

1. Scope of these Terms and Conditions

The sale and delivery of goods by TRACOE medical GmbH (henceforth "TRACOE medical") to companies, legal entities under public law or special funds under public law at home and abroad are executed exclusively in accordance with the provisions of these standard terms and conditions (STCs). This also applies to future contracts between TRACOE medical and the customer.

Counter confirmations from the customer with reference to its or other deviating commercial or purchasing conditions are hereby rejected, unless TRACOE medical has expressly consented in writing to the application of such deviating STCs. These STCs are considered accepted upon receipt of the goods by the customer or its agents at the latest. Individual agreements between TRACOE medical and the customer have priority over these STCs.

2. Order and Contract Conclusion

Offers from TRACOE medical are subject to change and are non-binding, unless something else is stipulated in the text of the offer. Orders are received by TRACOE medical in written form and in electronic format. A contract only comes into being with the confirmation in writing or in electronic format from TRACOE medical to the customer or with the performing of the delivery to the customer. Supplementary oral agreements, changes, additions, guarantees or assurances regarding our offers or written contracts only come into effect following written confirmation from TRACOE.

3. Delivery Terms

(1) Delivery dates or periods only apply if there is explicit agreement in writing. TRACOE medical's compliance with delivery obligations requires the customer fulfils its obligations punctually and properly; e.g. its cooperation and payment obligations (including agreed prepayment). The plea of non-performance of the contract remains unaffected and reserved for TRACOE.

(2) TRACOE medical does not bear responsibility for delays to delivery due to force majeure or events that significantly impede service delivery, or render it impossible, even if such dates are subject to binding commitment. Such events exist in particular in the case of subsequently arising material sourcing issues, operational disruptions, strikes, lockouts, personnel shortages, transport equipment deficiencies, administrative orders; even if these events occur at TRACOE medical's suppliers or subsuppliers. In such cases, TRACOE medical is entitled to postpone the delivery for the duration of the obstruction plus an appropriate lead time or, if fulfilment has been rendered impossible by the delay, to withdraw from the contract in whole or in part with respect to the as yet unfulfilled portion of the delivery. If the obstruction lasts longer

than three months, the customer is entitled to withdraw from the contract with respect to the as yet unfulfilled portion of the delivery.

(3) The delivery time is considered adhered to, up to the expiry of this period: when the delivery object has left the plant or warehouse of TRACOE medical for the purpose of shipment; or when TRACOE medical has notified the customer of delivery of the delivery object (ex works delivery, etc.); or when the delivery object has been handed over to the entity charged with transportation, if this deviating procedure has been agreed with the customer.

(4) If the customer gets into default of acceptance, or if it violates other cooperation obligations, TRACOE medical is entitled either to withdraw from the contract or demand compensation for damages resulting from this, including any additional costs incurred, after setting an appropriate grace period. TRACOE medical reserves the right to assert further claims. At the same time, in such cases the risk of accidental loss or of accidental degradation of the purchase item transfers to the customer at the time the customer gets into default of acceptance.

(5) TRACOE medical is always entitled to partial deliveries.

4. Delivery and Instruction

When delivering devices intended for the specialist trade in medical technology, and installation and/or training (such as cuff pressure measuring devices) by a specialist trade employee is required at the end customer's, TRACOE medical reserves the right to deliver the order only to a verifiably appropriately trained specialist trader. In such cases, the specialist trader will perform the installation and/or provide the training at the end customer's.

5. Prices

TRACOE medical delivers goods at the list prices applicable on the day of receipt of the order at TRACOE. TRACOE medical levies a minimum quantity surcharge of EUR 6 per order for orders with a net goods value of less than EUR 150. All price quotations are subject to statutory sales tax and transport and packaging costs. Sales tax is shown separately in the invoice at the statutory amount on the day of invoicing. TRACOE medical reserves the right to amend its aforementioned list price appropriately for factual reasons; i.e. if falls or increases in cost occur after concluding the contract, especially due to collective bargaining agreements, material cost changes or currency fluctuations.

TRACOE medical shall substantiate such changes to the customer upon request. In such cases, the customer is entitled to a right of withdrawal, which it may exercise by means of a written declaration to TRACOE medical within two weeks of



notification of the price change (receipt critical for adhering to the deadline).

6. Terms of Payment

(1) Invoices from TRACOE medical are due and payable without deduction within 30 days of the invoice date, unless a different period has been explicitly agreed between the parties in writing. Once this payment period lapses, the customer automatically becomes in default of payment.

(2) In the event of default of payment, the customer must pay annual interest at 9 percentage points above the base interest rate (§ 247 of the German Civil Code [BGB]) on the outstanding receivable amount. If TRACOE medical is able to demonstrate a greater extent of damage caused by arrears, then it is entitled to claim for this from the customer. Furthermore, TRACOE medical is entitled at its own discretion either to defer the delivery of other ordered goods to the customer after setting an appropriate grace period for the full payment of the outstanding receivables at the latest or to withdraw from the contract(s).

