

## General Terms and Conditions

of Carl Martin GmbH, Neuenkamperstr. 80-86, 42657 Solingen Managing Director: Peter Holzknecht, County Court Wuppertal HRB 15702 (hereinafter "Carl Martin GmbH").

### **1. Validity**

The sale of our goods and other services is based exclusively on the following General Conditions of Sale. Deviating purchase conditions of the customer are hereby contradicted. At the latest, the Conditions of Sale shall be deemed accepted unconditionally by the purchaser with the acceptance of our goods or other services, even in the event of a previous objection. To be effective, deviations from the Conditions of Sale require our express written consent for each individual contract. These Conditions of Sale shall only apply to companies within the meaning of § 14 BGB (German Civil Code). The following provisions shall apply from 01.01.2018. All previous terms and conditions are hereby superseded. Special and old contracts remain unaffected by this.

### **2. Offers**

Our offers are always subject to change. The contract is concluded by our written order confirmation or by our invoice. Samples and specimens are non-binding.

### **3. Catalogue**

Illustrations in our catalogue are non-binding. Within the context of further technical and medical advancement, we reserve the right to make changes to models, dimensions, materials and design until delivery, insofar as these are reasonable for the customer taking into account the mutual interests of both Parties.

### **4. Catalogues, price lists**

Brochures, product images, drawings, etc. shall remain our property and we reserve the unrestricted copyright exploitation rights thereto. They may only be used for the purchase and sale of the products supplied by us. They shall be returned to us upon request. Reproduction is not permitted.

### **5. Custom-made products**

For products according to samples, drawings or other documents, we are not obliged to check existing industrial proprietary rights and these shall be charged based on the costs incurred. The cancellation of orders for custom-made products and the return of custom-made articles are excluded. We are entitled to deviate from the total quantity ordered. Furthermore, we draw your attention to the special provisions for custom-made products ensuing from § 12 of the Medical Devices Act.

### **6. Partial deliveries**

Partial deliveries as well as excess or short deliveries of +/- 10 % of orders are permitted. Partial deliveries requested by the buyer are to be paid for separately in each case.

## **7. Delivery times**

Delivery times are to be regarded as non-binding and generally indicate the expected delivery date which we will endeavour to meet. Something different shall only apply if we have expressly marked delivery dates as binding in writing with the buyer. Compliance with agreed delivery periods requires that the purchaser fulfils his contractual obligations, in particular makes due payments – also for any earlier deliveries. The delivery deadline shall be deemed to have been met if the goods have left our works before expiry of the deadline or if readiness for shipping has been notified. If we are prevented from delivering by force majeure, an agreed delivery deadline shall automatically be extended by the duration of the force majeure. Circumstances which make delivery unreasonably difficult or impossible for us, such as industrial action, lack of workforce, energy or material, traffic disruptions, interruption in the supply of primary material, operational disruptions due to water, fire, machine breakage, official orders, etc., shall be deemed equivalent to force majeure, regardless of whether these circumstances occur with us or our supplier.

## **8. Delayed delivery**

A delay in delivery for which we are responsible entitles the customer to withdraw from the contract after he has set us a reasonable grace period in writing and this has expired unsuccessfully through our fault. The buyer's claims for damages shall be governed by Clause 15.

## **9. Force majeure**

Circumstances or events for which we are not responsible and which delay, render impossible or unreasonably impede delivery shall release us from the delivery obligation for the duration of the impediment and a reasonable start-up period, even if they occur at our suppliers. If the impediment is not expected to end within a reasonable period of time, we shall be entitled to withdraw from the contract in whole or in part without any obligation to perform a subsequent delivery. Such circumstances or events for which we are not responsible are in particular but not exclusively the following reasons: war, fire, natural disasters, accidents, traffic and operational disruptions, seizure, embargo or other official measures, general shortage of raw materials, limitation of energy consumption, strike or lockout, currency volatility or if breaches of contract by suppliers are due to one of these reasons.

## **10. Delay in acceptance**

If the purchaser does not accept the goods without justification, if he delays the call-off beyond the agreed period or if he culpably violates other obligations to cooperate, we shall be entitled to claim damages including additional costs. Furthermore, the risk is transferred to the purchaser. We reserve the right to assert further claims.

## **11. Prices**

The prices are quoted in EUROS ex works excluding freight, packaging, insurance and incidental costs, which have to be borne by the purchaser in addition. For deliveries within Germany the value added tax will be charged additionally at the statutory rate. Unless fixed prices have been expressly agreed in writing, invoicing shall be based on the prices applicable on the day of delivery.

## **12. Shipping**

Shipment shall be effected at the expense and risk of the purchaser. Unless otherwise agreed, we shall determine the means and route of transport without being responsible for choosing the fastest or cheapest option. The packaging will be charged at cost and will not be taken back.

