

general commercial conditions

for use in relation to companies, legal entities under public law or public funds

The following terms and conditions shall apply to all future deliveries, services and quotations in relation to the buyer, even if no express reference to these terms and conditions has been made. Any contrary terms and conditions of purchase of the buyer shall not apply, and shall be binding upon frasco only if they have been expressly accepted by frasco. Even if frasco makes reference to any letter containing, or referring to, terms and conditions of the customer or any third party, this shall not constitute consent to the application of such terms and conditions. If any individual provisions are or become ineffective, the other terms and conditions shall not be affected hereby.

Insofar as the products marketed by frasco are medical devices under Section 3 (1) Medizinproduktegesetz [Medical Devices Act], the buyer shall comply with all applicable statutory provisions and secondary provisions (statutory orders, directives) relating to the installation, operation and use of medical devices and relating to the recording, assessment and prevention of risks in respect of medical devices in circulation or operation.

1. Quotation and Conclusion of Contract

- a) Quotations shall be subject to change without notice, to availability and to prior sale.
- b) Orders shall become binding only upon frasco's written acknowledgement of the order.
- c) Amendments and supplements to the agreement made, including these General Terms and Conditions of Business, shall only be effective in writing.

2. Prices

- a) The selling prices quoted in the respective latest version of the price list shall apply. Prices shall be subject to change without prior notice. However, a minimum order value of € 50.00 net shall be charged even if the purchase order is below this value
- b) Selling prices shall be in € net, ex works Teltang and exclude packaging, insurance, freight charges, customs duty and incidental import levies. Value-added tax shall be added at the respective statutory rate, insofar as applicable.
- c) In addition to the aforementioned amounts, a handling fee of € 10.00 net shall be charged in the case of any order value below € 200.00 net. This handling fee shall not apply to order values above € 200.00 net.

3. Obligation to deliver/take delivery

- a) Periods and deadlines promised by frasco in respect of delivery or performance shall always only be approximate, unless a fixed period or deadline has been expressly guaranteed or agreed upon. Compliance with such deadlines and periods shall always be conditional upon the timely receipt of all documents essential for carrying out the order, as well as any down payment agreed upon. Otherwise, the deadlines and periods for delivery or performance shall be appropriately extended. Section 10 shall apply as regards the provision of material by the buyer.

In cases where shipment has been agreed upon, the periods and deadlines shall relate to the time of hand-over to the forwarder, carrier or any other third party appointed to carry out transportation.

- b) If frasco defaults on delivery or performance, or if for whatever reason it becomes impossible for frasco to deliver or perform, frasco's liability shall be limited to compensatory damages under the terms of Section 7.
- c) frasco shall be entitled to make sub-deliveries, if such sub-delivery can be used by the buyer for the purpose intended under the contract, if it has been ensured that the residual goods ordered will be delivered, and if this does not involve any substantial extra work or cost for the buyer, unless frasco agrees to assume such extra cost. Moreover, deviations of up to +/- 10 % from the quantities ordered shall be permissible.
- d) If the buyer fails to fulfil its obligation to take delivery despite a reminder, frasco shall be entitled, without prejudice to its other rights, to sell the delivery item on the open market.
- e) Except where a special agreement has been made, shipments of samples shall be invoiced after 30 days, calculated from the date of the delivery note.
- f) Goods returned for reasons not imputable to frasco shall be accepted only by prior arrangement and only if the goods are in faultless condition and in their original packaging, and if postage has been paid. frasco hereby reserves the right to decide in any individual case whether to accept returned goods. There shall be no entitlement to return custommade goods or goods delivered more than 3 months previously. Section 6 shall remain unaffected by this provision.

Credit notes shall be issued only if the original invoice and the original delivery note have been enclosed with the goods returned. In the case of a credit note, a handling fee of € 50.00 net and an additional resorting fee of 20 % of the order value shall be charged.

- g) Any events of force majeure shall entitle frasco to postpone delivery by the duration of the hindrance plus a reasonable start-up period, or to wholly or partly rescind the order on account of the part of the order not performed, provided that such disruptions are of temporary duration. Strike, lockout or unforeseeable circumstances, e.g. business disruptions, that make it impossible for frasco to deliver on time despite reasonable efforts shall be deemed to be equivalent to force majeure. Insofar as any aforementioned events make it materially more difficult or impossible for frasco to deliver or perform, and such hindrance is not of temporary duration, frasco shall be entitled to rescind the contract. If, as a result of such delay, it would be unreasonable to expect the buyer to accept delivery or performance, the buyer may rescind the contract by written declaration to frasco forthwith.

