

WISAP Medical Technology GmbH

General Terms and Conditions for Sales and Services to Commercial Customers

This English version of WISAP's general terms and conditions for sale and supply to commercial customers is for Customer's convenience only. In case of inconsistency between the German version and the English version, the German version shall prevail.

I. Scope of Application

1. The General Terms and Conditions for Sales and Services (hereinafter "Conditions") of WISAP Medical Technology GmbH, Rudolf-Diesel-Ring 20, 82054 Sauerlach near Munich (hereinafter „WISAP“) shall apply to all current and future offers, contracts and other legal relations of WISAP and the Customer (hereinafter „Customer“).
2. The General Business Terms of the contractual partner shall only become contents of the contract if and insofar as they correspond with the Conditions of WISAP or WISAP has explicitly recognized the General Business Terms of the contractual partner in a text form, i.e. in writing, by fax or by e-mail.

II. Offers, conclusion of contract and contents of the contract

1. If an order of a Customer is to be qualified as an offer according to § 145 BGB [German Civil Code] then WISAP can accept this offer within two weeks since the receipt. Offers of WISAP are principally non-binding and without obligation unless they are explicitly marked as binding offers.
2. The acceptance of the offer can be carried out by WISAP by declaration in a text form (thus in writing, by fax or e-mail) or by providing the commissioned service. WISAP reserves the right not to accept orders. Silence of WISAP after expiry of the acceptance deadline shall be deemed as rejection in case of doubt.
3. If the order of the Customer is placed using electronic means WISAP shall make an effort to confirm the receipt of the order immediately. The confirmation of receipt does not yet represent any binding acceptance of the order, however the confirmation of receipt on the part of WISAP can be associated with the declaration of acceptance.
4. In the event WISAP confirms an order, the confirmation shall be deemed to refer to these Conditions – even if this is not explicitly mentioned in the confirmation. If these Conditions do not comply with the submitted General Business Terms of the Customer, the confirmation of the order shall be understood as a new offer according to §

150 section 2 BGB [German Civil Code].

5. In the event of orally agreed contracts the scope of services shall be stipulated by WISAP by written confirmation of contract on the part of WISAP.
6. Insofar as the contractual relationship between WISAP and the Customer is based upon the sale of an object or the delivery of movable objects which are to be manufactured or produced subject to deviating regulations in these Conditions, §§ 433 ff BGB [German Civil Code] shall apply if applicable in conjunction with § 651 BGB [German Civil Code]. § 631 ff BGB [German Civil Code] shall apply to contracts for work and services subject to deviating regulations in these Conditions.

III. Assignment of Rights and Obligations

The assignment of rights and/or the assignment of obligations of the Customer under the sale and purchase agreement shall only be valid upon WISAP's written consent.

IV. Prices

1. Prices are net of VAT ex works or stock of WISAP plus applicable VAT, transport and packing costs, as well as any applicable fees and customs, unless otherwise agreed.
2. In the event it is agreed that the goods sold are to be supplied more than 4 months after conclusion of the sale and purchase agreement and (i) the costs of material, production, packaging, distribution or transportation changed since then, or (ii) any applicable public burdens, customs or currency rates changed since then, WISAP may adjust the sale prices accordingly. Such adjustment of the sale prices shall be based upon WISAP's calculation at the time the contract was concluded and the actual cost increase occurred. Notwithstanding the foregoing, any increase of the sale prices shall be excluded to the extent WISAP is responsible for the increase of costs. WISAP's profit shall not increase due to such price adjustment.
3. In the event the Customer requests such an estimate prior to commencing any repair works it shall inform WISAP accordingly in writing. In the event Customer subsequently decides against any repair work being carried out, WISAP may charge a reasonable fee for such estimate.
4. WISAP may demand reasonable advance payments.

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V. Payment Conditions

1. The sale prices and the prices for supplementary performance shall become due upon receipt of the invoice, at the latest upon delivery of goods.
2. In the event Parties have agreed on deferred payment, all payments shall become due immediately in case of default of Customer, in the event Customer becomes unable to pay his debts, in the event Customer ceases payments or in the event an application for insolvency proceedings against the Customer has been filed.
3. WISAP may demand interests in the amount of 8 percentage points above base interest rate from the date of maturity of payment.
4. In the event of Customer's default, statutory law shall apply.
5. Customer may only set off claims in the event the counterclaim is undisputed or recognised by final judgement. Customer may enforce a lien ("*Zurückbehaltungsrecht*") only if the counterclaim is based on the same contractual relationship.

