

## 1. Scope of Application

- 1.1 These General Terms and Conditions of Export (Export T&C) shall apply exclusively to all offers and contracts regarding sales and deliveries of Kohler Medizintechnik GmbH, Bodenseeallee 14-16, D-78333 Stockach, Germany (hereinafter referred to as the "Seller"), for contracts with buyers having their registered office or the relevant establishment outside the Federal Republic of Germany; relevant is the establishment closing the contract in its own name.
- 1.2 These Export T&C shall not apply if the buyer buys the goods for personal, family or household use and if at the time of closing the contract the Seller knew or ought to have known this.
- 1.3 These Export T&C apply to all offers and deliveries of the Seller. They also apply to all future contracts with the buyer, even if they are not expressly agreed again.
- 1.4 The Seller hereby objects to any purchase conditions of the buyer which deviate from these Export T&C of the Seller and from the otherwise unchanged applicable statutory regulation under German law. The Seller does not recognize those purchase conditions even if he does not expressly object to the deviation.
- 1.5 Any amendment of these Export T&C prior to or upon conclusion of the contract requires an express agreement in text form (e.g. in writing or by e-mail).
- 1.6 If the Seller and the buyer agree on provisions deviating from individual provisions of these Export T&C, the validity of the remaining provisions of these Export T&C shall not be affected.

## 2. Minimum Order Value, Conclusion of Contract, Contractual Scope, Buyer's Information Obligation

- 2.1 Orders with an order value of less than € 200.00 plus VAT within the EU as well as less than € 500.00 plus VAT to third countries outside the EU will not be accepted by the Seller.
- 2.2 All offers, prices and other information are non-binding, unless they are expressly declared to be binding in an offer.
- 2.3 The documents pertaining to the offer, such as illustrations, drawings, weight and dimensional data, shall be deemed to be only approximate value unless they are expressly declared to be binding. Even if they are declared to be binding, they do not constitute a guarantee of quality or durability.
- 2.4 The Seller reserves the right to make changes and errors with regard to the illustrations and drawings relating to the goods in brochures, advertising material and price lists as well as the data contained therein, e.g. on material, dimensions, shapes, unless they are expressly declared to be binding.
- 2.5 The documents belonging to the offer are intended only for the buyer and may not be disclosed to third parties without the prior consent of the Seller.
- 2.6 The buyer is bound to an order for two weeks from receipt by the Seller. If the order is received by the Seller during the months of July and August, the acceptance period shall be extended to four weeks due to the Seller's company vacations during this period.
- 2.7 The contract is concluded either by sending the order confirmation in text form (e.g. by e-mail or in writing) or by fulfilling the order, whichever occurs first.
- 2.8 The buyer is obliged to inform the Seller prior to the conclusion of the contract if the goods to be delivered are not intended to be exclusively suitable for normal use or are used under conditions which are unusual or pose a particular health, safety or environmental risk or require increased utilization or if the contract may involve atypical possibilities of damage or unusual amounts of damage of which the buyer is aware or should be aware.

## 3. Prices

- 3.1 All prices shall apply ex works of the Seller in Stockach according to FCA, Incoterms 2020 plus VAT, transport insurance and packaging (clauses 3.3 and 5.1).
- 3.2 VAT or a comparable tax of the country in which the delivery or service is taxable shall be added to the prices.
- 3.3 The prices offered apply to the individual order. They do not apply retroactively or to future orders. Repeat orders shall be deemed to be new orders.

## 4. Packing and Packing Costs, Shipping

- 4.1 Unless otherwise agreed, packaging shall be carried out at the Seller's option against payment.

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4.2 In the absence of instructions from the buyer, the Seller shall determine the carrier and means of transport.

## 5. Delivery, Passing of Risk

5.1 Unless otherwise agreed in writing, all deliveries shall be made exclusively ex works of the Seller's location in Stockach in accordance with FCA, Incoterms 2020 (clause 3.1). Any clauses deviating from this are to be interpreted in accordance with the relevant Incoterms of the International Chamber of Commerce in Paris in the version applicable as of 1 January 2020.

