

General Terms and Conditions of Sale and Performance of S 1 Optics GmbH

(Version: August 2008)

I. Application

1. Our deliveries and other services are effected solely in accordance with the General Terms and Conditions of Sale and Performance set forth hereinbelow. We do not recognize any terms and conditions of the contracting partner contradicting or deviating from our General Terms and Conditions of Sale and Performance; the application of such terms is explicitly opposed. Our General Terms and Conditions of Sale and Performance apply even if we effect delivery/performance without reservation whilst being aware of terms and conditions of our contracting partner deviating from or contradicting our Terms and Conditions.
2. The following General Terms and Conditions of Sale and Performance only apply to enterprises within the meaning of Section 14 of the German Civil Code (BGB) and to public law legal entities and to public law special funds.

II. Entering into a Contract, Written Form, Deviating Agreements, Guaranties

1. Our brochures and advertisements are not to be considered as constituting a legally-binding offer to enter into a contract.
2. The written declarations given by each party are to be deemed authoritative for the content of the contracts agreed with us. If a contract is entered into without any such declarations having been made by each party, our written order confirmation alone shall be authoritative.
3. Deviating agreements, ancillary and additional agreements are only binding in individual instances after being confirmed by us in writing.
4. Any granting of a guarantee by us requires an express written agreement to this effect designated as "*Garantie*". Our product descriptions do not constitute a guarantee within the meaning of Section 443 German Civil Code (BGB).

III. Offer Documentation and Business Secrets, Costs

1. The documentation belonging to the offer, such as illustrations, drawings, indications of weights and measurements, are only approximate unless they are explicitly stated as being binding.
2. We retain, without limitation, the exploitation rights under ownership and copyright law with regard to the cost estimates, drawings and other documents, in accordance with Section X; they may only be disclosed to third parties with our prior consent. We are under obligation to only disclose to third parties plans marked confidential by the customer if the customer has given us its prior consent.
3. Design drawings are not supplied in principle.

IV. Scope of Delivery and of Services to be Performed

1. In the absence of a special written agreement, only our written order confirmation is authoritative for the scope of delivery and of the other services to be performed.
2. If the order is changed in retrospect, the additional services shall be charged.
3. Our coatings are in compliance with the safety requirements of the relevant European norms (EN). Furthermore, the applicable international standards (ISO/IEC) are taken into consideration as state of the art.

V. Prices and Payments, Setoff and Right of Retention

1. Prices are ex works pursuant to the latest version of the INCO Terms, excluding packaging and insurance and also excluding Value Added Tax which must always be paid in addition to our prices, at the statutory rate applicable on the invoice date.
2. We shall charge for samples of special coatings in accordance with the terms and conditions agreed upon.
3. Payments shall be effected to us on the due date thereof with no deductions whatsoever, i.e. for bank charges etc., in accordance with the payment terms agreed in writing.
4. The customer may only offset those claims which are undisputed or recognized by final and binding judgment; setoff is not permissible in any other respect. The assertion of a right of retention with respect to counterclaims not acknowledged or not recognized by final and binding judgment is excluded insofar as such claims are not based on the same legal relationship.

VI. Provision of Substrates by the Customer

1. The customer is obliged to provide the requisite substrates free of charge and with customs clearance. If this is not possible or if the customer does not comply with this obligation, we shall pre-pay such costs and then charge the customer for the full costs thereof with no surcharge.
2. We have the right but are not obliged to subject the substrates provided by the customer to full or partial incoming goods control. If we should detect any defects, we have the right to return the substrates to the customer and to demand the provision of substrates free of defects.
3. In the case of the toll coating of serial parts, we shall reach a separate agreement with the customer on a larger number of substrates required to be provided than the number of ultimately finished parts on account of possible rejects.
4. In all other respects Section XIII shall remain unaffected, in particular subsection 2 thereof.

VII. Delivery Date

1. The delivery period results from the agreements reached by the parties. Delivery periods indicated by the seller are only binding if they have been explicitly confirmed by us in writing. The precondition for compliance with delivery dates by

us is the punctual receipt of all items and documents to be provided by the customer and the compliance with payment terms agreed upon and with other obligations, including any collaboration duties, by the customer. If such preconditions are not met on time, the delivery period shall be reasonably extended. This shall not apply insofar as we are accountable for the delay.

