

# T&Cs

## Terms and Conditions

Last modification: 08.02.2022

### Terms & Conditions English Version

#### 1. Scope of the General Terms and Conditions

The Terms and Conditions apply to all contracts that are concluded via the online shop [www.breatheilo.com](http://www.breatheilo.com) between breathe ilo GmbH and consumers, i.e. customers.

A consumer means any person who enters into a legal transaction for a purpose that is neither attributed to their commercial or independent professional activity.

Consumer transactions are a legal transaction with a customer who is to be regarded as a consumer under the meaning of § 1 Austrian Consumer Protection Act ("Konsumentenschutzgesetz"). Consumer shall mean a person who makes the legal transactions not in the course of carrying on his own business. The customer's order represents an offer to our company to conclude a purchase contract.

These terms and conditions also apply to all future contractual relationships, thus even if this is not explicitly stated in additional contracts.

The current version of our Terms and Conditions applies at the time the contract is concluded, available on our homepage [www.breatheilo.com](http://www.breatheilo.com)

We only contract based on our Terms and Conditions, i.e. all transactions are subject to our Terms and Conditions.

#### 2. Recognition of Conditions

The consumer acknowledges these terms and conditions and agrees to them by placing an order.

#### 3. Protective Clause

Deviations from the general terms and conditions or the terms and conditions of the consumer contract will be rejected unless otherwise explicitly stated by breathe ilo GmbH

#### 4. Contract

##### 4.1. The online presence of breathe ilo GmbH on the internet website [www.breatheilo.com](http://www.breatheilo.com)

The products displayed on the website shall not constitute an offer in the legal sense. In any case, the product descriptions as stated in the online shop shall not constitute binding offers by the seller, but serve to make a binding offer by the customer.

They are an invitation presented to the consumer inviting them to make an offer themselves. In the legal sense, the offer is made by the consumer when placing an order. The confirmation of the receipt of the order occurs with the acceptance of the order immediately after an automated email is issued. The email confirmation concludes the purchase contract.

#### **4.2. Order Process**

The desired product (s) can be selected by the consumer and placed into the “shopping cart” at the click of a button. The selected products are temporarily stored in the “shopping cart” during the duration of the visit at [www.breatheilo.com/shop](http://www.breatheilo.com/shop). The order process continues when the “Proceed to Checkout” button is clicked. On the next page, the consumer is requested to log in using their account details, given the consumer has registered at the webshop. The consumer is then requested to enter the desired delivery address and payment method, entering the data required to process the transfer. When choosing external services as a payment method, such as Paypal, the consumer is redirected to an external website of the respective payment service provider. Before the order is submitted, the relevant order information is summarized in an “Order Overview”. The consumer is free to edit the details if required, before clicking the “Place the Order” button. Once the order is submitted, the customer makes a binding offer with respect to the selected goods.

#### **4.3. Order Confirmation**

Once the order is placed, breathe ilo GmbH sends an order confirmation email to the email address provided. The order confirmation notification confirms that the order was placed and displays the ordered contents. The order confirmation does not constitute the acceptance of the customer’s offer by breathe ilos GmbH. If breathe ilo GmbH rejects the contract conclusion, the consumer will be notified via email.

#### **5. Storage of the Contract**

The contract, i.e. the order information provided by the customer, is stored by breathe ilo GmbH and may be viewed by the customer under “My Account” in “My Orders”. An order confirmation notification containing the contents of the order placed is forwarded separately to the email address provided by the customer.

#### **6. Cancellation / Withdrawal**

The ordered goods may be returned within 14 days without a stated reason. Detailed information regarding our Returns Policy is set forth under the section “returns policy”.

##### **Cancellation Policy**

The following cancellation policy applies to a contract for goods that can be sent in a package by mail.

##### **Withdrawal for Parcel Goods**

As a consumer, you are entitled to withdraw from the contract within fourteen days without stating a reason. The withdrawal period is calculated from the time the goods are taken in possession by you or a third party explicitly stated by you, who is not the carrier.

If a contract has been concluded for several goods that you have ordered as a consumer and that are delivered separately, the cancellation period starts on the day on which you or a third party named by you, who is not the carrier, took possession of the last goods. The same applies in the case of a partial shipment.

In order to exercise your right to withdrawal, you are required to inform us regarding the withdrawal from the contract in the form of a letter or email

**breathe ilo GmbH**  
**Margaretenstraße 70/3.OG**  
**1050 Wien**  
**AT**

Please send a request via our contact form:

<https://support.breathelo.com/hc/en-us/requests/new>

It is sufficient to inform us of the withdrawal from the contract fourteen days before the expiration of the withdrawal period.

### **Effects of Withdrawal**

When you issue a withdrawal from your contract, all payments received, including the costs of shipping (excluding additional shipping costs incurred when a different shipping service has been chosen by you, that does not comply with our standard shipping courier), will be reimbursed. The refund will be made within fourteen days of the notification of cancellation that we receive from you. The same method of payment used in the original transaction will be used to make the refund unless explicitly requested by you, in which case any additional fees will be carried by the customer.

Reimbursement will be withheld until the goods in question are received via your return, or earlier if proof has been given that the goods are underway.

