

## GENERAL TERMS AND CONDITIONS

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The following are the Terms and Conditions of Sale applicable to the sale of vario-optics ag products:

### 1. DEFINITIONS

The term "Seller" as used herein shall refer to vario-optics ag. The term "Customer" as used herein shall refer to the customer designated on a Seller order acknowledgment ("Order Acknowledgement") which contains or incorporates by reference these Standard Terms and Conditions for Sale. The terms "Product" or "Products" refer to the goods or Services (as defined hereinafter) sold by Seller or described on a Seller Order Acknowledgement, statement of work, or other referenced document. Where applicable, as documented in Seller's Order Acknowledgement, "Services" may refer to non-recurring engineering services and/or development of tooling. The term "contract" as used herein shall refer to the terms, conditions and warranties contained in this document.

### 2. PRODUCTS AND SALE TERMS

Customer agrees to purchase, and Seller agrees to sell, Products specified in Seller's Order Acknowledgement under the terms of this document. Any terms or conditions in addition to or different from this document asserted by Customer as applicable to this transaction, in a purchase order, on a web site, or otherwise incorporated by reference (including general or special conditions, plans, specifications, drawings, samples, or quality standard), are inapplicable and rejected by Seller. Customer shall be deemed to have so assented unless Customer notifies Seller to the contrary in writing within ten (10) days of receipt of the Order Acknowledgement referencing this document. If, for any reason, Customer should fail to accept these terms in writing, any conduct by Customer which recognizes the existence of a contract pertaining to the subject matter hereof, including payment and/or acceptance of Products, shall constitute an acceptance by Customer of this document and all of the Standard Terms and Conditions of Sale.

### 3. PRICES

- a. All prices shall be deemed to be net, Ex Works (Incoterms 2020), without any deduction whatsoever.
- b. Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the Customer.
- c. The Customer shall bear all value-added taxes, sales taxes, profit taxes, income taxes, social contributions, registration fees, tariffs, as well as all other kinds of taxes, fees, levies, custom duties and the like which are levied against the Supplier, its related companies, its factories or its personnel in connection with the contract.

### 4. PAYMENT TERMS

- a. Payment will be made in Swiss Francs by wire transfer unless otherwise agreed upon by the parties. Customer bears the risk of currency conversion.
- b. The due dates of payment shall not be adjusted for failures of transport, delivery, customs or other delays occur due to reasons beyond the control of the Seller.
- c. No hold back or off-setting of payments is permitted.

- d. If any payment due from a Customer is overdue, the Seller, without prejudice to its legal rights, shall be entitled to suspend the further execution of the contract, to stop the fabrication or to withhold shipment of additional Product. Seller may also refer the overdue debt to collection, and undertake any other remedy available at law.
- e. Customer shall pay interest on the overdue amount at a rate of 4% over the 12-months-LIBOR for the contractual reference currency valid at the due date.

## 5. CANCELLATION

The cancellation of orders shall be at the sole discretion of the Seller. The Customer shall be liable to cover all costs accrued caused by his reduction of the order.

## 6. SHIPMENT

All shipments will be Ex Works (Incoterms, 2020) Seller's factory unless otherwise specified in Seller's Order Acknowledgement. In the absence of specific instructions, Seller will select the carrier. Title to the goods shall pass to Customer upon delivery by Seller to the carrier. Transportation from the Ex Works point designated in Seller's Order Acknowledgement, handling and insurance are at the expense of Customer. Goods held for Customer, or stored for Customer, shall be at the risk and expense of Customer. Claims against Seller for shortages must be made within 10 days after arrival of shipment. Customer is responsible for making claims related to shipping.

