



- 1 **Scope.** These General Terms and Conditions shall apply to all supplies, services and licenses provided by EOS GmbH Electro Optical Systems ("EOS"), unless otherwise agreed in any purchase, license, service, work or other contract ("Contract") concluded between EOS and the Customer. All goods, rights, licenses or tangible or intangible works that are the subject of the Contract are hereinafter referred to as the "Deliverables" and all services or works that are the subject of the Contract are hereinafter referred to as the "Services". EOS' Deliverables and Services are provided to Customers only for purposes within the scope of their business or independent profession.
- 2 **No Other Terms and Conditions.** EOS does not accept any terms and conditions which deviate from these General Terms and Conditions, except if such terms and conditions have been expressly accepted by EOS in writing.
- 3 **Binding Orders.** Orders must be placed in writing and require express written acceptance by EOS. EOS may take up to two weeks to confirm whether or not it accepts any order. Should the Customer wish to cancel an order, the Customer shall immediately notify EOS thereof in writing ("Cancellation Notice") and pay EOS a cancellation and restocking fee of 20% of the agreed total price within five days of receipt of the Cancellation Notice. Cancellation after confirmation of dispatch by EOS is not possible.
- 4 **Prices.** Supplies and services not covered by the Contract shall be charged at EOS' list prices prevailing at the time of acceptance of the order. The prices quoted by EOS are exclusive of the costs of transport and insurance, as well as all related expenses, ancillary costs and customs duties, and any statutory value added tax (or similar) applicable on the date of invoicing. In the event of withholding of source tax ("Quellensteuer") by the Client, EOS shall be informed prior to withholding and payment of the invoice.
- 5 **Terms of Payment.** All invoices shall be paid by the Customer upon receipt without any deduction. In the event that the Customer fails to make the payment within thirty days from (i) the due date and (ii) receipt of EOS's invoice, Customer shall be deemed to be in default whether or not EOS has reminded the Customer of its payment obligation.
- 6 **Terms of Delivery, Passing of Risk.** Subject to the above Sections of these General Terms and Conditions, all Deliverables shall be made Carriage and Insurance Paid (CIP), Incoterms 2020. Risk will pass to the Customer when the Deliverable is handed over to the first carrier at Krailling, Germany. If packaging material within the meaning of § 15 (1) of the German Packaging Act (VerpackG) is used in the delivery of a Deliverable, EOS shall be legally obliged to take back the packaging material and shall take it back at the Customer's request. This ensures the legally required return of the packaging material to the recycling cycle and a contribution to the fulfilment of the European recycling targets in accordance with EU Directive 94/62/EC. The Customer shall bear the costs of recycling, disposing of or (as applicable) returning transport and sales packaging. This obligation shall also apply where EOS is under a statutory obligation to recover and/or recycle packaging.
EOS reserves the right to make partial deliveries.
Deliveries in the context of warranty services will be at EOS' cost up to the location to which the Deliverable was originally delivered; higher costs for delivery to a different location shall be borne by the Customer. In any event, the Customer shall be exclusively responsible for import clearance (costs, duties and formalities) also in the context of warranty services.
No delivery date shall be binding on EOS unless it has been expressly confirmed as "binding" by EOS and all prerequisites for the delivery which are within the responsibility of the Customer pursuant to Sec. 8 are met and the Customer has confirmed this in writing upon request.
If Customer fails to confirm within three days in writing a delivery date proposed in EOS' written notice of readiness for shipment, or where Customer requests postponement of a confirmed delivery date, Customer is in default of acceptance and EOS reserves the right to have the Deliverables concerned stored at the Customer's expense and/or to sell such Deliverables, in an auction or otherwise, to any third party. All monies obtained from such sale shall be for EOS' account to the extent that EOS has corresponding claims against the Customer in connection with the Contract. EOS reserves the right to supply a successor product to the Deliverable ordered which has become available prior to delivery, provided that the successor product meets the agreed specifications and is not more expensive than the Deliverable ordered.
- 7 **No Assignment.** The Customer shall not be entitled to assign its rights under the Contract - except for claims for payment - to any third party without EOS' prior written consent, which consent shall not be unreasonably withheld.
- 8 **Customer Obligations.** It shall be the Customer's responsibility to comply with any technical guidelines, such as assembly requirements, which EOS may issue from time to time, to provide the technical environment required for the functioning of Deliverables and/or provision of Services, and to provide EOS with all information and assistance which EOS may reasonably require. In the event that EOS has a claim to be compensated financially due to non-conforming or delayed assistance by the Customer, such compensation shall be calculated at EOS' list prices, as amended from time to time, and in particular on the hourly rates set out therein. In the event that EOS names to the Customer a third-party service



provider, this shall be considered a recommendation only and EOS shall not be deemed to have assumed any liability in respect of the performance of such third-party service provider.

