



## **GC Tech. Europe GmbH General Terms and Conditions of Sales**

### **1. Scope**

Any sales contract entered into by GC Tech. Europe GmbH ("GC") and a buyer ("the Buyer") is exclusively governed by, in decreasing order of priority, any written agreement, the present general terms and conditions of sales and German law. These general terms and conditions shall replace all previous versions, shall be strictly interpreted, and the Buyer fully renounces the application of its own general terms and conditions.

The fact that GC does not invoke or does not try to enforce these general terms and conditions does not imply any waiver of the present terms and conditions. Any waiver or any deviations by GC will only be valid in writing.

Any agreement entered into by GC shall only be binding when executed or confirmed in writing by a competent representative of GC.

### **2. Offers**

All orders shall be placed in writing to GC and are irrevocably binding upon the Buyer.

A binding agreement comes into force between GC and the Buyer upon signature of the order confirmation by GC, a written confirmation and acceptance of a received order, or any other clear and written agreement.

GC offers are subject to possibilities for delivery and prior sale. Thus, offers are only binding if expressly stated by GC, and remain in any case valid for one month, unless indicated otherwise.

Should GC exceptionally accept in writing to cancel an order placed by the Buyer, the Buyer shall pay to GC a lump-sum indemnity of 15% of the total price of the cancelled order, without prejudice of GC's right to claim additional damages.

The signatory who places an order in his or her own name or in the capacity of mandatary, or who fully or partially pays for the order, even on behalf of third parties, acts in the name of these third parties and commits itself jointly and indivisibly with them.

### **3. Price**

Applicable prices are those that appear on the GC price list at date of acceptance of the purchase order. All prices are deemed plus the statutory value added tax. The prices are subject to increase at any time in the case of (i) a demonstrable increase in [raw material and component] prices and/or (ii) an increase in government levies on the ordered products. In such cases, the new price structure shall be notified to the Buyer in writing or by e-mail at least two weeks before coming into force. In all other cases of price increase, the new price structure shall be notified to the Buyer in writing or by e-mail at least three months in advance.

If the Buyer does not accept the new price, it has the option to terminate the agreement by registered letter, seven (7) days after the notification of the price increase. If GC has not received this notice of termination by the time the new price structure comes into force, the Buyer is considered to agree with the new price structure.



All taxes, duties and/or levies that concern the delivered goods or their transport, of whatever kind, including new taxes, duties and levies that might be introduced after the conclusion of the agreement, are fully for the expense of the Buyer.

For sales to distributors, no shipping costs will be charged for any orders with a value as of 5.000,00 EUR. For sales to any other buyers, no shipping costs will be charged for any orders with a value as of 250,00 EUR.

#### **4. Payment**

In the absence of a written agreement otherwise, the invoices of GC are payable no later than thirty (30) days after the invoice date. In the event of full or partial non-payment of an invoice by the due date, the Buyer owes default interest on the unpaid invoice amount whereas the interest rate is 9%-points above the respective base lending rate of the European Central Bank. In case GC is in the position to prove higher damages on default, GC is entitled to assert these. Furthermore, GC retains the right to suspend further deliveries and installations and/or terminate the agreement without prior notice of default for all of the portion not yet executed, without prejudice to the damage compensation owed by the Buyer. Finally, GC retains the right to claim back the goods sold in the case of non-payment.

If GC would have doubts at any time concerning the creditworthiness of the Buyer due to legal actions taken against the Buyer, due to non-payment or late payment of one or more invoices, and/or any other demonstrable event, GC explicitly retains the right to demand prior payment for deliveries yet to be made, or demand (other) guarantees, even if all or part of the goods have been sent.

The Buyer is only entitled to rights to offset if its counterclaims have been determined final and binding or have been confirmed by GC. The Buyer can only exercise a right of retention if its counterclaims are based on the same contractual relationship.

#### **5. Delivery**

The communicated delivery times are purely indicative. GC is not responsible for indirect damage resulting from late delivery or lack of delivery. If the delay in delivery lasts more than thirty (30) days, the Buyer has the right to cancel the purchase by registered letter without judicial intervention. Any advance payment made by it will be refunded. The Buyer explicitly renounces any other possible means of redress, in particular the awarding of any form of damage compensation. Compliance with GC's delivery obligation presumes the timely and proper satisfaction of the Buyer's obligations.

GC retains the right to make partial deliveries. The partial delivery of an order may never serve as justification for the refusal to pay for the goods delivered.

