



Valid from 01.2022

## **General Terms and Conditions of Dental Manufacturing Unit GmbH. for the Sale of Goods and Services. (in the version of January 2022)**

### **1. General**

- 1.1 The following General Terms and Conditions of Sale and Delivery are an integral part of the contract for all current and future business relationships of Dental Manufacturing Unit GmbH (in short DMU) with customers. They shall apply regardless of whether a reference is made to them or not. The term "customer" shall be understood to mean any natural or legal person entering into a business relationship with DMU.
- 1.2 The customer acknowledges the General Terms and Conditions of business as binding for him when placing an order. Deviating, conflicting, or supplementary general terms and conditions/purchasing conditions of customers shall not become part of the contract, even if acknowledged. The validity of deviating General Terms and Conditions of business of the customer is hereby rejected even if they are transmitted to us with a letter of confirmation or in any other way.
- 1.3 If conditions are agreed in writing in the contract which deviates from these Terms and Conditions of Sale and Delivery, the provisions of the contract shall prevail.
- 1.4 Agreements must always be made in writing.
- 1.5 INCOTERMS in the respective current version of the ICC (International Chamber of Commerce) shall only be deemed to be agreed upon after expressed consent on the part of DMU and to the extent expressly stipulated therein.

### **2. Offers, prices, contract**

- 2.1 The offers of DMU are subject to confirmation. A contract shall only be concluded upon written confirmation or fulfillment of the order by DMU.
- 2.2 Orders or modifications by the customer shall only be considered as accepted or binding if they have been confirmed in writing by DMU. Silence on the part of DMU shall not constitute consent.
- 2.3 For any errors in the order confirmation DMU assumes neither a duty of verification nor responsibility, unless their correction on the part of the customer takes place promptly, within 24 hours after receipt of the order confirmation.
- 2.4 Subsidiary agreements of any kind to contracts as well as the exclusion, additions, or amendments to these General Terms and Conditions must always be in writing.
- 2.5 Also by the conclusion of the contract, the customer shall not acquire any right, of any kind whatsoever, to the intellectual property or industrial property rights of DMU. Both customer and supplier undertake to protect the respective intellectual property and also any industrial property rights of DMU or its sub-suppliers. Otherwise, the customer or the supplier shall be liable for any damage resulting from the violation of this obligation.
- 2.6 The prices quoted by DMU are ex-works excluding packaging and shipping charges. The calculation of the country-specific statutory value-added tax shall be made separately in accordance with the statutory provisions in force on the day of delivery or performance. DMU reserves the right to change prices with prior notice if the goods are delivered after 3 months from the date of conclusion of the contract.



- 2.7 We reserve the right to make both technical and other changes; this refers in particular to changes in design, shape or color that are based on an improvement in technology or on requirements of the legislator. Any technical change is permissible, even after the conclusion of the contract if this does not result in any significant change in function or otherwise the customer needs to prove that this change is unreasonable.
- 2.8 All prices are quoted free carrier (FCA), duty unpaid, plus packaging and VAT in Euro unless another currency is agreed. Payments may only be made in the currency agreed for this purpose. Any additional costs (in particular transport costs) shall be borne by the customer.
- 2.9 If a currency other than Euro has been agreed with the customer and if the currency devalues against the Euro after the conclusion of the contract to an extent of 3% or more in comparison with the contractual period, DMU shall be entitled to invoice a price increase corresponding to the devaluation. For this purpose, the customer must be informed 5 days before invoicing.
- 2.10 If further service costs occur, e.g. storage charges or delivery quantity surcharges or discounts, these are to be accepted by the customer and will be invoiced to the customer.
- 2.11 For orders with a net delivery value of order (excluding extra charges such as transport costs) of less than € 200, a minimum quantity surcharge of € 20 will be charged.

