

# General Terms and Conditions of Business of Swiss Eye International GmbH

## I.

### Application of Terms and Conditions

1. We shall conclude all contracts exclusively at the terms and conditions below. Any variation from these terms and conditions shall only be valid if we confirm such in writing. Any terms and conditions of business of the customer not acknowledged by us shall not be binding upon us, even if we have not expressly opposed them.
2. These Terms and Conditions shall also apply to future contracts, even if the application hereof has not been expressly agreed again. Any variation from these Terms and Conditions shall require the prior written approval of the validity thereof with respect to each specific contract.
3. In the terms of these Terms and Conditions, the written form shall be respected by e-mail and faxed letters.

## II.

### Offers, Cost Estimates, Scope of Delivery

1. Our offers and price quotes contained in catalogues, advertisements and other advertising material shall be subject to change. The validity of verbal and telephone arrangements must be confirmed in writing by us.
2. The documents, graphics, drawings, samples, weights and measures and any information in brochures supporting our offers shall only apply as approximations, unless we have expressly designated them as binding. We hereby reserve the title and copyrights to samples, cost estimates, drawings and other documents. Such documentation may not be made available to third parties without our approval.
3. Cost estimates are to be compensated by the customer.
4. The scope of the delivery shall be determined in accordance with our written order confirmation. If no written order confirmation is presented, our offer shall be decisive. Any collateral arrangements and modifications must be confirmed in writing by us.
5. We are entitled to accept orders by customers within 14 days upon receipt of the offer.

## III.

### Delivery Period

1. The delivery period shall be non-binding, unless a fixed deadline designated as such is expressly agreed in writing.
2. Decisive shall be the periods mentioned in our order confirmations or otherwise agreed with the customer. Compliance with these periods shall require the timely receipt of all documents to be provided by the customer and the observance of the agreed terms and conditions of payment and other obligations. If these prerequisites are not fulfilled in due time, the delivery period shall be extended by the duration of the delay.
3. Partial deliveries shall be permitted to a degree reasonable for the customer. In the case of reasonable partial deliveries, we shall be entitled to bill them separately. This shall apply particularly if the customer prescribes the scope of delivery or the time of the pickup for the deliveries we declare to be ready for shipping.
4. If we are hindered in the performance of our obligations through the occurrence of unforeseen extraordinary circumstances that we cannot avert despite reasonable diligence in accordance with the circumstances of the case, irrespective whether such circumstances occur in our works or at our preliminary suppliers (e.g. operational interruptions, administrative intervention, delays in the delivery of material raw materials and supplies), if the delivery or performance is not impossible, the delivery date shall be extended by the length of the hindrance. If the delivery or performance becomes impossible due to the aforementioned circumstances, we shall be free of our delivery obligation. Even in the event of strike or lock-out, the delivery period shall be reasonably extended. If the delivery or performance becomes impossible, we shall be free of the delivery obligation. If the delivery period is prolonged in the aforementioned causes by more than one month, the customer shall be entitled to rescind the contract. The assertion of damage compensation claims (particularly those for lost profit) shall be excluded hereby.
5. If the aforementioned circumstances occur at the customer, the same legal consequences shall apply to the customer's acceptance obligation. We may only invoke the circumstances mentioned in Paragraph 4 if we inform the customer without delay.
6. If the shipping or delivery is delayed at the customer's request, we may charge storage fees of one percent of the net invoice amount for each instigated month starting one month after notice of the completion or readiness for delivery. The storage fees shall be limited to five (5) percent of the net invoice amount, unless we document higher costs.
7. If an acceptance date is agreed with the customer for delivery and such date is not kept due to reasons for which we are not responsible, we shall be entitled to invoice the goods prior to the delivery. This invoice shall then be due within 10 days after the invoice date.
8. The delivery period shall be considered as observed if the object is shipped or picked up ready for operation within this period. If the pickup is delayed due to reasons for which the customer is responsible, the period shall be considered as observed if the completion or readiness for shipping is notified within the agreed period.

