

Sales and Delivery Conditions of Möller Medical GmbH

§1 Validity

1. Our Terms and Conditions of Business apply to all current and future business relationships with companies within the meaning of Sec. 14 German Civil Code, i.e. with natural or legal persons, or business partnerships having a legal capacity, which exercise a commercial or independent professional activity (hereinafter "the Orderer").
2. For all deliveries and services, exclusively our terms of delivery shall apply. General Terms and Conditions of Business of the Orderer shall also not be applicable, even if we do not once again expressly contradict them.

§2 Offer and Scope of Delivery

1. Our offers are subject to confirmation.
2. For the scope of the delivery, our written order confirmation is decisive. Any supplementary agreements and alterations require our written confirmation. Should an Agreement have been concluded without a written order confirmation existing, our offer – or, in the event that this is not available – the written confirmation of the Orderer shall be decisive.
3. We unrestrictedly reserve the right to retain ownership and copyright exploitation rights to cost estimates, drawings and other documentation. They may not be made accessible to third parties. If we are not granted the order, any drawings and other documentation associated with offers are to be returned to us without delay upon request.

§3 Prices

1. The prices specified are net, without Value Added Tax, ex works, exclusive of packaging and postage costs, binding for the next 6 months. Excepted are special provisions which have been fixed in offers or Agreements in writing. Following this period of time, we reserve the right to adapt the current cost situation accordingly.
2. For small orders our industrial customers of under € 150 we charge a minimum quantity surcharge in the amount of € 50. Excepted herefrom are customers as practising doctors and hospitals; here we charge a minimum quantity surcharge in the amount of € 10 in the event of an order value of under € 50.

§4 Payment

1. Invoices shall become payable without deduction immediately upon receipt by the Orderer.
2. Special agreements regarding payment conditions require to be made in writing in order to be effective.
3. In the event of payment deadlines being exceeded, the statutory amount of arrears interest will be charged. The asserting of claims regarding further damages due to arrears shall not hereby be excluded.
4. Retention of payments or offset due to any counter-claims of the Orderer disputed by us and not established as being legally valid is not admissible.
5. We only accept cheques for convenience of payment; the Orderer shall bear all extra costs incurred thereby. We only accept bills of exchange to the extent that this has expressly been agreed by us in writing.

§5 Delivery Time

1. Deadlines for deliveries and services shall only be binding if they have expressly been agreed by us in writing. The deadline for deliveries shall begin with the despatch of the order confirmation, however not prior to the Orderer providing the documents to be obtained.
2. The delivery deadline is deemed to have been met if the items to be delivered have left the factory prior to its expiry or readiness for despatch has been notified.
3. Adherence to the delivery deadline assumes the fulfilment of the contractual obligations of the Orderer.
4. Should we fall into arrears with our deliveries or services, and should the Orderer grant a reasonable deadline, expressly declaring that he will refuse to accept the delivery or service following expiry of this deadline, and should the subsequent deadline not be adhered to, the Orderer shall be entitled to withdraw.
5. The delivery deadline shall be reasonably extended in the event of measures within the scope of industrial action, in particular strikes and lock-outs, as well as in the event of the occurrence of unforeseeable events, which are beyond our control. This shall also apply if the circumstances occur at the premises of sub-contractors. We shall also not be responsible for the circumstances described above if they arise during a delay which has already occurred. We shall notify the beginning and end of such hindrances to the Orderer as soon as possible.
6. Should damages accrue to the Orderer due to a delay which has occurred as a consequence of our fault, the Orderer shall be entitled, under exclusion of any further claims, to demand compensation for delay. For each full week of delay it shall amount to 0.5%, however no more than 5% of the value of that portion of the entire delivery which is not available on time, or as contractually agreed, as a consequence of the delay.
7. Should despatch be delayed at the Orderer's request, the costs incurred by storage shall be charged to him for each month – beginning one month after notification of readiness for despatch – however, in the event of storage on our premises, at least 0.5% of the amount of the invoice. We shall, however, be entitled, following the setting and fruitless expiry of a reasonable deadline, to make the items to be delivered available elsewhere and/or to deliver them to the Orderer with a reasonably extended deadline.

§6 On-call Orders

1. All on-call orders are, to the extent that nothing else has been agreed, to be collected within 3 months following expiry of the contractual deadlines, without collection being required to be demanded. Should this deadline have expired, we shall be entitled, at any time, to invoice the goods at the same time as despatching them.
2. Should no contractual deadline have been agreed, the specified rights shall accrue to us following expiry of a year since the Agreement was concluded.

