

General Terms and Conditions (Ts&Cs)

OCULUS Optikgeräte GmbH, Münchholzhäuser Straße 29, D-35582 Wetzlar

§ 1 Scope of Application

(1) The delivery of goods, provision of services and all offers of the seller are exclusively subject to these General Terms and Conditions (hereinafter referred to as "Ts&Cs"), provided the customer is a businessman, a legal person under public law or a special fund under public law. These Ts&Cs are a component of all agreements OCULUS Optikgeräte GmbH, Wetzlar, (hereinafter referred to as "OCULUS"), enters into with its contracting party, (hereinafter referred to as "Customer"), concerning the delivery of goods or provision of services offered by OCULUS. These Ts&Cs also apply to any future OCULUS delivery of goods, provision of services or offer performed for or submitted to the Customer, even if the applicability of these Ts&Cs are not separately agreed.

(2) Terms and conditions of the Customer or a third party do not apply, even if OCULUS does not specifically object to the applicability of such terms in individual cases.

§ 2 Offer, Conclusion of an Agreement and Text Form

(1) If a Customer order is deemed to be an offer, OCULUS may accept such offer within a period of two (2) weeks.

(2) Supplements and amendments to concluded agreements, including these Ts&Cs, require the text form (Section 126b German Civil Code [BGB]) to be effective. Other than the managing directors or "Prokurists" [authorized signatories], OCULUS employees are not authorized to verbally agree to terms diverging from the above agreements.

(3) OCULUS retains ownership and copyright to all documents or objects (offers, cost estimates, drawings, illustrations, calculations, samples etc.) delivered or provided by OCULUS. Without OCULUS' express consent, the Customer may not make available to third parties, publish, use, permit use by third parties or reproduce such documents and objects.

(4) OCULUS is the owner or author of trade names, trademarks, symbols, logos and any other intellectual property capable of being protected under copyright that are associated with OCULUS products or OCULUS. The Customer is obligated to observe OCULUS' intellectual property rights and to use such intellectual property according to the contractual agreement. The Customer is not authorized to reproduce, distribute, exhibit, adapt or transform such OCULUS rights.

§ 3 Pricing and Payment

(1) Prices apply to the agreed scope of service and delivery as indicated. Any additional, supplemental or special services will be invoiced separately. Prices are stated in EURO, ex works plus packaging and statutory VAT, in the case of export shipments customs duties apply, as well as any fees and other public charges and duties.

(2) The Customer may only offset with counterclaims or retain payment based on such counterclaims to the extent such counterclaims are uncontested or recognized by declaratory judgment. This does not apply, if the prohibition to offset in a specific agreement for the delivery of goods or provision of services would force the Customer to pay for defective or incomplete delivery or service in full, although the Customer is entitled to counterclaims in the amount of any expenses for the remedy of such defects or the completion of such delivery or service.

§ 4 Delivery and Delivery Dates

(1) Deliveries are ex works. Goods are shipped to another destination at the request and expense of the Customer.

(2) Unless agreed otherwise, OCULUS is authorized to determine the shipment type, in particular carrier and transport route, in its fair judgment and to invoice the Customer with the incurred costs.

(3) Deadlines and dates for the delivery of goods or the provision of services provided by OCULUS are binding, if a fixed deadline or a fixed date is expressly committed or agreed between the parties. In the event shipment is agreed, delivery deadlines and delivery dates relate to the point in time goods are transferred to the shipper, carrier or another third party contracted for transport. The stated service i.e. delivery period requires the clarification of all technical issues.

(4) OCULUS is not liable for the impossibility of or delay in delivery, if such impossibility of delay is caused by force majeure or by other events that could not be foreseen at the conclusion of the agreement (e.g. disruption of operation of any kind, difficulty to procure material or energy, transportation delays, strikes, lawful lock-outs, lack of manpower, energy or raw materials or missing, incorrect or delayed deliveries from suppliers, provided OCULUS is not at fault for such events. OCULUS may withdraw from the agreement, if such events render the performance of services or deliveries more difficult to a significant extent or make the performance of services or deliveries impossible and the duration of the impairment is not only temporary in nature. If the duration of the impairment is only temporary in nature, delivery or performance periods / dates are extended or postponed by the period such impairment continues plus a reasonable start-up period. Should it be unreasonable for the Customer to accept the delivery or service due to the delay, the Customer may withdraw from the agreement by notifying OCULUS in writing without undue delay.

