

GENERAL TERMS AND CONDITIONS

of RUDOLF Medical GmbH + Co. KG, Fridingen, Germany



Hereinafter, Rudolf Medical GmbH + Co. KG is typically referred to as “we”, “our”, “us”, etc.



With “Buyer”, “you”, etc. we refer to the “distributor”, “customer” or “recipient of shipments, goods and services”.

The terms below apply to all of our current and future offers as well as to all contracts that are closed with our company. These General Terms and Conditions apply exclusively. The buyer’s general business terms and conditions only apply to the extent that we have provided our express written consent for this. We do not acknowledge our buyers’ general business terms and conditions. Our General Terms and Conditions only apply to entrepreneurs in terms of § 14 BGB (German Civil Code), legal entities of public law and public-law special funds.

1. Offer and Contract Conclusion

- 1.1. Our offers are non-binding and free of any obligation. Declarations of acceptance and all orders require our written confirmation in order to be legally valid. This also applies to amendments, modifications and supplemental agreements. Quantities listed as “ex stock” are subject to prior sale.
- 1.2. A contract will only be considered as having been concluded upon granting of our written order confirmation or upon delivery. Solely our order confirmation is authoritative for the subject matter of the contract. All agreements that were made between us and the buyer for the purpose of executing this contract are stipulated in writing in this contract.
- 1.3. Our information regarding the object of delivery or service (e.g., weights, dimensions, practical values, tolerances and technical data) as well as our illustrations of the same (e.g., drawings, graphics) are only indicative values, unless usability requires precise conformity for the contractually intended purpose. Our information and illustrations are not constituent elements but rather descriptions or designations of the delivery or service. Standard deviations and deviations that result from legal requirements or that represent technical improvements, as well as the replacement of components by comparable parts, are permitted to the extent that this does not negatively impact usability for the contractually intended purpose.
- 1.4. We retain the intellectual property rights to all graphics, drawings, calculations and other documents. This also applies to written documents that are designated as “confidential”. The buyer requires our express written consent to forward these documents to third parties.
- 1.5. If contracts subject to confirmation in writing or via electronic communication are concluded, then the content of our confirmation letter is authoritative, unless the recipient immediately objects to this.

2. Prices and Payment Terms

- 2.1. Our prices are in EURO, excluding the legal value added tax (VAT), ex works (EXW Incoterms® in its respective current version). If the order value is less than EUR

250.00 (before VAT), we reserve the right to reject such order unless the buyer maintains a regular account with a turnover exceeding EUR 20,000 annually with us.

- 2.2. In the absence of special agreements, payment is due immediately. However, we retain the right to request an acceptable pre-payment at any time.
- 2.3. If the buyer is in default of payment for more than four weeks for receivables that comprise at least 20% of our receivables from the buyer, then we retain the right to declare all receivables that are based on the same legal relationship due immediately. If, after contract conclusion, we become aware of circumstances that could significantly decrease the buyer's creditworthiness and which endanger the payment of our open receivables by the buyer from the respective contractual relationship (including from other individual orders to which the same framework contract applies), then we are entitled to only make outstanding deliveries or render outstanding services against prepayment or collateral security. In addition, we retain the right to the prior sale of goods that were made available upon demand. This will not affect further legal rights.
- 2.4. In the event of a default of payment, we are entitled to charge interest on late payments in the amount of 8% p.a. higher than the respective prime lending rate according to § 288, Section 2 BGB (German Civil Code). The debtor will be in default when he or she does not remit payment after having received our reminder, which will be sent after the purchase price becomes due. Irrespective of this, the debtor will be in default if he or she does not pay by the calendar date that is stipulated in the contract. The legal regulation according to which the debtor is also automatically in default 30 days after an invoice is due remains unaffected. In addition, after a default, EUR 10.00 will be charged per reminder, unless higher costs have been incurred. "Due date" respectively "last date of payment" is referring to the payment being credited to the account of RUDOLF Medical and available to RUDOLF Medical. Initiating a payment to the due date does not fulfill the contractual duty.
- 2.5. Prepayments and Collateral Security: If, after contract conclusion, the buyer experiences a significant deterioration of his financial circumstances or if there are justified doubts about the buyer's willingness to pay, then we are entitled to demand either prepayments or collateral security (buyer's choice) for the buyer's deliveries.
- 2.6. We may require a prepayment or collateral from buyers who are unknown to us as well as for custom-made products.
- 2.7. Offsetting by the buyer is permitted solely in connection with unchallenged and legally binding claims. Counterclaims that have a reciprocal (synallagmatic) relationship to our claim are excepted from this exclusion of set-off.
- 2.8. Each contracting party will bear the bank fees that they incur. All of the costs associated with the security for payment (e.g. bank credits, L/C costs) will be passed on to the buyer.
- 2.9. We reserve the right, prior to delivery of the products, to change prices accordingly (providing written notification) if changes occur (= cost increases and cost decreases) to raw material costs or other production costs following conclusion of the contract. We will provide evidence for any cost increases upon the buyer's request. The customer can reject the price change in writing within five (5) working days of delivery of the notification. We are then entitled to choose whether to deliver the products to the customer at the previously agreed price or to terminate the contract, with regard to the outstanding delivery quantities, in writing and with immediate effect.

