

General Terms and Conditions 1. General, Customers

(1) These general terms and conditions apply to (i) the using of MBI Toric Calculator for calculating lenses as well as to (ii) all offers, sales contracts, deliveries and services made on the basis of any orders by contract partners (each, a "Customer") through MBI Toric Calculator.

(2) The offerings in the MBI Toric Calculator are directed to only Business Customers (an individual, company or partnership vested with legal capacity who enters into the relevant contract in the conduct of its business or its self-employed professional activity, e.g. physicians or medical professionals). Through using MBI Toric Calculator the customer declares to be a Business Customer in this sense.

(3) Standard business conditions of the Customer do not apply, regardless of whether or not MBI expressly objects to them in a particular case.

2. MBI Toric Calculator

(1) Terms of Use

By using MBI Toric Calculator Customer agrees that use of the MBI Toric Calculator is covered by the following Terms of Use:

(2) Rights of Use

MBI grants Customer the right to access and use the MBI Toric Calculator for the limited purpose of performing calculations to determine the recommended MBI Intraocular lens and its configuration. Customer agrees to refrain from unauthorized use, modification, reproduction, distribution and publication of the MBI Toric Calculator.

(3) Proprietary Rights

The MBI Toric Calculator is owned by MBI and/or its affiliates. All right, title and interest in and to the MBI Toric Calculator and all portions thereof shall remain with MBI and/or its licensor(s). Customer acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with MBI or its licensors' ownership of or rights with respect to the MBI Toric Calculator.

(4) Restrictions

Customer may not do any of the following, nor permit any third party to do any of the following:

(a) use, reproduce or modify of any portion of the MBI Toric Calculator or incorporate any portion of the MBI Toric Calculator for any other purpose than the purpose specified or incorporate any portion of the MBI Toric Calculator into any other product;

(b) transfer, encumber, sublicense, disclose, rent, lease, offer for timesharing or distribute any portion of the MBI Toric Calculator; or (c) remove, obscure, deface or fail to reproduce in any copy any copyright, trademark or other proprietary rights notice contained in any part of the MBI Toric Calculator.

In addition, Customer will not do any of the following, nor permit any third party to do any of the following, to any portion of the Software: reverse engineer, decompile, disassemble or otherwise attempt to determine the source code, ideas, algorithms or structure underlying any of the Software, except to the extent that you are permitted by applicable law to reverse engineer the Software despite the foregoing restriction.

(5) Warranty Exclusion

The MBI Toric Calculator is provided "as-is" without any warranty whatsoever. The diagnostic information provided by the MBI Toric Calculator is provided for Customer's convenience, but should not be used for final diagnosis or as a substitute for Customer's medical expertise. While efforts have been made to make the information provided by the MBI Toric Calculator helpful and accurate, MBI does not warrant the accuracy of the information obtained from the MBI Toric Calculator. Customer assumes all risks and responsibilities for selection of the MBI Toric Calculator to achieve Customer's intended results and for the use of and results obtained from the MBI Toric Calculator. MBI makes no warranty that the MBI Toric Calculator will be error free or free from interruption or failure. Customer hereby acknowledges that the MBI Toric Calculator may not be available or become unavailable due to any number of factors including, without limitation, periodic system maintenance, scheduled or unscheduled, acts of god, technical failure of the MBI Toric Calculator, telecommunications infra-structure, or delay or disruption attributable to viruses, denial of service attacks, increased or fluctuating demand, actions and omissions of third parties, or any other cause reasonably beyond the control of MBI. Therefore, MBI expressly disclaims any express or implied warranty regarding MBI Toric Calculator.

(6) Limitations of Liability

Neither MBI nor any of its subsidiaries, employees, or other representatives shall be liable for damages arising out of or in connection with the use of this MBI Toric Calculator. Under no circumstances shall MBI have any liability for any consequential, incidental, indirect, special, or punitive damages or costs (including, but not limited to, lost profits, business interruption, loss of information or data, or loss of goodwill, loss of or damage to property, and any claims of third parties, arising out of or in connection with the use, copying, or display of MBI Toric Calculator or its contents or any linked Web site), regardless of whether MBI has been advised, knew, or should have known of the possibility thereof.

