



## General Terms and Conditions of Sale – SI Trading GmbH

### 1. Scope of Application, Form

(1) These general terms and conditions of sale apply to all business relations with our customers (hereinafter referred to as the “buyer”). They shall only apply if the buyer is an “entrepreneur”, as defined in Section 14 of the German Civil Code (BGB), a legal person incorporated under public law or a special fund under public law.

(2) These general terms and conditions of sale particularly apply to contracts for the sale and/or delivery of movable objects (“goods”), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (see Sections 433, 650 of the German Civil Code [BGB]). Unless otherwise agreed, the valid version of these general terms and conditions of sale shall be the one in place at the time the order is placed by the buyer, or at least the version most recently shared with the buyer, and that version shall also serve as a general

agreement for any future contracts without us having to refer to it again in each individual case.

(3) Our general terms and conditions of sale shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the buyer shall only be included in the contract if we explicitly approve their validity. We must grant our approval in each case (e.g. even if we unreservedly provide the buyer with a delivery despite being aware of the latter’s general terms and conditions).

(4) Any individual agreements concluded with the buyer (including any side agreements, additions or amendments) shall take precedence over these general terms and conditions of sale in each case. Subject to evidence to the contrary, the content of such agreements shall be specified in a written contract or in our written confirmation.

(5) Any legally relevant declarations and notifications to be submitted by the buyer in relation to the contract (e.g. set deadlines, notification of defects, withdrawal from the contract or reduction in fees) must be made in writing or text form (e.g. letter, email, fax). Notwithstanding the above provisions, the statutory provisions shall apply with regard to formal requirements and additional evidence, especially in case of doubt regarding the authority of the person submitting a declaration.

(6) Any references to the validity of the statutory provisions are only made for clarification purposes. The statutory provisions shall therefore also apply without such clarifying references, unless they are directly amended or explicitly excluded by these general terms and conditions of sale.

### 2. Conclusion of Contract

(1) Our offers shall be non-binding and subject to change. This shall apply even if we provide the buyer with catalogues, technical documentation (e.g. drawings, plans, certificates, references to DIN standards), other product descriptions or documents (including electronic files); we reserve the property rights and copyrights to such material.

(2) As soon as an order is placed for goods, the buyer shall be deemed to have made

a binding offer to enter into a contract. Unless otherwise stated in the order, we shall be entitled to accept this offer to enter into a contract within 3 working days after receiving the order.

(3) We may either accept the offer in writing (e.g. by issuing an order confirmation) or by delivering the goods to the buyer. If we behave in any other way, particularly by remaining silent, this shall not suggest that we are interested in concluding a contract. Any changes to the contract must always be confirmed by us in writing. If the contract is confirmed by the buyer, this shall be deemed ineffective; we shall not be required to object to such confirmations.

### **3. Delivery Deadlines and Delays**

(1) A separate delivery deadline shall be agreed in each case or specified when we accept the order. If this is not the case, the delivery deadline shall be approximately 10 days from the conclusion of the contract. We shall be entitled to deliver the goods before the agreed deadline or to set the delivery time within the agreed deadline. We shall be entitled to perform our contractual duties after the scheduled date if we inform the buyer that the deadline will be missed and indicate the relevant extension period. If the performance of our contractual duties after the originally agreed deadline is deemed unreasonable, the buyer may object within a reasonable period.

(2) If we cannot meet a binding delivery deadline for reasons not attributable to us (unavailability of the service), we shall immediately inform the buyer and indicate the new expected delivery date. If the service cannot be provided by the new delivery date, we shall be entitled to withdraw from all or part of the contract; we shall immediately reimburse the buyer for any payments that have been made. The service shall particularly be considered unavailable in this sense if we do not receive deliveries on time from our supplier, provided

we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure the goods in a particular case.

(3) The onset of a delivery delay shall be determined by the statutory provisions. However, the buyer must first issue a reminder in each case. If we default on a delivery, the buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation for damages shall amount to 0.5% of the net price (delivery value) of the delayed goods for each full calendar week of delay, but no more than 5% of the delivery value of the delayed goods. We reserve the right to prove that the buyer has incurred significantly

less damage than the above lump sum or no damage at all.

(4) Notwithstanding the above, the buyer may exercise the rights described in § 8 of these general terms and conditions of sale and we may exercise our statutory rights, particularly if we are released from our obligation to perform the contract (e.g. due to the impossible or unreasonable nature of the service and/or rectification measures).

