

# **General Terms and Conditions of Services for Systems of Microscopy and Industrial Inspection and Measuring Instruments**

## **1. General**

1.1 The subsequent General Terms and Conditions of Services (hereafter "Service Conditions") apply to orders for services pertaining to systems of microscopy and industrial inspection and measuring instruments (hereafter "Services"), in particular repair works, maintenance works, training courses, hotline and validation of systems of microscopy and industrial inspection and measuring instruments (hereafter "Equipment") by Olympus Deutschland GmbH and its branches (hereafter "Olympus") for their customers (hereafter "Customer(s)"). These Service Conditions shall only apply vis-à-vis commercial entities/business persons (*Unternehmer*), governmental entities, or special governmental estates within the meaning of Section 310 para. 1 BGB (German Civil Code).

1.2 These Service Conditions apply to Services rendered during the entire business relationship (including business in case of an ongoing business relation). In addition to these Service Conditions, Olympus' General Terms of Delivery and Payment (available under [www.olympus.de/imprint](http://www.olympus.de/imprint), hereafter "GTD") apply. Except for the exclusivity clause under Section 1.2 sentence 1 of the GTD, this particularly applies to the general provisions under Sections 1.2 through 1.4 of the GTD. In the case of contradictions or deviations, the Service Conditions prevail over the GTD.

## **2 Service Orders**

2.1 The Customers place service orders either by sending in their Equipment using the Olympus service form pursuant to Section 2.2 or by contacting Olympus in other ways to make an on-site appointment pursuant to Section 2.3.

2.2 Prior to sending in their Equipment to place a service order, the Customer must complete the Olympus service form "Return Material Authorization Form" - short: "RMA" - (available under <https://www.olympus-europa.com/ssd/de/service/downloads/index.html>) and send it to the email-address or fax number indicated in the form. Equipment shall be sent upon receipt of the returned RMA, to the address indicated in the Olympus RMA, enclosing the RMA. The sending of the Equipment shall then be deemed the Customer's offer of placing a service order in accordance with information provided on the service form, i.e. an order for preparing a chargeable cost estimate and/or provision of a Service. If Olympus is able to execute repair orders without deviating from service form information and preparing a cost estimate first, there is no need for a separate declaration of acceptance by Olympus. Service orders are based on the unconditional performance of requested Services. Otherwise, Olympus will contact the Customer to agree upon the scope of Services or to deliver the cost estimate.

2.3 If it is impossible and/or impractical to send in the Equipment for the provision of Services (particularly with bulky equipment and large appliances), the Customer contacts Olympus to agree upon the subsequent steps. Olympus will inform the Customer if on-site repair works for the Equipment are possible and, if applicable, agree upon an on-site appointment. Olympus and the Customer will agree upon the relevant scope of Services during their on-site appointment. Olympus staff will particularly check if repair works are easily possible or if prior review of the expected work efforts and/or cost estimate preparation pursuant to Section 3 is required. To the extent the Customer requires the performance of Services without previously obtaining a written cost estimate and the Parties have not agreed otherwise, Olympus will perform the requested Services without a written cost estimate and charge the Customer for the relevant Services based on the actual time effort.

2.4 Olympus provides no repair services for Equipment for which spare parts are no longer available. Olympus will inform the Customers accordingly. In this case, maintenance is only possible if there are no

defects that require the replacement of a component with a spare part.

2.5 Unless the parties' agreement provides otherwise, repair orders relate to the rectification of defects indicated by the Customer without Olympus being obliged to check other components not affected by such defect for their functioning.

### **3 Work Efforts Reviews and Cost Estimates**

3.1 Determination of the costs for requested Services generally requires partial disassembly. In this context, Olympus checks, as a matter of routine and to a reasonable extent, if third-party components (i.e. parts from manufacturers which Olympus does not employ for its original Equipment) were installed in the sent in Equipment or if other inappropriate modifications (e.g. in the course of previous repair works not performed by Olympus) were made which clearly impact on the Equipment repair or use. In case of non-acceptance of potential additional service costs due to the use of third-party components or a chargeable exchange of third-party components against original spare parts, Olympus shall be released from any corresponding liability for damaging or risk-increasing effects of third-party components or other inappropriate modifications on the condition that Olympus notified the Customer thereof prior to performance.

3.2 If Olympus prepares a cost estimate, delivery of the cost estimate represents an offer to the Customer for the conclusion of a repair order. Repair offers based on cost estimates lapse 4 (four) weeks from delivery to the Customer if the Customer fails to accept the repair order based on the relevant cost estimate. Should the Customer fail to react to the cost estimate within that period, Olympus may return the Equipment to the Customer at the Customer's expense without any repair works being performed (cf. Section 6).

3.3 If, after placing a service order based on a cost estimate, it turns out that due to further defects or malfunctions, the estimated Services will not suffice for the repair and the additional Service required for this causes an increase of the cost estimate by more than 10% (ten per cent), Olympus will inform the Customer for purposes of a new assignment. In case of an increase of up to 10% (ten per cent), Olympus may assume that such additional works are in any case covered by Customer's assignment, provided that the cost estimate indicates the possibility of such increase.

3.4 Olympus prepares its cost estimates against a charge currently amounting to up to two working hours of qualified services employees, but not more than € 180.00, plus VAT and a postage lump sum. If the Customer orders a repair according to the cost estimate or purchases a new device, the preparation of the cost estimate will not be charged to the Customer.

