

# GENERAL CONDITIONS OF PURCHASE

## 1) DEFINITIONS

In the relationship governed by these general conditions of purchase (GCP) the following terms will mean: "**Acceptance**": an express statement of the Purchaser following its audit of the quality of the product; "**Purchaser**": the company Zhermack S.p.A., P. IVA 00594630295, with registered office at Via Bovazecchino 100 – 45021 Badia Polesine, Rovigo – Italia; "**Order Confirmation**" (OC): the document issued by Supplier to confirm the PO; "**Delivery**": **of products**, the delivery of the Product to the Purchaser; **of services**, the execution of the services; "**Contract**": the formal or informal agreement between the Purchaser and the Supplier that incorporates the present GCP; "**Quantity of product supplied in excess**": the quantity of product supplied in excess in relation to that ordered in the PO; "**Supplier**": the company or natural person that will supply/sell goods or services to Purchaser; "**Packaging**": any kind of product packaging; "**Purchase Order**" (PO): the "ORDACQ" model supplemented by these GCP; "**Party/ies**": the Purchaser and the Supplier separately or together considered; "**Price**": the taxable price of the supply; "**Product/s**": the goods or services respectively sold/provided by Supplier and bought/accepted by Purchaser; "**Chemical Product**": the chemical product of synthetic or natural origin in its original or modified structure.

## 2) OBJECT

All the Supplies of Products purchased by Purchaser are governed exclusively by the present GCP; Purchaser is not bound by and hereby expressly rejects any general sales conditions of Supplier.

## 3) ACCEPTANCE OF THE GENERAL CONDITIONS OF PURCHASE

Supplier, by sending the OC, accepts unconditionally and undertakes to follow, during the relationship with Purchaser, the present GCP and declares to know them and to accept them entirely without exception, aware that Purchaser will not be bound by any other conditions of purchase unless previously and expressly approved in writing, or otherwise they will be considered void.

## 4) CONCLUSION OF THE CONTRACT

The Contract will be considered formed when Supplier sends the OC to Purchaser by any means: letter, fax, email, that proves the forwarder and the time of forwarding. The Contract will be irrevocable for Supplier. Purchaser reserves the right to revoke the PO until having received the OC.

Orders and/or amendments are binding only if Purchaser makes them in writing and if Supplier, for each addition/amendment of the PO, sends the supplemented/amended PO to Purchaser.

Supplier accepts the use of email and fax in forwarding the PO and the subsequent addition/amendment, to the address indicated for receiving the PO. Supplier undertakes to ratify the actions of its own employees and representatives who send the OC. The OC can be sent to the address indicated in the PO marked for the attention of "Gruppo acquisti".

The right of property of the Product will pass from Supplier to Purchaser when the latter receives the OC and, if the Product has yet to be produced, at the time of its existence.

## 5) EARLY TERMINATION

Purchaser has the right to terminate the Contract, at its sole discretion, up until the moment of acceptance of the Product, with a simple written communication sent to Supplier in the manner required for the PO. Should Purchaser wish to exercise its right to terminate, Supplier expressly renounces any claim for damages or compensation.

## **6) CONTRACT ASSIGNEMENT**

It is expressly forbidden to the Supplier to assign the contract without the prior written consent of the Purchaser.

## **7) DELIVERY**

Delivery will take place in accordance with the terms indicated in the PO.

Unless otherwise expressly indicated in the PO, the delivery will be made by Supplier to Purchaser in accordance with the rule DPP Incoterms 2010 - Delivery Duty Paid to Purchaser's place of business. In case of application of another clause Incoterms 2010, Supplier will take out insurance at its own expense that will also cover the likely risks typical for that Product, taking into consideration the type of transport used.

In case of delivery by carrier, Supplier will give timely written communication on the Product's delivery to the carrier, clearly indicating the details, and will adopt every necessary precaution to maintain unaltered the features of the Product during transportation.

Supplier assumes the risk of loss/damage of the Product, even if the cause of the loss/damage is not due to Supplier and even if it was differently agreed upon in the PO, until the moment Purchaser has accepted the Product. This will also be the case in the event of partial delivery and if the Product is stored/stocked at Supplier's or third party's place, awaiting delivery.

All delivery terms indicated in the Purchase Order are considered binding and essential in the interest of Purchaser under art. 1457 of the Italian Civil Code and therefore anticipated or delayed delivery is not accepted. In case of delayed delivery, even if it is only a part of the Product ordered, Purchaser will have the right, through written communication to Supplier, to terminate the contract in whole or in part for such supplies undelivered in the indicated terms, without need for formal notice and without prejudice to its right to further damages; Supplier will compensate Purchaser for any damage and/or cost derived from the delayed or anticipated delivery. The part of the Product ready for delivery before the agreed upon time, will be stored at Supplier's expense.

