

Ortho Caps GmbH - General Terms and Conditions of Sale

§ 1 Scope of application

(1) Ortho Caps GmbH (hereafter «Orthocaps») designs and markets devices, software, and services to help certified dentists with their diagnoses, as well as plan and provide orthodontic treatment. These General Terms and Conditions of Sale apply to any contract entered into with a client (hereafter the «dentists» or «dentist»).

(2) All of Orthocaps' offers, deliveries and services for dentists are provided exclusively in accordance with these General Terms and Conditions of Sale. Any statement to the contrary by the dentist that refers to his or her own general terms and conditions is contrary to these General Terms and Conditions of Sale.

(3) Any provision, assurance or quality guarantee agreed by Orthocaps and the dentist that differs from these General Terms and Conditions of Sale must be confirmed in writing.

(4) The language of the contract is German. The contractual provisions, including these General Terms and Conditions of Sale and the information related to the products ordered, are communicated to the dentist by email upon acceptance of the contractual offer or the presentation of a new offer. Orthocaps does not retain the contractual provisions.

(5) The dentist is informed in writing, by fax or email, of any amendment to these General Terms and Conditions. A dentist who has not opposed an amendment within a period of four weeks from the time of notification thereof is considered to have accepted said amendment. If the General Terms and Conditions are amended, dentists are informed of their right to oppose the amendments, and the legal consequences of a failure to communicate their opposition.

§ 2 Description of the services offered

(1) Non-contractual case assessment

The non-contractual case assessment is a free online service offered to certified dentists on Orthocaps' web portal. It provides answers to any question related to Orthocaps' software or devices and helps determine the appropriate device. Dentists may briefly describe the purpose of the treatment in an electronic message, and Orthocaps indicates in its answer the best way to use its services and devices.

(2) Transmission of cases, creation of iSetup and use of Orthocaps' software

Additionally, on its web portal, Orthocaps provides certified dentists with an opportunity to present a case for treatment with Orthocaps' devices, which is legally binding. For this purpose, Orthocaps creates an «iSetup», i.e. provides the dentist with a proposed treatment using its devices. Thanks to a proposed "software as a service" (hereafter «SaaS»), the dentist can adapt the proposal to the meet the patient's requirements using Orthocaps' software which is available on the web portal and protected by copyright.

(3) Orthocaps' devices

Orthocaps' devices manufactured according to the dentist's recommendations are intended to treat dental malocclusion and/or misalignment problems. They are intended for orthodontic treatment and are made to measure in Orthocaps' main laboratory in Germany. To manufacture these devices, Orthocaps exclusively uses materials authorized in Germany.

§ 3 Data protection and transfers

If the consent of the parties involved is required to authorize a transfer of (health) data to Orthocaps and/or the collection, processing and use thereof by Orthocaps, it must first obtain the written agreement of the dentist for the transfer of this data.

§ 4 Certification, liability and guarantee of the dentist

(1) Orthocaps only provides its devices and service to dentists who, at the time of use, have already been certified in accordance with clause (2) below. Dentists are only authorized to use Orthocaps' services and devices once they have been certified, in particular for the purposes of planning the treatment of certain patients with Orthocaps' software.

(2) To obtain certification, dentists must attend an Orthocaps certification course and possess a license to practise as a dentist or orthodontist.

(3) Any decision related to the observations, diagnosis, planning and treatment of patients must be taken by the dentist independently and under his or her sole responsibility once full and complete information has been provided to the patient. Dentists are also expressly responsible for the revision, evaluation, modification and confirmation of Orthocaps' proposal in the framework of the orthodontic treatment plan. It is incumbent on the dentist alone to apply Orthocaps' recommendations and decide whether the use of Orthocaps' devices and services are intended to achieve a specific objective or result for a given patient.

(4) The dentist must ensure that the use of Orthocaps' devices and services meet the current level of knowledge in the field of dentistry, as well as the standards that are generally accepted in this sector, and that he/she complies with all of the regulations and recommendations related to Orthocaps' products and services. The dentist also holds Orthocaps harmless from any liability related to the inappropriate use of Orthocaps' devices and services or the provision of incomplete or inaccurate information.

