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**General Terms and Conditions of Sale and Delivery of  
DEKEMA Dental-Keramiköfen GmbH D-83395 Freilassing ("DEKEMA")  
for International Business**

## **§ 1 Applicability of the terms and conditions, exclusive applicability**

1. The following General Terms and Conditions of Business apply solely to companies, i.e. natural or legal persons or incorporated partnerships that at the time of conclusion of the contract with DEKEMA are exercising their commercial or independent professional activity, to legal persons under public law and to special funds under public law.
2. Where DEKEMA and the buyer have made individual agreements that differ from the present terms and conditions, these agreements shall have precedence.
3. In the case of quotations, order confirmations, deliveries and services of DEKEMA, these terms and conditions apply exclusively. Conflicting terms and conditions of the Purchaser or ones that differ from these General Terms and Conditions of Business shall not apply even if DEKEMA does not expressly contradict them or effects delivery unconditionally. Such terms and conditions of the Purchaser are only binding on DEKEMA if DEKEMA has explicitly agreed them on an individual basis.
4. These General Terms and Conditions of Business shall also apply to all future transactions with the Purchaser in the course of the business relationship even if they have not been agreed separately.
5. These terms and conditions contain all agreements between DEKEMA and the Purchaser for execution of this contract.

## **§ 2 Offer and conclusion of contract; amendment of contract or these terms and conditions, documents provided**

1. Information contained in print media (e.g. brochures) and on the DEKEMA website does not represent an offer; it is solely an invitation to submit an offer on the part of the Purchaser. In the absence of any specific agreement, a contract comes into being at the latest with the written order confirmation by DEKEMA or by the delivery and acceptance of the purchased object.
2. Additions, amendments and ancillary agreements to the contract and these terms and conditions require written confirmation by DEKEMA to be effective.
3. **DEKEMA employees are not entitled to waive or modify these terms and conditions, nor to make ancillary agreements. The power of representation of the Managing Directors and "Prokurists" (company officers with power of representation) in the number competent for representation remains unaffected by the above.** Amendments or additions to the contract require written confirmation by DEKEMA to be effective.
4. DEKEMA reserves its rights of ownership and copyright over documents handed over to the Purchaser or otherwise made available to the Purchaser (including electronically), particularly offer documents such as photocopies, drawings and calculations. The documents must not be made accessible to third parties. This applies particularly to written documents designated as "Confidential". Any handover to third parties requires the explicit written authorization of DEKEMA.

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## § 3 Prices and payment terms, offsetting and withholding

1. Unless otherwise agreed on an individual basis, the DEKEMA prices shall apply "ex works" Freilassing (EXW Incoterms 2010). Payments are to be made in EURO.

2. If DEKEMA has taken responsibility for the shipment or organization of the transport for the Purchaser, the Purchaser shall in addition to the purchase price bear the costs of the shipment or transport as well as any transport insurance (see § 5 Para. 5). The Purchaser shall furthermore bear the costs of any additionally supplied documents and official certifications/notarizations in consultation with DEKEMA in the individual case. DEKEMA is entitled to levy reasonable charges against the Purchaser for services provided by itself.

3. Statutory value added tax is not included in the DEKEMA prices. If, in accordance with statutory regulations, it accrues to DEKEMA, it shall be billed to the Purchaser at the statutory level applicable on the day of the delivery and stated separately in the invoice.

For supplies of goods and services within the EU, the Purchaser shall notify DEKEMA of its VAT ID number. On receipt of the purchased item, the Purchaser shall further confirm to DEKEMA that the purchased item has arrived in another EU member state, providing the name and address of the purchaser, the quantity of the supplied items and the normal trade name, the place and month of receipt of the purchased item, the date of issue of the confirmation and the signature of the purchaser or a person designated by him/her for receipt (§ 17a of the Turnover Tax Implementation Regulation). In the case of electronic data transfer of the confirmation, a signature is not necessary provided it is clear that the electronic data transfer started within the area of responsibility of the buyer or of the designated person. Summary confirmations containing the sales from up to one quarter are permissible.

If it subsequently emerges, e.g. as a result of a company audit, that, contrary to the original assumption that the supplied goods or services were free of VAT, DEKEMA has to pay VAT, DEKEMA is entitled to charge this amount to the Purchaser by issuing an appropriate invoice.

4. The granting of a discount requires a separate agreement.

5. Unless otherwise agreed on an individual basis, the purchase price is due for payment without deduction immediately after receipt of invoice. DEKEMA is entitled to demand payment in advance. § 3 Para. 9 remains unaffected.

