

## **§ 1 Scope of application, form**

(1) These General Terms and Conditions for the purchase of goods and services (GTCP) shall apply to all business relationships of Ziehm Imaging GmbH, Lina-Ammon-Straße 10, 90471 Nuremberg ("Ziehm Imaging") with all business partners and suppliers ("Suppliers"). The GTCP only apply if the Supplier is an entrepreneur (§ 14 German Civil Code), a legal person under public law or a special fund under public law.

(2) The GTCP shall apply in general to the procurement of goods and services by Ziehm Imaging from Suppliers, particular for:

- contracts for the sale and / or delivery of movable goods regardless of whether the Supplier manufactures the goods itself or purchases these from Suppliers (§§ 433, 650 German Civil Code).
- the provision of services and work performances

(3) Where these GTCP require declarations, notifications, agreements etc. to be in writing, this shall also include text form (e.g. email, fax).

(4) Unless otherwise agreed, the GTCP shall apply in the version valid at the time of the conclusion of the contract (in the version most recently communicated to the Supplier in text form as a framework agreement for future contracts of the same type, without having to refer to them again in each individual case ) as a framework agreement applicable also to similar future contracts, without the need for them to be referenced in every individual case.

(5) These GTCP shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Supplier shall become a component of the contract only if and to the extent that Ziehm Imaging has expressly consented to their application in writing. This consent requirement shall apply in every case, for example, even if Ziehm Imaging accepts deliveries from the Supplier unreservedly with knowledge of the latter's general terms and conditions.

(6) Individual agreements with the Supplier in individual cases (including ancillary agreements, supplements and amendments) shall have priority over these GTCP in every case. The content of such agreements shall, in the absence of proof to the contrary, be subject to a written contract and/or written confirmation.

(7) Legally binding declarations and notices of the Supplier concerning the contract (e. g. setting a deadline, reminder, declaration of withdrawal) have to be given in

writing. Statutory formal requirements and further evidence, in particular in case of doubts about the legitimacy of the person making the declaration, remain unaffected.

(8) References to the application of statutory provisions are for clarification purposes only. Therefore, even without such clarification, the statutory provisions shall apply insofar as they are not directly amended or expressly excluded in these GTCP.

## **§ 2 Contract conclusion**

(1) Orders of Ziehm Imaging shall be deemed to be binding at the earliest with written submission or confirmation. For the purpose of correction or completion, the Supplier must notify Ziehm Imaging of any obvious errors (e. g. typing and calculation errors) and incompleteness of the order, including the order documents, before accepting the order; the contract shall otherwise be deemed not concluded.

(2) The Supplier is obliged to confirm orders in writing within a period of five (5) working days, or in particular, to execute them without reservation by providing the service (acceptance).

(3) A late acceptance shall be considered to be a new offer and shall require acceptance by Ziehm Imaging.

## **§ 3 Delivery time and delay of delivery**

(1) The delivery time specified by Ziehm Imaging in the order shall be binding. If the delivery time is not stated in the order and is not otherwise agreed, it shall be two (2) weeks from the conclusion of the contract. The Supplier is obligated to notify Ziehm Imaging in writing without undue delay if, for whatever reason, it is presumably unable to meet agreed delivery times.

(2) If the Supplier does not render its performance or does not render it within the agreed delivery time or is in default with its deliveries, the rights of Ziehm Imaging – especially with respect to withdrawal and compensation – shall be determined according to the legal provisions. The provisions of para. 3 shall remain unaffected.

(3) If the Supplier is in default of its performance Ziehm Imaging – in addition to further legal claims – can demand a lump sum compensation for damage caused by delay of 1 % of the net price per completed calendar week, however not more than a total of 5 % of the net price of the performance. Ziehm Imaging reserves the right to prove that a higher loss has been incurred. The Supplier reserves the right to prove that no damage has occurred or only a significantly lower loss has occurred.

#### **§ 4 Performance, delivery, transfer of risk, delay in acceptance**

(1) Without the prior written consent of Ziehm Imaging, the Supplier shall not be entitled to use third parties (e. g. subcontractors) to carry out the performance owed. The Supplier bears the risk of procurement for its performance, unless otherwise agreed in the individual case (e. g. restriction to stock).

