
GENERAL CONDITIONS OF SALE, MAINTENANCE AND REPAIR OF HERBERT WALDMANN GMBH & CO. KG

Last updated: 3 April 2020

1. Scope of application

1. These General Conditions of Sale, Maintenance and Repair shall apply exclusively to dealings with entrepreneurs in the exercise of their commercial or independent professional activity, legal persons under private law, foundations and legal persons under public law as well as special funds under public law. They shall apply to all business transactions between Herbert Waldmann GmbH & Co. KG (hereinafter referred to as "Waldmann") and the Ordering Party even if they are not explicitly referred to in any subsequent contracts. They shall apply to work and service contracts accordingly, in particular for maintenance and repair orders. The acceptance of products delivered shall be replaced by acceptance of work performed in case of work contracts and services delivered in case of service contracts.

2. Any opposing, additional or deviating provisions of the Ordering Party that contradict these General Conditions of Sale, Maintenance and Repair shall not become part of the contract unless Waldmann has explicitly agreed to them in writing. These General Conditions of Sale, Maintenance and Repair shall apply even if Waldmann unconditionally executes any delivery to the Ordering Party being aware of its opposing, additional or differing terms.

3. Additional agreements or any agreement deviating from these General Terms and Conditions of Sale, Maintenance and Repair made between Waldmann and the Ordering Party for execution of a contract shall be made in writing in this contract. This shall also apply to the waiver of this written-form requirement.

4. Any rights to which Waldmann is entitled in accordance with legal provisions or any other agreements beyond these General Conditions of Sale, Maintenance and Repair shall remain unaffected.

2. Conclusion of the contract

1. Offers of Waldmann are free and non-binding.

2. Illustrations, drawings, details with regard to weight, dimensions, performance and consumption as well as any other description of the products in the documentation belonging to the offer are estimates only, unless explicitly stated as binding. They do not constitute any agreement or guarantee regarding the characteristics of the products.

3. Waldmann shall reserve all ownership rights, copyrights and any other property rights to all offer documents. Such documentation may not be disclosed to third parties.

4. Any purchase order or sales order shall become binding after being confirmed by a written order confirmation or execution of the purchase or sales order by Waldmann. Automatically generated order confirmations without names and signatures will be deemed to be written documents. If Waldmann does not respond to offers, purchase orders, requests or any other statements from the Ordering Party, this shall be deemed as approval only if this has previously been agreed in writing. When orders are placed via the Waldmann Online Shop, a contract is concluded when a written order confirmation is delivered or when the ordered goods are dispatched. As far as the order confirmation contains any obvious errors, typing or calculation errors, it shall not be binding for Waldmann.

5. If the Ordering Party applies for initiation of solvency proceedings or of similar proceedings regarding the Ordering Party's assets or if any reasoned application of a third party for the initiation of solvency proceedings or similar proceedings regarding the Ordering Party's assets is denied for a lack of assets, Waldmann is entitled to rescind the contract in whole or in part.

3. Scope of delivery

1. The scope of the delivery is specified in the written order confirmation issued by Waldmann. Any changes to the scope of delivery by the Ordering Party require the written approval by Waldmann in order to be effective. The design and the form of the products will be subject to changes to the extent that such changes are not significant and can reasonably be expected to be accepted by the Ordering Party.

2. Deliveries can be made in parts.

4. Performance time

1. Periods and dates have to be agreed in writing in order to be binding. They are non-binding, unless they have previously and expressly been designated as binding by Waldmann.

2. A period starts with the dispatch of the order confirmation by Waldmann, but not until any documents, permits and approvals to be obtained by the Ordering Party have been presented, any technical matters have been clarified and the agreed deposit or, in case of transactions with an Ordering Party abroad, the whole payment has been received. In case of a deadline, this deadline is postponed accordingly. Observance of the performance time requires punctual and proper fulfilment of any other duties of the Ordering Party.

3. The performance time is deemed to be observed if the products leave the factory or if Waldmann has issued a collection or dispatch note before expiration of the delivery period. Adherence to the performance time is subject to timely and proper delivery of the products supplied to Waldmann.

4. In case of a delay in delivery, the Ordering party is entitled to cancel the contract after a reasonable grace period it granted to Waldmann following the delay in delivery has expired without result.

