



STS MEDICAL GROUP SENGWALD

IMPROVING HEALTHCARE THROUGH EFFICIENCY

Terms of Sale and Delivery

governing business relations between SENGWALD Klinikprodukte GmbH and companies, legal persons under public law and assets under public law

Our delivery terms are exclusively valid. All orders will be accepted and processed solely in accordance with the following terms. These terms are applicable to all further future orders and contracts in the course of continuing or temporarily interrupted business relations, also in case in individual instances it should be neglected to include them with the pertinent contractual documents. Contradictory conditions or terms laid down by the customer which do not agree with these conditions will not be recognised by us unless we explicitly agreed to their validity in writing. Our terms of sale and delivery are also applicable in such cases as we, in the knowledge of the existence of customer terms in contradiction or differing from our own conditions, perform deliveries without reservations in this regard. All agreements which have been made between us and the customer for the purpose of making and executing the contract are recorded in writing in the contract. Insofar as we describe the quality of the products to an individual customer, the description of the nature of the quality of the goods is conclusively described. In particular public

statements (explanations at exhibitions, brochures, advertising, home pages in the internet amongst others) by ourselves or by our partners and representatives, their assistants or third parties, contain no supplementary or modified descriptions which otherwise describe quality of the goods. The customer/contractual partner, by the placement of orders or agreement of other contracts with us, explicitly recognises the following terms and conditions:

1. Quotations

1.1. Our quotations are invitations to the customer to submit their offers on the basis of these terms of business. Our quotations therefore remain free. The prices contained therein are calculated on the basis of the raw material prices and manufacturing costs prevailing at the time of preparation. Should, between the preparation of our quotation and the delivery date of the goods concerned, even after issue of our order confirmation, the market prices which we have to pay for raw materials, auxiliary materials or utilities be increased, the actual tolerable market price shall be charged unless otherwise specifically agreed by us with the corresponding

customer.

1.2. Value added tax is not included in our prices and is added and separately noted as legally required on the day the invoice is issued.

2. Order Confirmation

2.1. All customer offers, particularly orders as well as all other agreements, are subject to our written confirmation to become valid and binding. We reserve the right to accept orders within 14 days. The acceptance of downpayments is, as a matter of principle, not the closure of a contract. The supply of goods to the customer is no replacement for an order confirmation and is not to be compared with such.

2.2. The size of deliveries is subject to our written order confirmation.

2.3. We reserve the right in all individual cases to either accept or reject subsequent alterations to customer orders. Insofar as we accept subsequent alterations the orders shall be invoiced including the costs which arose from the modification.

2.4. The reduction of an order is subject to our agreement to such. Should an order be subsequently reduced in quantity or the delivery of a portion

postponed with our acquiescence, the materials which have been purchased or processed for this purpose shall be invoiced on the date previously agreed upon. Should the customer later reduce the quantity of goods ordered we are entitled to recalculate the originally agreed price on the basis of the reduced quantity and any price increases which this might yield shall also be invoiced together with the costs arising from the alteration.

2.5. The customer himself is obliged to determine whether the goods as ordered or as suggested by ourselves are suitable for the intended use. We give no guarantee on the suitability of our products unless we have explicitly stated such in writing.

3. Lead Time

3.1. The lead times details stated in our quotations are not binding. Insofar as a delivery date is agreed between ourselves and the customer the lead time for this shall be stated in the order confirmation. The lead time begins after the full definition of the point and time of delivery and the quantity of goods to be supplied, as well as the amount and payment terms of the remuneration have been bindingly agreed between the parties and all of the necessary documentation and/or releases have been received from the customer. If multiple deliveries are agreed, the lead time begins on the date when the call-up is received from the customer. If the customer should be obliged to perform preliminary work or advance payments the lead time begins when these have been received. The lead times are to be considered fulfilled if, before their expiry,

the goods leave our factory or notice of readiness to transport the goods has been given to the customer.

3.2. We are particularly not responsible for exceeding the lead time if this is due to delays caused by the customer's demand to make changes to an order.

3.3. Every lead time is stated subject to our own punctual receipt of supplies. We do not accept the risk connected with procurement.

3.4. Disruptions occurring after the order confirmation, whether in our factory or in factories producing goods necessary for the manufacture of the goods ordered, as well as caused by acts of war, strikes, lock-outs, unpredictable disturbances of factory processes, unavoidable energy or raw material shortages or force majeure through other events outside our influence prolong the agreed lead time so long as they exist up to a maximum of 5 weeks. During this period the purchaser is not entitled to cancel the order for this reason. The lead time is not prolonged if the purchaser is not immediately informed of the reason for the delay as soon as it becomes probable that the lead time cannot be met. The purchaser has no further rights or claims on us due to failure to deliver or late delivery under such circumstances and in particular cannot claim consequential damages.

