

## **General Terms and Conditions for**

**Whitepeaks Dental Solutions GmbH & Co. KG**  
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### **§ 1 General**

- (1) The following Terms & Conditions shall apply for all present and future business relations between Whitepeaks Dental Solutions GmbH & Co. KG (in the following “Whitepeaks”) and its customers, even if not explicitly referred to. Amending or supplementing customers’ terms & conditions shall not become part of the contract, even if not expressly contradicted in the awareness of customers’ opposing or differing terms & conditions or if delivering to customer without reservation.
- (2) All agreements regarding the execution of this contract made between us and the customer will be made in writing.
- (3) Our sales terms shall only be valid for entrepreneurs according to § 310 I BGB (German Civil Code).

### **§ 2 Conclusion of Contract, Offer Documents**

- (1) Our offer is non-binding. The purchase agreement shall only be completed when we accept your order. We have the right to accept your order within two weeks by way of sending an offer confirmation or by sending the ordered good to the customer within this term.
- (2) Drawings, pictures, measures, weights or any other performance data shall only serve for illustration and shall not be binding unless expressly agreed in writing. The good can differ here from. Possible deviations are to be accepted as far as they are not unacceptable for customer.
- (3) All property rights in pictures, drawings, calculations or other documents shall remain with us. This shall also apply for documents that are qualified as “confidential”. Customer has to obtain explicit written approval before forwarding to third parties.

### **§ 3 Pricing**

- (1) The indicated prices refer to the time when the respective price list is being published; we retain the right to change prices after this time. A price change for already agreed contracts is excluded.
- (2) Our prices are “ex work Wesel”. At customer’s express wish, delivery will be covered by cargo insurance at customer’s expense.
- (3) The given prices exclude VAT; the legally applicable VAT at time of billing will be indicated separately on the invoice.
- (4) The billed price has to be paid within 28 days after date of billing without any deduction. For consequences of late payment legal rules will apply.
- (5) The deduction of cash discount requires a separate written agreement.

#### **§ 4 Delivery and Expenses**

- (1) The beginning of the delivery period given by us implies that the customer has timely and duly fulfilled his obligations. The defence of non-performance of the contract shall remain.
- (2) Should the customer get into delay or should he culpably infringe other duties of cooperation we have the right to claim all damages arising from it, including possible additional expenses. We reserve further claims or rights.
- (3) As far as the conditions of para. (2) are given, the danger of incidental destruction or incidental deterioration of the purchased good transfers to the customer at the time he is in default of acceptance or debtor's delay.
- (4) We shall be liable according to legal requirements if the underlying contract is a time bargain according to § 286 para. 2 no. 4 BGB (German Civil Code) or to § 376 HGB (German Commercial Code). We shall also be liable according to the legal requirements pointed out, if, as a consequence of a delay in delivery we are liable for, customer can claim that he has no further interest in performance of the contract.
- (5) We shall also be liable according to legal requirements if the delay in delivery is due to a willful or gross negligent contractual breach; our agents' or representatives' fault shall be ascribed to us. Should the delay in delivery occur due to a willful or gross negligent contractual breach by us, our damages shall be limited to the foreseeable, typically occurring damage.
- (6) We shall also be liable according to legal requirements if the delay in delivery takes place due to a culpable infringement of a fundamental contractual obligation; given that case the damage shall be limited to the foreseeable, typically occurring damage.
- (7) Apart from that in case of delay in delivery we shall be liable for every week of delay within liquidated damages in the amount of 0.5% of the delivery value, capped at a maximum of 5% of the delivery value.
- (8) Customers' further legal claims and rights shall remain.

#### **§ 5 Return, Cancellation**

- (1) Customer is granted the right to return goods within 2 weeks after reception (date of confirmation of receipt by carrier, e.g. postmark), as long as he returns the goods at own expenses and undamaged and complete with original packaging. For the timeliness of the return the entry of the goods with Whitepeaks is substantial.
- (2) The right to return is excluded for all goods not listed in our catalogue or on our webpage and/or that have been manufactured or purchased individually to customer specification, as well as for any and all one-off-productions and for consumables that are not in the original packaging any more.
- (3) Customer shall bear expenses for the return of goods, unless the delivered goods do not comply with the ordered goods or if the delivered goods are severely damaged. Customer has to proof the return.
- (4) Should the customer make use of the granted right to return the goods, in order to cover costs White Peaks will charge a fee of 12% of the goods' value, at least 15. - €.

- (5) Should orders for one-off-productions be cancelled, White Peaks will charge all works performed and all parts manufactured until receipt of cancellation up to the maximum value the total delivery would have had.

