

## General Terms and Conditions Evobeam GmbH (issued 08<sup>th</sup> January 2020)

### I. Scope of Application

1. The following general terms and conditions (hereinafter referred to as "General Terms") apply to all business transactions of Evobeam GmbH ("EVOBEAM.") with registered seat in Nieder-Olm (HRB 43424 in Mainz)
2. These General Terms also apply in their current form to future business, even if they are not communicated to the customer or attached in individual cases.
3. There are no verbal side agreements to concluded contracts. Subsidiary agreements and changes to the contract must be in writing or text in order to be effective. This formal requirement can neither be waived verbally nor tacitly.

### II. Buyer's General Terms and Conditions

1. Any general deviating or conflicting conditions of the customer are not applied to the business transaction and are hereby rejected. Consequently, deviations from these terms and conditions only apply if they have been recognized in writing by EVOBEAM. These General Terms and Conditions shall also apply exclusively if EVOBEAM fully fulfils its obligations in the knowledge of the contrary conditions of the customer or other conditions that deviate from these conditions.

### III. Payment

1. Unless otherwise agreed in writing between the customer and EVOBEAM, invoices are due for payment without deduction within 14 business days of the invoice date.
2. The customer bears all bank charges.
3. Checks, bills of exchange and other means of payment are only accepted on account of performance. When paying with these means of payment, the day is considered to be the date on which EVOBEAM can freely dispose of the amount paid.
4. Any offset by the customer can only be made if the counterclaim is undisputed or has been legally established. The customer only has a right of retention if the counterclaim is based on the same contractual relationship and has been recognized, undisputed or legally established.

### IV. Shipment and Passing of Risk / Export Controls

1. EVOBEAM delivers "ex works" (INCOTERMS 2020); Packaging and transport will be charged separately.
2. Insurance of the shipment against theft, breakage, transport, fire and water damage and against other insurable risks is incumbent on the customer.
3. The risk passes to the customer when the delivery is sent, even if partial deliveries are made or EVOBEAM has additional obligations, such as freight or shipping charges or direct delivery and installation.
4. If the shipment is delayed due to circumstances for which the customer is responsible, the risk passes to the customer from the day the readiness for dispatch is reported.
5. If the delivery of the products requires the issuance of an export or import permit by a government and / or government agency in accordance with an applicable law or regulation or is otherwise restricted or prohibited due to an export or import control law or regulation, EVOBEAM may suspend its obligations and the rights of the customer with regard to such a delivery until such approval is given or for the duration of such a restriction and / or prohibition. EVOBEAM is entitled to cancel this contract without any liability to the customer. If an end user certificate is also required, the customer informs EVOBEAM of this and presents this document to EVOBEAM at the first written request. If an import permit is required, the customer informs EVOBEAM immediately and presents EVOBEAM with such a document as soon as it is available. By accepting an offer from EVOBEAM at the conclusion of a transaction and / or when accepting EVOBEAM products, the customer undertakes to comply with all provisions of any applicable export or import control laws when handling products and / or the related documentation.

### V. Delivery Period

1. The deadline for deliveries and services begins with the sending of the order confirmation by EVOBEAM, but not before complete technical clarification, if applicable, the provision of the documents, permits and releases to be procured by the customer and only after receipt of a possibly agreed down payment at EVOBEAM. Compliance with the delivery deadline or the delivery schedule presupposes the fulfilment of all contractual obligations and cooperation activities of the customer. Otherwise the delivery / performance time will be extended accordingly. The same applies in the event of changes or expansions of the agreed scope of delivery / services that become necessary or requested by the customer.
2. If a delay in the delivery / service time is due to unforeseen circumstances for which EVOBEAM is not responsible, EVOBEAM is not liable for this delay. In this case too, the delivery / performance time will be extended accordingly. Insofar as such circumstances complicate the fulfilment of the contract for an unforeseeable or endangering duration of the contract and EVOBEAM's obstacle to performance cannot be remedied with reasonable expenses, EVOBEAM is entitled to withdraw from the contract.
3. The delivery period is deemed to have been met if - unless otherwise agreed - the delivery item has left EVOBEAM's works by the expiry date.
4. If the customer does not call up products that are reported ready for dispatch immediately, he will be charged the costs incurred for storage in the amount of € 30.00 per Euro pallet parking space and month. EVOBEAM is also entitled to dispose of the products elsewhere after setting a reasonable deadline and then requesting the difference between the price agreed with the customer and the price for delivery to a third party from the customer.

