

Standard Terms and Conditions of SOMNOmedics GmbH

§ 1 Scope

(1) These conditions of sale exclusively apply to companies, legal entities governed by public law or special trusts under public law according to § 310 section 1 of the German Civil Code (BGB).
Conflicting conditions or conditions of the buyer deviating from our conditions of sale will not be accepted unless we have expressly agreed in writing.

(2) These conditions of sale shall also apply to any future transactions with the buyer as far as those involve legal transactions of a similar kind.

§ 2 Offer and Conclusion of a Contract

As far as an order is to be considered an offer according to § 145 of the German Civil Code (BGB), we can accept it within two weeks.

§ 3 Provided Documents

We reserve property rights and copyrights to all documents made available to the buyer in connection with the order confirmation, including but not limited to calculations, drawings, offers, information material, etc. These documents shall not be disclosed to third parties without our express written consent. Unless we confirm the offer of the buyer within the period stated in § 2, these documents shall be returned to us immediately.

§ 4 Prices and Payment

(1) Unless otherwise agreed in writing, our prices are ex works exclusive of shipping, plus applicable value added tax. Shipping costs will be charged separately.

(2) Cash discounts are permitted upon special written agreement only.
Payment of the purchase price shall be made into the following account only:
Account no.: 100 213 713, sort code: 790 63122, Raiffeisenbank Höchberg eG

(3) Unless otherwise agreed, the purchase price shall be paid within 14 days after delivery.
Default interest will be charged at a rate of 8% per annum above the applicable base rate of interest. The right to claim a higher damage caused by default shall remain reserved.

(4) Unless a fixed price has been agreed, reasonable price changes resulting from changed labour, material and distribution costs shall remain reserved for deliveries which take place 3 or more months after conclusion of the contract.

§ 5 Offset and Right of Retention

The buyer is entitled to offset only if the counterclaims are legally binding or undisputed. The buyer is entitled to exercise the right of retention only to the extent that the counterclaim is based on the same contractual relationship.

§ 6 Delivery Time

(1) The start of the delivery time indicated by us implies punctual and proper fulfilment of the buyer's obligations. Defence to non-performance shall remain reserved.

(2) If the buyer is in default of acceptance or culpably infringes any obligations to cooperate, we are entitled to demand compensation for any damage resulting thereof including any additional costs. Any further claims shall remain reserved. Provided that the aforementioned conditions are met, the risk of accidental loss or accidental degradation of the goods shall be transferred to the buyer at the moment he is in default of acceptance or payment.

§ 7 Transfer of Risk upon Shipment

If the goods are shipped to the buyer upon his request, the risk of accidental loss or accidental degradation of the goods will be transferred to the buyer upon dispatch or, at the latest, when the goods leave the factory/warehouse. This applies irrespective of whether the goods are shipped from the place of performance or regardless of which party bears the freight costs.

§ 8 Title Retention

We retain ownership of the item delivered until all outstanding amounts resulting from the delivery contract are fully paid. This also applies to all future deliveries, even without our express reference to this clause. We are entitled to take the purchased item back, if the buyer breaches the contract.

(2) It is the buyer's obligation to handle the purchased item with care unless the property has already been transferred to him. In particular, the buyer is obliged to provide at his own expense insurance against damages resulting from theft, fire and water in an amount sufficient to cover the replacement value of the purchased item. If maintenance and inspection works have to be carried out, the buyer is obliged to order these services at his own expense. As long as the property in the goods has not been transferred, the buyer must immediately inform us in writing if the delivered item is seized or subject to other third-party interventions. Unless the third party is able to compensate us for the judicial and extra-judicial costs resulting from a lawsuit according to § 771 ZPO (German Code of Civil Procedure), the buyer is liable for the losses incurred.

§ 9 Warranty and Notice of Defect as well as Recourse/Manufacturer Recourse

(1) The buyer's warranty rights imply that he has properly fulfilled his obligations to inspect and to give notice of defects according to § 377 HBG (German Commercial Code).

(2) Warranty claims will expire within 12 months after the goods delivered by us have been received by our buyer (Second-hand goods are sold with a 3-month warranty.). Before any goods are returned, the buyer must obtain our consent in the form of a RMA number.

(3) If the goods, in spite of all due care, show any defect and if this defect existed already at the time when risk was transferred, we will, subject to due and proper notice of defect, either repair the goods or deliver replacement goods. We are entitled to supplementary performance within a reasonable period. Contribution claims remain unaffected, without restrictions, from the aforementioned regulation.

(4) Minor deviations from the agreed condition of the goods, minor impairment of their usability and usual wear and tear as in case of damages, which, after transfer of risk, result from improper or careless handling, excessive use, improper equipment or from particular external influences not implied by the contract are excluded from warranty. Repair and maintenance works must be carried out at the factory or by the person authorised by SOMNOmedics GmbH. Unauthorised opening of the device results in the loss of all warranty claims.

(5) Entitlements of the buyer arising from the expenses required for the purpose of supplementary performance, including but not limited to transport costs, travel expenses and material costs, are excluded as far as the expenses increase because the goods delivered by us had to be transported to a site other than the premises of the buyer, unless the transport complies with the intended use of the goods.

(6) Contribution claims of the buyer against us are only valid to the extent that the buyer has not made any agreements with his customer exceeding the statutory warranty claims. In addition, section 6 accordingly applies to the scope of the contribution claim of the buyer against the supplier.

10 Miscellaneous

(1) This contract as well as the legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany, excluding the CISG.

(2) Place of performance and exclusive place of jurisdiction for all disputes arising from this contract shall be our registered office unless otherwise stated in the order confirmation.

(3) Any agreements made between the parties for the purpose of performing this contract are recorded in this contract.

(4) If any provision of this contract is invalid or incomplete, such invalidity or incompleteness shall not affect the remaining provisions. The parties undertake to replace the invalid provision by a regulation permitted by law which most closely approximates the intent and economic effect of the invalid provision or completes it, respectively.