



## GENERAL TERMS AND CONDITIONS OF SALE

### 1. General Provisions

- (a) The terms and conditions indicated below (the "General Terms and Conditions of Sale") apply to all orders sent by the Purchaser (hereinafter "CUSTOMER")- to "ORTHOKEY", to receive supply of products and services of ORTHOKEY (hereafter referred as "SOLUTIONS"), unless otherwise specified within the body of the offer.
- (b) The CUSTOMER expressly and specifically accepts that the General Terms and Conditions of Sale constitute an integral part of each single agreement executed between the parties and confirmed by ORTHOKEY.
- (c) Any dissenting terms and conditions shall only apply if confirmed in writing by the ORTHOKEY.
- (d) ORTHOKEY reserves the right to change, integrate or vary the General Terms and Conditions of Sale, by including such variations in the quotations or in any other written correspondence sent to the Customer. The changes do not apply to orders already received and confirmed by ORTHOKEY.
- (e) The CUSTOMER expressly and specifically agrees that any order must be sent to the unique reference address **customer.service@orthokey.eu** or to the fax number 055 3246012.
- (f) By placing an order in the various ways prescribed, the CUSTOMER declares to have read all the information provided concerning the purchase and to fully accept the " General Terms and Conditions of Sale" and the payment conditions indicated in the offer sent by ORTHOKEY to the CUSTOMER.
- (g) The CUSTOMER's order is irrevocable from the moment of its receipt by ORTHOKEY. The order becomes binding for ORTHOKEY only after the relative order confirmation has been sent to the CUSTOMER.
- (h) The contract stipulated between ORTHOKEY and the CUSTOMER must be considered perfected when the CUSTOMER receives the order confirmation from ORTHOKEY, even if the confirmation by ORTHOKEY is only partial. In this regard, the CUSTOMER expressly and specifically accepts that ORTHOKEY reserves the unquestionable right to confirm the order both in full and in part.
- (i) The purchase or rental of any product or service not mentioned in this offer will be the object of a separate offer.
- (j) In case of cancellation of the purchase contract by the CUSTOMER, the CUSTOMER will be required to pay a penalty, as stated in Article 3 (g), unless otherwise stated in the specific conditions of the offer.

### 2. Offers and Orders

- (a) Without prejudice to the provisions above in art. 1 (h), orders placed by the CUSTOMER are not considered accepted until they have been confirmed in writing by ORTHOKEY.
- (b) ORTHOKEY reserves the right to define and indicate in the offer the maximum credit amount allowed to the CUSTOMER by ORTHOKEY itself. ORTHOKEY will have no obligation to fulfill any CUSTOMER order until the CUSTOMER itself has paid sufficient funds to meet the eligible credit limit. In the event that an order is not satisfied by ORTHOKEY due to exceeding the maximum credit limits allowed, ORTHOKEY has the right to terminate the purchase contract as indicated in the following article 3 (e).
- (c) For each purchase order of less than €800.00, a management fee of €85.00 will be applied.

