

## **General Terms and Conditions of Sale of Photonics Systems GmbH**

### **1 Scope of application**

**1.1** These General Terms and Conditions of Sale (hereinafter „GTCS“) apply to all business relationships between Photonics Systems GmbH, Pionierstraße 6, 82152 Krailling (hereinafter “Seller”) and its customers (hereinafter “Buyer”). The GTCS shall only apply if the Buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch „BGB“), a legal entity under public law or a special fund under public law.

**1.2** The GTCS apply in particular to agreements for the sale and/or delivery of movable goods (“Goods“), irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 BGB).

**1.3** Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or in any case in the version last communicated to the Buyer in text form shall also apply as a framework agreement for similar future agreements, without the Seller having to refer to them again in each individual case.

**1.4** These GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the agreement if and insofar as the Seller has expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the Buyer refers to its own General Terms and Conditions in the respective order and the Seller does not expressly object to them.

**1.5** Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in the Seller's order confirmation shall always take precedence over these GTCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the agreement.

**1.6** Legally relevant declarations and notifications by the Buyer in relation to the agreement must be made in writing. Written form within the meaning of these GTCS includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.

**1.7** References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

### **2 Order and order confirmation, conclusion of the agreement**

**2.1** The Seller's offers are subject to change and non-binding. This shall also apply if the Seller has provided the Buyer with catalogs, technical documentation (e.g. drawings, calculations, calculations, plans or references to applicable DIN standards), other product descriptions or documents - also in electronic form - to which the Seller reserves ownership rights and copyrights.

**2.2** The Buyer's order shall be deemed a binding offer. Unless otherwise stated in the Buyer's order, the Seller is entitled to accept this contractual offer within 21 (twenty-one) calendar days of receipt of the respective offer.

**2.3** Acceptance can be declared either in writing (e.g. by sending an order confirmation) or by delivery of the Goods to the Buyer.

**2.4** Drawings, illustrations, dimensions, weights or other performance data are only binding if this has been expressly agreed in writing.

### **3 Delivery period and delay in delivery**

**3.1** The delivery period shall be agreed individually between the contracting parties or specified by the Seller upon acceptance of the order.

**3.2** If the Seller is unable to meet binding delivery deadlines for reasons for which it is not responsible (e.g. in the event of non-availability of the service), the Seller shall inform the Buyer of this immediately and at the same time inform the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, the Seller shall be entitled to withdraw from the agreement as a whole or partially; in this case, the Seller shall immediately reimburse any consideration already paid by the Buyer. Non-availability of the service shall be deemed to exist, for example, in the event of late delivery by the Seller's supplier, if the Seller has concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if the Seller is not obliged to procure the Goods in individual cases.

**3.3** The occurrence of a delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Buyer is required.

**3.4** If the Seller is in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The liquidated damages shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but shall not exceed a total of 5% of the delivery value of the Goods delivered late. The Seller reserves the right to prove that the Buyer has suffered no loss at all or only a significantly lower loss than the above lump sum.

**3.5** The rights of the Buyer pursuant to clause 8 of these GTCS as well as the statutory rights of the Seller, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

### **4 Delivery, transfer of risk, acceptance and default of acceptance**

**4.1** At the request and expense of the Buyer, the Goods shall be shipped to another destination (sale to destination). In this event and unless otherwise agreed, the Seller shall be entitled to determine the type of shipment, in particular the transport company, shipping route and packaging.

**4.2** The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon handover. In the event of a sale involving the carriage of Goods, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment or transport.

**4.3** If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the German law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

**4.4** The Buyer may request a postponement of the originally agreed delivery date in writing by and provided that he notifies the Seller in writing at least 30 (thirty) calendar days prior to the delivery date specified in the Seller's original confirmation order or the latest estimated delivery date confirmed by the Seller (hereinafter jointly referred to as „Estimated Delivery Date“). The Seller may accept or reject any such request for postponement of the Estimated Delivery Date in its sole discretion. For accepted postponements of the Estimated Delivery Date, the Buyer agrees to pay the Seller a fee amounting to 0.1% of the purchase price per day after the Estimated Delivery Date, up to a maximum of 5% of the purchase price. In this event, the Buyer also undertakes to reimburse the Seller for all costs incurred by the Seller in connection with the rescheduling of the delivery. If a postponement of the delivery date or delay for which the Buyer is responsible lasts longer than 120 calendar days, the withheld delivery

shall be deemed to have been canceled. Clause 4.5 of these GTCS shall remain unaffected in this case.