(5) Should, after the conclusion of the agreement, OCULUS determine that its claim to payment is in jeopardy due to the Customer's lack of funds, OCULUS may refuse performance.

OCULUS' right to refuse performance does not apply, if the Customer pays the purchase price or provides security for the purchase price. OCULUS may set a reasonable period for the payment of the purchase price or the provision of a security. After the expiry of such period and payment or security has not been forthcoming, OCULUS may withdraw from the agreement.

(6) OCULUS may perform partial deliveries, provided the Customer is able to use such partial delivery within the scope of the contractually agreed purpose, delivery of the remaining ordered goods is ensured, and such partial delivery does not result in significant additional expenses or costs to the Customer.

(7) In the event OCULUS is in default with the performance of a delivery or service or the performance of a delivery or service becomes impossible for OCULUS, for any reason whatsoever, OCULUS' liability is restricted to damages pursuant to Section 7 of these Ts&Cs.

§ 5 Place of Performance, Passing of Risk, Acceptance

(1) Place of performance for all obligations under this agreement is the seat of OCULUS, unless provided otherwise. Should OCULUS be obligated to perform an installation, place of performance is the location the installation is to be performed. This applies only to installations within the territory of the Federal Republic of Germany, unless expressly agreed otherwise. OCULUS only performs installations outside of Germany, if such installations are expressly agreed between the parties.

(2) If, at the Customer's demand, goods are shipped to a location other than the place of performance, the risk passes to the Customer upon the transfer of the delivery object to the shipper, carrier or other person or entity designated to perform the shipment. This also applies in the case of partial deliveries or if OCULUS has assumed other, additional, services (e.g. shipment or installation). In the event shipment or transfer of the delivery object is delayed as a result of circumstances caused by the Customer, the risk passes to the Customer as of the date the delivery object is ready for shipment and OCULUS has notified the Customer accordingly. The Customer bears any storage costs that are incurred after the passing of risk. The Customer authorizes OCULUS to use its own carrier, if the parties expressly agree to ship the goods to a location other than the place of performance.

(3) At the request of one party to the agreement formal acceptance is to be performed. If acceptance is not requested, delivery or service is deemed accepted upon the expiry of a period of twelve (12) working days after written notification of the completion of the delivery or service. If acceptance is not requested and the Customer uses the goods or the service or a part thereof, delivery or service is deemed accepted upon the expiry of a period of six (6) working days after the first use of the goods or service, unless agreed otherwise.

§ 6 Defects in Quality, Claims for Defects

(1) Information on the object of a delivery or service provided by OCULUS, as well as drawings of such object, are decisive, unless the usability for the intended purpose under the agreement requires exact conformity. Such information and drawings do not represent guaranteed properties as to quality; they do represent descriptions or characteristics of the goods or service. Customary variations and variations based on statutory requirements or variations that represent technical improvements, as well as the replacement of components by equivalent parts are permissible, provided such variations, improvements or replacements do not negatively affect the usability for the intended purpose under the agreement.

(2) The warranty period is one (1) year from the delivery date or from the acceptance date in the case acceptance is required.

(3) Claims for defects are subject to the condition that the Customer has properly complied with its obligation to inspect and its obligation to give notice of defects according to Section 377 German Commercial Code [HGB]. In the case of contract for work and services, Section 377 German Commercial Code [HGB] applies mutatis mutandis. The Customer is obligated to inspect a product after the passing of the risk or after acceptance regarding the product's proper functionality without undue delay and to give OCULUS written notice of any identified defects without undue delay, in the case of hidden defects, written notice of defects is to be given promptly after such defects are identified, at the latest, however, within a period of seven (7) days.

(4) Should OCULUS be responsible for a defect, the Customer may demand damages according to the conditions stipulated in Section 7 of these Ts&Cs.

(5) Claims for defects do not apply, if the Customer modifies or causes a third party to modify the delivery object without OCULUS' consent and remedy of defects is rendered impossible or unreasonable by such modification. In any case, the Customer bears any additional costs for the remedy of defects arising from such modification.

