

GENERAL TERMS AND CONDITIONS OF PURCHASE OF OLYMPUS EUROPA HOLDING GMBH

- 1. General**
- 1.1 The following general terms and conditions of purchase (hereinafter "General Terms and Conditions of Purchase") shall apply to all contracts that involve ordering goods or services by Olympus Europa Holding GmbH, Wendenstraße 14-18, 20097 Hamburg, Germany (hereinafter "Olympus") from the contract partner (hereinafter "Supplier").
- 1.2 These General Terms and Conditions of Purchase shall apply exclusively. Different, conflicting or supplementary terms and conditions of business and/or other limitations of the Supplier shall not be recognized by Olympus, unless Olympus recognized them in individual cases, expressly and in writing, instead of these General Terms and Conditions of Purchase.
- 1.3 Changes to these General Terms and Conditions of Purchase shall be made in writing to be effective.
- 2. Ordering and orders**
- 2.1 The Supplier shall be obligated to accept an order placed by Olympus within the time period set by Olympus, either in writing (order confirmation) or by rendering the service without reservation (delivery). Unless the offer of Olympus includes an express commitment period, Olympus shall abide by it for a period of 2 weeks following the date of the offer. Receipt of the order confirmation or delivery at Olympus shall be relevant for the timely acceptance. A delayed order confirmation, or an order confirmation amending the offer, shall be considered a new offer, requiring acceptance by Olympus.
- 2.2 In principle, offers shall be binding only if made in writing. Verbal orders or changes to an order shall be binding only if confirmed by Olympus in writing. This written form requirement may be waived only by written agreement.
- 2.3 Mere quote requests of Olympus shall be subject to confirmation and understood only as a request to the Supplier to make an offer on his part.
- 2.4 If Olympus informed the Supplier about the intended purpose of the delivery or service, the Supplier shall be obligated to inform Olympus promptly if the Supplier's delivery or service is not suited to fulfill this intended purpose. In this case Olympus shall be entitled to withdraw from the contract without having to pay damages on its part.
- 2.5 The Supplier must promptly inform Olympus about any changes with respect to the type of composition of the material to be used or the construction design compared to similar deliveries or services already rendered previously on behalf of Olympus. In this case Olympus shall be entitled to withdraw from the contract without having to pay damages on its part.
- 2.6 The Supplier shall conduct correspondence associated with an order only with the department of Olympus that placed the order by specifying the order number, order date and other purchase order indicators.
- 3. Prices**
- All prices shall include statutory value added tax, unless it is stated separately. If the Supplier reduces his list prices between the order and the delivery to Olympus, Olympus shall be entitled to request that the price arranged between Olympus and the Supplier be reduced by such difference. In the absence of a written arrangement to the contrary, the price shall include delivery and transport to the shipping address stated in the contract including packaging. Upon request, the Supplier shall be obligated to take back the packaging material.
- 4. Payment terms**
- 4.1 Unless expressly arranged otherwise in writing, the arranged prices shall be payable within 30 calendar days without any deductions, or within 14 calendar days with a 3% discount on the gross price of the invoice, from the time the invoiced delivery or the service is accepted, or if acceptance is not required, from the time delivery and service is complete and Olympus receives a proper invoice. However, under no circumstances shall the payment period begin before the agreed delivery date. Deduction of discount shall also be permissible if Olympus offsets or withholds payment payments due to defects.
- 4.2 For each individual order the phrasing, sequence of the text and the prices of invoices shall correspond to the order and include the information stated in clause 2.6. Duplicates of invoices shall be labeled as such. Value added tax shall be shown separately in the invoice.
- 4.3 If one of the data mentioned in clause 2.6 is missing in the invoices and this is resulting in delayed processing, the payment periods specified in clause 4.1 shall be extended by the duration of the delay.
- 4.4 Olympus shall not owe any interest after due date. The right to payment of default interest shall remain unaffected. In case of default Olympus shall owe default interest in the amount of five percentage points above the base rate according to section 247 of the German Civil Code (BGB).
- 4.5 Olympus shall be entitled to offset any claims of the following group companies on the Supplier against claims the Supplier has on Olympus as well as offset its own claims Olympus has on the Supplier against claims of the Supplier on the following group companies: Olympus Deutschland GmbH, Olympus Winter & Ibe GmbH, Olympus Soft Imaging Solutions GmbH, Gyros Medical GmbH.
- 5. Delivery date and failure to keep the delivery date**
- 5.1 Arranged delivery dates (delivery time and delivery deadline) shall be binding.
