

General Terms and Conditions of Orthocaps GmbH

to be applied in business transactions with dental practitioners and entrepreneurs

§ 1 Application of the terms and conditions

- (1) Orthocaps GmbH (hereinafter called "Orthocaps") develops and offers appliances and services which support dentists with respect to their diagnosis, as well as planning and carrying out orthodontic treatment. For these purposes, we provide a software supported, copyright protected system (hereinafter: Orthocaps software), for supporting the planning and treatment of malocclusion and/or tooth malpositions. A case assessment together with relevant treatment appliances is a part of these services.
- (2) All offers, deliveries and services by Orthocaps with respect to dentists will be exclusively performed on the basis of these general terms and conditions. These also apply to all future business relationships, even if they are not expressly agreed again. At the time of using any services or accepting any products, at the latest, these terms and conditions are deemed as having been accepted. Any counter confirmations of the dentist with reference to his own general terms and conditions are herewith discounted.
- (3) All agreements deviating from the general terms and conditions, all assurances and quality guarantees between Orthocaps and the dentist have to be made in writing.

§ 2 Description of Orthocaps appliances and services

- (1) Case assessment

A case assessment is a free of charge online service for Orthocaps clients, which these can access via the Orthocaps homepage. It serves as an aid for answering any questions regarding Orthocaps software or Orthocaps appliances and for determining the correct Orthocaps appliances. The dentist can electronically describe the treatment target and Orthocaps' reply will provide him with the best possible utilization of Orthocaps services and appliances.

- (2) Treatment planning, Orthocaps software

Regarding any further consultation, Orthocaps will provide through specialist dentists for orthodontics treatment plan services as well as online supported access to Orthocaps software against costs.

- (3) Orthocaps appliances

Orthocaps appliances are orthodontic treatment equipment which has been individually produced by the Orthocaps master laboratory in Germany. In order to produce this equipment, Orthocaps is exclusively using materials which are approved of in Germany.

§ 3 Data protection, data transfer

The transfer and processing of personal and health related data to respectively by Orthocaps as well as storing this data by a third party at the request of Orthocaps requires the effective agreement of affected patients. Before any data is transferred, the dentist has to submit this agreement in writing to Orthocaps.

§ 4 Certification, responsibility and guarantee of the dentist

- (1) Orthocaps only certifies dentists with respect to the use of Orthocaps appliances and services. Orthocaps only provides her appliances and services to dentists, who have been certified at the time of utilization. Any required conditions for a certification are available on the homepage of Orthocaps. Only after their completed certification are dentists entitled to utilize any Orthocaps' services and appliances; in particular treatment plans for certain patients under the inclusion of the Orthocaps system.
- (2) Any decisions regarding findings, diagnosis, planning and treatment of patients have to be taken by the dentist independently and with full responsibility on the basis of having informed the patient extensively and completely. The responsibility of the dentist with regard to the orthodontic treatment expressly also includes the revision, assessment, modification and confirmation of the Orthocaps proposal within the scope of the treatment plan. It is the sole responsibility of the dentist to implement any recommendations of Orthocaps or to decide whether the use of Orthocaps appliances and services is suitable for a certain purpose or to achieve a certain result with respect to a certain patient.
- (3) The dentist guarantees that he is licensed to practice as a dentist at the time of using any Orthocaps services and appliances. With regard to treating patients, who are compulsory medically insured by law, the dentist has to make sure that he is licensed to participate in contractually agreed dental care. He is obliged to observe all regulations concerning professional matters and ethics and all regulations concerning contractual dentists, in particular the Chamber Law applying to him, the Social Code - Book V, the overall agreements for dentists and the Orthodontic Guideline of the Federal Joint Committee.
- (4) The dentist is not permitted to use any Orthocaps appliances or services if the dental approbation or - in case of legally insured patients - the contractual dental licence has ended, been suspended or withdrawn resp. revoked. The dentist has to ensure that the use of Orthocaps appliances and services corresponds to the state of dental medical knowledge as well as to the generally recognized industrial standard and that he will follow all product and service regulations and recommendations by Orthocaps. The dentist has to refrain from Orthocaps from all liability which is based on the incorrect use of Orthocaps appliances and services or incomplete resp. wrong information.
- (5) The dentist is obliged to inform himself regularly on the Orthocaps website about any amendments to the prices or general terms and conditions for Orthocaps appliances and services.

