

General Purchasing Terms and Conditions



Carl Zeiss Optronics GmbH

Version 8/2011

1. Scope

1.1 These general purchasing terms and conditions apply to goods and services supplied to Carl Zeiss Optronics GmbH, unless any other agreements have been made

1.2 Other general terms and conditions shall not apply even if these were not explicitly contradicted in individual cases or if ordered goods have been accepted without any reservation.

2. Terms used

2.1 Carl Zeiss Optronics GmbH is hereinafter referred to as the Client.

2.2 The respective contractual partner of Carl Zeiss Optronics GmbH is referred to as the Supplier.

3. Orders

3.1 Orders and acceptance must be made in writing. Additional verbal agreements made before and after the conclusion of the contract shall only be legally binding if confirmed by the Client in writing.

3.2 If the Supplier does not accept the order within 14 days, the Client shall be entitled to revoke the order free of charge.

4. Consequences of failure to meet deadlines

4.1 Advance deliveries shall only be permissible with the Client's approval. The place of performance for the delivery of the Supplier's goods and services shall be the destination specified in the order. If no destination has been specified and the destination cannot be derived from the nature of the obligation, the Client's business domicile shall be considered the place of performance. In the event that any delays on the part of the Supplier are to be expected or have occurred, the Client shall be notified immediately so that a decision about the further course of action can be taken.

4.2 If the Supplier fails to deliver within a period of grace set by the Client, the Client shall be entitled without further warning to reject subsequent acceptance, to repudiate the contract or demand compensation for nonperformance. The Client shall also be entitled to repudiate the contract if the Supplier is not responsible for the delay.

4.3 If the Supplier defaults on delivery, the Client shall be entitled to claim a penalty totaling 0.5% of the value of the delayed goods or services per week or part thereof. However, the Client may claim no more than 8% of the value of the delayed goods or services as such penalty.

5. Prices

The prices shall be maximum prices. They shall include all expenses and costs relating to the goods and services to be provided by the Supplier.

6. Fulfillment and delivery

6.1 The Supplier shall be entitled to have the delivery of goods or services performed by third parties only with the Client's prior written approval. Partial deliveries shall require the Client's approval.

6.2 Every delivery must be accompanied by a delivery note indicating the order number, the item number, the material number and, if requested,

the appertaining serial numbers and other identifications requested by the Client in the order. A shipping advice must be sent to the Client no later than the day of delivery. Additional costs incurred by the Client through non-compliance with the above stipulations shall be borne by the Supplier.

6.3 Supplied technical goods must be accompanied by a technical description and a user manual free of charge. With software products, the delivery agreement is only fulfilled if full system and user documentation has been provided. Where programs are written specially for the Client, the program must also be supplied with the source code.

6.4 The Supplier shall be obliged to notify the Client immediately if its goods or services are not suitable for the intended purpose. This shall be inapplicable only in cases where the Client did not inform the Supplier about the intended use of the goods or services or if this use was not recognizable for the Supplier in any other way.

6.5 The Supplier must inform the Client immediately about changes to the composition of the processed material or the design of goods or services. The Client must approve the changes in writing.

6.6 If the Supplier converts documentation provided by the Client to its own documentation, he must bear the appropriate costs and make sure that the documentation created by him complies with the contractual stipulations and the Client's documentation. The Supplier shall immediately notify the Client of any deficiencies or discrepancies in the documentation provided. The Client has no obligation to check and approve the documentation created by the Supplier. The Supplier shall grant the Client the right to inspect and comment on the documentation created by the Supplier. However, such inspection or comments shall by no means exempt the Supplier from the obligation to comply with the scope of the goods and services in accordance with the contract.

7. Duty of update deliveries

The Supplier shall be obliged to supply the delivery items or spare parts at reasonable terms for the period of standard technical utilization, but at least for 25 years after the last delivery. If the supplier intends to stop delivery of further items or spare parts during or after this period, it shall notify the Client immediately in writing and give him the opportunity to place final orders.

