

## GENERAL TERMS AND CONDITIONS OF LUMED GMBH

### 1. CONCLUSION AND CONTENTS OF CONTRACT

#### 1.1.

All deliveries, services and offers, production and distribution of ophthalmic-surgical products (Phaco-Handpieces, e.g.) and the accessories of LUMed GmbH (in the following named „LUMed“) are subject to these terms and conditions.

Deviating and/or supplementary agreements require the express agreement of LUMed. LUMed expressly contradicts the terms of business and conditions of purchase of the customer. They only become contents of contract if LUMed declares its agreement expressly and in writing.

#### 1.2.

Offers of LUMed are in principle non-binding and without obligation up to conclusion of contract. The customer is bound to his order for 8 weeks starting from receipt of order at LUMed. A contract is concluded, if LUMed confirms the acceptance of the order in writing within this period or delivers the goods.

#### 1.3.

In the interests of a technical and medical advancement LUMed reserves the right to make changes to construction and design also after order acceptance as far as this is reasonable for the customer.

### 2. PRIZES

#### 2.1.

At the time of the conclusion of contract the ruling prizes are valid. All earlier list prizes lose their validity also without special announcement and/or report. The prizes are valid from stock. Freight, postage, packing and insurance, also at partial deliveries, are charged separately. The prices are to be understood in € plus the VAT, currently in force.

### 3. PAYMENT/DELAY OF PAYMENT/TRANSFER

#### 3.1.

All payments have to be settled within 10 days from date of invoice – without deduction, except otherwise stipulated expressly. In the case of foreign businesses and first-time deliveries LUMed is entitled to ask for payment in advance.

#### 3.2.

Payment orders, checks and bills will be only accepted according to special agreement and on account of payment with invoicing all collection and discount charges. In the case of payment orders the payment takes place with the credit note of the value on the account of LUMed, in the case of checks and bills with respective redemption.

**3.3.**

With delay of payment default interest are charged in the amount of 10% per annum above basic rate of interest, in each case plus the VAT, currently in force. They are to be set higher or lower, if LUMed accounts for a higher or the customer for a lower debit.

**3.4.**

If the customer is in arrears with payments, also all other claims of LUMed become, independently of the respective due date, immediately due for payment. In addition LUMed is entitled to demand prepayment for deliveries not rendered yet.

**3.5.**

LUMed is entitled to charge to the customer's account, despite contrary terms of the customer, payments apriori on its older debts. If costs and interest have already accrued, then LUMed is entitled to count the payment at first to the costs, then to the interest and at last to the principal claim.

**3.6.**

The customer can charge against the claims of LUMed only if the counterclaim of the customer is undisputed or a valid legally enforceable instrument is present. The customer can only argue a right of retention, as far as the fronting claims arise from the same contractual relationship.

**3.7.**

LUMed is entitled to convey the claims of its business relations.

## **4. DELIVERY**

**4.1.**

LUMed is constantly seeking to adhere to deadlines confirmed in writing. In cases of possible missed deadlines an appropriate grace period for subsequent delivery is to be granted.

**4.2.**

Force majeure, turmoil, strike, lock-outs and breakdowns without one's fault, traffic disruptions as well as shortage of raw materials dispense from the compliance of agreed delivery dates.

**4.3.**

Part deliveries can be made and have to be accepted.

## **5. TRANSFER OF RISK/SHIPMENT**

**5.1.**

Place of fulfillment is the company headquarters of LUMed. The customer is entitled to examine the contractual item within eight days after receipt of a notification of provision at the agreed place of taking in charge and he has the duty to accept the contractual item within this period.

**5.2.**

If the contractual item is delivered at the customer's request to another place than the headquarters of LUMed, the transfer of risk takes place as soon as the contractual item is released to the haulage firm and has left the warehouse of LUMed. This takes effect even if LUMed has borne the haulage. The conclusion of a transport or any other insurance is left to the customer.

**5.3.**

Delivery is considered as made, if the customer defaults the acceptance.

**5.4.**

If the customer does not accept the contractual item within 14 days after having received the notification of provision, LUMed is entitled to set a final deadline in writing of 14 days with the declaration that after this period the acceptance will be refused.

