



**General**  
**Terms and Conditions of Sale and Delivery**  
**(hereinafter referred to as "T&Cs")**

of

H. + H. Maslanka Chirurgische Instrumente GmbH with its registered office in 78532 Tuttlingen,  
Germany

**I. General, Scope of Application**

1. Our T&Cs shall only apply to companies as well as to legal entities under public law and a special fund under public law. They do not apply to consumers.
2. Our offers, deliveries and other services to the purchasers named in Section 1, Paragraph 1 are made exclusively on the basis of these T&Cs. This shall also apply to all future transactions with purchasers, without special renewed reference. Any conflicting, different or supplementary terms and conditions of the purchaser not contained in these T&Cs shall not be recognised, even if we carry out deliveries or services to the purchaser without reservation in the knowledge of such terms and conditions, unless we have expressly agreed to them.
3. References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these T&Cs.

**II. Conclusion and Content of the Contract, Reservation of Right of Amendment**

1. Our offers are subject to change. We can accept orders or commissions in writing within 21 days of receipt, unless a specific deviating acceptance period has been expressly agreed. Our order confirmation in text form shall be authoritative for the scope of delivery. Order confirmations by means of EDP shall also be valid without signature. Subsidiary agreements and amendments require our confirmation in text form.
2. Costs incurred for the amendment or cancellation of confirmed orders shall be borne by the purchaser insofar as he is responsible for the amendment or cancellation.
3. Our information on the subject matter of the contract (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative unless usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or identifications of the subject matter of the contract. Deviations customary in the trade which are



made on the basis of legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

4. We reserve the property rights and copyrights as well as other intellectual property rights to illustrations, drawings, calculations, catalogues, price lists and other documents. Reproduction and/or transfer to third parties, in particular competitors, is not permitted without our express written consent.

### **III. Prices and Payment**

1. Our prices apply to the scope of services and deliveries listed in the order confirmation. Additional or special services will be charged separately. Prices are quoted in EURO ex works (EXW according to Incoterms 2020) in Tuttlingen. The respective statutory value added tax is not included in our prices and is shown separately. Loading, packaging, insurance, customs and other expenses shall be borne by the purchaser. Packaging is not taken back.
2. The cost basis of our prices is our offer. For services provided later than four (4) months after conclusion of the contract, we are entitled to increase or reduce the agreed prices accordingly - but by a maximum of 10% - insofar as significant changes in material, energy or raw material costs have occurred after submission of the offer and we are not responsible for these changes. In the event of a change in the aforementioned costs of more than 10%, each party shall have the right to demand that the other party enter into supplementary negotiations with the aim of agreeing an appropriate price adjustment.
3. Unless otherwise agreed, our invoices are due for payment in full 30 days after the invoice date and delivery or acceptance of the subject matter of the contract. However, even within the framework of an ongoing business relationship, we are entitled at any time to make a delivery in whole or in part only against advance payment or the provision of security if, after the conclusion of the contract, we become aware of circumstances which tend to substantially reduce the creditworthiness of the purchaser and which jeopardise the payment of our outstanding claim from the respective contractual relationship. Payment shall only be deemed to have been made when we can avail ourselves of the amount without recourse (receipt of payment).
4. The purchaser shall check our invoices for correctness and completeness. Our invoices shall be deemed to be accepted if no objection is made in writing within 30 days of the invoice date. This also applies to balance notifications.



5. The purchaser shall be in default with the due date of payments without the need for a separate notice of default. In the event of late payment, the purchaser shall owe interest on arrears in the amount of 9 percentage points p.a. above the respective base interest rate pursuant to Section 247 (1) Federal Code. The contracting parties are at liberty to prove higher or significantly lower actual damages.
6. The purchaser may only offset against our claims or assert a right of retention with counterclaims that are recognised by us, not disputed, ready for a decision or legally established.
7. Payments shall be used to settle the respective oldest invoice items due plus interest and costs accrued thereon, and in the order in which they are due: costs, interest, principal claim.

