

## **Standard Terms and Conditions of SOMNOmedics AG**

### **§ 1 Scope**

(1) These conditions of sale exclusively apply to companies, legal entities governed by public law or special trusts under public law according to § 310 section 1 of the German Civil Code (BGB). Conflicting conditions or conditions of the buyer deviating from our conditions of sale will not be accepted unless we have expressly agreed in writing. General terms and conditions of customers are not effectively agreed to even if customers expressly request the validity of these conditions in their orders. The validity of other terms and conditions cannot be inferred from our acceptance of an order.

(2) Our offer is directed exclusively at persons and partnerships who are acting in their commercial or independent professional activity when concluding the legal transaction, as well as to legal entities under public law and special funds under public law. When placing an order, the customer makes a binding declaration that he is not acting as a private customer.

(3) These conditions of sale shall also apply to any future transactions with the buyer as far as those involve legal transactions of a similar kind.

### **§ 2 Offer and Conclusion of a Contract**

All our offers are non-binding and subject to change, unless they are expressly marked as binding. Orders should be placed in writing (e.g. by letter, e-mail, fax). After receipt of the order, we can accept it within two weeks in writing (e.g. by order confirmation) or implicitly by executing the order.

### **§ 3 Provided Documents**

We reserve property rights and copyrights to all documents made available to the buyer in connection with the order confirmation, including but not limited to calculations, drawings, offers, information material, etc. These documents shall not be disclosed to third parties without our express written consent and they may not be used or reproduced either by yourself or by third parties, unless we confirm the offer of the buyer within the period stated in § 2, these documents shall be returned to us immediately.

### **§ 4 Prices and Payment**

(1) Unless otherwise agreed in writing, our prices are ex works exclusive of shipping, plus applicable value added tax. Shipping costs will be charged separately.

(2) Cash discounts are permitted upon special written agreement only.

Payment of the purchase price shall be made into the following account:

IBAN: DE31 7906 3122 0100 2137 13, BIC: GENODEF1HGB, Raiffeisenbank Höchberg eG (EUR)

IBAN: DE28 7905 0000 0043 2070 26, BIC: BYLADEM1SWU, Sparkasse Mainfranken Würzburg (EUR)

IBAN: DE36 7905 0000 0300 0157 40, BIC: BYLADEM1SWU, Sparkasse Mainfranken Würzburg (USD)

(3) Unless otherwise agreed, the purchase price shall be paid within 14 days after delivery. Default interest will be charged at a rate of 9% per annum above the applicable base rate of interest. The right to claim a higher damage caused by default shall remain reserved.

(4) Unless a fixed price has been agreed, reasonable price changes resulting from changed labor, material and distribution costs shall remain reserved for deliveries which take place 3 or more months after conclusion of the contract.

(5) We reserve the right to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, we become aware of circumstances which are likely to significantly reduce the creditworthiness of the customer and which jeopardize the payment of our outstanding claims by the customer from the respective contractual relationship.

### **§ 5 Offset and Right of Retention**

The buyer is entitled to offset or to withhold payments only if the counterclaims are legally binding or undisputed or arise from the same contract under which the delivery or service in question was made.

### **§ 6 Delivery and Delivery Time**

(1) The start of the delivery time indicated by us implies punctual and proper fulfilment of the buyer's obligations. The defense of non-performance of the contract remains reserved.

(2) Performance deadlines and performance dates promised by us are always only approximate, unless a fixed deadline or a fixed date has been expressly agreed in writing.

(3) If the buyer is in default of acceptance or culpably infringes any obligations to cooperate, we are entitled to demand compensation for any damage resulting thereof including any additional costs. Any further claims shall remain reserved. Provided that the aforementioned conditions are met, the risk of accidental loss or accidental degradation of the goods shall be transferred to the buyer at the moment he is in default of acceptance or payment.

(4) We are entitled to make partial deliveries, provided this is not unreasonable for the customer. If an order is executed in partial deliveries, we shall determine the order of delivery of the parts and the respective quantities.

(5) We reserve the right to deliver technically equivalent or higher quality products than ordered and confirmed at the same price. Acceptance of these equivalent or higher quality products shall be deemed agreed. The products delivered and services rendered are specified in the data books, catalogs, drawings or similar. Properties are not guaranteed. Drawings / tables, dimensions or performance data are only binding if expressly agreed in writing. However, these do not constitute a guarantee of properties, nor do we provide technical data.

## **§ 7 Transfer of Risk upon Shipment**

If the goods are shipped to the buyer upon their request, the risk of accidental loss or accidental degradation of the goods will be transferred to the buyer upon dispatch, at the latest when the goods leave the factory/warehouse. This applies irrespective of whether the goods are shipped from the place of performance or regardless of which party bears the freight costs. Unless otherwise agreed, delivery terms shall be EXW (Randersacker) Incoterms 2020.

