

# **General Terms and Conditions of Phoenix Implants GmbH**

## **A. General provisions**

1. The following terms of sale, delivery and payment shall apply to any and all offers made by and contracts concluded with Phoenix Implants GmbH (hereinafter referred to as "Phoenix") now and in future. The contractual partner's general terms and conditions and/or purchase conditions shall not become part of the contract. By accepting our delivery, the customer accepts the exclusive applicability of these present General Terms and Conditions.
2. Any and all agreements made with regard to the execution of a contract must be in writing in order to be effective.

## **B. Conclusion of contract**

1. The contract shall only be concluded upon the issue of a written order confirmation or upon delivery by Phoenix.
2. All offers made by Phoenix shall be without engagement. An order shall not be deemed accepted unless confirmed in writing by Phoenix.
3. Our order confirmation shall be decisive for the subject matter of the contract unless we receive - within 7 days after the date of such order confirmation - a written rescission of contract from the contractual partner.

## **C. Prices and terms of payment**

1. Our prices are stated in euros net of VAT and net of the costs for packaging, insurance and transport.
2. The price in the price list applicable as of the date of delivery shall be valid.
3. Unless otherwise agreed upon, our invoices shall be due for payment within 14 days after the date of invoice.
4. With regard to any payments due to Phoenix, the contractual partner shall not be entitled to a right of retention or set-off unless such counterclaims were expressly acknowledged by us or established by declaratory judgment.

## **D. Delivery, transfer of risk and acceptance**

1. Dates of delivery shall be as agreed upon in the individual case. A term of delivery shall be deemed complied with if the item to be delivered was shipped or was made ready for dispatch and the contractual partner was informed thereof.
2. We shall be entitled to effect partial deliveries and services to the extent this is not unreasonable for the contractual partner. Any additional costs incurring due to such partial deliveries shall be borne by Phoenix.
3. Shipment shall be effected at the contractual partner's expense and risk. No transport insurance shall be effected for deliveries unless expressly requested by and at the expense of the contractual partner. We shall be entitled to select the means of transport in our sole discretion.
4. The risk shall be transferred to the contractual partner as soon as the item to be delivered leaves our premises. This shall also apply to partial deliveries. If the contractual partner picks up the goods, the risk shall be transferred as of the time the contractual partner is informed that the goods are ready for dispatch.
5. Irrespective of the contractual partner's rights resulting from section G "Defects", the contractual partner shall be obliged to accept delivered goods even if they have minor defects.
6. In case the contractual partner is in default of acceptance, we shall invoice the costs for making the goods ready for dispatch amounting to 0.5 % of the value of the goods to be delivered.

## **E. Term of delivery**

1. The contractual partner's fulfillment of its contractual obligations shall be a prerequisite for compliance with the deadlines and terms of delivery and service. This means terms of delivery shall commence upon receipt of our order confirmation, however, not before receipt of any documents, specifications, etc. to be provided by the contractual partner. Delivery dates shall be postponed accordingly.
2. The term of delivery shall be deemed complied with if - as of the time the term of delivery expires - the item to be delivered left the premises or the contractual partner was informed that the item is ready for dispatch.
3. In case of delays in delivery or in performance and/or failure to deliver or to perform due

to force majeure or due to labour disputes, interference by public authorities, operational breakdowns, difficulties in the procurement of materials or power or in case of any other unforeseeable, exceptional circumstances that are not attributable to our sphere of responsibility, irrespective of whether such circumstance incur in our company or in that of our sub-suppliers, the term of delivery shall be extended by the duration of such impediment. This shall not apply to cases in which we agreed to the terms of delivery even though such circumstance were foreseeable or to cases in which we failed to take possible or reasonable measures to prevent or avert such event or to cases in which such event is attributable to our sphere of responsibility. Phoenix shall not be entitled to invoke such provisions unless the contractual partner was informed immediately of the occurrence and the foreseeable duration of such events.

4. The customer shall be entitled to assert claims for damages if the contractual partner suffered any damage due to a delay that is attributable to Phoenix' sphere of responsibility. The amount of damages shall be limited to 1 % for each full week of delay (a pro-rata share thereof for any individual day of delay) and to a maximum of 10 % of the contract value. Our liability in accordance with section H "Liability", no. 2 and 3 shall remain unaffected.

