

GENERAL TERMS AND CONDITIONS OF SALE (GTCs).

1. GENERAL

1.1 Our terms and conditions of sale apply exclusively to all of our provision of goods, services and offers, including those made in the future. We do not recognize purchaser terms that conflict with or differ from our terms; the general terms and conditions of the purchaser are hereby objected to. Our terms and conditions of sale shall also apply where we have knowledge of conflicting or differing terms of the purchaser and supply goods to the purchaser without reservation.

1.2 These GTCs apply only where the purchaser is an entrepreneur, a legal entity governed by public law or a public-law special fund. The same applies to purchasers which carry on a business outside of Switzerland which is comparable to that of a domestic entrepreneur, as well as to foreign institutions which are comparable to domestic legal entities governed by public law or to a domestic public-law special fund. An entrepreneur means a natural person or legal entity or a partnership with legal status which is acting in furtherance of its commercial or professional business in entering into a legal transaction.

2. FORMATION OF CONTRACT

2.1 With respect to quantity, delivery time and delivery possibility our offer is subject to change provided not indicated otherwise in our confirmation of order (art. 7 Swiss Code of Obligations, CO). However, the order is generally qualified as an offer. Acceptance on our part (confirmation of order) may take place within two weeks unless the purchaser has specified another period for acceptance.

2.2 A contract is only formed upon our written confirmation of order. Where a confirmation of order is not provided in an individual case or the contract is formed without a confirmation of order our offer is determinative with respect to the content of the contract. Where the purchaser and the seller have mutually signed a written document on the delivery of goods and where this document contains all of the contractual terms, this document shall be regarded as amounting to a written confirmation of order.

2.3 All of the agreements relating to the contract and its performance entered into between us and the purchaser must be in writing for these to be effective. This also applies to the acceptance of an order. The renunciation of the written form must also be written.

2.4 For custom orders we reserve the right to provide goods that are manufactured with higher or lesser standards within reason provided that such differentiation is unavoidable and that in doing so, the balanced relationship between performance and consideration is maintained. The purchaser will be informed about this in advance.

2.5 We retain exclusive ownership rights and copyright in respect of our offer letters, depictions, diagrams, calculations and other materials – including those in electronic form. These may not be provided to third parties, made known to these or copied by the addressee or by third parties without our express consent.

2.6 Information provided to us by the purchaser is deemed to not be confidential, unless he declares them expressly as confidential to us.

3. PRICES

3.1 Provided not set out otherwise in the confirmation of order, prices are quoted in Swiss Francs “ex works” exclusive of packaging. Packaging and other additional and special services will be calculated separately.

3.2 We reserve the right to change our prices correspondingly where costs reductions or increases arise after the contract is formed, in particular due to collective agreements or increases in raw materials costs. These will be proven to the purchaser at its request.

3.3 Statutory value-added tax is not included in our offers, costs estimates and in the confirmation of order unless expressly referenced as such. For export deliveries this also applies to customs duties and other public charges. Statutory value-added tax will be separately stated in the invoice in the statutory amount on the date that the invoice is issued.

4. SHIPPING AND TRANSFER OF RISK

4.1 Shipping shall take place ex works for the account and at the risk of the purchaser; the latter also applies where we assume shipping costs or only make partial delivery on the basis of a special agreement.

4.2 The return of packaging materials is not accepted unless otherwise agreed to. For deliveries made in rail or freight forwarding containers the containers must be returned to the freight forwarding deliverer within 48 hours of receipt. Charges for delay caused by the sender of the empty containers shall be borne by it.

5. PERFORMANCE OF DELIVERY

5.1 The delivery dates and periods proposed by us are only approximate unless a fixed period or fixed date has been expressly accepted or agreed to. Delivery in accordance with a fixed date or period requires that the purchaser fulfills its participatory duties, in particular in the complete clarification of the technical details of the order, provides materials and documents to us in the scope agreed to on a timely basis and makes prepayments and provides security for payment on time.

5.2 Where deliveries cannot be made due to force majeure and unforeseeable events for which we are not responsible, in particular administrative measures and import and export restrictions, we shall only be obliged to make such deliveries once the obstacle to delivery has been remedied. This shall also apply to unforeseen delivery difficulties for which we are not responsible in connection with raw materials, energy or prior or intermediate products which are required for the manufacture of the goods. We will immediately inform the purchaser of the commencement and end of such obstacles to delivery as soon as we have got certain knowledge about the unforeseeable event.

