

## General Terms and Conditions

of EyeC GmbH

### § 1 Scope and Priority

1. The following Terms and Conditions shall apply to all supplies and all Installation, repair and advisory work and other Services of EyeC GmbH (hereinafter referred to as "EyeC"). Any follow-up business shall be governed by these Terms and Conditions as amended from time to time even if not expressly referred to in the individual case.

2. No conditions of purchase or other general terms and conditions of Customer shall apply unless EyeC so expressly confirms in writing.

### § 2 Execution and Amendment of Contracts

1. The offers of EyeC shall be subject to acknowledgement of order in every respect. No order will be binding upon EyeC unless and until acknowledged by EyeC.

2. Any amendments to a contract must be in writing. In particular, no employee or agent of EyeC shall be entitled to enter into any verbal collateral agreements or to make any verbal promises or agreements regarding the amendment of a contract. Such verbal collateral agreements or verbal promises or agreements shall have no binding effect on EyeC unless and until the acknowledgement of EyeC of the order has thus been amended in writing.

### § 3 Payments

1. Unless otherwise agreed, any claims under invoices of EyeC shall be payable in their net amounts (without discount) immediately upon receipt.

2. EyeC, irrespective of any terms and conditions of Customer to the contrary may set off payments first against earlier debts of Customer. If costs and interest have arisen, EyeC may set off payments first against costs, then against interest, and finally against the main performance.

3. If the customer does not provide payment by the due date, in non-conformance with § 286, section 3 BGB (German Civil Code), it is considered a delay of the customer (provided that the customer is a businessman) and will be sent a written overdue notice. In any case, and without a written overdue notice, a delay of the customer occurs 30 days after the given due date and receipt of the invoice or equivalent request for payment.

4. In the case of default, EyeC calculates interest for the late payment based on applicable German law. The assertion of

further rights, in particular of any further delay damages, remains reserved.

5. EyeC may accelerate maturity of the remaining debt as a whole (i) if Customer fails to comply with contractual payment commitments, (ii) if Customer suspends payments, or (iii) if EyeC gets aware of any other circumstances that call Customer's credit Standing into question.

6. No set-off against claims of EyeC shall be allowed unless a counter-claim is uncontested, has been established by a declaratory judgement or recognized by EyeC. No right of retention may be exercised unless the counter-claim is uncontested or has been established by declaratory judgement. In non-merchant dealings, however, a right of retention may also be exercised if the counter-claim is based on the deal transacted.

7. EyeC shall not be obliged to accept bills of exchange or checks. When allowing Customer to provide a bill of exchange or a check, acceptance shall be subject to discounting and reimbursement of all expenses incurred by EyeC. Also, EyeC shall not be obliged to present a bill of exchange or check in due time or to protest a bill of exchange.

### § 4 Liability

1. Any claims for damages arising for any legal ground whatsoever on the basis of negligence of minor or average impact on the part of EyeC or any staff of EyeC shall be excluded unless this exclusion of liability restricts material rights or duties arising from the nature of a contract in that it would impede the attainment of the purpose of a contract.

2. The foregoing restrictions on liability shall not apply in dealings with consumers (Section 24 a of the German Act on Terms and Conditions (*Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen - AGBG*) to the extent that a damage claim is raised on the basis of default or impossibility. However, the liability of EyeC shall be limited in such cases to the direct damage and, by amount, to three times the purchase price of the goods in question.

3. In dealings with persons from among those covered by Section 24 AGBG, any claim for damages arising for any legal ground whatsoever on the basis of gross negligence on the part of EyeC or staff of EyeC shall be excluded unless arising from gross negligence on the part of officers or unless this exclusion of liability is restricting material rights or duties arising from the nature of a contract in that it would impede the attainment of the purpose of a contract.

4. Subsections 1 to 3 above shall not apply to claims for damages arising from a lack of guaranteed qualities or initial inability to perform.

5. To the extent that EyeC is liable for damages, EyeC's liability shall be limited to the loss EyeC had foreseen or, considering all facts EyeC had or should have known, should have foreseen on execution of contract as a possible result of a breach. Such limitation on liability shall not apply in the case of wilful conduct or gross negligence of officers.

