

I. Validity of the Conditions/Subject of the Contract

Article 1 Validity of the Conditions

- (1) These Terms and Conditions of Business exclusively apply to our offers, sales, deliveries, services and repair and maintenance services. We shall only accept Terms and Conditions of Business that are contrary to or deviate from our Terms and Conditions of Business if they are confirmed in writing as an addendum to our Terms and Conditions of Business.
- (2) Our Terms and Conditions of Business shall also apply if, despite knowledge of contradictory or deviating Terms and Conditions of Business of the Customer to our own Terms and Conditions of Business, the delivery is carried out without reservation. Any quotations or acknowledgements by the Customer referring to its own purchasing conditions are hereby expressly rejected.
- (3) Our Terms and Conditions of Business shall also apply to all future transactions with the Customer.

Article 2 Subject of the Contract

- (1) The subject matter of these General Terms and Conditions of Business is the sale and supply of devices in the fields of fitness, sport, medicine, science and engineering as well as services and repair and maintenance services to devices from these fields.
- (2) The specific sale, delivery, service and/or repair and maintenance services which the Customer accepts shall exclusively be determined in our order confirmation or invoice.

II. Particular Provisions for Sales, Deliveries and Services

Article 3 Scope of Delivery and Scope of Services

- (1) The information contained in our order confirmation or invoice shall prevail for determining the condition of the delivery item to be supplied by us. This shall apply accordingly to the content and scope of our services. Any information contained in catalogues, brochures, newsletters, displays, websites, images, price lists and other publications shall not prevail for determining the condition of the delivery item unless this information is expressly included in the order confirmation or invoice.
- (2) Information included in our order confirmations or invoices for determining the condition of the delivery item does not constitute any guarantee, in particular concerning service life. Information on the scope of delivery and scope of services does not constitute consent to the assumption of supply risk. We retain the right to proper and prompt delivery of the goods to us by our suppliers. The Contractual Parties must expressly agree in writing to the acceptance of guarantees and the supply risk. This Agreement shall expressly use the terms of guarantee and supply risk and shall explain the scope of the guarantee in more detail.
- (3) Insofar as we do not expressly assume the responsibility for the onsite set up, this shall be assumed exclusively by the Customer. Instructions issued by us for the set-up and use of our delivered items do not constitute assembly instructions, but rather only information on the dimensions and application of the delivered item.
- (4) The Seller shall retain the right to amend the design and form of the delivery item, as well as to deviations in colour and amendments to the scope of delivery, within the delivery deadline, provided no substantial changes are made to the purchase item and the changes are considered reasonable by the Purchaser.
- (5) Should the purchase item be delivered by the Seller or a shipping agent, the Purchaser shall be obligated to assume the costs of ensuring the delivery site can be accessed and the purchased item adequately unloaded. The Purchaser shall also be obligated to assume the costs of ensuring an adequate number of unloading personnel and, if required, unloading aids (such as forklift trucks, cranes, etc.), to transport the object of purchase from the delivery vehicle to the intended location. The Purchaser shall assume all costs relating to the delivery (e.g. any required road closures), in particular if the total cost amount could not be estimated by the Seller at the time of creating the offer and was not listed in the offer or order confirmation. The Purchaser shall assume liability for all damages incurred as a result of poor or non-compliance with these requirements.

Article 4 Prices

- (1) Unless agreed otherwise, the prices EXW our headquarters in D-83365 Nussdorf -Traunstein, Germany shall apply and shall include loading but exclude the respective statutory VAT rate applicable in the Federal Republic of Germany. Unless agreed otherwise, the Customer shall assume all remaining costs, for example for packaging, transport, insurance, assembly, installation, induction, bank charges (e.g. costs for letters of credit, etc.) and customs duties, etc.

- (2) We retain the right to calculate the prices valid on the day of delivery, insofar as a period of 4 months has passed between issuing the order and the day of delivery and the prices of primary products and raw materials and supplies have increased by 5% since the conclusion of the Contract. This same clause applies accordingly to price reductions.
- (3) The calculation shall occur in the agreed currency with the proviso that the euro exchange rate that is valid on the day of delivery is used as the basis for calculation.

