

## General Terms and Conditions of Business and Delivery of Thommen Medical AG

### 1 Contractual rights

The contractual rights and obligations between the customer and Thommen Medical AG, CHE-109.314.907, Neckarsulmstrasse 28, 2540 Grenchen are solely derived from the written agreements, these General Terms and Conditions of Business and Delivery and, where those do not apply, from the statutory provisions of the Swiss Code of Obligations. These General Terms and Conditions of Business and Delivery shall apply exclusively and for an indefinite period of time, unless they are amended by explicit written agreement. They shall still apply if Thommen Medical AG makes a delivery to the customer without reservation even though it is aware that the customer's terms and conditions conflict with or deviate from its own. Any other terms and conditions of the customer will not become part of the contract, even if Thommen Medical AG does not explicitly object to them. Any other terms and conditions of the customer will only be valid if Thommen Medical AG has explicitly accepted them in written form. Any side-agreements, contractual amendments, guarantees and warranties, in particular warranted characteristics, must always be made in written form. The written form requirement can only be waived by prior written declaration. The General Terms and Conditions of Business and Delivery shall apply in the version valid as of the date on which the contract was concluded.

Should a provision of these General Terms and Conditions of Business and Delivery be or become invalid, or contain a loophole, the legal validity of the other provisions shall not be affected by this. In place of the invalid provision, a valid provision which approximates the provision intended by the contracting parties as closely as possible in economic terms shall be deemed to have been effectively agreed upon from the outset. The same applies in the case of a loophole.

### 2 Conclusion of the contract

The offers of Thommen Medical AG are subject to change unless they have been explicitly designated to be "binding" and (cumulatively) include a term of acceptance. In addition, the offers of Thommen Medical AG are not directed at consumers, but only at persons who are conducting their commercial or independent professional activities when placing an order when placing an order and have the professional qualification to use the products properly (e.g. dentists, dental laboratories, etc.). Access to the e-shop as well as orders via the e-shop require prior registration. Username and password are not transferable to third parties.

The customer may place its binding order with Thommen Medical AG in writing, by fax, e-mail, telephone or through the e-shop. By placing an order, the customer is deemed to have accepted these General Terms and Conditions of Business and Delivery of Thommen Medical AG. Confirmation that orders have been received via the e-shop will be issued to the customer immediately (order confirmation). The contract is only concluded upon receipt of the written confirmation from Thommen Medical AG indicating that the customer's order has been accepted (order confirmation). The delivery as such is also deemed to be an order confirmation which constitutes the contract.

### 3 Delivery

Products listed in the catalog are normally available from stock. Goods are generally delivered from the warehouse in Grenchen (EXW CH-2540 Grenchen, Incoterms 2020). However, Thommen Medical AG reserves the right to deliver from another warehouse (such as from a warehouse outside Switzerland) (EXW, Incoterms 2020). Shipping costs shall be assumed by the customer. The customer assumes the risk of shipping. It is the customer's responsibility to insure deliveries against loss and damage.

The order is the decisive factor for the scope and performance of the delivery. As a general rule, consignments on approval or shipments of samples will not be made.

Delivery periods or delivery dates are only binding if they are explicitly established as being "binding" in written form at the time the contract is concluded. General specifications in the offer do not constitute an assurance of deadlines and dates. Delivery periods or delivery dates are deemed to have been complied with once the delivery has been dispatched or the customer has been notified that the goods are ready to dispatch by the time said periods or dates elapse. The delivery period shall be reasonably extended (even during a delay) if:

- a) Thommen Medical AG does not receive the information it requires to fulfil the contract in due time, or if the customer subsequently changes this information and thus causes a delay in the deliveries or services;
- b) hindrances arise which Thommen Medical AG cannot avert in spite of exercising due care, regardless of whether they arise at Thommen Medical AG, at the customer or at a third party. Such hindrances include events such as epidemics, pandemics, mobilization, war, riots, significant operational disruptions, accidents, labor disputes, late or defective delivery by upstream suppliers, defective goods, official measures or omissions, natural events, etc. Thommen Medical AG shall inform the customer of the beginning and end of such hindrances as quickly as possible. If the hindrance lasts longer than three months or is determined to last longer than three months, both the customer and Thommen Medical AG may withdraw from the contract; or
- c) the customer is in default with the fulfillment of its contractual obligations, in particular if the customer fails to comply with the terms of payment. Thommen Medical AG may set a reasonable deadline for the customer to properly fulfil its contractual obligations. If the deadline elapses without success, Thommen Medical AG will be entitled to withdraw from the contract.

