

General Terms and Conditions of Services for Systems of Microscopy and Industrial Inspection and Measuring Instruments

1. General

1.1 The subsequent General Terms and Conditions of Services (hereafter “Service Conditions”) apply to orders for services pertaining to systems of microscopy and industrial inspection and measuring instruments (hereafter “Services”), in particular repair works, maintenance works, training courses, hotline and validation of systems of microscopy and industrial inspection and measuring instruments (hereafter “Equipment”) by Evident Europe GmbH, Caffamacherreihe 8-10, 20355 Hamburg, Germany, registered at the Hamburg commercial register under number HRB 170281 and its branch offices and by EVIDENT Technology Center Europe GmbH, Wilhelm-Schickard-Str. 3, 48149 Münster, Germany, registered at the Münster commercial register under number HRB 10405 (Evident Europe GmbH, its branch offices and EVIDENT Technology Center Europe GmbH each hereinafter “Evident”) for their customers (hereafter “Customer(s)”). These Service Conditions shall only apply vis-à-vis commercial entities/business persons (*Unternehmer*), governmental entities, or special governmental estates within the meaning of Section 310 para. 1 BGB (German Civil Code).

1.2 These Service Conditions apply to Services rendered during the entire business relationship (including business in case of an ongoing business relation). In addition to these Service Conditions, Evident’s General Terms of Delivery and Payment (available at <https://www.evidentscientific.com/imprint/> hereafter “GTD”) apply. Except for the exclusivity clause under Section 1.2 sentence 1 of the GTD, this particularly applies to the general provisions under Sections 1.2 through 1.4 of the GTD as well as the data protection clause of section 14 of the GTD. In the case of contradictions or deviations, the Service Conditions prevail over the GTD.

2 Service Orders

2.1 The Customers place service orders either by sending in their Equipment using the Evident service form pursuant to Section 2.2 or by contacting Evident in other ways to make an on-site appointment pursuant to Section 2.3.

2.2 Prior to sending in their Equipment to place a service order, the Customer has to contact Evident customer support. Evident customer support will provide the Customer with a service form “Return Material Authorization Form” (in short “RMA”). The form should be filled by the Customer and sent to the email address mentioned in the RMA. The Equipment is not to be sent in until the Customer has received the RMA back from Evident. The Equipment must then be sent to the address specified by Evident in the RMA and the RMA must be enclosed. The sending in can also be replaced by a pick-up of the Equipment coordinated by the customer with the customer support. The sending of the Equipment shall then be deemed the Customer’s offer of placing a service order in accordance with information provided on the service form, i.e. an order for preparing a chargeable cost estimate and/or provision of a Service. If Evident is able to execute repair orders without deviating from service form information and preparing a cost estimate first, there is no need for a separate declaration of acceptance by Evident. Cost estimates are submitted to the customer by Evident for approval. If the cost estimate is not approved by the customer, Evident reserves the right to return the Equipment in unrepaired condition at the customer's expense after three reminders (cf. Section 6). Service orders are based on the unconditional performance of requested Services. Before the start of the repair works Evident will contact the customer to agree on the scope of the service or to send the cost estimate. Evident will contact the customer if a major damage is detected during the repair works or if, during the handling of warranty cases, it is determined that it is not a warranty case due to improper use.

2.3 If it is impossible and/or impractical to send in the Equipment for the provision of Services (particularly with bulky equipment and large appliances), the Customer contacts Evident to agree upon the subsequent steps. Evident will inform the Customer if on-site repair works for the Equipment are possible and, if applicable, agree upon an on-site appointment. Evident and the Customer will agree upon the relevant scope of Services during their on-site appointment. Evident staff will particularly check if repair works are easily possible or if prior review of the expected work efforts and/or a chargeable cost estimate preparation pursuant to Section 3 is required. To the extent the Customer requires the performance of Services without previously obtaining a written cost estimate and the Parties have not agreed otherwise, Evident will perform the requested Services without a written cost estimate and charge the Customer for the relevant Services based on the actual time effort.

2.4 Evident provides no repair works or services for Equipment for which spare parts are no longer available. Evident will inform the Customers accordingly. In this case, maintenance is only possible if there are no defects that require the replacement of a component with a spare part.

2.5 Unless the parties' agreement provides otherwise (e.g. cost estimate), repair orders relate to the rectification of defects indicated by the Customer without Evident being obliged to check other components not affected by such defect for their functioning.