6. The foregoing exclusions on liability shall also apply to the benefit of the staff of EyeC.

7. In the event that EyeC, due to mandatory provisions of the German Product Liability Act (*Produkthaftungsgesetz*) of 15 December 1989, should be liable for material or personal damage caused by a defect of a product, the provisions of the German Product Liability Act shall prevail. With regard to internal compensation pursuant to the second sentence of Section 5 of the German Product Liability Act, the foregoing provisions shall apply as well, however, with the restriction that internally EyeC shall only be liable for cases of damage under product liability up to the gross amount of the value invoiced for the goods under a given order. Such maximum liability shall apply to any product liability claim or similar claim made against EyeC by Customer or a third party (e.g. those buying from Customer). Therefore, if a third party makes a direct claim against EyeC on the basis of defective goods, Customer shall indemnify and hold us harmless against any liability under which we would be liable beyond that maximum liability.

## § 5 Data Privacy

We process customer data in accordance with the applicable legal provisions on data protection. You will receive the data protection information for customers upon conclusion of the contract, exchange of commercial documents or can be viewed at [https://www.eyec-inspection.com/fileadmin/files/Data\\_Privacy\\_Information\\_for\\_business\\_partners\\_en.pdf](https://www.eyec-inspection.com/fileadmin/files/Data_Privacy_Information_for_business_partners_en.pdf)

## § 6 Applicable Law and Venue

1. All legal relations with Customer shall be governed exclusively by German law, however, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. In dealings with persons from among those covered by Section 24 AGBG, EyeC's place of business shall be exclusive venue for any legal action or other legal proceeding against us, based on any legal ground whatsoever, as well as non-exclusive venue for any legal action or other legal proceeding by EyeC against Customer.

## § 7 Severability

In the event that any provision hereof should be ineffective, this shall not affect the validity of the remainder hereof. An ineffective provision shall be deemed replaced by a provision capable of putting into effect the economic aim of such ineffective provision.

## A. Delivery

### § 8 Scope of Services

Customer will acquire from EyeC all Systems or components specified in an acknowledgement of order and, if covered by the scope of delivery, the related operating Software and documentation.

### § 9 Quality and Prices

1. EyeC shall be entitled to deviate from the technical data and specifications identified in an acknowledgement of order or, if made for technical reasons, to work in components other than those agreed. In such a case, EyeC shall as a rule obtain Customer's prior consent to work in such deviation. Such consent may not be withheld by Customer unless for legitimate interests. No consent will be required for deviations related to individual components or for deviations resulting in minor deviations from data specified in functional specifications or for changes made to adjust a component to the general state of the art.

2. Responsibility for compliance with any legal, official and professional association requirements to be observed when using our products lies solely with Customer.

3. In dealings with persons from among those covered by Section 24 AGBG, prices quoted by EyeC will be net prices. Prices shall be ex works, exclusive of ancillary costs such as freight, customs duties and packing, plus VAT as applicable on the date of delivery. Any prices confirmed shall only apply if delivery is taken of the quantity so confirmed.

4. If more than four months pass between the conclusion of a contract and the date of delivery scheduled for the overall consignment or parts thereof with the price of a product ordered rising by more than 5€% after conclusion of contract especially due to price increases of suppliers, then EyeC shall be entitled to reasonably increase (i.e. in accordance with such rise in our cost price) the prices of those parts of the entire consignment for which delivery is scheduled for a date after that four-month period. If a price increase so claimed by EyeC adds up to more than 5€% of the price of the overall consignment, Customer shall have the right to withdraw from the contract within a period of two weeks following receipt of EyeC's notice in respect of such change in prices.

### § 10 Shipment and Passing of Risk

1. Unless otherwise agreed in writing, deliveries will be made ex works. Packaging and shipping, at our Option, will be at Customer's expense.

2. The risk of loss and the risk of a change for the worse shall pass to Customer when the goods are handed over to a forwarding agent, carrier or any other person transporting the goods, including staff of EyeC. This shall also apply if delivery is free domicile. In the case of free-domicile deliveries, however, EyeC shall assume liability, restricted to the gross amount of the invoiced value of the relevant goods, for any direct damage in transit if caused by own transporting staff of EyeC.

