

## GENERAL TERMS OF CONDITIONS (GTC) of ifw optronics GmbH, Jena (1/2011)

### 1. GENERAL PROVISIONS

Our General Terms and Conditions of Business shall be exclusively applicable to our customers and underlie all, including future deliveries and services of **ifw optronics GmbH**. By ordering goods or services these general terms and conditions of sale shall be held as accepted. Any adverse terms and conditions of sale or customer's purchase deviating from our GTC's shall only be applied if we accepted these provisions expressly in writing. Collateral or additional agreements of this contract are ineffective unless they are accepted expressly in writing by **ifw optronics GmbH**. Purchase conditions of our customers do not bind **ifw optronics GmbH** when contradicted expressly.

Orders are only valid when confirmed in writing by **ifw optronics GmbH**. Orders are not binding until accepted by **ifw optronics GmbH** in writing. Telegraphic, telephonic or oral amendments or supplements to an agreement also need our written confirmation for their effectiveness. Refinements or amendments of orders or services of **ifw optronics GmbH** are valid as long as they are reasonable to the counterparty in consideration of **ifw optronics GmbH's** interests.

### 2. QUOTATIONS

Offers of **ifw optronics GmbH** are non-binding and subject to change without notice as long as no deviating general terms and conditions are made. Documents such as pictures, drawings and/or weight or size specifications are only approximately authoritative unless they are identified as expressly binding. **ifw optronics GmbH** reserves the property rights and copyright of any calculations, drawings and other documents; they shall not be accessible to a third party and shall be treated as confidential documents.

For service orders as well as development orders written deadline and price confirmations shall be valid as a non-binding target date/ price but not as binding covenant, since unexpected changes of deadlines or prices might occur.

### 3. DELIVERY AND PRICES

The quantity of supply is based on a binding written confirmation of order.

Additional services, which were not included in the original offer, shall be charged separately, such as measurements and calibration within the bounds of order transaction, whose necessity were not foreseeable at the time of order processing or order confirmation or which are enforced at the request of the counterparty.

Our prices are calculated ex works, plus package, insurance, freight, papers, postage; partial deliveries and express items, unless differing provisions are stated in the confirmation of contract. All prices are respectively applicable value added tax shall apply.

Non-foreseeable changes of customs, import and export duties in Germany or any other supplying countries, currency rates etc. authorize **ifw optronics GmbH** for an adequate price adjustment.

Delivery periods and delivery deadlines shall be considered as binding only if expressly defined as binding on our confirmation of contract award. Delivery periods and delivery deadlines start with the date of our confirmation of contract award, but not before all contract details are clarified by presenting all required certificates. Delivery periods and delivery deadlines refer to the moment of readiness for dispatch. These terms shall be considered as complied with when the goods cannot be sent on time without our default.

### 4. PAYMENT CONDITIONS

Unless explicitly otherwise agreed, all payments have to be settled within 14 calendar days of invoice date cash or by bank transfer into our business account. A payment shall be considered settled on the day of transfer to our buyer's paying office. Payments have to be settled net at our paying agency. The settlement of the invoiced amount by exchange and credit cards will not be accepted.

When exceeding the statutory payment deadline **ifw optronics GmbH** reserves their right to charge statutory interests. The counterparty pays the expenses of all operating, any legal as well as enforcement costs.

The withholdings of payments or set-off due to any denied counter demands by the supplier are not admissible.

All payments shall be charged to the oldest debt and with interests and costs independently from differing provisions by the counterparty.

### 5. RETENTION OF TITLE

**ifw optronics GmbH** retains ownership on the goods subject to retention of title until payment in full of the price of all incidentals or interests. In case the counterparty resells the delivered goods all of this resell's originated demands towards his buyer convey to **ifw optronics GmbH** with all its ancillary rights.

During the period of title retention the counterparty is responsible of insuring the delivered goods against all possible damages.

Processing and manufacturing of the goods are carried out by **ifw optronics GmbH** as a manufacturer in terms of § 950 BGB, without obligations. The manufactured goods are subject to retention of title in terms of the first paragraph. In case of processing, combining or mixing of goods subject to retention of title with goods of the customer, we shall be entitled to co-ownership of the new property in as much as the invoiced value of goods sold with retention of title relates to the value of the other involved goods. Where our co-ownership becomes null and void due to processing, combining or mixing with other goods, the customer immediately assigns to us his rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of our title. He shall also be responsible for holding such rights in safe custody on our behalf and at his own expense. Any rights to co-ownership created as a result of such processing, combining or mixing shall be subject to paragraph 1 of these Terms and Conditions.

The customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in normal business operations, as long as the customer is not defaulting. The customer shall be prohibited from taking any other disposition regarding goods for which we retain title. We shall be promptly notified about any hypothecation or other seizure of goods under retention of title through a third party. All intervention costs will be charged to the customer if and to the extent that they cannot be collected from such third party. If the customer grants his buyer additional time for payment of the sales price, customer shall reserve title in goods resold with retention of our title under the same terms which we have applied when delivering such goods with retention of title. The customer shall be prohibited from any other kind of resale.

The customer immediately assigns to **ifw optronics GmbH** any receivables resulting from a resale of goods initially sold with retention of our title. These will be used to substitute the goods under retention of title as collateral of the equivalent amount. The customer shall only be entitled and

authorized to resell such goods if his receivables therefrom accrue to us.

If the customer resells goods under retention of our title together with goods from other suppliers at a certain total price, the customer shall assign to us his receivables from such resale in the same amount as stated in our invoice for goods initially sold with retention of title.

If an assigned receivable is included into a current account, the customer immediately assigns to us that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.

Until we give notice of revocation, the customer shall be authorized to collect receivables assigned to us. We shall be entitled to such revocation if the customer fails to meet his payment obligations under the business relationship with us in due course. If the preconditions for exercising a revocation right are fulfilled, the customer shall promptly notify us of any assigned receivables with respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. We reserve the right to personally advise the debtors of such assignment.

If the value of the collateral deposited in our benefit exceeds the amount of secured claims by a total of more than fifty (50) per cent, the customer shall be entitled to demand that we insofar release securities of our own choice.

If we claim retention of title, this shall only be understood as rescind of the contract if expressly stated so by us in writing. The customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.

### 6. CUSTOM-MADE PRODUCTS

Cancellation of contracts with development services and customized modifications is not possible. In case of a cancellation during the development period the buyer will be charged for the hitherto incurred investments with an additional charge for lost profit.

For large orders interim billings will mature, according to the amount of work and costs incurred.

### 7. SHIPMENT, PASSING OF RISK

Unless otherwise expressly agreed, shipment shall always be carried out at the customer's risk. The risk, even partial deliveries, shall pass to the customer as soon as the goods have been handed over to the person executing the shipment or delivery ex works. Paragraph §§446, 447 BGB are applicable.

If a shipment is delayed for reasons to be attributed to the customer, the risk of accidental deterioration, loss and destruction shall pass to the customer on notification of our readiness to ship. Required storage costs after passing of risk shall be borne by the customer.

If the customer defaults in accepting, we shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the customer.

### 8. WARRANTY

The legal requirements for warranty of all goods delivered by **ifw optronics GmbH** cover a period of 12 months, starting from the point of transfer of risk, applicable by section 7 of these GTC's. Enclosed or available data sheets belonging to the

related product are an integral part of the contract. Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with our original product specifications, unless the customer can show that the defect in question resulted from another cause.

The goods claimed to be defective shall be returned to us for examination in their original or equivalent packaging. We shall remedy defects if the warranty claim is valid and within the warranty period. It is at our discretion whether we remedy the defect by repair or replacement. We shall only bear costs necessary to remedy the defect as long as they do not increase by shipping goods from the counterparty to another place of delivery. We shall be entitled to refuse to remedy defects in accordance with our statutory rights. We may refuse to remedy defects if the customer has not complied with our request to return the goods claimed to be defective.

The customer shall be entitled to rescind the contract or reduce the contract price in accordance with his statutory rights, however, the customer shall not be entitled to rescind the contract or to reduce the contract price, unless the Customer has previously given us twice a reasonable period to remedy the defect which we have failed to observe, unless setting of such a period to remedy defects is dispensable. In the event of rescission, customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.

We shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. The customer shall have no rights against us in respect of defects in goods sold as lower-class or used goods. Furthermore **ifw optronics GmbH** shall not accept any liability for defects caused by abnormal handling, normal wear and tear, incorrect or neglectful handling, exceeding or improper wear, the use of improper equipment, chemical, electronic or electric influence as well as climate or natural influence.

