

I. Scope of Application

1.1. These conditions apply to all deliveries of goods, accessories and other products as well as all contracts of sale and purchase, contract for services, contracts for work done and other contracts concluded between the ourselves and the customer. Special conditions apply to contracts of setting up and repairs; unless otherwise expressly agreed, setting up is the Customer's obligation.

1.2. We herewith object to our Customer's Standard Terms and Conditions insofar as these differ from ours; this also applies in case of our silence in respect of a renewed submission of the Opponent's Standard Terms and Conditions. Any approval granted only applies to the individual case and not to previous or future contracts.

1.3. Our estimates are not binding and only contain an invitation to trade to the Customer.

1.4. Even if our offers were binding we are entitled to revoke these until acceptance by the Customer. The Customer is bound to its order for 14 days. Customer's offers/orders are only accepted by our written order confirmation or by commencement of our contractual work.

1.5. Documents containing technical details, costs estimates, drafts and calculations which are provided to the Customer in the course of contract negotiations and the execution of the contract must not be used by the Customer for other purposes or copied or made accessible to Third Parties. We reserve ownership and intellectual property rights and other rights in respect of these documents. If the contract is not awarded documents etc. within the meaning of the first sentence of this clause are to be returned immediately upon demand. Sentences 1–3 apply accordingly to the Principal's documents; however, these can be made available to Third Parties who we subcontract to perform deliveries and services.

II. Prices, Payment Conditions, Price Increase, Set Off and Retention

2.1. Unless agreed otherwise our prices are "ex works" exclusive of setting up or assembly and protective devices.

2.2. Our prices are exclusive of packaging which is invoiced separately.

2.3. Unless agreed otherwise, payments are to be made to us without deductions within 30 days from invoicing.

2.4. In commercial transactions the price does not include VAT. The amount of statutory VAT applicable is shown in the invoice on the date of invoicing.

2.5. In the event that the date of conclusion of the contract and the date of delivery are more than 4 months apart (in commercial transactions one month) and our acquisition costs increase after conclusion of the contract and making the goods available for collection we are entitled to increase the price by unilateral declaration in the same amount. In this case the Customer is entitled to repudiate the contract always provided that we receive notice of repudiation within one week of the price increase.

2.6. The Customer is only entitled to a set off against our claims with undisputed or unappealable claims. A private consumer's retention right against us is excluded unless it is based on the same contractual relationship. The merchant's rights to refuse performance pursuant to § 320 BGB and/or entitlements to retention, including commercial retention rights are excluded.

III. Deliveries and time for Delivery

by authorities, problems with energy supply, traffic blocks, import and export bans, strikes The following regulations apply to all deliveries of goods, including contracts for work done and goods delivered.

3.1. All deliveries are "ex works Unterschleißheim" or "ex works Teisnach". Upon request of the Customer and at the Customer's costs we arrange for the shipment plus insurance to the delivery address. Risk passes to the Customer when the goods are made available for collection.

3.2. Dates for delivery and assembly are only binding if expressly confirmed by ourselves. Even if the dates are binding the Customer, in the event of delay, has to grant a minimum grace period of one month. Upon unsuccessful expiry of this grace period the Customer can repudiate the contract. Further claims for damages, in particular, damages for delay, are excluded; this limitation of liability does not apply if we are culpable of gross negligence or intent. In addition, the foregoing exclusion does not if the delay results in harm to life or health or personal injury on account of a negligent breach by the party tendering these Standard Terms and Conditions or an intentional or negligent breach by its statutory agent or person employed to perform an obligation.

3.3. The right to part deliveries is reserved.

3.4. The right to obtaining supplies oneself is reserved in commercial transactions. If this fails without us being responsible the agreed terms are extended by the time lost due to the incorrect and untimely self supply. The same applies in particular to business interruptions, actions and lock outs, mobilization, war, blockade and cases of "force majeure".

3.5. We provide the client software through download, accessible on our websites, FTP-servers or web-shop. Alternatively, we can provide the licensed software by email or through a data carrying device.

3.6. All brands and product names mentioned are trademarks of their respective legal owners and are hereby recognized as such. The licensed software and the accompanying documents were developed and created by IMM Photonics GmbH and are protected by copyright. IMM Photonics GmbH has the exclusive rights of use regarding graphics and icons used.

3.7. The client receives –subject to charged licensed software with full payment of the royalties– a non-exclusive, unlimited in time right to use the licensed software for commercial purposes in regard to the software controlled hardware.

3.8. Unless otherwise agreed between the client and us, the licensed software may only be installed on one computer at any given time. Under no circumstances does the client have the right to rent or in any other way sublicense the licensed software, to communicate and/or to make it available to the public by wired or wireless means, or to provide it to third-parties, with or without compensation, e.g. by means of Application Service Providing or as "software as a service".

3.9. The client may create a backup copy if this is necessary to ensure future use. The client must label the backup copy as "Backup copy" and must affix the manufacturer's copyright notice in a way that is clearly visible.

