

OLYMPUS MEA FZ-LLC GENERAL TERMS OF SALES 11/2017

1. General

1.1. The subsequent general terms (hereafter „GT“) apply to all contracts in connection with the sale and/or the delivery of movables (hereafter „goods“) concluded between Olympus MEA FZ-LLC (hereafter „Olympus“) and its customers. These GT shall apply only vis-à-vis commercial entities/business persons, governmental entities, or special governmental estates.

1.2. These GT exclusively are applicable to the business relationship for its entire duration (including future business in case of an ongoing business relation). Olympus does not recognise any conditions of the customer which are in conflict with or deviate from these conditions and/or supplement these conditions unless Olympus has expressly agreed to these in writing. This approval requirement as well these GT shall also apply should Olympus unconditionally execute a delivery to the customer in full knowledge of the conflicting or deviating terms of the customer.

1.3. All agreements concluded between Olympus and the customer for the purposes of execution of business are to be set down in writing in a contract. Any individual agreements (distribution agreements, ancillary agreements, supplements, modifications) with the customer shall prevail in any case. As regards the content of such agreements a written contract and/or Olympus written confirmation shall be decisive. With the exception of managing directors and authorized representatives Olympus' employees shall not be entitled to enter into oral agreements deviating hereof. For the purpose of ensuring the written form transmission by facsimile shall be sufficient, otherwise, transmission by means of telecommunication, particularly by email, shall not be sufficient.

1.4. Material statements and relevant notifications that have to be made by the customer after execution of the contract (such as the appointment of a deadline, notice of a defect, declarations of termination or price reducing) shall be in writing in order to become effective.

2. Quotations, Orders

2.1. Olympus quotations shall always be provisional and non-binding unless explicitly marked as binding.

2.2. Although in principle, contracts with Olympus only come into force once Olympus has issued a written confirmation, they in any case come into force with the commencement by Olympus of the execution of an order and/or delivery of the goods. Olympus' confirmation of order or where no such confirmation of order exists, Olympus' quotation, is authoritative for the content of the contract.

2.3. Olympus reserves the right to make technical, and design changes, in particular improvements, even after confirming an order, in so far as this is reasonable for the customer.

2.4. Where a declaration by Olympus exists that has been designated as a description of a service or product, this description conclusively and completely specifies the characteristics and qualities of the supplied product or service. Such service and/or product descriptions are only nearly authoritative, unless the applicability for the contractually designated purpose requires exact conformity. In cases of doubt, these types of descriptions, illustrations, references to DIN/ISO standards etc. may not be deemed as to constitute the assumption of a guarantee. In cases of doubt, only explicit written declarations by Olympus are authoritative for the determination of a guarantee promise.

2.5. Olympus reserves the right, within a period of 10 days upon the execution of this contract, to rescind from contract by way of a written declaration, if Olympus within the scope of a conducted solvency check shall become knowledge of facts that the credit-worthiness of the customer appears to be questionable and jeopardize the performances as provided in the contract. In the context of a solvency check Olympus shall be entitled to request information (such as bank enquiry, credit report, creditreform).

2.6. In case a certificate of origin is needed, customer shall already notify Olympus thereof when placing the order. To cover additional expenses arising out of ordering/issuing certificates of origin, Olympus is entitled to charge an administration fee of USD 50,- per certificate of origin to the customer.

3. Prices

3.1. Prices are indicated in USD or in another agreed currency and do not include Value Added Tax (VAT). VAT shall be invoiced at the currently valid statutory rate.

3.2. Olympus reserves its right to alter the prices, in case the time period between the conclusion of the contract and the agreed delivery date exceeds four (4) months and an increase of costs, in particular based on collective wage agreements or changes in material prices, have occurred. In case of an increase of the price by more than 25% of the agreed contract price, the customer is entitled to withdraw from the contract.

3.3. Prices quoted shall apply – unless agreed otherwise – ex works (EXW Incoterms 2010) including normal packaging costs.

4. Terms of Payment

4.1. Invoices are payable no later than by the due date indicated in the invoice. Payment shall be made without any deduction and free of all charges. No deduction of a discount is permitted unless such discount had been expressly agreed upon. Should the deduction of a discount be stipulated in the respective quotation/agreement or in the respective invoice, such discount is granted only if and to the extent that at the date of receipt of payment no balance is due in favour of Olympus. In case of repairs and deliveries of spare parts the possibility of deduction of a discount is excluded.

