

General Terms and Conditions

Issued 1st June 2011

I. Scope of Application

1. The General Terms and Conditions ("General Terms") hereinafter set forth shall exclusively apply to all transactions with EVOBEAM GmbH ("EVOBEAM") with registered seat in Mainz, Germany.
2. The General Terms as amended from time to time shall also apply to future transactions even if in a particular case they have not been transmitted or otherwise delivered to the buyer.

II. Buyer's General Terms and Conditions

1. Any differing or conflicting general terms of the buyer shall not be applicable to any transaction and are hereby rejected. Consequently, any variations from these General Terms shall be of no effect unless they have been agreed to in writing by EVOBEAM these General Terms shall also be exclusively applicable if, in the knowledge of contrasting conditions on part of the buyer or conditions which deviate from these General Terms, EVOBEAM fulfils its obligation without restriction.

III. Payment

1. Unless otherwise agreed upon between the buyer and EVOBEAM in writing, invoices shall be paid without any deductions within 14 business days following receipt of the invoice. In the event of failure to pay by the due date, EVOBEAM shall be entitled to charge past-due interest in the amount of 8% above the basic rate of interest of the European Central Bank p.a. from the date of default onward.
2. All bank charges shall be borne by the buyer.
3. Checks, bills of exchange, and other means of payment shall be accepted only conditionally on account of performance. In case of payment with such means of payment, payment shall be deemed to have been received as of the date on which the funds from such means of payment have become available to EVOBEAM.
4. Any setoff with a counterclaim shall be permitted only if such counterclaim is undisputed by EVOBEAM or has been confirmed by a non-appealable court decision.

IV. Shipment and Passing of Risk/Export Controls

1. EVOBEAM delivers ex works (INCOTERMS 2010); packaging is charged separately.
2. Buyer shall be responsible for obtaining insurance coverage against theft, breakage, transport, fire and water damage, as well as other insurable risks.
3. The risk shall pass to the buyer upon dispatch of shipment. This shall apply even in the case of partial shipments, and/or even if EVOBEAM has assumed additional obligations such as freight or shipping charges, or direct delivery and installation.
4. If dispatch or shipment is delayed due to circumstances for which the buyer is responsible, the risk shall pass to the buyer as of the date of notification of readiness for dispatch.
5. If the delivery of EVOBEAM products is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, EVOBEAM may suspend its obligations and buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and EVOBEAM may even rescind the transaction without incurring any liability towards the buyer. Furthermore, if an end-user statement is required, buyer shall inform EVOBEAM thereof, and buyer shall provide EVOBEAM with such document upon EVOBEAM's first written request. If an import license is required, buyer shall inform EVOBEAM immediately thereof and buyer shall provide EVOBEAM with such document as soon as it is available. By accepting EVOBEAM's offer, entering into any transaction, and/or accepting any EVOBEAM products, buyer agrees that it will not deal with the EVOBEAM products and/or documentation related hereto in violation of any applicable export or import control laws and regulations.

V. Delivery Period

1. The period for delivery and performance starts upon dispatch of the acknowledgement and acceptance of the order by EVOBEAM, but not before, if necessary, all technical details have been fully cleared up and agreed upon, all documentation, permits, approvals, clearances etc. to be supplied by the buyer have been provided, and only after any agreed upon down payment has been received by EVOBEAM Compliance with the delivery period or schedule shall be contingent upon performance of the buyer's obligations.
2. The delivery deadline shall be deemed to have been met if, unless otherwise agreed upon, the products to be delivered have left the premises of EVOBEAM's production plant prior to the expiry of such deadline.
3. In case the buyer does not immediately call off the EVOBEAM products after it has been advised of readiness for shipment, such EVOBEAM products shall be invoiced to buyer after one month following such notice of readiness for dispatch, and the expense incurred for storage shall be billed to buyer at a rate of € 30.00 per pallet per month for

each month started. Furthermore, EVOBEAM shall have the right, after the setting and fruitless expiry of a reasonable extension of time, to dispose otherwise of the products to be delivered and then to claim the difference between the price agreed upon with buyer and the price by disposal to a third party from buyer.

