

# TERMS AND CONDITIONS

## 1. Scope, Contractors

- 1.1 The following General Terms and Conditions („Terms“) shall apply to all offers and legal transactions of Amann Girrbach AG („AG“) to / with its contractors („Customers“), purchasing any products and/or obtaining services („Products“) from AG.
- 1.2 AG delivers its goods and provides its services only based on these Terms. Any deviations from the Terms, including but not limited to the applicability of any general terms and conditions of Customer, require written form and acknowledgement by AG in order to be effective.
- 1.3 If Customer has concluded an agreement with AG, the terms of the respective agreement shall prevail in case of a contradiction between the Terms and the terms of the agreement. The Customer's commercial terms and conditions, including but not limited to terms and conditions of purchase, shall not apply. AG is not required to object to these terms.

## 2. Conclusion of Contract

- 2.1 The scope of performance is regulated by the agreement concluded between AG and Customer („Contract“).
- 2.2 Offers, information and cost estimates, issued by AG, shall not be binding unless agreed otherwise.
- 2.3 Any orders placed by Customer are subject to confirmation by AG.

## 3. Price and Payment

- 3.1 All prices are ex works (Incoterms 2010) and do not include any statutory value added tax (VAT).
- 3.2 Prices shall be payable free of any deduction, unless agreed otherwise.
- 3.3 Unless agreed otherwise, payments shall be made by a prepayment or an irrevocable and confirmed commercial letter of credit, issued by a major reputable bank satisfactory to AG. Customer shall bear any payment costs.
- 3.4 If Customer fails to meet the payment terms or any other obligation arising from any transaction, AG may without prejudice to its other rights:
  - a) suspend performance of its own obligations until payments have been made or other obligations fulfilled, and exercise its right to extend the period of delivery to a reasonable extent,
  - b) call in debts arisen from this or any other transactions as well as to charge default interest of 1,25 % per month plus value added tax for these amounts.
 In any case AG has the right to invoice all expenses arising prior to a lawsuit out of court, especially reminder charges and lawyer's fees.
- 3.5 Customer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by AG.

## 4. Delivery

- 4.1 Unless agreed otherwise, AG shall deliver ex works (Incoterms 2010).
- 4.2 The specified delivery dates shall be subject to change, i.e., shall be non-binding. Therefore, compensation claims of all types with reference to delivery periods or dates shall be excluded.
- 4.3 Binding delivery times must be expressly agreed in writing. Compliance with binding delivery times shall require that all commercial and technical questions between AG and Customer have been clarified and Customer has met any and all obligations incumbent upon it, e.g. provision of the documents to be procured by it, other materials, permits or releases, or payment of a down payment or prepayment. Should Customer fail to meet its obligations, AG shall be entitled to reasonably extend the delivery time.
- 4.4 In the event of force majeure or other unforeseen incidents outside AG's responsibility, including, without limitation, natural events, strike and lockout, acts of public authorities, the deadline for delivery may reasonably be extended by AG. In case the delivery of Products becomes impossible due to an event of force majeure or other unforeseen incidents as defined in this Section 4.4, AG shall be entitled to unilaterally rescind the Contract.
- 4.5 Partial deliveries are permitted and can be invoiced separately. Customer shall not be entitled to reject partial deliveries.
- 4.6 No Products may be returned without AG's express written permission, as evidenced by the issuance of a return authorization. Risk of loss or damage to Products returned to AG shall remain with Customer until they are received by AG. Medical Devices cannot be returned or credited. Products that have not been stored in a sanitary manner or in accordance with the Products' storage recommendations cannot be returned or credited.

