

HIGYHAG Lasertechnologie GmbH

General Purchase Terms for Deliveries and Services

I. Scope of application, conflicting Supplier terms and conditions, overriding agreements

1. These General Purchase Terms (“**General Purchase Terms**”) govern all contracts concluded by HIGHYAG Lasertechnologie GmbH (“**Buyer**”) and its suppliers or contractors (each a “**Supplier**”) for deliveries and other services rendered by Supplier. These General Purchase Terms also apply to all future transactions in ongoing business relationships, whether or not their application has been expressly agreed in each case.
2. Conflicting Supplier terms shall not apply, whether or not a delivery has been accepted without objection, unless they have been specifically approved in writing by Buyer, and including in the event that Buyer, being aware of Supplier business terms contrary to or deviating from these General Purchase Terms, has unconditionally accepted the deliveries of Supplier.
3. Any individual agreements with Supplier shall take precedence over these General Purchase Terms, as shall any Buyer specifications set out in Buyer’s orders that deviate from these General Purchase Terms.

II. Written form, orders, period for acceptance, inspection of orders, offers / cost estimates, subcontracting

1. All orders, acceptance confirmations, order confirmations as well as side agreements and other arrangements made prior to or at conclusion of the contract must be set forth in writing (letter, fax, e-mail, together “**written form**” or “**in writing**”) to become legally effective.
2. Supplier must confirm all orders in writing without delay, stating the order number. If Supplier fails to accept an order within two weeks after receipt, Buyer may withdraw the order. Where a simplified electronic order procedure has been agreed, the terms relating to the technical aspects of the order as defined therein shall take precedence while these General Purchase Terms apply in all other respects.
3. Supplier shall inspect the order without delay for obvious mistakes, unclear points and incomplete information and shall advise Buyer without delay of any necessary amendment or further clarification of the order.
4. Offers and cost estimates of Supplier will be free of charge. In its offers and order confirmations Supplier will adhere to Buyer’s request and indicate any deviations expressly and separately.
5. Any subcontracting by Supplier shall be subject to Buyer’s written consent, except subcontracting relating only to marketable parts. Buyer will not arbitrarily withhold such consent. In any case, Supplier remains responsible for the fulfilment of the contract. Supplier further shall ensure that any third party subcontractor is capable of rendering the subcontracted services professionally and reliably. For the subcontracted work, Supplier must impose on its subcontractors obligations equal to those Supplier owes to Buyer.

III. **Delivery and service dates/times, pre-schedule deliveries/services and delivery/services by instalments, call-off orders, late delivery/services, contractual penalty**

1. All agreed dates and times for deliveries and services (“**dates**” and “**times**”) are binding. Any time periods indicated on the order shall commence on the date of the order. Compliance with a date or time depends on whether the delivery or service has been rendered by the agreed date or within the agreed time within the meaning of section IV.3 below. Pre-schedule deliveries and services and deliveries and services by instalments are permitted only with Buyer’s consent and must be indicated in the shipping papers.
2. For call-off orders, Buyer reserves the right to determine with binding effect the nature and quantity of the goods to be called off and the delivery times in each individual call-off.
3. Supplier shall advise Buyer in writing without delay of any foreseeable delay in deliveries and services, indicating the reasons and the anticipated duration of the delay.
4. If Supplier is late with any delivery or service, Buyer will have the right to charge a contractual penalty in the amount of 0.3% of the net value of the goods or services with which Supplier is late but no more than 5% of the net value of such goods or services, for each working day or part thereof (Monday to Friday, with the exception of public holidays at the seat of Supplier and at the seat of Buyer). Notwithstanding Sec. 341(3) BGB, Buyer may claim the contractual penalty until Buyer’s final duty, for example the final payment, has been fulfilled. Nothing in this shall prejudice any further rights Buyer may have for reason of the delay. Contractual penalty payments will be credited against any claims for damages as may exist.

