

Terms and conditions of delivery and payment | Status: 01.05.2023

§ 1 General Aspects

1. These terms and conditions of delivery and payment are a part of all offers and contracts for deliveries and services provided by us, including current and future business relations. The inclusion of any other business terms is expressly excluded herewith.
2. All agreements, including the inclusion of other business terms, are only binding when they are confirmed in writing. If other business terms than these become part of the contract and place us in an essential provision less favourable than under the following terms, we are entitled to rescind the contract with appropriate notice.
3. When Incoterms are used the 2020 version applies.

§ 2 Prices

Our conditions and price lists (plus any additional cost, such as freight or packing costs) being valid at the time of the order will apply subject to a price increase for the date of delivery that might have become necessary due to a price increase of essential preproducts. The prices only are to be regarded as fixed prices if they are mentioned by us in the order confirmation for a period of 4 months at the longest. All orders with a net order value of more than 1,000 € (within Germany) are free of shipping costs. Below 1,000 € net (within Germany), a flat shipping fee of 5.90 € net will be charged. For deliveries outside of Germany, the shipping flat rate is waived for orders over 15,000 € net. The current shipping costs to the respective country will be communicated with the offer. Minimum purchase quantities for the spacers are one packaging unit each (Flex Spacer = 12 pieces, 24 pieces, Cutan Spacer = 80 pieces, 10 pieces and Dress = 40 pieces, 4 pieces).

§ 3 Transfer of Risk and Delivery

1. The place of performance for our deliveries are our factories (exwork or EXW). Once the goods have been designated or made available, the risk of accidental loss and deterioration is transferred to the buyer.
2. Insofar as delivery dates or delivery periods are given in the order confirmation, these are not binding unless otherwise expressly stated.
3. Non-compliance with delivery dates and periods provides entitlement to invoke rights only after an appropriate, subsequent notice period (particularly in the fields of planning/ equipping, custom fabrication and special procurement) of at least 14 workdays.
4. In the event of force majeure, labor dispute, official measures as well as any business failure, which is not our fault, which lasts longer than a week or which will probably last longer than a week, the delivery period will be appropriately extended.
5. If we show the careful selection of a supplier who does not deliver according to contract, the delivery time will be appropriately extended insofar as no substitute procurement by us is reasonable. In the event that it is impossible for our supplier to fulfill delivery obligations, we are entitled to rescind the contract.
6. Damage compensation claims in the event of delay or impossibility of performance are limited to replacement of the provable additional cost (cost of cover based on three substitute offers). Further damage compensation is excluded. In cases of delay based on slight negligence we are liable to the extent of 0.5% of the value of the goods ordered, calculated weekly, with the highest amount not more than 5 % of the value of the delivery affected by the delay.
7. We are entitled to make partial deliveries for production reasons so long as these do not burden the buyer unreasonably. Rights arising from delay and claims of warranties remain limited to the partial deliveries in question.
8. If the goods are unjustifiably not accepted or not taken after an appropriate notice period has been provided, we are entitled to rescind the contract or to claim damage compensation in the amount of 20 % of the value of the goods ordered. The demand for higher damage compensation or the proof of a lesser damage sum is not excluded thereby.
9. In the case of a provable significant deterioration in the assets we are entitled to make further deliveries subject to advance payment, to demand immediate payment of all outstanding invoices, and to demand cash payment or security against return of any bills of exchange submitted as payment.

§ 4 Payment

1. The invoices shall be paid 14 days after date of invoice without any discount or reduction. Payment by check or bill of exchange is for purposes of payment; the payer has to bear any discount, costs of exchange and other costs. In cases where the payment period has been exceeded we calculate interests for the delay based on normal bank lending rates. Payment documents are to be issued in Euro or the equivalent value in the contractual currency. Payments are to be made in Euro or the equivalent value in the contractual currency.
2. The offsetting of counterclaims or retention of invoiced amounts is only permitted for claims undisputed or accepted by us or for claims that have been determined to be legally binding.
3. In the case of first orders, we reserve the right to check creditworthiness and, if necessary, to deliver against cash in advance or cash on delivery.

§ 5 Product Quality and Warranty

1. The original order is exclusively decisive for the determination of the quality of the goods. The appropriateness of the goods for the purpose intended by the buyer is not warranted. Express warranties are only those that are labeled expressly as a warranty. Reference to standards does not establish a warranty extended by us. Common or technically unavoidable deviations do not constitute a defect. Every warranty is void upon modifications to the goods that go beyond the current state of technology or which exceed our installation and classification instructions.
2. The buyer is obligated to inspect the goods after receipt and to notify us of any apparent defects without delay within 10 days after receipt of the goods. In cases where defective goods are returned all necessary information on the use of the goods is to be provided as well as, where appropriate, the orthopaedic appliance in question. The buyer has the burden of presenting clear information concerning alleged defects.

