

# TERMS AND CONDITIONS OF SALE

## 1. Applicable Conditions and Scope of Application

1.1 Unless otherwise expressly agreed in writing, our supplies and services are exclusively governed by the General Terms and Conditions of Sale set forth below. They only apply to entrepreneurs, i.e. natural or legal persons or partnerships having legal capacity that act in the performance of a commercial or a self-employed occupational activity when entering into legal transactions.

1.2 All Terms and Conditions of the supplier shall be contradicted; these shall only be valid if and to the extent that we expressly accept them in writing.

## 2. Advice, Information and Documentation

2.1 Any advice and information given on our products is based on our experience to date. The data, in particular concerning the possibilities of use of our products, are average data only and do not constitute a description of the quality of the goods. We are unable to assume any liability as to the correctness of the data and the possibilities of use.

2.2 We reserve all property rights, copyrights and all other rights to any documents and objects, such as drawings, samples or models, made available to the customer in connection with our offers. The customer is not entitled to disclose these to third parties without our prior written consent, irrespective of whether these were marked confidential or not.

## 3. Conclusion and Content of Contract

3.1 Our offers are not binding, unless we include a binding term of validity. A valid and binding contract shall be concluded only upon either our written confirmation of the customer's order or, in the absence of such a confirmation, the delivery of the goods. The contents of the contract shall be determined by our order confirmation, in case of delivery without separate order confirmation, our delivery note shall be deemed as being such a written confirmation. Oral statements are always non-binding.

3.2 Any information given on our products, in particular, pictures or drawings or information concerning quality, quantity, weight, dimensions and performance are approximate data only and no quality descriptions. Provided that no limit to possible deviations has been stipulated in the order confirmation and none are given in the expressly acknowledged customer specifications, deviations customary in the industry are admissible in any case. The quality, suitability, qualification and function as well as the designated use of our products are exclusively determined by our specifications and technical qualifications. Public statements, promotions or advertising by us or by third parties do not constitute a description of the quality of the goods.

3.3 Guarantees regarding the quality or shelf life of our products must be expressly identified as such in the order confirmation. The quality of samples or specimens is not warranted, unless expressly stated otherwise in the order confirmation. This shall also apply to data concerning the result of analyses.

## 4. Delivery and Passing of Risk

4.1 Where delivery dates or times are not expressly and bindingly agreed in our written order confirmation but are to be regarded as estimates, the customer may set a reasonable time limit for delivery two weeks after the expiry of the approximate deadline. We are not in default until the set time limit has expired. Delivery periods do not start until the customer has duly met his obligations in a timely manner, e.g. approval or release of product drawings, or until we have received a down payment, in case such payment has been agreed in writing.

4.2 In case of default or impossibility of performance we are only liable for claims for damages pursuant to the provisions in clause 7 below. Our liability for damages caused by default is limited to 0.5 % of the value of the delivery or partial delivery that is in default per completed week. Our maximum liability for damages caused by default is limited to 5 % of the value of the (partial) delivery in default.

4.3 In cases of force majeure, for example operational disruptions, delays in transit, strikes or lockouts, and in cases of incorrect, delayed or non-delivery by our own suppliers, irrespective of its cause (reservation of self-supply), and in any other case of insufficient performance for which we are not responsible, we shall be entitled to extend the delivery period by the duration of the disruption and for a reasonable period thereafter to reinstate work. If it is foreseeable that the inability to perform will be of a permanent nature, we are entitled to refuse the delivery completely or in part. In that case the customer is not entitled to any damage claims. He is no longer obliged to fulfil his contractually agreed counter performance and any advance payments will be returned.

4.4 We are entitled to make partial deliveries at any time, to the extent that the customer can be reasonably expected to accept this. Place of performance is always Lemgo.

4.5 If delivery upon request is agreed, the respective requests must be placed within three months after conclusion of the contract, unless otherwise agreed in writing. If the customer does not request delivery within the specified time, clause 4.7 shall apply accordingly.

4.6 All sales are agreed under the term ex-works Lemgo (EXW Lemgo Incoterms® 2010). Shipment and transport are always at the Customer's risk. The risk shall be transferred to the customer, also in case of partial deliveries, when the goods are handed over to the person in charge of their transport or when the goods have left our warehouse for shipment, unless clause 4.7 below applies. At the risk and cost of the customer, we are prepared to take out transport insurance to insure the goods.

4.7 If the customer refuses acceptance of the goods or if shipment is delayed for reasons for which the customer is responsible, the risk shall be transferred to the customer at the time when his default in acceptance commences. We are entitled to charge either a lump sum of 0.5% of the invoice amount per month as storage costs or the damage actually suffered, unless the customer proves that the damage is less than that amount. In addition, we are entitled to set the customer a final period of 14 days and to rescind the contract or claim damages for non-fulfilment if this period lapses without acceptance of the goods by the customer.