### **3. Delivery - place of performance - delay in delivery**

- 3.1 The basis for the obligatory scope of delivery is exclusively the order confirmation of DMU to the respective order of the customer and the valid General Terms and Conditions.
- 3.2 Irrespective of the insurance arranged by DMU, the goods shall in any case travel at the expense and risk of the customer. This shall also apply in the case of carriage-paid delivery, irrespective of which means of transport is used or who chooses the means of transport. Costs for transport insurance shall be borne by the customer.
- 3.3 If partial deliveries are reasonable for the customer and no other alternatives have been agreed upon, partial deliveries may be made and invoiced.
- 3.4 The export of certain goods may be subject to a licensing requirement. Hereby, the customer needs to consider the relevant national and international export regulations, such as the export control regulations of the European Union. Thus, deliveries to the customer are subject to, national and international foreign trade law, legal prohibitions, or embargoes.
- 3.5 DMU shall be entitled to demand full or partial payment of the agreed purchase price or the provision of further securities by the customer before delivery to the customer in the event of a material deterioration of the customer's financial situation, irrespective of any deferral granted or acceptance of checks or bills of exchange. If the customer does not comply with this demand immediately after the principle of delivery versus payment, DMU shall be entitled to withdraw from the agreed contract after 3 months have elapsed.
- 3.6 The stated delivery date shall be deemed to be agreed only approximately and shall not be binding for DMU unless the dates have been expressly confirmed in writing by DMU.
- 3.7 The confirmation of a delivery date is subject to contractual cooperation with the customer when such cooperation is required even after confirmation of the order.
- 3.8 The stated delivery and unloading times are always non-binding unless particularly agreed otherwise in writing.
- 3.9 If the customer provides the means of transport, he shall be responsible for its punctual provision. Any delays shall be notified to DMU in due time. Any costs arising therefrom shall be borne by the customer. (e.g. lump sum in the amount of the storage costs customary at the place of performance).
- 3.10 Unless otherwise agreed, Salzburg-Austria shall be the agreed place of performance of the service.
- 3.11 Delivery shall be made exclusively for the intended use.
- 3.12 If carriage paid delivery is agreed upon at conclusion of the contract, DMU shall have the right to choose the transport route and the forwarding agent or transport company, unless this was expressly stipulated upon the conclusion of the contract.



- 3.13 Risk shall pass to the customer at the place of performance from the time when the ordered goods are ready for collection. In the case of carriage-paid delivery, the risk shall pass to the customer when the goods are dispatched.
- 3.14 The customer shall be obliged to dispose of or return the packaging under the law at its own expense and to prove this to DMU at any time upon request.
- 3.15 In case of delays in delivery by DMU, the customer shall expressly set a reasonable grace period of at least 50 working days. If DMU lets this grace period expire or declares that it cannot deliver, the Customer shall be entitled to withdraw from the contract. This declaration shall be made in writing to DMU within one week after the expiry of the grace period or after the announcement of not being able to deliver.
- 3.16 In case of subsequent changes requested by the customer, the delivery period shall be reasonably extended.
- 3.17 Delays in delivery due to force majeure affecting DMU or one of its suppliers shall cause a reasonable extension of the delivery period, but at least by the period until the hindrance ceases to exist and a reasonable start-up time. If the impediments persist two months after the expiry of the agreed delivery period, either party may withdraw from the contract. All claims for damages by the customer due to delay in delivery or withdrawal from the contract due to force majeure are excluded.
- 3.18 Events of force majeure shall be all events which are beyond the control of DMU, including but not limited to e.g. earthquakes, lightning, frost, storms, floods, war, laws, official interventions, seizures, transport disruptions, raw material or energy failure, furthermore operational disruptions due to explosions, fire, strikes, sabotage, and all other events which could only be prevented with disproportionate costs and economically unreasonable means.
- 3.19 For slightly negligent actions of DMU, liability for claims for damages of the customer arising from or in connection with a delay in delivery or resulting withdrawal shall be excluded. DMU shall in no case be liable for lost profits on the part of the customer or indirect damages due to non-compliance with a delivery date up to the limit of extreme negligence.

#### **4. Disclaimer - liability**

- 4.1 Claims for damages against DMU due to injury to life, body or health which are not based on a negligent breach of duty by DMU or an intentional or negligent breach of duty by a legal representative or vicarious agent of DMU shall be excluded. Claims for damages due to other damages which are not based on a grossly negligent breach of duty by DMU or an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of DMU shall be excluded. Claims for damages against DMU shall become statute-barred after one year from the statutory commencement of the limitation period. The above limitations of liability shall not affect any claims of the customer under product liability or under any warranties given.
- 4.2 Customers may only use the goods manufactured, imported or placed on the market by DMU for the intended purpose and must ensure that these goods (also as raw material or partial product) are only handed over for the intended use to persons familiar with the product hazards or product risks and are only placed on the market by such persons.



