

**General terms of sale and delivery of PHOTON ENERGY GmbH (hereinafter known as PE)  
for use in transactions with enterprises (date of issue: June 2012)**

This translation of the original German document is for reading purposes. Only the original German version is legally binding.

## **I. General**

### **(1) Actual and personal scope**

These terms shall apply to all the goods and services (including additional services such as proposals, planning assistance and consultancy services) we supply to enterprises in the sense of § 14 of the German Civil Code, legal entities under public law and to public law funds. They shall not apply to legal relationships with consumers in the sense of § 13 of the German Civil Code.

### **(2) Exclusion of other terms of business**

We hereby reject different terms of business issued by the customer. They shall not make any obligations on us even if we fail to revoke them again expressly after we receive them. Our terms shall be deemed to have been accepted when the order is placed or on receipt of the order confirmation, but at the latest when our goods or services are accepted.

### **(3) Validity**

If individual provisions should be or become invalid, this shall not affect the validity of the other provisions in these general terms of sale and delivery. In the event that a provision should be invalid, a valid provision shall be deemed to have been agreed which is as close as possible to the commercial objective.

### **(4) Written form**

Differences from the following terms, other amendments or supplements to the purchase order shall require our written confirmation in order to be valid. This shall also apply to the cancellation of this requirement for written form.

### **(5) Copyright**

We reserve title and copyright to illustrations, drawings, calculations and other documents.

The customer shall require our express written consent before they are disclosed to third parties.

## **II. Order**

### **(1) Written confirmation**

Our quotations are non-binding until such time as a purchase order placed on the basis of the quotation has been confirmed by us in writing. Every purchase order shall require our written confirmation to mark its legal acceptance. Our invoice shall also be deemed to be the order confirmation if we provide goods and services without a written confirmation.

### **(2) Content of the order**

We reserve the right to make technical and design modifications to the ordered goods as long as this does not adversely affect their technical function, normal use or the value of the goods or such adverse effects are only minor. If it is not reasonable to expect the customer to accept a modification of this nature, it may cancel the purchase order. Additional rights shall be excluded.

### **(3) Technical data/Product details**

The technical data and product details provided in our quotations, brochures, catalogues, websites, drawings and illustrations are for product description purposes only unless they are expressly marked as binding in writing with tolerances and shall therefore not give rise to any guarantee agreements. In the absence of a separate written agreement, descriptions of products and services as well as agreed dimensions and weights shall not give rise to any guarantees of properties or durability but shall be product descriptions only. If property or durability guarantees are included, we shall issue separate certificates to this effect. Otherwise only the relevant acceptance and safety regulations in the country of manufacture shall apply to our goods.

## **III. Duty of delivery**

### **(1) Reservation of deliveries to us**

The condition for our own duty of delivery shall be the prompt and correct delivery of goods and materials by our suppliers to us. In the event that we are prevented from making deliveries due to circumstances which are beyond our control, in particular forces majeure, strikes, lock-outs, import and export bans, transport difficulties, official actions or the like, we shall be entitled to cancel the contract with the exclusion of all claims for compensation. Any not inconsiderable change to the availability, price or quality of the goods from our suppliers or the services of third parties if the completion of the order placed with us is essentially dependent on such goods or services, shall also entitle us to cancel the contract and exclude all claims for compensation.

### **(2) Part deliveries, excess or shortfall deliveries**

Part deliveries shall be permitted and shall be regarded as separate deliveries as far as payments and complaints are concerned. We shall be entitled to make excess or shortfall deliveries subject to a limit of 10% of return transport shall be paid by the customer. We shall not accept returns the order volume unless it is unreasonable to expect the customer to accept this.

### **(3) Major deterioration in the customer's circumstances**

If the customer suffers a major deterioration in its pecuniary and/or liquidity circumstances after the conclusion of the contract or if such circumstances come to light before the conclusion of the contract, we may, at our discretion, cancel the contract or demand immediate cash payment of all outstanding invoices, even if previously full or partial credit had been granted for the invoice amounts or they had been paid by bills of exchange. Such deteriorations shall particularly include a poor creditworthiness classification by a credit rating agency, protests relating to bills of exchange or cheques, seizures, insolvency, opening of insolvency proceedings and a refusal to open insolvency proceedings due to a lack of assets. In the event that we do not cancel the contract despite a deterioration in circumstances, we shall only supply the goods gradually against payment, or against payment in advance for large purchase orders.

## **IV. Delivery date/Lead time**

### **(1) General provisions relating to delivery dates/lead times**

Unless otherwise agreed, all information relating to delivery dates and lead times shall be regarded as approximate and non-binding. If binding delivery dates and lead times have been agreed, they shall be extended by a reasonable period if they cannot be met due to circumstances which are beyond our control. In this respect a period of one month shall be regarded as reasonable unless a shorter or longer period is agreed in writing in an individual case taking both parties' interests into account. Lead times shall commence on the date of our written confirmation but not before the clarification of all design details and all other items to be provided by the customer in order to ensure that the contract can be executed correctly. The same shall apply to delivery dates.

