

# General Terms and Conditions of Business of SCHEU-DENTAL custom-made GmbH

Präambel:

The following General Terms and Conditions of Business (Allgemeine Geschäftsbedingungen, "AGB") apply only if the contractual partner is an entrepreneur (section 14 German Civil Code (Bürgerliches Gesetzbuch, "BGB"), a legal entity under public law (juristische Person des öffentlichen Rechts) or a public-law special fund (öffentlich-rechtliches Sondervermögen). Conflicting or deviating terms or other provisions of the contractual partner are not accepted unless we expressly consent to the same in writing in the individual case.

## 1. Basis of the Contract

Our specific quotation, which is always based on these terms and conditions, takes precedence.

Our quotations with regard to price, quantity, delivery period and availability are without obligation.

Orders from our contractual partner become binding upon us if we confirm the order in writing or if we perform the order.

## 2. Prices

Our prices apply ex works in euros plus the rate of value added tax applicable on the date of delivery.

If no fixed prices have been agreed, we reserve the right to make reasonable price changes due to changes in the costs of labour, materials and distribution for deliveries which are made 3 months or longer after conclusion of the contract. We charge a fee of 11 euros for processing the order for small orders up to a net value of 30 euros (or 100 euros for orders outside the EU).

## 3. Contractual Deadlines and Delivery Date

We fulfil our contractual duties at the time that our course of business allows. Binding contractual deadlines, especially delivery deadlines, apply only if we have confirmed the same in writing to the contractual partner.

A binding contractual or delivery period starts to run only after clarification of all technical and commercial details. If the provision of our service requires an act of cooperation by the contractual partner, the period does not start to run before complete performance of this act.

Part deliveries may be made. For contracts involving continuous delivery in part quantities, the call-up quantities and delivery dates must be defined at the time of concluding the contract. If this does not take place, or if our contractual partner has breached an agreement to this effect, we are entitled to set a date at our due discretion for the entire or remaining quantity to be called up and accepted. If our contractual partner does not call up or accept the entire or remaining quantity by this date, it is in default with acceptance. In this case, we are entitled to set a subsequent deadline of 8 days with a declaration that we will refuse delivery after this date. After the subsequent deadline has passed without issue, we are entitled to withdraw from the contract and, if appropriate, claim compensation for damages. There is no need for us to set a subsequent deadline if our contractual partner has genuinely and finally refused acceptance or is obviously unable to pay the selling price even within the subsequent deadline.

If our contractual partner is in default with payment for an earlier delivery or part-delivery, we are entitled to withhold deliveries or part-deliveries or, after setting a subsequent deadline for payment without issue, to withdraw from the contract without being obliged to compensate for any damages resulting from the same.

If it should become apparent after conclusion of the contract that our claim to payment is in danger, we may subsequently make a delivery or part-delivery conditional upon payment in advance or the furnishing of a security while setting a reasonable deadline.

If a binding period for delivery is exceeded, our contractual partner must set a reasonable subsequent deadline which must

normally be at least 4 weeks.

Events of force majeure, strikes, lockouts, disruptions of operations or traffic for which we are not responsible release us from the obligation to deliver to the extent of their effects and their duration. This applies in particular to delivery delays which are caused by the transport company. If delivery delays due to force majeure or on other grounds for which we are not responsible exceed a reasonable extent for one of the contractual parties, this party may withdraw wholly or partly from the contract; such a right of withdrawal is always available for delivery delays lasting more than 6 months.

#### **4. Setup and Treatment Timeout for Aligner Orders**

When ordering aligners, the following applies:

The treatment plan issued by us must be approved by our contractual partner/attending physician. If the treatment plan is not approved within a period of 90 days from the date of provision of the treatment plan, this is deemed to be cancellation of the order. A cancellation fee of 99.00 euros is charged unless our contractual partner proves that no costs or lower costs were incurred by us for the treatment plan issued.

Treatment is deemed to have been completed if our contractual partner/ attending physician does not request a further delivery of the same aligner treatment within a period of 180 days of service of our last delivery. If further aligners are to be ordered for the relevant patient thereafter, these require a new order incurring costs.

Treatment is further deemed to have been completed if our contractual partner/attending physician has ordered a retainer for a patient. If further aligners are to be ordered thereafter for the relevant patient, these also require a new order incurring costs.

#### **5. Shipment**

The contractual partner must pay the freight costs. Packaging, postage, insurance and other costs of shipment will be charged additionally in the invoice.

