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GENERAL TERMS AND CONDITIONS

1. General

These general terms and conditions of sale and delivery apply to all contracts entered into between Fritz RUCK GmbH Ophthalmologische Systeme GmbH, Frankfurt am Main, (also referred to as "RUCK" herein) and the customer as well as to all other deliveries and performances. They also apply to all future business relations with the customer, even if they are not expressly agreed to again. By placing an order, the customer acknowledges the following terms and conditions, at the latest through acceptance of the goods or use of the service. Terms and conditions of the customer which RUCK does not expressly acknowledge are nonbinding for RUCK, even if RUCK does not expressly object. Only procurators and managing directors of RUCK are authorized to orally make amendments to a contract or agreements deviating from these terms and conditions.

2. Offers and contract formation

Offers by RUCK are nonbinding and subject to change. The customer is bound by its order for eight weeks following its receipt at RUCK. A contract is formed when RUCK confirms acceptance of the offer in writing or fills the order. Invoicing is considered order confirmation. In the interest of further technical and medical development, RUCK reserves the right to make changes in design and execution even after order acceptance to the extent it is reasonable for the customer.

3. Prices


The price list in force at the time of contract formation applies, errors and misprints excepted, plus statutory value-added tax. Prices are in euros. If, as an exception, RUCK has entered into a fixed price agreement with the customer, RUCK is entitled to adjust the agreed price commensurately if there is a period of at least four months between the ordering and the delivery date and during this interval there has been a material change either in labor, transport and/or materials costs of RUCK or of the sales price of Ruck's suppliers or the amount of taxes to be paid by RUCK based on statutory provisions or ordinances has materially changed and such changes as of the end of the four-month period have resulted in a modified cost or tax burden for RUCK. Concurrent increases and decreases in the various costs and taxes are to be mutually offset when this computation is made. RUCK has a corresponding right to adjust the price only if the result shows the occurrence of a material change and it discloses the cost trend. In such case, the customer may summarily rescind the contract. When the net order value is less than €100.00, we add a minimum quantity surcharge of €20.00.

4. Payments/default/offset

Our invoices are payable within thirty days of the invoice date without any deduction. Invoices where the gross cost of goods is under €100.00 and invoices for services and repairs are immediately payable without deduction. RUCK may refuse to accept payment instructions, checks and drafts at any time. If at all, they are only accepted conditioned on payment. All associated bank costs are charged to the customer. Satisfaction occurs only when the amount owed is credited to the account of RUCK. Reductions for postage, transfer or similar fees are excluded. RUCK is at all times entitled to require prepayment, even in the case of partial deliveries. If the customer defaults in making payment, RUCK is entitled to charge default interest of up to ten percent over the base interest rate pursuant to § 247 of the German Civil Code (BGB). For such case, RUCK reserves the right to assert additional rights and make other claims for damages. The customer is entitled to prove that RUCK has incurred less loss from default. If the customer should default on a payment obligation, the amount of which is at least fifteen percent of all receivables of RUCK from the customer, including those that are not yet due, all receivables of RUCK shall become due and payable as a whole. All payment deferrals shall end, even in the case of the acceptance of drafts. During default in the above sense, RUCK is entitled to condition the delivery of goods upon advance payment in the amount of the respective cost of the goods. RUCK may discontinue processing the order any further and condition its continuation on the customer's provision of security for the full value of the order. If the customer provides no security within a reasonable time set by RUCK, RUCK is entitled to rescind the contract and demand damages in lieu of performance. If the customer defaults on a payment obligation that does not reach the above amount, the statutory provisions apply exclusively. The customer may only offset the amount it owes with undisputed, legally established claims or with disputed claims that are ripe for decision. The customer is entitled to withhold payment only to the extent it is based on the same contractual relationship. RUCK is entitled to assign claims arising from its business relations.

5. Delivery

Delivery dates are binding only if they are confirmed. Freight, postage, packaging and insurance are charged separately, even for partial shipments. In the event of our non- delivery or a delay in delivery, the customer may

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rescind the agreement after the lapse of a reasonable grace period to be set, which shall not be less than one month. The assertion of a claim for damages is limited pursuant to no. 13 of these general terms and conditions. Events based on force majeure—particularly based on strikes, lockouts, business disruptions and shortage of manpower, raw materials and supplies of any kind, traffic disruptions, etc.—entitle RUCK to postpone delivery for the duration of the hindrance and/or to rescind the contract if delivery becomes impossible. RUCK may make partial deliveries, which must be accepted by the customer.

6. Passing of risk and shipment

The place of performance is the registered office of RUCK. The customer has the right to inspect the contracted article at the agreed place of acceptance within eight days of receipt of a notification of readiness to deliver and the duty to undertake the acceptance process for the contracted article within such period. If the customer neglects to do so, it shall be in default of acceptance. Upon default of acceptance, the risk of accidental destruction and of accidental deterioration passes to the customer.