4.2. Payments are regarded as having been made on the day that these sums are at the disposal of Olympus. Cheques and bills of exchange are accepted as payment in lieu of performance only. The acceptance of a cheque or bill of exchange constitutes a deferment. All costs in connection with cheques and bills of exchange will be borne by the customer.

4.3. The customer is only entitled to offset amounts if his counterclaim has been legally established, uncontested or is recognised by Olympus. The customer shall have no right to re-debit or retain monies unless this is based on the same contractual relationship. However, in case of defective deliveries mandatory statutorily prescribed counterclaims remain unaffected.

4.4. In the event of default in payment, the customer shall be obliged to pay interest for default as of the date on which he defaults on payment, which annual interest shall amount to 10 percent points above the applicable base rate of the European Central Bank and shall be no less than 12%. Olympus reserves its right to assert higher damages in connection with the default in payment. No interest is payable on customer's down payments and advance payments. Olympus shall also be entitled within reasonable limits to withhold deliveries, even those from different orders, and to perform delivery only against prepayments or on a cash-on-delivery basis without advance notice.

4.5. Notwithstanding the rights contained in these GT, Olympus' statutory rights in respect of default of payment and due date of payment remain unaffected. Delivery times agreed to by Olympus shall be extended by the period of default of payment.

4.6. If after formation of a contract facts become known, which are apt to substantially reduce the creditworthiness of the customer or if a significant deterioration of the financial situation of the customer otherwise becomes apparent, which may impair payment of a claim of Olympus by the customer based on the respective contractual relation, Olympus shall be entitled at its discretion – as the case may be, after setting a reasonable deadline – to demand advance payment or provision of security and, should the customer definitively refuse to meet the terms of the contract and/or to provide security or upon the fixation of a period of time shall not perform its obligation and/or provide security, to terminate the contract. In case of manufacture of specific items (custom-tailored items), Olympus may declare rescission promptly. The statutory provisions regulating dispensability of setting a deadline remain unaffected.

5. Delivery, Delivery Period/Time

5.1. Delivery times/deadlines shall only be binding if confirmed as binding by Olympus in writing. They otherwise constitute "circa periods".

5.2. The delivery deadlines shall be considered to have been met if, by the time of the deadline, the delivery item has been dispatched or collected from Olympus, or, should this dispatch or collection be delayed for reasons for which Olympus is not responsible, if notification of readiness to deliver is given within the stipulated time.

5.3. Insofar as binding delivery dates cannot be observed for reasons outside the scope of Olympus (non-availability of performance), Olympus shall immediately inform the customer hereof and shall at the same time inform the customer of the anticipated new delivery date. If performance is still not possible within the new delivery deadline, Olympus is entitled to withdraw from the contract in full or in part and shall promptly reimburse an already received consideration. In particular the late delivery of Olympus' own sub-suppliers is deemed a case of non-availability if neither Olympus nor its sub-supplier is acting with fault or if Olympus is not obliged to procurement in the individual case.

5.4. Furthermore, the customer's right to termination of a contract upon expiry of a reasonable period of grace granted to Olympus without result shall remain unaffected.

5.5. Should the customer be in default of acceptance or negligently violates any other cooperation obligation, if e.g. dispatch or delivery of the goods be delayed by circumstances lying within the sphere of responsibility of the customer, Olympus shall be entitled to claim damages, including any additional expenses. In case of storage by Olympus, warehouse charges shall be calculated with 0.25% of the invoiced price of the stored goods for each completed week. The assertion of further claims is reserved.

5.6. Part deliveries shall be permitted, as far as such deliveries are reasonable for the customer. To the extent that such part deliveries can be used on their own, they shall be considered as independent deliveries in respect of the due date of payment.

5.7. Delivery shall be made as agreed in the individual confirmed order on the date stated in the confirmation of the respective order. In respect of the delivery date, time shall not be of the essence. Olympus undertakes to notify the customer of any delays in the delivery.

6. Dispatch, Packing

6.1. Dispatch within the territory of the Federal Republic of Germany shall be from a location to be specified at the discretion of Olympus unless otherwise stipulated by the parties. The goods shall be delivered in packaging which is suitable for dispatch and transport. Mode of dispatch and packaging are at the reasonable discretion of Olympus.

6.2. If the goods are shipped at the request of the customer, the customer shall bear the transport costs ex works and the costs of transport insurance if requested by the customer.

