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Pro Walk GmbH

Terms and Conditions of Sale and Delivery (as of February 2015)

1. These terms and conditions of sale and delivery shall apply to the entire business relationship, even if no specific reference is made to them again. They exclude terms and conditions of our contracted partners if these contradict our terms and conditions. Deviating terms, particularly the buyer's purchasing conditions, are herewith expressly excluded. As part of an ongoing commercial relationship between business entities/people these terms and conditions of sale and delivery shall constitute an integral part of any contract, even if no reference is made to their inclusion again on a case-by-case basis.
2. Our offers/products and details relating thereto in catalogues, sales documentation and offers in the internet are always subject to change and are non-binding. Contracts shall not be deemed accepted and/or placed until they have been confirmed by us in writing or we execute the contract with an immediate direct delivery. This applies particularly to side agreements and commitments made by authorised representatives and agents. Documentation relating to our offers shall always remain our property and may not be made available to third parties or used for any other purposes and must be returned on our request. Technical and other details refer solely to the subject of the contract and do not constitute any guarantee of any product feature/quality. Samples which we provide are basically without obligation and constitute approximate representations, not least because of the fact that the consistency of raw materials is not always homogeneous. We shall always retain the copyright.
3. We herewith advise our contracting partners that we process personal/person-related data acquired as part of the business relationship, in accordance with the provisions and regulations of the Bundesdatenschutzgesetz [Federal Data Protection Act].
4. The prices quoted to our customers are always subject to change and do not include packaging, ex-works freight costs and VAT/sales tax. Unless agreed otherwise, the prices applicable on the day of delivery shall apply; in this regard, the prices stated in the order confirmation are non-binding.
5. Our receivables/claims are payable within two weeks of the invoice date. Direct debiting entitles the client to a discount of 1%. On invoices unpaid 14 days after the invoice date, from the 15th day on we shall be entitled to charge a late interest of 8 percentage points over the Base Rate¹ and reserve the right to demand higher interest and compensation for damages caused by the delay. Bills of exchange and discounting charges shall always be chargeable to the account of our contracting partner; bills of exchange shall be accepted by us in lieu payment only on the basis of an explicit agreement. Even if a client makes payments with respect to certain receivables, we may apply such payment to the debt of our choice. In the case a customer's solvency is in doubt, especially if payments are overdue, we shall be entitled to demand payment of all outstanding claims and to make future deliveries subject to advance payment or the provision of securities. A set-off is possible only with regard to receivables/claims that we have acknowledged or that have been legally established. A refusal to make payment or a withholding of payment is not permitted if the customer was aware of the defect or other reason for complaint on conclusion of the contract, and/or receipt of the goods. The same applies if the client remained ignorant of this as a result of gross negligence, unless we deceitfully concealed the defect or reason for complaint or assumed a guarantee for the quality of the goods. Because of defects or other complaints, payment may moreover be withheld to reasonable extent. In the event of a dispute, an expert nominated by our competent Chamber of Commerce shall decide on the amount. This person should at his/her reasonable discretion, decide on the allocation of the costs of his/her involvement. An assignment of a claim against us is not allowed.
6. With regard to our deliveries, the risk shall pass to the customer once the goods have been handed over to a carrier, regardless of who chose it. We are always entitled to make partial deliveries. Our delivery times/deadlines are always approximations and not binding. If our supply of raw materials is, for any reason whatsoever, hampered, by strikes or other labour disturbances and force majeure, we are entitled to postpone the outstanding deliveries for the duration of the disruption or completely or partially withdraw from the contract. Improvements and changes to the provision of goods and services by the seller are permissible, as far as they are reasonable for the buyer. Such changes to the provision of goods and services do not entitle the purchaser to delay or deny providing consideration. The buyer undertakes to accept deliveries as agreed; this obligation to accept is the buyer's principal obligation.
7. We reserve the right of retention of title to the goods delivered by us, until full payment of the purchase price. With goods which our customers obtain as part of an ongoing business relationship, we reserve the right of retention of title until all our claims against such customers from the business relationship, including future claims, also from contracts concluded at the same time or later, have been settled. This also applies if we included an individual or all accounts receivable in a collective invoice and offset any payments and the client has acknowledged this. If in payment of the purchase price by our customer a bill-of-exchange liability arises, then our retention of title shall not lapse, until payment of the bill by our customer as the drawee. In case of payment delay by our client we are entitled after a reminder (dunning notice) to take back the goods and our customer is obliged to give them back. If goods subject to retention of title are processed by our customer into a new movable object/chattel, then such processing shall be deemed to be carried out for us, without imposing any obligation on us; the new product shall become our property. If our goods are processed together with goods of other suppliers we shall acquire co-ownership of the new product in proportion of the value of our retention-of-title goods to the goods supplied by others at the time of processing. Should the goods subject to retention of title be combined, mixed or blended with other goods pursuant to §§ 947, 948 BGB [German Civil Code], then we shall become co-owners in accordance with statutory provisions. Should our customer, by combining, mixing or blending, acquire sole ownership title then it transfers to us here and now co-ownership in the ratio of the value of the retention-of-title goods to the goods supplied by others at the time of the combining, mixing or blending. In such cases, our customer shall store the goods free of charge in our ownership or co-ownership, which shall be deemed goods subject to retention of title within the meaning of the above conditions. If goods subject to retention of title are sold alone or together with other goods, then our customer assigns to us here and now the receivables resulting from the resale, in the amount of the value of the goods subject to retention of title with all ancillary rights and priority over other claims/rights. We herewith accept the assignment. The value of the goods subject to retention of title is the amount on our customer's invoice, which shall not be applied, however, to the extent that the rights of third parties are enforceable against it.

