

## Terms and Conditions of Purchase Photonic Optische Geräte GmbH & Co KG

- 1.) **General; Applicability.** These Terms and Conditions of Purchase shall apply as part of the contract to all purchase contracts, lease or tenancy contracts, contracts for work or services and to any other contracts with suppliers of Photonic. They shall not only apply to the present transaction but also to all future transactions, even if they are not referred to in the specific case. General terms and conditions or terms and conditions of sale, if any, of contractors that are in conflict with, deviate from or amend these Terms and Conditions of Purchase shall not be deemed agreed, even if they are known or not expressly objected to; this shall also apply if with regard thereto Photonic does not expressly object to a future contractual or other document in which the contractor refers to other general terms and conditions.
- 2.) **Purchase order; Conclusion of contract.** Purchase orders, agreements, side agreements, amendments and the like shall only be legally binding if made in writing; this shall equally apply to changes to purchase orders. Amendments to the content of contracts shall only be accepted if made in writing and shall require our written approval. We may cancel purchase orders until receipt of the offer or the acknowledgment of the order or until the deadline for automatic acceptance as defined in Clause 3, without us being obliged to pay damages, to reimburse costs or to make any other payments to the supplier. Offers of the contractor shall be valid for 90 calendar days from receipt and shall be free of charge for and non-binding on us, even if they have been made at our request. When submitting an offer the contractor shall exactly adhere to our request and expressly point out any deviations; silence on our part regarding deviations, demands, proposals, etc. shall not be considered as approval. Offer documents will not be returned; specimens shall be made available to us free of charge.
- 3.) **Acknowledgment of orders; Cancellation.** As a matter of principle our purchase orders will be accepted by returning a copy of our order that has been signed by the supplier. If the supplier fails to respond to an order received by him, including by fax or email, within 14 calendar days, our purchase order shall be deemed accepted. This period shall be suspended during the supplier's plant or company holidays, provided that the supplier has informed us of those plant or company holidays. Changes made to the order by the supplier in the course of acknowledging the order shall be valid only upon our written approval. These conditions shall apply to the ordering of services *mutatis mutandis*. The ordering party shall be entitled to rescind the contract at any time against reimbursement of the costs incurred and evidenced by the supplier by then.
- 4.) **Shipping.** Shipment shall be made in compliance with our shipping regulations to the address stated in the purchase order (incoming goods department). For goods from non-EU countries a movement certificate (certificate of origin) MUST be enclosed with the shipping papers. Unless otherwise agreed in writing the delivery term DDP Photonic Optische Geräte GmbH & Co KG Wien shall apply. Shipments without shipping papers (delivery note, movement certificate, etc.) will not be accepted. All shipping papers, invoices and correspondence shall state the supplier number, our full purchase order number and our detailed description of the article including article number. For call orders not only the master contract number but also the call order number shall be stated as a reference and the residual quantity remaining under the master contract after delivery shall also be stated.
- 5.) **Delivery.** A maximum period of 14 days shall be agreed as the delivery period for calls. This shall not apply to explicitly agreed delivery periods. Photonic reserves the right to charge the supplier for any costs incurred or revenue lost due to late delivery. Delivery dates shall be binding deadlines. Delays in delivery to be expected in exceptional cases shall be advised to us without delay. We shall be entitled to rescind the order in whole or in part with no obligation to grant a grace period or to pay the costs incurred by the supplier by then if the (originally) agreed delivery date is not met. We expressly reserve the right to claim damages for late delivery or non-delivery. We shall not accept any excess quantities or short quantities. If delivery is effected in parts with no agreement to that effect, the additional costs of transportation shall be borne by the contractor. If we agree to accept the goods despite late delivery, the supplier shall bear any and all additional costs incurred in order to accelerate or complete delivery (e.g. air freight or express freights, additional carriers, etc.). In the case of early deliveries the goods may be returned at the supplier's costs, the parts may be stored with us in a bonded warehouse until the agreed delivery date and/or payment may be postponed until the agreed delivery date on the basis of which the agreed payment period has been calculated. We shall be entitled to make changes to quantities or dates of orders placed by us in compliance with the agreed response time. If the agreed delivery dates are not observed, we shall be entitled to deduct from the invoice a contractual penalty of two (2) thousandth of the net order value attributable to the goods not delivered on time for every calendar day commenced or to claim payment of that amount from you; however, the contractor shall neither be released from his delivery obligation nor shall any claims for additional damages be excluded thereby.
- 6.) **Insurance.** We shall take out insurance for the transportation of goods ordered by us which are delivered on the delivery term EXW that may have been agreed. In all other cases the supplier shall take out appropriate insurance for the goods.
- 7.) **Deliveries and services; Quality; Origin.** Deliveries and services shall be effected completely and shall be provided in such a way that they are state of the art, as new, and top-quality, comply with all provisions, regulations, technical standards and requirements of trade associations applicable in Austria and shall include all usual ancillary services and parts that are necessary to ensure the promised properties, even if they have not been specified specifically. Defective products must be reported once the defect is identified (including after the products have been delivered). In addition, the deliveries shall comply with regulations of EU law, in particular the REACH Regulation (EC) No 1907/2006 and the RoHS Directive 2011/65/EU, each as amended from time to time. Before entering into the supply relationship the supplier shall make a supplier's declaration in accordance with the legal requirements from time to time and in full conformity with the facts. In addition, the supplier shall immediately and without request advise any changes of origin or newly introduced delivery items, if any, and shall also in this case always make an up-to-date supplier's declaration so that we will at all times hold up-to-date written documents on the origin of the goods that meet the requirements. The supplier shall be liable for any and all disadvantages we may suffer due to improper or late delivery of the supplier's