## **§ 8 Title Retention**

(1) The products sold shall remain our property until all claims arising from the business relationship, including future claims are fulfilled. In the case of bills of exchange and checks, payment shall only be deemed to have been made when they have been honored. Any processing or finishing of the products shall be deemed to have been carried out on our behalf. If third-party items are combined or mixed, we shall acquire co-ownership in the proportion that corresponds to the ratio of our products to that of the other items brought in by the customer at the time of combination or mixing. If the customer acquires sole ownership of the new item, he hereby grants us co-ownership of it in the ratio of the invoice value of the reserved goods to the value of the new item.

(2) Until revoked, the buyer may resell the goods in our ownership or co-ownership in the course of ordinary business operations, but may not pledge them or assign them as security. If the buyer sells our goods or their goods in which our goods are incorporated without receiving the full purchase price in advance or step by step against transfer of the purchased item, the buyer undertakes to agree to a retention of title with their own customer in accordance with these conditions. The buyer hereby assigns to us their claims arising from this resale as well as the rights arising from the retention of title agreed by him. If the value of the securities from the retention of title exceeds our claims from the business relationship with the customer by a total of more than 20%, we shall, at the request of the customer, release securities of their choice.

(3) It is the buyer's obligation to handle the purchased item with care unless the property has already been transferred to him. In particular, the buyer is obliged to provide at their own expense insurance against damages resulting from theft, fire and water in an amount sufficient to cover the replacement value of the purchased item. If maintenance and inspection works have to be carried out, the buyer is obliged to order these services at their own expense. As long as the property in the goods has not been transferred, the buyer must immediately inform us in writing if the delivered item is seized or subject to other third-party interventions. Unless the third party is able to compensate us for the judicial and extra-judicial costs resulting from a lawsuit according to § 771 ZPO (German Code of Civil Procedure), the buyer is liable for the losses incurred.

## **§ 9 Warranty and Notice of Defect as well as Recourse/Manufacturer Recourse**

(1) The buyer's warranty rights imply that they have properly fulfilled their obligations to inspect and to give notice of defects according to § 377 HBG (German Commercial Code).

(2) Warranty claims will expire within 12 months after the goods delivered by us have been received by our buyer (Second-hand goods are sold with a 3-month warranty.). Before any goods are returned, the buyer must obtain our consent in the form of a RMA number.

(3) If the goods, in spite of all due care, show any defect and if this defect existed already at the time when risk was transferred, we will give the buyer the option, subject to due and proper notice of defect, to either repair the goods or deliver replacement goods. We are entitled to supplementary performance within a reasonable period. Contribution claims remain unaffected, without restrictions, from the aforementioned regulation.

(4) Minor deviations from the agreed condition of the goods, minor impairment of their usability and usual wear and tear as in case of damages, which, after transfer of risk, result from improper or careless handling, excessive use, improper equipment or from particular external influences not implied by the contract are excluded from warranty. Repair and maintenance works must be carried out at the factory or by a person authorised by SOMNOMedics AG. Unauthorised opening of the device results in the loss of all warranty claims.

(5) Entitlements of the buyer arising from the expenses required for the purpose of supplementary performance, including but not limited to transport costs, travel expenses and material costs, are excluded as far as the expenses increase because the goods delivered by us had to be transported to a site other than the premises of the buyer, unless the transport complies with the intended use of the goods.

(6) Contribution claims of the buyer against us are only valid to the extent that the buyer has not made any agreements with their customer exceeding the statutory warranty claims. In addition, section 6 accordingly applies to the scope of the contribution claim of the buyer against the supplier.

## **§ 10 Liability**

(1) Claims for damages and reimbursement of expenses by the buyer, regardless of the legal grounds, in particular due to the breach of obligations arising from a contractual obligation and from tort, are excluded. This shall not apply in cases of the assumption of a guarantee or a procurement risk. Furthermore, this shall not apply in cases of mandatory liability, e.g. under the Product Liability Act, in cases of intent or gross negligence, due to injury to life, limb or health or a breach of material contractual obligations.

(2) However, the claim for damages for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless gross negligence is present or liability exists due to injury to life, limb or health. This does not imply a change in the burden of proof to the detriment of the buyer.

(3) The above provisions shall apply accordingly to our liability with regard to the reimbursement of futile expenses.

(4) Contractual and non-contractual claims for damages on the part of the buyer shall lapse within one year of delivery of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act remain unaffected in any case.

### **§ 11 Instruction/Product Monitoring/Product- and Producer-Liability**

The buyer is obliged to carefully observe the product instructions issued by us and to pass them on with special notice to any users and their customers. If the customer fails to comply with this obligation and this results in product or manufacturer liability claims against us, the customer shall indemnify us internally against these claims; if circumstances for which we are responsible have contributed to injuries or damage, the indemnification shall be based on the proportion of causation. The buyer is obliged to observe the delivered products and their practical use. This also applies after resale. The obligation to observe the product relates in particular to as yet unknown harmful properties of the product or to uses and consequences of use that create a hazardous situation. The buyer shall inform us immediately of any such knowledge gained.

