

General Terms

General Terms of Institut Straumann AG regarding the ordering and delivery of Straumann products by Straumann distributors via the Straumann internet portal

The internet portal on the websites “www.straumann.com/eshop”, “www.straumann.com/intl/portal” and “www.straumann.com/intl/eshop” (“Internet Portal”) is solely directed at distributors of Straumann (“Distributors”) authorised based on a separate written agreement or written appointment with Institut Straumann AG, Peter Merian-Weg 12, CH-4002 Basel (“Straumann”). Distributors can order products from Straumann (“Products”) via the Internet Portal. The Agreement regarding the delivery of Products is concluded between Straumann and the Distributor.

1. Scope of General Terms

For the orders of Distributors from Straumann over the Internet Portal the following General Terms exclusively apply in the version valid at the time of the order. General Terms to the contrary or differing General Terms of Distributors shall not apply, unless Straumann explicitly approves their use in writing.

2. Registration as User

2.1. To be able to order via the Internet Portal prior registration is required. The registration enables Straumann and its affiliates to collect the information necessary for a fast and smooth processing of the order. The pages of the Internet Portal concerning the ordering of Products are only available for registered users of the Internet Portal.

2.2 Only Distributors are authorised to register themselves on the Internet Portal.

2.3 The user name and the password cannot be transferred to third parties.

3. Conclusion of Contract, Right to Modify

3.1 Distributor places an order with Straumann by entering the required data into the order form and by clicking the order button, respectively by sending off the information to the internet portal. The order of Distributor is binding. Distributor will receive an electronic confirmation of the receipt of his order. Straumann thereafter verifies whether the information transmitted by Distributor is complete and appropriate for the processing of the order. If the verification is positive, Straumann will accept the order and deliver the ordered Products to Distributor. Otherwise Distributor will receive an invitation to place a new order with the missing or correct information. The information provided in the order form by Distributor has to be true and complete.

3.2 Offers of Straumann on the Internet Portal are subject to confirmation and made without engagement. Straumann reserves the right to change constructions and materials if the usual and contractually agreed use of Products is not materially or adversely impaired and the change is reasonable.

4. Prices and Payment Conditions, Default of Distributor, Retention Right, Set-off, No returns or exchanges

4.1 Unless otherwise explicitly agreed, the prices are determined according to the price list of Straumann valid at the time of the order. The price list of Straumann is published on the Internet Portal, respectively contained on the order form pages. All prices are given in CHF plus VAT. Unless otherwise explicitly agreed, the prices do not include transport costs, packing costs, insurance, custom charges and duties, etc., respectively are calculated EX WORKS.

4.2 Unless otherwise explicitly agreed, the invoices from Straumann are due immediately and have to be paid within 30 days from the date of invoice without any deductions.

4.3 In case of default of acceptance by Distributor, Straumann may - if legally required - set the Distributor a period of grace and thereafter, without an obligation to deposit the product, waive the acceptance and instead claim damages in the amount of the agreed purchase price. Straumann is free to claim additional damages.

4.4 Bills of exchange, cheques and similar payment methods are only accepted on account of performance and are only valid after a payment is unconditionally credited to Straumann. All related costs are on Distributor's account.

4.5 Claims by Straumann may only be set-off by Distributor against his own undisputed or legally ascertained claims deriving from the same contractual relationship.

4.6 Straumann accepts no returns or exchanges of delivered Products.

5. Partial Performance, Delivery Period, Force Majeure, Self-Delivery, Default of Delivery, Bearing of Risks, Shipment, Transport Insurance

5.1 Straumann is entitled to partial delivery in as far as this is reasonable for Distributor.

5.2 Delivery periods, respectively delivery dates, are only binding if they have been explicitly agreed in writing upon conclusion of the contract. General information on the Internet Portal does not constitute a representation of delivery periods or dates. Delivery periods, respectively delivery dates, are deemed to be observed if the product has left the factory or the storehouse of Straumann at the time of their expiration or if Distributor has been informed of the readiness for shipment of Products.

5.3 In the event of occurrence of force majeure circumstances or other circumstances beyond the reasonable control of Straumann, e. g. breakdown, strike, lockouts, war, bans on import or export, shortage of energy or raw material, governmental acts, etc., which temporarily prevent Straumann from delivering Products within the agreed periods and deadlines, the periods/deadlines are extended for the duration of these circumstances and interferences. This also applies in cases of default in delivery. If these circumstances and interferences continue for more than three months both parties may withdraw from the contract.

5.4 If a supplier of Straumann does not deliver or does not deliver in time, Straumann shall not be in default vis-à-vis Distributor, unless Straumann is responsible for the non-delivery, respectively the delay in delivery. Straumann is entitled to withdraw from the contract if the non-delivery or delayed delivery of his suppliers is not within its responsibility.

5.5 In case of default in delivery by Straumann, Distributor is entitled to ask for delivery or, after the expiration of a reasonable grace period, withdraw from the contract. Distributor may only ask for damages caused by the delay, respectively damages for non-performance, if the default in delivery is based on wilful misconduct or gross-negligence of Straumann. In cases of slight negligence of Straumann any liability is excluded.

