

General Terms and Conditions of PhotonTec Berlin GmbH

1 General Provisions

1.1 All business transactions – commenced, continuing and future ones - shall be exclusively subject to these Terms and Conditions. PhotonTec Berlin GmbH shall not recognise any of the customer's conditions to the contrary, the customer's terms and conditions hereby being objected to. Our conditions shall apply even if, in awareness of the purchaser's conditions to the contrary, our contractual obligations are fulfilled without reservation.

Any modification of the following conditions shall be subject to our prior written approval or to a written agreement in order to be effective.

1.2 These conditions shall apply analogously to contracts for services and mixed contracts.

1.3 PhotonTec Berlin GmbH shall have the exclusive ownership and copyright of our offered documents, depictions, drawings, calculations and other documents. In principle, and especially, if market as confidential, they shall not be disclosed to third parties.

2 Conclusion of Contract

2.1 Any agreements between PhotonTec Berlin GmbH and purchaser concerning the contract and its execution must be made in writing. Oral agreements and Emails shall be not effective.

2.2 Offers made by PhotonTec Berlin GmbH may be withdrawn at any time. Any samples and tests are for information purpose only and provided without obligation.

2.3 PhotonTec Berlin GmbH has the right to fulfil its contractual duties through third parties. PhotonTec Berlin GmbH is responsible for the performance of such third parties.

2.4 A contract shall not become effective before the order has been confirmed in writing by PhotonTec Berlin GmbH and on condition that the licensing authority grants an export licence if there is necessary in an individual case.

3 Price

3.1 The price in the offer is net price, Germany, "ex works" and exclusive of value added tax, freight, insurance, installation, postage, delivery or an other applicable costs. Unless agreed to the contrary, packaging is included in the price.

3.2 PhotonTec Berlin GmbH reserves the right to alter the price of the goods where changes in the price of component materials, salary or other circumstances

for which we are not responsible result in an increase in production costs.

4 Terms of Payment

4.1 The price shall be payable net within 30 days for German customer from the date of invoice and before delivery for non-German customer. The relevant date for meeting this deadline shall be the date of receipt of payment.

4.2 Payment is made by means of wire transfer. Other payment means must be agreed by PhotonTec Berlin GmbH. Associated costs of other payment means, as well as the risk for timely production and of any protestations are to be borne by the customer.

4.3 If the customer does not make timely payment, or if PhotonTec Berlin GmbH extends the time in which the customer has to pay, then the customer shall pay interest to PhotonTec Berlin GmbH at the prevailing bank debt rate, but in any event no less than 5% above the base rate of the European Central Bank.

4.4 PhotonTec Berlin GmbH reserves the right to claim for any additional damage it may suffer as a result of any delay by the customer.

4.5 Where the customer delays in payment, or where there is reason to doubt the customer's willingness or ability to pay, then in addition to any other rights PhotonTec Berlin GmbH may have, PhotonTec Berlin GmbH may demand immediate fulfilment of all the customer's outstanding obligations under the contract and / or demand security or prepayment in relation to future deliveries, withhold future deliveries due under this or any other contract PhotonTec Berlin GmbH may have with the customer (either in whole or in part), take back (at the customer's expense) any goods which have already been delivered to the customer but have not yet been paid for, or to withdraw from all existing contracts with the customer. Where goods are delivered in instalments, each instalment constitutes a separate payable transaction.

4.6 The customer shall only be entitled to set-off or retention in relation to obligations of PhotonTec Berlin GmbH which PhotonTec Berlin GmbH does not dispute, or which have been enforceably determined by a court.

5 Packaging and Delivery

5.1 Packaging and delivery are effected at the expense and risk of the receiver and without insurance.

5.2 The customer may specify a particular means of packaging or delivery or alternatively, it may require delivery according to its own particular delivery

protocol. Such specifications or requirements shall only be binding on PhotonTec Berlin GmbH insofar as PhotonTec Berlin GmbH is informed of them and confirms them in writing. Any resulting additional costs shall be borne by the customer.

