

# General Terms and Conditions of Sale of Orthovative GmbH

## 1. Scope

- 1.1 These general terms and conditions of sale form the basis of all declarations of intent by Orthovative GmbH. They shall be deemed accepted by the purchaser upon conclusion of the contract or acceptance of the delivery for the duration of the entire business relationship. All deliveries shall also be made on the basis of these General Terms and Conditions of Sale. These General Terms and Conditions of Sale apply only to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB).
- 1.2 These General Terms and Conditions of Sale apply exclusively. Conflicting or deviating terms and conditions of the purchaser shall not become part of the contract unless Orthovative GmbH expressly agrees to their validity in writing.
- 1.3 These General Terms and Conditions of Sale shall also apply if Orthovative GmbH, in ignorance of conflicting or deviating terms and conditions of the purchaser, performs the delivery or other service to the purchaser without reservation.

## 2. Offer and conclusion of contract, reservation of right of modification

- 2.1 Offers to Orthovative GmbH are always made without obligation. The contract is concluded either when Orthovative GmbH accepts the buyer's offer, to which the buyer is bound for 30 days, or when Orthovative GmbH begins with the execution of the purchase contract.
- 2.2 The conclusion of the contract is subject to the condition of correct and timely self-delivery by Orthovative GmbH, unless the incorrect or delayed self-delivery is the fault of Orthovative GmbH.
- 2.3 We reserve the right to make changes to the material compared to the product description, insofar as they result from the natural characteristics of the material or are customary in the trade and do not impair the use of the goods as stipulated in the contract.

## 3. Product description

Unless otherwise agreed, the contractually owed quality of the purchased item is determined exclusively by the specifications of Orthovative GmbH agreed in writing. Public statements, recommendations or advertisements do not represent quality specifications of the purchased item.

## 4. Prices

- 4.1 Orders of the purchaser are placed at the list prices in Euro valid at Orthovative GmbH on the day of the order. Prices always apply "ex works", unless expressly agreed otherwise, and excluding transport, packaging and other handling costs (e.g. preparation of export documents), which will be invoiced separately. Prices are subject to statutory value added tax at the statutory rate on the date of delivery.
- 4.2 **The employees of Orthovative GmbH are not authorized to grant discounts on the current price list. Discounts on the list prices always require the approval of the management of Orthovative GmbH.**
- 4.3 Orthovative GmbH reserves the right to increase the prices for contracts with an agreed delivery time of more than four months after timely notification of the buyer and before execution of the delivery of the goods according to cost increases that have occurred and are beyond the control of Orthovative GmbH, for example, due to subcontracting agreements, collective bargaining agreements or material price increases. If the increase amounts to more than 5 % of the agreed

purchase price, the purchaser shall be entitled to withdraw from the contract in accordance with Section 313 (3) of the German Civil Code (BGB). A claim for damages by the purchaser is excluded in this case.

## **5. Terms of payment, default of payment**

- 5.1 All payments are due upon delivery without deduction, net cash. **The granting of discounts requires the prior consent of the management of Orthovative GmbH.** Non-cash payments are only made on account of performance. Bills of exchange must be accepted by Orthovative GmbH only after prior written agreement.
- 5.2 Orthovative GmbH is entitled to demand advance payment or a down payment in an appropriate amount from the purchaser.
- 5.3 Payments are only considered effected when the amount is finally credited to the account of Orthovative GmbH. Orthovative GmbH reserves the right to use payments for the settlement of the oldest due claims plus the default interest and costs accrued thereon in the order: costs, interest, principal claim.
- 5.4 Insofar as the buyer does not meet his payment obligation on the due date or does not meet it in full, he will be in default one day after the due date without the need for further declarations by Orthovative GmbH. In case of default of payment by the purchaser, Orthovative GmbH is entitled to call due all claims from the business relationship with the purchaser that are not subject to the statute of limitations. This applies accordingly if, after the conclusion of the contract, it becomes apparent that the payment claims of Orthovative GmbH are or will be endangered due to the buyer's lack of ability to pay. The rights from § 321 BGB (German Civil Code) (plea of uncertainty) remain unaffected, whereby the plea of uncertainty extends to all further outstanding deliveries and services from the business relationship with the purchaser. If the payment deadline is exceeded, Orthovative GmbH is also authorized to demand security or advance payment from the purchaser before further deliveries.
- 5.5 Interest of 8 percentage points above the respective base interest rate p.a. shall be charged on due monetary claims. We reserve the right to claim further damages. The purchaser shall be at liberty to prove a lesser damage.
- 5.6 The purchaser is only entitled to rights of set-off and retention if his counterclaims have been legally established, are undisputed or have been acknowledged by Orthovative GmbH. In addition, the purchaser is entitled to assert rights of retention only on the basis of counterclaims from the same contractual relationship.

