

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**  
**of**  
**Vertex Dental BV**

Filed with the Chamber of Commerce in Utrecht under number 30063196

**1 General**

- 1.1 These general terms and conditions of sale and delivery shall apply to all offers, quotations and contracts made by Vertex Dental BV (hereinafter 'Vertex'), in which Vertex undertakes to deliver products to buyer.
- 1.2 The applicability of general conditions of the buyer or any other general conditions is expressly rejected.
- 1.3 Departures from these general terms and conditions will only be valid if expressly agreed to in writing by Vertex .
- 1.4 Insofar as these general terms and conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.
- 1.5 The term 'in writing' shall have the following meaning: by letter, by fax or by e-mail.

**2 Offers and conclusion of agreement**

- 2.1 All offers made by Vertex shall be free of obligation.
- 2.2 All information and data contained in product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the agreement.
- 2.3 An agreement shall come into effect once Vertex has confirmed the order in writing.
- 2.4 In the event that agreement is reached to effect payment by means of a letter of credit, the agreement concerned shall only come into effect once Vertex accepts the relevant irrevocable (confirmed) letter of credit in writing according to UCP 600. This letter of credit will be opened by a bank subject to the acceptance in advance by Vertex and will be opened at the latest five (5) working days after Vertex has sent the order confirmation.
- 2.5 Any offer made or undertaking given by a representative of Vertex shall only be binding so far as the latter confirms this in writing.

**3 Prices**

- 3.1 Unless otherwise agreed in writing, prices shall be stated in Euro, exclusive of VAT and are based on ex works, Zeist, the Netherlands (FCA, Incoterms 2000 in force at the moment of conclusion of the agreement).
- 3.2 Any price cited by Vertex shall be based on the existing monetary conditions, labour costs, procurement prices, duties, taxes and other levies, subsidies and the like prevailing at the time the agreement concerned is concluded. In the event that one or more of these cost price components increase after conclusion of the agreement but before the relevant products have been delivered, Vertex shall be entitled to pass on any reasonable price increase to the buyer.

**4 Delivery**

- 4.1 The terms and conditions of delivery shall be agreed per transaction. All terms and conditions of delivery shall apply in accordance with the Incoterms 2000.
- 4.2 Delivery times shall be determined per transaction. The delivery time shall commence at such time as the relevant agreement is concluded, all official formalities have been completed and

Vertex has also accepted any security for payment which may have been agreed or have received any prepayment. Unless otherwise agreed, a specified delivery time shall under no circumstances be deemed to constitute a fatal date. Vertex shall not be in default in respect of such delivery time until the buyer notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which Vertex has the opportunity to effect delivery, and the latter still fails to do so.

- 4.3 Vertex shall not be liable for any harm due to late delivery if and insofar as this is attributable to circumstances beyond Vertex's control and sphere of risk, which is deemed to include late or non-compliance on the part of its suppliers or the transport company it engages.
- 4.4 The buyer's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending Vertex's duty to effect a delivery.
- 4.5 Unless otherwise agreed in writing, the buyer shall at his own risk and expense provide for all permits, licenses, dispensations and/or approvals required for the importation of the products.
- 4.6 Vertex reserves the right to effect a delivery in parts. Each partial delivery shall be deemed to represent a separate agreement. Vertex shall be entitled to demand payment for each partial delivery before proceeding with any other.

## **5 Payment**

- 5.1 Vertex shall at all times have the right to demand full or partial payment in advance. As to all other sales, terms of payment shall be determined per transaction.
- 5.2 In the event that payment is not effected on time, the buyer shall be deemed to be in default without the need for any notice of default or judicial intervention, and he shall be charged the statutory interest for business transactions over the amount due per month or part of one, as well as all of the expenses involved in collecting his debt, both judicial and extrajudicial. The extrajudicial costs owed will never be less than 15% of the sum to be collected subject to a minimum of € 200,-.
- 5.3 Furthermore, subject to any other rights Vertex may have pursuant to the law or the agreement, in the absence of timely payment it shall be entitled either to suspend further delivery or to terminate all or part of the relevant agreement without the need for a notice of default or judicial intervention, such as its own discretion and subject to Vertex's right to seek compensation for any harm it has suffered.
- 5.4 At any rate, the entire purchase price shall fall due with immediate effect in the event that the buyer fails to effect timely payment or if he goes bankrupt, is granted a suspension of payments, is placed in the care of a guardian, his possessions are attached, he dies insofar as he is a natural person, or in the event that the buyer's business is liquidated or dissolved.
- 5.5 Upon or after entering into the agreement and before its implementation, Vertex will be entitled to demand a guarantee from the buyer that both the payment obligations and any other obligations arising from this agreement will be fulfilled. Refusal by the buyer to provide the required security gives Vertex the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to dissolve the contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

## **6 Retention of title**

- 6.1 Where delivery occurs before payment of the entire amount owed pursuant to the agreement, the products supplied shall remain the property of Vertex until all that is owed for the supply of those products, including any collection costs and interest, as well as any amount payable due to the buyer's failure to comply with his obligations pursuant to this agreement or any other, is paid in full.
- 6.2 Until title to the products passes to the buyer, he shall not be entitled to transfer title to them to a third party, to tender them by way of security, to encumber or to pledge them, or to place them at the disposal of a third party in any other way. Nevertheless, the buyer shall be entitled to sell these products in the normal conduct of his business. The buyer shall at all times help Vertex exercise its right of ownership. As long as retention of title applies, the buyer shall have a duty to grant Vertex access to his buildings and premises.
- 6.3 When first so requested by Vertex, the buyer shall be obliged to pledge to Vertex any accounts

receivable he acquires in respect of products supplied by Vertex which are subject to retention of title and have been sold to his buyers.

