

# General Terms and Conditions

## 1. Scope of Application

**1.1.** These General Terms and Conditions (“Terms”) are used by FiberBridge Photonics GmbH (“we” in all grammatical forms) and apply to all our business. They constitute a part of the binding agreement (“Contract”) between us and you (“Buyer”).

**1.2.** These Terms shall be preceded by any individual framework agreement between us and Buyer, or by any individual provision laid out in our written offer to Buyer and accepted by Buyer. These General Terms and Conditions shall precede over any provision laid out in Buyer’s order to us, unless we have agreed to such provision expressly and in writing

**1.3.** Any other general terms shall not become part of the Contract. We reject any other general terms, whether they are in conflict with this Terms or not. Other general terms shall not become part of the contract, even if we do not expressly object to them. Even if we accept Buyer’s performance without express objection, this shall not constitute acceptance of any other general terms.

**1.4.** Our products are not offered to consumers (as defined in § 13 German Civil Code or Article 2 Number 1 of EU Directive 2011/83). By placing an order, you confirm that you are not a consumer.

## 2. Offer and Acceptance, Bindingness, Cancellation

**2.1.** Unless agreed otherwise in writing, our offers are without obligation and non-committal, and are subject to prior sale.

**2.2.** The order of goods by Buyer shall be deemed as binding offer. The Contract shall commence upon acceptance. We are entitled to accept Buyer’s offer within two weeks after receipt of the order, unless stated otherwise in the order. Our acceptance may be issued express (e.g. by an order confirmation) or implied (e.g. by dispatch of the goods or performance of the services).

**2.3.** Our obligations shall be solely determined by our written order confirmation.

**2.4.** We are entitled to partial deliveries.

**2.5.** Any data stated in catalogues and brochures as well as in the documents relating to the offer and order, such as pictures, drawings, weights and dimensions, are noncommittal and for informational purposes only, unless they were specifically designated as binding in the order confirmation.

**2.6.** Unless a fixed price was expressly agreed on, Buyer shall be liable to the list price (or the proportional amount if the order was placed for a price different from the list price at the time of the order) at the time of performance, provided that the period of time between order and performance is longer than six weeks (not counting any delays culpably caused by us). However, we shall not increase prices unreasonably, but only to the extent justifiable by increased costs (including without limitation: labor, materials, taxes and levies, import fees and customs).

**2.7.** Accepted orders are binding and cannot be cancelled. However, if we accept a cancellation by Buyer, Buyer shall still be liable to the full price less any costs that we save. Buyer shall bear the full burden of presentation and proof for any such saved costs. Partial cancellations may lead to increased prices for the remaining order.

## 3. Improvements and Modifications

**3.1.** We reserve the right to improve or modify any of the products without prior notice provided that details of any modification affecting form, fit, function or maintenance shall be notified to Buyer in which event Buyer may vary or cancel any order for the relevant product placed prior to the receipt of such notification except to the extent that such orders can be met by the supply of stocks of the relevant product which do not incorporate the improvement or modification notified hereunder. Variation or cancellation hereunder shall be effected by Buyer notifying us thereof within 14 days of receipt by the Buyer of the relevant notification of the relevant improvement or modification. The Buyer’s rights of variation or cancellation under this Clause shall be its sole remedies in the event of any improvement or modification being made to a product, and in particular, but without limitation, no compensation or damages for breach of contract shall be payable to the Buyer by reason of such improvement or modification.

**3.2.** Notwithstanding clause 3.1., Buyer shall not have a right to vary or cancel the order if the modification is an improvement, is not material, does not adversely affect the functionality of the goods and does not lead to an increase in pricing of more than three percent.

## 4. Price and Payment

**4.1.** Unless expressly stated otherwise, all prices quoted are in Euros, Ex Works (EXW), exclusive of packaging and loading, and exclusive of VAT.

**4.2.** VAT shall be charged to the amount provided by tax laws. Buyers in an EU member state (other than Germany) shall provide a valid European VAT ID number and are otherwise liable to VAT; any invoice without VAT is provisional in respect to the validity of the Buyer’s VAT ID number.