8. Invoices, payments

8.1 Invoices must be submitted to the Client by separate mail.

8.2 The day on which the Client's bank has received the remittance order shall be considered the date of payment.

8.3 Payments shall not be construed as acceptance that the goods or services conform to the contract. If the goods or services are found to be faulty or incomplete, the Client shall be entitled, notwithstanding any other rights, to withhold payments until the Supplier has properly fulfilled its obligations.



- 8.4 The Supplier shall not be entitled to assign its claims vis-à-vis the Client to a third party or to have them collected by a third party without the Client's written consent.
- 9. Quality, safety, risk management, environmental protection and right of access**
- 9.1 The supplier must ensure that its goods and services comply with the legal regulations for environmental protection, accident prevention, industrial safety and security applicable in the Federal Republic of Germany. Furthermore, the Supplier must notify the Client of treatment and disposal requirements for each delivery. The relevant inspection and other certificates, verification documents as well as protective devices and any manufacturer's instructions shall be supplied free of charge.
- 9.2 Carl Zeiss Optronics GmbH staff to whom the task has been specifically entrusted and representatives of official bodies will have access at all times during normal business hours to business premises in which work for Carl Zeiss Optronics GmbH is performed, irrespective of whether the premises to be visited are those of the supplier or of the supplier's sub-contractors; for audit purposes or for the verification of legal requirements, they will also be able to have sight of all documents which are to be used and are relevant to the order. The decision on which of its employees are to be given access as described above will be taken solely by Carl Zeiss Optronics GmbH.
- 9.3 If Carl Zeiss Optronics GmbH has given its approval, the representatives of the Client, Carl Zeiss Optronics GmbH, will have access at all times during normal business hours to business premises in which work for Carl Zeiss Optronics GmbH is performed.
- 9.4 If so requested by Carl Zeiss Optronics GmbH, the Supplier will undertake a risk assessment on all parts which have been identified as critical parts and submit the results to Carl Zeiss Optronics GmbH.
- 10. Import and export regulations**
- 10.1 For goods and services provided by a country within the European Union (EU) outside the Federal Republic of Germany, the Supplier must specify its EU-value added tax identification number.
- 10.2. The Supplier is obliged to provide at its own expense the information about its supplier's declaration required in accordance with EC regulation no. 1207/2001, to permit inspections by the customs authorities and to obtain and provide the necessary official approvals.
- 10.3 The Supplier shall be obliged to inform the Client in writing no later than in its quotation
- (i) whether the goods and services (or a part thereof) are subject to US export control regulations. If this is the case, the "Export Control Classification Number" (ECCN) must be indicated if the goods and services are subject to the Export Administration Regulations (EAR), or the United States Munitions List Number (USML) must be indicated if the goods and services are subject to the International Traffic in Arms Regulations (ITAR). If the goods and services are subject to the ITAR-regulations, information must be provided as to whether the goods and services (or a part thereof) are classified as "Significant Military Equipment" (§ 120.7 ITAR) or as "Major Defense Equipment" (§ 120.8 ITAR);
- (ii) whether the goods and services (or a part thereof) are subject to national export control regulations. If this is the case, the export list number must be indicated and information provided as to whether the Supplier must submit declarations according to national (re)export regulations (e.g. Own Production Declaration) to the Client prior to the export of the goods and services;
- (iii) whether the goods and services are subject to international or EC export control regulations (e.g. EC regulations no. 428/2009 and 432/2007). If this is the case, the relevant number of the Control List and the Embargo Regulation must be indicated.
- (iv) what the country of origin and the statistical goods number of the goods and services are (i.e. commodity code).
- 10.4 If the information required according to point 10.3 is not provided at all or provided incorrectly, the Client shall be entitled to terminate the contract.
- 11. Acceptance test, ownership rights**
- 11.1 Goods and services must be acceptance-tested by the Client. Commissioning or use shall not replace the acceptance test.
- 11.2 The delivered goods shall become the Client's property no later than on delivery. Prolonged or extended reservation of ownership shall be excluded.
- 12. Duty of inspection and complaint, inspection requirements**
- The Client shall check random samples of the incoming goods and services; a detailed examination shall not be made before the goods and services are used. In this respect, the Supplier waives the objection of delay in lodging a complaint.
- 13. Liability for defects in quality and defects in title**
- 13.1 The Supplier shall grant a warranty that the goods and services shall remain free from defects for a period of 36 months after the date of passage of risk.
- 13.2 The warranty shall be suspended for the period beginning with the date on which the Client dispatches a notice of defect and ending on the date when defect-free goods or services are received.
- 13.3 At the Client's option, defects shall be remedied by repair or the supply of a replacement at the Supplier's risk.
- 13.4 The Supplier shall bear all expenses and costs incurred in connection with the identification and correction of any defects.
- 13.5 In the case of delay, failure or refusal of the repair or replacement, or in urgent cases, the Client shall also be entitled to replacement at the Supplier's expense. The Client may consider the repair or replacement as failed if the first attempt at remedying the defect has not been successful.
- 13.6. The Supplier shall indemnify the Client from all claims by third parties made on the Client because of material defects or defects in title – regardless

