

## General Repair Conditions of FUJIFILM Europe B.V. for Endoscopy Devices

### 1. General Conditions

- 1.1 Repairs and functional tests ("Repairs") of the endoscopy devices ("Device(s)") shall be carried out by FUJIFILM Europe B.V. ("FUJIFILM") exclusively on the following terms and conditions. Conflicting, deviating or supplementary contractual terms and conditions of the customer shall not apply even if they have not been expressly objected to or if we accept or perform a service without reservation in the knowledge thereof.
- 1.2 Repairs carried out on the basis of warranty obligations are excluded from these terms and conditions.

### 2. Order, Cost Estimate

- 2.1 After receiving a Device to be repaired, FUJIFILM shall carry out a comprehensive incoming inspection in order to determine the existing malfunctions. By sending in the Device to be repaired, the customer gives FUJIFILM its consent to the analysis of the defect and the determination of the cause of the damage, as well as to the disassembly that this necessarily entails.
- 2.2 In case of anticipated Repair costs of more than EUR 950.00 plus VAT, FUJIFILM shall prepare a cost estimate, which shall be approved in writing (email or fax is sufficient) by the customer. Cost estimates shall be valid for three weeks from the date of issue. If the cost estimate is not approved in writing within this period, the repair order shall be deemed not to have been placed.

If the estimated Repair costs are EUR 950.00 plus VAT or less, the Repair will be carried out without consultation of the customer. A cost estimate shall also not be prepared; unless the preparation of a cost estimate is expressly agreed between the parties.

- 2.3 If the customer does not place the repair order, the customer may decide whether FUJIFILM returns the unrepaired Device to the customer in disassembled condition or whether the Device will be assembled beforehand. For the return of the unrepaired, disassembled Device, FUJIFILM will charge a flat rate as stated in the cost estimate. If the unrepaired Device is to be assembled before it is returned, assembly will be charged at cost in addition to the flat rate for the return. If the customer does not place a Repair order and does not wish to have the disassembled Device returned, the customer shall instruct FUJIFILM to dispose of it properly.
- 2.4 If further defects or unforeseen additional expenses become apparent during the execution of the repair and if the actual repair costs exceed the cost estimate by more than 15 percent, a new cost estimate shall be prepared which must be approved in writing by the customer. If the customer does not approve the cost estimate, section 2.3 shall apply accordingly.
- 2.5 For all Repairs, the customer has the option of instructing FUJIFILM to ship (return) the Device. In this case, FUJIFILM has the right to determine the transport company carrying out the shipment. The shipping costs incurred (outward and return shipment) of the Device shall be invoiced separately to the customer. In the event that the Device is sent to FUJIFILM by an appointed transport company, the customer undertakes to pack the Device in the corresponding case and using the shipping bag provided by FUJIFILM free of charge and to make it available for collection. The mailing bags can be ordered by e-mail from [osc\\_feg@fujifilm.com](mailto:osc_feg@fujifilm.com). If the customer sends a Device without using the shipping bag, cleaning costs of a flat rate of EUR 25.00 plus VAT will be charged.
- 2.6 The customer shall, in the interest of FUJIFILM's personnel, clearly point out to FUJIFILM any Device that has not

been disinfected when sending a Device to be repaired.

## 2.7 Creutzfeldt-Jakob Disease

If the Device to be repaired has been used on a patient infected with Creutzfeldt-Jakob disease, FUJIFILM will reject the order and the customer shall refrain from sending the Device to FUJIFILM.

If the customer only becomes aware after shipment that the Device has been used on a patient infected with Creutzfeldt-Jakob disease, he shall inform FUJIFILM of this immediately. This applies even if there is merely a suspicion that the patient is infected with Creutzfeldt-Jakob disease. At the request of the customer, FUJIFILM will take care of the professional disposal of the (possibly) contaminated Device. The costs for this will be charged to the customer. The customer shall indemnify FUJIFILM against all claims, costs (including legal fees) which third parties may have against FUJIFILM, including claims by employees of FUJIFILM who have come into contact with the (possibly) contaminated Device. This clause 2.7 shall also apply beyond the termination of the respective Repair order.

2.8 FUJIFILM shall be entitled to perform the Repair services through subcontractors or other vicarious agents. However, the contractual partner of the customer shall remain FUJIFILM.