#### **IV. Delivery Period, Lack of Capacity of the Purchaser, Default of Acceptance**

1. Deliveries are made ex works (EXW according to Incoterms 2020).
2. Only the delivery periods confirmed by us shall apply. Unless expressly agreed otherwise, delivery periods shall not be deemed to be fixed-date transactions. The delivery period shall be extended by the period in which the purchaser is in arrears with an agreed payment. Delivery deadlines are only binding if the purchaser fulfils his contractual obligations and duties (e.g. procurement of necessary documents, approval of any implementation templates). If the purchaser initiates a change in the contract due to which compliance with the original delivery period is not possible, the delivery period shall be extended to a reasonable extent.
3. The delivery period shall be deemed to have been met if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the delivery period expires.
4. The delivery period shall be extended appropriately - also within a delay - in the event of delays due to circumstances for which we are not responsible, in particular in the event of incorrect or late delivery by suppliers in cases of force majeure, in particular also pandemics and epidemics or comparable events, natural disasters, war, terrorism, official measures and in the event of measures within the scope of industrial disputes, insofar as such obstacles demonstrably have an influence on the provision of the performance owed. This shall also apply if these circumstances occur with upstream suppliers. We shall inform the purchaser of the beginning and end of such obstacles as soon as possible. If the delivery date is delayed by more than 3 months due to such an impediment or if it is certain that it will last longer than 3 months, both parties are entitled to withdraw from the contract.



5. We are entitled to make partial deliveries insofar as they are reasonable for the purchaser.
6. In the event of a delay in delivery, the purchaser shall set us a reasonable grace period of at least two weeks in writing.
7. If we are in default with the delivery as a result of simple negligence, our liability for damages due to the delay in delivery, which can be claimed in addition to the delivery, shall be limited to 0.5% of the delivery value for each completed week of the delay, but not more than 5% of the delivery value. If the purchaser asserts a claim for damages instead of performance in the aforementioned cases, this claim for damages shall be limited to 20% of the delivery value. The limitations of liability pursuant to sentences 1 and 2 above shall not apply in the event of a delay due to gross negligence by us, our legal representatives or our vicarious agents, nor in the event of injury to life, limb or health, nor in the event of a transaction for delivery by a fixed date, i.e. in the event of a transaction in which the transaction stands or falls with compliance with the fixed time of performance.

#### **V. Transfer of Risk**

1. The risk shall pass to the purchaser at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the third party designated to carry out the shipment. This also applies if partial deliveries are made or if we have assumed other services (e.g. dispatch or shipping costs).
2. We have no obligation to insure the delivery against insurable risks from the transfer of risk.
3. If dispatch is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser from the day of notification of readiness for dispatch or acceptance.

#### **VI. Retention of Title and Other Securities**

1. We reserve title to the delivery item until payment of all liabilities of the purchaser arising from the business relationship, including ancillary claims and claims for damages. If a current account agreement has been agreed with the purchaser, the retention of title shall exist until full settlement of the recognised current account balance.
2. The purchaser is obliged to treat the reserved goods with care and to insure them adequately against theft, fire, water or other damage at its own expense within the scope to be expected



from a prudent businessperson and to provide evidence of this upon request. Claims arising from insurance contracts are hereby assigned to us in advance. The assignment is hereby accepted. In the event of seizure, confiscation, damage and loss, if an application for the opening of insolvency proceedings has been filed, as well as other dispositions by third parties, the purchaser must inform us immediately. The purchaser shall bear all costs which have to be incurred for the recovery of the delivery item, in particular within the scope of a third-party action, if they cannot be recovered from third parties. In the event of any discrepancies as to the whereabouts of the goods, we shall have the right to inspect them at his premises.

3. The purchaser may process and sell the goods in the ordinary and usual course of business, but may neither pledge them nor assign them by way of security.

The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the creation of the products as to the goods delivered under retention of title.