- 5.2 Early deliveries shall be permissible only with written approval of Olympus. If, in the event of early delivery, no such approval was given, Olympus shall be entitled to apply the prescribed delivery time to the invoice or refuse to take delivery.
- 5.3 Receipt at the place of receipt specified by Olympus shall be relevant for the timeliness of deliveries; for deliveries involving installation or assembly and miscellaneous services their acceptance shall be relevant for the timeliness of deliveries.
- 5.4 Insofar as the Supplier has reason to assume that he will be unable to fulfill his contractual obligations in whole or in part, or in due time, he shall notify Olympus immediately in writing by stating reasons and specifying the expected duration of the delay.
- 5.5 If the Supplier fails to perform, or fails to perform within the arranged delivery time, Olympus shall be entitled to the statutory claims against the Supplier without limitation. If the date on which the delivery must be made at the latest can be determined by virtue of the contract, the Supplier shall be in default at the end of such date, without this requiring a reminder by Olympus.
- 6. Delivery, passing of risk, place of performance**
- 6.1 Unless agreed otherwise in writing, delivery shall be free of charge. It shall be at the Supplier's expense and risk. For deliveries involving installation or assembly, the risk shall pass upon acceptance, for deliveries without installation or assembly upon receipt at the place of receipt specified by Olympus in the order. Even if shipping has been arranged, the risk shall pass to Olympus not until the goods or services were handed over to Olympus at the arranged place of destination.
- 6.2 Unless stipulated otherwise, the shipping and packaging costs, insurances, customs duties, fees, taxes and other dues shall be at the Supplier's expense. In this case Olympus shall be entitled to give instructions about the mode of transport, the carrier and the shipper.
- 6.3 The Supplier shall also be responsible for any additional costs arising from the failure of complying with shipping or packaging regulations or for any expedited shipping necessary to maintain the delivery date.
- 6.4 If the Parties expressly arranged delivery ex works or ex stock of the Supplier, shipping must be made at the lowest cost, in each case, unless Olympus stipulated a specific mode of transport.
- 6.5 Without prior written approval of Olympus the Supplier shall not be entitled to make partial deliveries.
- 6.6 The Supplier shall package, label and ship hazardous products in accordance with the pertinent domestic or international regulations, applicable in each case. In addition to the hazard class, the accompanying documents shall also include other information stipulated by the respective shipping regulations.
- 6.7 Subject to clause 6.6, the Supplier shall package the delivery item customary in trade.
- 6.8 The Supplier shall enclose a delivery note with the delivery item by specifying the date (issue and shipping), the content of the shipment (product description, item number and number of items) as well as specify the order information within the meaning of clause 2.6. If the delivery note is missing or incomplete, Olympus shall not be responsible for any resulting delays in payment; the payment periods stated in clause 4.1 shall be extended by the time of the delay.
- 6.9 All shipments made in breach of clause 6.8 hereinabove shall be stored at the Supplier's expense and risk until the arrival of the documents issued in accordance with the contract. Olympus shall be entitled to ascertain the content and condition of such shipments at the Supplier's expense.
- 6.10 The Supplier shall provide all supporting documents (e.g. certificates of origin) required for Olympus to clear customs or gain other benefits.
- 6.11 Olympus is a so-called "SVS/RVS-Verbotkunde". Olympus will not assume the costs of insuring the goods, especially not for forwarding insurance (SVS/RVS). This regulation includes no instruction to the Supplier to refrain from taking out insurance.
- 7. Spare parts**
- 7.1 The Supplier undertakes to supply spare parts for the duration of the estimated technical use, at least however another ten years following delivery at reasonable prices and pursuant to the terms of the respective underlying contract.
- 7.2 If the Supplier discontinues the delivery of spare parts after the end of the aforementioned time period, he shall promptly inform Olympus and give Olympus the opportunity to place a final order. Such notification shall be made at least 6 months before discontinuing delivery.
- 7.3 If no agreement is reached about the terms or prices, or if the Supplier discontinues the delivery of spare parts before the end of the aforementioned periods, the Supplier shall be obligated to promptly hand over the documents required for the production of the spare parts free of charge to Olympus upon request, and allow Olympus to use them for a consideration.
- 8. Warranty, notification of defects and liability of the Supplier**
- 8.1 The Supplier warrants that the goods and services are free of defects. The Supplier warrants in particular that the quality of the service is in compliance with the contractual arrangements and the United Nations Global Compact Code of Conduct (accessible under: www.unglobalcompact.org; cf. clause 17) and corresponds to the generally accepted rules of technology, the statutory and official provisions at the time of delivery.
