

## 1. Terms, Scope

- 1.1. Now and in the future, all our quotations, deliveries and other services are subject to these general terms and conditions.
- 1.2. Our general terms and conditions are exclusive, i.e. divergent terms and conditions or terms and conditions set forth by the customer, which are not included in our terms and conditions, will not be honored if we have not expressly and in writing consented to their application. Customer confirmations referring to the customer's own terms and conditions of purchase will be deemed insignificant.
- 1.3. All stipulations made between the customer and us for the purpose of executing this contract are included in writing in this contract. Any modifications or supplements thereof need to be laid down in writing.

## 2. Quotation and Contract Conclusion

- 2.1. Our quotations are to be understood as non-binding and without any obligation. Orders come into force only after we have confirmed them in writing.
- 2.2. Modifications of technical details as well as reasonable modifications of shape, color, and/or weight shall remain reserved.
- 2.3. If the order confirmation does not expressly designate them as binding product details, drawings, images, and performance descriptions contained in our catalogues, price lists, and documents related to our quotations are customary approximate values only.
- 2.4. Sales by sample only warrant the technical correctness of the specimens. We do not take on any assurances of applicability whatsoever.
- 2.5. We reserve the sole proprietorship for all our cost estimates, drawings, plans and other offer documents. The copyrighted exploitation rights remain with us exclusively.

## 3. Delivery Periods and Delays

- 3.1. Delivery periods and dates quoted by us are non-binding if they have not been agreed upon as binding. Delivery and service periods agreed upon do, as a rule, not constitute a transaction at a fixed date. They begin upon conclusion of contract, however, not until the customer has fully met his obligation to submit all documents, clearances and other specifications of all details and clarifications of the technical questions pertaining to the desired model and has made the down-payment if agreed upon in the contract.
- 3.2. Every conclusion of contract is subject to the proviso that our suppliers make their deliveries correctly and in time. The customer will be immediately notified of any temporary unavailability of services. If such delay lasts for more than 3 months, and/or it is foreseeable that it will last for more than 3 months, both parties to the contract have the right to withdraw from it. Damage claims by the customer are excluded. If acts of God have led to a violation of deadline, it will be reasonably prolonged. If delivery is unduly impeded or made altogether impossible by unforeseeable circumstances and situations for which we cannot be held responsible, such impediments, e.g. labor disputes, regulatory action, essential interruptions of operations due to partial or total destruction of our plant or its essential departments, or serious transport interruptions, shall be considered equivalent to acts of God. If such circumstances persist for more than 3 months, we have the right to withdraw from the contract. In this case, damage claims by the customer are excluded.
- 3.3. If a delay in delivery or of services is not the result of a deliberate or grossly negligent contract violation on our part, our liability for compensation for such a delay in delivery or of services that may be demanded on top of contractual delivery/service is restricted to 0.75% of the value of the delayed delivery/service for each completed week of delay. However, maximum compensation is restricted to 5% of the value of the delayed delivery/service. If the customer prefers recovery of damages to delivery/service, such damages shall be restricted to 15% of the value of the delayed delivery/service. The liability limits quoted in the above sentences 1 and 2 do not apply in cases of bodily harm or loss of life, and neither do they apply in transactions at a fixed date, i.e. in transactions that stand and fall with the observance of a fixed time of performance.
- 3.4. A reasonable number of partial deliveries is admissible.

## 4. Prices and Terms of Payment

- 4.1. If nothing else arises from our order confirmation or our price list, our prices ex works apply exclusively. The currently applicable VAT must be added to any quoted price.
- 4.2. Should price quotes in our web-shop catalogue deviate from those in our printed catalogue, the web-shop prices override those in the printed catalogue.
- 4.3. If not stated otherwise in the order confirmation, the net purchase price (without any deductions) is due for payment within 30 days from date of invoice.
- 4.4. We reserve the right to invoice partial deliveries separately.
- 4.5. In case of delay of payment, the customer has to pay interest on arrears of 8 percentage points above the base interest rate per year. We reserve the right to claim further damages. The customer forfeits any agreed upon bonuses, price deductions, or rebates in case of delay of payment.
- 4.6. Early payment discounts must be agreed upon in writing.
- 4.7. Any offsetting or claim of rights of retention is only acceptable in cases where the customer holds titles or claims of outstanding payments against us which we have acknowledged, which are non-disputed, and have been determined without further legal recourse. The customer may claim a right of retention only if his claim is based on the same contractual relationship.