(5) The dentist states that he/she is authorized to practise dentistry at the time he/she uses Orthocaps' service and devices. The dentist is not authorized to use Orthocaps' devices and services if his/her contractual authorization or license to treat patients under the compulsory health insurance scheme has expired or been suspended, withdrawn or revoked.

(6) With regard to the treatment of patients who must, by law, benefit from compulsory health insurance, the dentist must ensure that he/she has authorization to provide medical treatment under a contractual agreement. He/she must comply with all of the regulations regarding the profession's ethics relative to approved dentists, in particular, in Germany, those of the Medical Board (Kammerrecht), Book V of the Social Security Statute Book (Sozialgesetzbuch), any collective agreement governing dentists, and the directives related to orthodontics of the Federal Joint Committee (Gemeinsamer Bundesausschuss).

§ 5 General risks

Orthocaps recommends orthodontic treatment only be provided to patients who demonstrate dental and periodontal stability. The use of Orthocaps' devices and services may, nevertheless, present certain risks. The dentist must inform his/her patients of all the risks that may occur in each specific case. The risks are notably as follows:

- Non-compliance or anatomical anomalies, such as teeth with an unusual form, may prolong the treatment period and impact the quality of the end result or the ability to achieve the desired outcome.
- It is normal to observe some dental sensitivity once the orthodontic devices have been placed.
- It is possible that the gums, inner cheeks and lips will be slightly injured or irritated.
- It is possible for teeth to shift after the treatment. To limit this phenomenon, restraint devices may be worn after the orthodontic treatment.
- Cavities, periodontal diseases, gum inflammation or teeth stains (decalcification) may appear if the patients who receive orthodontic treatment eat sweet foods, do not adequately brush their teeth or whose dental hygiene is unsatisfactory.
- The devices may cause temporary speech impairment.
- The use of these devices may cause greater salivation or dry mouth. Certain drugs may increase these symptoms.
- It may be necessary to reduce the thickness of the dental enamel of certain teeth to create space and allow the teeth to move.
- The patient's general health and drug regimen may also have an impact on the orthodontic treatments.
- The state of the bones and gums which support the teeth may alter.
- Surgery may be required to correct a jaw that is too narrow or severe jaw anomalies. If surgery is required, the risks related to anaesthesia and wound healing should be taken into consideration.
- Orthodontic treatment may damage a tooth that has already been subject to trauma or significant reconstruction. In rare cases, additional dental treatment may be required (e.g. endodontic treatment or additional restorative treatment).
- Existing prostheses (e.g. crowns) may disengage and require new sealing, or even total replacement.
- Clinical crowns that are too short may cause device retention problems and disrupt the movement of the tooth caused by the orthodontic device.
- In some patients, the orthodontic treatment may affect the length of the dental root. This may alter the lifespan of the teeth.
- Orthodontic devices may break.
- Orthodontic devices may be ingested or inhaled accidentally in whole or in part. This risk increases if the dentist has reduced or modified the device.
- In rare cases, problems may occur to the jaw joints, causing joint pain, headaches or earaches.
- Allergic reactions may occur.
- All the teeth must be covered, at least partially, to avoid supra-eruption.

§ 6 Offer and contractual agreement

(1) Orthocaps provides certified dentists with access to its web portal. By clicking on «Add a new case» on the web portal, dentists may add information on a new treatment case. By clicking on «Enter», they will be redirected to a page that summarizes the exact content of the planned order. The order may be corrected by using the «Return» button. The «Final submission» button allows for a firm offer of a contract to be presented, within the meaning of Article 145 of the German Civil Code (BGB).

(2) Orthocaps immediately confirms receipt of the order by sending the dentist an email. It has one week from the time of receipt of the offer to accept it. If it accepts, the dentist must comply with the offer. To be legally valid, Orthocaps must confirm all of the acceptance declarations in writing or by fax. In principle, Orthocaps is not bound by its offers.

(3) Orthocaps reserves the right to refuse to enter into a contract with a dentist who is not certified at the time the offer is presented.

