

TERMS OF SALE AND DELIVERY

Coltène/Whaledent GmbH + Co. KG, Raiffeisenstraße 30, 89129 Langenau/Germany, www.coltene.com

1. Formation of contract

1.1 Offers submitted by Coltène/Whaledent GmbH + Co. KG (hereinafter referred to as Coltène/Whaledent) are subject to alteration. A contract shall only be created upon receipt of written acknowledgement of order or delivery of the goods by Coltène/Whaledent; contracts shall be subject exclusively to the terms and conditions below and overleaf. Terms and conditions of the ordering party which are contrary to our terms and conditions shall only be binding on Coltène/Whaledent if explicitly recognized in writing by Coltène/Whaledent even if Coltène/Whaledent has not explicitly rejected the application of such terms and conditions. Our international field sales representatives are not authorized to confirm orders or conclude contracts with third parties.

1.2 Subsidiary agreements and modifications shall only be valid if confirmed in writing by Coltène/Whaledent.

1.3 Coltène/Whaledent reserves its industrial property rights and/or copyrights to cost estimates, drawings and other documents. Documents and other information and know-how – other than that which is general knowledge in the industry - obtained from Coltène/Whaledent by the ordering party may only be passed on to third parties with the written approval of Coltène/Whaledent.

2. Prices, terms of payment

2.1 Prices shall apply for a period of four months as of the date of the order confirmation. Should longer delivery periods be agreed, the Coltène/Whaledent prices applicable on the day of delivery shall be calculated.

2.2 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. Contingent on the packaging options available, Coltène/Whaledent shall be entitled to adjust – i.e. increase or decrease - the size of quantities to enable the ordering party to purchase as economically efficiently as possible.

2.3 The ordering party shall settle payments within the period and on the terms specified in the relevant invoices. This shall also apply if the ordering party notifies defects in the supplied goods or asserts warranty claims pursuant to Clause 4 below. Notwithstanding any contrary provisions of the ordering party, payments shall in the first instance serve to settle all interest and costs due and in the second instance to settle those invoices which have been outstanding longest. Bills of exchange and cheques shall only be accepted on account of performance, at no cost or charge to Coltène/Whaledent, in those instances where such acceptance has been specifically agreed by Coltène/Whaledent. 1% interest per month shall be charged for overdue amounts.

2.4 The ordering party shall only be entitled to offset against counterclaims which are uncontested by Coltène/Whaledent or which have been recognized by declaratory judgment.

2.5 All payables due to Coltène/Whaledent, including those for which bills of exchange have been accepted or instalment payments agreed, shall be due for immediate settlement in the event of an unjustified failure to comply with the terms of payment or should it come to the notice of Coltène/Whaledent subsequent to the conclusion of the contract that the financial circumstances of the ordering party have seriously deteriorated.

In such circumstances Coltène/Whaledent shall also be entitled to make performance of any outstanding supplies and services contingent on advance payment or the provision of collateral security. Should, following a reasonable period of grace, neither advance payment nor security have been provided, Coltène/Whaledent shall be entitled to withdraw entirely or partially from some or all of the relevant contracts; this shall not affect the right of Coltène/Whaledent to assert other rights. Claims for damages by the ordering party due to such withdrawal in such cases are excluded.

3. Delivery date, dispatch, risk

3.1 Should Coltène/Whaledent be prevented from delivering in due time owing to procurement, production or supply problems affecting Coltène/Whaledent or its suppliers arising as a result of, e.g. force majeure, government measures, traffic problems, strikes, lockouts or unforeseen material shortages, the delivery period shall be extended by up to one month after elimination of the problem without this entailing the ordering party to assert claims on this basis. In the event of impossibility of delivery, the ordering party shall not be entitled to assert claims.

3.2 Coltène/Whaledent shall be entitled to make partial deliveries and to deviate in other respects from the order – e.g. in form, colour, and packaging to the extent that the ordering party can be reasonably expected to accept the same. Coltène/Whaledent is also entitled to make surplus or short deliveries in accordance with customary industry practice.

3.3 Coltène/Whaledent shall select the most economical shipping route known unless specified otherwise by the ordering party. Delivery charges and cost of cartage shall be borne by the consignee. Shipping costs shall be borne by the ordering party.

3.4 In the case of deliveries abroad, shipment shall be made EXW Langenau (Incoterms 2010) excluding transport packaging. Goods delivered abroad which require special transport locks or conditions (incl. but not exclusively hazardous goods) shall be shipped in all cases at the cost of the ordering party.

3.5 The material and price risk shall pass to the ordering party upon transfer of the delivered goods to the person or organization by whom/which the goods are transported even if means of transport are used which belong to Coltène/Whaledent and even if Coltène/Whaledent bears the costs of shipment. Should transfer or shipment be delayed for reasons for which the ordering party is responsible, the risk shall pass to the ordering party on the day on which the latter receives notice that the relevant merchandise is ready for delivery or transfer.

4. Duty to inspect, warranty

4.1 The ordering party shall inspect the merchandise for damages or material defects immediately upon receipt. The merchandise shall, in all circumstances, be inspected within ten days; notifications of defects shall be issued immediately upon detection of defects but no later, however, than within ten days of their detection.

