

**General Terms and Conditions of  
Omicron-Laserage Laserprodukte GmbH**

**1. General Terms, Applicability**

- 1.1 The following general terms and conditions (hereinafter the "Terms and Conditions") shall apply to all legal and business relationships between Omicron-Laserage Laserprodukte GmbH, hereinafter "OMICRON", and all customers who are not consumers. In all cases the terms and conditions in effect at the time the customer's order is placed shall apply. Any different terms and conditions, including, without limitation, any conflicting terms and conditions, of the customer shall apply only with the express written consent of OMICRON. These Terms and Conditions shall apply even if OMICRON – knowing that the customer's terms and conditions differ from or conflict with these Terms and Conditions – renders performance to the customer without any reservation of rights. These Terms and Conditions shall also apply to all future transactions with the customer.
- 1.2 All offers by OMICRON are subject to change. Contracts are valid only if confirmed in writing by OMICRON.
- 1.3 The customer hereby acknowledges that the systems delivered by OMICRON are subject to export supervision by the Federal Commerce Department. The customer agrees to comply with all relevant requirements of the Federal Commerce Department in the event of any reexport of systems delivered by OMICRON.

**2. Prices**

- 2.1 The customer shall for each transaction pay the prices in effect at OMICRON at the time the contract is concluded. All prices are exclusive of costs of packaging and transportation to the agreed delivery address of the customer. The customer is responsible for any customs duties, fees, taxes and other charges for deliveries outside the European Union.
- 2.2 If the parties have agreed to duty-free prices, the customer shall deliver the necessary customs documents to OMICRON. If the customer fails to do so or it turns out later for other reasons that the goods could not be imported duty-free, the customer or the party that issued the duty-free declaration shall be liable to OMICRON.

**3. Payment Terms**

- 3.1 Unless otherwise agreed, invoices from OMICRON are due within 30 days from the invoice date. Payment shall be made by bank transfer to the account of OMICRON, all costs and charges prepaid. In the event of non-payment, customer shall pay interest charges for late payment to OMICRON at the rate of 9 percentage points above the applicable base interest rate.
- 3.2 Payment orders are accepted for conditional credit only and the customer is responsible for of all collection and financing charges.

- 3.3 The customer shall have no right to offset any counterclaims against due payment claims of OMICRON, unless such counterclaims are undisputed or have been established by a final and conclusive court judgment.

#### **4. Place of Performance, Risk of Transport, Non-Acceptance**

- 4.1 The place of performance for all obligations arising from the contract with the customer shall be 63110 Rodgau, Germany.
- 4.2 The risk of accidental destruction, loss or deterioration of the goods (risk of transportation) shall transfer to the customer at the time the goods are delivered to the carrier. The shipping method (including, without limitation, the carrier, shipping route, and packaging) shall be selected by OMICRON. At the request of the customer OMICRON shall also use special shipping methods (e.g., expedited shipping) or deliver products in several shipments, provided that the customer shall pay all resulting additional costs.
- 4.3 If not all products ordered by the customer are in stock, OMICRON shall have the right to deliver products in several shipments, unless doing so would be unduly burdensome for the customer.
- 4.4 If the performance to be rendered by OMICRON is delayed for reasons for which the customer is legally responsible (e.g., non-acceptance), the customer shall indemnify OMICRON upon demand for any resulting damages and additional costs (e.g., warehousing costs). If OMICRON is unable to meet a delivery date, OMICRON shall promptly notify the customer of the expected new delivery date.

#### **5. Delivery, Liability, Rescission**

- 5.1 The agreed delivery period shall be extended by the time period during which the customer, if the customer is obligated to make advance payment, is late with performing the customer's obligations arising from the relevant contract with OMICRON or from another contract with OMICRON. Any additional rights OMICRON may have as result of late payment by the customer shall remain unaffected thereby.
- 5.2 Any liability of OMICRON for damages of the customer, as well as for malperformance related to services that are rendered by third parties and are merely brokered by OMICRON or that are expressly identified as third-party services is hereby excluded. Any claims of the customer against OMICRON shall be subject to a limitation period of one year from the date the products are delivered or the services are received. These provisions shall not apply to claims involving harm to life, limb or health, or to any other claims involving willfulness or gross negligence, or to any claims for damages resulting from a breach of material contract terms. A contract term is material within the meaning of the foregoing provision if performance of that term is a prerequisite for due performance of the contract as a whole and if the customer may reasonably rely on the performance of that term. OMICRON's liability for breach of a material contract term shall be limited to such damages as are reasonably foreseeable at the time the contract is concluded.
- 5.3 Irrespective of the foregoing provisions, the customer as well as OMICRON shall have the right to rescind the contract, if the agreed delivery period is exceeded by more than 10 weeks. In such

case all products delivered and/or payments made shall be returned or refunded to the other party; any additional claims shall be subject to section 5.2, *mutatis mutandis*. In the event of rescission the customer's remedies shall be limited to a refund of payments already made.