5.3 The customer is obliged to inform PhotonTec Berlin GmbH of any permits, licences, approvals, authorizations or other requirements or preconditions relating to delivery which exist in the jurisdiction in which the customer is located. The customer is obliged to take all steps necessary for compliance with these at its own expense.

5.4 The customer is obliged to inform PhotonTec Berlin GmbH with all assistance necessary to ensure compliance with any export regulations. Any costs incurred in relation to compliance with such regulations are to be borne by the customer.

5.5 The risk in the goods passes to the customer as soon as they have left the business address of PhotonTec Berlin GmbH. Where the goods are ready for delivery and delivery is delayed as a result of circumstances for which PhotonTec Berlin GmbH is not responsible, then risk in the goods shall pass to the customer as soon as PhotonTec Berlin GmbH has informed the customer (either orally or in writing) that the goods are ready for delivery.

5.6 The customer shall accept delivery of the goods even where such goods are faulty. This provision does not affect any rights the customer has under the warranties.

5.7 Insurance against damage in transit will only be effected at the customer's request and at the customer's expense.

5.8 The costs and risk of returning faulty goods are to be borne by the customer.

6 Deadlines and Delay

6.1 PhotonTec Berlin GmbH is not obliged to deliver the goods as long as the customer has not performed one or more of its obligations under the contract.

6.2 The time periods for delivery and performance stated by PhotonTec Berlin GmbH begin to run upon entry into the contract and PhotonTec Berlin GmbH receives advanced payment if agreed upon.

6.3 PhotonTec Berlin GmbH shall not be obliged to comply with these deadlines unless the customer has supplied all requested documentation and has adhered to all payment terms. The deadline shall be deemed to

have been met if the goods have left the works or storage of PhotonTec Berlin UG.

6.4 Dates for delivery are only binding where these have been expressly confirmed in writing by PhotonTec Berlin GmbH.

6.5 Where delivery is delayed because of the customer, then commencing on the 14th day after notification to the customer that the goods are ready for delivery, the customer shall pay PhotonTec Berlin GmbH a storage charge of 5% of the agreed purchase price of the goods per annum for each month commenced that the goods remain undelivered, unless PhotonTec Berlin UG is able to establish that it has incurred higher costs. Where PhotonTec Berlin GmbH can establish that it has incurred higher costs, then the customer shall pay PhotonTec Berlin GmbH a storage charge equal to the costs which PhotonTec Berlin GmbH can establish it has incurred.

6.6 Late delivery does not entitle the customer to withdraw from the contract or to claim damages unless the delay occurs as a result of intentional or grossly negligent behaviour on the part of PhotonTec Berlin GmbH. This shall not apply where the delay in delivery jeopardizes the realization of the purpose of the contract. If the customer extends the deadline for delivery and delivery is not effected by expiry of this extended deadline, the customer has the right to withdraw from the contract on the grounds of non-fulfilment of the contract.

6.7 For the purposes of clarification only, PhotonTec Berlin GmbH is not obliged to pay any contractual penalty, should it delay in delivering the goods.

6.8 Should delivery be delayed or fulfilment of the contract be otherwise hindered by reasons of force majeure (for example power cuts, strikes, delay in delivery resulting from war or unstable political conditions, prohibitions or other measures enacted by any authorities), PhotonTec Berlin GmbH may withdraw from the contract or alternatively, delay delivery of the goods for the duration of the obstruction without liability for damages or other claims.

7. Warranty and Damage

7.1 All information concerning PhotonTec Berlin GmbH's products is given to the best of PhotonTec Berlin GmbH's knowledge. However, such information does not free the customer from the need to carry out its own checks and tests. The customer is obliged to check the goods without delay, in order to ascertain the existence of any defects in relation to composition and fitness for purpose.