### **4. Delivery, Transfer of Risk, Acceptance, Delayed Acceptance**

(1) As all deliveries shall be made ex stock, our warehouse shall be the place of performance for the delivery and any rectification measures. The goods shall be shipped to another destination at the buyer's request and expense (sale involving the carriage of goods). We shall not be obliged to inform the buyer about the delivery or to take out transport insurance. Unless otherwise agreed, we shall be entitled to choose the type of shipping ourselves (particularly the transport company, shipping route and packaging).

(2) The risk of accidental loss and deterioration shall be transferred to the buyer, at the latest, when the goods are handed over to the buyer. In the case of sales involving the carriage of goods, however, the risk of accidental loss and deterioration and the risk of delay shall be transferred to the forwarding agent or carrier – or any other person or institution assigned to carry out the shipment – as soon as the goods are handed over. The goods shall also be deemed to have been handed over if the buyer fails to

accept them on time.

(3) If the buyer fails to accept the goods on time, if the buyer fails to cooperate or if our delivery is delayed for other reasons attributable to the buyer, we shall be entitled to claim compensation for the resulting damage, including any additional expenses (e.g. storage costs). In such cases, our lump-sum compensation shall amount to 0.5% of the sales price per calendar week, starting with the scheduled delivery deadline or, in the absence of a delivery deadline, starting when the goods were reported as ready for dispatch, but no more than 5%

in total (or 10% if the goods are ultimately not accepted at all). The lump-sum compensation owed in such cases shall be limited to the damage to be expected in the normal course of events. We reserve the right to prove that we have incurred greater damage and to assert our legal claims (particularly our right to demand the reimbursement of additional expenses, reasonable compensation, termination); however, the lump sum described above shall be deducted from any further monetary claims. The buyer shall be entitled to prove that we have incurred significantly less damage than the above lump sum or no damage at all.

## **5. Prices and Payment Conditions**

(1) Unless otherwise agreed in a specific case, our prices valid at the time the contract is concluded shall apply ex stock (plus the statutory rate of value added tax). All payments must be transferred in EUR to a bank account indicated by us without any deductions or charges. Each payment shall be deemed to be timely depending on the point in time at which it is unconditionally credited to our bank account.

(2) The purchase price shall be due for payment within 14 days of the invoice date and the delivery or acceptance of the goods. However, we shall be entitled to make all or part of a delivery subject to a prepayment at any time, even during an ongoing business relationship. We shall announce such a proviso, at the latest, when issuing the order confirmation.

(3) The buyer shall be deemed to be in arrears at the end of the above payment deadline. The purchase price shall accrue interest at the statutory rate of default interest during the period in which the buyer is in arrears. We reserve the right to assert further claims for damages caused by the late payment. If the buyer is a merchant, we also reserve the right to charge commercial maturity interest in accordance with Section 353 of the German Commercial Code (HGB).

(4) The buyer shall only be entitled to exercise a right to set-off or a right of retention if its counterclaims are undisputed or legally established. If defects are found in the goods, however, the buyer shall be entitled to exercise certain rights, particularly those stipulated in the second sentence of § 7 (6) of these general terms and conditions of sale.

(5) If it becomes apparent that our claim to the purchase price is jeopardised by the buyer's solvency after the contract has been concluded (e.g. if a request is filed for insolvency proceedings), we may refuse to provide our services and, potentially after setting a grace period, to withdraw from the contract in accordance with the statutory provisions (Section 321 BGB). In the case of contracts for the production of custom-made items, we may declare our withdrawal immediately; the legal provisions on the dispensability of setting a grace period shall remain unaffected.

(6) The buyer shall not use the medical devices purchased from us to conduct any business that is prohibited by the relevant provisions, particularly those applicable to medical devices and foreign trade, including US export control law. If the buyer is unsure whether such a prohibition exists in a specific case, the buyer shall consult us.

## **6. Retention of Title**

(1) We shall retain ownership of the goods until all present and future claims arising from the purchase contract and our ongoing business relationship (secured claims) have been settled in full.

(2) The goods subject to retention of title must not be pledged to third parties or assigned as security until the secured claims have been settled in full. The buyer must immediately notify us in writing if a request is filed for insolvency proceedings or if the goods belonging to us are accessed (e.g. seized) by third parties.