2. If non-compliance with the delivery period is due to force majeure or other events outside our sphere of influence, e.g. labour disputes, then the delivery period shall be reasonably extended. We shall notify the customer promptly of the beginning and end of such impediments.
3. If we are in default, the customer may claim compensation for damages for each complete week of default in an amount of 0.5% of the value of that part of the overall delivery which it was not possible to use in time or in accordance with the contract on account of the default, but not exceeding, on aggregate, 5% of the value of that part of the overall delivery which it was not possible to use in time or in accordance with the contract on account of the default – insofar as the customer can evidence that it has suffered a loss. Any further claims for compensation of the default damage are excluded. In all other respects other claims for damages by the customer on account of delayed delivery are governed by Section XII / XIII of these Terms and Conditions. Claims for compensation on account of delayed delivery shall not arise if we are not accountable for the delayed delivery.
4. The customer may withdraw from the contract within the framework of the applicable statutory provisions insofar as we are accountable for the delayed delivery.

VIII. Passing of the Risk, Part Performance

1. Risk shall pass to the customer when the item for delivery is dispatched from our premises, risk also passes then if part delivery is effected or if we have assumed responsibility for other performance, e.g. costs of shipping, or delivery and assembly. At the customer's request and expense we shall insure the consignment against customary transport risks.
2. If dispatch is delayed for reasons for which the customer is accountable, the risk shall pass to the customer from the date of our notification that the goods are ready for dispatch. We undertake to take out the insurance required by the customer at the customer's request and expense.
3. Part deliveries are admissible if the customer can be reasonably expected to accept them.

IX. Acceptance

1. In the case of a contract for work, the customer is obliged to accept the work duly produced.
2. Acceptance shall be effected by taking delivery of the work without complaint. This shall be deemed effected if the customer does not notify a complaint with regard to the work within 14 days of delivery, to the effect that the work is defective or not in conformity with the contract. The notification of complaint must be given in writing.
3. The customer may not refuse acceptance in the event of minor defects.

X. Reservation of Title

1. All items delivered by us shall remain our property until all of our claims from the business relationship with the customer have been paid.
2. The customer is obliged to treat the item delivered with care pending transfer of ownership.
3. In the event of default of payment by the customer we have the right to demand the surrender of the goods delivered subject to reservation of title, after the expiry to no avail of a reasonable period of time set for the customer to perform; the applicable statutory provisions on the dispensability of setting a time period shall remain unaffected. Reclaiming the item delivered or asserting the reservation of title on account of default of payment constitutes rescission of the contract except insofar as we expressly stipulate otherwise. We can similarly demand the surrender of the item delivered if the customer treats our property improperly or otherwise acts in breach of contract. In this case our demand for surrender of the item delivered does not constitute rescission of the contract.
4. If the item delivered is reclaimed pursuant to subsection 3 above, any repayment of payments already made by the customer for the goods shall only be made in the amount of the current market value less our loss, the decrease in value, compensation for the period of use by the customer of the item delivered, the recovery costs, e.g. transport costs, and our loss of profit.
5. The customer has the right to re-sell, in the normal course of business, the items delivered by us, in compliance with all the safety precautions and accident prevention regulations to be observed in the concrete case. However, the customer assigns to us now already all claims in the amount of the final invoice amount (including VAT) of our claim to which the customer is entitled from its customers or third parties from such re-sale, irrespective of whether the item delivered was re-sold with or without any processing. The customer remains entitled to collect this claim even after assignment thereof. Our authority to collect the claim ourselves remains unaffected hereby. We undertake, however, not to collect the claim as long as the customer complies with its payment obligations, is not in default of payment and, in particular, if no application has been filed for the initiation of insolvency

proceedings and the customer has not suspended payments. If this is the case, however, we can demand that the customer notifies us of the assigned claims and the debtors thereof, provides all of the details required to make the collection and delivers to us all of the respective documentation and advises the debtor of the assignment.

