

## **TERMS OF SALES, DELIVERY AND PAYMENT OF THE DIRECTPHOTONICS INDUSTRIES GMBH**

### **1. Validity of these terms and closing of contract:**

**1.1** All tenders, agreements, deliveries and performances shall be carried out exclusively based upon, and in accordance with, the following provisions. Unless otherwise agreed, these provisions shall also apply for deliveries to a foreign country and for all future business transactions. Any deviating terms of the ordering party shall not apply, unless we have expressly confirmed them in writing.

**1.2** In order to be valid, all agreements and orders as well as any subsequent changes thereof require written conformation to be valid.

**1.3** Our offers shall be under the provision that fulfillment is not being restricted by EU - and US export control regulations (e.g. embargos, sanctions lists, license requirement). You shall provide all information and documentation needed for the export/ domestic shipment/ import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained or any other embargo restrictions apply, this offer is void and any subsequent contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded unless such damage is caused by an intentional or grossly negligent breach of duty of DirectPhotonics.

### **2. Offer documents, copyright:**

We reserve the ownership rights and copyrights to all documentation connected with the offer. The documentation may not be made available to any third party without our prior written consent. The documentation shall be returned to us immediately upon request if an order is not placed with us. The development work and designs for the construction of lasers, systems and other products shall remain our intellectual property, and the ordering party may neither make them available to third parties nor utilize them for his own purposes. The ordering party is obligated to maintain strict confidentiality even if he does not place an order.

### **3. Prices and payment:**

**3.1** All prices are ex-works - from our address as named in the order confirmation, pursuant to INCOTERMS 2010, except to the extent otherwise agreed, and quoted in Euros in each instance thereof plus value added tax as respectively required by law, as well as costs for packaging, loading, shipping, transportation insurance, customs and handling costs. Our list prices valid on the day of delivery shall apply if a fixed price has not been agreed. Payments are to be made free of any bank fees or other charges.

**3.2** The ordering party shall bear the costs of any changes in prices agreed in a foreign currency or in exchanging the Euro that arise after closing of contract.

**3.3** Payments shall solely be made to us. Non-cash payments are only deemed as performed in full when the sum is credited to our bank account. Representatives and travelling employees of our company are not authorized to accept money. Bills of exchange shall only be accepted as performance of payment by special agreement and on the condition that they are eligible for discount. Discount expenses shall be charged commencing on the date that the invoiced amount becomes due, onwards.

**3.4** Unless otherwise agreed, invoices shall be paid net within 30 days from the date of invoice. We reserve the right to make deliveries conditional upon advance payment, cash payment or c.o.d., especially in instances of

first orders or outstanding overdue payments. Spare parts and other deliveries related to repairs, including service and maintenance, shall be paid in full immediately after delivery.

**3.5** In any event, our claims for payment shall become due for immediate payment if the ordering party becomes insolvent, if bankruptcy proceedings are instituted against his assets or if his company is sold or comes under new ownership.

**3.6** If the ordering party enters into default on a payment or partial payment, then each respective outstanding payment shall accrue interest at a rate 8 % above the base interest rate in compliance with § 1 of the Discount Rate Transitory Law (DÜG), insofar as we cannot furnish evidence of higher damages.

**3.7** The ordering party is not entitled to offset or reduce payments or to assert rights of retention unless his claims have been legally established by a final judgment or are undisputed.

**3.8** In those instances stated under No. 5 above and in other circumstances that become known after the closing of contract, which considerably jeopardize the ordering party's ability to legally fulfill the contract, we shall be able to demand a reasonable advance payment, the sum of which not agreed prior to any such instance or circumstance, or to reasonably increase the amount of an advance payment already agreed or to demand furnishing of collateral for the amount of respective fails to meet circumstance, or to reasonably increase the amount of an advance payment already agreed or to demand furnishing of collateral for the amount of respective outstanding debts. We shall be entitled to rescind the contract or demand damages in the event that the ordering party fails to meet our demand, despite stipulation of a reasonable time period for compliance of the contract.