## **6. Delivery, packaging; transfer of risk; delay in delivery**

- 6.1 Binding delivery dates or fixed delivery periods exist only insofar as they have been confirmed by Orthovative GmbH. Delivery periods begin with the date of the order confirmation by Orthovative GmbH and are only valid under the condition of timely clarification of all details of the contract and timely fulfillment of all obligations of the buyer, such as provision of all official certificates, provision of letters of credit and guarantees or provision of down payments. If these prerequisites are not fulfilled in time, the delivery periods shall be extended accordingly.
- 6.2 Delivery shall be made "ex works". Unless otherwise agreed, the time of dispatch "ex works" shall be decisive for compliance with delivery periods and dates.
- 6.3 Unless otherwise agreed, Orthovative GmbH does not take back any transport or other packaging with the exception of consumer packaging within the meaning of the Packaging Ordinance.
- 6.4 Orthovative GmbH is entitled to make partial deliveries, unless these are unreasonable for the buyer. Partial deliveries are considered as a single transaction.

- 6.5 The purchaser may withdraw from the contract due to delayed delivery by Orthovative GmbH only if Orthovative GmbH is responsible for the delay and the purchaser has previously unsuccessfully set a reasonable deadline for Orthovative GmbH to perform.
- 6.6 Claims for damages shall be determined in accordance with Clause 9 of these General Terms and Conditions of Sale.
- 6.7 Force majeure and events that temporarily prevent Orthovative GmbH, through no fault of its own (temporary impediments to performance, in particular strike, lockout, operational disruptions due to fire or due to the interruption of supply, delay in the supply of raw materials or machines, war or sovereign orders), from delivering the purchased item on the agreed date or within the agreed period, entitle Orthovative GmbH to postpone the delivery or performance by the duration of the temporary impediment to performance plus a reasonable start-up period. This applies accordingly to impediments to performance at the supplier's, if the supplier is not responsible for them. If corresponding disruptions lead to a postponement of performance of more than three months, the Buyer may withdraw from the contract. Other rights of withdrawal shall remain unaffected.
- 6.8 Orthovative GmbH shall take out transport insurance for the purchaser at the purchaser's timely expressed request and at the purchaser's expense.

## **7. Default of acceptance of the buyer**

The purchaser is obliged to accept the defect-free object of sale. If the purchaser defaults on acceptance or culpably violates other obligations to cooperate, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the purchaser from the point in time at which the purchaser defaults on acceptance. In case of default of acceptance on the part of the purchaser, Orthovative GmbH is entitled to claim compensation for the resulting damage. The claim for compensation amounts to a lump sum of 15 % of the agreed net purchase price. The purchaser reserves the right to prove that no damage has actually occurred or that the damage is significantly lower than the lump sum. Orthovative GmbH can prove and claim a higher damage.

