

**General Terms and Conditions of Sale 2009****1. General**

- 1.1 Any delivery of goods and services by us shall be subject to the Terms and Conditions set forth herein to the extent no other agreements have been explicitly made. As far as the client's general terms and conditions are inconsistent with ours, their application shall be subject to our explicit written approval.
- 1.2 Any claims held against us may not be assigned to third parties. Section 354a of the German Commercial Code (HGB) shall remain unaffected.
- 1.3 The sale, resale and the disposal of goods and services including any associated technology or documentation may be governed by German, EU, US export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is subject to an official license. Customer declares with his order the conformity with such statutes and regulations and that the goods will not directly or indirectly delivered into countries that prohibit or restrict the import of such goods. Customer declares to have obtained all licenses required for export and import.

**2. Information, Consultancy**

Information and consultancy in relation to our goods and services is provided as deemed appropriate from existing experience. Any values quoted as part thereof, especially performance data, represent average values which have been determined through experiments under standard laboratory conditions. We cannot assume any commitment for our products to precisely meet the quoted values and areas of application. Section 10 of these Terms and Conditions governs any issues of liability.

**3. Prices**

- 3.1 The prices quoted in our order confirmation shall solely apply. Additional services will be invoiced separately.
- 3.2 All prices are quoted as net prices and do not include value added tax, which is to be paid additionally by the Customer in the amount specified by applicable law.
- 3.3 Unless otherwise expressly agreed, our prices are quoted ex works Jena/Germany. The Customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

**4. Delivery**

- 4.1 Unless otherwise expressly agreed, we shall deliver ex works Jena/Germany.
- 4.2 Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of our order confirmation, however, in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of our own.
- 4.3 With respect to delivery periods and dates, which are not expressly defined as fixed in the order confirmation, the Customer may -two weeks after expiry of such a delivery period or date- set us an adequate grace period for delivery. We may only be deemed to be in default after expiry of such a grace period.
- 4.4 Without prejudicing our rights from Customer's default, delivery periods and dates shall be deemed to be extended by the period of time during which the Customer fails to comply with his obligations to us. In case we do not comply with our obligations we shall only be liable for all types of damages in accordance with section 10 of these Terms and Conditions.
- 4.5 We reserve the right to carry out a delivery using our own delivery organisation.

- 4.6 We may perform partial deliveries and render partial services if such action would not unreasonably affect the Customer.

- 4.7 The Customer may rescind the contract after two unsuccessful grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the Customer.

- 4.8 Any contractual or statutory right of a Customer to rescind the contract, which the Customer fails to exercise within a reasonable period of time set by us, shall be forfeited.

**5. Shipment, Passing of Risk**

- 5.1 Unless otherwise expressly agreed, shipment shall always be carried out at the Customer's risk. The risk shall pass to the Customer as soon as the goods have been handed over to the person executing the shipment.
- 5.2 If a shipment is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of our readiness to ship. Required storage costs after passing of risk shall be borne by the Customer. This shall not affect any other claims.
- 5.3 If the Customer defaults in accepting, we shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the Customer.

**6. Payment**

- 6.1 Payment shall be made in full within 30 days from the date of the invoice. Payment shall be considered to have been made on the day the payable sum is received. Bills of exchange and cheques shall not be deemed payment until after they have been honoured and will be accepted without any obligation to make timely presentation and timely protest.
- 6.2 Immediately upon default of payment –or from the due date if you are a businessman within the meaning of the German Commercial Code (HGB)– we are entitled to demand default interest of 8 (5 in case the Customer is a consumer) percentage points above the base lending rate p.a.. We reserve the right to claim a higher actual damage.
- 6.3 Customers may only withhold or offset due payments against their own counter-claims if these are uncontested or have been found to be legally binding.
- 6.4 Any of our receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of the Customer's payments, independent of the term of the bills of exchange which may have already been accepted. In any of these aforementioned cases, we shall also be able to perform remaining deliveries only against advance payment or provision of security, and, if no such advance payment is made or security provided within a two-week time period, to cancel the contract without fixing another extension term. This shall not affect any further claims.

**7. Retention of Title**

- 7.1 Delivered goods shall fully remain our property (goods sold subject to retention of title) until all receivables, on whatever legal grounds, have been fully paid up.
- 7.2 In case of processing, combining or mixing of goods subject to retention of title with goods of the Customer, we shall be entitled to co-ownership of the new property inasmuch as the invoiced value of goods sold with retention of title relates to the value of the other involved goods. Where our co-ownership becomes null and void due to processing, combining or mixing with other goods, the Customer immediately assigns to us those of his rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of our title. He shall also be responsible for holding such rights in safe custody on our behalf and at his own expense. Any rights to co-ownership created as a result of such processing, combining or mixing shall be subject to section 7.1 of these Terms and Conditions.

