

**General Purchasing Terms and Conditions of Thorlabs GmbH**  
**as of March2011**

**§ 1 General, Applicability**

These General Purchasing Terms and Conditions exclusively apply to all purchase orders, order agreements and call orders. Any terms and conditions of the supplier which are contradictory to or not expressly contained in these General Terms and Conditions will not be valid unless express, written authorization is received.

Acceptance of goods or services, or their payment, shall not be regarded as agreement to sales and delivery terms which deviate from these General Purchasing Terms and Conditions.

**§ 2 Purchase Orders**

(1)

Purchase orders, agreements and call off deliveries as well as any changes or supplements require express written, and signed, agreement. Transfers via data transfer as well as EDP printouts are valid without a signed agreement.

(2)

Should the supplier not confirm the order within two weeks after receipt of the order in a written form (order confirmation) we reserve the right to cancel the order. Call off orders are binding unless the supplier does not reject the order within five work days from the date of receipt in a written form.

**§ 3 Prices, Shipping, Passage of Risk**

(1)

Agreed prices are fixed prices and are regarded - in addition to applicable value-added tax - as delivered, delivery duty paid (DDP - Delivery Duty Paid, Incoterms 2010) to our receiver including packing. The type of shipment shall be agreed with us.

(2)

Should the price „ex works“ or „ex warehouse“ be agreed, we shall only take over the least expensive freight charges. If we also paid, besides the purchasing price, taxes, freight or insurance charges, such costs shall be stated separately in the invoice. All charges incurred up to the handover to the carrier including loading and excluding cartage shall be payable by the order taker. The pricing terms shall not affect the location of the fulfilment of the agreement.

(3)

As far as possible and admissible, we shall assume responsibility for the disposal of packing material at the supplier's charge. Otherwise the supplier must assume all charges for the regular collection of the packing material, at the place of delivery, and organise the proper disposal.

(4)

The transfer of risk will take place at receiving department, as defined by us.

**§ 4 Payment Conditions**

If no specific terms have been agreed, invoices shall be paid within 14 days with a deduction of 3 % discount, or within 30 days net. The payment term begins as soon as the delivery/service has been rendered completely and an invoice which meets legal requirements has been received by us. Payments do not substantiate the acceptance of the

delivery or service as being in accordance with the agreement. Copies of invoices must be marked as duplicates.

## **§ 5 Deadlines, Delays**

(1)

The delivery date stated in the purchase order is binding.

(2)

When the supplier is aware that the agreed deadlines cannot be kept due to any reasons, the supplier shall immediately inform us in writing of the reason and expected duration of the delay, as soon as the circumstances occur or become visible to him. The obligation to keep the agreed dates remains unaffected by this.

(3)

If agreed dates cannot be kept due to a reason the supplier is responsible for, we are entitled to compensation, to our choice, to rescind the agreement after expiration of a reasonable period of grace, or to procure replacement from a third party and/or demand compensation for damages due to non-fulfilment.

(4)

In the case of delay of deliveries due to force majeure or labour disputes, through no fault of the supplier, we have the choice - without entitling the supplier to compensation - to rescind the agreement either partially or entirely after a reasonable grace period, or to demand the fulfilment of the order at a later date of our choosing.

(5)

The acceptance of a delayed delivery shall not substantiate a waiver of claims for compensation.

(6)

Preliminary, partial or excess deliveries are only allowed with our express allowance and must be stated on delivery documents and invoices.

## **§ 6 Warranty**

(1)

Delivered goods must have the agreed characteristics; they must comply with the details of our order and fulfil state-of-the-art requirements. The supplier warrants that his deliveries and services comply with the applicable legal and governmental regulations, especially the applicable environmental, accident and labour protection regulations.

(2)

Acceptance of the goods is subject to an inspection of the goods for their correctness and applicability. Obvious defects shall be reported within three weeks after receipt of the delivery/service, hidden defects shall be reported immediately after their discovery.

(3)

The legal warranty period of the §§ 438, 634 a) BGB is applicable. The warranty period for production components begins with the delivery of the Thorlabs product to the final customer, but at the least 12 months after transfer of risk to us, in all other cases with the transfer of risk/acceptance of the service.

(4)

In case goods which do not meet specifications are delivered we are entitled to repair or replacement for the substandard goods. The costs for the subsequent fulfilment must be borne by the supplier, also then when the costs for the subsequent fulfilment may increase, as the delivered product after its delivery was transferred to a place other than the original place of destination, unless the transfer to another place does not correspond to the defined usage of the product. If the defect of the delivered product is only visible after installation into a product produced by us, the supplier must also bear all costs for a required removal of a defect at a delivered product, especially labour costs for installation and de-installation. The right to claim compensation, especially for claims for compensation instead of delivery, remains expressly reserved.

