

General Terms and Conditions of FREI medical GmbH for contracts with foreign non-consumers

§ 1 Scope of application of these General Terms and Conditions

These General Terms and Conditions (hereinafter: GTC) shall apply to all of our deliveries and services arising from contracts with non-consumers established outside the Federal Republic of Germany at the time of conclusion of the contract; if there are several establishments, the establishment concluding the contract shall be decisive. Our deviating "General Terms and Conditions for contracts with non-consumers (Germany)" shall apply to contracts with non-consumers in the Federal Republic of Germany. Our "General Terms and Conditions for contracts with consumers" shall apply to contracts with consumers. Any general terms and conditions other than those GTC used by us shall only become part of the contract upon our express written consent.

§ 2 INCOTERMS, prices, packaging and shipping costs, return of goods

- Incoterms 2020 EXW ex works is agreed (destination of delivery: seat of FREI medical GmbH, Am Fischerrain 8, 79199 Kirchzarten, Federal Republic of Germany), whereas any deviations that are provided for in these GTCs or that are individually agreed (including any deviating agreement on different INCOTERMS) shall take precedence over the INCOTERMS provided for herein.
- The prices indicated in our online shop, catalogues, brochures, advertisements and the like shall not cover any packaging or shipping costs.
- If the delivery or service is subject to value-added tax and if such value-added tax is increased after the conclusion of the contract, we shall be entitled to adjust our prices accordingly, if the period of time between the conclusion of the contracts and the agreed time of delivery or performance is at least four months. The same shall apply to packaging and shipping costs.
- We shall only take back any ordered or delivered goods, if you are entitled to return these or if we are obligated to take these back according to the applicable statutory provisions. If we take back goods as a gesture of goodwill in exceptional cases, you shall pay 20% of the net value of the goods plus value-added tax as compensation for our efforts in connection with order processing, whereas you shall bear the cost and risk of the return delivery. Any claims beyond that shall be reserved.

§ 3 Payment, offset and retention rights

- The purchase price in full (inclusive of all purchase price components such as packaging etc) shall be payable in EURO in advance without consideration of currency fluctuations.
- The applicable interest pursuant to Art. 78 CISG shall be 8 percentage points above the ECB base rate.
- You may only offset or assert any retentions rights if your counterclaims are uncontested or have been finally adjudicated.

§ 4 Times of delivery, foreign trade legislation

- Delivery times and periods shall always be agreed upon in writing to avoid any misunderstandings. We shall confirm any oral agreements within the framework of our acceptance of your offer (usually by means of an order confirmation). Delivery periods shall begin upon conclusion of the contract in principle. These delivery periods shall be suspended for as long as all of the information necessary for performing the contract is not available to us. Any delivery dates shall be delayed by the respective period of time. If a delivery date has been effectively agreed upon, we shall do anything that is necessary to ensure delivery by the agreed date. Conversely, you shall be obligated to accept the goods offered by us at the agreed date. In this case you may not plead non-performance. Furthermore, in such case we shall be entitled to claim compensation of any additional costs or damage arising out of a delayed acceptance (financing cost, additional storage costs, logistics costs etc).
- Our obligation to perform the contract shall be subject to the condition that such performance is not subject to any obstacles or limitations based on applicable provisions of foreign trade legislation (including embargoes) of the Federal Republic of Germany, the European Union or any other state. We shall not review whether or not a respective conflict exists and shall not assume any liability for the non-existence of such obstacles.
- Delivery shall be subject to correct and on time delivery by our suppliers. If our delivery is delayed due to force majeure, e.g. war, acts of god, civil commotion, forces of nature or other extraordinary, unforeseeable events beyond our control, taking place after conclusion of the contract and if we are not accountable for our lack of knowledge, delivery period shall be extended by the duration of the impediment and a reasonable period for resuming our operations. The same shall apply if the impediment to performance has existed already at the time of conclusion of the contract, but we were not aware thereof without being liable for our lack of knowledge. Delivery times shall be delayed by the respective periods of time. Delivery periods shall be extended or delivery dates shall be delayed to the same extent in case of delays due to applicable foreign trade legislation requirements (including but not limited to permits to be obtained). In such case we shall inform you immediately. If an impediment to performance results in a delay of more than four months, both parties shall be entitled to rescind the contract. You may do so at an earlier stage, if any delay is unreasonable/unacceptable.
- We shall be entitled in any case to make partial deliveries to a reasonable extent without any additional cost for you.

