

General Terms and Conditions of Business of Medtraco GmbH, Aachen

1. Scope of applicability

Our deliveries, services, offers and order confirmations are based exclusively on these General Terms and Conditions of Business. The customer's terms and conditions are not effective, irrespective of whether they differ from these General Terms and Conditions of Business. Individual arrangements are not affected by the following provisions.

These General Terms and Conditions of Business apply exclusively with respect to companies in the meaning of Article 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).

2. The conclusion of the contract

Our offers are non-binding. The contract arises upon our written order confirmation or upon the delivery of the goods, unless otherwise agreed in text form (in writing, by e-mail or fax).

3. Prices, price adjustments

3.1

Unless otherwise specified by us, all prices should be understood as being net prices in euros, ex-works plus shipping costs and VAT in the statutory amount.

Costs for shipping, packing and insurance shall be separately invoiced to the customer, unless we have made an explicit commitment to the contrary.

3.2

The prices effective at the time when the order is placed apply. Price changes are possible at any time.

4. Delivery periods and late delivery

4.1

The delivery periods specified by us are non-binding and only approximations, unless a binding delivery deadline has been explicitly agreed in writing.

4.2

A binding delivery period begins on the date of the written confirmation of the delivery deadline. The delivery period is deemed to have been adhered to if the customer is notified that the goods are ready to be shipped or the goods are dispatched before the end of that period.

4.3

Agreed delivery times shall be appropriately extended in the event of operational disruptions for which we are not responsible, such as industrial disputes or delivery delays for which we are not responsible. The customer shall be obliged, at our request, to declare within a reasonable period of time whether it wishes to rescind the contract due to the delivery delay or insists on receiving the delivery.

4.4

If we are late in making delivery, we shall be liable (provided that the customer provides proof of losses) up to a limit of 0.5% of the net price for each completed week of delay, and in total for a maximum of 5% of the net price of the affected part of the delivery. This limitation of liability shall not apply in the event of wilful misconduct or gross negligence. Liability for losses caused by delay due to gross negligence shall be limited to typical, foreseeable losses.

5. Delivery and packing materials; taking back goods and packing materials

5.1

Partial deliveries are permitted, provided that they are reasonable for the customer in an individual case.

5.2

Deliveries shall be carried out ex-works (EXW) in Aachen (Incoterms 2010). We shall insure deliveries against typical transport risks at the customer's request and expense.

5.3

Packing materials will only be taken back in the event of return delivery to the plant in Aachen without charge for us.

5.4

The return of goods is excluded.

6. Payment

6.1

Unless the order confirmation states otherwise, the purchase price shall be due for payment without deductions and free of charge for us within eight days from the date when the goods are made available in the plant and notification is given that they are ready to be shipped. The receipt of the funds by us shall be decisive as to whether the payment has been made on time. Receipt of the invoice is not a condition for a payment being due.

6.2

The customer does not have the right to withhold payment or set off a payment with counterclaims unless they have been established with legally binding effect or are undisputed or complaints regarding defects have been submitted which are obviously legitimate.

7. Documents

Documents provided to the customer, such as price-lists, offers, etc., shall remain our property. All trademark, copyright and other protective rights shall remain with us. The customer is not permitted to either use such documents for its own purposes or make them available to third parties.

8. Retention of ownership

8.1

The delivered goods shall remain our property until all our claims from the business relationship with the customer have been satisfied. The inclusion of individual claims in a running invoice or the recognition of an account balance shall not affect the retention of ownership.

8.2

The customer has the right to resell the goods in the course of its normal business, process them or combine them, as long as it is not in payment default. Pledging or assignment as security are excluded without our consent.

Resale is only permitted on the condition that the customer (the reseller) stipulates that the ownership title to the goods only transfers to the buyer once it has completely fulfilled its payment obligation from the resale. The customer already now assigns to us all receivables from the resale, up to the amount of our claim. We hereby accept that assignment.