IV. **Labelling/packaging, place of fulfilment/place of delivery, delivery, acceptance of delivery, delivery of technical devices and software products**

1. All goods must be duly and properly packaged and labelled in accordance with Buyer’s instructions. Where the Supplier is obligated to take back transport packaging in accordance with the German Packaging Ordinance (*Verpackungsverordnung*) or foreign legislation the Supplier must retrieve the packaging from the place of fulfilment (section IV.2) at Supplier’s expense, in compliance with the German Packaging Ordinance (*Verpackungsverordnung*).
2. The place of fulfilment for all deliveries and services shall be the place of delivery indicated on the order, unless agreed otherwise. If no place of delivery is indicated on the order, the place of fulfilment shall be at Buyer’s domicile.
3. All deliveries of goods shall be “DDP place of fulfilment” (INCOTERMS 2010) as set out in section IV.2 hereof. Where the delivery includes setup, assembly and/or installation duties owed by Supplier, the risk shall pass and the delivery shall be deemed completed only upon complete setup, assembly and/or installation, to be documented in a written report. Where the acceptance of a delivery is required by law or has been agreed, the risk shall pass and the delivery shall be deemed completed only upon contractual completion and acceptance of the results; failure by Buyer to accept a delivery or service in spite of being obliged to do so shall equal acceptance. Unless otherwise agreed Buyer must accept any result that is ready for acceptance within 15 days after completion where acceptance is required by law or has been agreed.
4. Every delivery of goods must include a shipping note indicating Buyer’s order number, Buyer’s part number(s) (if indicated on the order), and the nature and quantity of the content of the delivery.

5. Unless otherwise indicated on the order or agreed, deliveries of technical devices must include at least a technical description and an instruction manual for no charge. Deliveries of software products must include a complete system documentation, including the source code for software programmes specifically written for Buyer. A delivery shall only be deemed completed or service be deemed ready for acceptance under section IV.3 after the duties set out in this section IV.5 have been fully discharged as well.

V. Supplier declaration, customs and foreign trade notification and labelling duties

1. Unless otherwise indicated on the order or agreed, the goods must comply with the origin requirements of the European Union preferential agreements. Supplier must submit to Buyer a due and proper supplier's declaration for the goods at the latest with the delivery. Supplier accepts strict liability for any loss incurred by Buyer as a result of noncompliance with this duty.
2. Supplier shall inspect the goods to be delivered for whether they are subject to any prohibition, restriction and/or permission in the national, European or international trade of goods (for example, with a view to the export control list, the EC Dual Use Regulation, US re-export control regulations, etc.). Supplier shall transmit to Buyer all data necessary to observe and comply with existing prohibitions, restrictions or permissions and label the goods appropriately. In particular, Supplier shall mark any deliveries subject to permission or export control as well as the related order confirmations, shipping papers and invoices, with the export control number or dual-use item number according to the annex to the EC Dual Use Regulation as applicable from time to time. For deliveries subject to US re-export control regulations, Supplier must indicate the relevant items in writing, submit the ECCN code and mark the order confirmations, shipping papers and invoices accordingly.

VI. Supplier's right of retention and setoff

Supplier has a right of retention with respect to deliveries of goods or work results only on the basis of claims from the same contractual relationship that are undisputed or ripe for adjudication or have been established by final enforceable judgment. Any set-off by Supplier shall only be permitted on the basis of Supplier counterclaims that are undisputed or ripe for adjudication or have been established by final enforceable judgment.

VII. Prices, invoicing, payment terms, no assignment

1. The agreed prices are fixed prices. Unless agreed otherwise, the prices are "DDP place of fulfilment" (INCOTERMS 2010) as set out in section IV.2. Unless otherwise agreed, the prices are inclusive of all expenditures in connection with the deliveries and services owed by Supplier, in particular but not limited to the cost of any inspection, acceptance, documentation, preparation of technical documents and items, packaging, shipping, customs and border clearance charges, and insurance. Where "DDP place of fulfilment" has not been agreed and Supplier is obliged to dispatch the goods, Supplier shall choose the most economic shipping method. Where the agreed price is not "inclusive of packaging", the packaging shall be billed at cost.
2. Invoices must be submitted in duplicate, separate from the goods, and be verifiable. Invoices must at least indicate the order number, Buyer's full order reference or order number, the date of the order, the shipping note number and the date of the delivery or service, must be listed in the order summary, and fully match the wording of the order references.