5.2 The risk shall pass to the buyer at the latest when the delivery is dispatched, even if partial deliveries are made or the Seller has assumed other services, e.g. the costs of dispatch or delivery.

5.3 If dispatch is delayed for reasons beyond the Seller's control, in particular at the request of the buyer, the risk shall pass to the buyer upon provision of the goods and receipt of the notice of readiness for dispatch, even if a different delivery clause has been agreed; however, the Seller shall be obliged to take out the insurance policies requested by the buyer at the latter's request and expense. The payment obligations of the buyer remain unaffected.

5.4 Should the shipment of the consignment be delayed at the request of the buyer, the buyer shall be charged monthly storage costs of 0.1% of the price of the goods sold, beginning one month after notification of readiness for dispatch.

## 6. Partial Delivery

6.1 Partial delivery is permissible and can be invoiced separately.

6.2 In the event of partial delay or partial impossibility of performance, the buyer may only declare avoided the entire contract and therefore claim damages if the partial non-performance is a fundamental breach of contract.

6.3 As long as a partial delivery has not been paid for, the Seller may suspend further completion of the order and demand advance payment before making further (partial) deliveries.

6.4 In all other respects, the provisions of the following clause 7 shall apply accordingly to partial delay.

## 7. Delivery Time, Delays, Avoidance of the Contract

7.1 The delivery period shall be agreed individually or shall be stated when the order is accepted.

7.2 Subject to clause 7.3 below, the delivery period shall start with the dispatch of the order confirmation by the Seller.

7.3 If the buyer is obliged to procure certain documents, such as permits, releases etc., himself or to make a down payment or advance payment, the delivery period shall commence not before the point in time when all documents to be procured by the buyer have been received by the Seller or a down payment or advance payment to be made has been received by the Seller.

7.4 A bindingly agreed delivery period shall be deemed to have been met if the goods have left Seller's business site by the time it expires or if the buyer has been notified that the goods are ready for dispatch.

7.5 If the Seller has failed to meet binding delivery periods for reasons beyond the Seller's control and which the Seller could not foresee at the time of conclusion of the contract or which the Seller cannot avoid or overcome ("Impediment"), the Seller shall inform the buyer thereof without delay and at the same time notify the buyer of the expected new delivery period. If the delivery is not possible even within the new delivery period, the Seller shall be entitled to declare the contract avoided in whole or in part; the Seller shall immediately refund any consideration already paid by the buyer. An Impediment in this sense is in particular Force Majeure (clause 17) and the untimely self-delivery despite a timely order or if neither the Seller nor his supplier has influence on the obstacle.

7.6 The existence of a breach of contract due to delayed delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder with an appropriate deadline must be sent by the buyer.

7.7 In the event of a breach of contract due to delay in delivery, the Seller's liability for damages shall be limited to 0.5% of the net order value of the delayed goods for each completed week of delay, up to a maximum of 5% of the net order value of the delayed goods. If the buyer claims damages in addition to the avoidance of the contract, this claim for damages is limited to 10% of the net order value of the delayed goods. The limitation of liability according to sentences 1 and 2 above shall not apply in the event of intent or gross negligence, nor in the event of injury to life, limb or health.

## 8. Acceptance / Returns

8.1 The Seller may set the buyer in writing a reasonable period of time for acceptance of the delivered goods in the event that the buyer does not accept the goods at the time of delivery. The Seller's right to demand the purchase price shall

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remain unaffected. After expiry of the deadline, the Seller may declare the contract avoided in whole or in part by written declaration and claim damages.

- 8.2** The buyer may not refuse to accept and pay for goods delivered in accordance with the order.
- 8.3** The return of goods delivered in accordance with the order on a goodwill basis is subject to prior confirmation by the Seller in each individual case. Prior to this, the buyer must provide evidence of the delivery date of the returned items. Depending on their age and condition, the Seller is entitled to make price reductions.
- 8.4** If the cause of the return is not due to a defect or fault of the Seller, the Seller is entitled to charge the costs for the removal of custom-made markings and a handling fee of up to 20% of the original value of the goods.
- 8.5** For returns on a goodwill basis, the risk shall not pass to the Seller until the returned goods have been received by the Seller. The transport costs shall be borne by the buyer.
- 8.6** Opened sterile packaging generally cannot be returned for liability reasons.

