

# TOPTICA PHOTONICS SE

## GENERAL PURCHASING CONDITIONS

### **1. Scope and applicable conditions**

- 1.1. These General Purchasing Conditions ("GPC") apply to all business relationships between TOPTICA Photonics SE, Lochhamer Schlag 19, 82166 Gräfelfing (hereinafter "TOPTICA") and the supplier. The GPC apply only if the supplier is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law. TOPTICA's orders are always based on the GPC.
- 1.2. The GPC apply in particular to contracts for the purchase and/or delivery of movable goods ("goods"), regardless of whether the supplier manufactures the goods himself or purchases them from suppliers (§§ 433, 650 BGB), as well as for work and services, which the supplier provides for TOPTICA ("services"). Unless otherwise agreed, the GPC in the version valid at the time of the order by TOPTICA and communicated to the supplier serve as a framework agreement for similar future contracts, without TOPTICA having to refer to them in each individual case.
- 1.3. Changes, additions or side agreements require written form to be effective. This also applies to the waiver of the requirement for written form.
- 1.4. These GPC apply exclusively. Deviating, opposing or supplementary General Terms and Conditions of the supplier (especially on an order confirmation, price list, invoice, delivery note or similar) only become part of the contract to the extent that TOPTICA has expressly and in writing agreed to their validity. This requirement for approval applies in particular when TOPTICA, aware of the General Terms and Conditions of the supplier, accepts the deliveries without reservation.
- 1.5. Individual agreements made in individual cases with the supplier (including side agreements, additions and amendments) take precedence over these GPC in all cases. The content of such agreements is, subject to proof to the contrary, determined by a written contract or a written confirmation from TOPTICA.

### **2. Order and Delivery Contract**

- 2.1. Orders from TOPTICA are binding at the earliest with written submission or confirmation. The supplier must point out to TOPTICA obvious errors (e.g. typos and calculation errors) and incompleteness in the order including the order documents for the purpose of correction or completion before acceptance.

- 2.2. The supplier is entitled to accept an order within a period of five (5) working days after its receipt by written confirmation (e.g., order confirmation). A late acceptance is considered a new offer and requires acceptance by TOPTICA.

### **3. Order Changes**

- 3.1. The supplier may not make any significant changes to the goods and/or ordered services without the prior consent of TOPTICA, which could have significant effects, particularly on the form, fit, function, processing performance or use of the goods or service.
- 3.2. TOPTICA is entitled to demand changes to the goods in construction and execution within reasonable limits. The effects of such changes, particularly with regard to additional or reduced costs and delivery dates, are to be regulated appropriately by mutual agreement.

### **4. Invoicing and Payment**

- 4.1. The prices stated in TOPTICA's order are binding. Unless otherwise specified by TOPTICA (especially in the order), all prices quoted by TOPTICA are DDP Incoterms®2020 to the delivery address stated in the order.
- 4.2. All prices are in euros, unless otherwise agreed. All prices include statutory VAT, if not separately identified.
- 4.3. Unless otherwise agreed in individual cases, the prices include all services and ancillary services of the supplier (e.g., customs, assembly, installation) as well as all incidental costs (e.g., proper packaging, transport packaging, transport costs including any transport and liability insurance).
- 4.4. Unless otherwise agreed, the agreed prices are due for payment within thirty (30) days of complete delivery and performance and receipt of a proper and auditable invoice. Payment is subject to invoice verification.
- 4.5. Payments by TOPTICA are made exclusively by bank transfer.
- 4.6. Invoices must be submitted with the relevant TOPTICA information such as supplier number, order number, delivery note number, material number, and name of the responsible contact person at TOPTICA. All related billing documents are to be attached. Invoices are to be created in accordance with the applicable VAT regulations. As long as an invoice does not comply with the requirements contained in this clause 4.6, it is not due for payment.
- 4.7. TOPTICA does not owe maturity interest. The legal regulations apply to the delay in payment.

- 4.8. TOPTICA is entitled to offsetting and retention rights and the defense of unfulfilled contract to the extent provided by law. TOPTICA is especially entitled to withhold due payments as long as TOPTICA still has claims from incomplete or deficient services against the supplier.
- 4.9. The supplier has a right of set-off or retention only for legally established or undisputed counterclaims.
- 4.10. Without prior written consent from TOPTICA, which may not be unreasonably withheld, the supplier is not entitled to assign his claims against TOPTICA or have them collected by third parties. Should the supplier assign his claims against TOPTICA to a third party contrary to this regulation, the assignment is effective, but TOPTICA reserves the right to pay either the supplier or the third party with discharging effect.