3. Delivery Dates

- 3.1. Delivery dates are based on the agreements agreed upon in individual cases. The delivery dates are non-binding. The delivery date will only be binding if it has been expressly agreed upon in writing. A delivery date has been met if the item for delivery has been handed off for transport or readiness for shipment has been established and communicated. Delivery timescales and dates are valid subject to us receiving correct and punctual deliveries from our own suppliers. Regardless of fault we shall not assume any procurement risk unless this is expressly agreed upon.
- 3.2. If the delivery is delayed due to circumstances that are not caused by us, then the delivery date will be extended by the duration of the impediment. This applies in particular to disruptions in operations that are not caused by us or our suppliers, e.g. interventions by authorities as well as acts of nature. If a binding delivery date is delayed due to such an impediment by more than three months and it is not foreseeable that the delivery difficulty will be remedied by the end of another four weeks' time, then both parties are entitled to withdraw from the contract.
- 3.3. If the buyer is in default of acceptance, then we are entitled to demand compensation for any additional expenditure, including the usual storage costs even when storing the goods in our facility, for the duration of the delay. We are also entitled, after expiration of a reasonable grace period for acceptance, to otherwise dispose of the delivery item and to redeliver to the buyer within an acceptable time frame. The right to assert any further claims shall remain reserved.

4. Delivery, Packaging

- 4.1. Delivery occurs at the expense and risk of the buyer. Any and all transport damage can only be claimed with the deliverer (post office, railroad, freight forwarder, etc.).
- 4.2. The risk transfers to the buyer as soon as the shipment has been transferred to the company carrying out the transport or has left our warehouse for the purpose of shipment. If shipment becomes impossible through no fault of our own, then the risk is transferred to the buyer upon notification of readiness for shipment. The buyer is free to designate a freight forwarder. If no freight forwarder has been designated for the transport by the buyer, then we are entitled to commission the freight forwarder that works for us. Should our freight forwarder's freight costs be higher than those of other freight forwarders, then the buyer will have to bear these costs.
- 4.3. If the buyer does not provide specific shipping instructions, then we are entitled to ship the goods in the best manner at our dutiful discretion.
- 4.4. Upon the written request of the buyer, we will insure the shipment at the buyer's expense and risk against theft, breakage, transport-damage, fire and water damage and other insurable risks.
- 4.5. Partial deliveries are permitted unless this is expressly objected to by the buyer at order placement. Each partial delivery is subject to these general business terms and conditions and permits neither discounts nor payment deferrals.

5. Retention of Title

- 5.1. The goods delivered by us will remain our property until fulfillment of all requirements stemming from the entire business relationship with the buyer.