§ 7 Liability for Damages

(1) OCULUS' liability for damages, based on any legal grounds whatsoever, in particular arising from the impossibility of performance, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations (culpa in contrahendo) and tort, is limited according to the provisions of this Section 7, provided such liability is based on fault or negligence.

(2) OCULUS is not liable for simple negligence of its corporate bodies, legal representatives, employees or other vicarious agents, unless essential contractual obligations are violated. An essential contractual obligation is an obligation whose performance the Customer relies on and is entitled to rely on. Essential to the performance of this agreement is e.g. the obligation to timely delivery and installation of the delivery object free from material defects, as well as the duty to consult, the duty to safeguard and the duty to exercise due care, which should enable the Customer to use the delivery object according to the agreement or which are intended to safeguard the life or limb of the Customer's employees.

(3) To the extent OCULUS is liable for damages in principle according to Section 7 Para. (2), such liability is limited to damages that OCULUS has foreseen as a potential consequence of a breach of contract or which OCULUS should have foreseen by applying customary due care. In addition, indirect and consequential damages, as a consequence of defects of the delivery object, are only recoverable, if and to the extent such damages are typically foreseeable damages, if the delivery object is used as intended.

(4) Exclusions and limitations of liability apply to the same extent for the benefit of OCULUS' corporate bodies, legal representatives, employees and other vicarious agents.

(5) The limitations in this Section 7 do not apply to OCULUS' liability for intent, warranties as to quality, injuries to life, limb or health or pursuant to the German Product Liability Act [Produkthaftungsgesetz].

§ 8 Retention of Title, Guarantee

OCULUS retains title to the delivery objects, up to the point in time OCULUS has received all outstanding payments in connection with the business relationship. OCULUS is authorized to retake possession of the delivery object, in the event the Customer is in breach of this agreement. The retaking of possession of the delivery object includes OCULUS' withdrawal from the agreement. After retaking possession of the delivery object, OCULUS is authorized to realize the delivery object, any proceeds from such realization is to be credited to the Customer's liabilities. Reasonable realization expenses are to be deducted from the realization proceeds.

(2) The Customer is obligated to take good care of the delivery object; the Customer is, in particular, obligated to insure the delivery object against fire and water damages and damages arising from theft. Should maintenance and inspection work be required, the Customer is obligated to perform such works at its own expense and in a timely fashion.

(3) The Customer may resell the delivery object in the normal course of business; the Customer hereby assigns, however, all claims in the amount of the invoice total (including VAT) that the Customer may have against its customers or third parties from such resale. The Customer's authorization to collect this claim remains effective also after assignment. OCULUS' authorization to collect this claim remains unaffected. OCULUS undertakes, however, to refrain from collecting this claim, as long as the Customer meets its payment obligations arising from the collected proceeds, the Customer does not default in payment and, in particular, an application for the opening of insolvency proceedings has not been filed.

(4) Processing or transformation of the delivery object by the Customer is performed on behalf of OCULUS in any case. In the event the delivery object is processed together with objects that are not the property of OCULUS, OCULUS acquires co-ownership to the new object (thing) proportionate to the ratio between the object of purchase (invoice total amount, including VAT) and the other processed objects at the point in time of processing.

(5) OCULUS undertakes to release securities, which the Customer has provided according to the terms of this Agreement, at the Customer's request to the extent the realizable value of such securities exceeds the value of OCULUS claims, for which security has been provided, by more than ten (10%) percent; OCULUS is authorized to determine which securities are released.

(6) In the case of delivery outside of Germany, OCULUS may demand that the Customer provides an unlimited, absolute performance bond, governed by German law, of a financial institution licensed in the European Union to secure OCULUS' payment claims

§ 9 Place of Jurisdiction, Governing Law, Final Provisions

(1) Place of jurisdiction is the seat of OCULUS; OCULUS may, however, also take legal action before the court at the Customer's seat.

(2) This Agreement is exclusively governed by the laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) Should the parties to this Agreement have failed to address a certain matters in this Agreement, such legally effective provisions are deemed to be agreed between the parties to address such matter which the parties to this Agreement would have agreed according to the economic objectives of this Agreement, if the parties would have been aware of the lack of such provisions.