3 Work Efforts Reviews and Cost Estimates

3.1 Determination of the costs for requested Services generally requires partial disassembly. In this context, Evident checks, as a matter of routine and to a reasonable extent, if third-party components (i.e. parts from manufacturers which Evident does not employ for its original Equipment) were installed in the sent in Equipment or if other inappropriate modifications (e.g. in the course of previous repair works not performed by Evident) were made which clearly impact on the Equipment repair or use. In case of non-acceptance of potential additional service costs due to the use of third-party components or a chargeable exchange of third-party components against original spare parts, Evident shall be released from any corresponding liability for damaging or risk-increasing effects of third-party components or other inappropriate modifications on the condition that Evident notified the Customer thereof prior to performance.

3.2 If Evident prepares a cost estimate, delivery of the cost estimate represents an offer to the Customer for the conclusion of a repair order. Repair offers based on cost estimates lapse 4 (four) weeks from delivery to the Customer if the Customer fails to accept the repair order based on the relevant cost estimate. Should the Customer fail to react to the cost estimate after three reminders by Evident, Evident may return the Equipment to the Customer at the Customer's expense without any repair works being performed (cf. Section 6).

3.3 If, after placing a service order based on a cost estimate, it turns out that due to further defects or malfunctions, the estimated Services will not suffice for the repair and the additional Service required for this causes an increase of the cost estimate by more than 10% (ten per cent), Evident will inform the Customer for purposes of a new assignment. In case of an increase of up to 10% (ten per cent), Evident may assume that such additional works are in any case covered by Customer's assignment, provided that the cost estimate indicates the possibility of such increase.

3.4 The preparation of a cost estimate by Evident shall be charged in any case, explicitly even if no repair is carried out. Evident prepares its cost estimates against a charge currently amounting to up to two working hours of qualified services employees, but not more than € 296.00, plus VAT and a postage rate of € 50.00. If the Customer orders a repair according to the cost estimate or purchases a new device, the preparation of the cost estimate will not be charged to the Customer.

4 Prices and Terms of Payment

Regarding prices and terms of payment for the Services, in addition to Sections 2 and 3 of these Service Conditions, reference is made to Sections 3.1 and 3.2 of the GTD and Section 4 of the GTD.

5 Performance of Repairs and Maintenance

5.1 Components replaced during repair works will be professionally disposed of, unless the Customer indicated when placing the order that it requests replaced components to be returned; in this case, the parts will be returned to the Customer at its expense. Otherwise, Evident may charge the actually incurred costs or alternatively a replaced parts disposal lump sum of ranging from € 7.50 to 15.00 (plus VAT) depending on the extent of the parts to be disposed of at its own discretion.

5.2 The Customer is responsible for appropriately packaging of the Equipment when sending it to Evident. Accessories, which obviously have no relevance for the Service to be rendered, are not to be sent in by the Customer. Small accessory parts (such as sent in accessories and further materials) must be separately packaged. Evident accepts no liability for the loss of small accessory parts which the Customer failed to separately pack and other sent in accessories not listed in the RMA or the dispatch document.

5.3 Evident reserves the right to employ adequate third parties for the Services. Evident may particularly transfer Equipment from other manufacturers and peripherals marketed by Evident to authorised workshops of these manufacturers for maintenance purposes. Commissioning third parties does not affect Evident's liability.

5.4 Evident is subject to binding regulatory requirements regarding the performance of its Services. If certified processes are affected, contrary instructions from the Customer cannot be considered.

5.5 With regard to any combinations of medical devices, reference is made to Section 9 of the GTD.

6 Return of Unrepaired Equipment

6.1 If the Customer, following cost estimate preparation, does not place a repair order, the Equipment will be returned to the Customer in a disassembled condition against the payment of a cost estimate preparation charge currently amounting to up to two working hours of qualified service employees, but not more than € 296.00, plus VAT and a postage rate of € 50.00.

6.2 Only upon the Customer's express request and at the discretion of Evident will unrepaired Equipment be returned in its original assembled but unrepaired state. For this purpose, the Equipment will be set to the state which it had at its arrival at Evident. Evident may, at its discretion, request reasonable charges covering the efforts required for re-assembling the unrepaired Equipment. In this case, Evident is not liable for the assembled, but unrepaired, Equipment being functional. The Equipment will not be reprocessed and will be returned to the Customer as defective Equipment. Evident expressly recommends not continuing the use of the Equipment in such instances.

7 Delivery

For the delivery to Evident pursuant to Section 2.2, the Customer must pack the goods for transport purposes and sufficiently secure/protect them against/from damage and loss. Evident assumes no liability for transport damage (including loss).

8 Acceptance

8.1 If the Services to be rendered are subject to the laws concerning contracts for work and labour (such

as with repair works) and these Service Conditions do not provide otherwise or the parties have not agreed differently, acceptance is subject to legal provisions concerning contracts for work and labour.

8.2 Works are deemed accepted if Evident has set the Customer a reasonable deadline for acceptance and the Customer has not refused acceptance within this deadline, stating at least one defect which is not only insignificant and actually exists - or is at least objectively obvious.

