

OLYMPUS' GENERAL TERMS OF DELIVERY AND PAYMENT

1. General

- The subsequent general terms of delivery and payment (hereafter „GTD“) apply to all contracts in connection with the sale and/or the delivery of movables (hereafter „goods“) concluded between Olympus Europa SE & Co. KG, Olympus Deutschland GmbH as well as Olympus Soft Imaging Solutions GmbH (hereafter „Olympus“) and its customers. These GTD shall apply only 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).
- These GTD exclusively are applicable to the business relationship for its entire duration (including future business in case of an ongoing business relation). Olympus does not recognise any conditions of the customer which are in conflict with or deviate from these conditions and/or supplement these conditions unless Olympus has expressly agreed to these in writing. This approval requirement as well these GTD shall also apply should Olympus unconditionally execute a delivery to the customer in full knowledge of the conflicting or deviating terms of the customer.
- All agreements concluded between Olympus and the customer for the purposes of execution of business are to be set down in writing in a contract. Any individual agreements (ancillary agreements, supplements, modifications) with the customer shall prevail in any case. As regards the content of such agreements a written contract and/or Olympus written confirmation shall be decisive. With the execution of managing directors and authorized representatives Olympus' employees shall not be entitled to enter into oral agreements deviating hereof. For the purpose of ensuring the written form transmission by facsimile shall be sufficient, otherwise, transmission by means of telecommunication, particularly by email, shall not be sufficient.
- Material statements and relevant notifications that have to be made by the customer after execution of the contract (such as the appointment of a deadline, notice of a defect, declarations of termination or price reducing) shall be in writing in order to become effective.

2. Quotations, Orders

- Olympus quotations shall always be provisional and non-binding unless explicitly marked as binding.
- Although in principle, contracts with Olympus only come into force once Olympus has issued a written confirmation, they in any case come into force with the commencement by Olympus of the execution of an order and/or delivery of the goods. Olympus' confirmation of order or where no such confirmation of order exists, Olympus' quotation, is authoritative for the content of the contract.
- Olympus reserves the right to make technical, and design changes, in particular improvements, even after confirming an order, in so far as this is reasonable for the customer.
- Where a declaration by Olympus exists that has been designated as a description of a service or product, this description conclusively and completely specifies the characteristics and qualities of the supplied product or service. Such service and/or product descriptions are only nearly authoritative, unless the applicability for the contractually designated purpose requires exact conformity. In cases of doubt, these types of descriptions, illustrations, references to DIN/ISO standards etc. may not be deemed as to constitute the assumption of a guarantee. In cases of doubt, only explicit written declarations by Olympus are authoritative for the determination of a guaranteed promise.
- Olympus reserves the right to suspend the period of 10 days upon the execution of this contract, to rescind from contract by way of a written declaration, if Olympus within the scope of a conducted solvency check shall become knowledge of facts that the credit-worthiness of the customer appears to be questionable and jeopardize the performances as provided in the contract. In the context of a solvency check Olympus shall be entitled to request information (such as bank enquiry, credit report, creditreform, Schufa).
- In case a certificate of origin is needed, customer shall already notify Olympus thereof when placing the order. To cover additional expenses arising out of ordering/issuing certificates of origin, Olympus is entitled to charge an administration fee of EUR 50,- per certificate of origin to the customer.

3. Prices

- Prices are indicated in Euro or in another agreed currency and do not include Value Added Tax (VAT). VAT shall be invoiced at the currently valid statutory rate.
- Olympus reserves its right to alter the prices, in case the time period between the conclusion of the contract and the agreed delivery date exceeds four (4) months and an increase of costs, in particular based on collective wage agreements or changes in material prices, have occurred. In case of an increase of the price by more than 25% of the agreed contract price, the customer is entitled to withdraw from the contract.
- Prices quoted shall apply – unless agreed otherwise – ex works (EXW Incoterms 2010) including normal packaging costs.

