

## General Terms of Delivery and Payment of FUJIFILM Optical Devices Europe GmbH

### 1. Scope

1.1 These Terms of Delivery and Payment (hereinafter "**Terms**") and any special agreements shall exclusively govern the sale of machinery, appliances, systems, materials, components and other products (hereinafter "**Product**"). Contrary, different or supplementary contract terms of the buyer shall not apply, even if not expressly rejected, or if we accept or perform a service without reservation, though in awareness of them.

1.2 Additions, amendments and other special agreements shall require our written confirmation in order to be effective. The same shall apply to cancellation of the said requirement of written form.

1.3 These Terms shall be binding only on business people ("*Kaufleute*"), entrepreneurs ("*Unternehmer*") or legal persons in public law ("*juristische Personen des öffentlichen Rechts*") or special funds in public law ("*öffentlich-rechtliches Sondervermögen*").

### 2. Conclusion of contract

2.1 Our offers shall always be non-binding and subject to confirmation. We may amend them without prior notice, unless they are expressly identified in writing as binding or contain a deadline, set in writing, for acceptance.

2.2 We may accept the buyer's orders within a two-week period upon receipt. A contract with us shall only become effective if we give written confirmation of an order or carry out the delivery.

2.3 The presentation of our Products published on our websites (e.g. via webshops) in the internet does not constitute a binding offer within the meaning of Section 145 of the German Civil Code ("*Bürgerliches Gesetzbuch*"). By placing an order via the internet, the buyer makes a binding offer and receives a confirmation of receipt of the respective order via e-mail from us. This confirmation of receipt does not constitute a contractually binding acceptance of the offer. The same applies to orders placed verbally or via telephone. Also in these cases, a contract with us shall only become effective if we give written confirmation of an order or perform the delivery. Our acceptance of orders placed electronically, verbally or via telephone is always subject to the availability of ordered Products. In the event that the Product or the ordered quantity is not available, we will accordingly inform the customer in electronic, written or oral form.

2.4 All information about the Product's features which we supply in advertising, brochures, offers or order confirmations shall be deemed non-binding indications only and not part of the agreed quality of the Product, unless expressly agreed in writing as information on the quality of the Product. Guarantees, especially as to the quality of the Product, shall only be binding on us to the extent agreed in writing, if they are expressly described as a 'guarantee' or 'guarantee of quality of Product' and if they expressly set forth our obligations deriving from such guarantees.

### 3. Prices and price revision

3.1 Unless otherwise agreed, quoted selling prices shall be understood in Euro for supplies EXW (Incoterms 2010) plus value-added tax at the applicable statutory rate, plus packaging costs.

3.2 We shall charge an additional minimum quantity surcharge and a handling charge on orders which fall below our notified minimum order threshold or notified minimum order quantity. The buyer shall meet extra costs deriving from special dispatch mode requirements (e.g. express carriage).

3.3 Up to the date of delivery, we reserve the right to make reasonable adjustments to prices which are affected, other than to a minor

degree, by rises or falls in costs after contract conclusion (e.g. due to collective bargaining agreements, changes to the burden of taxation or in the prices of commodities and materials, other price revisions by suppliers, or foreign exchange rate fluctuations) which are beyond our control and which were not foreseeable with sufficient certainty at the time of conclusion of the contract. We will prove the grounds of the price amendment to the buyer on request. If delivery relations are ongoing we may, on the same terms, adjust the prices agreed for future orders.

### 4. Payment terms

4.1 Unless otherwise agreed, our invoices shall be payable without deduction within 30 days after invoice date. If this payment deadline is missed, the buyer comes into default without further warning. Timely payment shall be determined by receipt of the invoice amount in our designated account.

4.2 If the buyer, in a context of ongoing delivery relations, repeatedly comes into default of payment, we may alter the agreed payment terms for future deliveries (e.g. require cash in advance) or withhold future deliveries until the provision of appropriate collateral security.

