

General Terms and Conditions of Supply of Ondal Medical Systems GmbH

1. General

- 1.1 These General Terms and Conditions (hereinafter: these “**Terms**”) set forth the rights and obligations for the delivery of objects (e.g. products, devices, overall systems; hereinafter: the “**Deliveries**”) by Ondal Medical Systems GmbH (“**ONDAL**”), Wellstraße 6, 36088 Hünfeld, Germany (Local Court Fulda, HRB 3331) to businesses, legal persons of public law or public-law special funds (hereinafter: the “**Customer**”).
- 1.2 These Terms are part of the contract which is brought about through ONDAL’s order confirmation following placement of the order by the Customer.
- 1.3 In case of any inconsistencies between the Terms of the order confirmation and these Terms, the Terms of the order confirmation shall prevail. Any deviating or supplementary contract terms of the Customer shall be excluded and shall not apply even if ONDAL does not specifically object to them.

2. Offers; performance descriptions

- 2.1 Our offers with respect to prices, quantities, delivery periods and delivery possibilities shall be non-committal until confirmed in our order confirmation.
- 2.2 Illustrations, drawings, weight indications, performance descriptions in brochures, cost estimates and data sheets, etc. (the “**Documents**”) are not guarantees within the meaning of § 443 BGB [German Civil Code], but performance descriptions. ONDAL reserves the right even after confirmation of the order to make alterations which are caused and justified by advances meanwhile occurred. Without the prior written approval of ONDAL the Customer shall not be entitled to reproduce, copy, provide to third parties or otherwise disclose Documents or use Documents in a manner which runs counter to ONDAL’s interests. If the order is not placed with ONDAL, the Documents shall be returned to ONDAL immediately upon request.

3. Placing of orders

- 3.1 Any orders placed shall not be binding on us unless they have been placed in writing or by electronic means and have been confirmed by us by order confirmation. The order confirmation may also be provided by way of delivery or simultaneously with the delivery.
- 3.2 Order changes, above all changes to ordered quantities, shall not be admissible where delivery dates are already confirmed in the running calendar month of the original placement of the order. In case of order cancellations, generally all materials procured for performance of the confirmed and cancelled order, including procurement and financing expenses, shall be assumed by the Customer. If confirmed dates for orders are deferred for more than three (3) calendar months, any additional storage, insurance and financing costs thereby incurred shall be assumed by the Customer.

4. Prices

- 4.1 Our prices are shown net EX WORKS Hünfeld (INCOTERMS 2010) unless provided otherwise in these Terms. If a quantity discount is granted, such discount applies to the completed acceptance of an order to a single recipient address. In case of call orders, the prices applicable on the day of delivery shall be calculated unless any other agreements have been made.
- 4.2 The prices are stated in EUR (€), plus statutory VAT, if any. To be added are all taxes, customs duties or charges which may be applicable even under the provisions of any law other than the law to be applied in accordance with these Terms. Disposable packaging and transport packaging is included in the price and will not be credited in case of returns; reusable packaging, such as pallets, is only provided on a loan basis. If no specific shipping route or type of shipping has been agreed, we reserve the right to choose the least expensive solution. Special packaging requested by the Customer will be charged separately.
- 4.3 The prices reflect the cost situation of ONDAL at the time of conclusion of the contract. If any changes to costs should occur up to the day of delivery, ONDAL reserves the right to adjust the prices if the Deliveries and/or performance of the services are to take place later than four (4) months after conclusion of the contract.

5. Delivery

- 5.1 Delivery periods are always non-binding unless we have expressly declared that they are binding.
- 5.2 Compliance with the delivery periods requires the receipt in good time of all documents and supplies to be provided by the Customer as well as satisfaction of any other obligations.
- 5.3 Partial deliveries are permissible.

