

# GENERAL TERMS & CONDITIONS OF SALE

1 January 2021

## PREAMBLE

1. These General Terms & Conditions of Sale ("General Conditions") shall apply to goods, materials or equipment and associated documentation (the "Products") and Services ("Services") (jointly "Deliverables") provided by NKT Photonics A/S or its subsidiary companies ("Supplier"). Any modifications of or deviations from these General Conditions must be agreed in writing.
2. These General Conditions shall apply in addition to and form part of the agreement (the "Contract") in writing between the parties concerning supply of the Deliverables and all appendices, including agreed amendments and additions in writing, to the said documents.
3. In case of conflicts between these General Conditions and other elements of the Contract, these General Conditions shall supersede.

## PRODUCT INFORMATION

4. All information and data contained in general product documentation and price lists shall be binding only to the extent that they are by reference in writing expressly included in the Contract.

## IP, DRAWINGS AND TECHNICAL INFORMATION

5. Supplier retains all right, title, and interest in and to (i) all inventions, ideas, processes, methods, know-how, skills and techniques embodied in or represented by Products, Services, specifications and materials provided by Supplier to the Purchaser; and (ii) all inventions, ideas, processes, methods, know-how, skills and techniques developed, discovered or conceived by Supplier or its employees in connection with or used for the development and/or manufacture of Products and Services, including, but not limited to, patent rights, copyrights, trade secret rights, mask work, design rights, trademark rights and/or other proprietary rights throughout the world.
6. The sale of any Deliverable by Supplier shall not in any way confer upon the Purchaser, or upon anyone claiming under the Purchaser, any express or implied license to any intellectual property rights of Supplier.
7. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to

the formation of the Contract, shall remain the property of the submitting party.

8. Drawings, technical documents, or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

## DELIVERY. PASSING OF RISK

9. Any agreed trade term shall be construed in accordance with the INCOTERMS® in force at the formation of the Contract.

If no trade term has been specifically agreed, the delivery shall be Free Carrier (FCA) at the place named by the Supplier.

If, in the case of delivery Free Carrier, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier.

Partial delivery shall be permitted to the extent practically possible and commercially reasonable.

Products will be made available for delivery within applicable lead time as communicated to Purchaser.

## TIME FOR DELIVERY. DELAY

10. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place, such period shall start to run as soon as the Contract is entered into and all agreed preconditions to be fulfilled by the Purchaser have been satisfied, such as official formalities, payments due at the formation of the Contract and securities.
11. If delay in delivery is caused by any of the circumstances mentioned in Clause 39, by an act or omission on the part of the Purchaser, including suspension under Clause 16, or any other circumstances attributable to the Purchaser, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

12. If the Deliverable is not delivered at the time for delivery, the Purchaser shall be entitled to compensation for documented loss from the date on which delivery should have taken place.  
The Purchaser shall forfeit his right to such damages if he has not lodged a claim in writing for such damages within one month after the time when delivery should have taken place.

#### INSPECTION

13. The goods delivered shall be inspected immediately on arrival. Supplier shall be notified in writing without undue delay and not later than fourteen days after the delivery has been received, of any defect, which is discovered through such inspection and for which a claim against Supplier will be made.

#### PRICE AND PAYMENT

14. Unless otherwise stated specifically in the offer or order confirmation all prices are quoted FCA (Incoterms 2000) and excluding packaging, VAT, turnover tax, customs duty and other public charges. Payment shall be made in EUR within 30 days after the date of invoice.
15. If the Purchaser fails to pay by the stipulated date, the Supplier shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be 8 percentage points above the rate of the main refinancing facility of the European Central Bank. The compensation for recovery costs shall be 1 per cent of the amount for which interest for late payment becomes due.
16. In case of late payment and in case the Purchaser fails to give an agreed security by the stipulated date the Supplier may, after having notified the Purchaser in writing, suspend his performance of the Contract until he receives payment or, where appropriate, until the Purchaser gives the agreed security.

#### RETENTION OF TITLE

17. Physical Products shall remain the property of the Supplier until paid for in full.  
The Purchaser shall at the request of the Supplier assist him in taking any measures necessary to protect the Supplier's title to the Product.  
The retention of title shall not affect the passing of risk under Clause 9.

#### LIABILITY FOR DEFECTS

18. Pursuant to the provisions of Clauses 19-30, the Supplier shall remedy any defect or

nonconformity (hereinafter termed defect(s)) resulting from faulty workmanship.