5. If Waldmann has concluded a framework agreement with the Ordering Party about future deliveries and the Ordering Party culpably does not retrieve the products on time, Waldmann shall be entitled to deliver and invoice the products, withdraw from the contract and/or claim damages and/or reimbursement of expenses after a reasonable grace period set by Waldmann has expired without result.

5. Maintenance and repair orders

1. The Ordering Party shall deliver the products to be maintained or repaired at its own cost and risk in due time to the address specified by Waldmann and promptly pick them up after maintenance or repair work has been completed and Waldmann notified that the products are ready to be picked up. If it has been agreed that Waldmann picks up the products to be maintained or repaired or that maintenance or repair is carried out at the Ordering Party's site, travel costs and costs for installation and mounting shall be charged separately. In this case, the Ordering Party is obligated to facilitate free access to the products to be maintained or repaired.

2. Waldmann only issues estimates for repair orders if the Ordering Party orders this separately in writing. The estimated cost of repair is non-binding. Waldmann carries out the repair unless the Ordering Party rejects the estimate in writing within 14 days from the date of the estimate.

6. Passing of the risk and acceptance

1. The risk of accidental loss or accidental deterioration will pass to the Ordering Party when the products are handed over to the person carrying out transportation or when the products leave the warehouse of Waldmann for shipment. In case of collection by the Ordering Party, the risk will pass to the Ordering Party with the notification that the goods are ready for collection. Sentence 1 and sentence 2 shall also apply if delivery is made in parts or if Waldmann has granted any further benefits such as transportation costs or installation of the products at the Ordering Party's premises.

2. Should the Ordering Party default on accepting the delivery of goods, Waldmann will be entitled to claim compensation for the resulting damage and any additional expenditure. The same will apply if the Ordering Party breaches other duties to collaborate, unless the Ordering Party is not responsible for such a breach of other duties to collaborate. The risk of accidental loss or accidental deterioration of the products will pass to the Ordering Party at the latest at the moment of default on accepting the delivery of goods. After a reasonable grace period set by Waldmann has expired without result, Waldmann shall be entitled to make other dispositions concerning the product and supply the Ordering Party with the products within an adequately extended period.

3. If dispatch is delayed due to circumstances beyond Waldmann's control, the risk will pass to the Ordering Party with the notification that the goods are ready for dispatch.

4. Any delivered products have to be accepted by the Ordering Party without prejudice to the Ordering Party's rights arising from product defects even if such products have minor defects.

5. The Ordering Party is obligated to accept the repair work as soon as it has been informed about completion of the work and the repaired products have been tested.

6. When acceptance is delayed without the fault of Waldmann, acceptance is deemed to have taken place two weeks after the end of the repair work was announced.

7. With the acceptance, Waldmann's liability for recognisable defects ends, insofar the Ordering Party has not reserved its assertion in writing upon acceptance.

7. Prices and payment

1. Without special agreements, all prices are quoted ex works and do not include any shipping costs, packaging costs, insurance, statutory taxes, custom duties or other duties. Any costs incurred in this respect, including, but not limited to, the costs for packaging and transportation of the products, will be charged separately. Statutory VAT will be charged at the rate applicable at the date of invoicing and will be shown as a separate item.

2. Any orders for which no fixed prices have been expressly agreed and for which a delivery date that is at least six weeks following the conclusion of the contract has been determined will be invoiced on the basis of the Waldmann list prices applicable on the day of delivery. Entry of the list price applicable at the order date into an order form or an order confirmation shall not be deemed to be an agreement of a fixed price. In case of price increases of more than 5%, the Ordering Party will be entitled to rescind the contract in this respect. The Ordering Party will, upon request of Waldmann, state immediately whether the Ordering Party will exercise its right to rescind. To the extent production-related price increases occur by the day of delivery, Waldmann will be entitled to adjust the price accordingly, regardless of any offers and order confirmations.

