



General Sales and Delivery Terms (T&Cs) *dated 12.2017*



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www.medevo.de

Gewerbestraße 10 | D-78667 Villingendorf | Tel +49(0)741 175 75 782 | Fax +49(0)741 175 75 784 | info@medevo.de

Sect. 1 Scope of Application

1. All the seller's deliveries, performances and quotations are based on these general sales and delivery terms. They are part of all the agreements concluded by the seller with their contractual partners (hereinafter referred to as "customers") about the deliveries and performances quoted by the seller. They also apply to all future deliveries, performances and quotations to the customer even if they are not agreed again separately.
2. The general sales and delivery terms apply exclusively. Deviating or conflicting terms and conditions of the customer are included in the agreement only if and insofar as the seller has expressly agreed to their application in writing. The general sales and delivery terms also apply if the seller performs the service for the customer without reservation whilst being aware of conflicting or deviating general sales and delivery terms of the customer.
3. Only the sales contract concluded in writing, including these general sales and delivery terms, is authoritative for the legal relationships between the seller and the customer. The seller's oral assurances made prior to concluding the sales contract as well as subsequent additions, modifications and supplementary agreements become binding only after the seller has confirmed them in writing.

Sect. 2 Quotation and Quotation Documents

1. The seller's quotations are subject to change and non-binding unless they are expressly indicated as binding or contain a specific acceptance period.
2. The seller reserves ownership and all copyrights to illustrations, drawings and other documents made available to the customer. Passing on such documents to third parties requires the seller's express written consent and they must be returned to the seller immediately upon their request.
3. Unless agreed otherwise, samples are only delivered at extra cost.
4. The seller's sales representatives are entitled to represent the seller only if and insofar as a written power of attorney was granted.

Sect. 3 Pricing and Payment Terms

1. The seller's pricing specified in the quotation and/or order confirmation applies to all delivery contracts. All prices are in EURO ex works, Villingendorf "EXW" (Incoterms ® 2010), excluding carriage charges, insurance, customs, duties and other public dues as well as statutory VAT. For international deliveries without sales tax, the customer is obligated to certify the receipt of the goods at the agreed delivery location to the seller.
2. Unless otherwise agreed in writing, the net payment terms for all invoices are 30 days from invoice date. Statutory regulations apply in case of delayed payments.
3. If an invoice amount is due and not paid despite two reminders, all other outstanding invoices become due immediately.

4. Bills of exchange are only accepted if agreed upon in advance and on account of performance as well as on the prerequisite that they can be discounted. The customer is charged discount expensed from the due date for payment of the invoice.
5. The customer may offset claims only if their counterclaims have been legally determined, are undisputed or acknowledged on the part the seller.
6. The customer is entitled to exercise their right of retention only insofar as their counter-claim is based on the same contractual relationship and furthermore has been legally determined, is undisputed or acknowledged on the part the seller.
7. If it becomes apparent after conclusion of the contract that the seller's entitlement to payment is at risk owing to the customer's insufficient financial capacity, the seller is entitled to withdraw from the contract (Sect. 321 BGB) according to the statutory regulations for service refusal and, if applicable, after having given reasonable notice. In case of contracts about the delivery of goods produced by the seller according to specific customer requirements (custom production), the seller can declare their immediate withdrawal; the statutory regulations about the dispensability of given reasonable notice remain unaffected.

Sect. 4 Delivery, Delivery Time, Delivery Delay

1. Deliveries are ex works, Villingendorf "EXW" (Incoterms ® 2010).
2. Delivery and service periods and dates promised by the seller are only approximate values unless a specific period or date has been expressly promised or agreed.
3. For sales ex works the delivery period is deemed fulfilled if the goods are made available to the customer at the seller's premises within the delivery period or on the delivery date. If shipment has been agreed, delivery periods and dates refer to the point of time when the goods are handed over to the forwarding agent / freight carrier / other third party designated to perform the shipment.
4. The seller assumes no liability for delivery delays insofar as they have been caused by force majeure or other events (e.g., difficulties in sourcing materials or energy; industrial action; legitimate lockouts; difficulties in procuring the necessary official approvals; official activities; or missing, incorrect or late deliveries from upstream suppliers) unforeseeable at the time of contract conclusion and which the seller is not responsible for. In case of temporary hindrances, the delivery and performance periods are extended or postponed by the duration of the hindrance plus a reasonable starting period.
5. The seller is entitled to partial deliveries and partial performances at any time unless otherwise agreed in writing.