(2) The performance shall take place within Germany "free house" to the location specified in the order. If the destination is not specified and nothing else has been agreed upon, the performance shall be made to the place of business of Ziehm Imaging in Nuremberg. The respective destination is also the place of performance for the performance and any possible supplementary performance (debt to be discharged at creditor's domicile).

(3) Deliveries of goods must be accompanied by a delivery note which is accessible from the outside, stating the date (issue and dispatch), the content of the delivery (article number and quantity) and Ziehm Imaging's order identification (date and number). If the delivery note is missing or incomplete, Ziehm Imaging shall not be responsible for the resulting delays in processing and payment. Separately from the delivery note, the Supplier shall send Ziehm Imaging a notice of dispatch with identical content.

(4) In case of goods the risk of accidental loss and accidental deterioration of be transferred to Ziehm Imaging upon handover at the place of performance. If an acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services (Werkvertragsrecht) shall also apply mutatis mutandis in respect of an acceptance. The transfer and / or acceptance shall be deemed to have occurred if Ziehm Imaging is in default of acceptance.

(5) In respect of the occurrence of acceptance delay on the part of Ziehm Imaging, the statutory provisions shall apply. However, the Supplier must explicitly offer Ziehm Imaging its performance even if a defined or definable calendar time has been agreed upon for an action or cooperation of Ziehm Imaging (e. g. provision of material). If Ziehm Imaging is in default of acceptance, the Supplier may demand compensation for its extra costs in accordance with statutory provisions (§ 304 BGB). If the contract relates to a non-fungible item to be produced by the Supplier (individual manufacture), the Supplier shall be entitled to further rights only if Ziehm Imaging is obliged to cooperate and is responsible for the failure to cooperate.

## **§ 5 Prices and payment conditions**

- (1) The price stated in the order shall be binding. All prices are understood to include VAT, if not expressly stated separately.
- (2) Unless otherwise agreed in the individual case, the price shall include all services and ancillary services of the Supplier (e. g. assembly, installation, documentation, instructions) as well as all ancillary costs (e. g. proper packaging, transport costs including any transport and liability insurance).
- (3) The agreed price shall be due for payment within 30 calendar days of full delivery and performance (including any agreed acceptance) and receipt of a proper invoice. In the case of services and works, a detailed list of hours must be attached to the invoice. If Ziehm Imaging makes payment within 14 calendar days, the Supplier shall grant Ziehm Imaging a 3 % discount on the net amount of the invoice. In the case of bank transfer, payment shall be considered effected on time if the transfer order is received by the bank before the end of the payment period; Ziehm Imaging shall not be responsible for delays caused by the banks participating in the payment transaction.
- (4) Ziehm Imaging shall not be liable for any maturity interest (Fälligkeitszinsen). For default in payment the statutory provisions shall apply.
- (5) Ziehm Imaging shall be entitled to rights of set-off and retention as well as the right of defense of non-performance of contract to the statutory extent. In particular, Ziehm Imaging is entitled to withhold due payments for as long as Ziehm Imaging still has outstanding claims against the Supplier for incomplete or defective services.
- (6) The Supplier shall have a right of set-off or retention only on the basis of legally recognized or uncontested counterclaims.

## **§ 6 Secrecy and retention of title**

- (1) Ziehm Imaging reserves all proprietary rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents must be used exclusively for the contractual performance and returned to Ziehm Imaging after completion of the contract. The documents must not be disclosed to third parties, even after the termination of the contract. The duty of secrecy shall not expire unless and insofar as the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e. g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects which Ziehm Imaging provides to the Supplier. Such items must be kept separately – as long as they are not processed – at the expense of the Supplier and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of goods supplied by the Supplier shall be carried out on behalf of Ziehm Imaging. The same applies to further processing of the delivered goods by Ziehm Imaging, such that Ziehm Imaging shall be regarded as the manufacturer and acquire ownership of the product no later than at the time of the further processing in accordance with the legal requirements.