3. If shipment is delayed due to circumstances beyond EyeC's control, the risk of loss and the risk of a change for the worse shall pass to Customer on notification of readiness for shipment.

4. Even if responsibility for a carriage does not lie with EyeC, any damage occurred in transit shall be notified by Customer without delay, at the latest, however, within one week after receipt of the goods.

## **§ 11 Delivery and Cancellation**

1. Any delivery dates confirmed by EyeC shall have no binding force unless so expressly identified.

2. Compliance with delivery deadlines and delivery dates requires on-time fulfilment of Customer's contractual duties. A delivery deadline shall begin to run upon receipt of all specifications relating to the execution of an order, of all documents and papers necessary to execute such order, any other information to be provided by Customer, and of any prepayment that may have been agreed upon between the Parties. If the goods ordered leave our premises or the distributing warehouse at the agreed time or if Customer has been notified to the effect that the goods are ready for dispatch, then a delivery deadline or delivery date shall also be deemed observed if such goods, without fault on the part of EyeC, cannot be dispatched in good time. This shall apply accordingly in respect of delivery dates.

3. Even if a time has been fixed by the calendar within the meaning of Section §284 Subsection 2 of the German Civil Code, no default shall occur until EyeC receives a written warning notice. If EyeC is in delay in delivery, Customer shall allow EyeC an adequate period of grace. Such period of grace must be no less than two weeks.

4. Customer may withdraw from a contract upon expiration of an adequate period of grace that may have been allowed to EyeC in respect of a case of delay in delivery, provided, however, that Customer when allowing such period of grace has indicated that performance might be rejected. Customer may not withdraw from a contract if the goods were dispatched or ready for dispatch on expiration of a deadline, provided that Customer has been notified accordingly.

5. In case of unforeseeable events beyond EyeC's control, e.g., war, risk of war, riots, a third party using force against individuals or things, government interference including currency and trade policy measures (e.g. economic sanctions), industrial conflicts at EyeC or EyeC's suppliers or forwarders, interruptions of scheduled traffic routes, fire, raw material shortages (e.g. if relating to semiconductors or other electronic components), power shortages or any other operational impediments at EyeC or EyeC's suppliers as beyond EyeC's control, any agreed periods or dates of delivery shall be extended by the duration of the impediment. This shall also apply if EyeC is already in delay in delivery or if an impediment had already been existing before conclusion of contract however, without EyeC being aware of that impediment. EyeC shall notify Customer without delay of any impediment of the kind described above.

6. If a delay in delivery caused by an event pursuant to Section 5 above lasts more than two months, each Party shall be entitled to cancel the contract. Customer, however, may only withdraw from a contract if EyeC fails to notify Customer on request within a period of one week as to whether EyeC wishes to withdraw from such contract or to effect delivery within a reasonable delay. Irrespective of such delay, a corresponding right of rescission shall arise if the execution of a contract may no longer be reasonably expected from a party in the light of the delay so occurred.

7. If EyeC accepts in writing to take goods back from Customer although Customer has got no legal or contractual right of rescission, then EyeC shall be entitled to charge a lump-sum compensation in an amount equal to no less than 30€% of the gross amount of the invoiced value of such goods.

8. EyeC shall be entitled to withdraw from any contract concluded if supplies are substantially impeded as compared to the conditions on conclusion of contract due to act of God, acts of war, or any other reason. Supplies shall be deemed substantially impeded especially if the ruling price of the goods to be procured rises by more than 25€% between the conclusion of a contract and a scheduled date of delivery.

This shall not apply in dealings with consumers (Section €24 a AGBG). In such a case, EyeC may not withdraw from the contract on the basis of a price increase unless it may not reasonably be expected to be bound by the contract.

9. EyeC may request Customer at one-week notice as a minimum to secure any outstanding delivery by advance payment or bank guaranty (at Customer's Option) and EyeC may refuse performance for as long as no such security has been provided (i) if Customer delays payment of an invoice by more than two weeks, (ii) if a motion for the opening of insolvency proceedings against Customer's assets has been filed, (iii) if Customer has initiated a composition procedure for the settlement of debts or if Customer has ceased payments, or (iv) if EyeC obtains knowledge of any other circumstances materially affecting Customer's credit Standing thus impeding our claim for the counter-performance owed by Customer. Thereafter, EyeC shall allow a reasonable period of grace. If that period expires without results, however, EyeC may withdraw from the contract and any other contracts with Customer or claim damages due to non-performance.