4. Terms of Payment

- Invoices are payable no later than by the due date indicated in the invoice. Payment shall be made without any deduction and free of all charges. No deduction of a discount is permitted unless such discount had been expressly agreed upon. Should the deduction of a discount be stipulated in the respective quotation/agreement or in the respective invoice, such discount is granted only if and to the extent that at the date of receipt of payment no balance is due in favour of Olympus. In case of repairs and deliveries of spare parts the possibility of deduction of a discount is excluded.
- Payments are regarded as having been made on the day that these sums are at the disposal of Olympus. Cheques and bills of exchange are accepted as payment in lieu of performance (Erfüllungssherber) only. The acceptance of a cheque or bill of exchange constitutes a deferment. All costs in connection with cheques and bills of exchange will be borne by the customer.
- The customer is only entitled to offset amounts if his counterclaim has been legally established, uncontested or is recognised by Olympus. The customer shall have no right to re-debit or retain monies unless this is based on the same contractual relationship. However, in case of defective deliveries mandatory statutorily prescribed counterclaims remain unaffected.
- In the event of default in payment, the customer shall be obliged to pay interest for default as of the date on which he defaults on payment, which annual interest shall amount to 10 percent points above the applicable base rate of the European Central Bank and shall be no less than 12%. Olympus reserves its right to assert higher damages in connection with the default in payment. No interest is payable on customer's down payments and advance payments. Olympus shall also be entitled within reasonable limits to withhold deliveries, even those from different orders, and to perform delivery only against prepayments or on a cash-on-delivery basis without advance notice.
- Notwithstanding the rights contained in these GTD, Olympus' statutory rights in respect of default of payment and due date of payment remain unaffected. Delivery times agreed to by Olympus shall be extended by the period of default of payment.
- If after formation of a contract facts become known, which are apt to substantially reduce the creditworthiness of the customer or if a significant deterioration of the financial situation of the customer otherwise becomes apparent, which may impair payment of a claim of Olympus by the customer based on the respective contractual relation, Olympus shall be entitled at its discretion – as the case may be, after setting a reasonable deadline – to demand advance payment or provision of security and, should the customer definitively refuse to meet the terms of the contract and/or to provide security or upon the fixation of a period of time that shall not perform its obligation and/or provide security, to terminate the contract. In case of manufacture of specific items (custom-tailored items), Olympus may declare rescission promptly. The statutory provisions regulating dispensability of setting a deadline remain unaffected.

5. Delivery, Delivery Period/Time

- Delivery times/deadlines shall only be binding if confirmed as binding by Olympus in writing. They otherwise constitute "circa periods".
- The delivery deadlines shall be considered to have been met if, by the time of the deadline, the delivery item has been dispatched or collected from Olympus, or, should this dispatch or collection be delayed for reasons for which Olympus is not responsible, if notification of readiness to deliver is given within the stipulated time.
- Insofar as binding delivery dates cannot be observed for reasons outside the scope of Olympus (non-availability of performance), Olympus shall immediately inform the customer hereof and shall at the same time inform the customer of the anticipated new delivery date. If performances is still not possible within the new delivery deadline, Olympus is entitled to withdraw from the contract in full or in part and shall promptly reimburse an already rendered consideration. In particular the late delivery of Olympus' own sub-suppliers is deemed a case of non-availability if neither Olympus nor its sub-supplier is acting with fault or if Olympus is not obliged to procurement in the individual case.
- Furthermore, the customer's right to termination of a contract upon expiry of a reasonable period of grace granted to Olympus without result shall remain unaffected.
- Should the customer be in default of acceptance or negligently violates any other cooperation obligation, if e.g. dispatch or delivery of the goods be delayed by circumstances lying within the sphere of responsibility of the customer, Olympus shall be entitled to claim damages, including any additional expenses. In case of storage by Olympus, warehouse charges shall be calculated with 0.25% of the invoiced price of the stored goods for each completed week. The assertion of further claims is reserved.
- Part deliveries shall be permitted, as far as such deliveries are reasonable for the customer. To the extent that such part deliveries can be used on their own, they shall be considered as independent deliveries in respect of the due date of payment.
- Whether delivery is in default shall otherwise be determined pursuant to the statutory provisions. However, a delivery reminder by the customer shall in any case be required. If Olympus is in default of delivery, the customer may claim liquidated damages in an amount of 0.5% of the net price (delivery value) for each completed calendar week the default situation persists, at a maximum not more than 5% of the delivery value of the goods that are behind schedule. Olympus may assert that the customer has not incurred any damage or significantly lower damages.