## 5. Retention of title

- 5.1 The delivered Products shall remain the sole property of AG until full payment of all invoiced amounts including interest and charges by Customer (retention of title, „Retained Goods“). In case the delivered Products contain software, AG grants Customer only a revocable non-exclusive and non-transferable right of use.
- 5.2 Customer shall be entitled to resell the Retained Goods in the course of regular business and only subject to this reservation under Section 5.1. Customer herewith assigns its claims out of any resale of Retained Goods to AG in order to secure AG's claims. AG hereby accepts such assignment. The same shall analogously apply in case of finishing or processing, combining or mixing.
- 5.3 Upon request, Customer shall notify AG without undue delay and in writing of to whom it has sold the Retained Goods and the receivables that vest in it as a result of sale, and shall furnish any documents necessary for collecting such receivables. In case of seizures or other claims raised by third parties, Customer shall be obliged to assert AG's right of ownership and notify AG accordingly without delay. Customer shall reimburse AG for the costs associated with any claims in this context.
- 5.4 If Customer is in breach of the Contract, in particular in the event of a default in payment after a reasonable extension period, Customer shall, upon AG's demand and at Customer's expense, immediately return all Retained Goods to AG and assign to AG any repossession claims against any third party in conjunction with such goods. Following to AG's demand, Customer has to return the respective goods to AG.

## 6. Representations and Warranties

- 6.1 Customer shall inspect the Products immediately and record any objections thereto without undue delay upon receipt. In case of a defect, Customer shall notify AG of any defect in writing no later than 7 (seven) days of delivery, otherwise any claims, also claims from consequential damage, shall be excluded. Latent defects and defective performance of services which cannot be detected even by diligent examination shall be notified to AG in writing within 7 (seven) days following discovery thereof (otherwise any claims, also claims from consequential damage, shall be excluded), but in any event no later than three months after delivery. After the expiry of these periods, the liability for defects, for whatever reason, shall be excluded.
- 6.2 The warranty will be void if a defect is caused by the use of unsuitable dental materials, specifically the use of classes of dental materials which are not permitted for use in the software delivered by Amann Girrbach. The warranty will also be void due to improper use of dental materials as well as the incorrect or negligent treatment of the Products.
- 6.3 Any reference to technical norms within offers, information and cost estimates shall constitute a non-binding performance specification only. AG does not guarantee the compliance with such technical norms. Any guarantees in relation to such technical norms have to be explicitly provided in the form of a full guarantee for compliance with such norms in writing. The functions of offered software programs and modules shall be limited to the description in the performance specifications.
- 6.4 The legal assumption provided in Sec 924 ABGB (Austrian Civil Code) shall be excluded; the buyer shall bear the burden of proof that any defects already existed at the time of delivery. A claim of recourse pursuant to Sec 933b ABGB (Austrian Civil Code) by the buyer is expressly excluded.
- 6.5 AG shall be entitled at its own discretion render repairs free of charge or substitute delivery. In the event of a defect in software, AG may also provide a new software release in lieu of repair. Any other warranty rights of Customer including but not limited to price reduction and rescission of Contract are excluded.
- 6.6 Customer shall provide AG with sufficient time and opportunity to perform any and all substitute performance measures that appear necessary to AG. In particular, upon request, Customer shall send the delivered Products to AG or a workshop to be specified by AG on a case-by-case basis. Otherwise, AG shall be discharged from liability for any consequences.
- 6.7 The delivered goods are free and clear of any defects and do not infringe any third party intellectual property rights and third party copyrights („Third Party IP Rights“) but only regarding to the jurisdiction of Austria. In particular, in case the delivered goods are exported to third countries, AG therefore shall not be liable for any infringements of Third Party IP Rights, in particular for software, patents, designs and trademarks, in other jurisdictions than the Austrian jurisdiction. Should a third party assert legitimate claims against Customer based on any infringement of Third Party IP Rights relating to delivered goods used in accordance with the Contract in the jurisdiction of Austria, AG shall be liable towards Customer during the warranty period specified in Section 6.7 of these Terms. Any other claims against AG over and above those governed by this Section shall be excluded.
- 6.8 All warranty claims forfeit no later than 12 (twelve) months after date of delivery by AG to Customer, **irrespective of whether concerning the first delivery of a Product or a replacement delivery.**