declaration or an update of the same. If necessary, the supplier shall prove his information on the goods' origin by means of an information sheet that has been confirmed by his customs office.

- 8.) Packaging; Passing of risk; Retention of title.** The goods shall be properly packaged safe for transport and in the agreed units. If the supplier possesses an ARA licence number, he shall immediately advise the same to us. Unless otherwise agreed, packaging shall not be returned and is included in the price. The contractor shall bear the risk up until delivery, i.e. until the unloading process has been completed and the goods have been put onto the foundation. By accepting our purchase order the contractor waives any right to claim retention of title to the items to be delivered.
- 9.) Quality; Safety; Environmental protection.** Purchase orders may be executed only in accordance with the specifications and testing arrangements agreed in writing. Modifications affecting specifications or fundamental adaptations to the manufacturing or testing processes may only be made subject to prior written agreement with Photonic. Deliveries shall exclusively be released for delivery by the customer, which must be done in writing. Manufacturers are part of the specifications. Dealers may not change a manufacturer, even if parts are of identical construction. Parts of printed circuit boards or electronic components shall only be purchased from authorised, approved or licensed suppliers (dealers). Any change of manufacturers shall be strictly prohibited.  
EOL: The contractor warrants through appropriate internal precautions that the customer will be notified at least 6 months in advance in the case that components or input materials are discontinued. This is intended to give the customer an opportunity to warrant supply reliability by ordering its all-time needs.  
The delivered goods must comply with Austrian and international regulations on safety and environmental protection and shall, in particular, not contain cadmium, polychlorinated biphenyl, polychlorinated terphenyl or their compounds.
- 10.) Sampling and Release.** Before shipping new serial products, type samples from serial production shall be presented together with a measurement report. This shall equally apply in the case of initial use of a tool after a design change or tool overhaul. The delivery note must state the word "Sample" or "Muster" by all means. We shall release goods for actual serial production only after approval of the type sample. After approval the materials used and the manufacturing process may only be changed upon our approval.
- 11.) Incoming goods.** Goods shall be taken delivery of subject to the proviso that the goods are in line with the agreed conditions. Neither a confirmation on the receipt note nor an entry in the accounting system by the incoming goods department or payment of the invoice shall be considered an acknowledgement of conformity of the shipment with the order. We expressly reserve the right to claim back differential amounts, if any.
- 12.) Warranty; Liability; Product liability.** The contractor shall assume full warranty for a period of 24 months. If the delivered goods are resold, this period shall start to run only when those goods have been delivered to our customer; otherwise it shall start to run only when the goods are processed or upon initial start-up of the finished goods delivered (machines, appliances, tools, etc.). In the case of delivery of defective goods we may at our option and at the cost and risk of the supplier
- a) claim replacement of the defective goods, or
  - b) improve the defective goods ourselves or have them improved by third parties, or
  - c) return the entire shipment or defective parts, or
  - d) store defective parts in our warehouse or with third parties, or
  - e) cancel the contract or claim a price reduction.