- 9 **Warranty.** In the event of any defect of a Deliverable, including any deviation from agreed specifications and/or any violation of rights of third parties (collectively “Defects”) the Customer may, within the limitation periods set forth in Sec. 11, exercise its statutory remedies for repair or replacement of the Deliverable, and, only where that fails or in other exceptional cases as provided for in statutory law, withdraw from the Contract or demand a reduction in the agreed price (“Warranty Claims”) only subject to the following limitations:

EOS reserves the right to decide whether to repair or to replace any Deliverable which should prove to be defective. EOS reserves – also in work contracts - at least two attempts at such repair or replacement, except where this should unduly prejudice Customer in individual cases.

Any Warranty Claims shall be excluded unless the Defect in question substantially limits the suitability of the Deliverable for the agreed purpose. The same shall apply in the event of immaterial deviations from agreed specifications. There shall be no obligation on EOS to provide software updates to maintain conformity with the Contract, unless expressly agreed otherwise in the Contract. EOS shall only be obliged to provide (i) the Deliverables expressly agreed in the Contract and (ii) the assembly or installation instructions, or other instructions, expressly agreed in the Contract.

The Customer shall promptly inspect any Deliverables. EOS shall be notified of Defects or deviations which can be detected upon such inspection promptly after delivery, or, where installation is required, installation. EOS shall be notified of any other Defects or deviations promptly after they have been detected. In the absence of such prompt notice, the Customer shall be deemed to have consented to any Defect or deviation of the Deliverables of which EOS has not been promptly notified. The notice under this clause shall in particular not be deemed prompt if it is not received within two weeks, or, with respect to deliveries of sintering materials or spare or wear parts, one week. Furthermore, any Warranty Claims shall be excluded to the extent that the Customer (a) uses the Deliverable for any purpose other than the contractual purpose or in violation of the relevant statutory requirements and/or any guideline issued by the manufacturer; or (b) either (i) modifies the Deliverable or (ii) uses of the Deliverable in connection with any hardware or software not approved by the manufacturer of the Deliverable for such purpose, unless, in each case, the Customer has obtained EOS’ prior written consent, and except, in each case, where the foregoing circumstances did not cause the Defect.

Furthermore, any Warranty Claims for conflicting third-party rights or statutory provisions shall be excluded unless (a) such third-party rights or statutes prevail at the location to which the Deliverable was originally delivered or within the European Economic Area or Switzerland and (b) the Customer enables EOS to conduct the defence alone without any restriction and grants to EOS the necessary powers.

The Deliverables are not intended to be distributed to consumers as defined in statutory law. Where Deliverables are sold or distributed to third parties, EOS shall be liable for third party claims against the Customer and/or Customer’s cost or efforts for providing warranty services to its own customers in the event of a non-conformity only if and to the extent that EOS cannot establish that such non-conformity was not due to negligence imputable to EOS and only within the limits of Sec. 10. The foregoing shall not limit EOS’ obligation to repair or replace the Deliverable in accordance with the warranty provisions. All of the foregoing claims shall be subject to the limitation periods agreed in Sec. 11 and shall apply to the exclusion of any more extensive statutory remedies.

EOS does not guarantee properties of Deliverables. The manufacturer's warranty issued with any Deliverable shall not be deemed a guarantee of properties. Where EOS expressly issues a guarantee of properties in an individual case, the limitations of liability and limitation periods agreed below, shall not apply to claims thereunder.

All sintering materials sold by EOS have not been developed, tested or certified as a medical device according to the Directive 93/42/EEC (MDD) or Regulation (EU) 2017/745 (MDR), nor is it intended as a medical device for the purposes specified in particular in Art. 2 No. 1 MDR.

It shall be Customer’s sole responsibility to determine the fitness of the Deliverables and Services for its particular purposes. It shall also be Customer’s sole responsibility to avoid defective design or workmanship of any products manufactured and placed on the market by Customer using Deliverables or Services through comprehensive testing prior to, and quality control during, production. The Customer shall indemnify and hold harmless EOS from all third-party claims caused by Customer’s failure to consummate the foregoing responsibilities.

With respect to Consulting Services EOS shall be responsible for providing the consultancy, training or workshop in accordance with the Contract but not for any parts built based on the Service or other results of the Service.