¹ 8 percentage points above the base interest rate is a legally permissible interest rate for such business liabilities/debts governed by §§ 247 (1), 288 (2) BGB = German Civil Code. The base rate, set semi-annually, is minus 0.88% p.a. from 1 July until 31 December 2017]

If our customer has joint ownership of the re-/onsold goods subject to retention of title, then the assignment of the receivables includes the amount corresponding to our share of the co-ownership value. Our customer is entitled and authorised to resell, use or install the goods subject to retention of title in the normal, proper course of business only on condition that the receivables are actually assigned to us.

Our customer is not empowered to any other dispositions of the goods subject to retention of title, particularly pledging or chattel mortgaging. We authorise the buyer, subject to revocation, to collect the receivables assigned in accordance with the above provisions. We shall not avail ourselves of our own authority to collect, so long as the customer meets his payment obligations. At our request, our customer shall name the debtors of the assigned receivables and notify them of the assignment; we are also authorised to notify the debtor of the assignment ourselves. By handing over the documents necessary for an appeal, our customer shall immediately inform us of any legally enforced measures by third parties against the goods subject to retention of title, or the assigned receivables. Suspension of payment and/or application for the opening of insolvency proceedings means that the right to sell, use or install the goods subject to retention of title or the authorization to collect receivables shall lapse; so too shall any direct debit authorisation if a cheque is returned unpaid or a bill of exchange protested. This does not apply to the rights of the insolvency administrator. If the value of the collateral provided exceeds the receivables by more than 20%, then in this respect we are obliged to retransfer, re-assign or release at our option. On payment of all our claims from the business connection, title to the goods subject to retention of title and the assigned receivables passes to our customer.

