

# **General Terms and Conditions of Delivery and Sale of Löwenstein Medical GmbH & Co. KG, Bad Ems**

## **1 General**

- 1.1 The following conditions of sale and delivery shall apply exclusively to all the goods we supply, our services and quotes – including those to be delivered in future – in the business dealings between the customer (purchaser) and Löwenstein Medical GmbH & Co. KG (vendor) if the purchaser is a merchant within the meaning of Section 14 of the German Civil Code.
- 1.2 We hereby object to any differing conditions of the purchaser; they will be deemed to not have been accepted, including the period of order execution. Other agreements, in particular assurances, amendments, and ancillary agreements, shall only be valid if we declare our express consent to them in writing, to include the reproduction of a signature of the name or otherwise in accordance with Section 126b of the German Civil Code.

## **2 Quotes and Orders**

- 2.1 Our quotes, also those contained in prospectuses, advertisements and similar, as well as pricing information and delivery deadlines, are non-binding and subject to change at all times. Technical changes and changes to shape, colour, or weight shall be permitted within reasonable limits. The description in the vendor's quote is deemed to have been agreed upon as the overriding description of the goods and is supplemented by the manufacturer's product description.
- 2.2 We request that orders are made in writing, to include the reproduction of a signature of the name or otherwise in accordance with Section 126b of the German Civil Code.
- 2.3 The contract will not come into effect until confirmed by us in writing, to include the reproduction of a signature of the name or otherwise in accordance with Section 126b of the German Civil Code. If no confirmation is issued, the contract shall in all cases come into effect upon delivery of the goods, which will include our invoice.

## **3 Delivery, Delivery Deadlines and Performance Deadlines**

- 3.1 If delivery has not been agreed and no special arrangements have been made, the purchaser is required to assume responsibility for ordered goods no later than two working days after notification that they have been made available. Goods in stock and goods sold at the vendor's warehouse shall be deemed to have been supplied upon the date of conclusion of the contract if the vendor has informed the purchaser that the respective goods are in stock.
- 3.2 The risk of accidental destruction or deterioration of the goods shall transfer to the purchaser upon handing over the goods to the purchaser. If the goods are shipped, the goods shall be transferred to the purchaser upon their consignment to the freight forwarder, the carrier, or to any other person or institution designated to ship them. At our option, shipment shall be made via carriage, freight forwarding, post or similar from our plant in Bad Ems, Germany, or ex-warehouse from our branches at the expense of the purchaser. If we are required to send the goods using a certain mode of shipment, the purchaser shall be invoiced for the resulting charges even if we would normally deliver them freight-free to the receiving station.
- 3.3 If a delivery or performance deadline is agreed, this shall begin on the date the contract is concluded but not before any agreed advance payment is received by us

from the purchaser. To comply with the delivery or performance deadline, it shall be sufficient to make the goods available at the vendor's premises or, accordingly, if shipping has been agreed, to dispatch the goods in a timely fashion.

- 3.4 If circumstances beyond our control such as Acts of God, sovereign intervention, import or export bans, industrial action occur, the delivery or performance deadline shall be extended appropriately, including cases of existing delivery or performance delays.

If such delays should lead to postponement of performance of more than three months, the purchaser can cancel the contract after setting an appropriate subsequent deadline in accordance with clause

3.5. We shall also be entitled to cancel the contract if events of this nature should make delivery or performance permanently impossible. Where delays are permanent, the purchaser shall also be entitled to cancel the contract. We shall immediately notify the purchaser of the impediment to delivery and if we cancel the contract we will reimburse any payments made. These provisions shall also include shortfall or late supply to ourselves in the case that we cannot be held responsible for the shortfall or the delay.

- 3.5 Failures to comply with delivery dates or delivery deadlines shall entitle the purchaser to cancel the contract if an appropriate subsequent deadline of at least 14 days has been set by the purchaser with which we have failed to comply. Any subsequent deadline must be made in writing.
- 3.6 If the purchaser is not able to accept the goods within two working days after they have been made available (see clause 3.1) for reasons for which he is responsible, the purchaser shall be in default of acceptance and the risk shall pass to the purchaser after two days upon notification that the goods are available (clause 3.1, p. 1) or in stock (clause 3.1, p. 2).
- 3.7 In cases of transport damage, obvious defects are to be notified to the carrier in writing immediately. Correspondingly, clause 4.1 shall apply. Notification is to be sent to us without delay together with a written description of the damage.
- 3.8 In the case of customised products manufactured according to the special instructions from the purchaser, the purchaser shall accept all consequences resulting from any breach of third-party industrial property rights; in particular, the purchaser shall exonerate the vendor from any third-party claims.
- 3.9 Partial performance is permitted within the delivery periods specified by us provided this does not result in any disadvantages to the purchaser.