#### **F. Retention of title**

1. We reserve the title to all goods and services delivered by Phoenix until settlement of all claims resulting from the business relationship (goods subject to retention of title).
2. The contractual partner shall be obliged to inform Phoenix without delay if the goods subject to retention of title were attached by a third party. The contractual partner shall bear any costs required to set aside such attachment and to replace the goods we delivered.
3. The contractual partner shall be entitled to resell the goods subject to retention of title in the ordinary course of business at the contractual partner's usual conditions. The contractual partner hereby assigns to Phoenix the contractual partner's claims from such resale in the amount of the value of our invoice incl. VAT. Phoenix hereby accepts such assignment. Phoenix authorises the contractual partner to collect such claims assigned to us, in the contractual partner's name and for our account. Such authorisation may be revoked at any time. Upon our request, the contractual partner shall disclose such assignment and deliver to Phoenix any information and documents required for the collection of such claims.
4. If the goods subject to retention of title are mixed with other items, such newly created goods shall be subject to retention of title. In such case, Phoenix shall acquire co-ownership to such newly created item on a pro-rata basis, calculated based on the proportion of the invoice value of the goods subject to retention of title to the value of the other goods included therein. If one of the mixed items is considered to be the main item, the contractual partner shall assign to us the title in proportion of the invoice value of the goods we delivered to the value of the remaining item. The contractual partner shall keep in custody such new item with regard to our co-owned share free-of-charge.

#### **G. Defects**

1. The contractual partner shall be obliged to inspect the delivered item immediately upon receipt and to notify Phoenix in writing of any defect immediately upon detection thereof.
2. In case of defective delivery and/or service, the customer shall be entitled to demand that we - in our discretion - rectify such defect or that we deliver a new item that is free of defects and/or that we produce a new part (supplementary performance). If Phoenix refuses such supplementary performance, if such supplementary performance fails, is unreasonable for the contractual partner or is not effected within a certain period of time stipulated by the contractual partner, the contractual partner shall be entitled, in the contractual partner's discretion, to demand a reduction in price or to rescind the contract. However, rescission of contract shall be excluded in case of minor defects. In addition, Phoenix' liability shall be restricted as described in section H "Liability".
3. Claims based on defects shall be excluded if such defects are due to usual wear and tear or if such delivered item was changed, including but not limited to the installation of third-party parts to the extent we cannot exclude that such defect was caused by such installation of third-party parts.
4. Claims based on defects shall become statute-barred 12 months after the transfer of risk.
5. Phoenix shall be entitled to refuse rectification of a defect for as long as the contractual partner is in delay in performance.

#### **H. Liability**

1. The contractual partner's claims for damages caused by the neglect of our duty resulting

from the obligations and in tort, are excluded, in particular regarding consequential damage including loss of profit.

2. Phoenix' liability for any damage resulting from any injury to life, limb or health, for any claims arising in accordance with the Product Liability Act, for warranties (except for any damage arising as a consequence of any defect outside the warranty period) as well as for any foreseeable damage caused due to our wilful intent or gross negligence shall remain unaffected. We shall remain liable for any property damage we cause due to our slight negligence to the extent such damage is covered by our existing liability insurance.
3. We shall be liable for any culpable violation of material contractual obligations, even in case of slight negligence, however only for any foreseeable, typical damage and only up to the amount covered by our liability insurance.

#### **I. Final provisions**

1. German law shall apply; the UN Sales Convention on the International Sale of Goods shall be excluded.
2. Exclusive place of performance for both parties shall be 83395 Freilassing.
3. If the contractual partner is a merchant, a legal person under public law or a special fund under public law, the place of jurisdiction shall be Freilassing. If the contractual partner is a merchant, the statutory place of jurisdiction shall apply.
4. Should a provision of these General Terms and Conditions be or become ineffective or unenforceable, this shall not affect the effectiveness of the other provisions of these General Terms and Conditions. Such ineffective provision shall be replaced by an effective provision that comes as close as possible to the economic intent of the ineffective provision, unless non-mandatory statutory law applies. The same shall apply mutatis mutandis to any gap.

*Phoenix Implants GmbH strongly recommends the participation in advanced training courses on dental implants and strict compliance with the instructions for use enclosed with our products. The user shall be exclusively responsible for therapy planning and for the use of the product. We endeavour to continuously improve our products and therefore we reserve the right to modify, change or cease to offer certain products.*

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