

GENERAL TERMS AND CONDITIONS

1. Scope, Entire Terms and Conditions, Formal Requirements

- 1.1 These General Business Conditions of IB/E OPTICS GmbH (hereafter IB/E) shall exclusively apply. General business conditions and terms and conditions of the customer are not accepted, except that IB/E expressly agrees in writing to the application in total or of individual terms and conditions. These General Business Conditions of IB/E shall also exclusively apply, if and when IB/E unconditionally executes the business transaction knowing of contradicting, divergent or different terms and conditions of the customer.
- 1.2 Any oral understandings prior to conclusion of contract or execution of any business transaction become invalid and are excluded by these General Business Conditions. Future understandings and/or agreements are only valid in writing. This also applies to any agreement or waiver related to the requirement of the written form. Communication by E-Mail is accepted. The sender of an E-Mail has the burden of proof for its receipt by the addressee.

2. Offer, Conclusion of Contract

Offers made by IB/E are made conditional and without engagement, if not expressly declared to be binding. A contract is established by the written order of the customer based on the written offer of IB/E including and accepting these General Business Conditions and the written acceptance of the respective order.

3. Object of Contract and other Contractual Documents

- 3.1 The scope of works and services to be accomplished, delivered and rendered by IB/E is defined by the agreement between the Parties, which is based on the offer(s) of IB/E, other specifications, deadlines, plans, drawings, supplements etc..
- 3.2 IB/E is entitled to have the works and services under its obligations partially or in total executed by third parties.

4. Place of Performance, Obligations for Performance and Delivery, Passing of Risk, Deadlines for Delivery

- 4.1 It is agreed that the place of performance for the fulfillment of the obligations of both sides is the registered domicile of IB/E in 94078 Freyung, Germany.
- 4.2 If IB/E is obliged to deliver goods, the customer is obliged to collect them at the place of performance. If IB/E obliges to ship goods or pieces of work, the owners risk passes to the customer as soon as IB/E hands over the goods to the forwarding person commissioned by IB/E. The delivery will not be insured.
- 4.3 If IB/E is obliged to deliver goods or pieces of work, partial shipments are allowed, provided that the customer obviously is not interested in partial shipments, or that partial shipments obviously are not reasonable for him. If IB/E makes use of this right for partial shipments, cost of packing and forwarding will be invoiced only once.
- 4.4 Notified dates of delivery are not binding, if meeting them cannot be warranted. If delivery depends on delivery by a sub supplier, and this fails out of reasons beyond IB/E's control, IB/E is entitled to rescind the contract. The customer in this case has no right to claim damages. The preceding provision is not applicable, if the date of delivery had been defined as "fix" or "binding".

5. Payments, Maturity, Partial Performance

- 5.1 The remuneration offered is understood - unless specifically arranged otherwise - plus VAT applicable upon delivery. Costs for packing and transportation are not included in the remuneration and are invoiced separately.
- 5.2 IB/E shall be entitled to an advance payment of 35% of the agreed remuneration upon, before or during the execution of its obligations. If a required advance payment is not made within 4 days, IB/E shall not be liable for non-compliance with binding completion dates. If IB/E, after having concluded the contract, becomes aware of additional facts that cast doubt on the creditworthiness of the customer IB/E may require the entire agreed payment in advance.
- 5.3 Permitted partial works, supplies and services can be separately invoiced in full, provided that they are ready for acceptance.
- 5.4 For payment deadlines, the amount due must be received at IB/E at the due date.
- 5.5 After completion of the contractual obligations, the remainder has to be paid without any deduction by the customer within 10 days as of the date of the invoice. In case of delayed payment IB/E is entitled to claim interest of 1% per month of the outstanding amount.

6. Set-Off, Retention, Assignment Clause

- 6.1 The customer is not entitled to set off its claims against payments owed to IB/E, unless the claims of the customer are undisputed or legally established by a final verdict.
- 6.2 The customer is not entitled to claim retention of payments against the payment claims of IB/E - also not for complaints of defect -, unless these result from the same contractual relationship.
- 6.3 The customer is not entitled to assign claims against IB/E under the contract to any third party.

7. Retention of Title

- 7.1 IB/E retains title to the delivered goods (reserved goods) until the complete fulfillment of all present and future claims resulting out of the respective business transaction, including secondary claims and all claims existing against the customer prior to the date of the conclusion of the contract.
- 7.2 If the reserved goods are processed by the customer, it is agreed that the processing is made for and on behalf of IB/E as manufacturer, without any further obligation to IB/E, and that IB/E directly and immediately becomes the owner. If by the processing through the customer a new object is created under inclusion of property of other suppliers, IB/E acquires ownership of the newly created object in proportion to the value of the reserved goods to the value of the newly created item. In the event that no such automatic acquisition of property should occur at IB/E, the customer already now transfers its future ownership or - in the above ratio - co-ownership of the newly created object as security to IB/E. If the reserved goods are connected or mixed inseparably with other items into a single unit, and if one of the other items is to be regarded as the main object, IB/E transfers, as far as IB/E owns the main object, to the customer the co-ownership of the single unit in the proportion referred to above.

8. Warranty, Limitation of Liability, Statute of Limitations

- 8.1 The statutory warranty rights apply with the following modifications.
- 8.2 The customer, without delay, shall notify IB/E of any defects.
- 8.3 If the production and delivery of goods is part of the contractual obligation of IB/E, IB/E warrants, that they are free from material defects and deficiencies in title.

