General Terms & Conditions (GTC) of Straumann Ltd (trading as the Straumann Group)

1. GENERAL PROVISIONS, SCOPE, OTHER PROVISIONS
1.1 Straumann’s quotations, deliveries, and other performances (including those in the future—vis-à-vis the persons named in section 1.2 shall be provided exclusively in accordance with this GTC. Straumann does not recognize contra accounts, subcontractor or otherwise terms not contained in the GTC unless Straumann has expressly consented thereto in writing. This also shall hold true if, in accordance with GTC, the Buyer’s circumstances so justify. GTC applies exclusively to any relationship with the Buyer (including incidental claims, such as interest) that have been satisfied in full. If a check is accepted, any additional performance obligations shall only occur if and when the check has been cashed andStraumann can dispose of the amount without third-party risks.

1.2 If a Buyer may process the delivery items in the proper and ordinary course of business, resell them with retention of title of, or use them in the course of rendering other contractual performances to third parties, however, he may not pledge them or transfer them by way of security.

1.3 Regarding third-party software from manufacturers other than Straumann itself, any of the respective manufacturer’s own licensing terms shall take precedence. Straumann shall make the respective manufacturer’s licensing terms available to the Buyer upon request prior to formation of the agreement.

2. FORMATION OF THE AGREEMENT, PROVISION CHANGES, DOCUMENTATION
2.1 The agreement shall be formed only when Straumann confirms the Buyer’s order in writing or begins executing it. Ancillary agreements, oral declarations by both representatives, and changes to confirmed orders (including changes in delivery items) must be confirmed in writing by Straumann in order to be effective.

2.2 Straumann reserves the right to make changes in design and materials relative to the product description in the catalogue, provided that the contractually stipulated use of the goods is not substantially impaired or adversely affected and the Buyer can reasonably be expected to accept such changes.

2.3 Straumann retains all rights of ownership, copyrights, and industrial property rights (including the right to apply for patents) in the catalogue, product documentation, any other documentation; such documentation may be made accessible to third parties only if there is discernibly no need for confidentiality.

3. DELIVERY PERIOD, PROVISO ON OBTAINING DELIVERY SEPARATELY, BUYER’S INABILITY TO PERFORM, DEFAULT OF ACCEPTANCE
3.1 Delivery deadlines or dates shall be agreed to section 4.1 have occurred within the stipulated time. From this, the delivery deadline shall in each instance be met only if the Buyer’s duties and obligations are duly satisfied in a timely manner. Straumann reserves the right to refuse performance if the Buyer does not satisfy his contractual duties.

3.2 The delivery period shall be extended—even in the case of section 4.1 have occurred within the stipulated time. From this, the delivery deadline shall in each instance be met only if the Buyer’s duties and obligations are duly satisfied in a timely manner. Straumann reserves the right to refuse performance if the Buyer does not satisfy his contractual duties.

3.3 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.4 If loss or damage to the delivery items from delivery of the goods to the Buyer by the transport company is external to the Buyer, it shall be up to the Buyer to have the transport company provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.5 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.6 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.7 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.8 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.9 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.10 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.11 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.

3.12 In the case of a purchase that is a commercial transaction for both parties, the Buyer must provide written notice of any kind of defects—except hidden defects—within eight working days (Saturday shall not count as a working day). Following discovery, the goods shall be considered approved. Written notice of hidden defects must be provided within eight (8) working days (Saturday shall not count as a working day) following discovery; otherwise, the goods shall be considered approved in respect of such defects as well.
If Straumann is unwilling or unable to undertake reme­dying/replacement delivery, in particular because reme­dying/replacement delivery is delayed beyond rea­sonable periods for reasons for which Straumann bears responsibility, or if reme­dying/replacement delivery in some way fails at least twise, then the Buyer, if further attempts at subsequent performance are unreasonable for it, shall be entitled at its option to withdraw from the agreement or to reduce the purchase price. The Buyer can withdraw from the agreement in connection with a minor defect only with Straumann’s consent.

7.4 Rights relating to material defects can arise only if the delivery item has a material defect upon transfer of risk (in particular defective execution, poor materials). There shall be no rights relating to material defects in the case of inappropriate or improper use or handling of the delivery item, natural wear and tear, or inappropriate conditions for use, etc.

7.5 The limitation period for material defect claims shall be one year from the transfer of benefit and risk. This shall not apply to death, bodily injury, or impairment of health or to cases of intent.

7.6 Straumann’s liability for injury arising from the defectiveness of the delivery item shall be subject to the limits named in section 8.