VI. Terms and Dates of Delivery

1. Terms and dates of delivery shall not be binding unless laid down in writing. If not explicitly agreed otherwise, terms and dates of delivery shall be deemed to be approximated only.
2. Temporary impediments of performance beyond WISAP's responsibility, e.g. acts of God, riots, strikes, lockouts and lack of delivery of necessary raw materials, automatically prolong the terms and dates of delivery mutually agreed according to the duration of such impediments.
3. Customer's reminders shall require written form.
4. WISAP is entitled to part performance as far as reasonable. Reasonable part performances require the Customer to pay the proportionate compensation.

VII. Place of Delivery, Passing of Risk, Acceptance of Delivery and Default of Acceptance

1. Place of performance and place of delivery is the place of business of WISAP. The risk of accidental loss, destruction or deterioration passes to the Customer upon transfer of goods to forwarder or carrier. This applies also for fob- or cif-trades (Incoterms 2010).

2. Acceptance of delivery is one of the main obligations of Customer.
3. Further claims of WISAP remain unaffected, including those for damages due to delay in performance.

VIII. Act on Safety of Medical Products; Act on electric and electronic appliances

1. Customer shall procure that WISAP'S goods will only be operated by technically qualified personnel. Customer shall ensure an adequate training of personnel according to the applicable statutory provisions.
2. Customer shall procure that WISAP's goods will not be combined with goods of a different manufacturer unless explicitly approved otherwise by WISAP and such manufacturer in writing.
3. Customer shall comply with all applicable regulations concerning the safety of medical products including all applicable legal guidelines and governmental orders. This includes the necessary registrations, ensuring the traceability of products to the end customer and reporting (potential) incidents also to WISAP.
4. Except for intention or gross negligence on the part of WISAP, its representatives and auxiliary persons, WISAP assumes no liability if products acquired from third parties contain substances in concentrations or applications whose bringing into circulation after 01.07.2006 is forbidden in accordance with the act on the bringing into circulation, the return and environmentally-friendly disposal of electric and electronic appliances ("German ElektroG") in its currently valid version. The aforementioned regulation also applies if the products acquired were processed or refined or altered by WISAP before they were sold to the Customer. In so far as a claim of WISAP is eliminated by the aforementioned regulation, WISAP herewith cedes any claims of WISAP vis-à-vis the third party to the Customer.

IX. Defects

1. Customer shall examine delivered goods immediately in accordance with § 377 BGB [German Commercial Code] and shall give WISAP immediate notice of any defects of such goods. Otherwise any and all claims based on defects shall be forfeited.
2. WISAP may deviate from performance data mutually

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agreed in case deviations are reasonable for Customer with respect to WISAP's interests.

3. The specification of materials and goods, particularly those referring to the DIN-classifications, do not imply any representations or guarantees as regards the quality of the materials used.
4. Any claims of the Customer based on defects against WISAP shall be limited, upon WISAP's choice, to the elimination of defects or delivery of goods free of defects. In the event WISAP fails to eliminate the defects Customer may reduce the purchase price or resign from the contract.
5. In the event of fraudulent misrepresentation by WISAP or in the event goods have been utilised for a building, according to its common way of utilisation, which caused a defect of the building, or in the event of a delivery recourse according to §§ 478, 479 BGB [German Civil Code] all claims based on defects are time-barred in accordance with statutory law. In other respects claims based on defects are time-barred 12 months after delivery unless statutory provisions stipulate a shorter term.

X. Failure to Comply and total Liability

1. WISAP shall be liable only for (i) wilful misconduct and gross negligence of its representatives and persons employed by WISAP in the performance of its obligations, or (ii) in the event of an infringement of essential contractual obligations by WISAP; this applies accordingly in the event of an infringement of obligations with regard to negotiations of the agreement. The foregoing limitation of liability does not apply in the event of personal injury or death, in the event of a fraudulent misrepresentation by WISAP and in the event WISAP took over a guarantee for the quality of goods.
2. Any tortuous liability surpassing the contractual or pre-contractual liability is excluded. Notwithstanding the foregoing WISAP's liability according to the German Act for Product Safety ("*Produkthaftungsgesetz*") remains unaffected.
3. WISAP assumes no liability for any untypical or unpredictable damages, provided WISAP, its representatives or persons employed by WISAP in the performance of WISAP's obligations did not act intentionally. The foregoing limitation of liability does not apply in the event of a fraudulent misrepresentation by WISAP and in the event WISAP took over a guarantee for the quality of goods.

4. A term of preclusion of 18 months applies to all claims other than mentioned in paragraph IX.5. Such term shall begin when Customer obtains knowledge about the damage and about the damaging person.
5. As far as the liability of WISAP is excluded, this shall also apply for the liability of WISAP's representatives, employees, agents and persons employed in the performance of WISAP's obligations.