6.3. For after-sales service deliveries (replacement parts, repair equipment), packaging shall be calculated separately.

7. Passing of Risk

The risk lies with the customer for all deliveries, including any returns, even if freight prepaid, FOB, or CIF (Incoterms 2010) delivery has been agreed. The risk shall pass to the customer as soon as the consignment leaves the warehouse of Olympus or of a warehouse maintained by Olympus. This also applies in case of partial deliveries or in case Olympus has undertaken further services (such as shipment or installation). Should delivery be delayed at the customer's request or as a result of circumstances for which the customer is responsible, the risk shall pass to the customer for the duration of the delay as of the date of notification of readiness to deliver.

8. Reservation of Title

Olympus shall retain sole and absolute title to any goods supplied until the underlying invoice has been fully paid together with the full price of any other goods the subject of any other invoice with Olympus and until that time the customer acknowledges that it is in possession of the goods solely as Bailee in a fiduciary capacity for Olympus. The customer shall fully insure the goods until it obtains full title to them. Olympus may, at any time, require evidence that the goods are properly insured, including, in particular, a copy of the insurance policy. The customer may sell the goods in the ordinary course of business but shall not otherwise (and shall not purport to) sell, mortgage, encumber or

part with possession of the goods or allow any lien or encumbrance to arise over them. Olympus may at any time inspect the goods and may at any time repossess the goods and for this purpose enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same. Until such time as the customer becomes the owner of the goods, they will be stored on its premises separately from its own products or those of any other person and in a manner which makes them readily identifiable as the goods of Olympus.

9. Combination of Products

9.1. Unless explicitly stated in the delivered instruction manuals ("system chart"), Olympus does not make any statement on the compatibility of the delivered products.

9.2. Olympus will solely combine delivered medical devices and/or non-medical devices and/or products from the inventory of the customer on behalf of and under instruction from the customer. Olympus will not place devices on the market.

9.3. The customer is responsible for the safe operation of combinations.

9.4. The customer may be obliged pursuant to medical device regulations to inspections, assessments and declarations before he may operate a combination of products.

10. Warranty

10.1 The customer shall conduct a thorough incoming inspection including a functionality test with respect to the goods. In the event that any goods prove to be defective when delivered to the customer and such defectiveness is directly attributable to Olympus, the customer shall notify the same without undue delay and, in any event, no later than within 10 days from delivery to the customer. Defective goods so notified shall be, within Olympus' sole discretion repaired or replaced without cost for the customer.

10.2. Warranty claims of the customer require that the customer has complied with its obligation to examine and give notice of defects. Any complaints regarding incomplete, false or defective deliveries are to be reported in writing immediately after delivery. Hidden defects are to be reported in writing after these have been detected. Notice is deemed to be made in due time if given within 10 days after delivery or detection, as the case may be. The punctual dispatch of the notice suffices to comply with the time limit.

10.3. The customer shall fulfill all his contractual obligations, in particular the stipulated terms of payment; Olympus may make the owed subsequent fulfillment dependant on the fact that the customer pays the due purchase price. The customer may, however, withhold payment in reasonable proportion to the extent of the defect.

10.4. The customer shall grant Olympus the necessary time and occasion to fulfil the warranty obligations. Subsequent fulfillment neither includes the disassembly of the defective item nor reassembly if Olympus had not originally been obliged to assembly in the first place. Any expenses incurred in connection with the examination and subsequent fulfillment, in particular costs for transportation, infrastructure, personnel and material (not covered: costs for disassembly and reassembly) are borne by Olympus, if a defect in fact exists. In any other cases these costs are borne by the customer and Olympus may claim reimbursement from the customer, as the case may be.

10.5. Any improper repairs or modifications effected by the customer or by third parties shall nullify any warranty or liability, unless the customer proves that the defect is not the result of this intervention.

10.6. The liability for defects shall neither apply to normal wear and tear, nor to damage occurring after passage of risk as a result of faulty or negligent handling, overuse, inappropriate equipment, or such chemical, electro-chemical, or electrical influences as are not provided for in the contract.

10.7. Claims of the customer for damages or compensation of futile expenses are subject to the limitations set forth in Item 11 below and are otherwise excluded.

10.8. In so far as the Olympus product is equipped with accessories from third-party companies and the warranty terms and conditions of the third-party company are included with the Olympus product, Olympus shall assume these terms and conditions to the extent as they are not more disadvantageous for Olympus than the above provisions. Otherwise the above provisions shall apply.