The supplier shall reimburse us all costs, damages or losses, including but not limited to those which are subject to Austrian or foreign provisions on product liability or which we incur or suffer because of deliveries that are not in conformity with the agreement, and shall indemnify us and hold us harmless. Upon our request the supplier shall at any time furnish evidence that sufficient third-party liability insurance has been taken out and is maintained. Moreover, notwithstanding our claims for damages, we shall be entitled to cancel the entire purchase order if any part of the shipment is defective, and this shall not result in any claims of the supplier vis-à-vis us. Even if a defective item is used for quite a long time, this shall constitute no approval or waiver of our statutory claims or our claims under these Terms and Conditions of Purchase. The contractor waives the plea of late notification of defects. Defects may be notified until the end of the warranty period; Photonic shall be under no obligation to inspect the goods with respect to type, quantity or quality of the same or in any other respect. Applicability of Sections 377 and 378 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*] is expressly excluded. In the case that we are held liable under the Austrian Product Liability Act [*Produkthaftungsgesetz/PHG*] or similar Austrian or foreign laws because of (parts of) products/goods delivered to us the contractor agrees to indemnify us and hold us harmless. Several suppliers at fault shall be jointly and severally liable for the obligations under this Clause.

- 13.) Proprietary rights.** The supplier warrants that the delivered goods infringe no patent rights, registered design rights, utility model rights, copyrights or other intellectual property of third parties and that he will indemnify us and hold us harmless in the case of legal disputes over patents, registered designs, utility models, trademarks, copyrights or other disputes based on the (alleged) infringement of intellectual property of third parties regarding delivered goods. Any and all drawings, models, materials, calculations and other information and aids made available for execution of offers and/or purchase orders shall remain our unrestricted property and may not be reproduced, made accessible to third parties or used to execute orders from third parties. They shall be returned to us immediately upon request. Designs of any kind whatsoever which the supplier has produced for us shall become our property including all rights.
- 14.) Secrecy.** The supplier shall maintain strict secrecy vis-à-vis third parties about business matters in the broadest sense of the word concerning us or our customers which have or will become known to him through offer documents and/or orders and/or otherwise in connection with the delivery or service provided for us, including but not limited to all technical and/or commercial data, regulations, models, drawings, designs, know-how and all other business and trade secrets whatsoever. This obligation shall not end upon receipt of the delivery or service but shall continue for an indefinite period of time and may not be terminated. The supplier shall ensure that this obligation will be complied with by his staff, upstream suppliers and/or subcontractors and he shall be liable for them in this respect. The name or company logo of the manufacturer may be stated on goods, etc. which were produced according to our specifications only upon our express written approval. Such approval shall only apply to the specific case for which it was given.