- 5.2. The buyer is obligated to separately store and designate the goods that are subject to our retention of title. The buyer will insure the goods that are subject to our retention of title against fire, water damage, burglary and theft at his own expense. The insurance policy must be made available to us by the buyer for review if we request this. The buyer will not make any claims against the insurance company in advanced by way security to us.
- 5.3. The buyer must immediately inform us in the event of a third-party's access to goods that are subject to our retention of title. The buyer will bear all costs arising from the rescindment of this access and to the restocking of the goods we delivered.
- 5.4. The buyer is entitled to sell goods that are subject to our retention of title over the regular course of business dealings provided that he is not in default of payment and that he has not concluded a prohibition of assignment with his customer. Pledging and transfer by way of security are not permitted. The buyer assigns all claims to receivables stemming from resale to us as of now and in their full scope by way of security. The buyer will remain authorized to collect these receivables even after the assignment. Our right to collect the receivables ourselves will remain unaffected by this. However, we are obligated not to collect the receivables as long as the buyer has not been in default of payment for at least one week, no application to initiate insolvency proceedings has been submitted and no stoppage of payment is in place. However, if this is the case and if our security interests are at risk due to this, then we can demand that the buyer discloses the assigned receivables and their debtors, gives us all the information necessary for collection, provides us with the associated documents and communicates the assignment to the debtors (third parties). We are entitled to notify third parties of the assignment ourselves.
- 5.5. If the law of the country in which the delivery item is located does not permit a retention of title or assignment of receivables according to section 5.4 or only permits to this to a limited extent, then a corresponding security agreed upon based on this legal system will be applicable. The buyer is obligated to cooperate with all the required measures (e.g. registrations) for implementing the retention of title or other rights that supersede the retention of title as well as the protection of these rights and to bear the costs stemming from this.
- 5.6. If the value of the securities to which we are entitled as per the above provisions exceeds our claims by more than 10%, we shall be obligated to release the excess value upon the request of the buyer. We will select the securities to be released.

6. Claims for Defects

- 6.1. The buyer is obligated to inspect the delivered goods immediately after delivery for material defects, such as quantity, quality and condition and to immediately inform us of any defects or incorrect deliveries. If the buyer does not inform us immediately of all defects that could be detected during a proper inspection, then the goods are considered to have been accepted in regard to the unreported but detectable defect. Claims based on these defects are excluded. Visible defects must be noted on the delivery receipt, and a defect report must be initiated and immediately forwarded to us.
- 6.2. If deliveries or services rendered by us prove to be defective, then we are obligated to eliminate the defect. We will either repair or replace the defective parts as we deem fit. When complaints are based on improper storage, assembly or handling, on use of the goods for purposes other than those intended or on ordinary wear and tear, then

this does not constitute a defect. If the buyer modifies or changes the delivered good or if he has it modified or repaired by a third party without our express prior written authorization, then no claims for defects can be asserted. If subsequent performance fails within an acceptable time frame, i.e. if remediation of defects and replacement delivery is impossible, unacceptable or if these are refused or delayed by an unacceptable time frame, then the buyer can decrease the remuneration or withdraw from the contract. In addition, the buyer can demand compensation for damages in accordance with section 7. Further claims for defects are excluded.

- 6.3. In the event of justified complaints, we are obligated to bear the costs for labor and material required to rectify the defect, provided that these costs are not increased because the contractual object was brought to a location other than the place of fulfillment. If, over the course of defect rectification work done by us we replace the buyer's materials, then the replaced parts will become our property.
- 6.4. If the defect is due to a defective third-party product, then we are entitled to assign our claims for defects against our supplier to the buyers. In this case, a claim cannot be asserted against us due to the preceding provisions until after the buyer has judicially asserted the assigned claims against the supplier without success. The buyer is obligated to immediately inform us of the judicial assertion of the assigned claims and to obtain our consent for all agreements in regard to the assigned receivables.
- 6.5. The statute of limitations for claims for defects is 12 months, calculated from delivery. Claims for damages due to culpable injury to life, body or health, due to culpable violation of significant contractual obligations and due to material defects that were intentionally caused by us or by one of our legal representatives or by a vicarious agent with gross negligence will lapse within the legal deadlines.
- 6.6. The buyer is obligated to guarantee the traceability of the products ordered from us and resold by him for a period of five (5) years for general medical products (class 1 to 2b) and fifteen (15) years for implants (class 3 and higher) from the date of invoicing to the end-user. He guarantees that the Identification/ Marking of the products will remain as it is so that in the event of a detected error, the containment of the defective parts/products/batches is guaranteed.

