

General Terms and Conditions (GTCs)

Document no.	8.2.9
Version	01 / 21/11/2022
Process owner	Head of Sales

1. General terms and conditions

These General Terms and Conditions ("GT&Cs") form part of each purchase and works agreement between Taracell AG and its contractual partners or customers. They take precedence over any terms and conditions of the respective contractual partner. Provisions of the contractual partner that state otherwise shall only be deemed accepted if expressly agreed to by Taracell AG in writing.

2. Binding nature of offers

The representations and product descriptions of Taracell AG on its website, in catalogues, brochures or other media as well as its price lists, etc. are non-binding and constitute neither an offer within the meaning of the Swiss Code of Obligations (Obligationenrecht, OR), nor an assurance regarding characteristics of the products of Taracell AG.

3. Contract conclusion and contract performance

The contract between Taracell AG and the customer bindingly enters into existence following written (including fax or email) confirmation (order confirmation) by Taracell AG of a verbal or written order (including by fax or email) of the contractual partner. Information in technical documents and from the website www.taracell.ch shall only constitute part of the contract if these documents are expressly referred to in the order confirmation.

The order confirmation bindingly records the content and scope of the delivery obligation of Taracell AG (delivery). Any subsequent change to delivery requires written agreement. Any deviations of a magnitude of up to 10% per delivery qualify as being in compliance with the contract and as accepted by the customer.

4. Plans, technical documents, preliminary studies

Each party retains all rights to inventions, plans, technical documents and other works (drawings, descriptions, requirements documents, specifications, figures and similar) that they have handed over to the other party. The receiving party recognises these rights and shall not copy or duplicate documents as well as templates and samples, or partially or completely make them accessible to third parties or use them for purposes other than those for which they were transferred, without prior written authorisation from the entitled party. Documents transferred by Taracell AG as well as templates and samples should be returned by the contractual partner upon first request.

The contractual partner indemnifies Taracell AG from all claims of third parties arising from intellectual property rights, in the event that Taracell AG products are manufactured based on drawings, models or samples of the party. If Taracell AG must deliver items in accordance with drawings, models or samples that are transferred by the contractual partner, the contractual partner guarantees that no property rights of third parties have been infringed by the manufacture and delivery of the items.

Should a third party nevertheless assert applicable property or compensation claims due to such items, the contractual partner shall indemnify Taracell AG from all claims for compensation of third parties including own and third-party legal costs. Taracell AG is obligated to inform the contractual partner immediately if third-party property rights are asserted. After consulting the contractual partner, Taracell AG is authorised to stop producing the items regarding which property rights of third parties have been asserted until legal clarification has been obtained. In this case, the contractual partner must provide compensation for the costs incurred until then.

5. Regulations and safety devices in the country of destination

The customer must inform Taracell AG in writing or by email by the time of the order at the latest of what statutory regulations and applicable standards are to be observed in the country of destination for the products to be supplied by Taracell AG with regard to their operation, the environment as well as illness and accident prevention. In the absence of information to the contrary, the statutory regulations and standards at the location of the registered office of Taracell AG shall be authoritative, and Taracell AG shall comply with these.

Statutory regulations and standards that are only communicated after the order has been made and that lead to additional costs for Taracell AG, e.g. due to protective devices for employees, shall only be fulfilled by Taracell AG if the customer fully assumes all additional costs due to the delayed notification.

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6. Delivery deadlines

The agreed delivery period begins as soon as the purchase or works agreement between Taracell AG and the contractual partner has entered into force and is binding following the issuing of the order confirmation, all official approvals are present and the agreed payments on account or prepayments have been made.

A unilateral, reasonable extension to the delivery deadline by Taracell AG due to internal or external disruptions as well as due to other delivery impediments which Taracell AG, despite having exercised all due care, could not avert or remedy in due time is permitted. Taracell AG shall inform the customer as soon as possible of the extension to the delivery deadline.

If delivery has been delayed by Taracell AG despite having received written warning from the customer, without the customer being at fault, the customer is obligated to set Taracell AG a reasonable subsequent deadline for fulfilment in writing. If this subsequent deadline is not met for reasons that are the fault of Taracell AG, the customer is authorised to refuse acceptance of the delayed delivery or partial delivery. If acceptance or partial acceptance of the delivery is not financially feasible for it, the customer shall be authorised to withdraw from the contract and to request the refunding of payments already made against the return of deliveries already completed. The customer shall have no further rights and claims against Taracell AG due to delayed delivery, and in particular no claims for damages.

If the delivery is delayed by Taracell AG for reasons for which the customer is responsible, Taracell AG shall be authorised to charge the customer for its resulting costs. The customer shall bear the risk of deterioration in the condition of the goods or loss of the delayed delivery.

