

HIGHYAG Lasertechnologie GmbH Terms of Sale and Delivery

I. Scope of application, conflicting Customer terms and conditions, written form

1. The General Terms of Sale and Delivery below ("**GTC**") apply to all contracts of sale and delivery concluded by HIGHYAG Lasertechnologie GmbH ("**Supplier**") with its customers ("**Customer**"), if the Customer is a business and concludes the contract while exercising its trade or profession within the meaning of Sec. 14 BGB. These GTC also apply to all future transactions in ongoing business relationships, whether or not their application has been expressly agreed in each case.
2. Conflicting Customer terms shall not apply unless they have been accepted in writing by Supplier in each case, including in cases where Supplier, being aware of Customer business terms contrary to or deviating from these GTC, has unconditionally rendered the deliveries and services.
3. All offers, orders, acceptance confirmations, order confirmations as well as side agreements and other agreements made prior to or at conclusion of the contract must be set forth in writing (for example, letter, fax, email) to be legally effective.

II. Offers, formation of the contract, order modifications, documentation, specifications, samples, cost estimates

1. Unless otherwise agreed or otherwise indicated, the offers of Supplier are not binding and without any commitment. A contract becomes effective only upon the written confirmation of the order received by Supplier but, by derogation from sec. I. 3, at the latest upon Customer's acceptance of the delivery.
2. If any order modifications are carried out at Customer's request, Customer shall cover all costs incurred in connection with the order modification.
3. All documentation, images, drawings, performance specifications, weights and dimensions in catalogues, on product sheets and on Supplier's internet sites are stated as accurately as possible but should be treated as approximate only and do not constitute a qualitative specification of the goods, unless they are expressly referred to as binding. We reserve the right to make improvements and change measures, to an extent that is customary in the trade and reasonably acceptable for Customer.
4. Supplier reserves title and copyrights to samples, cost estimates, drawings and other documents and information, whether in tangible or intangible, electronic or other format; except with express consent of Supplier, they may not be copied or made available to third parties or used for producing the work results oneself. Supplier agrees not to make available to third parties any information and documents designated as confidential by Customer, except with Customer's consent.

III. Prices, payment, default, withholding of payment / setoff

1. Unless otherwise agreed the prices are net EURO prices, ex works (Incoterms 2010), inclusive of loading at works of Supplier but exclusive of packaging and unloading. Value-added tax as applicable from time to time will be added to the price.
2. Unless otherwise agreed the purchase price falls due for payment immediately on delivery and invoicing, without any deduction of cash discounts. Customer will be in default at the latest if he does not perform within 8 days after the payment became due unless Customer is not responsible for the late payment. In any event of default, interest for default at a rate of 9 percentage points above the base rate will be charged; Supplier reserves the right to claim compensation of further or other losses.

3. Customer has the right to withhold payment or set it off against counterclaims, only on the basis of Customer counterclaims that are undisputed or have been established by final enforceable judgment or are ripe for adjudication.

IV. Delivery, delivery times and dates, delivery by instalments, upstream delivery, force majeure, late delivery

1. Unless agreed otherwise all delivery dates and times stated by Supplier shall be without commitment. Supplier's compliance with delivery dates and times shall be contingent upon all commercial and technical issues having been cleared between the parties and upon Customer having performed all of its obligations, such as producing the necessary official permits or approvals or making an advance payment. If these conditions for timely delivery are not fulfilled, the delivery time will be reasonably extended, unless Supplier is responsible for the delay.
2. Delivery by instalments and billing by instalments shall be permitted, where reasonably acceptable for Customer.
3. If Supplier has not received delivery of any goods at all or in time, Supplier will not be in default with the delivery to Customer if Supplier is not responsible for not having received upstream delivery at all or in time, especially if Supplier has specifically closed a covering transaction and the supplier did not deliver to Supplier at all or in time.
4. In any event of force majeure or disruption of the operations of Supplier or Supplier's upstream suppliers, such as riot, lawful strike, employee lockout or official orders, which temporarily prevent Supplier, through no fault of its own or attributable to it, from delivering the goods by the agreed date, will postpone and extend the delivery dates and times by the duration of the interference caused by such circumstances. If performance is delayed by more than four months as a result of such interference, both parties may withdraw from the contract. Nothing in this shall prejudice Customer's other rights of withdrawal.
5. In any event of late delivery Supplier will be liable in accordance with sec. VIII. below. Notwithstanding the provisions of sec. VIII. 2 below, the reimbursable loss caused by late delivery through ordinary negligence shall be limited to 5% of the agreed purchase price of the goods whose delivery by Supplier is late.