3. In default of special agreements, the delivery price shall be paid within 10 days from the date of invoice without discount. Invoices for maintenance, repair and replacement parts are to be paid immediately without deduction. Provided a cash discount has been agreed, it is required that the Ordering Party has paid all due receivables arising from the business relationship in due time before this amount may be deducted. The payment day is the date on which the payment is available to Waldmann. In case of default in payment, the Ordering Party shall pay interest on arrears amounting to 9% above the relevant base interest rate p.a., and Waldmann may request a lump sum of EUR 40.00. Any further claims of Waldmann shall remain unaffected.

4. Notwithstanding paragraph 3, payment for any dealing with Ordering Parties domiciled abroad shall be made before delivery, unless otherwise agreed in writing.

8. Claims for defects and liability

1. The Ordering Party's rights arising from product defects require that the Ordering Party inspect the delivered products promptly after having received them – if reasonable also by any test processing or test usage – and that the Ordering Party inform Waldmann in writing about any recognisable defects or defects that become obvious during inspection without undue delay and no later than two weeks from receipt of the products. Any detected hidden defects have to be notified in writing to Waldmann without undue delay. Before incorporating delivered products in other objects or attaching delivered products to any other object, the Ordering Party shall carry out a simple function test. Such notification to Waldmann has to contain a written description of such defects. As regards planning, construction, assembly, connection, installation, putting into operation, operation and maintenance of the products, the Ordering Party's claims for defects, moreover, require compliance with any standards, notes, guidelines and conditions within the technical notes, assembly instructions, operating instructions, operating manuals, planning guidelines and any other documentation of the respective products, in particular that maintenances be carried out properly and verified and that the recommended components have been used.

2. In case of resale of the delivered products, the Ordering Party is obligated towards Waldmann to agree to the requirements as stipulated in paragraph 1 also with its customer. This shall not apply if the Ordering Party's customer is a consumer. Should the Ordering Party violate the requirement acc. to sentence 1, any claims for recourse by the Ordering Party against Waldmann are excluded.

3. In case of defective products, Waldmann is free to fulfil its supplementary performance duty by remedying the defect (repair) or by providing a defect-free product (replacement). Waldmann will be obliged to bear any expenses associated with such repair or replacement, including, but not limited to, any transport, road, labour and material costs provided such costs are not increased by the fact that the products have been moved to a location other than the delivery address. Expenses for removing a built-in defective product and incorporating or attaching a repaired product or replacement part shall only be replaced by Waldmann if the defect was not recognisable during the function test carried out before incorporation or attachment. Any labour and material costs claimed by the Ordering Party in this regard are to be charged at cost price without profit share. Required expenses for dismounting and mounting shall only be replaced insofar as the total amount is not unreasonable. To determine the reasonable limit, the value

of the delivered product in faultless state, in particular, and the significance of the defect (e.g. functional or optical defect) shall be considered. Replaced products and parts become property of Waldmann and shall be returned to Waldmann.

4. Should Waldmann refuse or not be capable to fulfil its supplementary performance duty, the Ordering Party is free to rescind the contract or reduce the delivery price, notwithstanding any other rights. The same applies if the supplementary performance fails, cannot reasonably be expected to be accepted by the Ordering Party or is delayed beyond reasonable deadlines for reasons Waldmann is not responsible for.

5. Any right to rescission acc. to paragraph 4 due to insignificant defects shall be excluded. Any Ordering Party's right to rescind is excluded if the Ordering Party is unable to reconstitute the benefits received provided that such inability is not based on the fact that such restitution is impossible because of the nature of the benefits received, provided that Waldmann is not responsible for such inability and provided the defect was not detected before the processing or remodelling of the products. Further, any right to rescind will be excluded if Waldmann is not responsible for the defect and if the Ordering Party has to compensate for any deterioration in value rather than to reconstitute the benefits received.

6. No claims for defects can be asserted for defects resulting from normal wear and tear, including, but not limited to, wearing parts, inappropriate treatment, assembly, use or storage or inappropriately performed modifications or repairs to the products by the Ordering Party or by any third parties. The same also applies to any defects which have to be attributed to the Ordering Party or have been caused by any technical circumstances other than the original defect.

7. Any claims of the Ordering Party to reimbursement of expenses instead of damages in lieu of the benefit will be excluded to the extent a reasonable third party would not have incurred the same expenses.

8. Unless otherwise agreed in writing in a given case, Waldmann will not give any guarantee, in particular no guarantee of quality or guarantee of durability.

