

§ 1 Application of General Terms and Conditions, Hierarchy

1. The following General Terms and Conditions for Services ("GTC") apply to all transactions between Amoena Medizin-Orthopädie-Technik GmbH ("AMOENA") and the customer as entrepreneur within the meaning of § 14 BGB [German Civil Code] and, in particular, to all supplies and services on the part of AMOENA and all payments and other obligations on the customer. AMOENA does not recognize any of the customer's terms and conditions that deviate from or supplement these GTC unless AMOENA has confirmed them in writing. Nor does unconditional performance or acceptance of payment by AMOENA imply acknowledgement of the customer's terms and conditions.
2. If other contractual provisions in a quotation, order confirmation or signed supply contract should be in contradiction with these GTC the other contractual provisions shall take precedence. In all other respects the various provisions shall apply side by side.

§ 2 Conclusion of a contract

1. Quotations from AMOENA are generally non-binding.
2. A contract is generally only concluded on acceptance of the customer's order based on AMOENA's order confirmation in accordance with the contents thereof.

§ 3 Guarantees, subcontractors

1. Guarantees are only given if expressly stated by AMOENA.
2. AMOENA may also have services rendered by subcontractors. The subcontractor must adhere to the terms agreed between AMOENA and the customer.

§ 4 Prices

1. The agreed prices are euro prices. Unless otherwise agreed, VAT and costs such as transportation, packaging and insurance are not included in the price. If no price is agreed upon conclusion of the contract the price currently stipulated by AMOENA at its reasonable discretion or, if available, the price applicable according to the price list/catalogue shall apply.
2. If, after conclusion of the contract, there should be a change in the prices and costs on which AMOENA's calculations are based, especially the cost of labor, goods, raw materials, transportation or energy, AMOENA shall make a price adjustment. The price adjustment must be made in accordance with AMOENA's original calculations, whilst maintaining the calculated profit and giving coherent reasons – although without being under any obligation to disclose its calculations. AMOENA must inform the customer of the price adjustment immediately. The price adjustment shall apply upon receipt of substantiated notification and take effect from the date on which the underlying costs change, although not before receipt of substantiated notification. If a price increase amounts to more than 5% the customer shall be entitled to withdraw from the service affected by the price increase within 2 weeks of receipt of substantiated notification.

No price increase may take place if the change in underlying costs is based on circumstances for which AMOENA is responsible which do not meet the duty of care expected of a diligent businessman. AMOENA is not required to take or seek any measures that lead to a price reduction.

§ 5 Invoice, payment

1. Invoices from AMOENA are due for payment immediately without any reduction. A discount shall only be granted by express agreement.
2. Unless otherwise agreed, a payment will be in default if the customer does not pay the invoice within 30 days of the invoice

date unless the invoice issued has not been delivered by then, is erroneous, is not due and payable or is unenforceable. Payment default may also arise under the law.

§ 6 Partial performance, delay in performance, force majeure

1. Acceptable partial performance is permissible. Partial performance will be unacceptable if the customer has no interest in same.
2. In the event of delay in performance AMOENA's liability in damages shall be governed exclusively by § 12 of these GTC.
3. Force majeure and other unforeseen, unavoidable events beyond the control of AMOENA (e.g. the effects of war, pandemics, strikes or lawful lockouts, operational disruptions, unforeseeable difficulties in the procurement of materials and energy, obstacles at AMOENA's suppliers through no fault of their own, transport delays, lack of manpower, energy or raw materials, or measures taken by authorities) shall extend the performance period accordingly. In such an eventuality even agreed performance dates shall be pushed back accordingly. If the force majeure is not merely temporary both contracting parties shall be entitled to withdraw from the contract as far as the performance affected by the force majeure is concerned. In such an eventuality claims in damages will be excluded in the absence of fault. AMOENA will immediately notify the customer of the commencement and ending of force majeure.
4. In light of the impact of the coronavirus crisis that occurred in 2020 and the Ukraine war at the beginning of 2022 the customer and AMOENA are agreed that a surprising situation can always arise in which, through no fault of its own, AMOENA can only fulfil its contractual obligations under extremely difficult conditions. In such an eventuality AMOENA has the right to suspend performance for the duration of those difficult conditions until either the difficult conditions come to an end or a solution has been worked out with the customer. If suspension of AMOENA's performance obligations is not merely temporary both contracting parties are entitled to withdraw from the contract as far as the performance suspended is concerned.

§ 7 Receipt, acceptance, passage of risk, default of acceptance

1. The customer must take delivery of contractual services as agreed or – where required by law or contract – accept same as agreed. Unless otherwise agreed, the risk shall also pass at that time.
2. If the customer should be in default with acceptance AMOENA may demand compensation for the resulting loss or damage unless the customer should not be responsible for the dereliction of duty.

§ 8 Retention of title

1. All products to be transferred to the customer shall remain the property of AMOENA ("retention goods") until such time as payment has been made in full. The customer must treat retention goods with care and insure them at its own expense against theft, fire and water damage at replacement value.
2. The customer must mark retention goods as the property of AMOENA and immediately notify AMOENA in writing in the event of seizure or other intervention by a third party.
3. The customer shall be entitled to resell retention goods in the ordinary course of business; however, all debts due to it from its customers or third parties from such resale are hereby assigned by it to AMOENA in the amount of AMOENA's claims, regardless of whether the retention goods have been resold processed or unprocessed. The assignment also includes, in particular, those claims that the customer acquires vis-à-vis its banks due to payments made by its customers. AMOENA accepts the assignment. The customer is authorized to collect such debts even

after this assignment. AMOENA's own authority to collect the debts remains unaffected hereby. However, AMOENA may not collect debts unless the customer is in default with its payments. However, if this should be the case the customer must inform AMOENA of the assigned debts and their debtors, provide the information necessary for collection, supply the accompanying documents and inform the debtors of the assignment.

