General Terms of Sale | siOPTICA GmbH

1. Scope

1.1 None of our deliveries, services and offers are subject to anyother rules than the General Terms of Sale set forth herein. This shall also apply to any future business even though it may not have been expressly stipulated otherwise. Any counter-confirmation made by a Buyer with reference to his own business or purchasing terms is hereby contradicted.

1.2 Any provision made between us and a Buyer in order to execute a contract shall be stipulated in a written contract.

2. Offer and conclusion of contract

2.1 Our quotations are non-binding unless the binding force of a quotation has been explicitly stipulated in writing. Your orders shall have no binding contractual force and effect unless we have sent our written order acknowledgement.

2.2 Drawings, illustrations, weights, measures, and other performance data shall only be binding if expressly stipulated in writing.

2.3 We retain title of ownership and copyright of all tender documents, illustrations, drawings, calculations, and other documents. These must not be disclosed to any third party.

2.4 Written documents which are clearly marked as „confidential" are subject to secrecy requirements. The Buyer shall procure our express written approval before he may disclose a document of such type to a third party.

3. Prices, Terms of payment, Set-off, retention

3.1 Unless otherwise agreed, prices are quoted ex works.

3.2 Unless otherwise specified, we consider ourselves bound by the prices quoted in our firm and binding offers for four weeks commencing at the date of offering.

3.3 Prices are always quoted before VAT, which will be separately shown in the invoice at the rate that is legally binding on the date of invoicing.

3.4 Payment terms stated in our offers and invoices are binding. If for a particular sale neither the relevant offer nor the relevant invoice does state any payment terms, then such invoice shall be payable in full within fourteen (14) days from the date of invoice. The date on which payment is received on our account will be decisive.
Despite any Buyer statement to the contrary, we shall be entitled to initially set payments off against previous debts. The Buyer will then be duly informed about applied settlement procedures. Where such previous debts have incurred additional costs and interest, we shall be entitled to set due payments off against such costs in the first place, then against such interest, and finally against the primary obligation.

3.5 Any deduction of discount shall require a special written agreement.
If the Buyer defaults, we may, at our own option, charge annual interest of eight percentage points above the respective base interest rate as laid down in section 247 of the German civil code from the day on which a default situation begins. This shall not affect our right to claim further compensation of damage from the Buyer.

3.6 If circumstances become known to us, which cast doubt on the Buyer's creditworthiness, notably, if a cheque and/or a bill of exchange is not cleared, or payment discontinues, we will be within our rights to call in the total amount due, even though we may have previously accepted cheques.
Furthermore, advance payment or the provision of securities may be demanded in such cases.

3.7 The Buyer shall only be entitled to claim set-off if his counterclaims have been found to be lawful or indisputable or are acknowledged on our part. He may only use this right of retention to the extent that his counterclaim is based on the same contractual relationship and has been found to be lawful or indisputable or is acknowledged on our part.

4. Delivery Time, partial deliveries, default in accepting

4.1 Dates and/or periods of delivery require our written confirmation to be firm and binding. Unconfirmed dates and/or periods of delivery are in no case binding. All technical issues must have been settled for a quoted delivery period to begin.

4.2 Stipulated delivery deadlines will be met subject to the proviso that we obtain correct and timely self-supplies ourselves. We shall notify the Buyer of any foreseeable delay as soon as possible.

4.3 We may, at any time, perform partial deliveries and render partial services.

4.4 Our compliance with contractual delivery and performance commitments shall require the timely and proper fulfilment of the Buyer's obligations.

4.5 If the Buyer defaults in accepting or fails to meet any of his obligations to cooperate, we shall be entitled to claim compensation of damages we have suffered there from, including additional expenses if any. in this case, the risk of accidental loss/destruction or accidental deterioration of sold products shall pass to the Buyer at the moment when the Buyer defaults in accepting.

5. Passing of risk

5.1 The risk of goods deliveries shall pass to the Buyer as soon as a shipment has been handed over to the person responsible for its transportation or has left our storage facility for dispatch (shipping date). if a shipment becomes impossible through no fault of our own, the risk shall pass to the Buyer upon notification of our readiness to ship.

6. Claims of The Buyer Based on Defects

6.1 Where we are shown to be responsible for a material defect in the products sold, the Buyer shall be entitled to demand reperformance within a reasonable period of time.

6.2 A written notice of defect shall be given to us immediately on identification of a defect.

6.3 None of the Buyer's claims in connection with expenditures necessary for reperformance, notably, transporting, travel, labor and material costs, will be accepted where such expenditures increase, because an object of sale has been transferred to a location that is different from the place of fulfilment, unless such transfer is required for such object's intended use.

6.4 If defect removal fails within a reasonable time and/or no replacement can be provided or appears unreasonable, the Buyer may, at his discretion, demand a reduction in the sales price or cancel the contract. damages may only be claimed if the conditions
of paragraph 8. of these General Terms of sale are fulfilled.