## **9. Payment**

- 9.1** The purchase price is due immediately upon receipt of invoice. The invoice amount shall be transferred to the account specified in the invoice within 30 days of the invoice date.
- 9.2** All payments shall be made in EURO without deduction and net to the account of the Seller.
- 9.3** If payment is not made on time, the Seller shall be entitled to charge interest from the due date at a rate of 8 percentage points above the base discount rate of the European Central Bank. The Seller may suspend the execution of the contract to this extent. If the buyer has not made the agreed payment within a reasonable period of grace, but no later than one month after the due date, the Seller is entitled to declare the contract avoided in whole or in part by means of a declaration in text form and to claim damages.

## **10. Unfavourable Financial Position of Buyer**

- 10.1** If the buyer's assets deteriorate after conclusion of the contract, the provisions of the UN Convention on Contracts for the International Sale of Goods shall apply.
- 10.2** The same shall apply if, after conclusion of the contract, facts become known to the Seller which give rise to justified doubts about the solvency or creditworthiness of the buyer, unless the buyer can prove that these facts were already known to the Seller when the contract was concluded.

## **11. Examination and Notification of Defects**

- 11.1** The buyer shall inspect the goods and any documents sent to him or have them inspected immediately upon their arrival. The buyer shall inspect in accordance with the acknowledged rules of technology.
- 11.2** The Seller's liability for a lack of conformity of the goods and/or documents shall lapse, without the buyer being able to invoke an excuse in this respect, if immediately, but at the latest within 10 calendar days after he has discovered or should have discovered it, the buyer does not notify the Seller of this lack of conformity in writing specifying the nature of the lack of conformity in detail; this is irrespective of the reasons given by the buyer for not complying with these requirements. The buyer's notice of non-conformity must have been sent by the buyer within the aforementioned period; it is also necessary that the Seller has actually received the notice of non-conformity sent in due time.
- 11.3** When negotiating with regard to an alleged non-conformity, the Seller does not waive the objection of a delayed, insufficient or unfounded notice of non-conformity.
- 11.4** In any case, the buyer loses the right to invoke a lack of conformity of the goods if he does not notify the Seller of such lack of conformity at the latest within 12 months after the goods have actually been handed over to him.

## **12. Non-Conformity of the Goods**

- 12.1** After consultation with the Seller, the buyer shall ensure that all evidence is secured.
- 12.2** Deviations in quantities, dimensions, quality, weights and similar are permissible within the standard commercial tolerances. The Seller reserves the right to make equivalent design changes.
- 12.3** A non-conformity shall not be deemed to exist if damage to the delivered goods has occurred after the transfer of risk for the following reasons: improper or inappropriate use, faulty installation or assembly and/or initial operation on the part of the buyer or third parties, natural wear and tear, dirt, improper, faulty or negligent handling - most notable

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excessive operational demands - inappropriate operating and cleaning agents, substitute materials, chemical, electrochemical or electrical influences provided that they are not attributable to the Seller.

- 12.4** A non-conformity shall also not be deemed to exist if the objectionable quality of the delivery item is based on the design particularly required by the buyer or on the material supplied by the buyer or if it is caused by improper modifications or repair work carried out by the buyer or a third party or without the prior approval of the Seller.

### **13. Rights in Case of Lack of Conformity of the Goods**

- 13.1** If the goods or documents are not in conformity with the contract, the Seller shall be entitled to remedy the lack of conformity even after the agreed delivery period by repairing the goods or - in the event of a material breach of contract - by delivering a replacement (subsequent performance). The right to refuse performance under the statutory conditions shall remain unaffected.

- 13.2** The buyer shall give the Seller the time and opportunity necessary for the subsequent performance, in particular he shall hand over the rejected goods for inspection purposes. If, following a notification of non-conformity by the buyer, a lack of conformity of the goods cannot be established, the buyer shall reimburse the Seller for the costs incurred in connection with the inspection of the goods.

- 13.3** In the event of subsequent performance, the non-conforming goods shall be sent to the Seller's registered office at the Seller's expense and risk. There shall be no repair at the place of use of the rejected goods. Replaced parts shall become the property of the Seller.