If, at the customer's request, RUCK sends the sold article to a different place than the place of performance, risk passes to the customer if the seller has consigned the article to the shipping company, the carrier or to the person or establishment that is otherwise designated to execute the shipment. This applies even if RUCK has assumed the transport costs. The procurement of transport or other insurance is up to the customer. If the customer fails to accept the contracted article within fourteen days of receipt of notification of readiness to deliver, RUCK may set a fourteen-day grace period for the customer in writing with the statement that RUCK will refuse acceptance after the expiration of this period. After the grace period lapses without success, RUCK is entitled to rescind the contract by written declaration and/or to demand damages.

It is not necessary to set a grace period if the customer genuinely and finally refuses acceptance or is also manifestly incapable of paying the contract price within such period. If RUCK demands damages, they shall amount to twenty-five percent of the order value unless RUCK proves greater or the customer less loss. If RUCK does not avail itself of its right to rescind the contract and/or to demand damages, RUCK may freely dispose of the contracted article and deliver in its place a similar contracted article on the contract terms.

7. Reservation of ownership


Delivered goods remain the property of RUCK until full payment of the purchase price and repayment of all claims arising from the business relationship. Any processing or restructuring of the retained goods by the customer is always undertaken for RUCK. If the retained goods are processed or commingled with other objects that do not belong to RUCK, RUCK acquires joint ownership of the new article in proportion to the value which the retained goods bear to that of the other processed articles at the time of the processing or commingling. If the customer's article can be considered the primary article, the customer shall transfer pro rata joint ownership to RUCK. The customer shall then store the article for RUCK without charge.

Upon request, the customer is obligated to inform RUCK of the amount and location of retained goods in customer's possession. The customer may resell retained goods in the ordinary course of business with reservation of ownership. The customer may not pledge or transfer the retained goods as security without the consent of RUCK. The customer forthwith transfers as security, to the full extent, claims arising from resale or from another legal basis (e.g. insurance, tort) with respect to the retained goods, including all current account balance claims. RUCK revocably authorizes the customer to collect claims that have been assigned to RUCK in its own name for the account of RUCK. RUCK may revoke the powers to resell the retained goods and to collect the claim assigned to RUCK if it becomes apparent that RUCK's right to payment is jeopardized by the customer's inability to perform. RUCK is then entitled to demand information on the recipient of the goods, to inform it of the subrogation and to collect the claims of the customer against the recipient of the goods. If the customer, after request, should fail to settle up all claims that become due, RUCK is entitled, without prejudice to further rights, to demand the immediate surrender of all retained goods it owns. The customer has no right of retention in this case. In such case, the customer forthwith grants RUCK the irrevocable right to immediately pick up the retained goods and to enter the customer's business and warehouse premises for this purpose unhindered during customary business hours. RUCK clarifies that such rights are exercised solely for purposes of security and do not constitute a rescission of the contract. If the value of the security given to RUCK exceeds the total claims of RUCK by more than twenty percent, the customer may demand the release of collateral at RUCK's option.

8. Notices of defects

(This provision does not apply to consumers in terms of § 13 BGB)

The customer is obligated to inspect the delivered goods immediately upon receipt. RUCK considers complaints only when the customer immediately informs RUCK of them in writing. The customer shall promptly complain of non-obvious defects in writing. Receipt of the declaration at RUCK is definitive for observance of the deadlines.

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Upon the lapse of the above deadlines, the goods are considered approved and warranty claims are excluded. Notices of defects do not affect the due date of the purchase price. If the delivery or goods are lost or damaged in shipment, the submission of a confirmation from the corresponding carrier is required.

9. Warranty

The customer is strictly entitled to the statutory warranty rights. The limitation period for these warranty rights is one year if the customer is a merchant, but two years if the customer is a consumer. For reusable accessories that are subject to disinfection or the sterilization process, the warranty is only six months.

Intraocular lenses (IOL) that have become non-sterile may not be sterilized by the customer. In such case, the warranty right expires.

The warranty expires when procedures or repairs are undertaken by third parties without express permission. RUCK makes no warranty for defects that are based on improper handling by the customer, especially during transport and storage, and on improper use of the article. An express agreement is needed to stipulate features and grant warranties of qualities and service life. If a shipment of goods is defective, RUCK is in principle only obligated to correct the defect or to deliver a flawless replacement (cure). The customer is only entitled to assert other claims for defects, particularly the right to rescind the contract or reduce the purchase price, if RUCK has not corrected the defect within a reasonable time set by the customer or delivered flawless goods. RUCK is not obligated to effect a cure and/or honor a warranty as long as the customer is, on its part, in default in the performance of material contractual duties. This shall not apply when the customer has a right to refuse to perform or a right of retention. The customer can withhold payment for defects or assert other rights to withhold performance only to the extent that the amount of the retained remuneration bears a reasonable relationship to the scope of the defect.


