

GENERAL TERMS AND CONDITIONS OF SÜDPACK MEDICA AG

1. SCOPE

These General Terms and Conditions govern the relationship between the client and SÜDPACK MEDICA AG, hereinafter referred to as MEDICA. They apply to all contract conclusions and all legal relationships between the client and MEDICA and in particular form an integral part of MEDICA's order confirmation and any annex agreements. The provisions of the General Terms and Conditions shall always apply unless the parties have agreed otherwise in writing.

2. CONCLUSION OF CONTRACT

2.1 Unless our offers are expressly designated as binding or contain a specific acceptance period, they are subject to confirmation and are not binding. A contract is only concluded with our written order confirmation or by delivery.

2.2 For the contents of the contract, in particular for the scope of services, only the purchase contract concluded in writing is decisive. This reproduces in full all agreements between the parties to the contract relating to the subject matter of the contract. Oral agreements between the contracting parties and promises made by us prior to the conclusion of the contract are not legally binding and shall be replaced by the written contract, unless it is expressly stated in each case that they continue to be binding. Supplements and amendments to the agreements made, including these General Terms and Conditions, must be made in writing in order to be effective. In order to satisfy the written form requirement, transmission by telecommunications is sufficient, in particular by fax or email, provided that a copy of the signed declaration is sent.

2.3 Information on the delivery item in our brochures, price lists, catalogues and our offer (e.g. weights, dimensions, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximate unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or designations of the delivery or service. Deviations and changes customary in the trade which are made due to legal regulations or represent technical improvements are permissible provided that they do not impair the usability for the contractually intended purpose.

2.4 Samples and specimens are non-binding illustrative material and, with regard to their quality and technical values, are to be regarded only as approximate indications for the execution of the order.

3. PRICES AND TERMS OF PAYMENT

3.1 Our prices for deliveries are ex works plus transport insurance, packaging, dispatch, statutory value-added tax, and in the case of export deliveries plus customs duties, fees and other public charges.

3.2 If substantial changes occur in the raw material, wages, energy or other product procurement and/or manufacturing costs after submission of the offer or conclusion of the contract, it is generally possible to implement a reasonable price adjustment after consultation with the customer, in particular if deliveries are to be made more than four months after conclusion of the contract.

3.3 Payment is due without any deduction upon delivery. If no specific payment term has been agreed, the customer shall be in default 14 calendar days after delivery and invoicing, without the need for a reminder. The date of receipt by us shall be decisive for the date of payment. Payment by cheque or bill of exchange is excluded unless agreed separately in individual cases.

3.4 We shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the customer and which endanger the payment of our outstanding claims by the customer under the respective contractual relationship.

3.5 The customer may only offset counterclaims against our claims or retain payments due to such counterclaims if the counterclaims are undisputed or have been established as final and absolute by a court of law or have a reciprocal relationship with our claims.

4. DELIVERY DATES

4.1 Without the express agreement of a delivery date as binding, delivery times shall only be deemed to be agreed as approximate. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

4.2 We shall not be liable for the impossibility of delivery or for delays in delivery if these were caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure to deliver, the incorrect delivery or the non-timely delivery by suppliers) for which we are not responsible. Insofar as such events make the delivery or service considerably more difficult or impossible for us and the hindrance is not merely of a temporary nature, we shall be entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or service periods shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to us.

4.3 If we are in default of delivery or if a delivery or service becomes impossible for us for whatever reason, our liability shall be limited to damages in accordance with these General Terms and Conditions.

5. DELIVERY

5.1 All deliveries are EXW from our factory or warehouse (Incoterms 2010). If the customer is in default of acceptance, the risk shall pass upon notification of readiness for dispatch. This applies regardless of whether the shipment is made from the place of performance and who bears the transport costs.

5.2 We shall only insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the customer and at the customer's expense.

5.3 Partial deliveries are permissible if the partial delivery can be used by the customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the customer does not incur any considerable additional costs or expenses as a result (unless we declare our willingness to bear these costs).

5.4 If deliveries and services are agreed as call-off orders / blanket orders (successive delivery relationships), the customer shall be obliged to call-off and accept the entire contractual quantity or the remainder thereof, unless otherwise agreed in individual cases, at the latest after expiry of the contract period. If the customer does not fulfil this obligation, we are entitled to deliver and invoice the remaining contractual quantity to the customer at his expense and risk.

If, exceptionally, a special arrangement is agreed, MEDICA shall be entitled to charge storage costs amounting to 0.25 % of the invoice amount of the delivery items to be stored per expired week, but no more than a total of 3 % of the invoice amount.

5.5 Production and material-related under- or overruns of the delivery quantity by up to 15 % are permissible in the case of order-related and technically difficult designs.

6. RETENTION OF TITLE

6.1 Goods delivered by us shall remain our property until payment has been made in full. Goods which the customer has not already paid for in full prior to delivery shall remain our property until all our claims arising from the entire business relationship with the customer have been satisfied in full.

6.2 The customer shall be obliged to store and label the goods subject to retention of title separately. He shall insure the goods under retention of title at his own expense against fire, water damage, burglary and theft. Upon request, the insurance policy shall be sent to us for inspection. The customer assigns the claims against the insurance company to us in advance. We accept the assignment.

