

Standard Purchase Terms and Conditions

Wirthwein Medical GmbH & Co. KG

Last updated: July 2020

1. Basis of the contract

1.1 The following Purchase Terms and Conditions shall apply to all orders we place for goods or services. If the Supplier agrees to their application and if the Supplier has been made aware of them, the Purchase Terms and Conditions shall also apply to all future transactions with the Supplier, even if we do not expressly refer to them in each individual case.

1.2 Any deviating terms and conditions used by the Supplier shall not become a part of the contract, irrespective of whether or not we object to them in each individual case. They shall only apply if we expressly acknowledge them in writing.

1.3 Our Purchase Terms and Conditions shall only apply in relation to businesses within the meaning of Section 310 (1) of the German Civil Code (BGB).

1.4 Modifications of, and amendments to, the contract must be made in writing in order to be effective.

2. Conclusion of the contract

2.1 Offers and quotations are free of charge, even if the Supplier prepares them upon a request issued by us.

2.2 Orders are only binding if they are placed in writing. In order to be valid, any orders placed orally or by telephone require subsequent confirmation by a commercial confirmation letter issued by us or by the Supplier. The same shall apply with regard to any ancillary oral agreements or amendments to the contract.

2.3 We shall be bound by our order for a period of 8 days from receipt of the order by the Supplier.

2.4 Without prejudice to any statutory withdrawal rights, we shall have the right to withdraw from the contract if insolvency proceedings are opened against the Supplier's assets, or if such proceedings are rejected due to lack of funds. If the Supplier has only temporarily suspended payments we shall also have the right to withdraw from the contract after setting a corresponding deadline.

3. Drawings, drafts, documents, products from customer-furnished materials, confidentiality

3.1 We reserve all property and copyrights to all drawings, drafts, calculations and other documents provided to the Supplier for the purpose of preparing an offer or, should we provide customer-furnished materials, for performance. They may only be forwarded to third parties with our written approval. The Supplier shall treat them confidentially, shall store them in a way that ensures that third parties do not have access, and shall return them to us at any time upon request, at the latest immediately after completion of the contract. The Supplier shall be responsible for the proper storage of such documents, and shall be liable for any loss or damage.

3.2 In the event of a breach of the confidentiality obligation, we shall have the right, without prejudice of any other rights, to withdraw from all open contracts with the Supplier, without having to pay damages.

3.3 The Supplier shall impose upon its employees and subcontractors the same terms regarding confidentiality that the Supplier has undertaken in relation to us.

3.4 The products manufactured in accordance with these documents, and any documents created for us in connection with the performance of the order, may only be forwarded to third parties with our written approval.

3.5 The confidentiality obligation shall continue to apply after completion of this contract.

3.6 Upon termination of the business relationship, any documents received shall be returned to the contracting partner without a prior request.

3.7 We reserve the right to additionally request the signing of a non-disclosure agreement at any time.

4. Forwarding orders to third parties

Without our prior written approval, the Supplier shall not have the right to entirely or partially assign an order placed by us to third parties. Such approval may not be unreasonably withheld. It shall not release the Supplier from its obligation to diligently select its subcontractors with regard to quality and reliability, and to supervise the proper performance of the order.

5. Dates, deadlines and delays

5.1 Any agreed dates and deadlines shall be binding. For deliveries, the decisive date for compliance with such deadlines shall be the receipt of such delivery at the delivery address specified by us, for deliveries including installation and assembly, and for all other success-related services, the decisive date shall be our formal acceptance.

5.2 In the interest of overall scheduling, we may request that individual deliveries or services or the entire delivery or service within the framework of the overall schedule, be temporarily suspended and/or temporarily accelerated - provided that the Supplier has the necessary capacities. Should this have significant impact on costs, the price shall be adjusted reasonably.

5.3 Upon request, the Supplier shall provide a schedule that shows when the various phases of the production process are planned to take place. This shall in particular apply if work is assigned/awarded/forwarded to subcontractors, in as far as such subcontracting is not contractually excluded. The Supplier shall inform us in writing without undue delay should circumstances occur or become apparent which result in the stipulated delivery date being unable to be complied with.