Any warranty shall be void if materials are used that are not in accordance with our original product specifications. If assured qualities are changed due to the use of additional materials this shall not be considered as a defect. **ifw optronics GmbH** shall not be liable to take back goods, for diminution or remedies.

Goods delivered by **ifw optronics GmbH** shall be examined instantly with respect to quality and quantity. **ifw optronics GmbH** shall only be liable for then detected defects if these are announced by an immediate written notice, according to §377HGB. Warranty claims shall be announced immediately, one week after recognition of the defect the latest. After one week any kind of warranty claim shall forfeit.

In order to make necessary changes as well as deliver spare parts, the counterparty shall allow us time and possibility without charge.

Liability for defects or warranty deed forfeit if reparation was done unauthorized, by the counterparty or by any third party.

The replacement of parts or assembly groups shall not enforce new warranty periods, unless in case of malice aforethought or gross negligence. They shall only enforce the suspension of the period of limitation due to accepted warranty claims.

**ifw optronics GmbH** reserves their right for technical and constructive changes on their goods. In case of spare deliveries with improved goods the balance of the improved product's value will be charged.

In case of improper handling of our products or their use as an element of a system solution with a resulting defect we deny any claims and compensation.

## 9. CLAIM FOR DAMAGES

**ifw optronics GmbH** shall not be liable for defects which were not caused on the delivering goods itself, especially not for lost profit or any financial damage of the counterparty.

**ifw optronics GmbH** shall only be liable for any kind of claims for damages and/ or reimbursement of expenses due to contract violations, neglect of duty during contract negotiations, violations according to responsibilities based on a written contract, delay or impossibility, if there is evidence of our vicarious party's malice aforethought or malicious negligence. However our liability is restricted - apart from the case of malice aforethought - to foreseeable contract coherent damage.

The limitation period for claims against us –based on whatever legal ground– is 12 months from the date of delivery to the customer and in case of tortious claims, 12 months from the date the customer becomes aware or would have become aware of the grounds giving rise to a claim and the liable person, had the customer not been grossly negligent. Possible shorter legal suspensions of limitation periods have priority. The exclusions and limitations of liability shall not apply in cases of injury to health or physical injury or where we have maliciously failed to disclose a defect or where the laws on product liability impose overriding liabilities which cannot be excluded.

## 10. PROPERTY RIGHTS

We are not liable for the function of a product based on drawings, prototypes or any other instructions by the counterparty or any other defects, as long as these circumstances are based on the counterparty's instructions. The buyer exempts **ifw optronics GmbH** from any possible demands by a counterparty, even product liability, about defects caused by the goods, unless they were caused intentionally or gross negligently.

The counterparty shall be liable towards us that the manufacturing and delivery based on the buyer's instructions do not violate any property rights of a third party. In case of a claim for property rights against **ifw optronics GmbH** we shall be authorized to assign from this contract without hearing the counterparty, unless the third party withdraws the claims for property rights within 14 calendar days in a written form. The counterparty shall be liable for compensating the financial loss to **ifw optronics GmbH** due to a claim for property rights. In case of a withdrawal, payments for the work done by **ifw optronics GmbH** shall be made by the counterparty. This shall not affect any further rights according to statutory rights.

Drafts, data sheets, models, tools, design documents etc. fully remain our property. The counterparty shall have no further claims, even though they covered payments for the manufacturing of development sheets and models, tools and design documents, unless otherwise expressly agreed. Any use of these documents by the counterparty or a third party authorized by the counterparty is prohibited and causes claim for damages by **ifw optronics GmbH**.

## 11. MISCELLANEOUS/ SEVERABILITY CLAUSE

Place of fulfillment for any deliveries ex works shall be the supplying plant, for remaining deliveries our storage. Governing law for all contract privities between **ifw optronics GmbH** and the buyer shall be the law of Germany with the exclusion of the international conflict of law provisions thereof and with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Should any of the clauses of these Terms and Conditions be wholly or partially invalid, the validity of the remaining clauses or parts thereof shall not be affected. In lieu of ineffective or unfeasible provisions the effective and feasible provision shall be liable which reaches the original purpose as close as possible.

## 12. LEGAL VENUE

Any delivery of goods and services by us shall be obligatory subject to the law of Germany. Place of fulfillment for our deliveries and payments shall be Jena.

Legal venue for disputes resulting from this contractual relationship shall be the district court of Jena. The presented legal venue shall be liable to non-qualified traders, as far as claims in this process need to be asserted.