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These obstacles to delivery shall also entitle us to withdraw from the contract without entitling the purchaser to assert claims for damages. In this case, the reimbursement of payments made by the purchaser shall take place without delay.

5.3 We are entitled to make partial deliveries and to provide services in part where

- ▶ the partial delivery or the partial services can be used by the purchaser
- ▶ provision of the remaining delivery and remaining services is ensured and
- ▶ the purchaser is not required to bear significant additional costs as a result of the partial delivery or the partial services.

5.4 In the event that we are in default of delivery or the performance of services, or such delivery or performance becomes impossible, regardless of the reason, and where no event pursuant to section 5.3 has occurred, our liability is limited to the damages pursuant to section 12 of these GTCs.

5.5 On-call orders may be performed subject to the capability to manufacture these.

6. RESERVATION OF TITLE

6.1 Until the fulfilment of all claims – including future and conditional claims – under deliveries agreed to on the basis of these terms and conditions, as well as the net claim under the current account balance of the above-noted claims, we retain ownership title to all goods delivered (so-called goods subject to a reservation of title). In the event of behaviour of the purchaser in breach of contract, in particular in the event of payment default, we shall be entitled to reclaim the goods purchased. Our reclamation of goods shall constitute a withdrawal from the contract. Upon reclamation of the goods purchased we shall be entitled to sell these; the sales proceeds shall be applied toward the amounts owed by the purchaser (minus reasonable realization costs).

6.2 The purchaser shall insure the goods against typical risks.

6.3 The goods sold pursuant to a reservation of title may only be processed in the ordinary course of business. Where processing is undertaken the reservation of title shall extend to the new goods created through the processing, in which we retain common title in proportion to the calculated value of the goods subject to reservation of title and the other goods in which we have no ownership title at the time of processing. The same shall apply to goods created as a result of the processing as applies to the goods purchased subject to reservation of title. In the event that the goods purchased are inseparably commingled with or attached to goods in which we have no ownership title, we shall acquire common title to the new goods in proportion to the calculated value of the goods subject to reservation of title and the value of the other goods at the time of processing. If the commingling takes place in such a manner that the goods purchased are regarded as the principle goods, it is deemed to be agreed that the purchaser assigns us proportionate common title. The same shall apply to the goods arising as a result of the commingling or the attachment as applies to the goods purchased subject to reser-

vation of title. The purchaser shall hold such goods for us free of cost. The purchaser also assigns to us as security the claim securing our claim against a third party which arises on its part as a result of attaching the goods purchased to real property.

6.4 The purchaser may resell the goods subject to reservation of title provided this takes place in the ordinary course of business. The purchaser hereby assigns to us in advance its claims against customers or third parties arising under a resale of the goods subject to reservation of title in the amount of the final invoice amount plus value-added tax of our claims. It is irrelevant whether the goods subject to reservation of title are resold without processing or having been processed. The purchaser remains entitled to collect on the assigned claim. Our authorization to collect on the assigned claim is unaffected thereby. We undertake to refrain from collecting on the claim provided the purchaser fulfils its payment obligations, is not in default of payment and – in particular – provided no application for the commencement of insolvency proceedings has been filed or the purchaser has stopped making payments as due. If this occurs, we may demand that the purchaser informs us of the assigned claims and their debtors, provides us with all information required for collection, provides us with all documents in connection therewith and notifies the debtors of the assignment. We undertake to release the security to which we are entitled at the request of the purchaser to the extent that the recovery value of our security exceeds the claims secured by more than 20 %. We are entitled to select the security to be released.

6.5 Liens or security assignments of the goods subject to reservation of title are prohibited. In the event that third parties have access to the goods subject to reservation of title, and in particular in the event that liens are created, the purchaser shall provide notice of our ownership title and shall inform us immediately. The purchaser shall be liable for all costs incurred by us in connection with this.

6.6 In the event of purchaser behaviour in breach of this contract, in particular default of payment, upon setting a reasonable deadline we are entitled to demand that the goods subject to reservation of title be returned to us; the purchaser is obliged to effect such return.

7. PURCHASER DEFAULT AND LUMP-SUM DAMAGES

7.1 We are entitled to make outstanding deliveries and to perform outstanding services only upon prepayment or the provision of security where circumstances become known to us after entering into the contract that are suitable to significantly reduce the purchaser's creditworthiness and which endanger the payment of our outstanding claims by the purchaser under the respective contract (including other individual orders which are governed by the same framework agreement).

