

GTC for the Contract about the Sale of Ophthalmologic Devices

General Delivery and Payment Terms and Conditions of Block Optic Design GmbH relating to the Delivery and Handing Over of Ophthalmologic Devices

- Corporate Customers -

1. In general

1.1 These general delivery and payment terms and conditions (GTC) serve to provide the legal framework for deliveries and services of Block Optic Design GmbH (hereinafter referred to as "BLOCK") and entrepreneurs within the meaning of Section 14 BGB [German Civil Code] (hereinafter referred to as "Customer"). Entrepreneurs within the meaning of said statutory provision shall be natural or legal persons or partnerships with legal capacity who, when signing the contract, act for preparation or in the exercise of their commercial or independent professional activity.

1.2 BLOCK shall render all deliveries and services exclusively on the basis of these GTC. General terms and conditions of the Customer shall not be applicable, even if BLOCK did not explicitly contradict them.

1.3 These GTC shall also apply whenever BLOCK renders the services for the Customer in the awareness of terms and conditions of the Customer which deviate from these GTC. In such events, the acceptance of the services on the part of the Customer shall be regarded as acceptance of these GTC and a simultaneous waiver of the applicability of the Customer's own GTC that is hereby assumed in advance.

2. Offers and prices

2.1 Offers shall always be unbinding. In the absence of a written agreement, a contract shall come into being only upon written order confirmation on the part of BLOCK. If BLOCK renders the service without a prior receipt of an order confirmation by the Customer, the contract shall come into being upon delivery or, as the case may be, upon commencement of the execution of the delivery or provision of the service.

2.2 Packaging costs, freight costs, postage fees and other dispatch costs shall not be included. Transport packages and every other packaging complying with packaging regulations shall not be taken back. Costs for the disposal of packaging material shall be borne by the Customer.

2.3 Deliveries or services shall be made or rendered at the prices and special conditions set forth in the respective purchase contract. The prices indicated there shall be binding.

2.4 Unless otherwise agreed upon in individual cases, prices shall be net prices and subject to the addition of sales tax owed in each case according to statutory provisions, currently at a rate of 19 %.

3. Purpose of contract, deliveries and services, rights of use

3.1 Unless otherwise agreed upon in individual cases, the contents/quality and scope of deliveries and services owed by BLOCK can be derived from the contract or, in the absence of a contract, from the order confirmation, including the respective product description, in this sequence. Product descriptions can be viewed with BLOCK at any time prior to contract conclusion.

3.2 The contract shall be based on the Customer's technical and functional requirements submitted by the Customer.

3.3 In the event of direct deliveries, the price and performance risk shall pass over to the Customer directly ex delivering plant or distribution centre.

3.4 Analysis services, planning services and related consultation services, if any, as well as technical calculations shall be rendered by BLOCK exclusively on the basis of a separate contract.

4. Delivery dates and deadlines

4.1 Dates and deadlines shall be binding if, in the individual case, bindingly agreed upon in writing between BLOCK and the Customer. The delivery or service period shall start upon contract conclusion or, as the case may be, upon dispatch of the order confirmation, unless otherwise agreed upon. The agreement of a fixed date of performance shall be subject to a timely and proper receipt of the required supplies and services of its respective sub-supplier by BLOCK.

4.2 If a failure to comply with a certain delivery or service period is due to events BLOCK cannot be made liable for (including strikes or lockouts), the performance dates shall be postponed by the period of the interruption including an adequate startup phase.

4.3 If BLOCK is totally or partially in delay with regard to the delivery or service owed by it, a compensation for damage or a reimbursement of expenses incurred by the Customer due to the delay shall, for each full

week, be limited to 0.5 % of the price for the part of the delivery or service that cannot be used due to the delay. In the aggregate, a liability for default shall be limited to 5 % of the total price of the respective order. This shall not apply to the extent that the delay is due to gross negligence or intentional behaviour on the part of BLOCK.

4.4 In the event of a delay of the delivery or service, the Customer shall be entitled to withdraw from the contract within the framework of statutory provisions only if BLOCK is liable for the delay.

In the event that, due to the delay, the Customer justifiably asserts claims for compensation of damage or reimbursement of expenses instead of contract performance, the latter shall be entitled to request for each full week of the delay 1 % of the price for the part of the delivery or service that cannot be used due to the delay, but in no case more than a maximum of 10 % of the total price of the respective order. Clause 4.3 sentence 3 shall apply *mutatis mutandis*.