After the unsuccessful expiration of the grace period LUMed is entitled to rescind the contract by a written declaration or to claim damages due to breach of contract.

The grace period is not necessary if the customer refuses acceptance seriously and definitively or evidently isn't able to pay the contract prize.

**5.5.**

If LUMed claims damages it accounts for 25 % of the contract prize. The amount of damage has to be estimated higher or lower, if LUMed proves a higher or the customer proves a lower damage.

If LUMed does not exercise the rights according to subparagraph 5.4 and 5.5, LUMed is allowed to dispose of the contractual item freely and instead of it deliver an equal contractual item according to the terms of contract.

**5.6.**

LUMed charges a shipping costs lump sum for freight and packing, depending on size, weight and shipping method.

## **6. REPAIRS AND SERVICES**

**6.1.**

Repairs and services are done after confirmed quotation.

## **7. WARRANTY/REDEMPTION OF GOODS**

**7.1.**

Objections due to defects, wrong deliveries and/or quantity deviations, as far as it involves obvious defects of the delivered goods, have to be advised immediately to LUMed in writing or at the latest within one week after receipt of goods.

If such a defect appears later, the advice has to be made immediately, at the latest within one week after discovery. In case of default of the aforementioned periods the goods are considered as approved and warranty claims are excluded. In this case the onus lies with the customer, for all conditions of entitlement, especially for the defect itself, for the time of discovery of the defect and for the timeliness of the notice of defects.

## **7.2.**

If a defect of the purchased item is present, the customer is entitled to claim remedy of the defect or compensation delivery (supplementary performance). LUMed will bear all necessary expenditures for the purposes of supplementary performance, in particular haulage, labor and material costs.

LUMed can refuse the way of supplementary performance chosen by the customer without prejudice to § 275 section 2 and 3 BGB, if it is only possible with disproportional high costs.

In this case the customer's claim is limited to the other type of supplementary performance.

The right of LUMed to also refuse the supplementary performance under these prerequisites due to disproportional high costs remains unaffected.

If the supplementary performance fails or if LUMed is not willing or able for it, the customer can rescind the contract or reduce the purchase price. The supplementary performance is considered as failed after the unsuccessful second attempt, if not something different arises out of especially the type of the object or the defect or other circumstances. In the case of only a minor contravention of contract, especially only minor deficiencies, the customer however has not the right to withdraw from the contract. In case of the withdrawal due to defect of title or defect as to quality, no claim for damages is due to the customer besides because of the defect.

Seller's warranties do not exist if the occurred defects casually relate to that the customer had not announced a defect according to subparagraph 7.1. and gave immediately the opportunity for a supplementary performance, or the contractual item was treated inappropriately or was overused, operating and maintenance instructions by LUMed were not followed by the customer, or the contractual item was repaired or maintained before in another enterprise than LUMed or authorized by LUMed, or parts were installed into the contractual item, or parts or accessories were used with the contractual item, whose use LUMed had not approved, or the contractual item was changed by the customer in any other way that was not authorized by LUMed.

Natural wear of the object of purchase is excluded from the warranty. Guarantee undertakings only have effectiveness if they are agreed in writing or were confirmed in writing by LUMed. Conversion rights are excluded in principle. If in individual cases an exchange or redemption takes place, it is only valid for new and originally packed goods. Products which do not belong any longer to the product portfolio of LUMed, or products which have been produced especially according to the customer's request or sterile products will not be taken back also in exceptional cases.

## **8. RETENTION OF TITLE**

### **8.1.**

The goods remain up to the full payment of the purchase price and redemption of all outstanding debits accrued from the business contact property of LUMed.

### **8.2.**

During the duration of the retention of title the customer is entitled to possess and to use the contractual item, as long as he meets his obligations from the retention of title and his obligations from the business conditions in due time.

**8.3.**

The customer is entitled to resale or further processing of the goods subject to retention of title in the duly business against immediate payment or under retention of title.