**4.3.** All payments shall be made in Euros. Buyer shall bear any currency conversion costs.

**4.4.** Payments shall be made by wire transfer. Any other payment method shall only be accepted on account of performance, and Buyer shall bear all costs.

**4.5.** International wire transfers shall be made according to the “SHARE” (SHA) transfer charges regulation.

**4.6.** The payment is due upon receipt of the invoice and shall be made within two weeks (payment period). Buyer is deemed to be in default after the payment period. If Buyer is in default, he shall be liable to all reasonable costs for all action that we take in order to collect our claim, including – without limitation – court and lawyer fees, collection agency fees, bailiff fees. Also, Buyer is liable to not less than statutory interest after the payment period.

**4.7.** Buyer may only offset claims which are undisputed or are enforceable.

**4.8.** Buyer shall not withhold their payment, unless for a claim arising from the same legal relationship. However, Buyer may withhold tax to the extent provided by their local tax laws if they have indicated any such withholding with the order; if they have not indicated the withholding, Buyer shall not be entitled to withhold any part of the price.

## 5. Delivery and passing of risk

**5.1.** The delivery time begins with the date of the confirmation of the order, but not earlier than a full agreement about the order is achieved. We will do our utmost to comply with the delivery times stated in our offers and confirmations of orders, but they are not binding unless expressly stated as binding.

**5.2.** Even in regard to binding delivery times, we shall not be liable for any delay or for the consequences of any delay in performing any of our obligations under the Contract if such delay is due to any cause whatsoever beyond our reasonable control, and we shall be entitled to a reasonable extension of the time for performing such obligations. In this respect, Buyer’s rights of withdrawal and further claims due to delayed delivery shall be excluded. The same applies if unforeseeable events occur during a period when we are already in default.

**5.3.** Buyer is obliged to accept the delivery even if delivered products have minor defects. This does not limit any Buyers’ warranty rights.

**5.4.** If an order is cancelled for a reason within Buyer’s sphere of responsibility, Buyer shall pay us five percent of the value of the cancelled order as minimum compensation. Buyer can – but bears the burden to – represent and prove that our disadvantage from the cancellation is lower.

**5.5.** Risk will pass to Buyer upon dispatch of the goods to the Buyer. This also applies to partial deliveries and also if we have assumed the costs of transportation and/or assembly.

**5.6.** If dispatch of the goods is delayed due to circumstances for which we are not responsible, the risk shall pass to the Buyer upon our written notice of the readiness for dispatch.

## 6. Warranty and Liability

**6.1.** Our warranty voids 12 months after the passing of risks. Our warranty applies only to those parts and services rendered which are stated in the confirmation of order. We warrant that the materials used are free of defects and that all the work done is carried out carefully.

**6.2.** A replacement or replacement parts or repairs made to a Product during the original warranty period shall be warranted for an additional period of three months after the Buyer’s receipt of such replacement, replacement part or repaired item, as the case may be, or until the expiry of the original warranty period, whichever is the longer period.

**6.3.** The warranty does not cover defects in or damage to the goods which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial or industrial application. Except for the express warranties set out in this clause, we grant no other warranties relating to defects in the design workmanship or materials, and all other representations or warranties, whether written or oral, express or implied, by statute, customs or otherwise howsoever, relating to such defects, are hereby excluded; in particular (but without limitation of the foregoing) we grant no warranties regarding the fitness for purpose, performance, use, quality or merchantability of the Products, whether

express or implied, by statute, customs or otherwise howsoever.

**6.4.** If the goods or services are not of the agreed quality at the time of the passing of risks, we will provide rectification in accordance with § 439 German Civil Code, unless otherwise stipulated in the following provisions. Rectification may be provided by way of rectification of defects or, at our sole discretion, by way of replacement. We may rectify a certain defect several times and, at our sole discretion, may proceed from a rectification of defects to replacement. Delivery costs due to the goods being brought to a place other than the place of performance are to be borne by the Buyer.

**6.5.** With respect to goods or services that we receive from a third party for resale to the Buyer, we assign all warranty rights against such third party to the Buyer. Claims can be advanced against us only if they have first been asserted against the third party without success.