8.3 Should Evident, upon return delivery of the Equipment, fail to expressly indicate another acceptance period, the Customer must accept the works immediately and no later than within one (1) week from receipt of the returned Equipment. If the customer does not accept the Equipment within this period, Section 8.2 applies accordingly.

9 Liability for Defects

9.1 Apparent defects may only be notified within ten (10) days from receipt of the Equipment.

9.2 The Customer's claims for defects resulting from the Services - including claims for defects concerning replaced spare parts - are subject to the statutory provisions regarding the law on contracts for works and labour (e.g. repair services) with the proviso that they become time-barred within one (1) year; the period of limitations for claims for defects commences upon acceptance.

9.3 Common wear and tear typical of the products (e.g. for incandescent lamps, insertion parts, feed wedges and lasers) and reduced functionality due to inappropriate use are excluded from liability for defects. Inappropriate use particularly means application errors, e.g. the use of an industrial endoscope outside the specification with a bending radius that is too small.

9.4 Any design modifications and other alterations (e.g. the use of non-original parts or parts identical in construction, third-party software program uploads) and manipulation of the Equipment (such as repair works by unauthorized personnel) after Evident provided its Services may also lead to an exclusion of the Customer's rights and claims regarding liability for defects.

10 Liability

10.1 Unless these Service Conditions provide otherwise, Evident is liable for violations of contractual and extra-contractual obligations pursuant to legal provisions and to Sections 11.2 through 11.6 of the GTD.

10.2 Except for cases of intention and gross negligence, Evident' liability for delayed performance is limited to 25% of the net order value.

11 Place of Performance

Place of performance for Services, payments and warranty claims is Hamburg. If Services are performed by a service branch of Evident, the place of performance for Services, payments and warranty claims shall be the location of the respective service branch.

12 Export Control

12.1 The Customer commits to and warrants not to sell, supply, transfer or export, directly or indirectly, the Equipment sent to Evident for the provision of Service to any natural or legal person, entity or body or to use them in the context of technical assistance or other services to the extent that this would be/is prohibited for Evident and/or the Customer under the sanctions regimes of the United Nations, the European Union, the Federal Republic of Germany or the United States of America. In this respect, the Customer undertakes to comply with the sanction regulations irrespective of whether they apply to him.

12.2 In the event that the funds and economic resources of the Customer or a recipient of the Equipment on which the Service is to be provided are or will be frozen at the scheduled time of delivery due to sanction regulations of the United Nations, the European Union, the Federal Republic of Germany or the United States of America and/or there is a ban on making funds or economic resources directly or indirectly available to or for the benefit of the Customer or a recipient of the Equipment on which the Service is to be provided at the scheduled time of delivery due to sanction regulations of the United Nations, the European Union, the Federal Republic of Germany or the United States of America, Evident shall be released from its obligation to perform.

12.3 Clauses 12.1 and 12.2 shall not apply if compliance with United States of America's sanctions violates Regulation (EEC) 2271/96, as amended, and a corresponding obligation would constitute a violation of Section 7 of the Foreign Trade and Payments Ordinance.

12.4 If Evident has doubts as to whether the Customer is acting or intends to act in accordance with this obligation, Evident shall be entitled to require the Customer to provide appropriate evidence (e.g. end-use declarations, licenses, etc.) that the Equipment on which the Service is to be provided is being used in accordance with clause 12.1. of this provision. If, in such a case, the Customer fails to provide proof of use of the Equipment on which the Service is to be provided in accordance with clause 12.1. of this provision, or fails to do so in a timely manner, Evident shall be entitled to postpone delivery of the repaired Equipment until such proof is provided. If the provision of such proof fails, Evident shall be entitled to terminate the contract for cause.

12.5 The Customer undertakes to use only such persons within the scope of the contract at Evident who are not listed on the sanctions lists of the European Union, the USA and Great Britain. Prior to the actual use of a subcontractor for the performance of services at the client's premises and at appropriate intervals, but at least quarterly, the Customer is obliged to carry out an appropriate screening with regard to a listing on the sanctions lists of the European Union, the USA and Great Britain. The results of the screening shall be documented and archived on the basis of the legal provisions of the German Fiscal Code (Abgabenordnung) like tax documents.

13 Choice of Law and Venue

13.1 These Service Conditions and all contractual relationships between Evident and the Customer are subject to German law under the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

13.2 The place of jurisdiction for all disputes between merchants, legal entities under public law or special funds under public law shall be Hamburg. This shall also apply if the Customer's place of residence or habitual abode is unknown, located abroad or relocated abroad.

13.3 Evident is also entitled to file a lawsuit at the general place of jurisdiction of the Customer.

Hamburg, June 27th 2023