5.4 If a delivery date cannot be met, we shall be informed thereof without undue delay, including information on the reason for such impediment and its expected duration. This shall not affect our statutory claims in the event of default, nor any agreed contractual penalties.

5.5 If the Supplier fails to meet a deadline that is defined in calendar days or open to reasonably definite calculation, the Supplier shall be deemed to be in default without a reminder being required. In such cases, we may, in addition to our claims for compensation for the damage caused by such delay, withdraw from the contract in accordance with the statutory provisions, and request payment of damages in lieu of performance, if the Supplier fails to provide the delivery or service within a period of grace set after the due date.

5.6 We may refuse acceptance of early deliveries or early provision of services.

6. Partial, excess or shortfall deliveries and subsequent deliveries

6.1 Without our expressed approval, the Supplier may not effect partial deliveries or services. Should we nevertheless accept such deliveries or services in an individual case, the Supplier shall only have the right to invoice us for such deliveries or services once it has performed all of its obligations.

6.2 We reserve the right to accept excess or shortfall deliveries in individual cases.

6.3 Subsequent deliveries shall be handled accordingly.

7. Force majeure

7.1 Force majeure is only acknowledged if it has a direct impact on the performance of this contract. Force majeure events shall in particular be fire, flooding, storms, earthquakes and other natural disasters, strikes, lock-outs or other disruptions of operations, and wars. Force majeure events can only be invoked in relation to the other contracting partner subject to the proviso that the beginning as well as the end of the force majeure event be notified to the contracting partner in writing within three days. The decisive date shall be the date of dispatch of such notification. A corresponding confirmation from the competent Chamber of Commerce and Industry shall be enclosed.

7.2 If a force majeure event occurs, we may request delivery at a later date, without the Supplier being entitled to derive any claims therefrom.

7.3 Should a force majeure event continue for more than three months, or should it result in permanent impossibility of performance for the Supplier, we may withdraw from the entire contract, or from a part of the contract. In such cases, the Supplier shall not have the right to claim compensation for losses incurred.

7.4 The Supplier undertakes to pay interest on any amounts to be reimbursed to us in the event of a withdrawal, at a rate of 5% above the relevant base rate, from the date of receipt of payment of such amounts.

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8. Prices, shipment, packaging, invoice, payment

8.1 The prices shall be fixed prices including costs for packaging, transport, customs formalities and customs duties, free point of delivery and shall be plus value added tax.

8.2 Shipment shall be for the Supplier's account and risk.

8.3 A delivery note, a consignment note and an invoice shall be prepared for each delivery. These documents must correspond to the wording of the references used in our order, and must contain the following information, in addition to the mandatory statutory information:

- Order date, number and reference
- Contents of the consignment
- Respective status of the order

8.4 In the absence of any deviating agreement, payments shall be due with a 3% cash discount within 14 days from receipt of the invoice, or net within 30 days. The payment period begins upon receipt of the invoice. Incorrect invoices shall only be deemed to be received by us at the time such invoices are corrected.

8.5 The obligation to take back packaging material shall be governed by the statutory provisions.

9. Assignment, set-off, retention rights

9.1 Without our prior approval, the Supplier shall not have the right to assign its claims against us to a third party, or to cause a third party to collect such claims. We shall not refuse our approval for unreasonable reasons.

9.2 The Supplier shall only set claims off against our claims if its relevant counter-claim is due for payment, uncontested, has been determined in a final and conclusive manner, or constitutes a reciprocal or exchange claim in relation to our claim. This shall also apply to retention rights, except if the Supplier is obligated to provide advance performance, and is entitled to invoke the plea of uncertainty pursuant to Section 321 BGB.