## **§ 12 Acceptance and Taking of Delivery**

1. Customer agrees to reasonably accept part shipments.

2. Customer will be in default of acceptance even if delivery is only offered by EyeC in writing. Section 294 BGB shall therefore be excluded. All other legal requirements as to default of acceptance shall remain unaffected.

3. In the case of call purchases, calling within the agreed time period shall be a primary duty in terms of Section 326 BGB.

## **§ 13 Reservation of Title**

1. Title to any goods supplied shall remain with EyeC until the full payment of the purchase price and of any other receivables of EyeC to be paid by Customer. This reservation of title shall survive even if receivables of EyeC are taken up in a current account with its balance being struck and accepted, for such reservation of title then to secure such balance.

2. If any goods EyeC supplied under reservation of title are processed or treated by Customer, such processing or treatment shall be deemed to have been carried out on EyeC's behalf as "producer" within the meaning of Section 950 BGB.

3. If any goods EyeC supplied under reservation of title are combined, mixed or processed with goods that are subject to a third party's reservation of title, EyeC shall acquire

title to the new thing or the mixed material in accordance with the ratio between the value of its goods and the value of the other goods on being combined, mixed, or processed. No claims to the rise in value as caused by such combination, mixture or processing will be made by EyeC.

4.

Any goods EyeC owns pursuant to Subsection 2 or co-owns pursuant to Subsection 3 shall secure EyeC's receivables in the same way as any goods it originally supplied under reservation of title. If Customer is getting into delay in payment, EyeC shall be entitled to revoke Customer's authority to combine, mix or process any goods EyeC delivered under reservation of title.

5.

a) Along with all ancillary rights, Customer already now assigns to EyeC (i) any claim of Customer under any resale of goods EyeC supplied under reservation of title and (ii) any claim of Customer under any resale of goods EyeC owns pursuant to Subsection 2, in order to secure all claims EyeC may have against Customer on such resale.

b) In the case of the resale of goods EyeC co-owns pursuant to Subsection 3, only that part of a claim shall be deemed assigned which is equivalent to the value of EyeC's portion of ownership to such goods.

c) Customer shall be entitled to assign receivables under the resale of goods by means of factoring transactions, provided, however, that such assignment is notified to EyeC in advance and that the proceeds from such factoring transactions cover no less than the invoiced value of the goods EyeC supplied under reservation of title, of the goods EyeC owns pursuant to Subsection 2, or co-owns pursuant to Subsection 3, from the sale of which such receivables are being derived. Customer already now assigns to EyeC any receivables and other claims against the factor under the sale of receivables assigned to EyeC by way of security; these shall secure EyeC's claims as well.

d) EyeC hereby accepts the foregoing assignments.

e) If the value of any receivables assigned to EyeC by way of security exceeds EyeC's claims against Customer by more than 10%, EyeC shall be obliged to release any excess security if so requested by Customer.

f) Customer shall be entitled to collect on EyeC's behalf any receivables so assigned. However, this authority of Customer shall cease to be effective if Customer delays any payment due to EyeC. In that event EyeC shall be authorized to inform the relevant customers of Customer on Customer's about that assignment. Customer shall be obliged to provide EyeC with any data (especially the names of customers) as well as any documents and papers EyeC may require to assert its claims against Customer's customers. 6.

Customer may not resell any goods that are subject to reservation of title or owned by EyeC pursuant to Section 2 or co-owned by EyeC pursuant to Section 3 unless such resale is made in the ordinary course of business and on condition that the purchase price claim under such resale is transferred to EyeC in accordance with Section 5. This authority shall cease to be effective if Customer delays any payment due to EyeC. These shall be the sole dispositions of Customer with regard to goods supplied under reservation of title or goods EyeC owns pursuant to Subsection 2, and Customer shall in particular not be entitled to pledge or transfer such goods by way of security. 7.

