

Verantwortlich:	Gina Krappmann, GÜNGÖR CUHADAR
Freigabe:	Matthias Theisen
Geltungsbereich:	AL-C, C, KL
Aufzeichnung Nr.	

## GENERAL TERMS AND CONDITIONS OF SALE

of

**optimed Medizinische Instrumente GmbH**  
**Ferdinand-Porsche-Str.11,**  
**76275 Ettlingen/ Germany**

As of January 2018

### I. General terms

#### 1. Scope of Applicability

1.1. All business dealings shall exclusively be governed by the following **Terms and Conditions**. Any of Customer's terms or conditions to the contrary to or deviating from our **Terms and Conditions** shall not be valid unless expressly confirmed by us in writing. The same applies to Customer's provisions that deviate from the statutory regulations to our detriment even if these **Terms and Conditions** do not explicitly refer to these statutory regulations.

These present **Terms and Conditions** shall also apply if we unconditionally effect delivery or render performances to Customer despite being aware of Customer's terms or conditions to the contrary to or deviating from these **Terms and Conditions** or from statutory regulations to our detriment.

1.2. These **General Terms and Conditions** shall also apply to any future business transactions with the Customer.

1.3. These **General Terms and Conditions** shall only apply with respect to entrepreneurs, legal entities under public law and public utility funds as defined by Section 310 Subsection 1 of the German Civil Code (§ 310 Abs.1 BGB).

#### 2. Offers and Cost Estimate, Subsequent Chances of Contract

2.1. Our offers and cost estimates are subject to change without notice and non-binding, unless expressly declared as binding.

2.2. We reserve all rights and titles to any bidding or contractual documents left to Customer under this Contract (in particular to any drafts, drawings, illustrations, samples, models or prototypes), unless Customer is entitled to such rights according to the purpose of this Contract or by explicit agreement. Any and all bidding documents as well as samples, models and prototypes shall be handed back to us immediately upon our request, if no order is placed with us. Customer shall have no right of retention insofar.

2.3. As far as reasonable and within our capacities, we endeavour to meet any requests for modifications to such products and/ or performances forming the object of this Contract which Customer may have after conclusion of this Contract.

As far as the examination of such requests or their execution may have an effect on the conditions of this Contract, in particular regarding remuneration, stipulated time limits etc., accordant adjustment of this Contract shall be made in writing immediately.

We may require additional adequate remuneration for examining, whether or not and subject to which conditions the requested modifications may be made, provided we previously informed

Customer about the need for such examination and Customer requested such examination accordingly.

### **3. Prices, Terms of Payment**

3.1. We reserve the right to adequately raise our prices, if cost increases occur after the conclusion of this Contract, which are beyond our responsibility, in particular due to changes in raw material prices or due to mandatory trade union wage agreements. We shall prove such occurrences to Customer upon his request.

3.2. Unless otherwise agreed upon, our prices are quoted net ex works and do not include postage, freight, packaging, insurance. The statutorily prescribed VAT shall be charged separately.

3.3. Unless otherwise agreed upon, payment shall be effected immediately and without any deductions. Any price deductions or cash discounts are subject to special written agreement between the Parties. The contracting partner is, without any further notification from us, considered to be in default if he has not paid within ten days of the due date. Apart from that, the legal provisions apply to the consequences of late payment, especially in regard to an interest rate of 9 % above the base interest rate and a fixed reminder fee of € 40.00. Unless provisions to the contrary have been agreed.

If nothing else has been agreed and a SEPA basic mandate/SEPA business mandate has been issued, the direct debit will be collected 10 days after the invoice date. The pre-notification period is reduced to 2 days. The contracting partner shall ensure that there are sufficient funds in his, her or its account. Costs incurred because of the non-payment or charge-back of the direct debit will be charged to the Customer.

3.4. We are entitled to require reasonable down payments from Customer, including VAT.

3.5. Bills of exchange and cheques shall only be accepted in lieu of payment; bills of exchange shall only be accepted subject to prior written agreement. Any discount charges, expenses as well as any other costs in connection with the collection of either cheques or bills of exchange shall be borne by Customer and shall be due for payment immediately. Debts shall only be regarded as discharged upon encashment of the cheque or the bill of exchange and when we have been released from any liability under this cheque or bill of exchange.

3.6. Customer may set off only such claims as are undisputed, acknowledged or legally established. Customer may plead the right of retention to fulfil an obligation under the Contract only if his claim against us is resulting from the same legal relationship as his obligation.