(3) If the buyer breaches the contract, particularly by failing to pay the purchase price owed for the goods, we shall be entitled to withdraw from the contract in accordance with the legal provisions and/or to demand the return of the goods subject to retention of title. If we choose to demand the return of the goods, this shall not automatically mean that we wish to withdraw from the contract; we shall be entitled to demand the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the purchase price owed for the goods, we may only assert these rights if we have previously set the buyer a reasonable grace period for the payment to no avail or if such a grace period is not necessary according to the statutory provisions.

(4) The buyer shall be authorised to resell the goods subject to retention of title within its ordinary course of business until this authorisation is revoked, as detailed in (b) below. In such cases, the following provisions shall also apply:

(a) The buyer hereby fully assigns to us, by way of security, any claims held against third parties as a result of the resale of the goods. We hereby accept the assignment. The obligations of the buyer detailed in § 6 (2) shall also apply with regard to the assigned claims.

(b) Both we and the buyer shall be entitled to collect the claims. However, we shall refrain from collecting the claims as long as the buyer complies with its payment obligations towards us, as long as the buyer remains solvent and as long as we do not assert the retention of title by exercising one of the rights described in § 6 (3). If this is the case, however, we may ask the buyer to notify us of the assigned claims and the debtors, to provide all information required to collect the receivables, to hand over the associated documents, and to inform the debtors (third parties) that the claim has been assigned to us. In such cases, we shall also be entitled to revoke the buyer's authorisation to resell the goods subject to retention of title.

(c) If the realisable value of the securities exceeds our claims by over 10%, we shall release securities of our choice at the buyer's request.

## **7. Claims for Defects**

(1) In the event of material defects and defects in title (including incorrect and/or insufficient deliveries), the buyer may exercise the rights stipulated by law, unless otherwise specified below. In all cases, the special legal provisions shall apply if the unprocessed goods are delivered to an end consumer, even if the consumer has processed the goods (recourse against the supplier in accordance with Section 478 BGB). The buyer shall not be entitled to claims arising from recourse against the supplier if the defective goods have been additionally processed by the buyer or another entrepreneur.

(2) Our liability for defects shall primarily be based on the agreement made regarding the quality of the goods. All product descriptions and manufacturer information which relate to the specific contract or which have been published by us (e.g. in catalogues or on our website: [www.si-trading.de](http://www.si-trading.de)) at the time the contract is concluded shall be regarded as agreements regarding the quality of the goods.

(3) If a certain quality has not been agreed, the statutory provisions shall be consulted to determine whether the goods are defective (second and third sentence of Section 434 (1) BGB). However, we shall not assume liability for any public statements made by the manufacturer or other third parties (e.g. advertising statements) which the buyer has not described as playing a key role in its decision to purchase the goods.

(4) The buyer shall only be entitled to assert claims for defects after fulfilling its statutory obligations to inspect the goods and report any defects in accordance with Sections 377 and 381 of the German Commercial Code (HGB). If a defect becomes apparent upon delivery, during the inspection or at a later point in time, we must be

immediately notified in writing. In any case, however, obvious defects must be reported in writing within five working days of delivery and any defects that were not recognisable during the inspection must be reported in writing within five working days of their discovery. If the buyer fails to properly inspect the goods and/or report any defects, our liability for defects that are not reported properly and in good time shall be excluded in accordance with the statutory provisions.

(5) If the delivered items are defective, we may first choose to rectify the situation by remedying the defect (repair) or delivering a faultless item (replacement). However, we reserve the right to refuse to rectify the situation if the legal requirements are met.

(6) We shall be entitled to ask the buyer to pay the purchase price before taking the necessary rectification measures. However, the buyer shall be entitled to withhold a reasonable part of the purchase price in relation to the defect.

(7) The buyer must give us the necessary time and opportunity to rectify the situation, particularly by providing us with the allegedly defective goods for inspection purposes. In the case of a replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions.

(8) Any necessary expenses incurred for the purpose of inspecting the defects and rectifying the situation (e.g. transport, travel, labour and material costs) shall be borne or reimbursed by us in accordance with the statutory provisions if there is actually a defect. If the goods are not defective, we may demand the reimbursement of any costs incurred as a result of the buyer's unjustified request for the rectification of defects (particularly testing and transport costs), unless the lack of defects could not be recognised by the buyer.