## **8) DOCUMENTS AND PACKAGING**

Supplier will assist Purchaser in any request for documents, and obtain and communicate them in a timely matter to Purchaser, at its own expense, all necessary documents for export-import according to the delivery terms agreed, as well as all authorizations, licenses and certificates relating to the Product and limited to the Product even if it is mixed with other products, to its safety, necessary for the authorization to produce and market it, as well as the homologation in the country/countries of export and to indemnify Purchaser for any liability concerning the failure to fulfil bureaucratic formalities.

In the case of Chemical Products, the Supplier will obtain and promptly send to the Purchaser, at its own expense, any certificates related to the chemical/physical analyses of the material and any inspection documents, such as laboratory analyses and declarations of conformity etc., and also the updated technical files and safety data sheets that have been modified, identifying the batch production number of the producer and/or of the Supplier for every lot constituting the Chemical Products sold/supplied and attaching the certificate of analyses for every single production batch, in order to guaranty the quality and merchantability of the Product.

No charge for product packaging will be at Purchaser's expense, the price agreed upon for the purchase of the Product will remain the same, unless previously expressly varied in writing. However, in case of sale by weight, the cost of packaging will not be calculated by weight at the same price of the Product.

The Packaging will be made in compliance with the legislative provisions in force and the experience of use according to the type of Product, and in accordance with the type of transport foreseen or foreseeable and, Purchaser will not be responsible for any loss or damage arising from incorrect transportation or handling. Supplier will follow the specific packaging instructions indicated by Purchaser in the PO.

Should pallets be used, Purchaser reserves the right to return the pallets within 1 year from delivery at Supplier's expense.

## **9) QUANTITY**

If the Quantity of the Product supplied is inferior or superior to that ordered in the PO, Purchaser has the right to refuse, in whole or in part, the Delivery and/or the Acceptance of the product, and as a consequence Supplier will have the duty to immediately withdraw the Product refused and apply the delivery terms written in art. 7 concerning the failure to deliver.

Purchaser will purchase the Quantity of the Product supplied in excess, at its convenience, under the same sale conditions to which the Product was delivered sending the PO to Supplier. Should the PO not be sent, the Quantity of the Product supplied in excess will be at Supplier's availability to collect even if it has been previously stocked by Purchaser. If after 30 days after its arrival, at Purchaser's place of business, the Quantity of the Product supplied in excess has not been sold or collected, Purchaser will have the option to destroy it, alienate it or stock it at Supplier's expense. In any case, Purchaser will not be liable for the Quantity of the Products supplied in excess and provisionally stocked in its warehouse, waiting to be collected.

Should there be a difference between the quantity declared at delivery time of delivery and the quantity, as a result of inventory rectifications made by Purchaser at the end of the use of the Product, which has been attested between the Parties, Purchaser will send to Supplier a debit note equal to the cost of the unaccounted Product/s and at the price indicated in the OC. If Supplier does not respond to the debit note within 15 days after its transmission it will be deemed accepted.

## **10) WARRANTY**

Supplier guarantees that the Product complies with applicable Italian rules and European regulations.

Supplier guarantees that the Product is made in accordance with the description indicated in the PO, in the Purchaser's technical specifications, in the Supplier's technical data sheet and/or the laboratory analyses provided with every single production batch, and in the other documents deemed necessary for its common use, that is not under retention of title of any kind and so that it is at the disposal of the Purchaser.

Supplier will act with reasonable care in the performance of its activities and guarantees the delivery of a safe Product that, following the normal conditions of use, doesn't present any risk or presents the minimum risk related to the use of the Product (as well as after its obvious use) or risks that are deemed acceptable observing a high level of health and safety, with particular consideration to the destination of the Product in the dentistry and orthodontics sector. Supplier will also supply, to Purchaser, the necessary information useful for the valuation and prevention of risks derived from the normal use of the Product. Supplier guarantees the Product free from any defect or low quality, that has been the consequence of a defect in planning, materials or manufacturing.

In the case of Chemical Products, if no express expiration date is indicated at the time of the Delivery, it will be equal to no less than 5 (five) years from the delivery date. However, the expiration of the Product will not be inferior to two thirds of its useful life calculated by the date of

production. In the case of Packaging, if there is no express indication of the expiration date of the Product at the time of the Delivery it will be considered unlimited.

Supplier will collaborate with Purchaser to manage and resolve any possible dispute, even by third parties to the Product, derived from the supply of Product made by Purchaser to its clients, and also in the event of any disputes that may arise from foreign countries.

