

Terms & Conditions (T&C)

for the Sale of Goods by SphereOptics GmbH

Section 1 Scope – Subject of the Contract

- (1) These Terms & Conditions (referred to in the following as ‘T&C’) apply to deliveries of goods (referred to in the following as ‘goods’) and services such as maintenance, installation and training in connection with the delivered goods that are provided by SphereOptics GmbH (referred to in the following as ‘SphereOptics’) to companies, legal entities under public law and special funds under public law (referred to in the following as the ‘customer’), including the delivery of goods in the area of optical measurement technology. Where one or more purchase or other contracts (referred to in the following as ‘contract’) have been concluded between SphereOptics and the customer, these T&C shall be an integral part of these agreements and shall apply unless specified otherwise in the contract.
- (2) These T&C shall apply exclusively. SphereOptics does not recognise any terms and conditions of the customer that conflict with or deviate from these T&C unless SphereOptics has explicitly agreed to their validity in writing. These T&C of SphereOptics shall also apply if SphereOptics carries out the delivery unconditionally despite being aware of the customer’s terms and conditions that conflict with or deviate from these SphereOptics T&C. Individual agreements made with the customer in specific cases, including ancillary agreements, supplements and amendments, shall take precedence over these T&C in every event. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or written confirmation by SphereOptics.

Section 2 Offer – Conclusion of a Contract

- (1) Where a declaration by the customer qualifies as an offer pursuant to Section 145 German Civil Code (BGB), SphereOptics may accept it within 14 days by sending an order confirmation or by delivering the goods. Offers made in advance by SphereOptics are subject to change and non-binding, also in regard to the quantity, quality, price and delivery date or delivery period.
- (2) For the event that the customer requests a change in the goods, other services, the delivery date or other details that have already been contractually agreed, SphereOptics shall comply with the request as far as possible. The customer shall incur the costs of the change in addition to the agreed remunerations.

Section 3 Offer Documents

- (1) SphereOptics reserves ownership of and copyright to all offers/cost estimates as well as technical documents, files, illustrations, product descriptions, calculations and drawings, etc. which it has submitted. The customer shall not be authorised to make these documents available to third parties, unless SphereOptics has given its explicit consent to do so. SphereOptics shall be entitled to demand immediate surrender of these documents for the event that the customer violates the above obligation. Where SphereOptics does not accept the customer's offer within 14 days, the customer shall return these documents to SphereOptics without delay and shall destroy any copies it has made.
- (2) The customer shall, upon instruction by SphereOptics, return these documents to SphereOptics in their entirety and destroy any copies made if it no longer requires them in the ordinary course of business.
- (3) Any typographical or other errors or omissions contained in these materials issued by SphereOptics to the customer shall be subject to correction without any liability on the part of SphereOptics.

Section 4 Prices and Terms of Payment

- (1) The prices apply to the scope of performance and delivery set out in the order confirmation. Additional or special performances will be charged separately. The prices are quoted in euro and apply ex works, plus packaging, statutory value added tax, customs duties for export deliveries as well as fees and other public charges. Statutory value added tax is not included in the prices quoted by SphereOptics and will, where applicable, be stated separately on the invoice in the statutory amount that applies on the date of invoicing.
- (2) The price quoted by SphereOptics is binding. For the event that the price has increased at the time of performance due to a change in the market price or an increase in fees charged by third parties involved in performance, the higher price shall apply. The customer shall be entitled to withdraw from the contract if this price exceeds the agreed price by 20% or more. This right must be exercised vis-à-vis SphereOptics within 7 days following notification of the increased price.
- (3) Remuneration shall be paid without any discount within 30 days after receipt of the goods or after performance of the service, unless otherwise agreed by the parties in writing. The customer shall be in default even without a reminder if it fails to make payment within 30

days of the due date. Default interest shall be charged at a rate of 9% p.a. above the base rate applicable at the time of calculation.

