

1. Scope of Validity, Place of Fulfilment, Court of Jurisdiction, Applicable Law, Contractual Language

- 1.1 Unless otherwise expressly agreed in writing, the following terms and conditions shall exclusively govern all offers as well as the delivery of goods and provision of services relating to Kohdent Roland Kohler Medizintechnik GmbH & Co. KG, Bodenseeallee 14-16, D-78333 Stockach, Germany (hereinafter referred to as the "Seller").
- 1.2 The court of jurisdiction is the business location of the Seller. The Seller shall also be entitled to bring an action against the buyer at the place of jurisdiction responsible for the buyer.
- 1.3 Unless otherwise established under contract or by virtue of an order confirmation, the business location of the Seller shall also be deemed the place of fulfilment. All legal issues arising between the buyer – including when the buyer's registered office is located abroad – and the Seller shall solely be governed by the laws of the Federal Republic of Germany to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 1.4 The Seller hereby rejects any purchase provisions set forth by the buyer which deviate from the terms and conditions set forth by the Seller and which otherwise also deviate from the unaltered, valid legal regulations as prescribed under German law. The Seller equally does not recognise such provisions even in cases where the Seller does not raise any further objections to the deviation, provided that the provisions are not expressly amended or concluded in writing by the Seller.
- 1.5 The General Terms of Delivery shall be established in German and translated into other languages. In the event of any deviations resulting from the translation, the formulation set forth in the German version shall prevail.

2. Conclusion of Contract, Prices, Packing and Packing Costs, Shipment, Transit Insurance

- 2.1 The Seller shall not accept or execute any orders amounting to less than € 100.00 in value.
- 2.2 (Details given without engagement)
All offers, prices and other details are without engagement unless otherwise expressly stated. All documents pertaining to the offer, such as illustrations, drawings, indications of weight and dimensions shall be deemed to be approximate values unless otherwise expressly declared as being binding. The Seller hereby reserves the right of ownership and copyright to all cost estimates, drawings and other documents, none of which may be disclosed to third parties.
- 2.3 All prices are quoted ex works from the Seller's location in Stockach, in accordance with the EXW, Incoterms 2000, and are to be understood exclusive of German sales tax and packing (cf. 2.4 and 3.1). All prices shall be subject to the relevant value-added tax or a comparable tax valid in the country in which the delivery of goods or provision of services is subject to sales tax. Customers within the European Union shall be required to state their value-added tax identification number upon concluding a contract.
- 2.4 The prices quoted shall apply to the order in question. They shall not apply retrospectively or to future orders. Follow-up orders are deemed to be new orders.
- 2.5 The Seller shall be entitled to increase his prices as appears just in the event that, following conclusion of the contract, cost increases should emerge, most notably as a result of collective bargaining agreements, market acquisition prices or rises in the price of materials.
- 2.6 Failing specific agreement to the contrary, the Seller shall pack the goods at cost and as he deems fit. The buyer shall be responsible for disposing of the packaging.
- 2.7 Unless otherwise instructed by the buyer, the Seller shall determine the carrier of the goods as well as the place and means of carriage. Orders shall be consigned at the risk and expense of the buyer. Failing specific agreement to the contrary, the Seller shall not be liable for obtaining transit insurance. The buyer shall be responsible for obtaining the desired transit insurance at his own expense.

3. Delivery, Passing of Risk, Partial Delivery

- 3.1 Unless otherwise agreed in writing, all deliveries shall be made ex works from the Seller's location in Stockach in accordance with EXW, Incoterms 2000 (cf. Art. 2.3). All clauses deviating from this are to be interpreted in accordance with the relevant Incoterms of the International Chamber of Commerce in Paris.
- 3.2 The passing of risk shall occur no later than at the time the delivery is dispatched to the buyer and shall also apply when partial deliveries are made or the Seller has taken on other services such as the shipping charges or carriage.
- 3.3 Should the shipment of the consignment be delayed due to circumstances beyond the control of the supplier, the passing of risk to the buyer shall occur on the day that the buyer is informed that the consignment is ready for dispatch. At the same time, however, the Seller shall be obliged to effect the insurance policy at the request and expense of the buyer which the latter requires.
- 3.4 The partial delivery of consignments is permissible. Inasmuch that payment for a partial delivery is still outstanding, the Seller shall be entitled to suspend the further execution of the order and to require payment in advance prior to providing the remaining (partial) deliveries.