Article 5 Delivery Times, Delayed Delivery and Failure to Perform

- (1) Any deadlines and dates specified by us are non-binding unless they have been expressly determined as binding in writing in our order confirmation or invoice. The delivery time shall be based on the information confirmed in writing in the order confirmation or invoice. Insofar as the Customer has not provided all documents, authorisations, approvals, delivery conditions etc. that are required from it at least one month before the delivery time that was confirmed in writing, the delivery time that was confirmed in writing shall be extended by one month, starting from the time at which the aforementioned documents, authorisations, approvals, etc. have been received in full by us.
- (2) The delivery time shall be deemed as having been complied with if the delivery item has left our factory before the delivery time expires or, in the case of collection by the Customer, once the Customer has been notified that the delivery item is ready for shipping.
- (3) Should we provide evidence that, despite careful selection of our suppliers and despite the conclusion of the necessary contracts on reasonable terms, the delivery by a supplier will be late, the delivery deadline shall be extended by the period of the delay that has been caused by us as a result of the late delivery by the supplier. Should the aforementioned hindrance continue for longer than one month, the Customer shall retain the right to withdraw from the section of the Contract that has not yet been fulfilled. In this case, claims for damages shall be excluded. We may only invoke the aforementioned circumstances if we have informed the Customer without delay of these circumstances i.e. within three working days following our becoming aware of the issue.
- (4) In the case of default in acceptance by the Customer, the Customer shall be obligated to reimburse us for the damages incurred by us on account of this breach of duty, in particular the costs for the storage of the delivery item. This shall not apply should the Customer not be liable for the breach of duty. In this case, the assumption of costs by the Customer shall be restricted to the costs incurred by us for the storage of the delivery items. Should setting a reasonable deadline of 2 to 4 weeks for acceptance prove unsuccessful, we shall also be entitled to make other use of the delivery item and to deliver the delivery item to the Customer with a suitable extended deadline.
- (5) Chargeable stocking of goods: If goods are not collected on time (EXW-date), h/p/cosmos reserves the right, to stock the goods outside of the h/p/cosmos premises. All the costs which arise due to this stock removal must be paid by the customer. Adjustments in the delivery date are possible for up to 6 months free of charge if they are agreed early enough before the collection date (EXW-date): 7 working days before collection date (EXW-date): h/p/cosmos treadmill ergometer size 150/50, 170/65, 190/65, h/p/cosmos airwalk se 135, h/p/cosmos Gaitway, h/p/cosmos locomotion. 14 working days before collection date (EXW-date): Sprintrainer h/p/cosmos comet, ladder ergometer h/p/cosmos discovery. 4 weeks before collection date (EXW-date): oversized treadmills h/p/cosmos venus, h/p/cosmos saturn. Deviations for further machines (special machines), higher quantities, merchandise, option special colour and climate chamber must be considered.

Article 6 Assumption of Risk/Shipping

- (1) Should the goods be delivered to the Customer at its request or should the delivery be carried out from our headquarters, as is normally the case, the risk of accidental destruction and of accidental deterioration of the goods shall be transferred to the Customer when we surrender the goods to the shipping agent and at the latest when the goods leave our headquarters, regardless of whether the goods are shipped from the place of performance or who assumes the shipping costs. Should the goods be ready for shipping and should the shipping or acceptance be delayed for reasons for which we are not liable, the risk shall be transferred to the Customer on receipt of the notification that the goods are ready for shipping. The insurance of the delivery items by us shall only occur at the express request of the Customer.
- (2) Insofar as the Customer does not specify anything to the contrary, the mode of shipping shall be at our discretion. We shall assume no obligation to use the cheapest mode of shipping. The packaging shall be subject to invoice and this shall not be waived unless the statutory regulations, for example the German Packaging Ordinance (*Verpackungsverordnung*), specify any deviating requirements or we, in individual cases, have agreed deviating conditions in writing with the Customer.
- (3) The legal transport regulations, in particular GGVS, GGVE, ADR and RID in their most recent versions, shall prevail for the transportation.

Article 7 Reservation of Title

- (1) The delivered goods shall remain our property until full and complete payment of all monies due from the business relationship between us and the Customer. The Customer is entitled to dispose of the delivery item in the ordinary course of business.
- (2) The reservation of title shall also extend to products that are the result of a combination with our delivery items, to their full value, whereby we shall be deemed to be the manufacturer. Should, in the case of combination with the goods of third parties, the rights of ownership be retained by the third parties, we shall acquire joint ownership in proportion to the invoice value of these combined goods.

(3) Claims raised against third parties pertaining to the resale of purchased goods shall be immediately assigned to us by the Customer in their entirety or in proportion to our joint ownership as a security (see section 2). We accept this assignment. The Customer is entitled to collect these claims in order to settle its debts to us until this is revoked or its payments are suspended. The Customer is not entitled to assign this claim.

At our request, the Customer shall be obligated to pass to us the information necessary for collecting the claims, including a copy of the respective delivery contracts with its customer, the invoice and a list of the payments received from its customer.

(4) The customer shall be obligated to advise us immediately by registered mail of any attachment, in particular compulsory measures of execution raised by third parties against products sold by us, or against claims assigned to us and shall forward to us the documents required for an intervention by us.

(5) Should the Customer default on its payments to us twice within 6 months and/or should the Customer be insolvent and/or should objective criteria indicate its insolvency, we shall be entitled to demand the return of the delivery item and the Customer shall be obligated to return the goods. In the case of resale of the goods, we shall be entitled to collect the assigned claims directly from the Customer's customer.

The return of the delivery item to us and/or the collection of the claims assigned to us shall not lead to a withdrawal from the Contract with the Customer.

(6) At the request of the Customer, we shall be obligated to release the security rights to which we are entitled at our discretion, should the value of these security rights exceed all outstanding claims against the Customer by more than 10%.

