

General Terms and Conditions (GTC) of ORTNER Medizintechnik e.U.



1. Area of applicability

1.1 These terms and conditions are valid between ORTNER Medizintechnik e.U. 8501 Lieboch, Strauchweg 26 Top 1-3 and natural and legal persons (from henceforth to be known as "Customer") for the objective corporate legal transaction as well also for all future business, even if in individual cases, especially in future no additional or follow-up orders shall be expressly referred to.

1.2 The current version of our terms and conditions at the time of the conclusion of the contract applies (it is available on our homepage www.ortmed.com/agbs/) and this will also be transmitted to the customer.

1.3 We only contract based upon our terms and conditions.

1.4 Customer terms and conditions or changes or additions to our terms and conditions require our valid and expressly written consent.

1.5 The customer's terms and conditions are not recognized even if we do not expressly contradict them upon receipt.

2. Offer / conclusion of contract

2.1. Our offers are non-binding.

2.2. Promises, assurances and guarantees on our part or agreements that deviate from these terms and conditions in connection with the conclusion of the contract only become binding to corporate customers after they have received our written confirmation.

2.3. In catalogues, price lists, brochures, advertisements on trade fair stands, circulars, advertising mailings or other media (information material) about our products and services that are not attributable to us, the customer - provided that the customer bases his decision on commissioning - us to explain. In this case we can comment on their correctness. If the customer violates this obligation, such information is non-binding, unless it has been expressly declared to be part of the contract in writing to corporate customers.

2.4. Cost estimates are not binding.

2.5. Cost estimates are for a fee. Consumers are informed of the obligation to pay before the cost estimate is prepared. If all services included in the cost estimate are commissioned, the invoice in question will be credited with the fee for the cost estimate.

3. Prices

3.1. Prices are generally not to be understood as a flat rate.

3.2. For services ordered by the customer that are not covered in the original order, there is a right to appropriate remuneration in the absence of a wage agreement.

3.3. Prices are exclusive of the applicable statutory sales tax and are ex warehouse. Packaging, transport, loading and shipping costs as well as customs and insurance are borne by the customer. We are only obliged to take back packaging if expressly agreed.

3.4. The customer must arrange for waste material to be disposed of in a professional and environmentally friendly manner. If we are commissioned to do this separately, this is to be remunerated appropriately by the customer to the extent agreed for this, in the absence of a remuneration agreement.

3.5. We are entitled of our own accord, as well as obliged at the request of the customer, to adjust the contractually agreed fees if changes to the extent of at least 2% with regard to (a) the wage costs by law, ordinance, collective agreement, works agreements or (b) other cost factors necessary for the provision of services such as procurement costs of the materials used based on recommendations of the joint commissions or changes in the national or world market prices for raw materials, exchange rates etc. have occurred since the conclusion of the contract. The adjustment is made to the extent to which the actual production costs change at the time the contract is concluded compared to those at the time the service is actually provided, provided we are not in default.

3.6. The remuneration for long-term obligations is agreed as value-secured according to the CPI 2010 and this results in an adjustment of the remuneration. The starting point is the month in which the contract was concluded.

3.7. Costs for travel, daily and overnight allowances are charged separately. Travel times are counted as working time.

4. Goods provided

4.1. If devices or other materials are provided by the customer, we are entitled to charge the customer 10% of the value of the devices or material provided as a manipulation surcharge.

4.2. Such devices and other materials provided by the customer are not covered by the warranty. The quality and operational readiness of materials provided is the responsibility of the customer.

5. Payment

5.1. Invoices are to be sent immediately.

Receipt of invoice to be paid without deduction.

5.2. The authorization to deduct a discount requires an express written agreement.

5.3. Payment dedications made by the customer on transfer receipts are not binding for us.

5.4. If the customer is in default of payment within the scope of other contractual relationships with us, we are entitled to suspend the fulfillment of our obligations from this contract until the customer has fulfilled them.

5.5. We are then also entitled to make all claims for services already rendered from the ongoing business relationship with the customer due.

5.6. If the payment deadline is exceeded, even if only with regard to a single partial service, the benefits granted (discounts, reductions, etc.) expire and are added to the invoice.

5.7. In the event of default in payment, the customer undertakes to reimburse us for the necessary and appropriate costs (dunning costs, collection fees, legal fees, etc.) to collect.

5.8. In accordance with Section 456 of the UGB, we are entitled to charge 9.2% points above the base interest rate in the event of default in payment.

5.9. We reserve the right to claim further damage caused by default.

5.10. The customer is only entitled to offset payments to the extent that counterclaims have been determined by a court or recognized by us.