If Supplier doesn't remedy the defects, non-conformity or lack of quality of the Products within a reasonable time, or in the event that the remedy, for some reason, may be unfeasible for Supplier, Purchaser will resolve the defects directly or through another supplier at the expense of Supplier who should have remedied the defects.

## **11) SPECIFICATIONS OF THE PRODUCT, PRODUCT'S TEST, NOTICE OF DEFECTS AND NON CONFORMITY OF THE PRODUCT**

Supplier will give prior notice of any change in the specifications of the product, so that Purchaser can decide if to accept them or not. Any supply of products, whose specifications are different from those agreed, will not be justifiably accepted.

The Product's Acceptance will be made after 15 working days from the arrival of the Product at Purchaser's place of business (Purchaser's daily warehouse transactions book will certify this); during this time, quality tests on the product will be carried out. The Product is kept by Purchaser at Supplier's expense and risk until its Acceptance and, in case of non-conformity, until its collection but it will remain at the Supplier's disposal to carry out counter analyses and/or technical tests. The Product's collection and the counter analyses or technical tests will be made within 30 days from the non-conformity notice. The failure to carry out technical tests within this time will be understood as acceptance of the analyses/quality evaluation made by Purchaser, whereas the failure to collect the Product within this time will be understood as authorization to dispose/sell/ destroy the Product at Supplier's expense.

Purchaser will be able to contest the quality and the latent defects if the Product should not conform to the PO and/or the chemical analyses of the batch and/or Supplier's technical files and/or the specifications indicated by Purchaser and/or the industrial applications of Purchaser, until the beginning of the processing of the Product and no later than 90 from the discovery of latent defects.

By the 30<sup>th</sup> of September of each year, Purchaser will communicate to Supplier a report regarding any non-conformity discovered with the Product supplied from the previous calendar year. Failure to answer this report of non-conformity within 2 months from its communication to Supplier will be understood as accepted and, all costs, expenses and damages in relation to it will be at Supplier's expense.

The Product and/or the supplied Product, that is not accepted by Purchaser will be immediately substituted or modified at Supplier's expense, unless Purchaser would prefer to buy it from another supplier at Supplier's expense. Supplier will place the substituted Product at Purchaser's disposition to perform new tests regarding quality.

Supplier will place at Purchaser's disposition all the tools, equipment, structures, services and materials needed to carry out quality control. The testing of quality made by Purchaser and the acceptance of the Product do not release, however, Supplier from the obligations in the contract, including without limitation, its liability for possible defects in the Product that may subsequently be discovered.

Supplier will collaborate with Purchaser in all the necessary actions to carry out quality control on the Product, in order that Purchaser is able to accomplish all checks and tests on the Product in accordance with its own supply process, adopted under article 7.4 of UNI EN ISO 9001:2008.

## **12) PRICE AND PAYMENT**

The price of the Product is understood to be fixed according to the price list approved by 31st December and valid for the whole of the successive calendar year.

Payment will be made according to the terms and conditions indicated in the PO and, unless otherwise agreed on, in Euro, and reserving the right of Purchaser to pay the quotation price in the Supplier's currency at the time that the payment expires. If the price of the Product is derived from the quotation price, price lists or from the stock exchange, the price agreed upon will be treated as the maximum price except for the possibility for Purchaser to pay the minimum price resulting from the quotation of the Product at the moment that the payment expires.

Supplier will send to Purchaser an invoice with the quantity and the price indicated in the PO, and also with the code, the description and the delivery date of the Product supplied; in case of a difference between the information indicated in the PO and in the invoice, the former will prevail, even if there has been no dispute relating to the latter.

Should a discount or bonus be agreed on that exceeds the quantity of the Product ordered, Supplier will issue a credit note in favour of Purchaser within 30 days from the end of the calendar year in which it has come about; should the credit note not be issued within the indicated term, Purchaser will send a debit note to Supplier.

It is forbidden for Supplier to refuse the credit and to issue a draft for the payment of the price. However, if the draft is issued and is not withdrawn, Supplier shall be responsible for any damages derived from the failure to withdraw it.

## **13) TERMINATION**

Purchaser will be fully entitled to terminate the contractual relationship with the Supplier, at any time, through written communication sent to Supplier expressing its intention to use this clause of termination, in case of breach of one or more of the obligations established in articles 6-7-9-10-11-15-16-17-18. Purchaser, will also have the right to terminate the Contract or to revoke the PO, if it has made a claim in writing to Supplier concerning the breach of any other obligation not indicated in the above articles and Supplier has not remedied the breach within the term indicated in Purchaser's claim notice. Purchaser will also have the right to terminate any of the current relationships of supply, without prior notice, if Supplier subcontracts the production of the Product or if it is in bankruptcy, composition with creditors or any other insolvency procedure.