VI. Retention of Title

1. Until complete payment of the products delivered by EVOBEAM and settlement of all claims from the business relationship with EVOBEAM, EVOBEAM reserves title to delivered products.
2. Products for which EVOBEAM reserves title shall be maintained by the buyer as EVOBEAM's escrow agent. The buyer shall be obliged to handle the goods carefully and to insure the products subject to retention of title with the due care and diligence of a prudent businessman, at least against damages deriving from fire, water and theft, and on request to provide evidence to the effect that this insurance has been taken out. The buyer already now assigns to EVOBEAM his claims under this insurance by way of security.
3. If products that are subject to retention of title become inseparably connected or mixed with other products, EVOBEAM shall have joint title to the new products. Claims out of the sale of products for which EVOBEAM reserved title are hereby already assigned to EVOBEAM, such assignment being limited to the amount of the invoice value of products for which EVOBEAM has reserved title, in case of sale of EVOBEAM's products together with other products. EVOBEAM hereby accepts the transfer of these claims.
4. The buyer shall only be entitled to sell products that are subject to retention of title in the ordinary course of business. The buyer shall not be entitled to dispose of the products in any other way, especially by pawning or as collateral. In case of a seizure or other measures of distraint by third parties, the buyer shall be obliged to inform the enforcement agencies about EVOBEAM's property and to inform EVOBEAM within 3 business days about the seizure.
5. If there are justifiable grounds for doubts as to the solvency or creditworthiness of the buyer, EVOBEAM shall be entitled to prohibit the further sale or processing of delivered products, for which EVOBEAM reserves title, and to request their return at the expense of the buyer. The taking-back of products subject to retention of title does not constitute any cancellation or termination of the contract.
6. EVOBEAM undertakes, at the request of the buyer, to release securities (products and accounts receivable) to which EVOBEAM is entitled according to the above provisions at EVOBEAM's discretion, if the value of the securities exceeds the claims to be secured by more than 10%. The realizable value shall be decisive for the valuation of any security.

VII. Duties of Inspection and Notice of Defects

1. The buyer shall be obliged to inspect the packaging and the products immediately upon delivery and to report any damage to the shipping agent.
2. Obvious defects, including but not limited to damages resulting from transport damages, shall be notified to EVOBEAM in writing without delay, in any event within 10 days of receipt of the delivery at the latest.
3. The buyer loses the right to rely on a lack of conformity of the products if the buyer does not give notice to EVOBEAM specifying the nature of the lack of conformity within 10 days after the buyer has discovered it or ought to have discovered it.

VIII. Warranty of Quality of New EVOBEAM Products

1. The buyer's warranty rights are determined by the applicable provisions of the laws of Germany, unless otherwise provided in the provisions hereafter.
2. The buyer shall have no warranty claims if any deviations as to quality of the product delivered from the quality agreed on in the contract are only insignificant.
3. In the case of any defect as to quality, buyer shall be primarily entitled to supplementary performance by EVOBEAM. Such supplementary performance shall, at the discretion of EVOBEAM, consist of either elimination of the defect or substitute delivery. If EVOBEAM decides to eliminate the defect, the buyer shall enable EVOBEAM to carry out any repair work by allowing its technicians full access to the defective product for the purpose of fulfilling the warranty or shall upon request send the defective product or defective part of the product to EVOBEAM or to a repair shop to be designated by EVOBEAM. The reasonable expenses incurred for transport of the defective product shall be refunded to the buyer. If the buyer fails to comply with this obligation, EVOBEAM shall be released from any and all warranty obligations. EVOBEAM shall bear the reasonable expenses incurred for the purpose of rectification, in particular transport, travel and labour cost. This shall not apply where such expenses have been increased by the fact that the product was subsequently transported to a location other than the premises or the place of business of the buyer, unless the EVOBEAM

products were supplied to such location in line with its intended use.

4. If such supplementary performance is unsuccessful twice or is delayed for reasons for which EVOBEAM is responsible, the buyer may, at its discretion, demand reduction of the purchase price or rescission of the purchase. Prior to a successful rectification of defects as to quality, EVOBEAM shall have the right to notify the buyer that no rectification shall take place, so that the only remedies left to the buyer are claim for reduction of the purchase price or rescission of the purchase. The buyer may demand compensation in lieu of performance because of failure to perform or failure to perform properly in respect of a defect as to quality only in the second place, i.e. only after definite failure of the supplementary performance, or after EVOBEAM has declared that no rectification shall take place, and only subject to the additional prerequisites according to the provisions of section VIII hereinafter.
5. Any claims for warranty will be time barred for twelve (12) months after delivery.
6. EVOBEAM shall not be liable for any damage resulting from non-compliance with the instructions for assembly and/or installation and/or the operating instructions, from unsuitable or improper storage and/or use of the EVOBEAM products, from faulty assembly and/or installation or from faulty commissioning by the buyer or third parties, from normal wear and tear, or from faulty or negligent handling by the buyer, nor for any damage caused by unsuitable components or parts or replacement materials, chemical, electrochemical, electrical, atmospheric and other unforeseeable influences, provided that any such damage is not predominantly attributable to any fault on the side of EVOBEAM.

IX. Warranty of Quality of Used EVOBEAM Products

EVOBEAM does not provide warranty for defects as to quality of any used items delivered. The provisions of section X shall remain unaffected.