10.9. Warranty claims arising from any batteries included are excluded. Such batteries shall only serve demonstration purposes and operational tests.

11. Liability

11.1. Nothing shall limit or exclude the liability of Olympus for: (a) death or personal injury resulting from negligence; or (b) fraud or fraudulent misrepresentation; or (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

11.2. Without prejudice to Clause 11.1 above, Olympus shall not be liable to the customer for any indirect loss arising out of or in connection with the sale and delivery of goods or any breach or non-performance of it no matter how fundamental (including by reason of Olympus's negligence).

11.3. Without prejudice to Clause 11.1 and 11.2, Olympus shall not be liable to the customer under any circumstances, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, loss of goodwill, loss of distribution rights, or other loss of business, suffered by the customer and irrespective of whether such losses are direct or indirect losses. Moreover, Olympus' liability shall be limited to the aggregate invoiced and paid amount during the calendar year, in which the claim is brought by the customer.

11.4. Without prejudice to Clause 11.1, 11.2 and 11.3 above, Olympus shall be discharged of all liability, to the extent permissible by law, howsoever arising in respect of the delivery of defective goods unless the claim or action is brought by the customer and written notice thereof given to Olympus within 12 months after delivery of the PRODUCTS.

11.5. The customer indemnifies and hold Olympus harmless from and against any and all losses together with all reasonably incurred legal expenses suffered or incurred by OLYMPUS as a result of a claim (including any action, demand, proceeding, filing, objection or complaint of any nature or kind) brought by any third party if such claim arises in connection with the customer's non-performance of its obligations under this Agreement /or its obligations towards its customers and/or its marketing, sale or distribution of the goods.

12. Assignment of Claims

Claims arising from the contractual relationship between the customer and Olympus and all claims against the damaging party or its insurer arising from the loss of or damage to reserved goods may only be assigned to third parties with prior written permission of Olympus.

13. Export Control Rulings

13.1. The export of certain goods, information, software and documentation may for example, by very nature of their type or their purpose or end purpose be subject to approval. The customer shall strictly comply with the relevant export regulations pertinent to the goods, information, software and documentation in question, in particular with regard to the EU, EU member states as well as the USA.

13.2. In abidance with the legislation governing export control of the Federal Republic of Germany, as well as of the EU member states and the USA the customer is under obligation to procure at his own cost and before the actual export of products or technical information, which he has received from Olympus, all the required export licenses and any such other documents necessary.

13.3. The customer shall be under obligation, not to sell, export, re-export, deliver or otherwise pass on, whether directly or indirectly, such products or technical information to persons, companies or to other countries in so far as this be in breach of laws and rulings of the Federal Republic of Germany, other EU member states or the USA. The customer is obliged to inform all recipients of these products and/or of any technical information of the requirement to observe by these laws and rulings.

13.4. The customer shall procure at his own cost all licenses and documents required for export and import, which may also be required for using the products. Refusal of export permission does not entitle the customer to withdraw from the contract or to claim damages.

14. Data Protection

Data obtained in the course of the business relation will be processed according to the applicable laws and taking account of Olympus' „privacy policy“ (retrievable at http://www.olympus-europa.com/corporate/en/privacy_notice.html). Data collected from the customer will only be collected, processed and used to the extent required for the conclusion and performance of the underlying sales/delivery agreement and/or any further agreements between Olympus and the customer.

15. Applicable Law and Place of Jurisdiction

15.1. These GT as well as all contracts concluded based on these terms are subject to the laws of England and Wales excluding the rules governing conflicts of laws and the Vienna Convention on the International Sale of Goods.

15.2. For all disputes arising out of conclusion, performance, interpretation, nullification, termination or invalidation of this GT as well as all contracts concluded based on these terms shall be settled by arbitration as follows:

15.2.1. The arbitration proceedings, including the appointment of arbitrators, shall be carried out in accordance with Rules of the Dubai International Arbitration Centre ("DIAC").

The arbitration tribunal shall consist of three arbitrators appointed in accordance with the Rules.

15.2.2. The language of the arbitration proceedings shall be English.

15.2.3. The arbitration shall take place in Dubai, United Arab Emirates.

15.2.4. The arbitral award shall be final and binding on the Parties. The Parties hereby undertake to follow and carry out the arbitral award.