

## SCHWIND Portal: Terms of use

These Terms of Use (hereinafter referred to as "Terms of Use") define the terms and conditions for members (registered Schwind users or representatives) who create a profile on the website [www.eye-tech-solutions.com](http://www.eye-tech-solutions.com) with their own website (hereinafter referred to as the "Website") operated by SCHWIND eye-tech-solutions GmbH, Mainparkstrasse 6-10, DE-63801 Kleinostheim (hereinafter referred to as "SCHWIND" or "Operator"):

### §1 Responsibility of a member

- (1) Each registered member is responsible for all contents published by the member on his website. This applies to statements in descriptive texts, pictures, videos as well as links to own social media accounts. SCHWIND, as the operator of the website, does not check or control the content of the published content.
- (2) SCHWIND exclusively provides the website and the services integrated therein. SCHWIND does not check for possible infringements of rights by the published contents of the members.
- (3) Should SCHWIND be informed of any infringement of rights by a member, it shall initiate complaint proceedings in accordance with § 4 and inform the member thereof.
- (4) In the event of a violation of the Terms of Use or a violation of rights, the Member shall be responsible for all damages incurred by SCHWIND or a third party as a result. In this context, the member is responsible for doing or refraining from doing anything necessary to remedy the infringement immediately. In this respect, the Member may, at his or her own discretion, either conclude or mediate a license agreement with the rights holder in the event of a violation of a third party's property right, or make suitable declarations and initiate measures to exclude the risk of repetition of future infringements and to compensate for the resulting material and immaterial damage.
- (5) The member himself is responsible for making suitable backup copies of the content uploaded to the website.
- (6) The member is responsible for ensuring that the data stored during the registration process are always up to date.

### §2 No guarantee

- (1) SCHWIND shall take all reasonable measures to ensure that the website and the implemented services function as smoothly as possible.
- (2) The use of the website or the services is at your own risk. The Member is solely responsible for the use of any content uploaded through the Services and for the upload itself.
- (3) A Member may use the maximum specified storage capacity. Due to the lack of guarantee of trouble-free operation of the Website as well as the permanent performance of the Website, the Member himself is responsible for making appropriate backup copies of the content uploaded to the Website in order to be able to access the separate backup copies in the event of a malfunction or breakdown of the Website.

### §3 Limitation of liability

- (1) SCHWIND assumes no liability for damages incurred by the member due to the lack of access or the inability to use the website or its contents.
- (2) SCHWIND shall be liable in accordance with the statutory provisions for intent and gross negligence. In the event of slight negligence, SCHWIND shall only be liable in the event of a breach of material contractual obligations, i.e. such obligations on the performance of which the member regularly relies and may rely, but limited in amount to the typically foreseeable damage. In addition, SCHWIND shall be liable for guarantees and claims under the Product Liability Act and in the event of culpable injury to life, limb or health. This liability also applies to legal representatives, employees or other vicarious agents of SCHWIND.
- (3) SCHWIND shall not be liable for damages resulting from the loss of works or data or their restoration only with unjustifiable effort if the member has violated its own obligation to back up data.

- (4) Furthermore, SCHWIND is not liable for the contents published by the members of the website. The member indemnifies SCHWIND against all claims asserted by other members or third parties against SCHWIND due to the publication of the member's content or his use of the services of the website. In this context, the Member shall also assume the costs of SCHWIND for any necessary legal defence, including all court and attorney fees at the statutory rate. This indemnification agreement does not apply if the member is not responsible for the infringements that have occurred. Furthermore, in the event of assertion of an infringement against SCHWIND, the member is obliged to provide the necessary information in connection with the legal defence immediately, truthfully and completely.
- (5) The website contains various links to external websites of third parties. SCHWIND has no influence on the design and content of the linked websites and accepts no liability for the topicality, correctness, completeness or quality of the content provided there through the mere link and hereby expressly distances itself from all content of the linked pages.

#### **§4 Complaint procedure**

- (1) SCHWIND merely provides the website and the integrated services. SCHWIND does not check or control the published contents. Should a violation of law be asserted against SCHWIND and should the violation of law result from the notification clearly and unambiguously verifiable, SCHWIND shall take the measures necessary in its opinion and discretion to remedy the violation of law complained of. In this case, the following procedure shall come into force:
  - a. The prerequisite for the complaint procedure is that the complaint clearly proves the alleged infringement.
  - b. The member whose conduct is objected to as unlawful with sufficient explanations and evidence will be requested within a reasonable period of time to comment.
  - c. If the requested member does not submit a statement within the aforementioned period, an inadequate statement or a statement confirming the infringement, SCHWIND will, if not already done, take the appropriate and necessary measures to remedy the infringement.
  - d. If, within the set period, the member submits a sufficient statement denying the infringement, SCHWIND will forward this to the third party who has made the complaint, with the request to reply within a reasonable period of time. If a further statement is received within the set period, SCHWIND will make a final assessment on this basis or, in the case of a lack of statement, within the period set by SCHWIND, on the basis of the previous communication, as to whether the infringement can be clearly proven. Should this be the case, SCHWIND will take the appropriate and necessary measures to remedy the infringement and inform all parties involved thereof. In the event that the alleged infringement is disputed, SCHWIND will also inform the persons involved thereof.
- (2) SCHWIND shall take the appropriate measures to remedy an infringement if requested to do so by a court or a state institution.
- (3) SCHWIND shall have the right, even in cases of doubt, to remedy a disputed and unambiguously proven infringement by taking suitable and necessary measures to protect the rights of third parties.
- (4) SCHWIND reserves the right, depending on the severity and intensity of the infringement, to terminate the membership of the responsible member immediately by extraordinary termination.

#### **§5 Intellectual property**

- (1) The publication of contents by the members does not result in any transfer of intellectual property rights to SCHWIND or other third parties. The member grants SCHWIND, as the operator of the website and services, a simple right of use for reproduction and making publicly available for use within the website and the services. All rights of use and moral rights are still assigned to the publishing member.
- (2) Insofar as a release is granted with regard to a published content on the Website, a simple right of use is hereby granted for the reproduction and making publicly accessible of the remaining Members on the Website and/or in the services integrated therein.