## **5. Documents, Ownership and Confidentiality**

- 5.1. Models, matrices, templates, samples, tools and other production equipment, as well as confidential information provided to the supplier by TOPTICA or fully paid for by TOPTICA ("TOPTICA Documents"), are the property of TOPTICA. TOPTICA reserves property and copyright rights to the TOPTICA Documents. The supplier undertakes to use the TOPTICA Documents exclusively for the provision of its contractually owed services. The same applies to TOPTICA documents marked as "confidential".
- 5.2. The TOPTICA documents and those marked as "confidential" (together "confidential TOPTICA documents") are to be kept secret from third parties as well as customers and competitors of TOPTICA (together "third parties") during the term of the contract and after its termination.
- 5.3. The supplier may not pass on the confidential TOPTICA documents as such or their content to third parties or otherwise make them accessible to third parties, disclose them, use them themselves or through third parties, exploit them for their own business purposes, or reproduce them without the express prior written consent of TOPTICA.
- 5.4. The supplier will impose this obligation under clause 5 on its employees to the extent they need confidential TOPTICA documents to fulfill their duties.
- 5.5. The supplier may not advertise the existing business relationship publicly without prior written consent from TOPTICA.

## **6. Delivery Dates and Delays**

- 6.1. The delivery dates and delivery times specified by TOPTICA in the order are binding. If no delivery date and/or delivery time is specified in the order and has not

been otherwise agreed, the delivery time is two (2) calendar weeks from the conclusion of the contract. The supplier is obliged to immediately notify TOPTICA in writing if it is likely not to meet the agreed delivery times - for whatever reason.

- 6.2. If the supplier does not perform its service or does not do so within the agreed delivery time or if it is in delay, the rights of TOPTICA - in particular to withdrawal and compensation - are determined by statutory provisions.
- 6.3. Delivery is DDP Incoterms® 2020 to the delivery address mentioned in the order. If no delivery address is mentioned in the order and nothing else has been agreed, the delivery must be made to the headquarters of TOPTICA.
- 6.4. A delivery note indicating the date (issue and dispatch), content of the delivery (material number and quantity), and TOPTICA's order (date and order number) must be attached to the delivery. If the delivery note is missing or incomplete, TOPTICA is not responsible for resulting delays in processing and payment. A corresponding shipping notification with the same content should be sent to TOPTICA separately from the delivery note.

## **7. Quality and Documentation**

- 7.1. The supplier must adhere to the recognized rules of technology and the agreements made in the manufacture of the goods and provision of the service. Unless otherwise specified, all materials used must comply with the legal regulations applicable in the country of manufacture. Any necessary safety data sheets should be sent without being requested. The supplier is responsible for the contractually compliant manufacture of the goods and provision of the service.
- 7.2. The supplier allows TOPTICA, and potentially in the company of TOPTICA's customer, to access the production facilities after prior appointment scheduling to verify and evaluate the quality assurance methods and measures applied, as well as to inspect the existing documentation of quality-related tests and activities. The supplier will be informed about the audit results and how they were achieved. If necessary (e.g., in case of quality defects), a joint visit to the supplier's sub-supplier can be arranged after prior coordination with the supplier.

## **8. Production Samples**

- 8.1. TOPTICA is entitled to demand the provision of production samples from the supplier. If TOPTICA requests the supplier to provide production samples, the supplier must produce the production samples under series conditions and according to the agreed quality before production starts, and send them to TOPTICA by express delivery.
- 8.2. The supplier conducts a comprehensive examination of the production samples before delivery. This examination particularly includes the testing of the media,

print, weather, and temperature resistance of the production samples, and depending on the respective production sample, also the electrical, geometric, functional, print, and material testing as well as endurance tests, vibration tests, and assembly attempts. The supplier creates a test report on the examination of the production samples at his own expense, which he provides to TOPTICA together with the production samples.

- 8.3. TOPTICA does not carry out an examination of the production samples. Upon receipt of the production samples, TOPTICA only checks randomly whether the material, the form, and the quantity of the delivered production samples comply with the agreed specifications.
- 8.4. The examination of the production samples is carried out by the customers of TOPTICA ("quality control"). TOPTICA informs the supplier in writing about the result of the examination and any necessary improvements or changes.
- 8.5. If the production sample fails the quality control because it does not meet the desired quality requirements, the supplier will make any improvements or necessary changes at his own expense and optimize the production sample until it meets the desired quality requirements.
- 8.6. If the new production sample passes the quality control and meets the desired quality requirements and there are no other reasons to complain about the new production sample, TOPTICA gives the approval for the new production sample.
- 8.7. The start of production of the goods requires written approval by TOPTICA.

## **9. Defective Delivery**

- 9.1. The statutory provisions apply to the rights of TOPTICA in the event of material defects and defects of title of the goods as well as other breaches of duty by the supplier, unless otherwise stipulated below.
- 9.2. According to the statutory provisions, the supplier is particularly liable for the goods having the agreed quality at the time of the transfer of risk to TOPTICA. Product descriptions that are the subject of the respective contract or were included in the contract in the same way as these GTCs are in any case considered an agreement on the quality. It makes no difference whether the product description comes from TOPTICA, the supplier, or the manufacturer.
- 9.3. The statutory provisions apply to the commercial obligation to inspect and give notice of defects (§§ 377, 381 HGB) with the following stipulation: TOPTICA's obligation to inspect is limited to defects that become apparent during TOPTICA's goods receipt inspection under external inspection including the delivery documents (e.g., transport damage, incorrect and short delivery) or are identifiable during TOPTICA's quality control in a random sample procedure. If an

acceptance has been agreed, there is no obligation to inspect. Otherwise, it depends on the extent to which an examination is feasible considering the circumstances of the individual case in accordance with proper business practice. TOPTICA's obligation to notify of defects discovered later remains unaffected. Notwithstanding TOPTICA's obligation to inspect, TOPTICA's notification of defects (notification of defects) is in any case considered immediate and timely if it is sent within ten (10) working days from discovery or, in the case of obvious defects, from delivery.

- 9.4. Subsequent performance also includes the removal of the defective goods and the reinstallation if the goods have been installed in another item or attached to another item according to their nature and intended use; TOPTICA's statutory claim for reimbursement of corresponding expenses remains unaffected. The supplier bears the expenses necessary for inspection and subsequent performance even if it turns out that there was actually no defect. TOPTICA's liability for damages in the event of an unjustified request for defect remediation remains unaffected; in this respect, however, TOPTICA is only liable if TOPTICA recognized or did not recognize due to gross negligence that there was no defect.
- 9.5. Without prejudice to TOPTICA's statutory rights and the provisions in clause 9.4, if the supplier does not fulfill his obligation to provide subsequent performance - at the discretion of TOPTICA by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery) - within a reasonable period set by TOPTICA, TOPTICA can remedy the defect itself and demand from the supplier reimbursement of the expenses required for this or a corresponding advance. If the supplier's subsequent performance has failed or is unreasonable for TOPTICA (e.g., due to special urgency, endangering operational safety, or imminent disproportionate damage), no deadline needs to be set; TOPTICA will notify the supplier of such circumstances immediately, if possible in advance.
- 9.6. Furthermore, in the event of a material or legal defect, TOPTICA is entitled to reduce the purchase price or withdraw from the contract according to the statutory provisions. In addition, TOPTICA is entitled to compensation for damages and expenses according to the statutory provisions.
- 9.7. TOPTICA reserves the right to withhold payments for claimed goods or services until the successful completion of the claim processing.

## **10. Limitation of Liability**

- 10.1. The mutual claims of the parties become statute-barred according to the statutory provisions unless otherwise stipulated below.
- 10.2. Notwithstanding § 438 Para. 1 No. 3 BGB (German Civil Code), the general limitation period for claims for defects is three (3) years from the transfer of risk. If an

acceptance has been agreed, the limitation period begins with the acceptance. The three-year limitation period applies correspondingly to claims arising from defects of title, whereby the statutory limitation period for third-party claims for restitution in rem (§ 438 Para. 1 No. 1 BGB) remains unaffected; claims arising from defects of title, moreover, never become statute-barred as long as the third party can still assert the right against us – particularly due to the lack of limitation.

