

General terms and conditions

As of: 2019 (BN_LT_09724_Rev.D)

§ 1. Application, conclusion of contract and confidentiality

(1) These General terms and conditions shall apply exclusively. Differing or contrary general terms and conditions of the buyer are only then acknowledged, if we approve of them in writing. A confirmation of an order or specifications related to an order is not such an acknowledgment of differing or contrary general terms and conditions of the buyer.

(2) These General terms and conditions shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.

(3) Our operating manuals and installation instructions, which can be downloaded from our internet home page www.seniorflexonics.de, are to be observed.

(4) Our bids are non-binding. The contract is only deemed concluded with our written confirmation.

(5) The minimum order value for all orders is 500,00 Euro.

(6) Technical specifications, for example regarding measurements, weights and performance figures are only decisive within common technical tolerances, unless they have been explicitly specified as binding.

(7) Cost estimates, drawings and other bid documents may only be made available to third parties with our written consent. For each case of culpable infringement, a contractual penalty in the amount of 2% of the project value incurs. The consent shall be deemed given for the circulation to architects and contractors, who work for the respective project.

§ 2. Prices and payment conditions

(1) All prices are quoted in EURO ex works; value added tax, freight and packaging costs excluded. The prices reflect the cost situation at the time of the order placement.

(2) If the decisive standard wages or the material prices change by the agreed date of delivery and/or service, the contractor may increase the price up to the amount of the extra costs actually incurred. Such price increase is not allowed with respect to goods and services that shall be delivered or rendered within four months after conclusion of the contract. Subsequent reduction of the order quantity or subsequent reduction of the number of items in the event of an agreed partial delivery, as well as the reduction of agreed call-offs is generally not admissible.

(3) There might be agreements (cash discounts/bonuses) that could lead to subsequent price reductions.

(4) The purchase price is due and payable within 14 days from the date of the invoice and delivery or acceptance of the goods. We are entitled, also during an ongoing business relationship, to make a delivery subject to advance payment, if circumstances indicate a weak creditworthiness of the buyer, in particular, if the buyer is in default with regard to payment of due obligations from earlier transactions. We request the advance payment with the order confirmation at the latest.

(5) The buyer is in default on expiry of the deadline set out in above sec. 2 para. 4, 1st sentence. The purchase price shall bear interest at the applicable statutory rate during the period of default. We reserve the right to claim damages for any further losses caused by default. Any of our rights against merchants under commercial law to claim interest from the due date shall remain unaffected (§ 353 HGB/German Commercial Code).

§ 3. Delivery time, partial deliveries and default in acceptance

(1) Delivery periods commence with the receipt of the order confirmation, but not before the clarification of the order details,

which have to be provided by the buyer according to the contract. The delivery deadline shall be deemed complied with upon the dispatch the merchandise or with the notice of readiness for dispatch, in case the merchandise cannot be dispatched in time through no fault of our own.

(2) In the event of force majeure, strikes, lock-outs and other severe operational disruptions we are entitled to postpone the delivery for the duration of the disruption, including an appropriate start-up time. The buyer will be informed as soon as possible of the start and end of such operational disruptions. Claims for compensations due to delay of the deliveries or due to inability are determined according to section 9.

(3) Partial deliveries are permitted unless they would not be reasonable for the buyer.

(4) In case of default in acceptance or other breach of duties to cooperate by the buyer we are entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the buyer at the time of such default or breach of duty to cooperate.

§ 4. Packaging, dispatch and passing of risk

(1) The packaging and the dispatch method are left to our discretion, if nothing else has been agreed upon in writing. We make the choice at our best discretion.

(2) The risk of loss or damage to the goods passes to the buyer upon dispatch.

§ 5. Offsetting, right of retention, uncertainty exception

(1) The buyer shall be entitled to offset only insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The buyer is entitled to claim rights of retention only to the extent such rights are based on the same transaction.

(2) Should it become apparent after the conclusion of the contract that our payment claim is endangered due to the buyer's inability to pay, we shall have the right to deliver only against advance payment or against the provision of sufficient collateral. This also applies, if the buyer comes in default of the payment with regard to outstanding obligations from previous transactions. If the buyer does not offer an advance payment or a collateral within a deadline set by us, we are entitled to withdraw from the contract and/or to demand compensation for non-fulfilment after a reasonable subsequent deadline. In the case of contracts for the manufacture of specific items (custom-made products) we may withdraw immediately; the statutory provisions concerning the dispensability of deadlines shall remain unaffected.

§ 6. Retention of title

(1) The goods shall remain our property until any and all claims arising from the business relationship have been paid in full. In case of breach of contract by the buyer including, without limitation, default in payment, we are entitled to take possession of the goods. In case of default in payment, we are entitled to take possession of the goods only if we have set the buyer a reasonable deadline for payment to no avail or if such deadline is unnecessary according to statutory provisions.