4. Delivery Time, Delays, Cancellation

- 4.1 The buyer may solely assert a claim for damages resulting from delays or for compensation in lieu of performance once a binding delivery date or a binding delivery period has expired without being met if the Seller is imputed with having acted with intent or gross negligence or in the event of injury to life, limb or health. No claims shall be accepted for performance in addition to damages in lieu of performance.
- 4.2 The delivery period is deemed to have been met if, by the time the delivery period has expired, the delivery item has left the works or its readiness for dispatch has been advised. In the event of force majeure or any other unforeseen impediments such as riots, disruptions of operations, strikes, lockouts, war, civil war, restrictions on exports or trade due to changes in the political conditions as well as delivery restrictions imposed by authorities or organisations similar to authorities, such as the FDA, and similar incidents and events, the delivery time shall be extended accordingly. The same shall apply in the event of delays in the delivery of crucial materials provided that it can be proven that such delays have a significant impact on the production or delivery of the delivery item and are beyond the control of the Seller.
- 4.3 Upon a non-binding delivery date or delivery period being exceeded, the buyer shall be entitled to send the Seller a written request to deliver within a reasonable period of time in the event that the buyer, for his part, has fulfilled all of his outstanding contractual duties. Upon expiry of the deadline without delivery having been made, the buyer shall, in addition to the delivery, solely be entitled to require indemnity for damages resulting from delays or compensation in lieu of performance if the Seller is imputed with having acted with intent or gross negligence or in the event of injury to life, limb or health. No claims shall be accepted for performance in addition to damages in lieu of performance.

5. Acceptance / Return Consignments

- 5.1 The Seller may set the buyer a reasonable period of time in writing for the acceptance of the consignment in the event that the buyer fails to accept the consignment at the time it is delivered. The Seller's right to require payment of the purchase price shall remain unaffected. Upon expiry of the deadline, the Seller shall be entitled to serve written notice on the buyer of his decision to withdraw from the contract in whole or in part and may claim damages.
- 5.2 The buyer may not refuse to accept or pay for any goods ordered pursuant to the contract. The ex gratia return of goods delivered pursuant to the contract presupposes that a return of the goods under this condition has been approved in advance by the Seller in each individual case. Prior to this, the buyer shall be obliged to furnish evidence of the delivery date of the returned articles. The Seller shall be entitled to mark down the prices for the articles in line with their age and condition.
- 5.3 Should the reason for the return of the goods not be attributable to the Seller, the Seller shall be entitled to invoice both the costs involved in removing any markings that had been requested by the customer and a handling fee of up to 20% of the original value of the goods.
- 5.4 For goods returned on an ex gratia basis, the passing of risk to the Seller shall not occur until the returned goods have reached the Seller. The costs of transportation shall be borne by the party returning the goods. For reasons of liability, the return of opened sterile packaging shall not be accepted under any circumstances.

6. Payment

- 6.1 Failing agreement to the contrary, all payments are to be effected no later than six weeks prior to the delivery date either by payment in advance or presentation of an irrevocable and confirmed letter of credit (or bank guarantee, bank deposit). The "Uniform Customs and Practices for Documentary Credits" of the International Chamber of Commerce in Paris shall apply. All payments shall be made in EURs without recourse to any potential fluctuations in exchange rates and strictly net to the "free paying agent" of the Seller. Should payment be effected in a currency other than the EURO and should currency losses result therefrom, the buyer shall be obliged to assume such losses.
- 6.2 In the event that payments are not made within the prescribed deadlines, the Seller shall, from the day of maturity onwards, be entitled to charge interest at the rate of 8 percentage points above the discount rate of the European Central Bank. Under such circumstances, the Seller shall have the right to suspend performance of the contract. In the event that the buyer has not cleared the agreed payment within a reasonable period of grace, but no later than within one month of the payment falling due, the Seller shall be entitled to send written notice of his decision to withdraw from the contract in whole or in part and may claim damages.