7.2 The customer must notify PhotonTec Berlin GmbH in writing of any defects without delay, and in any event within 7 days from the date of receipt of the goods. Defects which could not be discovered within 7 days from receipt shall be notified to PhotonTec Berlin GmbH within 7 days of the date on which they first became apparent. The customer shall lose its rights in relation to any defects which are not reported to PhotonTec Berlin GmbH within the relevant time limits.

7.3 Should the customer ascertain that an incorrect quantity of goods has been delivered, then the customer shall inform PhotonTec Berlin GmbH of this in writing without delay.

7.4 The warranty period shall commence on delivery. Any warranty claims shall be limited to a period of one year. The customer shall only be entitled to be remedies of repair and replacement, at the option of PhotonTec Berlin GmbH. PhotonTec Berlin GmbH has the right to repair or replace the goods on repeated occasions. No claim under a warranty may be made in the case of inappropriate use, incorrect installation, incorrect servicing and non-adherence to all relevant rules and instructions including any rules relating to safety in the workplace and laser safety. A right under a warranty will not arise where the customer makes changes to the goods or overhauls the goods without the previous consent of PhotonTec Berlin GmbH.

7.5 Where measures taken to bring the goods into conformity with the contract fail, the customer is still entitled to exercise its statutory rights.

7.6 Insofar as nothing to the contrary is specified in this contract, PhotonTec Berlin GmbH excludes liability for all damages (other than liability for death or personal injury), except where such damages result from intentional or grossly negligent behaviour. PhotonTec Berlin GmbH is therefore not liable for physical damage to and property other than the goods themselves. In particular, PhotonTec Berlin GmbH is not liable for loss of profits or other financial losses of the customer.

7.7 PhotonTec Berlin GmbH shall not be liable for any damages which are caused by inappropriate use of the goods. PhotonTec Berlin GmbH does not guarantee the suitability of the goods for any particular purpose and does not undertake any obligations relating to the provision of advice, unless this has been agreed in writing.

7.8 Where the customer asserts a right of retention on the grounds that the goods do not comply with the contract, it shall put all the retained monies on deposit in accordance with the procedure prescribed by law.

8. Retention of title

8.1 Title in the delivered goods remains with PhotonTec Berlin GmbH until the customer has paid the price in full and all the customer's other obligations (both existing and future) which arise from the business relationship between the customer and PhotonTec Berlin GmbH have been complied with. Further, PhotonTec Berlin GmbH retains title in all such goods, even where they are incorporated into other products by the customer, until all rights of PhotonTec Berlin GmbH resulting from the business relationship between PhotonTec Berlin GmbH and the customer (both existing and future), have been realized ('privileged goods')

8.2 If the customer alters the privileged goods, or incorporates the privileged goods into other products, such work shall be deemed to be carried out on behalf of PhotonTec Berlin GmbH. Where the goods are incorporated into other products, PhotonTec Berlin GmbH shall be a co-owner of the resulting products in the same proportion that the value of the privileged goods bear to the value of the resulting products.

8.3 The customer will treat and store the privileged goods with the care of an orderly trader.

8.4 The customer shall only dispose of the goods in the usual course of business and subject to the retained title in such goods.

8.5 The customer hereby assigns to PhotonTec Berlin GmbH all rights in relation to third parties which it may acquire from any subsequent sale of, or other transaction affecting the privileged goods, as security for the customer's existing and future obligations which arise from the business relationship between the two parties. In the case that the customer sells the privileged goods on to a third party, then the customer hereby assigns to PhotonTec Berlin GmbH its right to that proportion of the purchase price which is equivalent to the value of the privileged goods. PhotonTec Berlin GmbH hereby agrees to this assignment. As long as the customer complies with its contractual obligations, then the assignment of the foregoing rights will be treated as an undisclosed assignment. The customer is hereby authorised to call in all claims resulting from such rights on behalf of PhotonTec Berlin GmbH unless and until PhotonTec Berlin GmbH revokes this authorization. On request, the customer shall provide PhotonTec Berlin GmbH with all information necessary for PhotonTec Berlin GmbH to call in such claims itself and shall inform the third party of the transfer of such rights to PhotonTec Berlin GmbH.