8. We are liable for defects within the meaning of § 434 BGB only to the following extent: our customer has to immediately on receipt inspect the goods for defects and with regard to quality/condition. Obvious defects must be notified to us in writing, within three working days. In bilateral trade transactions among merchants/business persons, § 377 HGB [German Commercial Code] remains unaffected. Should the buyer discover defects in the goods, they may not exercise any disposition over them, i.e. they may not be divided, sold or processed until an agreement on the settlement of the claim is reached, and/or an expert appointed by our competent Chamber of Commerce has carried out an evidence collection procedure. With justified complaints, we are, with due regard to the nature of the defect and the legitimate interests of the customer, entitled to determine the type of post-fulfilment (replacement, repair/remedy). For the purpose of examining the complaint, the customer is obliged to provide us with the defective goods or samples. Culpable refusal voids any warranty claims. Claims by the buyer for post-performance/fulfilment expenses, particularly transportation, travel, work and material costs are excluded, so far as these costs increase, because the object of delivery was subsequently delivered to a place other than the delivery address of the customer or the contractually agreed venue, unless this is in line with the intended use. If the customer does not observe the operating or maintenance recommendations prescribed by us or the manufacturer and especially if changes are made to the goods, parts exchanged or consumable materials used which do not conform to the original specification, then any warranty obligations become void. The same applies to improper storage, extraneous influences or excessive wear. If, based on a complaint, there are claims against the manufacturer, they shall be assigned to the customer. Claims by the customer for damages are limited to a maximum of 25% of the order volume and shall be evidenced concretely in detail. Incidents within the meaning of the MPG [Medical Products Act] relating to any Pro Walk products shall be notified to us immediately. The customer shall inform us immediately of any consumer-related warranty event. Claims based on material defects become time-barred in twelve months. This does not apply as far as the law pursuant to §§ 438 (1) no. 2, 479 (1), 634a (1) no. 2 BGB prescribes longer periods.

9. Intellectual services/property provided by us are deemed to be accepted, provided our client does not express reservations in writing immediately after receipt. In case of such a reservation, we will review our performance of contract. If the client's reservation proves to be unjustified, the customer shall bear the additional costs incurred. The disclosure/dissemination and use of intellectual services over and above the contractually agreed purpose, particularly their publication, is permissible only with our prior written consent. Responsibility for compliance with the applicable legal provisions (e.g. competition law) governing the utilisation of our services, especially for advertising content, rests solely with our client, which in this regard shall free us from all third-party claims. Pro Walk exclusively reserves all rights, particularly the right of implementation/use (even in part/in the form of extracts), whether electronic or printed, to Pro Walk documents, presentations or presented ideas and concepts. Recipients are obliged to keep the contents confidential, only to use the CDs internally, printed materials, emails or other documents received and to ensure that neither copies nor other reproductions, even of individual parts, are made.

10. Claims by our customers for damages and reimbursement of expenses, regardless of the reason, particularly with regard to breach of contractual duty and tort, shall not be entertained. This does not apply in cases in which a warranty has been assumed or there is procurement risk. This does not apply, furthermore, in cases of mandatory liability, e.g. with regard to the Product Liability Act, in cases of gross negligence or intent of injury to life, body or health and violation of material contractual obligations. Claims with respect to the breach of material contractual obligations shall, however, be limited to foreseeable damage typical of the contract concerned, provided there is no gross negligence or intent, or there is an assumption of liability for injury to life, body or health. This does not involve a change of the burden of proof to the disadvantage of our client.

11. For custom-made items/special designs, for which we receive an appropriate sample from our customer specifying the raw materials used and technical requirements relating to the article, our customer shall indemnify us against any third-party claims, particularly with regard to any patent and other copyright violations that might be committed by the use of the specified samples. Any tools and devices procured for custom-made items must be paid for in addition by our customers, but remain our property regardless of the implementation and the size of the order. As well as the corresponding written specifications, they shall, unless otherwise agreed in writing, be retained by us for six months after execution of the contract and then destroyed. As we receive the necessary measurements for patient-related custom-made items from you, we can assume no liability for the use of the product. We shall be liable only within the framework of the prescribed dimensions and quality of our manufacture. For the product manufactured by us, you shall be liable for the specified measurements. We manufacture orthotics and patient-related customised products based on the dimensions you submit. The customer/ordering party is responsible for the correct dimensions. Liability for, or checking, the submitted design is not within the scope of Pro Walk's responsibility.

12. Should individual provisions of our terms and conditions be wholly or in part invalid, the other terms shall remain in force; the invalid provision shall be amended by one that economically and legally comes closest to the invalid provision.

13. Place of performance and place of venue for deliveries and payments (including cheque and bill of exchange litigation) and all disputes between the parties is, as far as our contracting partner is a merchant, public-law legal entity or special fund, the location of our registered office, i.e., Langen/Hessen, Germany. We are however, entitled to sue our customer at the location of its registered office. The relationship between the contracting parties are subject solely to the laws of the Federal Republic of Germany, under exclusion of the UN Convention on Contracts for the International Sale of Goods.