The customer shall continue to have the right to collect assigned receivables (alongside our right to do so). The collection authorisation shall expire in the event of payment default, a significant deterioration in the customer's financial position or if it ceases to make payments. In such cases, we shall be authorised to notify the buyers of the assignment and collect the receivables ourselves. The customer must provide the information necessary to claim the assigned receivables and permit us to inspect that information. In particular, it must provide us, at its own expense, with a precise list of the receivables that have arisen for it, with the name and address of the buyers, the amount of the individual receivables, the invoice date, etc.

8.3

The customer must promptly notify us in the event of a cessation of payment, a significant deterioration of its financial position that could lead to the endangerment of our offers or an attachment. Attaching creditors must be specified by name and address. The customer shall bear all the costs that have to be incurred to reverse the intervention by attaching creditors and recover the goods.

8.4

In the event that the customer defaults on the payment of a significant instalment or ceases its payments or a significant deterioration of its financial position occurs such that our receivables are endangered, particularly if the opening of insolvency proceedings regarding its assets is applied for, we shall have the right to demand the surrender of the goods subject to retention of title. Such a demand for the surrender of the goods shall constitute rescission of the contract. No time limit for performance need be set in such cases. We reserve the right to assert claims for compensation for losses.

8.5

The customer shall safekeep the goods subject to retention of title for us free of charge. It shall not have the right to establish a warehouseman's lien. It undertakes to insure the goods to an appropriate extent against the usual risks, such as fire, theft and water, and against damage in transit. It hereby assigns to us claims to compensation that arise for it against third parties due to damage of the kinds mentioned above, in the amount of the invoice value of the goods.

9. Warranty and illegitimate complaints

9.1

The customer shall only be entitled to warranty claims due to defects present in the goods if it has properly fulfilled its inspection and complaint obligations under Article 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*). The customer must inspect the delivered goods without delay upon receipt thereof and report any identifiable defects or shortfalls promptly and no later than within four days from the transfer of risk. Non-identifiable defects must also be reported without delay after their discovery and no later than seven days thereafter. The time limits for submitting complaints apply likewise for direct deliveries to third parties specified by the customer. The customer must also ensure that complaints are submitted on time in such cases and upon handover to the carrier.

9.2

If defects exist, we shall, at our discretion, have the right and obligation to either rectify the defect up to three times free of charge or provide a new delivery within a reasonable period of time (supplementary performance), provided that the defect occurs within the time limitation period and a complaint is submitted in good time and that the cause of the complaint already existed upon the transfer of risk. The customer shall bear the burden of proof in this respect. If the supplementary performance fails, the customer will be able to rescind the contract or reduce the remuneration without prejudice to any claims for compensation under section 10.

9.3

Claims for defects by the customer shall expire one year from the delivery of the goods, provided that the customer properly fulfilled its complaint obligation.

9.4

Claims by the customer relating to the expenses necessary for the supplementary performance, particularly transport, travel, labour and material costs, are excluded insofar as those expenses increase because the goods delivered by us have been taken to a location other than the place of performance.

10. Limitation of liability and events of force majeure

10.1

We shall not be liable for minor culpability of our vicarious agents unless they have breached key contractual obligations. Otherwise, our liability is limited to the losses that typically arise due to a breach of obligation of the kind in question.

10.2

In the event of an injury to life, body or health attributable to us, we shall be liable in accordance with the provisions of law.

10.3

The customer's claim to compensation for needless expenses instead of the compensation for losses in lieu of the performance and the liability under the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected by this.

10.4

Events of force majeure or operational disruptions of any kind, lock-outs, strikes, shortages of raw materials or fuel, measures of governmental authorities or other causes or events that lead to a restriction or cessation of our operations shall entitle us to postpone the fulfilment of our obligations or rescind the contract in whole or in part, without the possibility of compensation for losses being demanded from us.

11. Assignment, place of performance, applicable law, place of jurisdiction, miscellaneous

11.1

The customer can only transfer its rights from contracts concluded with us to third parties with our explicit written consent.

11.2

The place of performance for all deliveries and services is Aachen, Germany. Aachen, Germany is the exclusive place of jurisdiction for all disputes arising from the contractual relationship. However, we shall also have the right to take legal action at the location of the customer's registered office.

11.3

The contractual relationship is subject to German substantive and German procedural law. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.