8.6 The customer shall not charge or otherwise deal with the privileged goods in a way that interferes with

or otherwise endangers PhotonTec Berlin GmbH's rights in such goods without PhotonTec Berlin GmbH's previous consent. The customer shall immediately inform PhotonTec Berlin GmbH of the actions of any third party which may affect PhotonTec Berlin GmbH's rights in relation to the goods. Should such situation arise, then the customer shall provide PhotonTec Berlin GmbH with all information necessary to initiate legal proceedings to protect its rights. The costs of any such legal proceedings shall be borne by the customer, insofar as these are not borne by the third party.

8.7 Should retention of title not be recognised in the Jurisdiction in which the goods are located, then the customer shall provide PhotonTec Berlin GmbH with a security which has the same or similar effect to retention of title. If the cooperation of the customer is required in order to create such security, then the customer will, at its own expense, immediately take all action required by PhotonTec Berlin GmbH.

8.8 Should the customer behave in a way which does not conform to the contract, in particular in the case of non-payment or insufficient payment, then PhotonTec Berlin GmbH is entitled to demand that the goods be returned and in such a case, the customer shall be obliged to return them.

8.9 The customer shall insure the goods against theft, damage, fire, water and other damage at its own expense.

9. Non-performance

If the contract remains unperformed as a result of breach of contract or withdrawal by the customer, then PhotonTec Berlin GmbH is entitled to a contractual penalty of a sum equal to the total costs already incurred by PhotonTec Berlin GmbH, but in any event on less than 30% of the net value of the ordered goods. Insofar as PhotonTec Berlin GmbH withdraws from the contract on the such grounds, the customer shall reimburse PhotonTec Berlin GmbH for all costs incurred by PhotonTec Berlin GmbH as a result, subject to a minimum payment of a liquidated sum of 30% of the agreed net value of the contract.

10. Confidentiality

10.1 PhotonTec Berlin GmbH shall treat all trade secrets of the customer which are disclosed during the performance of the contract as confidential and shall not disclose such trade secrets to third parties. PhotonTec Berlin GmbH shall obtain the same agreement from any employees or agents to which it may disclose such information in order to perform its obligations under the contract.

10.2 PhotonTec Berlin GmbH hereby prohibits the forwarding of information concerning its business relationship with the customer to third parties.

11. Intellectual property

11.1 PhotonTec Berlin GmbH retains all intellectual property in its products and any items which are intended for use in conjunction with such products.

11.2 A third party who alters or further develops PhotonTec Berlin GmbH's products will only obtain intellectual property rights in such products if PhotonTec Berlin GmbH consents to this.

12. Governing law, jurisdiction and place for fulfilment

12.1 The legal relations of the parties are governed exclusively by German law. The laws on international trade resulting from the United Nations Convention on contracts for the international Sale of Goods shall not apply.

12.2 The place for fulfilment of the contract in relation to deliveries by PhotonTec Berlin GmbH, payment to PhotonTec Berlin GmbH and all other obligations of the customer is Berlin, Germany.

13. Miscellaneous

13.1 The above Terms and Conditions and any additional agreements made in writing at the time of entering into the contract constitute the entire contract and replace all earlier oral and written agreements.

13.2 The invalidity of any individual clauses does not affect the validity of the contract's remaining terms and conditions. The parties are under a duty to replace an invalid or unenforceable clause with the enforceable clauses which is most similar in economic effect to the invalid or unenforceable clause.

13.3 Changes or additions to the above terms and conditions and to any other additional terms and conditions agreed at the time of entering into the contract must be in writing. This provision of any requirement relating to written form. This provision also applies to this clause.

March 01, 2012
Berlin, Germany