3.7. Should we agree in individual cases to a rescission of a contract, the goods shall be attached with a unbroken and undamaged seal.

### **4. Date of Delivery or Performance, Non-Performance beyond our Responsibility, Delay in Delivery or Performance, Impossibility of Performance, Breach of Duty to Cooperate**

4.1. Dates of Delivery or Performance quoted by us are not binding unless expressly stipulated to be binding.

4.2. Dates of Delivery or Performance shall only be complied with on condition of

- the Customer, correctly and in due time, observing all and any of his obligations to co-operate, especially with respect to the submission of documents and the transfer of necessary information;
- the clarification of all technical details with Customer;
- the receipt of down payments resp. the opening of a Letter of Credit which may have been agreed upon;
- the submission of administrative approvals or licences that may be necessary.

We reserve the right to plead non-performance of the Contract by Customer.

#### **4.3. Delays in our delivery or performance beyond our responsibility- Force Majeure:**

4.3.1. Delays in delivery or performance due to the following circumstances that may impede timely delivery or performance shall not be within our responsibility unless we exceptionally assumed the risk of timely delivery or granted a guarantee specifically with regard to the date of delivery or performance- the same shall apply if such circumstances occur at our suppliers or their sub-suppliers:

Circumstances of 'Force Majeure' as well as any other circumstances that may impede timely delivery or performance

- which occur after conclusion of the Contract and which we learn about only after conclusion of the Contract for no fault attributable to us, and
- with regard to which we prove that they could not have been foreseen and avoided by us even with the utmost reasonable care, and with regard to which we have no obligation to bear the risk of their occurrence or of having to avert or to prevent their occurrence.

Provided that the above conditions are fulfilled – i.e. occurrence or faultless learning of such circumstances only after conclusion of the Contract, unforeseen and unavoidable occurrence to be proven by us – the above exclusion of responsibility shall in particular, but without limitation, apply to the following circumstances:

Legitimate labour struggle (strikes and lock-outs); operating troubles and breakdowns; shortage in or lack of raw material; shortage in or lack of manufacturing supplies; lack of personnel.

- 4.3.2. In the event of delays in delivery or performance under no. 4.3.1 above, any claims for damages of the Customer are excluded.
- 4.3.3. In the event of a definitive impediment to delivery or performance within the meaning of no. 4.3.1. above, either party shall be entitled to immediately rescind the Contract in accordance with the statutory provisions.
- 4.3.4. In the event of a temporary impediment to delivery or performance within the meaning of no. 4.3.1., we shall be entitled to postpone delivery or performance for as long as the impediment may last. This period of postponement shall also include a reasonable start-up time. If we can prove an unreasonable impediment to delivery or performance, we shall have the right to rescind the Contract. Customer, however, shall have the right to rescission only under the conditions set out in no. 4.5. below.

Section 323 Subsection 4 of the German Civil Code (§ 323 Abs.4 BGB) shall apply analogously to our right to rescind the Contract. With regard to Customer's right to rescind the Contract, Section 323 Subsection 4 to 6 of the German Civil Code (§ 323 Abs.4–6 BGB) shall apply. As for the legal consequences of a valid rescission, Section 326 of the German Civil Code (§ 326 BGB) including its references to other provisions shall apply analogously; Customer may, in accordance with Sections 346–348 of the German Civil Code (§§ 346–348 BGB), request restoration and return of any products or performances he may already have made without them being due.

#### 4.4. Delays in performance within our sphere of responsibility:

- 4.4.1. If according to Section 280 subsection 2 and Section 286 of the German Civil Code (§§ 280 Abs.2, 286 BGB) we may be held **liable for damages due to delay in performance**, and if there was no intent or gross negligence on our part or on the part of our legal representatives or agents, the amount of damages shall be limited as follows:  
For each full week of delay a lump sum of 0,5 % of the net invoice amount of the delivery or performance concerned, but in no event more than 5 % of such amount in total, shall be due as compensation for any damage caused by the delay. In case of gross negligence on our part or on the part of our legal representatives or agents our liability for damages shall be limited to a compensation of the foreseeable damage specific to the type of contract.
- 4.4.2. Our **liability for damages in lieu of performance** subject to Section 281 of the German Civil Code (§ 281 BGB) shall be limited to the foreseeable damage specific to the type of contract, unless the delay in delivery was caused by an intentional or grossly negligent breach of Contract on our part or on the part of our legal representatives or agents.
- 4.4.3. The aforementioned limitations of our liability shall not apply
  - if Customer has stipulated that his continuing interest in our performance shall depend upon a timely delivery or performance by us (transaction where time is of the essence – Fixgeschäft);
  - if as a consequence of a delay in delivery or performance which may be attributed to us, Customer may assert that his interest in a further fulfilment of the Contract has ceased to exist;
  - if we have assumed the risk of timely delivery or granted a guarantee specifically with regard to the date of delivery or performance agreed upon.
- 4.5. If we prove that we are not responsible for any delay, Customer shall be entitled to rescind the Contract only