V. Passing of risk, acceptance of delivery, insurance

1. Unless otherwise agreed the risk shall pass to Customer when the goods have been handed over to the carrier, forwarding agent or other person designated to effect shipment.
If acceptance of the delivery is mandatory, it will determine the moment the risk passes to Customer. Acceptance must take place promptly on the agreed date of acceptance, or alternatively upon Supplier's notice that the goods are ready for acceptance. Customer may not refuse to accept a delivery for reason of an insignificant defect.
2. If shipping or acceptance is delayed or fails for reasons outside Supplier's sphere or if Customer fails to timely accept delivery of the goods although they were offered to Customer, the risk will pass to Customer as of the day of the notice that the goods are ready for shipping or acceptance. Supplier agrees to take out, at Customer's expense, the insurances requested by Customer.

VI. Retention of title

1. The goods delivered by Supplier remain the property of Supplier as goods under retention of title ("**Retained Goods**") until all obligations under the contractual relationship including other claims subsequently acquired by Supplier against Customer in direct connection with the goods delivered, on which legal ground whatsoever, have been fulfilled. The same applies where payments are made towards specially designated claims.

2. The goods delivered further remain the property of Supplier as Retained Goods until all other claims (including all unsettled balances from current account) which Supplier acquires or will acquire against Customer, on which legal ground whatsoever, have been settled.
3. Customer has the right to resell or process the Retained Goods in the ordinary course of business. If the Retained Goods are processed and joined with other goods, Supplier will be entitled to co-ownership of the new product in the proportion of the invoice value of the Retained Goods relative to the invoice value of the other goods. Any processing and joining shall be deemed to have been accomplished on behalf of Supplier. Supplier herewith offers to grant Customer, and Customer accepts the offer of, a contingent right to the co-ownership share that is created. Co-ownership shall pass to Customer upon settlement of all claims due to Supplier.
4. Customer assigns to Supplier, and Supplier accepts the assignment of, the claims arising from any resale of Retained Goods in order to secure all outstanding claims of Supplier against Customer. If the Retained Goods are resold together with other goods after processing and joining, the assignment of the claim resulting from the resale shall only be effective up to the amount of the invoice value of the goods delivered by Supplier.

Supplier may revoke the right of resale for legitimate reasons as long as Supplier remains the owner of the Retained Goods.

5. Customer is authorized to collect the assigned claim unless and until such right is revoked. Supplier may revoke the authority to collect the claim for legitimate reasons. This shall not affect Supplier's authority to collect the amounts due, but Supplier agrees not to collect the amounts due as long as Customer meets its payment obligations towards Supplier.
6. Customer must adequately insure, and maintain insurance coverage for, the Retained Goods owned or co-owned by Supplier. Customer herewith assigns to Supplier, and Supplier accepts the assignment of, the claims Customer will have against its insurance company in the event of a loss, to the extent that such claims relate to goods owned or co-owned by Supplier.
7. While the retention of title remains in effect, any pledging, assignment by way of security, letting or other assignment or modification of the Retained Goods that may adversely affect Supplier's security interests shall be subject to Supplier's prior written consent. This shall not prejudice Customer's right to resell the Retained Goods in the ordinary course of business in accordance with sec. VI.3.
8. If Customer has not only temporarily suspended payments, files a petition for institution of insolvency proceedings or if insolvency proceedings are instituted against Customer, Customer, at Supplier's request, will be obliged to release the Retained Goods to Supplier. If Customer is in breach of the contract, in particular by late payment, Customer must release the Retained Goods to Supplier upon an unsuccessful payment reminder with setting of a deadline. Supplier's taking back of the Retained Goods shall only constitute a withdrawal from the contract if expressly declared so by Supplier. In any such case Customer also must submit to Supplier without undue delay a list of the remaining Retained Goods, whether processed or not, together with a list of the claims against third-party debtors.
9. Should the realisable value of all securities provided for the benefit of Supplier resulting from retention of title, assignment by way of security and assignment of future claims exceed the total amount of Supplier's claims against Customer by more than 10%, Supplier must in its discretion waive the retention of title and/or release securities under assignments by way of security and assignments of future claims.