3. Payment shall be made within 14 days after delivery or acceptance according to section IV.3-IV.5 and receipt of a contractual invoice with a 3% discount, and within 60 days net. Any invoice failing to meet the criteria of section VII.2 above may be rejected by Buyer, in which case the beginning of the above periods for payment shall be determined by the date of receipt of the new, contractual invoice. In the event of early delivery or services the agreed date of delivery or service shall take the place of delivery or service for the calculation.
4. Supplier shall have no right to assign its claims against Buyer or have them collected by a third party without Buyer's written consent, unless Supplier has granted its supplier an extended reservation of title in the ordinary course of business. Nothing in this shall prejudice Sec. 354a HGB (*German Commercial Code*).

VIII. **Passage of title, processing of delivered goods prior to the passage of title**

Where a reservation of title has been agreed for delivered goods, the title passes to Buyer at the latest upon payment of such goods. Buyer has the right to process, sell or otherwise dispose of delivered goods in the ordinary course of business, including before the passing of the title.

IX. **Quality requirements, compliance, safety, conflict minerals**

1. Supplier in its deliveries and other services is responsible for observing the current state of the art and the agreed technical data and specifications, without prejudice to further duties as may exist.
2. Supplier shall comply with all national, European and international laws applicable to the deliveries and other services, in particular but not limited to environmental protection, health and safety protection (including any minimum wage), product safety, anticorruption, antiterrorism, and data protection legislation, as applicable from time to time, at Supplier's expense. In particular, Supplier shall at its own expense comply with national and European legislation governing the use of hazardous materials relevant to the deliveries or services, requirements of the European RoHS Directive 2011/65/EU and national implementing regulations, as well as requirements of the European REACH regulation 2006/1907/EC ("**REACH**"), as applicable from time to time. Supplier shall ensure that the goods are marketable under REACH. Supplier will provide Buyer with required information and documentation (such as safety data sheets) as updated from time to time. If Supplier is not established in any Member State of the European Union Supplier is responsible for the fulfilment of REACH obligations through an only representative under Art. 8 REACH.
3. Supplier shall comply with all other relevant safety regulations, in particular but not limited to requirements of the trade supervisory authorities, the standards of VDE (Association for Electrical, Electronic & Information Technologies) for electrical components and of other professional committees and organisations, the applicable DIN standards and accident prevention regulations of the employer liability insurance associations. Any relevant certifications, test certificates and supporting documents must be supplied at no charge.

4. The goods must not contain any conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country (DRC Conflict Free within the meaning of Section 1502 of the US Dodd-Frank Act [Dodd-Frank Wall Street Reform and Consumer Protection Act], including the related implementing regulations of the Securities and Exchange Commission [SEC Final Rule on Conflict Minerals, 17 C.F.R. Parts 240 and 249(b)]). Supplier shall take all reasonable measures to fulfil this obligation and ensure to Supplier's best knowledge and belief (involving its suppliers and their suppliers as appropriate) that the goods are DRC Conflict Free. On request, Supplier shall provide to Buyer appropriate documentation in written form to support the status of the goods as DRC Conflict Free. Buyer has the right to use and disclose such information to fulfil its own duties under Section 1502 Dodd-Frank Act and to transfer it to third parties in the fulfilment of contractual obligations, without prejudice to further rights as may exist.

X. Defects, warranty, statute of limitations, Buyer's right of entry

1. Buyer's warranty rights are governed by the applicable laws, as amended by the terms of this section X, section XI.2 and section XII.
2. For deliveries of goods, Buyer must report any obvious defects to Supplier within 14 days after fulfilment as set out in section IV.3-5 and any hidden defects within 14 days after their discovery.
3. Supplier has sole responsibility for the deliverables and work results, whether or not Buyer has approved any drawings, calculations and other documents or attended technical or official inspections, tests and acceptance tests. This also includes proposals, recommendations and other contributions by Buyer.
4. Supplier will bear all expenditures incurred in connection with determining and removing defects, including disassembly and assembly costs, and including expenditures incurred by Buyer.
5. Any payments towards the agreed price prior to the determination of a defect or acceptance of the goods by an agent of Buyer from Supplier shall not constitute an acknowledgment that the goods are free of defects or release Supplier of its liability for defects.
6. Buyer may in its discretion choose between the removal of a defect or delivery of a replacement or, where work results are concerned, the completion of a new work result.
7. Where, due to particular urgency of the matter, it is not appropriate to set a deadline for Supplier to take remedial action Buyer, without prejudice to its legal remedies, has the right to undertake or arrange for substitute performance at Supplier's expense. Buyer will give Supplier advance notice of any such substitute performance, where possible.
8. Buyer's warranty claims shall become time-barred 36 months after the beginning of the statutory limitation; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.