- 4.8. If circumstances come to our knowledge which must lead to the conclusive assumption that the customer's pecuniary situation is deteriorating or threatens to deteriorate and therefore endangers contract fulfillment, we reserve the right to immediately revoke previously agreed upon payment periods or deferrals and to retain our own services until the customer has effected payment or a security deposit and has proven that contract fulfillment is actually not endangered. If the payment or the security deposit is not effected within 12 workdays, we reserve the right to withdraw from the contract and to demand damages instead of contract fulfillment.

- 4.9. Despite payment instruction to the contrary, we are entitled to count customer payments against our most recent receivables if the payments may otherwise become disputable. A loss of interest is carried by us. The customer will be notified of the respective offsetting.

- 4.10. If we exempt a customer from his obligation to pay our receivables at regular calendar intervals, our respective residual claim is due for payment in one sum and at once if the customer partially or altogether fails to pay an installment within a period of up to 10 days.

## 5. Delivery Periods, Default of Acceptance

- 5.1. The start of the delivery period quoted by us is set with the general proviso that the customer meets his contractual obligation to cooperate and is conditional upon prior clarification of all technical questions. Furthermore, the fulfillment of our delivery obligation is conditional upon the customer meeting his obligations properly and in due time.
- 5.2. In case of default of acceptance or any grossly negligent violation of cooperation obligations we are entitled to demand compensation for any detriments, including additional expenditures, resulting from such violation. We reserve the right to claim further damages. Our right to withdraw from the contract and to demand compensation for damages incurred instead of contract fulfillment remains unaffected.

## 6. Place of Fulfillment, Transfer of Risk

- 6.1. The place of fulfillment is Dachau. If not stated otherwise in the order confirmation, it is understood that delivery "ex works" or "ex warehouse" has been agreed upon.
- 6.2. If the customer is an entrepreneur, the risk of accidental destruction and accidental deterioration is passed on to him at the moment of handover, in cases of sale by dispatch at the moment of handover of the goods to the hauler, the freight forwarder, or any other person or agent commissioned to carry out delivery.
- 6.3. If the customer is an end-consumer or legally treated as equal to an end-consumer, the risk of accidental destruction and accidental deterioration is not passed on to him until the goods have been delivered to him. The same applies in cases of sale by dispatch.
- 6.4. Paragraph 5.2 of our general terms and conditions applies to the handover if the customer is in default to acceptance.
- 6.5. Transport packaging and all other sorts of packaging subject to the packaging regulations will not be taken back.

## 7. Export Limitations

- 7.1. U.S. and EU export limitation legislation and regulations concerning sales, places of destination, and utilization of goods and appurtenant technical documents must be observed. Any deviation from this regulation shall be considered as a violation of export control regulations and is strictly interdicted.

