

General Terms and Conditions of Teleon Surgical Vertriebs GmbH, Berlin

§ 1 General Provisions

1. These Terms and Conditions of Delivery and Contract ("General Terms and Conditions") apply exclusively to all deliveries and services provided by Teleon Surgical Vertriebs GmbH (hereinafter "Teleon") to its customers. These General Terms and Conditions apply only to transactions with businesses.
2. The offer, acceptance of the offer, order confirmation and the sale of all goods are subject to these General Terms and Conditions. Any terms and conditions or provisions amending the contract, in particular any conflicting terms and conditions of purchase of the customer, are hereby rejected; they shall only be effective vis-à-vis Teleon if Teleon agrees to such amendments in writing.

§ 2 Offers, Conclusion of Contract

1. All offers made by Teleon are subject to change and non-binding. Contracts and other agreements, in particular verbal side agreements and assurances given by employees or representatives of Teleon, shall only become binding upon written confirmation by Teleon. Guarantees and assurances must be expressly identified as such by Teleon and confirmed in writing. Legal declarations may be transmitted by post, email or fax, even where the declaration itself must be made in writing under these General Terms and Conditions.
2. In the event of a consignment stock established by Teleon at the customer's premises, the purchase contract shall be concluded at the latest upon removal of the consignment goods.

§ 3 Prices

The Teleon price lists valid at the time of conclusion of the contract shall apply, unless the parties have expressly agreed otherwise in writing. Prices are quoted net. All other costs, such as packaging, freight, customs duties, insurance premiums, etc., as well as any applicable statutory value added tax, shall be charged additionally.

§ 4 Standby Lenses

1. Unless otherwise agreed in individual cases, Teleon shall supply a replacement lens (so-called 'standby lens') with every lens. A 'standby lens' is an identical duplicate of the ordered lens.
2. The price agreed for a standby lens is the same as that for the ordered lens. The price for a standby lens becomes due for payment if the standby lens is not sent to Teleon and received by Teleon within the period agreed in the individual contract (as stated on the delivery note) following delivery. This does not apply if the ordered lens is a custom-made lens. The standby lens for a custom-made lens is not charged separately and does not need to be returned to Teleon even if it is not used.

§ 5 Custom-made lenses

1. If the customer orders a custom-made lens from Teleon, Teleon shall prepare a quotation for the custom-made lens based on the patient's individual measurements provided by the customer and shall send this to the customer together with an order form for the lens to be manufactured ("Teleon order form"). The customer is obliged to check the calculation proposal prepared by Teleon for accuracy in relation to the information provided by the customer and to confirm the accuracy of this information in writing on the enclosed Teleon order form.
2. In the event of inaccuracies in the information provided by the customer on the Teleon Order Form, the customer is obliged to notify Teleon of this in writing before signing the Teleon Order Form.
3. Teleon is not obliged to check the customer's details for the suitability or usability of a lens calculated on the basis of these details. Teleon guarantees that the lens to be manufactured corresponds to the values specified in the Teleon order form. **Furthermore, Teleon accepts no liability for the accuracy of the customer's details or the suitability of the custom-made lenses for use with the patient.**

§ 6 Delivery

1. Teleon makes the goods available for collection ex works. Teleon shall notify the customer as soon as the goods are ready. At the customer's request, which may also be made prior to the notification referred to in sentence 2, Teleon shall dispatch the goods to the customer at the customer's expense. If the goods are to be dispatched abroad, Teleon shall dispatch them at the customer's expense via a transport company to be designated by the customer. Deliveries to a consignment warehouse and withdrawals therefrom shall be governed exclusively by the relevant consignment warehouse agreement.
2. Teleon is not obliged to take out transport insurance for the goods. If the customer wishes to take out such insurance, Teleon shall do so on the customer's behalf and at the customer's expense.
3. Partial deliveries are permissible provided there is good cause for doing so and they are reasonable for the customer.
4. Where delivery times have been specified by Teleon and formed the basis for the placing of the order, such times shall be extended in the event of strikes and force majeure, namely for the duration of the delay. The same applies if the customer fails to fulfil their obligations to cooperate.
5. A delivery date confirmed by Teleon is subject to correct, complete and timely supply by Teleon's suppliers. In the event of non-delivery by our suppliers, both parties shall be entitled to withdraw from the contract. Any claim for damages by the customer due to late, non-delivery or incomplete delivery by Teleon's suppliers is excluded, unless Teleon is responsible for the non-delivery.
6. If, in the event of a delay in the delivery of the goods, the Customer sets Teleon a reasonable grace period for performance or subsequent performance, the Customer shall be entitled, upon the fruitless expiry of this grace period, to withdraw from the contract or to claim damages for non-performance. § 11 applies to any claim for damages.
7. In the event of a delay on the part of Teleon, the customer may, in addition to delivery of the goods, claim compensation for the loss caused by the delay only up to a maximum of 10% of the purchase price; § 11 applies to this claim.