**6.6.** In respect to any services we perform, we have no obligation, duty or liability to the Buyer in contract, tort, for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care.

**6.7.** Neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from events or circumstances outside its reasonable control. Such delay or failure shall not constitute a breach of the Contract and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, provided that if such delay or failure persists for more than six months nothing in this clause shall be taken to limit or prevent the exercise by either party of its rights of termination.

**6.8.** We are liable only for gross negligence and intention, and, in the case of simple negligence, for the violation of obligations that are essential to the Contract (“cardinal obligations”). In the last case, our liability is limited to the amount of the foreseeable damage. We are also liable for personal injuries (damage to life or health). Any and all other liability is excluded; however, nothing in this Terms shall limit our responsibility towards third parties under any applicable product liability laws.

**6.9.** Buyer shall indemnify us against all actions, proceedings, claims or demands in any way connected with the Contract brought or threatened against us by a third party except to the extent that we are liable to Buyer under the Contract.

## 7. Reservation of Title

**7.1.** Title to any delivered goods shall not pass to Buyer but shall be retained by us until the agreed purchase price has been paid to us in full and without reservations.

**7.2.** Until such time as title in a delivered good has passed to the Buyer:

(i) we shall have absolute authority to retake, sell or otherwise deal with or dispose of all any or part of the goods in which title remains vested in us; and

(ii) we shall be entitled to seek a court injunction to prevent Buyer from selling, transferring or otherwise disposing of the goods.

**7.3.** Notwithstanding the foregoing, risk in such goods pass as laid out in this Terms, and, until such time as title in the goods has passed to Buyer, Buyer shall insure such goods to their replacement values, naming us as the loss payee, and Buyer shall forthwith, upon request, provide us with evidence of such insurance.

## 8. Industrial and Intellectual Property Rights

**8.1.** We warrant that upon passing of the risk no patents or other proprietary rights of third parties exist which may be claimed with respect to the goods or services if these are used as intended.

**8.2.** For objects manufactured in compliance with information provided by Buyer, Buyer shall assume warranty for the fact that industrial property rights of third parties are not violated by manufacturing and operating any such objects. In this case Buyer releases and indemnifies us from all claims of third parties based on violation of industrial property rights.

**8.3.** For any software that is included in the goods (including, without limitation, control software, firmware, embedded software) we grant Buyer a non-exclusive license, bound to and limited to the use with the respective object it came with, transferable only together with such object, unlimited in time but not beyond the life of such object, limited to the country it was delivered to (EU/EEA counting as one). No exclusive license is granted, irrespective of whether the software was produced or adapted individually to Buyer’s specifications.

**8.4.** If the good has a deficiency in title which is the infringement of third party industrial property rights, we may withdraw from the Contract. We then owe no more than, as the case may be, the refund of the purchase price against return of the good. Buyer shall only have further

claims if we act grossly negligent or intentional (see Section 6.8 above).

#### **9. Miscellaneous**

**9.1.** Place of performance for any deliveries and/or services rendered is Hannover, Germany.

**9.2.** The Contract shall be governed by and construed in accordance with German law, excluding any conflict-of-law provisions, and further excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

**9.3.** The district court (Landgericht) in Hannover, Germany, shall have exclusive jurisdiction over all disputes and differences arising from or in connection with the Contract. However, if the Buyer has its seat or permanent residence outside the European Union or in Denmark, Great Britain or Ireland, we may choose to take action in any competent court in the Buyer's jurisdiction; if we do so, the Buyer may file counter-claims in such proceedings if permissible under applicable local procedural laws.

**9.4.** For the purpose of handling the business with the Buyer, we may store and process the data of the Buyer and/or data of individuals acting for the Buyer in accordance with the terms of the EU General Data Protection Regulation.

**9.5.** If any provision of these General Terms and Conditions is or becomes invalid or unenforceable, the other provisions shall remain in full force and effect. The invalid provision shall be replaced by such provision which is valid and comes closest to the intended economic purpose of the invalid provision.

Hanover, 29.08.2018