## 8. Warranty, Notices of Defect, and Liability

- 8.1. For the duration of the warranty period for our products, guarantee is regulated as follows:
  - 8.1.1. Opto-Mechanical Components: Lifetime Warranty.
  - 8.1.2. Optical Tables and Breadboards (excluding support systems): Lifetime Warranty.
  - 8.1.3. Light Sources, Lasers, Modulators, Isolators and Imaging Systems: The lesser of one year and (to the extent applicable) the number of hours specified in the operating manual for such products.
  - 8.1.4. Opto-Electronics, Control Electronics, Optics, Fiber, Nano-Positioning Product Lines, Cameras and Support Systems for Optical Tables and Breadboards: Two year warranty. For products that incorporate a light source (bulb, LED and/or laser diode), such light source is warranted for the lesser of one year or (to the extent applicable) the number of hours specified in the operating manual.
  - 8.1.5. Products Bearing Stamped Expiration Dates: The date noted by the stamp or marking.
  - 8.1.6. Non-Thorlabs Branded Products: The warranty stated by the manufacturer.
  - 8.1.7. Electronics with Hermetically Sealed Chambers: Two years for electronics and five years for protection against moisture infiltration into hermetically sealed chambers.
  - 8.1.8. Products in Need of Regular Calibration (e.g. sensors, polarimeters, power meters etc.): Two years. Measurement accuracy requires user to follow manufacturer's recalibration recommendations.
  - 8.1.9. Microscopy and PI Piezo Products: One year warranty from date of installation
  - 8.1.10. Fiber cleaving, splicing and/or recoating systems: One year warranty.
  - 8.1.11. Interferometric Fiber Inspection Systems: One year warranty.
  - 8.1.12. Cameras with no sensor face plate: Thirty days for sensor, two years for electronics.
  - 8.1.13. Guarantee for the following is ruled out:
    - a) Products which are identified by Thorlabs as a pre-production product, alpha, beta or similar product or a prototype;

- b) Specials, modifications, or customized items (including custom patch cables and customer Fiber Splicing Software) meeting the specifications provided by the customer;
  - c) ESD sensitive products whose protective packaging has been opened or items that are fragile to the touch, once removed from its packaging;
  - d) Products which were repaired or modified by anyone but us;
  - e) Products which were used in combination with other products which were not supplied or expressly declared compatible by us;
  - f) Products which were exposed to inappropriate mechanical, thermic, or electrical stress;
  - g) Products damaged by inappropriate installation, usage, storage, or malpractice;
  - h) Products damaged by accident or negligent usage, storage, transport, or handling;
  - i) The use, fit or function of Products that are assembled or constructed from items of a kit.
- 8.1.14. To the extent the product is incorporated into any other instrument or device, we make no representation with respect to the safety, efficacy, accuracy, reliability, use, or fitness for intended purpose of the product in such integrated product or in such application. To the extent so incorporated into any other instrument or device, or used in such application, customer hereby agrees to indemnify and hold Thorlabs harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs arising from or relating to any defects in and/or the use of the product and such integrated product, and/or the failure of the product or such integrated product to comply with any applicable laws or regulations. Major sub-systems manufactured by other firms but integrated into our product are covered by the original manufacturer's warranty and we make no warranty, express or implied regarding such sub-systems.
- 8.2. If the contract constitutes a commercial transaction for both parties, the customer is obliged to contest in writing any deficiencies of whatever kind immediately if this is compliant with his respective business routine—hidden defects to be reported immediately after detection. Failure to notify constitutes acceptance of the product.
- 8.3. We assume liability for deficient products either by supplementary performance or, at our discretion, by compensation delivery.
- 8.4. If supplementary performance fails, the customer may, at his discretion, demand a price reduction or the right to withdraw from the contract. In case of only a minor contract violation, especially a minor deficiency, the customer, however, does not have such a right of withdrawal.
- 8.5. If the customer chooses to withdraw from the contract due to defect of title or defect as to quality and following defective supplementary performance, he is not entitled to an additional claim of damages because of said defect. If the customer claims damages following a failure of supplementary performance, the product remains with the customer if such practice is not unreasonable. Damages are restricted to the difference between purchase price and value of the defective product. This does not apply if we have deliberately and fraudulently committed the contract violation.
- 8.6. If a defect as to quality leads to a damage to persons we assume liability in accordance with applicable legal provisions if the damage comes within the ambit of the product liability law and was caused wilfully or by gross negligence, or if we have expressly assumed liability.
- 8.7. In case of an only negligent violation of duties on our part or on the part of our agents and suppliers our liability is restricted to damages which are foreseeable and typical for the case in point.
- 8.8. All other contractual and delictual claims by the customer are excluded. We therefore do expressly not assume liability for damages which do not originate from the delivered product, and neither do we assume liability for any loss of profit.
- 8.9. If not stated otherwise in these terms of sale or in the order confirmation, customer claims for defects lapse after a period of 2 years after delivery or performance provision respectively.
- 8.10. The above liability restrictions do not interfere with customer demands resulting from product liability. Furthermore, they do not apply if we are responsible for bodily harm, damage to health, or loss of life of the customer.
- 8.11. Damage claims by an entrepreneur due to defect of title or defect as to quality lapse after one year following delivery of the product. This does not apply if we can be held responsible for gross negligence, neither does this apply if we can be held responsible for bodily harm, damage to health, or loss of life of the customer.
- 8.12. To the extent to which our liability is excluded or limited, this does also apply to the personal liability of our employees, workers, associates, representatives, and agents.
- 9. Product Return/Repair Policy.**
- 9.1. Customer will notify Thorlabs about the occurrence of defective or non-operational Product and request a "Return Authorization Number" (hereinafter referred to as "RMA#") from Thorlabs for the items customer would like to return for repair or replacement by e-mail to the attention of the Customer Service Manager. This RMA# is to be used for all correspondence and shipping documents that relate to the Product.
- 9.2. Customer will ship the defective or non-operational Product to Thorlabs. Customer is responsible for shipping cost.
- 9.3. Upon receipt of the returned Product, Thorlabs will test the Product to verify the defective status of the component within the terms of the Limited Warranty and communicate such results to customer.
- 9.4. Thorlabs will either send a repaired or replacement Product after verifying that the Product returned under the RMA# is in fact defective within the terms of the Limited Warranty. Thorlabs is responsible for shipping costs of replacement Product to the customer.