3.10. The client is only authorized to decompile and to copy the licensed software when provided by law. However, this applies only if we have not, within a reasonable period of time, followed through with the client's request for the necessary information.

3.11. The client is authorized to permanently transfer the purchased licensed software to third-parties. In that case, the client cedes the usage of the licensed software in its entirety, removes all installed copies of the licensed software from its computers and deletes or transfers to us all other copies located on any type of data carrying device, provided that the client is not legally required to maintain a prolonged storage of the data. At our request, the client will confirm in writing the execution of these measures or, if applicable, the reason for a prolonged storage of the data.

3.12. If the client uses the licensed software in such a way that exceeds the scope of the rights of use, be it in a qualitative (with regard to the type of permitted use) or quantitative (with regard to the number of licenses) way, the client shall acquire without delay the necessary rights of use for his usage.

3.13. Copyright notice, serial numbers as well as any other mean of program identification may not be removed from the licensed software or modified.

IV. Retention of Title, Assignment by way of Security

4.1. Until full payment of all our claims the goods delivered by us remain our property. Until full payment the Customer holds the goods in custody for us without charge.

4.2. The Customer is only entitled to sell on the goods or services of any kind in the ordinary course of business and only against cash payment or under retention of title. In the event of a transfer of ownership by way of security our goods are to be clearly segregated.

4.3. In the event of a modification of the goods within the meaning of §§ 947 and 950 BGB with other goods not belonging to us the retention of title clause extends to the new goods so produced; we are entitled to ownership pro rata in the new item in the amount of the sales price invoiced to the buyer inclusive of VAT. The handing over is substituted by the agreement whereby the Principal takes custody of the goods without charge.

4.4. Our Customer now assigns to us all its claims arising from the on-sale of the goods subject to retention of title inclusive of VAT and inclusive of claims under bills of exchange together with all ancillary rights and we herewith accept the assignment. In case the goods subject to retention of title are sold by the Customer together with other goods which do not belong to us at a total price the assignment is limited to the amount which we invoiced for the goods subject to retention of title inclusive of VAT.

4.5. The Customer is authorized to collect the assigned claims in the ordinary course of business until revocation of the authority. An assignment or pledge of these claims is only permitted if we consent thereto in writing. We are entitled to disclose the assignment or to demand that the Customer notifies the debtor of the assignment.

4.6. Upon our demand the Customer must insure the goods and other services for the duration of the retention of title at its cost against damage, destruction or loss. The Customer now assigns to us claims against the Insurer and we herewith accept the assignment; in case such assignment is invalid under the terms of insurance the Customer herewith instructs the insurer irrevocably to discharge their debt to us only.

4.7. In case the value of the existing securities exceeds the value of the claims to be secured by more than 20% we are – upon the Customer's request – obliged to release securities but retaining the right to elect the security to be released.

4.8. In the event of enforcement proceedings the Customer must notify us immediately in writing. The Customer to us free and indemnify us against the costs of an intervention.

V. Warranties

5.1. We warrant that the system delivered does not include defects which reverse or diminish a contractually stipulated use or, if no such use has been agreed, is suitable for the ordinary use and of a condition which is customary in items of similar kind and which the Customer can expect in this type of item. The defects warranty does not cover defects that arise from the installation of the licensed software in a software or hardware environment that does not meet the essential requirements and/or from modifications made by the client to the licensed software without having received our prior written consent.

5.2. If the Customer is a private consumer and if the contract relates to the purchase of consumer goods we warrant as follows:

5.2.1. The time limit for warranty claims is two (2) years, in case of used items one (1) year counting from the statutory date of commencement of the limitation period. In the case of the transfer of the licensed software, the date of completion of the download from our website (<http://www.imm-photonics.de>) marks the statutory date of commencement of the limitation period.

5.2.2. We shall be liable for intent and gross negligence. Furthermore, we shall be liable for the negligent breach of obligations, when the fulfilment of these obligations is essential to the proper conduct of the contract and is generally relied upon by the client and when the breach of these obligations prevents the carrying out of the purpose of the contract. Finally, we shall be liable only for foreseeable damages typical for this type of contract. The breach by a statutory agent or person employed to perform an obligation is equal to a breach by the Seller.

5.3. In commercial transactions with Customers which are not Consumers within the meaning of § 13 BGB the warranties are as follows:

5.3.1. The time limit for warranties is one (1) year counting from the statutory commencement of the limitation period. In the case of the transfer of the licensed software, the completion of the download from our website (<http://www.imm-photonics.de>) marks the beginning of the limitation period.

5.3.2. The Customer must issue a notification in relation to obvious defects within a preclusive time limit of 2 weeks following handing over; in business transactions with traders with full merchant status the Customer's duty to notify of defects which are obvious or not obvious is governed by §§ 377, 378 HGB.