10. Reservation of title

Transfer of title in the goods to us shall be unconditional and shall take place irrespective of whether or not the price has been paid. However, should we, in an individual case, accept an offer from the Supplier that makes transfer of title conditional upon payment of the purchase price, the Supplier's reservation of title shall expire no later than upon payment of the purchase price for the supplied goods. We shall maintain the right to re-sell the goods within the course of due business operations even prior to payment of the purchase price, subject to assignment in advance of the claims generated from such resale (or, as an alternative, subject to an ordinary prolonged reservation of title limited to such re-sale). This excludes all other types of reservation of title, in particular the extended or transferred reservation of title, or the reservation of title prolonged to cover the further processing of the goods.

11. Transfer of risk, Supplier's control duties

11.1 The risk shall pass to us upon receipt of the goods at the delivery address specified in the order or, if delivery comprises installation or assembly, or for success-related services, upon our formal acceptance.

11.2 The Supplier shall carry out sufficient intermediate and final inspections of its production process, and shall make any parts supplied by subcontractors subject to an incoming goods inspection.

12. Faulty delivery or service, warranty

12.1 Our rights in the event of material or legal defects of the goods (including incorrect and shortfall deliveries as well as improper assembly, faulty assembly, operating or user manuals) and any other breaches of obligations by the Supplier shall be governed by the statutory provisions, except if provided differently hereinafter.

12.2 Under the statutory provisions, the Supplier shall in particular be liable for the goods complying with the agreed characteristics at the time of transfer of risk to us. The product descriptions that - in particular by means of specification or reference in our order - are an integral component of the relevant contract or that are incorporated into the contract shall be considered as agreed characteristics. It is irrelevant in this context whether the product description originates from us, the Supplier or the manufacturer.

12.3 The Supplier shall ensure that the delivery or service complies with state-of-the-art technology as well as generally recognised technical and health-and-safety requirements issued by authorities and trade associations, that they comply with applicable environmental law, and with all other legal requirements. The Supplier shall comply with the statutory requirements (country/federal state of destination) as well as the official directives regarding environmental protection applicable at the destination, in particular with regard to hazardous substances, dust emission and noise.

12.4 If deliveries involve machines, devices or equipment, these shall comply with the requirements of the special safety provisions for machines and equipment applicable at the time of performance, and must bear the CE marking.

12.5 Deviating from Section 442 (1) 2 BGB, our claims for defects shall be unrestricted, even if a failure on our part to detect the defect upon conclusion of the contract was due to gross negligence.

12.6 The statutory regulations (Sections 377, 381 of the German Commercial Code, HGB) shall apply to the commercial duty to inspect the goods and report defects, subject to the following provisions: Our inspection obligations shall be limited to defects which become readily evident during our incoming goods inspection when examining the goods externally, including the delivery documentation, as well as during our quality control process involving random sampling (e.g. transport damage, incorrect and shortfall delivery). In as far as formal acceptance is required, we shall not have an obligation to inspect the goods. Otherwise, the decisive issue shall be whether or not an inspection is reasonable during the due course of business, taking into consideration the circumstances of the individual case.

Our obligation to notify defects detected subsequently shall remain unaffected. In any event, our complaint (report of defects) shall be deemed to have been submitted without undue delay and in good time if it is received by the Supplier within 10 business days.

12.7 The costs incurred by the Supplier for inspection and replacement or rectification (including removal and installation costs, if any) shall be borne by the Supplier even if it is found that there was no actual defect. Our liability for damages in the event of unjustified requests for rectification of a defect shall remain unaffected; however, we shall only be liable in this respect if we realised, or failed to realise in a grossly negligent manner, that a defect did actually not exist.

12.8 Should the Supplier fail to comply with its obligation to provide replacement or rectification - at our discretion by eliminating the defect (rectification) or by delivering a defect-free item (replacement) - within a reasonable period of time set by us, we shall be free to eliminate the defect ourselves, and to request that the Supplier reimburse us for the expenses incurred, or make a corresponding advance payment. Should replacement or rectification by the Supplier fail or be unreasonable for us (e.g. due to particular urgency, dangers to operational safety, or the threat of disproportionately great damage), the setting of a deadline for replacement or rectification shall not be required; we shall inform the Supplier of such circumstances without undue delay, if possible in advance.