4. The customer may process or modify retention goods in the ordinary course of business. The processing or modification of retention goods shall always be carried out for AMOENA. If retention goods are processed with other objects not belonging to AMOENA, AMOENA shall acquire co-ownership of the new item in the ratio that the value of the retention goods bears to the other processed objects.
5. At the request of the customer AMOENA shall be obliged to release the security to which AMOENA is entitled insofar as the realizable value of the security exceeds the claims to be secured by more than 10%; it shall be for AMOENA to select the securities to be released.

§ 9 Warranty

1. In the event of a statutory warranty claim the following provisions shall take precedence over the law. No claim may be brought under a warranty, for example, in the event of normal wear and tear or in the event of unsuitable, improper or incorrect use by the customer.
2. Where the law on the sale of goods applies the customer must immediately inspect the product supplied by AMOENA on delivery. If inspection should reveal a defect the customer shall be obliged to notify AMOENA immediately and in any event no later than 8 working days from receipt. If a defect should become apparent later on the customer must similarly notify AMOENA of the defect immediately and in any event no later than 3 working days after its discovery. Otherwise, the product shall be deemed approved. In all other respects § 377 HGB (German Commercial Code) shall apply.
3. The agreed quality is determined exclusively on the basis of the contractually expressly stipulated performance characteristics and specifications. No further warranty, especially for a specific purpose or for a certain suitability of services, duration of use or durability, shall be given by AMOENA unless this has been expressly agreed; otherwise, the risk of suitability and use lies exclusively with the customer. A purpose provided for in the contract must be expressly derived from the contract unless the purpose stipulated in the contract is obvious to both parties.
4. In the event of a warranty claim AMOENA shall be obliged, at its discretion, to either remedy the defect or deliver a faultless item (supplementary performance). AMOENA shall bear the costs necessarily incurred for the purpose of supplementary performance, especially transport, travel, labor and material costs. Liability for costs is excluded insofar as additional costs are incurred as a result of transferring an item to a place other than the place of performance.
5. If supplementary performance should be unnecessary or impractical, or if it should fail or be wrongly refused or delayed by AMOENA the customer may, pursuant to statute, reduce the purchase price accordingly or withdraw from the contract and claim damages pursuant to statute as well as under § 12 of these GTC.
6. The limitation period shall expire one year after delivery of an item or – if required by law – after acceptance. In cases under §§ 438(1) nos. 1 and 2, 438(3), 634 a (1) nos. 2 and 3, and 634 a (3) BGB the limitation period provided for therein shall apply. If AMOENA should be liable in damages under a warranty according to § 12 of these GTC the warranty period with regard to the claim in damages shall be governed by statute. The provisions on recourse against a supplier pursuant to § 445 a et seq. BGB only apply if the end customer is a consumer.

§ 10 Costs for unfounded complaints of defects

If a customer's complaint of defects should be unfounded AMOENA may charge the customer for services provided by AMOENA on the basis of such a complaint according to the prices applicable at AMOENA, together with additional expenses (e.g. travel expenses).

§ 11 No warranty for pure services

Where AMOENA provides services to the customer, especially customer service, training, consultancy etc., no warranty is provided under the law.

§ 12 AMOENA's limited liability in damages

1. If AMOENA or the legal representatives, employees or vicarious agents of AMOENA should, with intent or gross negligence, be in breach of an obligation, regardless of its nature and on whatever legal basis and especially under the contractual relationship, or in the event of intentional or grossly negligent commission of a tortious act, AMOENA shall be liable for the resulting loss or damage to the customer in accordance with the law.
2. If AMOENA or the legal representatives, employees or vicarious agents of AMOENA should only be in breach of an obligation due to simple negligence, regardless of its nature and on whatever legal basis and especially under the contractual relationship, or in the event of simply negligent commission of a tortious act, claims in damages on the part of the customer against AMOENA shall be excluded unless it is a simply negligent breach of a fundamental contractual obligation. In such an eventuality AMOENA's liability will be limited to the foreseeable damage typical of the contract. A fundamental contractual obligation in this sense is one which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely.
3. The above exclusions from liability or limitation of liability shall not apply to cases of liability for culpable injury to life, limb or health, nor to cases of liability due to fraudulent concealment of a defect, to cases of liability for non-fulfilment of a guarantee of quality, or to cases of liability under the Product Liability Act.
4. The statutory rules on burden of proof remain unaffected.

§ 13 Intellectual property rights

All industrial property rights, particularly trademark, patent, utility model and design rights to documents, concepts, texts, drawings, drafts developed by AMOENA and to its services, remain exclusively with AMOENA. The customer may not make any applications for industrial property rights in this respect for itself or any third parties.

§ 14 Place of performance, place of jurisdiction, applicable law

1. The place of performance for all obligations on the parties shall be the registered office of AMOENA, unless otherwise agreed.
2. The exclusive place of international jurisdiction over all disputes arising from the business relationship is the Federal Republic of Germany. The exclusive place of local jurisdiction is the registered office of AMOENA provided that the customer is a merchant, a legal entity under public law or a special fund under public law.
3. The entire business relationship between AMOENA and the customer shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods and private international law.