### **(2) Fixed transactions**

The agreement of binding fixed delivery dates or lead times shall require an express description as a fixed transaction and our written confirmation.

### **(3) Duty of cooperation**

The customer undertakes to provide all the details, documents and other specifications required to execute the contract with its purchase order but at the latest immediately after placing the purchase order. If these documents and details are not received promptly, the customer shall be unable to demand compliance with delivery dates or lead times. In this case any claims for damages caused by the delay shall be excluded. The delivery date or lead time shall be regarded as having been extended by a reasonable period.

## **V. Transfer of risk**

### **(1) Transfer of risk on shipment**

The risk of loss or deterioration of the goods shall be transferred to the customer as soon as the goods leave the delivery works. This shall apply even if the shipment is made at our expense or with our means of transport. In all cases shipment shall take place at the customer's risk, even if delivery is included in the price.

### **(2) Transfer of risk on notification that the goods are ready for shipment**

If the shipment of the goods is delayed at the customer's request or for reasons which are not our responsibility, the risk shall be transferred to the customer upon notification that the goods are ready for shipment.

## **VI. Prices**

### **(1) General price provisions**

Our prices shall be quoted ex-works excluding packaging, delivery and shipment costs and statutory value-added tax. The agreement of fixed prices shall require express written confirmation. Unless otherwise agreed, our prices shall be quoted in euros for all deliveries, including deliveries completed outside the eurozone.

## (2) Price adjustment / increase

Prices quoted by us shall be non-binding. We shall be entitled to make reasonable adjustments or increases to the prices if our supplier increases its sales prices, our costs are increased by a not inconsiderable amount due to changes in exchange rates, duties or similar fiscal costs, or a period of more than one month elapses between the placement of the purchase order (call order) and the delivery of the goods if a new price list comes into force during this period. An adjustment / increase in prices shall not be permitted if it would be unreasonable to expect the customer to accept it.

## (3) Packaging and packaging material

The customer shall pay the cost of packaging and packaging material. We shall accept returns of packaging and packaging materials. The costs of packaging of any kind for deliveries made outside Germany.

## **VII. Terms of payment**

### (1) Payment deadlines

Unless agreed to the contrary, the amounts shown in our invoices shall be payable within 14 days of the invoice date strictly net.

### (2) Default interest

In the event that the customer is in default, it must pay default interest at a rate of 8 percentage points above the relevant base rate of the European Central Bank on the outstanding amount. We also reserve the right to claim additional default compensation.

### (3) Payment by bill of exchange or cheque

Bills of exchange shall only be accepted on the basis of express agreement and (like cheques) shall only be accepted as payment and subject to our accepting them in each individual case. Discount and other charges shall be paid by the customer.

### (4) Other settlement difficulties

Delivery shall be made subject to the creditworthiness and solvency of the customer. If the customer being in payment default, cheques or bills of exchange not being redeemed, the customer becomes insolvent, settlement proceedings are instigated, the customer fails to honour terms of payment, an agency downgrades the customer's credit rating or circumstances occur which appear to reduce the customer's creditworthiness, we shall be entitled at any time to amend the provisions of the contract and cancel the contract after issuing a final refusal to supply the goods or services.

### (5) Setting off and right of retention

The customer shall only be entitled to set off or retain payments to settle our due claims for its own counter claims if they have been established by a court of law or acknowledged in writing.

## **VIII. Reservation of title**

### (1) Reservation of title agreement

The supplied goods (reservation of title goods) shall remain our property until all our claims against the customer arising from our business relationship have been settled in full. Bills of exchange and cheques shall not be regarded as payment until they have been redeemed.

### (2) Extended reservation of title

If the goods are processed or combined with other goods which do not belong to us by the customer to form a new item, we shall be entitled to claim co-title to the new item in the proportion of the value of the reservation of title goods to the other processed and/or included goods at the time of the processing and/or combination. This resultant co-title shall be deemed to be reservation of title goods in the sense of these provisions.

### (3) Sale and advance assignment

The customer may only sell the reservation of title goods as part of its normal business activities and only in the event that it is not in default with the settlement of all our claims. The customer hereby assigns its claims from the resale of the reservation of title goods to us to secure all our claims from our business relationship. We hereby accept this assignment. If the reservation of title goods are sold by the customer together with other goods or co-title rights which do not belong to us, the claim from such resale shall only be assigned to us up to the amount of the value of reservation of title goods. The value of the reservation of title goods shall be based on our invoice total. The customer shall be entitled to collect the claims assigned to us from reselling until such time as we revoke this right.

