

Terms of sales, delivery and payment of eurolaser GmbH (business customers, 01/2022)

I. Validity of these terms and closing of contract

(1) These Terms of Sale exclusively apply to entrepreneurs, legal entities under public law, and special funds under public law within the meaning of § 310 of the German Civil Code (BGB). Any terms and conditions of the purchaser that are contrary to or deviate from our Terms of Sale are not recognized by us unless we have expressly agreed to them in writing or in text form (§ 126b German Civil Code).

(2) All tenders, agreements, deliveries, performances and all other business from the eurolaser GmbH shall be carried out exclusively based upon, and in accordance with these terms of conditions unless specifically agreed otherwise in writing or in text form (§ 126b German Civil Code). The following provisions apply for inland and international business transactions.

(3) All agreements, ancillary agreements, orders, guarantees and amendments to the agreement must be in written form or in text form (§ 126b German Civil Code).

II. Offer documents, copyright

We reserve the ownership rights and copyrights to all documentation connected with the offer. The documentation may not be available to any third parties without our prior written consent. The documentation shall be returned to us immediately upon request if an order is not placed with us. The development work and designs for constructing lasers, systems and other products shall remain our intellectual property and the ordering party may neither make them available to third parties nor utilize them for his own purposes. The ordering party is obligated to maintain strict confidentiality even if he does not place an order.

III. Prices and payment

(1) All prices are ex-works, the delivery is forthcoming of the basis of "Incoterms 2020" EXW, ex works eurolaser GmbH, Borsigstraße 18, DE-21339 Lüneburg, Germany (cost- and risk-transfer to the customer from serial production) and quoted in Euros in each instance thereof plus value added tax. Our list price valid on the day of delivery shall apply if a fixed price has not been agreed.

(2) The ordering party shall bear the costs of any changes in prices agreed in a foreign currency or exchanging the Euro that arise after closing of contract.

(3) Payments shall solely be made to us. Non-cash payments are only deemed as performed in full when the sum is credited to our bank account. Representatives and travelling employees of our company are not authorized to accept money or Cheques. Bills of exchange shall only be accepted as performance of payment by special agreement and on the condition that they are eligible for discount. Discount expenses shall be charged commencing on the date that the invoiced amount becomes due, onwards.

(4) Unless otherwise agreed, invoices shall be paid net immediately from the date of invoice. We reserve the right to make deliveries conditional upon advance payment, cash payment or c.o.d., especially in instances of first orders or outstanding overdue payments.

(5) In any event, our claims for payment shall become due for immediate payment if the ordering party becomes insolvent, if bankruptcy proceedings are instituted against his assets or if his company is sold or comes under new ownership.

(6) If the ordering party enters into default on a payment or partial payment, then each respective outstanding payment shall accrue interest at a rate of 9 percentage points above the relevant base rate, insofar as we cannot furnish evidence of higher damages or the LIBOR +8 % is over 12 % per year. In accordance with § 34 of the Introductory Act to the German Civil Code (BGBEG) the rate of default interest applies only to contractual obligations arising before 28.07.2014. In case of continuous obligations the rate applies to services to be provided in return after 30.06.2016. For other obligations the interest rate is 8 percentage points above the relevant base rate.

(7) The ordering party is not entitled to assert rights of retention unless his claims are undisputed, ready for decision or have been legally established by a final judgement and come from the same contractual relationship.

(8) In those instances stated under No. 5 above and in other circumstances that become known after the closing of contract, which considerably jeopardize the ordering party's ability to legally fulfil the contract, we shall be able to demand a reasonable advance payment, the sum of which not agreed prior to any such instance or circumstance, or to reasonably increase the amount of an advance payment already agreed or to demand furnishing of collateral for the amount of respective outstanding debts. The advance payment must not exceed 70 % of the net order value. We shall be entitled to rescind the contract or demand damages due to non-performance in the event that the ordering party fails to meet our demand, despite stipulation of a reasonable time period for compliance and warning of rejecting further performance of contract.

IV. Transfer of risk, dispatch, freight

If goods are dispatched to the ordering party at his request, then the risk of accidental perishing or accidental deterioration of the goods shall transfer to the ordering party when the goods are surrendered to the authorized shipping agent. This shall also apply for partial deliveries, regardless of whether shipment is carried out from the place of performance and regardless of who bears the freight costs. If the goods are ready for dispatch and dispatch or acceptance of the goods is delayed on grounds for which we are not responsible, then risk shall transfer to the ordering party when notice is received that the goods are ready for dispatch.