## 7. Liability

- 7.1 AG shall be liable for damage caused in the course of performing the Contract only in case of gross negligence and/or intent. The compensation of indirect, incidental, special or consequential damage including without limitation loss of profits shall be excluded in the same way as for lost savings, interest losses and loss due to third-party claims against Customer.
- 7.2 Notwithstanding the foregoing Section 7.1, AG shall be liable in the event of culpable injury of life, limb or health caused by AG and damages caused by gross negligence, intent or fraud as well as any other liability that - as a matter of law - cannot be limited or excluded.
- 7.3 The Contract does not provide any protection in favour of third parties.
- 7.4 In all instances of liability on the part of AG, Customer shall have to prove AG's fault that gives rise to liability.
- 7.5 Should Customer be held liable under the PHG (Austrian Product Liability Act), it shall explicitly waive recourse within the meaning of Sec 12 PHG.
- 7.6 Customer shall take any and all necessary measures in order to prevent or limit any damage. In particular, Customer shall ensure the regular back-up of programs and data. Customer shall be liable for any damages caused by any omission of its obligations. Customer is obliged to indemnify AG of any third party claims arisen out of the transaction.
- 7.7 All compensation claims against AG shall forfeit no later than 12 (twelve) months after date of delivery.
- 7.8 Notwithstanding the foregoing and in the event and to the extent that AG is liable, the liability of AG shall not in any event exceed the purchase price of the delivered goods.

## 8. Software Use

- 8.1 In case software is included in the scope of delivery (e.g. CAD/CAM Milling System), all rights in know-how and products that merit intellectual property right protection, shall be retained by AG, notwithstanding the duty to furnish the software to Customer. AG shall grant Customer a non-exclusive and not separately transferable right of use therein. The provision of user documentation as well as the provision of maintenance and service documentation shall in any event require separate written agreement.
- 8.2 Customer shall use the software only with the specified hardware or hardware delivered together with the software. Use of software together with other equipment shall require AG's prior written consent. Notwithstanding statutory provisions, Customer may not modify, engage in reverse engineering, translate, extract or otherwise link the software to other programs.
- 8.3 Customer receives a single licence in the software. Customer may make one copy of the software for backup purposes only. If AG expressly grants multiple licenses, Customer shall comply with the instructions on reproduction as furnished by AG. In particular, Customer shall keep a record of the location of any and all reproductions. Upon request such records shall be submitted to AG.

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- 8.4 Customer shall not grant sub-licences. In the event, Customer transfers software together with the delivered equipment (e.g. CAD/CAM Milling System) to a third party, Customer shall not grant more rights to the third party than granted itself by AG. In the event that Customer and/or third party transfers a software license to a third party, Customer and/or third party shall not retain any copy of the software. Multiple licences shall be resold only in their entirety.
- 8.5 Customer and/or third party shall ensure that the third party complies with any and all obligations arising out of these Terms. Customer will indemnify AG against any and all liabilities resulting from a breach of the Terms by a third party.

## 9. Provisions for CAD/CAM Milling Systems

- 9.1 If a CAD/CAM system is included in the scope of delivery, Customer shall have following additional obligations:
- provide appropriate equipment training to its purchasers; further provisions on establishing and performing such services will be carried out as agreed between AG and the Customer;
  - provide a service hotline/1st level support to its purchasers at a competitive standard;
  - ensure that the location where the equipment will be installed satisfies the technical installation and operating requirements for the equipment set forth in the respective specification of the equipment of AG; and
  - ensure that Customer's purchaser complies with the terms of the limited software license under the condition of the Terms.
- 9.2 The CAD/CAM Mill, the CAD/CAM Scanner and the respective dongle serial number must be registered on the customer platform of AG after installation. The specific terms of use of the customer platform apply.
- 9.3 Customer is obliged to enrol in the Software Protection Plan („SPP“) for the CAD/CAM software for a period of 4 (four) years. The SPP includes the following over a term of 4 (four) years:
- Back up support on the phone or per email to the Customer free of charge;
  - remote control maintenance free of charge via Webinar;
  - software update free of charge (not included: upgrades in the sense of an enlarged functional scope);
  - CAD data control (10 times) and helpdesk service.
- 9.4 The SPP will be automatically extended every year for an additional 12 (twelve)-month-period, if termination notice has not been given three months prior to the respective expiration date.
- 9.5 Notwithstanding anything to the contrary herein, any SPP may be terminated at any point in time without liability by AG in case the license and support agreement between AG and AG's licensor of the software is terminated. AG will inform Customer thereof within reasonable time. Customer acknowledges and accepts that the software may in that case no longer be supported by AG. If the Customer has paid the SPP fee directly to AG for a specific limited period of time, such proportionate part of the said fees as corresponds to the non-expired part of the said period of time shall be refunded to the Customer.
- 9.6 Customer acknowledges and accepts that the right to use the provided software according to the provisions in this Term is granted from the date of first installation of the CAD/CAM Milling Systems.
- 9.7 AG shall not be obliged to provide any support under the SPP in case a fault is caused by the usage of third party products in connection with the CAD/CAM Milling Systems for which no approval of AG regarding the compatibility of such products with the CAD/CAM Milling Systems of AG has been given.
- 9.8 Customer acknowledges and accepts that any new software releases that AG may launch, may not always run properly or at all on older PCs, or more generally be compatible with such hardware or third-party software (including but not limited to the system software), as a previous release was perhaps compatible with. According to that it may be necessary for Customer to upgrade its hardware or third-party software (including but not limited to the system software) at its own expense in order to be able to use new software releases properly.