## **8. Liability for defects**

- 8.1 Orthovative GmbH provides the legal warranty that the ordered goods are free of defects. The incorrect use of the purchased item or its faulty installation does not constitute a defect.
- 8.2 Orthovative GmbH's liability for defects requires in any case that the purchaser inspects the purchased item for defects immediately upon receipt. The purchaser must report all obvious defects immediately, at the latest, however, 5 days after receipt of the purchased item. Hidden defects must be reported by the buyer immediately, but no later than 5 days after their discovery. Any notice of defects by the Buyer shall be made in writing. The Buyer's notice of defect must specify the respective object of purchase as well as the respective defect of the object of purchase. The receipt of the notice of defects by Orthovative GmbH is decisive for meeting the deadline. If the purchaser fails to notify the defect, the purchased item is considered approved, unless it is a defect that was not recognizable during the inspection, § 377 HGB (German Commercial Code).
- 8.3 If there is no purchase of consumer goods (resale to consumers as end users), the purchaser's claims are primarily limited to the claim for subsequent performance, i.e. rectification of defects or replacement delivery. Orthovative GmbH has the right to choose between rectification of defects and replacement delivery. In the case of rectification, Orthovative GmbH is obligated to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labour and material costs, provided that the costs are not increased by the fact that the purchased item was brought to a place other than the place of performance. In the event of failure of the rectification or replacement delivery, the purchaser may demand a reduction in price or withdraw from the contract. The rectification of defects has failed if and to the extent that a deadline set to Orthovative GmbH for the first time for the rectification of defects has expired without result. The prerequisites for exercising the right of withdrawal are determined according to § 323 BGB. The limitation period for material defects for newly manufactured items is one year from delivery of the item. If the object of purchase is delivered on the basis of the German Contracting Rules for the Award of Public Works Contracts (Verdingungsordnung für Bauleistungen - VOB), the limitation provisions there shall apply.
- 8.4 Insofar as Orthovative GmbH sells to the buyer items that are recognizable to the buyer and that it has acquired from third parties, Orthovative GmbH's liability for defects presupposes that the buyer first asserts its warranty and guarantee claims against the third party and that the third party demonstrably refuses the warranty or is unable to do so. Orthovative GmbH will assign to the purchaser the claims to which it is entitled against the third party - insofar as they exist and are necessary - at the purchaser's request, in order to enable the purchaser to independently assert the warranty claims described above against the third party.
- 8.5 In the event of a purchase of consumer goods with an end consumer, the purchaser shall be entitled to the statutory rights of recourse due to defective goods in deviation from Clauses 8.3 and 8.4. The purchaser can only demand compensation from Orthovative GmbH for expenses associated with the consumer's exercise of the rights to claim for defects if the purchaser was obligated to bear these expenses.
- 8.6 Claims for damages due to defects shall always be determined in accordance with Section 9 of these General Terms and Conditions of Sale.

- 8.7 Information on quality and durability as well as other information are only independent guarantees if they have been expressly agreed and designated as such.

## **9. Damages, other liability on other legal grounds**

- 9.1 Orthovative GmbH shall be liable without limitation for intent and gross negligence as well as in the case of fraudulent intent. In the case of slight negligence, Orthovative GmbH's liability is limited to the foreseeable damage typical for the contract, insofar as it violates an obligation that is essential for achieving the purpose of the contract (cardinal obligation). Regardless of the reason for the claim, Orthovative GmbH does not assume any liability beyond this, unless otherwise agreed between the parties.
- 9.2 The above limitations and exclusions of liability do not apply to claims for damages arising from injury to life, limb or health, or to claims under the Product Liability Act. Insofar as the liability of Orthovative GmbH is limited or excluded, the personal liability of Orthovative GmbH's vicarious agents and assistants is also limited or excluded.
- 9.3 Any liability for damages beyond the provisions in Sections 9.1 and 9.2 shall be excluded, irrespective of the legal nature of the asserted claim; this shall apply in particular to liability for culpa in contrahendo, for other breaches of duty or for claims in tort for compensation for property damage pursuant to Section 823 of the German Civil Code (BGB).

## **10. Retention of title**

- 10.1 The respectively delivered object of purchase (reserved goods) remains the property of Orthovative GmbH until settlement of all claims to which Orthovative GmbH is entitled from the business relationship, in particular also the respective balance claims (balance reservation). This also applies to claims arising in the future and conditional claims, and also if payments are made on specifically designated claims. This balance reservation finally expires with the settlement of all claims still open at the time of payment and covered by this balance reservation.
- 10.2 The purchaser must treat the reserved goods with care and insure them adequately at replacement value against fire, water and theft damage at his own expense. In the event of damage to or destruction of the reserved goods, the purchaser already assigns to Orthovative GmbH the claims for compensation against the insurance companies that arise in that case.
- 10.3 As long as he is not in default, the purchaser is authorized to sell the goods subject to retention of title in the ordinary course of business at his normal terms and conditions under the condition that he receives the full purchase price from his customer or that he reserves the title vis-à-vis the latter until the purchase price has been paid in full. The purchaser is only entitled to other dispositions of the reserved goods, in particular transfers by way of security or pledges, with the prior written consent of Orthovative GmbH. If the purchased item is taken abroad in the course of ordinary business, the purchaser must ensure effective protection of the retention of title or, in the case of the non-existence of such a protection according to the local legal system, the procurement of a legal position that protects the claims of Orthovative GmbH in a comparable manner.
- 10.4 The purchaser already now assigns to Orthovative GmbH all claims with ancillary rights in the amount of the final invoice amount of the purchase price claim owed by him (including VAT), which arise for him from the resale against his customers or third parties, regardless of whether the reserved goods have been resold without or after processing. Orthovative GmbH accepts the respective assignment. If the goods subject to retention of title are sold by the purchaser together with other goods not sold by Orthovative GmbH, the purchaser must assign to Orthovative GmbH the claim from the resale in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold.