Goods supplied under reservation of title as well as goods EyeC owns pursuant to Subsection 2 or co-owns pursuant to Subsection 3 shall be adequately insured by Customer against fire, theft, water, and similar risks, and Customer shall on request submit suitable documents showing that such insurance cover does exist. Customer hereby assigns to EyeC all or, as the case may be, a proportionate share of its claims for compensation against the relevant insurers or any other parties that may be liable to pay damages. 8.

Any acts affecting goods supplied under reservation of title or goods EyeC owns pursuant to Subsection 2 or co-owns pursuant to Subsection 3 shall be notified to EyeC, and the same shall apply with regard to any rights and enforcement actions of third parties. 9.

If Customer's authority to resell goods ceases to be effective, then Customer, if so requested, shall disclose its stock of goods that are subject to reservation of title, owned by EyeC pursuant to Subsection 2 or co-owned by EyeC pursuant to Subsection 3, and surrender any goods that are subject to reservation of title if requested to do so. To enforce its claim for surrender, EyeC, upon notice and fixing a time period, may also enter Customer's premises to take away any goods that are subject to reservation of title. Further, as soon as EyeC has withdrawn from a contract or as soon as the conditions for EyeC claiming damages due to non-performance have occurred, EyeC, in order to satisfy its claims, may realize any of the goods so surrendered. 10.

Any exercise of reservation of title, in particular the taking back, pledging, or realization of the goods thereunder, shall not be deemed as rescission of contract unless EyeC so expressly confirms in writing.

## § 14 Warranty

1.

Unless expressly identified as guaranteed qualities, any particulars relating to EyeC's goods are solely to describe the nature of the goods. Notwithstanding Section 494 BGB this shall also apply to any samples.

2.

Minor deviations in material or wall thickness values, weight, cubical contents, maximum capacities and wear resistance limits, decorative get-up, dimensions, shapes or colours, as well as normal wear and tear shall not be deemed as defects.

3.

Any impediment not exceeding the limits of what is usual in the trade with regard to such type of goods as well as any impediment caused by improper use of the goods shall not be deemed as defects.

4.

No warranty is given with regard to the chemical stability or any specific physical quality of EyeC's products unless such qualities have been warranted or agreed in writing as a feature of a given product.

5.

a) In business dealings, the provisions of Sections 377,378 of the German Commercial Code (HGB) shall apply, provided that any notice of defect must be given in writing. b) In dealings with non-merchants, any warranty claims basing on apparent defects shall be excluded unless notified by Customer in writing within the 14 days from delivery. c) Otherwise, in dealings with merchants and non-merchants, no warranty claims shall arise if as a result of the re-dispatch or processing or treatment of goods delivered by EyeC or on the basis of other facts, EyeC is no longer able to accurately examine and determine whether a defect in the goods has actually occurred.

6.

In the case of legitimate notices of defects or complaints, EyeC's warranty shall be to the exclusion of any other warranty claims for rectification of defects or substitute delivery unless EyeC notifies Customer within 14 days upon receiving Customer's notice of defects or letter of complaint that no rectification of defects or substitute delivery will be carried out by EyeC. In that case, EyeC's warranty hereunder shall be limited to the reduction of the purchase price (*decrease*) or the cancellation of a given contract (*change*). If EyeC chooses to remedy a defect or to make a substitute delivery with such rectification of defect or substitute

delivery proving abortive, Customer may only claim reduction of remuneration or cancellation of contract.

7.

Subsection 6 shall not apply to any warranty claims in relation to guaranteed qualities. 8.

Warranty claims against EyeC may be asserted only by the direct customer and may not be assigned to any third party.

## **B. Installation**

### **§ 15 Scope of Services**

Unless otherwise provided in an acknowledgement of order, EyeC shall only be obliged under a contract regarding the sale of Systems and components to install, and bring about operational readiness of, the goods supplied. Unless agreed otherwise, installation work and the procuring of operational readiness shall be at Customer's expense.