Notwithstanding § 275 (2) and (3) BGB, RUCK may decline the type of cure chosen by the customer if it is only possible with disproportionately high costs. In this case, the right of the customer is limited to the other type of cure. Even under these requirements, RUCK's right to decline the cure because of disproportionately high costs remains unaffected. If the cure fails or RUCK is not willing or able to effect the cure, the customer may rescind the contract or reduce the purchase price. The cure is deemed to have failed after the second unsuccessful attempt unless the type of article or defect or other circumstances expressly suggest otherwise. However, the customer shall not be entitled to a right of rescission for a merely slight lack of conformity, particularly where defects are only slight. If a damages claim is asserted by the customer for a defect in title or quality, the customer shall only have a right of replacement pursuant to § 13 of these general terms and conditions. Warranty obligations do not exist when the defects that have appeared are causally connected with the fact that the customer has not reported a defect pursuant to section 8 and promptly given an opportunity to cure; or the contracted article has been improperly handled or overused; operating or maintenance instructions from us were not followed by the customer; or the contracted article has been previously placed in service, maintained or serviced in a different operation than ours or one authorized by us; or parts have been installed in the contracted article; or parts or accessories have been used with the contracted article, which use we have not approved; or the contracted article has been modified by the customer in another manner that is not approved by us. These provisions do not apply to warranties of qualities and service life or in the case of the fraudulent concealment of a defect or the fraudulent representation of a nonexistent quality. In the event that a warranty is not complied with, the liability of RUCK is limited to the reimbursement of foreseeable and proximate losses which were intended to be prevented through making the warranty, unless the reimbursement of the further loss is also expressly covered by the warranty. The assignment of warranty claims requires the express advance consent of RUCK.

10. Return of defect-free goods

A right to return goods is, in principle, excluded. Nevertheless, if a return is allowed in individual cases, it shall only be for new and originally packaged goods. Returns always require advance coordination with RUCK. Goods that RUCK no longer carries in its product range or that were manufactured or procured at the specific request of the customer are not returnable, even in exceptional cases. If RUCK should consent to a return of merchandise, twenty percent of the value of the merchandise will be charged as an inspection and handling fee.

11. Repair and services orders

Cost estimates are made without an assumption of liability for their correctness. They are additionally subject to a charge. Our current service prices apply.

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12. Place of repair

Repairs are, in principle, performed at our premises or at appropriately authorized businesses. If the customer wishes the repairs to be performed on site, the customer must assume the corresponding costs. The costs of shipping and packaging for repairs that are not classified as warranty cases are borne by the customer.

13. Liability

1. We shall be liable in accordance with statutory provisions, but our liability for damages is limited as follows:
 - a) In cases of simple negligence, liability shall only exist for injury to life, limb and health;
 - b) For intentional acts of ordinary vicarious agents or gross negligence of legal representatives, employees or agents, liability is limited only to foreseeable, typically occurring loss; The limitation shall not apply to losses resulting from injury to life, limb or health. Nor shall it apply to consumers.
 - c) In cases of the breach of a cardinal duty, in deviation from a), we shall also have liability for simple negligence, but limited as under b). A duty is understood to be a cardinal duty when the contract is impossible to perform properly until the duty is discharged and the contracting party may routinely trust that it will be discharged.
2. The mandatory provisions of the German Product Liability Act (Produkthaftungsgesetz) and liability in the case of a promise remain unaffected. For other breach of duty, particularly fault during contract formation, default or tort, we assume no further liability than as regulated above.
3. Our legal representatives, executives and basic employees have no further liability than we ourselves have.

14. Confidentiality and trademark protection

Offer, sales and other documents, including image, sound and other data carriers, may not be delivered to third parties or unauthorized persons without our approval, neither in the original form nor as a copy, or used in a manner adverse to our interests. In addition, our conditions granted in an offer—particularly prices—may not be shared with third parties, either in writing or orally. The customer is not permitted to exploit the name "Fritz RUCK," the trademark "Fritz RUCK," the logo and other icons or any descriptions of RUCK or to utilize them in any other manner.

15. Rescission

We are entitled to rescind the contract up to the shipping of the goods if the customer acts in significant breach of contract, the customer's financial situation materially worsens or if there is a material change in the conditions underlying the contract.

16. Foreign shipments

In consequence of existing foreign contracts, products purchased from us may only be exported with our express written approval.

17. Place of performance and judicial venue

The place of performance for all claims of a contractual and non-contractual nature is Frankfurt am Main. German law exclusively applies to delivery and performance, including to foreign destinations or customers, and to contracts of all sorts. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules of international private law with respect to contractual relationships under the law of obligations are excluded. If the customer is a merchant or a legal person or a special fund under public law, the exclusive judicial venue shall be Frankfurt am Main. However, RUCK is also entitled to bring suit against the customer at the customer's domicile.

18. Data

We are entitled to process data about the customer concerning the business relations or obtained in connection therewith, irrespective of whether it originates from the customer itself or from third parties, giving due regard to the provisions of the German Federal Data Protection Act (Bundesdatenschutzgesetz). The invalidity of individual points of the contract with the customer shall not affect the validity of the remaining provisions.

Frankfurt am Main, October 2020 – Fritz Ruck Ophthalmologische Systeme GmbH