- 10 **Liability.** EOS shall be liable in damages, whether based on contract or any other legal theory, only to the extent that the damage was caused by gross negligence or willful misconduct imputable to EOS. In the event of death of a natural person or personal injury to the latter, EOS shall be liable also for slight negligence in accordance with statutory law. In addition,



EOS shall also be liable in accordance with statutory law for a slightly negligent violation of a fundamental duty under the Contract, but such liability shall be limited to such damage as EOS could have reasonably foreseen at the time of signing of the Contract. Fundamental duties as used herein comprises all duties which must be fulfilled by EOS in order to enable consummation of the Contract and the achievement of its purposes and fulfillment of which the Customer may reasonably expect in view of the content and purposes of the Contract such as the duty to consummate the Contract in a timely manner and a manner which does not endanger the life or health or personal property of Customer and its personnel. This par. shall not be construed to shift the statutory burden of proof in any way. The Customer shall be responsible, in regular intervals, to back-up data and to examine the work products of any Deliverables. EOS shall not be liable for damage which could have been prevented by such actions.

EOS shall not be liable for any damage or loss in the event that Customer has used sintering materials or parameters other than those provided or certified by EOS, or that Customer has modified or altered Deliverables or used them for a purpose or in a manner not contemplated in the Contract, except if and to the extent that Customer can establish that such damage or loss has not been caused or aggravated thereby.

The Customer shall hold EOS harmless from all claims asserted by third parties claiming that the Customer has infringed the intellectual property rights of third parties by making certain work products using the Deliverables or violated statutes or regulations applicable to its business, including, but not limited to, regulatory law, statutes on unfair competition or data protection.

Limitations on EOS' liability agreed in the Contract or these General Terms and Conditions shall apply also to the personal liability of EOS' officers, employees or agents.

Any mandatory statutory product liability and/or mandatory statutory liability arising from a guarantee of properties shall remain unaffected.

- 11 **Limitation Period.** All remedies for defects in Deliverables and Services as well as other remedies based on defaults shall cease to be available to the Customer after one year following the time of delivery/provision and, in the case of used Deliverables, after six months from such time.

However, all remedies based on fraudulent concealment of defects, willful misconduct, gross negligence, and/or the death of a natural person or personal injury to the latter, caused by negligence or willful misconduct as well as in case of a guarantee of quality shall be subject to the applicable statutory limitation periods.

Where EOS repairs or replaces a Deliverable or attempts to do so, such repair or replacement shall not result in a renewal of the limitation period for the Customer's Warranty Claims with respect to the repaired Deliverable (including spare parts or units used for the repair) or a replacement product. Notwithstanding the repair or replacement, such Warranty Claims shall be subject to a limitation period equivalent to the remaining limitation period applicable to the original Deliverable, except that such limitation period shall not expire earlier than three months after the conclusion of the repair or replacement or EOS' refusal to undertake further attempts at such repair or replacement.

- 12 **Retention of Title; Title in Replaced Parts.** Until payment in full of all outstanding amounts by the Customer, EOS shall retain title to the Deliverables. The Customer shall be authorized to process or re-sell Deliverables which are subject to this reservation of title within the ordinary course of business, provided that EOS may revoke such authority at any time. In the event of processing, EOS shall be considered the processor. Where such Deliverables are combined or commingled with other goods, EOS shall obtain co-ownership in proportion to the value of the Deliverables and the other goods. In the event of reselling, the Customer hereby assigns to EOS all claims against third parties arising out of the reselling of such a Deliverable, including auxiliary claims and collateral, to serve as security for payment of the purchase price to EOS. Where EOS replaces a Deliverable in whole or part in the context of warranty services, services under a manufacturer's warranty or other Services (such as maintenance or repair), Customer shall be obligated to hand over all replaced parts to EOS and transfer title to such parts to EOS.

- 13 **Export.** EOS advises the Customer that parts or technology used in Deliverables may be subject to export limitations under statutory export control regulations on a national (German AWG/AWV), EU (Dual Use Regulation) and/or international level (US Export Administration Regulations (EAR)). EOS will make references to export control list items in the delivery documents. The Customer is aware that export control regulations may apply also to any re-export of Deliverables from the location to which they were originally delivered to a third country. Based on this, the Customer agrees to abide by the end use/destination disclosed prior to delivery, and to refrain from re-exporting the Deliverables except in accordance with export control laws prevailing at the location to which they were originally delivered and the US export control regulations, and to impose this obligation also on its own customers, without prejudice to the other provisions of the Contract or these Conditions.

- 14 **Subcontractors.** EOS may make use of subcontractors to perform any of its obligations under the Contract.