### **4 Prices and Terms of Payment**

Regarding prices and terms of payment for the Services, in addition to Sections 2 and 3 of these Service Conditions, reference is made to Sections 3.1 and 3.2 of the GTD and Section 4 of the GTD.

### **5 Performance of Repairs and Maintenance**

5.1 Components replaced during repair works will be professionally disposed of, unless the Customer indicated when placing the order that it requests replaced components to be returned; in this case, the parts will be returned to the Customer at its expense. Otherwise, Olympus may charge the actually incurred costs or alternatively a replaced parts disposal lump sum of ranging from € 7.50 to 15.00 (plus VAT) depending on the extent of the parts to be disposed of at its own discretion.

5.2 The Customer is responsible for appropriately packaging of the Equipment when sending it to

Olympus. Accessories, which obviously have no relevance for the Service to be rendered, are not to be sent in by the Customer. Small accessory parts (such as sent in accessories and further materials) must be separately packaged. Olympus accepts no liability for the loss of small accessory parts which the Customer failed to separately pack and other sent in accessories not listed in the RMA or the dispatch document.

5.3 Olympus reserves the right to employ adequate third parties for the Services. Olympus may particularly transfer Equipment from other manufacturers and peripherals marketed by Olympus to authorised workshops of these manufacturers for maintenance purposes. Commissioning third parties does not affect Olympus' liability.

5.4 Olympus is subject to binding regulatory requirements regarding the performance of its Services. If certified processes are affected, contrary instructions from the Customer cannot be considered.

5.5 With regard to any combinations of medical devices, reference is made to Section 9 of the GTD.

## **6 Return of Unrepaired Equipment**

6.1 If the Customer, following cost estimate preparation, does not place a repair order, the Equipment will be returned to the Customer in a disassembled condition against the payment of a cost estimate preparation charge currently amounting to up to two working hours of qualified service employees, but not more than € 180.00, plus VAT and forwarding expenses.

6.2 Only upon the Customer's express request and at the discretion of Olympus will unrepaired Equipment be returned in its original assembled but unrepaired state. For this purpose, the Equipment will be set to the state which it had at its arrival at Olympus. Olympus may, at its discretion, request reasonable charges covering the efforts required for re-assembling the unrepaired Equipment. In this case, Olympus is not liable for the assembled, but unrepaired, Equipment being functional. The Equipment will not be reprocessed and will be returned to the Customer as defective Equipment. Olympus expressly recommends not continuing the use of the Equipment in such instances.

## **7 Delivery**

For the delivery to Olympus pursuant to Section 2.2, the Customer must pack the goods for transport purposes and sufficiently secure/protect them against/from damage and loss. Olympus assumes no liability for transport damage (including loss).

## **8 Acceptance**

8.1 If the Services to be rendered are subject to the laws concerning contracts for work and labour (such as with repair works) and these Service Conditions do not provide otherwise or the parties have not agreed differently, acceptance is subject to legal provisions concerning contracts for work and labour.

8.2 Works are deemed accepted if Olympus has set the Customer a reasonable deadline for acceptance and the Customer has not refused acceptance within this deadline, stating at least one defect which is not only insignificant and actually exists - or is at least objectively obvious.

8.3 Should Olympus, upon return delivery of the Equipment, fail to expressly indicate another acceptance period, the Customer must accept the works immediately and no later than within one (1) week from receipt of the returned Equipment.

## **9 Liability for Defects**

9.1 Apparent defects may only be notified within ten (10) days from receipt of the Equipment.

9.2 The Customer's claims for defects resulting from the Services - including claims for defects concerning replaced spare parts - are subject to the statutory provisions regarding the law on contracts for works and labour (e.g. repair services) with the proviso that they become time-barred within one (1) year; the period of limitations for claims for defects commences upon acceptance.

9.3 Common wear and tear typical of the products (e.g. for incandescent lamps, insertion parts, feed wedges and lasers) and reduced functionality due to inappropriate use are excluded from liability for defects. Inappropriate use particularly means application errors, e.g. the use of an industrial endoscope outside the specification with a bending radius that is too small.

9.4 Any design modifications and other alterations (e.g. the use of non-original parts or parts identical in construction, third-party software program uploads) and manipulation of the Equipment (such as repair works by unauthorised personnel) after Olympus provided its Services may also lead to an exclusion of the Customer's rights and claims regarding liability for defects.

## **10 Liability**

10.1 Unless these Service Conditions provide otherwise, Olympus is liable for violations of contractual and extra-contractual obligations pursuant to legal provisions and to Sections 11.2 through 11.6 of the GTD.

10.2 Except for cases of intention and gross negligence, Olympus' liability for delayed performance is limited to 25% of the net order value.

## **11 Place of Performance**

Place of performance for Services, payments and warranty claims is Hamburg. If Services are performed by a service branch of Olympus, the place of performance for Services, payments and warranty claims shall be the location of the respective service branch.

## **12 Choice of Law and Venue**

12.1 These Service Conditions and all contracts concluded hereunder are subject to German law under the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

12.2 The place of jurisdiction for all disputes - including actions in summary as well as cheque proceedings - between merchants, legal entities under public law or special funds under public law shall be Hamburg. This shall also apply in the event that the Customer's place of residence or habitual abode is unknown, located abroad or relocated abroad.

12.3 In the aforementioned cases, Olympus shall also be entitled to alternatively bring an action before the competent court at the customer's registered office or place of residence or habitual abode

**(dated December 2020)**