4.3 If it emerges, after conclusion of the contract, that the buyer's fulfilment of its contractual obligations is at risk due to its financial situation (especially in case of suspension of payment, filing for insolvency proceedings, seizure or enforcement measures, protesting of bills or cheques and returns of debit notes, to or affecting third parties or others) or due to other impediments to performance (e.g. export or import bans or failure of other suppliers) we may, at our sole discretion, withhold deliveries until receipt of all payments arising from outstanding claims against the buyer, or until provision of the appropriate collateral security. For claims which are not yet due, including cases where framework agreements or supply contracts require us to perform in advance, and claims with no intrinsic or economic relation with the delivery, this shall only apply if it is in our own, justified interest. Provided that the above conditions of advance payment or provision of security are met, we may rescind the respective contract if we have requested the buyer to comply with them and the buyer has not made the required advance payment or provided the security within two weeks of receipt of such request.

4.4 The buyer can only offset against undisputed claims or claims determined as legally binding. The same shall apply to the exercise of rights of refusal to perform and of retention.

### 5. Delivery and delayed acceptance

5.1 Unless otherwise agreed, deliveries shall be EXW (Incoterms 2010) at our site, or, as the case may be, elsewhere as designated by us. In case of sale by delivery to a place according to the buyer's instruction ("*Versendungskauf*"), the risk of loss, damage or destruction of the Product shall pass to the buyer no later than commencement of the loading process.

5.2 Specified delivery dates or deadlines shall be non-binding, unless expressly agreed in writing as binding. The buyer may make a written delivery demand to us four weeks after we have missed a non-binding delivery date or non-binding delivery deadline. After receipt of such written demand and elapse of such reasonable deadline, we shall come into default of delivery provided that we are responsible for the default of delivery. If the buyer does not fulfil its obligations of co-operation in relation to the delivery in time or does not make an agreed down-payment, the delivery deadlines shall be extended, or the delivery dates postponed by a corresponding period of time.

5.3 We hereby reserve the right of correct and timely receipt of supply. If we are prevented from fulfilling our contractual

obligations due to force majeure, e.g. war, terrorism, unrest, natural disaster, fire or other unforeseeable circumstances beyond our control, such as strike or lawful lockout, disruption to operations or transport, raw material procurement difficulty or non-delivery by our suppliers, the agreed delivery deadlines shall be extended or the agreed dates postponed, respectively by the duration of such prevention plus a reasonable recommencement period. Such circumstances shall still be beyond our control if they occur during existing default. We shall inform the buyer as soon as possible of the commencement and expected ending of such circumstances. If prevention lasts two months or longer, both parties may withdraw from the affected contract.

- 5.4. The buyer shall come into default of acceptance ("*Annahmeverzug*") if it does not accept the Product on expiry of the binding delivery deadline or on the binding delivery date. If the delivery deadline or date is non-binding, we may inform the buyer that the Product is ready for acceptance. If the buyer does not accept the Product within one week of receipt of such notice of readiness, it shall fall into default of acceptance.
- 5.5. The risk of loss, damage or destruction of the Product shall pass to the buyer no later than the time of default of acceptance. If the buyer is in default of acceptance, we may invoice it for our additional expenses thereby incurred. We may charge 0.1% of the invoice amount as a flat rate of compensation for the costs per calendar day of storage of the Product limited to 1% per calendar month. Further rights remain unaffected.
- 5.6. We shall be entitled to partial deliveries, if the buyer can reasonably be expected to receive them, having regard to its interests. Such entitlement shall especially exist if the delivery of the remaining Product ordered is assured and the buyer thereby incurs no significant extra expense or costs. Each partial delivery may be invoiced separately.
- 5.7. We hereby reserve the right to apply technically necessary or useful modifications to the Product throughout the delivery period, provided that the buyer can reasonably be expected to accept them, having regard to its interests. We shall immediately inform the buyer of the nature, content and scope of such modifications.
- 5.8. The buyer shall immediately return returnable packaging (e.g. packaging for multiple use) to us at its own expense. A deposit shall be charged on returnable packaging and credited after return. We shall not take back transport packaging and all other packaging in the terms of the German Packaging Ordinance ("*Verpackungsverordnung*"), except pallets. The buyer shall dispose of such packaging at its own expense. The third and fourth sentence of this Clause 5.8 shall not apply if the buyer is a private end-consumer ("*Endverbraucher*") within the meaning of the German Packaging Ordinance.