6. Payments by the Purchaser are always set off initially against its oldest debts. This also applies even in the case of a provision of the Purchaser to the contrary. DEKEMA will inform the Purchaser of the type of offsetting.

7. A payment is only considered to have been made when DEKEMA has the sum at its disposal; in the case of transfers, this is when the sum is credited to the DEKEMA account. DEKEMA reserves the right to refuse checks or bills of exchange. These shall be accepted as payment on a provisional basis only. Discount charges or bill of exchange charges shall be borne by the Purchaser and are payable immediately.

8. If DEKEMA becomes aware after conclusion of contract of circumstances that indicate a lack of creditworthiness on the part of the Purchaser, in particular if the latter does not cash a

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check or stops its payments, DEKEMA shall be entitled to demand payment by the Purchaser of all outstanding debts even if DEKEMA has already accepted checks. In this case, DEKEMA is further entitled to demand advance payments or the provision of security. If the Purchaser does not comply with requests of this kind, DEKEMA can withdraw from the contract. This shall also apply should the Purchaser fail, despite repeated reminders, to fulfil its payment obligations from previous contracts with DEKEMA.

9. The Purchaser shall only be entitled to set off payments if its counterclaim has been stated to be legally binding, is undisputed or is ripe for adjudication. The Purchaser may exercise the right of retention only in the case of a counterclaim arising from the same contractual relationship as the claim for payment of DEKEMA, or if the counterclaim of the Purchaser is undisputed, has been stated to be legally binding or is ripe for adjudication.

## **§ 4 Delivery period, withdrawal from the contract**

1. The start of the delivery period specified by DEKEMA is subject to the clarification of all technical questions.

2. Adherence to agreed delivery deadlines is subject to the timely and proper fulfilment of the obligations of the Purchaser. It is also subject to the proviso that DEKEMA itself obtains the right supplies in good time. DEKEMA shall inform the Purchaser as soon as possible of any anticipated delays.

3. DEKEMA may deliver the purchased item before an agreed delivery date if nothing to the contrary has been agreed in the individual case.

4. Events of force majeure and other events, over which DEKEMA has no control, in particular war, natural catastrophes, embargos, export bans, strikes, lockouts, official directives etc., even if such events occur with suppliers or their sub-suppliers, shall give rise to an extension of the delivery period for the duration of the impediment. DEKEMA will notify the Purchaser immediately of the start and end of the impediment.

If the impediment lasts longer than 4 weeks, both contracting parties may withdraw from the contract. The Purchaser shall only be entitled to withdraw from the contract if it has set DEKEMA a reasonable extension period in writing. Notwithstanding the above, the Purchaser may withdraw from the contract without setting a prior deadline if such a deadline is not required by law.

5. If for reasons beyond its control, DEKEMA has not received supplies from one or more upstream suppliers, both DEKEMA and the Purchaser may declare the contract to be rescinded.

6. If a delay in delivery represents a material breach of contract, the Purchaser may declare the contract to be rescinded.

7. Claims for loss or damage and for the reimbursement of expenditure of the Purchaser as a result of DEKEMA delivering late or defaulting on its delivery obligation (including defaulting on its delivery obligation due to delivery being impossible) shall only arise if DEKEMA is responsible for the delay or is defaulting on its delivery obligation. Such claims shall only arise

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in accordance with the provisions of § 7 below. This shall apply regardless of whether the Purchaser has declared the contract to be rescinded.

## **§ 5 Shipping and transfer of risk**

1. Unless otherwise agreed on an individual basis, the delivery shall be sent "ex works" Freilassing (EXW Incoterms 2010). This shall also apply if DEKEMA has undertaken additional services e.g. shipping or organization of transport. In this case, the risk of accidental loss and accidental deterioration shall pass to the Purchaser upon handover of the purchased item to the transportation employee.

2. If handover or shipping are delayed as a result of circumstances for which DEKEMA is not responsible, risk shall pass to the Purchaser on the date the contractual item is ready for collection and the Purchaser has been informed it is ready for shipping.

3. If shipping is performed by a transportation company, the Purchaser shall notify the transportation company immediately in text form of any complaints (loss or damage of the purchased item or non-compliance with the delivery deadline) within the relevant deadlines stated in Section 438 of the Commercial Code and send a copy of the complaint to DEKEMA.

4. If no agreement was made concerning shipping and packing on an individual basis, DEKEMA shall choose this at its discretion. If the forwarding agent or carrier takes delivery of the consignment without making any objection, this shall be deemed to be evidence that there are no defects in the packaging.