(7) The Customer holds the reserved goods for us and is obligated to keep them in a correct and proper condition for the duration of the reservation of title. The Customer is also obligated to allow all maintenance work proposed by the manufacturer and any necessary repairs to be carried out without delay by the Seller or at a workshop approved by the manufacturer for maintaining the object of purchase.

The Customer is obligated to protect the object of purchase against damage, fire and theft as well as water and other risks. The Customer hereby assigns to us its claims for compensation against insurance companies and other persons or entities liable for compensation arising from the types of damages mentioned in sentence 2, in the amount of the respective claim. Provided there is a covenant not to assign, the Customer shall guarantee that the insurer grants express consent to the assignment.

(8) Should the Customer have returned delivery items in accordance with Article 6 Sec. 5, we shall be entitled to dispose of the delivery item that was returned on the open market to achieve the best possible price, after having given notification in writing with a suitable deadline and having credited the proceeds of the sale against the purchase price. The Customer shall assume all costs pertaining to the return and sale of the delivery item. The sale costs are 10% of the sale proceeds including VAT and are not subject to verification. The costs shall increase or decrease should we verifiably demonstrate higher costs or if the Customer verifiably demonstrates lower costs. The proceeds of the sale shall be credited to the Customer after deduction of the costs and other claims by the Seller pertaining to the purchase contract. This clause shall not apply in the case of consumer loan contracts, financial assistance or instalment supplier contracts in the meaning of Articles 491 – 507 of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*).

(9) The addendum at Article 25 Sec. 2 regarding the 5% limit is ineffective in all cases (cf. above).

Article 8 Software Licensing

(1) Software that has been sold by us to the Customer is standard software, provided we have given no notification of this software being a special version. Standard software refers to software that has been reproduced by us in an identical form and has been sold to a variety of customers.

(2) The Customer may only copy the supplied program insofar as this is necessary to use the program. The installation of the program from the original data carrier to the mass storage drive of the hardware used, and the loading of the program into the RAM (Random Access Memory), is included as necessary a copy. In addition, the Customer may reproduce a copy of the software for security purposes. However, only a single security copy may be created and must be stored by the Customer. This copy must also be marked as being a security copy. The Customer is expressly prohibited from reproducing the supplied program for resale, circulation purposes or for licensing the reproduced copy to third parties.

(3) Translation of the licensed program codes into other code forms (decompilation), as well as other types of reverse development of the different manufacturer software levels (reverse engineering), including program amendments, is only permissible with our written consent. Our consent is not required should we refuse fault elimination without justification and if the aforementioned fault elimination measures are required.

Article 9 Product Monitoring Obligation and Product Warning Obligation

(1) To protect the operator, end user and user against possible dangers that could arise from (the use of) our products, the Customer shall be obliged to continually monitor the products from us in all aspects concerning safety (product monitoring obligation). Should it become clear that dangers are being caused by the product; the Customer shall be obliged to inform us immediately of this in writing (product warning obligation).

The Customer shall be obliged to inform itself of and comply with the local Medical Device Directive, Machinery Directives, Operator Ordinances as well as the legal monitoring and reporting systems, technical safety checks ('Sicherheitstechnische Kontrollen) as per the local Medical Device Directive) and other relevant regulations.

(2) Should a claim be raised against us by third parties pertaining to a breach of the product monitoring obligation and/or product warning obligation and should this breach of the product monitoring obligation and/or product warning obligation be attributed to a breach of the Customer's product monitoring obligation and product warning obligation for which the Customer is liable, the Customer shall be obligated to reimburse us for the damages incurred on account of the breach of obligations by the Customer.

(3) The Customer is obligated to ensure that all safety regulations and hazard information are strictly complied with, that all users of the devices and the maintenance personnel are promptly and adequately informed of and trained on the safety regulations and hazard information, as well as to ensure that our safety regulations and hazard information is available to all users and maintenance personnel.

This also applies to non-binding and free samples and to lease arrangements for the devices.

Article 10 Industrial Property Rights and Copyright

(1) Claims for damages pertaining to an infringement of trademarks, word, image and sound marks, patents, patent applications, utility models, design patents, copyrights, software source codes and proprietary rights raised against us, our organisational bodies, senior management or agents are excluded insofar as there is no gross negligence or intent by us, our senior management or agents or the non-infringement of the aforementioned industrial property rights has been guaranteed by us.

This limitation of liability shall not apply should we, our senior management or agents be liable for a breach of fundamental contractual obligations (material contractual obligations).

If we or our organisational bodies, senior management or agents can be held liable for the payment of damages pertaining to slight negligence (breach of material contractual obligations), the damages shall be limited to damages that could typically have been foreseen.

Liability pertaining to slight negligence excludes liability as a result of loss of production, interruption to the course of business and loss of profits.

(2) The right of the Customer to withdraw from the Contract on account of the infringement of the aforementioned industrial property rights shall remain unaffected.