9. Waldmann shall be liable, without limitation, for any damage resulting from a breach of warranty or from any injury to life, limb or health. The same applies to intent and gross negligence. In case of slight negligence, Waldmann will only be liable to the extent that essential duties which result from the nature of the contract or which are of special significance for achieving the purpose of the contract are violated. In case of violation of such obligations, default and impossibility, Waldmann's liability shall be restricted to damage that has to be typically expected within the context of the concluded contract. Any compulsory legal liability for product defects will remain unaffected.

10. Warranty claims and rights of the Ordering Party – except for the rights and legally protected rights acc. to § 309 No. 7 letters a) and b) of the German Civil Code (BGB) – come under the statute of limitation 12 months after delivery. This shall not apply when longer periods are legally prescribed, i.e. acc. to § 438 paragraph 1 No. 2 (in relation to a building and to a thing that has been used for a building) and § 634a paragraph 1 No. 2 of the German Civil Code (in the case of a building), as well as in case of wilful intent, gross negligence, maliciously concealed defects or a warranty. A statement by Waldmann regarding any of the claims for defects asserted by the Ordering Party shall not be deemed an initiation of negotiations about the claim or the circumstances the claim is based on provided the claim for defect by Waldmann is rejected in its entirety.

11. As far as Waldmann's responsibility is excluded or restricted, this shall also apply to the personal liability of the employees, representatives and authorised agents of Waldmann.

9. Product liability

1. The Ordering Party will not modify the products in any way and will in particular refrain from modifying or removing any existing warning notices regarding the risks associated with any misuse of the products. In case of violation of this duty, the Ordering Party will indemnify Waldmann against any and all third-party product liability claims inter se, unless the Ordering Party is not responsible for the non-conformance the liability claim is based on.

2. Should a product defect of the products cause Waldmann to arrange for a product recall or product alert, the Ordering Party will cooperate and support Waldmann to the best of its ability and acc. to legal provisions in the implementation of such measures as Waldmann deems necessary and appropriate, especially in obtaining the necessary customer data. The Ordering Party is obliged to bear all costs of the product recall or the product alert, unless the Ordering Party is not responsible for the product defect and the damage incurred according to the principles of product liability law. Any further claims of Waldmann shall remain unaffected.

3. The Ordering Party will inform Waldmann immediately and in writing about any risks associated with the use of the products and possible product defects the Ordering Party gains knowledge of.

10. Force majeure

1. If, due to force majeure, Waldmann is not able to fulfil its contractual obligations, including but not limited to delivery of the products, Waldmann shall be released from meeting the obligation for the duration of the obstacle and an adequate preparatory period after removal of the cause without being obliged to pay damages to the Ordering Party. The same shall apply if any unforeseen situations for which Waldmann is not responsible, in particular industrial disputes, measures taken by public authorities, energy shortage or substantial operational disruptions, make it unacceptably difficult or temporarily impossible for Waldmann to fulfil its obligations. This will also apply if a sub-supplier is faced with such circumstances. This will also apply if Waldmann is already defaulting. To the extent Waldmann is exempted from the duty to deliver, Waldmann will reconstitute any advance benefits provided by the Ordering Party.

2. After expiry of an appropriate deadline, Waldmann will be entitled to rescind the contract if such an event lasts for more than four months and if Waldmann, as a result of such an event, is no longer interested in the contract being performed. After expiry of the deadline and upon request of the Ordering Party, Waldmann will state whether it will exercise its right to rescind or deliver the products within an adequate period of time.

11. Retention of title

1. The delivered products will remain the property of Waldmann until full settlement of the purchase price and of any claims Waldmann is entitled to against the Ordering Party as a result of the business relationship. The Ordering Party will be obliged to treat any products with retained title with care during the period of the retention of title. In particular, the Ordering Party undertakes to insure the provided goods with retained title at its own costs against overvoltage, fire and water damage as well as against theft at reinstatement value. On Waldmann's request, the Ordering Party has to provide Waldmann with proof that such insurance cover has been effected. The Ordering Party undertakes to assign to Waldmann all coverage claims and rights to exemption it is entitled to as a consequence of the damage to or loss of products with retained title and based on the insurance it holds. Therefore, Supplier herewith assigns all possible present and future claims it is entitled to based on this insurance to Waldmann. Waldmann herewith accepts this assignment. Provided the assignment is not legally effective, the Ordering Party commits towards Waldmann to instruct the insurer to effect payment with valid discharge of the debt to Waldmann. Therefore, the Ordering Party hereby instructs the insurance company to make any payments only to Waldmann. Any further claims of Waldmann shall remain unaffected.

