

Gebrüder Martin GmbH & Co. KG
KLS Martin Platz 1, 78532 Tuttlingen, Germany

GENERAL TERMS AND CONDITIONS OF SALE
(Revised: 1 Oktober 2013)

1. Scope of Application

- 1.1. As a matter of principle, these General Terms and Conditions of Sale (hereinafter referred to as "T&C Sale") shall apply to all deliveries, services and offers provided by Gebrüder Martin GmbH & Co. KG (hereinafter referred to as "Seller"), unless modifications, exclusions or additions are expressly agreed in writing. All diverging conditions are refuted and shall not be integrated in any contract, even if Seller omits to expressly reject them in writing.

2. Contract Closure, Prices, Packaging and Packaging Costs, Shipping, Transport Insurance

- 2.1. All offers made by Seller shall be non-binding, unless Seller expressly allows a period for acceptance.
- 2.2. If Seller has allowed a period for acceptance in a firm written offer, the contract shall be deemed concluded provided Buyer's written declaration of acceptance reaches Seller before the stipulated acceptance period expires. In the case of non-binding offers, the contract shall be deemed concluded when Seller issues confirmation of order.
- 2.3. The scope of delivery shall be defined by the technical specifications laid down in the binding offer or – in the case of non-binding offers – in Seller's written confirmation of order.
- 2.4. All prices are for delivery Ex Works ("EXW", Incoterms 2010) from Seller's place of business in Tuttlingen, Germany, and do not include packing costs and German value-added tax (*Mehrwertsteuer*). Buyers domiciled inside the European Union must provide Seller with their VAT number on or before contract closure.
- 2.5. Unless otherwise agreed, packaging shall be at Seller's discretion and shall be charged for separately. Buyer shall be obliged to dispose of all packaging materials at its own cost.
- 2.6. The assembly and installation of the goods and equipment delivered shall be Buyer's responsibility. If under an express supplementary agreement Seller assumes responsibility for assembly and/or installation and/or commissioning, Seller's General Terms & Conditions of Assembly & Installation shall apply.
- 2.7. The Incoterm stipulated in Item 2.4 (EXW) shall apply even if Seller organizes or assists with packaging, transport, insurance, etc. on Buyer's behalf. Any costs thus incurred on Seller must be reimbursed by Buyer without undue delay.

3. Delivery, Passing of Risk, Declaration

- 3.1. Passing of risk shall occur at Seller's factory in accordance with the ex works (EXW) Incoterm (see Item 2.4).
- 3.2. Partial deliveries shall be permitted.

- 3.3. In the event that Buyer wishes delivery to be made to some location outside Germany, the export permit risk shall be borne by Buyer.

4. Delivery Date, Delivery Period, Delay, Cancellation of the Contract

- 4.1. All delivery dates are approximate and without obligation; they shall only be binding if expressly so agreed in writing. The delivery period shall commence when Seller issues confirmation of order, not however before all the necessary documents, licences, permits and information have been provided, not before completion of any further formalities which are Buyer's responsibility, and not before receipt of the agreed advance payments.
- 4.2. If Seller is responsible for late delivery, Buyer on proving that it has sustained losses shall become entitled after a delay of 3 (three) weeks to liquidated damages for each further full week of delay, excluding all other claims. The liquidated damages shall amount to 0.5% - but not more than 5% in total - of the value of the items which can no longer be put to their intended use owing to the delay. Item 7.5 and Item 12 below shall apply *mutatis mutandis*.
- 4.3. After the maximum amount of liquidated damages pursuant to Item 4.2 above has been reached, and after a reasonable period of grace including a threat to refuse acceptance of delivery has expired, Buyer may issue Seller with written notice effectively terminating the contract in respect of the delayed goods, unless Seller delivers prior to termination.
- 4.4. If and insofar as Buyer defaults in its contractual obligations or responsibilities, Seller shall be entitled to extend the delivery period for the duration of such default. Items 5.2 and 5.3 shall apply *mutatis mutandis*.