**10. Reservation of Proprietary Rights**

- 10.1. We reserve the proprietary rights for all products delivered to the customer until he has fully complied with all our claims for payment – including future claims – and all secondary claims (e.g. costs of bills of exchange, costs of financing, interest costs) resulting from our business relationship with him. In case a current account agreement has been made with the customer, our reservation of proprietary rights does not expire until the agreed upon debit balance has been reached.
- 10.2. The customer is obliged to handle the goods subject to retention of title carefully. If maintenance or inspection works are necessary, the customer has to carry them out regularly and at his own expense.
- 10.3. The customer is obliged to immediately notify us of any third-party seizure of the goods, e.g. in case of a writ of attachment, furthermore, of any damage, loss, or destruction. We are entitled to withdrawal from the contract and to demand that already delivered goods be returned to us if the customer commits a breach of contract, e.g. default of payment or violation of any of the duties laid down in paragraphs 9.1 and 9.2.
- 10.4. If they cannot be collected from any third party, the customer bears all costs which must be paid especially in connection with a third-party motion to override a writ of attachment or, as the case may be, for the reacquisition of the delivered goods.
- 10.5. The customer is entitled to sell goods which are subject to retention of title within the frame of his regular business routine if he is not in default of payment or has stopped payments altogether. He must not bond goods which are subject to retention of title or pledge them as security. Already at this very moment, the customer resigns an amount equivalent to the gross invoice value of his receivables from all proceeds resulting from such onward sales, onward processing, or any other legal title (insurance, impermissible action, loss of property due to conjunction of the delivered goods with a parcel of land) and from purchase price, works compensation as well as from any other receivables (including the agreed upon balance of a current account agreement, resp. in case of an insolvency of the business partner, the then existing "causal balance") to us. We accept the cession.

Following the cession, and subject to withdrawal, the customer is entitled to collect the ceded receivables for our account and in his own name. This authorization may be revoked if the customer fails to adhere to his payment obligations. In such a case and if so demanded by us, the customer has to submit to us all necessary information and documents pertaining to the ceded receivables and to notify the third-party debtor of the cession. We are at any time entitled to assert a claim ourselves but will not make use of this title as long as the customer properly adheres to his payment obligations.