The goods sold shall be delivered in accordance with the Incoterms 2020 CIP, unless expressly agreed otherwise. The Buyer is obliged to receive the goods delivered by a carrier on behalf of GC at the agreed time, and to foresee the required space so that the goods can be delivered. The carrier shall deliver the goods to the ground floor of the registered office of the Buyer, unless agreed otherwise. Upon delivery, the Buyer shall sign the delivery note in acknowledgement of receipt. However, the risk shall transfer from GC to the Buyer at the point where the goods are taken in charge by the carrier.



Title to the goods shall only pass to the Buyer when full payment (including accessories) of the invoice for the aforementioned goods has been made. The Buyer has to notify GC immediately in writing in case of attachments or other interventions of third parties so that GC is able to file an action according to § 771 ZPO (German Code of Civil Procedure). For the duration of the retention of title, the goods are to be insured by the Buyer against fire, water, theft and burglary theft; the rights from these insurances will be assigned to GC which accepts these assignments. In case the Buyer resells the goods, the Buyer will grant an extended retention of title to GC. The Buyer shall however be entitled to collect this claim towards the Sub-Buyer while GC retains the right to collect the claim itself.

## **6. Returned goods**

In the event that the Buyer wishes to return goods to GC, the following rules apply:

- No returned shipment of goods shall be accepted without prior written notice (return request) and respective prior approval by GC European Sales Manager;
- The returned goods shall only include goods directly purchased by the returning party from GC;
- The return shall be requested at the latest one month after receipt of the goods by the Buyer;
- In the event of a complaint request, any used implant has to be sterilized by the Buyer, for example in an autoclave; the complaint request must be accompanied with a completed Aadva™ Implant Complaint Questionnaire (if the product is an implant);
- Any return request must be accompanied with an xls listing of the goods mentioning the following:
  1. Article No
  2. Description
  3. Quantity
  4. LOT No.
  5. Expiry date
  6. Reason for complaint
  7. Information about desired replacement (with Article No. and Quantity)
- All returned goods shall have a remaining shelf life of minimum 14 months from the receipt of the returned goods at GC;
- The goods must be in a resalable condition, which includes but is not limited to the following:
  1. No dealer stickers
  2. Undamaged, clean original packaging
  3. Closed & sealed packages
- In the event that the return of the good is justified, i.e. approved by GC European Sales Manager due to e.g. upselling, product switch with upselling, product exchange with upselling or the like, the returned good is subject to a 15% return fee of the original price.
- In the event that the return of the good is unjustified, i.e. none of the aforementioned reasons are given, but the return is approved by GC European Sales Manager though, the returned good is subject to a 30% return fee of the original price.
- In case of an unannounced return (= no approval by GC European Sales Manager), no credit note will be issued. In this case, the Buyer has the choice of either getting the returned goods back at his expense or leaving it up to GC to dispose about the returned goods without any credit and at his expense.



**7. Compliance with the Laws applying to Medical Devices**

In the event that the sold products are medical devices, the Buyer shall observe all applicable legal provisions (laws, rules, regulations or applicable orders), particularly the requirements of the medical device legislation, with regard to the storage and distribution of the products. Especially the compliance with the Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC, is to be highlighted in this context.

In particular, the Buyer shall ensure the traceability of the products according to Article 25 of Regulation (EC) 2017/745 so as to enable products to be recalled if necessary. The Buyer shall document any data necessary to trace the medical device products, like for example UDI number as well as date, place and person of delivery or application (dentist, distributor or patient), and shall hand out or inform the dentist to hand out this relevant information to the patient who has received or has been treated with the medical device as far as it is an implantable medical device. The Buyer shall pass on this obligation to further distributors in the case that the Products are being sold from a distributor to another distributor.

If the Buyer is distributor of the products, it shall undertake to further abide by the general obligations set out for distributors in Articles 14 and 16 of the Regulation (EU) 2017/745. In particular, a distributor shall ensure that, while a medical device is under its responsibility, storage or transport conditions comply with the conditions set by GC. Furthermore, if a distributor considers or has reason to believe that a device which it has made available on the market is not in conformity with this Regulation due to any risks/problems/malfunctions, it shall immediately inform GC in writing. The distributor shall cooperate with GC and with competent authorities to ensure that the necessary corrective action to bring that device into conformity, to withdraw or to recall it, as appropriate, is taken. Where a distributor considers or has reason to believe that the device presents a serious risk, it shall also immediately inform the competent authorities of the Member States in which it made the device available, giving details, in particular, of the non-compliance and of any corrective action taken.