- 5.4 If ONDAL satisfies its obligations in accordance with the INCOTERMS applicable according to No. 4.1 above, the periods will be deemed satisfied.
- 5.5 If the failure to satisfy the periods for Deliveries is due to force majeure, e.g. mobilisation, war, riot or similar events, such as strike, lockout or the occurrence of any other unforeseeable impediments, the periods will be extended correspondingly, plus a reasonable restart period. The events of force majeure shall also include all sovereign acts, such as the refusal to issue a required governmental permit despite proper application, transport restrictions, and restrictions of energy consumption, but also any general shortage of raw materials and supply goods, as well as any other reasons such as the non-supply or late supply by suppliers, for which ONDAL is not responsible.
- 5.6 Any claims of the Customer to compensation for the damage due to the delay of the delivery and/or service as well as any further claims for damage are subject to the limitations of No. 12 of these Terms.
- 5.7 At ONDAL's request, the Customer shall be obliged to state within a reasonable period whether, due to the delay of the Deliveries and/or services, it rescinds the contract and/or demands damages instead of performance or damages in addition to performance or insists on the delivery and/or services. Claims based on delay shall become statute-barred six (6) months after their accrual and knowledge or grossly negligent lack of knowledge of the Customer.

6. Acceptance; passing of risk

- 6.1 If acceptance has been agreed and ONDAL demands acceptance of the contractually agreed Deliveries following completion, the Customer shall accept them without undue delay, however no later than within two (2) weeks. If the Customer fails to effect acceptance in time or unjustifiably refuses acceptance, acceptance shall be deemed to have taken place. Acceptance shall likewise be deemed to have taken place if the Deliveries – as applicable, after completion of an agreed trial phase – have been put to use.
- 6.2 Risk shall pass to the Customer
 - (i) in accordance with the INCOTERMS applicable according to No. 4.1, or
 - (ii) for the period of time by which the shipment, delivery, the beginning or performance of the contractual services is delayed at the Customer's request or for reasons within the Customer's responsibility (default in acceptance). ONDAL is prepared, however, to take the security measures requested by the Customer, at the Customer's cost.

7. Payment

- 7.1 Our invoices are payable net within thirty (30) days following the invoice date, without any deductions or as agreed. In the event of payment default, we reserve the right to charge interest of 8% p.a. above the base interest rate.
- 7.2 The Customer is expressly advised that it will be in default of payment at the latest if it has not effected payment within 30 days after the due date and receipt of an invoice.
- 7.3 If the Customer is in default of payment or if it has discontinued its payments or if circumstances arise which are tantamount to discontinuance of payment, we will be entitled to demand advance payment or provision of security or suspend delivery.
- 7.4 The Customer may set off or assert a right of retention only with respect to such claims that are uncontested or have been established with non-appealable effects. Any right of retention of the Customer based on counterclaims which are contested or have not been established with non-appealable effect under any other contractual relationships shall be excluded. The Customer may assert a right of retention only with respect to claims which result from the same contract as the corresponding counterclaim of ONDAL.

8. Retention of title

- 8.1 The delivered objects (hereinafter: "**Reserved Goods** ") remain the property of ONDAL until satisfaction of all claims and receivables which ONDAL has against the Customer under the business relationship (including any current account receivables), insofar as this is permissible under the laws of the country in whose territory the Reserved Goods are located in accordance with the contract. If such law does not allow retention of title to the Reserved Goods, but permits retention of similar rights, ONDAL shall be entitled to claim such rights. The Customer agrees to support all actions taken to protect the ownership or security interests in the Reserved Goods.
- 8.2 Insofar as ONDAL's ownership of the Reserved Goods is diluted through connection with another object, ONDAL acquires co-ownership of the new item at the ratio the value of the Reserved Goods connected (final invoice amount inclusive of VAT) bears to the other connected objects at the time of the connection. If the Reserved Goods are connected such that the item of the Customer has to be considered the main item, ONDAL and the Customer hereby agree that the Customer assigns to ONDAL proportional co-ownership of such item. ONDAL hereby accepts such assignment. Any costs incurred by ONDAL in enforcing the claims as co-owner shall be borne by the Customer.