Delay in delivery is only deemed to take place if a written reminder has been sent after the latest date on which delivery was to be made, and after the reminder, a subsequent delivery period with the same duration as the delivery period, albeit no longer than 3 weeks, has elapsed.

If shipment is delayed at the request of the customer or for other reasons for which Thommen Medical AG is not responsible, the risk shall be transferred to the customer at the time originally scheduled for delivery from the factory.

In any case, any potential claim for damages caused by delay shall be limited to the value of the (partial) delivery in question. Consequential damages caused by delay, indirect damages, costs for covering purchases, lost profits and damages from business interruption are explicitly excluded. The customer may not withdraw from the contract due to delay in delivery.

### 4 Returns

Returns at the customer's expense may be made within 5 business days after the products have been received. Thommen Medical AG will accept such returns under the following (cumulative) conditions:

- The original bill of delivery is enclosed with the return;
- the return is made to the official address of Thommen Medical AG;
- the return is made on time;
- the products are undamaged;
- the products are in the original undamaged packaging; and
- the packaging does not contain any personal notes.

If the return is unconditionally accepted by Thommen Medical AG, the purchase price already paid will be refunded by way of the payment method used (or, at the discretion of Thommen Medical AG, by another means of payment) or the open invoice will be cancelled.

If the goods are returned without the bill of delivery being enclosed, a processing fee of CHF 40 will be charged.

### 5 Notification of defects

The customer must inspect the delivery immediately and notify Thommen Medical AG in writing of any defects without delay, albeit within 5 business days after receiving the delivery. If no complaint is made, the purchased product is deemed to have been approved.

## **6 Warranty and legal guarantee**

Thommen Medical AG grants a voluntary warranty for certain products in accordance with the respective valid and applicable provisions of the Thommen Medical Warranty, which are listed on the website of Thommen Medical AG .

The statutory warranty provisions shall apply in all other respects, under the following conditions. All warranty claims of the customer must be made with a timely and formally valid notice of defects and will lapse one year after the transfer of use and risk. Warranted characteristics are only those that have been explicitly designated as such in the specifications and drawings. Damages that have not demonstrably arisen as a result of poor material, faulty design or defective workmanship, e.g. as a result of natural wear and tear, inadequate maintenance, transport, failure to follow operating instructions, excessive stress, unsuitable operating materials, chemical or electrolytic influences and as a result of other reasons for which Thommen Medical AG is not responsible are excluded from the warranty and liability of Thommen Medical AG. Thommen Medical AG does not provide any warranty for products or semi-finished products supplied by third parties or for the conformity of the products with public, private or association standards at the place of delivery or destination.

If the delivery proves to be defective and Thommen Medical AG becomes liable for warranty under the above-mentioned conditions, Thommen Medical AG shall in any case have the right to make a replacement or subsequent delivery ex works (EXW, Incoterms 2020) within a reasonable period of time, to accept the reduced value of the delivery or to subsequently remedy the defects with the product, at its own discretion. Any further claim of the customer due to defective delivery, in particular due to damages (incl. consequential damages caused by defects, or indirect damage) and withdrawal is excluded. Substitute performance by third parties at the expense of Thommen Medical AG is also excluded. If Thommen Medical AG decides to remedy the defects of which it has been notified, the customer shall give it the opportunity to do so. Defective parts shall be returned to Thommen Medical AG – at its request and only with its express consent – at the customer's expense in the condition in which they were delivered, and in the original packaging if possible. The customer shall have no further rights and claims due to defects in material, design or workmanship or due to a lack warranted characteristics.

## **7 Pricing**

Unless specified otherwise, prices are strictly net in Swiss francs, in standard packaging from stock. Prices always exclude value-added tax. Prices are subject to change at any time until the contract has been concluded.

## **8 Payment conditions**

All invoice sums are due in full for payment 30 days after the invoice date (in particular without discount deductions). The receipt of payment by Thommen Medical AG is the decisive factor in determining timely payment. If the customer does not meet the due date agreed upon, he/she shall pay default interest starting on the due date at a rate of 4% above the respective discount rate of the Swiss National Bank, without a special reminder having to be sent. Thommen Medical AG may charge dunning fees of CHF 20.00 per reminder.

In the event of any delay in payment or in the event of liquidity problems on the part of the customer, Thommen Medical AG shall be entitled to demand advance payment for further deliveries or to only deliver in exchange for payment in advance, even if other payment and delivery conditions had been agreed upon when the contract was concluded, without being in default itself. Delay in payment by the customer shall result in all claims of Thommen Medical AG towards this customer becoming due immediately. Failure to comply with the terms of payment shall entitle Thommen Medical AG to withdraw from the contract and to claim damages. Thommen Medical AG shall also be entitled to withdraw from the contract and to reclaim the goods from the customer if they have been transferred to the customer's possession before the purchase price has been paid. The customer has no right of retention.