- of the legal reason – and reimburse the costs required for the respective legal action.
- 14. Technical documentation, tools, supplies**
- 14.1 Technical documents, tools, factory standards, production supplies, special operating material, etc. provided by the Client shall remain the Client's property; all trademark, copyright and other industrial property rights shall remain with the Client. The objects specified above, including all duplicates, must be returned to the Client without explicitly being requested immediately after execution of the order. Therefore, the Supplier shall not be entitled to enforce the right of retention. The Supplier may use the objects specified above only for the execution of the order; it is not entitled to make these objects available to unauthorized third parties in any way. Duplication of the objects is only permitted to the extent required to execute the order.
- 14.2 If the Supplier produces the objects specified in sentence 1 of clause 14.1 for the Client partly or fully at the Client's expense, clause 14.1 shall apply accordingly. On production of the objects, the Client shall become the (co-)owner in proportion to its share in the production costs. The Supplier shall store the objects for the Client free of charge. The Client can acquire the Supplier's rights to the object at any time by paying the Supplier's share in the costs and demand that the objects be surrendered to him.
- 15. Provision of materials**
- 15.1 Any material provided by the Client shall remain the Client's property and shall be kept by the Supplier free of charge and with due commercial diligence separate from other goods and marked as the Client's property. The material may only be used for the execution of the order. Damage to the provided material must be replaced. The Supplier shall be obliged to perform any required maintenance and repair work at its own expense. Furthermore, it must insure the objects sufficiently and verify this insurance vis-à-vis the Client on its request.
- 15.2 If the Supplier processes or transforms the material provided, this activity shall be deemed to be performed for the Client. The Client shall immediately become the owner of the new objects thus created. If the material provided only makes up a part of the new objects, the Client shall be the co-owner of the new objects in proportion to the value of the provided material incorporated in them. The Supplier shall store the co-owned material for the Client free of charge.
- 16. Confidentiality**
- 16.1 The Supplier shall be obliged to treat as confidential all non-public information and data (particularly that of a commercial or technical nature) which it gains knowledge of within the context of the business relationship and not to pass them on to third parties. The same obligation applies to any sub-suppliers or other third parties whom the Supplier involves in contract performance.
- 16.2 The Supplier shall not be entitled to publicly exhibit products specially made for the Client unless the Client has given its written consent. The same
- 16.3 applies to the publication of orders and services as well as reference to orders vis-à-vis third parties. When supplying references or publishing and exhibiting products, the Supplier may use the company name or trademark of the Client only with the Client's prior written approval.
- 17. Place of jurisdiction, applicable law, validity of the terms**
- 17.1 The place of jurisdiction for any legal action against the Client under this contract shall be the Client's domicile, provided that the Supplier is a merchant in the sense of the German Commercial Code. However, the Client shall be entitled to bring matters before the court at the Supplier's domicile or any other competent court.
- 17.2 The law of the Federal Republic of Germany shall apply, but excluding the provisions referring to the CISG and any reference clause of German private international law.
- 17.3 Should any individual clauses of these general purchasing terms be invalid either in whole or in part, this shall have no influence on the effectiveness of the other clauses.