6. Any working or processing of the goods subject to reservation of title is effected for us within the meaning of Section 950 of the German Civil Code (BGB), without any obligation upon us. The processed goods are deemed to be goods subject to reservation of title within the meaning of these Terms and Conditions. If the goods subject to reservation of title are processed or irretrievably intermingled with other goods not belonging to us, we acquire joint ownership of the new thing in the same proportion as the relationship between the invoice value of the goods subject to reservation of title and the invoice value of the other goods used, at the time of the processing or intermingling. The joint ownership rights thus arising are deemed to be goods subject to reservation of title within the meaning of these Terms and Conditions. If our goods are joined or irretrievably intermingled with other movable items to form one uniform thing and if the other thing is to be regarded as the principal thing, then it is deemed agreed that the customer assigns to us proportionate joint ownership, insofar as the principal thing belongs to the customer. In all other respects the same applies to the thing created by processing, joining and intermingling as applies to the goods subject to reservation of title.
7. At the customer's request we undertake to release the security to which we are entitled to the extent that the realizable value of our security exceeds the amount of the claims to be secured by more than 10 %. The selection of the security to be released is incumbent upon us.
8. With regard to the goods of the customer to be processed by us (in particular when coating is performed) we shall acquire ownership in the new thing except insofar as the value of the processing or working is considerably less than the value of the initial item.

XI. Industrial Property Rights

1. If we have to deliver in accordance with drawings, models or samples, or by utilising free-issue parts of the customer, then the customer is responsible for this not infringing any protective rights of third parties in the country of destination of the goods. We shall advise the customer of rights known to us. The customer shall indemnify us against claims by third parties and compensate for the loss arising. If the customer is enjoined by a third party from manufacturing or supplying on the basis of a protective right belonging to the third party, then we are entitled – without examining the legal position – to suspend the work pending clarification of the legal position by the customer and the third party. If we cannot be reasonably expected to continue the order as a result of the delay, then we are entitled to rescind.
2. Upon request, we shall return drawings and samples provided to us which have not led to an order, otherwise we are entitled to destroy these three months after making a quotation. This obligation applies to the customer accordingly. The party entitled to destroy has to inform the other contracting party in good time of its intention to destroy.
3. We have the copyright and, if applicable, other ownership and industrial property rights, in particular all rights of use and exploitation, in the models, moulds, and devices, drafts and drawings designed by us or by third parties on our behalf.
4. Section III shall remain unaffected.

XII. Liability for Defects in the Delivery/Performance

1. The preconditions for claims with regard to defects by the customer are, in the case of a commercial transaction, that the customer complies with its examination obligations and obligation to notify defects, owed pursuant to Section 377 and Section 381 (2) of the German Commercial Code (HGB). Complaints on account of incomplete or defective performance must be notified to us in writing promptly, no later than 10 days after taking delivery of the goods, in the event of concealed defects, immediately upon the discovery thereof.
2. With regard to defects in the item delivered or in our performance at the time of the passing of risk we are liable as follows:
 - a) We provide a warranty that the item is free of defects for one year from the date of delivery of the item delivered or from acceptance if acceptance is required.
 - b) We provide supplementary performance at our discretion by supplying a defect-free thing / producing a defect-free work or by repair. We must be granted adequate time and opportunity for supplementary performance. If we are denied this opportunity, we are released from the obligation to effect supplementary performance and from further claims on account of defects in the item delivered/work.
 - c) Claims by the customer on account of expenses necessary for the purpose of supplementary performance, in particular, transport, transportation, labour and material costs, are excluded insofar as such expenses are increased due to the fact that the item delivered/work was brought to a different delivery location other than the one agreed by contract.
 - d) Within the framework of the applicable statutory provisions, the customer has the right to rescind the contract or to reduce the purchase price or have a refund if we have allowed a reasonable period of time set by the customer for supplementary performance to expire to no avail, if the supplementary performance definitively fails or if it is impossible (failure of supplementary performance). If a defect is only minor, the customer only has the right to reduce

the purchase price or have a refund if supplementary performance fails. Any claims with regard to defects other than those mentioned hereinabove are excluded – subject to Section XII 2, Section XII 3 of these Terms and Conditions.

