

General Terms and Conditions of custo med GmbH

I. General information, Scope of application

1. The following General Terms and Conditions (hereinafter referred to as "T&Cs") apply to all contracts of custo med GmbH (hereinafter referred to as "custo med") with its customers regarding the delivery of its products and/or the provision of a service, in particular the provision of software and updates/upgrades thereto and the provision of related services.
2. Customers within the meaning of these T&Cs are both consumers and entrepreneurs.
3. In addition to these T&Cs, the EULA (End User License Agreement) applies to the use of any custo med software application, which is provided to the customer with the delivery of such products, but can also be viewed online at www.customed.de. It will also be sent upon request.
4. General Terms and Conditions of the customer that conflict with or deviate from these T&Cs shall not be recognised by custo med, except in cases where custo med has confirmed this in writing.

II. Prices and payment terms

1. Offers from custo med are non-binding. Deviations or changes made verbally or by representatives of custo med require the written confirmation of custo med to become effective.
2. Prices are calculated according to the valid price list, unless otherwise agreed in the order confirmation. Our prices are net prices. Costs for packaging, shipping and delivery, assembly, insurance and commissioning are charged separately.
3. The purchase price is due for payment without deduction immediately upon receipt of the invoice by the customer, unless other payment terms have been agreed. If the payment deadline is missed, custo med is entitled to charge default interest at a rate of 8 percentage points above the base interest rate from the time of the occurrence of the default.
4. If a customer is an entrepreneur, they shall only have a right to refuse performance or a right of retention if the claim on which the right is based is undisputed or has been legally established. Offsetting by the customer, even if not an entrepreneur, is only permitted if the counterclaim has been legally established or is undisputed.

III. Retention of title

1. custo med retains ownership of the sold/delivered goods until all claims – including past, future and conditional claims, including all ancillary claims and claims for damages – arising from the business relationship with the customer have been settled.
2. The customer is obliged to handle the goods with care for the duration of the retention of title and in addition, to insure the goods adequately at its own expense against damage by fire, water and theft at their replacement value.
3. In the event of attachment or other interventions by third parties, the customer must immediately notify custo med in writing in order that custo med can enforce its property rights. Insofar as the third party is not able to reimburse custo med for the legal and out-of-court costs incurred in this respect, the customer shall be liable for the damage incurred by custo med.

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4. The customer is entitled to resell the reserved goods in the ordinary course of business. The customer hereby assigns to custo med the buyer's claim arising from the resale of the retained goods in the amount of the final invoice amount agreed with us (including statutory value added tax). If the value of the securities granted to custo med exceeds the total claims by more than 20%, custo med is obliged to release securities in the volume in excess.

IV. Delivery and performance time, take-back obligations

1. custo med's obligation to deliver is governed by custo med's order confirmation, these terms and conditions and the EULA (depending on applicability). Unless otherwise agreed in writing between the parties, delivery shall be ex works.
2. In case of shipment of the goods, custo med can choose the means of transport and the shipping route itself, excluding any liability. This exclusion does not apply if custo med acts with gross negligence or if there is injury to life, body and health.
3. Delivery dates and deadlines stated by custo med are non-binding.
4. If products and/or services of custo med are shipped at the request of the customer, the risk for damage and loss passes to the customer at the point when custo med dispatches the goods. custo med is only obliged to take out transport insurance at the express request of the customer. The customer bears the costs.
5. If software is downloaded, the risk passes to the customer as soon as they have received the required software key.
6. custo med may make partial deliveries if a partial delivery is reasonable for the customer and is not significantly detrimental to the interests of the customer.
7. Claims for damages arising from non-compliance with delivery periods or delivery dates are excluded, unless custo med is responsible for the delay due to intent or gross negligence.
8. custo med is entitled to withdraw from the contract at any time – even after delivery – if, in the case of reasonable commercial judgement, the fulfilment of custo med's claims appears to be at risk due to the customer's lack of creditworthiness. If custo med withdraws from the contract, the customer is obliged to pay custo med 20% of the order value as a lump-sum reimbursement of expenses, unless custo med is responsible for the termination of the contractual relationship. The customer reserves the right to prove that custo med has suffered less damage or no damage. If custo med has already delivered the goods, the customer is obliged to return the goods to custo med immediately and without charge.
9. custo med is also entitled to withdraw from the contract if custo med or its suppliers encounter performance disruptions that are not merely temporary in nature due to operational disruptions, official measures, lack of manpower or raw materials, labour disputes or other cases of force majeure, for which custo med is not responsible.

