



General Standard Terms and Conditions of Sale of Compumedics Germany GmbH (Revision 02.2015)



§ 1 General Provisions – Scope of Application

(1) These General Terms and Conditions apply to all present and future legal relations between Compumedics Germany GmbH (hereinafter, the “Supplier”) and the customer (hereinafter, the “Customer”), provided the Customer is a company, a legal person governed by public law or a special fund governed by public law in terms of § 310 (1) German Civil Code. These General Terms and Conditions do not apply to consumers in terms of § 13 German Civil Code. Unless otherwise expressly agreed in writing, general terms and conditions of the Customer shall not apply, even if the Customer’s order is based on such general terms and conditions. These General Terms and Conditions shall also apply if the Supplier executes an order without making any reservations although being aware of deviating or conflicting general terms and conditions of the Customer.

(2) Any agreement between the Supplier and the Customer must be in writing in order to be valid; this shall also apply to any waiver of this written form requirement.

(3) In the event any provision of these General Terms and Conditions is or becomes invalid or impracticable, the invalid or impractical provision shall be replaced with retroactive effect by such a valid provision that comes closest to the original economic purpose and intent of the invalid or impracticable provision.

(4) These General Terms and Conditions apply to all concluded and all future agreements between the Supplier and the Customer.

§ 2 Offer

(1) Unless expressly stated otherwise, all offers of the Supplier are non-binding.

(2) Offers of the Customer are binding upon the Customer. The Supplier can accept an offer within 4 weeks after its receipt at its own choice by written order confirmation or delivery of the goods and/or performing of the services. The same applies in case of amendments or changes of an offer.

(3) The Supplier reserves the title and copyright to cost estimates, designs, illustrations and other documents; such items may only be made available to third parties upon the prior written approval of the Supplier. The Customer must return these offer documents immediately if it does not order the offered goods.

§ 3 Prices – Terms and Conditions of Payment

(1) Unless otherwise stated in the order confirmation, all prices are quoted ex warehouse including packaging and excluding statutory value added tax. Discounts need the written approval of the Supplier.

(2) In the event costs change after the placing of an order, in particular due to a significant change of material costs, the Supplier may modify its prices accordingly. The Supplier will prove the change of costs upon request of the Customer. In the event of a price change, the Customer may cancel the respective order; any other right of the Customer is excluded. Cost modifications will be deemed to be significant in terms of this clause if they exceed 5 % of the net sales price.

(3) Payment orders, checks and bills of exchange will only be accepted upon separate agreement and only on account of performance (and not in discharge of an obligation) after deduction of any charges related thereto.

(4) The Customer shall only be entitled to set-offs or a retention right if it has a counterclaim which has been determined by an unappealable court decision is uncontested or acknowledged by the Supplier. Furthermore, the Customer may exercise retention rights only if the counterclaim arises from the same contractual relationship.

(5) In the event that legitimate doubts exist regarding the Customer’s solvency or credit-worthiness, the Supplier shall – without prejudice to any other rights – be entitled to demand advance payments for deliveries not yet made.

§ 4 Delivery

(1) Any indicated date or time of delivery shall be non-binding upon the Supplier unless otherwise stated in writing. Delivery periods commence upon receipt of the order confirmation but not until the Customer has fulfilled all obligations to cooperate and any technical issues have been clarified. A date of delivery is met if the goods leave the premises of the Supplier in time or – if dispatch is not possible – if the Supplier notifies the Customer about its readiness to deliver the goods. The Supplier may make partial deliveries.

(2) Force majeure, natural disasters, strike, lock-out, administrative measures, change requests of the Customer and any other event for which the Supplier or its own contractor is not responsible, lead to a reasonable prolongation of the delivery period.

(3) The Supplier shall not be liable for any delay or default if it – without own fault – has not, not completely or not in time received the goods from its own contractor and it is impossible or unreasonable to displace the contractor. In this event, the Supplier shall be entitled to cancel the respective order; the Supplier, however, shall not be liable in this event for delayed fulfillment or non-fulfillment of its delivery obligations.

(4) If the Supplier delivers the goods late or fails to deliver at all, the Customer shall demand from the Supplier in writing to perform within a reasonable period of time of not less than 10 days unless setting a deadline is unnecessary under statutory law. When setting the deadline, the Customer has to specify the goods or services for which the deadline is set. If the Supplier fails to perform within the deadline, the Customer may cancel the respective order, unless the failure is insignificant. The right of the Customer to claim damages in accordance with § 6 remains unaffected. If the Supplier does not perform within the deadline set by the Customer, the Supplier may demand from Customer to declare within a period of time specified by the Supplier whether the Customer insists on performance. Until the Customer informs about its decision, the Supplier is under no obligation to perform.

§ 5 Claims arising from defects

(1) The Customer is entitled to claims arising from defects only if it has properly examined the goods immediately upon delivery and notified the Supplier of any defect occurred as soon as possible in writing. Hidden defects must be notified immediately upon recognisability.

