

# General Terms and Conditions (GTCs) of RZ Medizintechnik GmbH

As at August 2019

## § 1 Applicability of GTCs, contracting parties

1. All business transactions with the buyer, client or orderer, hereinafter "orderer", shall be governed solely by the below terms and conditions, in the version that is current at the time of the order. We do not accept other terms and conditions of the orderer, even where services were fully rendered or payments accepted, unless we expressly agree to their applicability in writing. This applies to general terms and conditions beyond the general terms and conditions of purchase, particularly, but not exclusively, regarding quality assurance agreements, provision contracts, consignment contracts and non-disclosure agreements.
2. These GTCs are solely applicable to contracts with commercial parties, as defined in and pursuant to § 14 of the German Civil Code.
3. It is agreed in accordance with § 312 i Paragraph 2 Sentence 2 BGB that the purchaser waives the obligation to be provided with information in electronic commerce according to § 312 i Abs. 1 Nr. 1 - 3 BGB.

## § 2 Advice

1. We only advise the orderer at his express request. As product and service related advice, our advice shall be limited to products delivered, and services provided, by us. It does not include contract-independent consultation, i.e. explanations that are given without the sale of products, or the provision of services, by us.
2. Our advice is based on empirical values. To the extent that our advice concerns sets of circumstances whose validity we have no influence on, such as the composition of raw material, or the services of subcontractors, our consultation is nonbinding. Omitted statements do not constitute advice.

## § 3 Subject matter of the agreement

The subject matter of the contract is the production, or provision, as well as delivery, of ordered products and services.

## § 4 Conclusion of the Contract

1. Your order represents an offer to us for the conclusion of a purchase- or service contract.
2. The agreement only enters into force with our confirmation of order. The sending of the ordered goods, and the provision of ordered services, shall be deemed confirmations of orders.
3. We are not obliged to accept your order.
4. In the case of e-business services, it is possible to retrieve the contract terms and conditions, including the general terms and conditions, upon conclusion of the contract and store them in a reproducible form.

## § 5 Order

1. Data provided by the orderer in the course of his order are not subject to control by us; the orderer is sole responsible for the veracity of the data provided.
2. The orderer is bound to his order.

## § 6 No right of cancellation

Provided that the orderer orders and buys the contractual object from us in the exercise of his commercial or self-employed activity, he is a commercial party, as defined in and pursuant to § 14 of the German Civil Code. As we exclusively supply commercial customers, the orderer has no right of cancellation.

## § 7 EU standards

Products of RZ Medizintechnik GmbH comply with the applicable EU standards.

## § 8 Order changes

1. A separate contractual arrangement is required for desired changes to the contractual object.
2. The right to make technical amendments to the object of delivery or performance is reserved, so long as the contractual target is not thereby jeopardised.

## § 9 Delivery, delivery time

1. Unless otherwise arranged, delivery takes place to the address indicated by the orderer.
2. § 271 of the German civil code notwithstanding, our deliveries take place after production of the ordered items, the normal course of business.
3. If a schedule is agreed for delivery or performance, it shall begin at the dispatch of the order, but not before full clarification of all details of the order, as well as due performance of all the orderer's co-operation obligations; the same applies to delivery or performance dates. In case of consensual changes to the contractual object, new schedules and dates for delivery or performance shall be arranged. This also applies to cases where the contractual object was renegotiated after conclusion of the contract, while no amendment to the contractual object was made.
4. Schedules and dates for delivery or performance are subject to non-defective and on-time supply by sub-contractors and to unforeseeable disruptions of production.
5. The delivery or performance time is met if the contractual object has left our plant before its expiry, or if we have indicated completion for collection.
6. We are entitled to deliver goods and services before the arranged deadline.
7. Partial delivery or performance is permissible, and can be charged separately.

## § 10 Default of acceptance

1. If the orderer does not accept the contractual offer by reason of a circumstance for which he is responsible, we can claim compensation for any additional expenditures we have incurred as a result. In particular, we are entitled to charge the orderer in the amount of 0,5 % of the net delivery- or performance price for each commenced month, but no more than a total of 5%. The proof of higher or lower storage fees shall remain reserved to the parties to the contract.
2. We are furthermore entitled to determine, at the orderer's risk and cost, a suitable place of storage, and to insure the objects of delivery and performance at the orderer's cost.
3. If we are entitled to compensation for damages in lieu of performance, we can, without prejudice to the assertion of a higher actual damages, claim 15% of our price in damages, provided the orderer doesn't establish that no damage did actually occur, or that it is significantly lower than the flat rate.

