

General Terms and Conditions (GTC) of the Ortho Select GmbH, October 2013

I. Application

1. These terms and conditions apply exclusively in the conduct of business with companies, legal entities under public law and public-law special funds. Conflicting or deviating GTC of the Purchaser shall not be accepted by Ortho Select unless Ortho Select had agreed to their application in writing.
2. These terms and conditions are accepted by the Purchaser when placing the order, but at the latest when the first delivery is accepted, and apply for the entire duration of the business relationship.
3. Guarantees, collateral agreements or other contractual changes required by the Purchaser only apply if expressly confirmed in writing by Ortho Select.

II. Offer, conclusion and content of the contract

1. All offers by Ortho Select are non-binding. The contract is entered into only upon written confirmation from Ortho Select according to its content, or by delivery. If the delivery is made immediately without prior confirmation of the order, the invoice shall also be deemed to be the order confirmation.
2. Call orders shall be concluded for a maximum term of 12 months, with call dates and quantities to be specified when placing the order.
3. Partial deliveries are permissible.
4. Orders should always be made in writing. Orders by telephone will be processed at the risk of the Purchaser.

III. Prices and Terms of Payment

1. Our prices are calculated in euros unless otherwise agreed. They are "ex works" plus value-added tax as well as customs, freight, packaging and insurance costs at the rate applicable on the day of delivery.
2. We reserve the right to increase our prices at a reasonable rate if cost increases, especially due to wage settlements, market acquisition prices or material price increases occur after the conclusion of the contract.
3. Invoices for deliveries of goods are, as a general rule, to be paid net without any deductions within 30 days of the invoice date. The parties may agree to other terms of payment. All payments are to be made free of charge. With checks and bills of exchange, the Purchaser has to pay the discount and collection charges as well as other bank charges even in the absence of any express agreement. Payments will first be offset against the costs, then against interest and then to the oldest principal claim.
4. The assignment of claims is subject to approval by Ortho Select.
5. Offsetting against counterclaims of the Purchaser which are disputed by Ortho Select or not legally established is excluded. The Purchaser may claim a right of retention only on the basis of counterclaims arising from the same contract.

IV. Default of payment, asset deterioration

1. In the case of late payment or deferment, an interest charge at the rate of eight percentage points above the base rate according to § 247 BGB will be invoiced to the Purchaser. If Ortho Select can prove a higher interest charge or if the Purchaser can prove a lower interest charge, the interest invoiced shall be correspondingly higher or lower.
2. If there are concrete indications of the impending insolvency of the Purchaser, Ortho Select can cease the continuation of work on current orders and demand adequate security for the fulfillment of the contract. If the Purchaser does not provide such securities in the short term, Ortho Select is entitled to withdraw from the contract and to invoice the Purchaser for the costs incurred until such time as well as lost profits.

V. Delivery time, delivery delay, impossibility

1. The delivery period begins at the earliest upon dispatch of the order confirmation, but not before full provision of the complete documentation, permissions and approvals to be provided by the Purchaser, and not before receipt of an individually agreed upon deposit. Compliance with the delivery period by Ortho Select is in any case subject to the fulfillment of contractual obligations by the Purchaser.
2. The delivery period is deemed to be complied with if, before its expiry, the contractual object has left the Ortho Select factory or if the readiness for dispatch has been communicated in writing. Call orders must always be timed so that the last delivery occurs no later than one year after receipt of the order by Ortho Select.
3. The delivery period shall be extended appropriately in the case of unforeseen events that are beyond the control of Ortho Select, such as force majeure, labour disputes, strikes, lockouts, delays in the delivery of essential raw materials, materials or parts. This also applies to war, civil war, export restrictions or trade restrictions due to a change in the political situation.
4. If there is a delay in delivery for which Ortho Select is responsible, the Purchaser may give Ortho Select a reasonable grace period in written form with the notice that he will refuse to accept the contractual object after the deadline. After expiration of the deadline without delivery, the Purchaser is entitled to withdraw from the contract in written form, or, in the case of gross negligence, to request compensation instead of performance of the contract. The same applies to performance problems that result from impossibility of performance for which Ortho Select is responsible.