3.5. We are entitled to invoice additional costs incurred due to the disturbances listed in 3.4 above to the customer.

3.6. If the customer should fail to accept deliveries or fail to fulfil other obligations to cooperate we are entitled to claim damages ensuing from such failures as well as the reimbursement of additional expenses which should accrue

from him. In this case the risk of chance sinking or deterioration of the goods passes to the customer at the point in time at which he falls into default in goods acceptance.

3.7. If the customer should fall into arrears with payments due to us, also concerning earlier orders, during the course of the lead time, the lead time is suspended until such time as the customer is no longer in arrears.

4. Reservation of the Right of Withdrawal

If the disturbances of the nature described in 3.4 above should prove to be not only of a temporary nature we are entitled to withdraw from the contract. Disturbances to performance not only of a temporary nature are particularly those which are of more than 5 weeks duration or will probably be of more than 5 weeks duration. The right to withdrawal is also effective in those cases in which we either do not or do not expect to receive supplies within the above-mentioned periods.

5. Delivery

5.1 The minimum value per order is 1,000.- inland or 2,500.- for export respectively. Delivery is free receipt freight centre inland or ex works for export respectively. Delivery in Germany is free receipt station and ex works for export orders.

5.2 Despatch is always at the customer's risk per normal freight regardless of whether or not we or the customer pay part or all of the freight costs.

5.3 All complaints or claims due to any damage incurred during transport must be made punctually by the



customer particularly to freight forwarders, hauliers or their insurers.

5.4 Additional costs generated by despatch as fast or express freight as well as via parcel service are to be borne by the customer, including deliveries inside Germany.

5.5 The usual tolerance of under or over supply of the quantity ordered due to the manufacturing process is to be accepted by the purchaser. The margin usual in our branch is, as we understand it, over or under supply of 15% of the quantity ordered.

5.6 Should a fixed delivery date not be agreed and goods be ordered on call for delivery at a later date, we are entitled to invoice the goods which we hold in store to the customer and charge the costs arising from storage and interest accruing from the date of storage begin until the date of despatch.

5.7 We are at our own discretion entitled to execute partial deliveries unless it cannot be expected of the purchaser to accept partial deliveries under the concrete terms of the contract.

5.8 All transport and other packaging in accordance with the requirements of the packaging regulations will not be taken back. The purchaser is obliged to ensure disposal of the packaging at his own expense.

6. Terms of Payment

6.1 The amount invoiced is due for receipt within 30 days of the date of invoice, without deductions. 2% cash discount is allowed on payments received within 14 days of the date of invoice insofar as no other agreement has been made.

6.2 Payment by draft is only permissible with our prior written

agreement. Receipt of payments by bank transfer and cheque is the date on which the amount is credited to our account by the bank. Receipt of payments by draft is the due date when the draft has been honoured.

6.3 Our acceptance of drafts or cheques is always provisional. The receipt of payments by cheque or draft has occurred when they have been honoured by the issuer and we have thereby been released from our responsibility in this connection.

6.4 Our right of ownership, irrespective of further reaching agreements and the regulations in §10 below, remains intact until the draft has been honoured. Should drafts which we have received not be discounted by our bank we are entitled to demand immediate cash payment.

6.5 Insofar as the above terms of payment are altered by agreement in favour of the customer, the entire credit and other costs of the modification are to be borne by the same.

6.6 Should a payment become overdue, without affecting our right to further claims, default interest at 8% above the base interest level of § 247 German Civil Code becomes due from the date of invoice onwards. §§ 352 & 353 German Commercial Code and § 288 German Civil Code remain unaffected. The customer is allowed to prove that the damage is not more than 5% above the base interest level of § 247 German Civil Code. We are permitted to prove that the damage is greater.

6.7 As soon as a payment comes into arrears all other outstanding invoices which were not yet due become simultaneously payable in full without the deduction of cash discounts unless

the customer can prove that he is not responsible for falling into default.

6.8 Reciprocal claims cannot be set off against our open invoices unless they are uncontested or already legally sanctioned.

6.9 In connection with larger orders intermediate invoices may be issued or partial payments requested in correspondence to the extent of the order. This also applies to the provision of larger quantities of materials.