**3.9** Permissible partial shipments may be invoiced.

#### **4. Transfer of risk, dispatch, freight:**

**4.1** If goods are dispatched to the ordering party at his request, then the risk of accidental perishing or accidental deterioration of the goods shall transfer to the ordering party when the goods are surrendered to the authorized shipping agent. This shall also apply for partial deliveries, regardless of whether shipment is carried out from the place of performance and regardless of who bears the freight costs. If the goods are ready for dispatch and dispatch or acceptance of the goods is delayed on grounds for which we are not responsible, then risk shall transfer to the ordering party when notice is received that the goods are ready for dispatch.

**4.2** Shipments can be insured by us at the expense of the ordering party, insofar as the ordering party has not provided evidence of insurance coverage within 5 days, at the latest, following our notice that the goods are ready for dispatch, or the ordering party expressly states that he waives insurance.

**4.3** If delivery with mounting and installation has been agreed upon, the risk of loss will pass to the ordering party after the goods mounted and installed at the orderer's company, or, if agreed upon, after the products have successfully passed a trial run. Likewise, the risk will pass to the ordering party if the latter is responsible for a delay with respect to either one of the following: sending, delivery, the beginning and completion of a product's mounting and installation, the acceptance at the orderer's company or the trial run.

#### **5. Retention of ownership:**

**5.1** Delivered goods shall remain our property until full payment has been effected with respect to all claims arising from the supply agreement, and any outstanding current account balances. We shall be entitled to take back the relevant, delivered goods, if the ordering party is in default on payment or has committed other, non-minor, violations of his contractual obligations. Taking back the delivered goods will be tantamount to a withdrawal from the contract. As a matter of fact, after taking back the product we will be entitled to subsequently sell them. After having deducted the expenditures incurred in connection with said realization process, the realization proceeds will be set off against the debts of the ordering party.

**5.2** As long as the retention of title is effective, the ordering party is not entitled to pledge or assign as security the goods acquired under retention of title. The orderer is entitled to re-sell the goods only in the ordinary course of business and only under the following condition: should the orderer resell the delivered goods to a

reseller, the latter needs to be paid by his customer in turn or the latter reseller retains the ownership of the product until the customer has completely fulfilled the payment obligations.

**5.3** The ordering party hereby assigns to us any claims arising from the resale of goods resold under reservation of title. Should there be any other claims, the claim relinquished to us shall have priority and be satisfied first. The orderer is entitled to collect claims arising from the resale of goods resold under reservation of title only for as long as he is not into default in fulfilling his of title obligations vis-à-vis us or does not sustain financial collapse. If the goods acquired under reservation are resold together with other products the orderer will give priority to our claim and relinquish to us that portion of his total claim (arising from said sale) which corresponds to the sum he has been invoiced by us. The ordering party is required, at our request, to provide us with information necessary to collect the assigned claims, to surrender required documents to us and to inform the debtor of the assignment.

**5.4** The ordering party shall perform any handling and processing whatsoever of retained goods for us without any obligations arising for us from the same. If delivered goods are processed, combined, mixed or blended with other goods that do not belong to us, then we are entitled to co-ownership of the new goods commensurate with the value of our retained goods to the value of other processed goods, which they possess at the time of processing, combining, mixing or blending. Should the ordering party acquire sole ownership of new goods, then the contracting parties hereby agree that the ordering party shall grant to us co-ownership in the new goods commensurate with the value of our retained goods in any such new goods, which they possess at the time of processing, combining, mixing or blending, and that the ordering party shall keep our proportionate share in said new goods in safe custody for us free of charge. If retained goods are resold together with other goods, and more precisely regardless of combining, mixing or blending, then the aforementioned advance assignment, as agreed above, shall solely apply to the amount of the value of retained goods that are resold together with the other goods.

**5.5** As collateral for our claims against him, the ordering party shall also assign to us his claims against third parties arising from linking the delivered goods – or delivered goods as processed, combined, mixed or blended, where appropriate – to real estate.

**5.6** The ordering party is required to inform us immediately of any attachment, seizure or any other judicial enforcement procedures or dispositions of third parties concerning the reserved goods or the claims assigned in advance and to surrender to us all documentation necessary for intervention.

**5.7** In the event that the realizable value of the aforementioned collateral exceeds secured claims by more than 10 %, then we are obligated, at the ordering party's request, to release an appropriate portion of the collateral we hold: selection of the collateral to be released shall be our responsibility.