5. If no different agreement is made with the Purchaser, where DEKEMA organizes the shipment for the Purchaser, DEKEMA shall be entitled but not obliged to take out transport insurance cover for the shipment. Any costs incurred shall be borne by the Purchaser.

## **§ 6 Conformity of the purchased item, rights and entitlements in the case of lack of conformity (claims for defects)**

1. Unless otherwise agreed on an individual basis, the purchased item is in conformity with the contract if it meets the relevant statutory requirements and technical standards applicable in the Federal Republic of Germany, particularly product and safety requirements. DEKEMA is responsible in this regard.

2. The Purchaser is responsible for compliance with and implementation of the relevant regulations concerning foreign trade and other laws of the destination country to which the purchased item is to be delivered and of the country in which it has its registered office. The Purchaser must inform DEKEMA in text form at conclusion of contract of any specific issues arising from these regulations. Unless otherwise agreed on an individual basis, these specific issues only form part of the conformity of the purchased item if DEKEMA has confirmed this in writing.

3. Because they are sensitive wearing products, the lifetime of sintering tools such as rings and bases as well as heating elements and thermocouples may be shorter than the period of limitation stated in § 6 Para. 13. The durability depends on the individual application, particularly temperature, temperature changes, cycle time and atmosphere. The somewhat

limited durability of sintering tools such as rings and bases as well as heating elements and thermocouples is therefore in conformity with the contract.

It is possible that tension cracks, hair cracks, minor spalling and discoloration of the furnace insulation may occur. These do not impair the performance of the purchased item and therefore do not constitute lack of conformity.

4. Claims for defects are excluded for used products. In the case of the sale of used products, DEKEMA only assumes liability for defects if this is agreed with the Purchaser on an individual basis. Claims for defects by the Purchaser shall be based on these General Terms and Conditions of Business unless agreed otherwise on an individual basis.

5. The Purchaser must inspect the purchased item immediately after delivery at its own cost in terms of type, quantity, condition and completeness. Obvious non-conformities or such non-conformities that are recognizable on inspection – where such is possible in the course of normal business – must be reported by the Purchaser immediately (i.e. without undue delay) to DEKEMA. Non-conformities that only come to light later on must be reported immediately on discovery by the Purchaser. If the Purchaser fails to give such notification, claims for the relevant defect shall be excluded. Irrespective of the claims stated in § 7, they are also excluded if a non-conformity is not reported within a year of delivery.

6. Non-conformities must be reported in writing by fax, e-mail or in another form of text and must be described precisely.

7. Claims for defects (rights and entitlements in the case of non-conformity) shall not apply where the non-conformity is the result of one of the following circumstances, provided DEKEMA is not responsible for this circumstance:

- Unsuitable or improper use or storage of the purchased item by the Purchaser or third parties,
- Incorrect initial start-up of the purchased item by the Purchaser or third parties,
- Non-compliance with the user and service instructions, operating instructions or other operating or maintenance instructions relating to the purchased item by the Purchaser or third parties,
- Incorrect repairs or unauthorized tampering with or modifications to the purchased item, e.g. replacing parts, by the Purchaser or third parties,
- Use of consumables by the Purchaser or third parties that differ from those in the original specification,
- Physical, chemical, electrochemical or electrical influences,
- Normal wear and tear.

8. If notifications or declarations regarding non-conformities are required to be made by the Purchaser within a specific time limit, it is not the date of sending but the date of receipt of the notification or declaration by DEKEMA that applies.

9. Where a claim for defect (material defect or defect of title) exists because of a non-conformity, the Purchaser initially has the right of subsequent performance, which – even if the non-conformity represents a material breach of the contract – may be executed at the choice of DEKEMA in the form of rectification of the non-conformity (rectification) or the delivery of goods free from defects (replacement). If the purchase price has not been paid or only paid in

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part, DEKEMA may make the subsequent performance dependent on the Purchaser paying a reasonable part of the purchase price reflecting the claimed non-conformity.

10. The Purchaser must at its own cost return to DEKEMA the purchased item for the purposes of subsequent performance. The other costs required for subsequent performance shall be borne by DEKEMA.

11. The Purchaser is entitled to an appropriate reduction of the purchase price if DEKEMA seriously and definitively refuses subsequent performance due to disproportionate cost or other reasons, if the type of subsequent performance chosen by DEKEMA is unreasonable for the Purchaser or if the Purchaser has set DEKEMA a reasonable deadline for subsequent performance, which has not been met. In the event of a material breach of contract, the Purchaser may declare the contract to be rescinded in accordance with the provisions of § 6 Para. 10 of this document.