7.2 Where we are entitled to assert damages claims against the purchaser due to nonperformance or default, we shall be entitled – without having to prove such damages – to claim damages in the amount of 15 % of the purchase price unless the purchaser proves that lower damages were incurred. The assertion and proof of higher compensation for damages by us is reserved. This provision does not constitute a contractual penalty.

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8. PAYMENT METHODS

8.1 Invoices are due payable 30 days after the date thereof unless the otherwise provided for in the confirmation of order. The receipt of payment by us shall be determinative in respect of compliance with this period. Where defects are asserted this shall not affect the invoice amount for the non-defective portion of the goods supplied becoming due and payable.

8.2 Regardless of whether any other payment terms are asserted by the purchaser all payments shall be applied first toward interest and costs and then toward the respective oldest claims. We will inform the purchaser of the specific application of payments that has taken place without delay.

8.3 Where we become aware of circumstances which are suitable to significantly reduce the purchaser's creditworthiness and which endanger the payment of our outstanding claims we are entitled to perform outstanding services only in exchange for prepayment or the provision of further security. In this case, we may also render due and payable all outstanding debts with immediate effect, in particular, where amounts owed are outstanding.

8.4 In the event that bills of exchange and cheques are accepted any account fees arising shall be charged and are immediately due payable. The payment of the invoice amount shall take place only upon the redemption of the instrument.

9. CONSEQUENCES OF DEFAULT

9.1 Where the purchaser is in default of payment interest in the amount of 5% p/a shall be charged on the outstanding amounts as of the date these are due. In the event that we can prove higher default interest we are entitled to claim this.

9.2 In the event of payment default or the improper redemption of a payment instrument all further claims shall become immediately due payable, including all existing claims under cheques or bills of exchange.

10. OFFSET

The purchaser may only exercise rights of offset where its counterclaims are determined by the courts to be legally binding and/or these have been recognized by us. The purchaser is entitled to exercise a right to retain amounts to the extent that the counterclaim is undisputed, recognized in writing by us or determined by the courts to be legally binding to the extent that the counterclaim is based on the same contractual relationship.

11. WARRANTY

11.1 The rights of the customer to assert warranties for defects are conditional upon the customer carefully inspecting our goods and services

immediately upon delivery or performance. Product or legal title defects must be notified by the purchaser to the seller immediately in writing.

11.2 The information contained in the offer and the confirmation of order does not amount to a warranty of fitness unless this is separately agreed to.

11.3 Where we are responsible for a defect in the goods purchased we are entitled to remedy the defect or to provide substitute goods at the choice of the purchaser. Where we are not prepared or capable of providing the remedy selected by the purchaser, e.g. due to the high cost thereof, we may refuse to provide this remedy and may refer the purchaser to the possibility of other right of warranty. However, the purchaser is only entitled to withdraw from the contract (rescission) or to reasonably reduce the purchase price (reduction) after two remedies of the defect have been unsuccessful.

11.4 The assignment of warranty rights that may be asserted against is us not permitted without our written consent.

11.5 Liability for defects is excluded where the reduction in value or suitability of the goods provided is insignificant. In the event of separable performance the purchaser remains liable for payment of the non-defective portion.

11.6 In the event of defects in components of other manufacturers that are also sold and which we are unable to remedy due to licensing or factual reasons, we shall be entitled at our choice to assert our warranty claims against the manufacturers or suppliers for the account of the purchaser or to assign these to the purchaser. Warranty claims may be asserted against us in respect of such defects only under the other conditions set out above and in accordance with these terms and conditions where the enforcement before the courts of the above-noted claims against the manufacturer and supplier was unsuccessful or, e.g. as a result of an insolvency, is futile. The limitation period for the respective warranty claims of the purchaser is stayed for the duration of the legal dispute.

11.7 The limitation period for the assertion of warranty claims commences on the date that risk in the goods is transferred or the date of delivery of the goods and amounts to one year.

12. LIABILITY

12.1 We answer for the careful fulfilment of our contractual obligations and are only liable for indirect and direct damages being connected with that, if we have caused them deliberately or gross negligently. The liability for indirect or direct damages we caused with minor negligence is excluded.

12.2 To the performance of a contract we are entitled to call third parties or associates and are only liable in this case for damages caused deliberately or gross negligently.

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12.3 We are not liable for third parties whom we selected together with the purchaser. Opposite these we act in the name and on behalf of the purchaser.