(4) The transfer of ownership of goods to Ziehm Imaging must take place unconditionally and without any regard for payment of the price. However, if Ziehm Imaging, in individual cases, accepts an offer of the Supplier to transfer ownership which is conditional upon purchase payment, Suppliers reservation of ownership shall cease at the latest upon with the payment of the respective delivered goods. In the normal course of business, Ziehm Imaging is authorized to sell the goods even before payment has been made, subject to the advance assignment of the claims arising therefrom. Alternatively the simple retention of title (einfacher Eigentumsvorbehalt) and the retention of title extended to the resale (auf den Weiterverkauf verlängerter Eigentumsvorbehalt) shall apply. This excludes in any case all other forms of retention of title, in particular extended and forwarded retention of title as well as retention of title extended to the further processing.

## **§ 7 Defective delivery**

(1) The statutory provisions shall apply in respect of Ziehm Imaging's rights in the case of material and legal defects of goods (including incorrect and short delivery as well as improper installation or incorrect assembly and operating instructions, as well as infringement of property rights of third parties) and in the case of other breaches of duty by the Supplier.

(2) According to the statutory provisions, the Supplier is when transferring the risk to Ziehm Imaging particularly liable for the fact that goods have the agreed quality. For the agreement on the quality, the respective product descriptions, which – in particular by designation or reference in Ziehm Imaging's order – are the subject of the respective contract or are included in the contract in the same way as these GTC shall apply. It makes no difference whether the product description originates from Ziehm Imaging, from the Supplier or from the manufacturer.

(3) By derogation from § 442 para. 1 sentence 2 German Civil Code, Ziehm Imaging shall be entitled to claims for defects without limitation even if Ziehm Imaging remained unaware of the defects at the time of conclusion of the contract as a result of gross negligence.

(4) The statutory provisions (§§ 377, 381 German Commercial Code) shall apply for the commercial obligation to examine and notify of defects, subject to the following provision: Ziehm Imaging's obligation to inspect shall be limited to defects which become evident during the incoming goods inspection upon external inspection, including the delivery documents, as well as during Ziehm Imaging's quality control in the sampling procedure (e. g. transport damages, incorrect delivery and short delivery). To the extent an acceptance has been agreed, there shall be no duty to examine the goods. In all other respects it shall depend on the extent to which an examination is feasible in the normal conduct of business in light of the circumstances of the individual case. Ziehm Imaging's obligation to notify of defects discovered later shall remain unaffected. In all cases, the complaint (notification of defects) shall be deemed to be without undue delay and timely if it is sent by Ziehm Imaging within ten (10) working days of discovery or, in case of obvious defects, of delivery.

(5) Cure of the defective delivery (Nacherfüllung) also includes removal of the defective goods and reinstallation, provided that the goods have been installed in or attached to another object in accordance with their nature and intended use; Ziehm Imaging's legal claim for reimbursement of corresponding expenses remains unaffected. The expenses necessary for the purposes of inspection and cure shall be borne by the Supplier even if it turns out that no defect actually existed. Ziehm Imaging's liability for compensation of damages in the event of unjustified demands for the removal of defects remains unaffected; in this respect, Ziehm Imaging shall only be liable if Ziehm Imaging has acknowledged or through gross negligence failed to acknowledge that no defect existed.

(6) Irrespective of Ziehm Imaging's statutory rights and the provisions of para. 5, the following shall apply:

(7) If the Supplier does not honor its obligation to render cure – according to the choice of Ziehm Imaging, by eliminating the defect (Nachbesserung) or delivering a product free from defects (Ersatzlieferung) – within a reasonable period set by Ziehm Imaging, the latter may remedy the defect itself and demand compensation from the Supplier and / or a corresponding advance for the expenses required for this. If the cure by the Supplier fails or is unreasonable for Ziehm Imaging (e. g. due to special urgency, endangerment of operational safety or imminent occurrence of

disproportionate damages), no deadline shall be required; Ziehm Imaging shall notify the Supplier immediately of such circumstances – if possible beforehand.

(8) In other respects, Ziehm Imaging shall in the case of a defect in quality or title be entitled in accordance with statutory provisions to reduce the purchase price or withdraw from the contract. In addition, Ziehm Imaging shall be entitled to compensation for damages and expenses in accordance with statutory provisions.