Sect. 5 Transport, Default of Acceptance

1. The seller is entitled but not obligated to insure deliveries on the customer's behalf and account.
2. In case of transport damage, the customer is to immediately initiate a collection of the state of affairs with the responsible bodies and notify the seller.
3. If the customer fails to accept delivery when offered by the seller or otherwise culpably breaches other obligations to cooperate, the seller is entitled to claim compensation for any damages they incur including any additional expenses. Claims and rights extending above and beyond this remain reserved.

Sect. 6 Liability for Material Defects

1. Statutory claims for defects on the part of the customer assume that they have correctly fulfilled their inspection and reproof obligations pursuant to Sect. 377 of the German Civil Code. Objections to visible defects, in particular an incomplete delivery, can only be considered within three working days since receipt of the goods.
2. The contractually agreed composition characteristics are authoritative in determining the absence of defects of the delivered goods. The customer assumes liability for the correctness of the documents they have provided, in particular for drawings and samples.
3. In case of material defects of the delivered goods, the seller is, at their discretion, entitled to subsequent fulfilment by removing the defect or to deliver new goods without defects. In the case of subsequent fulfilment, the seller is obligated to bear all required, proportional expenses associated with the subsequent fulfilment, in particular transport, infrastructure, labour, and material costs, insofar as these are not increased by the fact that the purchased item has been relocated to somewhere other than the company headquarters of the customer.
4. If the legal requirements are met, the customer is entitled to withdraw from the contract or to demand a reduction of the purchase price.
5. If the seller was culpable for the defect, the customer may claim damages under the prerequisites defined in Sect. 8.

Sect. 7 Liability for Defect of Title

1. The seller has to deliver goods that are free from the rights of third parties existing according to German law or according to the law of the country where the customer's headquarters are located, and which they were aware of or could not have been unaware of.
2. If the seller violates this obligation, the seller is to modify or exchange the delivery item at their discretion and cost so that the rights of third parties are no longer violated while the delivery item still fulfils its contractually agreed functions. If the seller fails to do so within a reasonable period determined by the customer, the customer is entitled to withdraw from the contract or to demand a reduction of the purchase price.
3. Any claims for damages are subject to the restrictions set out in Sect. 8 of these general sales and delivery terms.
4. In case of a violation of the rights of third parties, the supplier's obligations named in Sect. 7 are conclusive and subject to the regulations in Sect. 8. They only apply if
 - the customer immediately informs the seller of the claimed rights of third parties;
 - if all the defensive action, including out-of-court settlements, is reserved for the seller;

Sect. 8 Other Liabilities

1. The seller's liability for damages, regardless of the legal reason, in particular from impossibility, delay, poor delivery, other contractual violations and tort depends on the following regulations.

2. The seller assumes liability according to statutory provisions
 - in case of intent or gross negligence;
 - for injuries to life, body and health;
 - compliant with the Product Liability Act; and
 - in case of malicious silence with regard to a defect or a defect the absence of which has been warranted.
3. In case of the violation of a duty which is essential for achieving the contractual purpose and which seller has violated neither by intent nor by gross negligence, the seller assumes liability for the contractually typical, foreseeable damage.
4. The seller bears no further liability.

Sect. 9 Right to Cancellation for Cause in Case of Ongoing Obligations

In case of ongoing obligations, the seller has the right to cancellation for cause without notice according to Sect. 314 BGB, in particular if

- a. the industrial property rights of third parties, which constitute the basis for production, have been violated, or applications for industrial property rights failed to result in the granting of that property right;
- b. the contractual products, including property rights, cannot be marketed due to a legal or legally binding injunctive ban;
- c. a certification required for marketing the contractual products was withdrawn or revoked, or not granted or renewed otherwise by the appointed agencies or notified bodies;
- d. despite a written warning, one of the contractual partners has violated essential contractual duties, namely, but not limited to, failed to stop third parties from aggressing property rights that form the basis of the production process or delivery products manufactured by violating third party property rights;
- e. if insolvency proceedings have been commenced concerning the assets of one contractual partner or not commenced due to lack of assets or if the other contractual partner has filed for bankruptcy.