(3) Irrespective of any customer terms, TRACOE medical is entitled to credit customer payments to its older debts first. If costs and interest have already been incurred, then it is entitled to credit payments first to the costs, then to the interest and finally to the main deliverables still outstanding.

(4) A payment is only considered made when TRACOE medical has finally been credited with it. TRACOE medical expressly reserves the right to refuse bills of exchange and/or cheques. Acceptance only ever occurs for the sake of fulfilment. Discount charges and exchange fees are to be borne by the customer and paid immediately.

(5) The customer is only entitled to offsetting, withholding or reduction if its counter-claims are established as legally valid or undisputed.

7. Transfer of Risk

The risk of damage, deterioration, destruction or loss of the goods is transferred to the customer once the delivery object has left the plant or warehouse of TRACOE medical for the purpose of shipment; or when TRACOE medical has notified the customer of delivery of the delivery object (ex works delivery, etc.); or once the delivery object has been handed over to the entity charged with transportation, if this deviating procedure has been agreed with the customer. If the shipment is delayed at the request of the customer or on grounds for which the customer bears responsibility, the risk is transferred to the customer upon notification of the goods' readiness for shipment.

8. Packaging

Transport and all other packaging in accordance with the

German Packaging Ordinance (VerpackV) is not taken back. The customer is obligated to dispose of the packaging at its own cost.

9. Retention of Ownership

(1) The goods remain the property of TRACOE medical until all receivables are paid (including all outstanding balances from an existing current account) which are owed to TRACOE medical by the customer – irrespective of the legal grounds – now or in the future. This applies in particular to all receivables from add-on sales, repeat orders, repairs, accessory supplies and spare parts orders. The customer shall keep the property of TRACOE medical safe without charge. Goods of which TRACOE medical GmbH is entitled to ownership shall henceforth be referred to as reserved goods.

(2) The customer is entitled to sell the reserved goods in the regular course of business, provided it is not arrears with deliverables with respect to TRACOE medical, and TRACOE medical has not given written notice of revocation of right of disposal. Pledging and assigning of reserved goods by way of security is not permitted. The customer transfers to TRACOE medical the receivables resulting from resale or other legal grounds concerning the reserved goods at this point for the sake of security to the extent that the customer is required to guarantee the outstanding claims receivable of TRACOE medical (amounting to the claims at a minimum), and TRACOE medical is to accept this transfer. Upon the request of the customer TRACOE medical may at its discretion release one or more of these securities if its value subsequently and permanently exceeds the outstanding claims receivable of TRACOE medical by more than 20%. TRACOE medical shall confer revocable authority on the customer to collect on TRACOE medical's behalf the claims assigned to TRACOE medical and place these in the customer's own name and of the customer's account. This collection authorisation may only be revoked if the customer fails to keep up with its payment obligations in an orderly fashion.

(3) If the reserved goods are seized by a third party, the customer shall inform them of the ownership of TRACOE medical and inform TRACOE medical of this seizure in writing without delay.

(4) If the customer acts in violation of the contract, particularly in the event of default of payment, TRACOE medical is authorised, but not obligated, to take back the reserved goods in whole or in part or to demand transfer of the customer's surrender claims against third parties. The parties agree that taking back or pledging the reserved goods by TRACOE medical shall not be seen as a withdrawal from the contract. This only applies unless the German Consumer Credit Law [VerbrKrG] mandatorily applies to the legal relationship between the parties.



(5) In the event of goods being taken back by TRACOE medical, TRACOE medical is authorised to exploit those goods. The proceeds from this exploitation are to be credited against the customer's liabilities – minus appropriate exploitation costs.

10. Material Defects

(1) The customer is obligated to inspect the product received from TRACOE medical immediately following delivery and to report any defects or delivery errors to TRACOE medical without delay, within one week of receipt of the goods at the latest. Defects that are not able to be detected even with careful inspection within one week of receipt of the goods are to be reported immediately following their detection with a complaint in writing enclosing the delivery note belonging to the shipment in question. The defective goods are to be kept ready or to be shipped to TRACOE medical upon request in the condition they were in at the time the defect was detected, for inspection by TRACOE medical or a third party commissioned by it. If the applicable reporting and complaint obligations are not fulfilled, the product received shall be considered free of defects.

(2) If the customer fulfils the inspection and complaint obligations mentioned in paragraph 1, and if the customer keeps up with its payment obligations, TRACOE medical shall then be liable for defects in accordance with statutory regulations, provided no other regulation has been made in these STCs. TRACOE medical is always liable for 2 years (limitation period) from the day of risk transfer or the day of delivery, except for used devices (limitation period: 1 year). A requirement for the two-year liability for defects from TRACOE medical is that the customer is able to produce proof of original purchase (by means of invoice or delivery note) and the original serial number still appears unaltered on the product.

(3) TRACOE medical bears particular liability for its goods being free from manufacturing and material defects. If the usage instructions and notes on the packaging of the goods are not observed or the goods are not stored or used as intended, all warranty for defects resulting from this shall be invalidated, provided this is legally permitted.