## 6. Installation, Acceptance

- 6.1. If we carry out the erection, installation or commissioning of the Product on the buyer's premises, the buyer shall be responsible for preparing the future site of the Product at its own expense, in accordance with our instructions for the installation.
- 6.2. In cases of Clause 6.1, the buyer shall accept the Product immediately on completion of our works, by issuing a written declaration of acceptance. Acceptance shall not be refused for minor defects. The Product shall be deemed accepted if the buyer does not accept it within a reasonable timeline set by us, although the buyer is legally obliged to do so.
- 6.3. Apart from a test or trial run conducted under our supervision, the buyer shall not commission the Product before acceptance. In case of breach of the afore-mentioned obligation, the Product shall be deemed accepted.

## 7. Notification of defects and damages

- 7.1. The buyer's rights in respect of defects shall be conditional upon due fulfilment of all obligations of examination and complaint under Section 377 of the German Commercial Code ("*Handelsgesetzbuch*"). Complaints shall be made immediately in writing and specifically describe the defect. Identifiable defects shall be notified to us no later than one week upon delivery; hidden defects shall be notified within one week upon detection. Claims for defects notified with delay shall be barred. Acceptance of the Product shall not be withheld due to minor defects. The buyer shall meet the costs of examining the Product. The defective Product shall be made available to us on request, for checking/testing.
- 7.2. Clause 7.1 shall also apply if we have agreed to deliver the Product directly to a third party ("*Streckengeschäft*"). In such case the third party may notify the defect.
- 7.3. In cases of acceptance pursuant to Clause 6, Section 640 paragraph 2 of the German Civil Code shall apply.
- 7.4. If we dispatch the Product, the buyer shall immediately check the delivered object (Product) on receipt for visible external damage or wrong quantities to secure its right of recovery against the carrier. If such damage or error is found, the buyer shall note the cause and extent of the damage on the consignment note and have this confirmed by the signature of the carrier's delivery staff. The buyer shall notify damages which are not visible from outside or wrong quantities to the carrier in writing immediately after the detection of the damage, however no later than seven days from delivery. The notification shall state the cause and extent of such damage. The buyer shall immediately inform us in writing of the damage or wrong quantity and notification. There shall be no claims for losses incurred during transport which have not been duly notified.

## 8. Warranty rights

- 8.1. The buyer's rights in respect of defects shall be time-barred one year from delivery of the Product; in the cases as per Clause 6.1, such warranty period shall commence on acceptance of the Product. No such restrictions shall apply (a) if a defect is fraudulently not disclosed or (b) if a guarantee of the quality of the Product was provided (in this regard, the rules of liability and/or period of prescription arising from the guarantee shall also apply). In the event of compensation claims, such restrictions shall also not apply in the following cases: (a) culpable injury of life, body or health; (b) wilful misconduct and (c) gross negligence of our managerial staff ("*leitende Angestellte*") or our authorized directors ("*Organe*").
- 8.2. If the delivered Product is defective, we shall have the choice of subsequent fulfilment ("*Nacherfüllung*") by rectification of the defect ("*Nachbesserung*") or delivery of a fault-free product ("*Nachlieferung*"). Subsequent fulfilment shall not be construed as admission of any legal obligation. In the case of rectification of the defect, the remainder of the original warranty period shall commence on completion of the rectification measures or redelivery of the repaired Product. The same shall apply in case of substitute supply.
- 8.3. The place of performance of subsequent fulfilment shall be the originally agreed place of delivery, where we made the Product ready for collection or dispatch. In the cases of Clause 6.1, the place of performance of subsequent fulfilment shall be the place of completed erection, installation or commissioning of the Product. The buyer shall have no claims for expenses necessary for subsequent fulfilment, especially carriage, tolls, labour and material costs, where such expenses arise because the Product was subsequently brought to a place other than that originally agreed for delivery. Costs of fitting and removing the Product shall also be excluded, except and to the extent of erection, installation or commissioning of the Product carried out by us as

per Clause 6.1. We shall be entitled to invoice the buyer for any additional costs. The buyer shall only be entitled to claim such costs in the context of compensation as per Clause 9.