(3) Insofar as a claim is raised against us pertaining to an infringement of property rights of third parties, the Customer shall only be deemed to have proven this defect in title when a legally binding judgement in this respect has been passed against it. The right of the Customer to serve a third party notice to us shall remain unaffected by this regulation.

(4) All property rights, proprietary rights and all other claims to/arising from product names, trademarks, word, image and sound marks, patents, patent applications, utility models, design patents, copyrights, software, software source codes, firmware, firmware source codes and proprietary rights shall always unreservedly remain our property, even if licences, products and services from these fields and with these names are sold and supplied to the Customer.

III. Particular Provisions for Maintenance Services

Article 11 Subject Matter of the Contract for Maintenance Services

(1) We shall assume the maintenance of the devices specified in the maintenance contract, which is to be concluded and invoiced separately. The content and scope of the maintenance services shall be determined by agreement between the Contractual Parties, in particular with regard to the maintenance contract and the defined scope of services as specified in Article 11 of these Terms and Conditions of Business.

(2) Deviations from the defined scope of services as specified in the maintenance contract and in Article 11, as well as additional, undefined services in the maintenance contract and in Article 11, must be agreed in writing as an addendum to the maintenance contract.

(3) Declarations by our maintenance personnel on the content and scope of the maintenance services shall not be binding on us. Our commercial personnel working in this area from our headquarters at h/p/cosmos sports & medical gmbh, D-83365 Nussdorf-Traunstein are exclusively authorised to determine the content and scope of the maintenance services. Confirmations of this nature shall only be valid in written form.

Article 12 Scope of Services

(1) The maintenance work that is carried out by us consists of regular preventative maintenance of the devices specified in the maintenance contract by qualified personnel who are familiar with the devices to be maintained.

(2) The scope of the maintenance work encompasses the following maintenance services:

- the required labour time for the maintenance (as per the maintenance log);
- the travel costs to the location of use, insofar as this is located within the borders of the Federal Republic of Germany or the device to be maintained was located outside the borders of the Federal Republic of Germany at the time of the conclusion of the maintenance contract;
- all materials necessary for the preventative maintenance work;
- the provision of the tools necessary for the maintenance work;
- the recording of the results produced during the course of the maintenance work, in particular notes advising of necessary repairs insofar as these are evident to the technician during the maintenance work.

- (3) All remaining services, in particular those specified hereafter, do not constitute a part of the maintenance contract:
- measures and replacement parts to rectify damage and malfunctions (repairs);
 - the maintenance of devices not specified in the maintenance contract;
 - PC software updates, training sessions, inductions and consultancy;
 - the inspection and/or connection of peripheral devices (e.g. ECG, ergospirometry, blood pressure monitors, PC, etc.);
 - the inspection and connection of fittings and/or accessories that are not provided by us;
 - the maintenance of devices that were relocated to a site outside the borders of the Federal Republic of Germany after the conclusion of the maintenance contract, provided the Contractual Parties have not concluded a deviating agreement in this respect;
 - devices that were relocated to a site within the borders of the Federal Republic of Germany after the conclusion of the Contract, without us having been informed of this change of location at least 1 month before the maintenance was due and we, therefore, were no longer able to include this device in our maintenance plan in sufficient time.

Article 13 Time of Performance of Maintenance Work

(1) The scope of the maintenance intervals is determined in accordance with the interval option selected by the Customer in the maintenance contract.

(2) We may amend the maintenance intervals determined in the Contract by +/- 30 working days for the purpose of optimising our service tours.

Article 14 Place of Performance of Maintenance Work/Access

(1) The maintenance services shall be carried out at the location at which the item to be maintained was located at the time of the conclusion of the maintenance contract. Should the location of the maintenance item deviate from the address of the Customer at the time of the conclusion of the maintenance contract, the Customer must send detailed notification of this in writing before the conclusion of the maintenance contract.

(2) Should the device to be maintained be relocated to a site outside the borders of the Federal Republic of Germany, the Customer shall be obligated to inform us of this change at the latest one month before the maintenance work is due, in writing and marked for the attention of our Service Department and must include the exact address of the new location. Should the Customer not comply with this deadline, we shall be entitled to refuse to carry out the maintenance services for the maintenance interval in question. The maintenance work shall then be carried out in the next maintenance interval.

(3) Should the device to be maintained be relocated to a site outside the borders of the Federal Republic of Germany, we shall be entitled to refuse to carry out the maintenance services or to contract a third party to carry out the maintenance services. The Customer shall also be obligated to inform us of this relocation in writing at the latest one month before the maintenance work is due. Upon receipt of the written notification of the relocation, we can refuse to carry out the maintenance work at this location within a deadline of one month. In the case of a rejection by us, the Customer shall be entitled to prematurely terminate this maintenance contract.

The possibility of the Contractual Parties agreeing to a new maintenance contract, which takes into account the possibilities and additional costs associated with the relocation to a site outside the borders of the Federal Republic of Germany, shall remain unaffected by this.

(4) The Customer is obligated to inform us in writing of its current opening hours at least 1 month in advance of the maintenance work due.