6.5 Insignificant defects and natural wear and tear shall void any claims of warranty.

6.6 Failure to observe our operating or maintenance instructions, or changes in goods delivered or services rendered, or any replacement with a part or use of a consumable that does not meet original product specifications, shall void any warranty.

6.7 The statutory period for claims for defects is twelve months from the date of delivery.

6.8 The foregoing terms cover all commitments to provide claims of the Buyer based of defects in delivered products or services. No claims for defects of any other kind will be accepted. The legal provisions concerning the purchase of consumer goods shall remain unaffected.

7. Industrial property and Copyrights

7.1. If a claim is made to the Buyer for infringement of an industrial property right or a copyright due to the use of goods delivered within one year from the date of shipment of such goods or rendering of such services, we shall assert the Buyer's right for continued use, always provided that the Buyer promptly gives written notice about any such claim by a third party and provided that we have full freedom to take necessary action for defense and out-of-court settlement. if the continued use of delivered goods or services on reasonable economic terms proves impossible despite such defense and settlement efforts, we shall, at our own choice, modify or replace the particular goods for removal of their legal deficiency(ies) or repurchase such goods by refunding the sales price that had been paid to us less a certain amount of depreciation corresponding to the age of goods delivered.

7.2. No claims shall be accepted if a legal rule has been violated due to the non-contractual usage of goods or services delivered. The rules in paragraph 8. will apply in all other aspects.

7.3. We shall assume no liability in the case of law offences by goods delivered if such goods or have been manufactured to the Buyer's engineering design documentation or other Buyer specifications.

8. Limited liability

8.1 in the event of damage, our liability - for whatever legal reason- shall be limited to cases of:

a) deliberate action
b) gross negligence
c) danger to life, persons, or health through our own fault
d) defects that have been fraudulently concealed or guaranteed to be

absent on our part faults under the German product liability law .
If shown to have violated essential contractual obligations, we shall also assume liability in the case of ordinary negligence but in this case our liability shall be limited to damage that is typical of and reasonably foreseeable with contracts of this kind.
No other claims shall be accepted.

8.2 Where we are liable for loss of data, our liability will be restricted to the typical amount of efforts for data recovery that would have been required in the event of the Buyer's regular and risk-conforming saving of data.

9. Retention of Title

9.1 Pending the settlement of any receivables (including current account balance claims) from the Buyer at present or in the future - on whatever legal grounds - the following securities shall be provided to us. We shall, at our own option, relinquish these wholly or partially if their value clearly exceeds the value of receivables by more than 20 % .

9.2 Shipments shall remain our property (goods sold with retention of title). reprocessing or reshaping of goods shall always be regarded as performed on our behalf, but with no obligation on our part. We shall be entitled to co-ownership of the new property in as much as the value of goods sold with retention of title (invoiced value) relates to the new property. It will be the Buyer's responsibility to hold such new property in safe custody on our behalf and at his own expense. If the Buyer chooses to resell the new property, subparagraph 9.3 shall be applicable.

9.3 The Buyer may reprocess or resell goods under retention of title in normal business operations, as long as he is not defaulting. He shall be prohibited from pledging or depositing such goods for collateral security. furthermore, the Buyer shall be responsible to insure goods that have been shipped with reservation of title against all common risks. for reasons of safety, the Buyer immediately assigns to us any receivables resulting from a resale or other legal grounds (insurance, unlawful acts) in connection with goods under retention of title (including any current account balance claims) in their full amount. The Buyer is hereby revocably authorized to collect such receivables he has assigned to us on our account, but on his own behalf. This collection authority can only be revoked if the Buyer fails to meet his commitments to pay at the right time.

9.4 If a third-party gains access to, or a hold on, goods shipped with retention of title, notably in the case of hypothecation, the Buyer shall clearly indicate to such third party that these are our property, delivering prompt notice thereof, in order to enable us to enforce our own property rights. Where such third party is unable to refund our costs in connection with necessary court or out-of-court proceedings, the Buyer shall be held liable.

10. Rights in Software

10.1 Each Software product is accompanied by an applicable End User License Agreement (EULA) or a License Agreement (LA), respectively, as well as, if applicable, 3rd Party License Information.

11. Secrecy

Unless otherwise explicitly agreed in writing, no information provided to us in connection with product or service orders shall be considered as confidential.

12. Applicable law And legal Venue

12.1 These terms of business and all legal relations with the Buyer shall be governed by the law of the federal republic of Germany, to the exclusion of the UN -convention on contracts for the international Sale of Goods.

12.2 For Buyers who qualify as a merchant under the terms of the German commercial code, as a legal person under public law or a federal special fund, our company's registered place of business shall be the exclusive legal venue for any dispute arising from, or in connection with, this contractual relationship - whether directly or indirectly - unless legal requirements prescribe a different legal venue as compulsory.