

1. General information

The terms and conditions shall apply for all present and future business relations. They shall apply for the duration of the business ties, so that it does not require the remittance of these terms and conditions in each individual case. Deviating, contradictory or supplemental general terms and conditions shall become a component of the contract, even in the event of knowledge thereof, unless their application is expressly agreed to in writing.

2. Delivery

Within the Federal Republic of Germany, deliveries above EUR 700.-- net shall be made carriage paid. For orders with a net contract value under EUR 52.--, we reserve the right to charge a mark-up of EUR 5.50 for small volume purchases. We will carry the insurance. We are free to choose the method of shipping. If the customer desires rush shipping, e.g. by expedited service or express messenger, the additional costs shall be borne by him. In the event of transport damages, the customer agrees to immediately consult the carrier regarding loss assessment. In doing so, the original bill of lading, assessment of damages as well as the declaration of assignment of the recipient must be immediately forwarded to us. Packing will be assessed at the net cost price. We (Erwin Kowsky GmbH & Co. KG) will accept transport packing returned by the customer carriage paid and will recycle it in accordance with the German packaging regulation. Delivery deadlines designated by us shall apply on the condition of uninterrupted fabrication activity, but are not binding. Partial deliveries are permissible.

3. Retention of Title

The goods delivered shall remain our property until all receivables from the business relation are paid by the customer. The customer is authorized to resell the goods belonging to us in the normal course of business. In the event of resale, the customer shall assign in advance all claims to payment arising therefrom to us. If our property is mixed or processes with other goods, the assignment occurs in the amount of the ratio of the value of the goods delivered by us to the other processed items. If the value of our collateral exceeds our claims by more than 20%, we will immediately release fully paid-up collateral upon written request of the customer, at our discretion.

4. Invoices

The customer agrees to pay the purchase price within 10 days after the date of invoice strictly net cash. If the customer does not pay when due, he shall be in default without a warning. The customer must pay interest on the debt during default at a rate of 7.5% above the current prime rate. The statutory obligation for the application of further default damages shall remain unaffected thereby. We reserve the right to prove and assert higher default damages. In the event of receipt of payment within 10 days after the invoice date, we will grant a 2% discount, if all payment obligations from earlier deliveries have been fulfilled. In the event of participation in a bank debit memo, we will grant a 3% discount. Deviating terms of payment and delivery can be regulated through individual agreements regarding contractual conditions. In the event of non-compliance with stipulated purchase quantities, we are entitled to carry out a subsequent billing (in accordance with the currently valid price list) at the agreed-upon purchase price. Modifications will be accepted in accordance with separate agreement and only in lieu of performance in the context of § 354 para. 2 BGB (German Civil Code). The customer shall bear the costs of discounting and collection. Set-off is only permissible with legally established or uncontested counterclaims. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

5. Liability for defects

If the goods are defective, we will guarantee the goods against defects initially at our option, through rectification of the defect or replacement delivery. If even the second attempt at a remedy fails, the customer may, at his choice, demand a reduction of the compensation (abatement) or cancellation of the delivery (rescission). However, in the event of an insignificant infringement of contract, in particular for minor defects, the customer is not entitled to a right of withdrawal. The customer must notify us in writing of visible defects within a period of two weeks after receipt of the goods; otherwise, the assertion of claims for damages is excluded. For compliance with a time limit, punctual posting suffices. The customer shall meet the full burden of proof for all eligibility requirements, in particular for the defect itself, for the time of determination of the defect and for the timeliness of the notification of defects. If the customer elects to withdraw from the contract due to a defect in title or material after rectification of the defect has failed, he is not entitled to any claim for damages due to the defect. If the customer chooses indemnification after rectification of the defect has failed, the goods shall remain with the customer, if this is reasonable for him. The claim to damages is limited to the difference between the purchase price and the value of the defective item. This shall not apply if we have maliciously caused the breach of contract. The statute of limitations for defective material claims is one year from delivery of the goods. This shall not apply, if the customer has not notified us of the defect in a timely manner (No. 5 para. 3 of this provision). As a matter of principle, only the product description of the manufacturer is agreed-upon as properties and condition of the goods. Public statements, promotions or advertisement of the manufacturer shall not constitute any specification of the condition of the goods in accordance with the contract. If the customer receives deficient assembly instructions, we are merely obligated to the delivery of defect-free assembly instructions and this only if a deficiency of the assembly instructions conflicts with proper assembly. The customer shall receive no guarantee in the legal sense from us. We reserve the right to deduct 20% from the invoice amount for the processing expense of claims sent in without justification, e.g. for necessary inspections, carriage, re-stockpiling, etc.

6. Recourse

If, in the event of resale, the customer has had to verifiably take back a good delivered by us as a result of its defectiveness or has lowered the purchase price in respect to the consumer, the customer is only entitled to the claims identified in § 437 BGB if notifies us in writing of the warranty case with the consumer immediately after learning thereof and has given us the opportunity to subsequently perform in respect to the consumer. The customer shall meet the full burden of proof for all eligibility requirements, in particular for the defect itself, the time of learning of the warranty case and for the timeliness of the notification of defects. If, in the event of resale of goods sold by us, the customer has borne expenses in accordance with § 439 para. 2 BGB (shipping and handling, labour costs and material costs) in relation to the consumer, he may only demand compensation from us if the defect was present in the goods upon delivery of the goods to him, the customer immediately notified us in writing of the occurrence of the warranty case with the consumer and the customer has given us the opportunity to subsequently perform in respect to the consumer. The customer shall meet the full burden of proof for all eligibility requirements, in particular for the defect itself, the time of learning of the warranty case and for the timeliness of the notification of defects.

7. Limitations on liability

Damage claims of the customer are excluded, to the extent they are not based on a grossly negligent or intentional breach of duty by the seller. The preceding limitation of liability does not apply to claims under German Product Liability Act as well as damage claims in the event of bodily injury.

8. General notes regarding product liability

We make note that the intensified statutory provisions regarding product liability must be observed for our fabrications. Changes to our products are not permissible. We can assume no liability for damages incurred through changes to our products. Claims resulting from the Product Liability Act only exist if Kowsky original parts were exclusively used in a proper manner. Therefore, as a specialty retailer and user, please make sure that exclusively Kowsky parts (components of the modular system, replacement parts, exchange elements) are used, not only for liability reasons, but rather to guarantee the proper function of the product. We will only assume liability under the Product Liability Act for the initial placement of our products on the market. We will only agree to the re-use of our product, if it has been inspected by us in advance.

9. Place of performance/venue

Place of performance and venue is Neumünster German law is controlling for the contractual relationship without unified sales law (Unified Law on the International Sale of Movable Things and the Unified Law on the Formation of International Contracts for Movable Things) and without the Uniform Law on the International Sale of Goods.

10. Liability disclaimer for the countries USA and Canada

For technical insurance reasons, we will only be liable in the USA and Canada if the delivery of our products occurs in these countries with our express approval.

11. Severability clause

The invalidity of individual provisions of this contract shall not affect the validity of the remainder of the contract. The completely or partially invalid provision should be replaced by a provision, the economic result of which most closely approximates that of the invalid provision.

Erwin Kowsky GmbH & Co. KG, fabrication of orthopaedic appliances,
Oderstraße 73, 24539 Neumünster, Reg.-Gericht Neumünster HRA 786,
Personally liable partner: Stefan Kowsky Verwaltungsgesellschaft mbH (Management Company with limited liability),
Registered Office in Neumünster, Managing Director: Stefan Kowsky

Subject to technical changes and printing errors.