## **§ 8 Supplier regress (Lieferantenregress)**

(1) In addition to claims for defects, Ziehm Imaging shall be entitled without restriction to all claims for reimbursement within a supply chain (supplier regress, Lieferantenregress, pursuant to §§ 445a, 445b German Civil Code). In particular, Ziehm Imaging is entitled to demand from the Supplier precisely the type of cure (repair or replacement delivery) which Ziehm Imaging owes to its customers in the individual case. This shall not restrict Ziehm Imaging's statutory right to choose according to § 439 para. 1 German Civil Code.

(2) Before Ziehm Imaging acknowledges or fulfills a defect claim asserted by its customers (including the reimbursement of expenses pursuant to §§ 445a para. 1, 439 para. 2 and para. 3 German Civil Code), Ziehm Imaging shall notify the Supplier and ask the Supplier to submit a brief response. If the response is not made within a reasonable period and no amicable solution is brought about, the defects claim actually warranted by Ziehm Imaging shall be deemed to be owed to Ziehm Imaging's customer; in this case counter evidence shall be incumbent upon the Supplier.

## **§ 9 Manufacturer's liability**

(1) If the Supplier is responsible for product damage, it shall indemnify Ziehm Imaging from third-party claims insofar as the cause lies within its field of control and organization and it itself is liable in the external relationship.

(2) Within the scope of its indemnity obligation, the Supplier shall pay expenses in accordance with §§ 683, 670 German Civil Code which result from or in connection with a claim of third parties, including recall campaigns or withdrawal actions carried out by Ziehm Imaging. Ziehm Imaging shall inform the Supplier about the content and extent of recalls or withdrawal actions, as far as possible and reasonable, and give it the opportunity to comment. Any further statutory claims remain unaffected.

(3) The Supplier shall conclude and maintain product liability insurance with a fixed sum insured of at least EUR 5 million per case of personal injury / property damage.

## **§ 10 Granting of rights**

(1) If part of the delivery or service agreed upon between Ziehm Imaging and the Supplier is the provision of consulting and / or development services and if the contracting parties have not expressly agreed otherwise, Ziehm Imaging shall be entitled to all works created by the Supplier in this context, in particular documents, project outlines, presentations, drafts, etc. (hereinafter jointly referred to as "Work Results").

(2) With creation of Work Results, the Supplier grants Ziehm Imaging the exclusive, transferable and sublicensable right to use them for all types of use, in particular for their duplication, distribution, exploitation and processing, without restriction in terms of space, time and content. The above granting of rights applies accordingly to unknown types of use. If a right of ownership can be established and transferred to Work Results, the Supplier shall also transfer this to Ziehm Imaging at the time of its creation.

(3) In particular, the Supplier warrants that the contractually agreed use of the Work Results by Ziehm Imaging does not infringe any rights of third parties, is not dependent on the rights of third parties in such a way that use without them cannot be sufficiently guaranteed and that no third party is entitled to rights of priority use.

## **§ 11 Statute of limitation**

(1) The reciprocal claims of the contracting parties shall be statute-barred according to the statutory provisions, unless otherwise specified below.

(2) By way of derogation from § 438 para. 1 No. 3 and § 634a para. 1 No. 1 German Civil Code, the general limitation period for claims for defects shall be three (3) years from

- the transfer of risk, in the case of purchase contracts;
- acceptance in the case of contracts for work and other contracts, if the extent of an acceptance is agreed.

The three-year limitation period shall apply correspondingly also for claims for defects in title, whereby the statutory period of limitation for third-party claims in rem for the restitution of property (§ 438 para. 1 No. 1 German Civil Code) remains unaffected; claims for defects in title shall in no event become statute-barred for as long as the third party is still able to assert the right against Ziehm Imaging.

(3) The limitation periods of the law for contracts of purchase or work or services, including the above-mentioned extension, shall apply – to the extent permitted by law – to all contractual claims for defects. Insofar as Ziehm Imaging is entitled also to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 German Civil Code) shall apply for these, unless the application of the limitation periods of the law for contracts of purchase or work or services results in a longer period of limitation.

