

Elcon Medical Instruments GmbH General Terms and Conditions

§ 1 Scope of the General Terms and Conditions

- (1) All agreements and offers are subject exclusively to these General Terms and Conditions (GTC). We do not recognise other general terms and conditions.
- (2) All agreements, assurances and collateral agreements must be in writing.

§ 2 Offers and conclusion of contracts

- (1) Offers by Elcon Medical Instruments GmbH Medical Instruments GmbH (Elcon Medical Instruments GmbH) are always subject to change and non-binding. The contract is concluded with a written order confirmation by Elcon Medical Instruments GmbH. The invoice shall be deemed as confirmation in the case of an immediate delivery by Elcon Medical Instruments GmbH without prior confirmation.
- (2) Drawings and other illustrations as well as physical data such as size or weight are binding only if this has been expressly agreed in writing.
- (3) In documents provided to the contracting party, the other party does not acquire any property and any copyright or related rights. Elcon Medical Instruments GmbH may make such records available to third parties to the extent that this is necessary for the performance of the contract or parts thereof. Should property rights of third parties be interfered with because the purchaser ceded them, the customer shall release Elcon Medical Instruments GmbH from any resulting claims of third parties.

§ 3 Prices and conditions of payment

- (1) Elcon Medical Instruments GmbH prices are ex works, without packaging, without freight, without VAT and without shipping insurance.
- (2) Payment shall be made, unless otherwise agreed, in advance by bank transfer. For advance payments, Elcon Medical Instruments GmbH shall specify the bank details in the order confirmation. The invoice amount is to be transferred to this account within 10 days. A right of retention can be exercised by the contracting party only if the claims arise from the same contractual relationship.
- (3) Payments will be offset in accordance with § 367 BGB, otherwise against the oldest debt.
- (4) In case of default, Elcon Medical Instruments GmbH is entitled to default interest of 8 percentage points above the base rate, subject to proof of a higher damage caused by the default.
- (5) The exercise of set-off or a right of retention against the claims of Elcon Medical Instruments GmbH is excluded, unless the counter-claim or right of retention is undisputed or legally binding.
- (6) If the contracting party is in default or if a concrete indication of an impending insolvency exists, Elcon Medical Instruments GmbH is entitled to continue carrying out current orders only if appropriate securities are provided by the customer and, if the securities are not provided, to rescind the contract.

§ 4 Content of the contract, performance period, delivery

- (1) In case of doubt, the content of the contract is determined by Elcon Medical Instruments GmbH's order confirmation. Partial deliveries by Elcon Medical Instruments GmbH are permissible and may be charged separately if this does not result in disadvantages for the entire content of the contract.
- (2) Elcon Medical Instruments GmbH is entitled to technical alterations with regard to the contents of the order if this is based on the further development of the product, changes in the manufacturing technology, regulatory compliance or similar reasons.
- (3) The beginning of the delivery period presupposes that all necessary permits and approvals as well as documents and other things to be delivered by the purchaser are available and all technical issues have been completely clarified. The delivery period shall not begin before sending the order confirmation. The delivery period is subject to the timely delivery to Elcon Medical Instruments GmbH as well as the fulfilment of the duties of cooperation by the customer.
- (4) In order to comply with the delivery period, the shipment or the provision of delivery is sufficient.
- (5) In the case of force majeure, Elcon Medical Instruments GmbH is exempt from the requirement of timely delivery. Force majeure includes war, trade restrictions, strikes, lockouts, delays in the delivery of essential equipment or operational failure. In cases of force majeure, Elcon Medical Instruments GmbH is entitled either to extend the delivery period by the time of the existence of force majeure or to rescind the contract. This does not give rise to a right to compensation for the purchaser.
- (6) If there is a delivery delay for which Elcon Medical Instruments GmbH is responsible, the purchaser is entitled to give Elcon Medical Instruments GmbH a reasonable extension in writing by pointing out that he will refuse to accept the delivery after the deadline. Once this deadline has elapsed, the purchaser is entitled to withdraw from the contract by written notice or, in the case of intent or gross negligence, demand damages instead of performance. Any other compensation claims by the purchaser are excluded.
- (7) Unless otherwise agreed, Elcon Medical Instruments GmbH delivers freight collect and uninsured ex works according to the most current version of the Incoterms. In these cases, Elcon Medical Instruments GmbH determines the type and scope of the packaging exercising all the necessary care.
- (8) The risk passes to the buyer as soon as the consignment has been handed over to the carrier or has left Elcon Medical Instruments GmbH's warehouse for the purpose of shipment.
- (9) If the buyer is responsible for the delay of shipment, the risk passes to him as soon as Elcon Medical Instruments GmbH communicates its readiness for dispatch.