V. Retention of ownership

(1) Delivered goods shall remain our property until full payment of all claims arising from the business transaction, including any outstanding current account balances. We shall be entitled to take back the relevant, delivered goods, if the ordering party is in default on payment or has committed other, non-minor, violations of his contractual obligations. Taking back said goods does not mean that the contract is cancelled unless we have expressly stated the same in writing or in text form (§ 126b German Civil Code).

(2) The ordering party is entitled to re-sell the goods subject to right of retention (retained goods) in the normal course of business; however, he is not entitled to pledge said goods or assign them as collateral.

(3) The ordering party now hereby assigns us to any claims arising from resale of retained goods. However, he is entitled to collect said claims only for as long as he does not enter into default in fulfilling his obligations vis-à-vis us or does not sustain financial collapse. The ordering party is required, at our request, to provide us with information necessary to collect the assigned claims, to surrender required documents to us and to inform the debtor of the assignment.

(4) The ordering party shall perform any handling and processing whatsoever of retained goods for us without any obligations arising for us from the same. If delivered goods are processed, combined, mixed or blended with other goods that do not belong to us, then we are entitled to co-ownership of the new goods commensurate with the value of our retained goods to the value of other processed goods, which they possess at the time of processing, combining, mixing or blending. Should the ordering party acquire sole ownership of new goods, then the contracting parties hereby agree that the ordering party shall grant to us co-ownership in the new goods commensurate with the value of our retained goods in any such new goods, which they possess at the time of processing, combining, mixing or blending, and that the ordering party shall keep our proportionate share in said new goods in safe custody for us free of charge. If retained goods are resold together with other goods, and more precisely regardless of whether resale occurs after or devoid of processing, combining, mixing or blending, then the aforementioned advance assignment, as agreed above, shall solely apply to the amount of the value of retained goods that are resold together with the other goods.

(5) As collateral for our claims against him, the ordering party shall also assign to us his claims against third parties arising from linking the delivered goods – or delivered goods as processed, combined, mixed or blended, when appropriate – to real estate.

(6) The ordering party is required to inform us immediately of any attachment, seizure or any other judicial enforcement procedures or dispositions of third parties concerning the reserved goods or the claims assigned in advance and to surrender to us all documentation necessary for intervention.

(7) In the event that the realizable value of the aforementioned collateral exceeds secured claims by more than 10 %, then we are obligated, at the ordering party's request, to release an appropriate portion of the collateral we hold; selection of the collateral to be released shall be our responsibility.

VI. Delivery dates

(1) Correct and punctual self-delivery is reserved.

(2) Any agreed delivery dates shall be deemed adhered to if the goods have left the plant or warehouse on such date or if notice has been given that goods are ready for dispatch or where pre-acceptance is performed by or on the delivery date. Partial deliveries are permissible. The delivery date shall extend for a reasonable period, if the ordering party fails to furnish in due time the documentation, permits, work-pieces, devices or any other performances he is obliged to provide, or in the event of unforeseeable, extraordinary events that can not be averted despite required and reasonable due diligence exercised under given conditions, such as, for example, interruptions in business operations, strikes and lockouts, import or export bans, non-issue or revocation of permits or other measures instituted by authorities; this shall also apply if one of the aforementioned occurrences happens to a supplier or another manufacturer. If the ordering party is in default on performing agreed partial payments, then the delivery date shall commensurately extend.

(3) Eurolaser GmbH shall only get into default in delivery by means of a written reminder that, however, cannot be given earlier than two weeks from expiry of the non-binding time of delivery. The customer shall be obliged, at our request, to inform us in writing within an appropriate period whether he still insists on delivery or whether he intends to withdraw from the contract or will demand indemnification instead of performance. The customer shall only be entitled to rescind the contract for delays in delivery if we can be blamed for such delay and only pursuant to the legal provisions.

VII. Warranty

(1) If the performance we render is defective, including the absence of assured characteristics, then we shall, at our own discretion, supply replacement delivery or rectify our original delivery. In this regard, we shall be granted no less than two attempts to perform replacement or rectification. If replacement delivery or rectification of our original delivery fails, then the ordering party can, at his own discretion, either rescind the contract or demand a reduction in price.

(2) A complaint concerning apparent defects must be filed in writing or in text form (§ 126b German Civil Code) at the latest within 14 days after acceptance of the delivery or service; concealed defects no later than within 14 days after their discovery. For observance of the time limit it is sufficient to send the notification of defects in due time. Otherwise the future assertion of warranty rights due to that defect in the goods will be precluded.