## **6. Delivery Dates:**

**6.1** Correct and punctual self-delivery is reserved.

**6.2** Any agreed delivery dates shall be deemed adhered to if the goods have left the plant or warehouse on such date or if notice has been given that goods are ready for dispatch or where pre-acceptance is performed by or on the delivery date. Partial deliveries are permissible. The delivery date shall extend for a reasonable period, if the ordering party fails to furnish in due time the documentation, permits, workpieces, devices or any other performances he is obliged to provide, or in the event of unforeseeable, extraordinary events that cannot be averted despite required and reasonable due diligence exercised under given conditions, such as, for example, interruptions in business operations, strikes and lockouts, import or export bans, non-issue or revocation of permits or other measures instituted by authorities; this shall also apply if one of the aforementioned occurrences happens to a supplier or another manufacturer. If the ordering party is in default on performing agreed partial payments, then the delivery date shall commensurately extend.

## **7. Warranty:**

**7.1** If the performance we render is defective, including the absence of the specification agreed upon, then we

shall, at our own discretion, supply replacement delivery or rectify our original delivery. In this regard, we shall be granted no less than two attempts to perform replacement or rectification. If replacement delivery or rectification of our original delivery fails, then the ordering party can, at his own discretion, either rescind the contract or demand a reduction in price.

**7.2** Unless the obvious defects of our goods are in our performances are reported to us immediately in writing, (i.e., within 14 days after delivery at the latest) and the hidden defects are reported to us in writing promptly upon their discoveries all and any of the ordering party's rights to performances under warranty shall be excluded.

**7.3** We are not liable for damages that arise outside our scope of performance and influence through improper utilization or treatment, erroneous installation and operation by the ordering party or any third parties, natural wear and tear, inappropriate operating materials, replacement materials, electrical or chemical affects.

**7.4** Our written order confirmations and the documents referred to therein are exclusively authoritative for the scope of our deliveries and performances. Technical information regarding the delivered goods, including illustrations, drawings and application reports as well as any weight specifications requested by the ordering party do not in the meaning of § 443 BGB constitute any guaranty with respect to quality. We provide no guarantee for adherence to foreign packaging and customs regulations. We reserve the right to make technical improvements, also without notifying the customer of the same or harmonizing them with the customer.

**7.5** The warranty period is 12 months. The warranty period commences with delivery of the goods to the ordering party.

**7.6** All further claims of the ordering party are excluded, especially claims for damages which do not occur to the delivered goods themselves. This shall not apply in instances of intent or gross negligence or culpable violation of important contractual obligations. In the event of culpable violation of important contractual obligations, we shall solely assume liability for damages that are typical for contracts and could have reasonably been foreseen – except in instances of intent or gross negligence. The exclusion of liability shall not apply to guarantees with respect to quality, provided that it was specifically intended to safeguard the ordering party against damages, if the warranty with respect to quality be missing. Moreover, the exclusion of liability shall not apply in instances where liability is assumed, under product liability law, for personal injury or property damage at or on privately utilized objects in the event of defects in the delivered good.

## **8. Industrial Property Rights and Copyright:**

**8.1** For objects manufactured in compliance with information provided by the ordering party, the ordering party shall assume warranty for the fact that proprietary rights of third parties are not violated by manufacturing and operating any such objects. In the latter case the ordering party releases us from all claims of third parties based on violation of proprietary rights.

**8.2** If third parties assert any claim against the orderer which arise from the violation of industrial property rights with respect to the goods we delivered, and the claim has been ascertained by a court to be valid or was accepted by us legitimate, we shall take either one of the following steps, which we deem appropriate and for which we shall bear the costs:

- a) procure a license for the ordering party or
- b) alter the product accordingly and free of charge or
- c) replace the respective product by one that is not covered by industrial property rights, or

Should the aforementioned steps not be feasible or should they be excessively expensive (so that they cannot be reasonably requested) we will take back the goods and refund the orderer accordingly.

Unless we have intentionally or grossly negligently violated industrial property rights any claim in excess of the aforementioned claim are excluded. In that case we shall not be liable for more than the price of the delivered product.