- if Customer has stipulated that his continuing interest in our performance shall depend upon a timely delivery or performance by us (transaction where time is of the essence – Fixgeschäft) or
- if Customer proves that, as a consequence of the delay, his interest in our performance of the Contract has ceased to exist or that the maintenance of the contractual relationship cannot reasonably be expected from him.

Section 323 subsection 4 to 6 of the German Civil Code (§ 323 Abs.4-6- BGB) shall apply. As for the legal consequences of the rescission the statutory provisions (Section 346 et sqq. of the German Civil Code ( § 346 ff. BGB) shall apply.

- 4.6. If our performance becomes impossible without intent or gross negligence attributable to us, our legal representatives or agents, our liability for damages and for compensation of expenses shall be limited to 20% of the net invoice amount of our delivery or performance. However, in case of gross negligence our liability shall be limited to the foreseeable damage specific to the type of contract. This limitation shall not apply, if we exceptionally assumed the risk of providing the product in any event (procurement risk).

**Customer's statutory right to rescind the Contract in case of impossibility of our performance shall remain unaffected.**

- 4.7. We are entitled to partial delivery or partial performance, if and as far as Customer reasonably may be expected to accept this.

- 4.8. If Customer is in default in taking delivery or in accepting performance at the place of delivery or performance or if he is late in collecting goods or in requesting delivery of goods ordered – also with regard to possible partial deliveries – or if delivery is delayed in any other way due to circumstances for which Customer is liable or if Customer negligently breaches any duty to cooperate, we shall be entitled to claim compensation of any damages caused insofar including compensation of any additional expenses without prejudice to our further statutory rights. Should we have any further claims under law, such claims shall remain unaffected.

## 5. Passing of Risks, Insurance

- 5.1. Should our deliveries be governed by the law on the sale of goods, the risk of accidental loss, destruction or deterioration of any goods shall pass to Customer as soon as the goods have been delivered to the person or institution designed to pick up or execute the delivery, however, at the moment the goods leave our premises at the latest. This shall also apply if, in accordance with specific agreements to this effect, we effect delivery by using our own vehicles, or if delivery is effected freight and packaging paid, and also if we agreed to perform installation, mounting or other services at Customer's premises.

- 5.2. If Customer is in default in taking delivery or in accepting performance or if he is late in collecting goods or in requesting delivery of goods ordered or if delivery is delayed in any other way due to circumstances for which Customer is liable, the risk of accidental loss, destruction or deterioration of the goods shall pass to Customer at the moment that he is in default in taking delivery, or at the moment when delivery could have been effected if Customer's conduct had been in accordance with his contractual obligations.

- 5.3. Upon Customer's request and at his expense, any deliveries will be insured by us against theft, damage by breakage, by reason of fire, by water or in transit as well as against any other insurable risk from the time of the passing of risks.

## 6. Retention of Ownership

- 6.1. We retain ownership to all goods delivered by us until we receive full payment of any outstanding sums originating from the business relation with the Customer ('reserved goods'). In case we grant open account credit terms to Customer, the retained ownership shall also extend to the confirmed balance with regard to Customer's current account payable to us (current account reservation) until all current liabilities have been discharged. If such reserved goods are paid by way of a bill of exchange which results in a liability on our part the retention of ownership shall only become extinct if and when our liability under a bill of exchange becomes extinct as well; if payment by way of cheque / bill procedure has been agreed upon with Customer the retention of title shall also extend to the honouring of the bill of exchange