12. § 7 applies in respect of claims for loss or damage.

13. Claims for defects by the Purchaser against DEKEMA shall expire in one year from delivery of the purchased item. The statutory time limitation stated in § 7 remains unaffected.

14. Further claims for defects are excluded provided DEKEMA has not fraudulently concealed the non-conformity or has provided a guarantee for the quality or durability of the purchased item.

15. Guarantees for the quality or durability of the purchased item require the written confirmation of DEKEMA in order to be effective.

16. Claims for defects against DEKEMA are not transferable; only the direct purchaser shall be entitled to such claims.

## **§ 7 Property rights and copyrights to documents and software**

1. We reserve all property rights and copyrights to illustrations, drawings, weight specifications, dimensional data, descriptions of services or other product characteristics, cost estimates and other documents relating to our products and services. These documents may not be passed on to third parties without our express written consent.

### **2. Ownership of the delivered software**

Insofar as the delivered goods also include the provision of software, the customer shall acquire the right to use this software for a limited period of time, but shall not acquire ownership of the delivered software.

Dependent on the software, DEKEMA will supply a Perpetual license, a Flex license or both. The Customer will have to enter into a Perpetual license or a Flex license agreement to use the software.

The Flex license requires the payment of the initial software license fee and a subscription based annual license fee. The annual license fee includes ongoing software updates. The software will deactivate upon non-payment of the annual license fee.

The Perpetual license only requires one-time payment of the initial software license fee: Notwithstanding the foregoing, Customer may, at any time, subscribe all recent annual license fees to receive ongoing software updates. No software updates will be provided without the annual license fee payment.



## § 8 Limitation of liability

1. Any further claims of the Purchaser over and above those agreed in these terms and conditions, irrespective of their legal grounds, are excluded except as provided in the regulations below. This applies in particular in respect of claims for loss or damage due to fault in conclusion of contract or other breaches of duty or as a result of unlawful actions. In particular, DEKEMA shall not be liable for consequential loss or damage, e.g. lost earnings or other financial loss of the customer.

2. DEKEMA is liable in accordance with statutory provisions for loss or damage resulting from deliberate or grossly negligent breaches of duty on the part of DEKEMA, and for loss or damage resulting from loss of life, bodily injury or damage to health resulting from deliberate or grossly negligent breaches of duty on the part of DEKEMA.

Mandatory liability pursuant to the Product Liability Act remains unaffected.

3. In the case of loss or damage resulting from slightly negligent breaches of material contractual duties by DEKEMA, the statutory liability of DEKEMA is limited to typically foreseeable loss or damage. Material contractual duties are such duties that in the first instance make it possible properly to execute the contract agreement and on which the Client may normally rely ("cardinal duties").

4. A breach of duty by DEKEMA is the same as a breach of duty by its employees, workers, executives or other agents whose services it is using for the purpose of fulfilling its obligation to the Purchaser.

5. DEKEMA is liable in accordance with statutory provisions where the Purchaser claims loss or damage based on a guarantee provided by DEKEMA for the quality of the purchased item. In this case, however, DEKEMA shall only be liable for consequential loss caused by defects, particularly lost earnings, to the extent to which the Purchaser would be safeguarded by the guarantee against loss of the said type.

6. Insofar as the liability of DEKEMA is excluded or limited, the same also applies to the personal liability of employees, workers, executives, representatives or other agents (i.e. persons whose services it is using for the purpose of fulfilling its obligation to the Purchaser).

## § 9 Retention of title

1. DEKEMA retains the ownership of the purchased item ("goods subject to retention of title") until the whole purchase price has been paid and, if the customer is a merchant, all other amounts receivable arising from the business relationship, including the accepted current account balance.

2. The Purchaser is obliged to treat with care the goods subject to retention of title. It is obliged to insure the goods – e.g. as part of contents insurance cover – against theft, fire and mains water damage. Required maintenance work or repairs must be performed at its own expense.

3. Subject to point 5 below, the Purchaser may neither sell nor pledge nor pass the title as security of the goods subject to retention of title. In the case of attachments, confiscations or other dispositions made by third parties, the Purchaser shall notify DEKEMA immediately.

4. Any processing or conversion of the purchased item is always carried out on behalf of DEKEMA as manufacturer, but without any obligation for DEKEMA. If the (joint) ownership ceases due to combination, it is hereby agreed that DEKEMA shall acquire the joint ownership of the single object in proportion to the value of the purchased item (invoice value) to the other combined objects at the time of combination.