### 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 the property right are managed by the customer as trustee of EVOBEAM. The customer is obliged to handle the products carefully and to insure them with the care of a prudent businessman at least against fire and water damage and theft, and to provide proof that this insurance has been taken out on request. As a precaution, the customer assigns his claims from this insurance to EVOBEAM.
3. If the products with retention of title are inseparably linked or mixed with other products, EVOBEAM acquires co-ownership of the new products. In the event that EVOBEAM products are sold together with other products, the claims from the sale of the products for which EVOBEAM reserves the right of ownership are limited to the invoice value of the products. EVOBEAM hereby accepts the transfer of these claims.
4. The customer is only entitled to sell products with retention of title in the normal course of business. The customer is not entitled to dispose of the products in any other way, in particular not to pledge them or to use them as security. In the event of attachment or other enforcement measures by third parties, the customer is obliged to inform the enforcement authority about the property of EVOBEAM and to report the attachment to EVOBEAM within three business days.
5. If there are legitimate doubts about the solvency or creditworthiness of the customer, EVOBEAM is entitled to prohibit the resale or processing of the delivered products for which EVOBEAM claims retention of title and to demand their return delivery at the customer's expense. The withdrawal of the products for which there is a retention of title does not constitute a cancellation or termination of the contract.
6. At the customer's request, EVOBEAM will release the securities (products and claims) to which EVOBEAM is entitled according to the above provisions, at its own discretion, if the value of the securities exceeds the secured claims by more than 10%. The market value is decisive for the valuation of every security.

### VII. Duties of Inspection and Notice of Titles

1. The customer shall be obliged to inspect the packaging and the products immediately upon delivery and to report any damage to the shipping agent immediately.
2. Obvious defects, including damage in transit, must be reported to EVOBEAM in writing immediately, but in any event no later than 10 days after receipt of the delivery.
3. The customer loses the right to claim for defects if he does not complain to EVOBEAM of a defect in a product, stating the nature of the defect, within 10 days after the customer has determined it or should have determined it

### VIII. Warranty of Quality of new EVOBEAM products

1. The customer's warranty rights are based on the statutory provisions of the Federal Republic of Germany, unless the following provisions regulate otherwise.
2. Claims of the customer are excluded if the delivered product deviates only slightly from the contractual agreements.
3. In the event of a quality defect, the customer is primarily entitled to subsequent performance by EVOBEAM. At EVOBEAM's option, supplementary performance consists either in eliminating the defect or in a replacement delivery. If EVOBEAM decides to remedy the defect, the customer must enable EVOBEAM to carry out any repair work for the purpose of fulfilling the warranty and, for this purpose, enable the technicians to access the product or the affected part of the product on request or to EVOBEAM or to one of EVOBEAM Send in the workshop to be determined. Reasonable costs for the transportation of the product will be reimbursed to the customer. If the customer does not meet this obligation, EVOBEAM is released from any guarantee. EVOBEAM is obliged to bear the expenses that are reasonable for the purpose of reworking, in particular transport, travel and labour costs. This does not apply if the expenses mentioned increase due to the fact that the product was transported to a place other than the customer's place of business after delivery, insofar as the shipment does not correspond to the intended use of the products.
4. If the supplementary performance fails twice or is delayed for reasons for which EVOBEAM is responsible, the customer can either demand a reduction in the purchase price or withdraw from the contract. If EVOBEAM unjustifiably refuses to carry out the supplementary performance, the customer is referred to the address to reduce the purchase price or to withdraw from the contract. Compensation instead of performance due to performance not owed as owed in relation to a material defect, the customer can only subordinate, d. h., only after a final failure of the supplementary performance or after a statement by EVOBEAM that supplementary performance should not take place and only under the further conditions of the provisions in section VIII. of these terms and conditions.
5. The limitation period for claims for defects is twelve (12) months after delivery.
6. EVOBEAM shall not be liable for any damage resulting from non-compliance with the assembly and / or installation regulations and / or operating instructions, from unsuitable or improper storage or use of the products, from incorrect assembly, installation or inadequate maintenance or incorrect commissioning by the customer or Third parties, from natural wear and tear or from incorrect or negligent treatment by the customer, as well as from wear and tear of components based on the intended use of the product, furthermore not for damage caused by unsuitable equipment or replacement materials, chemical, electrochemical, electrical, weathering and other unpredictable influences, provided that the damage is not primarily attributable to EVOBEAM's fault.

