

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

Coltène/Whaledent AG, 9450 Altstätten, Switzerland, www.coltene.com

## 1. General

These General Terms and Conditions shall be binding for all deliveries by Coltène/Whaledent AG.

Acceptance of the order and conclusion of the contract to supply goods shall take place exclusively by means of a written confirmation of the order based on these General Terms and Conditions of Sale and Delivery. Transactions concluded by our representatives shall also be subject to these provisions. Agreements to the contrary shall require the express written consent of Coltène/Whaledent AG. Taking delivery of the goods shall be deemed acceptance of these General Terms and Conditions of Sale and Delivery even if they were previously refused by the customer. Customer's contrary or additional general terms and conditions or differing purchasing terms shall not be accepted even if designated the only applicable terms and conditions. They shall not become part of the contract, even if not expressly opposed by us.

Coltène/Whaledent AG products shall be used only in accordance with the manufacturer's directions and in compliance with statutory and official regulations.

## 2. Prices

Prices shall normally be subject to change and net in Euro ex works Altstätten exclusive of transport packing, unless otherwise stipulated in writing. In the case of deliveries with a net value of less than 500 Euros, Coltène/Whaledent shall be entitled to charge a mark up for small-volume purchases of 30 Euros.

Goods ordered under this Agreement shall be sold to enduser in the agreed territory only. The distributor agrees not to disclose the agreed conditions and prices.

## 3. Delivery Periods

Quoted delivery periods are approximate and not binding. Overruns shall not entitle the customer to compensation nor withdrawal from the contract. In cases of force majeure (e.g. acts of war, accidents, transport disruptions, strikes, lockouts, etc.) and in cases of labour, energy or raw material shortage or official orders, Coltène/Whaledent AG shall, without liability for damages, be released from the obligation to meet delivery dates and abide by prices and shall be entitled to withdraw from the contract in full or in part without any compensation claim thereby accruing to the customer. The same shall apply if Coltène/Whaledent AG suppliers or subcontractors do not deliver on time and in proper form.

## 4. Packaging and Transport, Passing of Risk

The immediate sales packaging is included in the price. Transport packing, on the other hand, will be charged for separately.

Coltène/Whaledent AG shall organise dispatch and transport to the best of its judgment but does not guarantee the use of the cheapest means of carriage or transport. Goods are normally shipped at the customer's expense (ex works, see Incoterms 2010)

Coltène/Whaledent AG reserves the right to deliver up to 10% more or less than the quantity ordered.

## 5. Period for Payment

Unless otherwise stipulated in writing, the period for payment shall be 30 days net from date of invoice. In case cash discounts is requested, prices have to be increased by the corresponding amount. Bill of exchange and cheque payment charges and bank transfer expenses shall be borne by the customer. If the stipulated terms of payment are not observed, Coltène/Whaledent AG shall be entitled to charge the customer interest and expenses from the due date to the date of receipt of payment without any need for a special reminder or formal notice of default. In this case, the customer shall pay default interest of 10 % (ten per cent). Coltène/Whaledent AG reserves the right to assert further claims.

## 6. Retention of Title

Goods sold shall remain the property of Coltène/Whaledent AG until all debts have been paid. The customer hereby unreservedly consents to registration of the reservation of title by Coltène/Whaledent AG in the relevant register at the appropriate place.

The customer shall keep the goods delivered subject to retention of title securely in safe custody on behalf of Coltène/Whaledent AG free of charge.

## 7. Warranty

Within the framework of these Terms and Conditions of Sale and Delivery, Coltène/Whaledent AG warrants perfect quality products. Warranty periods/expiry dates shall be stated on the packaging, user information or leaflet, according to the product. Application advice on Coltène/Whaledent AG products, whether verbal, written or by demonstration, shall be provided according to the best knowledge of the current state of the art in dentistry and shall be understood as non-binding information. This shall also apply with regard to safeguarding of any third party industrial property rights which is not warranted. Application advice shall not release the user from the duty of personally examining the products to assess their suitability for the intended purpose and procedure. This shall apply in particular to application in a procedure not expressly recommended. Application, use and processing shall take place outside the control of Coltène/Whaledent AG and under the user's responsibility.

## 8. Complaints

All complaints must be notified to Coltène/Whaledent AG in writing within 10 days from arrival of the goods at the destination at the latest and in the case of hidden defects within 10 days from discovery. If a justified complaint is made about the quality of the supply or goods and the defects are not due to damage in transport, the goods shall at Coltène/Whaledent AG's option be replaced or a credit note shall be issued. Shortfalls shall be made up if possible; otherwise a credit note shall be issued. Coltène/Whaledent AG reserves the right to make a handling and restocking charge of 20% on goods which are returned if they were ordered in error or are no longer required. All returned goods must be originally packed. If the goods are faulty then the restocking charge will not apply.

Apart from the right to replacement or a credit note the customer shall have no other claims, including but not limited to claims for reimbursement of freight charges, or for compensation of direct or indirect damage (such as loss of profit, loss of sales, damage caused by default, etc.).

## 9. Returns

Returns to Coltène/Whaledent are excluded. Returned consignments received by Coltène/Whaledent without the latter's consent shall be destroyed at the sender's cost.

## 10. Prohibition of Retention and Set-off

Retention of payments or set-off of Coltène/Whaledent AG's claim for payment of the purchase price against the customer's claims or counterclaims of any kind not expressly recognised by Coltène/Whaledent AG shall be excluded.

## 11. Place of Performance and Place of Jurisdiction

The place of performance for all deliveries governed by the contractual relationship between Coltène/Whaledent AG and the customer shall be Altstätten, Canton of St. Gallen, Switzerland. The place of jurisdiction shall be the business domicile of Coltène/Whaledent AG. However, Coltène/Whaledent AG reserves the right to sue the customer for claims or debts due at the place of jurisdiction for the customer's registered office or residence.

## 12. Invalidity, Amendment to these General Terms and Conditions of Sale and Delivery

Should any individual provisions of these General Terms and Conditions of Sale and Delivery be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision or stipulation that approximates as closely as possible to the meaning and purpose of the invalid provision.

Coltène/Whaledent AG reserves the right to amend these General Terms and Conditions of Sale and Delivery at any time without giving reasons. The version valid at the date of order shall apply in each case. Otherwise, any deviations from these General Terms and Conditions of Sale and Delivery shall be valid only if set down in writing.

## 13. Applicable Law

The contractual relations between the customer and Coltène/Whaledent AG shall be governed exclusively by these General Terms and Conditions of Sale and Delivery and, subsidiarily, by the provisions of the Swiss Code of Obligations. The validity of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.