## **§ 12 Export control and customs**

(1) The Supplier is obliged to inform Ziehm Imaging of any licensing requirements or restrictions for (re-)exports of the goods delivered or performance owed by the Supplier in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of the goods or performances delivered by the Supplier. For goods or performances subject to licensing or restrictions the Supplier is obliged to send in particular the following information to Ziehm Imaging in good time before the first delivery or performance and without delay in the event of changes (technical, legal changes or official findings):

- Description of goods / services
- Article number
- All applicable export list numbers including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN)
- Statistical Goods number (HS code)
- Country code according to the country code list and if necessary a certificate of origin attested by the Chamber of Commerce and Industry
- Preferential origin of the goods

(2) The Supplier is obliged to inform Ziehm Imaging about the commercial and preferential origin of its goods in a binding manner. For this purpose, the Supplier shall issue a long-term supplier's declaration for goods deliveries within the European Union (EU) in accordance with the respective valid EU implementing regulation within a period of 21 days after Ziehm Imaging's request. Furthermore, the Supplier assures to enclose the respective prescribed proof of origin for deliveries of goods from a country with a free trade agreement / preferential agreement. The commercial origin

must be indicated on the respective commercial invoice and, if required, a certificate of origin must be issued. In the case of an initial delivery, the origin data must be provided in writing no later than the time of the first delivery. Ziehm Imaging must be notified without undue delay in writing of any changes in the origin of the goods.

(3) In the case of deliveries of goods or services across customs borders, the Supplier shall be obliged to enclose with the delivery or performance all necessary documents such as commercial invoice, delivery note and information for a complete and correct import customs declaration. With regard to the invoice, the following shall be observed:

- Any costs not included in the price of the goods (e. g. research and development costs, license fees, tool costs, costs of materials provided by Ziehm Imaging with reference to the delivery of goods) must be listed separately in the invoice.
- In the case of deliveries free of charge, the Supplier is obliged to include in the pro forma invoice a value indication reflecting a market price and the following note "For Customs Purpose Only". The invoice or delivery note must also state the reason for free delivery (e. g. free sample shipment).

(4) The Supplier shall support Ziehm Imaging by all means necessary to reduce or minimize Ziehm Imaging's payment obligations with respect to customs duties or costs for customs clearance.

(5) Notwithstanding any other rights and without liability to the Supplier, Ziehm Imaging shall be entitled to withdraw from or terminate the affected contract without notice if the Supplier repeatedly fails to fulfill the obligations under this § § 12 para. (1) to para.(4).

### **§ 13 Compliance and Information obligations**

(1) The Supplier warrants that the goods and performances delivered to Ziehm Imaging comply with the requirements of all applicable national and international laws (e.g. EU Directives / EU Regulations, US Dodd-Frank-Act) and that it will comply with any reporting and information obligations towards Ziehm Imaging arising therefrom without delay and without being asked.

(2) In addition, the Supplier shall provide Ziehm Imaging upon request with all information required by Ziehm Imaging in order to comply with applicable national and international laws or to be able to answer justified inquiries from its customers in this

context, e.g. to comply with the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz), indications of origin for conflict minerals (especially gold, tin, tungsten, tantalum and compounds thereof), ingredients according to REACH etc.

(3) The Supplier undertakes to comply with the Supplier Code of Conduct of Ziehm Imaging GmbH. This can be found in the download area at [www.ziehm.com](http://www.ziehm.com).

#### **§ 14 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GTCP and the contractual relationship between Ziehm Imaging and the Supplier, under exclusion of international uniform law, in particular the UN Sales Convention.

(2) If the Supplier is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be the registered office of Ziehm Imaging in Nuremberg. The same applies if the Supplier is an entrepreneur within the meaning of § 14 German Civil Code. However, Ziehm Imaging is also entitled in any cases to bring an action at the place of fulfillment of the delivery or performance obligation pursuant to these GTCP and / or a prior-ranking individual agreement or at the general place of jurisdiction of the Supplier. This shall not affect the prior-ranking legal provisions, in particular the exclusive jurisdictions.