- 8.4 In case of definitive failure of subsequent fulfilment, the buyer shall be entitled to reduce the purchase price (Section 441 of the German Civil Code) or to rescind the respective contract (Sections 323 and 326 para 5 of the German Civil Code).
- 8.5 The buyer shall have no rights in respect of defects in cases of natural wear and tear or damage occurring through incorrect use, inappropriate storage or failure to observe the manufacturer's assembly or operating instructions after the passing of risk. The same shall apply to work on, or other tampering with, the Product unless the buyer can prove that the defects it claims were not caused thereby.
- 8.6 The costs reasonably incurred through unjustified defect complaints shall be borne by the buyer. The same shall apply if we erroneously grant rights in respect of defects, although we are under no obligation to do so.
- 8.7 If complaints are made because of defective light-sensitive material, the buyer is obliged to inform us about the emulsion number in addition to the numbers of the delivery note and invoice.
- 8.8 Further rights in respect of defects of any kind whatsoever are hereby excluded, subject to any compensation claims within the limits of Clause 9. If the Product is sold as a used product, all rights in respect of defects shall be excluded, except compensation claims within the limits of Clause 9.

## 9. Liability

- 9.1 In case of simple negligence, we shall only be liable for damages and losses caused by breach of material contractual obligations, i.e. obligations whose fulfilment are essential for the proper performance of the contract and on the observance of which the buyer regularly relies on, or may rely on. In such case, however, our liability shall be limited to the typically foreseeable damages. The said limitation of liability shall equally apply to damages caused by gross negligence of our employees or agents who are not our authorized directors ("*Organe*") or managerial staff ("*leitende Angestellte*").
- 9.2 In the cases of Clause 9.1, liability shall be limited to the purchase price of the respective Product.
- 9.3 In the cases of Clause 9.1, we shall not be liable for loss of profit, consequential or indirect losses.
- 9.4 In the cases of Clause 9.1, a claim shall be time-barred after the expiry of two years from the time at which the claim arose and at which the buyer learned of the circumstances underlying the claim. Irrespective of the buyer's knowledge, the claim shall be time-barred three years from the event giving rise to the damage. Claims for compensation resulting from defects shall be time-barred in accordance with Clause 8.1.
- 9.5 The above limitations of liability shall not apply to liability: (a) for damages due to culpable injury of life, body or health; (b) due to wilful misconduct; (c) due to gross negligence of our authorized directors ("*Organe*") or managerial staff ("*leitende Angestellte*"); (d) due to fraudulently concealed defects; (e) arising from provision of a guarantee as to the quality of the Product (any rules on liability or time-barring arising from the guarantee shall also apply) and (f) under the German Product Liability Act ("*Produkthaftungsgesetz*").
- 9.6 If our liability is excluded or limited pursuant to the Clauses 9.1 to 9.5 above, the same shall apply to the buyer's compensation claims against members of our authorized directors, managerial staff, employees or agents.

## 10. Retention of title

- 10.1 The delivered Product shall remain our property until the full payment of all of our claims against the buyer arising from the current business relation ("**Reserved Goods**"). If an account current exists in the context of the business relations, we hereby reserve title to the delivered Product until receipt of all payments against recognized balances.
- 10.2 The buyer shall only be authorized to dispose of the Reserved Goods in ordinary business transactions, if it is guaranteed that the resultant claims shall pass to us.
- 10.3 With the conclusion of the contract, the buyer assigns to us as security its rightful claims, and all secondary claims, arising from disposal or on other legal grounds pertaining to the Reserved Goods. The buyer shall remain entitled to collect such claims after such assignment. Our authorization to collect the claims ourselves shall not be affected thereby. We shall not collect the claims as long and insofar as the buyer meets its payment obligations, insolvency or similar proceedings have not been instituted, and no suspension of payments is in force. The buyer shall immediately notify us in writing if one of these events occurs. Upon our request the buyer shall disclose the assignment to the debtors and provide us with the information, and hand over to us the records necessary to assert our rights.
- 10.4 After rescission of the contract, and irrespective of our other rights, we shall be entitled to take the Reserved Goods back from the buyer and to enter the buyer's business premises for this purpose during ordinary office hours. After collection and upon prior warning, we shall be entitled to realize the value of the Reserved Goods as appropriate. The proceeds of such realization shall be offset against the buyer's liabilities, minus reasonable costs of realization.
- 10.5 The buyer shall treat the Reserved Goods with care, have them maintained as necessary at its expense, and insure them appropriately. The buyer shall immediately notify us of any third-party access to, or claims against, the Reserved Goods or the claims assigned to us (e.g. attachments).
- 10.6 Any conversion or reconfiguration of the Reserved Goods by the buyer shall take place on our behalf. If this takes place with external items not belonging to us, or the Reserved Goods are inseparably mixed or combined with such external items, we shall acquire co-ownership of the new item in proportion to the value of the Reserved Goods in relation to the external items. Besides, the same shall apply to the new item as to the Reserved Goods. If combination takes place in such a way that the buyer's item must be deemed the main item, the buyer shall transfer proportionate co-ownership to us.
- 10.7 If, in the event of sales to foreign countries, the retention of title agreed in this Clause 10 requires further action to be taken to make it effective (e.g. registration), the buyer shall undertake such action immediately. If, in such sales the local law does not allow the retention of title agreed in this Clause 10 with the same effect as in German law but other surety rights exist in favour of the seller, we shall be authorized to exercise all such rights. The buyer shall co-operate with such measures as we may wish to take to protect our rights of title or any other right to the Reserved Goods in substitution of our said rights of title.