Should our technician not be able to gain access to the device to be maintained during the specified opening hours, or should the technician not be able to carry out the maintenance work on account of circumstances for which the Customer is liable (e.g. no power supply, no ambient lighting, device not ready for operation, etc.), we may invoice the Customer for the full amount incurred for travel and maintenance, even if the maintenance work could not be carried out.

Article 15 Refusal to Carry Out the Maintenance Services

We shall not be obligated to carry out the maintenance work if:

- a) the device to be maintained is not ready for operation and the work required to bring the device into an operation-ready condition cannot be covered by the maintenance services due by us;
- b) fittings or changes to the device that were not carried out by us and that permanently restrict the maintenance work from being carried out smoothly have not been removed or undone by the Customer before the maintenance work;
- c) the condition of the device to be maintained and/or the ambient conditions (e.g. no power supply, insufficient ambient lighting) do not allow the maintenance work to be carried out without interruptions, in particular if this condition has been caused by the failure to carry out the required cleaning and monitoring work and/or by the intervention of third parties;
- d) the Customer does not ensure the clear access to the device to be maintained that is required to carry out the maintenance work in good time.

Article 16 Remuneration

The remuneration is determined by the conditions in the maintenance contract.

Article 17 Price Adjustments

The prices for the maintenance services are determined in accordance with our respective price lists in force for maintenance services, which are to be taken from the maintenance contract. We are entitled to adjust the prices annually at our discretion, on 1 January of each year but at the earliest after the Contract has been in force for longer than 4 months. The Customer can raise an objection to the price increase within one month following receipt of the price increase. In this case, the previous prices shall apply. In these cases, we shall be entitled but not obligated to prematurely terminate the Contract with a period of notice of 3 months as per the end of the month.

Article 18 Duration of the Contract

(1) A maintenance contract starts upon both Contractual Parties signing the Contract and has a duration of 2 years. The date specified by us in the Contract shall prevail for determining the period of notice.

(2) A maintenance contract shall be extended by a further year in each case if none of the Contractual Parties has terminated the Contract in writing subject to a period of notice of 3 months as per the end of the respective contract duration.

(3) The right to premature termination of the Contract in accordance with Article 16 of this Contract shall remain unaffected by this.

(4) Each Contractual Party is entitled, on substantial grounds, to terminate the Contract without notice at any time.

(5) Each termination must be made in writing. The termination shall be deemed to have been received if the termination notice is delivered to the most recent address specified by the party subject to termination to the officer authorised to carry out the termination. In the case of ambiguity, the address of the Contractual Party specified in the maintenance contract shall apply.

IV. Particular Provisions for Repair Services

Article 19 Scope of Repair Services

(1) Our repair services are designed for carrying out professional repair work. The repair work extends only to the specified defect/the specified description of the defect/the fault specified by us during the maintenance work.

Should we recognise during the course of the repair work that further defects are present on the repair object that are not stated in the defect description and that also need to be repaired and also that increase the scope of the repair work by more than 25% when compared to the original scope of repair work, we shall be obligated to inform the Customer immediately of these additional repairs/extent of the repairs before carrying out the additional repair work.

The Customer is obligated to take a legally binding decision on the extension to the scope of repair work within a period of 30 minutes following notification of the additional repairs by our mechanic. Should the Customer reject the proposed extension of the scope of repair work, we may refuse to carry out the additional repair work. The Customer shall be obliged to pay for the repair services carried out until this point, including travel costs.

(2) The scope of repair work does not include devices that have not been placed on the market by us, regardless of whether this concerns the main and/or peripheral devices.

(3) Should, despite proper and professional repair work having been carried out, the source of the defect not be able to be found and/or should the repair work not be able to be concluded because the replacement parts required for the repair work were not provided or could not be obtained by us and/or should the Customer reject the necessary scope of repair work and should these matters not have been identifiable when concluding the repair contract, we shall be entitled to terminate the repair contract and the Customer shall be obligated to pay us for the costs incurred up to this point.

Article 20 Remuneration

(1) With the exception of the costs for materials, the repair and travel costs are calculated in accordance with our respective charging rates in force, which can be requested from us. Costs for materials are calculated at cost.

(2) The estimated repair costs detailed in the quotations are always based on our estimations and do not constitute any binding final prices for the repair work. Should the estimation deviate from the actual expected repair costs more than 25%, the Customer shall receive an addendum to the quotation from the time at which the deviations were identified. Article 18 Sec. 1 applies accordingly in this respect.

Article 21 Time of Performance of Repair Work/Delay to Performance

(1) The period of time specified in our repair confirmation and/or repair offer shall prevail for determining the time at which the repair work is carried out. The start of the repair work shall be postponed by an appropriate margin insofar as the Customer does not meet its duty to cooperate, in particular if it does not ensure we have access to the repair item.

