

# **GENERAL TERMS AND CONDITIONS**

## **of the company waveguide medical systems GmbH (hereinafter "waveguide") for Austria & Switzerland**

### **1. General provisions, validity:**

These General Terms and Conditions (hereinafter referred to as GTC) apply in principle to all legal transactions concluded by waveguide with entrepreneurs, self-employed persons / members of the liberal professions and legal entities under public law.

Other purchase and/or other terms and conditions of the customer shall have no validity; we hereby expressly object to these with reference to the fact that we expressly contract only on the basis of our own GTC.

The customer declares that he was able to obtain knowledge of the content of these GTC before conclusion of the contract and that he expressly agrees with the content of these GTC.

### **2. Quotes:**

All quotes made by waveguide are subject to confirmation and non-binding.

Quote documents may not be passed on to third parties without the consent of waveguide.

Customer quotes and/or orders are accepted by waveguide either by written order confirmation and/or delivery of the goods ordered by the customer.

Cost estimates provided by waveguide are generally without guarantee of completeness and correctness.

### **3. Prices, payment:**

The prices stated in the quote and/or the subsequent written confirmation of order by waveguide are based on the costs at the time the first price quote was prepared. Waveguide is entitled to demand a higher remuneration than the offered and/or agreed remuneration or the purchase price if the calculation bases existing at the time of placing the order - the relevant date being that of the written order confirmation by waveguide - increase, in particular if raw material prices, exchange rates, personnel costs, etc. change after conclusion of the contract. In this case waveguide is entitled to adjust the prices accordingly.

All prices and fees are exclusive of the statutory value added tax applicable at the time. The prices apply ex works/warehouse of waveguide, whereby packaging, transport, loading and/or shipping costs as well as customs and insurance costs are borne by the customer. Packaging material will only be taken back by waveguide upon separate agreement.

All invoices are due for payment immediately and without deduction upon receipt. Deviations from this require our express written consent. In the event of default in payment, the respective statutory provisions shall apply.

### **4. Reservation of title and right of retention:**

All goods and products remain the property of waveguide until full payment by the customer, even if the items to be delivered or manufactured are resold, modified, processed or mixed.

The goods and products may not be pledged, assigned by way of security or otherwise encumbered with the rights of third parties until all waveguide's claims have been paid in full.

In the event of seizure or other claims by third parties against the customer, the customer is obliged to point out waveguide's ownership rights and to inform waveguide immediately of the initiation/implementation of such measures.

The customer hereby also assigns on account of payment all claims and rights to which he is entitled from the resale, processing, mixing or other utilisation of the goods and products of waveguide, whereby this assignment is to be noted accordingly in the customer's books and invoices until full payment of the remuneration and/or purchase price has been made and the customer's debtors are to be made aware of this assignment.

Waveguide has the right to retain its products and goods until all outstanding invoices have been settled in order to secure all claims arising from legal relationships with its customers.

In the case of deliveries abroad, the customer must inform waveguide of the measures to be taken there to secure the retention of title and the aforementioned rights of waveguide and carry these out at his own expense. If it is not legally possible to secure the retention of title and the aforementioned rights of waveguide in this form at the destination of the delivery, the customer must do everything necessary at his own expense to provide waveguide with comparable security rights to the delivery.

If the customer defaults on payment, waveguide is entitled to withdraw from the contract and take back the delivered goods after having unsuccessfully issued a warning to the customer and set a grace period for payment. The customer is obliged to surrender the goods, and further claims, in particular claims for damages, remain unaffected by this.

## **5. Delivery:**

Delivery/performance periods are generally non-binding unless they have been specified separately in writing either in the order confirmation or in an individual contractual agreement between the customer and waveguide.

Waveguide is entitled to carry out and invoice partial or advance deliveries.

Changes and/or additions to the order entitle waveguide to an appropriate extension of the delivery and service period.

Unforeseen circumstances or circumstances beyond the control of the parties, such as force majeure, which hinder compliance with the agreed delivery period, shall in any case extend the delivery period by the duration of such circumstances. These include, in particular, acts of war, official interventions and prohibitions, labour disputes, the loss of a major supplier who is very difficult to replace, obstruction of traffic routes, transport delays or transport damage, etc., whereby it is irrelevant whether these circumstances occur at waveguide itself or at one of its suppliers and/or subcontractors.

Any contractual penalties for delay in delivery agreed between the contracting parties upon conclusion of the contract shall not apply in the event of force majeure.