### (4) Risk to the reservation of title

Whilst the reservation of title is in force the customer shall not be entitled to pledge the goods or transfer title to them by way of security. In the event of seizure, confiscation or other action or intervention by third parties which take the form of enforcement, the customer must notify us without delay about such action in writing.

## (5) Duty of surrender

If the customer is fully or partly in default with the settlement of our claims, we shall be entitled to demand the surrender of the reservation of title goods at any time and to dispose of them elsewhere and to retain any further outstanding deliveries even if we have not cancelled their purchase. No further warning or deadlines shall be required for this purpose. Our exercising our claims to reservation of title rights shall not be deemed to be the cancellation of the contract.

## (6) Release of security

If the value of security provided to us on the basis of the above provisions exceeds the invoice total by more than 20%, we undertake to release the excess security of our choice at the request of the customer but with the proviso that with the exception of goods supplied on a genuine current account basis, such release must only be granted for those goods or their monetary value which have already been paid in full.

## **IX. Defects**

### (1) Details of properties

The properties of the product supplied by us shall be described in full by the content of our written or electronic quotation documents and/or our catalogues, CDs or other data media. Unless agreed to the contrary in writing, the type of use set out in our quotation shall be the exclusive contract content.

### (2) Customer's duty of inspection and complaint

The customer must inspect our products immediately on receipt and notify us in writing of any obvious defects within a period of two weeks after delivery. We must be notified in writing of defects which could not be discovered within this deadline even by a very careful inspection without delay but at the latest two weeks after their discovery. If the customer fails to notify us promptly of defects, we shall regard our goods as having been delivered as per the contract and in perfect condition. § 377 of the German Commercial Code shall apply.

### (3) Minor defects

Claims for defects shall not be accepted for minor discrepancies from the agreed properties, minor adverse effect on their use, natural wear and tear or for damage which takes place after the transfer of risk as a result of incorrect or negligent handling, excess stress, unsuitable media, poor quality building work, unsuitable foundation soil, chemical, electro-chemical, electronic or electrical influences or other special external influences which were not set out in the contract or for non-reproducible software errors. If the customer or third parties carry out incorrect modifications or repair work, we shall also not accept any claims for them or for consequential damage. The customer may not refuse to accept goods which are suffering from minor defects.

### (4) Liability for defects

Our products or services shall be reworked or replaced free of charge at our discretion if they suffer a defect within the state of the limitation as long as the cause of the defect was present at the time of the transfer of risk, for which the customer carried the burden of proof. We must initially be given a reasonable period of time to complete this refulfilment. If our refulfilment efforts fail more than three times, the customer may cancel the contract or reduce its payment. Any claims for compensation shall not be affected by this.

### (5) Warranty period

Warranty claims shall become statute-barred in twelve months. This shall not apply if the law described in § 438 Para. 1 No. 2 (Structures and Items for Structures), § 479 Para. 1 (Recourse Claims) and § 634a Para. 1 No. 2 (Structural Defects) of the German Civil Code specifies longer periods and in cases which involve death, physical injury or health harm, in the event of malice or a gross breach of duty by us and in the event that we deliberately fail to mention a defect. The statutory regulations relating to suspending an expiry date, suspending and restarting these periods shall not be affected.

### (6) Reimbursement of expenses

Claims by the customer relating to expenses incurred for the purposes of refulfilment, in particular transport, travelling, labour and material costs, shall be excluded if these expenses increase because the goods were subsequently moved to a location other than the customer's premises unless this transportation is covered by the intended use of the goods.

### (7) Exclusion of recourse claims

Recourse claims on the part of the customer shall only accrue against us pursuant to § 478 of the German Civil Code (Recourse by the Enterprise) if the customer has not made any agreements with its customers which go beyond the scope of statutory warranties and/or an equivalent settlement agreement exists between the customer and us in the sense of § 478 Para. 4 of the German Civil Code.

#### (8) Return of defective products

If the customer sues us under the warranty, it undertakes, at our discretion, to return the defective products to us free of charge or to make them available at its own premises for us to inspect them and assess the defects.

#### (9) Other compensation

Art. XII (Other compensation claims) of these terms of sale shall apply to compensation claims.

Claims by the customer other than those set out in this Art. IX against us and our agents for a defect shall be excluded.