### 3. Prices and Terms of Payment

- (a) The prices of the ORTHOKEY SOLUTIONS shall exclude any statutory VAT, which shall be payable pursuant specific provisions included in the invoice.
- (b) Taxes, duties, shipping, insurance, installation, end user training, after sales service are not included in the prices unless separately quoted.
- (c) The only ORTHOKEY bank reference to be used for payments is the "ORTHOKEY UNIQUE BANK REFERENCE - OUBR", sent by post with the letter "Identification and terms for the ORTHOKEY Unique Bank Reference" signed in original by the legal representative of ORTHOKEY. Any change of the ORTHOKEY bank reference shall be considered valid only if transmitted to the CUSTOMER according to the Terms and Conditions described in the letter "Identification and terms for unique ORTHOKEY bank reference". Any payment made by the CUSTOMER to a different bank account than the OUBR will not be considered a valid payment with respect to the financial balance between ORTHOKEY and the CUSTOMER.
- (d) In addition to other remedies permitted under the applicable law and these General Terms and Conditions of Sale, ORTHOKEY reserves the right to recover default interest on late payments starting from the date on which the right to payment accrues, calculated at the maximum permitted under the terms of the law applicable from time to time.
- (e) The CUSTOMER expressly and specifically agrees that if the CUSTOMER itself fails to take payments in the time and manner specified by ORTHOKEY or the CUSTOMER's business shall be operated beyond the ordinary course of business, which shall include, without limitation, when seizure or protest has been made, payments shall be delayed or insolvency proceedings shall have been petitioned or opened, ORTHOKEY shall have the right to suspend or cancel, at its sole discretion, further delivery and to declare all its claims arising from the business relationship as immediately payable. Moreover, ORTHOKEY may in such event request for anticipation on the payments or a warranty deposit.
- (f) In the event of disputes, the CUSTOMER has no right to make any compensation, to withhold unpaid SOLUTIONS or to reduce the price of the SOLUTIONS ordered.
- (g) The CUSTOMER expressly and specifically accepts that in the event that the CUSTOMER itself either cancels totally or partially the order related to the present offer and/ or does not make the payment within the terms of this offer, ORTHOKEY has the right to:
  - I. request to the CUSTOMER the return of the SOLUTIONS related to the outstanding payment amount. In the event that the CUSTOMER does not return the above-mentioned SOLUTIONS within 2 weeks from the date of the return request made by ORTHOKEY, the CUSTOMER will have to pay ORTHOKEY an indemnity equal to the outstanding payment amount increased by 20%. The indemnity must be paid by the CUSTOMER to ORTHOKEY within one month from the date of the request of return.
  - II. request to the CUSTOMER the payment of a penalty equal to 40% of the total net amount of this offer and ORTHOKEY has the right, as partial compensation for damages and not as a penalty, to retain the amounts already paid by the CUSTOMER in relation to this offer, however reserving the right to take appropriate action to obtain full compensation for the damages suffered.
  - III. terminate the contract related to this offer.

### 4. Shipping and delivery terms

- (a) Any delivery term indicated in the offer document shall be considered merely indicative, unless such term has been expressly indicated in writing as binding in the offer itself.
- (b) Within the limits of reasonableness, ORTHOKEY reserves the right to make partial deliveries.
- (c) ORTHOKEY operates according to the Ex Works logistic-commercial terms (INCOTERMS 2020), unless otherwise specified in the offer. The choice of courier and/or means of transport to be used for shipping the ORTHOKEY SOLUTIONS must be specified by the CUSTOMER. Otherwise, ORTHOKEY will use a contracted courier. In any case, the costs and risks of the shipment are borne by the CUSTOMER from the moment the SOLUTIONS are taken over by the courier.