## **13. Insurance**

Unless otherwise stipulated, we shall insure the consignments at the expense of the purchaser. However, there is no obligation on our part to take out insurance. In the event of damage to or loss of the goods during transport, the purchaser must immediately arrange for the carrier to record the facts.

#### **14. Liability for defects**

Warranty claims of the purchaser presuppose that he has duly fulfilled the inspection and complaint obligations owed under § 377 HGB (German Commercial Code). Warranty claims of the purchaser shall be excluded if the defect has arisen as a result of the delivered goods being improperly transported, stored, handled, processed or used. Furthermore, there shall be no warranty rights in the event of natural wear and tear. If our goods exhibit defects which occur within 12 months of delivery and were demonstrably present at the time of transfer of risk, we are obliged, at our option, to either repair the rejected goods or to deliver defect-free replacement goods (subsequent performance). If subsequent performance fails, the purchaser shall be entitled, at his discretion, to withdraw from the contract or demand a price reduction. We reserve the right to effect subsequent performance only after receipt of the first delivered goods. . We shall be responsible for fraudulent concealment of a defect as well as for a guaranteed quality of the product. The aforementioned shortening of the limitation periods shall not apply to claims for damages by the purchaser due to injury to life, limb or health and to claims for damages due to a violation of essential contractual obligations. The aforementioned shortening of the limitation periods shall also not apply to claims for damages due to an intentional or grossly negligent breach of duty by Carl Martin GmbH. The defective goods shall be sent to us carriage paid upon request.

#### **15. Liability**

We are liable for intent and gross negligence. Furthermore, we shall be liable in case of culpable violation of essential contractual obligations. In the case of slightly negligent violation of essential contractual obligations, our liability shall be limited to the damages typical for the contract. Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to liability under the Product Liability Law.

#### **16. Return policy**

Carl Martin GmbH grants all customers the right to return unused and undamaged products in their original packaging within 6 months of the invoice date. Excluded from this provision are all sterile products, products with an expiry date, liquids, custom-made products and private label products. We reserve the right to reduce credit notes for the returned goods due to price reductions, reduced marketability, storage costs for the goods as well as costs arising from the requirements of the Medical Devices Act (MPG). If the cause for the return was not our fault, we shall be entitled to charge processing fees. At the earliest, we shall be liable for returns after undamaged receipt at our premises. The transport costs shall be borne by the purchaser.

#### **17. Invoices**

Unless stipulated otherwise in the purchase contract, our invoices are payable net within 30 days of the invoice date. Discount deductions are not accepted. Payments always settle the oldest invoice. If the payment deadline is exceeded or if payment is not made in full on time, the purchaser shall be in default even without a reminder, no later than 30 days after the due date and receipt of invoice. Irrespective of other claims, we are entitled to demand interest at a rate of 8% above the respective base interest rate in accordance with § 247 BGB (German Civil Code) from the onset of default. If the purchaser is in arrears with due payments or if justified doubts about his solvency arise after conclusion of the contract, we shall be entitled to demand immediate payment of all claims against him and / or the provision of securities even prior to delivery, to withhold outstanding deliveries on this as well as on other contracts in whole or in part or to withdraw from existing contracts after the unsuccessful expiry of a reasonable grace period set by us. Further deliveries shall only be made against advance payment. The purchaser may neither withhold nor offset payments due to a counterclaim disputed by us which has not been legally established.

### **18. Retention of title**

The delivered goods shall remain our property until full payment of all claims and as long as we still have any claims arising from the business relationship with the purchaser. The purchaser may not pledge reserved goods or assign them by way of security. If the purchaser sells the goods delivered by us, regardless of their condition, he hereby already assigns us the claims against his customers arising from the sale, including all ancillary rights, until complete settlement of all our claims arising from the delivery of goods. In case of the purchaser's insolvency, the purchaser shall be obliged to inform us upon request of the names of his customers to whom our goods have been forwarded. At the customer's request, we undertake to reassign the goods insofar as the value of the securities assigned to us exceeds our delivery demands by more than 20 %. In the case of insolvency, the purchaser must inform his customers of the assignment and inform us immediately of the imminent or effected seizures. If, in the case of export transactions, retention of title is not permitted at the place where the goods are located after delivery, the purchaser shall at his own expense undertake everything necessary to procure for us the most similar security rights with regard to the delivered goods.

### **19. Information and advice**

All verbal and written information about the suitability and application possibilities of our products is given to the best of our knowledge. The purchaser shall not be released from the obligation to convince himself of the suitability of the products for the intended purpose by conducting his own tests.

### **20. Place of Performance/Place of Jurisdiction/Applicable Law**

The courts at our place of business shall have exclusive jurisdiction for all legal disputes, including those arising from bills of exchange and cheques, to the extent permitted by law. However, we reserve the right to also sue the customer before the courts of his general place of jurisdiction. The place of performance for the services of both contractual partners is Solingen. All legal relations between the purchaser and us are subject exclusively to the law of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods.