

I. General, Coverage

(1) These General Terms and Conditions of Sale and remarks relating to the contracts to be closed between Ocean Optics Germany GmbH and the buyer are applicable exclusively. Contrary conditions of the ordering party or conditions differing from these General Terms and Conditions of Sale shall not be effective, except in cases where there has been an explicit consent as to their application. These General Terms and Conditions of Sale are also applicable even if despite knowledge of conditions of the ordering party contrary to or differing from these General Terms and Conditions of Sale the delivery is executed without prejudice.

(2) The entirety of all agreements, conditions, and considerations between Ocean Optics Germany GmbH and the customer relating to execution of this agreement is contained herein.

(3) These General Terms and Conditions of Sale are only applicable in relation to enterprises, companies and legal entities, and public specific funds as set forth in § 14 BGB and § 310 BGB.

II. Quotes, Documentation, Orders & Contracts

(1) Ocean Optics Germany GmbH offers are non-binding unless the offer or the order confirmation contains clauses stipulating otherwise. Based on these General Terms and Conditions of Sale orders placed with Ocean Optics Germany GmbH shall only be deemed contractual after they have been confirmed in writing by Ocean Optics Germany GmbH or after Ocean Optics Germany GmbH has commenced with the fulfillment of the contractual work or deliveries. Ancillary agreements and amendments must be confirmed in writing by Ocean Optics Germany GmbH.

(2) Ocean Optics Germany GmbH is freed of its performance obligation even in case of confirmed orders under circumstances where the delivery or partial delivery is made impossible by unpredictable obstacles outside Ocean Optics Germany GmbH's responsibility. Such reasons may be regulatory orders, higher power or supplies delivered late or faulty.

(3) Documentation relating to offers such as pictures, drawings, as well as weight and measure specifications are only approximations unless they are expressly specified as binding. Quotes, drawings, and other documentation remain physical and intellectual property of Ocean Optics Germany GmbH; they must not be made available to third parties. If plans marked as confidential are provided by the customer, Ocean Optics Germany GmbH agrees to make them available to third parties only with the customer's express consent.

(4) Ocean Optics Germany GmbH does not accept any exercise risk, nor furnish any guarantees of any kind, unless an express written agreement pertaining to this has been reached with the customer.

III. Delivery Times

The delivery time commences with the date of mailing the order confirmation but not before supplying the documentation to be provided by the customer such as permits, releases, and not before receipt of any agreed down payment.

(2) The delivery time shall be considered met if the merchandise ordered has left the factory or the customer has been notified of the merchandise being ready for shipment by the delivery due date.

(3) The delivery time shall be extended appropriately in case of labor disputes especially such as strikes and lockouts, as well as in case of unexpected events outside the influence of Ocean Optics Germany GmbH, provided such hindrances are proven to have a significant influence on the completion or delivery of the merchandise ordered. The same also applies if such circumstances arise at Ocean Optics Germany GmbH's suppliers. Ocean Optics Germany GmbH shall further not be held liable for the above circumstances if they occur during an already existing delivery delay. In important cases Ocean Optics Germany GmbH will notify the customer of the beginning and end of such hindrances as soon as possible.

(4) If the shipment is delayed upon request of the customer the costs arising in connection with the storage at the Ocean Optics Germany GmbH factory but at least one half of one percent of the invoiced amount per month is charged starting one month after notification of readiness for shipment. If after notifying the customer of an appropriate waiting period such time has passed without action Ocean Optics Germany GmbH is entitled to dispose of the merchandise ordered as it sees fit and to deliver to the customer at an appropriately extended delivery time.

(5) Prerequisite for Ocean Optics Germany GmbH keeping the delivery time is the customer's fulfillment of its obligations under the respective contract.

IV. Pricing, Payment Terms

(1) Unless otherwise provided in the order confirmation the prices are calculated "EXW Ostfildern", not including packing and shipping. Orders which do not explicitly specify prices are calculated based on the standard price list valid at the day of delivery.

(2) Prices do not include the legally required Value-Added Tax (VAT or "MwSt"). The VAT shall be itemized separately on the bill at the rate in effect and the billing date.