If performance of the contract becomes impossible for reasons for which waveguide is not responsible, waveguide shall be released from its contractual obligations.

## **6. Transfer of Risk, Shipment, Place of Performance:**

Benefit and risk shall pass to the customer at the time when waveguide holds the purchased item/work ready for collection at the factory and/or warehouse, irrespective of the price agreed for the delivery and irrespective of whether the items are to be handed over to a carrier or haulier. Shipment, loading and unloading as well as transport itself shall always be at the risk of the customer, irrespective of who organises and manages this. For services/deliveries, the place of performance is the registered office of waveguide. The risk for a service or an agreed partial service shall pass to the customer upon its provision.

The customer shall also approve any customary and professional mode of shipment; transport insurance will only be taken out by written order of the customer and at his expense. In the case of deliveries with installation, the risk shall pass to the customer upon completion of the installation.

If dispatch, delivery, performance of the installation, acceptance into the customer's own operation or trial operation is delayed for reasons for which the customer is responsible, or if the customer is in default of acceptance for other reasons, the risk shall pass to the customer.

## **7. Installation:**

For the installation and assembly of the delivery (hereinafter referred to as: installation), the following provisions shall apply unless otherwise agreed in writing:

The customer must prepare the installation site at his own expense in accordance with waveguide's guidelines and in particular provide the necessary power connections and other technical equipment in good time so that the installation can be started as agreed and carried out without interruption.

If the installation or the subsequent commissioning is delayed due to circumstances for which waveguide is not responsible, the customer shall bear a reasonable amount of the costs for the waiting time of the installation personnel and the additional travel expenses required.

If waveguide demands acceptance of the delivery after completion of the installation, the customer must confirm this within one week. If this does not occur, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have been effected if the delivery has been put to use, if necessary, after completion of an agreed test phase.

## **8. Warranty:**

The warranty period shall be twelve months unless a special warranty period has been agreed for individual goods and products. This warranty period also applies to goods and products that are firmly attached to a building or land. The warranty claim presupposes that the customer has immediately notified waveguide in writing of the defect(s) that have occurred and that waveguide receives the notification. Warranty claims are excluded if the customer's technical systems (supply lines, networks, etc.) are not in a technically perfect and operational condition or are not compatible with waveguide's goods and products.

Any warranty is excluded for consumables or wearing parts, including optical components, which are subject to wear during operation, as well as for used equipment.

Warranty claims shall also be excluded in the event of defects caused by faulty assembly, improper handling or overstraining by the customer, non-compliance with the operating and/or training and safety instructions issued by waveguide, non-compliance with any statutory requirements and regulations, non-compliance with operating conditions that interfere with the function (such as inadequate power supply, other chemical, electrochemical or electrical influences, environmental influences) and failure to carry out maintenance and repair work.

No warranty claims shall exist even in the event that the customer himself or a third party commissioned by waveguide carries out changes/repairs to the delivered goods and products of waveguide without the written consent of waveguide.

If goods and products are manufactured by waveguide on the basis of design specifications, drawings, models or other specifications provided by the customer, waveguide's liability shall extend only to the proper execution of such goods and products.

Goods and products of waveguide about which complaints are raised are to be handed over by the customer to waveguide at the customer's place of business with the most exact description of the defect possible, whereby waveguide is entitled to carry out any inspection it deems necessary, even if this impairs the goods and

products whose defectiveness is alleged. The costs of such inspections shall be borne by the customer if it turns out that waveguide is not responsible for any defects in the goods and products complained of.

All ancillary costs incurred in connection with the determination and rectification of defects, such as transport, disposal, installation and removal costs, journey and travel time costs, shall be borne by the customer. If warranty work is to be carried out on the customer's premises, the customer must provide the necessary assistants and other support measures, including the provision of technical equipment, free of charge.

In the event of the assertion of a defect subject to warranty, waveguide is entitled, at its discretion, to repair the defective goods at the place of performance and to avert a conversion request by means of an appropriate price reduction, provided that the defect is not substantial and/or irreparable.

Unless expressly agreed otherwise, the warranty claims are based on the statutory provisions.

## **9. Liability and product liability:**

Waveguide is only liable for intentional or grossly negligent damage. Liability for slight negligence is excluded. The customer must prove that waveguide is at fault.