- 8.3 If the value of all security rights owing to ONDAL under this No. 8 exceeds the amount of all secured claims and receivables by more than ten percent (10%), ONDAL will, at the Customer's request, release a corresponding part of the security rights to the Reserved Goods; ONDAL may choose the Reserved Goods to be released, however.
- 8.4 The Customer shall have the right to resell the Reserved Goods in the ordinary course of business. The Customer hereby assigns to ONDAL its claims from the resale of the Reserved Goods, together with all ancillary rights, as well as those claims of the Customer relating to the Reserved Goods which arise on any other legal ground against its customers or third parties (above all, claims based on tort and claims to insurance benefits), including any and all current account receivables, in the amount of the claims and receivables due to ONDAL. ONDAL hereby accepts such assignment.
- 8.5 The Customer shall be authorised to collect the assigned claims, as long as it meets its payment obligations vis-à-vis ONDAL. In case of the Customer's delay in payment, ONDAL may revoke this authorisation to collect. The Customer may not, however, assign such claims in order to have them collected by way of factoring, unless the Customer irrevocably obliges the factor to effect consideration directly to ONDAL as long as ONDAL still has claims against the Customer.
- 8.6 In case of any attachments, seizures or other dispositions or interventions by third parties, the Customer shall notify ONDAL without undue delay. If the third party is unable to reimburse ONDAL for its court or out-of-court costs incurred in this connection, the Customer shall be responsible therefore.
- 8.7 In case of the Customer's breaches of duty, above all payment default, ONDAL shall be entitled to rescission and repurchase; the Customer shall be obligated to return the goods.

9. Liability for material defects

- 9.1 If any Deliveries show a material defect, ONDAL may choose to rectify the defect, make new delivery or render new services (hereinafter: "**subsequent performance**") if the cause of such defect existed already at the time of the passing of risk according to No. 6.2 above.
- 9.2 Claims of the Customer based on material defects become statute-barred twenty-four (24) months calculated from the date of acceptance or delivery pursuant to No. 6.1 or 6.2. This will not apply in cases of intent, fraudulent concealment of the defect or failure to comply with a guarantee of quality.
- 9.3 The Customer shall notify any material defect to ONDAL without undue delay by detailed written notice. If the notice of defect was unjustified, ONDAL may demand reimbursement from the Customer of the expenses incurred by ONDAL.
- 9.4 ONDAL shall always be given the opportunity to render subsequent performance twice within a reasonable period set to it. If such subsequent performance fails, the Customer may, notwithstanding any claims to damages, rescind the contract or reduce the compensation.
- 9.5 No claims based on material defects shall exist in case of only insignificant deviations from the agreed quality and/or only insignificant impairment of the usability.
Also, no claims based on material defects will exist in case of damage arising following passing of the risk (e.g. due to defective or negligent treatment, excessive strain, unsuitable equipment, defective processing) or due to usual wear and tear of the items.
Furthermore, the Customer will not be entitled to claims based on material defects for any damage caused through particular external – such as chemical, electrochemical, electrical and atmospheric – influences following passing of the risk which are not provided for under the contract.
If any changes or repairs are performed by the Customer or by third parties, no claims based on material defects shall arise from these and from the resulting consequences either.
- 9.6 Any expenses required for the purposes of subsequent performance – above all, transportation, infrastructure, labour and material costs – will be borne by ONDAL only to the extent that the supplied object has not, contrary to its designated use, been transferred to a place other than the place of delivery. If the object, in accordance with its designated use, has been transferred to a place other than the place of delivery, ONDAL will bear only such expenses which would have incurred if the Customer had not so transferred the objects; in such case, any additional costs of the subsequent performance caused by such transfer shall be borne by the Customer. Any costs incurred for dismantling and installation of goods and the costs for sending the goods to us shall be borne by the Customer.
- 9.7 Any additional claims based on material defects shall be excluded.