- (4) SphereOptics reserves the right to demand advance payment prior to delivery or performance. The customer shall incur all costs of the payment transaction.
- (5) The customer shall only be entitled to offset claims if its counterclaims are legally established, undisputed, recognised by SphereOptics or refer to a bilateral contract that includes the principal claim of SphereOptics. The customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.
- (6) In the event that the customer experiences a significant deterioration in its financial situation or imminent insolvency, SphereOptics shall be entitled to predicate deliveries and performances upon advance payment or to demand the provision of adequate security. Should the customer fail to provide such collateral within a reasonable period, SphereOptics shall be entitled to withdraw from the contract after the expiry of this period and to demand compensation for non-performance.
- (7) Catalogues and price lists issued by SphereOptics do not constitute binding offers, but are merely an invitation for the customer to submit a binding offer to SphereOptics on the basis of the catalogues and price lists.

Section 5 Delivery and Performance

- (1) The parties agree on delivery and performance ex works Herrsching, unless otherwise stated in the order confirmation from SphereOptics.
- (2) The scope of deliveries and performances owed shall be determined by the written description of deliveries and performances provided by SphereOptics as set out in all parts of the contract.
- (3) The customer undertakes to review the description of deliveries and performances for consistency with its requirements and completeness.
- (4) Changes to the scope of delivery and performance shall only be possible by mutual agreement after the order has been placed and may lead to changes in prices, periods and dates in particular. Changes or supplements to the agreements (including these T&C) shall only be effective if they adhere to the text form (e.g. email or fax) pursuant to Section 126b BGB.
- (5) Periods and dates for deliveries and performances indicated by SphereOptics are always approximate, unless a fixed period or date has been explicitly warranted or agreed. Where

the customer and SphereOptics have agreed on the shipping of goods, delivery periods and dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with their transport.

- (6) The delivery period as stated by SphereOptics shall only begin if the customer has fulfilled its obligations both properly and punctually. SphereOptics reserves the right to invoke non-performance of the contract.
- (7) SphereOptics may, without prejudice to its rights arising from the customer's default, demand that the customer accept an extension of the delivery and performance periods or a postponement of delivery and performance dates by a period that is equal to the time in which the customer fails to fulfil its contractual obligations towards SphereOptics.
- (8) SphereOptics shall not be liable for the impossibility and delay of deliveries or performances where they are caused by force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties in the procurement of materials and energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in the procurement of necessary official permits, official measures or the non-delivery, incorrect delivery or late delivery by suppliers, as well as pandemics and natural disasters, etc.) and for which SphereOptics is not responsible. SphereOptics shall be entitled to withdraw from the contract if these events significantly hinder or make it impossible for SphereOptics to provide deliveries and performances and the hindrance is not merely of temporary duration. In the event of temporary hindrances, the delivery or performance periods shall be extended or the delivery or performance dates postponed by the period of the hindrance plus a reasonable extension. Where the customer cannot reasonably be expected to accept the deliveries or performances due to the delay, it may withdraw from the contract by notifying SphereOptics in writing without delay.
- (9) If the customer is in default of acceptance or culpably breaches other duties of cooperation, SphereOptics shall be entitled to demand compensation for the damage it incurs in this respect, including any additional expenses.
- (10) For the event of default of acceptance in connection with a delivery of goods, SphereOptics reserves the right to sell the goods to third parties by way of distress sale. SphereOptics reserves the right to exercise additional claims.
- (11) SphereOptics shall be entitled to make partial deliveries of goods if the customer is able to use partial deliveries within the scope of the contractually intended purpose, if delivery of the remaining goods is assured and the customer does not incur significant additional expenses or costs as a result, unless SphereOptics agrees to bear such costs.

- (12) SphereOptics shall be entitled to withdraw from the contract insofar as it does not receive goods despite prior conclusion of a suitable purchase contract. SphereOptics' liability for intent or negligence pursuant to Section 9 of these T&C shall remain unaffected. SphereOptics shall notify the customer without delay if goods are not punctually available and, should it intend to do so, will withdraw from the contract without delay. In the event of withdrawal, SphereOptics shall reimburse the customer without delay for the corresponding consideration.
- (13) Where the goods are sent to the customer at its request, the risk of accidental loss or deterioration of the goods shall pass to the customer upon dispatch to the customer and no later than when the goods leave the SphereOptics factory. This applies irrespective of whether the goods are dispatched from the place of performance.
- (14) SphereOptics reserves the right to deliver successor models in place of the ordered goods, provided they also meet the agreed specifications and are not more expensive than the ordered goods.
- (15) Where SphereOptics is in default of delivery or performance, or if fulfilment of delivery or performance becomes impossible, irrespective of the reason, the liability of SphereOptics shall be limited to damages pursuant to Section 9 of these T&C.

Section 6 Warranty; Material Defects and Defects in Title

- (1) The customer shall not be entitled to exercise rights in regard to material defects or defects in title insofar as the goods show only insignificant deviations from the agreed quality, if the suitability of the goods for the intended use is only insignificantly restricted, if the defect is due to use of the goods by the customer for a purpose other than the contractually stipulated purpose or contrary to the statutory provisions, if the customer modifies the goods without written consent from SphereOptics or uses them together with other products that SphereOptics has not specifically approved.
- (2) The rights of the customer in the event of material defects and defects in title shall be excluded insofar as SphereOptics has explicitly described the goods as being in the experimental or development stage (prototypes).
- (3) The customer's warranty rights in regard to the goods delivered by SphereOptics shall be predicated upon orderly fulfilment of its obligation to inspect and give notice of defects without undue delay after delivery to the customer pursuant to Section 377 German Commercial Code (HGB). Where there are obvious defects or other defects which would have been recognisable upon careful inspection of the goods without undue delay, the

delivered goods shall be deemed approved by the customer if SphereOptics does not receive written notice of defect from the customer within 7 days of delivery of the goods, stating the order number and enclosing a record of the defect. In regard to other defects, the delivered goods shall be deemed approved by the customer if SphereOptics does not receive written notice of defect within 7 days from the time at which the defect became apparent. If the defect was already recognisable to the customer at an earlier point in time assuming ordinary use, this earlier time shall be authoritative for the start of the notice period. Upon receipt of written authorisation from SphereOptics, the customer shall return rejected goods to SphereOptics freight prepaid. SphereOptics shall incur the costs of the cheapest shipping method in the event of a justified notice of defects. This does not apply if the costs are higher due to the goods being located at a place other than the place of their intended use.

- (4) Where the delivered goods exhibit a defect that was already present at the time of transfer of risk despite SphereOptics having exercised due care, SphereOptics shall, at its discretion, either repair the goods or deliver replacements within a reasonable period of time, subject to timely notification of defects. SphereOptics reserves the right to choose the form of subsequent performance. This elective right shall pass to the customer if SphereOptics is in default of subsequent performance. The customer may withdraw from the contract or reduce the purchase price without prejudice to any claims for damages if subsequent performance fails due to impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery.
- (5) Quality assurances only apply if they were explicitly confirmed by SphereOptics.
- (6) The customer may claim damages under the conditions set out in Section 9 of these T&C if SphereOptics is at fault in regard to a defect.
- (7) Warranty shall be void if the customer has modified the delivered item or commissioned a third party with its modification without having obtained consent from SphereOptics and remedying the defect therefore becomes impossible or unreasonably difficult for SphereOptics. The customer shall in every case incur the additional costs of remedying the defect that result from the modification.

Section 7 Limitation Periods

- (1) The customer's claims for defects shall lapse within 12 months after delivery of the goods by SphereOptics to the customer. The statutory right of withdrawal shall also lapse at the end of the 12-month limitation period.

- (2) The statutory limitation period shall apply to claims that are based on intentional or grossly negligent breach of duty or on culpable injury to the customer's life, limb and health. The start of the limitation period shall be governed by the statutory provisions.

Section 8 Property Rights

- (1) SphereOptics warrants pursuant to this Section 8 that the delivered goods are free of third-party industrial property rights or copyrights. Each contracting party shall send written notification to the other contracting party without delay if claims are exercised against them in regard to the infringement of any such rights.
- (2) For the event that the goods infringe a third-party industrial property right or copyright, SphereOptics shall, at its discretion and at its expense, modify or replace the goods in such a way that the rights of third parties are no longer infringed but the goods continue to fulfil the contractually agreed functions, or shall procure rights of use for the customer by concluding a licence agreement. Where it fails to do so within a reasonable period, the customer shall be entitled to withdraw from the contract or reduce the price by a reasonable amount. The limitations set out in Section 9 of these T&C shall apply to any claims for damages by the customer.
- (3) In the event that goods from other manufacturers that are delivered by SphereOptics infringe rights, SphereOptics shall, at its discretion, exercise its claims against the manufacturers and upstream suppliers for the account of the customer or assign them to the customer. In such cases, claims against SphereOptics may only be exercised according to this Section 8 if the legal enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