## 7. INSPECTION

- a. Unless Customer notifies Seller in writing within ten (10) calendar days from the date of shipment of any goods or services stating that said goods or services are rejected, they will be deemed to have been accepted by Customer. The notice of rejection must also specify the reason(s) why the goods or services are being rejected. Defects which could not – even with careful examination – be discovered within ten (10) days after receipt of the delivery, hidden or latent defects, must immediately upon their discovery be notified to the Seller in writing and with detailed description. Hidden or latent defects must be communicated to the Seller in writing no later than thirty (30) calendar days after receipt
- b. Seller agrees, at its election, and as Customer's sole remedy for nonconforming goods, to either repair, replace with the same or functionally equivalent goods, or issue a credit in the amount of the unit contract price for any goods which upon test and examination by Seller, do not comply with the above assurances of conformity to specifications. Any repair or replacement shall not extend the notice period for non-conforming goods. No goods will be accepted for return or replacement without the written authorization of Seller with a designated Return Authorization. Upon such authorization, and in accordance with instructions by Seller, the goods will be returned shipping charges prepaid by Customer pursuant to industry standards unless otherwise authorized.
- c. The remedies in this section do not extend to any goods manufactured by Seller which have been subjected to misuse, neglect, accident, improper storage, testing or installation, unauthorized repair, or alteration, whether by Customer, shippers, or others.
- d. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, NON-INFRINGEMENT OR OTHERWISE ARE EXCLUDED. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW. The remedies of Customer shall be limited to those provided herein. No agreement varying or extending the foregoing warranty, remedies or this limitation will be binding upon Seller unless in writing, signed by a duly authorized officer of Seller.
- e. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO CUSTOMER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEED THE PRICE OF THE PARTICULAR PRODUCTS SOLD

HEREUNDER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES.

- f. Development products, including without limitation prototypes and pre-production samples and any Services (whether or not paid for by Customer) are provided "AS IS" without warranty of any kind.

## 8. PROPERTY AND OWNERSHIP RIGHTS

Unless otherwise mutually agreed in writing, the design, development or manufacture by Seller of goods or Services for Customer shall not be deemed to create a "work made for hire" and shall not give to Customer any patent, copyright or any other intellectual property right interest in the goods or Services, or any portion thereof. All such rights shall remain the property of Seller. Unless otherwise agreed in writing, all tooling, fixtures, test equipment, models, patterns, molds, processing software and technology, and proprietary information of Seller, whether or not made for, obtained, created, or developed by Seller for the performance of this contract, shall remain the sole property of Seller; and the payment by Customer of any costs or expenses relating to any of the foregoing (including non-recurring expenses), shall not be deemed to grant Customer any ownership interests therein.

## 9. EXCUSABLE DELAYS

In addition to any excuse provided by applicable law, Seller shall not be charged with any liability for delay, non-delivery or failure to perform any of its obligations herein arising from any event beyond Seller's control, whether or not foreseeable by either party, including but not limited to, delays of Sellers, labor disturbance or strike, war, terrorism, epidemic, pandemic, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, inability of Seller to obtain materials, shortages of materials, and other causes or events beyond Seller's control, whether or not similar to those enumerated above.

## 10. ORDERS

- a. Each Customer order for Products is subject to acceptance in writing by Seller. No order will vary these terms.
- b. Order Changes - Customer is liable for the costs of any changes to the goods, services, delivery schedule or specifications requested by Customer and agreed to by Seller including, but not limited to, cancellation or restocking charges, non-recurring engineering costs and other expenses, tooling and fixture charges, re-certification charges, re-work, wastage, and disassembly labor costs.
- c. NCNR- All non-standard goods manufactured for Customer, including all special materials and supplies necessary to perform the work specified, are non-cancelable and non-returnable ("NCNR").

## 11. TERMINATION

Except as otherwise agreed in writing, Customer shall not have the right to terminate or reschedule all or any portion or installment of the Products covered by this contract without the written consent of Seller.

## 12. CUSTOMER'S DEFAULT

Payment as required by the terms of this contract must be made when due regardless of any claim by Customer. Failure by Customer to pay the purchase price when due, or otherwise to perform this contract, shall give Seller the unlimited right, without liability, to take possession of the Products, with or without notice, and to have all of the remedies of a secured party under applicable law. In

addition, Seller, at its option by giving written notice to Customer of its election to do so, may, cancel any undelivered portions thereof and/or demand immediate payment of all outstanding bills of Customer. All rights and remedies of Seller shall be cumulative and may be exercised successively or concurrently without impairing Seller's security interest in the goods. Customer agrees to pay Seller reasonable attorneys' fees and legal expenses incurred by Seller in exercising any of its rights and remedies upon default in such amount as is permissible under law. All the foregoing is without limitation or waiver of any other rights or remedies available to Seller according to law or otherwise.