2.9 Devices which are "end of service" and/or for which there is only limited availability of spare parts, shall be repaired by FUJIFILM subject to the availability of corresponding spare parts. This may also apply in case of Repair in which FUJIFILM has already provided a cost estimate.

## 3. Loaner Devices

3.1 In exceptional cases and upon request of the customer, FUJIFILM will endeavour to provide the customer with a replacement Device ("Loaner"), if available, for the duration of the repair.

3.2 For the provision of a Loaner, FUJIFILM shall charge a provision and transport fee for a standard delivery and collection of a flat rate of EUR 300.00 plus VAT. Only for

endosonography Devices a one-time usage fee of EUR 500.00 plus VAT will be charged. Express and special deliveries will be charged separately.

3.3 After the Repair has been completed and the repaired customer Device has been returned, the Loaner shall be returned to FUJIFILM within ten (10) working days. The date of dispatch shall be decisive. If this period is exceeded, a usage fee of EUR 50.00 plus VAT shall be charged for each additional working day. The return of the Loaner shall be initiated by the customer. The customer is obliged to arrange for insured shipment. The return transport is at the expense and risk of the customer. The customer undertakes to pack the Loaner in the corresponding case and using the shipping bag provided by FUJIFILM. If the customer sends the Loaner without using the shipping bag, cleaning costs of a flat rate of EUR 25.00 plus VAT will be charged.

3.4 Upon receipt of the Loaner, the responsibility for proper handling and care is transferred to the customer. In particular, the customer shall observe the operating instructions.

3.5 After completion of the repair, the customer shall return the Loaner to FUJIFILM in the same condition in which it was received, except for wear and tear caused by proper use. Damage to the Loaner caused by improper handling, reprocessing, care or storage for which the customer is responsible as well as missing parts shall be charged to the customer.

3.6 The customer shall clearly inform FUJIFILM of any non-disinfected Device when returning the Loaner in order to minimise the risk of infection to FUJIFILM's personnel.

## 3.7 Creutzfeldt-Jakob Disease

If the Loaner has been used on a patient infected with Creutzfeldt-Jakob disease, the customer shall inform FUJIFILM of this fact before returning the Device. This applies even if there is merely a suspicion that the patient is infected with Creutzfeldt-Jakob disease. The costs for the professional disposal of the (possibly) contaminated Loaner shall be charged to the customer. Furthermore, customer shall pay to FUJIFILM the actual

replacement cost for the Loaner, such replacement cost being that prevailing at the time such Loaner is disposed of. For the avoidance of doubt, this is a like for like replacement cost and not a new for old replacement cost. The customer shall indemnify FUJIFILM against all claims, costs (including legal fees) which third parties may have against FUJIFILM, including claims of employees of FUJIFILM; who have come into contact with the (possibly) contaminated Loaner. This clause 3.7 shall also apply beyond the termination of the respective repair order.

#### **4. Repair Service; Transfer of Ownership of Parts Removed; Acceptance and Rights of the Customer**

- 4.1 FUJIFILM shall provide the Repair services in accordance with the respective state of the art at the time of their performance.
- 4.2 Ownership of parts removed during Repairs shall pass to FUJIFILM upon removal.
- 4.3 The customer shall carefully and completely inspect the repaired Device immediately upon physical receipt. The customer shall inform FUJIFILM immediately in case of obvious defects and immediately after their discovery in the case of hidden defects of the Repair service.
- 4.4 If the customer fails to give timely notice of defects in accordance with clause 4.3, the performance shall be deemed to have been properly rendered.
- 4.5 When giving notice of defects, the customer shall describe the alleged defect in detail in writing and in particular state in what way and under what circumstances this defect was detected.
- 4.6 The customer shall immediately accept the Repair after completion of the services, unless acceptance is excluded due to the nature of the work. Acceptance may not be refused due to insignificant defects. The Repair shall be deemed accepted if the customer does not accept it within a reasonable period of time set by FUJIFILM, although he is obliged to accept it.