3. If the goods at the time of transfer of the risk have a defect or if express warranties are violated, the right of repair or delivery of non-defective substitute goods exists within a reasonable period of at least 14 days after receipt of the returned goods. After this time the statutory rules apply.
4. Our instructions for use have to be made accessible to the users. The customer shall hold us free from any claims arising out of damages to third parties caused by violation of this duty.
5. All warranty claims are subject to a statute of limitations period of two years after delivery insofar as we have not fraudulently withheld disclosure of the defect.
6. In the case of groundless notices of defect (whether due to the non-existence of a defect or because we are not liable), the customer shall reimburse to us the costs incurred thereby.

§ 6 Liability

1. Damage compensation claims against us in case of slight negligence are excluded unless essential contractual duties (=contractual duties the fulfillment of which in the first place makes the proper performance of the contract possible and compliance with which the contract partner may regularly rely upon) are violated. The amount of damages is limited to the damages foreseen or foreseeable by the customer at the time of conclusion of contract (in general 50 % of the value of goods determined by the purchase price). We are not liable for intentional acts of our agents.
2. The customer indemnifies us free from claims of third persons provided the customer is responsible for a product defect.
3. Violations of additional obligations give the right to rescind the contract only in the event of culpable action.

§ 7 Safety Provision

CINOGY System GmbH products are delivered under the status of an Authorised Economic Operator (AEO). Especially in case of resale of the goods by the original purchaser, corresponding measures have to be taken to ensure passage of the goods through the international supply chain.

§ 8 Returned Goods

Return of defect-free goods for credit or exchange requires our consent. We accept only goods in their original packaging up to 6 months after date of invoicing (this does not apply for custom fabrication orders). For return/exchange of goods one month or more after date of invoicing we charge a 10% processing fee, after three months, a 20% processing fee. For returns, the completeness of the goods including accessories must always be ensured. It should also be noted that the suitcase of the operating device must also be packed in a suitable shipping carton, which protects the device and case against external influences. In the case of incomplete or damaged goods due to a lack of shipping packaging, the required spare parts will be charged to the customer.

§ 9 Reservation of Title

1. The delivered goods remain our property until full payment. The reservation of title extends to all claims arising from the business relationship (current account reservation).
2. In the event of late payment we are entitled to take back the goods that are subject to a reservation of title. To enforce this right we are permitted to enter the premises of the buyer during normal business hours. The customer is not allowed to pledge the goods subject to reservation of title or to transfer them as security.
3. The customer is entitled to process the goods that are subject to a reservation of title or to combine them with other goods within the scope of customary business. In such cases we acquire co-ownership of the new manufactured or combined goods in the amount of the value of the goods under reservation of title pursuant to § 947(1) German Civil Code. The customer assigns claims that arise on the basis of its contract relationship with its buyers or third parties to us in the amount of the co-ownership.
4. The customer remains entitled to pursue collections, however, our right to collect the claim ourselves remains undisturbed. We will make no use thereof so long as the customer fulfills his contractual duties.
5. With cessation of payments, petition to open bankruptcy proceedings or the opening of bankruptcy proceedings or of a judicial or non-judicial settlement procedure, the right to further sale, right of use, right to install the goods under reservation of title as well as the authority to collect assigned claims, expires. In the case of a protest of a check or bill of exchange, the right to collect assigned claims also expires.
6. If the value of the security exceeds the claim to be settled by the customer by more than 20% we will release further security upon request.
7. In a case where the reservation of title is not governed by the German law the parties herewith agree to a reservation of title under the conditions of German law. If a foreign law requires specific formalities for the validity of the reservation of title, the customer is obliged to fulfill all necessary requirements.

§ 10 Place of Performance, Jurisdiction and Choice of Law

1. Place of performance is always our place of business.
2. Judicial jurisdiction for all disputes related to this contract is in Duderstadt, Germany.
3. Every legal relationship is governed by German civil and commercial law excluding UN sales law (Convention on the International Sale of Goods) and the rules for International Private Law (IPR).

§ 11 Validity of the Clauses

1. Should particular provisions of this contract be invalid, the remaining provisions of the contract shall remain in effect.
2. In place of the invalid provisions or to fill a gap in a clause the appropriate provision that the parties would have agreed upon had they considered the point when concluding the contract shall apply.

CINOGY System GmbH

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