- 8.2 In the case of defects Olympus shall be entitled to the statutory claims without limitation, taking into account the following clauses. Especially in terms of the limitation periods of warranty claims the statutory regulations shall apply (section 438, section 634 a of the German Civil Code).
- 8.3 Different from section 442, subsection 1, sentence 2 of the German Civil Code, Olympus shall be entitled to warranty claims without limitation, even if the defect remained unknown at the time of contract conclusion due to gross negligence.
- 8.4 The statutory provisions (sections 377, 381 HGB [*Handelsgesetzbuch* / German Commercial Code]) apply to the commercial obligation to inspect and to the requirement to give notice of defects, subject to the following: Olympus' duty to inspect shall be limited to defects that become obvious through external examination during the incoming goods inspection. Olympus shall notify the Supplier of any noticeable defects within 10 calendar days after the passing of the risk. Olympus shall notify the Supplier of any defects that were not noticeable at that time, but were noticed later, within a period of 10 calendar days following their discovery.
- 8.5 In the event of defects Olympus shall, at its own choice, be entitled to demand that the Supplier repairs any defects or supplies objects free of defects and the Supplier must follow the request promptly and without any costs for Olympus.
- 8.6 In case of delay despite setting a reasonable deadline, failure or refusal of replacement or rectification of defects, Olympus shall be entitled to seek damages for nonperformance, reduce the purchase price or withdraw from the contract, in whole or in part. The rectification of defects shall be deemed failed if the first attempt to rectify remained unsuccessful. In urgent cases Olympus, in order to avoid major damage, shall be entitled to replace, correct defective parts, and eliminate sustained damage at the Supplier's expense, or have third parties correct such damage at the Supplier's expense.
- 8.7 Sections 478, 479 of the German Civil Code shall apply *mutatis mutandis* to the relationship between Olympus and the Supplier.
- 8.8 Once the Supplier receives the written notification of defects from Olympus the limitation of warranty claims shall be suspended. In case of replacement deliveries and rectification of defects the warranty period for replaced and rectified parts shall begin all over again as of that time.
- 9. Product liability – indemnity**
- 9.1 To the extent that the Supplier or his supplier is responsible for a supplied defective product, he shall be obligated to indemnify Olympus from damage claims asserted by third parties for personal injury and/or material loss upon first request insofar as the cause lies within his domain and organizational area, and he is himself liable vis-à-vis such third parties.
- 9.2 As part of his liability for claims within the meaning of clause 9.1 the Supplier shall also be obligated to refund any expenses pursuant to sections 683, 670 of the German Civil Code or pursuant to sections 830, 840, 426 of the German Civil Code that result from or in connection with a recall campaign.
- 10. Insurances**
- The Supplier undertakes to take out and maintain sufficient liability insurance, including product liability insurance, at his own expense, and agrees to submit these insurance contracts to Olympus for inspection upon first request.
- 11. Industrial property rights**
- 11.1 The Supplier warrants that all goods and services rendered by him in connection with the contract performance are unencumbered by third-party rights and that Olympus does not infringe any third-party industrial property rights or other rights or know how by using such goods/services.
- 11.2 The Supplier shall indemnify and hold harmless Olympus upon first request from all third-party claims resulting in connection with the infringement of industrial property rights pursuant to clause 11.1.
- 11.3 If inventions or improvements are generated at the Supplier in connection with the execution of the delivery or the service ordered based on information, documents or models of Olympus, Olympus shall have a free, non-exclusive right to use these inventions or improvements and any corresponding industrial property rights, which may be transferred to group companies. The Supplier shall be obligated to inform Olympus promptly about any such inventions, improvements and industrial property rights.
- 11.4 If the Supplier has industrial property rights to the deliveries or services ordered, or parts thereof, or to methods for their production, Olympus must be notified of such rights upon request by specifying the registration number of the industrial property right.
- 12. Liability of Olympus**
- 12.1 Subject to clauses 12.2 to 12.5 below, Olympus, irrespective of the legal reason, shall only be liable for damages caused by intentional or gross negligent conduct on the part of Olympus, its legal representatives, employees or other vicarious agents.
- 12.2 For damages caused by the intentional or gross negligent conduct of vicarious agents, the liability shall be limited to such damages, which must be typically be expected within the scope of the present contract.