19. The Supplier shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Purchaser.
20. The Supplier shall only be liable for defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.
21. The Supplier shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Purchaser, e.g. defects due to faulty maintenance, incorrect installation or faulty repair by the Purchaser or to alterations carried out without the Supplier's consent in writing. The Supplier shall neither be liable for normal wear and tear nor for deterioration.
22. The Supplier's liability shall be limited to defects which appear within a period of one year from delivery.
23. The Purchaser shall without undue delay notify the Supplier in writing of any defect which appears and, in any event, no later than 14 days after the Purchaser knew of or should have known of the defect. Such notice shall under no circumstances be given later than two weeks after the expiry of the period given in Clause 22.  
The notice shall contain a description of the defect which is sufficiently specific for the Supplier to assess the defect.  
If the Purchaser fails to notify the Supplier in writing of a defect within the time limits set forth in the first paragraph of this Clause, he shall lose his right to have the defect remedied.  
Where the defect is such that it may cause damage, the Purchaser shall immediately inform the Supplier in writing. The Purchaser shall bear the risk of damage to the Product resulting from his failure so to notify. The Purchaser shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Supplier.
24. On receipt of the notice under Clause 23 the Supplier shall at his own cost remedy the defect without undue delay, as stipulated in Clauses 19-30. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Purchaser's activities.  
Repair shall be carried out at the place where the Product is located unless the Supplier deems it more appropriate that the Product is sent to him or a destination specified by him.
25. The Purchaser shall at his own expense provide access to the Product and arrange for any intervention in equipment other than the

Product, to the extent that this is necessary to remedy the defect.

26. Unless otherwise agreed, the Purchaser shall bear any additional costs which the Supplier incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Purchaser or – if no destination has been stated – the place of delivery.
27. Defective parts which have been replaced shall be made available to the Supplier and shall be his property.
28. If the Purchaser has given such notice as mentioned in Clause 23 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he incurs as a result of the notice.
29. Where the Product has not been successfully repaired within reasonable time or where a Service has not been successfully redelivered,
  - a) the Purchaser shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Deliverable, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase price, or
  - b) where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Deliverable or a substantial part of it, the Purchaser may terminate the Contract by notice in writing to the Supplier in respect of such part of the Deliverable as cannot in consequence of the defect be used as intended by the parties. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 per cent of that part of the purchase price which is attributable to the part of the Deliverable in respect of which the Contract is terminated.
30. Save as stipulated in Clauses 19-29, the Supplier shall not be liable for defects. This limitation of the Supplier's liability shall not apply if he has been guilty of gross negligence.

#### ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE DELIVERABLE

31. The Supplier shall not be liable for any damage to property caused by a Deliverable after it has been delivered and/or whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser or to products of which the Purchaser's products form a part.

If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend, and hold the Supplier harmless.

If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them based on damage allegedly caused by a Deliverable. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 42.

The limitation of the Supplier's liability in the first paragraph of this Clause shall not apply where the Supplier has been guilty of gross negligence.

#### INFRINGEMENT

32. Supplier warrants that to the best of its knowledge the Deliverables and the production processes applied for manufacturing the Products will not infringe any third party's copyrights, patents, trade secrets, or other proprietary rights. Supplier, at its expense, will defend the Purchaser against any claim based on an allegation of such infringement, and Supplier will pay any resulting costs and damages awarded against the Purchaser that are attributable to such infringement and will pay the part of any settlement that is attributable to such infringement provided that (1) the Purchaser notified Supplier promptly in writing of the claim; (2) Supplier was permitted full control of the defense or settlement of the claim; and (3) the Purchaser cooperated reasonably in such defense or settlement at Supplier's expense. In its defense or settlement of any such claim, Supplier may at its discretion: (A) procure for the Purchaser a right to continue using or selling the Products; (B) modify the manufacturing process so that the use or selling of the Products becomes non-infringing but still retains at least the same form, fit and level of functionality and performance; or (C) replace the Products with equivalent devices not subject to such claim.
33. SUPPLIERS' DUTY OF INDEMNIFICATION IS IN LIEU OF ANY AND ALL OTHER REMEDIES OF THE PURCHASER WITH RESPECT TO INFRINGEMENT AND SHALL ONLY BE VALID IN COUNTRIES DESIGNATED BY THE PURCHASER WHEN PURCHASING DELIVERABLES.

