

General Terms and Conditions

1. Scope

- 1.1 These General Terms and Conditions shall apply to all legal transactions between **RIEGL LASER MEASUREMENT SYSTEMS** GmbH (hereinafter referred to as "Seller") and its business partners and customers (hereinafter referred to as "Buyer") for the supply of goods and, correspondingly, for the provision of services. All offers of the Seller are based upon these General Terms and Conditions. With respect to software the current terms for Software Transactions published by the *Fachverband der Elektro- und Elektronikindustrie Österreich* (Association of the Austrian Electrical and Electronics Industries) shall apply. With respect to medical electronics the current Installation Conditions of the Austrian High-voltage and Low-voltage Industry and/or the Installation Conditions of the Austrian Electrical and Electronics Industries shall apply.
- 1.2 If individual provisions of these General Terms and Conditions are directly in conflict with provisions set out in offers or order acknowledgements of the Seller, the provisions set out in offers and order acknowledgements shall take precedence. In such case only those provisions of these General Terms and Conditions are valid that do not directly conflict with the provisions of the offers or order acknowledgements of the Seller.
- 1.3 The Buyer expressly accepts that the Seller objects to any and all provisions in an order or in other business documents of the Buyer that deviate from the terms and conditions referenced in section 1.1 or 1.2. If the Seller does not explicitly consent to Buyer's terms and conditions in writing, the Seller does not accept any general terms and conditions of the Buyer that deviate from these General Terms and Conditions, even if the Seller does not expressly object to such terms and conditions for any individual transaction.
- 1.4 These General Terms and Conditions also shall apply as a framework agreement to all further legal transactions with the Buyer.
- 1.5 As a result of legal requirements, Seller only delivers to business customers and governmental entities, but not to consumers.

2. Offer

- 2.1 The Seller's offers shall not be binding and are not to be interpreted as offers within the meaning of sections §§ 862 ff of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch - Austrian General Civil Code*).
- 2.2 All offers are valid for 30 days.
- 2.3 Offer or project documents shall neither be duplicated nor made available to third parties without the Seller's approval. The Seller can reclaim them and they shall be returned to the Seller, if the order is placed elsewhere.

3. Conclusion of contract

- 3.1 The contract shall be deemed concluded as soon as the Seller – after receipt of the order – has sent a written order acknowledgement or has made a delivery.
- 3.2 Information contained in catalogues, brochures, the *RIEGL* webpage etc. as well as any other written or oral statements shall only be binding if the order acknowledgement expressly refers to them.
- 3.3 Later amendments and supplements to the contract or side agreements require a written confirmation of the Seller to be valid.
- 3.4 The Seller is entitled to correct mere typing and calculation errors contained in offers, order acknowledgements or invoices at any time.

4. Prices

- 4.1 Unless stated otherwise, the prices shall be ex works, including packing and loading, but excluding value added tax. Any duties, taxes or other charges incurred in connection with the delivery shall be paid by the Buyer.
- 4.2 If the final order deviates from the Seller's total offer, the Seller reserves the right to change the price accordingly.
- 4.3 The prices shall be fixed prices.
- 4.4 In case of repair orders, the services considered appropriate by the Seller shall be rendered and charged on the basis of the work involved. This shall also apply to services and additional work the necessity of which becomes obvious only during the execution of the order, with no special notification of the Buyer being required in such case.
- 4.5 The cost for drafting repair offers or for appraisals shall be invoiced to the Buyer.

5. Delivery

- 5.1 Agreed delivery periods shall commence on the below-mentioned dates, whichever is latest:
 - a) date of order acknowledgement,
 - b) date on which all technical, commercial and other requirements under Buyer's responsibility have been fulfilled,
 - c) date on which the Seller receives a down payment or security to be provided before the delivery of the goods.

- 5.2 The Buyer shall obtain any third-party approvals from authorities that may be required. If such approvals are not provided in due time, the delivery period shall be extended accordingly.
- 5.3 Also in the event of a default or delay of agreed payments the delivery period shall be extended accordingly.
- 5.4 The delivery period shall be deemed complied with if the delivery item leaves the warehouse of the Seller before the delivery period expires or if the Seller has notified the Buyer of its ability to deliver.
- 5.5 The Seller is entitled to effect and charge partial and/or preliminary deliveries. If on-call delivery has been agreed, the goods are considered as called 1 year after order acknowledgement at the latest.
- 5.6 Unless a more specific arrangement has been reached in writing, the Seller reserves the right to choose the type of delivery and dispatch. No particular obligation exists to choose the least expensive mode of transport. Packing – also of partial and/or preliminary deliveries – shall be effected in a manner customary in trade or commerce.
- 5.7 In the event of the occurrence of unforeseeable circumstances or contingencies beyond the control of the parties, such as all events of force majeure, which prevent meeting the agreed delivery date, said delivery date shall be extended for a period equal to the duration of such events, to the exclusion of any and all legal claims that the Buyer otherwise may have; such events shall include in particular armed conflicts, interventions and prohibitions of authorities, transport and customs delay, shipping damage, power and raw material shortage, labour disputes and default of a major supplier that is difficult to replace. The above-mentioned events justify the extension of the delivery date also if they occur with suppliers utilised by Seller.
- 5.8 If, upon concluding the contract, the contracting parties have expressly agreed in writing on a contractual penalty in the event of a delay in delivery, it shall be paid subject to the following rule:

A delay in performance which was demonstrably caused by the Seller's sole gross negligence shall entitle the Buyer to claim a penalty of not more than 0.5% for each full week of delay, but not more than 5% in total of the value of that part of the entire delivery in question which cannot be used as a consequence of the delayed delivery of a substantial part, provided that, if the Buyer claims such penalty, the Buyer has incurred damage in such amount. If a contractual penalty for the benefit of the Buyer has been agreed upon, any claims of the Buyer exceeding the penalty from the respective basis for such claims shall be excluded.

Further claims resulting from the delay, whether based on contract, non-mandatory statutory rules or otherwise, shall be excluded.

- 5.9 shipments of goods to the Buyer are insured for transport damages. If the Buyer discovers a defect upon opening the package(s), which obviously is attributable to damage caused during transportation, the Buyer must advise Seller with appropriate documentation within 5 working days after receipt of the shipment; otherwise the damage will not be covered by the insurance company.

6. Passage of risk and place of fulfilment

- 6.1 Utilisation and risk shall pass to the Buyer upon shipment ex works or ex warehouse, irrespective of the pricing agreed in writing for the delivery (e.g., delivered free, CIF etc.). This shall also apply if delivery is effected within the scope of an assembly or if the shipment is executed or organised and fulfilled by the Seller.
- 6.2 In the case of services, the place of fulfilment shall be the place where the service is provided. The risk of a service or an agreed partial service shall pass to the Buyer upon its provision.

7. Payment

- 7.1 Unless different terms of payment have been agreed in writing, the invoice associated with the relevant delivery shall in any event be paid within 30 days from invoicing at the latest.
- 7.2 In case of partial invoices, the corresponding partial payments are due upon receipt of the relevant invoice. This also shall apply to invoiced amounts which exceed the original total due to additional deliveries or other agreements, irrespective of the terms of payment agreed for the main delivery.
- 7.3 Payments shall be made without deductions in the agreed currency free Seller's paying agent. Cheques or bills of exchange are at all times accepted only on account of payment. The Buyer shall be debited with all related interest and charges (such as collection fees and discount charges).
- 7.4 The Buyer is not entitled to hold back or offset payments on grounds of warranty or any other claims.
- 7.5 A payment shall be deemed effected as of the day the Seller has the payment at its disposal.
- 7.6 If the Buyer has caused a delay of payment or a delay of any other service associated with this or other transactions, the Seller may, without prejudice to its other rights:

a) delay the fulfilment of its own obligations until such payment or other service has been effected and extend the time of delivery accordingly;

b) ask for immediate payment of all open receivables from such or other transactions and charge 1.25% interest per month on arrears plus value added tax per month for those amounts as of the relevant due date, provided that the Seller does not furnish proof of costs going beyond it.

In any event, the Seller shall be entitled to charge pre-trial costs, especially collection and legal fees.

7.7 Granted discounts or bonuses will only be granted if payment is effected at the agreed time in full.

7.8 The Seller retains the title of all goods he has delivered until the invoiced amounts plus interest and charges have been fully paid.

The Buyer hereby assigns to the Seller with immediate effect, for the purpose of securing and satisfying, all claims from the resale of goods subject to retention of title, even if they have been processed, redesigned or commingled, in order to collateralise the Seller's purchase money claim and undertakes to make a corresponding note in its accounting records or on its invoices. The Seller accepts such assignment.

Upon request of the Seller, the Buyer shall notify the Seller of the account receivable assigned as well as the corresponding debtor and make available all data and documents required for its collection of accounts receivable and notify the third-party debtor of the assignment.

In the event of attachment or other utilization, the Buyer shall be obliged to point out the legal title of the Seller and notify the Seller immediately.

8. Warranty

8.1 In accordance with the below-mentioned provisions, the Seller shall be obliged to remedy each defect that impairs operability which exists at the time of delivery and is caused by a structural or material defect or defective work. No warranty claims may be derived from information contained in catalogues, brochures, marketing material and written or oral statements that have not been included in the contract.