This exclusion from liability shall not apply:

- to any damages arising from loss of life, personal injury or impairment of health; - to any other damages arising from gross negligence or from intention;
- to any damages arising out of MBI' intentional tort.

Compensatory damages arising from any infringement of essential contractual duties shall be limited to the foreseeable damage which would be typical for this type of contract, unless it was caused by intention and/or gross negligence.

3. Purchasing of Intraocular Lenses

(1) Conclusion of Contract

(a) Offerings in the MBI Toric Calculator are non-binding.

(b) By placing an order, the Customer makes a binding offer to purchase the relevant product. The offer will remain open for acceptance by MBI for a period ending at the end of the third business day following the day of the offer.

(c) Without undue delay upon receipt of the order, MBI will send to the Customer by e-mail a confirmation of receipt, which shall not constitute an acceptance of the order. The order shall be deemed to be accepted by MBI either upon subsequent (e-mail) acceptance of the order or by dispatching the product. The sales contract with the Customer shall not become effective until MBI's acceptance.

(2) Prices and Payment

(a) MBI is entitled to subject deliveries to advance payment.

(b) The Customer shall have no right of set-off or retention, except to the extent that the counterclaim has not been disputed by us or been determined by a final and binding decision.

(3) Dispatch of the Product

(a) Any date of dispatch shall be only approximate, only except if a fixed date of dispatch has been individually and explicitly agreed upon.

(b) Any time period relevant to determine the date of dispatch shall begin (i) in event of payment after delivery, upon the conclusion of the sales contract or (ii) in event of advance payment, upon receipt by us of the full purchase price (including shipping costs).

(c) The date of delivery shall be such day on which the product is handed over by MBI to the carrier.

(d) Regardless of whether any product is indicated on the order form as "in stock", MBI may sell such product at any time. In such cases, MBI shall only be obligated to dispatch the product within the time period agreed upon or indicated by MBI as long as stock lasts.

(e) In the event that no date of dispatch has been specified or otherwise agreed upon or MBI is no longer required to deliver within any agreed time period pursuant to char. (d), MBI will announce to the customer a new date of dispatch as soon as known.

(f) In the event that a supplier fails to deliver in a timely manner a product that has been indicated on the order form as "not in stock" or has been sold off in accordance with char. d above, any applicable delivery period pursuant to char. (b) shall be deemed to be extended until delivery is made by the supplier plus an additional period of three business days provided that the supplier's failure to timely supply the products is not a result of MBI's fault or negligence and that MBI as without undue delay ordered the relevant products from the supplier.

(g) In the event that the product is no longer available or cannot be timely delivered, for any of the reasons set out in char. MBI shall without undue delay inform the Customer thereof. If the product is no longer available from the suppliers within the foreseeable future, MBI shall be entitled to terminate the sales contract. In case of such termination, MBI shall without undue delay reimburse the Customer any payments which the Customer has made to us in respect of the order. The legal rights of the Customer resulting from late delivery shall not be affected by this provision; provided, however, that the Customer may claim damages only subject to the provisions of Section 4 of these General Terms and Conditions.

(h) Partial deliveries of products included in the same order shall be permitted, provided that MBI shall bear any additional shipping costs caused thereby.

(3) Shipment, Insurance and Passing of Risk

(a) Unless expressly otherwise agreed upon, MBI shall be free to determine the appropriate mode of shipment and to select the carrier at reasonable discretion.

(b) MBI shall only be obliged to properly and timely deliver the product to the carrier and shall not be responsible for any delays caused by the carrier. Any transit times specified by MBI shall therefore only be non-binding estimates.

(c) The dispatch always occurs insured.

(4) Retention of Title and Resale

(a) MBI retains title to the goods until receipt of all payments in full. In case of breach of contract by the purchaser including, without limitation, default in payment, MBI is entitled to take possession of the goods.

(b) The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(c) As long as the purchase price has not been completely paid, the purchaser shall immediately inform MBI in writing if the goods become subject to rights of third persons or other encumbrances.