- 10.5 The purchaser remains authorized to collect the claims even after the assignment. Orthovative GmbH undertakes not to collect these claims as long as the purchaser regularly meets his payment obligations. The buyer's authorization to collect expires in case of revocation by Orthovative GmbH, but at the latest, without the need for revocation, in case of default of payment, non-redemption of a bill of exchange or application for opening of insolvency proceedings against the buyer's assets or rejection of the application for opening of insolvency proceedings due to lack of assets. Orthovative GmbH will only exercise the right of withdrawal if, after conclusion of the contract, it becomes apparent that payment claims of Orthovative GmbH arising from the business relationship with the purchaser are at risk due to the purchaser's lack of ability to pay. In the event that the purchaser's collection authorisation expires, the purchaser must provide Orthovative GmbH, upon request, with all information necessary for the collection of the assigned claim and, at the purchaser's expense, hand over publicly certified documents about the assignment of the claims as well as inform the relevant debtors (third parties) about the assignment.
- 10.6 In the event of an agreement on a prohibition of assignment between the Buyer and its customer, the authorization to resell the goods subject to retention of title and to collect claims shall also be excluded in the event of § 354a of the German Commercial Code (HGB).
- 10.7 If the purchased item is inseparably combined with other items not owned by Orthovative GmbH, Orthovative GmbH acquires co-ownership of the new item in proportion to the value of the purchased item to the other combined items at the time of combination. If the connection takes place in such a way that the purchaser's item is to be regarded as the main item, it is deemed agreed that the purchaser transfers co-ownership to Orthovative GmbH on a pro-rata basis. Otherwise, the same applies to the newly created item as to the item delivered under reservation.
- 10.8 To secure its claim(s), the purchaser also assigns to Orthovative GmbH the claims that accrue to it against a third party through the connection of the purchased item with the property of a third party.
- 10.9 In case of behavior contrary to the contract, in particular default of payment or other culpable violation of essential contractual obligations, Orthovative GmbH is entitled to withdraw from the purchase contract and to demand the return of the reserved goods from the buyer. This applies accordingly if, after conclusion of the contract, it becomes apparent that the payment claim from this or other contracts with the purchaser is at risk due to the purchaser's lack of ability to pay. The purchaser is obliged to surrender the goods. For this purpose, Orthovative GmbH is entitled to enter the purchaser's premises. Such a demand for surrender always represents a declaration of withdrawal according to § 349 BGB at the same time. The withdrawal due to default of payment requires the setting of a reasonable deadline for payment by Orthovative GmbH to the purchaser. The regulations on the dispensability of such a deadline according to § 323 para. 2 BGB as well as § 376 HGB remain unaffected.
- 10.10 The assigned claims serve as security to the same extent as the reserved goods. In the event that the value of the securities exceeds the claims to be secured by more than 25%, Orthovative GmbH is obligated to release the securities at the buyer's request to the extent that the realizable value of the securities exceeds the securities to which Orthovative GmbH is entitled. Orthovative GmbH is entitled to select the securities to be released.
- 10.11 In the event of seizures or other interventions by third parties, the purchaser must notify Orthovative GmbH immediately so that Orthovative GmbH can still file a third-party action in time according to § 771 ZPO (German Code of Civil Procedure). As far as the costs for the replacement of the purchased item cannot be obtained from the third party, the purchaser is liable for the judicial and extrajudicial costs incurred by Orthovative GmbH.

## **11. Privacy**

Orthovative GmbH is entitled to electronically store and process all data about the purchaser that are related to the business relationship for the purpose of executing the contract in compliance with the provisions of the Federal Data Protection Act.

## **12 Place of performance, place of jurisdiction, choice of law**

- 12.1 The contract is exclusively subject to the law of the Federal Republic of Germany. The validity of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 12.2 The place of performance for all deliveries is the registered office of Orthovative GmbH.
- 12.3 The exclusive place of jurisdiction is Munich. However, Orthovative GmbH is entitled to sue the purchaser at the purchaser's general place of jurisdiction.
- 12.4 Should individual provisions of the contract be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions of the contract. Ineffective or unenforceable provisions shall be replaced by a provision that comes as close as possible to the economic content of the ineffective or unenforceable provision.