6. Dispatch, Packaging

- Dispatch within the territory of the Federal Republic of Germany shall be from a location to be specified at the discretion of Olympus unless otherwise stipulated by the parties. The goods shall be delivered in packaging which is suitable for dispatch and transport. Mode of dispatch and packaging are at the reasonable discretion of Olympus.
- The goods are shipped at the risk of the customer, the customer shall bear the transport costs ex works and the costs of transport insurance if requested by the customer.
- For after-sales service deliveries (replacement parts, repair equipment), packaging shall be calculated separately.

7. Passing of Risk

The risk lies with the customer for all deliveries, including any returns, even if freight prepaid, FOB, or CIF (Incoterms 2010) delivery has been agreed. The risk shall pass to the customer as soon as the consignment leaves the warehouse of Olympus or of a warehouse maintained by Olympus. This also applies in case of partial deliveries or in case Olympus has undertaken further services (such as shipment or installation). Should delivery be delayed at the customer's request or as a result of circumstances for which the customer is responsible, the risk shall pass to the customer for the duration of the delay as of the date of notification of readiness to deliver.

8. Reservation of Title

- Olympus shall retain title to the goods until all present and future claims against the customer to which Olympus is entitled as a result of mutual business – including the settlement of all outstanding current account balances – have been settled (reserved goods). The customer shall store the reserved goods in a proper manner and insure them sufficiently at his own expense.
- The customer shall be entitled to resale of the reserved goods only within the scope of its ordinary course of business, as long as the customer is not in default of payment. The customer shall be prohibited from transferring ownership by way of security, pledging, or otherwise disposing of the reserved goods in any manner which thwarts or impedes the reservation of title in functioning as security. Should third parties attach reserved goods in the customer's possession or in case of other interferences by third parties, the customer shall inform such third parties of Olympus' reservation of title, and shall inform Olympus in writing of the attachment enclosing a copy of the relevant statutory declaration which declares that the goods attached are identical with the reserved goods supplied. The customer shall bear all costs arising from attempts to prevent attachments by third parties in the event that proceedings are successful and in the event that attempts to enforce the judgment on the third parties in question are not successful.
- Any modification or processing of the reserved goods affected by the customer on behalf of Olympus shall not give rise to any obligations for Olympus. In the event of processing, combination, or mixing of the reserved goods with other non-Olympus goods, Olympus shall be entitled to the resulting fractional share of co-ownership of the new item, in accordance with the ratio between the value of Olympus reserved goods (invoiced price including VAT) and that of the other goods processed at the time of processing, combination, or mixing. Should the customer acquire sole ownership based on combination or mixing of the new item, due to the fact that the new item is deemed to constitute the main item, Olympus and the customer already hereby agree that the customer transfers co-ownership of the new item in proportion to the value of Olympus' reserved goods. Olympus accepts such transfer and assignment. The sole or joint ownership created in such manner shall be held in safe custody by the customer for Olympus free of charge. Furthermore, the same provisions shall apply to any new item created through processing, combination or mixing as to the reserved goods.