4.2 If the item of purchase is defective or one or several of its warranted characteristics is/are missing, Coltène/Whaledent's warranty is limited according to the choice of Coltène/Whaledent to the remedy of defects or delivery of a substitute. The ordering party must grant appropriate time and opportunity for this. If improvements to the product or a replacement cannot be accepted by the customer, or if the improvements fail at least twice, the customer has the right to reduce the purchase price or withdraw from the contract. Claims for damages only exist under item no. 5 of these Standard Terms and Conditions.

4.3 All warranty obligations shall cease if – except in order to avert imminent dangers – the ordering party undertakes repair or other processing work to rectify defects in the merchandise without the permission of Coltène/Whaledent to the extent that such work substantially impairs the physical properties of the merchandise. Coltène/Whaledent also disclaims all warranty for defects arising from the inappropriate use, application or storage of the merchandise or other unusual operating conditions.

5. Liability

5.1 Coltène/Whaledent is only liable in the event of intent and gross negligence by the enterprise or its agents employed in performing a contractual obligation for which Coltène/Whaledent is vicariously liable or its vicarious agents. This does not apply in the event of a breach of material contractual obligations, in particular in the event of statutory claims for damages for non-performance, due to default or impossibility of performance of contract for which Coltène/Whaledent is responsible or in the event of injury to life, limb or health. Liability under the German Product Liability Act [Produkthaftungsgesetz] remains unaffected.

5.2 In the event of a breach of material contractual obligations that is based on other circumstances than intent or gross negligence, liability is limited to the foreseeable and typical damage or loss. The same applies in the case of the grossly negligent behaviour of agents employed in performing a contractual obligation for which Coltène/Whaledent is vicariously liable (not executive employees) outside of the area of the material contractual obligations as well as injuries to life, limb or health.

5.3 Claims for damages that are based on intentional acts by Coltène/Whaledent or one of their statutory representatives or agents employed in performing a contractual obligation for which Coltène/Whaledent is vicariously liable as well as claims based on the culpable injury to life, limb or health become time-barred in accordance with the statutory limitation periods. In other respects, claims for damages are subject to a one-year limitation period as from the time at which the customer obtains knowledge of the damage or loss, or regardless of this knowledge within five years since the coming into existence of the claim for damages. The aggrieved party must notify the other party of damage or loss without delay after obtaining knowledge of this. Failing this, claims for damages are excluded.

6. Resale

The ordering party shall only resell Coltène/Whaledent special products in their unmodified original packaging, except where otherwise stipulated by official regulations or other agreements.

7. Retention of title

7.1 The delivered goods shall remain the property of Coltène/Whaledent pending full settlement of all claims in connection with the business relationship between the ordering party and Coltène/Whaledent. In the case of open accounts, title shall be retained to secure balance amounts due to Coltène/Whaledent.

7.2 The ordering party shall only be entitled to sell in the course of its ordinary business activities and only to the extent that the ordering party has not defaulted on payment. The goods may not be disposed of in any way which may jeopardize the title of Coltène/Whaledent.

7.3 The ordering party herewith assigns all claims arising from the resale of the merchandise to Coltène/Whaledent; should the ordering party sell the goods subject to reservation of title after these have been processed, joined, blended, or mixed with or together with other goods, such assignment shall only apply to those parts of the goods which correspond in value to the purchase price agreed between Coltène/Whaledent and the ordering party plus a safety margin of 20% of such price. The ordering party is authorized to collect claims assigned to Coltène/Whaledent; Coltène/Whaledent shall be entitled to revoke this authorization and the entitlement to resell the goods subject to reservation of title should the ordering party fail to meet its obligations to Coltène/Whaledent.

7.4 The ordering party shall provide Coltène/Whaledent with information as and when required about the goods subject to reservation of title or about associated claims which have hereby been assigned to Coltène/Whaledent. Should third parties seize or assert any claims to the goods subject to reservation of title, the ordering party shall immediately notify the same and provide the necessary documents to Coltène/Whaledent. The ordering party shall also draw such third party's attention to Coltène/Whaledent's reservation of title. The costs of averting such seizures or assertions shall be borne by the ordering party.

7.5 Should the value of the security provided exceed the value of all the secured claims of Coltène/Whaledent by more than 20%, the ordering party shall be entitled to demand that such excessive security be released.

7.6 Should the ordering party default on its obligations to Coltène/Whaledent, Coltène/Whaledent shall – notwithstanding any other rights – be entitled to repossess. In such cases, the ordering party shall grant Coltène/Whaledent or an agent appointed by Coltène/Whaledent immediate access to the goods subject to reservation of title and shall thereby surrender the same.

8. 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.

9. Other provisions

9.1 The place of performance is Langenau / Federal Republic of Germany; the legal venue is Ulm / Federal Republic of Germany. Coltène/Whaledent shall also be entitled to bring an action against the ordering party at the latter's legal venue and, in the case of actions on cheques and bills of exchange, to bring an action before the courts having jurisdiction for the place of payment of such bills or cheques.

9.2 If any provision of these Terms of Sale and Delivery is determined to be invalid, such provision will be replaced by a valid provision which corresponds as closely as possible to the business purpose and intent of the invalid provision.

9.3 German law shall apply exclusively – to the exclusion in particular of the Agreement on contracts for the international sale of movable tangible goods, the United Nations Convention on Contracts for the International Sales of Goods (CISG) and the international private law.

Former terms of sale and delivery become null and void.

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