Buyer`s complaints that are received will be processed to GC, any distributor involved shall provide assistance if required. Any distributor shall keep a register of complaints, of non-conforming devices and of recalls and withdrawals, and keep GC informed of such monitoring and provide them with any information upon their request.

A distributor shall, upon request by a competent authority, provide it with all the information and documentation that is at its disposal and is necessary to demonstrate the conformity of a medical device.

**8. Force majeure**

In the case of force majeure, the obligations of the affected party with respect to the other party are suspended. By force majeure is understood the situation in which the execution of the agreement by one of the parties is fully or partially prevented, whether temporarily or not, due to circumstances outside the will of this party, even if this situation was already foreseen at the time of the formation of the agreement. This includes but is not limited to war, mobilization, strikes, lock-outs, official decrees. In this case, the parties will take all reasonable efforts to limit the effects of the situation



of force majeure. If the situation of force majeure should last more than two months, the other party is entitled to cancel the agreement without the intervention of a court, without the party appealing to force majeure being obliged to pay any compensation to the other party.

Inasmuch as the obligation of the Buyer with respect to GC is in essence a payment obligation, force majeure on the part of the customer is hereby excluded.

**9. Complaints and warranty**

Possible visible defects must be mentioned on the delivery note at the time of delivery or reported in writing by registered letter within eight (8) working days following the delivery, in which the Buyer must describe the defects in detail and include clear photos.

Other defects that remain hidden, despite proper inspection of the goods at the time of the delivery, must be reported immediately by registered letter and no later than five (5) working days after their discovery, on pain of lapse of right of recourse. This notification must contain a detailed description of the defect and clear photos must be included. The goods shall be deemed as approved if the obligation for inspection and reporting of defects is not being fulfilled by the Buyer.

The statute of limitations for claims relating to defects is one (1) year.

Except in the case of fraudulent intent and in the case of the issue of a guarantee for the quality, any other warranty for material defects - and then in accordance with the provisions of the following paragraph - is excluded.

**10. Liability**

The Buyer may claim damage compensation only in the case of serious or intentional error on the part of GC.

GC is not liable for nor can it be obliged to pay compensation of immaterial, indirect or consequential loss, including but not limited to loss of profit, production restrictions, lost savings, damages, personnel costs, administrative costs, claims by third parties.

Insofar as GC depends on the cooperation, services and supplies of third parties in the execution of its obligations, it cannot be held liable for any damage resulting from their error, including serious or intentional error.

In the event that the goods sold by GC would exhibit defects, the Buyer may only claim repair or replacement of the delivered goods, without the Buyer being entitled to claim any form of damage compensation.

The Products, its labels, instructions for use and warnings will be designed, translated, tested and approbated for use in the countries of the EMEA (hereinafter "Territory") only. The Buyer understands and accepts that the Products are not designed for use outside the Territory. To the extent permissible by law, GC accepts no responsibility or liability for any damage or loss caused by the Buyer's sale of the Products outside the Territory. GC can further claim direct and indirect damages of any kind arising from or in any way connected with the sale of its products outside the Territory.

All clauses which restrict the free movement of goods within the European Economic Area or subject it to special conditions are void.

Except as otherwise limited under the present conditions, GC's liability in respect of any failure to perform any provision of any contract and/or of the present conditions,



shall be limited, per event, to the turnover realized by GC with the sale of goods to the Buyers during the twelve (12) months preceding the date of failure or, if the contractual relation has lasted for less than twelve (12) months, to the projected yearly turnover based on the turnover realized until the date of failure.

**11. Applicable laws and jurisdiction**

All agreements to which these general terms and conditions apply, as well as all other agreements that result, are governed exclusively by German law. Application of the Vienna Sales Convention of 11 April 1980 is explicitly excluded.

All disputes between parties concerning agreements subject to these general terms and conditions belong exclusively to the competence of the courts of Hagen, Germany.

**12. Severability Clause**

In the event that any provision of this Agreement would be held to be illegal, void or unenforceable for whatever reason, such provision shall be deemed severable and of no effect whatsoever upon the other provisions. In such case, the parties shall without delay enter into good faith negotiations and proceed to the necessary modifications in a way that respects, as far as possible, the agreement of intentions that existed at the moment of execution of the present Agreement.