

# Standard Terms and Conditions of Sale and Delivery of Servo Dental GmbH & Co. KG

## § 1 Application of the Standard Terms

All agreements and offers shall be made solely on the basis of these Standard Terms and Conditions of Sale and Delivery, which shall be acknowledged by issuance of the order or acceptance of the delivery. Differing, conflicting, or supplementary Standard Terms of Business shall not become a part of the contract, even if we are aware of them, unless we agree to their application in writing.

## § 2 Contract Formation, Contracting Parties

- (1) Our offers are subject to change.
- (2) An order is not accepted by us until we confirm it in writing. Our written order confirmation is controlling with respect to the items included in the delivery. The documents related to the order, such as illustrations, drawings, weights and dimensions, are only approximations, unless expressly referred to as binding. We reserve our ownership rights and copyright in all drawings and other documents. Such documents may not be made available to third parties.
- (3) Supplements and side agreements shall require our written confirmation.
- (4) The customer is not authorized to assign the rights under this Agreement without our consent.

## § 3 Design Modifications

We reserve the right to make design modifications at any time. However, we are not obliged to make such modifications to products that have already been delivered.

## § 4 Prices and Payment Terms

- (1) The prices designated in our order confirmation are controlling. If the buyer waives an order confirmation or if no written order confirmation is issued for some other reason, the prices in the current (= most recent) price list shall apply.
- (2) VAT tax in the statutory amount must be added to our prices.
- (3) If the price list is changed between the signing of the contract and the scheduled delivery deadline, the list prices at the time of the order shall apply, unless otherwise agreed.
- (4) The prices are ex works Hagen.
- (5) Packaging, transportation, and ancillary costs as well as customs duties and other levies in connection with the delivery shall also be billed to the customer.
- (6) Packaging will not be taken back.
- (7) Unless otherwise agreed, invoices are payable with a 2% discount within 10 days of the invoice date or net within 30 days. The date the payment is received shall be controlling. The discount is granted on the net value of the goods (after subtracting any rebates, freight charges, and the like).
- (8) The rights of set-off and withholding may only be exercised with respect to claims that are uncontested or that have been found to be valid by a court of law.
- (9) If there is a default in payment by the customer, we shall be entitled to charge a lump-sum compensation of 40 Euro in each case of payment default.  
Beyond this we shall be entitled to charge default interest at the rate charged for checking account overdrafts by our bank, however a default interest at a rate of 9 percent above base lending rate at minimum. Assertion of a higher damage claim remains unaffected. The lump-sum compensation will be credited against a higher damage claim as mentioned in sentence two and three of this passage.

## **§ 5 Partial Deliveries**

Partial deliveries are permissible if the contract partner finds this reasonable.

## **§ 6 Delivery Times**

- (1) Delivery times/delivery deadlines shall be deemed to be approximations, unless they are expressly designated as binding
- (2) The delivery period begins with the date of the order confirmation, but not before any agreed-upon advance payments have been made by the buyer. The delivery deadline has been met if the delivery item has left the factory by the end of the delivery period or – if the customer is responsible for transportation – when the customer has been informed that the delivery item is ready for shipping.
- (3) The foregoing is subject to our own receipt of proper and timely deliveries from suppliers.
- (4) If we are in default with a delivery, the buyer's damages for delay shall be limited to direct, foreseeable typical contracts losses. In particular, no compensation shall be paid for loss of production, interruptions of operations, or lost profits.
- (5) In cases of force majeure, such as natural catastrophes of all kinds, including inclement weather, earthquake, flood, and volcanic eruption, as well as fire, traffic accidents, hostage taking, war, civil commotion, civil war, revolution, terrorism, sabotage, atomic/reactor accidents, or disruptions of production, for which we are not responsible, the delivery deadline shall be appropriately extended, including a reasonable start-up time, but not beyond three months. At the end of this three-month period, either party shall be entitled to rescind the Agreement or, if partial deliveries have already been made, to rescind the portion of the Agreement that has not yet been fulfilled. In this case, no damage claims may be asserted.