Section 9 Liability for Damages due to Fault

- (1) The liability of SphereOptics for damages – irrespective of the legal grounds – in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort, shall be limited in accordance with the provisions of this Section 9, insofar as liability depends on fault in each case. The liability of SphereOptics is limited to intent or negligence in this regard.
- (2) SphereOptics shall not be liable for ordinary negligence on the part of its company officers, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Contractual obligations shall be deemed material if they refer to the

undertakings to deliver the goods on time, to ensure their freedom from defects that impair their functionality or usability to a more than insignificant extent, as well as to advisory, protective and custodial undertakings that are intended to enable the customer to use the goods for their contractual purpose or are intended to protect life or limb, the customer's employees or property from significant damage.

- (3) Where SphereOptics is liable for damages on the merits of Section 9 para. 2, this liability shall be limited to damages which SphereOptics foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or should have foreseen by exercising due care. Moreover, indirect damage and consequential damage resulting from defects in the goods shall only be eligible for compensation insofar as such damage should typically be expected when the goods are used for their intended purpose.
- (4) In the event of liability for ordinary negligence, the liability of SphereOptics to pay compensation for damage to property and consequent financial losses shall be limited to an amount of €1,000,000.00 per case of damage, even if a breach of material contractual obligations is involved.
- (5) Where liability for damages vis-à-vis SphereOptics is excluded or limited, this shall also apply with regard to the personal liability for damages of the company officers, employees and vicarious agents of SphereOptics.
- (6) The limitations of this Section 9 shall not apply to the liability of SphereOptics for intentional conduct, for assured characteristics, for injury to life, limb or health or under the Product Liability Act (ProdHaftG).
- (7) Where liability for damages that are not based on injury to the life, limb or health of the customer is not excluded for simple negligence, such claims shall lapse within 12 months beginning with the accrual of the claim or, in the case of claims for damages due to a defect, from the handover of the item.

Section 10 Retention of Title

- (1) The retention of title agreed between SphereOptics and the customer is intended to secure in each case all current and future claims of SphereOptics against the customer arising from the supply relationship between the contracting parties.
- (2) SphereOptics shall retain title to the delivered goods until the customer has made full payment of all claims arising from the contract. The goods and such goods as take their place under reservation of title according to the following provisions are referred to in the

following as ‘reserved goods’. This applies also to all future deliveries, even if SphereOptics does not explicitly refer to this. SphereOptics shall be entitled to take back the goods if the customer acts in breach of contract.

- (3) The customer shall keep the reserved goods free of charge on behalf of SphereOptics.
- (4) The customer is entitled to process and sell the reserved goods in the ordinary course of business until such time as retention of title is enforced. Pledges and assignments by way of security are prohibited.
- (5) Where the reserved goods are processed by the customer, the parties agree that processing shall be carried out in the name and for the account of SphereOptics and that SphereOptics shall directly acquire ownership or co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. For the event that it is not intended that SphereOptics should acquire ownership in this way, the customer transfers with immediate effect its future ownership or co-ownership of the newly created item to SphereOptics by way of security.
- (6) In the event that the reserved goods are sold, the customer assigns to SphereOptics by way of security the resulting claims against the buyer – in proportion to the co-ownership share if SphereOptics holds a co-ownership share in the reserved goods – with immediate effect. The same shall apply to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance or tort claims in the event of loss or destruction. SphereOptics issues the customer with revocable authorisation to collect the claims assigned to SphereOptics in its own name. SphereOptics may only revoke this authorisation to collect if retention of title is enforced.
- (7) The customer shall notify SphereOptics without delay of any compulsory execution measures by third parties in regard to the reserved goods and in doing so shall transfer such documents as are necessary for an intervention; this shall also apply to impairments of any other kind. Irrespective of this, the customer shall notify a third party in advance of the existing rights to the goods. The customer shall incur the costs of an intervention by SphereOptics insofar as the third party is not able to reimburse such costs.
- (8) Where the value of the security exceeds the claims of SphereOptics against the customer by more than 20%, SphereOptics shall, at the customer’s request and at SphereOptics’ discretion, release in an equivalent amount securities to which it is entitled.
- (9) SphereOptics shall be entitled to demand return of the reserved goods if it withdraws from the contract due to breach of contract by the customer, in particular in the event of default of payment.