7. Unfavourable Financial Position of Buyer

In the event that the buyer should be in an unfavourable financial position and should the Seller become aware of this after conclusion of the contract, or should the buyer fall into an unfavourable financial position after conclusion of the contract thereby jeopardising the Seller's entitlement to consideration, the Seller shall be entitled either to demand collateral for the consideration or to withdraw from the contract and invoice the buyer for any expenses which shall have occurred up to such time.

8. Responsibility for Conformity of the Goods with the Contract

- 8.1 (Duty to examine and to make a complaint in respect of a defect) The buyer is to inspect the goods immediately upon their arrival. In doing so, the buyer is to proceed in accordance with the acknowledged rules of technology. The buyer shall lose any rights to invoke lack of conformity with the contract in the event that he fails to inform the Seller in writing of such and to specify exactly such immediately after having established this or immediately after the time he should have established this. In consultation with the Seller, the buyer shall ensure that all evidence shall be secured.
- 8.2 (Standard deviations, design changes)
Deviations in quantity, dimensions, quality, weight and similar items are permissible within the standard commercial tolerances. The Seller reserves the right to make equivalent design changes.
- 8.3 (Seller's liability for consignment defects)
The Seller shall be liable for consignment defects as follows to the exclusion of all other claims:

8.3.1 Defective parts are to be remedied or replaced in accordance with the option chosen at the discretion of the buyer. If remedy is the chosen option, the defective parts are to be forwarded to the Seller's business location. No remedies shall be performed on the defective parts at their place of usage. In the event that remedy or replacements should fail to produce the desired results, the buyer shall be entitled to reduce the purchase price within reason or opt to withdraw from the contract. The Seller is to be notified immediately of the determination of any defects. Parts which are replaced shall pass into the ownership of the Seller.
- 8.3.2 The buyer's entitlement to assert claims arising from defects shall expire in one year after the passing of risk.
- 8.3.3 No warranty is given for damage resulting from any of the following causes: improper or inappropriate use; faulty installation or assembly and/or initial operation on the part of the buyer or third parties; natural wear and tear; dirt; improper or negligent handling – most notably excessive operational demands – inappropriate operating resources and cleaning agents; substitute materials; chemical, electrochemical or electrical influences provided that these are not attributable to the Seller.
- 8.3.4 To enable the Seller to execute all of the repairs and replacement deliveries which the Seller, at his own discretion, deems necessary, the buyer shall afford the Seller a reasonable amount of time.
- 8.3.5 The Seller shall not be liable for defects which are the result of the design prescribed by the buyer or the material supplied by the buyer.
- 8.3.6 The liability for defects in the consignment shall not be extended as a result of the remedy work or new deliveries. A new warranty period, as prescribed under 8.3.2, shall not commence as a result.
- 8.3.7 No other claims on the part of the buyer, most notably claims pertaining to indemnity for damage occurring to the delivery item, shall apply.
- 8.3.8 Defects caused by modifications or repair work performed by the buyer or third parties improperly or without the prior consent of the Seller shall be excluded from the warranty as shall natural wear and tear or improper operation.
- 8.3.9 No liability is accepted for advice or proposals given by the Seller which do not directly relate to the consignment and which are not designated as being binding. The same shall also apply to operating and maintenance instructions which are not designated as being binding.
- 8.3.10 The warranty shall not be limited by the aforesaid clauses in the event of a guaranteed quality characteristic; if the Seller or his vicarious agents should be culpable of intent or gross negligence; in the event of liability for life, limb or health; or if under German or foreign product liability law, liability is accepted for bodily injury or damage to privately used objects.

9. Jigs and Devices, Plans, Sales Literature, Confidentiality

- 9.1 The Seller shall be the sole beneficiary of all rights to the jigs and devices, drawings, drafts and plans – most notably patent rights, copyrights and rights of the inventor – that are made or prepared by the Seller. All sales literature such as catalogues, sample books, price lists, etc., which are made available to the buyer shall remain the property of the Seller and are to be returned upon request.
- 9.2 The parties to the contract hereby agree that all commercial and technical details relating to their mutual business relations are to be held in confidence provided that these are not already in the public domain. This shall also apply to the determination of any failures to conform with the contract pursuant to Art. 8.1 which may neither be copied nor disclosed to third parties nor made public in any other manner without prior authorisation.