5. Obligations of the Customer/Delay in acceptance

5.1 The Customer shall be obliged to inspect the deliveries or services immediately with respect to completeness, compliance with delivery documents and externally visible defect and to assert claims due to visible deviations and defects without any delay.

Apart from that, transport damage or shortfalls that can be recognised upon delivery, shall be reported by the Customer on the acknowledgement of receipt of the transport company. If a complaint by the Customer fails to be made within a term of two weeks after receipt by the Customer, the respective delivery or service shall be deemed to be in compliance with the contract, unless the deviation could not be recognised despite of a careful inspection. Any damage not able to be recognised upon delivery shall be reported to BLOCK by the Customer two weeks after having become aware of it.

The provision in Section 377 HGB [German Commercial Code] shall remain unaffected.

5.2 If the Customer is in delay with respect to the acceptance of deliveries or services, BLOCK shall have the right to set a reasonable period for the acceptance of the deliveries and services in writing and, upon expiry of such term without acceptance having taken place, request a lump sum for damage in the amount of 20 % of the value of the unaccepted deliveries or services instead of contract performance. The Customer shall be free to give evidence that BLOCK did not incur any damage at all or that the damage was lower. In this case, the compensation shall - depending on the evidence - be fixed at a lower amount or excluded.

5.3 The Customer shall inform BLOCK about a competent contact person who may take binding decisions on behalf of the Customer during contract performance. Such person has to be available for communicating necessary information and participate in the decisions required for contract performance. Necessary decisions on the part of the Customer have to be caused by the contact person without any delay and jointly documented in writing by the parties directly afterwards.

5.4 The Customer shall ensure that the documents, information and data required for the provision of services are made available to BLOCK correctly, completely, in due time and free of charge, unless they are owed by BLOCK. BLOCK may assume that such documents, information and data are correct and complete, unless BLOCK identifies or should be able to identify anything to the contrary.

6. Payments, offsetting and retention

6.1 Unless otherwise agreed upon in individual cases, payments shall generally become due for payment without any deduction within a term of seven calendar days after the invoice date.

6.2 The remuneration shall be paid to one of the accounts of BLOCK indicated in the purchase contract or, as the case may be, in the order confirmation or the invoice. A payment shall be deemed to have been made only if it has been credited to one of BLOCK's bank accounts. Upon the due date, BLOCK shall be entitled to charge interest at a rate of 5 %. In case of delay, BLOCK shall have the right to request interest at a rate of 9 percentage points above the basic interest rate. BLOCK's right to assert a higher damage shall remain unaffected.

6.3 Whenever the Customer is granted a term of payment, the availability of a sufficient credit limit shall be assumed in case of every individual order. In the event that the respective order exceeds the available credit limit, BLOCK shall be entitled to exercise this order and any other order only against advance payment or against submission of a security in form of a performance guarantee issued by a financial institute or credit insurer licenced in the European Union. The same shall apply if, after order

confirmation, BLOCK becomes aware of any circumstances justifying doubts concerning the creditworthiness of the Customer.

6.4 If the Customer fails to settle a justified claim at the due date agreed upon either in total or in part, BLOCK shall have the right to suspend the provision of services forming part of other orders. Apart from that, BLOCK shall be entitled to revoke cash discount agreements and agreements on payment terms with respect to all claims outstanding at the time being and such claims shall then become immediately due for payment. Likewise, BLOCK shall be entitled to render other services only against advance payment or submission of a security in form of a performance guarantee issued by a financial institute or credit insurer licenced in the European Union.

6.5 In the event that the Customer is economically not able to fulfil its duties towards BLOCK or in case of an insolvency filing by the Customer, BLOCK may withdraw from the contract concluded with the Customer. Section 321 BGB [German Civil Code] and Section 112 InsO [German Insolvency Code] shall remain unaffected. The Customer shall give BLOCK notice of a threatening insolvency in good time.

6.6 The Customer shall have the right to offset or to retain payments due to defects only if it is actually entitled to claims due to material or title defects. In case of defects, the Customer may only retain a portion of the payment that can reasonably be attributed to the defect, always provided that the defect doubtlessly exists. Clause 8.2 shall apply *mutatis mutandis*. The Customer shall have no retention right if its claim for defects is statute-barred. In any other respect, a set-off by the Customer as well as the exercise of a retention right must exclusively be based on undisputed or legally established claims. The exercise of a retention right by the Customer on the basis of a counterclaim that is not justified by a right arising from the contract concluded on the basis of these General Terms and Conditions shall be excluded.