(3) We are not liable for damages that arise outside our scope of performance and influence through improper utilization or treatment, erroneous installation and operation by the ordering party or any third parties, natural wear and tear, inappropriate operating materials, replacement materials, electrical or chemical affects.

(4) Our written order confirmations and the documents referred to therein are exclusively authoritative for the scope of our deliveries and performances. Technical information regarding the delivered goods, including illustrations, drawings and application reports as well as any weight specifications requested by the ordering party do not constitute any assured characteristics. We provide no guarantee for adherence to foreign packaging and customs regulations. We reserve the right to make technical improvements, also without notifying the customer of the same or harmonizing them with the customer.

(5) The warranty period is 12 months, but not for software which is no part of the system size and its warranty is subject to manufacturers instructions. The warranty period begins with the installation of the goods at the ordering party, at the latest 1 month after the date written in our "ready for delivery" declaration. The warranty period will be increased to 24 months in case of regular maintenance. The warranty will be void in case of not maintaining the system in the interval written in the manuals, in case that the maintenance and adjustments/fixing are not done by a company or person authorized by eurolaser, in case of wrong usage of the system. The warranty does not apply to wearing parts and consumable items as well as optical components. Defect parts or appliances have to be sent packed, carriage free and insured to eurolaser GmbH. The return by eurolaser GmbH in a case of warranty results in the same way.

(6) For spare- and exchange-parts there is a warranty of 6 months. Defect parts have to be sent packed, carriage free and insured to eurolaser GmbH. The return by eurolaser GmbH in a case of warranty results in the same way.

(7) Claims of the ordering party for damages which do not occur to the delivered goods themselves are excluded. This shall not apply in instances of intent or gross negligence or culpable violation of important contractual obligations. In the event of culpable violation of important contractual obligations, we shall solely assume liability for damages that are typical for contracts and could have reasonably been foreseen – except in instances of intent or gross negligence.

(8) Apart from the claim granted to the ordering party under these provisions, the ordering party shall have no further claims to compensation and especially no claims to compensation due to delays in deliveries, frustration of contract, positive violation of contract, violations of obligations at conclusion of contract as well as tortuous acts. This exclusion of liability shall not apply in instances of intent or gross negligence, or violation of an important contractual obligation or occurrence of personal injury that should have been prevented by the violated obligation. For all remaining purposes, liability is limited to foreseeable damages typical for contracts, insofar as these damages are not intentional or caused by gross negligence. The shortening of the statutory warranty period (No. 5) does not apply to those cases, which are excepted from exclusion of liability and insofar as legal regulations explicitly stipulate a longer period of limitation. In these cases, the statutory regulations of the German Civil Code (BGB) shall apply.

(9) The exclusion of liability shall not apply for the absence of assured characteristics insofar as the assurance of these characteristics was specifically intended to safeguard the ordering party against arising damages. Moreover, the exclusion of liability shall not apply in instances where liability is assumed, under product liability law, for personal injury or property damage at or on privately utilized objects in the event of defects in the delivered good.

(10) Warranty of the ordering party: For objects manufactured in compliance with information provided by the ordering party, the ordering party shall assume warranty for the fact that proprietary rights of third parties are not violated by manufacturing and operating any such objects. The ordering party releases us from all claims of third parties based on violation of proprietary rights.

VIII. Compensation

If an order is cancelled for a reason for which the ordering party is responsible, then the ordering party is required to pay us 25 % of the net value of the cancelled order as compensation; notwithstanding possible assertion of claims for higher or lower actual damages.

IX. Saving clause

If any of the provisions of these terms are or become partially or wholly invalid, then this shall not affect the validity of the contract as a whole and the remaining terms of sale, delivery and payment. In this case, the parties are obligated to replace the invalid or infeasible terms or contractual provisions with agreements that come closest to the intended purpose of the original term or provision being replaced.

X. Place of performance, venue of courts and applicable law

(1) At our own discretion, either Lüneburg shall constitute the sole venue of courts for all disputes arising directly or indirectly from the contractual relationship, insofar as ordering parties pertain to legal entities under public law or to special funds under public law or to businessmen – except for businessmen whose operations, pursuant to the kind and scope thereof, do not have to be established as a full business operation. The site (headquarters or branch office) stated on our order confirmation shall constitute the place of performance for businessmen or other persons as defined under the first sentence of this provision.

(2) The contractual relationship is subject to German law in all cases, in particular the German Civil Code (BGB) and the German Commercial Code (HGB), under exclusion of all conflicting laws and the Vienna version of the UN Convention on Contracts for the International Sale of Goods (CISG).