VII. Defects, warranty, statute of limitation

Supplier accepts liability for defects in quality and title as set out below, to the exclusion of any further rights and remedies and subject to the provisions of sec. VIII. below:

1. Customer must report any obvious defects to Supplier in writing without undue delay but no later than eight days after taking delivery of the goods. Hidden defects must be reported in writing without undue delay as well but at the latest eight days after their discovery. If no such notification is made the delivery will be deemed free of defects and approved.

2. Any defect reported in a timely manner will be remedied by way of repair or delivery of substitute goods free of defects, at Supplier's discretion (remedial action). Supplier may refuse any remedial action that would involve unreasonable costs. Remedial action will be taken at Supplier's registered office. Any replaced parts become the property of Supplier.
3. Remedial action will be deemed to have failed if the defect has not been remedied after at least two attempts of repair or substitute delivery or, in technically complex cases, after at least three attempts of repair, or if a further attempt of repair or further substitute delivery would not be reasonably acceptable for Customer or would be impossible, is unreasonably delayed or seriously and definitively refused.
4. Supplier offers no warranty for defects caused by unprofessional modifications of or repair work on the goods delivered, by Customer or a third party acting on behalf of Customer. Further, Supplier offers no warranty for defects that occur as a result of improper or negligent handling after the risk has passed to Customer (for example, noncompliance with user instructions, unsuitable or improper storage conditions or usage, faulty processing, assembly or placing in service by Customer or a third party, excessive use, improper servicing and maintenance, unsuitable equipment, or special outside influences that were not accounted for in the contract).
5. The warranty does not cover insignificant deviations in the quality of the goods delivered from the agreed quality, insignificant impairments of their fitness for use, and natural wear or tear. Any deviations in the measurements and technical data that are within the tolerated limits admissible and/or customary for the type of products and are reasonably acceptable for Customer in consideration of Supplier's interests do not fall under the warranty.
6. Supplier warrants that the goods do not infringe any third parties' rights. A defect of title is given if Supplier was not able to effectively grant Customer the rights required for the contractually agreed use. If a third party asserts claims against Customer based on infringement of property rights due to the rights granted by Supplier and if this impairs the use of the goods, Supplier may at its own expense choose either to modify or replace the goods so it no longer infringes the property right but essentially fulfills the agreed functional and performance requirements with reasonable terms for Customer or indemnify Customer of costs for the corresponding license fees. Alternatively, Customer may withdraw from the agreement if this has been threatened when a final deadline is set.
7. Supplier shall defend Customer against all infringement claims that are asserted by third parties, settle them and indemnify all damages awarded in a trial to a third party, provided (i) Customer without undue delay notifies in writing Supplier of any such claim, (ii) Supplier has sole control of the defence against such a claim and all related settlement negotiations, (iii) Customer gives required information and powers of attorney, and (iv) Customer does not acknowledge any claims asserted by the third party.
8. Warranty for defects of title is excluded if the defects of title are caused by an unauthorized modification or not contractually agreed use of the good. Warranty for defects of title is also excluded if Supplier has designed the goods in accordance with specifications made by Customer and the defect of title is caused by this.
9. To the exception of claims for damages based on defects, warranty rights become time barred twelve months after delivery of the goods. This limitation period does not apply to structures and to goods that have been used for a structure in accordance with their customary purpose and have caused the deficiency of the structure.
10. Customer has the right to claim damages for defects, except where Supplier's liability has been disclaimed or limited under sec. VIII. hereof. Any rights or remedies further or other than those provided in this sec. VII. for defects shall be excluded.
11. Nothing in this sec. VII. shall be deemed to limit or prejudice Customer's rights based on defects which Supplier has fraudulently concealed or which are covered by a guarantee as to quality.