(d) The purchaser may resell goods subject to the above retention of title only in the course of his regular business. For this case, the purchaser hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us. Notwithstanding MBI's right to claim direct payment the purchaser shall be entitled to receive the payment on the assigned claims. To this end, MBI agrees to not demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

(e) Insofar as the above securities exceed the secured claim by more than 10%, MBI is obligated, upon own election, to release such securities upon the purchaser's request.

(5) Warranty

(a) In the event of a defect of the delivered product, the Customer shall be entitled to request from MBI to repair the defect or to supply another product (as ordered) which is free from defects. MBI shall have the right to choose between any such remedies at own discretion.

(b) If the remedy (supplementary performance) pursuant to Section 3 para. (1) char. (a) fails or cannot reasonably be expected from the Customer or MBI refuses to remedy the defect, the Customer shall be entitled to terminate the sales contract, reduce the purchase price or claim damages or frustrated expenses, in each case in accordance with applicable law; provided, however, that damage claims of the Customer shall be subject to the provisions contained in Section 4 of these General Terms and Conditions.

(c) The warranty period shall be twelve months upon delivery of the product.

(d) The Customer shall promptly upon delivery inspect the product with due care. The delivered product shall be deemed to be approved by the Customer unless the defect is notified to MBI (i) in case of any obvious defects within a period of five business days upon delivery or (ii) otherwise within five business days from the day when the defect has been identified.

4. Liability

(1) MBI's liability for late delivery shall, except in cases of willful misconduct or gross negligence, be limited to an amount equal to 50% of the aggregate purchase price.

(2) MBI shall not be liable (on whatever legal grounds) for damages which may not reasonably be foreseen, assuming a normal use of the product. In any case MBI's liability shall be limited for damages to persons or goods to EUR 1.000.000 and for financial damages to EUR 100.000. Limitations of liability shall not apply in cases of willful misconduct or gross negligence.

(3) The provisions of this Section 4 shall not apply with respect to the liability of MBI for guaranteed product specifications.

5. Data Protection

(1) MBI may save and process any data relating to the Customer, to the extent necessary for the purpose of the execution and implementation of the sales contract and as long as MBI is required to keep such data in accordance with applicable law.

(2) MBI shall have the right to submit personal data relating to the Customer to credit agencies, to the extent necessary for a credit check, subject, however, to the Customer's consent in each individual case. MBI shall not make available any personal data of the Customer to other third parties without the express consent of the Customer, except to the extent that a disclosure is required under applicable law.

(3) Collection, submit to any third party or otherwise processing of personal data of the Customer for any purpose other than those set forth in this Section 10 is not permitted.

(4) In utilizing the MBI Toric Calculator, Customer may be inputting patient data. This data will not be received or retained by MBI for any period of time. Therefore privacy protection is sole obligation of the Customer. Not until and only if an order is placed, data used therefor will be saved by MBI, but only used in the context of the business relationship.

6. Delivery range:

Delivery range are defined as follow.

Standard Toric IOL: +5.0D to +34.0D
From +10.0D to +30.0D in 0.5D steps
From +5.0D to +10.0D and from +30.0D to +34.0D in 1.0D steps
Cylinder: +1.0D to +6.0D in 0.5D steps

7. Applicable Law, Competent Courts, Final Provisions

(1) Any contracts entered into between MBI and the Customer shall be only governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG).

(2) The courts in Pomona , CA, USA shall have exclusive jurisdiction in respect of all disputes arising out of or in connection with the relevant contract

(3) Should any provision of these Terms, or any provision incorporated into these Terms in the future, be or become invalid or unenforceable, the validity or enforceability of the other provisions shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be substituted by a suitable and equitable provision, which, to the extent legally permissible, comes as close as possible to the economic intent and purpose of the invalid or unenforceable provision. The same shall apply: (i) if the Parties have, unintentionally, failed to address a certain matter in these Terms; in this case a suitable and equitable provision shall be deemed to have been agreed upon which reflects what the Parties, in the light of the economic intent and purpose of these Terms, would have agreed upon if they had considered the matter; or (ii) if any provision is invalid because of the scope of any time period or performance stipulated herein; in this case a legally permissible time period or performance shall be deemed to have been agreed upon which comes as close as possible to the stipulated time period or performance.