7.7 If the defective delivery item is a third-party product, Straumann shall be entitled to assign its defect claims against the third party to the Buyer and to require the Buyer to undertake all claims against the third party. Straumann can be held liable under sections 7.4.7 only if the claim against the third party is unsu­perable, unenforceable despite timely (judicial) recourse or if recourse in the specific case cannot be reasonably expected.

8. RETURN OF GOODS

8.1 The following provisions shall apply if the Buyer wishes to return any goods:

a) The following goods may never be returned:
   - Goods that are temperature-controlled, e.g. Straumann Emdogain and Periog
   - Goods that are derived from human tissue, e.g. botis and abutments
   - Goods that are custom-made, e.g. Straumann CARES abutments
   - Goods specified in accordance with Buyer’s individual specifications, even if unopened
b) Any other Goods may not be returned for credit:
   - if the defect is for the buyer in any way defaced or damaged,
   - if they have been removed from their wrapper or undergone any sterilisation or disinfection process, or
   - if 60 days have passed since the date of the invoice

a) The copy of the invoice, a delivery note, or a Return Request number issued online must accompany all returns. Straumann reserves the right to refuse credit if these are not included
b) Goods returned for credit or exchange must be securely packaged for protection in transit. Credit or exchange will only be issued upon determination that the goods are in an acceptable condition.
c) Credit for returned goods will only be issued upon determination of acceptable condition, Straumann’s decision being final regarding the condition of returned goods.
f) Once the 60-day Period has expired, only implants can be returned (and then only for exchange) up to 12 months after date of invoice. Implants can only be considered for exchange if they are in original, unopened packaging with at least one year shelf life left. Upon exchange, a credit will be made for the original price paid and the replacement implant will be invoiced separately. If the healing caps/closure screws are not returned, the list price at time of order will be charged.

a) All returns must be shipped (prepaid) to Return Department, Straumann Group, 3 Pegasus Place, Gwath Road, Crawley, West Sussex, RH10 9AY, UK.

C. STRAUMANN SERVICE SET

9.1 The Buyer need assistance in the retrieval of broken components in a Straumann implant case and require the use of the “Straumann Service Set” (along with support from a Straumann representative), this will be provided at no charge, provided that original Straumann components have been used throughout the entire implant treatment.

9.2 The Buyer is responsible for the use of the “Straumann Service Set” and will incur standard charges for the delivery of any other Goods may not be returned for credit:

d) The healing caps/closure screws are not sent free of charge with the original order. If the healing caps/closure screws are not securely packaged for protection in transit, Straumann reserves the right to levy a charge of €1500 to the Buyer, whether the use of non-original components is noted in the original order, or after, during, or after use of the “Straumann Service Set”.

10. LIMITATION OF LIABILITY

10.1 Straumann shall be liable only for willful misconduct and gross negligence. Straumann shall in no way be liable for losses, collateral damage, indirect damage, special damage, consequential damage, or other similar types of damage.

10.2 If in case of initial impossibility of delivery, Straumann shall only be liable if the impediment of performance was known to Straumann with lack of knowledge is due to gross negligence on the part of Straumann.

10.3 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.

10.4 Any liability exclusions and limits of liability for Straumann set forth in this GTC shall also apply to the personal liability of Straumann’s staff, employees, representatives, assignees, and agents.

11. INTELLECTUAL PROPERTY

11.1 The GTC and any and all contractual provision shall not be interpreted to mean that they transfer to the Buyer Straumann’s intellectual property rights to goods. Straumann shall remain the exclusive holder of intellectual property rights to goods. Moreover, all representations, plans, calculations, and other documents generated under the GTC and any contractual provision shall remain with Straumann.

12. SPECIAL PROVISIONS ON ORDERING DENTAL PROSTHESES AND JAW MODELS BASED ON SCANNED DATA

If the Buyer orders dental prostheses or jaw models through electronic transmission of data that he has generated with a scanner (referred to hereinafter as “Scan Orders”), the following provisions shall apply additionally:

12.1 In the case of electronic orders of dental prostheses, the Buyer waives his right to receipt of notice of acceptance from Straumann. Upon acquisition of the scanner, each scanner Buyer shall receive from Straumann a permanent Buyer number and password for purposes of electronic data transmission. The order can be placed only if the user interface form provided by Straumann has been completed.

12.2 At the end of each calendar month, Straumann shall issue to the Buyer an invoice for all the dental prostheses delivered during that month on the basis of Scan Orders. Delivered jaw models shall be invoiced immediately.

12.3 To enableStraumann to comply with its delivery obligations relating to Scan Orders, the Buyer shall duly satisfy its duties to cooperate in a timely manner. In particular, the Buyer shall ensure that the scanner data are recorded accurately, that all needed information is included, and that the entirety of the scanned data is transmitted to Straumann. Employees who operate the scanner and prepare Scan Orders must thus be trained accordingly.