9. Buyer has the right to request access to the manufacturing sites of Supplier and, if applicable, of Supplier's sub-suppliers in order to inspect the goods and work results on site for flawlessness, subject to reasonable prior notice and during normal operating hours; this includes inspections for the use of suitable materials and appropriate professionals. Supplier shall provide any information necessary for this purpose and submit the relevant documents for viewing. Where necessary to protect trade or business secrets of Supplier or a sub-supplier, and requested by Supplier for that reason, any such inspection shall be carried out by a third party sworn to secrecy, who must not forward any information about trade and business secrets to Buyer. Inspections shall be without legal effect on any formal acceptance of the deliveries and services.

XI. Intellectual property rights

1. Supplier grants Buyer non-exclusive, perpetual, worldwide, irrevocable and assignable rights of use in all deliveries or work results eligible for intellectual property protection in order to integrate them in other products, distribute them and make them available to the public on the internet. In particular but without limitation, this includes the right to modify, edit or otherwise redesign the delivery or work result for purposes of integration and to distribute the delivery or work result in the original or in a modified, edited or redesigned form.
2. Supplier shall indemnify Buyer against any and all claims of third parties resulting from any infringement of patents, copyrights, design rights, trademark rights, name rights and other intellectual property rights and applications for intellectual property rights ("**IP Rights**") through the contractually agreed use of the deliveries or work results, unless Supplier is not responsible for the infringement of rights. This applies equally to all necessary expenditures incurred by Buyer in connection with any such third party claims, in particular the costs of legal defence. Furthermore, Supplier will at its discretion and expense either modify or replace the delivery or work result to no longer infringe the IP Right but still essentially comply with the agreed functions and performance characteristics in a manner that is reasonably acceptable for Buyer, or indemnify Buyer against licensee fees payable for the use of the delivery or work result to the owners of such IP rights, where reasonably acceptable for Buyer. Supplier further is liable for all consequential losses incurred by Buyer, particularly as a result of shortage of supplies and disruptions of production. Nothing in this shall prejudice any further rights Buyer may have.
3. IP Rights that arise from developments based on special orders by Buyer or joint developments with Supplier are vested solely in Buyer if they are based exclusively on secret Buyer knowhow and/or if Buyer bears the full development costs. For this purpose, Supplier herewith assigns to Buyer any and all IP Rights in such developments at the latest from the moment of their creation. If it is impossible to assign the resultant IP Rights to Buyer, Supplier will grant Buyer at the latest at the moment of their creation exclusive rights of use for full exploitation, in particular with no limit as to time, territory and subject matter.
4. Supplier may use any knowledge or resources of Buyer (such as designs, drawings, specifications), which include IP Rights or secret technical knowhow or manufacturing methods of Buyer, manufactured goods, services rendered or other work results, only to fulfil the contract with Buyer.

XII. Supplier's liability for product damage, recalls, insurance

1. Where Supplier is responsible for any product damage Supplier will indemnify Buyer against any third part claims on first demand, provided the cause of the damage falls within Supplier's sphere of control and organisation and Supplier is liable in relation to third parties.
2. In the event of any necessary recall and/or recall ordered by the authorities or other actions required to avert danger to individuals or property of third parties, Supplier is liable for all expenditures, costs and losses incurred by Buyer as a result of such recall or other action and will indemnify Buyer against any such third party claims where the cause of the recall or other action is lack of conformity of the deliverables with the contract, particularly lack of conformity with the agreed specifications or contractual representations or a product defect, unless Supplier is not responsible. Nothing in this shall prejudice any further or other claims Buyer may have.
3. Supplier shall at Supplier's expense maintain liability insurance, including product liability and recall insurance, providing for adequate coverage for Supplier's deliveries and services, at least for the duration of the business relationship, and submit the insurance policy to Buyer for inspection upon request.