## 5. Terms of Payment

- 5.1 Unless payment terms have been agreed, the following shall be payable:  
40% of the price upon receipt of the order confirmation,  
60% shall be due promptly upon delivery.
- 5.2 Payments shall generally be due immediately upon receipt of the invoice and shall be made to DMU without unnecessary delay, free from any additional fees, unless otherwise agreed. The date of deposit on the account of DMU shall be decisive as payment in full satisfaction of the debt and its timeliness.
- 5.3 At DMU's request, payment may be made by cash on delivery or by direct debit. Bills of exchange and checks shall only be accepted based on special written agreements and always with the purpose of payment.
- 5.4 In case of acceptance of bankable bills of exchange, the discount or bill charges shall be borne by the customer and shall be due immediately.
- 5.5 The customer is obligated to bear all costs and expenses associated with the collection of the claim (in particular costs for reminders, collection, inquiries investigation and also for legal advice, etc.) as well as for an expedient legal prosecution.
- 5.6 In case of delay, DMU shall charge interest on arrears, which shall be fixed expressly and independent of legal regulations. These are set at 8% above the prime rate of the European Central Bank. Offsetting by the customer shall be excluded, unless with claims recognized in writing by DMU or legally established.
- 5.7 Payments for the delivered goods shall also be made if rework has to be carried out on the goods, irrespective of whether such rework falls within the warranty obligation of DMU or not.
- 5.8 Offsetting and retention of payments due to counterclaims of customers are excluded.
- 5.9 If the customer's business is no longer conducted in an orderly manner, if enforcement measures are taken against the customer, if a check or bill of exchange is rejected, or if payments are delayed or suspended, or if the customer files for judicial or extrajudicial reorganization proceedings, or if insolvency proceedings are instituted against the customer's assets, or if an insolvency petition is dismissed for lack of assets to cover costs, DMU shall be entitled to declare all claims arising from the business relationship immediately due and payable, even if bills of exchange or checks have been accepted or payment in installments has been granted.
- 5.10 The same provision as in clause 5.8 shall apply if the customer is in default with his payments or if other circumstances become known which make his creditworthiness appear doubtful. Furthermore, in such a case DMU shall be entitled to demand advance payment or provision of security, to realize securities given and to withdraw from the contract and to claim damages for non-performance. The assignment of customer's claims against DMU to third parties, as well as the transfer of rights and obligations under the concluded purchase contract, shall not be permitted without the prior written consent of DMU.
- 5.11 Deduction of discount shall always require a written agreement after the conclusion of the contract.
- 5.12 The customer shall check the correctness of the statements of account, in particular balance confirmations, as well as all other statements and notifications. Any objections to statements of account shall be reported to DMU in writing within one month of receipt.
- 5.13 If partial deliveries are necessary in case of call-off or collective orders, DMU shall be entitled to invoice them separately.



## **6. Returns**

- 6.1 Unless otherwise provided for in these general terms and conditions, the customer shall not be entitled to withdraw from the contract, exchange or return the goods for any other reason. However, a return option may be agreed upon in individual cases with purchasers who are not authorized dealers. The conclusion of such an individual agreement shall be at DMU's discretion.
- 6.2 Return of delivered goods shall only be allowed with the prior consent of DMU.
- 6.3 If the goods are nevertheless returned, DMU shall be reimbursed for all costs incurred as a result.
- 6.4 The customer shall not be entitled to any claims or other legal consequences arising from the acceptance of the returned goods.
- 6.5 In case of agreed return of goods, DMU reserves the right to charge a handling fee for the costs incurred by the return and to take into account a deduction corresponding to the age and condition of the goods when crediting the value of the goods. The amount of the deduction shall be determined by DMU.