## **14) FORCE MAJEURE**

In the event that Purchaser and Supplier should not be capable of performing whichever of the obligations agreed upon due to an uncontrollable event such as fire, flood, war or strike that could not be foreseen, avoided or overcome using due diligence, they are not obligated to make compensation for damages and costs. The party that is unable to perform will immediately inform the other party in writing, estimating the duration of the delay, and will do everything in its power to avoid any further delay in performing its obligations and to carry out its duties. When the event invoked lasts more than one month, each party is entitled to terminate the contract with no obligation to make compensation for damages to the other party.

## **15) CONFIDENTIALITY OBLIGATIONS: KNOW-HOW PROTECTION**

In accordance with article 39, section 7, of the TRIP's agreement and with art. 98 of the Italian Industrial Property Code (D.lgs. n. 30/2005 and successive amendments), Supplier will not disclose or divulge to third parties, not privy to the contract, all inherent information concerning the know-how as well as all other information, experience and knowledge of Purchaser's business that is made known in the course of dealings, in performing the contract and in business meetings,

including the information regarding the composition of the products, the plants, the production methods and any other company's asset, as well as the organization of the production and the business, the services rendered by the company, the commercial initiative and the clients, the management and ruling of the company, the relationship with thirds parties etc. The above indicated information will be considered confidential and must not be used directly or indirectly by Supplier except for the correct performance of the contract. Supplier will take all reasonable care to keep this information confidential, disclosing it solely to its own employees, collaborators or consultants that need to know it for the performance of the contract, binding them to the terms and conditions of this clause. During this contract and after its termination Supplier will not disclose, publish or divulge, copy, imitate or use in any way part of the know-how of Purchaser's property. Supplier guarantees that it is not aware of any industrial property rights or intellectual property rights of thirds parties, whose goods or services could interfere. In any case, Supplier will keep Purchaser free from third party claims for the breach of their intellectual or industrial rights during the supply of the service or of the Product.

#### **16) INSURANCE, LICENCE, SECURITY MEASURE**

Supplier undertakes to take out the insurance cover required by law for the activity of its workers, employees and collaborators, to acknowledge the respective contract of employment, as well as to allow Purchaser to verify it, providing the Purchaser with all the relative documentation.

#### **17) LIABILITY FOR ACCIDENT TO PERSONS AND DAMAGES TO THINGS**

Supplier will indemnify Purchaser and insure adequately for any event and for any pecuniary loss deriving from the actions of thirds parties and for liability for damage caused by a defective product. Supplier will not object to the exclusion of Purchaser from any possible legal process.

#### **18) CRIME PREVENTION EX D.LGS 231/01 AND ETHICS CLAUSE**

Supplier declares to have read the organization, management and control model adopted by Purchaser pursuant to Legislative Decree 231/2001 relating to corporate liability for acts resulting from crimes (the "Model") and its Code of Ethics, whose rules are binding for the parties and constitute an integral and substantial part of the Contract.

An extract of the Model and the Code of Ethics are available on the website [www.zhermack.com](http://www.zhermack.com). Purchaser will provide the full text of the Model, if requested by Supplier.

The violation by Supplier of the provisions contained in the Legislative Decree 231/2001, in the Model or in the Code of Ethics will give Purchaser the right to withdraw from the Contract immediately, by sending a registered letter to the other party; in any case any compensation for damages will still be due.

#### **19) PRIVACY**

Following the acceptance of the present GCP, Supplier authorizes the processing of the personal data and certifies that he has received the informative ex art. 13 of D.Lgs. n. 196/03.

#### **20) LANGUAGE**

The original version of these GCP is in Italian. In case of translation into another language, for any dispute arising related to the interpretation of these GCP, the Italian text prevails.

#### **21) APPLICABLE LAW**

The Contract integrated by the present GCP and the resulting relation are governed by the Italian laws in force and by the EU law.

## **22) JURISDICTION**

Any dispute relating to the interpretation, performance and termination of the Contract, however relevant or occasioned to the present Contract, shall be submitted to the exclusive jurisdiction of the competent courts in Verona, excluding any other alternative or concurrent jurisdiction.