XIII. Tools, provision of materials

1. If, at Buyer's request, Supplier makes any tools including technical documents, drawings, standard specification sheets, etc. ("**Tools**") for purposes of fulfilling the contract, the parties agree that such Tools shall be Buyer's property. In lieu of their actual handover, Supplier has the right to keep the Tools on loan until the contract has been completed. Supplier may not use the Tools for fulfilling other orders from third parties. Upon fulfilment of the contract and on Buyer's request Supplier must release the Tools to Buyer. The compensation for the making of the Tools is included in the agreed total price, whether or not it is indicated separately.
2. All items, models, documents, drawings, samples and tools made available to Supplier by Buyer for purposes of fulfilling the contract are the property of Buyer. This includes items acquired by Supplier at Buyer's expense for purposes of fulfilling the contract and material provided by Buyer. The items and documents made available to Supplier may only be used and – as required for operational reasons and permitted by copyright legislation and only as strictly necessary to fulfil the contract – copied for fulfilling the contract with Buyer. After fulfilment of the contract and at Buyer's request, they must be returned to Buyer without delay, including all duplicates made thereof.
3. Supplier bears the risk of loss of and damage to Buyer property, however, not for normal wear and tear. Supplier will store Buyer's property separate from other property of Supplier, at Supplier's expense and with the diligence of a prudent businessman, handle it with care, maintain it in good condition and, as reasonably feasible, mark it as Buyer property. Buyer's property may not be removed from Supplier's premises and/or the agreed location, sold, used as collateral, pledged, etc. without Buyer's prior written approval.

4. Buyer's property may not be mixed, joined or processed with Supplier's or a third party's property unless this is necessary for fulfilling the contract with Buyer. In the event of processing or transformation, Buyer shall be considered the producer. If Buyer's property is joined or inseparably mixed with other items, Buyer shall be considered co-owner at the proportion of the value (purchase value plus value-added tax) that the items had at the time of joining or mixing. If such joining or mixing is such that Supplier's property may be considered the main component, it shall be agreed that Supplier transfers proportionate co-ownership to Buyer. Supplier shall safeguard the sole or joint property for Buyer.
5. Supplier shall insure Buyer's property at Supplier's expense. Supplier hereby assigns to Buyer, who accepts the assignment of, any payment claims against Supplier's insurance relating to Buyer's property.

XIV. Spare parts

Supplier shall supply spare parts at reasonable conditions for the duration of the ordinary technical service life of the deliverables but at least for ten years after the last delivery. If Supplier discontinues the delivery of spare parts upon expiration of the term set out in the 1st sentence of this clause or discontinues delivery of the deliverables prior to the expiration of such term, Supplier must allow Buyer the opportunity of placing a final order.

XV. Confidentiality, advertising

1. Supplier shall treat as a business secret and keep confidential any and all commercial and technical information that is not publicly known and which is disclosed to Supplier in connection with the business relationship with Buyer, as well as the fact of the business relationship as such. This confidentiality undertaking shall survive and remain in effect after the termination of the contract. The confidentiality undertaking does not extend to information which (i) is or becomes public domain other than by a breach of rights, (ii) is known to Supplier at conclusion of the contract, or (iii) is disclosed to Supplier by a third party without breaching any nondisclosure obligation.
2. Supplier may not advertise the business relationship with Buyer or use it for reference purposes, except with Buyer's prior written consent.

XVI. Governing law, forum, severability

1. All legal relations between Buyer and Supplier shall be governed exclusively by the laws of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction for all disputes arising between Buyer and Supplier on whichever legal grounds shall be the courts having jurisdiction at the registered office of Buyer, if Supplier is a merchant or if Supplier's registered office is not in Germany. Buyer has the right, however, to sue Supplier before any other court having legal jurisdiction. Nothing in this shall prejudice the validity of any legal provisions on exclusive jurisdiction.
3. If any of the above provisions are invalid or are declared invalid by final enforceable judgment, nothing in this shall prejudice the validity of the remaining provisions of these General Purchase Terms.