

**General Business Conditions
of Schwind eye-tech-solutions (hereinafter "SCHWIND")**

1. Applicability

Any deliveries, performances and offers of SCHWIND towards traders, enterprises, corporate bodies according to public as well as private law or public separate estates (hereinafter "**Customer**") shall be subject to the following General Business Conditions. SCHWIND explicitly objects to any counter-confirmations of the Customer with reference to his own general conditions. Contradicting or deviating conditions of the Customer shall only apply if explicitly accepted by SCHWIND in writing.

2. Order

Offers by SCHWIND remain non-binding and provisional. Offers/orders become only binding if SCHWIND accepts such in writing, unless not explicitly stated otherwise in the specific offer. Supplements, modifications and supplementary agreements will only be effective if confirmed by SCHWIND in writing.

3. Security Provisions

Any delivery item of SCHWIND will be produced according to the latest German (Federal Republic of Germany) security provisions and DIN standards. SCHWIND produces the delivery items EU-conform according to the Medical Product Directive 93/42/EEC and provides for the CE-marking of the delivery items. Additional or exceeding, in particular, but not exclusively, non-German provisions are not observed, unless explicitly agreed between the Customer and SCHWIND in writing.

4. Scope/Delivery/Passing of Risk

(1) Information regarding weight, measures, quantities or designs and drawings are, unless not explicitly specified as binding, only non-binding and provisional.

(2) DIN-tolerances are applicable to the required or agreed measures/quantities, unless no other tolerances have been agreed in individual agreements.

(3) Cost estimates, drawings and other documentation remain within SCHWIND's ownership. The Customer is not entitled to any user rights. Any and all documentation shall not be accessible to third parties and shall be returned to SCHWIND on SCHWIND's demand.

(4) The Customer shall accept reasonable partial deliveries.

(5) The risk passes to the Customer at the time of being made available at the factory of SCHWIND and the notification of the Customer thereof. Provided SCHWIND undertakes the transport the risk passes at handing over of the delivery item to the carrier. However, the risk already passes at the time of notification by SCHWIND to the Customer if the transport is delayed due to reasons within the sphere of the Customer, in particular, but not exclusively, if the Customer does not request delivery in time, does not fulfil import- or export-requirements or does not provide for necessary import- or export-documentation or similar documentation in time.

Provided the delivery was delayed, refused or was not carried out due to the Customer's wish, SCHWIND shall be entitled to a compensation of storage costs commencing one month following the notification of the availability.

SCHWIND may dispose of the delivery item and provide for a delivery to the Customer with an adequate extended time period, provided SCHWIND has set a reasonable time limit for the acceptance of delivery and the Customer has not accepted the delivery item within this period.

(6) In case of substantial deterioration of estate of the Customer, in particular, but not exclusively, in case of an application for insolvency proceedings, an application for the issuance of an affidavit regarding an inventory of assets against the Customer, SCHWIND shall be entitled to refrain from further deliveries, if the Customer has not fully provided for the consideration.

(7) The Customer shall bear the costs and the risk of the transport. SCHWIND is not responsible for any damages and losses during the transport. SCHWIND provides for the transport in the best way according to its discretion without taking responsibility that this is the cheapest and shortest way of transport. The Customer is entitled to choose and commission a carrier himself.

(8) Wrapping and packaging will be invoiced and not taken back.

(9) SCHWIND may, but is not obliged to, effect a transport insurance. Provided such insurance is effected on Customer's demand, the Customer will bear such costs. SCHWIND does not take any responsibility for the cover or payments under such insurance.

5. Delivery Period

(1) The delivery period does not commence prior to the delivery of any documentation, permissions or clearances to be provided by the Customer and/or receipt of any agreed instalment payment by SCHWIND. Delivery-dates are proximate and non-binding, unless not explicitly agreed otherwise, and all documents, approvals, clearances, et cetera have been supplied by the Customer in time.

(2) Observance of the delivery period by SCHWIND is conditional with the compliance of the contractual obligations by the Customer.

(3) The delivery period is met, if the delivery item has left the plant of SCHWIND or if the availability of the delivery item has been notified by SCHWIND.

(4) The delivery period shall be reasonably prolonged in case of labour disputes, in particular strikes and lock-outs, as well as unforeseeable obstacles which are outside SCHWIND's will as well as in other cases of force majeure, provided and to the extent such performance obstacles verifiably and materially affect the completion or the delivery of the delivery item. This also applies if such circumstances occur in the sphere of the sub-contractors. SCHWIND shall also not be liable for such circumstances even if such circumstances occur during a default of SCHWIND. In important cases SCHWIND will notify to the Customer the commencement and cessation of such circumstances.

6. Prices

(1) All prices are quoted ex works Kleinostheim exclusive VAT, packaging and transport costs. VAT shall be separately payable in the statutory amount at a time. Packaging, transport, introduction and training as well as ancillary services, such as basic material products or written examination protocols, will be invoiced separately by SCHWIND.

