

TOPTICA Photonics AG
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Germany

1. General

These General Terms and Conditions of Sale and Supply ("our Terms") are an integral part of the contract and apply to all our offers, deliveries and services; any modifications, other terms and/or ancillary agreements will apply only if and insofar as confirmed by us in writing. The customer's business terms and conditions will not apply even if we have not expressly rejected them. Our Terms will be deemed acknowledged by you upon receipt of the order confirmation.

2. Offer and Price

2.1 Unless agreed otherwise in writing, our offers are without obligation and non-committal, and are subject to prior sale.

2.2 The scope of our obligation to deliver will be determined solely by our written order confirmation. During the delivery period, we may carry out technical modifications not affecting the functionality of the goods. Depending on the scope of the order, we reserve the right to make partial delivery.

2.3 The data stated in catalogues and brochures as well as in the documents relating to the offer and order, such as pictures, drawings, weights and dimensions, are non-committal and for information purposes only, unless they were specifically designated as binding in the order confirmation. We reserve the ownership rights and copyrights to drawings and other documents; these must not be forwarded, reproduced or disclosed to third parties for any other purposes and include no license to construct any parts.

2.4 The prices stated are for the scope of delivery described in the order confirmation.

2.5 The prices stated are for goods delivered ex warehouse Graefelfing and are exclusive of value added tax applicable at the time of invoicing and, as may be agreed between us, are exclusive or inclusive of customs charges. The prices are determined according to the kind and scope of the goods or services described in the order confirmation and may be changed if so subsequently requested by the customer. Our prices are determined on the basis of the prices charged by our suppliers, our labor costs, the exchange rates as well as customs charges and importation duties, all at the time of the order confirmation. If any of these parameters should have changed by the time of delivery, we reserve the right to adjust our prices proportionately, provided that a period of more than six (6) weeks lies between conclusion of the contract and the agreed delivery date. Fixed prices must be agreed specifically in writing. We may also adjust prices if the purchased quantity deviates from what was agreed.

3. Payment Terms

3.1 Unless otherwise agreed, our invoices are payable without discount within 30 days.

3.2 Unless a higher amount of damages can be proven, we may charge default interest of 8% above the base interest rate.

3.3 If the customer is in delay of payment, all our claims will become due at once. In addition, we may interrupt any outstanding works. Agreed delivery periods will be extended accordingly.

3.4 The customer may set off counterclaims only if non-appealable or recognised by us. A right of withholding may be exercised by the customer only if it concerns the same contractual relationship.

4. Delivery Dates

4.1 All delivery dates stated have been ascertained in consideration of the current circumstances, such as production capacity and staff situation, and, unless otherwise specifically agreed, are to be regarded as approximate dates. If delivery periods are specified, these will start to run upon conclusion of the contract as soon as all cooperating duties of the customer, such as providing documents and communicating the requisite data, etc. have been fulfilled, the necessary permits or clearances have been obtained, and the agreed down-payments have been effected. Subsequent change requests of the customer, which we will consider at our discretion, will lead to a reasonable postponement of delivery periods and dates.

4.2 The customer will take delivery of devices supplied, even if these show insignificant defects; the delivery dates will be deemed met. Partial delivery is admissible. If delivery is delayed due to unforeseeable events outside our sphere of influence, e.g. force majeure, strike, lockout, interruption of operations, shortage of important raw materials, sabotage, delay in the supply of important raw materials and components, the delivery period will be

extended accordingly. In this respect, the customer's rights of withdrawal and further claims due to delayed delivery shall be excluded. The same applies if unforeseeable events occur during a period when we are already in default. A right of withdrawal due to delay in performance will exist only in accordance with clause 9, and claims to damages only in accordance with clause 8 below.

4.3 If the subject matter of the contract is the supply of non-fungible goods which are to be manufactured or created, the customer shall have a unilateral right of termination until passing of the risk only if an important ground exists. If we are not liable for the important ground, our claim to remuneration shall amount to 30% of the order value, unless the statutory claims are higher or lower, the latter to be proven by the customer. If the subject matter of the contract is the supply of other goods, the subsequent termination of contract will be subject to our approval and we will charge 30% of the order value, save as may be agreed otherwise.

5. Passing of Risk

5.1 Risk will pass to the customer upon dispatch of the goods to the customer. This also applies to partial deliveries and also if we have assumed the costs of transportation and/or assembly.

5.2 If dispatch of the goods is delayed due to circumstances for which we are not responsible, the risk shall pass to the customer upon our written notice of the readiness for dispatch.

6. Liability for Defects of Quality

6.1 We warrant that at the time of passing of the risk the goods and services are free of defects. Unless agreed otherwise, the agreed quality corresponds to our specifications, as amended and published at the time of the order confirmation. The statutory inspection and complaint obligations must be observed.

6.2 If the goods or services are not of the agreed quality at the time of passing of the risk, we will provide subsequent performance in accordance with section 439 German Civil Code, unless otherwise stipulated in the following provisions.

6.3 Subsequent performance may be provided by way of rectification of defects or, at our option, by way of new delivery. We may rectify a certain defect several times and, at our discretion, may proceed from a rectification of defects to new delivery. Transport costs due to the goods being brought to a place other than the place of performance are to be borne by the customer.