## 4.8 Returns

- Customers of the Business Unit Komet Dental: Sterile products in unopened and undamaged packaging will be accepted back within 4 weeks of the date of the invoice. Customers of the Business Units Komet Medical and Komet Custom Made: The return of products in sterile and/or customized packaging is excluded.
- Applicable to customers of all Business Units: In the event that the customer returns non-sterile standard products to our premises later than 4 weeks after the date of the invoice, we shall charge a fee of 20% of the selling price to cover the costs for processing and quality control. Any non-sterile standard products returned later than 6 months after the date of the invoice will no longer be accepted. The return of products produced and/or packed according to customer specifications is excluded.
- All warranty claims are processed as set forth in paragraph 7 to these Terms and Conditions.

## 5. Prices, Payments

5.1 Our prices include standard packaging and do not include value added tax.

5.2 Any shipping expenses shall be borne by the customer, unless otherwise agreed in writing, at the freight rates, customs tariffs and any further duties applicable at the time of delivery.

5.3 The customer is only entitled to make any deductions from amounts due to us if the counterclaims are legally established as absolute or if we have acknowledged them in writing or if they are undisputed. The customer may only exercise this right of lien if his counterclaim arises from the same contract.

5.4 Unless otherwise agreed, payment of our invoices is due within thirty (30) days from the date of the invoice. After this period has lapsed, the customer is in default of payment. For payments within eight (8) days from the date of invoice a discount of 2% of the invoiced amount is granted. If the customer has given us a SEPA direct debit mandate or a combined mandate, a discount of 3% will be granted. In this case, we shall be authorised to collect the due amounts from the customer per direct debit within merely 8 days. The pre-notification has to be issued at least three (3) days before debiting the account. The purchaser ensures that the account is duly covered. Costs incurred by the debit transaction being dishonoured or reversed shall be borne by the customer, provided that the non-redemption or the reversal of the debit transaction was not caused by us.

5.5 If the customer is in default with any payments due, we shall charge a flat fee of € 1.50 for each reminder and claim default interest at the legally permitted rate according to § 288 paragraph 2 of the BGB (German Civil Code), unless higher or lower damage is demonstrated.

5.6 We are entitled to draw up electronic invoices, i.e. we can send invoices per email in PDF or text format etc. The customer hereby agrees to this procedure.

5.7 All amounts payable to us become due immediately if the customer does not comply with his contractual obligations. In the event of default, bill protest or cessation of payments, we are entitled to demand immediate payment of all our claims, including claims of circulating bills of exchange, regardless of any previously agreed due dates. This shall also apply in the event that circumstances become known to us which in our opinion make the creditworthiness or the solvency of the customer doubtful, even if these circumstances have existed at the time the order was placed but were neither known to us nor should have been known to us at that time. Notwithstanding further rights, we shall be entitled in all above mentioned cases to effect outstanding deliveries against advance payment or security only, and, if no advance payment is made or security granted within a two week period, to withdraw from the contract without fixing any further time period for compliance. Our right to further claims remains unaffected.

5.8 The customer is not entitled to assign any claims arising from this contract to third parties without our prior written consent.

## 6. Retention of Title

6.1 All goods delivered shall remain our property ("goods subject to retention of title") until the customer has fully settled all outstanding payments and those arising after the conclusion of the contract.

6.2 Processing and machining of the goods subject to retention of title is made for us as manufacturer ("Hersteller") according to §950 of the German Civil Code (BGB), without obligation to us. Processed and machined goods are deemed to be goods subject to retention of title as per clause 6.1. In the event of the customer processing or machining the goods or combining and mixing them with goods of different origin to a new product or to a mixed stock, we become co-owner of it, at the ratio of the invoice value of the goods subject to retention of title at the time of delivery to the value of the other processed or mixed goods. The co-ownership share is considered as goods subject to retention of title as per clause 6.1.

6.3 If goods subject to retention of title are combined with other goods and if any of the goods belonging to the customer are to be regarded as the essential part as per §947 of the German Civil Code, it is hereby agreed that a co-ownership share is transferred to us at the ratio of the invoice value of the goods subject to retention of title to the value of the essential part and that the customer stores the goods for us free of charge. The co-ownership share is considered as goods subject to retention of title as per clause 6.1.

6.4 The customer shall duly store the goods subject to retention of title and mark them as our property. On demand, we must be given permission to take stock of the goods and to mark them adequately at the storage location. In the event of third party seizures of the goods subject to retention of title, the customer shall be obliged to point out our firm's ownership rights to the third parties and inform us immediately indicating all details, to enable us to assert our property rights.

6.5 The customer is entitled to resell the goods subject to retention of title exclusively within the ordinary course of business according to his usual conditions, provided that he also ensures retention of title as stipulated above and that he is not in default of payment and if it is ensured that his claims arising from the resale pursuant to clauses 6.5 through 6.7 are transferred to us. As a precaution, the customer hereby fully assigns to us all claims resulting from the resale of the goods subject to retention of title, and we accept the assignment of the said claims. The customer is only authorised to assign claims to third parties with our prior written consent.