If, after the contract has been concluded, Thommen Medical AG becomes aware of circumstances that cast doubt upon the customer's creditworthiness, or if its claim to payment is placed in jeopardy due to the customer's dwindling assets, or if the customer defaults on paying the purchase price, Thommen Medical AG may demand advance payment or a security within a reasonable period of time and may refuse performance until its demand has been met. If the customer refuses, or the deadline elapses without result, Thommen Medical AG shall be entitled to withdraw from the contract in whole or in part without itself being in default and may claim damages for non-performance.

Counterclaims of the customer may not be offset against claims of Thommen Medical AG. Claims towards Thommen Medical AG may not be assigned. Payments shall be made regardless of any possible potential complaint about the delivery or any alleged counterclaims. Retention of payment is not permitted. Thommen Medical AG is entitled to refuse to remedy any potential defects as long as the customer has not fulfilled its payment obligation. The purchase price shall also be due for payment if the customer is in default of acceptance.

## **9 Retention of title**

Thommen Medical AG retains ownership of its delivery until it has been paid for in full. As long as Thommen Medical AG retains the title exists, the customer shall refrain from all actions that could jeopardize the claim in question.

The customer is obligated to cooperate in measures that are necessary to protect the property of Thommen Medical AG. Once the contract has been concluded, the customer shall, in particular, grant Thommen Medical AG its consent to have the retention of title entered in the Registry of Retention of Title or to have analogous measures taken abroad.

Future claims arising from any resale of the goods delivered shall be assigned in advance to Thommen Medical AG in the amount of the liabilities resulting from the business condition.

## **10 Use of SPL® products**

The user of SPL® products undertakes to have read and understood all the necessary user information before using them.

## **11 Disclaimer**

- a) Thommen Medical AG only assumes liability for willful misconduct and gross negligence. Thommen Medical AG assumes no liability in any way for damages that have not occurred to the delivery item itself, such as loss of profit, incidental damages, indirect damages, special damages, consequential damages or other similar types of damages.
- b) If Thommen Medical AG is held liable for a slightly negligent breach of a cardinal contractual obligation, its liability shall be limited to the foreseeable damage typically incurred in such a contract, excluding liability for lost profits, incidental damage, indirect damage, special damage, consequential damage or other similar types of damage.
- c) In cases of impossibility of performance from the outset, Thommen Medical AG shall only assume liability if the impediment upon fulfilment was known to it, or if it was only ignorant of it due to gross negligence.
- d) The above-mentioned exclusions of liability shall not apply in the event of fraudulent concealment of defects, to liability for claims based on the Product Liability Act, to bodily injury, nor shall they apply if a quality guarantee has been assumed.
- e) Claims of the customer will be excluded if the damage is attributable to non-compliance with operating, maintenance and installation instructions for which the customer is responsible, to unsuitable or improper use, faulty or negligent handling, natural wear and tear or faulty repair.
- f) The customer shall immediately and comprehensively inform and consult Thommen Medical AG if it wishes to assert them. It shall give Thommen Medical AG the opportunity to investigate the claim.

g) Any exclusions and limitations of liability of Thommen Medical AG provided for in these terms and conditions shall also apply to the personal liability of the employees, workers, representatives, assignees and vicarious agents of Thommen Medical AG.

h) With the exception of claims arising from unlawful acts, claims for damages by the customer for which liability is limited under this clause shall lapse after one year calculated as of the statutory commencement of the limitation period.

i) These terms and conditions provide conclusive arrangements for all cases of breach of contract and the legal consequences thereof, as well as claims of the customer, regardless of the legal basis upon which they are made.

## **12 Applicable law and legal venue**

The contracting parties shall initially attempt to settle any potential differences amicably among themselves. The place of performance for all obligations arising from the sale and delivery of the products is Grenchen.

The legal relationship shall be governed exclusively by substantive Swiss law to the exclusion of the provisions of private international law (only Art. 116 of the Federal Law on International Private Law [IPRG], which explicitly permits an express choice of law such as this one, shall not be affected by this exclusion) and to the exclusion of the Vienna Convention on Contracts for the International Sale of Goods [CISG].

The sole legal venue for the customer is the registered office of Thommen Medical AG (Grenchen, Switzerland). However, Thommen Medical AG is also entitled to take legal action against the customer at the latter's own place of business or at any other court with ordinary jurisdiction.

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