

SK LASER GMBH TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

These terms and conditions of purchase apply between SK LASER GmbH whose principal place of business is at Daimlerring 6 in 65205 Wiesbaden in Germany ("SK LASER") and the supplier of goods named on the Order (the "Supplier"). By accepting an Order from SK LASER the Supplier agrees these terms are the sole and exclusive terms and conditions which govern the Order and may only be amended by agreement in writing signed by both parties. Any agreement in writing signed by both parties will take precedence over these terms, but only where signed by both parties.

1. Interpretation

1.1 Definitions

In these conditions the following definitions apply:

"Business Day"

a day other than a Saturday, Sunday or public holiday in Germany when banks in Frankfurt are open for business.

"Conditions"

the terms and conditions set out in this document as amended from time to time in accordance with clause 18.1.

"Contract"

the contract between the Customer and the Supplier for the sale and purchase of the Products in accordance with these Conditions.

"Delivery Location"

the Customer's premises at Daimlerring 6 in 65205 Wiesbaden or such other location as the Customer specifies on the Order.

"Intellectual Property Rights"

patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Order"

the Customer's order for the Products, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or a completed Order Form as the case may be.

"Products"

the goods, or any part of them, set out in the Order.

"Specification"

any specification for the Products, including any related plans and drawings, that are agreed in writing by the Customer and the Supplier.

“Supplier”

the person or firm named in the Contract Details

“VAT”

value added tax chargeable and any similar replacement according to the Umsatzsteuer Law in Germany or additional tax.

1.2 Construction

In these Conditions the following rules in this clause 1 shall apply.

1.2.1 Clause headings shall not affect the interpretation of these Conditions.

1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.2.4 A reference to writing or written includes fax but excludes email.

1.2.5 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.2.6 References to clauses are to the clauses of these Conditions.

1.2.7 Unless otherwise expressly provided, the obligations and liabilities of the persons (if more than one) who comprise the Supplier under these Conditions are joint and several.

1.2.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Products in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order; at which point the Contract shall come into existence.

3. Supply of the Products

3.1 The Supplier shall ensure that the Products shall:

3.1.1 correspond with their description and any applicable Specification;

3.1.2 be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Products.

3.2 The Supplier agrees to comply with the Customer's Supplier Code from time to time, a copy of which is available. The Customer will notify the Supplier of any changes made to the Supplier Code. The Customer shall be entitled to immediately terminate the Contract if the Supplier commits a material breach of that standard.

3.3 The Supplier shall ensure that at all times it has and maintains all licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.4 The Customer shall have the right to inspect and test the Products at any time before delivery.

3.5 If following such inspection or testing the Customer considers that the Products do not conform or are unlikely to comply with the Supplier's undertakings set out

at clause 3.1, the Customer may inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Products and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.7 The Customer may at any time prior to despatch of the Products amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier's failure to comply with its obligations under the Contract the Customer shall have no liability to the Supplier in respect of it.

4. Quality and packing

4.1 The Supplier shall pack and supply the Products in accordance with the specific requirements of the Customer as set out in the Order or as otherwise notified by the Customer to the Supplier and all generally accepted industry standards and practices that are applicable.

4.2 The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.

4.3 The Supplier warrants that it has obtained and holds all licences, permissions, authorisations, consents and permits needed to supply the Products in accordance with the terms of the Contract.

4.4 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Products.

5. Delivery

5.1 The Supplier shall ensure that:

5.1.1 the Products are properly packed in accordance with these Conditions and secured in such a manner as to enable them to reach their destination in good condition; and

5.1.2 each delivery of the Products is accompanied by a delivery note which shows the Order number (if any), the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.

5.2 The Supplier shall deliver the Products to the Delivery Location:

5.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order ("Delivery Date");

5.2.2 during the Customer's normal business hours, or as instructed by the Customer. 5.2.3 in instances where the Products are transported from outside of Germany the Products shall be delivered DDP Delivery Location (Incoterms 2010) save that the Supplier shall be responsible for unloading the Products at the Delivery Location.

5.3 Delivery of the Products shall be completed on the completion of unloading the Products at the Delivery Location.

5.4 If the Supplier:

5.4.1 delivers less than 100% of the quantity of Products ordered, the Customer may reject the Products; or

5.4.2 delivers more than 105% of the quantity of Products ordered, the Customer may at its discretion reject the Products or the excess Products; and any rejected Products shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Products ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Products.

5.5 The Supplier shall not (unless the Order provides to the contrary) deliver the Products in instalments without the Customer's prior written consent. Where it is agreed that the Products are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time, or at all, or any defect in an instalment shall entitle the Customer to the remedies set out in clause

5.6 or as otherwise set out elsewhere in these Conditions.

5.6 If an Order is not delivered by the specified Delivery Date, then, without limiting any other right or remedy the Customer may have, the Customer may:

5.6.1 refuse to take any subsequent attempted delivery of the Order;

5.6.2 obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Customer in obtaining such substitute products; and

5.6.3 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date.