(3) The customer shall be deemed in default of payment if it fails to remit payments due the latest 10 days after receipt of the invoice or any payment-due notice equivalent. It remains within Ocean Optics Germany GmbH discretion to effect such default at an earlier time by issuing a reminder, to be served after the due date. Contrary to sentences 1 and 2 of this paragraph, the customer shall be in default also in such cases where it is agreed that the sales price is to be paid on a specified date and the customer fails to remit its payment by that date. Invoices are fully due, without discounts. Delivery may be made against pre-payment or COD, especially for first-time orders or after occurrence of late payments.

(4) Payments shall be considered made only at such time when Ocean Optics Germany GmbH has actual access to the moneys involved.

(5) The customer may deduct counter claims from its payments only if they have been determined undisputed and legally binding. In such a case the customer is also entitled to exercise its right to withhold payment to the extent that its Counter claim relates to the same contract.

(6) Without prejudice against further claims by Ocean Optics Germany GmbH the customer in case of payment default shall pay interest to Ocean Optics Germany GmbH of 5% above the current base rate of the European Central Bank.

(7) If we do not receive payment within time, we will, by not delivering, make use of our legal retaining lien and thus declare to suspend fulfillment of the contract. If after entering into a contract Ocean Optics Germany GmbH learns of circumstances reducing the credit worthiness of the customer. Ocean Optics Germany GmbH is entitled to withdraw from the contract and/or without

General Terms and Conditions of Sale (AGB) of Ocean Optics Germany GmbH

regard for any due dates demand payment for or immediate release of merchandise already delivered.

V. Delivery terms, Transfer of risk, Insurance, Packaging

(1) Unless otherwise provided in the order confirmation the delivery terms are "EXW Ostfildern" and in case of rush shipments or drop shipments "EXW" form the related manufacturing facility of Ocean Optics (WinterPark, FL, USA; Shanghai, PR of China; Duiven, The Netherlands); this applies also in case of partial delivery and if Ocean Optics Germany GmbH has agreed to undertake additional items such as shipping costs, delivery, and installation. Ocean Optics Germany GmbH can upon customer's request and at its expense insure the shipment against theft, breakage, freight, fire, and water damage and various other coverable risks.

(2) If the shipment is delayed due to circumstances within the customer's responsibility the risk is assigned to the customer beginning with the date the order is ready for shipment, but Ocean Optics Germany GmbH must if requested by the customer at customer's cost procure such insurance coverage as it demands.

(3) Deliveries must be taken of merchandise delivered even if it has minor flaws. This does not preempt the customer rights as set out in Article VII.

(4) Partial deliveries shall be permitted unless the customer can prove that the partial delivery represents an unreasonable imposition.

(5) With the execution of pallets, no transport or any other packaging meeting the packaging regulation will be taken back by Ocean Optics Germany GmbH. The customer is obligated to effect the disposal of any such packaging at its own expense.

VI. Title

(1) Up to such time as all moneys due have been received Ocean Optics Germany GmbH reserves the right of ownership on the merchandise ordered. This title also remains with Ocean Optics Germany GmbH in case of receivables of Ocean Optics Germany GmbH arising from any other ongoing business relationship with the customer and up to such an amount as Ocean Optics Germany GmbH is entitled to on the current purchase.

(2) Ocean Optics Germany GmbH is entitled to insure the merchandise ordered at customer's expense against theft, breakage, fire, water, and other damage provided the customer itself cannot provide proof of itself having purchased appropriate insurance.

(3) The customer may not mortgage the merchandise delivered, nor pass any rights thereto to third parties as a security, nor make any dispositions to the detriment of any merchandise still property of Ocean Optics Germany GmbH except for actions taken in the context of regular business dealings.

(4) If maintenance and inspection work needs to be performed - these must be undertaken in a timely manner by the customer at its own expense.

(5) In case of liens against the merchandise ordered or any actions brought by third parties the customer must immediately Ocean Optics Germany GmbH in writing in order to enable Ocean Optics Germany GmbH to file suit pursuant § 771 ZPO. Inasmuch as such third party is unable to reimburse Ocean Optics Germany GmbH for the court or out-of-court costs of said suit filed pursuant § 771 ZPO the customer shall be liable for any damages incurred by Ocean Optics Germany GmbH.