6.3 The customer must inform us immediately of any access by third parties to the reserved property. The customer shall bear all costs which are incurred for the cancellation of the access and for the replacement of the goods delivered by us.

6.4 The customer is entitled to sell the reserved goods in the ordinary course of business as long as he is not in default of payment. Pledging or transfer by way of security is not permitted. The customer hereby assigns to us in full by way of security any claims arising from the resale or any other legal reason (insurance, tort) in respect of the reserved goods. We revocably authorise him to collect the claims assigned to us for our account in his own name. Upon our request, the customer shall disclose the assignment and provide us with the information and documents required for the collection of the claim.

6.5 If the reserved goods are combined with other objects, the reserved title shall continue to the newly created object. We thereby acquire a co-ownership share in the ratio of the value of the reserved goods (invoice value) to the value of the other connected items. If one of the combined items is to be regarded as the main item, the customer shall transfer co-ownership to us in the ratio of the value of the goods delivered by us (invoice value) to the value of the other combined items. The customer shall keep the new item in safe custody free of charge with regard to our co-ownership share. If the reserved goods are resold as part of the new item, the advance assignment agreed in Clause 6.4 shall only apply to the amount of the invoice value of the reserved goods.

6.6 If the law of the country in which the delivery item is located does not permit the agreement of a reservation of title or only in a limited form, we may reserve other rights to the delivery item. The customer is obliged to cooperate in all necessary measures (e.g. registrations) to realise the retention of title or the other rights which take the place of the retention of title and to protect these rights.

7. CLAIMS FOR DEFECTS

7.1 If our deliveries or services prove to be defective, we shall initially be obliged to remedy the defects by repair or replacement, at our discretion, within a reasonable period of time. In the event of replacement delivery, the customer must return the defective item to us in accordance with the statutory provisions. We shall bear the expenses necessary for the purpose of subsequent performance, in particular transport, labour and material costs; this shall not apply if the costs increase because the delivery item is located at a location other than the location of the intended use.

7.2 We shall be entitled to make the subsequent performance owed dependent on the customer paying the purchase price due.

7.3 The limitation period for claims based on defects shall be 12 months from delivery or, if acceptance is required, from acceptance. A claim for damages due to breach of the obligation to subsequent performance (repair or replacement delivery) shall only exist if, during the aforementioned 12-month limitation period, a) both the customer has demanded subsequent performance and b) we have breached our obligation to subsequent performance. The 12-month limitation period pursuant to this Clause 7.3 shall not apply in the event of fraudulent intent and for claims for damages pursuant to Clauses 8.1-8.3; instead, the statutory limitation period shall apply in such cases.

7.4 If the defect is based on a defective third-party product, we shall be entitled to assign our warranty claims against our suppliers to the customer. In this case we can only be held liable under the above provisions if the assertion of the above-mentioned claims against the upstream supplier has been unsuccessful for reasons for which the customer is not responsible or, for example due to the insolvency of the upstream supplier, it has no prospect of success.

8. LIABILITY

8.1 We shall be liable in accordance with the statutory provisions for a culpable breach of our essential contractual obligations. Essential contractual obligations are obligations which characterise the typical purpose of the contract, the fulfilment of which is essential for the proper execution of the contract and the observance of which the contractual partner may regularly rely on. Insofar as we are not guilty of gross negligence or willful intent, we shall only be liable for typical, foreseeable damage and not for any consequential damage.

8.2 In all other cases we shall be liable if damage has been caused by us or by one of our vicarious agents with intent or gross negligence. In the event that we assume a guarantee as well for damages resulting from injury to life, body or health, we shall be liable in accordance with the statutory provisions. Otherwise claims against us for damages from breaches of duty are excluded.

8.3 Liability in accordance with the Product Liability Act shall remain unaffected.

9. DRAWINGS, CONSTRUCTIONS AND OTHER DOCUMENTS

9.1 We reserve our property rights and copyrights to our offer documents, illustrations, drawings, calculations, samples and other objects and documents. Without our express consent, these objects may not be made accessible to third parties, disclosed, used or reproduced by the customer himself or by third parties, either as such or in terms of content. The customer must return these items and documents to us in full upon request and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronic data provided for the purpose of normal data backup.

9.2 In the case of deliveries based on drawings, models or information provided by the customer, the customer shall indemnify us against all claims to industrial property rights asserted by third parties, unless the customer is not responsible for the infringement of the industrial property rights. In the event of breaches of contract by the customer, his industrial property rights shall not prevent us from exploiting the goods.

10. INFORMATION AND RECOMMENDATIONS

10.1 Our information and recommendations are non-binding and exclude all liability, unless we have expressly undertaken to provide information and recommendations. In particular, our information and recommendations do not exempt the customer from carrying out his own tests and trials with regard to the suitability of the delivery item for the technical and economic purposes intended by the customer. The customer is also responsible for compliance with the statutory and official regulations when using the delivery item.

12. CONCLUDING PROVISIONS

All legal relationships and disputes arising out of or in connection with these General Terms and Conditions or under Swiss law shall apply to all services or contracts associated with these General Terms and Conditions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is expressly excluded. The place of jurisdiction shall be the registered office of SÜDPACK MEDICA AG in Baar (Switzerland) Canton Zug. This applies to all services or contracts provided in connection with these General Terms and Conditions. MEDICA shall, however, also be entitled to sue the customer at his place of business or residence.