5.11 For reminders that are necessary and appropriate for collection, the customer undertakes to pay reminder fees per reminder in the amount of € 35, - provided this is in reasonable proportion to the claim made.

6. Credit check

6.1. The customer declares his express consent that his data will be transmitted to the state-privileged creditor protection associations Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvency Protection Association for Employees (ISA) and Kreditschutzverband von 1870 (KSV) for the sole purpose of enabling the protection of creditors

7. Customer's duty to cooperate

7.1. Our duty to perform at the earliest begins as soon as all technical details have been clarified, the customer has created the technical and legal requirements (which we will be happy to provide on request), we have received agreed down payments or security deposits, and the customer has his contractual obligations to perform and cooperate, in particular those mentioned in the sub-items below are met.

7.2. In the case of assemblies to be carried out by us, the customer is obliged to ensure that work can begin immediately after the arrival of our assembly personnel.

7.3. The customer must arrange for the necessary third-party approvals as well as

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reports and approvals by authorities at his own expense. These can be requested from us.

7.4. The energy and water quantities required for the performance of the service including the trial operation must be provided by the customer at his own expense.

7.5. The customer must provide us with lockable rooms that are not accessible to third parties free of charge for the time of the performance of the service for the stay of the workers and for the storage of tools and materials.

7.6. The customer is liable for ensuring that the necessary structural, technical and legal requirements for the work to be produced or the object of purchase are given, which were described in the contract or in information provided to the customer before the contract was concluded or which the customer should have known due to relevant specialist knowledge or experience.

7.7. The customer is also responsible for ensuring that the technical systems such as supply lines, cabling, networks and the like are in a technically perfect and operational condition and are compatible with the works or objects of purchase to be manufactured by us.

7.8. We are entitled, but not obliged, to check these systems for a separate fee.

7.9. In particular, the customer must provide the necessary information about the location of concealed electricity, gas and water lines or similar systems, escape routes, other structural obstacles, possible sources of danger and the required static information without being asked before the start of the assembly work.

7.10. Order-related details of the necessary information can be requested from us.

7.11. The customer bears sole responsibility for the design and functionality of the parts provided. There is no obligation to check any documents, information or instructions provided by the customer - beyond the creation of a technical construction dossier and certification of compliance with the Machinery Directive and any other applicable guidelines - with regard to the delivery item, and our liability in this regard is excluded. The obligation to issue the certificate can be contractually assigned to the customer who puts the delivery item on the market.

7.12. The customer is not entitled to assign claims and rights from the contractual relationship without our written consent.

8. Performance execution

8.1. We are entitled to have the commissioned services fully or partially carried out or performed by third parties or to use the services of third parties in this regard to an unlimited extent. We are not obliged to

provide information or disclosure to the customer in this regard.

8.2. We are only then obliged to retrospectively.

To take into account the customer's requests for changes and extensions if they are necessary for technical reasons in order to achieve the purpose of the contract.

8.3. Objectively justified minor changes to our performance that are reasonable for the customer are deemed to have been approved in advance.

8.4. If, for whatever reason, the order is changed or supplemented after the order has been placed, the delivery / service period is extended by an appropriate period of time.

8.5. If the customer wishes to perform a service within a shorter period of time after the contract has been concluded, this constitutes a change in the contract. This may result in overtime and / or additional costs due to the acceleration of material procurement, and the remuneration increases appropriately in relation to the necessary additional work.

8.6. Objectively justified partial deliveries and services (e.g. system size, construction progress, etc.) are permissible and can be invoiced separately.

8.7. If delivery on call has been agreed, the service / object of purchase shall be deemed to have been called no later than six months after the order has been placed.

9. Delivery and service deadlines

9.1. Delivery / service deadlines and dates are only binding for us if they have been set in writing. Any departure from this formal requirement must also be in writing.

9.2. We are entitled to exceed the agreed delivery deadlines by up to four weeks. Only then is the customer entitled to withdraw from the contract by setting a reasonable grace period.

9.3. Deadlines and dates are postponed in the event of force majeure, strikes, unforeseeable delays for which we are not responsible by our suppliers or other comparable events that are beyond our control during the period during which the relevant event continues. This does not affect the right of the customer to withdraw from the contract in the event of delays that make a commitment to the contract unreasonable.

9.4. If the start of the performance of the service or the performance are delayed or interrupted by circumstances attributable to the customer, in particular due to the breach of the duty to cooperate in accordance with point 7, performance deadlines will be extended accordingly and completion dates postponed accordingly.

9.5. We are entitled to charge 2% of the invoice amount for each commenced month of the delay in performance for the storage of materials and equipment and the like in our company, whereby the customer's obligation to pay as well as his obligation to accept remains unaffected.