10. Returns

Goods with respect to which a notice of defect has been provided may be returned to us only with our express agreement. In case of unrequested returns, we will be entitled to refuse acceptance of the goods and return them at the sender's expense. The Customer shall be responsible for the costs for packaging, freight and repairs in the event of repairs conducted after expiry of the deadline specified in No. 9.2 and which are not covered by a specifically agreed warranty.

11. Liability for defects of title/infringement of industrial property rights

- 11.1 ONDAL shall be obligated to perform the Deliveries free from defects of title, e.g. industrial property rights and copyrights of third parties (hereinafter: “**Property Rights**”), only in the country of the place of destination. If a third party makes justified claims against the Customer on the basis of the infringement of Property Rights through Deliveries performed by ONDAL and used in accordance with the contract, ONDAL shall be liable to the Customer within the period specified below as follows:
- (i) At its choice and cost ONDAL will either obtain utilisation rights for the concerned Deliveries, change the Deliveries such that no Property Rights are infringed, or replace them.
 - (ii) If this is not possible for ONDAL on reasonable conditions, the Customer shall be entitled to the statutory rights of rescission or reduction of the purchase price as well as to damages in accordance with No. 12 above.
- The aforesaid obligations of ONDAL apply only if the Customer notifies ONDAL of the claims raised by the third party immediately in writing, does not acknowledge any infringement and if ONDAL retains all rights to take defence actions and conduct settlement negotiations. If the Customer ceases to use the Deliveries or services on the ground of claims being raised by third parties, the Customer shall make sure – such as by specific notice to the third party – that its cessation of use does not mean an acknowledgement of any Property Rights infringement.
- 11.2 Claims of the Customer on the ground of defects of title shall be excluded insofar as the Customer is responsible for the Property Rights infringement.
- 11.3 Claims of the Customer shall be excluded insofar as the Property Rights infringement is caused by special requirements of the Customer, any use which was not foreseeable for ONDAL or by the fact that the Deliveries and/or services are altered by the Customer or used together with products other than those supplied by ONDAL.
- 11.4 Any additional claims based on defects of title shall be excluded.

12. Liability

- 12.1 ONDAL shall be liable without limitation for damage caused with intent, for written guarantees as well as in case of culpable violation of life, body and health. The liability in accordance with the mandatory provisions of product liability laws shall remain unaffected.
- 12.2 Otherwise, ONDAL’s liability vis-à-vis the Customer – no matter on what legal basis, including default (No. 5.4) – shall be limited to a total of fifteen percent (15%) of the agreed compensation.
- 12.3 Notwithstanding the liability according to No. 12.1 and No. 5.6, ONDAL shall not be liable for financial loss or consequential loss, for damage due to lost profit, loss of production, interruption of operations, contractual claims of third parties, lost use, financing expenses, interest loss and claims from a purchase of replacement goods, as well as loss of data, information and programmes.
- 12.4 Subject to the mandatory liability provided by law (No. 12.1), the period of limitation of any liability claims shall be twelve (12) months from accrual and knowledge or grossly negligent lack of knowledge of the Customer. No. 9.2 remains unaffected thereby.
- 12.5 Any additional liability of ONDAL shall be excluded.

13. Applicable law / jurisdiction

- 13.1 The contractual relations between ONDAL and the Customer shall be governed exclusively by German law, excluding any conflict of law regulations. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) shall be excluded.
- 13.2 The courts of Fulda shall have exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship if the customer is a business, a legal person of public law or a public-law special fund. ONDAL shall also be entitled, however, to sue the Customer at its seat.

Managing Directors: Bernd Fabian (CEO), Dr. Markus Schneider (CFO)
Commercial Register Local Court Fulda HRB 3331
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