(2) The itemisation of individual claims in a current invoice or the balancing and acknowledgment thereof shall not affect the retention of title.

(3) Any goods delivered subject to retention of title shall not be given in pledge to any third party, nor assigned as collateral security until full payment of the secured claims is received. The buyer shall promptly notify us in writing if he became subject to an application of insolvency and of any action or attempt by third parties to seize or take possession of goods owned by us.

(4) The buyer hereby assigns to us all claims from the sale of reserved goods. We accept hereby the assignment. The resale is equivalent to the use of the reserved good by the buyer to fulfil work contracts.

(5) Notwithstanding our right to claim direct payment, the buyer shall have the revocable right to collect our debts in his own name as long as he is not in default with regard to his obligations in relation to us and he has not become subject to an application for insolvency.

(6) The retention of title shall extend to any products which have been manufactured by further processing, mixing or combining our goods with other goods; in such case, we shall be deemed to be the manufacturer of any such manufactured product without any obligations on our part. If the buyer acquires the sole ownership of the newly created article, he will grant us co-ownership of the newly created article in such proportion as corresponds to the value of the goods delivered by us in relation to that of any other goods involved in such processing, mixing or combination, and will hold it in safe custody free of charge.

(7) If the realizable value of securities granted to us exceeds our secured claims by more than 10%, we release upon the buyer's request securities of our choosing of appropriate value.

§ 7. Planning and development

Consultancy, development, planning for customers are only binding in so far as they relate to the use of our delivered goods and are based on the complete written information of the customer regarding the purpose and use of the system.

§ 8. Liability for defects

(1) The buyer must carefully inspect our merchandise immediately. Defects that are thereby visible have to be reported immediately, at the latest however within 8 working days after the receipt of the goods, insofar as this is possible in correct business practice. Defects that cannot be detected by a careful inspection must be reported immediately after they have been detected.

(2) Warranty claims shall be time-barred twelve months after the passing of risk. In case of buildings or objects, which are customarily used for a building construction and which have caused defectiveness of a building a statutory limitation period of five years from the passing of risk applies.

(3) In case of defects, we are obliged to repair or to replace at our own discretion. Any right to refuse a repair and/or a replacement which may be available according to statutory provisions shall remain unaffected.

(4) We shall be entitled to require the buyer to make payment of the purchase price, if due to be paid, as a precondition for repair or replacement owed to the buyer. The buyer shall, however, be entitled to withhold a fraction of the purchase price which is in reasonable proportion to the defect.

(5) The repair and the replacement include neither a removal of defect goods nor their new installation, if we were initially not obliged to install the goods.

(6) We shall bear any necessary expenses incurred for examination and subsequent performance, including, without limitation, costs of transport, travelling, work and materials (but not the costs of removal and new installation) if the product is confirmed to be defective. If, however, the buyer's complaint turns out to be unjustified, we may claim compensation from the buyer for any expenses resulting therefrom, e.g. examination and transport costs, unless the lack of defectiveness was not recognizable for the buyer.

(7) If the defect is not eliminated by us or by the supplier of the third party product, the buyer is entitled to reduce the purchase price or to withdraw from the contract. The right to withdraw from the contract shall, however, be excluded in the case of minor defects.

§ 9. Exclusion of liability

(1) Unless otherwise provided for in these General terms and conditions, including the following provisions, our liability for any breach of contractual and non-contractual duties shall be governed by the applicable statutory provisions.

(2) As far as fault-based liability is concerned, we shall be liable for damages – on whatever legal grounds – in case of intentional conduct and gross negligence. In case of simple negligence (or any milder statutory standard of liability, e.g. diligence usually applied to one's own affairs), we shall only be liable a) for damage from injury to life, body or health, b) for damage caused by breach of an essential contractual obligation (the fulfilment of which is fundamental to the proper execution of the contract and may regularly and justifiably be relied upon by the buyer); in such case, our liability shall, however, be limited to foreseeable damage typical of the contract.

(3) The limitations of liability as set forth in para. 2 apply also for breaches of duty by persons, for whose culpability we may be held responsible under statutory regulations. They shall not apply in case of fraudulent concealment of defects by us or of any warranty given by us as to the quality of the goods. The same shall apply to claims of the buyer under the Product Liability Act.

§ 10. Applicable law, place of performance and jurisdiction

(1) These General terms and conditions as well as the contractual relationship between us and the buyer shall be exclusively governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of performance for all supplies and services is Kassel.

(3) The courts competent for Kassel shall have exclusive jurisdiction over any disputes, including cheque and bill of exchange suits, arising from the contractual relationship. We may, however, also bring legal action in the courts of the buyer's place of general jurisdiction. Compulsory statutory regulations, in particular such providing for exclusive court competence, shall remain unaffected.