### **13. LIMITATION ON ACTIONS**

No action, regardless of form, arising out of this contract may be brought by either party more than one year after the cause of action arose, provided; however, in the case of non-payment, not more than two years from the date of last payment.

### **14. TRADEMARK, INTELLECTUAL PROPERTY RIGHTS**

- a. All trademark, patent, design or other intellectual property rights remain in the exclusive ownership of the Supplier. The use of such rights without the Supplier's explicit approval shall be prohibited.
- b. All technical documents, drawings, plans, layouts etc. remain the Supplier's intellectual property and shall not be used by the Customer nor be disclosed to third parties. All confidential documents delivered by the Customer remain its intellectual property and will not be disclosed by the Supplier.

### **15. LEAD TIME**

- a. The Lead time for production shall start as soon as the contract is entered into, the necessary technical documents of the Customer have arrived completely at the Supplier, the agreed payments and securities are given, and the required official permits are granted. The Lead time shall be deemed to be completed when the Product is ready for shipment at the factory.
- b. The Lead time shall be reasonably extended if conditions such as epidemics, acts of God, mobilisation, war, revolution, labour conflicts, energy or raw material shortage, boycotts, accidents, serious breakdown in the plant or official actions prevent the compliance with the Lead date.
- c. The Lead time shall be extended if the Customer changes the original order or the technical documents, or is overdue with his contractual obligations, especially if the Customer has delayed the Lead of the necessary documents/data, has delayed the agreed payments or is overdue with the work to be carried out by Customer.

### **16. PERMISSIBLE QUANTITY DEVIATION**

The actual quantities delivered may deviate up to 10% from the order. The invoice will be based on the actual quantities delivered.

### **17. PACKING**

Packing shall not be returnable.

### **18. FREE CONSULTATION**

Any free of charge technical consultation shall be outside of any pre-contractual or contractual obligations. The Supplier shall not be liable for free consultations, especially with respect to the correctness of the contents of the consultation.

## 19. PLACE OF PERFORMANCE

Unless otherwise agreed, place of performance for all contractual obligations is Heiden, Switzerland.

## 20. WARRANTY AND LIABILITY ON ENGINEERING SERVICES, PROTOTYPES AND PILOT SAMPLES

- a. The requirements document of the Customer is the basis for all engineering services. Besides the technical details, it defines also the environmental conditions, standards, guidelines etc. to be considered. The Seller's obligations are based solely on the requirements document.
- b. The Seller issues no guarantee on specifications, concepts, inventions, drawings, know how, information, parts, prototypes and pilot samples during the development phase.

## 21. INDEMNIFICATION

All acts or omissions of the Customer or his agents or employees result in claims against the Supplier for personal injury or damage to property, the Customer will indemnify and hold harmless the Supplier for all losses and costs.

## 22. JURISDICTION AND APPLICABLE LAW

For any dispute resulting from this contract, including the validity of this contract or these general terms and conditions, the exclusive place of jurisdiction for both parties shall be Switzerland. The contract shall be governed exclusively by Swiss material law disregarding choice of law concepts. The parties agree to the jurisdiction of Swiss courts for any dispute.

## 23. GENERAL

- a. This contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating the subject matter thereof.
- b. This contract may not be assigned, modified, or terminated without Seller's prior written consent, and any attempt to assign, modify or terminate without such consent shall be absolutely void.
- c. No delay or omission to exercise any right, power or remedy accruing to Seller upon breach or default by Customer under this contract shall impair any such right, power or remedy of Seller, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- d. No amendments to or modifications of the provisions of this contract will be valid and binding upon Seller unless in writing and signed by an authorized representative of Seller.

**vario-optics ag**  
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