VIII. Liability, limitation of claims

1. Supplier shall be liable for losses caused by Supplier or vicarious agents employed in the discharge of Supplier's obligations, provided that the loss was caused by intent or gross negligence.
2. In the event of a breach by ordinary negligence of a principal obligation or of a secondary obligation whose breach will put the achievement of the contractual purpose at risk, or whose fulfilment is essential for the due and proper implementation of the contract, and whose fulfilment Customer could reasonably rely on ("**Material Secondary Obligation**"), Supplier's liability shall be limited to losses characteristic for and foreseeable at the time of conclusion of the contract. Supplier accepts no liability for any breach by ordinary negligence of secondary contractual obligations which are not Material Secondary Obligations.
3. The above provisions shall not affect Supplier's liability in the event of any guarantee as to quality or durability, for malice, for tortious acts, for physical injury and for product defects under the Product Liability Act. This shall not entail a reversal of the burden of proof to Customer's disadvantage.
4. Where the liability of Supplier is limited or excluded, this extends to the liability of Customer's employees, agents or vicarious agents engaged in the discharge of Customer's duties.
5. To the exception of claims based on tort, Customer's claims for damages for which liability is limited under this sec. VIII. become time-barred within one year, calculated from the beginning of the statutory limitation period.

IX. Use of the Software

1. If software will be part of the delivery, Customer will be granted the non-exclusive right to use the delivered software including any documentation in accordance with the intended use of the goods. A use of the software on more than one system is not permitted.
2. A decompilation, disassembly, reverse engineering or any other kind of attempt to derive the source code and/or the various stages of manufacture of the software are inadmissible unless required for the interoperability with an independently created computer program. In this case Customer will request Supplier for the pertinent interface information against payment of the incurred costs. Customer shall neither remove any copyright notation nor modify without the prior explicit consent of Supplier.
3. Customer's use of the software and documentation as authorized herein shall not create in Customer's favor any right, title or interest therein. Sublicenses may not be granted.

X. Disposal of goods delivered

1. Customer must duly dispose of the delivered goods after the termination of their use in accordance with the statutory requirements, at Customer's expense. To that extent, Customer will release Supplier from the obligations under Sec. 10 (2) ElektroG (Act Governing the Sale, Return and Sound Disposal of Electrical and Electronic Equipment) (manufacturers' duty to take back waste electrical and electronic equipment) and indemnify Supplier against any related third party claims.
2. If the goods delivered by Supplier are resold in the course of commercial business Customer shall impose suitable contractual requirements to ensure that either Customer's customer sees to their due and proper disposal in accordance with the statutory provisions after the termination of the use and/or assumes liability towards its customers for the due and proper disposal, or that Customer will arrange for the due and proper disposal in relation to its customer.
3. If after the termination of the use a third party asserts a claim for the disposal of the delivered goods against Supplier, Customer shall duly dispose of the goods and indemnify Supplier from and against all claims of third parties in relation to the obligations under Sec. 10 (2) ElektroG.
4. Supplier's claim against Customer under sec. X.1 to fulfil the duty of disposal and/or to release Supplier from the obligations under Sec. 10 (2) ElektroG will become time-barred at the earliest one year after the definite termination of the use and Supplier's awareness thereof.

XI. Governing law, forum, severability

1. All legal relations between Supplier and Customer shall be governed exclusively by the laws of Germany, to the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
2. The exclusive place of jurisdiction for all disputes arising between Supplier and Customer on whichever legal grounds shall be the courts having jurisdiction at the registered office of Supplier, if Customer is a merchant, a legal person under public law or a public law fund or if Customer's registered office is not in Germany. Supplier has the right, however, to sue Customer 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 Terms of Sale and Delivery.