

General terms and conditions

Our quotations, deliveries and services are provided exclusively according to the following Terms and Conditions. They are also all valid for all future commercial relations, even if these have not been expressly agreed. These conditions are considered as accepted once the goods or services have been received. Counter-confirmation by the purchaser with reference to its Terms and Conditions will be opposed. Deviations, additions or supplementary agreements are only effective, if we confirm them in writing.

1. Quotations

Our quotations are without obligation and not binding. Renounceable letters of acceptance and all orders require our written or telex confirmation in order to be legally effective.

2. Prices

Unless otherwise stated, we will be bound by the prices contained in our quotations for thirty days from the quotation date. Otherwise, the prices quoted in our order acknowledgment plus statutory value-added tax will prevail. Additional deliveries and services will be invoiced separately.

Prices are quoted net ex works Jungingen, unless otherwise agreed, excluding pack-aging and freight charges and excluding insurance plus statutory value-added tax.

We deliver only:
within Germany:

Minimum order value: EUR 150.00

Mark-up for small volume purchases below a value of EUR 150.00 = EUR 15.00
outside Germany:

Minimum order value: EUR 1000.00

3. Deliveries

Dates of delivery or deadlines have to be agreed in writing in order to be binding.

Delayed deliveries and services due to force majeure and for reasons which considerably impede delivery or make it impossible for us to deliver, not merely temporarily, have not been fulfilled – this also includes subsequent difficulties arising in the procurement of materials, equipment failure, strikes, lock outs, lack of personnel, lack of means of transport, official directives etc., also if they occur at our suppliers or their subcontractors – will not be our responsibility even in the case of deadlines and dates which have been compulsorily agreed. They entitle us to postpone the delivery or service by the period of the hindrance plus an appropriate start-up time or to cancel the contract in part or in whole for those sections which have not been fulfilled.

If the duration of the impediment exceeds three months, the customer shall be entitled after setting an appropriate extension of time to withdraw from the part of the contract not yet fulfilled. The customer shall not be entitled to claim damages in the event of the duration being extended or if we are released from our obligation. We shall only be permitted to rely on the circumstances referred to if we notify the customer without delay.

Customer's claims for damages due to delay shall likewise be excluded in other cases unless delay is due at least to gross negligence.

We are entitled to make part deliveries of goods and services at any time unless such part delivery is of no interest to the customer.

Performance of our obligations to deliver and perform depends upon due and timely fulfilment of the customer's obligations.

If the customer is in default of acceptance, we shall be entitled to demand compensation for our loss. The risk of accidental deterioration and accidental loss shall pass to the customer when default of acceptance occurs.

4. Passing of risks

Risks are passed to the customer, as soon as the consignment has been assigned to the establishment or person responsible for transport or it has left our warehouse for the purpose of shipment.

5. Warranty

5.1 We warrant that our products are delivered free of manufacturing and material defects. Any warranty claims must be made within 2 years from delivery of our products.

5.2 Claims based on product defects will not be considered in the event of failure to follow our operating or maintenance instructions, modifications to the products, replacement of parts or use of consumables that do not meet the original specification, unless the customer can disprove a properly substantiated assertion that it was such a circumstance that caused the defect.

5.3 The customer must notify us in writing of any defects without delay and within one week of receipt of the delivery item at the latest. Defects not discovered within that time even after careful inspection shall be notified to us in writing without delay upon being discovered.

5.4 Upon receipt of notification from the customer of a product defect, we may at our option and at our expense demand that:

- the defective part or appliance be sent back for repair and subsequent return to the customer;
- the customer holds the defective part or appliance in readiness and our service engineers are sent to the customer's premises to carry out repairs;

c) or we may propose another repair solution.

5.5 If repair is unsuccessful after an appropriate time, the customer can at its option demand a reduction in the price or cancellation of the contract.

5.6 Liability for normal wear and tear is excluded.

5.7 Only the direct customer is entitled to make warranty claims against us.

Such claims are not transferable.

5.8 SpO2 Sensors, blood pressure cuffs and bulbs are excluded from the warranty.

5.9 ENT endoscopes' warranty is 1 year.

6. Retention of title

Goods will remain our property until all claims including all accessory claims have been paid for in full.