Otherwise, Sect. 314 BGB applies, provided that a written warning must at least be made in text form in order to become legally valid.

Liability for damages due to cancellation for cause is excluded if the cancelling party invokes a reason according to Para. (9) a)–c) and was unable to foresee the arrival of the result constituting the cause.

Sect. 10 Limitation

The limitation period for claims from material defects and defects of title is one year from the transfer of risk. For claims for damages according to Sect. 8 Para. 2, the statutory periods apply. They also apply in case of a supplier regress according to Sections 478, 479 BGB.

Sect. 11 Retention of Title

1. The seller reserves the title to the delivered goods until all payments from the business relationship with

the customer have been received. If the customer behaves contrary to the contract, in particular in case of late payments, the seller is entitled to demand the return of the reserved goods. A return of reserved goods to the seller is a withdrawal from the contract.

2. The customer is, however, entitled to resell the reserved goods during the course of ordinary business as long as they fulfil their obligations arising from the business relationship in a timely manner; the customer is, however, not entitled to seizure or security transfer of the reserved goods. The customer assigns to the seller all claims arising from reselling to their buyers or third parties. The seller accepts the assignment. The customer may collect this demand even after the assignment. The seller's authority to collect the demand themselves remains unaffected by this. However, the seller undertakes not to collect receivables while the customer meets their payment obligations from the collected profits; does not fail to pay in due time; and has not applied to file for insolvency proceedings; or has ceased to pay. If this is the case however, the seller may demand that the customer states the assigned demands and their debtors, provides all required information for collection, hands over the associated documents and informs the debtors about the assignment.
3. Processing or reshaping the reserved goods by the customer is always carried out on the seller's behalf. If the reserved goods are processed with other objects not belonging to the seller, the seller acquires co-ownership of the new goods in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other processed objects at the time of processing.
4. If the reserved goods are inseparably joined or mixed with other objects not belonging to the seller, the seller acquires co-ownership of the new goods in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other joined or mixed objects at the time of joining or mixing. If joining or mixing takes place in a fashion that leads to the item of the customer being considered the main item, it is considered agreed that the customer transfers pro rata co-ownership to the seller. The customer retains the sole ownership or co-ownership for the seller of the property that so arises.
5. Incidentally the same applies to the item that has been created by processing, joining or mixing as for goods supplied under reservation.
6. The customer is to immediately inform the supplier, and hand over to them, the documents necessary for an intervention, about the debt enforcement of third parties on the goods delivered with reservation or on the demands assigned to the seller or on other securities.
This also applies to other types of impairment.
7. The seller undertakes to release the securities to which they are entitled upon the customer's demand to the appropriate extent if the realisable value of the securities exceeds the demands to be secured by more than 20%. The seller is free to determine the selection of securities to be released.

Sect. 12 Concluding Provisions

1. The customer declares their consent that the seller may store the customer data received in connection with the business relationship for the purpose of the business relationship and may transmit the data, insofar as is required for contract fulfilment, to third parties (e.g., for credit assessment; to insurers; for notifications according to MPG).
2. The customer's claims may only be assigned with the seller's written consent.
3. The seller declares to comply with the regulations arising from the Minimum Wage Law (MiLog).

4. The customer is obligated to comply with the laws of the applicable jurisdiction(s); in particular, with the regulations arising from the Minimum Wage Law (MiLog), if applicable. In particular, the customer is to align their actions with the guidelines and recommendations of the United Nations' Global Compacts.
5. The exclusive place of jurisdiction for all disputes arising out of or in connection with this contractual relationship is, wherever permissible, Rottweil, Germany.
6. The right of the Federal Republic of Germany applies. The system of international private law and of the UN law on the sale of goods (CISG) are excluded.
7. Should one or more provisions of these T&Cs become ineffective, this does in no way affect or impact the validity and enforceability of the remaining clauses. In that case, the parties undertake to replace the ineffective provision by a legally effective provision coming as close as possible to the provisions' economic intentions. The same applies in the event of any regulation gaps.