- e) No warranty is provided for defects which are caused by circumstances lying in the customer's sphere of influence, in particular in the following cases: the provision of an object for coating which is, contrary to our requirements, of poor quality or unsuitable for coating; natural wear and tear of the item delivered/work; unsuitable or improper use of the item delivered/work; faulty assembly or commissioning by the customer or by third parties, insofar as we are not responsible for this; deficient or negligent treatment of the item delivered/work; defects as a result of such thermal, chemical, electro-chemical, electric or other special external influences after the passing of risk which are not assumed under the contract.
 - f) Furthermore there are no claims with regard to defects if the customer or third parties has/have undertaken alterations or repairs of the item delivered/work without our written consent and, as is suspected, the alterations or repairs led to the defect.
 - g) There are no claims with regard to defects if the item delivered/work is operated with unsuitable accessories of third parties.
 - h) Further, no warranty is given for any public statements, in particular not for advertising statements, which we make to the public on any properties of the goods.
3. Individual contracts on a reject quota remain unaffected by these General Terms and Conditions.
 4. In the case of coating developments and sample coatings there is a risk of the desired specification not being achieved. We do not assume liability for non-achievement of the specification after conducting a prior risk analysis, insofar as intent or gross negligence is not imputable to us and unless otherwise agreed in writing in an individual contract. In the event of gross negligence by persons who are not statutory representatives and not managerial employees of our company ("Organe" or "leitende Angestellte") our liability is limited to the value of the order ("batch costs") ("Chargenkosten"). Section XIII subsection 2 remains unaffected with regard to the components/substrates.

XIII. Overall Liability

1. If the item delivered/work cannot be used by the customer in accordance with the contract through our fault as a result of a failure to give information or advice or of faulty information or advice or through the violation of other contractual ancillary duties, the provisions of Section XII and of the following subsections shall apply accordingly, to the exclusion of further claims by the customer.
2. We do not assume liability for damage to components/substrates provided to us for processing, insofar as intent or gross negligence is not imputable to us and unless otherwise agreed in writing in an individual contract. In the event of gross negligence by persons who are not statutory representatives and not managerial employees of our company ("Organe" or "leitende Angestellte"), our liability is limited to compensation of the loss or damage reasonably foreseeable and typical of the contract. The customer is at liberty to insure the components/substrates provided for processing against damage and destruction of all kinds, including, in particular, insurance against breakage.
3. With regard to damage not caused to the item delivered/work itself, we are liable for whatsoever legal grounds in the case of fatal injury, damage to body or health (personal injury). The same shall apply in the event of other damage insofar as this is based on a deliberate or grossly negligent violation of an obligation by us or by a statutory representative, agent employed in the performance of an obligation or a vicarious agent. We are further liable in cases of statutory liability provisions with mandatory application in accordance with the preconditions and scope thereof, for damage, in particular for personal injury and damage to property used privately pursuant to the German Product Liability Act. Any further liability by us is excluded subject to subsection 4 below.
4. Insofar as we violate a material contractual duty by slight negligence and insofar as there is no personal injury as defined in subsection 3, our duty to provide compensation is limited to reasonably foreseeable damage, typical of the contract.

XV. Our Right to Rescind

In the event of unforeseen events within the meaning of Section VI of these Terms and Conditions, insofar as the economic significance or content of the performance should considerably change or have a considerable effect on our business and in the event that it should ensue in retrospect that execution is impossible, the contract shall be reasonably adjusted. Insofar as this is not economically reasonable, we have the right to rescind the contract in whole or in part. If we wish to exercise this right of rescission, we must advise the customer thereof promptly after we realize the scope of the event, even if an extension of the delivery period was initially agreed with the customer.

XV. Place of Performance, Jurisdiction and Venue

1. If the customer is a merchant as defined in the German Commercial Code (HGB), a public law legal entity or a public law special fund, then the place of performance for all obligations arising from the contractual relationship with us is Nürtingen, Germany.
2. If the customer is a merchant as defined in the German Commercial Code (HGB), a public law legal entity or a public law special fund, then it is deemed agreed that the courts with jurisdiction for Nürtingen, Germany, have jurisdiction over disputes arising from or in connection with our deliveries and performance and with claiming any bank guaranties. In derogation from this we are also entitled to take legal action at the principal place of business of the customer.

XVI. Applicable Law

The laws of the Federal Republic of Germany apply to the contractual relationship.

XVII. Data Protection

In accordance with the provisions of the German Data Protection Act we advise that our bookkeeping is conducted using data processing equipment and that in this connection we compile, process and use in an automated process, the data we receive from the customer on the basis of the business relationship with the customer, to the extent required to establish, develop or amend the contractual relationship at any one time.

XVIII. Partial Invalidity

If it transpires that a provision of this contract is ineffective, this does not affect the validity of the remainder of the provisions of the contract.