

## General Terms and Conditions

### 1. Scope

- 1.1 These general terms and conditions shall apply to legal transactions between **RIEGL LASER MEASUREMENT SYSTEMS** GmbH (hereinafter referred to as "Seller") and its business partners (hereinafter referred to as "Buyer") for the supply of goods and, correspondingly, for the provision of services. Applicable to software shall be, first and foremost, the software terms published by the *Fachverband der Elektro- und Elektronikindustrie Österreich* (Association of the Austrian Electrical and Electronics Industries), to assemblies the assembling terms of the Austrian high-voltage and low-voltage industry and/or the assembling terms of the Austrian electrical and electronics industries for medical electronics.
- 1.2 Deviations from the terms mentioned in clause 1.1 shall only be effective if the Seller has acknowledged them in writing.

### 2. Offer

- 2.1 The seller's offers shall not be binding and can not be understood as bids in terms of sections 862 ff ABGB (Austrian General Civil Code).
- 2.2 All offers are valid for 30 days.
- 2.3 Offer or project documents must not 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 confirmation or a delivery.
- 3.2 Information contained in catalogues, brochures etc. as well as any other written or oral statements shall only be authoritative if the order confirmation expressly refers to them.
- 3.3 Later amendments and supplements to the contract require a written confirmation to be valid.

### 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 an order deviates from the overall offer, the Seller reserves the right to change the price accordingly.
- 4.3 The prices shall be fixed prices.
- 4.4 In the case of repair orders, the services considered appropriate by the Seller shall be rendered and charged on the basis of the effort involved. This shall also apply to services and extra services whose necessity becomes obvious only during the execution of the order, with no special notification of the Buyer being required in this case.
- 4.5 The effort for drafting repair offers or for appraisals shall be invoiced to the Buyer.

### 5. Delivery

- 5.1 The time of delivery shall commence with the latest of the below mentioned dates:
- date of order confirmation,
  - date at which all technical, commercial and other requirements that are in the responsibility of the Buyer have been met,
  - date at 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 time of delivery shall be extended accordingly.
- 5.3 The Seller is entitled to effect and charge partial or preliminary deliveries. If on-call delivery has been agreed, the goods are considered as called 1 year after order placement at the latest.
- 5.4 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; 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 even if they occur with suppliers.
- 5.5 If, upon concluding the contract, the contracting parties have expressly agreed on a contractual penalty in the event of a delay in delivery, it shall be paid as stipulated by the following rule, with a deviation from individual points leaving the application of the overall rule unaffected:  
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, however, 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 the Buyer has incurred damage to this amount. Further claims resulting from the delay shall be excluded.

### 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 for the delivery (e.g. charges prepaid by sender, 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, 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 part payments are due upon receipt of the relevant invoice. This shall also 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 claims or other cross claims.
- 7.5 A payment shall be deemed effected as of the day the Seller has the money at his 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 his other rights:
- delay the fulfilment of his own obligations until this payment or other service has been effected and extend the time of delivery accordingly;
  - ask for immediate payment of all open receivables from this or other transactions and charge 1.25% in interest 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 dunning and legal fees.

- 7.7 Granted discounts or bonuses are contingent on the timely payment of the full amount.
- 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. Thus, the Buyer transfers to the Seller his receivable resulting from the resale of conditional goods, even if they have been processed, redesigned or blended, in order to collateralise the Seller's purchase money claim and undertakes to make a corresponding note in his books or on his invoices. Upon request, the Buyer shall notify the Seller of the account receivable discounted as well as its debtor and make available all data and documents required for his 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 him 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 The warranty period shall be 24 months. The warranty period shall commence at the time the risk passes pursuant to clause 6.
- 8.3 In order to claim warranty, 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 warranty obligation pursuant to clause 8.1 exists, the Seller shall, at his 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 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.

- 8.5 If a product is fabricated 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 conditions.
- 8.6 The following defects shall also be excluded from warranty: 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 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 Claims pursuant to § 933b *Allgemeines Bürgerliches Gesetzbuch* (ABGB, General Civil Code) shall at any rate become statute-barred on the expiry of the time specified in clause 8.2.
- 8.9 The provisions stipulated in clauses 8.1 to 8.8 shall apply correspondingly to any responsibility for defects on other legal grounds.

## 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, 2000 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 his option, shall 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 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.
- 9.6 Claims pursuant to § 933b *Allgemeines Bürgerliches Gesetzbuch* (ABGB, General Civil Code) shall at any rate become statute-barred on the expiry of the time specified in clause 9.1.

## 10. Rescission of contract

- 10.1 Unless a more specific arrangement has been made, the precondition for the Buyer's rescission 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. The rescission 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.
- 10.2 Regardless of his other rights, the Seller shall be entitled to rescind the contract:
- if the execution of the delivery and/or the commencement or continuation of the service is impossible on grounds for which the Buyer is responsible or is delayed despite the granting of a reasonable extension,
  - if doubts about the Buyer's solvency have arisen and the Buyer, upon the Seller's wish, neither makes any advance payment nor furnishes any suitable security before delivery, or
  - if, due to the circumstances specified in clause 5.4, the delivery time is extended by more than half of the originally agreed delivery period, but is at least 6 months.
- 10.3 The contract may also be rescinded with regard to a still outstanding part of the delivery or service on the aforementioned grounds.
- 10.4 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 rescind

the contract without granting a grace period.

- 10.5 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 rescission, be invoiced in conformity with the contract and paid. This shall also apply if the Buyer has not yet accepted the delivery or service and shall also apply to any preparatory acts rendered by the Seller. Instead, the Seller shall also be entitled to demand the return of items already supplied.

## 11. Liability

- 11.1 The Buyer shall only be liable for damage outside the scope of application of the *Produkthaftungsgesetz* (PHG; Product Liability Act), if proof can be furnished of his intent or gross negligence, within the scope of statutory provisions. Any liability for slight negligence, the compensation for consequential damage and financial losses, non-achieved savings, interest loss and for damage from third-party claims vis-à-vis the Buyer shall be excluded.
- 11.2 If any conditions for the assembly, start-up and utilisation (such as included for example in the operating instructions) or official conditions for admission are not complied with, any damages shall be excluded.
- 11.3 If a contractual penalty for the benefit of the Buyer has been agreed upon, any exceeding claims of the Buyer from the respective title shall be excluded.

## 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 3 years 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 fabricated by the Seller based on design details, drawings, models and other Buyer's specifications, the Buyer shall indemnify and hold the Seller harmless for 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. Clause 2.2. shall also apply to production documents.

## 14. General

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.

## 15. Legal venue and applicable law

The competent court at the Seller's headquarters shall be in charge of ruling on all disputes arising from the contract, including decisions on its existence or non-existence. The contract shall be exclusively governed by Austrian law, excluding the renvoi rules. The United Nations Convention on Contracts for the International Sale of Goods prepared by UNCITRAL shall not apply.

Version of March 2006