§7 Transfer of Risk and Despatch

1. The risk shall be passed to the Orderer at the latest upon despatch of the parts to be delivered, and actually even if partial deliveries are made or we have also taken on other services, e.g. the despatch costs or delivery.
2. Should despatch be delayed as a consequence of circumstances for which the Orderer is responsible, the risk shall be deemed to have been passed to the Orderer from the day of readiness for despatch.
3. We insure deliveries if required, and at the Orderer's expense, in accordance with his instructions.
4. Partial deliveries, as well as deviations from the quantities ordered of up to +/- 10%, shall be permissible.
5. The Orderer undertakes, to the extent that he has received instructions, hints regarding use or warnings or descriptions of risks from us, to also pass these on when passing on the products delivered by us, and to impose such an obligation upon his own customers. In particular, the Orderer has a comprehensive checking, testing and supervision obligation towards us regarding the entire goods delivered by us with regard to any possible damage by third parties.
6. Any further processing of the products delivered by us lies outside the scope of our influence and thus within the exclusive scope of liability of the Orderer, who is therefore, to that extent, also obliged to continually observe the products.

§8 Retention of Ownership

1. We reserve ownership of the items delivered by us until such time as all payments have been received by us. In the event of the Orderer engaging in conduct which is contrary to the Agreement, in particular in regard to delays in payment, we shall, following a reminder, be entitled to take back the items delivered, and the Orderer shall be obliged to deliver the items to us. In the event that the Repayment Law does not apply, in taking back the items, as well as in the execution of the matter by us, a withdrawal from the Agreement shall only be present if we expressly declare this in writing. In the event of executions or other interventions by third parties, the Orderer is required to inform us in writing without delay.
2. The Orderer shall be entitled to sell on the items delivered in the orderly course of business. He does, however, already now assign to us all rights which accrue to him against the customer or against third parties from the selling on of the items, whether the items retained are sold on without processing or following processing. The Orderer shall also be empowered to incorporate these demands following assignment. Our authority to incorporate the demands ourselves shall not be affected hereby; however, we undertake not to incorporate the demands, so long as the

Orderer duly undertakes his payment obligations. We can require the Orderer to make known to us the assigned demands and the debtors thereof, provide us with all details necessary for collection, hand over to us the associated documentation and inform the debtors of the assignment. Should the items delivered be sold on together with other goods, which do not belong to us, the claim of the Orderer against the customer shall be deemed to have been assigned to us in the amount of the delivery price agreed between us and the Orderer.

3. The processing or transformation of items reserved shall always be undertaken by the Orderer for us. Should the items reserved be processed together with other items, not belonging to us, we shall acquire co-ownership of the new item in the proportion to the value of the item reserved to the other items processed at the time of processing. Furthermore, the same shall apply to the item which has arisen through processing of the reserved goods.
4. The Orderer undertakes to insure the items delivered during the period of retention of ownership against theft, breakage, fire, water and other damage, and to inform us accordingly. Should this not occur, we shall be entitled to conclude the insurances at the Orderer's expense.
5. The retention of ownership and the securities accruing to us shall apply until complete release from all possible obligations (e.g. upon payment in the so-called bill of exchange procedure) which we have undertaken in the interests of the Orderer.
6. We undertake to release any securities accruing to us to the extent that their value exceeds the claims to be secured, in so far as these have not yet been paid, by more than 20%.