4. Packaging, Shipment, Passage of Risk

- a) frasco shall choose the packaging, mode of shipment and method of shipment at its dutiful discretion and in accordance with any and all applicable legal provisions. Packaging material shall be charged at cost price.
- b) frasco shall effect transportation insurance for all deliveries. In any event, insurance costs shall be borne by the buyer. If any damage occurs in transit, confirmation from the relevant post office or forwarder shall be sent to frasco.
- c) Even in the case of delivery carriage paid, the risk shall pass to the buyer as soon as the goods leave the premises of frasco's supplier. If dispatch is delayed through the fault of the buyer, the risk of accidental destruction shall already pass to the buyer upon notification of readiness for shipment.

5. Retention of Title

- a) The goods delivered (goods under retention of title) shall remain frasco's property until all claims existing now or in future against the buyer have been satisfied. In the case of a running account, such retention of title shall be deemed to be security for the balance owed by the buyer. During the period of retention of title, the buyer shall not be entitled to pledge the goods or to assign the same to third parties as security.
- b) In case the goods are on-sold, the buyer hereby assigns to frasco, until all frasco's claims have been satisfied, the proceeds receivable from such on-selling, as well as any other claims that the buyer is entitled to against its customers as result of such on-selling (particularly tort claims and claims to insurance benefits). frasco hereby accepts this assignment. At frasco's request, the buyer shall provide frasco with all information and documents necessary for asserting frasco's rights against the buyer's customers. frasco hereby revocably authorises the buyer to collect in the buyer's own name the claims assigned to the seller. frasco shall revoke such authorisation to collect only in the event that the goods are realised as security.
- c) Any attachment or seizure of goods under retention of title by third parties shall be reported to frasco forthwith. All intervention costs ensuing therefrom shall, in any event, be borne by the buyer.
- d) frasco shall release goods under retention of title, if and insofar as their value exceeds by more than 20 % the sum of the claims secured. In this respect, frasco shall be free to choose which goods to release.

6. Alterations, Liability for Defects

- a) frasco hereby reserves the right to alter the design or manufacture of its products in keeping with technical progress, or to completely remove products from its product range, without prior notice. Information provided in prospectuses, advertising mail, advertisements or demonstration items shall not constitute agreed qualities. This shall apply also to illustrations, drawings and size- or weight-related data enclosed with quotations, unless these are expressly referred to as binding.
- b) Any agreement on certain features of the goods or on the production of moulds must be in writing. Any reference to technical standards shall serve as a performance specification.
- c) Any notification of obvious defects shall be made forthwith upon receipt of the delivery.
- d) If a quality-related defect exists, such defect shall be eliminated, or a replacement shall be provided free of charge, at frasco's option. If such replacement or rectification fails twice, the buyer may assert the statutory warranty claims under these General Terms and Conditions of Business. Parts replaced shall be returned at frasco's request. In any event, warranty claims shall become statute-barred one year after the buyer has received the goods.

7. General Limitations of Liability

- a) In cases where fault is relevant, frasco's liability for compensatory damages on whatever legal basis, particularly on the basis of impossibility, default, defective or incorrect delivery, breach of contract, culpa in contrahendo and tort, shall be limited in accordance with this Section 7.
- b) frasco shall not be liable in cases of ordinary negligence on the part of its organs, statutory representatives, employees or other authorised agents, except where duties material to the contract have been breached. Duties material to the contract are defined as duties that ensue from the nature of the contract and that, if breached, would jeopardise attainment of the purpose of the contract.
- c) Insofar as frasco is liable in principle under Item 7 (b), such liability shall be limited to the loss that was, at the time of contract closure, foreseen by frasco as being a possible consequence of any breach of contract, or that frasco ought to have foreseen at such time by applying the diligence customary in the trade. Additionally, any collateral loss and consequential loss incurred as a result of defects in the item delivered shall be compensatable only insofar as such loss is to be typically expected when the item delivered is used as intended.
- d) In cases of liability for ordinary negligence, frasco's obligation to compensate for property damage and any further pecuniary loss resulting therefrom shall be limited to an amount of € 5,000,000.00 per occurrence of damage or loss, even if duties material to the contract have been breached.
- e) The above exclusions and limitations of liability shall apply to the same extent in favour of frasco's organs, statutory representatives, employees and other authorised agents.
- f) The limitations under this Section 7 shall not apply to any liability of frasco based on intentional misconduct, qualities guaranteed, mortal injury, physical harm or health damage or claims under the Produkthaftungsgesetz [Product Liability Act].