- 15.) Tools.** The tools and devices produced upon our order and paid by us shall be our property, which we may use at any time and without additional costs, inclusive of spare parts, maintenance documents, operating instructions and rights. The supplier is instructed and authorised to take delivery of the tools as our representative immediately upon completion (passing of title) and shall mark the same as our property by means of the Photonic code and tool number in an inalienable manner. The supplier shall manage our tools for us and undertakes to use the tools made available to him exclusively for executing the orders placed by us. The costs for maintenance of tools, repairs, fulfilling the safety requirements, as well as payments for inventor's rights, copyrights and/or patent rights shall be settled by payment of the delivery price for the entire useful life. They shall be retained for a minimum of seven (7) years from the last delivery. Prior to scrapping, our written approval shall be obtained. Third parties who claim rights to our tools shall be advised of the fact that we hold title to the same. Subsequently, we shall be immediately informed thereof. We shall assume no liability for tools, devices, etc. made available by us.
- 16.) Prices; Payment.** Unless otherwise agreed in writing all prices shall be fixed lump-sum prices DDP Photonic Optische Geräte GmbH & Co KG Wien and shall include all ancillary services and expenses, including transportation, unloading, packaging, etc. Supplements or amendments to purchase orders or purchase orders for spare parts shall be subject to the terms of the principal purchase order. Price increases made after conclusion of the contract shall not be effective. Goods that are subject to different customs clearing processes shall be invoiced separately. Payment shall exclusively be effected by remittance after receipt of the invoices, and not prior to complete performance by the contractor. In the case of delivery prior to the agreed delivery date the payment period shall start to run only from the agreed delivery date. The standard payment terms are: 3% cash discount for payments within 14 days; payable with no deduction within 60 days. In the case of defective or poor performance we shall be entitled to withhold the total payment until proper performance without losing our right to rebates, cash discounts and the like. Remittance charges, if any, shall be borne by the contractor. We shall be entitled to offset claims we or our affiliates may have against claims of the contractor, irrespective of whether our claims are due or not. Invoices that do not contain our purchase order number cannot be processed and will be returned. Accounts receivable under deliveries of goods or provision of services shall become time-barred one year after passing of the goods or completion of the work. Assignments of claims resulting from a delivery made to us shall only be permitted upon our agreement.
- 17.) Physical access.** The supplier guarantees Photonic, Photonic's customers and public authorities in charge of medical products the right to enter the premises of the supplier's organisation if appropriate notice is given in advance.
- 18.) Statutory retention period.** All documents must be retained for at least 15 years. They may be destroyed only after expiry of the retention period upon written approval from Photonic.
- 19.) Subcontractors.** Our orders may not be subcontracted in whole or in part unless we agree in writing. The supplier shall be liable for personal execution of the order by him.
- 20.) Advertising.** Our company name may not be used for advertising purposes unless we have given our written consent.
- 21.) Applicable law; Place of jurisdiction.** The place of performance for deliveries and/or services provided in accordance with our Terms and Conditions of Purchase shall be Vienna. Exclusive jurisdiction of the court having jurisdiction over A-1160 Vienna and over the subject matter is agreed. The parties agree that Austrian law shall apply and that the Austrian Statute on Private International Law [*IPRG*], UN Sales Law and other conflict of laws rules shall be excluded. If the supplier's registered office is in a country with which Austria has concluded no convention on the enforcement of decisions of the courts of law, the parties agree that all disputes arising out of these Terms and Conditions of Purchase and all separate contracts concluded within the ambit of these Terms and Conditions of Purchase or over the violation, termination or nullity of the same shall be finally settled according to the Rules of Arbitration and Conciliation for the Permanent Arbitral Tribunals of the Economic Chambers by a sole arbitrator. The proceedings shall be held before the Permanent Arbitral Tribunal of the Economic Chamber of Carinthia in Klagenfurt. The language of arbitration shall be German. If any provisions of these Terms and Conditions of Purchase are or become ineffective, this shall not affect the effectiveness of the remaining provisions. In that case the ineffective provision shall be deemed replaced by an effective provision that comes as close as possible to the business purpose of the ineffective one.