(2) Provided prices have not been agreed at the time of conclusion of the contract the general prices applicable at the time of delivery (at plant Kleinostheim) shall apply.

7. Payment Condition

If not agreed otherwise, payments shall be made as follows:

(1) Invoices of SCHWIND shall be payable within 10 days, calculated from the date of the invoice, without any reductions. Pre-conditions for maturity is the receipt of the invoice.

(2) In case of late payment SCHWIND shall be entitled to interest at an interest rate of 8 per cent above base rate of the German Federal Bank. SCHWIND reserves the right to request further damages.

(3) Provided the Customer has paid without explicit fulfilment purpose, any payments shall be – in case of multiple claims – set off firstly against costs, secondly against potentially accrued interest and then against existing claims. Furthermore, s. 366 German Civil Code (BGB) shall apply.

(4) If the Customer violates culpably a contractual obligation, in particular, if he is fully or partially in default, any obligation under any contract between SCHWIND and the Customer becomes immediately due. SCHWIND is entitled to request security for existing claims and effect outstanding deliveries only against pre-payments.

(5) Permissible partial deliveries may be invoiced separately.

8. Right to Set-Off/Retention Right

(1) The right to set-off for the Customer shall be reduced to undisputed or legally binding claims. SCHWIND shall be entitled to any statutory right to set-off or right of retention.

(2) The Customer shall only be entitled to the right of retention, if such right is based on the same contractual relationship.

(3) The Customer is not entitled to assign any claims under contractual relationships with SCHWIND to third parties without prior consent of SCHWIND.

9. Reservation of Title

(1) The delivery item remains in the ownership of SCHWIND until full payment of the calculated prices and all claims of SCHWIND arising out or in connection with the business relation between SCHWIND and the Customer, irrespective of the legal cause, including ancillary claims, damage claims, and payment of balances of current accounts with the Customer (reservation of customer/vendor account).

(2) SCHWIND shall be entitled, but not obliged, to withdraw the delivery item in case of the Customer's conduct contrary to contractual obligations; the Customer consents to the withdrawal already. Such withdrawal of the delivery item is only deemed to be a rescission of the contract, if this rescission is explicitly declared by SCHWIND. Any costs which accrue due to the withdrawal of the delivery item (in particular transport costs) shall be borne by the Customer. SCHWIND is entitled to prohibit any resale or processing of the delivery item with other items and revoke the collection authorisation (please refer to s. 9(4) below. The delivery of a withdrawn delivery item (withdrawn without explicit rescission) may only be requested by the Customer following full payment of the purchase price and all costs.

(3) The Customer shall handle the delivery item with due care.

(4) The Customer shall be entitled to resell the delivery item within the ordinary course of business; whereby the Customer assigns already to SCHWIND any

claim against his customers or third parties resulting from reselling or claims based on any other legal reasons (in particular from insurances or tortious acts) in the final amount of the invoice (including VAT).

The Customer remains entitled to collect the claims irrespective of the assignment, whereby SCHWIND shall also be entitled to demand payment from the customers or third parties.

However, SCHWIND will not demand payment as long as the Customer meets all his payment obligations out of the collected proceeds, is not in payment default, has not made any application for insolvency proceedings or has not ceased all payments. The Customer is obliged to inform SCHWIND on demand of all assigned claims against third parties, provide all information and documentation necessary for the assertion of claims and inform the debtor of the assignment.

SCHWIND may revoke the collection authorisation in case of contractual default of the Customer (in particular payment default). SCHWIND shall then be entitled to inform third parties of the revocation of the collection authorisation. The collection authorisation terminates in any case of cessation of payment of the Customer or in case of an application for the opening of insolvency proceedings over the estate of the Customer.

(5) The assignment is also valid if SCHWIND gains partial ownership due to amalgamation according to ss. 946, 947 BGB, mixing or commingling or if ownership is lost to the principal part of the new product or if the delivery item or the new product is resold to third parties.

(6) The Customer shall not pledge, shall not provide for any security transfer and shall not assign the delivery item, the new product or any claims which replaces such. The Customer shall immediately inform SCHWIND of any pledges or other intrusions of third parties to enable SCHWIND to take legal action according to s. 771 German Code of Civil Procedure (ZPO) or provide for other legal remedies.

(7) SCHWIND shall be entitled to rescind the contract and to withdraw the delivery item or the new product in case the circumstances according to clause 9(6) occur as well as in case of payment default of the Customer.

(8) SCHWIND will release security granted by the Customer provided and to the extent the value of the security exceeds the nominal value of the secured claims by 30 per cent. SCHWIND chooses which security shall be released.

(9) The Customer shall insure the delivery items which are subject to the retention of title against theft, breakage, fire and water damage and it proves the existence of such insurance to SCHWIND. Provided the Customer is in delay with such proof SCHWIND is entitled to take out such insurance on Customer's costs. SCHWIND shall always have access to the disposition place of the delivery item.