8. Payment Terms

- a) All payments shall be made in € (euros) exclusively to frasaco. A cash discount shall be allowed only if all invoices due earlier have been settled.
- b) Invoices from frasaco shall be due and payable within 30 days of the invoice date, if nothing to the contrary has been agreed upon in writing, and the invoicee is based in the Federal Republic of Germany.
- c) If the invoicee is based outside of the Federal Republic of Germany, delivery shall be subject to advance payment, unless otherwise agreed upon in writing. Payments in foreign currency shall be credited at the respective current € exchange rate. In this respect, the buyer shall bear the exchange rate risk. Exchange rate differences, bank charges and the like shall be passed on to the buyer, and shall be settled forthwith.
- d) If the agreed payment deadline is exceeded, interest at the rate of 8 % above the respective valid base interest rate shall be charged per annum in accordance with Section 247 BGB [German Civil Code].
- e) frasaco hereby reserves the right to refuse to accept cheques and bills of exchange. Checks and rediscountable bills of exchange shall be accepted only on account of performance. All costs in connection therewith, particularly discounting charges, shall be borne by the buyer.
- f) The buyer shall not be entitled to set off against claims of frasaco or assert a right of retention, unless the buyer's claims are undisputed, have been determined by a final and non-appealable court judgement or are at the final judgement stage.
- g) Any culpable non-compliance with payment terms, such as default in payment for example, or any circumstances giving rise to serious doubts about the buyer's credit-worthiness, shall cause all frasaco's claims to fall due immediately.

9. Moulds and Tools

- a) The price for moulds shall also include the costs for one single supply of samples, not however the costs for testing and machining devices, nor for alterations requested by the buyer. Costs for any further supply of samples that are imputable to frasaco shall be borne by frasaco.
- b) frasaco is and shall remain the owner of all moulds made for the buyer by frasaco itself or by any third party contracted by frasaco. As long as the buyer meets its obligations to pay and take delivery, moulds shall be used only for orders placed by the buyer. frasaco shall be obliged to replace such moulds free of charge only if such moulds are essential for fulfilling an output quantity guaranteed to the buyer. frasaco's obligation to retain such moulds shall lapse two years after the last delivery of parts made out of such mould, and after prior notification of the buyer.
- c) If it is agreed that the buyer shall become the owner of such moulds, title shall pass to the buyer upon payment of the purchase price for the moulds. Instead of handing over the moulds to the buyer, frasaco shall be under an obligation to retain the moulds. frasaco shall mark the moulds as externally owned property, and shall, at the buyer's request, insure such moulds at the buyer's expense.
- d) In the case of moulds owned by the buyer and/or made available by the buyer on loan, frasaco's liability as regards retention and care shall be limited to the level of diligence that it applies in its own affairs. Costs for servicing and insurance shall be borne by the buyer. frasaco's obligations shall lapse, if the moulds have not been collected by the buyer within a reasonable period after completion of the order and a corresponding request to the buyer. As long as the buyer has not fully met its contractual obligations, frasaco shall, in any event, be entitled to retain the moulds.

10. Material Provided by the Buyer

- a) If material is to be provided by the buyer, such material shall, at the buyer's own expense and risk, be supplied to frasaco in due time and faultless condition with an appropriate quantity surplus of at least 5 %.
- b) If these prerequisites are not met, or not met in due time, the delivery period shall be reasonably extended. Except in cases of force majeure under Item 3 (g), the buyer shall bear all resulting extra costs, including costs in connection with interruptions in manufacture.
- c) frasaco shall assume no responsibility for the quality or composition of material provided by the customer. The customer shall be solely responsible for ensuring that the raw materials provided are absolutely suitable for production, and that they satisfy the statutory provisions. frasaco shall not carry out any examination or analysis of the material provided by the customer, unless this has been expressly agreed upon in writing.

11. Property Rights

- a) If frasaco is required to deliver on the basis of drawings, models or samples, or using parts provided by the buyer, the buyer shall be accountable that no third-party property rights are infringed as a result thereof. frasaco shall point out to the buyer all such rights known to it. The buyer shall indemnify frasaco against all third-party claims, and shall compensate for any loss incurred. frasaco shall be entitled, without this requiring any examination of the legal position, to temporarily discontinue work, if a third party pleading a property right belonging to it prohibits frasaco from manufacturing or delivering.

- b) All drawings and samples sent to frasaco for the purpose of submission of a quotation shall be returned to the buyer at the buyer's request, or shall otherwise be destroyed three months after the submission of a quotation, if the buyer has not accepted the quotation in due time.
- c) frasaco shall be entitled to copyrights and any industrial property rights in the models, moulds, devices, drafts and drawings made by frasaco or by third parties on its behalf.

12. Principle of Separability

If the buyer is a medical institution or a member of a healthcare profession, frasaco and the buyer hereby affirm that the decision to purchase is based solely on quality and price. The procurement and the marketing of the goods by frasaco shall be subject to general competition in terms of price and performance. The buyer hereby affirms that no other considerations have been relevant, and that there are no other reasons for its decision to purchase (e.g. gratuities to the buyer).

13. Place of Performance, Place of Jurisdiction and Applicable Law

- a) For both Parties hereto, Tett nang shall be the place of performance for delivery and payment. Tett nang shall be the place of jurisdiction for both Parties hereto. However, frasaco hereby reserves the right to bring an action before the court having jurisdiction over the buyer's registered office, where necessary.
- b) The laws of the Federal Republic of Germany shall exclusively apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.