4. In the event of conduct by the purchaser in breach of contract, in particular default of payment, we shall be entitled to take back the delivery item after issuing a reminder. Taking back the goods does not constitute withdrawal from the contract unless this is expressly declared. The costs arising from the taking back of the goods shall be borne by the purchaser if the taking back of the goods has been threatened with a reasonable period of time. We may sell the returned delivery item and satisfy ourselves from the proceeds if the sale has been threatened beforehand. The threat shall set a reasonable deadline for the purchaser to fulfil its obligations.
5. The purchaser hereby assigns to us the purchase price, compensation for work or other claims arising from the resale or further processing or any other legal reason in respect of the delivery item, including the recognised balance from a current account agreement or, in the event of insolvency of the purchaser's business partner, the then existing causal balance in the amount of the invoice value of the delivery item. The assignment is hereby accepted. The purchaser is revocably authorised to collect claims assigned to us in his own name. The direct debit authorisation can only be revoked if the purchaser does not properly fulfil his payment obligations. Upon request, the purchaser shall in such a case provide the information on the assigned claim required for collection, provide corresponding documents and notify the debtor of the assignment. This assignment of claims serves to secure all claims, including future claims, arising from the business relationship with the purchaser.



6. If the realisable value of the security granted in accordance with the aforementioned provisions exceeds our claims against the purchaser by more than 20%, not only temporarily, we shall release securities to this extent at our own discretion at the request of the purchaser. The aforementioned cover limit shall be increased by the amount of the value-added tax if we are charged with value-added tax on the sale of the collateral goods as a result of a delivery by the purchaser subject to value-added tax.
7. In the event of cessation of payments, application for or opening of insolvency proceedings or out-of-court composition proceedings, the right of the purchaser to resell and use the goods subject to retention of title as well as the authorisation to collect assigned claims shall expire. The statutory rights of an - even provisional - insolvency administrator remain unaffected.
8. In the event of a delivery abroad, the purchaser shall be obliged to take all necessary measures to preserve the above retention of title provision or an equivalent security interest under the applicable law.

#### **VII. Purchaser's Duty to Inspect, Notice of Defects, Rights in the Event of Material Defects**

1. The documents belonging to the offer, such as illustrations, drawings, weights and dimensions, are only approximate unless they are expressly designated as binding. The purchaser must examine the documents and samples sent. By agreeing to the offer and release, the purchaser approves the documents and samples, so that no defect rights arise insofar as the delivery item essentially corresponds to the documents.
2. In the case of a purchase or a contract for the delivery of movable goods to be manufactured or produced, which is a commercial transaction for both parties, the purchaser shall give written notice of defects of any kind - with the exception of hidden defects - within 14 working days (Saturday does not count as a working day) after delivery; otherwise the delivery item shall be deemed to have been approved. Hidden defects must be notified in writing immediately after discovery; otherwise the delivery item shall also be deemed approved with regard to these defects, but no later than 12 months after the transfer of risk. By negotiating a complaint, we shall in no case waive the objection of late, insufficient or unfounded notice of defects.
3. Insofar as the delivery item has a defect for which we are responsible, we are entitled, at our discretion, either to remedy the defect (rectification) or to deliver a defect-free item (replacement delivery) - in each case subject to paragraph 4 below. If we are not prepared or not in a position to rectify the defect/replace the goods, if this is delayed beyond a reasonable period for reasons for which we are responsible, or if the rectification/replacement fails in any other way, the purchaser shall be entitled, at his discretion, to withdraw from the contract or to reduce the



purchase price, provided that further attempts at rectification/replacement are unreasonable for him. The purchaser may only withdraw from the contract due to an insignificant defect with our consent.

4. Material defect rights can only arise if the delivery item has a material defect at the time of transfer of risk. Excluded from the liability for defects are rights due to unsuitable or improper storage, use, faulty assembly or treatment of the delivery item, natural wear and tear or unsuitable conditions of use, etc.
5. The purchaser's statutory rights of recourse against us shall only exist insofar as the purchaser has not reached an agreement with its customer which goes beyond the statutory claims for defects. The scope of the rights of recourse shall be determined in accordance with Section VII, 3.
6. The limitation period for claims for material defects is - subject to Para. 1 - two years. This period begins with the transfer of risk. This shall not apply in the event of injury to life, limb or health for which we, our legal representatives or our vicarious agents are responsible as well as in cases of intent and gross negligence.
7. We shall only be liable for damages due to defectiveness of the delivery item within the limits specified in Section IX.