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- (d) All the custom duties are not included and in case will be invoiced separately.
- 5. Duty to inspection, acceptance and verification of the SOLUTIONS**
- (a) Upon receipt of the SOLUTIONS, the CUSTOMER shall immediately:
- Verify the quantities and packaging of the SOLUTIONS and, if necessary, report any significant anomaly in writing to the unique reference address [customer.service@orthokey.eu](mailto:customer.service@orthokey.eu), as described in the following point (b);
  - in writing conduct a conformity check on the SOLUTIONS and Services compared to the data indicated in the order confirmation and report any significant anomaly to the unique reference address [customer.service@orthokey.eu](mailto:customer.service@orthokey.eu), as described in the following point (b).
- (b) In case of a notice of defect, the CUSTOMER shall comply with the following procedures and deadline:
- the notification shall be made no later than 3 (three) working days from the taking possession of the SOLUTIONS by the CUSTOMER or from the activation of the Service object of the order confirmation. In the event of a defect which, despite a first inspection, has remained undiscovered, the objection must be raised within the day on which the defect has been discovered, but in any event by no later than 8 (eight) days from the takeover of the SOLUTIONS or from the activation of the Service;
  - the detailed notice above mentioned shall be delivered exclusively in written form to the unique reference address [customer.service@orthokey.eu](mailto:customer.service@orthokey.eu) within the terms indicated above. Any communication made in any other form does not count as a notification of defects for the purposes of this article;
  - the notice must clearly specify the type and quantity of the alleged defects;
  - the CUSTOMER hereby expressly and specifically agrees to make the contested SOLUTIONS available for inspection; this inspection will be carried out by ORTHOKEY or by an expert designated by ORTHOKEY.
  - ORTHOKEY is not obligated to accept returns of the SOLUTIONS, unless expressly agreed in writing. Any cost incurred for this purpose is borne by the CUSTOMER.
- (c) The CUSTOMER hereby expressly and specifically accepts that, in the absence of objections in the forms and methods described in this article, the SOLUTION delivered and/or the Service used are considered approved and accepted by the CUSTOMER.
- 6. CUSTOMER obligations**
- The CUSTOMER is required to:
- comply with and be responsible, in all relevant respects, with all applicable statutes, laws, ordinances, rules and regulations of any relevant governmental body, which are applicable to the marketing, sale and use of ORTHOKEY SOLUTIONS.
  - be responsible for the correct use of the ORTHOKEY SOLUTIONS and provide specific training to each relative user.
  - keep confidential all information and data, communicated by ORTHOKEY, pertaining to the organization, structure, activity, programs, production and commercial results of ORTHOKEY, as well as information of which the CUSTOMER becomes aware directly or through other subjects, or in the form of samples, models or the equivalent, including any information obtained as a result of the examination, testing or analysis of any hardware and software item or portions thereof, provided by ORTHOKEY.
- 7. Medical devices traceability**
- In accordance with the current laws and regulations on traceability (UE 2017/745 MDR and quality standard ISO 13485), the CUSTOMER assumes responsibility for keeping the information relating to the physical location of the SOLUTIONS provided by ORTHOKEY updated at its headquarters and agrees to provide such information to ORTHOKEY where requested.
  - In the event that the CUSTOMER does not provide the traceability information within 30 days of the formal request by ORTHOKEY, the CUSTOMER will be required to pay 20,000.00 Euros as compensation within 60 days of the formal request sent by ORTHOKEY.
- 8. Terms of warranty**
- ORTHOKEY warrants that the SOLUTIONS shall be free from defect and shall comply with the technical specifications declared by ORTHOKEY.
  - The warranty is valid only on the SOLUTIONS used in an environment and for applications consistent with the specifications declared by ORTHOKEY; any use that is inconsistent with or not suitable for the specifications declared by ORTHOKEY is to be considered improper and as such does not give rise to the right to the warranty. Any modification or replacement of parts of the SOLUTION not authorized by ORTHOKEY, releases the latter from any civil and penal liability, and makes the warranty invalid.
  - The warranty does not cover the parts by their nature subject to wear.
  - The CUSTOMER hereby expressly and specifically accepts that the Software contained in the Orthokey SOLUTIONS is provided on an "as it is" basis, therefore devoid of any guarantee, whether legal or otherwise, with particular reference to the presence of hidden defects or errors, the proper or uninterrupted operation of the Software, the fitness for a particular use, or the infringement of third party rights. ORTHOKEY warrants, however, that the Software is free from "malware" at source. ORTHOKEY is not liable for damages to the CUSTOMER, unless this is required by applicable laws or is based on a specific written agreement. This includes general, special, or incidental damages, as well as damages resulting from the use or inability to use the Software; this includes, but is not limited to, loss of data, corruption of data, losses incurred by CUSTOMER or third parties and the inability of the Software to work together with other software, even if the holder or other parties have been advised of the possibility of these damages.
- 9. Limitation of liability**
- Unless in case of justified objection raised in accordance with the provisions of the article 5 above, the CUSTOMER shall not be entitled to any further rights or remedies. In particular, ORTHOKEY shall not be responsible for any indemnity requested for breach of contract or default, in the event of damage or loss of profit deriving to the CUSTOMER as a result of the use, non-use, or installation of the SOLUTIONS in other products, without prejudice to the warranty granted in the article 8, or the liability of ORTHOKEY in case of willful misconduct or gross negligence. In no event shall ORTHOKEY be liable for any consequential, incidental, special, punitive or exemplary loss, including, but not limited to, loss of profit, loss of revenue, loss of business, loss of goodwill, loss of anticipated savings or cost of procuring substitute goods or services.
  - ORTHOKEY shall do its best endeavor to deliver the SOLUTIONS within the terms agreed, if any, but it shall not be liable for any loss or damage of any kind directly or indirectly caused by any delay in the completion of a contract or delivery of the SOLUTIONS.
  - The catalogues, price lists or other promotional material of ORTHOKEY are only a mere indication by way of example of the type of the SOLUTIONS and prices, and no indication contained therein shall be binding for ORTHOKEY. ORTHOKEY does not accept responsibility for errors or omissions in its price lists or promotional materials.
- 10. Retention of title**
- The SOLUTIONS supplied remain the full property of ORTHOKEY until the date of the full payment by the CUSTOMER of the entire price of the SOLUTIONS and of all the amounts due to ORTHOKEY in relation to the same order confirmation. Until that time, the CUSTOMER shall hold the SOLUTIONS as fiduciary agent of ORTHOKEY and shall keep them properly stored, protected and insured.
  - In the event that in the country where the CUSTOMER has its domicile, for the retention of title in favor of ORTHOKEY to be valid, it is necessary to complete administrative or legal formalities such as, without limitation, the registration of the SOLUTIONS in public registers,