5. Returning Goods / Delays in Acceptance

- 5.1. Returned goods shall only be accepted on payment of a handling charge of 25% of the value of the goods or a minimum charge of EUR 50. Custom-made products or special orders are excluded here and will not be taken back.
- 5.2. Buyer shall bear all and any costs for storage, insurance, protective measures, etc. which are incurred as a result of Buyer effecting acceptance late. Without further proof, Buyer shall pay liquidated damages for each week of delay amounting to 0.5% - but not more than 5% in total - of the value of the order.
- 5.3. Seller may send Buyer written notification that acceptance of the goods must take place within a specified period. Nevertheless, this shall not affect Seller's entitlement to payment of the purchase price. If the specified period expires to no avail, Seller shall be entitled to give written notice terminating the contract in whole or in part, and to claim damages.

6. Payment

- 6.1. Unless otherwise agreed, all payments must be remitted in advance or (with Seller's prior written consent) effected via an irrevocable and confirmed letter of credit at least 6 (six) weeks before the delivery date. The "Uniform Customs and Practices for Documentary Credits" issued by the International Chamber of Commerce, Paris, shall apply. All amounts billed must be paid in EURO - irrespective of exchange rates - into the account specified by Seller, without deducting any discount and free of bank charges.

6.2. In the event of late payment, Seller shall be entitled to interest as from the due date at a rate of 8 (eight) percentage points p.a. above the European Central Bank's base rate in force at the time. For the duration of default in payment, Seller may also suspend performance of the contract. If Buyer fails to pay the agreed amount within a reasonable additional period not to exceed 1 (one) month after the due date, Seller shall be entitled to give written notice terminating the contract and to claim compensation for any loss or damage it has sustained.

6.3. Credit Rating, Default in Payment

If any circumstances give cause for doubt regarding Buyer's credit rating, all claims created in the overall business relationship shall fall due immediately. Seller shall be entitled to demand advance payment for deliveries, even if it has granted Buyer more favourable payment terms in the past. Sentence 1 shall also apply by analogy if Buyer defaults in any payment. If payment in instalments is agreed and if Buyer defaults in payment of more than 10% of the amount owed, the entire purchase price shall fall due immediately.

7. Liability for Conformity of the Goods

7.1. Inspection & Reporting Obligations

On receiving the goods, Buyer must inspect them without delay in accordance with recognized industrial standards. Buyer shall forfeit the right to claim for obvious defects / non-conformity if it fails to report same to Seller without delay, and shall forfeit the right to claim for concealed defects / non-conformity if it fails to report same as soon as they are discovered, giving precise specifications in each case. The onus of proof shall be incumbent upon Buyer.

7.2. Handling, Storage

Buyer shall be responsible for the goods' proper handling and storage and for furnishing proof to this effect.

7.3. Eliminating Defects, Replacement Deliveries

If the goods do not comply with the contract (are defective), Seller may eliminate the non-conformity/defect within 4 (four) weeks of Buyer's report to this effect, either by making repairs or by making a replacement delivery, at its own option.

Any repairs to the goods shall be carried out at the recipient's place of business specified in the contract. If this differs from Buyer's place of business, this must be disclosed to Seller in the contract; otherwise Seller shall not bear any extra costs thus incurred.

On request, Buyer shall be obliged to assist with any repair work in accordance with Seller's instructions, against reimbursement of its expenses.

7.4. Reduction in the Price, Termination of the Contract

If Seller fails to eliminate the non-conformity/defect via repair or replacement pursuant to Item 7.3 above, Buyer shall be entitled to a reasonable *pro rata* reduction in the purchase price. In the event of any material non-conformity/defect, Buyer may set a final deadline for its elimination, and if such deadline expires to no avail, it may declare termination of the contract.