- 13.4** Replacement delivery or repair of non-conformity shall not result in the period pursuant to clause 11.4 beginning to run anew.

- 13.5** If the buyer has granted the Seller a reasonable grace period for performance of the contract and performance of the contract has not taken place within this period or has been unjustifiably refused by the Seller, the buyer shall be entitled to reduce the purchase price or - in the event of a material breach of the contract - to declare the contract avoided. No fundamental breach of contract shall be deemed to have occurred if the Seller remedies the lack of conformity within a reasonable period of grace set by the buyer, which must be at least eight weeks due to the delivery times of primary products and raw materials.

- 13.6** The reduction of the purchase price shall be limited in amount to the damage suffered by the buyer.

- 13.7** The warranty period shall start anew only for replaced or repaired parts of the delivered goods.

- 13.8** Claims from statutory supplier recourse are excluded.

- 13.9** The Seller shall only be liable for damages due to lack of conformity of the goods within the limits specified in clause 14.

- 13.10** The Seller shall not be liable for advice and proposals of Seller which are not directly related to a delivery and which are not designated as binding.

### **14. Scope of Liability**

- 14.1** The Seller shall have unlimited liability for damages resulting from injury to life, limb or health caused by an intentional or negligent breach of obligation by the Seller or an intentional or negligent breach of obligation by his legal representative or vicarious agent, and in the case of statutory strict liability, in particular under the Product Liability Act and in the case of an express guarantee.

- 14.2** The Seller shall be liable for any other damage resulting from an intentional or grossly negligent breach of obligation by the Seller or an intentional or grossly negligent breach of obligation by its legal representative or vicarious agent. In this case the liability is limited to the typically occurring damage foreseeable at the time of conclusion of the contract.

- 14.3** In all other cases of liability, claims for damages due to the breach of a contractual obligation shall be limited to the amount covered by the Seller's insurance in the amount of EUR 5 million. In the event that, from the buyer's point of view, a higher damage is to be expected, the Seller shall, at the request and expense of the buyer, take out a higher insurance cover.

- 14.4** Under no circumstances shall the Seller be liable for additional expenses, loss of profit or other financial losses of the buyer.

- 14.5** The limitation of liability for delayed delivery pursuant to clause 7.7 remains unaffected.

- 14.6** Seller's liability is excluded in all other cases.