## **7 Complaints**

- 7.1 The buyer is obliged to check the products upon delivery for any visible and/or immediately observable defects. If the buyer fails to report defects within eight working days after the date of delivery, the buyer will be considered to have approved the products supplied and complaints will no longer be considered. Defects which can only be observed at a later stage, shall be reported to Vertex immediately after discovery but not later than five months after the date of delivery.
- 7.2 Claims regard of number, measure or weight must be submitted together with copies of the invoices, the freight- and delivery documents. Other claims must be accompanied by the respective product or a sample.
- 7.3 In case of damage to the products, the buyer must make, immediately upon delivery, a remark on the transport-document undersigned by the driver in question of which a copy must be submitted as evidence.
- 7.4 The product can only be returned for the account and risk of the buyer and only after prior written permission has been obtained from Vertex. Any transport for returned product will be organised by Vertex.
- 7.5 Unless otherwise agreed in writing, a complaint shall not suspend the buyer's payment obligation, not even if Vertex approves a return.
- 7.6 The complaint must contain a description of the defect and Vertex must upon first request be given the opportunity to investigate the complaint.

## **8 Warranty**

- 8.1 Vertex warrants the products to be free from any defects in material and workmanship.
- 8.2 If and insofar as any products or any part do not comply with the agreed quality requirements, Vertex shall, acting at its own discretion, either replace or repair them or shall take back the defective products according to the extent of the faulty delivery and credit the buyer for the purchase price, assuming that the buyer has lodged a complaint in accordance with the provisions of Article 7 and Vertex has acknowledged this complaint.
- 8.3 Any parts that become available as a result of a replacement, shall remain/become Vertex's property.
- 8.4 No warranty shall apply in the event that:
  - The product is not properly maintained or is not used in accordance with its operation manuals and instructions;
  - The product has been subjected to faulty repair or modifications by the buyer or third parties;
  - The defect is caused by a circumstance primarily located or originating outside the product;
  - The alleged defect is the result of normal wear and tear; or
  - Buyer has continued to use the product after the discovery of the defect, unless prior written permission of Vertex for continuous use has been obtained.

## **9 Liability**

- 9.1 Except in the case of legal liability pursuant to provisions of mandatory law and a deliberate act or omission, or gross negligence on the part of Vertex, any liability of Vertex for any damage, among which any direct or indirect damage, consequential damage or lost profits, is excluded.
- 9.2 The aggregate liability of Vertex to buyer under any theory or ground shall at all times be confined to the net invoice value of the product concerned or to that part of the net invoice value to which a claim for compensation is directly or indirectly related. Total compensation for damage payable by Vertex shall in no event exceed € 500.000,- per event, whereby a series of related events will be considered as a single event.
- 9.3 The buyer shall indemnify Vertex against any claim made by a third party in respect of which Vertex is not liable under these terms and conditions.

**10 Force majeure**

- 10.1 In the event of war, civil unrest, rioting, fire, other disasters and any other circumstances beyond Vertex's control irrespective of whether or not this occurs on its premises, those of its suppliers or the transport company it engages, or in the event of any change in circumstances of such a nature that Vertex cannot reasonably be required to fulfil its obligations, Vertex shall be entitled to withdraw its quotations, suspend deliveries or terminate any relevant agreement without judicial intervention, and it shall not be required to provide any compensation.
- 10.2 In the event that Vertex relies on force majeure, it shall immediately notify the buyer thereof in writing, and also of the cessation thereof.
- 10.3 Where Vertex has already executed part of an agreement, the buyer shall pay the purchase price for any products that have been delivered.

**11 Suspension and termination**

- 11.1 In the event that the buyer fails to comply with his obligations pursuant to an agreement into which he has entered, or fails to do so properly or on time, if there are grounds to fear that this will occur, or in the event that the buyer applies for a suspension of payments, files for bankruptcy or liquidates his business, Vertex shall be entitled to suspend or terminate the agreement concerned without the need to give notice of default or for judicial intervention, and it shall not have a duty to provide any form of compensation.
- 11.2 Any claim on the part of Vertex pertaining to a part of the agreement which has already been executed, or harm suffered as a result of its suspension or termination, which shall be deemed to include loss of profit, shall fall due with immediate effect.

**12 Intellectual property rights**

- 12.1 Vertex reserves all of its intellectual property rights in connection with the products which it supplies.
- 12.2 The buyer shall not be permitted to modify all or part of any product supplied, or to affix any other trademark to it, to use the relevant mark in any other way, or to register it in his own name.
- 12.3 In offering or delivering products similar to Vertex's products, in price lists and promotion material and in any promotional activity, the buyer shall refrain from any reference to Vertex's products, from the use of the word 'loco' or any equivalent thereof, and of any other reference to Vertex's products be it by using any trade mark or trade name belonging to Vertex.
- 12.4 When the buyer processes raw materials delivered by Vertex, he shall refrain on the goods processed, in printed matter or advertisements etc. from the use of any denomination given to those raw materials by Vertex. Every statement that buyers' product contains any raw material or component delivered by Vertex is subject to Vertex's prior written consent.

**13 Governing law and forum**

- 13.1 These general terms and conditions and any agreements entered into by Vertex shall be solely governed by and construed in accordance with the law of the Netherlands.
- 13.2 In case of any dispute the competent court in Utrecht, the Netherlands, will be entitled to deal with the dispute unless Vertex would elect to submit the dispute to competent courts elsewhere.
- 13.3 The provisions of Clause 13.2 leave intact the right of Vertex to obtain a settlement by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Amsterdam, the Netherlands. The arbitral procedure shall be conducted in the English language.