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or the affixing of appropriate seals on them, the CUSTOMER undertakes from now on to collaborate with ORTHOKEY and to implement all the necessary acts in order to obtain for the latter a valid right with reference to the retention of title on the SOLUTIONS.

**11. ORTHOKEY's intellectual property**

- (a) The CUSTOMER hereby expressly and specifically acknowledges that the trademarks, trade names or other distinctive marks on the goods are the exclusive property of ORTHOKEY and cannot be altered, modified, removed or canceled in any way.
- (b) Any information, communicative element, trade name, logo, trademark, image, video and/or any content transmitted or contained in the information or commercial material provided by ORTHOKEY to the CUSTOMER cannot be used or disclosed by the CUSTOMER in any form and by any communication channel without explicit authorization provided in writing by ORTHOKEY to the CUSTOMER from time to time for each specific case.
- (c) Any different use of ORTHOKEY's intellectual property by the CUSTOMER, unless expressly granted by ORTHOKEY in writing, will be understood as a violation by the CUSTOMER of the aforementioned exclusive rights of ORTHOKEY and a breach of contract, and as such it will be properly prosecuted.
- (d) The documents, drawings, data and information (both in paper form and on electronic support) that should be delivered to the CUSTOMER remain the exclusive property of ORTHOKEY and constitute support for a better representation of the SOLUTIONS and are indicative of the performance of the SOLUTION itself. The CUSTOMER undertakes not to reproduce them, not to disclose them to third parties and to also take the appropriate precautions towards its own personnel in order to guarantee the above protection.

**12. Data protection law**

The personal data of the CUSTOMER shall be processed in accordance with the Italian data protection law (Decreto Legislativo 101/2018 and GDPR UE n. 2016/679).

**13. Applicable law**

The present General terms and conditions of sale and all the agreements executed between ORTHOKEY and the CUSTOMER shall be governed by Italian laws.

**14. Jurisdiction**

- (a) Any dispute arising between the parties in connection with the interpretation, validity and execution of the present General terms and conditions of sale and of all the relevant agreements shall be devolved to the exclusive jurisdiction of the Court of Massa Carrara.
- (b) It is agreed between the parties that only ORTHOKEY, as its own discretion, may have the faculty to waive the exclusive jurisdiction set forth in paragraph (a) to bring an action against the CUSTOMER in its domicile and before any court of competent jurisdiction.

**15. Restrictions pertaining to the hiring of workers or employees**

The Parties mutually undertake to: (i) not hire, directly or indirectly, full-time or part-time, any employee or collaborator of the other party or (ii) collaborate, provide services or otherwise establish relationships within the five-year period from the date of the last order confirmation sent by ORTHOKEY to the CUSTOMER. In the event of violation of the provisions of this article, the parties hereby mutually undertake to pay, as compensation, a sum equal to twenty times the gross annual salary of the employee/collaborator of the other party.

**16. Final provisions**

- (a) The total or partial invalidity of any provision of the present General terms and conditions of sale shall not affect the validity of the other provisions.
- (b) The present General terms and conditions of sale have been drafted in both Italian and English languages. In case of problems of interpretation, the Italian version shall prevail.

Thank you for your business

*Best regards*

ORTHOKEY ITALIA S.R.L.- Commercial Unit

OFFER ACCEPTANCE	
Name Surname	
Signature	
Date	
Stamp	