If, due to unacceptable quality of the goods provided, a total control, which exceeds the normal incoming control is required, the supplier shall bear all additional costs incurred by the control.

(5)

In urgent cases, e.g. for avoidance of production interruptions, we are entitled to remove defects as well as damage caused by these defects without limit to the cost of the supplier, or to have the removal performed by a third party, at the suppliers expense. The same shall apply when the supplier does not fulfil his obligation to remove defects in a timely manner.

(6)

The supplier shall bear the costs and risk of the return delivery of defective products. Before described claims are subject to a regular statutory limitation acc. to §§ 195, 199 BGB.

## **§ 7 Product Liability**

(1)

As far as the supplier is responsible for damage to a product, he is obliged to free us from claims for damages of third parties on first demand, as the cause is located in his range of responsibility and organization, and he himself is liable in the outer relationship.

(2)

The supplier shall bear all costs and expenditures resulting from this (including the costs for a possible lawsuit or a required reconstruction or recall action). On the contents and scope of the necessary recall actions, we will - as far as possible and reasonable - inform the supplier and give him the chance to submit his comments.

(3)

The supplier is obliged to secure a product liability insurance with a sufficient risk coverage for the term of this agreement, meaning up to the expiry of the defect limitation period. In case that we are entitled to receive further compensation for claims, they remain unaffected by this.

## **§ 8 Protective Rights**

(1)

The supplier shall guarantee that the supplied products are free from rights of third parties. The supplier shall be obliged to inform us when for the products to be delivered their own or a foreign protective right exists.

(2)

The supplier has to indemnify us from claims of third parties due to protective rights violations on our first demand.

(3)

The indemnification obligation of the supplier refers to all expenditure, which are from or in relation to the use of a third party.

(4)

If due to a protective right violation, we or our customers are not allowed to continue the production and/or delivery, the supplier must pay a compensation for the damage caused to us and we will have the choice to acquire a license from the protective right holder or to recall the delivered goods.

### **§ 9 Provision of Materials**

Materials, parts, containers and special packing materials provided by us remain our property. They may only be used for the purpose for which they were designed. Further processing of materials and the assembly of parts is made for us. It is agreed that that we are the co-owner of the products for which our materials and parts are used, in relation to the value of the provided materials to the value of the entire product, which is stored by the supplier for us. In case of value decreases or losses, the supplier must care for a replacement.

### **§ 10 Tools, Forms, Samples, etc.**

Tools, forms, samples, models, profiles, drawings, test specifications, standards, print samples and templates, or any products based on these materials, provided by us may neither be handed over to third parties nor be used for other purposes than the contractually agreed purposes. They must be protected against unauthorized observation and usage. In addition to other rights, we may request their return when the supplier violates these obligations.

### **§ 11 Order Control**

In case of larger delivery orders, we reserve the right to occasionally send one of our representatives to the production or delivery site in order to personally control the status and the progress, as well as the handling of the order. The representative shall get extensive technical information.

### **§ 12 Secrecy**

All information the supplier received from us, as far as they are not generally known or in another way legally known, shall not be disclosed by the supplier to third parties even after termination of the business relationship and may only be used for the execution of the orders placed. Products, which are produced acc. documents prepared by us such as drafts, models and the like or acc. to our confidential information or with our tools or re-built tools, may not be used by the supplier himself nor offered or delivered to third parties. This shall also apply to print orders. The supplier shall be obliged to urge that this secrecy agreement must also be fulfilled by sub-contractors and/or sub-suppliers in its full extent.

### **§ 13 Assignment of Claims**

Assignment of claims for payments from our side may only be allowed with our written consent. This may only be refused due to a compelling reason.

#### **§ 14 Place of Jurisdiction, Applicable Law**

(1)

As far as the supplier is a fully qualified merchant, we determine as place of jurisdiction that place where the order was placed, or Dachau.

(2)

The agreement is governed by the rights of the Federal Republic of Germany, except the conflict of laws. The application of the general Hague purchasing laws, the general UN purchasing law or other conventions for the right of purchasing are excluded.

#### **§ 15 Salvatorian Clause**

Should one or several terms of our general purchasing terms and conditions be or become ineffective, the other terms and conditions shall remain effective. The parties to the contract are obliged to agree an effective term or condition, which is nearest to the ineffective term and condition.