(4) Orthocaps' employees, representatives and agents are not authorized to verbally enter into ancillary agreements or verbal agreements that go beyond the written provisions of the contract.

(5) Orthocaps may amend the rules and recommendations related to its products and services once a contract has been signed in the event of discoveries or technical progress if the amendment does not unreasonably affect the contractual balance between the parties. The dentist must regularly check Orthocaps' website for any change in the rules and recommendations related to the products and services. Orthocaps will inform the dentist of any major change.

§ 7 iSetup, and use of Orthocaps' software and the storage space made available

(1) If a contract is entered into, within the meaning of Article 6 of these General Terms and Conditions, Orthocaps proposes a treatment procedure (iSetup).

(2) The dentist may adapt the iSetup proposal and manage his/her cases using Orthocaps' software made available on its web portal. For this purpose, Orthocaps grants the dentist a non-exclusive, non-transferable right to use its software until the treatment has ended. It ensures that the data collected can be consulted on the internet. It must take appropriate measures to prevent the loss of data and access to the data by unauthorized third parties.

(3) The dentist may not transfer his/her right of access in whole or in part to a third party for the purposes of using the software, whether for free or in return for payment. In particular, he/she must protect the confidentiality of his/her login information and not communicate this information to third parties. The dentist may not save any information in the storage space whose provision, disclosure or use is contrary to applicable laws or any contract entered into with a third party. He/she must ensure that his/her data and information do not contain viruses or elements that may cause damage before saving said data and information, and he/she must use recent anti-virus software.

(4) If Orthocaps' services are used by an unauthorized third party who, through the fault of the dentist, has used the dentist's login information, said dentist is liable for any damage that Orthocaps may suffer.

(5) Orthocaps may immediately block access to its portal if it has grounds to believe that the data stored are illegal and/or infringe the rights of third parties. A suspicion of an illegal and/or illicit act is legitimate when Orthocaps has been informed thereof by a court, an authority and/or other third parties, in which case Orthocaps must immediately inform the dentist that it has blocked his/her access and the reasons therefor. Access must be restored once the suspicions have been cleared.

(6) Orthocaps immediately fixes any software error in accordance with its technical capabilities. An error occurs when Orthocaps' software no longer fulfills the functions set out in the description of the service, provides inaccurate results or does not work correctly, making it impossible to use or limiting its use. Orthocaps updates and improves its software by continuously updating and upgrading said software.

(7) The dentist helps Orthocaps identify and correct any error, and gives it immediate access to the documents that provide information on the circumstances surrounding the error.

(8) Orthocaps is not liable for the loss of data if the damage results from the fact the dentist did not save the data and did not ensure that the data lost could be restored by taking reasonable measures.

(9) Any adaptation or modification of the SaaS service made available on the web portal and any addition thereto, such as measures to identify and remedy malfunctions, cause an interruption or temporary inaccessibility only if it is strictly necessary for technical reasons. The SaaS service's main functionalities are checked every day. In principle, the maintenance department is available from Monday to Friday from 9:00 am to 5:00 pm. If serious malfunctions occur (e.g. no use possible or very limited use of the SaaS service), the maintenance department takes action at the latest three hours after the dentist has become aware thereof or has communicated this information. Orthocaps informs the dentist of the maintenance operations and technical conditions as soon as possible. If the malfunction cannot be remedied within 12 hours, Orthocaps informs the dentist thereof by email within 24 hours and indicates the reason and estimated time-line for the repairs.

(10) The services agreed in the contract by virtue of Article 1 are available 98.5% of the time, on average, throughout the year, including maintenance operations, it being understood that access to the service cannot be interrupted or disrupted for more than two calendar days.

§ 8 Delivery and schedule for deliveries and services related to Orthocaps' devices

(1) Orthocaps devices are delivered in accordance with the agreement signed with the dentist, Orthocaps having opted for the least expensive delivery means. If the dentist makes a specific request, potential additional costs will be invoiced separately.

(2) The delivery dates and schedule only bind Orthocaps if they have been expressly set out in writing in the order confirmation.

