

# General Terms and Conditions of Purchase of Ziehm Imaging GmbH

## § 1 General, Scope of application

(1) These General Terms and Conditions of Purchase (T&C) shall apply to all business relationships of Ziehm Imaging GmbH, Donaustraße 31, 90451 Nuremberg ("Ziehm Imaging") with all business partners and suppliers ("Sellers"). The T&C only apply if the Seller is an entrepreneur (§ 14 BGB [German Civil Code]), a legal person under public law or a special fund under public law.

(2) The T&C shall apply in particular for contracts for the sale and/or delivery of movable goods ("Goods"), regardless of whether the Seller manufactures the Goods itself or purchases these from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the T&C shall apply in the version valid at the time of the order and/or at least the version most recently communicated to the Seller in text form as a framework agreement applicable also to similar future contracts, without the need for them to be referenced in every individual case.

(3) The T&C shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller 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 Seller unreservedly with knowledge of the latter's general terms and conditions.

(4) Individual agreements with the Seller in individual cases (including ancillary agreements, supplements and amendments) shall have priority 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.

(5) Legally binding declarations and notices which are to be given to Ziehm Imaging by the Seller after conclusion of contract (e.g. setting of deadlines, reminders, declaration of withdrawal) shall be required in writing to be effective.

(6) References to the application of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall apply insofar as they are not directly amended or expressly excluded in these T&C.

## § 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 Seller must notify 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 Seller is obliged to confirm orders in writing within a period of five working days, or to execute them without reservation by dispatching the Goods (acceptance). 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 four weeks from the conclusion of the contract. The Seller is obligated to notify Ziehm Imaging in writing without delay if, for whatever reason, it is unable to meet agreed delivery times.

(2) If the Seller does not render its performance within the agreed delivery time or falls behind 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 paragraph 3 shall remain unaffected.

(3) If the Seller falls behind with its deliveries, 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 delayed delivery. Ziehm Imaging reserves the right to prove that a higher loss has been incurred. The Seller 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 Seller shall not be entitled to use third parties (e.g. subcontractors) to carry out the performance owed. The Seller bears the risk of procurement for its services, unless otherwise agreed in the individual case (e.g. restriction to stock).

(2) Delivery 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 delivery shall be made to the place of business of Ziehm Imaging in Nuremberg. The respective destination is also the place of performance for the delivery and any possible supplementary performance (debt to be discharged at creditor's domicile).

(3) Deliveries 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 is incomplete, Ziehm Imaging shall not be responsible for the resulting delays in processing and payment. Separately from the delivery note, the Seller shall send Ziehm Imaging a notice of dispatch with identical content.

(4) The risk of accidental loss and accidental deterioration of the Goods shall transfer 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 shall 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 Seller 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 Seller 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 Seller (manufacture to specification), the Seller 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 delivery time specified in the order shall be binding. All prices are understood to include VAT, if not stated separately.

(2) Unless otherwise agreed in the individual case, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) 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. If Ziehm Imaging makes payment within 14 calendar days, the Seller 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 default interest. For payment default 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 Seller for incomplete or defective services.

(6) The Seller 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 Seller. Such items must be kept separately – as long as they are not processed – at the expense of the Seller and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of Goods supplied by the Seller 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 the Goods to Ziehm Imaging must take place unconditionally and without any regard for payment of the price. If Ziehm Imaging, however, in individual cases, accepts an offer of the Seller to transfer ownership which is conditional upon purchase price payment, the Seller's reservation of ownership shall cease at the latest upon payment of the purchase price for the delivered Goods. In the normal course of business, Ziehm Imaging is authorized to sell the Goods even before the purchase price has been paid, subject to the advance assignment of the claims arising therefrom (alternatively the validity of the simple retention of title extended to the resale). 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 the Goods (including incorrect and short delivery as well as improper installation or incorrect assembly and operating instructions) and in the case of other breaches of duty by the Seller.

(2) According to the statutory provisions, the Seller is when transferring the risk to Ziehm Imaging particularly liable for the fact that the 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 T&C shall apply. It makes no difference whether the product description originates from Ziehm Imaging, from the Seller or from the manufacturer.

(3) By derogation from § 442 (1) sentence 2 BGB, 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 contract as a result of gross negligence.

(4) The statutory provisions (§§ 377, 381 HGB [German Commercial Code]) shall apply for the commercial obligation to examine and notify of defects, subject to the following proviso: 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). If 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 immediate and timely if received by the Seller within ten working days.

(5) The costs incurred by the Seller for the purpose of the examination and supplementary performance (including possible disassembly and assembly costs) shall be borne by the Seller even if it is found that there was actually no defect. 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 was present.

(6) If the Seller does not honor its obligation to render subsequent performance – according to the choice of Ziehm Imaging, by eliminating the defect (rework) or delivering a defect-free item (replacement delivery) – within a reasonable period set by Ziehm Imaging, the latter may remedy the defect itself and demand compensation from the Seller and/or a corresponding advance for the expenses required for this. If the subsequent performance by the Seller 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 Seller immediately of such circumstances, if possible beforehand.

(7) 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**

(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 pursuant to §§ 478, 479 BGB). In particular, Ziehm Imaging is entitled to demand from the Seller precisely the type of subsequent performance (rework 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 (§ 439 para. 1 BGB).

(2) Before Ziehm Imaging acknowledges or fulfills a defect claim asserted by its customers (including the reimbursement of expenses pursuant to §§ 478 (2), 439 (2) BGB), Ziehm Imaging shall notify the Seller and ask the Seller 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 Seller.

#### **§ 9 Manufacturer's liability**

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

The Seller 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 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 (1) No. 3 BGB, the general limitation period for claims for defects shall be three years from the transfer of risk. If an acceptance is agreed, the limitation shall begin with the acceptance. 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 (1) No. 1 BGB) 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, especially in the absence of statute of limitations.

(3) The limitation periods of the law on the sale of goods, 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 BGB) shall apply for these, unless the application of the limitation periods of the law on the sale of goods results in a longer period of limitation.

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

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

(2) If the Seller 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 purchaser is an entrepreneur within the meaning of § 14 of the German Civil Code (BGB). However, Ziehm Imaging is also entitled in any cases to bring an action at the place of fulfillment of the delivery obligation pursuant to these T&C and/or a prior-ranking individual agreement or at the general place of jurisdiction of the Seller. This shall not affect the prior-ranking legal provisions, in particular the exclusive jurisdictions.