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- 8.4 As far as the development of software is part of the contractual obligation of IB/E, IB/E warrants that the developed software has the agreed quality and is not flawed to substantially impair the suitability for the stipulated application. The customer is aware of the fact that it is not possible, according to the state of the art, to create a completely error-free program.
- 8.5 As far as the rendering of engineering services is part of the contractual obligation of IB/E, IB/E warrants the provision of the services owed in accordance with the recognized rules of technology. IB/E shall not be liable to the extent that the objectives pursued by the development activity shall be achieved.
- 8.6 If a certain level of development is required, IB/E shall warrant that the level of development is not fraught with defects affecting the suitability for the application stipulated in the contract.
- 8.7 In the case of a defective production and delivery of goods (8.3) or software (8.4) or, in the case of an insufficient level of development (8.6), IB/E is obliged to remedy the defect by subsequent performance within reasonable delay. IB/E will provide in its discretion remedy by repair or by a new defect-free performance. IB/E is entitled to two subsequent performances. After two unsuccessful attempts the customer may rescind the contract or demand the appropriate reduction of the remuneration.
- 8.8 The customer is entitled to remedy the defect itself only after having set an appropriate time limit for IB/E to remedy the defect. If without this, the customer tries to remedy the defects, he has no claim anymore for future warranty insofar, without the prior written consent of IB/E.
- 8.9 IB/E shall endeavor (in its own diligence standard) in fulfilling its contractual obligations not to infringe property rights of third parties. IB/E, however, will not investigate potentially conflicting rights of a third party. The customer is obliged to accomplish this obligatory research. IB/E shall not be liable to the customer or to any third party for possible violation of third party property rights, unless the customer explicitly informed IB/E in writing about property rights of third parties specifically to be observed. The customer holds IB/E free from claims out of infringement of property rights of third parties.
- 8.10 All rights of the customer resulting from warranted performance of IB/E shall come under the statute of limitations after 12 months. The start of the limitation period is governed by the applicable statutory regulations.

9. Further Liability

- 9.1 IB/E shall be liable in cases of intent or gross negligence according to the statutory provisions. IB/E is liable for negligence in violating material obligations, where the violation endangers the purpose of the contract, and the compliance with which the customer regularly trusts. IB/E shall be liable in these cases for the foreseeable damage typically related to such contract. For the negligent breach of other obligations IB/E shall not be liable. The above limitation shall not apply for injury to life, body and health as well as guarantees and fraudulently concealed defects. Liability under the product liability law remains unaffected.
- 9.2 For fault of its agents and representatives IB/E shall be liable to the same extent.
- 9.3 The provision of the preceding paragraph (9.1) extends in analogy to all reasons of liability (particularly but not exclusively Section 8) related to this contract. This applies in particular to compensation in addition to the performance, the damages instead of performance, tort claims and the claim for wasted expenditure, for whatever legal reason, including liability for defects, delay or impossibility.

10. Property Rights

- 10.1 Property rights of IB/E, which are used in fulfillment of the contractual obligations of IB/E, remain exclusively with IB/E; the customer acquires no rights thereto. IB/E is committed to grant the customer, if and when necessary, a non-exclusive, non-transferable usage right.
- 10.2 IB/E is exclusively entitled to inventions, which in the course of performance of the contractual obligations of IB/E (especially development works and services) are made by workers of IB/E. Corresponding property rights are registered by IB/E and are owned exclusively by IB/E.
- 10.3 Both sides are entitled to inventions, which in the course of performance of the contractual obligations of IB/E (especially development works and services) are made by workers of IB/E jointly with employees of the customer. Corresponding property rights are to be registered jointly by both sides and are - unless otherwise agreed - equally owned and shared by both sides. Preparation and execution of the application is made by IB/E at the expense of both sides, equally shared.
- 10.4 IB/E is not obliged to inform the customer, if it does not continue to uphold property rights, even if these may be important with respect to contractual performance of IB/E for the customer.
- 10.5 As far as the development of software is part of the contractual obligations of IB/E, IB/E grants the customer the non-exclusive right of use of the software without limits to duration. The customer may not change, decompile, process, copy, etc. the Software.

11. Confidentiality

- 11.1 The Parties are obliged, for the period of performance of this contract and for a period of 2 years after completion of the works and services, to treat all mutually provided information strictly confidential, and to take all measures to prevent the release to third parties. This obligation applies to all exchanged informations regardless of whether these have been communicated orally or in writing or in any other way.
- 11.2 All documents exchanged remain the property of the respective author and have to be returned upon request after completion of performance.
- 11.3 The obligation to maintain confidentiality of the mutually provided information does not apply, if they, before the communication was made, were evidently known to the informed side or known to the general public or generally accessible or later became known or generally accessible.

12. Jurisdiction

The courts of Regensburg/Germany shall have jurisdiction, if the customer is a merchant within the meaning of the German Commercial Code, is a legal entity under public law, or is organized under regulations for a public special asset, or has no general jurisdiction in the Federal Republic of Germany. In addition, IB/E is also entitled to the proceedings against the customer at his general place of jurisdiction.

13. Applicable Law

The laws of the Federal Republic of Germany shall be applicable with respect to all present legal relations, and future legal relations after fulfillment of the contract, arising from this contractual relationship. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) is excluded.

14. Severability

If a specific provision of these General Terms and Conditions is or becomes invalid, the other conditions shall remain valid.