

Lumics GmbH - Terms and Conditions of Sale

The terms and conditions of sale contained herein (the "Agreement") shall apply to all quotations and offers to sell and purchase orders accepted by Lumics GmbH ("Lumics"). Lumics acceptance of any offer to purchase made by or purchase order issued by Buyer is expressly made conditional on the terms and conditions of sale as set forth in this Agreement irrespective of whether the Buyer accepts them in writing, by implication or by acceptance of and payment for the goods sold hereunder. These terms and conditions of sale shall govern the contractual arrangement entered into between Lumics and Buyer with respect to the goods sold hereunder to the exclusion of any terms or conditions of purchase proposed by Buyer.

1. Quotations and Prices. Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after the date thereof and constitute offers, provided that budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Lumics. Unless otherwise stated in writing by Lumics, all prices quoted shall be exclusive of transportation, insurance, taxes, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such charges and hold Lumics harmless therefrom. Prices quoted relate only to the goods referenced in this Agreement and do not include intellectual property, industrial property, or patent rights of any kind, nor shall they include product testing other than Lumics standard tests.

2. Delivery, Title and Risk of Loss. For any shipments, the delivery term for the goods referenced in this Agreement is EXW Shipping Point (Lumics, Berlin, Germany). Title to the goods referenced in this Agreement and risk of loss or damage to the goods shall pass to buyer at the time Lumics completes its delivery obligations. Goods held by Lumics at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Freight and associated duties incurred by Lumics in shipping the goods, if agreed to by Lumics, shall be invoiced to Buyer. Buyer shall be responsible for expenses incurred by Lumics where, at Buyer's request, Lumics packs product in other than its normal manner.

3. Termination or Change. Buyer shall not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order under this Agreement in whole or in part, without Lumics prior written consent and upon terms that will compensate Lumics for any loss or damage resulting from such action. Buyer's liability shall include, but not be limited to, the price of product delivered or held for disposition, the price of services already performed, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses, plus Lumics loss of profits thereon. Any such termination shall be subject to a minimum termination charge of twenty-five percent (25%) of the value of the sales terminated. If delivery of the goods referenced in this Agreement is delayed by Buyer, Lumics may invoice Buyer when Lumics is prepared to ship. Lumics may invoice Buyer immediately upon termination or cancellation or suspension of any order.

4. Payment Terms. Buyer shall pay the invoiced amount within thirty (30) days from the date of Lumics invoice. Lumics may exercise an option to assess an interest charge of up to 2.5% p.a. above the current prime rate quoted by European Central Bank (but not to exceed the maximum lawful rate). Buyer hereby grants to Lumics a purchase money security interest in the goods delivered by Lumics to secure the purchase price of such until Lumics is paid in full. Buyer agrees to execute and deliver all documents requested by Lumics to perfect and maintain its security interest. Unless otherwise agreed, prices shall be quoted and invoices shall be rendered and paid in EURO.

5. Taxes. Any tax or related charge that Lumics shall be required to pay to or collect for any government in connection with this Agreement, including, without limitation VAT, sales tax or use tax (though excluding tax incurred based on the net income of Lumics) shall be billed to Buyer as a separate item and paid by Buyer, unless a valid exemption certificate is furnished by Buyer to Lumics.

6. Product Warranty & Indemnity. Lumics warrants to Buyer that the goods referenced in this Agreement and delivered to Buyer will conform to the relevant technical specifications previously delivered by Lumics or, if not previously delivered, then delivered herewith. The foregoing warranty for pump laser products shall be valid for a period of one (1) year from the date of delivery. In the event that any goods delivered by Lumics do not meet the foregoing warranty, such shall be deemed defective and Lumics will give an appropriate credit for the defective good(s) to buyer or, at Lumics expense and option, repair or replace the defective good(s). Either of these alternatives shall be Buyer's sole and exclusive remedy in the event of delivery of defective good(s). The foregoing warranty is Lumics sole warranty with respect to any goods delivered to Buyer hereunder and is conditioned on:

(i) all claims regarding any defective goods must be made in writing to Lumics within one (1) year after delivery of the relevant pump laser products and (ii) the defective goods shall not have been damaged or destroyed by Buyer or its personnel.

This warranty applies only to Buyer and may not be assigned or extended by Buyer to any of its customers or other users of the goods. This warranty does not extend to any system into which the goods are incorporated. Lumics shall be allowed a reasonable period to investigate any claim relating to defective

goods and shall be given access to Buyer's relevant records and data for this purpose. The above warranty does not apply to, and Lumics makes no warranties with respect to products that are experimental products or prototypes (all of which are provided "AS IS").

7. Limitation of Liability. Buyer's sole and exclusive remedy and Lumics sole and exclusive liability to Buyer for delivery of defective goods, whether brought under a claim alleging breach of contract, tort injuries, negligence theory, strict liability, class action, or any other legal theory, shall be limited exclusively to crediting Buyer in the amount of the purchase price paid for the defective good(s) or repairing or replacing the defective good(s), at Lumics option. In no event will Lumics be liable to Buyer or any other party, under any circumstances for any special, consequential or indirect damages such as loss of capital, loss of use, substitute performance, loss of production, loss of profits, loss of business opportunity, or any other claims for damages. The warranty and remedies provided in Sections 6 and 7 of this Agreement shall apply to the exclusion of any other warranties (express or implied, including the warranties of merchantability and fitness for a particular purpose) or remedies that might otherwise be available under applicable law, notwithstanding the fact that other damages or injuries might be reasonably foreseeable. No statement made by any Lumics employee or other representative should be interpreted as expanding the scope of the warranty provided herein.

8. Intellectual Property Warranty & Indemnity. With respect to intellectual property and industrial property matters, Lumics sole and exclusive liability is to indemnify Buyer only against valid claims based upon infringement of validly issued European and U.S. patents and then only with respect to goods comprising Lumics regularly established line of products and only when such goods are used for normal purposes in the form in which sold by Lumics. This indemnification does not apply to patents covering composite structures or systems into which the goods referenced in this Agreement may be incorporated by Buyer. Lumics sole obligation under this indemnification shall be the assumption of the defence of any such suit brought against Buyer. Lumics shall be given exclusive control of the defence of such claim, including settlement, and Buyer, at its own cost, shall assist Lumics in the conduct of such defence. Lumics total liability hereunder shall be limited to its out-of-pocket costs up to, but not exceeding, the amount paid by Buyer as the purchase price attributable to the goods that are the subject of the claim or claims. Buyer assumes and will hold Lumics harmless against any patent liability for products manufactured to Buyer's design or specifications or specially designed by Lumics to meet Buyer's requirements. Buyer grants to Lumics a royalty-free right to use, for the purpose of making the goods and selling them to Buyer, any intellectual property or industrial property right that Buyer owns or to which Buyer has licensing, sublicensing or "have made" rights.

9. Assignment. Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of Lumics. Any attempted assignment without Lumics consent shall be void and ineffective.

10. Non-Waiver. No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

11. Excuse of Performance. Except with respect to Buyer's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite Lumics reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control.

12. Choice of Law. This Agreement and the performance of the parties obligations hereunder shall be governed by the laws of the Federal Republic of Germany. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

13. Entire Agreement. Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in the Agreement supersede all prior oral or written understandings between Buyer and Lumics and shall constitute the entire Agreement with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by a duly authorized officer of Buyer and Lumics.