### **§ 6 Warranty**

- (1) Customer's warranty claims require that he has met his statutory obligations to examine the goods and to give notice of defects according to § 377 HGB (German Commercial Code).
- (2) In case of a defect of the purchased good, we may, upon our own choice, remedy by way of repair or redelivery. In case of remedy we will bear all necessary expenses only up to the purchase price. Redelivery can also take place by way of delivery of goods with the same life ("Replacement Device").
- (3) In case of failure of remedy, customer has the right to rescind from contract or to reduce the payment.
- (4) According to legal requirements, we shall be liable if customer claims damages that are based on willful intent, gross negligence, including willful intent or gross negligence by one of our agents or representatives. In cases where we are not accused of willful intent, compensation shall be limited to the typically occurring damage.
- (5) We are liable according to legal requirements if we have culpably infringed an essential contractual obligation; but also in such cases our liability to pay compensation is limited to the typically occurring damage.
- (6) Liability for culpable injury of life, body or health shall remain unaffected; this shall also apply for mandatory liability according to the Product Liability Act (Produkthaftungsgesetz).
- (7) Unless otherwise settled above, liability is excluded.
- (8) The limitation period for damage claims is 12 months, counting from transfer of risk.

### **§ 7 Liability**

- (1) Any further liability as the liability stated in § 6 shall be excluded, regardless of the legal nature of the claim asserted. This shall especially apply for damage claims due to other breaches of obligations or due to claim of damages for property damage due to tort according to § 823 BGB (German Civil Code).
- (2) For the limitation of all claims that are not subject to the limitation due to defect of the item, a cut-off period of 18 months shall apply. The period starts with knowledge of defect and the liable person.
- (3) The limitation set in sec. (1) shall also apply if customer requests damage claims or compensation of useless expenses instead of performance.
- (4) As far as damage claims have been excluded or limited towards us, this shall also apply with regard to our employees', workers', assistants', agents' and vicarious agents' personal liability.

## § 11 Reservation of Proprietary Rights

- (1) We reserve the proprietary rights of the purchased goods until receipt of all due payments from the business relation with the customer. In case of breach of contract by customer, especially in case of default of payment, we have the right to take back the purchased good. The taking back of the purchased good corresponds to the rescission from contract. After taking back the purchased good we have the right to utilize it. The proceeds of such sale will be credited against the customer's obligation minus reasonable expenses for utilization.
- (2) Customer must treat the purchased goods carefully; he especially has the obligation to insure them at own expenses at their replacement value against fire, water and theft. If maintenance or inspection works are necessary, customer has to perform them in time and at own expenses.
- (3) In case of distraint or other intervention by third parties, customer has to inform us immediately in writing, so that we can file a suit according to § 771 ZPO (Code of Civil Procedures). If third party is not able to replace any expenses resulting due to a suit according to §§ 771 ZPO (Code of Civil Procedures) in and out of court, customer is liable for occurred losses.
- (4) Customer has the right to resell the purchased good within the normal course of business dealings; but he already assigns all claims in the amount of the net invoice (including VAT) that arise from the resell and the buyers or third parties. This is whether the purchased goods have been resold with or without processing. The customer shall remain entitled to collect the claim even after cession of claims. Our right to collect the claim ourselves remains unaffected. Nevertheless, we shall not collect the claim, as long as customer does not breach his obligation to pay from collected revenues, fall behind with his payments or refrain from paying. Should this happen, we can ask the customer to inform us about all ceased claims and the respective debtors, that he furnishes particulars regarding the collection, that he hands over the necessary documents and that he informs the debtors (third parties) about the cession.
- (5) The processing or reshaping of purchased good by the customer will always be made on our behalf. Should the purchased goods be processed with other goods not belonging to us, we acquire joint property of the new good in proportion of the purchased goods' value (net invoice including VAT) and the other processed goods at the time of processing. For the goods created through procession the same shall apply as said above for the goods delivered under reservation of proprietary rights.
- (6) Should the purchased good have been irrevocably commingled with goods not belonging to us, we acquire joint property of the new goods in proportion of the purchased goods' value (net invoice including VAT) and the other commingled goods at the time of commingling. Should the commingling take place in a way that customer's goods will be perceived as main good, it shall be regarded as agreed that customer passes the respective joint propriety to us. Customer shall hold the risen sole propriety or joint propriety for us.
- (7) Customer also ceases to us claims to secure our claims against him, that arise to a third party through combination of purchased goods with an estate against a third party.
- (8) We shall free securities that we are entitled to if customer asks us to, as far as the liquidable value of our securities exceeds the claims to be secured by more than 10%; the choice of what is to be freed is up to us.

## **§ 12 Miscellaneous**

- (1) As far as customer is merchant, our place of business shall be place of judiciary; nevertheless, we shall have the right to sue the customer at the court of his area of residence.
- (2) The laws of the Federal Republic of Germany shall apply; UN-purchase law shall be excluded.
- (3) As far as nothing else results in the order confirmation, our place of business shall be place of performance.