7. Title reservation

7.1 Until complete settlement of all claims arising from the business relationship, including ancillary claims, claims for damages and cashing of cheques and bills of exchange, the delivered goods shall continue to be the property of BLOCK. Justified retentions due to defects according to clause 8.5 sentence 2 shall be taken into account. The reservation of title shall also continue to exist if individual claims of BLOCK are included in a running invoice and the balance is drawn and recognised.

7.2 If goods subject to title reservation and held by the Customer are processed to become a new movable item, such processing shall be deemed to be carried out for BLOCK without any obligations arising for the latter. The new item shall become the property of BLOCK. In the event of a processing, blending or combination with goods not belonging to BLOCK, the latter shall acquire co-ownership in the new item in the proportion of the invoice values of its goods subject to title reservation to the total value. The Customer shall have the right to resell or install the goods subject to title reservation subject to the condition that the claims according to clause 7.3 actually pass over to BLOCK. The powers of the Customer to sell, process or install goods subject to title reservation within the ordinary course of business shall cease to exist upon revocation by BLOCK due to a lasting deterioration of the Customer's financial situation, but in no case later than upon the latter's cessation of payments or at the time, when insolvency proceedings against its assets are applied for or opened.

7.3 The Customer hereby assigns the claims together with all ancillary rights arising from the resale of the goods subject to title reservation – including balance claims, if any – to BLOCK who accepts such assignment. If goods were processed, blended or combined and BLOCK has acquired co-ownership in the amount of its invoice values, it shall be entitled to a purchase price claim proportional to the value of its rights in such goods. In the event that the Customer sold the entitlement to payment within the framework of a non-recourse factoring agreement, BLOCK's claim shall immediately become due for payment and the Customer shall assign the substitute claim towards the factoring company to BLOCK and forward its sales proceeds to BLOCK without any delay. BLOCK already now accepts this assignment.

7.4 As long as the Customer comes up to its payment obligations, it shall be authorised to collect the assigned claims. The debit authorisation shall expire upon revocation, but no later than upon a delay in payments on the part of the Customer or in the event of a material deterioration of the Customer's financial circumstances. In this case, the Customer shall authorise BLOCK to inform the purchasers of this assignment and to collect the claims itself.

The Customer shall be obliged to provide BLOCK upon the latter's request with a precise list of the claims the Customer is entitled to, together with the names and addresses of the purchasers, the amount of the individual claims, the dates of the invoices etc., as well as any and all information

required for the assertion of the assigned claims and to allow BLOCK to verify this information.

7.5 If the value of the securities made available to BLOCK exceeds the latter's claims by more than 20 %, BLOCK shall upon the Customer's request or upon request of a third party affected by the excess security held by BLOCK be obliged to release securities according to its own choice.

7.6 A pledging or transfer by way of security of the goods subject to title reservation or, as the case may be, the assigned claims shall be inadmissible. BLOCK shall be given immediate notice of any attachments by indicating the pledge holder.

7.7 In the event that BLOCK repossesses the delivery item on the basis of a title reservation, a withdrawal from the contract shall be deemed to have taken place only if BLOCK makes an explicit statement to this effect. BLOCK shall be free to sell the repossessed goods subject to title reservation within the ordinary course of its business.

7.8 The Customer shall keep the goods subject to title reservation on BLOCK's behalf without charge and shall insure them against the usual risks such as, for instance, fire, theft and water in the customary scope. The Customer hereby assigns its claims for compensation it is entitled to receive from insurance companies in case of damage or loss of the aforementioned kind to BLOCK in the amount of the invoice value of the goods. BLOCK accepts this assignment.

7.9 Any and all claims as well as the title reservation-related rights to all special forms identified in these terms and conditions shall continue to exist until complete indemnification from contingent liabilities assumed by BLOCK in the Customer's interest.

8. Material defects

8.1 BLOCK warrants towards the Customer that the deliveries and services shall comply with the agreements made according to clause 3.1, always provided that they are used according to the contract.

8.2 Claims due to material defects shall be excluded to the extent that a deviation from the contractual quality is due to excessive or improper use, incorrect assembly, insufficient maintenance or natural wear and tear. The same shall apply with respect to deviations occurring due to special external influences not provided for in the contract. Likewise, claims shall be excluded in the event of a sale of used goods.

