

## **Terms & Conditions (T&C) for Services by SphereOptics GmbH**

### **Section 1 Scope**

- (1) These Terms & Conditions (referred to in the following as 'T&C') apply to all services 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'). Where one or more services 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 Subject of Performance – Subject of the Contract**

- (1) The business purpose relates to the provision of calibration and measurement services.
- (2) SphereOptics shall provide services for the customer based on the following terms and conditions, in particular reflection and transmission measurements, LED and lamp measurements, scattered light distribution measurements (BRDF, BTDF), photobiological safety measurements and calibration service for spectrometers and camera systems.
- (3) The contracting parties agree to cooperate on the basis of the specific terms and conditions agreed in the individual contract.

### **Section 3 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. Offers made in advance by SphereOptics are subject to change and non-binding.
- (2) The subject of the contract or the precise designation of the task is described in the written order.

- (3) Amendments and supplements as well as verbal subsidiary agreements to the contract must always be confirmed in writing by SphereOptics. Deviations of any kind shall be void without this written confirmation.

#### **Section 4 Offer Documents**

- (1) SphereOptics reserves ownership of and copyright to all offers/cost estimates as well as technical documents, data, 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 5 Prices and Terms of Payment**

- (1) Unless alternative invoicing arrangements are agreed in the contract, services shall be due and invoiced at the fixed price specified in the individual contract on completion or on a monthly basis if remuneration is agreed based on units of time or materials. All prices are quoted in euro plus value added tax. Value added tax shall be charged at the statutory rate that applies at the time of performance.
- (2) Estimated prices for services that are quoted in units of time and materials, in particular in cost estimates, are non-binding. The assumed quantities underlying an estimate are based on an assessment of the scope of services that we carry out to the best of our knowledge.
- (3) Payment is due in full 14 days after performance of the service. The customer shall be in default without any further declaration by SphereOptics insofar as payment is not made on time.
- (4) Invoices are payable without deduction upon receipt. SphereOptics shall be entitled to claim default interest if the invoice amount has not been received within 14 days after the invoice date. Default interest shall be charged at a rate of 9% p.a. above the base rate applicable at the time of calculation.
- (5) SphereOptics reserves the right to demand advance payment prior to performance. The customer shall incur all costs of the payment transaction.
- (6) 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.

- (7) In the event that the customer experiences a significant deterioration in its financial situation or imminent insolvency, SphereOptics shall be entitled to predicate 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 terminate the contract after the expiry of this period and to demand compensation for non-performance.
- (8) 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 price lists.

### **Section 6 Term of the Contract and Termination**

- (1) The contract begins and ends at the individually agreed times.
- (2) The contract may be terminated by serving ordinary notice. The parties agree on a notice period of two weeks to the end of the month.
- (3) Termination without notice for cause is permitted. Cause shall apply, for instance if
  - the customer is in default of two consecutive payments and fails to make payment after expiry of a reasonable grace period.
  - the customer falls into financial collapse after conclusion of the contract (illiquidity, insolvency), unless an application for the opening of insolvency proceedings has already been filed.

### **Section 7 Scope of Performance, Obligations of the Contracting Parties**

- (1) The performances provided by SphereOptics shall generally comprise the tasks listed in detail in the order placed by the customer.
- (2) SphereOptics shall periodically update the customer about the result of its activities. The contracting parties may agree in the contract on a performance schedule and a planned end date for completion of services.
- (3) SphereOptics shall notify the customer without delay if it is factually unable to perform an order as contractually owed.
- (4) The parties shall, to the best of their knowledge and belief, endeavour to support each other in the performance of their individual obligations and to do so shall share information, intelligence or experience to ensure a smooth and efficient workflow for both parties.
- (5) Each contracting party may submit a written request to the other contracting party to change the scope of the agreed performance. Upon receipt of a change request, the recipient will check whether and under which conditions the change is feasible and will notify the requesting party of the approval or rejection in text form without delay, providing reasons if necessary. Where a change request submitted by the customer requires

extensive review, SphereOptics shall be entitled, subject to prior notice, to charge for the effort involved in the review, assuming the customer insists that the change request should be reviewed.

### **Section 8 Liability for Damages due to Fault**

- (1) SphereOptics shall be liable in accordance with the statutory provisions in cases of intent or gross negligence. Liability for assurances shall be strict and irrespective of fault. SphereOptics shall be liable for ordinary negligence exclusively in accordance with the provisions of the Product Liability Act (ProdHaftG) with regard to injury to life, limb or health or due to the breach of material contractual obligations. Notwithstanding, claims for damages for ordinary negligence in the breach of material contractual obligations shall be limited to foreseeable damages that are typical for the contract, unless liability applies for injury to life, limb or health. SphereOptics shall be liable to the same extent for the fault of vicarious agents and company officers.
- (2) The provisions of paragraph 1 above extend to damages in addition to performance, damages in lieu of performance and claims for compensation due to futile expenses, irrespective of the legal grounds, including liability due to poor performance, delay or impossibility.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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 9 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 10 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](mailto:poststelle@lda.bayern.de).

#### **Section 11 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 12 Disclaimer of Assignment**

The customer shall not be entitled to assign claims against SphereOptics to third parties.

#### **Section 13 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 14 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.