9.6. When withdrawing from the contract due to default, the customer must set a grace period by registered letter with simultaneous threat of withdrawal.

10. Bearing of risk

10.1. The risk is transferred to the business customer as soon as we have the object of purchase, the material or the work ready for collection in the factory or warehouse, deliver it ourselves or hand it over to a carrier.

10.2. The entrepreneurial customer will take out appropriate insurance against this risk. We undertake to take out transport insurance at the customer's written request and at the customer's expense. The customer approves any standard shipping method.

11. Default in acceptance

11.1. If the customer is in default of acceptance for more than 4 weeks (refusal of acceptance, default in advance payments or otherwise, no call within a reasonable time for order on call), and despite setting a reasonable grace period, the customer has not taken care of the elimination of the circumstances attributable to him, which the If the contract is in place, we may otherwise dispose of the equipment and materials specified for the performance of the service, provided that, in the event of the performance of the service being continued, we procure these within a period appropriate to the respective circumstances.

11.2. If the customer is in default of acceptance, we are also entitled to store the goods with us if the contract is to be fulfilled, for which we are entitled to a storage fee in accordance with Section 9.4.

11.3. In the event of a justified withdrawal from the contract, we are entitled to demand flat-rate compensation of 25% of the gross order value from the customer without proof of the actual damage.

11.4. The assertion of higher damages is permissible.

12. Retention of title

12.1. The goods delivered, assembled or otherwise handed over by us remain our property until they have been paid for in full.

12.2. Resale is only permitted if we have been informed in good time beforehand, stating the name and exact address of the buyer, and if we agree to the sale. In the event of our approval, the purchase price claim is already assigned to us.

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12.3. The customer must note this assignment in his books and on his invoices until the payment or purchase price has been paid in full and inform his respective debtors of this. Upon request, he has to provide us with all documents and information that are necessary to assert the assigned claims and claims.

12.4. If the customer defaults on payment, we are entitled to reclaim the goods subject to retention of title if a reasonable grace period has been set.

12.5. The customer must inform us immediately about his assets or the seizure of our reserved goods before bankruptcy is opened.

12.6. The customer declares his express consent that we may enter the location of the reserved goods in order to assert our retention of title.

12.7. The customer bears any costs that are necessary and appropriate for appropriate legal prosecution.

12.8. The assertion of the reservation of title only constitutes a withdrawal from the contract if this is expressly declared.

12.9. We may dispose of the retained goods that have been taken back by hand and in the best possible way.

12.10. Until all of our claims have been paid in full, the object of performance / purchase may not be pledged, assigned by way of security or otherwise encumbered with third-party rights. In the event of seizure or other claims, the customer is obliged to point out our right of ownership and to notify us immediately.

13. Third party property rights

13.1. For delivery items that we manufacture according to customer documents (construction details, drawings, models or other specifications, etc.), the customer alone guarantees that the manufacture of these delivery items does not infringe third-party property rights.

13.2. If third party property rights are nevertheless asserted, we are entitled to cease production of the delivery items at the customer's risk until the rights of third parties have been clarified, unless the unjustification of the claims is obvious.

13.3. The customer indemnifies and holds us harmless in this regard.

13.4. We are entitled to demand reasonable advances on costs from corporate customers for any process costs.

13.5. We can also claim reimbursement of necessary and relative costs incurred by us from the customer.

14. Our Intellectual Property

14.1. Delivery items and the relevant execution documents, plans, sketches, cost estimates and other documents as well as software that we have provided or have created through our contribution remain our intellectual property.

14.2. Their use, in particular their passing on, duplication, publication and making available, including copying only in extracts, as well as their imitation, processing or exploitation, requires our express consent.

14.3. The customer further undertakes to keep the knowledge gained from the business relationship confidential to third parties.

15. Warranty

15.1. The warranty period for our Services are included with the respective offers, otherwise this is 3 months from Handing over.

15.2. The time of handover is lacking deviating agreement (e.g. formal Acceptance) the time of completion, at the latest when the customer has completed the service has taken over his power of disposal or the takeover without giving reasons has refused. With the day on which the Customers are shown completion the performance for lack of justified Refusal to accept as in his Power of disposal assumed.

15.3. Complaints must be made immediately respectively. If a complaint is made late, so the customer can make claims Warranty (§§ 922 ff ABGB) Compensation for the defect itself (§ 933a para 2 ABGB) as well as from an error about that the item is free from defects (§§ 871 f ABGB) no longer assert.

15.4. If a joint handover is provided, and the customer stays with the communicated handover date, the Takeover then takes place on that day.