8.3 The Customer shall give detailed written notice of any material defects in a comprehensible manner by indicating the information necessary for an identification and analysis of the defect. Apart from that, the Customer shall assist BLOCK in any other respect if this is necessary for eliminating the defect.

8.4 If the Customer is entitled to assert claims for defects, it shall first of all only be entitled to subsequent performance within a reasonable period of time. Such subsequent performance shall, at BLOCK's discretion, consist of an elimination of defects or a new delivery. When taking its decision in this context, the Customer's interests shall be taken into due account. If a subsequent performance is carried out, BLOCK shall, at the time of the respective replacement, become the owner of the items replaced during subsequent performance.

The processing of the Customer's notice of a material defect by BLOCK shall result in a suspension of the limitation period only if the statutory requirements effective in this context are met. A subsequent performance can only have an effect on the period of limitation relating to the defect that triggered a subsequent performance.

8.5 If a subsequent performance fails to be successful or cannot be carried out for any other reason, the Customer may – on the basis of statutory provisions - reduce the remuneration, withdraw from the contract and/or request damages or compensation of expenses according to clauses 10.1 - 10.3. An election right held by the Customer has to be exercised within a reasonable period of time; such period shall, as a rule, amount to seven calendar days after the Customer was able to become aware of its election right.

8.6 If the Customer withdraws from the contract, BLOCK shall take the goods back and return the remuneration paid by the Customer after having deducted the value of the utilisation possibilities granted to the latter. Such utilisation possibilities shall always be determined on the basis of a degressive depreciation over a utilisation period of three years. The contract partners shall be free to give evidence that a longer or shorter utilisation period must be taken as a basis.

8.7 The limitation period for claims for material defects shall amount to one year starting on the statutory commencement date. Statutory periods shall remain unaffected to the extent that statutory regulations mandatorily provide for longer periods in case of, for instance, an intentional or grossly negligent breach of duty on the part of BLOCK, including its legal representatives or persons employment for the fulfilment of its duties, or in case of a fraudulent concealment of a defect as well as in the event of an

injury to life, body or health and in case of claims arising from the product liability act.

8.8 Unless otherwise agreed upon, the Customer shall bear the additional expenses necessary for subsequent performance, including transportation costs, road costs, labour costs and costs for material, if and when such costs arise because it has taken the owed delivery or service to another place than to the one indicated to the provider as place of use when concluding the contract. In any other respect, the provision set forth in Section 439 BGB shall remain unchanged.

8.9 BLOCK may request compensation of its expenses to the extent that

- it becomes active in response to a report, but the reported defect fails to exist, unless the Customer was despite of reasonable efforts not able to recognise that there was no defect; or
- additional expenses arise due to an improper fulfilment of duties on the part of the Customer, particularly according to clause 8.3.

8.10 The provisions on a recourse of the Customer pursuant to Sections 478, 479 BGB shall remain unchanged.

9. Legal defects

9.1 BLOCK shall be liable towards the Customer for an infringement of rights of third parties due to a delivery or service on its part only if the delivery or service is used by the Customer in conformity with the contract, particularly in the operating environment provided for in the contract. A liability for infringements of third-party rights shall moreover be restricted to the rights of third parties in the European Union and the European Economic Area as well as at the place of the utilisation of the delivery or service in compliance with the contract. Clause 8.2 sentence 1 shall apply *mutatis mutandis*.

9.2 In the event of third-party claims towards the Customer due to an alleged infringement of third-party rights by a delivery or service, the Customer shall be obliged to give BLOCK immediate notice. To the admissible extent, BLOCK shall be entitled, but not obliged to defend itself against the asserted claims at its own expense.

9.3 If third-party rights are infringed by a delivery or service of BLOCK, the latter shall according to its own option and at its own expense:

- provide the Customer the right to make use of the delivery or service or design the delivery or service in a way that it no longer infringes any rights; or
- take the delivery or service back by returning the remuneration paid by the Customer (less an adequate compensation for use pursuant to clause 8.6 sentences 2 and 3) if BLOCK cannot offer another remedy with reasonable efforts.

The Customer's interests shall be taken into due account in this context.

9.4 Claims of the Customer due to legal defects shall become statute-barred according to clause 8.7. With respect to claims for damages and for compensation of expenses, clause 8.5 shall apply in addition.

