

# GENERAL TERMS AND CONDITIONS

## of MergeOptics GmbH for the delivery of goods and supply of services

### I. Scope

1. These general terms and conditions shall apply to all present and future business relations between purchasers and MergeOptics GmbH ("MergeOptics") unless agreed otherwise in writing.
2. In default of a specific agreement to the contrary, general terms and conditions of the purchaser shall not become part of the contract. The terms and conditions of MergeOptics shall also apply where MergeOptics accepts delivery without reservation and where MergeOptics is aware of the supplier's contrary terms or terms diverging from these terms and conditions.

### II. Formation of contract

1. Offers of MergeOptics are without engagement and without obligation.
2. Contracts, order acknowledgements, orders and any other agreements and declarations entered into or made by MergeOptics shall only have binding legal effect once they have been confirmed by an authorized representative of MergeOptics in writing.
3. Any appendices, drawings, illustrations, technical data and specifications contained in brochures, catalogues, mailings, advertisements, price lists, the internet or any documents are without obligation unless they are specifically indicated as binding in the offer.

### III. Delivery and Delay

1. All delivery dates are ex factory and start as from the formation of contract, however not before all information and documents necessary for the execution of the contract have been provided by the purchaser and all technical questions have been cleared.
2. MergeOptics's adherence to delivery obligations is subject to due and proper fulfilment of the purchaser's obligations.
3. The delivery date is under the proviso of proper self-supply of MergeOptics.
4. In case of a temporary impediment of performance due to force majeure, industrial disputes, lawful lock-out or similar events which lie beyond the control of MergeOptics, the delivery times shall be extended accordingly.
5. The delivery date shall be also complied if the respective good leaves the factory or a notification regarding the despatch readiness is given.

6. In case of delayed delivery the purchaser is only entitled to his statutory rights after the unsuccessful lapse of an additional period of at least two weeks.
7. MergeOptics is entitled to reasonable partial performances which are separately chargeable.

### IV. Passing of Risk, Acceptance

1. The risk shall pass onto the purchaser upon as soon as the delivered item leaves the factory, is provided to the purchaser in another way or is handed over to the carrier.
2. Purchaser's default of acceptance or culpable violation of other obligations to co-operate entitles MergeOptics to claim the damage caused in this respect including possible additional expenditures. Further claims shall remain unaffected hereof.
3. Under the conditions of Clause 2 the risk of accidental loss or accidental deterioration of the delivered item shall pass onto the purchaser upon his default of acceptance or his debtor's delay.

### V. Prices

1. All prices are ex factory plus statutory value added tax. Packaging costs shall be charged additionally.
2. If the time between formation of contract and delivery is more than two months and in default of an agreed fixed price MergeOptics is entitled to alter the price in order to balance cost increases for raw, manufacturing and other materials as well as salaries and wages.
3. In case of a fixed price and a delay in delivery due to restraints in the purchaser's sphere, MergeOptics is entitled to charge prices according to the general price list valid at the delivery date.

### VI. Payment and Payment Terms

1. Invoices shall be payable within 14 days from invoice date strictly net.
2. Delay in payment shall cause default interest of 8 % above base lending rate. Assertion of additional damage caused by delay remains unaffected hereof.
3. Payments per cheque or bill of exchange require a special agreement and are only accepted on account of performance. Possible expenses and costs shall be borne by the purchaser.

4. The whole claim becomes due in case of agreed instalments and the purchaser's delay with one instalment rate.
5. Article 57 UN sales convention ("United Nations Convention on Contracts for the international sale of goods") as amended on 11 April 1980, BGBl. 1989 II, p. 588 shall apply.

#### **VII. Retention of Title**

1. Until complete payment of all claims deriving from business relations between MergeOptics and the purchaser all goods delivered to the purchaser shall remain property of MergeOptics (reserved goods).
2. Purchaser's conduct in breach of contract, especially delay in payment entitles MergeOptics after an appropriate specified period to take back the delivered item. The retraction is at the same time a rescission of the contract. After retraction of the delivered good MergeOptics is entitled to its realisation. The proceeds of the realisation shall be credited against purchaser's liabilities minus adequate realisation costs.
3. MergeOptics shall be notified of any attachments and other third party interferences without delay in writing. Unless the third party can reimburse judicial and extra-judicial costs of MergeOptics pursuant to Section 771 German Civil Process Order, the purchaser shall be liable for MergeOptics's damages.
4. The purchaser is entitled to resell the reserved goods during the ordinary course of business until revoked. In return the purchaser assigns his reselling proceeds and all ancillary rights - including a payment claim - to MergeOptics in the amount of the clearing value.
5. In case the ownership of the reserved goods devolves from MergeOptics to the purchaser due to mandatory statutory provisions, MergeOptics shall acquire co-ownership of the new good in the amount of the invoice value of the goods concerned.
6. The purchaser is entitled to collect the assigned claims. The entitlements to resell and to collection can be revoked in case of purchaser's payment delay. In case the right to collection is revoked, the purchaser shall specify his customers including creditors and bring about all documents necessary and appropriate for the assertion of the claim.
7. MergeOptics at its own option can release securities if the value of the given securities exceeds the secured claims more than 20 %.

#### **VIII. Guarantee and Warranty**

1. Warranty and guarantee claims due to evident defects are excluded unless notification is given within one week. The obligation pursuant to Section 377 German Commercial Code shall apply notwithstanding.

2. In case of a defect the purchaser is entitled to remedy of the defect or subsequent delivery. After triple failure of remedy or failure of subsequent delivery the purchaser is entitled to reduction of the purchase price or rescission. Statutory claims for compensation shall remain unaffected hereof.
3. MergeOptics is entitled to make the remedy or the subsequent delivery conditional upon adequate partial payment which shall take into account the defect.

#### **IX. Prescription**

1. Claims based on defects shall prescribe one year as from the passing of the risk.
2. The limitation period for delivery recourse pursuant to Sections 478, 479 German Civil Code shall remain unaffected; its maximum shall be five years as from the delivery of the defect item.

#### **X. Liability and Limitations of Liability**

1. The liability of MergeOptics shall only be unlimited for intent or gross negligence, and for culpable loss of life, bodily injury or damage to health.
2. In cases of slight negligence MergeOptics shall only be liable for the violation of cardinal duties. In such case the liability of MergeOptics is limited to typical and predictable damages.
3. Clauses 2. and 3. shall also apply in favour of any legal representatives, employees, representatives and agents of MergeOptics and other persons commissioned with contractual performance.
4. The preceding limitation of liability shall also apply to claims for damages irrespective of the cause in law.
5. The liability pursuant to the German Product Liability Act shall remain unaffected by these provisions.

#### **XI. Setting-off and Right of Retention**

Any setting-off with contested claims or claims not recognized by declaratory judgment shall be excluded. The same applies for rights to refuse performance pursuant to Sections 273, 320, 438 subsec. 4 sentence 2 German Civil Code.

#### **XII. Jurisdiction and Choice of Law**

1. The contractual relationship shall be governed by the laws of the Federal Republic of Germany. UN-sales convention shall be precluded unless stated otherwise in these terms and conditions.
2. Except for mandatory exclusive jurisdiction, place of jurisdiction shall be the seat of MergeOptics. In any case MergeOptics shall be entitled to sue at the purchaser's domicile.