(2) The Supplier shall perform its duties with the due diligence of a prudent businessman. The Supplier is liable for defects for a period of 12 months which commences upon delivery of the good. The statutory limitation period for claims arising from fraudulently concealed defects remains unaffected.

(3) Customer claims arising from unsubstantial defects are excluded. Defects are insubstantial if the value or suitability for the common use is only insubstantially impaired. As far as goods show a defect, the Supplier will, at its discretion, either remove the defect or replace the products. Such supplementary performance is excluded if the Supplier would have to incur disproportional costs.

(4) If the Supplier is not willing, able or refuses to remove the defect or replace the goods, does not remove the defect or replace the goods within a deadline set by the Customer or if setting a deadline is superfluous, the Customer may, at its discretion, reduce the purchase price or cancel the order. The Customer’s right to claim damages in accordance with § 6 remains unaffected.

§ 6 Liability

(1) The Supplier shall be liable for damages caused by willful misconduct or gross negligence. In the event of gross negligence, the Suppliers’ liability shall be limited to the extent of damage which one must typically expect upon placement of an order due to the circumstances known at that time.

(2) The Supplier shall be liable if the damage is caused by the negligent breach of a material contractual duty. Except in the event of willful misconduct, the Supplier’s liability shall be limited to the extent of damage which one must typically expect upon placement of an order due to the circumstances known at that time.

(3) Unless otherwise expressly stated above, any Customer claims for damages – regardless of legal grounds – are excluded. Claims for damages under the German Product Liability Act, due to the loss of life, personal injury or prejudice to health or due to the assumption of a guarantee as well as claims for damages attributable to gross negligence or willful misconduct shall, however, remain unaffected.

§ 7 Retention of title

(1) The Supplier reserves the title to the goods delivered until it has received all payments from the business relationship with the Customer. The Supplier’s title shall also extend to new products arising from the processing of the delivered goods. Processing is done by the Customer on behalf of the Supplier who is deemed to be the manufacturer in terms of § 950 German Civil Code. If the delivered goods are processed, connected or blended with items not belonging to the Supplier, the Supplier shall obtain joint title to the new goods in the proportion of the invoice amount of the goods delivered by the Supplier to the invoice value of the other items.

(2) The Customer must treat the delivered goods with due care until payment therefore is made in full in accordance with § 3. The Customer must sufficiently insure the delivered goods against damage by fire, water and theft at its own costs at replacement value.

(3) The Customer must inform the Supplier immediately in writing in the event of any pledges or other third-party interference to enable the Supplier to file an action pursuant to § 771 German Code of Civil Procedure. If the third party is unable to reimburse the Supplier for the costs of the action pursuant to § 771 German Code of Civil Procedure, the Customer shall be liable for the Supplier’s loss.

(4) The Customer is entitled to sell the goods in the ordinary course of business; the Customer, however, hereby assigns all receivables from the sale of the goods including bills of exchange and checks in the amount of the invoice value (including value added tax) in order to secure the respective claims. In the event goods to which the Supplier holds a joint title are sold, the assignment is limited to that portion of the receivables, which corresponds to the portion in joint ownership. The Customer continues to be entitled to collect such receivables after the claims have been assigned. The right of the Supplier to collect the receivables remains unaffected. The Supplier, however, must not collect the receivables as long as the Customer fulfills its payment obligations from the proceeds received, does not default in payment, no petition is filed to commence insolvency proceedings and the Customer has not suspended payments. Otherwise, the Supplier may demand that the Customer informs the Supplier about the assigned receivables and the respective debtor provides all information necessary for collection surrenders all related documents and informs the third party of the assignment.

(5) If the value of securities exceeds the claims of the Supplier by more than 20 %, the Supplier shall release securities at its discretion upon request of the Customer.

§ 8 Transfer of Risk – Packaging

(1) The risk of accidental damage or accidental loss of the goods shall pass to the Customer upon delivery of the goods to the shipping agent, the carrier or any other person appointed to carry the goods.

(2) Upon request of the Customer, the Supplier shall take out transport insurance for the goods at the Supplier’s costs. The Customer must have damages to the shipment confirmed by the transport company immediately in writing.

(3) The Supplier does not take back packaging material. The Customer must dispose of packaging at its own expense.

§ 9 Confidentiality

The Customer shall keep all information designated by the Supplier as confidential or recognizable as trade or business secrets of the Supplier and made accessible to the Customer in connection with the business relationship or for other reasons confidential for an unlimited period of time. The Customer will not record or otherwise utilize such information unless required for the purposes of the business relationship.

§ 10 Final Provisions

(1) The legal and business relationship of the Supplier and the Customer shall be subject to the laws of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

(2) We confirm the compliance with obligations of German Minimum Wages Law (MiLoG).

(3) The place of performance is Singen.

(4) The exclusive place of jurisdiction for any disputes arising from or in connection with the legal or business relationship and agreements between the Supplier and the Customer is Singen. Notwithstanding the foregoing, the Supplier is also entitled to initiate legal proceedings against the Customer in the courts of the Customer’s registered place of business or domicile.