(2) The deadline for the provision of repair services shall be deemed to have been met if we have started the repair work before this deadline expires. The conclusion of the repair work is dependent on the type and scope of the necessary repair work, the orderly compliance of the Customer with regard to its duty to cooperate, the provision/procurement time for replacement parts as well as possible extensions of the Contract for the repair services. As such, the time at which the repair work terminates shall not be determined in advance, unless agreed otherwise in writing.

(3) The Customer is obligated to inform us in writing of its current opening hours at least 2 days before the repair work due.

Should our technician not be able to gain access to the device to be repaired during the specified opening hours, or should the technician not be able to carry out the repair work on account of circumstances for which the Customer is liable (e.g. no power supply, insufficient ambient lighting, device not ready for operation, etc.), we shall be entitled to invoice the Customer for the full amount incurred for travel and repair work, even if the repair work could not be carried out.

(4) Should we not be able to or only partially be able to carry out the repair work for reasons for which the Customer is liable, in particular on account of non-compliance with its duty to cooperate as specified in Article 19, the Customer shall be obligated to pay us the costs already incurred including the related share of the profits.

Article 22 Acceptance

Insofar as no formal acceptance of the repair work has been agreed between the Contractual Parties, the repair work shall be deemed to be accepted if the Customer has not advised us in writing of any substantial defects with regard to the repair services within 10 days following the termination of the repair work.

V. General Provisions

Article 23 Offer and Conclusion of the Contract

(1) Our offers are subject to change and can, therefore, be withdrawn by us at any time until acceptance by the Customer. The possession or receipt of a price list or other price information does not constitute an offer and does not constitute an entitlement to the resale/distribution of the products. The prices lists and price information can be replaced at any time by new price lists and other price information.

(2) The Customer is bound to its order/its Contract for a duration of 4 weeks. Acceptance shall be carried out by us in writing, unless immediate delivery/provision of services and/or invoicing is carried out by us.

The same shall apply to possible addenda, amendments and collateral agreements.

Article 24 Payment

(1) Payments are due on the payment date specified in our order confirmation. Should no specific date be determined, the following payment terms shall apply:

- deliveries/services in Germany: 30% when placing the order the remaining balance in cash without deductions or by irrevocable letter of credit before delivery/termination of the service

- deliveries/services outside Germany: for deliveries/services outside Germany, the payment must have been credited to our bank account before dispatch/5 days before the start of the services, or must be effected by means of an irrevocable and confirmed letter of credit that we must have received at least 14 days before delivery/provision of services.

(2) In the case of outstanding invoices of the Customer, each payment shall count towards the payment of the longest-outstanding claim due.

(3) Payments involving bills of exchange and cheques are not cash payments. These will only be accepted after a particular written agreement has been concluded and on account of payment. All expenses for discounts and collections, charges and taxes pertaining to the acceptance, transfer and collection of bills of exchange shall be paid by the Customer. We shall not be obligated to ensure bills of exchange, cheques and other means of payment are presented in good time. Should a bill of exchange not be discounted or not be honoured promptly, the entire amount due or remaining amount due to us shall become payable.

Agents are only authorised to accept payments once a written power of collection has been presented.

(4) Should a Customer not meet its payment obligations, in particular if it does not honour a cheque or a bill of exchange or suspends its payment, we shall be entitled to immediately demand payment of the entire remaining balance, even if we have accepted cheques or bills of exchange. In these instances we shall also be entitled to refuse to carry out any outstanding deliveries and services until the Customer has provided the service in return or has provided security in sufficient scope for the outstanding deliveries and services.

(5) Only undisputed or legally enforceable claims shall entitle the Customer to setting off or retention.

(6) Should the purchasing contract be cancelled by the Customer before delivery has occurred, the Seller may invoice the Customer for cancellation fees amounting to at least 15% of the order value for standard devices and up to 100% of the order value for customer-specific special orders. The respective aggrieved Contractual Party shall retain the right to claim for further or lesser damages. They bear the burden of proof in this respect.

(7) The following hint to the SEPA-direct debit scheme is a pre-notification: Demands for payment, which are collected via the SEPA-direct debit-scheme, are automatically due after date of invoice and will be collected within one week from the agreed bank account of the customer. Our creditor identifier is DE71ZZZ0000055048. The mandate reference is generally according to the h/p/cosmos invoice number.

(8) International payments: All bank charges which arise due to an international payment (demand for payment) must be borne by the customer.

Article 25 Notice of Defects

The obligations to inspect and give notice of defects by the Customer are always determined in accordance with Article 377 of the German Commercial Code. This also applies to maintenance and repair services.