- accepted by us by the Customer and shall not be forfeited once the cheque received has been credited to our account.
- 6.2. Customer shall have the right to resell any reserved goods in the ordinary course of business; however, by now he shall assign to us any and all claims that he may have against his customers or against third parties as a result of the resale to the amount of the invoice total (including VAT) of our claims. If Customer grants open account credit terms to his customers and any claims resulting from a resale of reserved goods are entered into this current account, the current account claim shall be assigned to us to the amount of the confirmed balance; the same shall apply for the actual balance if Customer becomes insolvent. Customer shall remain entitled to collect the claims even after assignment to us.
- 6.3. Subject to the rules and regulations of insolvency law, our right to collect claims ourselves shall remain unaffected; however, we undertake not to collect any claims for as long as Customer himself duly meets his contractual obligations, in particular for as long as Customer is not in default of payment, if insolvency proceedings are not filed for and if he does not suspend his payments in general. Under this right of resale, the Customer shall not be entitled to pledge or transfer by way of security any of the reserved goods.
- 6.4. If our obligation under no. 6.2. above, not to collect claims ourselves, ceases to exist, we shall have the right - subject to the rules and regulations of insolvency law - to withdraw the right of resale and to take back the reserved goods or to require Customer to assign to us any claims for restoration of the reserved goods he may have against third parties respectively. Our recovery of reserved goods constitutes a rescission of the Contract.
- Upon prior warning to do so and expiry of a time limit set, reserved goods which have been taken back by us for the aforementioned reasons may - subject to the rules and regulations of insolvency law - be reasonably realized and exploited by us; the proceeds of such realization shall be credited against Customer's liabilities - after deduction of adequate realization costs.
- Under the conditions set out above entitling us to withdraw Customer's right of resale, we may also revoke his authorisation to collect claims and may require him to disclose to us any claims assigned as well as the debtors of such claims; furthermore, we may require Customer to disclose to us all information necessary for collection, to submit the relevant documentation and to notify the debtors (third parties) of the assignment.
- 6.5. In case of damage to or loss of the reserved goods as well as in case of a change of residence or a change of possession, Customer shall immediately notify us thereof in writing; the same shall apply in case execution is levied upon the reserved goods by a third party or in case of any other interference by a third party so that we are in a position to bring an action under Section 771 of the German Code of Civil Procedure (§ 771 ZPO). If such third party is in no position to reimburse the judicial and extra-judicial costs incurred by us under Article 771 ZPO, Customer shall be liable for the costs incurred by us. If the release of the reserved goods is achieved without legal proceedings, costs hereby incurred may also be charged to Customer, costs for regaining pledged reserved goods shall be included herein.
- 6.6. Any of Customer's processing or transformation of reserved goods delivered by us shall always be deemed to be on our behalf only. If reserved goods are processed with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the joint property being defined by the ratio of the value of the reserved goods (invoice total plus VAT) to the value of the other goods processed or transformed, such value being assessed at the time of their processing or transformation.
- Furthermore, any provisions herein which apply to the reserved goods shall also apply to the product of such processing or transformation. With respect to the product of such processing or transformation, Customer shall acquire expectant rights corresponding to his expectant rights to the reserved goods.
- 6.7. If reserved goods are inseparably mixed or combined with other goods which are the property of any person other than us, the product thereof shall be deemed to be owned jointly with that other person, our share in the joint property being defined by the ratio of the value of the reserved goods (invoice total plus VAT) to the value of the other goods which have been mixed or combined, such value being assessed at the time of their mixing or combining. If the mixing or combining of the goods has been done in such a way that Customer's goods are to be

considered to be the main product it is agreed that Customer assigns to us co-ownership of such product on a pro rata basis. The Customer shall keep such property which is either owned by us solely or owned jointly with another person properly stored on our behalf.