#### **4 Notice of Defects, Warranties**

- 4.1 Section 377 of the German Commercial Code shall apply provided that, if Subsection 1 of the Code applies, the defect must be notified within two weeks following delivery to the purchaser. If Subsection 3 of the Code applies, the defect must be notified within two weeks after the defect has been detected.
- 4.2 The option granted in Section 439, Subsection 1 of the German Civil Code shall apply to us. Costs of repairing defects incurred due to the purchaser taking the item purchased to a place other than the place of performance shall be borne by the purchaser. We may, at our option, also repair the defects at the purchaser's premises.
- 4.3 If assembly instructions should contain errors, we shall only be obliged to supply error-free assembly instructions; and only if the item has not been assembled correctly.
- 4.4 In deviation from Section 438 Para 1 No. 3 of the German Civil Code, the general

limitation period for claims from material and title defects shall amount to one year from delivery. If an acceptance is agreed, the statutory limitation shall commence on acceptance. However, if the item involves a construction or an object, which has been used commensurate with its customary manner of use for a construction and which has given rise to its defectiveness (building material), the limitation period shall amount to 5 years from delivery in accordance with statutory regulations. Statutory special provisions for in rem restitution entitlements of third parties, in the event of fraud of the Seller and for claims in a recourse against the supplier in the case of final delivery to a consumer, shall also remain unaffected.

The aforesaid limitation periods of the sales law shall apply also for contractual and non-contractual compensation claims of the purchaser, which are based on a defect of the item, unless the application of the normal statutory limitation (Sections 195, 199 of the German Civil Code) would result in a shorter statutory limitation in an individual case. The limitation periods of the German Product Liability Act [Produkthaftungsgesetz] shall remain unaffected in any case. Otherwise, the statutory limitation periods shall exclusively apply for compensation claims of the purchaser as per Section 6.

## **5 Prices and Payments**

- 5.1 The prices quoted in our current price lists are valid as of conclusion of the contract, plus the value added tax applicable at the time of performance.
- 5.2 Only undisputed or legally determined counterclaims may be offset. Asserting rights of retention and/or other rights to refuse performance is only permitted if counterclaims are undisputed or have been legally determined.
- 5.3 In cases of arrears of payment or in cases of justified concern that the purchaser is insolvent or his financial position has considerably deteriorated, we shall be entitled to suspend deliveries or, at our option, demand immediate advance settlement of the total balance outstanding including claims not yet due, claims deferred, and claims resulting from bills of exchange. Alternatively, we will demand corresponding security deposits.

If the purchaser fails to fulfil our requests for advance payment or provide security within an appropriate period set by us, we shall be entitled to cancel all contracts. We shall also be entitled to invoice the purchaser for costs incurred by us and for all damages caused.

## **6 Liability**

- 6.1 Liability on the part of the vendor for compensation, regardless of the legal reason but in particular for impossibility of performance, arrears, deficient or incorrect delivery, breach of obligations in contract negotiations and illicit acts, shall, to the extent that this is due to fault, be limited in accordance with this clause 6.
- 6.2 The vendor shall not be liable in cases of minor negligence on the part of his management bodies, legal representatives, employees, or other vicarious agents provided no breach of fundamental contractual obligations has occurred. Fundamental contractual obligations are defined as (i) the obligation to make timely delivery and install the item delivered whose lack of defects that impair its functional capability or usability constitute more than a minor impairment and (ii) obligations to provide advice, protection and due care intended to enable the customer to use the item delivered in accordance with the contract or protect the life and limb of the customer's personnel or his property from major damage.
- 6.3 If the vendor is liable to pay compensation on the merits of the claim in accordance

with clause 6.2, liability shall be limited to the damage that has been foreseen by the vendor upon conclusion of the contract as a possible consequence of a breach of contract or the damage he should have foreseen by exercising the usual degree of due care and attention. Also, indirect and consequential damages resulting from defects to the items delivered shall only be compensated if such damages are to be typically expected during the intended use of the item delivered.

- 6.4 In cases of liability for minor negligence, the obligation on the part of the vendor to pay compensation for physical damage and resulting subsequent financial loss shall be limited to an amount of EUR 5 million per claim (in accordance with the current sum assured in its product liability insurance policy or liability insurance policy), even if a breach of fundamental contractual obligations has occurred.
- 6.5 The abovementioned liability exclusions and limitations shall apply to the same extent to the benefit of the vendor's management bodies, legal representatives, employees, and other vicarious agents.
- 6.6 If the vendor provides technical information or acts as an advisor and the information and advice are not part of the performance the vendor is obliged to deliver under the terms of the contract, this information and advice shall be provided free of charge and shall exclude all liability.
- 6.7 In accordance with the German Product Liability Act or other legally binding grounds for liability, the restrictions in this clause 6 shall not apply to the vendor's liability for deliberate actions, guaranteed inherent characteristics of the product, death, physical injury, or harm to human health.