Deliveries to foreign countries are made subject to the Incoterms "ex-works" (2020).

Unless otherwise agreed in writing, we shall decide on the transport route at our due discretion without having to be responsible for the cheapest and fastest shipment.

#### **6. Passing of the Risk**

The risk passes to our contractual partner as soon as the goods have been handed over to the transport person. This also applies if we pay the transport costs on the basis of a special agreement made contrary to the general provisions.

If our contractual partner is in default with acceptance or culpably breaches any other duties of cooperation, we are entitled to require compensation for the damages we have suffered in this respect, including any extra costs. The right to bring further claims is reserved. In the event of default in acceptance, the risk of accidental destruction or accidental deterioration passes at that time to our contractual partner.

We can charge for the goods ready for shipment, even in the event of otherwise differing payment agreements, at the time of readiness for delivery and take the goods into stock at the expense of our contractual partner, in which case we are liable only for the careful selection of the warehouse operator.

#### **7. Return of Goods**

We reserve the right to refuse to accept a justified return delivery if the return delivery was not previously advised in writing or by telephone. Unjustified returns will not be accepted.

## 8. Payment

We charge the contractual price and all costs at the latest at the time of handover to the transport person. Payments must be made to us immediately without deduction in each case after the invoice date; section 286 (3) BGB applies.

Unless we invoice in foreign currency, payments in foreign currency will be converted to euros at the exchange rate quoted on the date of payment in Düsseldorf.

Our contractual partner is entitled to withhold payment only in the event of gross breaches of contract on our part and, in the event of defective delivery, up to the amount of the portion of the selling price which corresponds to the reduction in value. Moreover, our contractual partner is only entitled to exercise a right of retention if its counter-claim is based on the same contractual relationship. Our contractual partner may only set off claims which have been established with legally binding effect, which are undisputed or which we have recognised.

Exceeding agreement payment dates or default based on section 286 (3) BGB effects the due date for payment of all other invoices not yet due for goods already delivered and entitles us to revoke any credit granted. For services not yet performed, we may also require advance payments or the furnishing of security.

In the event of default in payment, we charge default interest in accordance with section 288 (2) BGB at an interest rate of 9 percentage points above the base interest rate. We are entitled to verify higher default interest.

## 9. Reservation of Title

We reserve title to the goods we have delivered until payment in full of all our receivables from current and future business relations with our contractual partner. Our contractual partner may process and sell the goods in the ordinary course of business; however, credit sales must be subject to reservation of title.

In the event of processing, we are deemed to be manufacturer of the new object. If, in the event of combining or mixing our goods with an object of our contractual partner, the latter is to be regarded as the principal item, we acquire corresponding co-ownership of this principal item.

If our contractual partner gets into default with payment or another obligation, it may dispose of or process the reserved-title goods only with our written consent. Moreover, it must grant us access to the goods we have delivered at all times and surrender the same to us on request even if we do not exercise the right of rescission.

Our contractual partner already now assigns to us all receivables arising from the disposal of reserved-title goods by way of security. Our contractual partner is revocably entitled at all times to collect the receivables assigned subject to immediate payment of the proceeds to us. At our request, our contractual partner must inform its purchasers of the assignment and inform us of the inventory of assigned receivables and reserved-title goods.

If third parties make claims to reserved-title goods, our contractual partner must draw attention to our reservation of title and notify us without delay; the latter also applies to interference by third parties with the receivables assigned to us. Our contractual partner pays all costs of intervention incurred.

If the value of our securities exceeds our receivables by more than 20% we shall, if our contractual partner so requests, release the securities in excess thereof at our discretion.

## 10. Duty of Examination and Warranty

Our contractual partner must examine the goods without delay after their receipt. Complaints due to material defects, wrong deliveries and quantity deviations which can be ascertained by reasonable examination of the goods can only be claimed in writing within 8 days of the arrival of the goods at their destination. Within another 8 days, suitable evidence must be sent to us for inspection, e.g. allegedly defective parts of the delivery. If a defect later becomes apparent, notification must be made without delay after discovery and suitable evidence must be sent to us without delay. A notification of defect is delayed if the goods are no longer in their condition at the time of delivery; in the event of major interventions in or modifications of the goods, the exercise of rights based on defects is excluded. An express or implied acceptance of the goods as being in order excludes rights based on defects.

Negotiations on the matter of defectiveness do not constitute a waiver of the defence of delay.

If a notification of defect should prove to be unjustified, and if the contractual partner could have detected this upon careful examination, it must pay the costs incurred as a result.