6.4 The customer may set a reasonable period of at least two (2) weeks for us to effect the new delivery and, if the new delivery has failed during such period, may demand reduction of the price or, unless the defect is insignificant, withdraw from the contract, each after expiry of the period. Damages for defects of quality may be claimed only subject to clause 8 below.

6.5 Rights and claims based on defects of quality will become time-barred twelve months after delivery, except in the case of intent.

However, damage claims based on defects of quality will become time-barred after expiry of the statutory period even if they result from the violation of another's life, body or health or from gross negligence.

6.6 We are not liable for usual wear and tear, material provided or processing made by the customer, damage resulting from improper storage, installation or operation, or from insufficient maintenance, or for damage resulting from a modification or repair not authorized by us in writing.

6.7 With respect to goods or services which we receive from a third party for resale to the customer, we assign all warranty rights against such third party to the customer. Claims can be advanced against us only if they have first been asserted against the third party without success.

7. Liability for Proprietary Rights Infringements

7.1 We warrant that upon passing of the risk no patents or other proprietary rights of third parties exist which may be claimed with respect to the goods or services if these are used as intended. Clauses 6.2 to 6.5 and 6.7 shall apply correspondingly.

7.2 Our liability will be excluded if a third party patent or proprietary right is infringed because we have adhered to a design provided by the customer or have complied with an instruction given by the customer, or because the goods are used for a purpose, in a country, or in connection with other goods or other software, without this having been communicated to us before execution of the contract.

7.3 During the period of our liability, the customer has the obligation to inform us in writing as promptly as possible in the event that a third party claims any patent or other proprietary right or asserts any claims in and out of court with respect to the goods or services. Before recognizing any claim advanced by a third party in or out of court, the customer shall give us the opportunity to comment. At our request, we shall be given the authority to handle the negotiations or legal dispute with such third party at our

own cost and responsibility. The customer shall be liable to us for any damage sustained by it as a result of a culpable violation of said obligations.

8. Damages

8.1 We will be liable to the customer only for damage caused with intent or gross negligence. In the event of a breach of obligations, being material for achievement of the purpose of the contract, we shall, however, be liable for each fault of our personnel (statutory representatives, executive employees and other vicarious agents) causing damage.

8.2 Except in case of intentional causation of damage by our personnel or causation of damage with gross negligence by our statutory representatives or executive employees, our liability shall be limited, in each case, in terms of amount to the damage which is typically foreseeable at the time of conclusion of the contract.

8.3 In cases of doubt, the amount of the typically foreseeable damage shall be limited to the order value, in any event, however, to the maximum of € 250,000.

8.4 Claims to damages which result from the violation of another's life, body or health, as well as damage claims under the Product Liability Act shall remain unaffected.

9. Rescission

A breach by us which is not a defect will entitle the customer to rescind only if we are responsible for such breach and if the other statutory requirements are met.

10. Retention of Title

10.1 We retain title to the goods delivered until full payment of our claims due under this contract, including ancillary claims and all – even future – claims arising from the business relationship with the customer.

10.2 The customer is entitled to resell the goods delivered subject to our retention of title in the ordinary course of business. The goods must not be pledged or assigned by way of security. If a third party intends to seize the goods subject to our retention of title, the customer will advise the third party of our title and inform us immediately.

10.3 The customer will assign to us its claims resulting from any resale. The customer is authorised and obliged to collect the claims in the ordinary course of business. At our request, the customer will name the claims assigned and the debtors concerned. To secure our payment claims, we are entitled at any time to disclose the assignment of the claim.

10.4 If the goods delivered subject to our retention of title are connected or intermixed with other goods to which we hold no title, we will become proportionate joint owners in relation of the invoice value of the goods delivered to the other goods. Any processing or conversion of the goods by the customer will always be undertaken for us, as manufacturer, without this obliging us in any manner. We will become co-owners in any processed or converted goods in the sense of the aforesaid provisions.

10.5 If the customer is in delay of payment, even for other or future goods delivered or services provided, or if the customer becomes insolvent, we may claim retention of title and retrieve the goods, even by entering the premises of the customer. If we claim retention of title, we will not be deemed to have rescinded the contract, unless we declare otherwise.

10.6 If the value of the collateral should exceed our payment claims by more than 20%, we will release the excess collateral at the request of the customer.

11. Miscellaneous

11.1 Our legal relationship with the customer is subject to the substantive law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

11.2 The place of performance of the parties' mutual obligations is Graefelfing/Munich, Germany.

11.3 If the customer is a fully qualified merchant in the sense of the German Commercial Code or has no general place of jurisdiction in Germany, we may elect that the Landgericht München I [Regional Court] or the Landgericht at the customer's seat shall have exclusive international, local and subject-matter jurisdiction.

11.4 If any provision of these General Terms and Conditions of Sale and Supply is or becomes invalid or unenforceable, the other provisions shall remain in full force and effect. The invalid provision shall be replaced by such provision which is valid and comes closest to the intended economic purpose of the invalid provision.

12. Data Protection

For the purpose of handling the business with the customer, we may store and process the data of the customer in accordance with the terms of the Federal Data Protection Act.