15.5. Fixes one from the customer alleged deficiency do not represent Acknowledgement of a defect.

15.6. The customer always has to prove that the defect at the time of delivery already existed.

15.7. To remedy defects, the Customer, the system or the devices without culpable delay accessible to us too make and give us the opportunity to Assessment by us or by us to grant appointed experts

15.8. Notices of defects and complaints of any kind are to be made in writing immediately (after 10 working days at the latest) at the headquarters of our company, with a description of the defect as precisely as possible and an indication of the possible causes. The rejected goods or works are to be handed over by the customer if this is possible.

15.9. If the customer's allegations of defects are unjustified, he is obliged to reimburse us

for the expenses incurred to determine the absence of defects or to remedy the defect.

15.10. Any use or processing of the defective delivery item, which threatens further damage or makes it difficult or impossible to rectify the cause, must be stopped by the customer immediately, unless this is unreasonable.

15.11 We are entitled to carry out any examination that we consider necessary, or to have it carried out, even if it renders the goods or workpieces unusable. In the event that this investigation shows that we are not responsible for any errors, the customer must bear the costs for this investigation.

15.12. Transport and travel costs incurred in connection with the rectification of defects shall be borne by the customer. Upon our request, the customer must provide the necessary labor, energy and rooms free of charge and he must cooperate in accordance with point 7.

15.13. The customer must allow us at least two attempts to remedy the defect.

15.14. We can avert a request for conversion through improvement or a reasonable price reduction, provided it is not a material and irreparable defect.

15.15. If the objects of performance are based on information, drawings, plans, models or other specifications of the General Terms and Conditions (GTC) of ORTNER Medizintechnik e.U. Page 4 of 4 March 2021 issue produced by the customer, we only guarantee execution in accordance with the conditions.

15.16. The fact that the work is not fully suitable for the agreed use does not constitute a defect if this is based solely on actual circumstances deviating from the information available to us at the time the service is provided, because the customer does not meet his obligations to cooperate in accordance with point 7.

15.17. Likewise, it does not constitute a defect if the customer's technical systems such as supply lines, cabling, networks, etc. are not in a technically perfect and operational condition or are not compatible with the items supplied.

16. Liability

16.1. Due to breach of contractual or pre-contractual obligations, in particular due to impossibility, delay, etc., we are only liable for financial losses in cases of intent or gross negligence due to technical features.

16.2. Liability is limited to the maximum amount of liability insurance we may have taken out.

16.3. This limitation also applies to damage to an item that we have taken over for processing.

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16.4. Claims for damages are to be asserted in court within two years if they otherwise expire.

16.5. The limitations or exclusions of liability also include claims against our employees, representatives and vicarious agents due to damage that they cause to the customer without reference to a contract on their part with the customer.

16.6. Our liability is excluded for damage caused by improper handling or storage, overuse, non-compliance with operating and installation instructions, incorrect assembly, commissioning, maintenance, servicing by the customer or third parties not authorized by us, or natural wear and tear, provided that this event is causal for the damage was. There is also an exclusion of liability for neglecting necessary maintenance.

16.7. If and to the extent that the customer can claim insurance benefits for damage for which we are liable through his own or in his favor (e.g. liability insurance, comprehensive insurance, transport, fire, business interruption and others), the customer undertakes to make use of the insurance benefit and our liability towards the customer is limited to the disadvantages that arise for the customer through the use of this insurance (e.g. higher insurance premium).

16.8. Those product properties are owed that can be expected from us, third-party manufacturers or importers from the customer with regard to the approval regulations, operating instructions and other product-related instructions and information (in particular also control and maintenance), taking into account his knowledge and experience. The customer, as the reseller, has to take out adequate insurance for product liability claims and hold us harmless with regard to recourse claims.

17. Severability Clause

17.1. Should individual parts of these terms and conditions be ineffective, this shall not affect the validity of the remaining parts.

17.2. The parties undertake to come up with a replacement regulation - based on the horizon of honest contracting parties - that comes as close as possible to the economic result, taking into account the industry standard of the ineffective condition.

18. General

18.1. Austrian law applies.

18.2. The UN sales law is excluded.

18.3. The place of performance is the company's headquarters (8501 Lieboch, Strauchweg 26 Top 1-3).

18.4. The place of jurisdiction for all disputes arising from the contractual relationship or future contracts between us and the customer

is the local court responsible for our registered office.

18.5. The customer must inform us immediately in writing of any changes to his name, company, address, legal form or other relevant information.

18.6. We and the customer are aware of the current uncertainty due to the corona pandemic (force majeure) and this has been included in the business basis. The customer expressly declares that he agrees to the legal consequences (penalty payment in accordance with point 11.3.) In the event of default in acceptance and cancellation fee in the event of withdrawal (point 11).