In the event of justified notifications of defects, subsequent performance is at our discretion. We decide whether repair or new delivery takes place; we are entitled to subsequently make up short deliveries.

## 11. Compensation for Damages

If we are entitled to compensation for damages - regardless of the legal grounds - this equals 20% of the selling price. We are entitled to claim higher damages if we verify the same. The contractual partner has the right to prove that we suffered either no damages or lower damages.

Claims of our contractual partner to compensation for damages are excluded.

User of our product is the attending physician. He is responsible for treatment errors arising from its dental work. He is also liable for the use of a defective product if his conduct under the circumstances exhibits features of a treatment error. Such other circumstances may lie in the faulty selection of the product (faulty exercise of freedom of treatment) and/or in particular in inadequate patient information and/or lack of consent of the patient and/or in a deviation from the manufacturer's instructions.

There are no claims to compensation for damages or compensation for loss of value in the form of lost fees and/or new costs arising from dental services becoming necessary or similar. This applies especially to relapses and complaints. In the event of material fracture, the attending physician assists the manufacturer of the medical products in establishing the causes. In this event, on the basis of the obligations of the German Medical Products Act (Medizinproduktegesetz) alone, the case should be carefully documented by our contractual partner and the data or photos taken made available to the manufacturer in anonymised form.

The user has no claims to compensation for damages or compensation for loss of value in the form of lost fees and/or new costs arising from dental services becoming necessary or similar even if the product suffers a material fracture.

In deviation from the statutory provisions, warranty claims to replacement of our contractual partner become time-barred one year after our delivery. This does not affect the provision of section 478 Civil Code (BGB). Claims to compensation for damages of our contractual partner also become time-barred, in deviation from the statutory provisions, one year after the relevant delivery.

Excluded from the limitations of liability in these General Terms and Conditions of Business (AGB) are claims to compensation for damages arising from harm to life, physical injury or harm to health or from the breach of essential contractual duties (cardinal duties) and liability for other damages which are due to a deliberate or grossly negligent breach of duty by SCHEU-DENTAL custom-made GmbH, its statutory representatives or vicarious agents. Essential contractual duties are those whose performance is necessary to achieve the purpose of the contract. If there is a breach of essential contractual duties, SCHEU-DENTAL custom-made GmbH is liable only for the foreseeable damages typical of the contract if these were caused by simple negligence unless the contractual partner has claims to compensation based on harm to life, physical injury or harm to health. These limitations also apply in favour of the statutory representatives and vicarious agents of SCHEU-DENTAL custom-made GmbH if claims are brought against the latter directly. The limitations of liability arising from these General Terms and Conditions do not apply if SCHEU-DENTAL custom-made GmbH has fraudulently concealed a defect or given a warranty for the condition of the goods. The same applies if SCHEU-DENTAL custom-made GmbH and the contractual partner have made an agreement on the condition of the goods. This does not affect the provisions of the Product Liability Act (Produkthaftungsgesetz).

## 12. Ancillary Agreements

No verbal or collateral agreements exist. Alterations and addenda to these Terms and Conditions must be agreed in writing by both parties.

### 13. Governing Law

The law of the Federal Republic of Germany applies to these Terms and Conditions of Business and to the entire legal relations between the contractual parties. The application of the UN Convention on Contracts for the International Sale of Goods and Conflict of Laws is excluded.

### 14. Data Protection

If our contractual partner receives access to personal data in the course of performing the contractual services, it must comply with the applicable data-protection provisions, in particular process personal data solely for the purpose of providing the contractual services (defined purpose), ensure that its employees receive access to the data only insofar as absolutely necessary and oblige its employees in writing to data secrecy and instruct them on the data-protection provisions to be observed and verify the same to us on request.

### 15. Place of Performance and Place of Jurisdiction

For all rights and duties arising from the transactions with us, Hilden is place of performance for both parties.

If our contractual partner is a merchant for the purposes of the Commercial Code, a legal entity under public law or a public-law special fund, then exclusive (also international) place of jurisdiction for all disputes from the present contractual relations is Düsseldorf. The same applies if the seller is an entrepreneur as defined in section 14 BGB. However, in all cases we are entitled to bring a claim at the place of performance of the delivery obligation in accordance with these Terms and Conditions or of overriding individually agreed terms or at the general place of jurisdiction of our contractual partner. Overriding statutory provisions in particular on exclusive jurisdiction remain unaffected.