## **§ 7 Custom-Made Items**

- (1) If orders for custom-made items are canceled, we will charge the customer for all the work performed until receipt of the cancellation notice and for processed parts up to a maximum amount that corresponds to the value of the total delivery.
- (2) Custom-made items are non-returnable.

## **§ 8 Transfer of Risk**

- (1) The risk of accidental loss or deterioration of the goods – including with respect to partial deliveries – passes to the customer with delivery to the customer or to a freight forwarder or carrier. In this regard, it is irrelevant whether the shipment originates at the place of performance and which party bears the freight costs. If the goods are ready to be shipped and shipment or pick-up is delayed for reasons that are not our responsibility, risk shall pass to the customer with receipt of the notice that the goods are ready to be shipped.
- (2) If we are responsible for transport, we shall be liable only for properly selecting the means of transportation described in the Agreement. The selection of the means of transportation is within our discretion. We are not required to select the least expensive method of shipment. We will only purchase insurance at the express request of the customer and for the customer's account.
- (3) All agreements with respect to the assumption of transportation and insurance costs shall only relate to the aforementioned costs, even if the application of Incoterms/TRADE Terms has been agreed upon, and shall not affect the transfer of risk.

## **§ 9 Inspection and Notification of Defects**

- (1) Defects discoverable through reasonable inspection (patent defects), must be reported promptly after receipt of the goods; hidden defects must be reported promptly after they are discovered.
- (2) All inspection costs shall be borne by the customer.

## **§ 10 Return of Goods**

- (1) When goods are taken back by Servo, the value of the goods will be credited based on their condition, which shall be determined by an expert designated by Servo at the request and expense of the buyer.
- (2) Goods with a delivery date that is more than 12 months in the past will not be replaced. Subject to Section 10 (3) to (5) goods with a delivery date that is more than 12 months in the past will not be replaced.
- (3) Goods with an expiration date of six months or less will not be replaced.
- (4) With medical products, only batch-traceable goods in the original packaging with a delivery date no older than six weeks will be taken back.
- (5) Items that must have special storage conditions (e.g. with respect to temperature) will generally not be replaced.
- (6) Only returns delivered "freight prepaid" will be accepted.
- (7) If goods are returned, Servo will charge 12% of the value of the goods, but at least EUR 15.00 per return, to cover costs.

## **§ 11 Warranty and Compensatory Damages**

- (1) If the item delivered is defective or lacks warranted qualities when risk passes, we can, at our option, rectify the defect or replace the item. If only a portion of the delivery is defective, the customer can only assert its rights with respect to the defective portion.
- (2) If the goods are handled or stored in a manner contrary to the requirements of our usage instructions or our special storage instructions, warranty claims are excluded.
- (3) If our attempts to rectify the defect are unsuccessful, the customer can either demand reduction of the price or rescission of the Agreement, and all other claims shall be excluded.
- (4) The warranty period for all products is 12 months.
- (5) We shall be liable for replacement deliveries and defect rectification work to the same extent as for the original delivery.
- (6) Payment of the purchase price can only be refused due to alleged defects if we have recognized the warranty claims as valid or if they have been found to be valid by a court of law.
- (7) In cases of wrongful intent or gross negligence – including the wrongful intent or gross negligence of our representatives or agents – we shall be liable in accordance with the provisions of law. In other respects, we shall only be liable for loss of life, bodily injury, or impairment of health or culpable breach of cardinal contractual obligations. "Cardinal contractual obligations" are those whose fulfillment enables the proper implementation of the Agreement and on whose fulfillment the contract partners may generally rely. Any claim for compensatory damages due to the breach of cardinal contractual obligations is limited to direct, foreseeable, typical contractual losses. In particular, no compensation shall be paid for loss of production, interruption of operations, or lost profit. Even in cases of gross negligence, our liability shall be limited to foreseeable, typical contractual losses if none of the exceptions in Sentence 2 of this Paragraph applies.
- (8) Our liability under the German Product Liability Act remains unaffected.
- (9) The foregoing provisions shall apply to both contractual and tort liability.