## § 11 Prices, postage- and shipping charges

1. The prices of the current price lists as well as prices from current, individually created offers apply.
  - 1.1 All offers remain valid for 180 days respectively until the 31st of March of the following year.
2. For purchases via the tweezer configurator of the RZ-Medizintechnik, the prices specified in the ordering process apply.
3. All prices are exclusive of VAT in the respective statutory amount plus additional costs such as packaging, freight and shipping costs, customs, installation, insurance and bank charges. Any applicable VAT will be billed separately and shown. Shipping and incidental costs will be communicated to the purchaser in writing on request. For purchases via the tweezers configurator of RZ-Medizintechnik GmbH, the final price will be displayed on the page „Inquiries / Payment“.
4. For orders dispatched to countries other than Germany, important customs duties and costs can be levied by the country of destination. Import duties and taxes are raised by the respective customs office and are borne by the orderer. They conform to the import provisions of the recipient country. The orderer can obtain further information from the relevant customs office.
5. We only take out insurance for items to be dispatched at the request and expense of the orderer.

## § 12 Payment, payment options, arrears

1. The orderer shall pay the purchase price, or the fee arranged for the performance of services, by means of the orderer-specific payment possibilities.
2. Invoices are due within the payment period indicated on the invoice. Discounts and rebates are not granted.
3. The customer undertakes to pay the agreed price. In the event of a delay in payment, deferral of payment or partial performance, we have the right to charge default interest at a rate of 9% p.a. above

the relevant basic interest rate. We furthermore have the right to withhold further performance until all due invoices have been paid. The right to prove higher damages is reserved.

4. Partial payments require separate written agreement.

5. With his purchase confirmation the buyer guarantees his solvency, as well as his creditworthiness. In the event of warranted doubt in the orderer's solvency or creditworthiness, we have the right to require advance payment or suitable security for the payment to be made by the orderer. If the orderer is not willing to make advance payment or furnish security, RZ Medizintechnik GmbH has the right to rescind these contracts after granting a reasonable period of grace and to require compensation for reason of non-fulfilment.

6. The orderer is only entitled to offset claims if the counterclaim is undisputed, or has been established in law. The assignment of claims against us is permissible only with our approval.

7. The client has a right of retention only if his counter-claim is based on the same contractual relationship and is undisputed or established in law, or if we have committed a gross violation of our obligations from the same contractual relationship despite written warning, and have not offered appropriate collateral.

8. If our performance is undisputedly defective, the orderer only has the right to withhold payment in reasonable proportion to the defects and the anticipated costs of remedying them.

## § 13 Place of performance, passage of risk, packaging

1. The place of performance is our place of business. Unless otherwise arranged in writing, the shipment of the contractual object shall be transferred to the orderer according to the Incoterm specified in the quotation and invoice.

2. The risk of demise, loss or damage of the contractual object shall pass to the orderer with notification of the shipping confirmation and dispatch of the contractual object, or its handover to the instructed carrier.

3. Unless otherwise arranged, we shall determine the type and extent of packaging. Disposable packaging shall be discarded by the orderer.

4. In the event of damage to, or loss of, items during transport, an immediate inventory inspection shall be instigated, and we shall be notified thereof. The orderer must raise claims resulting from possible transport damage immediately with the carrier.

## § 14 Obligation to inspect and notify defects, acceptance

1. The orderer shall be responsible for the inspection of goods in terms of § 377 of the German commercial code, or comparable international regulations, immediately after receipt, and to notify us in writing of thus, or later, discovered defects, immediately after their discovery. Failing which, items shall be deemed accepted as defect-free. § 377 of the German commercial code shall correspondingly apply to services and works. Notices of defect must be made in writing. The orderer shall immediately surrender to us one or more items from the relevant consignment.