6.10 In case of justified doubt of the purchaser's full ability to pay we are entitled at our own discretion to demand prepayment or to deliver the goods only on a cash on delivery basis. So long as full payment has not been received we cannot come into delivery arrears. In this case the risk of chance sinking or deterioration of the goods passes to the customer at the point in time at which he is informed of our doubts.

7. Guarantee

7.1 The customer must in accordance with § 377 German Commercial Code inspect the goods immediately after delivery and if necessary made a complaint.

7.2 Complaints regarding obvious defects must be received by us in writing within 14 days of receipt of the goods in question, regarding hidden defectives within 14 days of detection. If these periods of notice are exceeded any rights to the performance of guarantees for such defects are lost.

7.3 Slight deviations in colour, print positioning and print or in the quality of the goods do not entitle the purchaser to complain.

7.4 Proportional waste of up to 2%



determined by the purchaser after delivery concerning printed or specially packed goods does not entitle to a complaint.

7.5 The entire quantity of goods covered by the complaint must be held ready for inspection by us or our nominee. Persons authorised by us to carry out such inspections are not empowered to make statements, regardless of whether technical, economical or legal, or decisions which are binding upon us.

7.6 In connection with justified complaints we are entitled to supply a cost free replacement delivery of fault-free goods. In case we decide to remove the defects we are obliged to bear the transport costs which arise to remove the defects insofar such costs are not increased by having the defective goods taken to a place other than the place of fulfilment.

7.7 If we should renounce our right to a replacement delivery or if this delivery should fail, the customer has the right to choose between the cancellation of the contract (conversion) or the reduction of the purchase price (decrease).

7.8 Defects in goods which we purchase from third parties and pass on to the customer without alteration of their properties are not our responsibility. Responsibility for intentional damage or gross negligence on our part remains unaffected. Insofar as we have recourse for guarantee performance from the third party we transfer this to the customer upon request.

8. Liability

Insofar as not otherwise determined in these terms of sale and delivery we accept liability under the following regulations:

8.1 We are liable in accordance with legal regulations insofar as the customer makes claims for damages due to intention or gross negligence on the part of our representatives or subcontractors. So far as no claims of intentional injury to the terms of the contract on our part are made, our liability is limited to the foreseeable, typical damage.

8.2 We are liable in accordance with legal regulations insofar as we are guilty of a major injury to our contractual duty. Our liability for this is limited to the foreseeable, typical damage.

8.3 Liability for the actions of simple subcontractors is in general terms limited to responsibility for damage in case of culpable injury to significant contractual duties. Our liability for this is also here limited to the foreseeable, typical damage.

8.4 The responsibility for culpable injury to life, body or health remains unaffected. This also applies to the compulsory liability under the product liability act.

8.5 We accept no responsibility for subsequent damages in connection with defects due to the absence of properties which we had claimed for goods unless such statements were expressly made to prevent the occurrence of such damage.

8.6 Claims are restricted to the limits of the insurance cover for factory liability or product liability. This does not apply if

- the insurer refuses to pay compensation in accordance with the conditions
- the maximisation of damages, autoretentions, cover limits or risk exclusions are applicable or
- the insurance cover is not sufficient to cover adequate compensation for typical

damages under this type of contract which could have been foreseen.

8.7 Insofar as nothing different has been mentioned above, we accept no liability. The statutory period of limitation for damage claims is twelve months from the date of the transfer of risk.

9. Total Liability

9.1 Liability for damages in addition to those regulated by § 8 is – regardless of the legal nature of the claims made – out of the question. This applies in particular to claims for damages arising from culpability during the process of agreeing the contract, due to other injuries to duty or claims for material damage due to an offence in accordance with § 823 German Civil Code.

9.2 Insofar as the responsibility for damages is excluded or limited for us this also applies to the personal responsibility for damages of our employees, workers, associates, representatives and subcontractors.

10. Reservation of Ownership Rights

10.1 Our deliveries are made exclusively under the reservation of the right to ownership. The goods remain our property until full payment of all justified demands, including future demands, arising out of our business relationship with the customer, has been received.

10.2 The reservation of our right of ownership remains in force in such cases as individual demands are included in a current account which is balanced and recognised by us.

10.3 A conversion of the purchased goods is done on our behalf. The customer cannot attain a right of



ownership under § 950 German Civil Code if the goods are converted or used to manufacture other products. Any right of the purchaser to future benefits on the purchased products is continued in the converted articles.

10.4 If the goods are converted, mixed or added together with other materials we become entitled to joint ownership of the resultant new products to the proportion of the value of our goods in relationship to the total value of such new products at the point in time at which they were made.

