

General Terms and Conditions of siCAT GmbH & Co. KG

Place of business: Brunnenallee 6, 53177 Bonn, Germany

Status: 2008-03-25

§ 1 Scope

- (1) Regarding the business relationship between siCAT GmbH & Co. KG (hereinafter: siCAT) and the customer, only the following General Terms and Conditions which were present on the internet at the point of time when the order was placed, and therefore were accepted through placement of the order, shall apply.
The business relationship concerned here includes the sale of bite block plates in the Web Shop of siCAT and the creation of drilling templates by siCAT based on scan templates submitted by customers. The customer shall be required to use bite block plates together with the GALILEOS system as a prerequisite for placing an order for a drilling template created by siCAT.
Regarding drilling template kits and checkbooks (prepaid), which are not usually ordered directly from siCAT and are marked with material numbers (6148402, 6148402, 6148410, 6148444, 6178128, 6178136, 6178144, 6178151, 6178169, 6178177, 6148428, 6148436, 6148469, 6148477), only the "MASTER AGREEMENT ON DRILLING TEMPLATES of 05/16/2007" shall apply.
- (2) siCAT shall carry out the order according to the General Terms and Conditions valid at the time of order placement. The customer can access the current version of the General Terms and Conditions under "AGB" on the internet web page www.sicat.com or www.sicat.de. Moreover, siCAT shall also mail the General Terms and Conditions to the customer along with the order confirmation. siCAT expressly reserves the right to make alterations and additions.
- (3) These General Terms and Conditions shall apply exclusively; siCAT does not recognize any provisions of the customer conflicting with or deviating from these General Terms and Conditions unless siCAT has expressly consented to their validity in writing. These General Terms and Conditions shall also apply even if siCAT performs delivery to the customer in full awareness of customer provisions conflicting with or deviating from said General Terms and Conditions.
- (4) All agreements concluded between siCAT and the customer in execution of this Contract are stipulated in writing therein.

§ 2 Conclusion/rescission of contract

- (1) The respective contract is formed when siCAT accepts the order through an order confirmation which siCAT sends via e-mail. If the customer failed to specify an e-mail address in the order or the address specified could not be reached for technical reasons, the contract is initially formed on dispatch of the goods.
- (2) Regarding orders for GALILEOS drilling templates, receipt
 - (a) of the written order for drilling templates (form from GALILEOS Implant),
 - (b) of the scan template with the bite block plate and the required models,
 - (c) of the order for the manufacture of a GALILEOS drilling template
 - (d) and of the planned work on CDat
siCAT GmbH & Co. KG
SGL, Brunnenallee 6, 53177 Bonn, Germany
(hereinafter: "place of business")
are prerequisites for accepting the order pursuant to § 2 Sect. 1 of these General Terms and Conditions.
- (3) siCAT shall immediately check incoming documents according to § 2 Sect. 2 of these General Terms and Conditions and immediately report any deficiencies thus determined to the customer by e-mail or by telephone. Any changes in the scope of the contract must be clarified with the customer. The customer shall receive an order confirmation for the new scope of performance along with a handwritten copy of the amended order form.
- (4) If certain drill sleeves cannot be inserted in the drilling template due to the plan and the space available in the jaw, siCAT will insert automatic pilot sleeves instead if sufficient space is available in the jaw. No clarification or notification in terms of § 2 Sect. 3 of these General Terms and Conditions shall take place. The customer is in agreement with appropriate amendment of the order which it had originally placed. The price for a pilot sleeve will be additionally invoiced.
- (5) siCAT reserves the right of rescission in the following cases:
 - (a) The goods are not available for a period of at least four weeks.
 - (b) Data errors which prevent proper execution of the order have occurred.
 - (c) siCAT reserves the right to perform a credit assessment on conclusion of the contract and to withdraw from the contract in case of a negative outcome. In case of a bad credit rating, rescission can be prevented through advance payment.

§ 3 prices

- (1) All prices quoted in catalogs and price lists are subject to change without notice. The prices valid on the day of delivery or performance shall apply. All prices are quoted without cash discounts or other allowances. The legal value-added (sales) tax is not included in the prices; it will be separately itemized in the invoice to the amount legally applicable on the day of invoicing.
- (2) Costs for postage, packaging and shipping, as well as any costs incurred for loading and insurance, will be charged to the customer. For deliveries of duty unpaid goods, the duties levied by the customs authorities and any associated costs shall be borne by the customer.

§ 4 Terms of payment

- (1) The purchase price is due on conclusion of the contract.
- (2) Except when otherwise stipulated, payment shall be made by direct debit or by credit card. Payments by invoice or advance payment require the express consent of siCAT. If the customer's place of business is located outside of Germany, payment is possible only by credit card or by advance payment.
- (3) If the method of payment is advance payment, the goods are shipped to the customer only on receipt of payment.
- (4) The customer may exercise offset rights only if his counterclaims have been legally determined, are indisputable or have been recognized. He is authorized to exercise his right of retention only if his counterclaim is based on the same contractual relationship. The contractual relationship here is the concrete individual order.

§ 5 Delivery / Delivery time

- (1) siCAT is entitled to partial deliveries in case part of the ordered goods are temporarily not deliverable. Additional shipping costs shall be borne by siCAT in this case.
- (2) GALILEOS drilling templates shall always be shipped within six days (Monday to Friday) on receipt of order. Should siCAT be unable to deliver the ordered goods in due time, e.g. due to a very large demand, siCAT shall inform the customer immediately of the delay thus incurred. Shipping times are country-specific and may vary. The delivery period specified by siCAT shall commence only upon clarification all technical issues in terms of § 2 Sect. 2 and, if applicable, of § 5 Sect. 3 of these General Terms and Conditions.
- (3) Moreover, the delivery commitment is based on the premise that the customer duly and properly fulfills his obligations. The defense of non-performance of contract is reserved.