- 15 **Intellectual Property.** EOS reserves all intellectual property rights in and to all Deliverables and all documentation created or provided in connection with any Service or Deliverable, as well as all any other development or discovery which EOS may make in provision of any Service or otherwise in consummation of the Contract. The Customer's right to use any Deliverables (including Deliverables developed or customized for Customer) shall be non-exclusive, limited to internal business purposes and otherwise only as provided in the Contract and in these Conditions. Reverse engineering, in particular (but without limitation) the dismantling of Deliverables and the attempt to derive design, construction elements and individual components from the finished product and/or the reproduction of Deliverables shall not be permitted. EOS shall be entitled to use the feedback and further know-how which EOS obtains through the Services in order to improve the service and products of EOS, provided that this does not infringe the intellectual property rights of the Customer or disclose business secrets of the Customer.
- 16 **Software.** Software will be provided in object code only; the source code will not be delivered. The Customer shall refrain from (a) reverse engineering the software or reducing it in any other ways to a form perceptible to humans; or (b) modifying, adapting or translating the software, or creating derivative works of the software, except in each case to the extent expressly permitted in the Contract or by mandatory law. The same shall apply to any publication of any benchmark tests with the software without EOS's prior written consent. Any copies of the software shall contain all of the copyright notices shown on the original. Neither the Customer's right to copy and modify the Software to the extent expressly permitted by applicable mandatory legislation regarding back up or the elimination of errors nor the Customer's rights under applicable mandatory legislation regarding reverse engineering shall be deemed restricted hereby. The Customer shall refrain from selling the software or generally making the software available to any third party, whether by delivering a data medium, over a network, or in any other form, whether or not for compensation, except with EOS's prior written consent. Unless EOS has reasonable cause to withhold the consent, it shall be granted if the third-party acquirer assumes all obligations regarding the Software under the Contract and these Conditions and the transfer does not lead to simultaneous use of more than one copy of the software. With respect to system software the consent shall be considered granted for any transfer together with the system for which it was provided, provided that the Customer does not retain copies.
- Where EOS delivers third party software licensed to EOS, EOS will make a reference to the license terms of such third-party software in the Contract and such license terms shall prevail over these General Terms and Conditions.
- 17 **Confidentiality.** The parties mutually agree to keep all confidential technical and commercial information disclosed by the respective other party strictly confidential and to refrain from using any such confidential information except as required to consummate the Contract for as long as the information is and remains reasonably confidential. Only information which the recipient can show was already published or known to it at the time of disclosure or that was published later without the fault of the recipient shall be exempted from this clause. The recipient shall notify the owner of any confidential information in the event that one of the foregoing exceptions applies and/or it becomes aware that information which the respective other party regards as confidential has become publicly known, or if notes or media containing such confidential information are lost, or if it deems itself legally obligated to provide confidential information to any third party, including courts of law or government entities. Confidential Information may not be disclosed to third parties except for a disclosure to officers, employees or contractors of the recipient or its corporate affiliates (collectively "Personnel") if and to the extent that such Personnel are bound by secrecy obligations and require knowledge of the information to consummate the Contract. The parties guarantee that their Personnel are bound by, and shall comply with, a secrecy obligation corresponding to or exceeding the standard set by this clause. This confidentiality clause shall remain in force even after termination of the Contract for as long as the information is and remains reasonably confidential. Disclosure of know-how does not constitute a change in legal control or joint control within the meaning of GeschGehG (German Trade Secrets Act).
- 18 **Notices.** Any notices which may be given pursuant to the Contract shall be valid only if they are in writing.
- 19 **Severability.** Should one or more of the provisions of the Contract or these General Terms and Conditions be or become invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected.
- 20 **Governing Law.** The Contract and these General Terms and Conditions shall be subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 21 **Disputes.** All disputes arising in connection with the Contract, or its validity shall be finally settled according to the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) (the "Rules") without recourse to the ordinary courts of law. The tribunal shall consist of one arbitrator if the amount in dispute does not exceed € 50,000.00 or otherwise three arbitrators. The chairman of the tribunal must have the qualification required to be admitted to the German bar and all arbitrators must be fluent in English. The procedure shall be governed by the Rules, as amended from time to time, and to the extent that the Rules do not provide sufficient guidance, by the procedural law prevailing at the place of arbitration. The proceedings shall be held in English, but documents in German may be submitted to the tribunal without translation.



The place of the arbitration shall be Munich, Germany. The foregoing shall not limit either party's right to file in any court of competent jurisdiction any action (a) seeking injunctive relief and/or (b) where an arbitral award would not be enforceable against the respective other party in the relevant jurisdiction.