8.2 For defects that could not be detected during the delivery inspection, the warranty period is in effect for 24 months. The warranty period shall commence at the time the risk passes pursuant to section 6 and shall neither be extended nor suspended due to remedying and improvement attempts. This warranty period also applies to partial deliveries. Such defects shall be declared in writing immediately after the discovery of the defect. If the Buyer undertakes no such notification, warranty and all other claims shall be excluded. The notification does not imply that the Buyer is entitled to retain the amounts invoiced or any part thereof.

8.3 If a defect subject to warranty obligation pursuant to this section 8 exists, the Seller shall, at its option, rectify the defective product or the defective part at the place of performance or have it sent to him for rectification or effect a reasonable price reduction.

8.4 The Buyer shall be debited with the incidental expenses resulting from the rectification of defects (such as installation and dismantling, transport, waste disposal, travelling expenses and times). For warranty work at the Buyer's premises, the required personnel, lifting devices, scaffolding, incidentals etc shall be provided by the Buyer free of charge. Replaced parts shall become the Seller's property.

8.5 If a product is manufactured by the Seller based on design details, drawings, models or other Buyer's specifications, the Seller's liability shall only extend to the execution according to the required specifications.

8.6 The following defects shall also be excluded from warranty: Defects resulting from instructions and assembly not effected by the Seller, insufficient facilities, non-compliance with the installation requirements and terms of use, excessive utilisation of the parts beyond the capacity indicated by the Seller, negligent or faulty handling and use of unsuitable operating materials; the same shall apply to defects caused by material provided by the Buyer. Neither shall the Seller be liable for damage attributable to acts of third parties, atmospheric discharges, excess voltages and chemical influences. The warranty shall not cover the replacement of parts that are subject to natural wear and tear.

8.7 The warranty shall immediately expire if the Buyer himself or a third party not expressly authorised by the Seller changes or repairs, or opens and/or dismounts the supplied items without the Seller's prior written consent.

8.8 The provisions of Sections 8.1 through 8.7 shall apply correspondingly to any responsibility for defects on other legal grounds, including but not limited to damage claims.

9. Guarantee

9.1 Unless otherwise agreed upon, the Seller gives a 12-month guarantee on all equipment and parts supplied. In the case of equipment with an elapsed time indicator, 2,000 operating hours or the period of 12 months, whichever is reached first, shall be deemed the guarantee period. The claim under guarantee shall commence at the time the risk passes pursuant to clause 6.

9.2 In order to claim guarantee, the Buyer shall furnish proof of the existence of the defect without delay, in particular provide the Seller with the documents or data available to him. If a defect subject to guarantee obligation exists, the Seller, at its option, shall rectify the defective product or the defective part at the place of performance or have it sent to it for rectification or effect a reasonable reduction of the purchase price.

9.3 The Buyer shall be debited with the incidental expenses resulting from the rectification of defects (such as installation and dismantling, transport, waste disposal, travelling expenses and times). For guarantee works at the Buyer's premises, the required auxiliary personnel, lifting devices, scaffolding, incidentals etc shall be provided free of charge. Replaced parts shall become the Seller's property.

9.4 The guarantee covers the repair or removal of any occurring defects, malfunctions etc that are not attributable to inexpert or negligent handling or operation or malicious intent. The following defects shall also be excluded from the guarantee: defects resulting from instructions and assembly not effected by the Seller, insufficient adjustment, non-compliance with the installation requirements and terms of use, excessive utilisation of the parts beyond the capacity indicated by the Seller, negligent or faulty handling and use of unsuitable operating materials; the same shall apply to defects caused by material provided by the Buyer. Neither shall the promise of guarantee apply to damage attributable to acts of third parties, atmospheric discharges, excess voltages and chemical influences.

9.5 The guarantee shall immediately expire if the Buyer himself or a third party not expressly authorised by the Seller changes or repairs, or opens and/or dismounts the supplied items without the Seller's prior written consent.

10. Damage Claims and Liability Limitations

10.1 Claims pursuant to § 933b of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, Austrian General Civil Code) are excluded.

10.2 If any conditions for the assembly, start-up and utilisation (such as included in the operating instructions) or official conditions for admission are not complied with, any claims, including but not limited to claims for damages, shall be excluded.

10.3 For damages suffered by the Buyer, the Seller's liability is limited at the maximum to one-half of the value of the Buyer's order and only in the event of willful misconduct and gross negligence of the Seller or willful misconduct and gross negligence of the vicarious agents of the Seller. The liability of the Seller in the event of slight negligence is excluded, except in the case of personal injury.