§ 5 Default of acceptance, rescission by the customer

- (1) If the purchaser rescinds the contract, Elcon Medical Instruments GmbH is entitled to claim 25% of the sale price as a flat-rate compensation for costs incurred and loss of profit. Proof of a higher damage by Elcon Medical Instruments GmbH and the proof of a lower damage by the customer are reserved.
- (2) If the purchaser is in default of acceptance, Elcon Medical Instruments GmbH is entitled to charge 1% of the sales price per month or part thereof, a maximum of 5% of the sale price as storage costs. Proof of higher storage costs by Elcon Medical Instruments GmbH and proof lower storage costs by the purchaser are reserved.
- (3) The withdrawal from the purchaser from the contract is excluded in the case of special designs. This does not apply if the withdrawal is made due to a defect of the products.

§ 6 Retention of title

- (1) Elcon Medical Instruments GmbH retains title to the delivered goods until full payment of all claims from the existing business relationship with the customer.
- (2) The customer may resell or process the delivered goods. In this case, the purchaser shall assign all claims against third parties which arise from the resale or further processing to Elcon Medical Instruments GmbH. Elcon Medical Instruments GmbH accepts this assignment.
- (3) The purchaser may collect the assigned claims in his own name. Elcon Medical Instruments GmbH will not carry out a collection of the claim, unless the purchaser fails to meet his payment obligations, is in default, or if there is a claim to open insolvency proceedings against his assets.
- (4) In the case of further processing and combination with other objects, Elcon Medical Instruments GmbH acquires co-ownership of the new item in the same proportion as that of the delivered goods to the co-processed objects.
- (5) At the customer's request, Elcon Medical Instruments GmbH will partially release security rights if the value of all security rights exceeds the secured claims by more than 20%.
- (6) In the case of actual or legal access to the collateral property by a third party, damage or loss, the purchaser shall immediately notify Elcon Medical Instruments GmbH in writing.
- (7) The customer shall treat the collateral property carefully and adequately insure it the usual scope. Claims by the purchaser for insurance benefits shall be assigned to Elcon Medical Instruments GmbH in the amount of the value of the collateral property. Elcon Medical Instruments GmbH accepts this assignment.

§ 7 Defects, Liability

- (1) If the delivered goods are defective, Elcon Medical Instruments GmbH is entitled to remedy the defect or to replace the delivery at its own option. Subsequent performance shall have failed at the earliest after two unsuccessful attempts at improvement, unless the subsequent performance is unacceptable to the customer. If the subsequent performance fails, the purchaser is entitled to a price reduction, rescission or damages in lieu of performance.
- (2) In cases of simple negligence, Elcon Medical Instruments GmbH's liability for breach of contract is limited to those damages that are foreseeable and typically associated with the specific business.
- (3) Any further liability is limited to intent and gross negligence.
- (4) The liability under the Product Liability Act or for culpable injury or killing a person remains unaffected.

§ 8 Warranty

- (1) Elcon Medical Instruments GmbH grants the purchaser a warranty for a period of:
 - Ten years on all instruments for Open General Surgery
 - Three years on all TUNGSTENCUT and TUNGSTENGRIP instruments as well as TITAN instruments, diagnostic sets, laryngoscopes and headlamps
 - One year on all containers, bipolar instruments, micro-instruments and all instruments, devices and optics for minimally invasive surgery and all cables
- (2) The warranty only covers defects in material and workmanship.
- (3) In the case of a complaint, the product concerned is to be made available to Elcon Medical Instruments GmbH to examine whether there is a warranty case.
- (4) If there is a warranty case, Elcon Medical Instruments GmbH, at its option, carries out a repair or a replacement at no charge to the purchaser. If neither a repair nor a replacement is possible or economically feasible, Elcon Medical Instruments GmbH may instead refund the customer the value of the goods.

§ 9 Acceptance, duty of inspection and complaint

- (1) Any claims for defects by the customer are in accordance with the proviso of proper compliance with the duty of inspection and complaint pursuant to § 377 HGB. These duties include in particular an immediate examination of the delivered goods upon delivery or pick-up as well as the immediate written notification of defects. In the case of hidden defects, these must be reported immediately upon discovery.
- (2) By making a defect claim, the purchaser acquires no right of retention with respect to its payment obligations.

§ 10 Applicable law, place of jurisdiction

- (1) For all legal questions, the applicability of the law of the Federal Republic of Germany excluding the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG) shall be understood as agreed.
- (2) Unless otherwise agreed, the place of performance shall be Elcon Medical Instruments GmbH's registered office.
- (3) Place of jurisdiction is the registered office of Elcon Medical Instruments GmbH. Elcon Medical Instruments GmbH can also sue the customer at the latter's registered office.

§ 11 Final provisions

- (1) The parties shall adapt the contract by mutual agreement if unforeseen events occur that significantly alter the content of the contractual object or its commercial importance, or significantly affect the operation of Elcon Medical Instruments GmbH. If such an adjustment is actually or economically not feasible or reasonable, Elcon Medical Instruments GmbH has the right to rescind the contract.
- (2) Should single provisions of these GTCs be invalid, the remaining provisions of the GTCs remain in effect.
- (3) The ineffective provision shall be replaced by a valid provision which is closest to the commercial intent of the invalid provision.