§ 5 Risk and place of performance

- The risk of accidental loss and accidental deterioration of the sold goods shall pass to the purchaser pursuant to the provisions of the agreed INCOTERMS.
- The place of performance for all obligations of the parties hereto out of or arising in connection with this contract shall be our company seat.

§ 6 Contractually agreed properties

Unless otherwise agreed, the goods delivered by us shall be deemed to have the contractually agreed properties (free of material defects) if they are suited for the purpose, for which goods of the same kind are usually used, at the time of passing of risk, whereas the statutory and other provisions applicable in the Federal Republic of Germany shall be authoritative. A legal defect shall only exist if the goods are not free of any enforceable third party rights or claims at the time of passing of risk. Any third party rights or claims due to industrial or other intellectual property rights shall only constitute a legal defect insofar as such intellectual property right is registered and published in the Federal Republic of Germany.

§ 7 Inspection and notification obligations

You shall be obligated to inspect the goods immediately upon receipt, if and to the extent such is feasible during your ordinary course of business, and to inform us about any defects immediately. If you do not notify us of any defects, the goods shall be deemed accepted, unless there is a defect that could not be detected during the inspection. If such a defect manifests itself at a later point in time, you shall notify us immediately upon detecting such defect; otherwise the goods shall be deemed accepted despite such defect. If you fail to notify us of a defect, as required, you may not rely on any grounds of defence in this respect. We may not rely on the above agreement if the material defect is due to facts of which we had knowledge at the time of passing of risk or which could not have been unknown to us at such point in time and which we nevertheless did not disclose at such point in time at the latest. Art. 38 et seq CISG shall apply insofar as these provisions are not contradictory to the above provisions. It is agreed that Art. 39 Para. 2 CISG shall also apply with regard to legal defects.

§ 8 Cost of rectification

Any costs required for rectification of defects, including but not limited to transport, shipping, labour and material costs, shall only be borne by us insofar as these are not increased by the fact that the goods were transported to a location other than your branch office, unless such is in line with the intended use of the goods.

§ 9 Purchaser's right to supplementary performance

The seller may meet its obligations by rectifying a defect – even if such constitutes a material breach – after the date of delivery at its own cost if such does not result in an unreasonable delay and if such does not cause any unacceptable inconvenience or uncertainty to the purchaser about the reimbursement of costs

by the seller (deviation from Art. 48 Para. 1 Clause 1 CISG). In all other respects Art. 48 Para. 1 Clause 2 and Para. 2 to 4 CISG shall apply.

§ 10 Rescission of contract

The purchaser may only declare that it rescinds the contract pursuant to Art. 49 Para. 1a) CISG (violation of a material obligation) if it granted a reasonable time period for subsequent performance of an obligation of the seller according to the contract or the CISG and if such period has lapsed without successful subsequent performance. This shall not apply if the seller is not entitled to subsequent performance (§ 9 hereof).

§ 11 Liability for damages, exclusion of liability, indemnification

- We shall be liable within the framework of Art. 74 et seq. CISG for any damage due to intentional or grossly negligent violation of duty of our legal representatives or vicarious agents. In this context (Art. 74 et seq. CISG) we shall also be liable for any injury of life, body and health that is due to an intentional or negligent violation of duty of our legal representatives or vicarious agents. Subject to the foregoing, any liability for damage resulting from a blameless or negligent violation of duty or a blameless or negligent tortious act of our legal representatives or vicarious agents shall be excluded, unless a material obligation is violated the adherence to which is imperative for achieving the purpose of the contract or which results from the justified reliance on a special relationship of trust (cardinal duties). In these exceptional cases, our liability shall also be limited to compensation of any foreseeable damage (Art. 74 Clause 2 CISG) and must be at least due to the negligent conduct of our legal representatives or vicarious agents; in case of a violation of a material obligation (Art. 25 CISG), we shall also be liable if the damage is not due to any fault on our part.
- Liability out of product liability laws, the assumption of a guarantee for the quality of a good or assumption of a procurement risk and out of a defect being kept secret wilfully shall not be affected. We shall not assume any liability for any damage that is asserted vis-à-vis you by a third party based on any foreign laws and the enforcement of which is obviously not reconcilable with the principles of German law (ordre public) (including but not limited to any "punitive damages").
- The above provisions shall also apply to the benefit of our legal representatives or our employees in connection with any claims asserted against them directly.
- You shall indemnify us from all third party claims resulting from applicable product liability provisions and your conduct after passing of risk, e.g. your manner of offering the goods, insofar as you did not at least act negligently.

§ 12 Limitation of warranty claims

Any warranty claims of the purchaser shall become statute-barred after one year from delivery of the goods, unless the claim is due to an intentional or gross negligent violation of duty, the assumption of a guarantee for the quality of a good, a defect being kept secret wilfully or due to an injury of the life, body or health.

§ 13 Observation duties

If the purchaser obtains any information giving rise to the suspicion that a product of FREI medical GmbH poses a direct or indirect threat to the safety and health of humans, beyond a certain extent that is regarded acceptable based on medical findings, even if the product is used and maintained properly and in line with its intended use, or that an improper use or a use threatening the safety and health of humans is to be expected, the purchaser shall make such information available to FREI medical GmbH immediately and shall support FREI medical GmbH in its investigations.

§ 14 Reservation of title

- Any goods delivered by us and not yet paid by you (hereinafter: goods delivered subject to reservation of title) shall remain our property until all liabilities existing at the time of conclusion of the contract arising from our entire business relationship have been settled.
- You may only dispose of the goods delivered subject to reservation of title within your ordinary course of business if the account receivable acquired by you by way of such disposal is not subject to a prohibition of assignment and for as long as you are not in default.
- Any receivables out of a disposal of the goods delivered subject to reservation of title (in the invoice amount) shall be assigned to us by way of provisional payment. In case of an allocation of the amount receivable out of a disposal in a current account, the assignment shall relate to the final amount. We shall accept such assignment. If the goods delivered subject to reservation of title are sold by you together with other goods not delivered by us, the receivables out of the disposal shall be assigned to us on a pro rata basis of the invoice amount of the goods delivered subject to reservation of title in relation to the invoice amount of the other goods by way of provisional payment. In case of an allocation of the amount receivable out of a disposal in a current account, the assignment shall relate to the final amount. We shall accept such assignment. If you are entitled to a compensation claim (e.g. contractual claim) out of the use of the goods delivered subject to reservation of title vis-à-vis a third party, you shall assign such claim to us in the amount of the account receivable according to Para. 1 by way of provisional payment. We shall accept such assignment.
- Following the assignment you shall remain authorised and obligated to collect the amounts receivable. We reserve the right to collect the amounts receivable ourselves as soon as you do not meet your payment obligations properly and are in default of payment. We shall release the securities due to us (property subject to reservation of title; receivables assigned by way of security) at your request at our option insofar as the realisable amount exceeds the secured receivables by 10% or more.
- You shall be obligated to handle the goods delivered subject to reservation of title carefully and to have the necessary maintenance and inspection work carried out at your cost. You shall be obligated to insure the goods delivered subject to reservation of title, if it is customary to insure such goods. You shall notify us immediately of any change in possession. In case of attachment or other third party interventions you shall notify us immediately in writing.
- If we bring a third party action pursuant to § 771 German Code of Civil Procedure (ZPO) successfully and if compulsory execution for cost against the defendant is unsuccessful, you shall be obligated to reimburse all costs incurred by the legal action.

§ 15 Applicable law, language

All legal relationships arising out of this contract between you and us shall be exclusively subject to the laws of the Federal Republic of Germany (whereas the United Nations Convention on Contracts for the International Sale of Goods [CISG] shall also apply). The German version of these GTCs shall be authoritative.

§ 16 Place of jurisdiction

The international jurisdiction of the German courts and the local jurisdiction of the court competent for the seat of FREI medical GmbH (Local Court Freiburg, Regional Court Freiburg etc.) for all disputes arising out of and in connection with this contract shall be agreed. These jurisdictions shall be exclusive; however, we shall be entitled to file suit against you at your generally applicable place of jurisdiction.

§ 17 Severability

If a provision of this contract between you and us is or will be held invalid in whole or part or if this contract between you and us contains any gaps, this shall not affect the validity of the remaining provisions hereof.

§ 18 Service provider identification

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