

General conditions of sale for commercial transactions
(Seller and purchaser are companies)

§ 1 Area of validity

(1) These terms and conditions of sale shall only be valid for companies, legal entities under public law or federal special funds under public law in the sense of § 310 Para. 1 BGB (German Code of Law). Contrary conditions of sale or purchaser's conditions deviating from our conditions of sale shall only be recognised by us if their validity is expressly agreed to by us in writing. Our offers are aimed at the specialist medical public (in particular doctors and hospitals) and not at private individuals.

(2) These terms and conditions of sale shall also be valid for all future transactions with the purchaser, to the extent that transactions of a related nature are involved.

§ 2 Offer and conclusion of contract

If and insofar as an order is to be regarded as an offer pursuant to § 145 of the German Civil Code (BGB), we have two weeks for acceptance thereof. Presentation of the products in our catalogs does not constitute a legally binding offer, but an invitation to treat. Errors and omissions reserved. The purchase contract is concluded when we confirm your order by sending an order confirmation after receipt of your order.

§ 3 Provided documentation

We shall retain ownership and copyright in documentation provided to the purchaser in connection with placing of the order, such as calculations, drawings etc. This documentation may not be made available to third parties unless we grant explicit written permission to the purchaser in this regard. To the extent that we do not accept the purchaser's offer within the period in § 2, this documentation must be returned to us immediately.

§ 4 Prices and payment

(1) Our prices are quoted in €. In case of invoicing in foreign currency, the calculated prices are subject to change. The exchange rate used upon foreign currency settlement shall be decisive. Unless otherwise agreed in writing, our prices are ex works excluding packaging and, in the case of domestic deliveries, plus value added tax at the respectively applicable rate. Costs of packaging will be invoiced separately.

(2) Payment of the purchase price shall be made exclusively to the accounts specified on the invoice. Deduction of a discount is permissible only with a special written agreement. Any deviating payment conditions or payment processing only after prior written confirmation.

(3) Unless agreed otherwise, the purchase price shall be paid net without deduction within 30 days of the invoice date. Default interest will be charged at a rate amounting to 8 % above the respective base interest rate p.a.. We reserve the right to assert higher damage caused by default.

(4) Unless a fixed-price agreement has been made, we reserve the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries that take place 3 months after conclusion of the contract or later. We reserve the right to increase prices without prior announcement.

§ 5 One-off production

Items that are not listed in our catalogue shall under no circumstances be accepted for return.

§ 6 Return shipments

Return shipments of unobjected instruments require our approval and can be returned to us within a maximum period of 14 days. As a contribution to expenses, we charge € 2.50 per piece, but at least € 25.- per shipment, as well as € 3.00/piece for the removal of a marking applied upon the customer's request.

§ 7 Set-off and rights of retention

The purchaser shall have the right of set-off only where his counterclaims have been judicially determined or are undisputed. The purchaser shall only be entitled to exercise a right of retention where his counterclaim is based on the same contractual relationship.

§ 8 Delivery time

(1) The start of the delivery time indicated by us presupposes the timely and orderly fulfilment of the purchaser's obligations. The defence of non-fulfilment of contract shall be reserved.

(2) Where the purchaser is in arrears with payment or is guilty of any other breach of cooperation duties, we shall have the right to demand compensation for the damages incurred including any additional expenditure. We reserve the right to additional claims. In the event of the existence of aforesaid conditions, the risk of incidental degradation or loss of the merchandise shall pass to the purchaser with commencement of default.

(3) Force majeure, a shortage of raw materials etc. shall release us from compliance with the agreed delivery dates. Delays in delivery shall not entitle the purchaser to claim damages.

(4) Further statutory claims and rights on the part of the purchaser due to a delay in delivery shall remain unaffected.

§ 9 Transfer of risk on dispatch

Where the goods are dispatched to the purchaser at his request, the risk of incidental degradation or loss of the goods shall transfer to the purchaser as soon as same are dispatched, however at the latest at the time of leaving the plant/warehouse. This shall apply independent of whether the goods are dispatched from the place of fulfilment or who is responsible for the shipping costs.

§ 10 Reservation of ownership

(1) We shall reserve ownership to the supplied object until payment of all claims pertaining to the supply agreement has been received in full. This shall also apply to all future deliveries, even where this is not expressly referred to. We shall be entitled to reclaim the merchandise should the purchaser act contrary to agreement.

