



General Terms and Conditions of Purchase of Sleep ID GmbH

(as of October 2020)

§ 1 General Terms - Applicable Law – Scope

- (1) These Terms and Conditions, the contract between the Supplier and Sleep ID GmbH to be concluded, its conclusion and all other agreements between Sleep ID GmbH and the Supplier in performance of this contract, shall be governed by the substantive law of the Federal Republic of Germany under exclusion of international private law and the UN Sales Convention (CISG - Convention on the International Sale of Goods), if not otherwise expressly agreed upon in writing.
- (2) Sleep ID GmbH's orders are subject to the respective provisions of Incoterms 2010 as set out in the respective order, unless otherwise expressly agreed in writing. To the extent applicable, Incoterms 2010 shall prevail over the law applicable in accordance with the choice of law in the foregoing paragraph, unless otherwise expressly agreed in writing.
- (3) The Terms and Conditions of Purchase of Sleep ID GmbH shall apply exclusively; deviating or conflicting terms of the Supplier are not acknowledged by Sleep ID GmbH, unless Sleep ID GmbH has expressly consented to their application in writing. These Terms and Conditions shall also apply if Sleep ID GmbH accepts delivery despite having knowledge of differing or contrary terms.
- (4) All agreements being concluded between Sleep ID GmbH and the Supplier for the purpose of the execution of this contract shall be set out in this contract in writing (Sec. 127 para. 2 sentence 1 German Civil Code (BGB)).
- (5) These Terms and Conditions shall only apply with respect to entrepreneurs, legal persons under public law and special fund under public law (Sec. 310 para. 1 German Civil Code (BGB)).
- (6) Unless otherwise agreed, the Terms and Conditions of Purchase in the version valid at the time of ordering or, in any case, in the version last communicated to the Supplier in text form, shall also apply as a framework agreement for similar future contracts, without Sleep ID GmbH having to refer to them again in each individual case.

- (7) Individual agreements made with the Supplier in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions of Purchase. The content of such agreements shall be governed by a written contract or Sleep ID GmbH's written confirmation, subject to proof to the contrary.
- (8) Legally relevant declarations and notifications of the Supplier in relation to the contract (e.g. setting of a deadline, reminder, withdrawal) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts as to the legitimacy of the person submitting such declaration, shall remain unaffected.

§ 2 Jurisdiction - Place of Performance

- (1) If the Supplier is a businessman, the place of jurisdiction for all disputes arising out of or in connection with this contract and its interpretation shall be the registered office of Sleep ID GmbH. Sleep ID GmbH is, however, entitled to sue the Supplier at his place of general jurisdiction.
- (2) Place of performance shall be the registered office of Sleep ID GmbH, if not otherwise expressly agreed in writing.

§ 3 Offer - Offer Documents – Acceptance – Confidentiality

- (1) Sleep ID GmbH's order shall be deemed binding at the earliest upon written submission or confirmation. The Supplier shall notify Sleep ID GmbH of any obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion prior to acceptance; the contract shall otherwise be deemed not to have been concluded.
- (2) The Supplier shall be required to confirm Sleep ID GmbH's order in writing within a period of two weeks or, in particular, to execute the order without reservation by dispatching the goods (acceptance). Any delayed acceptance shall be considered a new offer and shall require acceptance by Sleep ID GmbH.



(3) Sleep ID GmbH reserves all intellectual property rights and copyrights to illustrations, drawings, calculations and other documents handed over to the Supplier; they must not be disclosed to any third party without a written consent by Sleep ID GmbH. The information given to the Supplier is to be used only to the means of performing this contract. After completion of the order, all documents are to be returned to Sleep ID GmbH without request. Any information gathered in the process of entering into or fulfilling this contract is to be kept confidential; Sec. 10 para. 4 of these Terms and Condition applies additionally.

§ 4 Prices - Terms of Payment

(1) The price specified in the order is binding. The price includes free delivery to the agreed facility of Sleep ID GmbH and all packing, shipping, insurance and all other miscellaneous costs associated with the delivery including transport and liability insurance, except otherwise expressly agreed in writing. Prices do not include the respective statutory value-added tax.

(2) Any obligation to return the packaging requires a special agreement.

(3) Invoices can only be processed by Sleep ID GmbH, if they imply the order number specified in the order by the Sleep ID GmbH; the Supplier is responsible for any consequences arising due to the non-compliance with this obligation, unless the Supplier can prove that he is not responsible for not providing the above-mentioned information.

(4) The purchase price is due and payable within 14 days from the delivery and the receipt of a proper invoice with a 2 % discount or net within thirty (30) days from the delivery and the receipt of a proper invoice, except otherwise agreed in writing.

(5) Sleep ID GmbH does not owe any interest on maturity.

(6) The Supplier shall only have a right of set-off or retention in the event of legally established or undisputed counterclaims.

§ 5 Period of Delivery, Default of Delivery

(1) The period of delivery stated in the order (Estimated Time of Delivery or Estimated Time of Arrival) is binding. Decisive for meeting the delivery date or delivery period is the receipt of the goods at the place of receipt or use specified

by Sleep ID GmbH. If delivery dates and delivery periods are not met, the Supplier shall be in default without further conditions.