**General Terms and Conditions of Sale 2009**

- 7.3 The Customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in normal business operations, as long as the Customer is not defaulting. The Customer shall be prohibited from taking any other disposition regarding goods for which we retain title. We shall be promptly notified about any hypothecation or other seizure of goods under retention of title through a third party. All intervention costs will be charged to the Customer if and to the extent that they cannot be collected from such third party. If the Customer grants his buyer additional time for payment of the sales price, Customer shall reserve title in goods resold with retention of our title under the same terms which we have applied when delivering such goods with retention of title. The Customer shall be prohibited from any other kind of resale.
- 7.4 The Customer immediately assigns to us any receivables resulting from a resale of goods initially sold with retention of our title. These will be used to substitute the goods under retention of title as collateral of the equivalent amount. The Customer shall only be entitled and authorised to resell such goods if his receivables therefrom accrue to us.
- 7.5 If the Customer resells goods under retention of our title together with goods from other suppliers at a certain total price, Customer shall assign to us his receivables from such resale in the same amount as stated in our invoice for goods initially sold with retention of title.
- 7.6 If an assigned receivable is included into a current account, the Customer immediately assigns to us that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.
- 7.7 Until we give notice of revocation, the Customer shall be authorised to collect receivables assigned to us. We shall be entitled to such revocation if the Customer fails to meet his payment obligations under the business relationship with us in due course. If the preconditions for exercising a revocation right are fulfilled, the Customer shall promptly notify us of any assigned receivables with respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. We reserve the right to personally advise the debtors of such assignment.
- 7.8 If the value of the collateral deposited in our benefit exceeds the amount of secured claims by a total of more than fifty (50) per cent, the Customer shall be entitled to demand that we insofar release securities of our own choice.
- 7.9 If we claim retention of title, this shall only be understood as rescind of the contract if expressly stated so by us in writing. The Customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.
- 8. Software Rights**
- 8.1 Software programs will fully remain our property. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, unless with our prior written consent, nor may they be copied or otherwise duplicated, even for the Customer's internal needs apart from a single back-up copy for safety purposes.
- 8.2 The Customer is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for no other purpose than that of operating the product, for which such software is intended. For programs and documentation created and delivered at the Customer's request, we shall grant that Customer single end user licences for non-exclusive non-assignable exploitation.
- 8.3 Typically, no source programs are provided. This shall require a special written agreement in each particular case.
- 9. Warranty**
- 9.1 The goods claimed to be defective shall be returned to us for examination in their original or equivalent packaging. We shall remedy defects if the warranty claim is valid and within the warranty period. It is at our discretion whether we remedy the defect by repair or replacement. We shall only bear costs necessary to remedy the defect.
- 9.2 We shall be entitled to refuse to remedy defects in accordance with our statutory rights. We may refuse to remedy defects if the Customer has not complied with our request to return the goods claimed to be defective.
- 9.3 The Customer shall be entitled to rescind the contract or reduce the contract price in accordance with his statutory rights, however, the Customer shall not be entitled to rescind the contract or to reduce the contract price, unless the Customer has previously given us twice a reasonable period to remedy the defect which we have failed to observe, unless setting of such a period to remedy defects is dispensable. In the event of rescission, Customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.
- 9.4 If we maliciously withhold disclosure of a defect or give a quality warranty in accordance with section 444 of the German Civil Code (a representation by the seller that the goods will have certain qualities at the time the risk passes and acceptance by seller of strict liability in the event that they do not), the Customer's rights shall be governed exclusively by the statutory provisions.
- 9.5 Any rights of the Customer to receive damages or compensation shall be governed by the provisions in section 10 of these Terms and Conditions.
- 9.6 Specifications of our goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.
- 9.7 Unless limits for variations have expressly been agreed in the order confirmation, such variation shall be admissible that are customary within the trade.
- 9.8 We shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. The Customer shall have no rights against us in respect of defects in goods sold as lower-class or used goods.
- 9.9 Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with our original product specifications, unless the Customer can show that the defect in question resulted from another cause.
- 9.10 Provided that the Customer is a businessman, the Customer shall be obliged to notify defects to us in writing or via fax.
- 9.11 The limitation period for claims for defects shall be 12 months (24 months in case Customer is a consumer). This shall not apply to Customer's claims for damages based on damages of body or health caused by a defect for which we are responsible or claims for damages based on our intentional or grossly negligent conduct.
- 9.12 If the customer purchases used products from us, then we shall deliver such products with no guarantees, unless we have expressly agreed otherwise with the customer in writing. Our field employees are not authorized to enter into any agreements with customers concerning warranty provisions on used equipment.