2. The Ordering Party is only allowed to sell products with retained title within the ordinary course of business. The Ordering Party is not entitled to pledge the products with retained title, to transfer them by way of security or to make any other dispositions endangering the property of Waldmann. In case of any pledges or other interferences by third parties, the Ordering Party has to notify Waldmann immediately in writing and provide all necessary information, inform the respective third party about Waldmann's legal rights of property and cooperate in implementing the measures of Waldmann for protecting the products with retained title. As far as the third party is not able to reimburse Waldmann for any costs incurred in and out of court for enforcing Waldmann's ownership rights, the Ordering Party shall be obliged to compensate Waldmann for any loss resulting therefrom unless the Ordering Party is not responsible for the seizure or any other intervention of third parties.

3. The Ordering Party herewith assigns any receivables from the resale of the products with retained title together with any ancillary rights to Waldmann, regardless of whether the products with retained title are resold without or after having been processed. Waldmann herewith accepts this assignment. In case of a blanket assignment by the Ordering Party, any accounts receivable assigned to Waldmann shall be explicitly excluded. Provided an assignment of accounts receivable resulting from the resale of products with retained title should not be legally effective, the Ordering Party hereby instructs the third-party debtor to make any payments only to Waldmann. The Ordering Party will be revocably entitled to collect the claims assigned to Waldmann in its own name on behalf of Waldmann. The collected amounts have to be paid to Waldmann without undue delay. Waldmann is entitled to revoke the Ordering Party's collection mandate and the Ordering Party's resale authorisation for good cause. Good causes in the sense of these provisions include, in particular, if the Ordering Party fails to properly meet its payment obligations towards Waldmann, defaults on payment, suspends its payments or if the initiation of solvency proceedings or of similar proceedings for the settlement of debts regarding the Ordering Party's assets is applied for by the Ordering Party or if any reasoned application of a third party for the initiation of solvency proceedings or similar proceedings for the settlement of debts regarding the Ordering Party's assets is denied for a lack of assets.

4. After the direct debit authorisation is withdrawn by Waldmann, the Ordering Party is obliged to inform the third-party debtor or debtors promptly about the assignment and provide Waldmann all data (in particular, about the person of the third-party debtor) and documents (in particular, documents proving the existence, extent and due dates of the claims) required for direct debit immediately and at its own cost. Waldmann is entitled to disclose the assignment to third-party debtors even before withdrawing the direct debit authorisation towards the Ordering Party. In this case, Waldmann shall inform the Ordering Party hereof.

5. In case of any behaviour in breach of the contract, including, but not limited to, default in payment by the Ordering Party, Waldmann will be entitled, notwithstanding any other rights Waldmann may have, to rescind the contract after expiry of an adequate period of grace set by Waldmann. The Ordering Party shall inform Waldmann or its representative on request promptly about the location of the products delivered with retention of title, grant access to the products with retention of title and hand them over. Upon timely notification, Waldmann may otherwise utilise the products with retained title to satisfy its receivables against the Ordering Party.

6. As a matter of principle, any processing or remodelling of the products with retained title by the Ordering Party will be carried out for Waldmann. The Ordering Party's reversionary interest in the products with retained title continues in the processed or remodelled item. If the products are processed or remodelled together with any other items which are not in the ownership of Waldmann, then Waldmann will acquire co-ownership of the new item at the ratio of the value of the delivered products to the other processed items at the time of the remodelling or processing. The same applies if the products are combined or mixed with any other items which are not in the ownership of Waldmann with the result that Waldmann loses full ownership of them. The Ordering Party will hold the new items in safe custody for Waldmann. Apart from that, the item created by processing or remodelling and combining and mixing will be subject to the same provisions as the products with retained title.