V. Inspection obligations and notification of defects

1. The customer is obliged to inspect the packaging and the products immediately after delivery and to report any damage to the carrier immediately.
2. Obvious defects, including transport damage, must be claimed to custo med in writing without delay, but in any case at the latest within 5 days after receipt of the goods at the place of destination. This applies in business transactions with non-merchants only insofar as it concerns obvious defects.
3. Acceptance cannot be refused due to insignificant defects. If a deadline for acceptance set by custo med expires without result, acceptance shall be deemed to have been granted.

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VI. Warranty and liability

1. Unless expressly agreed otherwise, custo med's goods shall correspond to the current state of the art and match the product information and specifications provided by custo med, including any separate license agreements and/or custo med licence terms (EULA) for the software.
2. From the time of delivery, custo med warrants that the goods, in particular software, essentially correspond to the product description with regard to their functionality, provided that the goods are used in one of the reference systems tested by custo med. Specifications for reference systems will be provided by custo med upon request.
3. The customer is informed that, according to the current state of the art, despite the greatest diligence and care program errors in software cannot be excluded with certainty, and it cannot be guaranteed that software and hardware work faultlessly in all applications and combinations.
4. In the event that errors or incompleteness of the specifications are based on incorrect data from third parties, the warranty is excluded.
5. The customer is obliged to provide custo med with all documents and information required for troubleshooting. The customer must inform custo med immediately of any program errors, necessary changes and other circumstances indicating the necessity of similar measures.
6. Errors notified by the customer, in particular objectifiable data errors reported by the customer, shall be rectified by custo med as soon as possible. If it proves impossible to rectify the error, custo med will develop an alternative solution.
7. If, at the customer's request, customised or standard third-party software is integrated into systems delivered by custo med, custo med shall not be liable for compatibility and function.
8. custo med does not assume any warranty or liability for damages arising for the following reasons: unsuitable or improper use, natural wear and tear, incorrect installation or commissioning by the customer or third parties, incorrect or negligent handling and unsuitable operating materials. Furthermore, custo med shall not be liable for damage resulting from the fact that the delivery item is housed in rooms which have structural defects or in which the delivery item is exposed to chemical, electrochemical or electrical influences or polluted air.
9. Furthermore, custo med does not assume any warranty or liability for damages that are based on the fact that the equipment is operated in combinations with (reference) systems that have not been tested and/or confirmed by custo med, nor for such damages that are due to the lack or inadequate study of the product description, instructions for use or their improper implementation by the customer or third parties.
10. custo med provides a warranty for material defects by means of supplementary performance, at its discretion by means of rectification of defects or replacement delivery. custo med is free to choose the type of supplementary performance.
11. If the customer chooses to withdraw from the contract due to a defect of title or material defect after a failed supplementary performance, they are not entitled to any additional claim for damages on account of the defect.
12. Further claims, in particular claims for damages, of the customer, irrespective of the legal grounds, are excluded, unless custo med is guilty of intent or gross negligence in the individual case. This exclusion of liability does not apply to liability for damages arising from injury to life, body and health, or to liability for damages under the Product Liability Act or from guarantees. In the event of a minor negligent breach of material contractual obligations, liability is limited to compensation for typically foreseeable damage.

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VII. Limitation

1. Claims made by the customer due to material defects or defects of title are limited to one year from delivery.
2. For other claims of the customer under the contract as well as from a debt relationship (Section 311 (2) German Civil Code (BGB)), a limitation period of one year from the statutory commencement of the limitation period applies.

VIII. Place of performance, place of jurisdiction

1. The place of performance and place of jurisdiction for both contracting parties is Munich. custo med, however, has the right to also bring suit against the customer at its general place of business.

IX. Final provisions

1. The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded.
2. Should individual provisions of the above General Terms and Conditions be wholly or partially invalid, this shall not affect the validity of all other provisions or agreements. In such case, both parties undertake to agree on a provision that comes as close as possible to the economic purpose of the invalid clause.
3. The customer expressly agrees to the collection, processing and use of customer-related data, which is necessary for the purpose of the business transaction in compliance with the provisions of data protection law. custo med makes the contractual data accessible only to those employees and authorised service partners who require access in order to perform the tasks assigned to them.

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