**General Terms and Conditions of Sale 2009****10. Limited Liability**

- 10.1 In case of a breach of contractual obligations, defective deliveries or tortious acts, we shall only be obliged to compensate damages or expenses –subject to any other contractual or statutory conditions for liability– if we acted intentionally or with gross negligence or in cases of minor negligence, if such negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of minor negligence, our liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract.
- 10.2 Our liability for losses caused by late delivery due to minor negligence shall be limited to 5% of the agreed purchase price.
- 10.3 The exclusions and limitations of liability in sections 10.1 – 10.2 shall not apply in cases of a quality warranty in accordance with section 444 of the German Civil Code (see section 9.4), in cases where we have maliciously failed to disclose a defect, in case of damages resulting from death, injury to health or physical injury or where the laws on product liability impose overriding liabilities which cannot be excluded.
- 10.4 The limitation period for claims against us –based on whatever legal ground– is 12 months (24 months in case Customer is a consumer) from the date of delivery to the Customer and in case of tortious claims, 12 months (24 months in case Customer is a consumer) from the date the Customer becomes aware or would have become aware of the grounds giving rise to a claim and the liable person, had the Customer not been grossly negligent. The provisions in this clause shall neither apply in cases of intentional or gross negligent breaches of duty nor shall they apply in cases referred to in section 10.3 of these Terms and Conditions.
- 10.5 If the Customer is an intermediary seller of the goods obtained from us and the final purchaser of the goods is a consumer, the limitation period for any action of recourse against us by the Customer shall be the period specified by statute.
- 10.6 Our liability for software supplied by us shall be limited to liability for losses or alteration of data caused by the program; however, we shall not be liable for any losses or alteration of data which could have been avoided by the Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

**11. Industrial Property Rights, Copyrights**

- 11.1 In the event of claims against the Customer because of breach of an industrial property right or a copyright in using our deliveries or services in accordance with the contractually defined manner, we shall be responsible to obtain the right for the Customer to continue using such deliveries or services, provided that the Customer gives immediate written notice of such third-party claims and our rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using our deliveries or services under reasonable economic conditions, it shall be understood as agreed that we may, at our discretion, modify or replace the particular delivery or service for removal of a legal deficiency, or take back such delivery or service with refunding of the sales price previously paid to us less a certain deduction to account for the age of the delivery or service in question.
- 11.2 The Customer shall have no further claims alleging infringement of industrial property or copyrights provided we have neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. We shall have no obligations in accordance with section 11.1 in case breaches of rights are caused by exploiting our deliveries or services in any other manner than contractually defined or by operating these together with any other than our own deliveries or services.

**12. Disposal**

- 12.1 Customer is obliged to closely observe our goods accompanying documents and to ensure the correct disposal of the goods in accordance with the applicable law. In the event the goods are disposed of, evidence of the disposal must be promptly sent to us.
- 12.2 In case Customer is a businessman, Customer shall be obliged to dispose the goods at own costs. Customer shall be obliged to transfer this obligation on the purchaser of the goods or parts thereof in case of a resale of the goods. In case the Customer is a Consumer the statutory provisions regarding disposal of waste shall apply.

**13 Reporting Duties, Resale**

- 13.1 The customer is obligated to promptly notify us concerning all events, which happened or almost happened and which involved our products, and shall do so irrespective of whether it must notify government agencies pursuant to the applicable regulations for medical products.
- 13.2 The customer must promptly inform us about each resale or other transfer of our products, indicating the purchaser or recipient, or must take other suitable action to ensure that we can identify the location of our products at any time.
- 13.3 In the event our products are resold, the customer must take the appropriate actions to ensure that at the time of and following the sale, all applicable statutory provisions (specifically those involving medical products) are observed.

**14. Confidentiality**

- 14.1 Unless otherwise expressly stipulated in writing, no information provided to us in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.
- 14.2 We point out that personal data in relation to our contractual relationship may be stored by us and may be transferred to companies associated with us in the Carl Zeiss group, too.

**15. Miscellaneous**

- 15.1 The place of jurisdiction, provided that you are a businessman, a legal person under public law or a special fund under public law, shall be Jena/Germany. However, we may also take legal action against you at your place of business.
- 15.2 Governing law shall be the law of Germany with the exclusion of the international conflict of laws provisions thereof and with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.3 Should any of the clauses of these Terms and Conditions be wholly or partially invalid, the validity of the remaining clauses or parts thereof shall not be affected.