12.9 Claims relating to defects shall become time barred after 3 years, except if statutory regulations provide for a longer period of limitation, or if the mandatory provisions in Sections 478, 479 BGB apply.

12.10 Otherwise, we shall have the right, in accordance with the statutory regulations, to reduce the purchase price or to withdraw from the contract if a material or legal defect exists. Furthermore, we have the statutory claims for damages and reimbursement of expenses.

12.11 Our approval of drawings, calculations or other technical documents of the Supplier shall not affect the Supplier's responsibility for defects, and its liability for any assumed warranty obligations.

13. Usage rights, infringement of third-party property rights

13.1 The Supplier is contractually obligated to grant all usage rights required to achieve the purpose intended to be reached with this contract.

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13.2 Notwithstanding this, the Supplier shall ensure that use of the goods/services owed under the contract does not infringe upon third-party patents or other third-party property rights, and shall indemnify us from and against any and all claims made against us due to an infringement upon domestic industrial property rights. In addition to this, the Supplier shall take all reasonable measures to enable us to use the goods/services as intended in the contract without any interference by third parties.

14. Product liability, insurance

14.1 If the Supplier is responsible for a product damage, it shall be obligated to insofar indemnify us from and against third-party claims for damages, upon first request, in as far as the cause for the damage originates from its area of control and organisation, and in as far as the Supplier itself is liable vis-à-vis third parties.

14.2 The Supplier's indemnification obligations cover all expenses incurred by us due to, or in connection with, claims made by third parties.

14.3 Within the framework of its liability for damage events as defined in clause 14.1 above, the Supplier shall also be obligated to refund any expenses in accordance with sections 683, 670 BGB or sections 830, 840, 426 BGB which are incurred as a result of, or in connection with, a product recall carried out by us. We shall inform the Supplier of the contents and scope of the product recall to be carried out - in as far as this is possible and reasonable - and shall give the Supplier the opportunity to comment. Other statutory claims shall remain unaffected.

14.4 The Supplier undertakes to take out a product liability insurance with an insured sum of no less than € 5 m per event of damage to persons/objects - as a lump sum; should we have claims for damages going beyond this, such claims shall remain unaffected.

15. Place of performance, place of jurisdiction, applicable law

15.1 The place of performance for all deliveries and services provided by the contracting parties shall be our registered place of business. If a different location is specified in the order as the delivery address, such other address shall be the place of performance for the Supplier's deliveries/services.

15.2 If the contracting parties are businesses, legal entities governed by public law, or special funds governed by public law, or if one of the contracting parties does not have a place of general jurisdiction in Germany, the exclusive place of jurisdiction, also for proceedings relating to cheques and bills of exchange - shall be our registered place of business. However, we may also file legal action at the Supplier's place of business.

15.3 The law of the Federal Republic of Germany shall apply to this contractual relationship and all related legal disputes. The application of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods is excluded.

15.4 The contractual language is German. If another language is used additionally, the German wording shall take precedence.

16. Code of conduct for Suppliers/ prohibition of child labour

The Supplier shall comply with all laws and regulations of all applicable jurisdictions. It shall in particular not be involved, neither actively nor passively, in any form of corruption or violation of its employee's fundamental rights. The Supplier agrees to refrain from employing children. The Supplier shall ensure that its own suppliers also refrain from employing children. Children are all persons under 15 years of age. Children of 14 years of age may be employed in exceptional cases if the laws of the country of production permit work from the 14th year of age onwards. Moreover, the Supplier shall assume responsibility for its employees' health and safety at the workplace, and shall make all reasonable efforts to promote and demand compliance with this code of conduct in relation to its own suppliers. The Supplier shall issue all necessary organisational instructions and take all necessary organisational measures, in particular in the areas of site security, security of business partners, personnel and information, packaging and transport, in order to guarantee security in the supply chain.

17. Environmental protection

In our mission statement, we have undertaken to deal responsibly and sustainably with all resources. The Supplier shall comply with all laws and regulations on environmental protection, and shall always make us aware of ecologically and economically reasonable options when preparing an offer, in order to support us in implementing energy-saving and resource-conserving processes.