- 10.3. The limitation periods of sales law, including the above extension, apply – to the legal extent – to all contractual claims for defects. Insofar as TOPTICA is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) applies, unless the application of the limitation periods of sales law results in a longer limitation period in the individual case.

## **11. Compensation for Infringement of Intellectual Property Rights**

- 11.1. The supplier indemnifies TOPTICA from all claims, damages, costs, and expenses (in particular lost profits and reasonable attorney's fees) that are associated with the legitimate assertion by third parties that the goods and/or services, alone or in combination with each other, or their use, infringe the industrial property rights of third parties, or defends against such claims at its own expense on the instructions of TOPTICA. This does not apply insofar as the supplier is not responsible for the infringement of third-party property rights according to §§ 276, 278 BGB (German Civil Code).
- 11.2. TOPTICA will immediately notify the supplier in writing of any such claim. The supplier is obligated to support TOPTICA in enforcing claims to a reasonable extent. A delayed notification does not relieve the supplier of its obligations under clause 11, unless the supplier is impaired by the delay.

## **12. Repair and Maintenance Information**

- 12.1. The supplier will provide TOPTICA with information for the repair and maintenance or information for the creation of such information for the goods or service (hereinafter referred to as "RMI"). The supplier ensures that these RMI are free from third-party rights and waives the right to be recognized as the author of these RMI.
- 12.2. The RMI provided to TOPTICA particularly include drawings, specifications, instructions, and any information about the subject of the contract that is required to meet legal requirements.
- 12.3. TOPTICA and the companies associated with TOPTICA according to §§ 15 ff. AktG (German Stock Corporation Act) are entitled to use, reproduce, process, modify, translate, and/or publish the RMI in any form. Furthermore, TOPTICA is

entitled to further develop the RMI and/or provide the RMI of the contractual partner as well as its own RMI to third parties.

- 12.4. It is clarified that the RMI are not subject to confidentiality and that their use by TOPTICA is free of charge.

### **13. Social Responsibility and Environmental Protection**

- 13.1. The supplier undertakes to comply with the respective legal regulations regarding the treatment of employees, environmental protection, and occupational safety, and to work towards minimizing adverse effects on people and the environment in his activities to the best of his ability.

- 13.2. TOPTICA expects continuous improvement of environmental performance from the supplier. To this end, within his possibilities, the supplier will establish and further develop an environmental management system (e.g., according to DIN ISO 14001 and/or Regulation (EC) No. 1221/2009 of the European Parliament and the Council (EMAS)).

- 13.3. Furthermore, the supplier will adhere to the principles of the UN Global Compact Initiative. These primarily concern the protection of international human rights, the right to collective bargaining, the exclusion of forced labor and child labor, the exclusion of discrimination in hiring and employment, environmental responsibility, and the prevention of corruption.

- 13.4. Further information on the UN Global Compact Initiative can be found at [www.un-globalcompact.org](http://www.un-globalcompact.org)

### **14. No Reservation of Ownership**

- 14.1. The transfer of the goods to TOPTICA must absolutely take place, irrespective of the payment of the price. However, if TOPTICA accepts in an individual case a supplier's offer of transfer that is conditional on the payment of the purchase price, the supplier's reservation of ownership expires at the latest with the payment of the purchase price for the delivered goods.

- 14.2. Even before payment of the purchase price, TOPTICA remains authorized to resell the goods in the ordinary course of business, with pre-assignment of the resulting claim (alternatively, the simple and extended reservation of ownership for resale applies). This excludes all other forms of reservation of ownership, in particular the extended, forwarded, and processing extended reservation of ownership.

### **15. General Provisions**



- 15.1. Should any provision of these conditions or further agreements be or become invalid, the validity of the remaining contract remains unaffected. If no default law is available, the parties commit to replace the invalid or unenforceable provision with a valid or enforceable one that achieves the intended purpose of the contract in a legally permissible way. The same applies to gaps in this contract.
- 15.2. The place of fulfillment for deliveries is the location to be supplied by TOPTICA. In all other cases, the place of fulfillment is Gräfelfing.
- 15.3. The law of the Federal Republic of Germany applies exclusively unless otherwise agreed. The application of the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods is excluded.
- 15.4. If the supplier is a merchant in terms of the Commercial Code, a legal entity under public law, or a public special fund, the exclusive place of jurisdiction, including internationally, is the headquarters of TOPTICA. However, TOPTICA has the right to bring action before any other competent court.