**8.4.**

As long as the retention of title exists, a pledge, chattel mortgage, leasing or other, the security of LUMed affecting, surrender of goods as well as their modification is only allowed with a previous approval in writing by LUMed, as far as this is permitted to the customer according to subparagraph 8.3. . A processing or a modification of the contractual item by the customer is always made for LUMed. If the contractual item is processed with other items not belonging to LUMed, then LUMed acquires the co-property in the new object proportional of the value of the contractual item to the other processed items at the time of the processing. If the contractual item is blended with other items not belonging to LUMed, then LUMed acquires the co-property in the new object proportional of the value of the contractual item to the other blended item at the time of the blending. If the item of the customer is to be regarded as the main item, then the customer has transferred proportionally co-property to LUMed. The customer keeps the item safe for LUMed, free of charge.

**8.5**

The customer assigns his claim from the resale respectively further processing of the goods subject to retention of title with all ancillary rights against the garnishee up to the amount of the invoice with the authority of the collection of the claim and already now preventively to LUMed. LUMed accepts the assignment already now. If the amount of the hedge is more than 20 % higher than the claim of LUMed, LUMed will release the hedge on request of the customer of own choice. The customer is entitled until cancelled to collect the claim assigned to LUMed; this takes place only on trust and for account of LUMed. The collected proceeds are due to LUMed and have to be delivered to LUMed. On request of LUMed the customer is committed to announce the assignment to the third party and to provide information necessary for the enforcement of the rights of LUMed against the third party. The direct debit authority can only be revoked, if the conditional purchaser does not meet his payment commitments against LUMed duly. And only under this precondition LUMed can demand of the customer to reveal the assignment to the third party.

**8.6.**

The customer has to inform LUMed immediately about the access to and any impairment of the rights of LUMed through third parties concerning the goods subject to retention of title or the claims assigned to LUMed and to support LUMed in each way with the intervention.

**8.7.**

The customer bears the costs for preservation and indemnity of the property of LUMed.

**8.8.**

The redemption of goods subject to retention of title by LUMed is no withdrawal from the contract.

## 9. LIABILITY

### 9.1.

The liability of LUMed is limited in principle to intent and gross negligence. This is not valid for the liability for damages from injury of life, body or health and not for the liability for the violation of fundamental contractual obligations. In these cases LUMed is also liable for ordinary negligence. Further the regulations of the product liability law remain unaffected.

### 9.2.

Compensation claims of the customer due to a defect lapse after one year starting from delivery of goods. This is not valid, if LUMed can be accused of fraud.

### 9.3.

The rights of the customer from warranties according to subparagraph 7 remain unaffected.

### 9.4.

The claims due to delay in delivery are finally regulated in subparagraph 4.

## 10. SECRECY PROTECTION OF TRADEMARKS

### 10.1.

Offer documents, sales records and other documents including pictures, audio and other media may not be delivered to third parties without permission of LUMed, neither in the original nor as a copy and they may not be used in a way damaging the interests of LUMed. Furthermore the conceded conditions of the quotation of LUMed, especially the prices, may not be passed on to third parties neither in written nor oral form.

### 10.2.

The customer is not allowed to use or to make use of in any way the name "LUMed", the brand "LUMed", logos or any other signs or labels of LUMed, without written permission of LUMed.

## 11. WITHDRAWAL

### 11.1.

Up to the dispatch of the goods LUMed is entitled to withdraw from the contract if the customer behaves to a not inconsiderable extent contrary to contract, his financial situation aggravates considerably or as long as the underlying conditions of contract change considerably.

## 12. PLACE OF FULFILLMENT, PLACE OF JURISDICTION, APPLICABLE LAW

### 12.1.

The contracting parties stipulate the place of residence of LUMed as place of jurisdiction and place of fulfillment.

### 12.2.

For the legal relationship between LUMed and its customers the law of the Federal Republic of Germany applies exclusively.

## 13. FINAL PROVISIONS

### 13.1.

LUMed is entitled to process data on the customer, concerning the business relations or connected with them, no matter if these come from the customer or from third parties, observing the regulations of the Federal Data Protection Act.

### 13.2.

The ineffectiveness of single points of the contract with the customer does not affect the effectiveness of the remaining regulations. The effective regulation which comes closest to the economic impact of the ineffective regulation supersedes the ineffective regulation.