§ 7 Transfer of Risk

1. The risk of damage to or loss of the goods shall pass to the customer at the time Teleon informs the customer that the goods are ready for collection.
2. If the customer has requested dispatch of the goods prior to this point in time, the risk of damage to or loss of the goods shall pass to the customer at the time when Teleon hands over the consignment to the carrier or the goods have left Teleon's warehouse for the purpose of dispatch.

§ 8 Payments

1. The customer must pay Teleon's invoices without deduction within 30 days of receipt. Timeliness of payment is determined by the receipt of the amount, freely available for use, in a Teleon account specified in the order confirmation or invoice.
2. Cheques are accepted only on account of performance. Payment by bill of exchange is excluded.
3. The customer is only entitled to set off claims if the counterclaim has been acknowledged by Teleon or is undisputed or has been established by a final and binding court decision.

§ 9 Retention of title

1. The goods delivered remain the property of Teleon (retention of title) until all claims between the parties have been settled, regardless of the legal basis, even if payments have been made for specifically designated claims. In the case of an open account, the retention of title shall serve as security for Teleon's balance claims.
2. The customer is entitled to use and resell the goods subject to retention of title in the ordinary course of business. The Customer hereby assigns to Teleon, with immediate effect, its claims arising from such resales up to the amount of the balance resulting from the business relationship at the time of sale. Teleon accepts this assignment. Teleon authorises the Customer to collect the assigned claims on behalf of Teleon in its name. Teleon may revoke the authorisation to collect if the Customer fails to meet their payment obligations. In such a case, the Customer is obliged, at Teleon's request, to notify their customers of the assignment and to provide Teleon with the information and documents necessary for Teleon to assert its rights against the customers.
3. For as long as the retention of title remains in force, the Customer shall not be entitled to pledge, transfer by way of security or otherwise dispose of the goods in a manner that impairs the security without Teleon's prior written consent. In the event of third-party claims against the goods sold, the Customer shall indicate Teleon's ownership and notify Teleon immediately in writing. Insofar as the third party is unable to reimburse Teleon for the judicial or extrajudicial costs incurred in the successful enforcement of its ownership rights, the customer shall be liable for these costs.
4. If the customer defaults on payment, Teleon may, without prejudice to further claims, revoke the customer's right to resell the goods and withdraw from the contract. In this case, the goods delivered by Teleon may be reclaimed from the customer within a reasonable period and, following written notice with a reasonable period of notice, may be realised to the best possible extent by private sale, with the proceeds of such realisation being set off against the purchase price. Teleon shall be entitled to these rights even if the secured claims have already become time-barred.
5. Insofar as Teleon is entitled to exercise the retention of title, the customer shall grant Teleon irrevocable and unrestricted access to its business premises or site during normal business hours for the purpose of collecting the goods sold. If the customer maintains a consignment warehouse, the provisions of the consignment warehouse agreement shall apply in this respect.
6. Teleon undertakes to release the securities to which it is entitled at the Customer's request to the extent that the realisable value of the securities exceeds the claims to which Teleon is entitled. The selection of the securities to be released shall be at Teleon's discretion.