(2) The purchaser shall be obliged to handle the merchandise with care to the extent that ownership has not yet been transferred to him. Where maintenance and inspection activities are required to be performed, the purchaser shall perform these at his own expense in a timely manner. To the extent that ownership has not yet been transferred, the purchaser shall inform us immediately should the supplied object be impounded or be subject to other interference by third parties. Should said third party not be able to reimburse us for judicial and extra-judicial costs of proceedings pursuant to § 771 ZPO (Court Procedures for Civil Law suits), the purchaser shall be liable for the loss incurred.

(3) The purchaser shall be entitled to re-sell the reserved goods in normal business transactions. The buyer's claims from re-selling the reserved goods are hereby ceded to us by the purchaser in the amount of the agreed final invoiced amount (including VAT). Said cession shall be valid independent of whether the merchandise has been re-sold without or after processing. The purchaser shall be entitled to collect the claim even after the cession. Our right to collect the claim ourselves shall remain unaffected by this. We shall however not collect the claim ourselves to the extent that the purchaser fulfils his payment obligations from the received proceeds of sale, is not in arrears with payment and in particular no insolvency proceedings have been initiated or suspension of payment exists.

§ 11 Warranty, notice of defects and recourse/manufacturer recourse

(1) Warranty rights on the part of the purchaser shall presuppose that same has fulfilled his examination and reproof obligations pursuant to § 377 HGB (German Commercial Code) in an orderly manner.

(2) Claims for defects shall lapse 12 months after delivery of the goods by us to the purchaser. Any goods to be returned shall require our prior approval.

(3) Should the goods supplied contain a defect that already existed at the time of transfer of risk, despite utmost care taken, we shall, at our discretion, repair or replace the goods, subject to receiving notification of the defect within the required time period. We shall at all times be granted opportunity for subsequent performance within a reasonable period of time. Recourse claims shall remain unaffected without restriction of the aforesaid terms.

(4) Where subsequent performance is unsuccessful, the purchaser may – without prejudice to any claims for damages – withdraw from the contract or reduce compensation in terms of the contract.

(5) Claims for damages shall not exist in case of insignificant deviation from the agreed properties, insignificant reduction of usability, normal wear and tear as well in case of damages caused by faulty or negligent handling after transfer of risk, excessive use, unsuitable operating media or that are due to particular external influences that are not stipulated according to the contract. To the extent that the purchaser or third parties perform inappropriate maintenance activities or modifications, no claims of material defects may be asserted for these or any resulting consequences.

(6) Claims by the purchaser on the basis of expenditure incurred for subsequent performance, especially transport, route, work and material costs shall be excluded to the extent that said expenditure is increased because the goods supplied by us were subsequently transferred to a site other than the purchaser's branch office, unless said transfer complies with the intended use of the goods.

(7) Claims to recourse against us by the purchaser shall only exist insofar as the purchaser has not reached any agreements with its customer that are more far-reaching than statutory claims on account of defects. Furthermore, Para. 6 shall apply in terms of the scope of claims to recourse against the supplier by the purchaser.

(8) For goods manufactured according to drawings, samples or other information provided by the customer, the customer shall be held liable in case of any infringement of third-party property rights.

§ 12 Obligations for distributors pursuant to Art. 14 of the EU-MDR

If the purchaser (economic operator) is a distributor according to MDR 2017/745 Article 2 (34), the obligation to participate in market surveillance and vigilance, the traceability of medical devices, must be observed in addition to the general due diligence obligation in the context of the GDP ("good distribution practice").

This includes, without being limited to, the following obligations:

1. Checking the CE marking upon goods receipt and the valid declaration of conformity.

2. Control of enclosure of all required information for the medical device by the manufacturer (correct labeling and instructions for use).
3. Control of the UDI by the manufacturer (assignment and readability, if any).

§ 12 Other

(1) This contract and all legal relationships between the parties shall be subject to the laws of the Federal Republic of Germany with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of fulfilment and exclusive place of jurisdiction for all disputes arising from this contract shall be Tuttlingen, unless otherwise stated in the confirmation of order.

(3) All agreements made between the parties regarding execution of this contract have been recorded in writing in this contract.

(4) Should individual provisions of this contract be or become ineffective or contain a loophole, the remaining provisions shall remain unaffected. The parties shall be obliged to replace the ineffective provision by a provision that is admissible by law and that most closely approximates the commercial intent of the ineffective provision or closes the loophole.

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