Article 26 Defects in Quality/Limitation Period

- (1) Should the delivery item and/or the maintenance and repair services not be free of defects in quality, or should we have assumed a written guarantee for specific characteristic features, we shall be obliged to rectify the defect in a manner of our choosing or to deliver a defect-free item.
- (2) Should the remedial work on the same specified defect fail after three unsuccessful attempts, the Customer shall be able to choose to withdraw from the Contract or to reduce the purchase price/remuneration.
- (3) Should the defect in quality be attributed to gross negligence or intent by us, or should the defect result in a breach of fundamental contractual obligations (material contractual obligations) for which we are liable, or in death, bodily injury or impairment to health for which we are liable, or should we have assumed a guarantee for specific characteristic features, the Customer shall also be able to claim for damages pertaining to a defect in quality instead of withdrawing from the Contract or a reduction in the purchasing price/remuneration.
- (4) Should it be possible to lodge a claim against us for the payment of damages pertaining to slight negligence (breach of material contractual obligations), the claim for damages shall be limited to damages that could typically have been foreseen.
- (5) In the case of slight negligence, damages pertaining to loss of production, interruption to the course of business and/or loss of profits shall be excluded.
- (6) This limitation of liability shall also apply accordingly to the behaviour of our senior management and agents.
- (7) Should we decide to undertake remedial work, we shall assume the costs required for the remedial work. Should the remedial work be undertaken by the Customer, the claim by the Customer for the reimbursement of costs shall be limited to costs for labour and materials relating to our proportion of the delivery and services. This reimbursement of costs shall not apply insofar as the expenses increase as a result of the purchased item being relocated to another site which is different than the headquarters/delivery location of the Customer after delivery.
- (8) The costs for shipping, handling, travel and labour are born by us within the Federal Republic of Germany only and only for warranty cases.
- (9) In areas outside the Federal Republic of Germany the purchaser must cover all costs for packaging, shipping, transportation, labour, any applicable duties and any other charges for the repair or replacement of the purchased item. Only the spare parts from the factory are free of charge.
- (10) Replacement parts for warranty cases remain our property.
- (11) No claims on the part of the Customer pertaining to a defect in quality shall exist:
 - a) for defects that have been caused on account of improper handling or over-stressing by the Customer or its customers;
 - b) should the delivery item be changed by third parties and/or by the installation of parts from an unknown source, unless it can be proven that the cause of the defect is not connected with this change;
 - c) should the suitability of our goods for a specific purpose or the specific application not be determined from the order confirmation or from the written instructions enclosed with one of the goods, or should the suitability for a particular purpose not have been expressly approved by us;
 - d) should the delivery item not have been regularly and verifiably maintained in accordance with our user manuals and should this have led to the defect;
 - e) should the Customer or a third party have used, transported, stored, assembled, installed or commissioned the item, or connected the item to unknown devices, etc. in an inappropriate or improper manner;
 - f) should the Customer or a third party have incorrectly assembled or commissioned the item;
 - g) should the Customer and/or a third party have accidentally and/or intentionally damaged the item and/or should the item have been damaged by environmental influences such as heat, fire, water, storms, etc.
 - h) in instances of wear and tear;
 - i) should inappropriate equipment or substitute materials have been used or on account of faulty construction work or chemical, electrochemical and electrical influences, provided we are not liable for these.

Should it transpire that the defect has been caused by circumstances that do not obligate us to assume liability for a defect in quality; the Customer shall be obligated to reimburse us for all consequent costs incurred.

(12) The regular limitation period for claims on account of defects for our delivery items is 1 year from the delivery of the item to the Customer. The limitation of the claims under the right of recourse that is regulated by Article 478 of the BGB remains unaffected by this regulation.

The limitation claims for claims for defects pertaining to our maintenance and repair services last one year from acceptance of the maintenance and repair services and, provided that no formal acceptance occurs and no defects are reported within 10 days, 10 days following the termination of the maintenance and repair services. Should defects be reported within 10 days following the maintenance and repair services, the limitation period only starts at the time at which either the reported defect was rectified or evidence is provided that no faulty maintenance and repair services were carried out.

Insofar as we can be held liable for damages, a curtailment of the limitation period for claims for damages pertaining to defects in quality in instances of gross negligence or intent by us, our senior management or agents, in instances of a breach

of fundamental contractual obligations (material contractual obligations) for which we are liable, as well as in instances of death, bodily injury or impairment to health for which we are liable, is excluded.

(13) Should the delivery items be used items, all claims for defects in quality shall be excluded. This exclusion shall not apply to claims for damages in instances of gross negligence or intent, in instances of a breach of fundamental contractual obligations (material contractual obligations) for which we are liable, as well as death, bodily or impairment to health, by us, our senior management or agents.

(14) The aforementioned regulation shall not apply to liability in accordance with the German Product Liability Act.

Article 27 Claims for damages for the infringement of obligations and delays

(1) Our liability pertaining to defects in quality or in title is not detailed in this section (Article 27). The regulations specified in Articles 10 and 26 of these Terms and Conditions of Business shall apply for this liability.

(2) Claims for damages pertaining to other breaches of obligation, in particular of the duty to protect or of quasi-contractual obligations, are excluded insofar as there is no gross negligence or intent, no breach of fundamental contractual obligations (material contractual obligations) for which we are liable or no death, bodily injury or impairment to health caused by us. Should a claim for the payment of damages pertaining to slight negligence be able to be raised against us, the claim for damages shall be limited to damages that could typically have been foreseen.