Compensation for purely financial losses, loss of profit, interest loss, damage arising from third-party claims (whether direct or indirect, incidental, consequential or punitive damages) shall be excluded to the extent permitted by law. The Buyer must prove the existence of gross negligence on the part of Seller. Regarding personal injuries the Buyer must prove slight negligence on the part of Seller.

10.4 Claims for damages against the Seller shall be time barred and lapse 24 months after the time of delivery (passage of risk according to Section 6). The Buyer shall inform the Seller of the damage by written notice within a reasonable time, at the latest, however, within 8 days.

10.5 If the Buyer is itself held liable on the basis of the Austrian Product Liability Act (*Produkthaftungsgesetz*) or similar foreign regulations, the Buyer expressly waives every right of recourse against the Seller, in particular pursuant to § 12 of the Austrian Product Liability Act or similar foreign regulations. If the Buyer introduces the goods the Seller has delivered onto a market outside of the European Economic Area, it is obligated to exclude vis-à-vis its buyer the duty of replacement according to the Austrian Product Liability Act or similar foreign regulations, to the extent that is possible and permissible according to the applicable law or the law agreed between Seller and Buyer. In this case or in the event of the omission of this duty to exclude liability, the Buyer is obligated to indemnify and hold the Seller harmless against third-party product liability claims.

11. Withdrawal from contract

11.1 Unless a more specific arrangement has been made, the precondition for the Buyer's withdrawal from the contract shall be a delay in delivery that is attributable to the Seller's gross negligence as well as the lapse of a reasonable extension granted to the Seller. The withdrawal has to be asserted by registered post. Other consequences and/or claims vis-à-vis the Seller due to the Buyer's rescission shall be excluded.

11.2 Regardless of its other rights, the Seller shall be entitled to withdraw from the contract, in particular

a) if the execution of the delivery and/or the commencement or continuation of the work is impossible on grounds for which the Buyer is responsible or is delayed despite the granting of a reasonable extension,

b) if doubts about the Buyer's solvency have arisen and the Buyer, upon the Seller's demand, neither makes any advance payment nor furnishes any suitable security before delivery, or

c) if, due to the circumstances specified in section 5.7, the delivery time is extended by more than half of the originally agreed delivery period, but is at least 6 months.

11.3 Withdrawal from the contract may also be exercised by Seller and Buyer with regard to a still outstanding part of the delivery or service on the aforementioned grounds.

11.4 The withdrawal becomes legally effective through the Seller's unilateral declaration.

11.5 If insolvency proceedings are opened against the assets of a contracting party or a petition for institution of insolvency proceedings is dismissed due to insufficient assets, the other contracting party shall be entitled to withdraw from the contract without granting a grace period.

11.6 Without prejudice to the Seller's claims for damages including pre-trial costs, any services or partial services already rendered shall, in the event of withdrawal be invoiced in conformity with the contract and paid. This shall also apply if the Buyer has not yet accepted the delivery or work and shall also apply to any preparatory acts rendered by the Seller. Alternatively, the Seller shall also be entitled to demand the return of items already supplied.

12. Assertion of claims

Unless separately agreed provisions or statutory provisions stipulate shorter periods in individual cases, all Buyer's claims shall be asserted in court within 24 months from the day of the passing of the risk, or else the claims shall be forfeited.

13. Industrial property rights and copyright

13.1 If a product is manufactured by the Seller based on design details, drawings, models and other Buyer's specifications, the Buyer shall defend, indemnify and hold the Seller harmless from any violation of industrial property rights.

13.2 Production documents such as plans, drawings and other technical documents as well as samples, catalogues, brochures, illustrations and the like shall always remain the Seller's intellectual property and shall be subject to the relevant statutory provisions on duplication, imitation, competition etc. Section 2.3 also shall apply to production documents.

14. General

14.1 Should individual provisions of the contract or these provisions become void, the validity of the remaining provisions shall in no way be affected. The void provision shall be replaced by a valid provision coming as close as possible to the sense and spirit and purpose of the achieved target in economic terms.

14.2 The contracting parties declare that during the negotiations and the conclusion of the present agreement, they have complied with the Rules of Conduct on Combating Extortion and Bribery of the International Chamber of Commerce (the Rules). They commit to comply with the same Rules during the performance of the agreement in their relations with the other contractual parties as well as with third parties. The contracting parties expressly acknowledge that the violation of the preceding declarations or of the Rules will constitute a substantial breach under the agreement

15. Jurisdiction and applicable law

All legal and other disputes arising out of or in connection with the contract, including disputes about its validity, shall be exclusively settled at the court having jurisdiction for commercial matters (*"Handelssachen"*) in Vienna. The contract shall be exclusively governed by Austrian law without regard to its conflict of law provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

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