**4.5** In the event the Buyer is in default of acceptance, fails to cooperate or if the Seller's delivery is delayed for other reasons for which the Buyer is responsible, the Seller shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, the Seller shall charge a lump-sum compensation amounting to 0.1% of the purchase price per calendar day, beginning with the delivery period or - in the absence of an agreed delivery period - with the notification that the Goods are ready for dispatch.

Proof of higher damages and the Seller's statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected by this; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that the Seller has suffered no loss at all or only a significantly lower loss than the above lump sum.

## **5 Prices and terms of payment**

**5.1** Unless otherwise agreed in individual cases, the Seller's current prices at the time of conclusion of the agreement shall apply, ex warehouse, plus statutory VAT.

**5.2** In the case of sale by delivery to a place other than the place of performance (see clause 4.2 of these GTCS), the Buyer shall bear the transportation costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

**5.3** The purchase price is due and payable within 14 (fourteen) days of invoicing and delivery or acceptance of the Goods. However, the Seller is entitled at any time, even in the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. The Seller shall declare a corresponding reservation at the latest with the order confirmation.

**5.4** The Buyer shall be in default upon expiry of the above payment deadline. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. The Seller reserves the right to claim further damages for default. The Seller's claim against merchants for commercial maturity interest (Section 353 German Commercial Code (Handelsgesetzbuch „HGB“)) shall remain unaffected.

**5.5** The purchaser shall only be entitled to set-off or retention to the extent that his claim has been legally established or is undisputed. In the event defective Goods, the Buyer's counter-rights shall remain unaffected.

**5.6** If it only becomes apparent after conclusion of the agreement (e.g. by filing for insolvency proceedings) that the Seller's claim to the purchase price is jeopardized by the Buyer's inability to pay, the Seller shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the agreement in accordance with Section 321 BGB. In the case of agreements for the manufacture of non-fungible Goods (custom-made products), the Seller may declare its withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **6 Retention of title**

**6.1** Until full payment of all current and future claims of the Seller arising from the purchase agreement and an ongoing business relationship (secured claims), the Seller retains the title to the Goods sold.

**6.2** The Goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer shall notify the Seller immediately in writing if an application for the opening of insolvency proceedings is filed or if the Goods belonging to the Seller are seized by third parties (e.g. attachments).

**6.3** If the Buyer acts in breach of agreement, in particular in the event of non-payment of the purchase price due, the Seller shall be entitled to

withdraw from the agreement in accordance with the statutory provisions and to demand the return of the Goods on the basis of the retention of title. If the Seller takes back the Goods, this shall constitute a withdrawal from the agreement. If the Buyer does not pay the purchase price due, the Seller may only assert these rights if it has previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

**6.4** If the Buyer is not in default, he is entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

**6.4.1** The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of the Seller's Goods, whereby the Seller shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, their right of ownership remains, the Seller shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. In all other respects, the same shall apply to the resulting product as to the Goods delivered under retention of title.

**6.4.2** The Buyer hereby assigns to the Seller by way of security any claims against third parties arising from the resale of the Goods or the product in total or in the amount of any co-ownership share of the Seller in accordance with the above clause. The Seller accepts the assignment. The obligations of the Buyer stated in clause 6.2 of these GTCS shall also apply with regard to the assigned claims.

**6.4.3** The Buyer shall remain authorized to collect the claim in addition to the Seller. The Seller undertakes not to collect the claim as long as the Buyer meets its payment obligations to the Seller, there is no deficiency in its ability to pay and the

Seller does not assert the retention of title by exercising a right in accordance with clause 6.3 of these GTCS. If this is the case, however, the Seller may demand that the Buyer informs it of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, the Seller shall also be entitled to revoke the Buyer's authorization to resell and process the Goods subject to retention of title.

**6.4.4** If the realizable value of the securities exceeds the Seller's claims by more than 10%, the Seller shall release securities of its choice at the Buyer's request.

## **7 Warranty claims for defects**

**7.1** Unless otherwise stipulated below, the Buyer's rights in the event of material defects and defects of title shall be governed by the statutory provisions.

**7.2** In all cases, the statutory provisions on the sale of consumer Goods (Sections 474 et seq. BGB) and the rights of the Buyer arising from separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.

**7.3** The basis of the Seller's liability for defects is above all the agreement reached on the quality and the intended use of the Goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual agreement or which were made public by the Seller (in particular in catalogs or on our Internet homepage) at the time of conclusion of the agreement shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (Section 434 (3) BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the Goods, shall

take precedence over statements made by other third parties.

