

Ibsen Photonics A/S - General Conditions for Supply

The acceptance of Ibsen Photonics A/S' (hereafter Seller) quotation implies the acceptance of the following conditions and no other terms and conditions (whether contained in the purchaser's purchase order or otherwise) shall be binding on Seller unless they are expressly agreed in writing by a duly authorised representative of Seller.

1. Validity

1.1 Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is stated, within ninety days only from the date thereof.

2. Documents

2.1 Except where intended to serve as instruction for use or advertisement matter, information in relation to Seller's products and their application remains the property of Seller and may not be utilised or copied, reproduced, transmitted or communicated to third parties without consent from Seller.

2.2 Illustrations, catalogues, colours, drawings, dimensions statements of weight and measurements etc. made by Seller as printed information are only meant to present a general idea of the goods to which they refer; they are approximate only and therefore not binding upon Seller.

3. Time of Delivery

3.1 The times given for delivery are estimated and not binding; they have to be reckoned from the date of Seller's written confirmation of the order or where a letter of credit has been asked for, from the date of the bank's advice that it has been opened in conformity with Seller's requirements. Seller reserves the right to dispatch the goods in consignments as and when they are ready for dispatch.

4. Trade terms

4.1 Unless otherwise agreed the parties shall contract EXW, Seller's shipping point under the latest version of Incoterms issued by the International Chamber of Commerce.

4.2 Unless otherwise agreed Seller will however arrange for and prepay charges for transportation and insurance to Buyer's destination and add such charges to Seller's invoice.

5. Complaints and Returns

5.1 Any complaints of erroneous dispatch and/or apparent damage shall be made in writing within fourteen days after receipt of the goods by the Buyer and if return of the goods is agreed upon shall be forwarded in accordance with Seller's instructions and preceded by an advice note, giving the reason for return and the date and number of the invoice; all goods returned must be consigned insurance and carriage prepaid and packed in their original packing.

6. Termination and Returns

6.1 For products fabricated to individual customer requirements, drawings, specifications and/or designs, Seller reserves the right to fabricate the entire quantity ordered in one production run. In the event of cancellation in whole or in part of an order, any components, subassemblies, and or finished assemblies on hand in quantities equivalent to the full production run for the entire quantity ordered, plus normal overrun, shall be considered as part of the applicable cancellation charges.

6.2 Buyer may cancel this order only by payment of Seller's cancellation charges, which shall take into account expense already incurred, overhead, lost profit and commitments made by Seller. Returns must be authorised by Seller and are subject to Seller's incoming inspection procedures. Products manufactured to Buyer's specifications or special requirements are not subject to return.

7. Experimental Products

7.1 If Seller delivers products identified as "prototypes", "samples for engineering approval", "on consignment", "for evaluation" or other terms of similar meanings, Buyer agrees that such products are confidential and experimental in nature, that Buyer will limit their availability only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and no others, and that all information concerning such products shall remain the proprietary property of Seller and shall not be disclosed to any third party.

7.2 It is anticipated that changes may be made in the manufacture of such products; therefore, Buyer shall communicate to Seller the data accumulated during the testing and evaluation of the products.

8. Prices

8.1 All prices are in Euro (EUR) unless otherwise expressly agreed in writing.

8.2 Unless otherwise specifically agreed in writing, prices do not include any costs for special handling or packaging, additional quality assurance inspection or testing, drawings or data, or any other customer requirements beyond Seller's normal commercial practice.

8.3 Prices are without engagement and may be altered by Seller to those ruling at the date of dispatch.

8.4 Should the prices be increased in consequence thereof, then upon receipt of Seller's notification of such price increase, Buyer shall have the right to cancel the order in respect of the goods, which have not yet been dispatched.

8.5 All taxes, VAT and import costs of any kind related to the home country of the Buyer and any letter of credit costs and fees are to be born by Buyer.

8.6 Seller shall not be liable to Buyer for any refunding of VAT if Buyer fails to notify Seller its VAT registration number as required in accordance with EEC rules and legislation.

9. Terms of Payment

9.1 All payments shall be prepayments if not otherwise expressly agreed in writing.

9.2 If sale on credit is agreed, the payment in full respect of products dispatched by Seller shall be due within 14 days from the date of shipment from Seller unless otherwise agreed in writing.

9.3 Seller retains ownership of the products until payment has been effected. If Buyer does not fulfill the terms of payment, Seller is entitled to take back the goods.

9.4 In the event of default in payment (as defined in 9.2 above) by the due date, Seller reserves the right to charge Buyer compound interest at the rate of 2% per commenced month on money overdue from the due date.

10. Letter of Credit

10.1 Any letters of credit established in Seller's favour shall be issued irrevocably and free of charge to Seller by first class banks which have adopted the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce.