§ 5 General risks

Any possible risks with regard to a treatment with Orthocaps appliances do not distinguish themselves from other treatment appliances/equipment used in orthodontics. Orthocaps recommends orthodontic treatment for periodontal and dentally stable patients. Using Orthocaps appliances and services might result in some of the risks mentioned hereafter. However, many of these risks do also exist without any orthodontic treatment. As far as this is required in individual cases, the dentist is obliged to inform his patients among others, but not conclusively, about the following risks.

- A lack of compliance resp. anatomic abnormalities such as unusually shaped teeth may prolong the duration of the treatment and affect the quality of the end result or the possibility of achieving the desired result.
- A certain sensitiveness has to be expected following the fitting of orthodontic appliances.
- Gums, cheeks and lips may be slightly grazed or irritated.
- Teeth might shift after the treatment. Regular wearing of retention appliances following the completion of the orthodontic treatment can reduce this tendency.
- Caries, periodontal complaints, inflammation of the gums or visible spots at the teeth (e.g. decalcification) may occur if orthodontic patients consume sugar containing food or do not clean their teeth thoroughly or if their mouth hygiene is not sufficient.
- These appliances may temporarily affect a patient's speech.
- The use of these appliances might result in temporarily increased salivation or a dry mouth. Certain medical drugs may increase this effect.
- It may be necessary to reduce the enamel of some teeth to create more space for tooth movements.
- General medical conditions and medications may also have an effect on orthodontic treatments.
- The health of the bones and the gums, which support the teeth, may be affected.
- Oral surgical treatment might be necessary to correct a narrow base or serious jaw anomalies. Should such surgical intervention be necessary both anaesthetics and risks with respect to the healing process must be taken into account.
- A previously traumatised or extensively reconstructed tooth might be damaged by orthodontic treatment. In rare cases this might require additional dental treatment (e.g. endodontic resp. further restoring measures).
- Existing tooth constructions (e.g. crowns) might loosen and may have to be recemented or in some cases even renewed.
- Short clinical crowns may result in retention problems and the orthodontic appliance might hinder the movement of the tooth.
- Orthodontic appliances may break.
- Orthodontic appliances may be accidentally swallowed or breathed in. This risk is increased if any appliances are either shortened or modified by the dentist.
- In rare cases there might also be problems in the jaw joint, which might cause joint aches, headaches resp. ear complaints.
- Allergic reactions may occur.
- In order to avoid supraeruption, all teeth should be covered at least partially.

§ 6 Offer and conclusion of contract

- (1) All offers by Orthocaps are subject to confirmation and non-binding. In order to be legally effective, all acceptance declarations and orders have to be confirmed by Orthocaps in writing or by fax.
- (2) If the enquiry/order/case submission of the dentist qualifies as an offer within the meaning of § 145 BGB [Civil Code], Orthocaps may accept the offer within a week from submission. The dentist is then bound to the offer.
- (3) Orthocaps reserves the right to refuse the conclusion of a contract with respect to a dentist who has not been certified at the time of the offer.
- (4) Employees, representatives and vicarious agents of Orthocaps are not entitled to make any additional agreements or to give verbal assurances, which go beyond the content of the written contract.

§ 7 Prices

- (1) All prices stated in the pricelists of Orthocaps or in other documents are non-binding. Exclusively authoritative are those prices which have been stated in Orthocaps' order confirmation, plus the currently valid turnover tax, postage, package and delivery costs, if applicable. Any additional deliveries and services will be charged separately.