The liability of waveguide for indirect damages, consequential damages, business interruption damages, pecuniary damages and other damages to lost profits, etc. as well as damages caused by claims of third parties against the customer is excluded.

Any liability of waveguide is in any case limited to the amount of the agreed fee and/or purchase price for the respective order. Waveguide issues contracts exclusively subject to this limitation of liability, any further liability of waveguide is expressly excluded.

In principle, the customer can only claim damages in the form of improvement and/or replacement of the goods and/or the product. Only in the event of impossibility of performance or disproportionate economic expense shall the customer be entitled to assert a claim for monetary compensation. Claims for damages must in any case be asserted in court within a six-month period from their occurrence, otherwise they shall expire.

Non-compliance with legal and/or contractual requirements for assembly, commissioning and use as well as non-compliance with safety instructions or other official approval conditions generally excludes any liability on the part of waveguide. In any case, the customer must ensure that all operating instructions and/or training instructions for the delivered works and products are observed by all users. Accordingly, the customer shall train and instruct his personnel and all persons working with the delivered goods and products accordingly.

To the extent permitted by law, waveguide's liability for damages to property resulting from the Product Liability Act and other claims which may be derived from other statutory provisions in this regard is excluded. In this respect, the customer is also obliged to pass on this exclusion of liability for product liability claims to his contractual partners, any recourse claims the customer may have against waveguide arising from the use of the services provided by waveguide

according to product liability law are excluded. The customer must take out adequate insurance for such claims and indemnify and hold waveguide harmless from and against any assertions to such claims.

If third parties (intermediaries, sales partners, commercial agents, etc.) are involved and/or active in the initiation and/or conclusion and/or subsequent execution of the contract concluded between waveguide and the customer, they are not entitled to make declarations and/or other statements at the expense of waveguide which commit waveguide to any obligations. Waveguide also assumes no liability for promises, information, recommendations, etc. made by third parties.

## **10. Industrial property rights, software:**

If goods and/or products are manufactured by waveguide on the basis of design data, drawings, models and/or other specifications provided by the customer for the manufacture of the same, the customer must indemnify waveguide against any infringement of industrial property rights arising therefrom.

Software, execution documents such as plans, sketches or other technical documents as well as sample catalogues, illustrations, brochures or the like shall remain the intellectual property of waveguide and enjoy copyright protection. Any duplication, distribution, imitation and/or exploitation or similar not expressly permitted by waveguide is prohibited.

If software components and/or computer programs are also part of the subject matter of the service, waveguide grants the customer the non-transferable and non-exclusive right of use at the respective installation site, subject to compliance with the contractual conditions and requirements (such as safety instructions, training and operating instructions, etc.). Warranty claims with regard to the software shall only exist for the software's compliance with the specifications agreed upon when the contract was concluded, insofar as this complies with the installation requirements and other instructions of waveguide and the respectively applicable conditions of use.

In particular, waveguide does not warrant that the software is in perfect condition or that it will function continuously without interruption or error.

The customer is responsible for ensuring compatibility with his technical requirements at the installation site and thus for the use and results achieved with the software.

## **11. Withdrawal from the contract:**

If a delivery and/or service is impossible for reasons for which the customer is responsible, whereby the fact that the customer does not comply with a contractual and/or legal obligation towards waveguide for which the customer is responsible is treated equal to this, waveguide is entitled to withdraw from the contract. In such a case, waveguide shall be compensated by the customer for all resulting disadvantages, including lost profits.

If insolvency proceedings are opened against the customer's assets or if an application for insolvency proceedings is rejected for lack of sufficient assets, waveguide is entitled to withdraw from the contract without setting a grace period.

The customer waives the rescission/adjustment of this contract due to error as well as the assertion of claims due to *laesio enormis* and loss of the business basis.

## **12. Final provisions:**

If individual provisions of these GTC should be or become invalid, this shall not affect the validity of the remaining provisions. Rather, the invalid provision shall be replaced by a valid provision that comes as close as possible to the invalid provision and is customary in the industry.

The competent court for the location and subject matter of waveguide's registered office shall have exclusive jurisdiction to decide on all disputes arising from the contract, including disputes about its existence or non-existence, which shall also include all future contracts between waveguide and the customer.

However, waveguide is also entitled, at its discretion, to sue at the customer's place of jurisdiction.

The contract is subject to Austrian law to the exclusion of the referral norms. The application of the UN Convention on Contracts for the International Sale of Goods is excluded by mutual agreement.

(Date: February 2021)