**For express and agreed approval of arts.: 3 (ACCEPTANCE OF THE GENERAL CONDITIONS OF PURCHASE), 4 (CONCLUSION OF THE CONTRACT), 5 (EARLY TERMINATION), 7 (DELIVERY), 8 (DOCUMENTS AND PACKAGING), 9 (QUANTITY), 10 (WARRANTY) 11 (SPECIFICATIONS OF THE PRODUCT, PRODUCT'S TEST, NOTICE OF DEFECTS AND NON CONFORMITY OF THE PRODUCT), 12 (PRICE AND PAYMENT), 17 (LIABILITY FOR ACCIDENT TO PERSONS AND DAMAGES TO THINGS), 18 (CRIME PREVENTION EX D.LGS 231/01 AND THE ETHICS CLAUSE), 19 (PRIVACY), 20 (LANGUAGE), 21 (APPLICABLE LAW) and 22 (JURISDICTION).**

**The Supplier**

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## **Informative ex art. 13 D. Lgs n. 196/03 ("Personal Data Protection Code")**

According to D. lgs. June 30, 2003, No 196 ("Code regarding the processing of personal data", below "Personal Data Protection Code"), we wish to inform you that, in the ordinary course of contractual relations and in accordance with the provisions of the Personal Data Protection Code, our Company ZHERMACK SpA collects and processes personal data that concerns you.

All information relating to natural and legal persons, identifiable entities and associations, also indirectly, are personal data.

To comply with the legislation on personal data protection under art. 13 of the Personal Data Protection Code, we wish to inform you of the use of your personal data and of your rights.

### **1. Purposes of processing personal data.**

The personal data that concerns you is processed, within the ordinary activities of our Company, for the purposes described below and related to the management and organization of our relations with suppliers:

(i) management of suppliers (supplier management; administration of contracts, orders, deliveries and invoices; selection in relation to company requirements);

(ii) management of litigation (breach of contract; transactions, debt collection, arbitration, litigation);

(iii) in general, for a better functioning of relations connected with contracts with suppliers.

### **2. Categories of personal data processed.**

The personal data includes everything related to the enforcement of contractual obligations and, in particular: identification, tax, banking, financial and organizational information.

### **3. Processing methods.**

The data that concerns you are those provided by you and are processed by persons specifically in charge of processing and responsible for managing relationships with suppliers, using manual and electronic instruments. The handling of data is carried out solely with logic and through organization models that are strictly related to the obligations, tasks and aims of the same processing. The method of processing guarantees the privacy and security of the information.

### **4. Compulsory or optional nature of giving personal data and consequences of a possible refusal.**

With regard to the nature of the data and the purposes of processing, the transfer of your personal data must be considered necessary for the carrying out of contractual obligations with suppliers.

If personal data is not provided, therefore, the contracts will not be able to follow a regular course



## **5. Subjects to which data can be communicated.**

In compliance with legal obligations or to discharge the obligations under the agreement, the Company finds it necessary to disclose some personal data that concerns you.

In particular, your personal data may be communicated to the tax offices and consultants for any assistance in litigation.

The above mentioned information will be provided in compliance with legal obligations or regulations or to assert or defend a right in court.

In addition, to carrying out its contractual obligations, the Company finds it necessary to communicate your data to banks and banking institutions.

Finally, the Company, which is part of a multinational Group, may, for the purpose of necessary coordination, disclose personal data relating to your economic activities (for example, membership of industry sector, products, economic conditions, etc. .) to other companies that are part of the Group. Transfers of data outside the EU, where some companies of the Group have offices, will take place in accordance with art. 43 of the Personal Data Protection Code.

The above mentioned subjects, to whom your personal data will or may be disclosed, will process personal data as data controllers pursuant to art. 28 of the Personal Data Protection Code, in full autonomy, being unrelated to the original handling executed by our Company. A detailed and constantly updated list of these subjects, indicating their respective offices, is always available from the data processor at the address indicated below.

## **6. The rights of art. 7 of the Privacy Code.**

Art. 7 of the Privacy Code confers specific rights to the data subjects. In particular, the data subject can obtain confirmation as to whether or not personal data concerning him/her exists from the data controller in intelligent form. In addition, the data subject can ask to know the origin of the data as well as the logic and the aim of the handling; to obtain the erasure, the anonymization or the blocking of personal data in breach of the law as well as updating, the rectification or, if interested, the integration of the data; to object, on legitimate grounds, to the processing of his or her personal data. To exercise these rights it is necessary to address the data processor at the address indicated below.

## **7. Data controller and processor.**

The data controller is ZHERMACK SpA, established in Badia Polesine (Rovigo) Italy, Via Bovazecchino No 100. The data processor of personal data relating to the suppliers is the manager of the Suppliers Accounting Office, to whom it is necessary to address in order to obtain the updated list of the other data processors.