### **§ 16 Cooperation by Customer**

Customer agrees to cooperate in the development, the provision of technical samples and any other Systems, the preparation and performance of installation work as well as to render any other technical assistance in accordance with technical specifications to be set up if the need arises or with any other agreements. Customer agrees to observe EyeC's operating instructions when operating the equipment. In particular, Customer agrees to cooperate as follows:

- the provision of the space required to place and install the equipment; operational readiness of any facilities required for servicing; in particular, the provision of power supply and, if the need arises, of any compressed air required for Operation and any coolant required for cooling;
- the provision of any staff required (Customer staff and third party staff);
- the securing of the place of installation to safeguard individuals working at the place of installation against harmful effects;
- the illumination of the place of work exclusively by way of low-temperature luminaries; the setting up of band conveyors, other continuous conveyors and means of transport required for inspecting work pieces, in a position conveying the work pieces to be inspected to the right position of the camera installed;
- the conclusion of all insurance contracts required to secure the equipment from the date it is delivered to Customer, including, without limitation, the conclusion of insurance contracts against fire, water damage and theft, at the indexed new value; moreover, the conclusion of any necessary insurance contract which in the case of a disruption in the future Operation of the equipment will cover the risks of loss of Output or interruption of Customer's business, as customarily available for such risks. Customer, at its own expense, shall carry such insurance until the full payment of the purchase price and at least for as long as Customer may have any warranty claims against EyeC;
- servicing must be possible without any impediment or delay;
- means of transport shall be provided upon prior coordination.

### **§ 17 Delivery and Functional Testing**

1.

On occurrence of operational readiness, Customer shall so confirm in an acceptance certificate to be signed by it. Where a test run has been agreed, its successful outcome shall be recorded in the acceptance certificate.

2.

If substantial complaints are made upon acceptance, EyeC shall rectify the defects within a reasonable period of grace of no less than six weeks. That period of grace shall commence upon Customer notifying the defect to EyeC. The period of grace shall be adequately renewed if EyeC can prove that the defect cannot be remedied within that period of grace.

## **§ 18 Warranty**

1.

With regard to defects arising after acceptance and within the warranty period, Customer may only request EyeC to rectify such defects. EyeC shall then reasonably decide whether to remove and replace any defective part or to repair the same. Any removed part shall pass into the ownership of EyeC.

2.

No warranty will be accepted by EyeC in respect of a defect unless reflected by a failure occurring within the warranty period, provided that such failure neutralizes or substantially affects the agreed use of the System, with such failure being caused by EyeC producing and installing the system. A defect will not have occurred by EyeC producing or installing a System if the defect is caused by directions of Customer or by Customer failing to cooperate or duly cooperate in accordance with § 16 hereof, or by preparatory work of third party.

3.

Any defect attributable to Customer's sphere (e.g., circumstances at the place of installation, disruptions in power supply, wrong handling) will be incumbent solely on Customer.

4.

In addition, the warranty provisions laid down in § 14 shall apply.

## **C. Repair Work**

### **§ 19 Scope of Services**

Beyond its warranty duty, EyeC shall carry out repair work against payment and subject to acceptance of order. If on-site repair is impossible, then transport to and from EyeC's premises of the thing to be repaired shall be at Customer's risk and expense.

### **§ 20 Cost Estimate**

On Customer's request, EyeC shall provide a written cost estimate, however, without warranty as to the accurateness of such cost estimate. Any prices stated in a cost estimate shall be plus Vat as applicable from time to time. EyeC shall notify Customer immediately if it expects that a cost estimate will be exceeded by more than 15%.

### **§ 21 Cooperation, Acceptance, Functional Testing, Warranty**

With regard to Customer's co-operational duties, acceptance, functional testing, and warranty, the provisions in B. shall apply analogously.

### **§ 22 Spares**

To the extent possible, EyeC shall provide, at Customer's expense, any spares required for System servicing.

## **D. Advisory Services**

### **§23 Scope of Services**

Services will be provided in accordance with the dates of performance stated in the acknowledgement of order. By way of exception, a contract for the performance of work and Services will not have been established unless the Services are to bring about a particular result as specified in the acknowledgement of order. In that event the provisions in B. shall apply analogously.

### **§24 Operational Training**

To the extent that training or guidance for a System is required by operating staff due to particular technical conditions, such training or guidance shall be provided by EyeC on the basis of a separate agreement.

### **§ 25 Documentation**

Title to any documents handed out to Customer in training or instruction sessions or in engineering projects shall remain with EyeC. No such documents or any extracts there from may be copied or disclosed to a third party without EyeC's prior consent. The general German laws on Copyright shall apply.

EyeC GmbH  
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