- 6.8. If our reserved goods are resold after having been processed or transformed in any way, by now Customer shall assign to us as security any claims resulting from such resale to the amount of the invoice total (including VAT) of our claims.  
If, on account of the processing or transformation of reserved goods with other goods which are the property of any person other than us or if on account of their mixing or combining with such other goods, we have only acquired co-ownership pursuant to the above clauses 6.5 or 6.6, Customer's claim for the purchase price shall only be assigned to us in advance in the proportion of the total amount charged by us for the reserved goods plus VAT to the invoice totals of the other goods which are not our property.  
In addition, provisions as laid down in clauses 6.2. - 6.4. above shall apply accordingly to claims assigned to us in advance.
- 6.9. If under the laws of a foreign country within the borders of which the reserved goods are located, a reservation of ownership or an assignment is not legally effective, the security provision which in this legal sphere corresponds to a reservation of ownership or an assignment shall be deemed to have been agreed upon.  
If Customer's participation is required in order to create such rights, Customer shall be obliged at our request to take all measures necessary in order to constitute and maintain such rights.
- 6.9. Customer shall treat our reserved goods properly and keep them in good repair; in particular, Customer shall at his expense sufficiently insure our reserved goods against theft, robbery, burglary, fire and water damage. By now, Customer shall assign to us any and all rights resulting from such insurance and relating to the reserved goods. We herewith accept such assignment.  
Furthermore, we reserve all rights to assert our claims for performance or claims for damages.
- 6.10. As a collateral for our claims against him, Customer assigns to us any and all claims that he may have against third parties as a consequence of the installation of reserved goods on real estate property in a way that the reserved goods under the applicable statutory rules have to be considered as part of the real estate property.
- 6.11. Upon Customer's request, we undertake to release the securities we are entitled to if the value of such securities exceeds the value of our claims to be secured by more than 10 %. We shall have the right to select the securities to be released at our discretion.

## 7. Acceptance

- 7.1. If our products or performances are governed by the law of contracts for work and services (Werkvertragsrecht), Customer shall - at our discretion - be obliged to accept our products or performances after their preliminary inspection at our premises and/or to accept them after inspection at his premises and to confirm his acceptance in writing as soon as we notified him of their completion or of their completed assembly or if a trial period for the testing of our products or performances has taken place in case such assembly or trial period was agreed upon between the Parties.  
Customer may not refuse his acceptance of our completed delivery or performance if any defects which may exist are only immaterial.  
Customer shall be deemed to have accepted our delivery of performance if he has not accepted them within an adequate time limit set by us for him to declare his acceptance notwithstanding his obligation to do so.
- 7.2. Upon acceptance we shall be released from any liability for apparent defects unless Customer expressly reserves the right to assert any rights or claims which he may have with regard to such defects at a later date.
- 7.3. If a trial period for our products or performances was agreed upon, Customer shall be obliged to test any functions of such delivery or performance within the scheduled trial period. Such tests must also include the testing of safety requirements in order to safeguard that any regulations valid for the relevant sector of industry such as VDE regulations, or the provisions of the Machine Protection Act (Maschinenschutzgesetz) are complied with.

- 7.4. We may also request acceptance inspections with regard to parts of our products or performances only if and as far as there are no conflicting reasons and Customer reasonably can be accepted to accept this.

## 8. Specifications, Warranty

- 8.1 The requirements contained in our specifications exhaustively and conclusively define the quality of our products and performances. But for stipulations to the contrary, these specifications shall only constitute stipulations about the quality and not guarantees or covenants. In case of doubt, statements from our part in the context of the Contract do not constitute guarantees or covenants in terms of an aggravation of liability or the assumption of a special obligation to meet claims. With respect to guarantees or covenants, in case of doubt, only explicit, written statements from our part shall be applicable.
- 8.2 We assume no liability for any damages due to the following reasons: inappropriate use or operation, common wear and tear, faulty or negligent handling, inappropriate alterations carried out by Customer or third parties without our prior consent.
- 8.3 Customer shall not have any warranty claims in case of only insignificant deviations from the quality agreed upon or in case of only insignificant impediments to the use of the products or of the performance.
- 8.4 Customer may only assert warranty claims if he has duly observed his duties to examine the products and to give notice of any defects in accordance with Section 377 of the German Commercial Code (§ 377 HGB).
- 8.5 In case of a defect of the product, we shall be entitled to supplementary performance ("Nacherfüllung"), at our option, either by remedying the defect or by delivering a substitute product without defects. Should one or both of these two types of supplementary performance be impossible or unreasonable, we shall be entitled to refuse it or them, respectively. We may also refuse supplementary performance, as long as Customer fails to fulfil his payment obligations vis-à-vis us to an extent commensurate with the non-defective portion of our product. We shall bear all expenses necessary for the purpose of supplementary performance, especially costs for transportation of man and material, working and material costs, except insofar as they are increased due to the fact that the defective product was moved to different place than the place of performance, unless such moving to a different place was necessary for the presupposed use of the product. We shall be entitled to remedy defects by third parties on our behalf. Replaced parts shall become our property.
- 8.6 In case of impossibility or failure of supplementary performance, of delay by our fault, unreasonable delay or our serious and definite refusal of supplementary performance, or unreasonableness of supplementary performance for Customer, the latter shall be entitled, at his option, to either commensurately reduce the purchase price ("Minderung") or to rescind the Contract ("Rücktritt").
- 8.7 With regard to preconditions and consequences of supplementary performance, as far as the contractual provisions do not contain any provisions at all or do not contain provisions deviating from statutory law, the provisions of statutory law shall apply with respect thereto.
- 8.8 Customer's claims for damages and reimbursement of expenses in connection with defects shall be governed – regardless of the legal nature of the claim – by the following provisions of cls. 8.8.1. to 8.8.4 inclusively; the aforementioned provisions shall especially apply also with respect to warranty claims, claims for breach of obligations, and claims in tort.
- 8.8.1. We shall be unlimitedly liable – pursuant to the applicable provisions of statutory law for damage in case of:
- intent;
  - culpable infringement of life, body or health;
  - defects and other facts that have been fraudulently concealed; or
  - defects whose absence has been guaranteed, or insofar as the quality of goods has been guaranteed.
- 8.8.2. Moreover, we are, in principle, liable for damages pursuant to the provisions of statutory law. Our liability for damages on the basis of statutory law is, however, limited – notwithstanding the