7. Upon request of the Ordering Party, Waldmann undertakes to release the securities to which it is entitled if and when the realisable value of the securities, taking into consideration any reductions in valuation customary in banking, exceeds Waldmann's receivables out of the business relationship with the Ordering Party by more than 15%. As regards the assessment, the invoice value of the products with retained title will be taken as the basis and the nominal value as regards the receivables. Waldmann will be responsible for selecting the specific items to be released.

8. In case of deliveries to other legal systems where the above-mentioned retention of title regulations do not have the same securing effect as in the Federal Republic of Germany, the Ordering Party herewith grants to Waldmann economically equivalent security interests possible under the relevant legal system. If any further action is required for this purpose, then the Ordering Party will spare no effort to immediately grant such security interests to Waldmann. The Ordering Party will cooperate in implementing all measures which are necessary for and conducive to the validity and enforceability of such a security interest.

12. Delivery of the "DermaMate" software for medical irradiation devices

1. Regulations under this clause apply to delivery of "DermaMate" software as well as to the combined delivery of hardware together with the "DermaMate" software. Without separate written agreement, delivery of this software shall not create any obligation on the part of Waldmann to provide updates or upgrades, adaptation, maintenance or further development of the software.

2. The software is subject to copyright, in particular according to the provisions concerning the protection of computer programs. The copyright includes in particular the program code, the documentation, the representation, the structure and organisation of the program files, the program name, the logos and other forms of representation included in the software (hereinafter referred to as "Licensed Material"). Waldmann and its licensors shall be entitled to all rights originating from copyright.

3. The program is given to the Ordering Party on a machine-readable data carrier in form of an "object program". The Ordering Party is not entitled to the source code being made available. A documentation for use belongs to the program; the Ordering Party receives it as printed version or also on the machine-readable data carrier.

4. The Ordering Party shall undertake to keep the protection notes contained in the Licensed Material, as well as copyright notices, brand names, alphanumerical identification and other legal reservations unchanged. This shall also apply to any partial or complete reproduction of the machine-readable Licensed Material made by the user.

5. In default of other written agreements, Waldmann is only obliged to provide the software in the country of the place of delivery exempt from third-party industrial property rights or third-party copyrights. The Ordering Party undertakes to inform Waldmann promptly in writing when a third party claims its property rights. In case of defects of title due to third parties' property rights, Waldmann may, at its own discretion, defend or satisfy the claims at its own expense or make possible the proper use of the software by the Ordering Party by replacing the affected software by a similar and equivalent software.

6. Waldmann grants a non-exclusive right to the Ordering Party – provided that the Ordering Party pays the complete price agreed upon without reservation and accepts the licence terms – to use the software for an unlimited period in its company for its own purposes and as described in detail in the original agreement, the present General Conditions of Sale, Maintenance and Repair and the manual.

7. The Ordering Party is entitled to make a backup copy for the archive of its company. It shall be marked as such and (as far as technically feasible) provided with the copyright notice of the original data carrier. The user manual may only be copied for company-internal purposes.

8. The Ordering Party shall only be entitled to transfer this software to a third party if the third party explicitly declares that the third party agrees on the present General Conditions of Sale, Maintenance and Repair still being valid and if the previous Ordering Party stops using the software and does not retain any copies. The original copy of the data carrier and the manuals (together with all previous versions of the program) shall be given to the third party. The Ordering Party shall inform Waldmann immediately in writing in case of passing on the material to third parties because of the imminent duty to notify as defined in the German legislation on medical products and for the issue of a new licence key. This notification shall include the name and address of the purchaser. Furthermore, the contractual agreements on the basis of which the resale has been realised shall be disclosed. The Ordering Party shall be liable for any damage resulting from the neglect of this duty.

9. All other types of reproduction or use of the software, in particular decompiling the granted program code into other code forms and making the different development levels of the software accessible in any other way (reverse engineering), are not permitted. Furthermore, any other type of distribution of the software (off-line or on-line) as well as leasing or conferring the software for commercial purposes is also prohibited. These restrictions shall not apply to the fields of application and in case the conditions of articles §§ 69 d and 69 e of the German Copyright Act (UrhG) are met.