- 5.4 If the customer fails to accept goods, OMICRON shall have the right to rescind the contract or to seek damages for non-performance after setting the customer a grace period of two weeks.

## **6. Retention of Title, Security Assignment, Processed Products**

- 6.1 OMICRON shall retain title to all products until all claims of OMICRON against customer have been fully paid – irrespective of the legal basis and due date of such claims – even if payments are made for specified claims. The retention of title shall secure, without limitation, all claims arising in connection with the sold product (e.g., claims arising from repairs or from deliveries of spare parts or accessories), and all claims of OMICRON arising from contracts concluded with other companies owned by or affiliated with the customer. If there is a current account, the retention of title shall secure OMICRON's claim for payment of the account balance; the payment terms originally agreed upon for each transaction shall be controlling for the customer's liability for the account balance. The customer hereby assumes the risk of loss, wear and tear, or damage of the sold product during the term of the retention of title. Prior to transfer of title secured goods may not be pledged, assigned for security purposes, processed or modified without the consent of OMICRON.

- 6.2 Any processing or modification of secured goods shall inure to the benefit of OMICRON. If secured goods are processed, combined with or commingled with other goods not owned by OMICRON, OMICRON shall have a co-ownership interest in the resulting product reflecting the invoice value of the secured goods in proportion to the value of the other processed goods at the time of processing, combination or commingling. If the customer acquires exclusive title to the resulting product, customer shall transfer a proportionate co-ownership interest in the resulting product to OMICRON and the customer shall hold the resulting product in bailment for OMICRON free of charge. The assignment of claims agreed above shall in the aforementioned cases be limited to the amount of the invoice value of the secured goods that are resold together with other goods. The customer shall promptly notify OMICRON of any attachment or other enforcement efforts by third parties with respect to the secured goods or assigned claims, providing OMICRON with all information needed to intervene in such efforts. All resulting costs that cannot be collected from the third party shall be paid by the customer. Upon the demand and at the option of the customer, OMICRON shall release security interests to which OMICRON is entitled under the foregoing provisions, if and to the extent that the value of OMICRON's security interests exceeds the secured claims by more than 20%.

- 6.3 The customer shall have the right to resell secured goods in the ordinary course of business. The customer hereby assigns to OMICRON all claims from the resale of secured goods, in each case in the amount of the final invoice amount. The customer shall have the continued right to collect claims, provided however that the right of OMICRON to collect claims directly shall remain unaffected thereby. However, OMICRON shall not collect assigned claims as long as the customer complies with its obligation to remit collected proceeds to OMICRON and is not late with payment, no petition for insolvency has been filed with respect to the assets of the customer, and the customer has not stopped making payments. OMICRON hereby accepts the foregoing

assignment. Customer shall provide OMICRON with all information and documentation necessary for collecting the assigned claims.

- 6.4 Except as provided above, the customer shall have no right to transfer secured goods or claims that have been assigned to OMICRON. The customer shall promptly notify OMICRON of any impairment of rights to sold products that are subject to a retention of title by OMICRON. The customer shall pay the costs of all measures taken to clear items that have been assigned to OMICRON for security purposes from third-party rights.

## **7. Warranty**

- 7.1 OMICRON makes no warranty for the suitability of sold products for any particular purpose, and it is the sole responsibility of the customer to review and decide whether products are suitable for the customer's purposes.

- 7.2 For technical reasons there may be minor discrepancies between product specifications (including electronic specifications) and actual products. Minor discrepancies from the specifications, or technical modifications that do not substantially impair the suitability of sold products, shall not be considered defects within the meaning of these warranty provisions.

