



General Terms and Conditions Photonfocus AG

1. General Provisions

1.1 Scope and Priority

1. The following Terms and Conditions shall apply to all supplies, all repair and advisory work and other services of Photonfocus AG, Lachen (hereinafter referred to as "Photonfocus").
2. No conditions of purchase or other general terms and conditions of Customer shall apply unless Photonfocus confirms them expressly in writing.

1.2 Conclusion and Amendment of the Contract

1. Photonfocus' offers shall not be binding. No order will be binding upon Photonfocus unless and until confirmed by Photonfocus in writing.
2. Any amendments to a contract must be in writing. No employee or agent of Photonfocus shall be entitled to enter into any verbal collateral agreements or to make any verbal promises or agreements regarding the amendment of a contract. Such verbal collateral agreements or verbal promises or agreements shall have no binding effect on Photonfocus unless and until Photonfocus' purchase order confirmation has been amended accordingly in writing.

2. Delivery

2.1. Scope of Services

1. Customer will acquire from Photonfocus all components specified in the purchase order confirmation and, if covered by the scope of delivery, also the related operating software and documentation.
2. Photonfocus shall, whenever possible, deliver to Customer the full purchase order. Customer agrees to accept partial delivery.

2.2 Shipment and Passing of Risk

1. Unless otherwise agreed in writing, deliveries will be made "ex works" (place of performance). Customer shall have all risk after delivery of the goods. Customer shall be responsible for obtaining transportation insurance at his own discretion.
2. Photonfocus shall make all reasonable efforts to effect delivery in time and by means and routes previously agreed upon. Delay in delivery does not entitle Customer to cancel any given purchase order or to claim damages.
3. Photonfocus shall provide proper packaging for the goods at its own discretion. Sea freight shall be shipped in standard export packaging. Special packaging shall be available upon Customer's request and at Customer's expense.
4. Customer shall take delivery within the period specified in the offer or in the purchase order confirmation, as the case may be. Should delivery be delayed either at the request of Customer or because of any other reason not caused by Photonfocus, all risk for the goods shall pass to Customer with effect on the originally agreed point of the time for delivery. From this time on, Photonfocus, at its own discretion, may store the goods at Customer's risk and cost.

5. There shall be no return of goods but in exceptional cases and subject to a written agreement. These goods shall be returned in the original packaging and accompanied by a copy of the invoice.

2.3 Prices and Payment

1. All prices quoted by Photonfocus are net prices. Prices shall be "ex works", exclusive of ancillary costs such as freight, customs duties and packaging, plus VAT as applicable on the date of delivery, and any other taxes, duties, fees and similar charges. Any prices confirmed shall only apply if delivery is taken for the quantity so confirmed.
2. Unless otherwise agreed, any claims under invoices of Photonfocus shall be payable in their net amounts (without discount) 30 days upon receipt.
3. Photonfocus, irrespective of any terms and conditions of Customer to the contrary, may set off payments first against earlier debts of Customer. If costs and interest have arisen, Photonfocus may set off payments first against costs, then against interest, and finally against the main performance.
4. In case of default, Photonfocus will charge default interest at the then valid Euromarket interest rate, but not less than 6 % p.a. Photonfocus reserves the right to assert further claims, in particular any excess damages caused by delay.
5. Photonfocus may accelerate maturity of the remaining debt as a whole (i) if Customer fails to comply with contractual payment commitments, (ii) if Customer suspends payments, or (iii) if Photonfocus gets aware of any other circumstances that call Customer's credit standing into question.
6. No set-off against claims of Photonfocus shall be allowed unless a counter-claim is uncontested, has been established by a declaratory judgement or recognized by Photonfocus. No right of retention may be exercised unless the counter-claim is uncontested or has been established by declaratory judgement.
7. Photonfocus shall not be obliged to accept bills of exchange or checks. When allowing Customer to provide a bill of exchange or a check, acceptance shall be subject to discounting and reimbursement of all expenses incurred by Photonfocus. Moreover, Photonfocus shall not be obliged to present a bill of exchange or check in due time or to protest a bill of exchange. Photonfocus shall be entitled to include all expenses incurred by Photonfocus in the following invoice.

3. Reservation of Title

1. Title in the goods remains vested in Photonfocus until such time as the goods have been fully paid for, as well as if the goods are processed or combined with other goods.
2. Customer hereby expressly authorizes Photonfocus, at Customer's expense, to do all necessary recordings in order to retain title. Customer shall cooperate and provide all the documents that may be necessary for Photonfocus to create, maintain and protect its title to the products.
3. In particular, Customer shall, at his own expense and at Photonfocus' discretion, keep the goods in proper conditions and insure them against theft, breaking, fire, water and other risks of loss during the period title in the goods is vested in Photonfocus. Customer shall take all necessary steps to ensure that Photonfocus' title in the goods is neither impaired nor removed.