## **§ 12 Retention of Ownership**

- (1) The delivery items shall remain our property until full payment of all claims to which we are entitled under the business relationship with the customer, on whatever legal ground, including future claims.
- (2) The customer shall be entitled to properly use our goods for their intended purposes, as well as to process and install our goods in the ordinary course of business and sell and deliver them as a reseller.
- (3) Notwithstanding our right to revoke this authorization at any time, the authorization shall end if the customer fails to make payment or if a petition is filed to open insolvency proceedings against the customer's assets.
- (4) The customer is not authorized to pledge the goods or transfer or assign them as collateral. In case the customer sells our property, it hereby irrevocably assigns its entire claim under the underlying sales agreement to us. In case of co-ownership, the customer hereby makes an irrevocable pro rata assignment to us up to the amount of our residual claim. We hereby accept these assignments.
- (5) To the extent that this is not possible under the laws of the country in which the delivery was made, the customer shall reserve or agree upon other security rights in the goods. The customer hereby assigns these rights to us, and we hereby accept them.
- (6) The installation of the goods on real property or in buildings or the use of the goods subject to the reservation of rights in order to fulfill other contracts for services or contracts for work and materials by the customer shall be the equivalent of resale.
- (7) The customer shall be entitled to collect on its claims as long as it meets its obligations to us without restriction and does not fall behind in its payments. At our request, the customer shall provide the information needed for collection and notify its debtors of the assignment at the customer's own expense.
- (8) Any reworking or processing of the goods subject to reservation of rights is undertaken by the customer on our behalf, without this imposing any obligations on us. If our goods are processed, combined, mixed, or blended with third-party goods, we shall be entitled to co-ownership rights in the new item that are thereby created in the ratio of the invoice value of the goods subject to reservation of rights to the remaining processed goods at the time of the processing, combining, mixing, or blending. If the customer acquires sole ownership of the new item, the customer shall grant us co-ownership rights in proportion to the invoice value of the processed, combined, mixed, or blended goods subject to reservation of rights and shall safeguard them for us free of charge.
- (9) The customer shall promptly inform us of any enforcement measures taken by third parties against the goods subject to reservation of rights or the claims assigned in advance and shall submit the necessary documents to us.
- (10) At the request of the customer, we agree to release collateral of our choice if the value of the collateral exceeds the claims being collateralized by 20 % or more.
- (11) The customer shall maintain the items purchased in proper condition and insure them against fire and theft and shall prove to us that it has obtained such insurance. The customer hereby assigns us its claims against the insurer in the amount of our claims.

## **§ 13 Copyright**

We hereby reserve all ownership and copyright rights in our cost estimates, drawings, drafts, samples, and models. Violations of these rights by the customer shall trigger the duty to pay damages.

#### **§ 14 Jurisdiction and Place of Performance**

- (1) The competent courts where Servo Dental GmbH & Co. KG has its registered office shall have jurisdiction over all disputes directly or indirectly arising from the Agreement, if the customer is a merchant, legal entity under public law, or special fund under public law. In addition, jurisdiction is agreed upon where Servo Dental GmbH & Co. KG has its registered office if the customer moves his residence or place of habitual abode or establishment outside of the purview of this law after signing the Agreement or if the customer's whereabouts is unknown at the time of the filing of the complaint. German law shall apply exclusively.
- (2) The place of performance for all the reciprocal obligations of Servo and the customer under the Agreement shall be where Servo Dental GmbH & Co. KG has its registered office, if both parties are merchants.

#### **§ 15 Applicable Law**

The laws of the Federal Republic of Germany shall apply exclusively. Application of the UN Law on Contracts on the International Sale of Goods is expressly excluded.

#### **§ 16 Final Provisions**

In other respects, the Standard Terms and Conditions Relating to Risk shall apply. If a clause in these Terms and Conditions is or becomes invalid, this shall not affect the validity of the remaining clauses.

Hagen, March 2017