- (2) Orthocaps is entitled to select the most cost-effective delivery option with regard to package, postage and delivery costs.

§ 8 Delivery, delivery and performance period

- (1) The delivery of all Orthocaps appliances is carried out free carrier place of delivery Hamm at the expense and risk of the dentist, using the most cost effective delivery option at Orthocaps' choice. In case of special requests on behalf of the dentist any additional costs will be charged separately.
- (2) Delivery dates or deadlines are only then binding if they have been expressly and in writing stated as being binding in the order confirmation.
- (3) Any delays with respect to deliveries or services due to Acts of God or because of events which not only temporarily significantly hinder or render the production or delivery of any ordered appliances by Orthocaps impossible - these include in particular strike, lockout, official orders - do not have to be justified by Orthocaps; this also applies to deadlines and dates for which a binding agreement exists. They entitle Orthocaps to postpone the delivery resp. service for the duration of the interruption plus an appropriate start-up time or to completely or partly cancel the contract with respect to the part which has not yet been fulfilled.
- (4) If the duration of the interruption exceeds 4 weeks, the dentist - after having set an appropriate grace period - is entitled to cancel the contract with regard to the not yet fulfilled part of it. The dentist may not claim for compensation if the delivery time is extended or if Orthocaps has been released from her obligation. Orthocaps may only then refer to the mentioned circumstances if he has informed the dentist without delay.
- (5) Orthocaps is entitled to provide part deliveries or part services at any time, unless the dentist is not interested in receiving part deliveries or part services.
- (6) The adherence of Orthocaps to delivery and service obligations requires the punctual and correct fulfillment of any obligations of the dentist. Any incomplete submission of the required documents may lead to delays.
- (7) If there is a default of acceptance on behalf of the dentist, Orthocaps will be entitled to claim compensation with respect to the damage she incurred; in the event of a default of acceptance the risk of accidental deterioration or the accidental decay of any Orthocaps appliances will be transferred to the dentist.

§ 9 Risk transfer

The risk is transferred to the dentist as soon as the goods have been duly handed over to the company or person who is in charge of their transport or if they have left the warehouse of Orthocaps for the purpose of being dispatched. If the delivery is delayed at the dentist's request, the risk will be transferred to him as soon as Orthocaps has notified him of the readiness for delivery.

§ 10 Material defect claims

- (1) Orthocaps guarantees that all Orthocaps appliances have been delivered free of any material and production defects and that they are in the condition which has been contractually agreed. The period for asserting any defect claims is one year from delivery of the goods.
- (2) The dentist is obliged to examine any delivered Orthocaps appliances immediately after receipt for any defects. Should any defects arise during the careful examination, the dentist is obliged, to inform Orthocaps immediately in writing, however within a week after receiving the goods at the latest. Orthocaps has to be notified in writing of any defects, which cannot be detected within this period, even during a thorough examination, immediately after their discovery, however, within a week after their discovery at the latest. Otherwise § 377 HGB [Commercial Code] applies.
- (3) At the choice of Orthocaps, the liability for defect claims will be limited to taking any defect appliances back, which are then exchanged for new appliances or to repairing any defect items. The dentist is only entitled to withdraw from or reduce the contract if no replacement for the defect goods has been provided within 4 weeks following the correct notification of the defect.
- (4) Any material defect claims against Orthocaps are only due to the dentist and cannot be assigned to a third party.
- (5) The liability for insufficient services is limited to the renewed sufficient rendering of the service.