## 10. Maintenance, Records and Responsibilities of Customer

- 10.1 Customer shall undertake installation, overall technical maintenance, repair and technical upgrade and update of the delivered goods according to AG's specification. Customer shall ensure the technical operational continuity of the installed base of delivered products in the country of Customer on a continuous basis.
- 10.2 Customer shall employ qualified service technicians („Employed Technician“). Employed Technicians shall attend training courses which are offered by AG and are indicated as essential for Customer by AG. Any expenses related to the participation in such training courses (e.g. travelling, accommodation, etc.) shall be borne by Customer.
- 10.3 If the service of certain products of AG requires working material, tools and measuring instruments that are manufactured or modified specifically for AG, Customer shall use such items only. For maintenance and repairs, Customer shall also only use original AG spare parts.
- 10.4 Customer shall draw up and maintain records of its repair and after-sales services containing product number and serial number, name and address of each purchaser as well as the location of the purchaser. Customer shall provide AG with such records upon request without undue delay.
- 10.5 Customer shall maintain records of all medical products („MP“) and other machinery and devices sold by Customer to its clients for a minimum period of 15 (fifteen) years. These records shall be kept in a way to allow a complete and prompt recall. Records shall contain product information such as article number, lot number, sales date, list of clients supplied and client's identification data. If AG requests access to such records for Product tracing, recall purposes or corrective actions, Customer shall immediately make such records available to Amann Girschbach.
- 10.6 Customer shall be responsible for maintaining complaint records for MP according to national regulations concerning both performance and safety of MP. All complaints, whether received orally, written or by electronic means, shall be documented. Customer shall report immediately to AG all complaints irrespective of Customer's own assessment concerning the actions to be taken regarding the medical event or complaints.

- 10.7 Customer shall resell the Products only in the form originally received from AG. Customer shall also be responsible for ensuring that its promotion, marketing, sale and distribution of the Products, and the promotional materials and labeling used in connection therewith, shall be strictly in accordance with the approved use of the Products, including Indications for use statements, where applicable.

## 11. Intellectual Property Rights

- 11.1 Customer acknowledges that any and all of the Intellectual Property Rights subsisting in or used in connection with the supplied goods and services, including all documentation and manuals relating thereto, are and shall remain the sole property of AG. Customer shall use Intellectual Property Rights belonging to AG or its supplier only with the prior written consent of the supplier.
- 11.2 Customer shall not register or procure the registration by third parties or assert or procure the assertion by third parties of any Intellectual Property Rights, including but not limited to trademarks, business names, company names, trade names, signs, patents, domain-name or e-mail address etc. which are wholly or partly identical with or similar to AG's or its affiliate's intellectual property rights. Customer will indemnify AG against any and all claims deriving from non-compliance with such provisions by Customer.
- 11.3 Customer acknowledges that there may be third party hardware and software included in the goods and services. Customer agrees to treat such third party hardware and software and the rights related to this in accordance with the terms and license conditions offered by the owners of such products and rights.
- 11.4 Customer shall ensure that any of its contractual partners complies with this Section 11. Further, Customer will indemnify AG against any and all liabilities resulting from a breach of the Terms by its contractual partners.