10. Waldmann is entitled to revoke these rights of use for reasons of importance. In particular, it is considered a good reason if the Ordering Party is in default of payment with a large part of the agreed price or if the Ordering Party does not observe these General Conditions of Sale, Maintenance and Repair and if the Ordering Party does not refrain from doing so even after written notice of Waldmann or the licensor including a threat of cancellation. In case of revoking the rights of use, the Ordering Party shall immediately return the original copy of the software and all further copies as well as other Licensed Material and shall delete the saved programs. The Ordering Party shall confirm the complete return and deletion in writing if requested to do so by Waldmann.

11. The "DermaMate" software is a system for medical devices classified as class II a and may only be used for controlling Waldmann therapy systems with MPG (German act on medical devices) classification up to class II a or for devices with MPG classification up to class II a that are used with a Waldmann control. Any use for controlling devices of any other type is explicitly prohibited and is done at the Ordering Party's own risk. The safety-related provisions of the German medical devices operator ordinance (MPBetreibV) and, in particular, the articles § 2, 5, 6, 9 and 11 hereof, were explicitly pointed out to the Ordering Party (see www.gesetze-im-internet.de).

12. The first use of the complete medical product system may only be realised by Waldmann itself or by personnel explicitly authorised by Waldmann. The provisions of the German medical devices operator ordinance (MPBetreibV) were explicitly pointed out to the Ordering Party in this regard (see www.gesetze-im-internet.de/).

13. The Ordering Party shall be granted a personalised licence when first using the software – subject to acceptance of the licence terms. It must be made sure that the personal access codes assigned together with the user management cannot be used by third parties. It is recommended changing the access codes immediately after the first use and from time to time.

14. Furthermore, Waldmann points out that the sample therapies provided with the software are only proposals. The respective treatments, in particular the treatment intervals and the dosage, are different for each patient and have to be determined individually in every case by the treating doctor. The Ordering Party shall make sure that the entry and modification of the individual treatment data of the different patients, in particular the limit values for irradiation, are only realised by professional and authorised personnel.

15. The safety instructions contained in the operating instructions shall apply in addition and have to be complied with strictly.

16. In case of software faults, including instructions for use or other delivered documentation, the regulations of Figure 9 of these General Conditions of Sale, Maintenance and Repair shall apply. In addition, the Ordering Party is obliged to provide all information necessary for analysis and rectification of the defect to Waldmann. This includes providing sufficiently qualified operating personnel as well as granting access to the software and to the system on which it is installed. Any notice of defects shall contain information about the kind of error, the type of application during which the error occurred, as well as information about the kind of measures carried out in order to eliminate the error. The error shall be described in a way that it is reproducible. There are no warranty rights in case of defects caused by any use deviating from the intended use of this program or from the operating conditions given in the specifications, due to insignificant deviations from the agreed characteristics or just insignificant impairment

of usability, damage being caused as a consequence of incorrect operation or handling of the software or negligent handling of the data carrier or due to special external influences not expected under the underlying contract, defects caused by modifications to software or hardware carried out by the Ordering Party or a third party and consequences thereof, software that has been extended by the Ordering Party or a third party using an interface provided by Waldmann for such purpose, incompatibility of the delivered software with the data processing environment used by the Ordering Party and failures of hardware, operating system and software of other manufacturers. Liability with regard to data loss shall be limited to the typical expenses for recovery that would have been caused in case of regular execution of data backups while taking into account the risks. Liability shall be excluded if the software function is impaired by other hardware or software components.

17. In addition to the above-mentioned regulations, the following regulations and the End User's ("End User") acceptance shall apply to the integrated Crystal Reports Developer Runtime product: The End User undertakes not to modify, disassemble, decompile, translate, adapt or re-engineer the Runtime product or the report file format (.RPT). The End User undertakes not to distribute the Runtime product to third parties. The End User undertakes not to use the Runtime product for development and transfer of a product that may generally be considered a competing product of the product offered by Business Objects. The End User undertakes not to use the Runtime product for development and transfer of products by means of which the report file format (.RPT) is converted into an alternative report file format, which can be used by generally usable report creation, data analysis or report distribution products that are not property of Business Objects. The End User undertakes not to use the product on rent or time-sharing basis nor operate a service office for the benefit of third parties. Business Objects and its suppliers shall not assume any guarantee, neither explicitly nor implicitly, including, but not limited to, guarantee of marketability, usability for a certain purpose and non-violation of third parties' rights. Under this agreement or in connection with the software, Business Objects and its suppliers shall not assume any liability for direct, indirect, accidental, exemplary damage, consequential damage or other damage irrespective of their legal grounds.