The consumer has fourteen days after having informed us about the foreseen cancellation to return the goods to our storage center or warehouse.

**Carbomed Medical Solutions GmbH**  
**zH breathe ilo Retourne**  
**Neue Stiftingtalstraße 2**  
**8010 Graz**

This deadline is met when the goods are sent a fortnight before the expiration of the withdrawal period. The consumer bears the direct cost of returning the goods.

Contracts that contain goods that are not pre-assembled, personalized goods or goods assembled by the manufacturer per the customer's selection, or goods that are clearly tailored to the personal needs of the customer cannot be revoked.

### **The right of withdrawal does not apply to the following contracts:**

1. Contracts for the shipment of goods that are not pre-assembled, or have been tailor-made to the individual customer's needs,
2. Contracts for the shipment of perishable goods or goods that have a short expiration period,
3. Contracts for the shipment of goods that have been opened and can thus not be returned due to hygienic or health protection reasons,
4. Contracts for the shipment of goods that are inseparable with other goods due to their composition,
5. Contracts for the shipment of alcoholic beverages, whereby the price was contractually agreed upon that can be shipped up to 30 days after the conclusion of the contract at the earliest, whose fluctuating market value the seller has no control over,
6. Contracts for the shipment of audio or video recordings, or computer software in a sealed package, whereby the seal has been removed after delivery,

7. Contracts for the shipment of newspapers, periodicals or magazines with the exception of subscription contracts.

## **breathe ilo –rental**

In the case of breathe ilo rental, the consumer may terminate the rental agreement at any time without giving notice. The rental agreement ends when we receive (i) the goods sent back to us (ii) and the clear written termination by email or written letter. The return needs to be sent to us. In case of missing 2 month rentals without returning the breathe ilo device, a claim for damages in the amount of the current list price will be due and enforced.

**Carbomed Medical Solutions GmbH**  
**zH breathe ilo Retour**  
**Neue Stiftingtalstraße 2**  
**8010 Graz**

### **End of Cancellation Policy.**

#### **7. Prices**

1. In principle, the purchase price for the ordered goods is considered agreed, which results from the current brochures, catalogs, price lists, web shop and similar publications of our company.

All prices are displayed as total prices, containing the prices for packaging, as well as value added tax.

2. Errors in price: When the price displayed is higher, the customer will be contacted. In such cases, the contract is only considered concluded if the customer agrees to purchase the good (s) at the actual price. When the price displayed is lower, the lower price will be calculated.

#### **8. Returns**

1. In addition to the stated product price, delivery costs are also added to the order. Further details concerning delivery costs can be found on our website.

The applicable sales tax is included in the delivery costs.

2. Delivery fees are also calculated when choosing the Cash on Delivery option. This amount is to be handed to the courier at the time of delivery.

#### **9. Terms of Delivery**

1. Unless otherwise agreed, delivery will be made to the address specified by the customer. We also deliver to "Packstationen". In the event of incorrect, incomplete or unclear information provided by the customer, the customer bears all resulting costs.

2. The estimated date of dispatch is stated directly in the shopping cart. When using the cash in advance payment option, delivery time starts one day after the payment has reached the breathe ilo GmbH bank account. When using the options cash on delivery or account, the delivery time starts one day after the order contract was concluded.

3. Damaged goods are to be reported to the courier company in the event that the goods were damaged due to transportation.

4. breathe ilo GmbH bears no responsibility when delays occur due to manufacturer or supply obstacles. If the delivery of the goods within a specific period is hindered due to unforeseen circumstances, breathe ilo GmbH is entitled to withdraw from the contract. The breathe ilo GmbH will inform the customer immediately in this respect. Damage claims are excluded in this case. The customer will be informed before the start of the ordering process in regard to existing delivery restrictions.

5. If the transport company sends the goods back to the seller since delivery to the customer was not possible, the customer shall bear the costs of the unsuccessful shipment. This does not apply (i) if the customer exercises his right of withdrawal effectively, (ii) if he is not responsible for the circumstance that led to the impossibility of delivery, or (iii) if he was temporarily prevented from accepting the service offered, unless the seller had announced the service / delivery a reasonable time in advance.

## **10. Payment Date & Reservation of Property Rights**

1. The sales price is due, at the latest, at the time of delivery.

2. The delivered goods are the property of breathe ilo GmbH until the complete payment has been received.

## **11. Terms of Payment**

1. breathe ilo GmbH accepts the following payment methods:

invoice, PayPal, credit card (Visa, Mastercard, American Express and Diners) and instant transfer. In the event of a delay in payment, breathe ilo GmbH is entitled, at its option, to request compensation for the damage actually incurred or default interest at the statutory rate. The statutory rate is 4% pa for consumers. Furthermore, breathe ilo GmbH is entitled to request compound interest in the event of the customer's default in payment from the day of the fulfilled delivery of the goods.