(9) In urgent cases (e.g. if operational safety is jeopardised or to avert excessive damage), the buyer shall be entitled to remedy the defect itself and then ask us to reimburse any expenses that are objectively necessary for such purposes. If the buyer intends to remedy the defect itself, we must be notified immediately, if possible in advance. The buyer shall not be allowed to remedy a defect itself if we are entitled to refuse to rectify the situation in accordance with the statutory provisions.

(10) If we fail in our attempts to rectify the situation, or if a reasonable deadline set by the buyer for us to rectify the situation expires to no avail, or if such a deadline can be waived in accordance with the statutory provisions, the buyer may withdraw from the contract or reduce the purchase price. However, the buyer shall not be entitled to withdraw from the contract due to an insignificant defect.

(11) Even in case of defects, the buyer may only assert claims for damages or the reimbursement of futile expenses in accordance with § 8; all other claims shall be excluded.

## **8. Other Liability**

(1) Unless specified otherwise in these general terms and conditions of sale, including the provisions below, we shall be held liable for the violation of our contractual and noncontractual duties in accordance with the statutory provisions.

(2) We shall be liable to pay damages, regardless of the legal reason, as part of our liability for intent and gross negligence. In the case of simple negligence, and subject to the statutory restrictions of liability (e.g. care in our own affairs, insignificant breach of duty), we shall only be liable for:

a) damages resulting from injury to life, limb or health; and

b) damages resulting from the violation of an essential contractual duty (an obligation which must be observed to enable the proper execution of the agreement in the first place and on the observance of which the buyer may regularly depend) – in such cases, however, our liability shall be limited to compensation for the typically foreseeable degree of damage.

(3) The restrictions of liability indicated in § 8 (2) shall also apply to any breaches of duty committed by persons – or in favour of persons – for whose actions we may be held accountable under the statutory provisions. They shall not apply if we fraudulent-



ly conceal a defect or have formally guaranteed the qualities of the goods, or if the buyer asserts claims under the German Product Liability Act (ProdHaftG).

(4) In the event of a breach of contract that does not consist of a defect, the buyer may only terminate or withdraw from the contract if we are responsible for the breach of duty. The statutory requirements and consequences shall otherwise apply.

(5) In any case, however, any claims for damages that are related to our products or services shall be limited to twice the order value.

## **9. Limitation Period**

(1) By way of derogation from Section 438 (1) No. 3 BGB, any claims arising from material defects and defects of title shall generally expire within one year of delivery. If a formal acceptance procedure has been agreed, the limitation period shall begin once the goods have been accepted.

(2) Other special statutory regulations on limitation periods shall remain unaffected (particularly Section 438 (1) No. 1, Section 438 (3), Section 444 BGB and Section 445b BGB).

(3) The above limitation periods under sales law shall also apply to any contractual and noncontractual claims for damages held by the buyer because of a defect in the goods, unless the application of the regular limitation period (Sections 195 and 199 BGB) would result in a shorter limitation period in a particular case. However, any claims for damages held by the buyer in accordance with the first and second sentence of point (a) of § 8 (2) – or under ProdHaftG – shall expire exclusively within the legally prescribed periods.

## **10. Applicable Law, Place of Jurisdiction and Other Provisions**

(1) These general terms and conditions of sale and the contractual relationship between us and the buyer shall be subject to the laws of the Federal Republic of Germany to the exclusion of international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) If the buyer is a “merchant”, as described in the HGB, a legal person incorporated under public law or a special fund under public law, our registered office in Mannheim shall be the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the buyer is an “entrepreneur”, as defined in Section 14 BGB. In each case, however, we shall also be entitled to take legal action at the place of performance for the delivery, as indicated in these general terms and

conditions of sale or in a prioritised individual agreement, or at the buyer’s general place of jurisdiction. This shall have no bearing on the prioritisation of certain statutory provisions, particularly those relating to exclusive competences.

(3) Unless the buyer files an objection in text form, we shall process any personal data that we obtain from the buyer while performing the work described in these general terms and conditions of sale.

(4) The buyer shall immediately inform us in writing if authorities are contacted or become involved in the broader context of the medical devices. In addition, the buyer shall continue to monitor the delivered medical devices on the market and shall immediately inform us in writing if there is any concern that the medical devices could pose a risk to third parties.

(5) If any provisions of these general terms and conditions prove to be fully or partially ineffective, or if any provisions are excluded by a special agreement, this shall have no bearing on the effectiveness of the remaining provisions.

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