

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

All our offers are subject to change and non-binding, unless they are expressly marked as binding. Orders shall be placed in writing (e.g. by letter, e-mail, fax). After receipt of the order, we may accept it within two weeks in writing (e.g. by order confirmation) or impliedly by executing the order.

§ 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 and they may not be used or reproduced either by ourselves or by 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) We shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, we become aware of circumstances which are likely to substantially reduce the creditworthiness of the buyer and as a result of which the payment of our outstanding claims by the buyer under the respective contractual relationship is jeopardized.

§ 5 Offset and Right of Retention

The buyer is entitled to offset and withhold payments only if the counterclaims are legally binding or undisputed or arise from the same contract under which the delivery or service in question was made.

§ 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) Performance periods and performance dates promised by us shall always be only approximate, unless a fixed period or date has been expressly agreed in writing.

(3) 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

(1) 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 work 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 and at the discretion of the buyer, 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) 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 Liability

(1) We shall be liable for damages in accordance with the statutory provisions in the event of intent and gross negligence, including that of our vicarious agents. The same shall apply in the case of negligently caused damage resulting from injury to life, limb or health.

(2) In the case of negligently caused damage to property and financial loss, we shall be liable, also for our vicarious agents, irrespective of the legal grounds, only in the event of a breach of an essential contractual obligation, but limited in amount to the damage foreseeable at the time of conclusion of the contract and typical for the contract. Essential contractual obligations are those whose fulfillment characterizes the contract and on which the buyer may rely.

- (3) The above provisions shall apply accordingly to our liability with regard to the reimbursement of expenses.
- (4) Claims for damages pursuant to para. 2 shall be subject to a limitation period of one year.
- (5) Liability under the German Product Liability Act remains unaffected.

§ 11 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 in Randersacker, Germany, 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.