Section 11 Confidentiality

- (1) Both parties undertake to treat confidential, business and technical information received from the other party as strictly confidential and to use it exclusively for the purposes of the contract.
- (2) This restriction does not apply to information which was demonstrably in the public domain or already known to the recipient at the time of its provision or is published after provision to the recipient without the recipient being responsible for this.
- (3) Each party warrants that the provisions of this confidentiality clause shall also be observed by its company officers, employees and vicarious agents, even after termination of the contractual relationship with its company officers, employees and vicarious agents.
- (4) The recipient shall notify the holder of confidential information without delay if it was already aware of confidential information provided by the holder, it has become aware of information which the holder considers confidential or if it is instructed by a court, a government agency or a third party to disclose confidential information. SphereOptics will only disclose the source of information to the customer if the customer has agreed to this. Their confidentiality obligations shall survive the end of the contract.

Section 12 Data Protection

- (1) SphereOptics processes personal data belonging to the customer or its affected employees for performance of the contract on the legal basis of Art. 6 para. 2 point b) GDPR (performance of contractual obligations).
- (2) SphereOptics shall process the data for the purpose of direct marketing in forms that do not require consent – such as the addressed postal dispatch of advertising materials – in a manner that is consistent with the purpose of performing the contract. Processing for the purpose of direct marketing in forms that require consent – such as the dispatch of advertising materials or the placement of personalised advertisements by electronic means – shall only take place on the basis of additional voluntary consent from the customer. The customer is not obliged to grant consent. The only consequence of not granting consent is that the customer will not receive advertising in forms that require consent.
- (3) All data shall be subject to the agreed or statutory confidentiality obligations concerning the protection of personal data. The customer's data shall only be transferred on a legal basis or subject to agreement with the customer, except in the case of transfers to typical commercial recipients such as banks, tax advisers, lawyers and shipping service providers, etc.

- (4) The customer's data shall be stored in any event during the current contractual relationship and for up to three years after completion of the orders for the purpose of documentation and compliance with legal obligations.
- (5) The customer has the right to withdraw its consent at any time. Where consent has been given in writing, such consent may only be withdrawn in writing. Where consent has been given to the receipt of electronic advertising, the customer may withdraw consent by clicking on the unsubscribe link where applicable. Processing will be discontinued in this case, except if an alternative legal basis for processing exists. Withdrawal does not affect the lawfulness of processing carried out prior to the withdrawal of consent.
- (6) The customer has the right to object to the processing of its personal data for the purpose of direct marketing. Its personal data shall no longer be used for the purpose of direct marketing if consent is withdrawn.
- (7) The customer or its affected employees have the right to information, rectification and erasure of their personal data, the right to restriction of processing, the right to data portability and the right to lodge a complaint with the competent supervisory authority, namely Bavarian DPA (BayLDA), Promenade 18, 91522 Ansbach, phone +49 (0)981 1800 930, email: poststelle@lda.bayern.de.

Section 13 Formal Requirement for Declarations

Legally material declarations and notifications that the customer is required to submit to SphereOptics or a third party must be in writing.

Section 14 Disclaimer of Assignment

The customer shall not be entitled to assign claims against SphereOptics to third parties, including any claims under warranty.

Section 15 Place of Jurisdiction

- (1) The place of performance and exclusive place of jurisdiction for all possible disputes arising from the business relationship between SphereOptics and the customer shall be the registered office of SphereOptics if the customer is a merchant, a legal entity under public law or a special fund under public law or if the customer does not have a general place of jurisdiction in the Federal Republic of Germany. This provision does not affect mandatory statutory provisions on exclusive places of jurisdiction.

- (2) The business relationship between SphereOptics and the customer shall be governed exclusively by the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods does not apply.

Section 16 Final Provisions

- (1) Should individual provisions of these T&C be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the T&C shall otherwise be unaffected.
- (2) The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effect most closely resembles the economic objective pursued by the parties upon agreement of the invalid or unenforceable provision.
- (3) Where there are omissions in the contract or these T&C, the legally effective provisions shall be deemed agreed that the parties would have entered into in keeping with the economic objectives of the contract and the purpose of these T&C if they had been aware of the omission.