5.3.3. In transactions with individuals which do not have full merchant status but are not Consumers we are entitled to limit our liability to the assignment of our warranty claims against producers, suppliers or authors. If the Customer's reasonable and appropriate attempts to enforce the assigned claims against the Third Party fail the Customer can claim the warranty against us under these Standard Terms and Conditions. If the Customer has full merchant status the Customer can direct these claims against us only if pursuing the claim assigned under the first sentence of this clause in court fails, or if the Customer who has full merchant status provides evidence in support of the futility of pursuing the claim in court.

5.3.4. Our liability is limited to the right to claim further performance pursuant to § 439 (1) BGB; as the case may be, after the assertion of claims assigned under clause 5.3.3. Further performance can also take the form of a new software version (update) provided to the client. We are authorized to render warranty service at the client's premises. We also satisfy our obligation for further improvement when we make available an automated installation program for updates downloadable on our website (<http://www.imm-photonics.de>). If further performance fails the Customer is entitled at its option to reduce the purchase price or to repudiate the contract.

5.3.5. Claims by the Customer for damages for defects of the sold goods are particularly excluded with the exemption of claims for damages for harm to life or health or personal injury if the Seller is responsible for the breach and other damage based on the Seller's intentional or grossly negligent breach. The breach of a statutory agent or person employed to perform an obligation is equal to a breach by the Seller.

5.4. Special rules for recourse claims pursuant to § 478 BGB; the Principal's claim for damages against us is excluded with the exemption of claims for damages for harm to life or health or personal injury if the Seller is responsible for the breach and other damage based on the Seller's intentional or grossly negligent breach. The breach of a statutory agent or person employed to perform an obligation is equal to a breach by the Seller.

VI. Liability

Inasmuch as we are liable in cases outside warranties or delay, in particular in relation to a breach of ancillary duties before or after the conclusion of the contract, our liability is limited as follows:

6.1. We are only liable for damage based on an intentional or grossly negligent breach by ourselves or our statutory agent or the person employed to perform an obligation with the exemption of claims for damages for harm to life or health or personal injury if based on the intentional or negligent breach of a statutory agent or person employed to perform an obligation.

6.2. In the case of slight negligence, the sum of damages is limited to the amount of typical, reasonably foreseeable damages; the maximal amount of damages is limited to € 20,000.00 per claim and to € 35,000.00 in total.

6.3. We shall not be liable for the loss of data and/or software insofar as the damage is due to the negligence of the client to perform data backup and to ensure that the lost data could be recovered with reasonable efforts.

6.4. Data communication via the Internet cannot be guaranteed - according to the actual state of technology - to be error-free and/or with accessible at any time. We cannot be held liable for the permanent and uninterrupted availability of our online services.

VII. Defence against Patent or Intellectual Property Rights asserted by Third Parties: US Regulations

7.1. In case a Third Party alleges the infringement of a patent or other protective rights within the jurisdiction against the Customer on the basis of the goods delivered we support the Customer to the best of our efforts in defending these claims. Inasmuch as we are obliged under the contract and pursuant to these Standard Terms and Conditions, we bear the costs of the Defence and indemnify and hold free the Customer from these costs provided the Customer leaves to us the full conduct of the Defence upon our demand and provides us with all requisite authorities. Our liability in respect of a possible infringement of patent or other protective rights outside the jurisdiction is excluded to the extent as legally permitted unless agreed otherwise in the individual case.

7.2. It is for the Principal to ensure the operation permit or permission to sell on of the goods delivered pursuant to public law. The Customer is notified that it is particularly its own responsibility to obtain permits pursuant to US export laws. The Customer is put on notice that the export of the goods delivered is partly only permitted subject to the prior consent of the Federal Authority for Trade and Industry in Eschborn/Taunus, it is for the Customer to obtain the requisite permit, if applicable.

VIII. Data Processing and Storage

We are entitled to process and store data on the Principal obtained in the course of the business connection or in relation thereto under the Data Protection Act, regardless of whether they originate from the Principal or a Third Party.

IX. Choice of Law

This contract, including non-contractual or pre-contractual claims, is subject to the law of the Federal Republic of Germany, excluding provisions of international private law and the CISG.

X. Partial Nullity and Written Form

10.1. In case of one or more provisions of this contract being null and void or not enforceable the parties will replace these with a provision which comes closest to the replaced provision in respect of its legal and commercial meaning.

10.2. If a substitution as set out afore is not possible, the remaining provisions of the contract remain unaffected.

10.3. Ancillary agreements and confirmations are only valid if confirmed in writing. No ancillary agreements or confirmations exist outside this contract.

XI. Jurisdiction

11.1. If the Customer has full merchant status or is a corporate body under public law or a special fund under public law or if the Customer's residence or habitual abode at the time of lodging the claim in court is either within the jurisdiction or unknown Munich is the exclusive jurisdiction for all disputes under or in connection with the contract.

11.2. This jurisdiction clause also applies to bill of exchange or cheque proceedings as well as statutory demands.