10. Force Majeure

- 10.1 Neither party shall be liable for failing to fulfil their duties in the event that the non-fulfilment should be due to an impediment beyond the control of the parties or, most notably, be caused by one of the following reasons: fire, natural disasters, war, seizure, export bans, embargos or other government measures or measures taken by organisations similar to the authorities, most notably the FDA; a general raw material shortage; the limitation of energy consumption; industrial disputes; or if the suppliers fail to conform with the contract for one of the aforesaid reasons.
- 10.2 Either party is entitled to terminate the contract by serving written notice on the other in the event that performance of the contract should be impeded for the duration of more than six months pursuant to Art. 10.1.

11. Reservation of Title

- 11.1 The Seller hereby reserves his right to ownership of all of the delivery items he supplies until such time as the buyer has discharged all of his liabilities arising from current and other business deals, most notably any balances relating to open accounts.
- 11.2 Until such time as the purchase price has been settled in full, the buyer shall be entitled to do the following in the course of ordinary business:

a) sell the Seller's delivery items, unless the buyer is in arrears or has suspended payment;

b) combine or mix the Seller's delivery items with other items, by virtue of which the Seller shall acquire partial ownership;

c) process or convert the Seller's delivery items. Such processing or conversion shall occur at no expense to the Seller. In the event that the processing or conversion results in a new item emerging of significantly greater value, the Seller shall acquire partial ownership of said item which reflects the proportionate value of his consignment to the value of the new item.
- 11.3 Until payment of the purchase price has been made in full, the buyer shall not be entitled to pledge the delivery item or to assign it by way of security. The buyer shall inform the Seller immediately of any garnishments or seizures or other dispositions on the part of third parties.
- 11.4 In the event that the items delivered by the Seller, their processed products or the mixture containing the Seller's delivery with other items should be resold, the buyer hereby assigns to the Seller – in compliance with § 354 a of Germany's Commercial Code (HGB) – the amount owed to him by the purchaser which corresponds to the outstanding invoice amount owed to the Seller for said delivered items along with any interest or costs which may have accrued. The buyer shall be entitled to collect the assigned claims himself until such time as he has duly fulfilled his obligations towards the Seller. Should the value of the goods subject to reservation of title together with any securities otherwise provided to the Seller exceed the payments owed by the buyer by more than 20%, the Seller shall be obliged to release the securities at the request of the buyer.
- 11.5 Should the buyer be in arrears with his payments, the Seller shall be entitled to withdraw from the contract after having set a reasonable deadline. Upon such withdrawal from the contract, the buyer shall be obliged return the supplied goods.

12. Deliveries by the Buyer to the USA / Canada

In the event that deliveries are made to buyers outside the USA / Canada, the buyer shall be obliged to obtain and maintain a product liability insurance policy with a minimum cover limit of 5 million euros for his exportation of delivery items to the USA / Canada.

13. Miscellaneous

- 13.1 With the exception of the assignment of claims to purchase prices to the Seller's banks, the rights and duties of the parties hereto are not transferable.
- 13.2 All amendments, supplements and other additional agreements pertaining to these General Terms of Delivery or to concluded contracts are to be made in writing.
- 13.3 A contract concluded on the basis of these General Terms of Delivery shall also remain binding in the event that individual provisions thereof should be or become invalid. The parties to the contract hereby commit to replace the invalid provision with a valid provision which most closely reflects the commercial intent of the original provision.
- 13.4 The buyer shall solely be entitled to offset or rights of retention with respect to legally established claims or claims that have been expressly confirmed in writing by the Seller.
- 13.5 (Trademarks, trade names, marketing, industrial property rights of the Seller) The buyer may solely use or register the trademarks, trade names and other marks and property rights of the manufacturer with prior written consent and solely in the interests of the Seller.
- 13.6 (Industrial property rights of third parties)
The buyer is responsible for ensuring that, by virtue of his instructions with respect to shapes, dimensions, colours, weight, etc., the property rights of third parties are not encroached upon. The buyer shall indemnify the Seller from all third-party claims resulting from an infringement of the afore-mentioned industrial property rights – including all litigation and extra-judicial costs – and, upon request, shall assist the Seller in any legal disputes which may arise.

14. Compliance with Legislation

The buyer is liable for observing and implementing all relevant foreign trade and payment provisions (e.g. import licences, currency transfer licences, etc.) and all other laws which are applicable outside the Federal Republic of Germany.