2. The use of defective deliveries or services is not permissible. If a defect could not be detected at receipt of goods, or delivery of service, any further use of the object of delivery or performance after discovery shall cease immediately.

3. The orderer shall return the items under complaint cleaned, and sterilised, or autoclaved, to us. Unless otherwise arranged, the return shipment shall be made carriage free. Return shipments must be announced in advance via the returns form <https://www.rzmedizintechnik.com/en/service/return-form/>.

4. The orderer has to give us sufficient time for the inspection of items under complaint. In the event of unjustified complaints, we reserve the right to charge the orderer for the expenses incurred for examining the alleged defects.

5. A notice of defect does not release the customer from the fulfilment of his payment obligations.

## § 15 Defect rights

1. To the extent that a defect of the contractual object exists, we are entitled at our own discretion to remedy the defect, make substitute supply or give credit within a reasonable period of time.

2. In case of third party products, including those that are built into or otherwise used in our products, we are entitled to initially limit our liability to the assignment of claims that accrue to us against the supplier of the third-party products, unless the satisfaction of claims from the assigned right fails, or the transferred rights cannot be honoured for other reasons. In this case the customer is again entitled to the rights laid out in paragraph 1, above.

3. Claims by the customer due to expenses required for supplementary performance, particularly transport, travel, work and material costs, are excluded, to the extent that these expenses increase because the goods delivered by us were subsequently moved to a different location other than the customer's place of business, except where the transport is according to its intended use.

4. The same warranty obligations apply for reworkings or compensatory services as for the originally delivered item.

5. Our statements relating to this agreement, e.g. performance specifications, reference to DIN standards, etc., comprise, in case of doubt, no assumption of warranty. Only express written statements on assumption of a warranty are thereby authoritative. Unless considered information on the nature of goods as defined in § 434 or § 633 of the German civil code, information in product descriptions and product specifications does not represent a guarantee for the nature of the item, or for it retaining a certain quality for a specified time.

6. In relation to repairs made without legal obligation, e.g. as a gesture of goodwill, the purchaser will only hold defect claims if expressly agreed.

## § 16 Legal deficiencies, property rights

1. Orders on the basis of sketches, drawings or other information supplied to us will be carried out at the risk of the orderer. Should we infringe the property rights of third parties as a result of such orders, the orderer shall indemnify us from claims of the holders of such rights. Any further damages shall be the responsibility of the orderer.

2. We shall not be liable for any breaches of property rights associated with the use of the supplied items or services or with the combination or use of the supplied items or services with other products.

3. In the event of legal deficiencies, we have the right, at our discretion: - to obtain the required licences regarding the injured protective rights - or to remove the deficiencies in the object of delivery or performance by providing an object of delivery or performance that is slightly altered in a way that is tolerable to the orderer.

4. Our liability for the infringement of third party protective rights is limited to such protective rights that are registered and published in Germany.

5. We reserve property- and copyrights to all images, illustrations and other (technical) documents provided by us. Disclosure or transfer to third parties requires our written approval. In the event of the order not being placed, all documents shall be returned immediately upon request. Documents provided by the orderer can be made accessible to third parties with whom we intend to place orders for supplies or services.

## § 17 Liability

1. In case of slight negligence, we shall only be liable for violations of essential contractual obligations. In case of gross negligence, we shall also be liable for violations of minor contractual obligations. In the above cases, liability is limited to foreseeable damage typical of the contract.

2. Our liability for the absence of warranted characteristics is limited to the scope and amount of our product liability insurance and recall cost insurance. The extent of coverage of our product liability insurance corresponds to the German insurance industry association's non-binding recommendations regarding product liability insurance. The cover for product liability for insurance cases covered by the insurance policy amounts to 2 million euros per claim and 4 million euros per insurance year. The cover for recall cost insurance amounts to 500,000 euros per insurance year.

3. Damages claims resulting from intentional breach of contractual obligations by us, claims for bodily injury and claims based on the Product Liability Act are governed by statutory regulations. In this respect, the above limitation of liability in item 3 does not apply.

4. We are liable for tortious claims according to contractual liability; limiting liability agreements in terms of the contract are also valid with regard to the orderer.