§ 10 Warranty

1. Teleon warrants that the delivered goods are free from material and manufacturing defects at the time of the transfer of risk.
2. The customer must inspect the goods for completeness and defects immediately upon delivery by Teleon and, if a defect is found, notify Teleon without delay. If the customer fails to give notice, the goods shall be deemed to have been accepted, unless the defect was not apparent during the inspection. If such a defect becomes apparent at a later date, notice must be given immediately upon discovery; otherwise, the goods shall be deemed to have been accepted notwithstanding this defect. If the goods are deemed to have been accepted or have been accepted by the customer as free from defects, the customer shall have no warranty claims against Teleon. This shall not apply if Teleon has fraudulently concealed the defect or has given a guarantee as to the quality of the goods.
3. In the event of a warranty claim, Teleon shall, at its discretion, provide a replacement for the defective goods free of charge or carry out repairs free of charge. If the replacement delivery or the repair ultimately fails, the customer is entitled, at their discretion, to demand a reduction in the purchase price (abatement) or the rescission of the contract (withdrawal). § 11 of these General Terms and Conditions applies to any claims for damages.
4. The warranty period for defects in the goods is one year. The limitation period in the event of a supply recourse claim under §§ 478 and 479 of the German Civil Code (BGB) remains unaffected. This does not apply insofar as claims for damages due to defects are concerned.
5. The customer does not receive any guarantees in the legal sense from Teleon.

§ 11 Exclusion of Liability

1. Claims by the customer against Teleon for damages arising from contractual and non-contractual liability are excluded, unless otherwise provided in § 11(2).
2. The above limitations and exclusions of liability, and any others set out in these General Terms and Conditions, shall not apply to damages resulting from injury to life, limb or health, for damage resulting from an intentional or grossly negligent breach of duty by Teleon or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of Teleon, as well as for damage arising from the breach of essential contractual obligations. An essential contractual obligation in the aforementioned sense is one whose fulfilment is essential for the proper performance of the contract and on whose compliance the customer regularly relies and is entitled to rely. In the event of a breach of essential contractual obligations due to slight negligence, liability is not excluded but is limited in amount to foreseeable damage typical for this type of contract.
3. Teleon's liability under the Product Liability Act or in respect of any guarantees assumed by Teleon remains unaffected.
4. Insofar as liability for damages not arising from injury to the customer's life, body or health is not excluded in cases of slight negligence, such claims shall become time-barred within one year from the date on which the claim arose or, in the case of claims for damages due to a defect, from the date of delivery of the item.
5. Insofar as liability for damages towards Teleon is excluded or limited, this shall also apply with regard to the personal liability for damages of Teleon's employees, staff, representatives and vicarious agents.

§ 12 Information and Advice

All oral and written information provided by Teleon regarding the suitability and possible applications of the products is given to the best of its knowledge. Such information represents only Teleon's experience and does not constitute an agreement as to quality or a guarantee of quality, and therefore does not give rise to any claims against Teleon. In particular, the customer is not relieved of the obligation to satisfy themselves, through their own testing, of the suitability of the products for their intended purpose.

§ 13 Patient data

1. The customer shall, as a general rule, only transmit patient-related data to Teleon in pseudonymised form. Data is deemed to be pseudonymised if Teleon cannot attribute the data to a specific patient. The patient concerned must no longer be identifiable to Teleon from the patient data transmitted by the customer to Teleon.
2. Insofar as the Customer transmits a patient's personal data (in particular health data) to Teleon, the Customer shall ensure that this consists exclusively of data necessary for the conduct of the business relationship between Teleon and the Customer.
3. Where, in individual cases, the customer transmits non-pseudonymised patient data for the fulfilment of the order, the customer shall ensure, prior to transmitting the patient's data (in particular health data), that the patient has given their express written consent to the processing of the data by Teleon for the purpose of transmission to Teleon.

§ 14 Jurisdiction and Applicable Law

1. If the Customer is a merchant, a legal entity under public law or a special fund under public law, or if they have no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction shall be Berlin. Teleon is also entitled to bring legal proceedings against the Customer at their general place of jurisdiction.
2. German law shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

§ 15 Final Provisions

Should one or more provisions of these General Terms and Conditions contravene mandatory law or be invalid for other reasons, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by one that comes as close as possible, in a permissible manner, to the economic intent of both parties.