- 12.3 Olympus shall be liable for damages caused neither intentionally nor through gross negligent conduct by Olympus, its legal representatives, senior managers or other vicarious agents only, if a duty was violated, the proper fulfillment of which constitutes a sine qua non on the fulfillment of the contract, and the compliance of which the Supplier may regularly rely on. In this case the limitation of liability concerning the damage to be reimbursed pursuant to clause 12.2 of this liability regulation shall apply.
- 12.4 Unless Olympus has assumed a guarantee designated as such in writing in the individual case, Olympus assumes no guarantee.
- 12.5 Any liability of Olympus for damages resulting from injury to life and limb or health, from the assumption of a guarantee as well as pursuant to the German Product Liability or the German Pharmaceuticals Act shall remain unaffected.
- 13. Ownership protection**
- 13.1 Tools, measuring and testing equipment, devices, models, samples, production equipment, materials, drawings, work instructions, manuscripts, films, photographs, etc. made available by Olympus to the Supplier or produced for contractual purposes and charged to Olympus separately by the Supplier shall remain the property of Olympus or become the property of Olympus, even if they remain in the possession of the Supplier. They shall be identified by the Supplier as property of Olympus, kept safely, secured against unauthorized access and use, secured against damage of any kind, and used only for purposes of this contract. Like subsequently produced items and services rendered, they may neither be duplicated nor passed on to third parties or destroyed without the written consent of Olympus.
- 13.2 In the absence of an arrangement to the contrary, each of the contractual partners shall bear half of the costs for maintaining and repairing the aforementioned items. However, inasmuch as these costs can be attributed to defects of such items produced by the Supplier or to improper use or storage on the part of the Supplier, his employees or other vicarious agents, they shall be solely borne by the Supplier. The Supplier shall promptly inform Olympus of any significant damages to these items. Upon request, the Supplier shall be obligated to turn over these items to Olympus in proper condition, if he no longer needs them to fulfill the contracts entered into with Olympus.
- 13.3 Upon request by Olympus, the Supplier shall turn over the items as defined in clause 13.1 to Olympus completely.
- 13.4 Retentions of title on the part of the Supplier shall be valid only insofar as they refer to payment obligations of Olympus for the respective goods to which the Supplier retains title. In particular, expanded or extended retentions of title shall be excluded.
- 14. Documents, confidentiality, publications**
- 14.1 The Supplier shall be obligated to make available to Olympus all documents and information required for use, assembly, operation and maintenance free of charge.
- 14.2 When quoting references or publishing, for example, informational or promotional material, the Supplier may name the company or trademarks of Olympus only with Olympus' prior written consent.
- 15. Principles of conduct**
- 15.1 Non-compliance with the principles listed in the UN Global Compact shall be regarded as a material breach of the contractual arrangements and entitle Olympus to terminate the cooperation with immediate effect.
- 16. Choice of law and venue**
- The law of the Federal Republic of Germany shall apply to these General Terms and Conditions of Purchase and all legal relations between Olympus and the Supplier to the exclusion of all international and supranational (contractual) legal systems, especially the United Nations Convention on Contracts for the International Sale of Goods. Hamburg shall be the exclusive venue for all disputes arising from this contractual relationship.
- 17. Miscellaneous**
- 17.1 If a temporary insolvency administrator is appointed, or if insolvency proceedings are filed or opened over the assets of the Supplier, Olympus shall be entitled to withdraw from the contract in whole or in part or cancel the contract. In this case Olympus may use the facilities that exist to continue the work or effected services and services of the Supplier in return for adequate compensation.
- 17.2 The right to set off against Olympus shall be excluded. This shall not apply to claims against Olympus that are uncontested, legally established or acknowledged by Olympus.
- 17.3 Retaining liens or other rights to refuse performance may be asserted against Olympus only insofar as they are based on claims of the Supplier from the same contractual relationship.
- 17.4 The assignment and/or transfer of rights and/or obligations from this contract by the Supplier shall require Olympus' prior written approval. This shall not apply insofar as financial claims are involved.
- 17.5 Without prior written approval by Olympus the Supplier shall not be entitled to have the performance he owes rendered by third parties. If the Supplier, without prior approval by Olympus, commissions a third party to render the performance he owes, Olympus shall be entitled to withdraw from the contract, in whole or in part, as well as seek damages.
- 17.6 If one of the provisions of these General Terms and Conditions of Purchase shall be or become invalid, in whole or in part, this shall not affect the validity of the remaining provisions. An invalid provision shall be replaced by a provision that is legally possible and comes closest to the invalid provision in terms of its content and that best corresponds to the well-understood economic interests of the Parties in the invalid provision. The same shall apply to any gaps or omissions.