## **7. Retention of title**

- 7.1 The delivered goods shall remain the property of DMU until full payment of the purchase price including ancillary costs and any accrued default interest, reminder and collection charges, as well as any other costs.
- 7.2 If the goods are resold, the customer shall assign to DMU the claims arising from the sale of the reserved goods. The customer shall be obliged to make the assignment recognizable by making a note in its books and, upon DMU's request, to disclose the names of the parties liable to pay the purchase price and to specify the assigned claims in detail. The assignment shall be accepted by DMU.
- 7.3 Any fees or taxes in connection with the assignment shall be borne by the customer and shall indemnify and hold DMU harmless in this respect. DMU shall be entitled at any time to disclose the assignment and to collect the assigned claims themselves. The customer is obliged to keep the reserved goods insured against the usual risks, such as natural hazards, to a sufficient extent at all times and to prove this to DMU upon request. Customer hereby assigns any insurance claims to DMU.
- 7.4 Furthermore, the customer shall store the goods following DMU's instructions and the state of art. customer is obliged to handle the goods with care and to insure them during the existence of the reserved goods. If maintenance and inspection work is required, the customer shall carry out such work regularly at its own expense.
- 7.5 The customer shall be entitled to rework as well as resell the reserved goods within the scope of the usual business activities. In the event of rework, combination or mixing of the reserved goods with other goods, a co-ownership share in the new item shall arise for DMU, namely in the event of processing in the ratio of the value (i.e. the gross invoice value including ancillary costs and taxes) of the reserved goods to the value of the new item, in the event of combination or mixing in the ratio of the value of the reserved goods to the value of the other goods.
- 7.6 In case of breach of contract by the customer, in particular, in case of default of payment, DMU shall be entitled to retrieve the goods. To retrieve the goods, DMU shall be expressly and irrevocably permitted to enter the customer's business premises or storage facilities without hindrance and to take the goods with it.
- 7.7 As far as and as long as the reservation of goods exists, the customer may not pledge goods or items produced from them without DMU's consent. Conclusion of financing contracts (e.g. leasing), which include the transfer of DMU's reserved goods, require the prior written consent of DMU unless the contract obligates the financing institution to pay the purchase price share directly to DMU. Furthermore, the purchaser is prohibited from entering into any agreements with its customers that could impair the rights of DMU.



## **8. Warranty**

- 8.1 DMU ensures solely for expressly warrants in writing as well as legally accepted properties of the contractual goods on the day of transfer of risk to the extent of the following provisions: DMU shall not be liable for defects caused by improper handling, ordinary wear and tear, storage or other acts and omissions of customer or third parties.
- 8.2 Likewise, DMU does not warrant any particular suitability or use or usability of the contractual goods, unless these would have been expressly agreed upon in writing.
- 8.3 The customer shall immediately inspect the delivered goods or the services rendered by DMU for any defects. Incomplete or incorrect deliveries or services as well as complaints about recognizable defects shall be reported to DMU in writing within 5 working days after receipt of the goods at the latest.
- 8.4 If the defects or faults are not recognizable, they must be notified immediately after their discovery.
- 8.5 In case of notice of defects, the customer shall specify the defects, explain the defects in detail and provide DMU with relevant documents. The notification shall be made in writing and exclusively to DMU (and not to any third party other than the carrier). If the notification of defects is not made following the above provisions, all warranty claims, claims for damages and other claims of the customer are excluded.
- 8.6 Until the clarification of the facts, the customer shall insure the goods properly and in accordance with the purchase price in the interest of both contracting parties.
- 8.7 In the case of justified and timely notices of defects, DMU shall, with due regard to the interests of the customer, provide warranty by improvement, granting a price reduction or replacement delivery (exchange) or take back the goods against reimbursement of the purchase price. DMU reserves the right to choose the respective warranty remedy.
- 8.8 If the replacement or improvement is impossible or involves a disproportionately high effort for DMU, the customer shall be entitled to a price reduction. Any further claims, in particular the right to rescission, damages including loss of profit or substitute performance, shall be excluded to the extent permitted by law.
- 8.9 The limitation period for warranty claims regarding new goods shall be 12 (twelve) months from the transfer of risk, for used goods 6 (six) months, unless otherwise agreed in writing, e.g. in the purchase contract. The duration of any delay in acceptance shall be deducted from this period.
- 8.10 However, the customer shall in no case be entitled to withdraw from the contract in the course of a warranty case.
- 8.11 If the defects occurred are due to circumstances for which DMU is not responsible, the warranty shall not apply. This shall apply in particular to malfunctions caused by the customer itself. The warranty shall also be void if the customer has made changes or interventions in the delivered goods unless the customer proves that the intervention was not the cause of the defect.
- 8.12 If DMU has taken action based on a notice of defect by the customer without there being objectively a defect, DMU may demand reimbursement of its expenses.
- 8.13 In the case of on-site service, the additional costs (e.g. travel, working time) shall be borne by the customer, unless otherwise agreed.
- 8.14 Other claims of any kind against DMU, in particular claims for compensation for direct or consequential damage, are - to the extent legally permissible - expressly excluded.
- 8.15 Fulfillment of a well-founded warranty obligation shall not affect any guarantee commitments made vis-à-vis third parties. Accordingly, such fulfillment shall not extend the period, neither with regard to warranty, nor concerning guarantee.