(2) The Supplier is obligated to promptly inform Sleep ID GmbH in writing, if circumstances occur or come to its knowledge, which indicate that the agreed delivery time cannot be met.

(3) In case of delivery delays, Sleep ID GmbH is entitled to statutory claims. In particular, Sleep ID GmbH is entitled to claim damages instead of performance upon fruitless expiration of a reasonable remedial time period. If Sleep ID GmbH claims damages, the Supplier shall have the right to prove that he is not responsible for the breach of duty.

(4) In the event of a delay in performance, the claim to performance under the delivery contract shall not expire until Sleep ID GmbH expressly demands damages in lieu of performance in writing expressly waiving performance, the judicial assertion of the claim to damages in lieu of performance, payment of damages or the declaration of the Supplier to acknowledge and fulfil the claim to damages.

(5) In the event of a delay in delivery, Sleep ID GmbH shall be entitled to demand from the Supplier a lump-sum compensation for delay in the amount of 0.5% of the net order sum per working day, provided in the order confirmation, however not exceeding 5% of the order sum. Furthermore, Sleep ID GmbH reserves the right to claim additional damages caused by the delay in excess of the contractual penalty. Any exceeding of the contractually agreed delivery date shall be considered a delay. The Supplier has the right to prove that no damage or significantly less damage than the damage claimed by Sleep ID GmbH has been caused by the delay. Sleep ID GmbH reserves the right to assert further rights and claims to which Sleep ID GmbH is entitled according to contract or law due to delay in performance and default in performance.

(6) If the Supplier is in default of delivery for more than ten days, we shall be entitled to withdraw from the contract.



§ 6 Passing of Risk – Documents

- (1) Liability for accidentally destroyed or damaged goods shall only be transferred to Sleep ID GmbH upon carriage free delivery to the agreed place of performance, except otherwise agreed in writing.
- (2) The Supplier is obliged to precisely name the order number of Sleep ID GmbH on all shipping documents and delivery notes; if he fails to do so, Sleep ID GmbH cannot be held responsible for any resulting delay in processing.

§ 7 Examination of Goods - Liability for Defects

- (1) Sleep ID GmbH is required to randomly examine the goods delivered by the Supplier within a reasonable time for any quality and quantity deviations and promptly report any discrepancies. The complaint is timely if it is received by the Supplier within a period of ten (10) working days from the time of reception of the goods or from the time of detection in case of a hidden defect. The Supplier must submit a statement on the complaint within one (1) working day.
- (2) Sleep ID GmbH reserves all rights and remedies for non-conformity provided by applicable law. Sleep ID GmbH is especially entitled, upon its choice, to claim remedy of defects or redelivery of conforming goods. The right to claim damages or compensation instead of performance is also reserved.
- (3) Sleep ID GmbH is entitled to cure the defect itself or to have it corrected by a third party at the expense of the Supplier, if the Supplier is in default after a reasonable time limit has been set for supplementary performance.
- (4) The period of limitations shall account for thirtysix (36) months, calculated from the passing of risk, unless the mandatory provisions of Sec. 478, 479 German Civil Code (BGB) are effective.
- (5) The Supplier is responsible for the retrieval of defective products from the place to which they were delivered by Sleep ID GmbH or on behalf of Sleep ID GmbH. The Supplier must bear all costs resulting from the retrieval of defective products from the place of their delivery, in particular transport, handling and export costs and customs duties. Sleep ID GmbH is entitled to pass on these retrieval costs that are charged to Sleep ID GmbH to the Supplier immediately upon receipt of a debit note. Sleep ID GmbH is entitled to immediately offset this recourse against any due claims of the Supplier.

- (6) If Sleep ID GmbH makes use of the option it is entitled to in relation to its customer to have the defective goods exploited by its customer at the place of delivery for a flat rate of 50% of the invoice amount, the Supplier is obliged to bear only the costs of handling, (if applicable) customs duties and the differential amount between the purchase price of the damaged product invoiced to the customer and the amount actually paid by the customer for the damaged product.

§ 8 Product Liability - Indemnification - Liability Insurance

- (1) To the extent the Supplier is responsible for a product damage he shall be obliged to indemnify Sleep ID GmbH upon first demand against any claims for damages by third parties, provided that the cause thereof lies within his sphere of control and organization and the Supplier himself is liable in relation to third parties.
- (2) Within the scope of his liability for claims according to paragraph 1 of this § 8, the Supplier is also obligated to reimburse Sleep ID GmbH all expenses according to Sec. 683, 670 or Sec. 830, 840, 426 German Civil Code (BGB) arising from or in connection with a lawful recall action or any other comparable measures initiated by Sleep ID GmbH. To the extent possible and reasonable, Sleep ID GmbH shall inform the Supplier sufficiently in advance of the content and scope of such a recall and shall give the Supplier the opportunity to comment.
- (3) Sleep ID GmbH will inform the competent authorities according to the terms of the German Product Safety Act (Produktsicherheitsgesetz – ProdSiG) in consultation with the Supplier.
- (4) The Supplier shall, at all times during the term of this contract, maintain product liability insurance with an adequate minimum insurance amount of € 10 million for each single occurrence of personal and property damage. If Sleep ID GmbH is entitled to any further damages, these damages shall remain unaffected.