## 11. Termination of ongoing delivery relations

- 11.1 If a delivery relationship is ongoing, we may terminate the contract for good cause, especially as follows: (a) if a petition to open insolvency proceedings against the buyer is rejected due to insufficient estate, enforcement measures against the buyer have been to no avail, or enforcement measures have been issued against the buyer and not cancelled within one month (e.g. lifting of an attachment); (b) we are unable to take out insurance for bad debt losses for deliveries to the buyer, with a

reasonable ceiling of cover, ongoing market terms, at reasonable expense, or an existing bad debt loss insurance lapses or fails; (c) the buyer repeatedly falls into arrears of payment, other than to a minor degree; or (d) the buyer has breached another contractual obligation, but only after a period of grace granted to remedy such breach has elapsed to no avail, or a warning has been ignored, unless, exceptionally, such period of grace or warning is dispensable, especially having regard to the severity of the breach of contract or other special circumstances.

- 11.2 Notice of termination shall require written form in order to be effective.
- 11.3 The buyer shall bring no claims for compensation or indemnity on grounds of termination of the contract. This shall not prejudice claims for compensation for breach of contract pursuant to Clause 9.

## 12. Regulatory compliance, export and disposal

- 12.1 The buyer shall comply with all relevant statutory regulations, regulatory requirements, court decisions and regulatory actions/orders, especially all relevant export control and import and export rules of the EU and USA. The buyer shall promptly obtain all necessary approvals, permits and licences, especially those necessary to import, export, resell or use the Product.
- 12.2 The buyer shall observe all instructions and warnings made accessible to it on the operation, use and disposal of the Product.
- 12.3 If the buyer breaches its obligations under Clauses 12.1 and 12.2, it shall indemnify us against any claim of third parties. We may withhold delivery to the buyer if we have grounds for suspecting that the buyer may breach its obligations under Clauses 12.1 and 12.2 or if not all necessary approvals, permits or licences have been obtained, and this is not attributable to fault or responsibility on our part.
- 12.4 The scope of the buyer's responsibility shall include proper disposal of the Product. If we are bound by compelling statutory requirements to do so, we shall take the Product made by us back for disposal at the buyer's request. The buyer shall bear the resulting reasonably incurred costs.

## 13. Final provisions

- 13.1 The buyer shall not assign its rights and obligations, in whole or in part, without our prior written consent. We may assign our rights and obligations, especially to affiliates within the meaning of Section 15 of the German Stock Corporations Act ("*Aktiengesetz*").
- 13.2 The place of performance shall be Kleve. Kleve shall also be the jurisdiction for all disputes arising from, or in connection with our delivery, provided that the buyer shall be a business person, legal person in public law ("*juristische Person des öffentlichen Rechts*") or special fund in public law ("*öffentlich-rechtliches Sondervermögen*").
- 13.3 All legal relations between us and the buyer shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN Sales Convention.
- 13.4 Any ineffectiveness whatsoever of individual provisions of these Terms shall not impair the effectiveness of the remaining provisions.