4. Liability and Warranty

Photonfocus shall provide a warranty excluding any further claims as follows:

Defects of Quality

1. Distributors and other intermediaries shall not be allowed to provide a warranty which goes beyond the warranty contained in this Section 4, neither in their own name nor on behalf of Photonfocus. Only Photonfocus shall be entitled to accept claims arising from this warranty and provide the corresponding services.
2. All deliveries shall be examined by Customer immediately after receipt. Any defects shall be notified to Photonfocus in writing within 10 days. Delivery shall be deemed accepted if Customer fails to make such notification. Defects that were not detectable by examination according to the standards in usage for similar products shall be notified to Photonfocus within 5 days after detection failing which the delivery shall be deemed accepted with regards to these defects as well.
3. All parts which are discovered to be defective as a consequence of circumstances existing prior to the transfer of risk shall be, at the choice of Photonfocus, repaired or replaced with defect-free parts. Replaced parts become the property of Photonfocus.
4. After consultation with Photonfocus, the Customer shall provide the necessary time and opportunity for the undertaking of the improvements or the replacement delivery deemed to be necessary by Photonfocus; otherwise, Photonfocus shall be exempted from the consequences resulting from the defect. The Customer shall only have the right to repair the defect itself or by a third party and to demand reimbursement of the necessary costs from Photonfocus in urgent cases of imperilment of company safety or to avoid disproportionate damage, whereby in such case Photonfocus shall be notified immediately.
5. From the direct costs resulting from the remedy or replacement delivery, Photonfocus shall bear the costs of the replacement parts and their shipping insofar as the objection is deemed to be justified. The risk of loss of the delivery shall remain with the Customer.
6. The Customer shall have a right to cancel the contract only if Photonfocus allows a reasonable deadline set for it to remedy the defect of quality or to make replacement parts available pass without success or if two attempts to remedy the defect have been unsuccessful. Should only an immaterial defect exist, then the Customer shall only have a right to reduce the purchase price. The right of reduction of the purchase price shall otherwise be precluded.
7. No warranty shall be given and no liability accepted in the following cases in particular: Interference by a third party, unsuitable or improper use, misuse, defective assembly or putting into operation by the Customer or third parties, normal wear and tear, defective or negligent treatment, improper servicing, unsuitable production equipment and facilities, chemical, electro-chemical or electrical influences, insofar as such are not caused by Photonfocus, mechanical or electrical modification, in particular by means of soldering.
8. Should Customer or a third party improperly undertake remedies, Photonfocus shall not be liable for any consequences resulting therefrom. The same shall apply for changes to the product without the prior approval of Photonfocus.
9. All claims arising from the warranty for defective products shall become statute-barred within 2 years after delivery to Customer, even if the defect is discovered later. Existing claims of Customer caused by defective products remain valid if the defect was notified in accordance with Section 4.1 within 1 year after delivery. The warranty for repaired or replaced parts shall be renewed upon repair respectively replacement. All claims arising from the renewed warranty shall become statute-barred within 6 months after repair respectively replacement.

10. The warranty shall in any case not exceed the original value of the product.

Legal Imperfection of Title

11. Should the use of the product cause infringement of any third party's intellectual property rights in Switzerland, Photonfocus shall, at its own costs, obtain the right to continue the use of the product or modify the product in a manner reasonable for the Customer so that the infringement of the protected rights no longer exists. Should this not be possible at commercially reasonable terms or within a reasonable time period, the Customer shall be entitled to cancel the contract. Photonfocus shall also be entitled to cancel the contract pursuant to the stated prerequisites. In addition, Photonfocus shall indemnify the Customer for claims of the respective owner of the protected rights which are non-disputed or determined with final res judicata effect.
12. Photonfocus obligations named in Section 4.11 shall be conclusive for the case of infringement of intellectual property rights. These shall exist only if:
 - the Customer notifies Photonfocus without undue delay of the claimed infringements of intellectual property rights,
 - the Customer supports Photonfocus to a reasonable extent with the defense against the claims or enables Photonfocus to undertake the modification measures pursuant to Section 4.11,
 - Photonfocus is reserved the right to all defensive measures including extra-judicial settlements,
 - the legal imperfection of title is not caused by a instruction of the Customer, and
 - the infringement of the right was not caused by the fact that the Customer arbitrarily changed the product or used it in way not in conformity with the contract.

Damages caused by Delay and Consequential Damage

13. As for the rest, all warranty or liability of Photonfocus for damage, including damage caused by delay or consequential damage, shall be excluded as permitted by law. In particular, all warranty and liability of Photonfocus for damage that it does not have to represent shall be excluded.

5. Use of Software and Documentation

1. Insofar as software and/or documentation is included in the scope of a delivery, the Customer shall be granted a non-exclusive right of its use. It shall be provided only for use on the product it was meant for. Use of the software on more than one system shall be prohibited.
2. The Customer may only copy, modify or translate software or documentation or transfer software from object code into source code to the extent allowed by law. The Customer agrees not to remove manufacturer details - in particular, copyright notations - or to change them without Photonfocus' prior approval.
3. All other rights on the software and documentation including copies thereof shall remain with Photonfocus respectively the software-provider. The grant of sublicenses by Customer is prohibited.

6. Repair Work

6.1 Scope of Services

Beyond its warranty duty, Photonfocus shall carry out repair work against payment and subject to acceptance of order. If on-site repair is impossible, the transport of the object to be repaired to and from Photonfocus' premises shall be at Customer's risk and expense.

6.2 Cost Estimate

On Customer's request, Photonfocus shall provide a written cost estimate, however, without warranty as to the accurateness of such cost estimate. Any prices stated in a cost estimate shall be plus VAT as applicable at that time. Photonfocus shall notify Customer immediately if it expects that a cost estimate will be surpassed by more than 10 %.

7. Final Provisions

7.1 Severability

In the event that any provision hereof should be ineffective, this shall not affect the validity of the remainder hereof. An ineffective provision shall be deemed replaced by a provision capable of putting into effect the economic aim of such ineffective provision.

7.2 Applicable Law and Venue

1. All legal relations with Customer shall be governed exclusively by substantive Swiss Law, excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (Vienna Convention).
2. All disputes arising out of or in connection with contracts hereunder shall be exclusively resolved by the courts at Photonfocus' domicile (at present Lachen, Kanton Schwyz). Mandatory jurisdiction shall be reserved. Notwithstanding the foregoing, Photonfocus shall have the right to assert its rights at the domicile of Customer.

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