provisions in cl. 8.8.1. above – to the foreseeable, typically arising damage in the following cases:

- gross negligence on the part of our legal representatives, executive employees, and other vicarious agents; and
- slight negligence on the part of our legal representatives, executive employees, and other vicarious agents – provided that any of the latter commit a breach of essential contractual obligations (obligations whose fulfilment enable the proper implementation of the contract and whose observance is regularly trusted).

8.8.3. Liability pursuant to the German Product Liability Act („Produkthaftungsgesetz“) shall remain unaffected.

8.8.4. Any further claims are excluded unless otherwise provided for in this cl. 8.8.

8.9 Statutory rules on the burden of proof remain unaffected by this cl. 8.

### 9. Liability for Collateral Duties

If, due to our fault or the fault of our legal representatives or agents, the product delivered can not be used as contractually intended as a consequence of a lack of advice or information prior to or after the conclusion of this Contract or as a consequence of wrongful advice or information or other wrongful performance of collateral duties (especially instructions for use and maintenance of the product) prior to or after the conclusion of this Contract, the provisions of no. 8.7. to 8.10. above shall apply accordingly excluding any further claims of the Customer.

### 10. General Liability, Rescission of Contract by Customer

10.1. The following provisions apply to Customer's claims other than claims in connection with defective products. However, these provisions shall not constitute a limitation or waiver of our statutory or contractual rights and claims.

10.2. Any liability for damages shall be governed by the provisions in no. 8.7 and no. 8.8 above except for the liability for damages due to delay in delivery or performance as provided for in no. 4.4 above and the liability for damages due to impossibility of delivery or performance as provided for in no. 4.6 above. Any further liability for damages shall be excluded regardless of the legal nature of such liability. This shall apply in particular to claims for damages beside performance and in lieu of performance, to claims for breach of obligations as well as to claims in tort for compensation of damage to property under Section 823 of the German Civil Code (§ 823 BGB).

10.3. The limitation contained in no. 10.2. above does also apply if Customer claims compensation of expenses incurred.

10.4. Any fault of our legal representatives and agents may be attributed to us.

10.5. The statutory rules on the burden of proof remain unaffected.

10.6. As far as our liability is excluded or limited, such exclusion or limitation does also apply to the personal liability of our staff, employees, legal representatives and agents.

10.7. If we breach an obligation of this Contract, Customer shall only be entitled to rescind this Contract, subject to the applicable statutory provisions, if fault for such breach is attributable to us. In the cases provided for in no. 8.6. above (failure of correction etc) and in cases of impossibility, however, the statutory provisions apply without limitation; as for a Customer's right of rescission on grounds of delay in delivery or performance, the provisions contained in no. 4.3.3., 4.3.4. and 4.5 above shall apply. Upon our request, Customer shall declare within a reasonable time limit, whether he will rescind this Contract or insist on our performance under this Contract.

### 11. Know How and Inventions

We reserve all rights and title to any valuable, new and confidential knowledge (know how) we dispose of or gain during the performance of any contracts made with us, as well as to inventions and any intellectual or industrial property rights that may exist insofar, unless otherwise agreed upon and unless Customer, according to the purpose of the respective contract, is entitled to use the respective products delivered.