§ 9 Supplier Recourse

- (1) In addition to the defect claims Sleep ID GmbH shall have unrestricted entitlement to the legally determined recourse claims within a supply chain (supplier recourse according to Sec. 445a, 445b, 478 German Civil Code (BGB)). In particular, Sleep ID GmbH shall be entitled to demand exactly the type of subsequent performance (rectification of defects or



replacement delivery) from the Supplier which Sleep ID GmbH owe its customer in the individual case. The statutory right of choice (Sec. 439 para. 1 German Civil Code (BGB)) of Sleep ID GmbH shall not be restricted by this.

(2) Prior to acknowledgement or fulfilment of a claim for defects asserted by a customer (including reimbursement of expenses according to Sec. 445a para. 1, 439 para. 2 and 3 German Civil Code (BGB)), Sleep ID GmbH shall notify the Supplier briefly describing the facts and ask the Supplier for a written statement. If a substantiated statement is not provided within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by Sleep ID GmbH shall be deemed to be owed to its customer. In this case, the Supplier shall be responsible for proving the contrary.

(3) Sleep ID GmbH's claims arising from supplier recourse shall also apply if the defective goods have been further processed by Sleep ID GmbH or another contractor, e.g. by installation in another product.

§ 10 Protected Rights

(1) The Supplier warrants that no third-party rights are violated in connection with his deliveries.

(2) If a third party makes a claim on Sleep ID GmbH due to an infringement of third party rights, the Supplier shall be obligated to indemnify Sleep ID GmbH from such claims upon first written request. If a third party claims damages, the Supplier is free to prove that he is not responsible for the violation of these third party rights.

(3) Sleep ID GmbH is not entitled to conclude any agreements with the third party - in particular to enter into a settlement - without the consent of the Supplier.

(4) The obligation to indemnify includes all necessary expenses arising from or in connection with the third party claim.

(5) The limitation period shall amount to thirty-six (36) months, calculated from the passing of risk.

§ 11 Retention of Title – Provision of Goods – Confidentiality

(1) Any parts provided to the Supplier by Sleep ID GmbH, shall remain Sleep ID GmbH's property; title thereto is expressly retained. Processing and/or

redesigning by the Supplier are to be carried out for Sleep ID GmbH. If the reserved goods are processed with other objects not belonging to Sleep ID GmbH, Sleep ID GmbH shall acquire co-ownership on the new item in relation to the value of the reserved goods (purchase price plus value-added tax) to the other processed goods at the time of processing.

(2) If Sleep ID GmbH's reserved goods are inseparably mixed or combined with other objects not belonging to it, Sleep ID GmbH shall acquire coownership on the new item in the relation of the value of its reserved goods (purchase price plus value-added tax) to the other goods at the time of mixing or combining. If the goods are mixed in such a manner that the Supplier's item is regarded as the main item, the parties hereby agree that the Supplier shall transfer proportionate co-ownership to Sleep ID GmbH; the Supplier shall hold in trust the sole ownership or coownership on Sleep ID GmbH's behalf.

(3) To the extent that collaterals granted to Sleep ID GmbH pursuant to para. (1) and para. (2) above exceed the purchase price of all unpaid reserved goods by more than 10 %, Sleep ID GmbH is obligated to release a collateral which shall be chosen by Sleep ID GmbH when requested by the Supplier.

(4) The Supplier is obligated to treat all received illustrations, drawings, calculations and other documents and information as strictly confidential; they may only be disclosed to third parties with the express written consent of Sleep ID GmbH. The confidentiality obligation shall remain in force and effect after completion of the contract; it shall lapse if and insofar as the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents and any other information provided becomes general knowledge or if the manufacturing knowledge was provably known by the Supplier. Supplier can prove to have known the information before having received such knowledge from Sleep ID GmbH.

§ 12 Limitation Period

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided below.

(2) By way of derogation from Sec. 438 para. 1 No. 3 German Civil Code (BGB), the general limitation period for claims for defects is 3 (three) years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to



claims arising from defects of title, however, the statutory limitation period for claims in rem for the restitution of property by third parties (Sec. 438 para. 1 No. 1 German Civil Code (BGB)) shall remain unaffected; furthermore, claims arising from defects of title shall in no event become time-barred as long as the third party can still assert the right against Sleep ID GmbH, in particular in the absence of limitation.

(3) The statute of limitations of the law on sales, including the above extension, shall apply - within the legal scope - to all contractual claims for defects. If Sleep ID GmbH is also entitled to non-contractual claims for damages due to a defect, the regular legal statute of limitations (Sec. 195, 199 German Civil Code (BGB)) shall apply, unless the application of the statute of limitations of purchase law leads to a longer statute of limitations in individual cases.