7. Tools and moulds

The tools (moulds) produced specially for customers or on behalf of Taracell AG for customers remain the property of Taracell AG until full payment by the customer or contractual partner. Taracell AG is obligated to store the tools (moulds) for the orderer. The obligation to store expires if no further order is received within 12 months of the last delivery to the customer. There are then three options available to the customer:

- Option 1: The customer takes back the tool, which it has paid for in full, at its own expense.
- Option 2: Taracell AG stores the tool in return for an annual flat storage fee of CHF 320.00, in a ready-to-use condition, until the tool becomes active again.
- Option 3: Taracell AG scraps the tool professionally for the customer.

Taracell AG reserves the right to decide freely on what to do next with the tools if the chosen option is not observed.

Taracell AG shall not make any products for third parties with these tools without the consent of the customer or contractual partner. If the contractual partner's needs exceed the capacity or total output figures ("lifetime") of the tool (mould), it is necessary to create a new tool (mould) or to remedy damage caused by wear. The costs arising from this shall be borne by the contractual partner or customer. For an order total to manufacture the tool or mould of up to CHF 20,000, the customer is obligated to settle this sum on a net basis within 30 days of ordering. If the order total exceeds CHF 20,000, the customer is obligated to pay 50% of the order sum after ordering and the other 50% after the sending of the initial sample, each within 30 days net. If the customer desires changes to tools or moulds after the initial samples have been reviewed, all associated costs shall be borne by the customer.

8. Prices

The contractually agreed price is net, ex works in Künten, in Swiss francs. Packaging costs can be settled separately. The agreed price does not include VAT and other taxes, fees and charges as well as all additional costs for transport, customs, insurance, etc. These shall also be borne by the customer, unless otherwise agreed or stated in Taracell AG's invoice. If Taracell AG makes payments to third parties for taxes and/or additional costs etc., it shall be entitled to full reimbursement by the customer and the customer is obligated to indemnify Taracell AG.

Bank charges incurred due to foreign transactions shall be borne in full by the client. If the customer does not take these costs into consideration, Taracell AG reserves the right to charge the customer subsequently for the costs and/or to withhold any deliveries until full payment.

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Taracell AG calculates the prices and fees agreed on conclusion of the contract based on the applicable cost factors at that time. If one of the factors, such as the price of raw materials, wages, energy, shipping costs, exchange rates, taxes, levies and customs charges, changes during the period between the conclusion of the contract and the individual order call-offs by more than 5%, the parties shall be obligated to renegotiate the price. If no agreement can be reached, both parties are free to terminate the contract with immediate effect. In this case, neither party shall owe the other party compensation for lost profits as a result of the premature termination of the contract. In the case of a cancellation of the delivery by the customer following receipt of the order confirmation from Taracell AG, the customer is obligated to pay 50% of the agreed price.

9. Payment conditions and deadlines

The agreed price must be paid within 30 days of the delivery or dispatch date to Taracell AG in full in Swiss francs to the bank account designated by Taracell AG, unless other payment conditions were agreed in writing. If the payment deadline is not met, Taracell AG shall be authorised to request compensation for inconvenience (reminder charge) of CHF 45.00.

Partial deliveries shall be invoiced separately.

If we become aware following the conclusion of the contract or the delivery of the goods that the contractual partner is not creditworthy (e.g. if its bills or cheques are protested) and this puts the entitlement to payment of Taracell at risk, Taracell shall be authorised to withdraw from the contract or to demand immediate payment for delivered goods and prepayment for goods not yet delivered including covering any drawn bill of exchange, with payment being due immediately.

For orders with agreed call-off deliveries or quantity contracts (framework contracts), the customer must pay for the goods in full within the agreed deadline, at the latest however within two months of the date of the agreed final call-off delivery or the end of the quantity contract (framework agreement).

The payment deadlines must also be met if the transport, delivery or acceptance of the goods is delayed for reasons that are not the fault of Taracell AG or if defects are present that do not wholly restrict the suitability of most of the delivery.

If the customer enters into arrears with payments or if there are doubts as to its ability or willingness to pay, Taracell AG may, irrespective of any ownership rights (e.g. as a result of retention of title), revoke agreed payment deadlines or, after setting a reasonable subsequent deadline, withdraw from the contract and demand compensation for damages due to non-performance.

If the customer fails to meet the agreed payment deadlines, Taracell AG is alternatively authorised to deem it in default by setting a payment deadline and to charge for default interest and storage costs from the expiry of the deadline. Art. 107 OR remains reserved. Taracell AG also reserves the right to only provide future deliveries in return for advance payment.

The customer is prohibited from reducing or entirely withholding payments due to complaints of defects or due to other claims not recognised by Taracell AG. Offsetting against counterclaims that are not disputed by Taracell AG nor have been upheld in a court of law is ruled out.

10. Transfer of benefits and risk

Benefits and risk are transferred from Taracell AG to the customer when the delivery leaves the Taracell AG factory. If transport is delayed at the request of the customer or for other reasons for which Taracell AG is not responsible, the risk transfers to the customer from the time originally scheduled for delivery from the factory. From this time on, the deliveries shall be stored by Taracell AG at the cost and risk of the customer.

