

General Terms and Conditions of Purchase of Novo Klinik-Service GmbH

Section 1 Scope of regulation

The following General Terms and Conditions apply from 1 March 2022 for transactions involving the purchase of goods and services by Novo Klinik-Service GmbH, 50127 Bergheim, Germany (hereinafter referred to as 'Purchaser'). The Seller's General Terms and Conditions to the contrary shall not form part of the contract, even if they are accepted without objection. These Terms and Conditions of Purchase only apply to companies, legal persons under public law or a special fund under public law within the meaning of Article 310, paragraph 1, of the German Civil Code (BGB). The current General Terms and Conditions can be found at [its-novo.de/en/general-terms-and-conditions-of-purchase](https://www.novo.de/en/general-terms-and-conditions-of-purchase).

Section 2 Offers

Offers from the Seller must be submitted in writing or in text form (email, fax, etc.) and are understood to be without any obligation to pay.

The Purchaser reserves the right of ownership, use and exploitation as well as all intellectual property to the drawings, plans, illustrations, calculations, models, samples and other documents provided to the Seller for the purpose of submitting an offer. The Seller may not transfer these to third parties or make them available to third parties without the written consent of the Purchaser.

If they are made available to it in connection with the submission of an offer or order, they may only be used for internal purposes and may not be passed on to third parties. They must be returned to the Purchaser at any time without being asked to do so, or upon request, if an order placed has been processed.

Section 3 Conclusion of contract; withdrawal

(1) With the order placed by the Purchaser, the contract is concluded on the terms stated in the order, unless the Seller objects without delay. Orders are only legally binding if the Purchaser places them in writing or in text form (email, fax, etc.). Orders placed verbally or by telephone require subsequent confirmation by the Purchaser in writing or text form (email, fax, etc.). In the case of deliveries that are not made on the basis of a proper order in accordance with the above provisions, the Purchaser may refuse to accept and pay. In the event of any uncertainties in the order, these must be clarified by contacting the Seller in writing or text form (email, fax, etc.).

The Seller is obliged to confirm the order in writing or text form (email, fax, etc.) within a period of two working days upon acceptance of the order.

If order acceptance or confirmation letters from the Seller deviate from the order, the Seller is obliged to expressly point this out. In this case, a contract shall only come into existence with the consent of the Purchaser in writing or text form (email, fax, etc.). Acceptance of an order that deviates from the order constitutes a new offer and requires acceptance by us in written and text form (email, fax, etc.).

The commissioning of a subcontractor requires the prior written consent of the Purchaser. The obligations of the Seller vis-à-vis the Purchaser shall remain unrestricted and the Seller shall be liable for any errors of its subcontractor as well as for its own errors.

(2) If the Seller withdraws from the contract with justification, it is obliged to refund any payments already made by the Purchaser. If the Seller unilaterally withdraws from the contract despite prior acceptance of the order, the right to assert a claim for damages is reserved. The Purchaser is entitled to withhold the return of goods already delivered until all payment obligations of the Seller have been fulfilled.

(3) In the event of a justified withdrawal of the Purchaser, the Purchaser is not obliged to pay the purchase price. An obligation to compensate for value only exists if the delivered item is lost or deteriorated due to intent or gross negligence on the part of the Purchaser. Compensation for value on the part of the Purchaser due to consumption, sale, encumbrance, processing or alteration (detrimental use) is excluded, unless the detrimental use was not made prior to the declaration of withdrawal and was not part of the normal course of business. If compensation for a detrimental use is excluded hereunder and if the Purchaser obtains a replacement or claim for compensation due to the detrimental use, the Purchaser is obliged to assign this claim to the Seller in the amount of the value of the purchased item. This does not affect the statutory grounds for excluding the right to value added.

The following withdrawals from the contract are always entitled:

(1) If the Seller fails to fulfil the obligation assumed with the order confirmation or fails to fulfil it in accordance with the contract, the Purchaser shall be entitled to withdraw from the contract immediately and demand compensation in lieu of performance.

(2) The Purchaser shall have the right to withdraw from the contract in particular if the Seller breaches its obligation pursuant to Section 12 (Confidentiality).

(3) The Purchaser is also entitled to withdraw from the contract if the Seller suspends delivery or applies for insolvency proceedings.

(4) The right to extraordinary termination for good cause in the case of continuing obligations remains unaffected. The justified withdrawals listed in the section do not exclude other justified grounds for withdrawal.

Section 4 Third-party rights

(1) The Seller guarantees that the delivered goods are free from third-party rights. The Seller shall indemnify the Purchaser on first written request against all claims made by third parties due to infringements of the rights of third parties.

(2) The obligation to indemnify relates to all expenses necessarily incurred as a result of or in connection with the claim by a third party. Any litigation costs must be appropriately advanced. The Seller's further liability for defects of title remains unaffected.

(3) The limitation period is 36 months, calculated from the date on which the purchased item is placed on the market by the Purchaser, but no earlier than two months after the date on which the third party asserts any (unlimited) claims against the Buyer.