### IX. Warranty of Quality of used EVOBEAM products

EVOBEAM assumes no liability for defects in used delivered items. The provisions of section X. of these terms and conditions remain unaffected.

#### **X. Liability for Damages**

1. EVOBEAM is liable for damage caused intentionally or through gross negligence by its managers, employees or other persons, which EVOBEAM has used to carry out a task and who are EVOBEAM's vicarious agents. In addition, EVOBEAM is liable for the assumption of a guarantee, culpable injury to life, body, health and compulsory product liability law, which was provided by the EU Council Directive 85/374 / EEG and which includes EVOBEAM's strict liability, such as the German Product Liability Act.
2. In the event of culpable violation of essential contractual obligations, i.e. EVOBEAM is basically liable for the main obligations that enable the contract to be carried out properly and on which the customer therefore trusts and can trust, however liability in the event of simple negligence is limited to the foreseeable damage typical of the contract.
3. Otherwise, claims for damages and consequential damages are excluded (regardless of the legal reason, but not limited to liability from tort, clear breach of contract and fault in contract initiation).
4. If a damage occurs or a damage has already occurred, the customer immediately undertakes all necessary efforts to limit the damage and its effects to a minimum, or initiates such efforts.
5. In cases of slight negligence, liability for damages due to a delay in delivery is limited to a maximum of 5% of the relevant delivery value.

#### **XI. Copyright**

1. EVOBEAM reserves ownership and copyrights to all documents provided to the customer, such as cost estimates, drawings and technical documents, but without being limited to them. Such documents may not be made available to third parties without the prior written consent of EVOBEAM.
2. EVOBEAM will join at its own expense (i) a legal dispute brought against the customer by a third party insofar as this legal dispute is based on the assertion that a product supplied by EVOBEAM under the present contract violates a patent, copyright, trademark or The business secret of that third party, and (ii) indemnify the customer from legally established claims for damages and costs that result directly from such an infringement.
3. EVOBEAM is not liable to the customer in accordance with paragraph 2 above if (a) EVOBEAM is not informed by the customer (i) immediately in writing of such a claim, (ii) the sole right to monitor and conduct the investigation. Receives preparation, defence and possibly settlement of the claim, including the choice of lawyer, and (iii) full support and collaboration in research, preparation, settlement and defence, and (b) claim after more than three (3) years after Delivery of the EVOBEAM product was raised.
4. If a claim pursuant to Section XI. 2. these GTC are pending against a product, or could be pending in EVOBEAM's assessment, EVOBEAM has the right, but not the obligation, at its sole discretion (i) to acquire the right for the customer to continue using the product and to sell, (ii) provide a replacement product, or (iii) modify the product so that the modified product does not infringe any third party rights, or (iv) terminate the business with respect to such a product.
5. Subject to the exclusions of liability and restrictions in accordance with Section X. of these General Terms and Conditions, the aforementioned paragraphs represent EVOBEAM's only liability and obligations towards the customer and the only rights of the customer with regard to actual or alleged violations of intellectual property rights or other property rights of all kinds.

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

1. The customer must comply with all applicable national and / or international laws, regulations and provisions relating to medical devices, including but not limited to the medical device directive and its guidelines of the European Commission (MEDDEV).
2. Without prejudice to all other provisions of MEDDEV, the customer is obliged to immediately inform EVOBEAM of an incident with a product or signs that a product is not safe.
3. The customer is obliged to ensure that the product is traced at any time in the event of a recall.
4. The installation and construction of permanently installed products as well as the maintenance and guarantee services as well as the handover / instruction for use are to be carried out by a service engineer from EVOBEAM or a trained and certified EVOBEAM partner.
5. The customer may not remove any references to EVOBEAM as the manufacturer of the product, other notes and instructions for use or the serial numbers and may not sell the products without such notes and instructions for use.