12.4 In the case of Scan Orders, Straumann shall produce the dental prostheses and jaw models in accordance with the data transmitted to Straumann using the material chosen by the Buyer. Thus, there shall be no claims in the event of defects resulting from improper operation of the scanner, faulty transmission of the scanned data, transmission of faulty data, ordering inappropriate materials, or fitting the dental prostheses with the patient. Finally, there shall be no defect claims if the defect is attributable to post-processing or alteration of the dental prosthesis or jaw model by the Buyer.

12.5 If the Buyer provides notice of a material defect in a dental prosthesis or jaw model, the Buyer must send it to Straumann promptly, together with the previously transmitted model, so as to give Straumann the opportunity to review the complaint. If Straumann concludes that the Buyer scanned the model improperly and thus transmitted faulty data, Straumann shall notify the Buyer of this conclusion without delay and provide both data sets to him as evidence. Only upon instruction by the Buyer will Straumann produce and deliver another dental prosthesis or jaw model in such cases, at the Buyer’s expense, based on the correct data set.

13. SPECIAL PROVISIONS FOR SCAN AND CARES SCAN AND SHAPE SERVICE

If the Buyer uses the Straumann Scan Service, Straumann will produce the individualized abutment or another prosthetic element (“Prosthetic Element”) in accordance with design and dimensions requested. The scan-up model to be provided by the Buyer. The scan-up model must be new and must not have been used previously. By sending in the scan-up model, the Buyer acknowledges that he has pre-approved design and production (design pre-approval). Straumann shall not be responsible for defects in the design or fit of the Prosthetic Element. The scan-up model must be disinfected upon delivery to Straumann. The Buyer must confirm in a written statement that disinfection has occurred. The packaging of the scan-up model must also comply with applicable transport and safety laws.

13.1 If the Buyer uses the CARES SCAN & SHAPE Service, Straumann will develop and provide the Prosthetic Element exclusively in accordance with the design parameters and dimensions specified by the Buyer in the order (order form or online). Straumann will not change the design parameters, dimensions, and form specified and approved by the Buyer. Straumann shall not be responsible for defects in the design or fit of the Prosthetic Element.

13.3 The Buyer’s scan-up model shall not be returned to the Buyer, but is instead destroyed ninety days after delivery of the Prosthetic Element. Should the Buyer not have submitted notice of defects within that period, the expiry of that period shall be considered to constitute acceptance that both the design and the Prosthetic Element correspond to the scan-up model.

13.4 If the Buyer changes or adapts the Prosthetic Element delivered by Straumann, any and all liability for defects on the part of Straumann shall be excluded.

14. SPECIAL PROVISIONS FOR ORDERS PLACED VIA STRAUMANN WEBSITE

If the Buyer orders products via a Straumann website, the following provisions shall apply:

14.1 The United Kingdom & Ireland internet portals are directed at persons in the United Kingdom & Ireland authorized based on their profession (dentists, dental practitioners, dental laboratories etc.).

14.2 Registration shall be required in order to be able to place orders via the website. The user name and password shall not be transferable to third parties. The pages relating to ordering are accessible only to registered users of the website.

14.3 Offers made by Straumann on the website shall not be binding. The Buyer shall place his order by inputting the information requested in the order form and sending the order to the website. The Buyer’s order shall be binding. The Buyer shall first receive electronic confirmation that the order has been received. Straumann shall then review the information sent by the Buyer. If the outcome of this review is positive, Straumann shall accept and execute the order.

14.4 Delivery deadlines or dates shall be binding only if they are expressly set forth in writing when placing the order. The order is entered into. General information provided on the website shall not constitute any warranty as to deadlines and dates.

15. CONCLUDING PROVISIONS

15.1 Unless stipulated otherwise, the place of performance shall be Straumann’s registered office.

15.2 This GTC, the underlying contractual relationship, and all disputes arising therefrom, including any regarding limitation periods, set-off claims, claims in tort, and interest claims, shall be governed by the laws of the United Kingdom.

15.3 All disputes arising from the GTC or the underlying agreement or in connection therewith shall be subject to the exclusive jurisdiction of the ordinary courts at Straumann’s registered office.

15.4 If any of the above provisions of these GTC should fail or become unenforceable, the remaining provisions shall continue to be effective. The invalid provision shall be replaced by the valid provision closest to the intended economic purpose of the invalid provisions. The same applies to an omission contained in the contract.

Version of: May 2018 Straumann Ltd, 3 Pegasus Place, Gwath Road, Crawley, West Sussex, RH10 9AY, UK.