12.4 Where we provide technical information or serve in a consulting role and this information or consulting is not included within the contractually-agreed scope of performance owed by us this shall take place free of charge and subject to the exclusion of all liability.

12.5 Liability for wilful injury to life, bodily integrity and health shall remain unaffected; this also applies to liability under the Product Liability Act.

12.6 Our liability under a warranty assumed by us is not governed by the above agreements, but instead, by the terms of the warranty and statutory laws.

12.7 The above agreements shall apply irrespective of the legal grounds for liability and in particular to claims founded outside of contract and in tort.

12.8 Provided not otherwise set out in this section 12, the liability of the seller is excluded to the extent permitted by law. This shall also apply with regard to our representatives and agents.

13. SPECIAL TERMS FOR COMMISSION PROCESSING

13.1 It is a precondition for the provision of our services that the purchaser provides us with a written order in respect of all of the components that are to be processed by us containing the following information:

- a. description, number or number of units, net weight, value of the component and type of packaging;
- b. material;
- c. requested processing;
- d. details on the testing process requested.

13.2 Provided not otherwise agreed, the components to be processed by us shall be delivered to us together with the required documentation pursuant to section 13.1 at the costs and risk of the purchaser and shall be collected there once our commission processing has been completed. Where the shipping of the components is agreed, risk shall be transferred to the purchaser upon the goods being delivered to the railway, the shipping agent or the freight forwarder or upon the commencement of storage, but in any event no later than when the components leave our factory or warehouse; this shall also apply where we have assumed responsibility for the collection and delivery with our own transportation means.

13.3 The processing to be performed by us on the components as commission processing shall be performed in particular pursuant to the information provided by the purchaser as a service in compliance with engineering codes. We provide no warranty for the success of the processing. Where the processing performed by us in accordance with the contract and in accordance with the information under section 13.1 does not result in success without us being responsible for this, the purchaser re-

mains liable to make payment of the agreed compensation. Any subsequent processing that is required and separately ordered by the purchaser will be additionally charged to the purchaser.

13.4 Our liability for damage to the components and other damages as a result of defects is governed by section 12.

14. COMPLIANCE

The purchaser undertakes to comply with all legal requirements, in particular with those in connection with the prevention of corruption, unfair trade practices and competition laws. In particular, it undertakes to refrain from offering, promising or granting our employees or relatives of these any illegitimate benefits. The same duties apply in respect of the employees of the purchaser, its agents and other third parties acting on the instructions of the purchaser and who shall be required to provide corresponding undertakings.

15. DATA PROTECTION

We are authorized to store or process purchaser information in terms of the Data Protection Act in the context of the purpose clause of the contract relationship.

16. ENVIRONMENTAL CLAUSE/PACKAGING

16.1 In disposing of the goods the purchaser shall comply with the information accompanying the goods and shall ensure that the goods specified on the bill of delivery are properly disposed of in accordance with statutory laws.

16.2 The purchaser is obliged to arrange for such disposal at its own cost. The purchaser shall transfer this obligation to a subsequent purchaser upon the resale of the goods or their components

17. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHTS

17.1 The purchaser shall notify us immediately in writing if third parties assert claims based on the infringement of intellectual property rights or copyrights against the purchaser based on its use of the goods/services. In these cases we reserve all rights to defend against such claims and to undertake all out-of-court measures to secure the defence of our legal position. The purchaser shall support us in doing so.

17.2 We shall only be liable for the infringement of intellectual property rights or copyrights of third parties where the respective third party is also entitled to such rights in the territory of Switzerland or the country in which delivery is to be made or the country in which the subject of the purchase is intended to be used pursuant to the purpose of the contract.

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The latter shall apply only where those countries covered by the purpose of the contract have been expressly set out in the confirmation of order.

18. SITE OF PERFORMANCE, VENUE, APPLICABLE LAW AND PARTIAL INVALIDITY

18.1 These general terms and conditions of sale and the legal relationship between the seller and the purchaser are governed by the laws of Switzerland subject to the exclusion of UN commercial law.

18.2 Where a term of these GTCs is or shall become ineffective the effectiveness of all of the remaining terms and agreements shall remain unaffected.

18.3 The site of performance for all duties under the contractual relationship shall be the site of the registered office of Swiss Optic AG.

18.4 The German version of the GTCs is binding and comes first especially in the case of objections, lack of clarity or incompleteness with the English version.

Heerbrugg, February 8, 2013