The customer is entitled to process and to sell the reserved goods in regular business transactions, provided he is not in arrears. Pledging or assignment by bill of sale as a security for a debt is not permitted. The customer herewith signs over to us for good measure and to the full extent any claims which arise from resale or for any other legal reason (insurance, illegal dealing) with regard to reserved goods. We authorise the customer, subject to revocation, to collect claims assigned to us for our account in his own name. This authority to collect can only be revoked if the customer fails to meet its payment obligations on time. If so requested by us, the customer will disclose any assignments and provide all necessary information.

In the case of third party attachment of reserved goods, in particular seizure, the customer shall draw attention to our property and notify us without delay to allow us to enforce our ownership. The customer shall be liable if the third party is unable to reimburse us for court or out-of-court expenses incurred in this connection.

If the customer is in breach of contract, in particular due to default of payment, we shall be entitled to withdraw from the contract and demand surrender of the reserved goods.

7. Payment

Unless otherwise agreed, our invoices are payable 30 days after invoicing with-out deduction. Despite customer's differing terms and conditions we shall be entitled to apply payments first to the customer's older debts and will inform the customer of the type of settlement operated. If expenses and interest have already been incurred we shall be entitled to apply the payment first to the expenses, then to the interest and lastly to the principal amount.

Payment shall not be deemed made until we can dispose of the amount. Cheque payments shall not be deemed made until the cheque has cleared.

If the customer is in default of payment, we shall be entitled to charge interest at a rate of eight percentage point above the base interest rate from the default date by way of lump-sum compensation. Lower interest will be charged if the customer can prove a smaller loss. We shall be permitted to prove greater loss. If anything comes to our knowledge that casts doubt on the customer's credit worthiness, in particular if a cheque is not honoured or if the customer suspends payments, or if we become aware of other circumstances casting doubt on the customer's credit worthiness, we shall be entitled to make the whole balance of the claim due, even if we have accepted cheques. In such a case we shall further-more be entitled to demand advance payments or furnishing of security.

The customer is only entitled to offset, retention or reduction, even if complaints or counterclaims have been made, if the counterclaims have been established in a final court judgement or are undisputed.

8. Product changes

We retain the right to undertake changes in product construction at any time. These may not, however, result in a decrease in quality. We are not obliged to undertake such changes to goods which have already been shipped.

9. Copyright

We indemnify the customer and his clients against claims of infringement to copy-right, trademarks or patents, unless the design for a delivery item was supplied by the customer. Our obligation to indemnify shall be limited in amount to the foreseeable loss. A further condition of indemnification shall be that the conduct of lawsuits is left to us and that the alleged infringement of rights relates solely to the construction of this company's delivery items, unconnected or not used with any other products.

We shall optionally have the right to release ourselves from this obligation by either obtaining the necessary licences in respect of the patents allegedly infringed or supplying the customer with a modified delivery item or parts thereof which if exchanged for the infringing item or part thereof will remove the accusation of infringement with respect to the delivery item.

10. Liability

Irrespective of the nature of the breach of duty, including tort, claims for damages shall be excluded unless based on intent or gross negligence.

In case of breach of essential contractual obligations we shall be liable for any negligence but only up to the amount of the foreseeable loss. No claims shall be made for loss of profit, expenses saved, third party claims for damages or any other indirect or consequential loss unless it is the precise purpose of a guaranteed characteristic feature of the product to protect the customer from such a loss.

The restrictions and exclusions of liability according to paragraphs 1 and 2 shall not apply to claims due to our acting with intent to deceive, or to liability for guaranteed characteristic features, claims under product liability law or damage due to injury to life, limb or health. Exclusion or restriction of our liability shall also apply to our white-collar and blue-collar employees, representatives and vicarious agents.

11. Halma Group Code of conduct

Our business relationships are subject to the Halma Code of Conduct, available on www.halma.com

12. Governing law, place of performance and jurisdiction

The law of the Federal Republic of Germany shall apply to these Terms and Conditions and to all legal relations between us and our customers. The United Nations Convention on the International Sale of Goods shall not apply.

The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Jungingen if the customer is a merchant, legal entity in public law or special fund in public law.

If any of the provisions contained in these Terms and Conditions, or any provision which is part of any other agreement, should be or become invalid, this will not affect the validity of all other provisions or other agreements.

Rudolf Riester GmbH, Jungingen, 09/2018