XI. Retention of Title

1. WISAP retains title for the supplied goods until all debts of Customer under the business relationship with WISAP, irrespective of the legal grounds, have been satisfied.
2. In the event of a current account the title retention correlates to the accepted balance.
3. As far as goods are under title retention, Customer may sell such goods in the ordinary course of business upon the usual terms, provided Customer complies properly with due payment obligations. Customer hereby assigns to WISAP any claims resulting from the sale of such goods including claims resulting from the installation of such goods, no matter whether such claims are based on sale contract, contract for work and services or unjustified enrichment ("*verlängerter Eigentumsvorbehalt*"). WISAP accepts the assignment herewith. In the event such delivered goods under title retention have been combined, mixed or processed by Customer, the assignment is limited to the value of raw material of such goods.
4. Notwithstanding such assignment Customer may demand payment from third party to Customer. This right shall extinct in the event Customer does not comply properly with due payment obligations to WISAP, particularly in the event of a default of the Customer, in the event Customer ceases payments or in the event of application of bankruptcy proceedings against the Customer. Customer shall inform WISAP immediately about applications of bankruptcy proceedings against Customer. Upon WISAP's request, the Customer shall supply WISAP with all information about debtors and value of such assigned claims at any time.
5. WISAP may inform third party debtors about such assignment at any time. Customer shall inform WISAP immediately about the value and the debtor of such assigned claims and shall provide WISAP with all necessary documents (copies of invoices, etc.).

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6. In the event default of Customer indicates that a considerable portion of WISAP's claim is put at risk, WISAP may resign from contract and/or may return goods the titles of which have been retained. WISAP's personnel may enter Customer's premises for such purposes. Such return of goods shall not be considered as a resignation from the contract.
7. Save as provided in paragraphs XI.8 and XI.9, statutory law applies for the resignation from the contract.
8. In the event of resignation from the contract place of performance and place of delivery shall be the place of business of WISAP (XIV.2). Customer shall bear the costs of return and risks of accidental loss, destruction or deterioration for the return of goods, the titles of which have been retained.
9. Customer shall be required to pay to WISAP 10% of the invoiced amount, at least a lump sum of 100.00 Euro, for return and taking back of goods which titles have been retained.
10. In the event the total amount of securities exceeds the secured claim by more than 10%, Customer may demand release of securities accordingly; WISAP may choose which securities are to be released.
11. In the event of pledging or other impairment of goods the titles to which have been retained by a third party, Customer shall inform WISAP immediately in writing.
12. In the event such third party is not able or is not willing to compensate WISAP for court fees and extra-judicial costs of an action according to § 771 ZPO [German Code of Civil Procedure], Customer shall be a jointly and severally liable debtor for such fees and costs.

XII. Resignation from Contract

1. In addition to the reasons provided by statutory law, WISAP may resign from contract in the event WISAP's obligation becomes impossible, e.g. default of delivery by WISAP's suppliers, acts of God, strike, natural disasters etc, in the event Customer misrepresented its creditworthiness, in the event Customer is not creditworthy or in the event of unpredictable obstacles not conquerable by reasonable efforts. This does not apply as far as WISAP is responsible for such impossibility or such obstacles.
2. In the event WISAP resigns from the contract due to a breach of contract by Customer, WISAP may demand a

lump sum payment of 25% of the total order sum for compensation. This does not apply in the event Customer is not responsible for the breach of contract. Customer may prove that WISAP encountered no or considerably lower damage. WISAP's right to demand higher damages remain unaffected.

XIII. Packaging

1. Goods are delivered unpacked unless otherwise agreed or if specific packaging is customary in commerce.
2. WISAP is not obliged to take back packaging and transport material.

XIV. Place of Jurisdiction, Place of Business of WISAP

1. Exclusive place of jurisdiction– for both parties (WISAP and the Customer) – is WISAP's place of business; this shall also apply for actions arising out of a bill of exchange and for actions concerning payment of a cheque.
2. WISAP's place of business is WISAP's registered seat.

XV. Intellectual property

1. WISAP's offer documents, cost estimates, blueprints, drawings and calculations shall remain the sole property of WISAP and may neither be reproduced nor made accessible to third parties without a previous consent of WISAP in text form. If an order is not placed, the offer documents of WISAP are to be returned to WISAP immediately and completely; produced copies are to be destroyed.
2. If inventions are created by WISAP in the context of the business relationship, then WISAP is entitled to the sole exploitation of the rights which can be derived from this in particular of patents.

XVI. Miscellaneous

1. WISAP assumes no liability for the violation of third parties' intellectual property rights in the event of export delivery of goods, unless WISAP acted intentionally or with gross negligence.
2. In the event a Customer has its place of business outside Germany, or its representative transports or forwards collected goods to a foreign country, Customer shall provide for necessary certificates of exportation. Otherwise Customer shall pay VAT applicable for delivery

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within Germany.

3. The contract and these Conditions shall be construed in accordance with the laws of the Federal Republic of Germany excluding the provisions of the United Nations Convention on Contracts for the international Sale of Goods.

WISAP

medical technology

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