- In the event of resale or leasing of the reserved goods, the customer assigns to Olympus in advance and by way of security its claims against its customers arising from this resale or leasing. Olympus accepts such transfer and assignment. Should the reserved goods be resold or leased together with goods from other suppliers and should an overall invoice be issued for both types of goods, the customer shall assign to Olympus that portion of the total price charged and/or of the total rental fee corresponding to the reserved goods included in the overall invoice. The customer shall be entitled next to Olympus to collect claims arising from resale and leasing which have been assigned to Olympus. Olympus undertakes not to collect the claims as long as the customer complies with its payment obligations, no event of a substantial deterioration in its financial position occurs and there is no other deficiency as regards the customer's capacity/solvency.
- The customer shall not be authorised to dispose of the assigned claims by other means, e.g. by assignment to third parties (in particular to financial institutions), without prior written consent of Olympus.
- In the event of default by the customer in making payment to Olympus, dishonouring of promissory notes or cheques based on the customer's fault, suspension of payments, excessive indebtedness, or should his assets be the subject of insolvency proceedings, or should the institution of such proceedings be refused for insufficiency of assets, the entire balance of his debts shall become payable, including promissory notes with later maturities. In this event, the customer shall, at the request of Olympus, provide Olympus with a list of all goods still in his possession which are subject to reservation of title, and a list of debts assigned to Olympus, which list shall include names and addresses of debtors and the amount of the debts and provide all other information required by Olympus in order to assert the claims. Should the conditions described above apply, the customer shall, upon request of Olympus, inform the debtors of the assignment of the debt to Olympus. Olympus shall be entitled to bring about the notification of such third party debtors itself. Olympus shall also be entitled to repossess the goods subject to its reservation of title with a view to utilisation or discharging the balance of the debts. The customer shall be obliged to procure possession of the goods for Olympus or to allow the authorised representative of Olympus access to the business premises during normal business hours. The demand for return or the seizure of the goods shall not constitute termination of the contract.
- At the customer's request, Olympus shall be obliged to release security at the customer's discretion where the total realisable value of such security exceeds the value of Olympus' claims against the customer arising from current business dealings by more than 20%.
- Should the proposed reservation of title not be legally effective in the territory in which the goods are located, Olympus and the customer already now undertake to agree on a provision in compliance with the applicable laws that best reflects the character of the right of retention of title. Where special requirements are necessary to meet these stipulations, the customer already agrees to ensure that these requirements are met at his own cost.

9. Combination of Products

- Unless explicitly stated in the delivered instruction manuals ("system chart"), Olympus does not make any statement on the compatibility of the delivered products.
- Olympus will solely combine delivered medical devices and/or non-medical devices and/or products from the inventory of the customer on behalf of and under instruction from the customer. Olympus will not place devices on the market according to Section 10 Medical Devices Act (Medizinproduktegesetz).
- The customer is responsible for the safe operation of combinations according to Section 2 para 3 and 5 Medical Devices Operator Ordinance (Medizinprodukte-Betreiberverordnung).
- The customer may be obliged pursuant to medical device regulations to inspections, assessments and declarations before he may operate a combination of products.

10. Warranty

- With regard to the rights in case of defects as to quality and defects of title (including wrong and short delivery) the statutory provisions apply unless agreed otherwise in the following. The special legal provisions in case of ultimate delivery of the goods to a consumer (supplier's recourse according to Sections 478, 479 German Civil Code – BGB) shall remain unaffected in all cases.
- Warranty claims of the customer require that the customer has complied with its obligation to examine and give notice of defects (Section 377 German Commercial Code, HGB). Any complaints regarding incomplete, false or defective deliveries are to be reported in writing immediately after delivery. Hidden defects are to be reported in writing after these have been detected. Notice is deemed to be made in due time if given within 10 days after delivery or detection, as the case may be. The punctual dispatch of the notice suffices to comply with the time limit.
- The warranty period is 12 months counted as of the passing of risk. The warranty period shall be extended by the period in which the delivered product cannot be used due to subsequent fulfillment (rectification or replacement delivery). However, subsequent fulfillment shall not result in the commencement of a new warranty period, unless the subsequent fulfillment in due consideration of any and all circumstances of the individual case has to be seen as an implied acceptance of an obligation to remedy a defect. A rectification of a defect, shall otherwise only result in a new warranty period if it concerns the same defect or the result of a deficient rectification of a defect.
- If the delivered goods are defective, Olympus shall at its own discretion remedy the defect (rectification) or deliver a non-defective item (replacement delivery).
- The customer shall fulfill all his contractual obligations, in particular the stipulated terms of payment; Olympus may make the owed subsequent fulfillment dependant on the fact that the customer pays the due purchase price. The customer may, however, withhold payment in reasonable proportion to the extent of the defect.
- The customer shall grant Olympus the necessary time and occasion to fulfill the warranty obligations. Subsequent fulfillment neither includes the disassembly of the defective item nor reassembly if Olympus had not originally been obliged to assembly in the first place. Any expenses incurred in connection with the examination and subsequent fulfillment, in particular costs for transportation, infrastructure, personnel and material (not covered: costs for disassembly and reassembly) are borne by Olympus, if a defect in fact exists. In any other cases these costs are borne by the customer and Olympus may claim reimbursement from the customer, as the case may be.
- Should Olympus allow a reasonable period of grace to expire without remedying the defect or replacing the goods, or should Olympus refuse to take either action, or should remedy or replacement be impossible, the customer shall be entitled to avail himself of his right to termination of contract or reduction of the purchase price.
- Any improper repairs or modifications effected by the customer or by third parties shall nullify any warranty or liability, unless the customer proves that the defect is not the result of this intervention.
- The liability for defects shall neither apply to normal wear and tear, nor to damage occurring after passage of risk as a result of faulty or negligent handling, overuse, inappropriate equipment, or such chemical, electro-chemical, or electrical influences as are not provided for in the contract.
- Claims of the customer for damages or compensation of futile expenses are subject to the limitations set forth in Item 11 below and are otherwise excluded.
- In so far as the Olympus product is equipped with accessories from third-party companies and the warranty terms and conditions of the third-party company are included with the Olympus product, Olympus shall assume these terms and conditions to the extent as they are not more disadvantageous for Olympus than the above provisions. Otherwise the above provisions shall apply.
- Warranty claims arising from any batteries included are excluded. Such batteries shall only serve demonstration purposes and operational tests.