§9 Guarantee/Limitation of Liability

1. Notices of defects and guarantee claims are – to the extent that they are obvious – to be lodged with us in writing or asserted without delay, however at the latest within a week following delivery or execution of an order. Should this notification of defect not occur, the Orderer shall be excluded from all claims regarding the guarantee. Defects that are not obvious require to be notified to us within one year. Should this notification of defect not occur, the Orderer shall also be excluded from any guarantee claims regarding defects that are not obvious.
2. For defects correctly notified, we make a guarantee to the extent that we will repair or deliver a replacement, at our discretion. The Orderer is required to set us a reasonable deadline within which to remedy the defect. In so far as no reasonable deadline, within the above meaning, is set, we shall be freed from liability for the defect. The Orderer shall only be entitled to withdraw or reduce payment if a replacement delivery or repair is, in the individual case at hand, culpably omitted, despite the setting of a reasonable deadline, or is not possible, despite repeated repair attempts.
3. Replaced parts shall become our property; they are to be returned to us carriage paid upon request.
4. For parts not manufactured or repaired by us ourselves, and third party services, our liability/guarantee shall be limited to assigning the claims regarding any defects to our suppliers or sub-contractors and referring the Orderer to asserting these claims directly. Only in the event that the Orderer cannot implement these claims against third parties, shall our liability, as regulated within the scope of these conditions, continue to exist.
5. Liability in the case of job order production is generally limited to the services confirmed by us. In particular in the case of coating orders, we shall thus not be liable for damage to abandoned materials. The exclusion of liability contained herein shall not apply to intent and gross negligence and to the extent that the damage incorporates injury to life, body or health. For ordinary assistants, liability is, in addition, restricted to intent.
6. Used items shall only be installed or delivered under exclusion of all guarantee.
7. For unsuitable or improper use, defective assembly or putting into operation by the Orderer or third parties, natural wear and tear, defective or negligent treatment, unsuitable means of operation, substitute materials, defective building works, chemical, electrochemical or electrical influences, no guarantee is undertaken, to the extent that they cannot be traced back to our fault.
8. No liability shall be accepted for any improper alterations or maintenance works carried out by the Orderer or third parties without prior consent.
9. The Orderer is required to give reasonable time and opportunity for the undertaking of all repairs and replacement deliveries which appear to be necessary. Should he refuse to do so, we shall be freed from liability for the defects.
10. Should we allow a reasonable extension of time for repair or a replacement delivery regarding a defect for which we are responsible to expire fruitlessly, the Orderer can withdraw from the Agreement. The Orderer shall also have the right of withdrawal in the event of impossibility or inability on our part to carry out a repair or provide a replacement delivery.
11. In the case of coating orders, a quantity of defective goods of 5% shall be taken to be agreed upon and accepted by the Orderer if nothing else has expressly been agreed upon and confirmed in our order confirmation. This shall not apply if the quantity of defective goods is based on intent and/or gross negligence and to the extent that the damage includes injury to life, body or health. For ordinary assistants, liability is, in addition, restricted to intent. For ordinary assistants, liability is, in addition, restricted to intent.
12. The aforementioned liability restrictions do not concern claims of the Orderer arising from product liability and arising from attributable damage to body and health.
13. Should a product manufactured by us not be utilised by the Orderer, his assistants or third parties in accordance with the regulations within the meaning of the Medical Products Law (for example, re-sterilisation of a product designated by us as a single-use article and delivered sterile), we shall not, in any event, be liable for such damages. Should such a product be imported by the Orderer or a third party into another country, for which we have not effected any product approval, we shall not in any event be liable for conformity of our product with the statutory provisions applicable there, or for any damages arising from non-conformity.
14. All claims against us, in particular damage claims and guarantee claims, shall become statute-barred within one year – to the extent that nothing else has been agreed – in so far as such a curtailment of the guarantee period is admissible.
15. Further claims of the Orderer against us and our assistants are excluded, in particular a claim to replacement of damages which have not occurred to the item delivered itself. The exclusion of liability contained herein shall not apply to intent and gross negligence and to the extent that the damage incorporates injury to life, body or health. For ordinary assistants, liability is, in addition, restricted to intent.
16. Furthermore, we shall only be liable for intent and gross negligence to the extent that the damage does not include injury to life, body or health. For ordinary assistants, liability is, in addition, restricted to intent. Liability on our part is, in addition, in accordance with the type of goods/business, restricted to the amount of the typical contractual, direct average damages foreseeable. This shall also apply in the case of slightly negligent infringements of obligation of our legal representatives or assistants. We shall not be liable in the event of slight negligence of insignificant contractual obligations.

§10 Further Rights of Withdrawal of the Orderer

1. The Orderer can withdraw from the Agreement if the entire service, prior to transfer of risk, finally becomes impossible for us. The same shall apply in the event of our incapacity. The Orderer can also withdraw from the Agreement if, in the event of ordering uniform items, the execution of part of the order is impossible, regarding the number of items, and he has a justified interest in declining a partial delivery. Should this not be the case, the Orderer can reduce the payment accordingly.
2. Should the impossibility occur during the delay in acceptance or through the fault of the Orderer, the latter shall remain obliged to make payment.
3. All other further claims by the Orderer are excluded – to the extent that this is legally admissible – in particular claims regarding conversion, termination or reduction in payment, as well as compensation for damages, of whatsoever kind, and actually only of such damages which have not occurred to the delivery item itself.

§11 Jurisdiction, Applicable Law

1. In the case of all disputes arising from this contractual relationship, if the Orderer is a trader registered in the Commercial Register, a legal person of public law or a special public fund, the Action is to be filed with the Court having jurisdiction for us. We shall also be entitled to file an Action at the Head Office of the Orderer.
2. The contractual relationship shall be subject to German Law. The provisions of the UN Convention shall not be applicable.