## **7 Reservation of Title and Liens**

- 7.1 The following agreed retention of title is used to secure ownership (title) of all respective current and future claims by the vendor against the purchaser resulting from the delivery relationships existing between the partners to the contract (including balance claims resulting from a current account relationship restricted to this delivery relationship).
- 7.2 The goods delivered by the vendor to the purchaser shall remain the property of the vendor until all secured claims have been satisfied in full. The goods and the goods designated as goods subject to any retention of title replacing them according to the following provisions are referred to below as "reserved goods".
- 7.3 The purchaser shall store the reserved goods for the vendor free of charge.
- 7.4 The purchaser is entitled to process and sell the reserved goods in the normal course of business until reservation of title is enforced (clause 7.9). Pledging and assignment are not permitted.
- 7.5 If the reserved goods are processed by the purchaser, it is agreed that they will be processed on behalf of and on account of the vendor in his capacity as manufacturer and that the vendor will acquire direct ownership or – if the goods are processed from materials belonging to several owners or if the value of the processed item is higher than the value of the reserved goods – that the vendor will acquire joint ownership (co-ownership) of the newly-created item as a proportion the value of the reserved goods in relation to the value of the newly-created item. Should the vendor acquire no such

ownership, the purchaser transfers his future ownership or – in the abovementioned relationship – ownership of the newly-created item immediately to the vendor as security. If the reserved goods are connected to or inseparably combined with other items and if one of the other items is to be regarded as the main item, the vendor shall, provided he owns the main item, transfer joint ownership of the unitary item pro rata to the purchaser at the proportion referred to in Sentence 1 above.

- 7.6 If the reserved goods are resold, the purchaser assigns here and now by way of security to the vendor the resulting claim against the subsequent purchaser; this will be a pro rata claim in the case of joint ownership by the vendor of the reserved goods according to his co-ownership share. The same applies to other claims arising in place of the reserved goods or which otherwise arise in respect of the reserved goods, such as insurance claims or claims resulting from wrongful acts in cases of loss or destruction. The vendor revocably authorises the purchaser to collect the claims assigned to the purchaser on his (the vendor's) own behalf. The vendor may only revoke this authority to collect in the case where reservation of title is enforced.
- 7.7 If third parties gain access to the reserved goods, in particular as a result of pledging, the purchaser will immediately inform these parties that the goods are owned by the vendor and will inform the vendor of this access in order to enable the vendor to enforce his rights of ownership. If the third party is not able to reimburse the vendor for the related court or out-of-court expenses incurred, the purchaser will be liable to the vendor for these expenses.
- 7.8 The vendor will release the reserved goods and those items or claims replacing them if their value exceeds the amount of the secured claims by more than 50%. The choice of the items to be released will be made by the vendor.
- 7.9 If the vendor cancels the contract in case of actions in breach of the contract by the purchaser (reservation of title), in particular due to arrears of payment, the vendor will be entitled to request the return of the reserved goods.

## **8 Data Storage**

The purchaser is aware that the vendor will store data arising from the contractual relationship in accordance with Section 28 of the German Federal Data Protection Act for data processing purposes and reserves the right to transmit the data to third parties if this is necessary in order to fulfil the contract.

## **9 Data Protection Storage**

We need the data we collect from you to fulfill contractual obligations. Your personal data are not transmitted to third parties for any purpose other than for the fulfillment of the stated purpose of the contract. As soon as the purpose of the data processing no longer exists, we will delete your data. Legal retention requirements apply.

You are entitled to the rights of data subjects pursuant to Articles 15 through 23 of the General Data Protection Regulation (GDPR). That means that you have the right to request information about your data and ask for rectification as needed. You have the right to have your data erased and to object to their processing. You also are entitled to demand restriction of their use and portability. Furthermore, you can lodge a complaint with your supervisory authority. At any time you can come to us with your issues or contact our data protection officer: [datenschutz@hul.de](mailto:datenschutz@hul.de). More information about data protection as per Articles 13 and 14 GDPR can be found at [www.hul.de](http://www.hul.de).

## **10 Place of Fulfilment, Applicable Law and Place of Jurisdiction**

- 10.1 The place of fulfilment for deliveries and payments is Bad Ems, Germany.
- 10.2 The Law of the Federal Republic of Germany shall apply, with the exception of the provisions of the conflict of law. The provisions of the UN Convention on the International Sale of Goods shall not apply.
- 10.3 If the purchaser is a merchant, a legal entity in public law, or a special public fund in public law or if he has no general legal venue in the Federal Republic of Germany, the legal venue for any and all disputes arising from the business relationship between the vendor and the purchaser shall be bad Ems, Germany. Furthermore, the vendor is entitled to institute legal action at the general legal venue of the purchaser. Binding legislative provisions concerning exclusive legal venues remain unaffected by this provision.

## **11 Final Provisions**

Should individual provisions of these Conditions be or become wholly or partly void, invalid and/or unworkable, the validity of the remaining provisions shall not be affected. Void, invalid and/or unworkable provisions are to be replaced with valid and workable provisions that come as close as possible to the desired commercial purpose. The same shall apply if these Conditions contain omissions. The German-language version of these Conditions shall be authoritative. Any versions hereof in other languages are merely translations.

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