X. Liability for Damages

1. EVOBEAM shall be liable in the event of intentional behaviour or gross negligence by its officers, employees or any other person employed by EVOBEAM in performing a task for which EVOBEAM is vicariously liable. In addition, EVOBEAM shall be fully liable in the event of non-observance of guarantees, in the event of culpable injury to life, body, and health and under mandatory product liability legislation that is established by Council Directive 85/374/EEC, and that provides for EVOBEAM's strict liability, such as the German Product Liability Act.
2. In the event of culpable violation of essential contractual obligations, meaning principal obligations enabling the proper execution of the contract and upon which the buyer therefore relies and may rely, EVOBEAM undertakes liability on the merits, however, the liability for simple negligence shall in this event be limited to damage that is typical for the contract and that can be reasonably foreseen.
3. Otherwise, any claims for direct or indirect damages (on any legal basis whatsoever, including but not limited to tort liability, positive breach of contract and breach of duty prior to contract) shall be excluded.
4. The buyer undertakes in the event of damage occurring or having already occurred to make all necessary efforts or to arrange for such efforts to be made without delay in order to limit the damage and its effects to a minimum.
5. In the event of simple negligence, liability regarding damages incurred by default in delivery shall be limited to a maximum of 5% of the value of the delivery in question.

XI. Copyright

1. EVOBEAM reserves all proprietary rights and copyrights to and in any and all documents provided to the buyer, including but not limited to cost estimates, drawings, and technical documentation. Such documents may not be made available to any third parties without EVOBEAM's prior written consent.
2. EVOBEAM at its sole expense, shall: (i) defend any legal proceeding brought by a third party against buyer to the extent that the proceeding includes a claim that any EVOBEAM product as furnished by EVOBEAM directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold buyer harmless against damages and costs awarded by the final judgment in such proceeding to the extent directly and solely attributable to such infringement.
3. EVOBEAM shall have no obligation or liability to buyer under subsection 2 of this section XI, (a) if EVOBEAM is not: (i) promptly notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defence and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by buyer in such investigation, preparation, settlement and defence; (b) if the claim is made after a period of three (3) years from the date of delivery of the EVOBEAM product.
4. If any EVOBEAM product is, or in EVOBEAM's opinion is likely to become the subject of a claim of infringement as

referred to under this section XI (2) above, EVOBEAM shall have the right, without obligation and at its sole option, to: (i) procure for buyer the right to continue to use or sell the product, (ii) provide a replacement product, or (iii) modify the product in such a way as to make the modified product non-infringing; or (iv) terminate any transaction to the extent related to such EVOBEAM product.

5. Subject to the exclusions and limitations set forth under section X above, the foregoing states EVOBEAM's entire liability and obligation to buyer and buyer's sole remedy with respect to any actual or alleged infringement of an intellectual property right or any other proprietary right of any kind.

XII. Applicable National and/or International Laws, Rules and Regulations

1. The buyer shall comply with all applicable national and/or international laws, rules and regulations concerning medical devices, including but not limited to the Medical Devices Directive and respective guidelines of the European Commission (MEDDEV).
2. Notwithstanding all other MEDDEV provisions, the buyer is obliged to inform EVOBEAM immediately in case of an incident with one of the EVOBEAM products or if it has indications that a EVOBEAM product is not safe.
3. The buyer is obliged to guarantee traceability of the product at all times in case of a recall. Installation and mounting of fixed installed products as well as maintenance and warranty services and the hand-over/instruction for use have to be conducted by a EVOBEAM service engineer or a trained and thus certified partner of EVOBEAM
4. Installation and mounting of fixed installed products as well as maintenance and warranty services and the hand-over/instruction for use have to be conducted by a EVOBEAM service engineer or a trained and thus certified partner of EVOBEAM
5. The buyer may not remove references to the capacity of EVOBEAM as manufacturer or other references or instructions for use or serial numbers or distribute products without such references and instructions for use.

XIII. Place of Performance and Place of Jurisdiction, Arbitration

1. The place of performance for buyer's obligation to make payments shall be Mainz, Germany.
2. Any dispute, controversy or claim arising out of or in relation to this transaction, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the German Institution of Arbitration (<http://www.dis-arb.de>) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be three; however, for disputes having a value below 500,000.00 EUR, the number of arbitrators shall be limited to one. The seat of the arbitration shall be in Munich, Germany. The substantive law of Germany shall apply. The arbitration shall be final and binding upon the Parties.
3. The arbitral proceedings shall be conducted in the English language. The arbitrators shall be proficient in English with at least ten years professional or academic practice.

XIV. Governing Law

1. These General Terms and any amendment hereof and any waiver or consent hereunder and any claims resulting here from shall be governed by and interpreted and construed exclusively in accordance with the substantive domestic laws of Germany explicitly excluding the United Nations Convention on the International Sale of Goods (CISG).

-- End of General Terms and Conditions --