10.5 The customer is revocably authorised to sell the reserved goods in the course of normal commercial sale. He is not, however, entitled to pawn, use as security or surrender possession of the goods under sale and lease back procedures. The demands and subsidiary rights of the customer arising from the further delivery of our goods to a third party are already ceded to us, also proportional to the ratio of our goods, to which we have a title to the extent of the invoiced value, which have been converted, mixed with or added to other goods, which are then in our joint ownership under 10.4 above.

10.6 If the customer should sell the title by way of genuine factoring he cedes any claim which he has on the factor instead of the title effective immediately to us; we hereby accept this transfer.

10.7 The customer is revocably authorised to collect the entitlements described in 10.5 & 10.6 on our behalf.

10.8 If the transfer of such rights is prohibited by a third party the customer is not entitled to surrender title to or sell the reserved goods unless the proceeds are lodged in a current account

relationship. In this case the customer surrenders his title to the current account (causal balance) vis-à-vis the third party to us in accordance with 10.5 above. After the account has been balanced the recognised balance, to the sum of the causal balance, replaces the original title to the current account.

10.9 The customer is obliged to inform us immediately, if necessary by telephone, if he or a third party initiates bankruptcy proceedings on his property.

10.10 In case of payment delay or cessation of payments on the part of the customer, initiation of bankruptcy proceedings or significant deterioration of his economic situation which could lead to endangerment of satisfaction we have the right to rescind his right to collect the ceded entitlements under 10.7 as well as to sell the reserved goods under 10.5 with immediate effect.

10.11 When the rights to collect the entitlements and sell the reserved goods have been effectively revoked the customer is obliged to hand over the reserved goods to us upon demand insofar as the rights of third parties, particularly others with joint ownership rights to the goods, are not thereby compromised or judicial rulings under § 21 of the Insolvency Decree are not contradicted. In this case we are entitled to enter the customer's land or buildings, take possession of the reserved goods and to transfer or arrange to transfer the goods to another location.

10.12 In the cases described in 10.10 we are also entitled to temporarily take possession of the reserved goods without thereby cancelling the contract.

10.13 If insolvency proceedings are initiated against the customer's property

the customer is obliged to mark our goods in his possession in such a manner as to draw attention to third parties of our reservation of ownership and to hand them over to us upon demand.

10.14 The customer is obliged if 10.13 should become the case to send us a detailed list of our remaining goods, even if they have been converted or used for production purposes as well as a list of the demands ceded in accordance with 10.5 and 10.6 above, complete with the names of the third party debtors.

10.15 The regulations in 10.13 and 10.14 also apply if we should cancel the contract under these conditions or due to legal requirements.

10.16 If the circumstance described in 10.13 occur, persons authorised by ourselves are entitled to make such inspections at the customer's premises as are necessary to protect our rights at any time and to demand sight of all documents necessary for this purpose.

10.17 The costs of the exploitation and the surrender of the reserved goods are to be borne by the customer.

10.18 The customer stores our goods for us free of charge. Insurance against common dangers such as fire, theft and water damage are to be taken out on the goods at their new value from the time of receipt onwards. The customer hereby cedes his right to compensation from the insurers or others for damage arising from the above risks to us to the extent of our claims. The obligation to pay us the purchase price of the goods remains if the extent of the claim for compensation does not reach the agreed purchase price.

10.19 All claims and rights under the reservation of ownership in all of the



special cases remain in force until our complete release from any possible liabilities into which we have entered in the interest of the customer.

11. Place of Fulfilment and Legal Domicile

11.1 Only the laws of the Federal Republic of Germany are applicable. The utilisation of UN purchasing law is hereby excluded.

11.2 The place of fulfilment for deliveries and payments is 83101 Rohrdorf-Thansau in Germany.

11.3 The legal domicile for all litigation in connection with the contractual

relationship as well as the origins and validity of such (also for actions regarding drafts and cheques) with businessmen is the seat of our administration in 83101 Rohrdorf-Thansau, Germany. We are entitled, however, also to choose to sue the customer at his legal domicile.

11.4 We are entitled, regardless of the value of the proceedings, to take action to secure our claims before the district court.

12. Nullity Clause

If one of the above contractual conditions should be completely or

partially invalid or unfeasible for any legal or other reasons, the validity of the remaining conditions remains unaffected. The contractual parties shall then agree a regulation to substitute the invalid or unfeasible clause which legally most closely approximates the economical intent of the invalid or unfeasible clause.

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