(4) If defects are reported punctually and properly and are justified, TRACOE medical shall provide supplementary performance. At the discretion of TRACOE medical, this could consist of free-of-charge repair – either at the customer's or at the factory – or replacement delivery. TRACOE medical is entitled to have that supplementary performance provided by a company authorised by it for this purpose. In the event of a return shipment, the customer is obligated to send the product in the original packaging or other packaging offering the same level of protection, as well as in a cleaned and disin-

fected condition with the associated decontamination certificate (available from TRACOE medical directly or through www.tracoe.com), to TRACOE medical or an address provided by it. In the event of TRACOE medical's failure with supplementary performance, the customer is entitled to demand either an appropriate reduction of the payment or a (partial) rescission of the contract with respect to the goods with defects.

(5) The liability for defects of TRACOE medical becomes inapplicable if changes, irrespective of their form, are made to the product, unless the change has been made by TRACOE medical or a company authorised by it, or TRACOE medical consented to the change in writing in advance. Claims of liability for defects are also excluded if repairs are performed or parts are replaced on the product of TRACOE medical by third parties. This applies regardless of whether this measure is the cause of a defect alone or through interaction.

(6) The liability of TRACOE medical also does not apply in the case of defects which can be attributed to:

- operational wear and tear or normal deterioration;
- faulty installation or defective or inadequate maintenance;
- improper use or operating errors (contrary to the enclosed operating instructions);
- improper or negligent treatment and care, especially soiling, calcification, the intake of fluids, improper cleaning, disinfection or sterilisation;
- use of accessories and/or spare parts which are not explicitly permitted by TRACOE medical;
- faulty installation or commissioning by the customer or third parties;
- negligence of the customer when handling the product;
- impermissible operating conditions, especially concerning humidity, temperature, electrical connections or power supply, vibrations and inadequate ventilation;
- accidents, force majeure or other events for which TRACOE medical bears no responsibility; especially lightning, water, fire and disruptions of public order.

11. Liability

Compensation claims for damages against TRACOE medical are ruled out, especially owing to the impossibility of performance, positive violation of a contractual duty, default at the time of contract conclusion, delays to delivery or unlawful handling. This exclusion of liability does not apply to actions which are intentional or grossly negligent, as well as harm to life and limb or health and for culpable violations of so-called "cardinal duties"; i.e. essential contractual obligations, the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the customer may regularly rely. Liability for cardinal duties is limited to dam-



ages which are foreseeable and typical for contracts. Mandatory provisions of the German Product Liability Act remain unaffected.

12. Return of Goods

As TRACOE products are medical products subjected to rigorous safety, quality and sterility checks, they are entirely disqualified from return or exchange.

13. Tracing of Medical Products

The customer is obligated to implement a product traceability system for medical products. The system must guarantee that comprehensive tracing right through to the end consumer is possible for each product at all times. The customer must also impose this obligation on any entity acquiring it, unless this is an end consumer. The customer obligates itself to allow TRACOE medical to inspect these records at any time upon request and to impose a corresponding obligation for allowing inspection on any entity acquiring it which is not an end consumer. The customer is obligated to report product-related incidents which have led to, could have led to, or could lead to the death or serious deterioration to the state of health of a patient, user or another person ("incidents") to TRACOE medical in writing immediately, but within three working days at the latest. All other product-related complaints and new risks that arise are to be reported to TRACOE medical in writing within seven working days.

14. Training and Cooperation; Legal Compliance

(1) The customer is obligated to train its sales staff well; especially with respect to the products, instructions and market information in the contractually specified field.

(2) The customer shall keep TRACOE medical informed of changes to requirements in the contractually specified field, of requests for new products, features and technologies and other market changes influencing the sale of the products.

(3) The customer obligates itself to observe all applicable legal provisions concerning the sale and distribution of medical products at all times and to inform TRACOE medical of any changes in the law which concern the sale and distribution of TRACOE products or as a result of which action would be required for whatever reasons.

15. Plans and Drawings

TRACOE medical reserves its property rights and copyrights to plans and drawings, illustrations, calculations and other documentation which are enclosed with the offers from TRACOE medical. The customer requires the express written consent of TRACOE medical before passing on such material

to third parties. Counterfeiting legally protected products from TRACOE medical is forbidden and will be subject to legal proceedings.

16. Court of jurisdiction and applicable law

(1) The place of fulfillment for all actions from the contractual relationships between TRACOE medical and the customer is Mainz.

(2) Mainz is the exclusive court of jurisdiction for all disputes from the contractual relationships between the parties, provided the customer is a businessman, a legal entity under public law or a special fund under public law.

(3) The law of the Federal Republic of Germany applies to these STCs and all the contractual relationships between the parties. The application of the UN sales law (CISG) is explicitly excluded.

17. General provisions

(1) Amendments to these STCs require the written form. The requirement for the written form can itself only be waived in writing.

(2) Should a term of these STCs or a term within the context of other agreements between TRACOE medical and the customer be or become ineffective, the effectiveness of all the other terms and agreements shall remain unaffected by this. The parties shall replace the ineffective term in question with a permissible regulation corresponding with the originals' commercial meaning and purpose. The same applies in the event of loopholes.

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