#### **XIII. Software**

1. If software is included in the scope of delivery of a product, the customer is granted a non-exclusive right to use the software only for use on the product. Further use is prohibited for the customer.
2. The customer may only reproduce, revise and translate the software to the extent permitted by law. A conversion from the object code into the source code is not permitted without the written consent of EVOBEAM. The customer undertakes not to remove or change the manufacturer's information on the software.
3. The customer is not entitled to change the software for his own purposes or to make it accessible to third parties. Employees of the customer or other persons whom he uses for the contractual use of the software are not considered third parties.
4. The customer is not entitled to grant third parties usage rights to the software.
5. EVOBEAM is entitled to prohibit the customer from using the software in the future if, despite prior written warning, he does not refrain from violating EVOBEAM's rights to the software, unless the violation occurs for reasons that neither the customer nor his Vicarious agents have to represent.

#### **XIV. Job-Shop (additional conditions)**

1. Insofar as the customer's order concerns contract processing, EVOBEAM are on the order from the customer all the information and specifications that appear significant and necessary for contract processing regarding the objects to be made available and processed, such as article description, dimensions, material, Pre-treatments, international standards and the value of the items to be provided, as well as information on treatment instructions and storage requirements. EVOBEAM is entitled to obtain from the customer any additional information that appears necessary for contract manufacturing.
2. The items to be delivered by the customer for contract processing must be appropriately labelled, correspond to the information contained in the order and be in a condition that is permissible and suitable for contract processing. EVOBEAM is entitled to return delivered items that do not meet these requirements at the cost and risk of the customer.
3. The items delivered by the customer for contract processing are subject to an incoming inspection by EVOBEAM, which is limited to a rough visual inspection of the items for external integrity, identity and quantity. The customer is immediately informed of any defects found by EVOBEAM.
4. EVOBEAM is not liable for losses, delays, mix-ups, etc. that result from inaccurate or incorrect information and labelling of the items.
5. The objects are kept with care during the stay at EVOBEAM and treated with the care that EVOBEAM uses in its own affairs. However, EVOBEAM is not liable for any damage that may result from the storage of the items despite the care taken. EVOBEAM only pays compensation for damage insofar as EVOBEAM is obliged to do so in accordance with Section X. of these General Terms and Conditions. Further liability of EVOBEAM is excluded. EVOBEAM is only obliged to take out insurance after a separate agreement.
6. EVOBEAM is not liable for any infringements of property rights that are connected with the processing of wages or with the use of the objects after the processing of wages with other objects, unless the violation of property rights was for EVOBEAM due to the customer's order or . information given when the contract was concluded or could have been recognized by EVOBEAM.
7. The customer is obliged to immediately notify EVOBEAM in writing of any claims made by third parties and to reserve all countermeasures and settlement negotiations to EVOBEAM.
8. In the event that EVOBEAM is used by third parties due to product liability, the customer is obliged to release EVOBEAM from such claims upon first request, insofar as and insofar as the damage was caused by an error in the object delivered by the customer. In these cases, the customer assumes all costs and expenses incurred by EVOBEAM, including the costs of any legal action or recall. In cases of fault-based liability, however, this only applies if the customer is at fault. Otherwise, the statutory provisions apply.
9. Insofar as the customer has product liability insurance, he is obliged to ensure that this insurance also extends to contract processing and that EVOBEAM is insured free of charge.

#### **XV. Place of Performance and Place of Jurisdiction, Arbitration**

1. The place of performance for the customer's payment obligations is EVOBEAM's registered office.
2. The exclusive place of jurisdiction for all legal disputes arising from or in connection with contractual relationships between EVOBEAM and the customer is the registered office of EVOBEAM. EVOBEAM reserves the right to bring an action at any other permissible place of jurisdiction.

#### **XVI. Governing Law**

For these General Terms and Conditions and all adjustments, additional provisions or waivers or consent, as well as all claims arising therefrom, the substantive law of the Federal Republic of Germany applies exclusively with the express exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

- End of General Terms and Conditions -