Liability on account of loss of production, interruption to the course of business and/or loss of profits shall be excluded in the case of slight negligence.

This limitation of liability shall apply accordingly to the behaviour of our senior management or agents.

(3) This limitation of liability as specified in Sec. (2) shall apply accordingly to claims in tort. Liability in accordance with the German Product Liability Act shall remain unaffected by this regulation.

(4) Claims against us for damages pertaining to delayed delivery or non-performance of services shall be excluded insofar as there is no gross negligence or intent by us, our senior management or agents.

This limitation of liability shall not apply should we, our senior management or agents be liable for a breach of fundamental contractual obligations (material contractual obligations).

Should it be possible to lodge a claim for the payment of damages pertaining to slight negligence (breach of material contractual obligations) against us, the claim for damages shall be limited to damages that could typically have been foreseen.

Claims for damages pertaining to loss of production, interruption to the course of business and/or loss of profits shall be excluded in cases of slight negligence.

This limitation of liability shall apply accordingly to the behaviour of our agents.

Any possible right of recourse by the Customer pertaining to these issues shall remain unaffected by this limitation of liability.

(5) Claims for damages pertaining to the other breaches of obligation that are regulated in this section that are not claims for defects, as well as pertaining to delay, shall fall under the statute of limitations within one year from the end of the year in which the claim was raised and the Customer became aware of the circumstances on which the claim is based or would have been required to become aware without gross negligence. The maximum limitations that are regulated in Article 199 Sec. 2 and 3 of the BGB for limitation claims shall remain unaffected by this regulation.

This restriction shall not apply to claims for damages pertaining to gross negligence or intent, to a breach of fundamental contractual obligations (material contractual obligations) for which we are liable as well as death, bodily injury or impairment to health or liberty caused by us, our senior management or agents.

Article 28 Damage claims

1) If damages for breach of duty exist, they are limited to the net contract value of the customer to us per our order confirmation / invoice.

Article 29 Suspension of the Limitation in Negotiations

The opening of negotiations on claims pertaining to defects in quality and in title or other claims for damages, also pertaining to delay, shall only occur should the Contractual Parties have declared in writing that they will enter into negotiations on claims of this nature. Should the invocation of this requirement for a written form constitute an abuse of a legal right, no Contractual Party shall be able to demand compliance with this requirement for a written form.

Article 30 Trade and Company Secrets

(1) Drawings and technical documents as well as documents on property rights, proprietary rights, product names, trademarks, word, image and sound marks, patents, patent applications, utility models, design patents, copyright, software, software source codes, firmware, firmware source codes and author's rights that have been transferred to the Customer remain our property. The transfer of the aforementioned documents shall not result in the Customer obtaining any rights, in particular any rights of use for these documents. The Customer may not use these documents without our written consent. In particular, it may not copy or reproduce the documents or circulate or advertise its possession of these documents, or make them accessible, to any third parties. This shall apply even if these documents do not bear any markings indicating their confidentiality.

- (2) The Customer shall ensure that its employees, advisers, partners and other persons who come into contact with these trade secrets are obligated in writing to protect our trade secrets in the aforementioned scope.
- (3) These obligations shall also apply following the termination of the contractual relationship.

Article 31 Place of Performance, Applicable Law, Place of Jurisdiction, Partial Nullity

- (1) The place of performance for the deliveries and payments is our headquarters in DE 83365 Nussdorf-Traunstein, Germany.
- (2) The law of the Federal Republic of Germany shall exclusively apply to these General Terms and Conditions of Business and all legal relations between us and the Customer.
- a) The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to purchasing and delivery contracts.
- b) The following stipulated order shall prevail for maintenance and repair contracts:
- the contractual agreement between the Contractual Parties, in particular the maintenance and/or repair contract including the respective price lists;
 - these General Terms and Conditions of Business;
 - the German law on contracts for work and services (*Werkvertragsrecht*);
 - other provisions specified in the BGB (*Bürgerliches Gesetzbuch*);
 - all other pertinent statutory provisions of German law.
- (3) The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relations is DE 83278 Traunstein, Germany and, if we so choose, also the place of jurisdiction of the Customer.
- (4) Collateral agreements, provisos, amendments and addenda shall be implemented in writing.
- (5) Should a provision of these General Terms and Conditions of Business be or become invalid, the validity of all other provisions shall remain unaffected.
- Should other agreements with the Customer in the context of the cooperation be or become invalid, the validity of all other agreements shall remain unaffected. In this case, the invalid provision is to be interpreted or expanded so that the intended commercial purpose of the invalid provision is achieved in a legally permissible manner.
- (6) Should the font size of this version be too small for those with visual impairments, a printed copy in a larger font size can be sent upon request.

Article 32 Liability for Warranty

- (1) Details for warranty terms and conditions are attached to the shipped goods, are available on request and can be found on enclosed link:
www.h-p-cosmos.com/downloads/manual/20101227_h-p-cosmos_warranty_terms_treadmills_accessories.pdf

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