5. Any liability exceeding the preceding regulations is excluded.

6. Any regress claims by the orderer against us only apply to the extent that the orderer has not reached any agreements with buyers of the goods in excess of the statutory defect- and compensation claims.

7. Insofar as we have excluded or limited our liability, the same applies to personal liability of our employees, workers, staff members, representatives and vicarious agents.

8. Insofar as liability is excluded or limited according to the provisions above, the orderer shall be obliged to also exempt us from claims made by third parties. Furthermore, the orderer shall indemnify us against claims of third parties resulting from inappropriate use or relabelling of our products by the orderer, or if medical malpractice cannot be demonstrably excluded as a cause.

9. The orderer is obliged to notify us immediately in writing of any claims made by third parties and permit us to take all defensive measures and conduct settlement negotiations.

10. The orderer shall strive to agree a waiver of recourse in our favour with his product liability insurance company, particularly concerning § 86 of the insurance contracts act (VVG) and item 7.3 of the general conditions for statutory third-party liability insurance (AHB).

## § 18 Limitation period

1. The limitation period for claims and rights resulting from deficiencies in our products and services, as well as resulting damages, is 1 year. The limitation period shall commence pursuant to legal statutes. The above statute of limitations shall not apply if the law stipulates longer time limits in terms of §§ 438 para. 1 no. 2, 479 and 634 a para. 1 no. 2 of the German civil code.
2. The limitation period under para. 1 sentence 1 furthermore does not apply in the event of intent, if we have maliciously concealed the defect, or if we have assumed a warranty for the properties of the item, neither does it apply for damages claims for reason of injury to health or freedom of a person nor for claims under the product liability act, nor for a grossly negligent breach of duty.
3. Subsequent performance measures, i.e. the delivery of a defect-free item, or removal of defects, shall not cause the limitation period to recommence, but shall merely suspend the limitation period applicable to the original delivery item for the period of the subsequent performance measure. In case of doubt, subsequent performance by us does not represent acknowledgement as defined in Section 212 no. 1 of the German civil code.
4. A change of the burden of proof to the detriment of the orderer is not connected with the above regulations.
5. Unless expressly stipulated otherwise, the statutory regulations on the commencement of the limitation period, suspension, stay and recommencement of the period remain unaffected.

## § 19 Repair and other services

1. The order shall be responsible for inspecting and guaranteeing the quality (e.g. material, accuracy of measurements, etc.) of products supplied by him for the purpose of processing. The orderer will supply the relevant material free of charge. Regarding material supplied to us, we merely carry out a receiving inspection with regard to quantity and identity, as well as a visual inspection to identify obvious transport damage. We are only obliged to verify the conformity of the material with the specifications provided by the orderer if there are obvious indications to that effect. We are not obliged to carry out further verifications. A verification can be expressly arranged; the cost of such inspection shall be borne by the orderer.
2. In case of damage, destruction or loss of items provided to us, our obligation to compensate only applies to the extent that we have caused the damage. If parts are no longer usable as a result of processing faults, we will carry out the same work free of charge, using a new part to be provided to us at our expense. We reserve the right to self-supply. Otherwise, our obligation to compensate is limited to the provision of an item of equal nature and value; a new-for-old value deduction shall be made, provided that legal conditions are met. Normal wear and tear is excluded from liability.
3. If an inspection procedure has been agreed, it must take place in our plant or warehouse within a week of the date of our notification of readiness for acceptance. The cost of the inspection shall be borne by the orderer. It shall be deemed as equivalent to the reception of goods if the orderer does not accept the work within this period of one week. Provided that we haven't assumed a guarantee for condition of the delivery item, or fraudulently concealed a defect, the rights of the orderer relating to a defect are excluded after the implementation of the agreed inspection by the orderer so long as the orderer hasn't provided a notice of defect, even though he could have observed it during the agreed inspection, and he thus failed in a negligent manner to establish the defect.
4. The orderer shall insure items provided to us with an "external insurance".
5. Unless different regulations are expressly stipulated in terms of para. 1 to 4 of this § 21, the provisions of the other regulations of these GTCs shall apply.