- 7.3 The customer shall carefully inspect products promptly upon receipt. The customer shall provide OMICRON with written notice of any readily apparent defects within seven days from receipt of the goods, and of any other defects within 14 days from discovery of the defect (exclusionary period). Timeliness of the notice shall be determined with reference to the date it is sent. If a defect was present at the time the risk of loss transferred, OMICRON may, at its sole option, either render remedial performance by repairing the defect (repair) or delivering products that are free of defects (replacement). The customer shall provide OMICRON with the time and opportunity needed for remedial performance, in particular by delivering the product in question to OMICRON for inspection and testing purposes. If a warranty claim by the customer turns out to be unjustified, the customer shall be liable to OMICRON for all resulting costs. OMICRON may make remedial performance conditional upon payment of the purchase price by the customer. However, the customer shall have the right to withhold such part of the purchase price as is reasonably proportionate to the defect. If remedial performance has failed or is delayed for an unreasonable time period, or if OMICRON has the right to refuse remedial performance under applicable law, the customer may reduce payment or, in the event of a substantial defect, rescind the purchase agreement. OMICRON makes no other warranties or guarantees, and any liability for public statements of third parties is hereby excluded.

- 7.4 OMICRON shall have no obligations under this warranty, if delivered products are treated improperly, are modified or processed without the approval of OMICRON, or are abused or opened without permission, or if the original product serial numbers are removed. OMICRON agrees to be liable for products of third-party manufacturers only on the condition that the purchaser shall initially seek to enforce against the supplier the warranty and guarantee claims that have been assigned to the customer by OMICRON. OMICRON shall be liable under this warranty only if and to the extent that the supplier has made no warranties or guarantees. Any warranty claims of the customer against OMICRON based on defective third-party products shall be subject to a limitation period of six months from the date the risk of loss transfers. OMICRON

hereby assigns to the customer all warranty and guarantee claims against suppliers of third-party products, and the customer hereby accepts this assignment.

- 7.5 OMICRON makes no warranty or guarantee for used products.
- 7.6 Any liability of OMICRON for defective or improper maintenance of products by persons not authorized by OMICRON is hereby excluded.
- 7.7 OMICRON shall perform warranty services exclusively on the premises of OMICRON or, at the sole option of OMICRON, at the agreed delivery address of the customer.

## **8. Software**

- 8.1 All copyrights to software developed and produced by OMICRON shall remain with OMICRON as the producer of the software. All software shall be delivered in protected form. All software shall be carefully installed and tested. In the event of any software errors, such errors shall, if the software has been developed specifically for the customer, be corrected within a warranty period of six months, to the extent compatible with the system and provided that the customer has made no changes to the software, data carriers or hardware, has followed all basic instructions of the software documentation, and provides OMICRON with any requested information and data. The customer hereby agrees that if these requirements are not satisfied, OMICRON may invoice customer for time and materials expended. In addition, OMICRON shall have no obligation to diagnose software errors in such cases. Any liability for lack of merchantability or suitability for a particular purpose, as well as any liability for accidental damages or consequential damages resulting from or in connection with the delivery, operation or use of software is hereby excluded.

## **9. Venue and Jurisdiction, Governing Law**

- 9.1 Venue and jurisdiction for any and all disputes arising from or in connection with this Agreement between the parties shall be in the courts of Frankfurt am Main, Germany.
- 9.2 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) shall not apply.

## **10. Miscellaneous, Severability**

- 10.1 The parties have made no oral collateral agreements with respect to the subject matter hereof. Any modifications to this Agreement, including this clause, shall be valid only if in written form and duly signed by both parties.
- 10.2 All provisions of this Agreement are severable for purposes of their validity. If any provision of this Agreement is void or invalid, or becomes void or invalid during the contract term, the validity of the remaining provisions shall remain unaffected thereby. The parties agree that they shall replace any invalid provision with such valid provision as most closely reflects the intent and purpose of the original provision duly taking into consideration the interests of both parties. The

same shall apply, *mutatis mutandis*, if any provisions of this Agreement have been inadvertently omitted.

10.3 OMICRON shall have the right to sell and assign its rights under this Agreement, or its right to enforce such claims, to third parties.

10.4 The terms and conditions shall be executed in two counterparts, one in the German language and the other in the English language. In the event of any conflicts the German version shall prevail.

**Last revised: September 2014**

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Commercial register court: Local Court of Offenbach, HRB 22785

VAT ID no.: DE – 132096304

Managing Directors: Sönke Baumann, Dieter Dinges, Wolfgang Fürstenberg

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(To be completed only by customers whose residence/domicile or place of habitual abode is not located in the Federal Republic of Germany)

I have read the foregoing General Terms and Conditions and hereby agree to their applicability/incorporation by reference.

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Place, date

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Signature of the customer