13. Disposal in Germany

In accordance with the German Electrical and Electronic Equipment Act (ElektroG), Waldmann exercises the option of a contractual agreement regarding the disposal of luminaires and medical devices supplied by Waldmann as follows:

1. In compliance with the legally imposed disposal obligations for manufacturers with regard to the luminaires and medical products (without fluorescent lamps) marketed as of 13 August 2005, Waldmann has contracted ISD INTERSEROH Dienstleistungs GmbH, Cologne (INTER-SEROH), at its own cost for collection and disposal. Cost of delivery to the collection points is borne by the Ordering Party. Information about the INTERSEROH collection points available to the Ordering Party may be requested from the INTERSEROH headquarters in Cologne or is available at www.interseroh-isd.de. In return, the Ordering Party shall ensure that the disposal is exclusively carried out by the disposal contractor designated by Waldmann. The WEEE registration number of Waldmann is DE 77596560.

2. Fluorescent lamps can also be returned free-of-charge to the nationwide available network system of the German lamp industry. These collection points can be found out at www.lightcycle.de.

14. Confidentiality

1. For an unlimited time, the parties shall be obliged to retain in confidence any information marked as confidential or evidently recognisable as business or trade secrets that they gain knowledge of and shall not record, pass on or exploit this information for any other purpose than required for the supply relationship.

2. The confidentiality obligation shall not apply if the information has evidently already been known by the receiving party before the contractual relationship was established or has been commonly known or generally accessible before the contractual relationship was established or if it becomes commonly known or generally accessible through no fault of the receiving party. The burden of proof shall lie with the receiving party.

3. By means of appropriate contractual agreements with its employees and representatives, including, but not limited to, any freelancers and contractors and service providers working for them, the Parties shall ensure that those persons will also refrain from using, forwarding or recording such business and trade secrets without authorisation for an unlimited time.

15. Final provisions

1. Transfer of any of the Ordering Party's contractual rights and duties to any third party requires Waldmann's prior written approval.

2. The Ordering Party may set off any counterclaims only as far as they have been found to be final and conclusive by a court decision or if they are undisputed. The Ordering Party shall only be entitled to assert a right of retention if the counterclaim is based on the same purchase order or contractual relationship.

3. The legal relationship between the Ordering Party and Waldmann shall be subject to the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. The exclusive place of jurisdiction for all disputes resulting from the business relationship between the Ordering Party and Waldmann shall be the place of business of Waldmann. Waldmann shall also be entitled to institute legal proceedings at the Ordering Party's headquarters or any other admissible competent court.

5. The place of fulfilment for all performances of the Ordering Party and for Waldmann shall be headquarters of Waldmann.

6. The contract language shall be German.

7. If any provision of these General Conditions of Sale, Maintenance and Repair is or becomes, in whole or in part, ineffective or unenforceable or in case of any gaps in these General Conditions of Sale, Maintenance and Repair, the validity of the remaining provisions shall not be affected thereby. In lieu of the ineffective or unenforceable provision, an effective and/or enforceable provision of this type that most closely reflects the purpose of the ineffective or unenforceable provision will be deemed as agreed. In case of a gap, a provision of this type that would have been agreed upon for the purpose of these General Terms and Conditions of Purchase if the Parties had taken this into consideration at the outset will be deemed as agreed.

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Rechtsform Kommanditgesellschaft
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Registergericht
Freiburg i.Br. HRA 602616
Komplementär Waldmann GmbH
Sitz Villingen-Schwenningen
Registergericht
Freiburg i.Br. HRB 602670
Geschäftsführer Christoph Waldmann,
Markus Wiedmann, Daniel Hug

Bank
Postbank Stuttgart
Sparkasse Schwarzwald-Baar
Volksbank Schwarzwald-Donau-Neckar eG
Volksbank eG Schwarzwald Baar Hegau
Deutsche Bank AG
Commerzbank AG
BW Bank

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