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- 14.7** Insofar as the Seller's liability is excluded or limited, this shall also apply to the personal liability of his employees, representatives and vicarious agents.
- 14.8** The terms "damage" or "claims for damages" in these Export T&C shall also include claims for compensation for futile expenditure.
- 15. Limitation Period**
- 15.1** In the case of statutory strict liability, in particular under the Product Liability Act and in the case of express guarantee, the statutory limitation period shall apply.
- 15.2** In the case of damages resulting from injury to life, limb or health which are based on an intentional or negligent breach of obligation by the Seller or an intentional or negligent breach of obligation by his legal representative or vicarious agent, in the case of other damages, which are based on an intentional or grossly negligent breach of obligation by the Seller or on an intentional or grossly negligent breach of obligation by his legal representative or vicarious agent, as well as in the case of damages which are based on an intentional or negligent breach of essential contractual obligations from the respective contract by the Seller or his legal representative or vicarious agent, the statutory warranty period shall also apply.
- 15.3** In all other cases the warranty period shall be one year from the passing of risk.
- 16. Property Rights, Secrecy**
- 16.1** All rights to cost estimates, devices, drawings, drafts, plans and other documents and items produced by the Seller, in particular patent rights, copyrights and inventor's rights, shall be the exclusive property of the Seller; they must not be made available to third parties. All sales documents such as catalogs, sample books, price lists, etc., which are made available to the buyer, remain the property of the Seller and must be returned upon request.
- 16.2** The buyer may use or register trademarks, trade names and other signs and industrial property rights of the Seller only after prior approval in text form and only in the interest of the Seller.
- 16.3** The buyer shall be liable for ensuring that no interference with the property rights of third parties occurs as a result of his instructions regarding the shapes, dimensions, colors, weights, etc. of the goods. The buyer shall indemnify the Seller against all claims of third parties for infringement of the aforementioned industrial property rights, including all court and out-of-court costs, and shall support the Seller in any legal dispute if requested.
- 17. Force Majeure**
- 17.1** Each party shall not be liable for the non-performance of one of its obligations if the non-performance is due to an impediment beyond its control or, in particular, to one of the following reasons: fire, natural disasters, pandemics, epidemics, war, civil war, riots, disruption of operations, strike, lockout, seizure, export ban, embargo or trade restrictions due to a change in political conditions as well as supply restrictions or other official measures or measures taken by organizations similar to authorities, in particular the FDA, general shortage of raw materials, restriction of energy consumption, labour disputes for which the parties are not responsible or if breaches of contract by suppliers are due to one of these reasons.
- 17.2** In the case of clause 17.1 above, the delivery period shall be extended accordingly. The same shall apply in the event of delays in the delivery of essential materials, insofar as these delays can be proven to have a considerable influence on the completion or delivery of the delivery item and are not the responsibility of the Seller.
- 17.3** Either party shall have the right to terminate the Agreement by written notice if performance of the Agreement is prevented for more than six months pursuant to clause 17.1 above.
- 18. Transfer of Ownership, Securing the Purchase Price Claim**
- 18.1** In the event that cash payment or advance payment has been agreed, ownership shall pass to the buyer in full upon delivery.
- 18.2** To the extent that there is no retention of title under the following provisions at the destination of the delivery, the buyer shall provide the Seller with another functionally equivalent means of security (e.g. letter of credit or bank guarantee).
- 18.3** If a retention of title is recognized at the destination of the delivery, the Seller shall retain title to the goods until the purchase price has been paid in full in accordance with clauses 3 and 9 (hereinafter "Reserved Goods").
- 18.4** The buyer is obliged to treat the Reserved Goods with care, in particular to adequately insure them at his own expense against fire and water damage and loss due to theft at replacement value.

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- 18.5** In the event of seizure, confiscation, damage and/or loss of the delivered items, the buyer shall notify the Seller immediately; any breach of this obligation shall entitle the Seller to declare the contract avoided. The buyer shall bear all costs which have to be expended for the successful cancellation of an attachment and, if applicable, for the successful replacement of the reserved goods, unless they can be collected by third parties.
- 18.6** If the Seller has effectively declared the contract avoided, he shall be entitled to take back the Reserved Goods if the taking back of the goods has been threatened with a reasonable period of time. The cost arising from the exercise of the right to take back, in particular for transport, shall be borne by the buyer. The Seller shall be entitled to sell the repossessed Reserved Goods and to satisfy itself from the proceeds thereof, provided that the realization was threatened beforehand with a reasonable period of time. If the proceeds exceed the outstanding claims from the contractual relationship, this surplus will be returned to the buyer.
- 19. Deliveries by the Buyer to the USA / Canada**
- 19.1** In the event that deliveries are made to buyers outside the USA / Canada, the buyer is obliged to obtain and maintain a product liability insurance policy with a minimum cover limit of 5 million euros for his exportation of the delivery items to the USA / Canada.
- 20. Miscellaneous**
- 20.1** Rights and obligations of the parties are not transferable, except for assignments of purchase price claims to banks of the Seller.
- 20.2** A contract concluded on the basis of these Export T&C shall remain effective even if individual provisions are invalid.
- 20.3** The buyer shall only have rights of set-off or retention with regard to counterclaims arising from the same contractual relationship or claims which have been finally and absolutely determined or expressly confirmed by the Seller.
- 21. Place of Fulfilment, Court of Jurisdiction, Applicable Law**
- 21.1** The place of jurisdiction for all rights and obligations of the parties to the contract arising from transactions of any kind is the Seller's registered office. The Seller may also sue the buyer at the court having jurisdiction over the buyer's registered office.
- 21.2** Unless otherwise stated in the contract or order confirmation, Seller's place of business shall also be the place of performance.
- 21.3** The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention/CISG) in the English language version shall apply exclusively to these Export T&C and the entire legal relationship between the Seller and the buyer. Legal issues not regulated by this Convention or which cannot be decided according to its principles are subject to German law.

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