11. Transport and insurance

Dispatch and transport are at the cost and risk of the customer. Special wishes regarding dispatch and transport of the deliveries must be notified to Taracell AG in good time. Taracell AG may perform transport on behalf of and at the risk of the customer.

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Deliveries with transport damage shall be accepted with reservation and the relevant transport company and insurance company shall be promptly notified. The customer is responsible for taking out insurance against transport damage of any kind at its own cost. For credit notes for returned and billed in advance deliveries, transport costs shall not be taken into account, unless the return is due to faulty performance by Taracell AG.

12. Reservation of title

The delivery shall remain the property of Taracell AG until payment of the agreed price and any ancillary claims. The customer is obligated to cooperate with measures required to protect the delivery or preserve its value; in particular, on conclusion of the contract, it authorises Taracell AG to enter or register the retention of title in public registers, books or similar in accordance with applicable laws at its cost.

13. Inspection, complaints and acceptance

The customer must inspect the delivery immediately after receipt and inform Taracell AG of any visible defects within 10 days at the latest after receipt. The delivery shall qualify as approved after the expiry of this period.

Orders with agreed call-off deliveries must be fully called off by the customer within the agreed deadline, at the latest, however, within six months of the date of the order confirmation by Taracell AG. Any warehouse storage by Taracell AG after this deadline shall be at the risk and cost of the customer; in this case Taracell AG shall alternatively be authorised to dispose of the delivery at its cost, which Taracell AG must notify to the customer, setting a deadline of no longer than 20 days.

Returns by the customer require the prior written consent of Taracell AG in every case and will only be accepted within 8 days of receipt of the delivery by the customer.

In all cases, the customer is responsible for providing precise information on the required design quality, quantities, tolerances, precisions, material, etc. It is obligated to review the plans, models etc. and to approve them in writing (including by fax or email).

If an initial sample is manufactured, this shall be authoritative for determining quality in accordance with the contract. The customer undertakes to review and approve this initial sample in writing as well as its design (dimensions, visual appearance, etc.) and the quality of the material. No production shall take place without written (including by fax or email) approval. The customer is further obligated to clarify the usability and serviceability of the goods with regard to the use it intends for them.

For the general tolerances, we refer to DIN ISO 20457:2020 with the subdivision of TG8/EPS and TG9/EPP. For functional and test mass, the tolerances can be defined more strictly following a technical discussion. These tolerances, however, shall always be in relation to moulding and producibility as well as the material, use and function of the product. A product drawing that has been approved by both parties shall be used as the basis for the performance of the order.

14. Warranty

The warranty period for non-visible defects is 12 months from the dispatch time of the delivery from Taracell AG. After the expiry of this deadline, all liability shall be excluded. The warranty claim of the customer expires immediately if the customer or third parties carry out changes or repairs to the delivery without having previously obtained the written consent of Taracell AG. The same applies to substitute performance.

In the case of defects in the material or design or due to promised features being missing, Taracell AG shall be free to choose between – if possible – repairing, supplying a replacement that is free from defects or granting a reasonable price reduction.

Taracell AG shall not be liable for any further damage. The customer shall, in particular, have no claim for compensation for damages resulting from defects, such as, in particular, production stoppages, loss of orders, lost profits and/or claims due to other direct or indirect damage or consequential damage of any kind. Withholding of the invoiced amount by the customer and demanding it be refunded are also excluded. Finally, Taracell AG shall not be liable for lost profits or claims of third parties as well as activities of the customer in connection with the assertion of defects.

Taracell AG shall not be liable for defects with regard to damage occurring after the transfer of risk due to incorrect or negligent handling, excessive use, unsuitable operating equipment and/or use that is not in accordance with the contract.

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Any product liability of Taracell AG is expressly excluded to the extent legally permissible.

For raw materials and other products that are obtained by Taracell AG from subcontractors, the warranty is restricted to the scope of the warranty conditions of the manufacturing companies or subcontractors, whereby such claims are assigned by Taracell AG to the customer for it to pursue at its own cost and risk.

15. Property rights

The customer warrants that no property rights of third parties are infringed by the delivery ordered from Taracell AG. If Taracell AG is sued due to an infringement of property rights in connection with the delivery for the customer, the customer shall reimburse Taracell AG for all costs arising as a result, including legal costs, and shall indemnify Taracell AG.

16. Ineffectiveness of individual provisions

The ineffectiveness of a provision of these General Terms and Conditions shall not affect the validity of the remaining provisions. The parties undertake to replace the ineffective provision with an effective regulation which corresponds as closely as possible to the economic effect of the ineffective provision.

17. Place of performance, applicable law and jurisdiction

The place of jurisdiction and of performance shall be the registered office of Taracell AG in CH-5444 Künten. However, Taracell AG shall be authorised to sue the contractual partner at its registered office if it wishes to do so.

The legal relationship between Taracell AG and the contractual partner shall be governed exclusively by Swiss law. The application of the Vienna Convention is excluded.