10. Liability

10.1 BLOCK shall in any case be liable towards the Customer for payment of damages

- for any damage caused by intention or gross negligence by itself or its legal representatives or persons employed for the fulfilment of its duties;
- according to the product liability act, and
- for any damage arising from an injury to life, body or health for which BLOCK, its legal representatives or persons employed for the fulfilment of its duties can be made liable.

10.2 BLOCK shall be liable in case of slight negligence if BLOCK or its legal representatives or persons employed for the fulfilment of its duties violated a material contractual duty (so-called major obligation) the fulfilment of which constitutes a condition *sine qua non* and the infringement of which threatens the achievement of the contractual purpose and the fulfilment of which (e.g. in case of an obligation for faultless delivery or service) may be regularly relied on by the Customer. In any other respect, a liability for slight negligence shall be excluded.

To the extent that BLOCK is liable for slight negligence, liability shall in case of damage to property and pecuniary damage be limited to the foreseeable damage typical for the contract. A liability for other remote consequential damages shall be excluded. With respect to a single damage event, liability shall be limited to the contract value. A liability according to clause 10.1 shall remain unaffected from this paragraph.

10.3 With respect to the limitation period, clause 8.7 shall apply *mutatis mutandis*.

10.4 With respect to claims for compensation of expenses and other liability claims of the Customer against BLOCK, clause 10.1 - 10.2 shall apply *mutatis mutandis*.

11. Export

11.1 Any and all deliveries and services shall be carried out by BLOCK in compliance with the currently valid German Foreign Trade Act (AWG)/German Foreign Trade Ordinance (AWV)/EU-Dual-Use Ordinance as well as the US export regulations and shall be intended for use and stay in the country of destination agreed upon with the Customer.

11.2 In the event of a border-crossing delivery or service, the Customer shall bear the arising customs duties, fees and other charges, unless otherwise provided for in individual contracts.

11.3 If the Customer intends a (re-)export, it shall be obliged to obtain the permits required for this purpose, particularly the permits of the respective foreign trade authority, prior to the export of the products. The Customer shall obtain information on the provisions and regulations applicable in the individual cases on its own and carry out the (re-)export on its own responsibility. To this extent, BLOCK shall have no information, consultation or cooperation duties.

11.4 If, in the event of a non-conforming export or import to another country, the Customer violates the statutory provisions applicable thereto and if, as a consequence, claims are asserted against BLOCK by the exporting or importing country, a transit state or a third country on the basis of the statutory regulations valid in said state, the Customer undertakes to indemnify BLOCK with respect to any and all financial obligations arising therefrom and shall furthermore be obliged to compensate BLOCK for the damage arising from an export or import carried out contrary to regulations.

12. Miscellaneous

12.1 Changes and amendments of all contracts and addenda, if any, concluded between the parties, shall be subject to writing. The text form (125b BGB) shall be sufficient for complying with the written form requirement. If the written form has explicitly been agreed upon in a contract (e.g. with respect to a change of the contract, a statement of doubts, a rescission or a termination), the oral form shall not be sufficient. Oral agreements shall apply only if they are confirmed in text form by BLOCK within a term of seven calendar days.

12.2 BLOCK and the Customer shall be obliged to keep business and trade secrets as well as other information described as confidential and becoming known in connection with their contractual relationship or the contractual relation arising therefrom secret. A disclosure of such information to persons not involved in the conclusion, implementation or execution of the contractual relationship shall be subject to an explicit written consent of the contract partner, unless this is contrary to a statutory duty or, as the case may be, the information is disclosed towards members of the legal and tax consulting professions and the disclosure relates to the legal and tax-related cooperation and its consequences. Unless otherwise provided for, this duty shall cease to exist after expiry of five years after having become aware of the respective information, but in no case prior to a termination of the contractual relationship between BLOCK and the Customer.

The contract partners shall be obliged to impose these duties on their employees and third parties involved, if any.

12.4 The exclusive applicable law for this contractual relationship and all other contractual relationships between the parties which are based on this contract shall be the law of the Federal Republic of Germany. The application of the United Nations Convention of Vienna on Contracts for the International Sale of Goods (CISG) shall be excluded.

13. Place of performance and place of jurisdiction

13.1 Place of performance for all obligations arising from the contractual relationships between the parties shall be Dortmund.

13.2 Place of jurisdiction for all legal disputes arising from the contractual relationships between the parties and all disputes relating to the coming into existence and the effectiveness of these contractual relationships shall - in the relationship to business people, legal persons under public law or special funds under public law - be Dortmund. BLOCK shall, however, be entitled to sue the Customer at the latter's registered office.