

GENERAL TERMS AND CONDITIONS FOR THE SALE OF
GOODS AND SERVICES

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) and services (“**Services**”) by MDVTEK LLC, a Colorado limited liability company, d/b/a GCD Dental Laboratory (“**Seller**”) to the buyer named on the work authorization (the “**Work Authorization**”) attached to these Terms (“**Buyer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying Work Authorization and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its Work Authorization or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

(c) Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Work Authorization.

2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s Work Authorization. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to [BUYER’S LOCATION] (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s Work Authorization.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(e) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Work Authorization, and any such dates shall be estimates only.

(f) With respect to the Services, Buyer shall (i) cooperate with

Seller in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer’s exclusive remedies for any non-delivery of Goods.

4. Buyer Representations and Warranties. If Buyer is the end user dentist, Buyer represents and warrants the following: that he or she is a licensed dental professional qualified to (1) order the Goods and Services and review it them accuracy (2) review and approve the surgical plan provided by a third party and (3) to use the Goods during dental procedures outlined in the surgical plan. If Buyer is not the end user dentist, Buyer represents and warrants the following: (1) it is qualified to order the Goods and Services and review and approve them for accuracy and (2) that the end user dentist is a licensed dental professional qualified to review and approve the Goods and Services and the surgical plan provided by a third party and use the Goods during dental procedures outlined in the surgical plan. Buyer represents that the Goods and Services ordered or used was done so at the Buyer’s sole request and specifications. The Buyer agrees to take full medical responsibility for the design and the application of the Goods and Services.

5. Shipping Terms. Delivery of the Goods shall be made FOB [BUYER’S LOCATION].

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Colorado Uniform Commercial Code.

7. Buyer’s Acts or Omissions. If Seller’s performance of its obligations

under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within five (5) days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in Buyer’s Work Authorization; or (ii) product’s label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility located at 770 W Hampden Ave, Ste 150, Englewood CO 80110. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

(a) Buyer shall purchase the Goods and Services from Seller at the prices (the “**Prices**”) set forth in Seller’s published price list in force as of the date that Seller accepts Buyer’s Work Authorization.

(b) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personal or real property, or other assets.

10. Payment Terms.

(a) 10.a – Buyer shall pay all invoiced amounts within 30 days of receipt of invoice, unless otherwise stated on the Work Authorization.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law

(which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.

11. Limited Warranty.

(a) Seller warrants to Buyer that for a period of two (2) years from the date of shipment of any Goods that are final prosthetics made from zirconia (“**Zirconia Warranty Period**”), that such Goods will be free from material defects in material and workmanship. Seller warrants to Buyer that for a period of one (1) year from the date of shipment of any Goods that are final prosthetics made from PMMA or acrylic (“**PMMA Warranty Period**”), that such Goods will be free from material defects in material and workmanship (each individual Zirconia Warranty Period and PMMA Warranty Period shall be referred to herein as a “**Warranty Period**”).

(b) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(c) The Seller shall not be liable for a breach of the warranties set forth in Section 11(a) unless: (i) Buyer gives written notice of the defective Goods reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 11(a) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Goods or Services are defective.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) Subject to Section 11(c) and Section 11(d) above, with respect to any such Goods during the applicable Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such Goods to Seller.

(f) THE REMEDIES SET FORTH IN SECTION 11(E) SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 11(A).

(g) Products manufactured by a third party (“Third Party Product”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

12. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 12(b) shall not apply to (i) liability resulting from Seller’s gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller’s acts or omissions.

13. Insurance. During the term of this Agreement and for a period of two (2) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) and professional liability in a sum no less than an amount sufficient to cover Buyer for use of the Goods and Services for each occurrence with financially sound and reputable insurers. Upon Seller’s request, Buyer shall provide Seller with a certificate of insurance from Buyer’s insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with thirty (30) days’ advance written notice in the event of a cancellation or material change in Buyer’s insurance policy.

14. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

15. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

16. Waiver. No waiver by Seller of any of the provisions of this

Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Colorado.

23. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Colorado in each case located in the City and County of Denver, and

each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Work Authorization or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

27. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

28. Litigation Costs and Expenses. If any party institutes any legal suit, action, or proceeding against the other party arising out of or relating to these Terms, including, but not limited to, contract, equity, tort, fraud, and statutory claims, the prevailing party in the suit, action, or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action, or proceeding, including reasonable attorneys’ fees and expenses and court costs, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).