VI. Delivery, shipping, packaging

1. Unless otherwise agreed, Ortho Select delivers freight collect and uninsured "ex works". The risk passes to the Purchaser once the shipment has been handed over to the person performing the transport. If a paid delivery has been agreed upon, delivery is also the Purchaser's risk.
2. If the delivery by Ortho Select shall be made to Purchasers outside the U.S./Canada, the Purchaser is obliged to conclude and maintain product liability insurance with a minimum coverage of € 5,000,000.00 if he then exports the supplied products to the U.S./Canada.
3. Packaging is done by Ortho Select in an appropriate and careful manner. Special requests concerning packaging are invoiced separately. Disposable packaging shall become the property of the Purchaser.
4. If the Purchaser withdraws from a placed order, Ortho Select may claim 10% of the sales price for the costs of processing the client's order and for lost profit, notwithstanding its right to claim higher actual damages. The Purchaser has the right to prove lower damages. The Purchaser's withdrawal from the contract is excluded in the event of special productions, sterile products and implants. This does not apply if the withdrawal is due to a defect in the aforementioned products.
5. The Purchaser is obliged to properly fulfil his inspection and complaint obligations owed pursuant to § 377 HGB. The Purchaser shall inspect the goods immediately upon delivery or pickup with a reasonable degree of thoroughness. Any defects must be reported immediately in writing. A complaint in accordance with § 377 HGB is deemed timely only if it is received immediately, at the latest within a period of five working days from receipt of delivery, at Ortho Select. Otherwise, a defect shall be deemed approved. Hidden defects must be reported immediately upon discovery. § 377 applies to services and works accordingly.

VII. Warranty, liability, obligations

1. In cases of justified complaints, payments by the Purchaser shall be withheld only on such a scale that is reasonable in relation to the defects.
2. Ortho Select is liable for duly reported defects as follows:
 - a) Parts that prove to be to be useless or significantly impaired in their usefulness as a result of causes acting before the transfer of risk are to be newly supplied or remedied free of charge, at Ortho Select's discretion by Ortho Select. Several attempts at repair or new deliveries are permissible. Replaced parts become the property of Ortho Select. The Purchaser is obliged to give Ortho Select the time and opportunity to carry out all repairs and replacements which appear necessary; otherwise Ortho Select is exempt from liability for defects.
 - b) No liability for defects will be assumed in cases of insignificant deviations from the agreed quality or for defects caused by unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear or incorrect or negligent treatment or maintenance. This also applies if the Purchaser or a third party makes repairs, damages or changes without the consent of Ortho Select that are causally related to the claimed defect.
3. If repairs or replacements are impossible, have finally failed or unreasonably delayed, the Purchaser may demand the rescission of the contract or reduction of the purchase price. Any other contractual or non-contractual claims against Ortho Select and its agents, in particular compensation claims for direct or indirect damages, lost profits, and the implementation of the warranty, are excluded unless Ortho Select is liable for intent or gross negligence or liable for compelling legal reasons.
4. Technical advice given by Ortho Select in verbal and written form as well as proposals, calculations, projections etc., merely serves to illustrate the best possible use of the Ortho Select products to the Purchaser. They do not release the Purchaser from his obligation to assure himself by his own examination of the suitability of the Ortho Select products for the intended purpose and use.
5. In the context of repairs by Ortho Select without legal obligation, such as a gesture of goodwill, the Purchaser is entitled to warranty claims only by express agreement.
6. Declarations of Ortho Select in connection with this contract do not comprise, in case of doubt, the acceptance of guarantee. Only express written explanations on the assumption of a guarantee are valid. The provision of information in the product descriptions does not represent a guarantee for the quality of the item.
7. Should the exclusion of liability for cases of ordinary negligence regulated in this section be or become ineffective, alternatively the limitation of liability on the part of Ortho Select applies to the assignment of claims arising from the product liability insurance contract concluded by Ortho Select.