11. Insolvency

11.1 Seller may cancel the whole or any part of an order in the event of suspension of Buyer's business, insolvency of Buyer, the institution by Buyer or others of bankruptcy, reorganisation, arrangement of liquidation proceedings involving or affecting Buyer, or any assignment for the benefit of creditors of Buyer or receivership that Buyer places itself in or may be placed in. Such cancellation shall be deemed a cancellation for default of Buyer.

12. Tests

12.1 Goods manufactured by Seller are carefully inspected and, where practicable submitted to standard tests at the factory before dispatch. If special tests or tests in the presence of Buyer or his representative are required, these must be specified by Buyer or his representative when giving the order and shall unless otherwise agreed, be made before dispatch; all costs connected with such tests will be charged extra.

12.2 In the event of any delay on the part of Buyer in attending such tests after fourteen days' notice that the goods are ready to be tested, the tests will proceed in Buyer's absence and shall be deemed to have been made in Buyer's presence.

13. Warranty

13.1 Buyer shall comply with such instructions and directions as Seller may from time to time issue and direct in respect of the products.

13.2 Seller warrants the products to be free from defects in material and workmanship for the period of 12 months from Seller's shipping date.

13.3 Upon arrival of the products in the territory Seller's sole responsibility hereunder shall be to send Buyer a repaired or replacement part at his discretion for any part of the product which proves defective within the warranty period, and which is returned to Seller. Freight costs are paid by the party sending the parts.

13.4 Buyer shall inspect and accept any products delivered, immediately after Buyer takes custody of such products. In the event the products do not meet the specifications or drawings, Buyer shall notify Seller in writing of such noncompliance and give Seller a reasonable opportunity to correct the noncompliance. Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such noncompliance in the event such written notification is not received by Seller within fifteen days after the Buyer takes custody of the products delivered hereunder. Seller shall not be obligated or liable under this warranty for apparent defects or defects which examination discloses are due to tampering, misuse, neglect, improper storage or handling, normal wear and all cases where the products are disassembled by other than authorised representatives of Seller. In addition, Seller shall not be obligated or liable under this warranty unless written notice of any defect is given to Seller within fifteen days from the date such defect is first discovered.

13.5 This warranty sets forth the entire warranty of Seller with respect to the products and is in lieu of all warranties expressed or implied including warranties of merchantability and suitability for a particular purpose.

14. Liability

14.1 Compliance with Seller's warranty undertaking pursuant to paragraph 13 or with any agreed modification thereof shall be considered to give full satisfaction to Buyer.

14.2 Seller shall not be liable for any consequential or other damage nor for any loss of whatsoever nature and howsoever arising other than those for which Seller have expressly assumed liability herein and Seller's liability shall in no event include any patent liabilities or patent indemnification.

15. Force Majeure

15.1 Seller shall not be liable for delays in or failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God or public enemy, acts of Buyer, act of government in either its sovereign or contractual capacity, fire, flood, earthquake or other natural disaster, strike or other labour dispute, acts of war, sabotage, insurrection, rebellion, or other acts of civil disobedience, failure of subcontractor to supply material, failure or delay in transportation, or equipment breakdown, nor shall Seller be liable for any reasonable delay in production or delivery.

15.2 In the event of delay due to such causes, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

15.3 Buyer cannot claim compensation in case of delays in delivery.

16. Product Liability

16.1 In relation to product liability, Seller shall be liable to third parties in accordance with the applicable law.

16.2 Seller shall only be liable to Buyer for business property damage, which result from product damages, which are attributable to products delivered by Seller and it is proved that Seller has committed an error, which has resulted in the damage. Seller's product liability to Buyer shall not exceed the cover of the product liability insurance policy taken out by Seller.

16.3 Seller shall not be liable for indirect losses of any such kind, such as loss of trade, loss of profit, etc.

16.4 In the event that Seller is held liable by a third party for damages arising from product liability, Buyer shall be obliged to become a party to any litigation initiated by third party against Seller.

17. Export Sales

17.1 Buyer agrees that it will not export or re-export directly or indirectly any of the products sold hereunder to any destination or to any person where such export or re-export is prohibited under law or regulation, or export or re-export such products without appropriate licence(s) required by applicable law or regulations.

17.2 Sales to third parties have to be made with an obligation identical to this notice.

18. Applicable Law and Disputes

18.1 This contract shall be governed by and be construed in accordance with the laws of Denmark. Any dispute arising out of this contract shall be finally settled by arbitration according to the rules and by the ordinary Court of Arbitration in Copenhagen (Det Danske Voldgiftsinstitut).

19. Uniform Laws

19.1 The Uniform laws drawn up by the United Nations Convention on Contracts for the International Sale of Goods (CISG) as enacted in Denmark or elsewhere shall not apply.

20. Severability

20.1 If any provision of this document is in violation of any governmental status or regulations, or is illegal for any reasons, said provision shall be self deleting without affecting the validity of the remaining provisions.