Section 5 Deadlines and delivery dates

(1) Delivery must be made immediately in principle, but are later only binding for the Purchaser if it has confirmed this in writing. Payment periods only begin from the date of complete delivery of the order. The agreed delivery dates and deadlines are binding and shall be invoiced from the date of the order. Compliance with these provisions shall be determined by the arrival of the delivery at the point of receipt specified in the order or by the successful acceptance, if this is contractually agreed or provided for by law.

(2) The Seller is obliged to inform the Purchaser immediately in writing if circumstances arise or if it becomes apparent to it that the stipulated delivery time cannot be met. The Seller must also notify the expected delay in writing or text form (email, fax, etc.). Recognition of the new delivery date requires the Purchaser's consent in written or text form (email, fax, etc.) and is not provided by the Seller's notice or by silence towards this notice.

(3) In the event of a delay in delivery, the Purchaser shall be entitled to the statutory claims. In particular, it shall be entitled to demand compensation in lieu of performance and to withdraw from the contract after a reasonable period has expired without success. If we demand compensation, the Seller is entitled to prove that it is not responsible for the breach of duty. Either the damage actually incurred or a lump sum of 20% of the order value plus VAT applicable at the time of the agreed delivery date can be claimed. When claiming the lump sum, the Seller reserves the right to prove that no damage has been incurred at all or has not been incurred to the same extent.

(4) The Purchaser shall only accept early deliveries or partial deliveries in individual cases or if this has been expressly agreed. Otherwise, the Purchaser shall have the right to return the delivery at the supplier's expense. Even if the Purchaser accepts them, it is not obliged to make early payments.

Section 6 Packaging, shipping and transfer of risk

(1) The Seller is obliged to pack the ordered goods properly and in recyclable material in order to avoid damage during the chosen mode of transport. Euro pallets or plastic pallets must be used when transporting goods on pallets to the Purchaser's warehouse. If quantities are ordered as complete packaging units or if the order quantity can be divided by a multiple of complete packaging units, only complete packaging units are accepted. In the case of light-sensitive goods, such as foams, they must also be protected by opaque UV-protective film. If the goods are to be shipped to a place other than the place of performance at the Purchaser's request, the Seller is obliged to take out adequate transport insurance for a net order value of EUR 1,000 or more, the costs of which are to be borne by the Purchaser only if it has agreed to this in writing in the order form.

(2) In the event of an incorrect delivery, or in the event of an excess or short delivery that exceeds a production-related level, the Seller shall take back the incorrect or superfluous goods at its own expense and deliver the ordered goods or remaining quantity free of charge.

(3) Unless otherwise agreed, delivery is free of charge. The risk of accidental loss of the goods shall be borne by the Seller. The Seller must indicate the Purchaser's job, article and order numbers on all shipping documents and delivery notes.

Section 7 Prices, terms of payment

(1) The prices stated in the order plus the applicable statutory value added tax apply. Subsequent price increases require separate written confirmation by the Purchaser. The price stated in the order includes all costs for delivery in accordance with the agreed terms of delivery.

(2) Payment deadlines and dates are met if the payment is transferred to the Seller's account by the end of the deadline. Payment of the purchase price shall only be made after delivery of all ordered goods. Partial invoices are not accepted. Only then will the discount period begin. Further payment agreements must be agreed in writing in the order form.

(3) The legal unity of the transaction remains unaffected by partial deliveries.

(4) Payments shall be offset against existing ancillary and principal claims of the Seller at the discretion of the Purchaser.

(5) Price increases must be notified at least four weeks before they come into force. Otherwise, the previous prices will continue to apply four weeks after receipt of the notification.

(6) If prices are agreed ex works, ex warehouse of the Seller or of a third party, all costs incurred up to the handover to the transport company, including loading and running fees, shall be borne by the Seller.

(7) The Seller must notify the Purchaser of the processing of a delivery without delay by means of a dispatch notification. Our order number must be stated on this and on other documents and invoices processing an order.

(8) The Purchaser is entitled to rights of set-off and retention to the extent permitted by law.

Section 8 Retention of title

The agreement of a retention of title requires the written confirmation of the Purchaser. A retention of title that goes beyond a simple retention of title is not accepted. Drawings, plans, illustrations, calculations, models, samples and other documents provided by the Purchaser to the Seller shall remain the property of the Purchaser.

Section 9 Warranty for defects and product characteristics

(1) The warranty for defects for delivered goods is based on the statutory provisions. Warranty exclusions are not accepted. Descriptions of goods in the order form constitute a guarantee of availability.

(2) The Seller warrants that the ordered and delivered goods are marketable in Germany; in the case of products defined as medical devices in accordance with the respective applicable EU regulations, they are applicable in accordance with their intended purpose within the EU and correspond to the current product version. It warrants that all deliveries comply with the current legal provisions as well as the regulations and guidelines of the authorities and, in particular, that the relevant applicable regulations for medical devices, pharmaceuticals, foodstuffs, cosmetics, dietary products, etc. are fulfilled. It assures for itself and its vicarious agents that the transport and storage conditions that the manufacturer expects of its product have been taken into account and complied with.