#### **VIII. Other Obligations of the Purchaser**

1. The purchaser undertakes to ensure within its sphere of influence/control that the requirements of product liability law, in particular the Medical Devices Act (MPG), are complied with. In particular, he undertakes to ensure that only such persons handle the contractual items who have the relevant qualifications and that the contractual items are not combined with products of other manufacturers, unless such a combination has been expressly approved by us in advance. It is pointed out that the obligations according to the MPG are subject to penalties and fines according to Sections 40 et seq of the MPG.
2. Insofar as the purchaser resells the delivery item within the scope of its business operations, it shall also ensure that the acquirer is properly instructed and that only qualified persons carry out such measures.
3. The purchaser further undertakes to cooperate within the framework of the medical device monitoring and reporting system provided for in Section 29 MPG and to comply with the



reporting obligations provided for as well as to provide us with all information relevant in this context even without our request.

### **IX. Limitations of Liability**

1. We shall be liable in accordance with the provisions of the Product Liability Act and in cases of culpable incapacity and culpable impossibility. Furthermore, we shall be liable for damages in accordance with the statutory provisions in cases of intent, gross negligence, the assumption of a guarantee and in the event of injury to life, limb or health for which we are responsible. If, in addition, we violate an essential contractual obligation (or cardinal obligation) with simple negligence, i.e. an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the purchaser may regularly rely, our obligation to pay compensation shall be limited to the foreseeable damage typical for the contract. The limitation of liability in the event of a delivery delay remains unaffected by this. In all other cases of liability, claims for damages due to the breach of an obligation arising from the contractual obligation as well as due to tortious acts are excluded, so that we are not liable in this respect for loss of profit or other financial losses on the part of the purchaser.
2. Insofar as our liability is excluded or limited on the basis of the above provisions, this shall also apply to the personal liability of our employees, workers, staff, representatives and vicarious agents.

### **X. Property Rights of Third Parties**

If the purchaser provides us with samples or drawings, he shall guarantee that the rights of third parties, in particular copyrights and industrial property rights, are not infringed. The purchaser undertakes to release us from all claims of third parties resulting from any such infringements of rights, to assist us in defending this infringement of rights and to compensate all damages incurred, including legal and court costs, that we incur as a result. The same applies if we produce a delivery item according to the purchaser's defined specifications.

### **XI. Data Storage**

We inform the purchaser that personal data - as long as and insofar as necessary for business and permissible within the framework of the General Data Protection Regulation - will be stored by us by computer and processed for the purpose of fulfilling the contract. The legal basis for the storage of data is Art. 6 (1) lit. b of the GDPR.





The responsible party pursuant to Art. 4 (7) GDPR is H + H Maslanka Chirurgische Instrumente GmbH, Stockacherstrasse 172, 78532 Tuttlingen, Germany, phone: (+49) 74 61 / 9 60 70, fax: (+49) 74 61 / 47 32. You can reach our data protection officer on (+49) 74 61 / 9 60 70.

For more information about how we process personal data, including your rights, please visit <https://www.maslanka.de/datenschutz>.

## **XII. Applicable Law, Place of Jurisdiction**

1. The General Terms and Conditions of Delivery and Payment and the entire legal relationship between us and the purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
2. The court of jurisdiction for all rights and obligations of the contracting parties arising from transactions of any kind is Tuttlingen (Federal Republic of Germany). This shall also apply if the purchaser has no general place of jurisdiction in Germany, has moved its registered office or normal place of residence abroad or if its registered office or normal place of residence is not known at the time the action is filed. However, we are also entitled to sue the purchaser at his general place of jurisdiction.

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