(3) Orthocaps is not obliged to justify a delay in delivery or in the provision of services that results from a force majeure event that it cannot immediately remedy, including a strike, a lockout or an official order, which temporarily impedes or makes Orthocaps' manufacturing or delivery of the devices ordered impossible, including when such an event occurs to Orthocaps' supplier or its supplier's supplier. This provision also applies to orders for which Orthocaps has committed in writing to comply with a schedule or date. These events allow Orthocaps to delay the delivery or provision of the services for the period of the interruption as well as throughout the period of the resumption, which must be adequate, or to partially or fully cancel the order relative to the unenforced portion of the contract.

(4) If the period of the interruption is longer than one week for a firm delivery date or four weeks for a non-firm delivery date, the dentist may cancel the portion of the contract that has not been enforced after having defined a reasonable additional delivery period. The dentist may not claim compensation if the delivery date is extended or if Orthocaps is not found to be liable. Orthocaps may only claim the abovementioned circumstances if it has informed the dentist thereof immediately.

(5) Orthocaps may make partial deliveries of the devices and services at any time, unless the dentist refuses said deliveries.

(6) Orthocaps' compliance with its delivery and service obligations is conditional on the dentist's compliance with his/her obligations regarding deadlines and the accuracy of the information provided. Delays may occur if the documentation required is incomplete.

§ 9 Transfer of risks related to Orthocaps' devices

The risks are transferred to the dentist as soon as the merchandise is duly delivered to the company or person responsible for transportation thereof or as soon as it leaves Orthocaps' warehouse to be shipped. If the delivery is delayed at the dentist's request, the risks are transferred to the dentist as soon as Orthocaps informs the dentist that the order is ready.

§ 10 Claims for material defects

(1) Orthocaps guarantees that the devices delivered are free from manufacturing defects and that they comply with the terms of the contract. Claims for material defects may be presented up to one year after delivery of the merchandise.

(2) The dentist must check all of Orthocaps' devices immediately upon receipt to ensure they are not defective. If he/she notes a defect at this time, he/she must inform Orthocaps immediately in writing at the latest one week after receipt of the merchandise. Orthocaps must be informed in writing of any defect that could not be noted during this period, even after a precise check, as soon as it is observed and at the latest one week thereafter. Article 377 of the German Commercial Code (HGB) applies.

(3) In the event of a material defect, Orthocaps may recover the defective device and deliver a non-defective device or repair it. The dentist may only withdraw from the contract or request a reduction in the price if the material defect is not remedied within the four weeks of his/her notification thereof in due form.

(4) The contracting dentist alone has a right to submit a claim against Orthocaps for a material defect. This right may not be transferred to a third party.

(5) The legal warranty rights apply.

§ 11 Orthocaps' liability

(1) Orthocaps is liable for any harm caused to the life, physical integrity and health of individuals if it results from an intentional breach by Orthocaps or one of its legal representatives or agents of Orthocaps' obligations.

(2) Furthermore, Orthocaps, including its legal representatives and executives, may only be held liable for an intentional breach or negligence if there has been no breach of an obligation for which compliance is essential to achieve the object of the contract (an essential obligation). Essential obligations are contractual obligations with which compliance is essential to enforce the contract, with which the co-contracting party is entitled to expect compliance at all times, and with which non-compliance would affect the achievement of the object of the contract. Orthocaps' may only be held liable for wrongdoing if its agents breach essential obligations.

(3) If an essential obligation is breached, Orthocaps is also liable for any slight negligence. Liability is limited, however, to foreseeable damage that is commonly accepted as potentially occurring in the framework of contractual relations.

(4) Liability within the meaning of the German law on product liability (Paragraph 14 of said law, the Produkthaftungsgesetz), remains applicable.

(5) Orthocaps is not liable for the loss of data or programmes if the damage results from the fact the user did not save the data and did not ensure that the lost data could be restored by taking reasonable measures.

§ 12 Payment

(1) Payment is due upon signing the contract, with no discount. The dentist is considered to be late in making a payment if an invoice remains unpaid 15 days after receipt thereof. The legal rules apply without prejudice to those set out below.