6. Acceptance and defective products, repair of defective products both when initially supplied and otherwise during the warranty period

6.1 The Customer shall not be deemed to have accepted any Products until it has had 20 Business Days following delivery to inspect them, or, in the case of a latent defect in the Products, 10 Business Days following the latent defect becoming apparent.

6.2 If any Products delivered to the Customer do not comply with clause 3.1, or are otherwise not in conformity with the terms of these Conditions, then, without limiting any other right or remedy that the Customer may have, the Customer may reject those Products and:

6.2.1 require the Supplier to repair or (at the Customer's option) replace the rejected Products at the Supplier's risk and expense within five Business Days of being requested to do so; or

6.2.2 require the Supplier to repay the price of the rejected Products in full (whether or not the Customer has previously required the Supplier to repair or replace the rejected Products); and

6.2.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that are not in conformity with the terms of the Contract.

6.3 Without prejudice to the Customer's rights and remedies under clause 6.2, the Customer may (in its absolute discretion) elect to itself attempt a repair of the relevant Product and, if it so elects, shall be entitled to require the Supplier to pay the Customer for all the labour employed by the Customer in carrying out any such work (such labour to be paid for at the rates generally charged from time to time by the Customer to its customers for similar services where any warranty period has expired or the customer is otherwise not entitled to receive a free or discounted service) together with the costs incurred by the Customer in acquiring any parts utilised in carrying out the works of repair, all such charges and costs to be paid by the Supplier within 14 days of the Customer's request to the Supplier for payment. The Customer shall be entitled to set-off all or any of such charges and costs against any amounts that may otherwise fall due for payment by the Customer to the Supplier pursuant to the relevant Contract or any other Contract and whether or not such 14 day period has elapsed.

6.4 These Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

6.5 Without prejudice to the operation of clause 6.3, if the Supplier fails to promptly repair or, as the case may be, replace rejected Products in accordance with

clause 6.2.1, or if the Customer does not itself effect the repair in accordance with this clause 6, the Customer may, without affecting its rights under clause 6.2.3 or otherwise under the Contract, obtain substitute products from a third party supplier, or have the relevant Products repaired by a third party, and the Supplier shall reimburse the Customer in full for the costs it incurs in doing so.

6.6 If following the supply by the Customer of any Products to the Customer's customers it becomes apparent that any of those Products do not comply with clause 3.1, or are otherwise not in conformity with the terms of the Contract, then without limiting any other right or remedy that the Customer may have, the Customer may (in addition to any of the rights which it has under any of clauses 6.2.1, 6.2.2, 6.2.3 and 6.5, and which rights shall apply whether or not the Customer still has the right to reject the relevant Products) proceed to itself repair the relevant Products in which event the provisions of clause 6.3 shall apply and the Supplier shall, in addition, pay to the Customer (within the time provided for in clause 6.3) all such out of pocket expenses and other charges (including without limitation a charge for all the time spent in travelling) the Customer may incur in attending its relevant customers' premises or otherwise where the relevant Products may be located.

6.7 The Customer's rights and remedies under this clause 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.

7. Title and risk 7.1 Title and risk in the Products shall pass to the Customer on completion of delivery.

8. Product prices and payment

8.1 The price of the Products shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

8.2 The price of the Products is exclusive of amounts in respect of VAT, but includes the costs of packaging, insurance and carriage of the Products. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.3 The Supplier may invoice the Customer for the Products on or at any time after the completion of delivery.

8.4 The Customer shall pay correctly rendered invoices within 60 days following the last day of the month in which the relevant invoice or invoices were received by the Customer.

8.5 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

8.6 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8.7 The Customer shall be entitled to any standard discount offered by the Supplier for prompt payment.

8.8 If the Customer disputes any invoice or other statement of monies due, the Customer shall notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in these Conditions. The Supplier's obligations to supply the Products and otherwise comply with the Contract shall not be affected by any payment dispute.

9. Customer materials

9.1 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier ("Customer Materials") and all rights in the Customer material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

10. Indemnity

10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Products, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Products, to the extent that the defects in the Products are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Products, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

11. Insurance

11.1 During the term of the Contract and for a period of 1 year thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Confidentiality

12.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14. Force Majeure

14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control (a 'Force Majeure Event').

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 7 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

15. Assignment and other dealings

15.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Customer.

15.2 The Customer may freely assign, transfer or subcontract any or all of its rights and obligations under the Contract to any person.

16. Severance

16.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17. Waiver

17.1 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise

18. Variation

18.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.

19. Governing law, jurisdiction and third party rights

19.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Germany. For the avoidance of doubt the United Nations Convention on the International Sale of Goods shall not apply to the Contract.

19.2 Each party irrevocably agrees that the courts of Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

19.3 A person who is not a party to the Contract shall not have any rights to enforce its terms.

20. Notices

20.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or sent by pre-paid post (by airmail if to an address outside the country of posting) to the relevant party at its registered office (if a company) or its principal place of business (in any other case).

20.2 Any notice shall be deemed to have been received: 20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

20.2.2 if posted, two Business Days after posting if sent to an address within the country of posting, or five Business Days if sent by airmail post.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.