- (4) siCAT shall be liable according to the relevant legal regulations insofar as the delay in delivery resulted from an intentional or grossly negligent breach of contract for which siCAT is responsible; any default of siCAT's representatives or vicarious agents is attributable to siCAT. Insofar as the delay in delivery was caused by a grossly negligent breach of contract for which siCAT is not responsible, the liability to pay damages shall be limited to foreseeable and typically occurring damage.
- (5) siCAT shall also be liable according to the relevant legal regulations, insofar as the delay in delivery is based on culpable breach of an important contractual obligation; in this case, however, the liability to pay damages is limited to foreseeable and typically occurring damage.
- (6) Furthermore, in the event of a delay in delivery, siCAT shall be liable to pay for each completed week of said delay a lump-sum payment for delayed performance amounting to at least 3% of the value of goods to be delivered and not to exceed 15% of the value of goods to be delivered.

§ 6 Transfer of risk – Packaging costs

- (1) siCAT shall ship bite block plates and drilling templates to the delivery address specified by the customer in his order.
- (2) At the customer's request, siCAT will cover the shipment with transport insurance; any costs thus incurred shall be borne by the customer.

§ 7 Special warranty and liability for GALILEOS drilling templates

- (1) The customer undertakes to test the drilling template within five working days upon receipt of the same and to notify siCAT by fax or e-mail concerning any possible defects for which siCAT is responsible within this period. This testing must in any case be performed prior to operation. By means of this testing, the customer ensures that the drilling template has been manufactured according to his specifications. The drilling template shall be deemed as being in accordance with the contract when put into use on the patient, or if the customer does not give notice of defects within two weeks after its shipment at the latest.
- (2) Should any defects occur for which siCAT is responsible and which prevent use of the drilling template during the operation, siCAT shall undertake to send to the customer free-of-charge a bite block plate for the manufacture of a new drilling template.
- (3) siCAT has no supplementary performance obligation regarding interventions or changes made in the drilling template without siCAT's consent, unless the customer can prove that the defect involved was not caused by such interventions or changes.
- (4) Unless otherwise stipulated hereinafter, any further claims raised by the customer, regardless of their legal grounds, shall be excluded. siCAT shall therefore not be held liable for any damage not incurred directly on the drilling template; in particular, siCAT shall not be held liable for lost profit or any other financial losses of the customer.
- (5) The aforesaid disclaimer does not apply insofar as the cause of damage is attributable to intention or gross negligence on the part of siCAT or siCAT's vicarious agents. Furthermore, it shall not apply to any injuries to life, body or health resulting from careless neglect of duty on the part of siCAT or siCAT's vicarious agents. It also shall not apply insofar as siCAT wantonly violates a cardinal or contractual obligation.
- (6) The limitation period for material defect claims is 12 months.
- (7) The limitation period for material defect claims shall not recommence due to supplementary performance, but rather, the period initiated by the original delivery shall continue without interruption.
- (8) In the event of a pre-contractual, contractual or non-contractual breach of duty, including defective delivery, siCAT shall be liable to pay damages and reimburse expenses – subject to any further contractual or legal liability requirements – only in cases involving intention or gross negligence, or in the event of a slightly negligent breach of contractual obligation jeopardizing the achievement of the purpose of the contract (essential contractual obligations). However, with the exception of intention, siCAT's liability shall be limited to the direct losses foreseeable and typical for this type of contract at the time of its conclusion.
- (9) For damages due to delay, siCAT shall be liable in case of slight negligence only to an amount not exceeding 5% of the consideration.
- (10) The preceding exemptions from and limitations of liability shall not apply in case of malicious silence with regard to a defect resulting in injury to life, body or health or in case of compelling product liability.

§ 8 Further liability for defects (not concerning the drilling template)

- (1) Any claims for defects on the part of the customer always require that the customer inspect the goods within five days of their receipt at the latest and notifies siCAT by fax or e-mail of any possible defects for which siCAT is responsible within this period.
- (2) Unless stipulations to the contrary have been made above, liability shall be excluded. This limitation of liability shall not apply:
 - (a) in case of intention or gross negligence on the part of siCAT or siCAT's vicarious agents,
 - (b) in case of personal injury,
 - (c) in case of damage resulting from the lack of a condition which was guaranteed by siCAT,
 - (d) in case of claims based on §§ 823 ff. of the German Civil Code.

§ 9 Data protection

The customer agrees to allow the storage, processing and use of the personal data submitted during order placement for the purpose of implementing the order.

§ 10 Other provisions

- (1) Severability clause
Should any individual provision of the present Agreements be or become ineffective, the remaining provisions hereof shall in no way be affected. The Parties shall undertake to cooperate in replacing any such ineffective provision with a new provision which, in a legally permissible manner, comes as close as possible to fulfilling the sense, spirit and purpose of the original (ineffective) provision.
- (2) Insofar as the customer is a dealer, siCAT's place of business shall be the venue; siCAT is, however, also entitled to bring action against the customer at the customer's place of business.
- (3) The law of the Federal Republic of Germany shall apply; the UN Sales Convention is excluded.