(2) Orthocaps accepts payment in cash, by bank transfer, by direct debit and upon delivery. For new clients, it reserves the right to limit the payment methods proposed before accepting the order. It does not accept payments from patients or payer organizations, including payments sent by the dentist or payer organizations on behalf of a patient.

(3) Orthocaps is entitled to allocate payment to a prior debt of the dentist, even if the dentist affirms the contrary, and informs the dentist of the sums allocated. If expenses or interest are due, Orthocaps may offset the expenses, then interest, and finally the principal sum due against the payment.

(4) A payment is considered to have been made when Orthocaps receives the sum it is owed.

(5) If the dentist is late in making a payment, Orthocaps may apply an interest rate that is nine points higher than the base interest rate. For any reminder sent as of the first day a dentist is late with his/her payment, compensation that can reasonably be foreseen in the normal course of business is estimated at €2.50 and is due. The dentist is entitled to prove that no damage occurred or that the damage is much less than the aforementioned fixed amount of compensation.

(6) No compensation or right of retention is authorized unless the dentist's claim is indisputable and proven.

§ 13 Ownership reservation

(1) The merchandise remains the property of Orthocaps until payment in full thereof. If the dentist is late with his/her payment for more than 10 days, Orthocaps may withdraw from the contract and demand the return of the merchandise.

(2) The dentist may resell the merchandise subject to the ownership reservation in the framework of normal business transactions, in which case he/she transfers any receivable resulting from this resale to Orthocaps, whether or not the sale occurs before or after the potential processing of the merchandise delivered, subject to the ownership reservation, up to the amount of Orthocaps' receivable invoiced, as of the date the contract is signed. Regardless of Orthocaps' right to collect the receivable itself, the dentist may recover the sum, even after it has been transferred. In this case, Orthocaps undertakes not to collect the receivable itself if the dentist is subject to its payment obligations, if no application for insolvency or similar proceedings has been filed and if he/she has not ceased to make payments. If the aforementioned collateral exceeds 10% of the receivables to be guaranteed, Orthocaps must release the collateral at its full discretion upon the dentist's request.

§ 14 Compensation for the cancellation of the manufacturing of Orthocaps' device

If the dentist cancels an order for multiple partial deliveries of services (i.e. a request for the commissioning of iSetup and an ensuing request for the manufacturing of Orthocaps' devices), after the commissioning of iSetup but before the manufacturing of Orthocaps' device starts, compensation of €250.00 is owed to Orthocaps as reasonable compensation that is foreseeable in the normal course of business. It is incumbent on the dentist to prove that Orthocaps has not suffered damage or has suffered damage in an amount inferior to the fixed compensation claimed.

§ 15 Documents

(1) Any document provided to Orthocaps becomes its property. No document will be returned to the dentist. In accordance with the obligations in effect in his/her profession and applicable to certified dentists related to documents, the dentist must retain copies of the documents throughout the legal document retention period. Orthocaps is not responsible for the loss of documents or data when they are transferred or processed. In this case, the dentist must return all the documents and data in question to Orthocaps when these documents are required to duly fill an order.

(2) Any items provided by the dentist that are required for the manufacturing process—for example, impressions—may be declared non-compliant by Orthocaps further to its examination, in which case the dentist must provide a replacement item if it is required to duly fill the order.

(3) Orthocaps only retains physical items, such as impressions or study models, for a period that does not exceed the period required to duly enforce the contract. They are then destroyed or archived, at Orthocaps' full discretion. Orthocaps may use the documents, and, without limitation, the impressions, X-rays, photographs, films and study models, for the purposes of dental/orthodontic consultations, continued education, research or publication in specialized reviews or professional publications as long as the patient has expressly agreed thereto in writing or the information and documents in question have been pseudonymized.

§ 16 Applicable law

These General Terms and Conditions of Sale and the legal relationship between Orthocaps and the dentist are governed by German law. The terms of the United Nations Convention on Contracts for the International Sale of Goods do not apply.