## 12. Confidential Information

- 12.1 Confidential business or technical information („Confidential Information“) received from AG shall not be disclosed, in whole or in part, to third parties by Customer, unless Confidential Information is public-known or such disclosure is explicitly permitted by AG in writing. Confidential Information shall only be disclosed by Customer to persons, who are sworn to secrecy and are essential in order to use the specific information. It is permitted to copy or use Confidential Information, without written consent of AG. If demanded by AG, Customer shall return the Confidential Information to AG or destroy/ delete it without delay.
- 12.2 If Customer is required by law, regulation or court order to disclose Confidential Information, Customer shall promptly inform AG of such prior to any required disclosure and cooperate with AG in seeking any relief sought by AG, and shall only make in any event such limited disclosure of Confidential Information as necessary, and not more, to be compliant therewith.

## 13. Data Protection

- 13.1 For the purpose of performing the contract and promoting our products vis-à-vis the contracting party, we will process the Customer's personal data provided by the Customer upon conclusion of the contract on the basis of Article 6 (1) (b) and (f) of the General Data Protection Regulation. It is in our legitimate interest to directly promote our products vis-à-vis the Customer.
- 13.2 The Customer is obliged to treat personal customer data received from a lead in full compliance with all data protection provisions. The Customer is explicitly prohibited from transferring such data to third parties and will fully hold harmless and indemnify AG for any infringement of this contractual provision.
- 13.3 Further information on the processing of personal information can be found in the Data Privacy Statement on our website.

## 14. Export Control

- 14.1 Unless otherwise stipulated, Products delivered by AG to Customer are intended to remain and to be used only in the country agreed with Customer.
- 14.2 Customer acknowledges that due to their nature or their intended use or final destination, certain Products are subject to the regulations on export control and in particular require an official permit upon export. In the event that Products delivered by AG are to be exported into a third country, the Customer himself is responsible, and solely liable, for observing whether the (i) goods, (ii) third countries or (iii) individuals involved are subject to an official export restriction. Customer himself is fully responsible, and solely liable, for strictly observing the relevant regulations on export control and embargos for these Products, countries or individuals involved. In particular Customer will adhere to the export control regulations of the European Union (EU) and the individual EU member states as well as the United States (USA), if applicable.
- 14.3 Whenever Customer transfers Products delivered by AG to other recipients, Customer shall irrevocably oblige these recipients in the same way and to inform them of the necessity to irrevocably comply with such legal provisions and provide evidence of fulfilling the obligation.
- 14.4 Customer guarantees to indemnify and hold AG harmless in respect to any and all costs, in particular of legal proceedings, expenses, liabilities or sanctions arising out of the violation of the above mentioned obligations of Customer.

## 15. Assignment

- Customer is not entitled to assign, transfer or sub-license any or all of its rights or obligations under the Contract and/or these Terms without AG's prior written approval. AG is entitled to assign, transfer or sub-license any or all of its rights or obligation under the Contract and/or these Terms without Customer's approval.

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## 16. Applicable Law; Place of jurisdiction

16.1 The contractual relationship between AG and Customer shall be governed by Austrian law excluding its conflicts of law rules and the United Nations Convention on Contracts for the International Sale of Goods.

16.2 If the Customer is seated in the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between AG and Customer, including but not limited to any dispute in relation to these terms, shall exclusively be referred to the courts in 6800 Feldkirch, Austria.

If the Customer is seated outside the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between AG and Customer, including but not limited to any dispute in relation to these terms, shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules). The language to be used in the arbitral proceedings is English. The place of arbitration shall be Feldkirch.

Notwithstanding the jurisdiction of the arbitral tribunal, a party may seek preliminary or injunctive measures from a state court and a court may order those measures prior to or during the arbitral proceedings.

However, in all cases AG may sue the Customer also before any other court having jurisdiction for the Customer.

## 17. Miscellaneous

17.1 Customer shall be responsible for compliance with domestic statutes, regulations and safety provisions, in particular in relation to admission, installation, operation, maintenance and repair of the Products and agrees to comply therewith. Customer shall indemnify AG against any and all claims deriving from non-compliance with such provisions by Customer.

17.2 If any provision of these Terms may be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from the other provision of these Terms and shall not affect the lawfulness, validity and enforceability of the remaining provisions of these Terms. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

Koblach, November 2018