6.6 If the customer sells the goods subject to retention of title together with other goods not supplied by us, the claim resulting from such sale shall only be assigned to us up to the amount invoiced by us for the goods subject to retention of title at the time of delivery. For the resale of goods, for which we become co-owners pursuant to clause 6.2 or clause 6.3 the assignment of claims is valid up to the amount of the co-ownership share.

6.7 If the assigned claim is added to an unpaid invoice, the customer hereby assigns to us the part of the account balance that corresponds to the claim, including the final balance of the current account.

6.8 Until further notice, the customer shall be authorised to collect the claims resulting from the resales pursuant to clauses 6.5 through 6.6. This authorisation can, however, be revoked at any time if the customer fails to meet his payment obligations.

6.9 If the customer acts contrary to contract, especially if he is in default of payment, we shall be entitled to take back the goods subject to retention of title after setting an appropriate period of grace. Taking the goods subject to retention of title back or distraining them means that we withdraw from the contract. After taking the goods subject to retention of title back, we shall be entitled to use them. After the deduction of an appropriate sum for the exploitation costs, the proceeds shall be offset against the debts owed to us by the customer.

6.10 If the value of the securities due to us exceeds the claims by more than 20%, we are under an obligation to release securities of our choice at the request of the customer.

## 7. Warranty and Liability

7.1 The Customer shall examine the goods immediately upon receipt at the place of destination, even if specimens or samples were delivered beforehand. The goods are to be thoroughly examined with respect to their quality. If boxes, cartons or other containers are delivered, samples have to be taken at random. The goods shall be deemed to have been accepted without any defects, unless the Customer notifies us of any defect within ten (10) days after receipt of the goods at the place of destination or, in case of hidden defects, within ten (10) days after the defect was discovered. The notification must be made in writing and has to specify the defect.

7.2 Any damages to goods in transit have to be notified immediately to the forwarding agent; the notification obligations pursuant to the German General Conditions for Forwarders (Allgemeine Deutsche Speditionbedingungen) shall apply.

7.3 If a notification of defects is justified and submitted in due time, we shall either rework the defective products or replace them at our discretion.

7.4 If the rework or replacement of the goods does not remedy the defect, the customer may demand a reduction of the purchase price or withdraw from the contract. In the case of minor defects, the customer is not entitled to withdraw from the contract. The right of the customer to assert further claims for damages at the below detailed conditions shall remain unaffected.

7.5 The above detailed provisions constitute the final and complete warranty for our goods. For any further claims for damages arising from the delivery of defective goods, irrespective of their legal basis, we can only be held liable pursuant to clauses 7.6 and 7.8 below.

7.6 For any claims based on culpable conduct, irrespective of their legal basis, e.g. default, delivery of defective goods, violation of contractual duties, violation of duties during contractual negotiations, torts, product liability (with the exception of the liability under the German Product Liability Act, "Produkthaftungsgesetz"), we can only be held liable for damages in case of a willful act or gross negligence.

We are not liable for slight negligence, unless the contractual purpose is substantially endangered by the violation. In any event, our liability shall be limited to typical damages that were foreseeable when the contract was concluded. This restriction shall not apply to damages arising from the death of the customer or injuries to the customer's body or health. This exclusion or restriction of liability shall apply equally to our statutory representatives, persons engaged in the performance of our contractual obligations and employees. Further claims for damage asserted by customers, such as claims concerning lost profit, expenses saved, production downtimes, service interruptions and other indirect or consequential damages are excluded.

7.7 The customer is obliged to pursue all existing claims against our presuppliers before raising a claim against us. For this purpose, we are obliged to assign to the customer possible warranty claims and claims for compensation which we have against our presupplier. The customer is obliged to enforce his claims by legal means. If a claim against the presupplier fails, the customer is entitled to file a lawsuit against us according to clauses 7.6 and 7.8.

7.8 Warranty claims fall under the statute of limitation one (1) year after the delivery of the goods, unless we have fraudulently concealed a defect.

7.9 We shall not be liable for any agreements between the customer and his customers beyond the statutory warranty claims.

## 8. Applicable Law and Jurisdiction

8.1 The relations between us and the customer are exclusively governed by the laws of the Federal Republic of Germany, to the exclusion of any foreign law. Neither the United Nations Convention on Contracts for the International Sale of Goods (CISG) nor any other existing or future interstate or international treaties, even if incorporated into German law, shall be applicable.

8.2 If the customer is a merchant, legal entity of public law or of special fund under public law, the exclusive place of jurisdiction for all disputes arising from or in connection with the delivery transaction shall be Lemgo. Notwithstanding the foregoing, we are also entitled to sue our customer at his place of residence/place of business. Any statutory provisions regarding exclusive jurisdiction remain unaffected.

## 9. Final Provisions

9.1 Any alterations and amendments to the contract, including this clause, must be made in writing in order to be valid. This shall also apply to any collateral and additional agreements.

9.2 If a provision herein is or becomes partly or completely invalid, the invalidity of this provision shall not affect the validity of the remaining provisions of this contract. The same applies to possible loopholes in the present contract.