**8.3** Claims that arise from the violation of industrial property rights, and that are asserted by the ordering party are ruled out in the following instances:

If (and to the extent that) the ordering party is responsible for the violation of the industrial property right;  
if said violation has been the outcome of specific directions given by the ordering party;  
if said violation was the outcome of a certain product application which we could not foresee;  
if said violation was due to the fact that the orderer or third parties altered the products we delivered or if said violation is due to the fact that the orderer or third parties applied (used) said products together with other products we did not deliver. Moreover, the ordering party might not assert any claims against us that arise from an industrial right's violation if such claims are due to the fact that the ordering party uses or sells products after having been informed that the use or sale of the products will violate the industrial rights of third parties.

**8.4** Any additional claim that might arise from industrial property rights' violation are ruled out. The following liability regulations remain unaffected by the aforementioned and so does the ordering party's right to withdraw from the contract.

#### **9. Redemption obligation pursuant to the German Electrical and Electronics Equipment Act (ElektroG):**

As far as the Electrical and Electronics Equipment Act provides or implies an obligation for taking back or disposing of supplied products by the manufacturer, the following terms apply:

**9.1** The customer accepts the obligation to properly dispose of the supplied goods after use, in accordance with the statutory provisions and at its own expense.

**9.2** The customer shall release the supplier from its obligations pursuant to Sec. 10 (2) Electrical and Electronics Equipment Act (Manufacturer's redemption obligation), and thus from any related third-party claims.

**9.3** The customer shall bind third-party businesses to which it supplies the delivered goods by contract to properly dispose of these goods after use, in accordance with the statutory provisions, and in case they are sold on, to bind the receiving party accordingly.

**9.4** If the customer fails to bind any third party to which he supplies the delivered goods by contract to properly dispose of these and to bind any receiving party accordingly, the customer shall be obliged to take back the delivered goods after use and to dispose of them in accordance with the statutory provision at its own expense.

**9.5** The manufacturer's entitlement to be released from his redemption obligations by the customer shall expire no sooner than two years from the definite termination of use of the device. This two-year delay will begin no sooner than the day the manufacturer receives a written notice from the customer confirming the end of use.

#### **10. Liability:**

Apart from the claims granted to the ordering party under these provisions, the ordering party shall have no further claims to compensation, and especially no claims to compensation due to delays in deliveries, frustration of contract, violations of obligations at conclusion of contract as well as tortious acts. This exclusion of liability shall not apply in instances of intent or gross negligence, or violation of an important contractual obligation or occurrence of personal injury that should have been prevented by the violated obligation. For all remaining purposes, liability is limited to foreseeable damages typical for contracts, insofar as these damages are not intentional or caused by gross negligence. Furthermore, this exclusion of liability shall not apply in instances where liability is assumed, under product liability law, for personal injury or property damage at or on privately utilized objects in the event of defects in the delivered good.

#### **11. Compensation upon cancellation of contract:**

If an order is cancelled for a reason for which the ordering party is responsible, then the ordering party is required to pay us 25 % of the net value of the cancelled order as compensation; notwithstanding possible assertion of claims for higher actual damages. The ordering party has the right to proof that the value of loss is lower than 25 %.

**12. Saving clause:**

If any of the provisions of these terms are or become partially or wholly invalid, then this shall not affect the validity of the contract as a whole and the remaining terms of sale, delivery and payment. In this case, the parties are obligated to replace the invalid or infeasible terms or contractual provisions with agreements that come closest to the intended purpose of the original term or provision being replaced.

**13. Place of performance, venue of courts and applicable law:**

**13.1** Berlin, Germany shall constitute the sole venue of courts for all disputes arising directly or indirectly from the contractual relationship, insofar as ordering parties pertain to legal entities under public law or to special funds under public law or to businessmen – except for businessmen whose operations, pursuant to the kind and scope thereof, do not have to be established as a full business operation. Our address as stated on our order confirmation shall constitute the place of performance for businessmen or other persons as defined under the first sentence of this provision.

**13.2** The contractual relationship is subject to German law in all cases, in particular the German Civil Code (BGB) and the German Commercial Code (HGB), under exclusion of all conflicting laws and the Vienna version of the UN Convention on Contracts for the International Sale of Good (CISG).

DirectPhotonics Industries GmbH  
Max-Planck-Straße 3  
D-12489 Berlin  
Germany  
Phone: +49-30-6392 87240  
Fax: +49-30-6392-8142  
Email: [sales@directphotonics.com](mailto:sales@directphotonics.com)  
Web: [www.directphotonics.com](http://www.directphotonics.com)