5.6 Unless otherwise agreed, deliveries of Products are made at Distributor's risk and expense. The risk is transferred to Distributor as soon as Products have left the factory or the storehouse of Straumann or the factory or storehouse of the producer mandated by Straumann, respectively as soon as Products have been handed over by Straumann or the producer to the forwarding agent, carrier or any other person entrusted with the shipment of Products. If the shipment is delayed for reasons beyond Straumann's control or if Distributor does not accept the Products in time, despite the Products being offered to him, the risk is transferred to Distributor with the receipt by him of a notification of readiness to make delivery.

5.7 Straumann determines the mode and type of shipment as well as the consigner at its own discretion, unless no other agreement has been reached. Upon request of Distributor, Straumann shall effect a transport insurance at Distributor's cost. Transport damages have to be immediately notified to Straumann and the forwarding agent in writing, at the latest, however, within five days of delivery.

6. Notification of Defects, Liability for Defects

If the cause of the defect already existed at the time of the transfer of risk according to section 5.6, Straumann shall be liable for defects only according to the following provisions:

6.1 Distributor has to examine the Products immediately after receipt for quantitative and qualitative conformity with the order or for other defects. The examination has to be carried out before the further processing of Products. Obvious defects have to be immediately notified to Straumann in writing, at the latest, however, within seven days from delivery of Products. Hidden defects have also to be immediately notified to Straumann in writing, at the latest, however, within seven days from their discovery. If no notification is received within these time limits, the delivery is deemed to be faultless and accepted.

6.2 If Distributor notifies a defect in time, Straumann has the right to either correct or eliminate the defect or to subsequently deliver a product free of defects (supplementary performance). Straumann may refuse certain types of supplementary performance or completely refuse any supplementary performance, if it involves unreasonable costs.

6.3 If the supplementary performance fails, Distributor may, at his choice, either withdraw from the contract or ask for a reduction of the price. Distributor has no claim for damages. The supplementary performance is deemed to be failed after three unsuccessful attempts of supplementary performance.

6.4 A Product is not deemed to be defective if Straumann has performed (frameworks etc.) in accordance with the information transmitted by Distributor. Similarly, immaterial discrepancies are not regarded as a defect.

6.5 Distributors cannot claim any expenses or costs in connection with the supplementary performance (e.g. transport, work, raw material costs, etc.). Expenses and costs of Distributor in connection with the collection of Product, the processing of Product, etc., are not borne by Straumann; in particular, these costs are not borne by Straumann, if the measures triggering the costs are taken by Distributor without prior consent of Straumann.

6.6 Distributor is not entitled to any claims for a defect if and in as far as a defect results from improperly made changes to or from inappropriate processing of the delivered product by Distributor or third parties mandated or instigated by him.

6.7 Claims for defects fall under the statute of limitation within twelve months from delivery of the product, unless the defect has been fraudulently concealed or concerns a durability guarantee.

6.8 Distributor may only claim damages for defects in as far as the liability of Straumann is not excluded or limited according to the following or other provisions. Further claims or other claims regarding a defect of quality other than the ones set forth in this chapter are excluded.

7. Overall Liability

7.1 Straumann shall only be liable for wilful misconduct and gross negligence.

7.2 In case of initial impossibility of delivery, Straumann shall only be liable if the impediment of performance was known to Straumann or if the lack of knowledge is due to gross negligence on the part of Straumann.

7.3 The above exclusions of liability do not apply in case of fraudulent concealment of defects and in as far as the exclusion is legally possible.

7.4 Any exclusion or limitation of liability of Straumann in these General Terms also apply to the personal liability of the employees, staff, representatives, assignees and vicarious agents of Straumann.

8. Retention of Title

All Products delivered by Straumann remain the property of Straumann until the complete payment of the purchase price plus any interest and costs by Distributor. If Distributor defaults with a payment, Straumann is entitled – after reminding Distributor – to register the retention of title at the expense of Distributor in the corresponding retention of title register and/or to demand the return of the delivered Products and to claim all its rights granted for non-performance under this contract.

9. Applicable Law, Place of Delivery, Jurisdiction, Partial Nullity

9.1 SWISS LAW SHALL EXCLUSIVELY APPLY. THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED.

9.2 Exclusive place of delivery for all delivery and payment obligations deriving from the contracts concluded with Straumann shall be Basel, Switzerland.

9.3 ALL DISPUTES ARISING OUT OF ANY CONTRACTS WITH STRAUMANN SHALL BE EXCLUSVELY RESOLVED BY THE ORDINARY COURTS OF BASEL-STADT, SWITZERLAND.

9.4 If any or several of the above provisions of these General Terms should be or become entirely or partially invalid, the remaining provisions shall continue to be effective. The invalid provision shall be replaced by the valid provision closest to the intended economical purpose of the invalid provisions. The same applies to an omission contained in the contract.

August 2010, Institut Straumann AG, Peter Merian-Weg 12, CH-4002 Basel