## IV.

### Prices and Terms and Conditions of Payment

1. Prices shall be considered *ex works* in Germany (Incoterms 2000) and shall not include packing or the value-added tax applicable on the invoice date. We hereby reserve the right to change our prices accordingly if cost increases occur after the conclusion of the contract, particularly based on collective agreements or material price increases. We shall document such increases to the customer upon request.
2. All payments are to be rendered in cash, through bank remittance or by check. Payment with bills of exchange and changes shall be made on account of performance. If bills of exchange are accepted which are to be paid abroad or in ancillary places, we shall not assume any liability for the timely presentation or filing of protests. Discount fees shall be charged from the due date of the invoice amount. If the customer negligently fails to meet its payment obligations (e.g. fails to redeem checks or bills of exchange or suspends payments), we shall be entitled to call due the total residual debt, even if we accepted the checks or

bills of exchange. Moreover, we shall have the right to request advance payments.

3. Set-offs with counterclaims or the assertion of retention rights shall only be permissible if the claims of the customer are undisputed or recognized by non-appealable judgment. The customer may only exercise a retention right if its counterclaim is based on the same contractual relation.
4. If, after the conclusion of the contract, it becomes evident that our claim to payment is jeopardized by insolvency on the part of the customer, we may refuse the performance incumbent on us and set the customer a deadline for payment consecutive to the performance of posting of a bond. In the event the deadline expires unproductively, we shall be entitled to rescind the contract and demand damage compensation. No deadline need be set if the customer seriously and definitively refuses payment or if special circumstances exist justifying our immediate rescission with due regard to interests of both parties.
5. The term for the SEPA Pre-Notification is reduced to 2 days and therefore deviates from the statutory period.

## V.

### Retention of Title

1. The delivered goods shall remain our property until the full payment of the agreed price and all claims from the business relation and future claims or until the redemption of bills of exchange or checks. If a current account relation exists between us and the customer, the title retention shall secure the balance claim.
2. If the customer pays by check and we issue the customer a bill of exchange for refinancing purposes, the title retention shall first expire when recourse can no longer be taken to us based on the bill of exchange.
3. The customer may resell the goods in the ordinary course of business. The customer hereby assigns to us in advance its claims from the resale of the retained goods, particularly the payment claim against its buyers. We hereby accept such assignment. The customer shall be obligated to notify its debtors of the assignment at our request. We must be informed of the claims and names of the customer's debtors.
4. The customer shall be entitled to collect claims based on the resale. In the event of default in payment or if we become aware of circumstances suited in our commercial assessment to reduce the customer's creditworthiness, we shall be entitled to revoke the collection right.
5. The retained goods shall be processed for us as producer in the terms of § 950 of the Civil Code. If the retained goods are processed or combined with other objects that do not belong to us, we shall acquire the co-title to the new thing in the ratio of the net invoice value of the retained good to the net invoice value of the other goods used as of the date of the processing or combination.
6. No chattel mortgages may be issued on goods to which we hold title. In the event of recourse by third parties to retained goods, particularly attachments, the customer shall point out our title to the goods and notify us without delay, sending a copy of the attachment record.
7. We shall be entitled to rescind the contract in the event of conduct on the part of the customer in breach of contract and to demand the surrender of the delivered goods. Any damage compensation claims shall not be prejudiced hereby. In the event of insolvency on the part of the customer, we may revoke the authority to sell and process goods.
8. If the realizable value of the securities granted exceeds our total claims against the Customer by more than 20%, we shall be obligated and ready at the customer's request to retransfer or release securities of our choice.

## VI.

### Rights of Customer in Event of Defects

1. We hereby assign our claims against suppliers of material third-party products to the customer. The customer may only take recourse to us due to these defects if prior recourse against the third-party suppliers fails before the courts. If the third-party supplier has its registered office abroad, prior out-of-court recourse shall be sufficient. The customer shall be obligated to notify us of such recourse by our suppliers and to keep us informed about the negotiations upon request on an ongoing basis.
2. If the purchase is a commercial transaction for the customer, defects must be notified to us in writing without delay or, at the latest, within one week after receipt of the goods. Defects that cannot be discovered upon diligent inspection within this period must be reported by the customer immediately after their detection in the form mentioned above.
3. In the event of legitimate defect claims, we shall have the right, at our choice, to carry out a subsequent improvement or to supply a replacement within a reasonable period of at least 14 days. If the subsequent improvement fails, the customer may rescind the contract provided the breach of contract is not merely minor. In addition, the customer shall be entitled, if relevant, to demand damage compensation or reimbursement of expenses. The right of the customer to undertake the work itself pursuant to § 637 of the Civil Code shall not be prejudiced hereby. The subsequent performance claim shall be triggered separately for each defect. No right of the customer to a reduction of the purchase price shall exist in the event of minor defects.
4. Claims of the customer due to the expenses necessary for the subsequent performance, particularly transport, carriage, work and material costs, shall be excluded, if the expenses increase because the delivered object was subsequently transported by the customer or a third party to location different from the place of delivery, unless the transport is in keeping with the intended use of the delivered object or was agreed with us when concluding the contract.
5. Defect claims of the customer shall lapse after 12 months. This shall not apply if the law in §§ 438(1)2, 479(1) and 634a(1)2 of the Civil Code prescribes longer periods, namely for construction work and things for construction, recourse claims and construction defects.
6. Damage compensation claims due to material defects shall be limited as follows: We shall not be liable in the event of a slightly negligent breach of non-material contractual duties.