### 12. Infringement of Third Parties' Rights

We do not warrant that the use, installation or resale of any of our products does not infringe third parties' industrial property rights. However, we guarantee that we have no knowledge of the existence of any such third parties' rights with regard to our products.



### 13. Prescription

- 13.1. The term of prescription for rights and claims based on defects of the product or performance – no matter on what legal grounds – shall be one year. In case of multi shift operation the term of prescription shall be six months only.  
This however shall not apply to the cases provided for in Sections 438 subsection 1 no.1, 438 subsection 1 no. 2, 479 subsection 1 and Section 634 a) subsection 1 no. 2 of the German Civil Code (§§ 438 Abs.1 Nr.1, 438 Abs.1 Nr. 2, 479 Abs.1 Nr.1; 634 a) Abs.1 Nr. 2 BGB); in these cases the term of prescription shall be three years.
- 13.2. The terms of prescription laid down in no. 13.1. above shall also apply to any and all of Customer's claims for damages against us in connection with defects of the product – regardless on what legal grounds. As for any other of Customer's claims for damages against us which are not connected with defects of the product, the term of prescription provided for in no. 13.1. sentence 1 above shall apply.
- 13.3. The terms of prescription provided for in no. 13.1. and 13.2. above shall not apply:
- In case of breach of an obligation with intent;
  - In case of fraudulent non-disclosure of a defect known to us or in case of a guarantee assumed by us with regard to the quality of the product or the performance; in case of fraudulent non-disclosure, instead of the terms of prescription provided for in no. 13. 1 above those statutory terms of prescription shall apply, which would apply in the absence of fraudulent non-disclosure, however, excluding the extension of the term of prescription as provided for in case of fraudulent non-disclosure according to Section 438 subsection 3 and Section 634 a) subsection 3 of the German Civil Code (§ 438 Abs.3 BGB; § 634 a) Abs.3 BGB) respectively.
  - To claims for damages in case of damage to life, body, health or freedom of a person;
  - To claims under the Product Liability Act (Produkthaftungsgesetz);
  - In case of a grossly negligent breach of obligation or
  - In case of breach of a fundamental contractual obligation.
- In these cases the statutory terms of prescription shall apply.
- 13.4. Unless otherwise expressly provided for herein, the statutory provisions on the beginning of the terms of prescription, on the suspension of their expiration (Ablaufhemmung), on the suspension of their running (Hemmung) and on their re-start (Neubeginn) shall remain unaffected.
- 13.5. Any claims for reduction of the purchase price and the right to rescind the Contract are excluded, if the claim for correction of the performance is prescribed. In this case, however, Customer may refuse payment of the purchase price in so far as he would be entitled to do so on the basis of his right to reduce the purchase price or his right to rescind the Contract.
- 14. Assignment by Customer**  
Customer shall assign claims against us arising in connection with our products or performances only with our prior written consent to any third party.
- 15. Place of Performance, Place of Jurisdiction, Applicable Law, Purchase within the EU, Safeguarding Clause**
- 15.1. Unless otherwise agreed upon, place of performance shall be our place of business exclusively.
- 15.2. If Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – herein included liabilities from cheques and bills of exchange – shall either be our principal place of business or, at our sole option, the location of the Customer. This agreement as to the place of jurisdiction shall also apply for Customers having their location in a foreign country.
- 15.3. To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and the Customer, German law, excluding the UN Sales Convention (CIS Convention on contracts for the international sale of goods of April 11, 1980), shall apply exclusively, without regard to German collision rules.
- 15.4. Should individual provisions of these **General Terms and Conditions** or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.

- 15.5. Customers from EU member states shall be obliged to compensate for all and any damage which may be incurred by us due to:
- tax violations committed by Customer himself or
  - false information given by Customer or information which has been withheld from us by Customer relating to his financial situation and relevant for taxation.

**16. Data Protection**

Personal data is treated in compliance with the current regulations on data protection. The ordering party shall permit optimed to collect, store, process, transmit and use any personal data required for the execution of a contract. The ordering party shall consent in particular to the transmission of personal data to the subcontractors commissioned by optimed and, if required in a particular case, to its financial institution. There shall be no transfer to any third persons over and above the aforesaid.

Ausdruck erstellt von Melanie Ochs, 26.08.2019 16:57