10. Warranty

The Customer shall examine the delivery item immediately after the handing over and admonish obvious defects (s. 377 German Commercial Code (HGB)). Hidden defects shall be admonished immediately by the Customer following discovery. Provided the Customer does not observe these obligations it is deemed that the delivery item is accepted as being free of any defects, in case of any defects SCHWIND shall be liable as follows:

(1) SCHWIND may choose according to its own discretion whether to rectify the defect or whether to deliver a new item (supplementary performance). The Customer shall grant to SCHWIND the possibility and period of time necessary for rectification of defects or supplementary performance; otherwise SCHWIND is released from liability for any impacts / damages resulting from such defects. SCHWIND is entitled to multiple – usually two – rectifications of defects or supplementary performances. SCHWIND is also entitled to reject the rectification of defects or the supplementary performance or both if such are impossible or disproportional.

(2) The Customer shall not be entitled to object because of deviations which are customary in trade or minor technical deviations in quality, colour, quantity or weight.

(3) The Customer is not entitled to any warranty or damage claims if he has instructed third parties to remove the defects or make amendments to the delivery item without having observed SCHWIND's rights to rectify defects or supplementary performance.

(4) Any liability for normal wear and tear and expendable parts shall be excluded.

(5) In case the rectification of defects or supplementary performance is impossible or fails, the Customer shall be entitled to request a deduction of the purchase price or rescind the contract according to statutory provisions (rescission only if it is not a minor defect); this shall apply in particular, but not exclusively, in case of a negligent delay or refusal of rectification of defects or supplementary performance or if the rectification of defects or supplementary performance fails a second time.

(6) SCHWIND is not liable for any defects which come or will come into existence because of poor assembling by the Customer or third parties, improper

maintenance or inattentiveness, improper or inappropriate handling or excessive use.

(7) The Customer is not entitled to rescind the contract unless SCHWIND is in default.

(8) Any claims because of defects become time-barred one year following the acceptance of the delivery item, provided a longer warranty period it is explicitly and mandatorily provided for according to statutory law.

11. Damage Claims / Rescission

(1) Unless hereinafter not otherwise provided for, damage claims as well as other further claims of the Customer irrespective of the legal reason (in particular, but not exclusively, claims because of violation of contractual main or ancillary obligations, reimbursement of expenses, unlawful acts as well as other claims in tort), shall be excluded;

(2) The exclusion of liability does not apply in case SCHWIND or its auxiliary personnel or its legal representatives violate intentionally or negligently life, body or health. This exclusion does also not apply for damages which are caused by an intentional or grossly negligent breach of duty by SCHWIND, its legal representatives or personnel.

This exclusion of liability does also not apply if SCHWIND, its auxiliary personnel or its legal representatives violate negligently or intentionally essential obligations of the contract (cardinal obligations). In such cases damage claims shall be restricted to the typical and foreseeable damage.

(3) SCHWIND's liability for damages to persons or private property based on defects of the delivery item according to the German Product Liability Act remains unaffected.

(4) The exclusion of liability shall also not apply in case of a guarantee or a representation of a certain quality given by SCHWIND to the Customer, if the damage was caused due to a violation of such guarantee or representation.

(5) SCHWIND retains the right of rescission as well as rights to damages or reimbursements of expenses according to statutory law.

12. Lump Sum of Damages

In case SCHWIND is entitled to damages because of a violation of obligations by the Customer, the Customer shall be obliged to indemnify SCHWIND for loss of profit and to reimburse arisen costs by payment of 20 per cent of the gross purchase price. The Customer shall be entitled to proof that there were no profit losses and/or arisen costs or that such are less than the requested lump sum.

13. Infringement of Patents

Provided the construction of the delivery item is made according to specifications (drawing, design or other specification) of the Customer, the Customer is liable that such do not and will not infringe any rights of third parties, in particular patents, utility or design patents, protection rights or copy rights. The Customer is obliged to indemnify SCHWIND from any claims of third parties, which result from this obligations.

14. Data Use

SCHWIND informs according to the German Data Protection Act that personal data is registered and processed during contractual performance. The data is processed centrally within the group. SCHWIND reserves the right to insure the business transaction through a credit insurer and to forward the date of the Customer to the respective credit insurer. The Customer consents hereby. The consent may be revoked at any time.

15. Place of Venue / Applicable Law

(1) Place of performance and place of fulfilment shall be the plant of SCHWIND in Kleinostheim.

Place of venue is Aschaffenburg. SCHWIND is entitled to commence proceedings at any other cognisant place of venue.

(2) The law of the Federal Republic of Germany, except for the United Nations Convention on Contracts for the International Sale of Goods, shall apply.

16. Miscellaneous

(1) If any provision of these General Business Conditions should be or become invalid, unenforceable or impracticable, the validity of the other provisions hereof shall not be affected. The parties undertake to replace the invalid, unenforceable or impracticable provision by such valid, enforceable and practicable provision which corresponds as closely as possible to the parties' economic intent. The same applies in the event of missing provisions.

(2) This is only a convenience translation of the German Allgemeinen Geschäftsbedingungen (General Business Conditions) of SCHWIND. The German version shall be decisive.