### **X. Legal problems, commercial intellectual property rights, copyright**

#### (1) Third party intellectual property rights

Unless agreed to the contrary, we undertake to supply the goods and services within Germany free of third party commercial intellectual property rights and copyrights (hereinafter know as intellectual property rights) or on the basis of valid licence agreements. If a third party sues the customer for justified claims due to a breach of intellectual property rights on the basis of goods supplied by us and used as per the contract, we shall be liable to the customer within the period defined in Art. IX. No. 5 as follows:

- a) At our discretion and our expense we shall either purchase utility rights for the goods concerned or modify them so that they no longer breach the intellectual property rights, or replace them. If we are unable to do this on reasonable terms, the customer shall be entitled to exercise statutory cancellation rights or demand a reduction in price.
- b) Our duty to pay any compensation shall be based on Art. XI. of these terms of sale.
- c) Our duties set out above shall only apply if the customer notifies us in writing and without delay of any claims made by third parties, does not acknowledge any breach and we are able to complete all defence actions and settlement negotiations. If the customer stops the use of the goods in order to reduce the damages or for other important reasons, it undertakes to notify the third party that the cessation of use does not constitute an acknowledgement of the claim.

#### (2) Culpability of the customer

Claims on the part of the customer shall be excluded if it is responsible for breaching the intellectual property rights.

#### (3) Other grounds for exclusion

Claims by the customer shall also be excluded if the breach of intellectual property rights were caused by special specifications imposed by the customer, an application which was not foreseeable for us or as a result of the fact that the goods were modified by the customer or used together with products not supplied by us.

#### (4) Other legal problems

The provisions of Art. IX shall apply as and where appropriate in the event of other legal problems.

#### (5) Exclusion of other claims

Claims by the customer other than those set out in this Art. X and in Art. IX against us and our agents for a legal problem shall be excluded.

### **XI. Other compensation claims**

#### (1) Exclusion of liability

Damages and expenses compensation claims on the part of the customer, regardless of their legal basis, in particular due to a breach of duty from the debt relationship and for illegal acts shall be excluded.

#### (2) Binding liability

This shall not apply if binding liability applies, for example under the Product Liability Law, in case of malice, gross negligence, death, physical injury or harm to the health as a result of the breach of major contract duties and of the acceptance of guarantees. The damages and expenses compensation claim for a breach of major contract duties shall, however, be limited to foreseeable damage unless malice or gross negligence has occurred or in the event of death, physical injury or harm to the health. The above provisions shall not result in any change to the burden of proof to the disadvantage of the customer.

#### (3) Statute of limitations

If the customer has compensation claims under this Art. XI, they shall become statute-barred at the end of the statute of limitations for actual defect claims as set out in Art. IX No. 5. The statutory statute of limitations shall apply to compensation claims under the Product Liability Law.

### **XIII. Software**

#### (1) Establishment of licence usage

In order to ensure compliance with the terms of this contract, the customer shall permit PHOTON ENERGY to conduct a usage inspection to establish the usage of the licensed products by the customer. The customer hereby states that it is prepared to provide PHOTON ENERGY access to its equipment and computer system and to ensure the cooperation of its personnel and advisers within reason if this is requested by PHOTON ENERGY for the purposes of conducting such an inspection during normal office hours and after reasonable advance notice has been given.

#### (2) Utility right

After the unreserved payment of the full purchase price, the customer shall receive single, non-exclusive, non-transferrable and non-sub-licensable utility right to the supplied software which is protected by copyright.

The customer may only use the software for the purpose of operating our laser devices with it.

#### (3) Exploitation right

An exploitation right shall be excluded.

#### (4) Copying right

The customer shall only be entitled to copy the software for its own purposes as required for the correct use of the software. In addition to the installation of the software on to the data device and loading the software into the system memory, this shall include the production of a backup copy which must be marked as such.

The software may only be copied (even in part) on to data processing equipment which is located in the customer's business premises and which is directly owned by it.

#### (5) Program amendments

All amendments or additions to the software as well as decompiling, reverse engineering, other translation or other action to obtain the source code shall be prohibited; this shall not include the right of the customer to decompile the software for the purposes of achieving inter-operability under the conditions set out in § 69e of the German Copyright Law and the right of the customer to determine the concepts and principles during program tests as set out in § 69 d Para. 3 of the German Copyright Law.

#### (6) Warranty exclusion

Liability for the replacement or loss of data caused by our software shall be excluded. The customer undertakes to back up its data.

#### (1) Cancellation by the customer

The customer's statutory right to cancel shall not require any culpability in the event that the goods are defective. In all other cases the customer may only cancel the contract if we commit a breach of duty.

#### (2) Data protection

We would like to notify our customers that we process and forward their personal data for commercial purposes with the help of IT systems within the regulations of the Data Protection Law.

### **XV. Place of fulfilment and jurisdiction/Applicable law**

#### (1) Place of fulfilment

The place of fulfilment for actions required from the contract by both parties shall be Nuremberg.

#### (2) Place of jurisdiction

The sole place of jurisdiction for all disputes arising directly or indirectly from the contract shall be Nuremberg. However, we shall also be entitled to sue at the customer's registered office.

#### (3) Applicable law

The laws of the Federal Republic of Germany shall be exclusively applicable to all legal relationships between us and the customer with the exclusion of the United National Convention on Contracts for the International Sale of Goods (CISG).