## § 20 Reservation of title, right of lien

1. We reserve the title to all contractual items until full settlement of all claims which we hold as a result of the business relationship with the orderer.
2. If the reserved goods are processed, bonded or mixed with other goods in external property, we acquire ownership of the new item in terms of § 947 of the German civil code.
3. If processing, bonding or mixing are carried out in such a way that the contribution of a third party should be seen as the main part, we acquire co-ownership at the value of our contribution in proportion to the third-party contribution at the time of processing, bonding or mixing.
4. Insofar as we acquire ownership of an item as a result of our contribution, we reserve the title this item until full settlement of all claims which we hold as a result of the business relationship with the orderer.
5. The orderer is obliged to take the reserved goods into careful safekeeping and, if necessary, to carry out timely maintenance and repair works at his own cost. The orderer shall insure reserved goods against loss or damage at his own cost. Any security claims arising in the event of damage are to be assigned to us.
6. The orderer is entitled to resell the item that is in our (co-)ownership in the proper course of business,

as long as he complies with his obligations arising from his business relationship with us. In this case, the claim arising from the resale shall be deemed as assigned to us at the ratio of the value of our contribution secured by the reservation of title to the total value of the goods sold. The orderer remains entitled to collect this claim even after the transfer. This shall not affect our right to collect the receivable ourselves.

7. The right of the orderer to dispose of the goods subject to our reservation of title and to collect the debts assigned to us, expires as soon as he no longer meets his payment obligations and/or application is made for insolvency proceedings to be instigated. In these aforementioned cases, as well as other behaviour of the orderer in violation of the contract, we shall be entitled to take back without warning goods of which we have reservation of title.
8. The orderer shall immediately notify us of risks to our reserved goods, particularly in the event of bankruptcy, insolvency and enforcement measures. At our request, the orderer shall be obliged to provide all necessary information about the inventory of goods in our (co-)ownership, and amounts payable assigned to us, as well as to inform his purchasers about the assignment. The orderer shall assist us in all measures necessary to protect our (co-)ownership and shall bear the resulting costs.
9. In relation to all claims under the contract, we hold a right of lien to the orderer's items that have come into our ownership on the basis of this agreement. Such lien may also be exercised in relation to outstanding debts stemming from deliveries or work already conducted, as long as there is a connection with the object of delivery of performance. For other claims from the business relationship the right of lien applies to the extent that it is uncontested or legally binding. §§ 1204 ff. of the German civil code and § 50 para. 1 of the insolvency statute shall apply accordingly.
10. If the realizable value of the securities exceeds our claims by more than 15%, we shall release securities of our choice at the customer's request.

## §21 Confidentiality

1. The orderer undertakes to treat all privileged aspects of the business relationship with confidentiality. He is particularly obliged to treat all business and technical information of which it becomes aware during the course of business, and that is not common knowledge, confidentially. Obligation of confidentiality does not apply to information, or aspects of the business relationship, that were public knowledge at the time of disclosure, as well as such information, or aspects of the business relationship, that the contracting party was demonstrably aware of already before disclosure by us. The orderer shall also ensure that his employees adhere to the provisions on confidentiality.
2. Reproduction of documents provided to the orderer is only permissible within the scope of operational requirements and copyright regulations.
3. Without our prior agreement in writing, no records must be made available to third parties in full or in part, or used for a purpose other than the one they were provided to the orderer for.
4. Even partial disclosure of the business relationship to third parties shall only take place after our prior written approval; the orderer shall likewise oblige third parties to confidentiality by means of a similar agreement.
5. The orderer may not advertise the business relationship without our prior written approval.
6. The orderer remains bound to confidentiality after the end of the business relationship.

## § 22 Place of jurisdiction, applicable law

1. At our discretion, the place of jurisdiction is our place of business (Germany), or the general place of jurisdiction of the orderer.
2. With regard to the business relationship with the orderer, the law of the Federal Republic of Germany shall be exclusively applicable. The applicability of CISG - "UN Sales Convention" - is excluded.
3. Should individual provisions of these GTCs be ineffective, the validity of the remaining provisions shall not be affected. The contracting shall endeavour to replace the ineffective clause by a valid clause which comes closest to the business purpose and the legal meaning of the original provision and is in accordance with the relevant provisions of the law.

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