(6) Any processing or use of any such merchandise whose title is still with Ocean Optics Germany GmbH shall be performed by the customer for and in the name of Ocean Optics Germany GmbH without any obligations arising for Ocean Optics Germany GmbH. In case of any processing, use, or merging of such merchandise with other items not property of Ocean Optics Germany GmbH, the partial property of the newly created item shall be assigned to Ocean Optics Germany GmbH to the extent corresponding to the value of Ocean Optics Germany GmbH's part at the time of said processing, use, or merging. If the customer gains sole proprietorship of the newly created item customer shall without the requirement for a separate agreement assign property rights Ocean Optics Germany GmbH to the extent corresponding to the value of Ocean Optics Germany GmbH's part at the time of said processing, use, or merging and maintain its safety without any costs incurring for Ocean Optics Germany GmbH.

(7) The customer is entitled to sell such reserved merchandise or the product newly created using it in the course of its regular business dealings. In such case customer at the present time and without the requirement for a separate agreement for each individual occurrence assigns to Ocean Optics Germany GmbH the title to the gross amount (including VAT) of the receivables arising against its customers or third parties from such sale up to the amount owed to Ocean Optics Germany GmbH, regardless whether the merchandise was sold with or without any processing. The customer shall retain the right to collect such receivables even after the assignment. This shall not preclude the right of Ocean Optics Germany GmbH itself to collect them. Ocean Optics Germany GmbH, however, agrees not to collect the receivables as long as customer meets its payment obligations arising from the income collected and does not incur any delays and especially does not file for bankruptcy or insolvency. If this be the case Ocean Optics Germany GmbH can demand that the customer discloses to Ocean Optics Germany GmbH the assigned receivables and the corresponding debtors, providing all data necessary for collecting them, turning over all related documents, and notifying the debtors (third parties) of that assignment.

(8) In case of any violation of the contract through the customer, especially payment default, Ocean Optics Germany GmbH after issuing a reminder with a fulfillment period is entitled to repossession and the customer is obligated to release the merchandise. The customer shall carry any and all costs incurred in the course of such a repossession or release. The enforcement of a property title by Ocean Optics Germany GmbH or a repossession of any delivered merchandise by Ocean Optics Germany GmbH do not constitute a withdrawal from the contract.

VII. Compensation of Defects

As far as none extensive guarantee is promised, Ocean Optics Germany GmbH shall be liable in case of faults of merchandise delivered by Ocean Optics Germany GmbH (notwithstanding Article VIII and barring any additional claims) as follows:

(1) Any parts or components whose usability for the intended purpose turns out within 12 months after risk assignment to be severely impaired due to a circumstance originating before the risk assignment, especially faulty construction, defective material, or deficient manufacture, shall at reasonable discretion by Ocean Optics Germany GmbH be repaired or replaced. Ocean Optics Germany GmbH must immediately be notified of the determination of any such faults. To maintain its entitlement to replacement, the customer must notify Ocean Optics Germany GmbH within 10 days after delivery in writing of obvious faults and such faults apparent by inspecting the merchandise after delivery.