**7.4** In the event software is part of the delivered Goods, it is always inherent to the service and its use for other services or systems is prohibited. In case of Goods with digital elements or other digital content according to the BGB, the Seller shall only be obliged to provide and, if necessary, update the digital content if this is expressly stated in a quality agreement between the parties.

**7.5** The Seller assumes no liability in this respect for public statements made by the manufacturer and other third parties.

**7.6** The Seller shall not be liable for defects which the Buyer is aware of or is grossly negligent in not being aware of when the agreement is concluded (Section 442 BGB). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory inspection and notification obligations (Sections 377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later point in time, the Seller must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 5 (five) working days from delivery and defects not recognizable during the inspection must be reported in writing within the same period from discovery.

**7.7** If the Buyer fails to properly inspect the Goods and/or report defects, the Seller's liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions. In the event of Goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs ("removal and installation costs").

**7.8** If the delivered item is defective, the Seller may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). If the type of subsequent performance

chosen by the Seller is unreasonable for the Buyer in the individual case, the Buyer may reject it. The Seller's right to refuse subsequent performance under the statutory conditions remains unaffected by this.

**7.9** The Buyer shall give the Seller the time and opportunity required for the subsequent performance owed, in particular to hand over the defective Goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item at the Seller's request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the item.

**7.10** The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs, shall be borne or reimbursed by the Seller in accordance with the statutory provisions and these GTCS if a defect actually exists. Otherwise, the Seller may demand compensation from the Buyer for the costs arising from the unjustified request to remedy the defect if the Buyer knew or could have recognized that there was in fact no defect.

**7.11** Claims of the Buyer for reimbursement of expenses pursuant to Section 445a (1) BGB are excluded, unless the last agreement in the supply chain is a consumer Goods purchase (Sections 478, 474 BGB) or a consumer agreement for the provision of digital products (Sections 445c sentence 2, 327 (5), 327u BGB). Claims of the Buyer for damages or reimbursement of futile expenses (Section 284 BGB) also exist in the event of defects in the Goods only in accordance with the following Sections 8 and 10 of these GTCS.

## **8 Other liability**

**8.1** The Seller shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions, unless otherwise provided for in these GTCS, including the following provisions.

**8.2** The Seller shall be liable for damages - irrespective of the legal grounds - within the

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scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, the Seller shall be liable, subject to statutory limitations of liability, such as care in its own affairs or insignificant breaches of duty, only

**8.2.1** for damages resulting from injury to life, limb, body or health;

**8.2.2** for damages arising from the breach of an essential contractual obligation, i.e. an obligation whose fulfillment is essential for the proper execution of the agreement and on whose compliance the contractual partner regularly relies and may rely. In this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.

**8.3** The limitations of liability resulting from clause 8.2 of these GTCS shall also apply to third parties and in the event of breaches of duty by persons (including in their favor) whose fault the Seller is responsible for in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the Goods has been assumed or for claims of the Buyer under the Product Liability Act.

**8.4** The Buyer may only withdraw from or terminate the agreement due to a breach of duty that does not consist of a defect if the Seller is responsible for the breach of duty. A free right of termination of the Buyer (in particular pursuant to Sections 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

## **9 Intellectual Property**

**9.1.** Copyrights, patent and trademark rights as well as know-how and the associated practical experience, as disclosed by the Seller in offers, design, drawings, projects, software, etc., shall remain the property of the Seller.

**9.2.** The Buyer is not permitted to reproduce, duplicate, otherwise use, pass on to third parties or communicate with others about the above

mentioned rights without the prior written consent of the Seller.

## **10 Statute of limitations**

**10.1** Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

**10.2** Special statutory provisions on limitation periods shall remain unaffected.

**10.3** The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.

**10.4** The Buyer's claims for damages pursuant to clause 8.2 of these GTCS and under the German Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **11 Choice of law, place of jurisdiction and other matters**

**11.1** These GTCS and the contractual relationship between the Seller and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

**11.2** If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Munich. The same applies if the Buyer is an entrepreneur according to Section 14 BGB.

In all cases, however, the Seller shall also be entitled to bring an action at the place of performance of the delivery obligation in

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accordance with these GTCS or an overriding individual agreement or at the Buyer's general place of jurisdiction.

**11.3** Overriding statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.

**11.4** Should individual provisions of the agreement or these GTCS be or become invalid or contain loopholes, this shall not affect the validity of the remaining provisions. To fill the

gaps, those legally effective provisions shall be deemed to have been agreed which the contracting parties would have agreed in accordance with the economic objectives of the agreement and the purpose of these GTCS if they had been aware of the loopholes or ineffectiveness.

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