7. Returned Goods

- 7.1. Returns of non-defective goods delivered by us (hereafter referred to as 'returns') are only permissible if we have consented in writing, prior to the return being sent to us. This consent shall be referred to as a 'return material authorization'. The amount to be repaid and the terms of the return shall be as per the RUDOLF Medical "Return Goods Policy" as available to be viewed on our website www.rudolf-med.com.
- 7.2. The return has to be free for the seller. This means that all costs, such as transport, customs, packaging, insurance, etc. will be borne by the buyer. Should we nevertheless incur any costs for the return, then we will pass these on to the buyer.
- 7.3. We are not liable for returns until they have been received at our premises intact and undamaged.

8. Liability

- 8.1. The seller is liable in cases of malicious intent or gross negligence on the part of the seller himself or of one of the seller's representatives or vicarious agents as well in the event of injury to life, body or health caused by slight negligence in accordance with the law. For the rest, the seller is only liable in accordance with the Product Liability Act or due to the culpable violation of major contractual obligations or if the seller fraudulently concealed the defect or has assumed a warranty for the condition of a delivery item. However, the claim for damages for violation of major contractual obligations is limited to the foreseeable damages related to this contract.
- 8.2. In all other cases, we will be liable if damage has been intentionally caused by us or by one of our legal representatives or by one of our vicarious agents due to gross negligence. However, we are only liable for any foreseeable damages related to this contract that occurred if the damage was not caused intentionally. Liability according to the Product Liability Act will remain unaffected; this also applies to the liability due to culpable injury to life, body or health. In the event of the assumption of a warranty, we will be liable in accordance with the law.
- 8.3. If no deviating provisions have been previously agreed upon, claims for damages against us stemming from breach of duty are excluded.
- 8.4. If we provide – without special remuneration – technical advice and recommendations, this will be based on careful examination; if this advice is not a part of the contractually agreed-upon scope of services owed by us, then all liability for this is excluded. The examination as to whether the ordered goods or the goods recommended by us are suitable for the buyer's intended purpose is the sole responsibility of the buyer.
- 8.5. The buyer will ensure that the requirements stipulated by the Product Liability Act and especially of the Medical Devices Act, are complied with within the area under his control. He will especially ensure that only persons who possess the corresponding technical qualifications will handle the products. He will ensure that our products will not be combined with the products of other manufacturers unless such a combination has been expressly approved by us. We would like to point out that these obligations are under threat of prosecution according to § 43 of the Medical Devices Act. If the buyer resells the products within the scope of his business operations, he will also ensure that the purchaser of said products receives the appropriate instruction.

9. Intellectual Property Rights

- 9.1. The buyer may only provide or make known to third parties the catalogues, drawings, plans, graphics, calculations, price lists, samples, technical documents and know-how provided to the buyer by us if we have granted our prior written permissions for this. All intellectual property rights are expressly reserved by us.
- 9.2. For deliveries according to the buyers' drawings, models or information, the buyer must indemnify us from any and all claims for damages by third parties. In the event of a breach of contract by the buyer, his property rights shall not prevent utilisation of the goods by us.
- 9.3. We can refer to our company in a suitable manner on the commodities manufactured by us.

10. Data Storage

The buyer consents, to data relevant to contract fulfillment, being kept on file by us. As a matter of principle, we do not provide buyers' data to third parties unless this is required for the proper execution of your order, on legal requirements or to properly run and finance our operations.

11. Code of Conduct

Both parties must adhere to our code of conduct in its latest version as available to be viewed on our website www.rudolf-med.com.

12. Final provisions

- 12.1. These business terms and conditions and the entire legal relationship between the buyer and us is subject to the laws of the Federal Republic of Germany or of International Private Law, with the exception of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.2. The place of fulfillment is Fridingen. The sole place of jurisdiction for all disputes stemming from this contract is the court responsible for our place of business. Additionally we have the option of bringing an action against the buyer at their place of business.
- 12.3. Should a provision of the general terms and conditions or a provision within the scope of other agreements be or become invalid, then the validity of all other provisions or agreements will not be affected.
- 12.4. Translation of these general terms and conditions into foreign languages is only for the purposes of better understanding by our customers. Solely the German version is legally binding.

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