### **§ 12 Export Controls**

- (1) The buyer shall comply with the applicable export control and sanction regulations.
- (2) The buyer shall provide us with all information necessary for us to comply with the export control regulations.
- (3) The fulfillment of the contract is subject to the provision that the applicable export control regulations do not conflict. In such a case, we shall be entitled to withdraw from the order.

### **§ 13 Data Protection and Confidentiality**

- (1) Contact details of the data controller:  
SOMNOmedics AG, Am Sonnenstuhl 63, 97236 Randersacker  
You can reach our data protection officer at [dsb@somnomedics.de](mailto:dsb@somnomedics.de)
- (2) We collect data for inquiries, notifications and orders from our customers, as well as for the execution of deliveries to our customers:
  - Title, first name, last name,
  - A valid e-mail address,
  - Address,
  - Telephone number (landline and/or mobile) and fax number,
  - Information required for the processing of inquiries, messages and orders.
- (3) This data is collected for the purpose of
  - Identification of the customer or their contact person and representative;
  - Processing of inquiries, notifications, orders and deliveries, as well as for the fulfillment of contracts;
  - Correspondence with customers;
  - Invoicing/accounting;
  - Settlement of claims.
- (4) We process personal data in accordance with
  - Art. 6 para. 1 sentence 1 lit. b) EU GDPR, insofar as this is necessary for the fulfillment of the contract with our customers or for the implementation of pre-contractual measures;
  - Art. 6 para. 1 sentence 1 lit. c) EU GDPR, insofar as this is necessary to fulfill a legal obligation to which we are subject;
  - Art. 6 para. 1 sentence 1 lit. f) and Art. 17 para. 3 lit. e) EU GDPR for the examination, assertion, exercise or defense of legal claims and in other cases for the protection of our legitimate interests, if no conflicting interests or fundamental rights or freedoms of our customers prevail.
- (5) Personal data that we collect or that has been communicated to us will only be stored until the purpose for which it was collected and processed has been fulfilled. Insofar as retention periods under commercial and tax law, in particular under Section 147 of the German Fiscal Code, Section 257 of the German Commercial Code and Section 14b of the German Value Added Tax Act, must be observed, the storage period for certain data may be up to 10 years.
- (6) Insofar as this is necessary in connection with inquiries, notifications, orders and deliveries as well as for the fulfillment of contracts, the personal data will be passed on to third parties (e.g. transport companies) in accordance with Art. 6 Para. 1 S.1 lit. b) EU GDPR. Insofar as this is necessary for the execution of the contract, data may also be passed on to companies affiliated with us within the meaning of §§ 15 ff. of the German Stock Corporation Act.
- (7) Our customers or their contact persons ("data subject(s)") with whom we communicate have the right, in connection with the processing of their personal data, to
  - in accordance with Art. 15 EU GDPR, to request information about the personal data processed by us;
  - in accordance with Art. 16 EU GDPR, to demand the immediate correction of incorrect or incomplete personal data stored by us
  - in accordance with Art. 17 EU GDPR, to request the erasure of personal data stored by us, unless the processing is necessary for the establishment, exercise or defense of legal claims or for compliance with a legal obligation
  - in accordance with Art. 18 EU GDPR, to demand the restriction of the processing of personal data if the accuracy of the personal data is disputed, the processing is unlawful, the data is no longer required for the original purposes or an objection to the processing has been lodged
  - in accordance with Art. 20 EU GDPR, to receive the personal data that the customer has provided to us in a structured, commonly used and machine-readable format or to request transmission to another controller

- in accordance with Art. 21 EU GDPR, to object to the processing for reasons arising from the particular situation of the data subject, provided that the data processing is based on our legitimate interest or that of a third party. In this case, we will no longer process the data unless the processing serves the establishment, exercise or defense of legal claims. Furthermore, processing may take place despite an objection if we can demonstrate a legitimate interest that outweighs the interests of the data subject; and

- to lodge a complaint with the responsible data protection supervisory authority in accordance with Art. 77 EU GDPR.

Corresponding inquiries should be addressed to our data protection officer (for contact details, see section 13.1. above).

(8) Any information requiring secrecy which the buyer receives from us in connection with the supply relationship must be treated confidentially and may not be passed on to third parties.

#### **§ 14 Industrial Property Rights and Copyright**

We remain the owner of all industrial property rights (in particular patents, trademarks, utility models, designs), copyrights and know-how that exist in the delivered products and in the documents handed over in connection with the contractual relationship. Licenses to any industrial property rights, copyrights or know-how are not granted by the contractual relationship.

#### **§ 15 Miscellaneous**

(1) This contract as well as the legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany, excluding the CISG.

(2) Place of performance and exclusive place of jurisdiction for all disputes arising from this contract shall be our registered office in Randersacker, Germany unless otherwise stated in the order confirmation.

(3) Any agreements made between the parties for the purpose of performing this contract are recorded in this contract.

(4) If any provision of this contract is invalid or incomplete, such invalidity or incompleteness shall not affect the remaining provisions. The parties undertake to replace the invalid provision by a regulation permitted by law which most closely approximates the intent and economic effect of the invalid provision or completes it, respectively.