(3) If a defect becomes apparent to the Purchaser within six months of delivery of the goods, it is presumed that the purchased item was defective at the time of transfer of risk, unless the presumption is incompatible with the nature of the purchased item or the defect.

(4) Should the goods lose their marketability within the shelf life stated on the product, or otherwise within a period of three years, calculated from delivery, due to a reason that lies in the goods or the Seller, the Seller is obliged to take back the goods free of charge and refund the purchase price as well as any ancillary costs charged at the time of delivery. It undertakes to inform the Purchaser without delay in writing, stating reasons if the marketability of the delivered products is restricted or lost.

(5) In principle, only goods that correspond to the manufacturer's current production level and are no older than 12 months from the date of production upon delivery are accepted. If the product has an expiry date without specifying the date of manufacture, the delivered goods must have a remaining term of at least 24 months upon delivery. If a manufacturing date is also specified, the remaining term may not have elapsed for more than 12 months, otherwise the Purchaser may withdraw from the contract.

(6) The warranty period is 24 months from delivery of the goods to us. For the rights under Section 8, this limitation period shall not come into effect until two months after the date on which the Purchaser has fulfilled the customer's claims for defects, but no later than five years after delivery of the goods to the Purchaser. This does not affect the provisions of Article 479 of the German Civil Code (BGB).

(7) The Seller is not entitled to limit the warranty to the assignment of its own existing warranty claims against manufacturers or suppliers, insofar as these are of value.

Section 10 Liability for damages and reimbursement of expenses

(1) Liability of the Purchaser:

a) The Purchaser's liability for damages for the breach of non-essential contractual obligations is excluded if it, its legally designated representatives or vicarious agents are solely responsible for ordinary negligence. In the event of financial losses, its liability is limited to foreseeable damages typical of the contract, unless it is responsible for wilful intent or gross negligence.

b) Insofar as its liability is excluded or limited, this also applies to the personal liability of its employees, workers, associates, representatives and vicarious agents. All of the aforementioned exclusions of liability do not apply to damage resulting from injury to life, limb or health.

c) Lump sums for the amount of damages or reimbursement of expenses shall not be accepted.

d) Within the scope of its liability for claims, the Seller is obliged to pay any expenses pursuant to Articles 683 and 670 of the German Civil Code (BGB) or pursuant to

Articles 830, 840 and 426 of the German Civil Code (BGB) arising from or in connection with a recall action carried out by the Seller or by the manufacturer of the goods or a subsequent delivery. This includes, in particular, investigation, information or exchange costs. The Seller shall be informed – as far as possible and reasonable – of the content and scope of the measures to be carried out and given the opportunity to comment. Further statutory claims remain unaffected.

e) The Seller undertakes to maintain product liability insurance with included cover for product asset losses with a minimum sum insured of EUR 10 million per personal injury and property damage.

Section 11 Assignability of claims

The Seller's rights and obligations under the contract are not assignable or transferable without the written consent of the Purchaser. Article 354a of the German Commercial Code (HGB) remains unaffected.

Section 12 Confidentiality

The Seller is obliged to keep confidential all drawings, plans, illustrations, calculations, models, samples and other documents provided to it, unless these are generally known or made publicly available. The Seller may only inform or pass them on to third parties with the express written consent of the Purchaser, insofar as the Seller has obliged third parties to maintain similar confidentiality. For breaches of contract by third parties, the Seller shall be liable to the Purchaser as it is for its own misconduct. The obligation of confidentiality shall continue to apply after the termination of the contract. The non-disclosure obligation shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known. If the Seller breaches this confidentiality obligation, it is obliged to pay the Purchaser a contractual penalty. The amount of the contractual penalty shall be at the Purchaser's reasonable discretion and, in the event of a dispute, shall be reviewed by the court responsible to ensure that it is equitable. Further claims remain unaffected by this.

Section 13 Miscellaneous

(1) Subsidiary agreements, amendments, additions, warranties or assurances require the written form and the written consent of the Purchaser.

(2) Any invalidity or loopholes of individual provisions of these General Terms and Conditions shall not affect the validity of the remaining provisions. In such a case, both parties undertake to agree on a legally permissible new provision that comes as close as possible to the economic purpose of the invalid provision. If the invalidity is due to exceeding or falling short of an impermissible limit in terms of number or value, the legally permissible limit shall apply.

(3) The place of performance for all obligations arising from the contractual relationship is the delivery address specified in the order.

(4) The legal relations between the Purchaser and the Seller shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(5) The place of jurisdiction is the court with jurisdiction over our registered office, unless otherwise stipulated by law.

(6) If a Commercial Agreement (framework agreement) has been agreed between the Purchaser and the Seller, in the event of a conflict, the terms of the Commercial Agreement shall take precedence over the Purchaser's General Terms and Conditions of Purchase.