5. The Purchaser is entitled to sell the goods subject to retention of title in the ordinary course of business provided it is not in default. The Purchaser hereby as a precaution transfers to DEKEMA any claims arising from resale or any other legal reason (insurance, unlawful acts) in regard to the goods subject to retention of title to the amount of the unpaid DEKEMA invoice (including VAT) plus a security premium of 10 %. DEKEMA confers revocable authority to the Purchaser to collect on its behalf the assigned claims. This authority to collect may be revoked if the Purchaser does not properly meet its payment obligations. If this is the case, DEKEMA may demand that the Purchaser discloses the assigned claims and its debtors, provides all information necessary for collection, hands over the related documents and advises the debtors (third parties) of the assignment.

6. If the Purchaser does not pay the purchase price within a period of grace set by DEKEMA, or if it states that it will not pay within this period, or if it seriously and definitively refuses payment in any other way, DEKEMA may declare the contract to be rescinded and demand the return of the purchased item. The same applies if

- the purchaser infringes contractual obligations despite previous warning, or
- a substantial deterioration of the financial circumstances of the Purchaser occurs, in particular if attachment of assets or other compulsory enforcement measures are initiated against it or a request to open insolvency proceedings or comparable proceedings abroad on the assets of the Purchaser is made, or
- the Purchaser attempts to reach an out-of-court settlement with its creditors in order to settle its debts or comparable proceedings abroad, or
- a request to open insolvency proceedings or comparable proceedings abroad on the assets of the Purchaser is rejected or the insolvency proceedings or comparable proceedings abroad are discontinued or terminated.

The Purchaser cannot assert a right of retention unless its counterclaim is undisputed, has been stated to be legally binding or is ripe for adjudication. The ensuing costs, particularly for return transport, shall be borne by the Purchaser. If DEKEMA demands the return of the purchased item, this shall be deemed to constitute withdrawal from the contract.

7. If the purchased item is delivered to a country, or shipped by the Purchaser to a country, in which retention of title as described above is not recognized or does not have the same effect in providing security, the Purchaser shall at its expense undertake all measures incumbent on it and make declarations necessary to obtain a comparable right of security.

## **§ 10 Design modifications**

DEKEMA reserves the right to make technically required design modifications, provided that this does not restrict the function or performance of the purchased item and the changes are reasonable for the Purchaser. However, DEKEMA is not obliged to make such modifications to products that have already been delivered.



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## § 11 Taking back and disposal

1. Unless otherwise agreed on an individual basis, the Purchaser accepts the obligation to take back and dispose of the purchased item at the end of its useful life at its own expense in accordance with statutory regulations, particularly the regulations in the Electrical and Electronic Equipment Act.
2. In this case, the Purchaser frees DEKEMA from the take-back obligation pursuant to the Electrical and Electronic Equipment Act and therefore from any related third-party claims.
3. The Purchaser must contractually oblige commercial or other third parties that acquire the purchased item in pursuit of their independent professional activities – and to which the Purchaser resells or otherwise passes on the purchased item – to take back and dispose of the purchased item at the end of its useful life at their own expense in accordance with statutory regulations, particularly the regulations in the Electrical and Electronic Equipment Act; in the event that the item is resold again, they shall agree a corresponding resale obligation with the acquiring party.
4. Should the Purchaser fail to contractually oblige the third parties to which it transfers the goods to take over the obligation to take back and dispose of such goods, and to pass on the obligation, then the Purchaser shall be obliged to take back and dispose of the supplied goods at its own expense in accordance with statutory regulations, particularly the regulations in the Electrical and Electronic Equipment Act.
5. The period of limitation for claims by DEKEMA against the Purchaser arising from § 10 in this document (including claims for loss or damage in the event of infringement of obligations arising from § 10) shall be two years from the final termination of use of the purchased item and notification of DEKEMA in text form of the termination of use. A later expiry date for the period of limitation in individual cases in accordance with statutory regulations remains unaffected.

## § 12 Applicable law, place of jurisdiction, place of performance, translation

1. These terms and conditions of business and all legal relations between DEKEMA and the Purchaser are governed by the law of the Federal Republic of Germany, including application of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. The state courts of Germany with responsibility at the registered office of DEKEMA in D-83395 Freilassing are solely responsible for all disputes arising out of or in connection with this contractual relationship. DEKEMA is furthermore entitled to have recourse to the relevant state courts in the country in which the Purchaser has its registered office.
3. Unless otherwise stated in the order confirmation, the place of performance is the registered office of DEKEMA.
4. In the event of any doubts about interpretation or differences between the German version of these terms and conditions of business and their translation into a different language, the German version shall prevail.