- 4.7 Except for the purpose of carrying out a test or trial operation under FUJIFILM's supervision, the customer shall not put the Device into operation before the acceptance of the Repair. In the event that the Device is put into operation without acceptance, the Repair shall be deemed to have been accepted.
  - 4.8 In the event of a defect in the performance of the Repair, the customer may demand subsequent performance in accordance with the statutory provisions. If the supplementary performance fails, the customer may - without prejudice to any claims for damages – at its discretion reduce the remuneration or withdraw from the contract in accordance with the statutory provisions. Any claims for damages shall be governed by the statutory provisions, subject to the provisions in clause 5 (Liability).
  - 4.9 The customer's claims for defects shall become time-barred 6 months after acceptance of the performance. Excluded from this are claims for damages, which the customer asserts within the scope of liability for defects. The statutory limitation periods for claims for defects shall apply to these claims for damages.
  - 4.10 Claims for defects on the part of the customer do not exist in the case of defects that arise after the service has been provided as a result of improper use, improper storage or non-compliance with the manufacturer's, assembly or operating instructions. The same shall apply to tampering with or other manipulation of the Device, unless the customer can prove that the defect claimed by it was not caused by the tampering or manipulation. The costs incurred by FUJIFILM as a result of unjustified notices of defect shall be borne by the customer.
  - 4.11 Claims for defects do not exist if a defect is due to natural wear and tear or the corrosion of individual parts. The same applies if the defect was caused by actions of third parties.
- #### **5. Liability**
- 5.1 FUJIFILM shall only be liable for damages caused by FUJIFILM, its legal

representatives or vicarious agents - irrespective of the legal grounds - in accordance with the following provisions.

5.2 FUJIFILM shall be liable without limitation (a) for damages resulting from culpable injury to life, body or health, (b) for intent, (c) for gross negligence of its corporate bodies or its executive employees, (d) for fraudulently concealed defects, (e) from the assumption of a quality guarantee (in this respect, the liability regulation or limitation period resulting from the guarantee shall apply) as well as (f) pursuant to the Product Liability Act.

5.3 FUJIFILM shall only be liable in cases of ordinary negligence for damages resulting from the breach of essential contractual obligations, the fulfilment of which is a prerequisite for the proper performance of the contract and on which the customer can rely. In this case, however, the liability of FUJIFILM shall be limited to the damage typically foreseeable for the type of contract in question. The aforementioned limitation of liability shall apply in the same way to damages caused by gross negligence on the part of other vicarious agents of FUJIFILM who do not belong to the corporate bodies or are not executive employees.

5.4 In the cases of clause 5.3, liability shall be limited to the remuneration paid by the customer.

5.5 In the cases of clause 5.3, FUJIFILM shall not be liable for loss of profit, consequential or indirect damages.

5.6 Insofar as the liability is excluded or limited in clauses 5.2 to 5.5 above, this shall also apply to claims for damages of the customer against corporate bodies, executive employees or other vicarious agents of FUJIFILM.

## 6. Terms of Payment

6.1 In the absence of any written agreement to the contrary, payments shall be due immediately upon receipt of the invoice without any deductions. If the payment deadline stated in the invoice is exceeded, the customer shall be in default without further reminder. The

receipt of the invoice amount on the account specified by FUJIFILM shall be decisive for the timeliness of the payment.

6.2 The customer may only offset against claims of FUJIFILM with legally established and undisputed claims. The offsetting prohibition shall not apply to claims of the customer due to defects in performance and/or a default of FUJIFILM.

Likewise, the customer may only exercise rights to refuse performance and rights of retention if the claims of FUJIFILM are offset by legally established or undisputed claims of the customer.

## 7. Final Provisions

7.1 Supplements, amendments or ancillary agreements to these Terms and Conditions shall require FUJIFILM's written confirmation in order to be effective. This shall also apply to the waiver of the written form requirement.

7.2 The customer may not assign its rights and obligations in whole or in part without FUJIFILM's prior written consent. FUJIFILM may assign the rights and obligations incumbent upon it, in particular to affiliated companies. An affiliated company means a corporation, other business organization, entity or person which directly or indirectly controls, is controlled by, or is under common control with, either party to this Agreement. For the purposes of this definition, "control" means the possession, directly or indirectly, of more than 50% of the voting stock or other voting interests of such corporation, other business organization, entity or person.

7.3 Any invalidity of individual provisions of these terms and conditions shall not affect the validity of the remaining provisions.

7.4 The laws of the Netherlands, excluding its conflict of law rules, shall apply.

7.5 The place of jurisdiction for all disputes and types of proceedings arising from the legal relationship between the customer and FUJIFILM shall be Tilburg, the Netherlands.