34. SUPPLIER DOES NOT WARRANT THAT THE RESULTS OF ITS SERVICES DO NOT INFRINGE ANY THIRD PARTY'S COPYRIGHTS, PATENTS, TRADE SECRETS, OR OTHER PROPRIETARY RIGHTS.
35. Supplier shall not be liable for nor shall Supplier have any obligation to defend and/or settle any claim for any infringement or other violation of any third party's copyrights, patents, trade secrets, or other proprietary rights (i) arising from compliance with or use of the Purchaser's specifications, designs or instructions, or (ii) relating to the Purchaser's use of any product furnished hereunder in combination with any other item(s), whether or not furnished by Supplier. The Purchaser shall indemnify and hold Supplier harmless in respect of any claim made against Supplier relating to (i) or (ii) above. Supplier shall not be liable towards the Purchaser for failure to deliver Deliverables due to circumstances described under (i) and (ii) above.

#### GENERAL LIMITATION OF LIABILITY

36. SUPPLIER SHALL IN NO EVENT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING, DIRECTLY OR INDIRECTLY, FROM THE USE OF THE DELIVERABLES OR THE SERVICES OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL LOSS OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF OPPORTUNITY, USE, INCOME OR PROFIT, OR INTERRUPTED OPERATION, NOR SHALL SUPPLIER BE LIABLE FOR ANY POST-PROCESSING OR MISAPPROPRIATE USE, HANDLING OR EXPOSURE OF THE PRODUCTS OR BASED ON THE SERVICES.
37. SUPPLIER CANNOT BE HELD RESPONSIBLE IF SUPPLIERS' PRODUCTS OR SERVICES FAIL TO PRODUCE THE REQUIRED OR EXPECTED RESULT NOR FOR COSTS DEFRAID IN VAIN.
38. SUPPLIER'S AGGREGATE LIABILITY WHETHER IN CONTRACT, WARRANTY, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY AGREEMENT BETWEEN THE PARTIES SHALL IN NO EVENT EXCEED THE AGGREGATE OF THE SUMS PAID BY THE PURCHASER TO SUPPLIER DURING THE 12 MONTHS PRIOR TO THE PURCHASER BECOMING AWARE OF THE BASIS FOR A CLAIM TOWARDS SUPPLIER AND, IN THE EVENT FEWER THAN TWELVE (12) MONTHS ARE AVAILABLE FOR CALCULATION OF THE LIMIT, THE LIMIT SHALL BE THE SUM OF (1) THE AMOUNT OF MONTHS AVAILABLE AND (2) AVERAGE AMOUNT PAID BY THE

PURCHASER IN THE AVAILABLE MONTHS MULTIPLIED BY THE NUMBER OF MONTHS IN SHORTAGE FOR A TOTAL OF TWELVE (12) MONTHS.

#### FORCE MAJEURE

39. Either party shall be entitled to suspend performance of his obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by Force Majeure, meaning any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power, currency and export restrictions, epidemics, natural disasters, extreme natural events, terrorist acts and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause.

A circumstance referred to in this Clause whether occurring prior to or after the formation of the Contract shall give a right to suspension only if its effect on the performance of the Contract could not be foreseen at the time of the formation of the Contract.

40. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If a party fails to give such notice, the other party shall be entitled to compensation for any additional costs which he incurs and which he could have avoided had he received such notice.

If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.

41. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended due to Force Majeure for more than six months.

#### DISPUTES AND APPLICABLE LAW

42. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
43. The Contract shall be governed by the substantive law of the Supplier's country.

#### EXPORT CONTROL

44. Supplier's Products and/or Services might be subject to national or international export control legislation and other legislative requirements or restrictions. Accordingly, it might be necessary for Supplier to - in collaboration with Purchaser - obtain approvals from relevant national and/or international authorities prior to shipment. Accordingly, SUPPLIER RETAINS THE RIGHT TO CANCEL AND/OR POSTPONE ANY ORDERS FOR WHICH ALL NECESSARY EXPORT CONTROL AND/OR OTHER PUBLIC APPROVALS, REGISTRATIONS AND/OR FILINGS HAVE NOT OR CANNOT BE PERFORMED, OBTAINED AND/OR APPROVED BY RELEVANT AUTHORITIES OR PUBLIC BODIES. Supplier shall not be liable, whatsoever, for any loss or damage of the Purchaser arising out of Supplier's cancellation of an order based on this Clause.

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