7.5. Exclusion of Further Claims for Defects

Save as stipulated in Items 4.2 - 4.3, Items 7.1 - 7.4, Item 9 and Item 10, Seller shall not be held liable for any non-conformity and/or defects for whatsoever legal

cause. This shall also apply to any loss or damage ensuing from a non-conformity/defect, including downtimes in production, lost profits or other indirect losses (not occurring in the actual goods delivered).

7.6. Normal Deviations, Modifications

Normal deviations in respect of quantities, quality, weights and measures, etc. are permitted and shall not be deemed defects. The right is reserved to modify the construction of the goods accordingly.

7.7. Heeding Seller's instructions

Seller's instructions on the goods' further processing and/or application must be observed by Buyer, failing which claims for nonconformity or defects shall not be recognised.

7.8. Electromedical Devices

All supplies of electromedical devices and related services are provided in accordance with the safety regulations laid down by the Association of German Electrical Engineers (VDE). Item 7.6 sentence 2 shall apply *mutatis mutandis*.

8. Tools, Plans, Installations, Devices, Sales Materials, Secrecy

8.1. One year after completion of the last order, Seller may dispose freely over any tools built for special (customised) parts. This shall also apply to any tool parts for which Buyer has been billed.

8.2. Seller shall retain title to all rights in its own devices, drawings, drafts and plans, in particular patents, copyrights and other protective rights. All sales materials such as catalogues, sample books, price lists etc. which have been placed at Buyer's disposal shall remain Seller's property, and must be returned to Seller on request.

8.3. Any documents pertaining to an offer, such as pictures, drawings, weights, measures and capacities, or data on other qualities and further information about the contractual products and services, are only approximate. Seller shall retain all proprietary rights and copyrights in its own information, also in electronic form.

8.4. Seller and Buyer agree to keep secret all commercial and technical details of their mutual business, as long as same are not in the public domain. This also applies to those objects mentioned in Items 8.2 - 8.3, which may neither be disclosed or made available to any third party.

8.5. In particular, without Seller's prior written consent, any internal information received from Seller (as opposed to information which by its nature is designed to be made public, such as promotional materials) is excluded from being published by Buyer, especially in the Internet. This shall apply regardless of whether or not such internal information is protected under non-disclosure agreements, e.g. user manuals for Seller's products.

8.6. Seller and Buyer shall ensure that the same non-disclosure obligation as is set out in Items 8.4 - 8.5 is also imposed on their sub-contractors.

9. Liability for Ancillary and Subsidiary Duties

9.1. Seller shall only be liable for contractual or pre-contractual ancillary or subsidiary duties in accordance with Items 4, 7.5 and 12.

10. Non-Performance, Impossibility, Inability

- 10.1. If Seller is unable to deliver in whole or in part, Buyer shall be entitled to give written notice terminating the contract in respect of that part which is not delivered, save where it is unreasonable to expect acceptance of part-performance. Items 7.5, 12 and 13 shall apply *mutatis mutandis*.

11. Force Majeure

- 11.1. Neither party shall be liable for non-performance owing to circumstances beyond its control, especially e.g. fire, natural disasters, war, confiscation, requisition, export bans, embargos or other government measures, general shortages of materials, power cuts, industrial action (strikes, lock-outs) including industrial action affecting sub-suppliers, or if non-performance by any sub-contractor/sub-supplier is owing to such circumstances.
- 11.2. Each party may give written notice terminating the contract if performance is prevented pursuant to Item 11.1 for more than 6 (six) months.

12. Seller's Limitation of Liability

- 12.1. All Buyer's claims for whatsoever legal cause – other than those explicitly mentioned in these T&C Sale – shall be excluded, in particular claims to damages, to a reduction in the purchase price/service fee, or to rescission of the contract. Buyer shall in no event be entitled to claim any compensation for damage which has not occurred in the goods actually delivered, such as downtimes in production, loss of usage, lost orders, lost profits, or other direct or indirect losses or damage.

