determination shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be deemed to be automatically amended and replaced by a valid or enforceable provision which accomplishes as far as possible the purpose and the intent of the invalid or unenforceable provision.

### 15. Governing Law

The contract and these Terms shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of law rules, in particular the German international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG)

### 16. Dispute Resolution

Either party may notify the other party in writing

at any time during or after the conclusion of the contract of the existence of a controversy or claim arising out of or relating to the contract (a "Controversy"). The parties shall attempt in good faith to resolve the Controversy within sixty (60) calendar days after the receipt of such notice, and agree to elevate the dispute internally to at least the level of Vice President in order to seek an amicable resolution.

If the Controversy is not resolved through negotiation within such sixty (60) day period, the Controversy shall be settled by the competent courts of Cologne, Germany, which shall have exclusive jurisdiction.