- (2) If two attempts at correction by Ocean Optics Germany GmbH fail the customer is, at its discretion, entitled to either demand a price reduction or to withdraw from the contract.
- (3) Parts replaced become property of Ocean Optics Germany GmbH.
- (4) There will be no warranty for damages occurring due to the following reasons: Unsuitable or improper use, use leading to damages causing loss, faulty installation or startup by the customer or a third party, regular wear, faulty or negligent handling, unsuitable operating materials or consumables, deficient building provisions, unsuitable site properties, chemical, electro-chemical or electrical influences, provided they are not caused by Ocean Optics Germany GmbH.
- (5) The customer must allow communicating with Ocean Optics Germany GmbH allow Ocean Optics Germany GmbH the required time and opportunity for performance of all repair and replacement deemed necessary in Ocean Optics Germany GmbH's reasonable discretion, otherwise Ocean Optics Germany GmbH shall not be liable for any deficiencies. Only in urgent case of the endangerment of operational safety and to prevent unreasonably extensive damage - whereby Ocean Optics Germany GmbH must be notified immediately - or if Ocean Optics Germany GmbH defaults at remedying the fault the customer is entitled to remedy the fault itself or have it remedied by third parties and to demand the necessary costs be reimbursed by Ocean Optics Germany GmbH.
- (6) Necessary expenses incurred for the purpose of making repairs and/or the delivery of a faultless item, such as transport, travel, labor, and material are carried by Ocean Optics Germany GmbH, whereby it remains within Ocean Optics Germany GmbH's discretion in each case to determine the most cost effective solution. This obligation does not cover excessive costs caused by the merchandise after its delivery having been moved to a location other than the residence or the business site of the customer unless such transport corresponds to the intended purpose of the item.
- (7) The warranty obligation for remedying the deficiency and/or delivery of a faultless item extends from the shipment of the faultless item or the completion of the repair to the end of the original warranty of the merchandise. This period, however, shall be extended for the amount of shut down time caused by the repair or replacement work.
- (8) Any modifications or maintenance work performed by the customer or a third party which is unsuitable or done without prior permission by Ocean Optics Germany GmbH invalidates any warranty for its consequences.
- (9) Not included in the warranty are: consumables, such as lamps, fuses, batteries and similar. Special provisions apply to equipment which, due to their technical construction, are given a shorter warranty period; in these cases the respective shorter warranty period also applies to Ocean Optics Germany GmbH.
- (10) The above mentioned limitations to liability for deficiencies do not apply if Ocean Optics Germany GmbH has fraudulently concealed a defect or has issued a guarantee, which however can only be effected with express permission from Ocean Optics Germany GmbH.
- (11) If a delivery item is returned to Ocean Optics Germany GmbH during the warranty period and within the course of the examination for defects, Ocean Optics Germany GmbH ascertains that the defect has been caused by improper handling or usage of the delivery item by the customer, Ocean Optics Germany GmbH will make the customer an offer to make a repair for a fee, subject to these conditions. The costs of fault diagnosis are to be borne by the customer-providing the case does not fall under warranty.

VIII. Liability/Statutory Limitation

- (1) If based on legal requirements or the conditions herein Ocean Optics Germany GmbH is liable for damages caused by simple negligence, Ocean Optics Germany GmbH's liability shall be limited. No liability shall apply for damages caused by faulty merchandise due to minor negligence.
- (2) Any liabilities of Ocean Optics Germany GmbH in case of malicious concealment of a fault, in cases arising from the assignment of warranty or a procurement risk are not affected by any culpability of Ocean Optics Germany GmbH.
- (3) In cases where our liability for damages is excluded or limited this is also applicable for the personal liability of our employees, staff members, representatives and persons employed in performing an obligation for whom Ocean Optics Germany GmbH is vicariously liable. In any case any liability for damages is limited to the predictable, typical damage incurred.
- (4) Further liability for damages is excluded - irrespective of the legal nature of the claim being asserted. This particularly applies to claims for damages based on fault at the time the contract was concluded, due to breach of other obligations or due to claims in tort for compensation for material damage in accordance with § 823 German Civil Code. This limitation also applies inasmuch as instead of a claim for rectifying the damage, performance compensation for useless expenditure is required.
- (5) For the statutory limitation of all claims which are not subject to statutory limitation due to a fault, the term of preclusion is 18 months. This extends from the point in time at which the person entitled to damages gains or should have gained knowledge of the damage, the fault and of the person liable for damages. In other respects the provisions of the German Civil Code on statutory limitation are applicable.

IX. Export regulations

Certain goods are subject to German, European and/or US-American export regulations. It is the customer's responsibility to abide by such regulations in case of a sale to a foreign country.

X. Other

- (1) Special conditions apply for assembly and service.
- (2) If any one or more of the conditions set out in these General Terms and Conditions of Sale should be or become invalid it shall be replaced by a valid clause or interpretation which most closely resembles the invalid one in its economic result. The validity of the remaining General Terms and Conditions of Sale shall not be affected.

XI. Place of Performance and Jurisdiction, Applicable Law

- (1) Place of performance for any and all obligations arising from this agreement for both parties is 73760 Ostfildern, Germany.
- (2) For both parties the place of jurisdiction for any disputes directly or indirectly arising from this contract is Stuttgart; this also applies to suits filed in conjunction receivables from bills of exchange and checks. We also reserve the right to file suit at any other place of jurisdiction where the customer can be sued according to German civil procedure law.
- (3) This contract is subject to the laws of the Federal Republic of Germany. UN Commercial Laws (CISG) shall not apply.