VIII. Statute of limitation

1. The limitation period for claims and rights due to defects of Ortho Select products is one year. This limitation period does not apply if the law prescribes longer time limits. The statute of limitations pursuant to sentence 1 shall apply to all claims existing against Ortho Select.
2. Subsequent performance such as the delivery of non-defective goods or repair of the defect, do not cause the statute of limitations to start afresh, but only inhibit the period of limitation valid for the original delivery by the duration of such subsequent performance. The implementation of the remedy by Ortho Select does not constitute, in the case of doubt, any acknowledgment pursuant to § 212, No. 1 BGB.
3. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
4. Unless expressly provided otherwise, the legal provisions concerning the limitation period, the onset of the limitation period, the suspension, stay and recommencement of limitation periods remain unaffected.

IX. Retention of Title

1. The contractual object delivered remains the property of Ortho Select until full payment of all claims from the business relationship, and especially until all the checks or bills of exchange given in payment have been redeemed. This also applies in the case of the processing of the contractual object, which is always performed for Ortho Select as manufacturer (§ 950 BGB). For processing, combination and mixing of the contractual object with other goods, Ortho Select is entitled to the co-ownership in proportion to the invoice value of the contractual object to the value of the other goods at the time of processing, combining or mixing.
2. The Purchaser is only entitled to sell the reserved goods only within the framework of an ordinary course of business and only as long as he is not in arrears. The Purchaser is not entitled to dispose of the reserved goods in other ways (e.g. security, pledging). Upon conclusion of the contract, the purchase price or wage claims of the Purchaser arising from the resale of the reserved goods are assigned to Ortho Select in the amount of the invoice values due to Ortho Select, until the settlement of all claims, including bills of exchange. The Purchaser is permitted until cancellation to collect these receivables.
3. Ortho Select is obliged to release securities of its own choice at the request of the Purchaser to the extent that they exceed the secured accounts receivable by more than 20%.
4. In the case of breach of contract, in particular default in payment, Ortho Select is entitled to repossess the conditional goods. The Purchaser is obliged to turn these over. All costs of collection and alternative use of the subject goods are borne by the Purchaser. The utilization costs are 10% of the proceeds, including sales tax, without proof. They are higher or lower if Ortho Select or the Purchaser can prove higher or lower costs. The assertion of the reservation of ownership and the seizure of the goods supplied by Ortho Select do not constitute withdrawal from the contract.
5. The Purchaser may neither pledge nor assign the delivered goods by way of security. In the event of attachments or other interventions by third parties, the Purchaser shall promptly give written notice. Enforcement officials or third parties must be notified as to the property of Ortho Select.
6. The Purchaser must insure the reserved goods against all risks and to handle them with care. The Purchaser's claims against the insurance company resulting from a case of damage shall be assigned to Ortho Select in the amount of the value of the reserved goods upon entering the contract.

X. Legal venue, place of performance, miscellaneous

1. The legal venue is Tuttlingen. Ortho Select is entitled to also sue the Purchaser at the court responsible for his headquarters.
2. The place of performance is Wurlmlingen or the place to which the contractual subject is to be delivered according to the order, or to whom the service is provided.
3. All legal issues between the Purchaser, even if its head office is abroad, and Ortho Select, shall be limited to the law of the Federal Republic of Germany, excluding any principles of conflicts of laws as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Should any provision of these General Terms and Conditions and additional agreements be or become invalid, the validity of the remaining provisions shall not be affected. The contracting parties are obliged to replace the invalid provision by a regulation having as similar an economic effect as possible.
5. All agreements must be in writing, assurances, collateral agreements or other contractual amendments requested by the Purchaser shall apply only after written confirmation by Ortho Select.