## **9. Intellectual property - secrecy**

- 9.1 as well as the copyrights for all drawings, drafts, circuit diagrams, trade secrets, source codes, object data, brochures, or other information such as illustrations, calculations, files, descriptions, reports or documents, etc.. All data transmitted by DMU shall be treated as confidential and shall not be made available to third parties under any circumstances. For any disclosure to third parties in any form whatsoever, the written consent of DMU is required.
- 9.2 In the event of a violation of these provisions for the protection of the documents, DMU shall be entitled to a penalty in the amount of twice the reasonable fee for the unauthorized use, with the right to assert a claim for damages in excess thereof being reserved. This penalty is not subject to the judicial right of moderation. The burden of proof that the customer has not used the documents of DMU shall be on the customer.

## **10. Export clause**

- 10.1 Re-exports by customer shall in any case require the prior consent of DMU.

## **11. Governing law, jurisdiction**

- 11.1 All agreements, contracts, orders, etc. shall be governed by Austrian law, excluding the norms of the IPR (International Private Law) as well as those of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract or relating to its breach, dissolution or nullity shall be the competent court in the provincial capital of Salzburg, Austria.

## **12. Waiver of rights**

- 12.1 Any failure by DMU to exercise or enforce its rights under these general terms and conditions shall not be deemed a waiver of the respective right so that the later exercise or enforcement of such right is expressly reserved.

## **13. Electronic document distribution**

Unless the customer objects in writing, documents relevant to his order (e.g. order confirmation, delivery note, invoice) shall be sent to him by e-mail or in another suitable electronic form. All transmissions to the e-mail or other electronic addresses specified by the customer shall be deemed to have been received by the customer upon sending.

## **14. Data Protection**

- 14.1 Customer expressly consents to the collection, processing, and use of personal data provided by customer or to be provided in the future by DMU for e.g. marketing purposes among others, by setting up a customer file. This consent can be revoked in writing by the customer at any time with effect for the future.



## **15. Disposal of electrical and electronic equipment**

- 15.1 The electrical and electronic equipment of DMU, are B2B products within the meaning of the Ordinance on Waste Electrical and Electronic Equipment (in short: "WEEE Ordinance"), not intended for private use and by their nature not comparable with products for private households. The customer shall be obliged to properly dispose of delivered electrical and electronic equipment within the meaning of the WEEE Ordinance at its own expense by the statutory provisions after the termination of use.

## **16. Miscellaneous**

- 16.1 Contracts or declarations of DMU shall only be legally binding if they are made by persons authorized to represent DMU (managing directors, authorized signatories, proxies) in the required number.
- 16.2 All agreements between the customer and DMU must be in writing. Verbal collateral agreements shall be invalid. Accordingly, any amendments and additions to these General Terms and Conditions shall be effective only if agreed in writing.
- 16.3 Should individual provisions of the General Terms and Conditions or individual agreements or contracts be invalid in whole or in part, all other provisions shall remain unaffected. The severability clause shall be deemed agreed upon. In the event of partial invalidity of the contract, all contracting parties undertake to replace the invalid provisions with legally compliant provisions that correspond as closely as possible to those of the invalid provisions.
- 16.4 The legal successors of the original customers are also bound by the obligations arising from contracts concluded based on these General Terms and Conditions.
- 16.5 The customer undertakes during the current business relationship with DMU to notify DMU immediately of any change in the person or the company of the customer as well as of any change in the business address.
- 16.6 DMU reserves the right to change or amend these General Terms and Conditions at any time. The amendment for each customer shall come into force upon notification and shall be valid for all further orders/deliveries from that moment on.