11. Liability

- To the extent not regulated otherwise in these GTD, Olympus may only be held liable pursuant to the applicable statutory provisions in case of a contractual or non-contractual breach of its duties.
- Olympus is liable to pay damages – regardless of their legal basis – only in case of intent or gross negligence. However, for damages caused by the grossly negligent conduct of any vicarious agents of Olympus, the liability shall be limited to those damages which would have occurred in any case of simple negligence. Olympus shall be liable only for (a) damage to life, personal injury or health; (b) damage based on the breach of a material contractual duty (obligation which makes the proper implementation of the contract possible in the first place and the observance of which the customer may regularly rely on); in this case the liability is however limited to the foreseeable, typically occurring damages.
- The limitations stipulated in Item 11.2 shall not apply in case Olympus has fraudulently concealed a defect or has assumed a guarantee for the properties of the item. The same applies to a liability under the German Product Liability Act.

12. Assignment of Claims

Claims arising from the contractual relationship between the customer and Olympus and all claims against the damaging party or its insurer arising from the loss of or damage to reserved goods may only be assigned to third parties with prior written permission of Olympus.

13. Export Control Rulings

- The export of certain goods, information, software and documentation may for example, by very nature of their type or their purpose or end purpose be subject to approval. The customer shall strictly comply with the relevant export regulations pertinent to the goods, information, software and documentation in question, in particular with regard to the EU, EU member states as well as the USA.
- In abidance with the legislation governing export control of the Federal Republic of Germany, as well as of the EU member states and the USA the customer is under obligation to procure at his own cost and before the actual export of products or technical information, which he has received from Olympus, all the required export licenses and any such other documents necessary.
- The customer shall be under obligation, not to sell, export, re-export, deliver or otherwise pass on, whether directly or indirectly, such products or technical information to persons, companies or to other countries in so far as this is in breach of laws and rulings of the Federal Republic of Germany, other EU member states or the USA. The customer is obliged to inform all recipients of these products and/or of any technical information of the requirement to observe by these laws and rulings.
- The customer shall procure at his own cost all licenses and documents required for export and import, which may also be required for using the products. Refusal of export permission does not entitle the customer to withdraw from the contract or to claim damages.

14. Data Protection

Data obtained in the course of the business relation will be processed according to the applicable laws and taking account of Olympus' privacy policy (retreivable at http://www.olympus-europa.com/corporate/en/privacy_notice.html). Data collected from the customer will only be collected, processed and used to the extent required for the conclusion and performance of the underlying sales/delivery agreement and/or any further agreements between Olympus and the customer.

15. Place of Performance

The place of performance shall be Hamburg unless the parties have agreed differently.

16. Applicable Law and Place of Jurisdiction

- These GTD as well as all contracts concluded based on these terms are subject to German law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN Sales Convention, CISG) is explicitly excluded.
- For all disputes the agreed place of jurisdiction for merchants, legal persons under public law, and separate public estates shall be Hamburg and for Olympus Soft Imaging Solutions GmbH Münster. This shall also apply in the event that the customer's legal residence or habitual place of residence is unknown, is located abroad, or has been transferred abroad.
- Olympus is also entitled to file a lawsuit at the general place of jurisdiction of the customer.