Our liability for consequential damage from defects shall be excluded except in the case of damage caused intentionally or due to gross negligence or breach of material contractual duties. If we are liable for consequential damage due to defects, the liability shall be limited to foreseeable damage not attributable to extraordinary circumstances. Claims of the customer based on injury to the life, limb or health of the customer or its vicarious agents ascribable to us shall not be restricted by the above limitation of liability. Claims of the customer based on the Product Liability Act and claims in the event of a guarantee given by us and in the event of the malicious concealment of a defect shall also not be prejudiced hereby.

## VII.

### Limitations of Liability, Damage Compensation

1. We are not liable in respect to acts of ordinary negligence concerning non-primary obligations of our executive bodies, legal representatives, employees or other persons employed in performing an obligation.
2. Our liability for consequential damage from defects shall be excluded except in the case of damage caused intentionally or due to gross negligence or breach of material contractual duties. If we are liable for consequential damage due to defects, the liability shall be limited to foreseeable damage not attributable to extraordinary circumstances.
3. Claims of the customer based on product liability or injury to the life, limb or health of the customer or its vicarious agents ascribable to us shall not be prejudiced hereby. Such claims shall not be affected by the above limitation of liability.
4. The reduction of the liability provision pursuant to Section VI.5 shall not apply if we can be ascribed gross negligence or in the case of injury to the life, limb or health of the customer or its vicarious agents ascribable to us.
5. We shall bear the burden of proving the facts establishing a limitation or exclusion of liability.
6. Non-primary obligations are obligations to deliver the goods timely, the freedom from defects that harm the functionality or usability more than insignificantly, as well as obligations concerning consulting, protection and custody that shall entitle the customer to use the goods according to the contract.
7. The foregoing limitation of liability and other limitations apply equally in favor of our executive bodies, legal representatives, employees and other persons employed in performing an obligation.

## VIII.

### Information and Advice

All verbal and written information about the suitability and application options of our goods are provided to our best knowledge. However, we are merely presenting our experience and not issuing any warranties. Claims against us in this regard shall be excluded hereby. The customer shall remain obligated to satisfy itself by inspection of the suitability of the goods for the application purposes foreseen by it.

## IX.

### International Business Transactions

1. If the customer has its registered office outside Germany or if we supply a foreign establishment of the customer, the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall apply in addition to these Terms and Conditions. Legal issues not regulated in the CISG shall be determined in accordance with the German law.
2. The CISG shall be modified as follows:
  - a) We shall owe replacement deliveries pursuant to Article 46 of the CISG only if the breach of contract associated with the delivered object constitutes a material breach of contract.
  - b) Early deliveries shall be possible contrary to Article 52 of the CISG.
  - c) If interest is owed pursuant to Article 78 of the CISG, the amount shall be determined in accordance with the interest rate applicable in Germany, which amounts to 8% above the base interest rate pursuant to § 247 of the Civil Code.

## X.

### Place of Performance and Jurisdiction

1. Bielefeld shall be the place of performance for all obligations from the contractual relation.
2. Bielefeld shall be the place of jurisdiction for all disputes arising from the contractual relation provided the customer is a merchant, a legal person in public law or a public-law fund. We shall be free, however, to appeal to the court competent for the customer's registered office.
3. Exclusively German law shall apply.

## XI.

### Data Protection

We are entitled to store, transmit, modify and delete personal data of the customer. The customer hereby is informed that we process data pursuant to the contractual relationship according to § 26 BDSG as described above. We reserve our right, to transfer the data necessary for the performance of the contractual obligations to third parties, for example an insurance company.