13. Statute of Limitation

- 13.1. All Buyer's claims based on defects or non-conformity of the goods and/or services supplied under the contract shall become statute-barred 12 months after passing of risk pursuant to Item 3.1 above.

Seller's liability shall be limited to any defects/non-conformity emerging within the aforementioned period.

14. Retention of Title and Ownership

- 14.1. Seller shall retain title to all delivered goods until the purchase price has been fully paid.

If retention of title is subject to certain conditions or regulations in the country of destination (such as e.g. public registration), Buyer shall inform Seller to this effect and shall assist Seller in implementing and satisfying any such requirements.

- 14.2. Buyer shall assist Seller in taking any measures required in order to protect Seller's ownership and title to the product in the country of destination. Buyer shall inform Seller immediately in the event of any pending impairment to Seller's title. This shall apply especially with regard to claims asserted by third parties, or measures imposed by public authorities.

- 14.3. Seller shall be entitled to re-possess any reserved goods, even without rescinding or terminating the contract, if Buyer – despite being sent a warning notice and allowed an extra period for performance – fails to fulfil its contractual obligations, especially if payment is delayed. Buyer here and now waives any retention rights.

Seller shall be under no obligation to allow an extra period for performance if it is not required to do so by law.

- 14.4. At its own expense, Buyer shall insure the delivered goods against theft, fire, damage from water and other risks, for the entire period until payment has been effected in full.
- 14.5. If reserved goods are combined, processed or transformed together with other products, including objects not belonging to Seller, Seller shall acquire co-ownership in the new product(s) up to the invoiced value of the reserved goods, thus equivalent to a proportionate share in the total value of the new object(s) at the time of processing. Items 14.1 - 14.5 shall likewise apply to the new object(s).

15. Miscellaneous

- 15.1. Assignment of the rights and duties of either party is not permitted, other than assignment of receivables to banks by Seller.
- 15.2. Amendments or supplements to these T&C Sale shall be binding only if laid down in writing. This shall also apply to any amendment to this requirement for written form.
- 15.3. In the event that any of the provisions of these T&C Sale and/or of any contract of which they form an integral part is or becomes invalid, this shall not affect the validity of the remaining provisions, which shall remain fully effective.
- 15.4. Buyer shall only be entitled to offset claims, or to suspend contractual performance, or to attach Seller's property, in respect of claims that have already been acknowledged by Seller or declared *res judicata* by a court of law.
- 15.5. Use of Seller's IP, Trade Marks & Brands in Marketing
Buyer may use Seller's trademarks, brands, labels and logos solely with Seller's prior written consent and in Seller's interests.
- 15.6. Third-Party Industrial Property Rights
Buyer shall ensure that its instructions regarding forms, measures, colours, weights, etc. do not infringe third-party patents and other industrial property rights. Buyer shall release and discharge Seller from all and any in- and out-of-court costs and expenses in this respect, and shall assist Seller on request in any legal action that is filed to ward off third-party claims that are based on an alleged infringement of the aforesaid industrial property rights.

16. Legal Compliance

- 16.1. Seller shall be responsible for compliance with relevant German laws and rules and regulations, which shall be decisive for all products that are not exported. It shall be Buyer's responsibility to comply with and implement relevant foreign trade regulations (e.g. import permits, currency restrictions, etc.) and other applicable rules and regulations applying outside Germany.

17. Place of Performance, Jurisdiction, Applicable Law

- 17.1. Place of performance shall be Seller's place of business in Tuttlingen, Germany.

- 17.2. In the event of a dispute arising from or in connection with these T&C Sale and/or any of the individual transactions to which they apply, the competent courts in Tuttlingen, Germany, shall have exclusive jurisdiction.
- 17.3. However, Seller shall be entitled to file action at Buyer's registered domicile or principal place of business.
- 17.4. All contracts concluded under these T&C Sale shall be governed by Swiss law, excluding CISG and regulations on conflict of laws under private international law.