§ 11 Payment

- (1) An invoice made out by Orthocaps has to be paid within 30 days of the invoice date without deducting a discount. Any other payment terms may be agreed in writing.
- (2) Orthocaps accepts cash, bank transfer, direct debit and cash on delivery as payment options. In case of new clients, Orthocaps has the right to limit the accepted payment options prior to accepting the order. Orthocaps does not accept any payments of patients or cost units including payments which have been forwarded by a dentist or cost unit on behalf of a patient.
- (3) Orthocaps is entitled - even in case of contrary stipulations by the dentist - to add payments initially to older debts of the dentist, and will inform the dentist about the type of settlements carried out. In the event that extra expenses and interest have already incurred, Orthocaps is entitled to offset any payments first against the extra expenses, then against the interest and finally against the main amount.
- (4) A payment is only then deemed as having been made when Orthocaps is in a position to dispose of the amount.
- (5) If the dentist is in arrears with payments, Orthocaps is entitled to request from the dentist interest rates of 8 percentage points above the basis interest rate as flat rate compensation. These interest rates have to be lower, if the dentist is able to prove a lower charge. Orthocaps may substantiate the existence of higher damage.
- (6) Any offsets and assertion of retention rights are only then admissible if the counter claim of the dentist has been established without dispute and absolute.

§ 12 Claim for compensation with respect to cancelling an order

In the event that an order for Orthocaps appliances is cancelled after the dentist has confirmed the order, the full amount of laboratory expenses will be due as flat rate compensation. The dentist may prove that Orthocaps has not suffered any resp. smaller damage than the requested flat rate.

§ 13 Liability of Orthocaps

- (1) In case of intention or gross negligence, Orthocaps will be liable in accordance with legal regulations.
- (2) Otherwise Orthocaps is only liable in accordance with the Product Liability Law with respect to injuring life, body or health or because of the culpable infringement of significant contractual obligations. However, the claim for compensation for the infringement of significant contractual obligations is limited to contractually typical and foreseeable damages. The liability of Orthocaps is also limited to contractually typical and foreseeable damages in case of gross negligence, if none of the exceptions listed in paragraph 2.1 exists.
- (3) Claims for lost earnings, saved expenses, for compensation claims of third parties as well as other indirect and subsequent damages cannot be requested unless a characteristic condition guaranteed by Orthocaps has the purpose of safeguarding the dentists against any such damages.
- (4) As far as the liability of Orthocaps is excluded or limited, this will also apply to employees, members of staff, representatives and vicarious agents of Orthocaps.

§ 14 Documents

- (1) Any documents submitted to Orthocaps become the property of Orthocaps. They will not be returned to the dentist. The dentist is obliged in accordance with his professional and contractual dental documentation obligation to keep copies of these documents and maintain them during the legally prescribed periods. Orthocaps does not assume liability for any documents or data which is lost during transfer or processing. In this case the dentist is obliged to resubmit all relevant documents and data to Orthocaps as far as they are required for the correct processing of the order.
- (2) Any documents submitted by the dentists, which are directly involved in the production process, such as prints, will be examined by Orthocaps and may be regarded as not being suitable. If they have been assessed as not being suitable, the dentist has to provide replacement documents, as far as they are required for the correct processing of the order.
- (3) Physical documents such as prints or study models will only be maintained by Orthocaps during the period for which they are required to duly fulfil the contractual relationship. At the discretion of Orthocaps they will be either destroyed or archived at a later date. Orthocaps may internally use documents, including but not limited to prints, X-Rays, photographs, films, study models etc. for orthodontic/dental medical consultations, training and research purposes, and publications in specialist magazines or for professional accompanying materials internally, provided the patient has agreed to this in writing or the relevant data and documents are made anonymous.

§ 14 Applicable law, place of jurisdiction, severability

- (1) The law of the Federal Republic of Germany applies to these terms and conditions as well as to the entire legal relationship between Orthocaps and the dentist. The stipulations of the UN Sales Law and the German International Private Law do not apply.
- (2) The place of jurisdiction is Hamm. In case of several places of jurisdiction Orthocaps has a right to choose.
- (3) Should any provision of this agreement be or become ineffective, the legal validity of the remaining contractual provisions will not be affected. Provided that provisions are not part of the contract or ineffective, the content of this agreement will follow the appropriate legal stipulations.