2. Your payment details will be encrypted during the ordering process and transmitted over the Internet. Due to a special integration into the ordering process, we have no access to your payment data at any time and are therefore not processors of this data. These data are processed exclusively by payment service providers as mentioned below:

### **Credit card payments:**

Stripe

510 Townsend Street

San Francisco, CA 94103, USA

contact data of the data protection officer: [dpo@stripe.com](mailto:dpo@stripe.com)

### **Paypal**

PayPal (Europe) S.à.r.l. et Cie, S.C.A.

22-24 Boulevard Royal

L-2449, Luxemburg.

contact data of the data protection officer: [dpo@paypal.com](mailto:dpo@paypal.com)

### **Instant Transfer / Klarna**

Klarna Bank AB (publ)

Sveavägen 46

111 34 Stockholm

Sweden

contact data of the data protection officer: [datenschutz@klarna.de](mailto:datenschutz@klarna.de)

**Payment by invoice Ratepay**

RatePAY GmbH

Franklinstraße 28-29

10587 Berlin/Germany

contact data of the data protection officer: [datenschutz@ratepay.com](mailto:datenschutz@ratepay.com)

## **12. Guarantee**

1. General regulations apply unless otherwise stated.
2. Guarantees exclude damages or defects caused by the consumer, particularly in cases of mishandling, misuse or unauthorized repair attempts.
3. In the case of the delivery of used goods, the guarantee claim expires after one year.
4. The status of limitation does not apply to claims for damages by the customer in terms of bodily injuries, health or otherwise.

The shortened limitation period does not apply to damages based on a grossly negligent breach by breathe ilo GmbH or an intentional or negligent breach of duty by a legal representative or agent of breathe ilo GmbH. The shortened period of limitation shall not apply to claims for damages due to the negligent or intentional breach of contract. Material contractual obligations are obligations that make the fulfilment of the contract possible, that the customer can rely on.

5. If the items delivered have obvious material or manufacturing defects (including damages caused by shipping), we request these defects be communicated to us immediately.
6. Should the guarantee be valid, the customer must make their claim directly to the manufacturer of the goods.

## **13. Disclaimer**

1. Claims for damages made by the consumer against breathe ilo GmbH are excluded unless breathe ilo GmbH or their agents have acted grossly negligent.
2. This does not affect the liability for damages resulting from injury to life, body or health due to negligence, deliberate breach of contract or applicable claims according to the Product Liability Act, or due to negligence on conclusion contract or other breaches of duty or tort claims for property damage liability. Material contractual obligations are obligations that make the fulfilment of the contract possible, the compliance of which the customer can rely on.

## **14. Right of Retention**

1. The customer is not entitled to offset payment against our claims unless the customer's counter-claims are legally established or undisputed. The customer is entitled to offset against our claims if they file a complaint or counterclaim regarding the same purchase contract.

2. The customer may only exercise this right when the counter-claim is made in regards to the same purchase contract.

## **15. Data Protection**

Provisions with regard to data protection are set forth in the Privacy Policy. The seller will not pass on personal data provided by the customer to third parties, unless this is necessary for the execution of the contract. As part of our data protection declaration, we provide all information on data protection as well as the type, purpose and scope of the determination and use of personal data by us on the website [www.breatheilo.com](http://www.breatheilo.com).

## **16. Terms & Conditions Modifications / Subject to Change**

We are entitled to modify these terms and conditions unilaterally as needed in terms of fixing equivalence mandate or to adapt to changing legal or technical conditions. The customer will be notified of the amended content via their last known email address. The modifications made become an integral part of the contract when the customer does not file a written objection within six weeks of the notification sent via email.

## **17. Severability Clause**

In the event that individual provisions of these general terms and conditions should be and / or become ineffective, this does not affect the effectiveness of the remaining provisions and the contracts concluded on the basis of them. The ineffective is to be replaced by an effective provision that comes as close as possible to the meaning and economic purpose.

## **18. Contractual Language**

The language available at the time of completion of the contract is German.

## **19. Contract Law**

These Terms and Conditions are governed by Austrian Law excluding its conflict-of-law rules of international private law and under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

For all disputes arising out of or in connection with these Terms and Conditions, the exclusive jurisdiction of the competent court for 8010 Graz is agreed.

## **20. Arbitration board and Online-dispute resolution**

The EU Commission provides a platform for online dispute resolution under the following link: <http://ec.europa.eu/consumers/odr>

This platform serves as a contact point for out-of-court settlement of disputes arising from online sales or service contracts in which a consumer is involved.

The seller is neither obliged nor willing to participate in a dispute settlement procedure before a consumer arbitration board.

Our email address: [contact@breatheilo.com](mailto:contact@breatheilo.com)

## 21. Sample form for withdrawal

To  
**breathe ilo GmbH**  
Margaretenstraße 70/3. OG  
1050 Wien  
Austria

**Please send a request via our contact form:**

<https://support.breatheilo.com/hc/en-us/requests/new>

- I/We (\*) hereby give notice that I/we (\*) withdraw from my/our (\*) contract of sale of the following goods (\*)/for the provision of the following service (\*)

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Ordered on (\*) \_\_\_\_\_ / Received on (\*) \_\_\_\_\_

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name of consumer(s)

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address of consumer(s)

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Signature of consumer(s) (only if this form is notified by paper)

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date

(\*) delete as appropriate