- 10.6. Processing of goods by the customer always takes place in our name and on our behalf. If the processing includes items that are not ours, we acquire co-ownership of the newly created object to the extent of the value our goods have in relation to the other processed items. The same applies if the goods are blended with other items which do not belong to us.
- 10.7. All securities serve the purpose of securing the principal claim as well as any secondary claims, including utilization costs and sales tax liability in the context of insolvency proceedings, security utilization, resp. The redemption of the goods subject to retention of title.

**11. Intellectual Property Rights and Fiber Splicing Software License.**

- 11.1. Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and registrations of all of the foregoing resulting from the performance of these General Terms and Conditions of Sale that is conceived, developed, discovered or reduced to practice by Thorlabs, shall be the exclusive property of Thorlabs.
- 11.2. We grant to customer a non-exclusive, non-transferable, limited license to use our Fiber Splicing Software for the sole purpose of installation of and use on the subject equipment and only on these General Terms and Conditions of Sale. Notwithstanding the aforesaid, any customer specific adaptations of the Fiber Splicing Software included in customized Fiber Splicing Software versions as a result of additional consultancy services ordered by customer are licensed pursuant to the terms herein. Customer is under no circumstances allowed to make any modifications, including but not limited to, error correction, of the Fiber Splicing Software. The customer shall not: copy, in whole or in part, Fiber Splicing Software or documentation; modify the Fiber Splicing Software; reverse compile or reverse assemble all or any portion of the Fiber Splicing Software; or rent, lease, distribute, sell or create derivative works of the Fiber Splicing Software. This provision 11.2 applies for the Fiber Splicing Software version indicated in the sale confirmation, for its updates and for new versions.

**12. Disposal of Waste Equipment**

- 12.1. In compliance with the European Waste Electrical and Electronic Equipment Directive (WEEE Directive 2002/96/EC) and if so desired by the owner, we take back for disposal and at no cost for the owner all electrical equipment as defined by WEEE which we have delivered within the EU since August 12, 1995 and which is therefore labelled with a crossed-out waste bin.
- 12.2. If a customer residing within the EU buys equipment as defined by WEEE from us in order to replace equipment made by us or any other manufacturer and first delivered prior to August 13, 2005, we take back such waste equipment for disposal if so desired by the owner and at no cost for him if the function, the amount, and the weight of such waste equipment conforms to the equipment delivered by us.
- 12.3. This redemption offer applies only to complete, non-dismantled equipment as defined by WEEE which is located within the EU, and only if it does not contain any dangerous or toxic matter and has not been defiled with garbage.
- 12.4. We meet all costs of appropriate disposal only, shipment costs must be met by the sender.

12.5. If a final owner of equipment as defined by WEEE waives his right to send it back to us for the purpose of disposal he is obliged to properly dispose of it at his own expense. Disposal together with domestic waste or via municipal waste collection points is not permissible.

### 13. Place of Jurisdiction and Place of Fulfilment

13.1. It is agreed that all disputes between the contract partners concerning their rights and obligations arising from transactions of all sorts – including disputes concerning bills of exchange and cheques – and including disputes concerning the validity of this agreement will be settled by a court of law at our place of business. The same applies if the customer has no general domestic place of jurisdiction, has moved his domestic place of business or his place of residence abroad following conclusion of contract, or if his place of residence or his usual whereabouts are unknown at the time of institution of legal proceedings against him. However, we are also entitled to file suit against the customer at his general place of jurisdiction.

13.2. Federal Republic of Germany law applies exclusively; invocation of UN sale of goods law is excluded.

13.3. If not stated otherwise in the order confirmation, the place of fulfilment is our place of business.

13.4. If one term or some of the terms of the contract concluded with the customer, including these general terms and conditions of sale, are made partially or completely inoperative, the validity of the other terms remains unaffected. The partially or completely inoperative regulation is to be replaced by a regulation whose economic success promises to come as close as possible to the success of the inoperative regulation.

As of January 2019