

1. Limits of Agreement

All current and future purchases and sales of products and services shall be made pursuant to the terms and conditions as set forth herein as well as any additional terms and conditions that may be agreed on in individual cases between ZygoLOT GmbH (Seller) and the Buyer. Any conflicting, differing or additional terms and conditions are rejected by the Seller and shall have no effect unless agreed to in writing by ZygoLOT. These terms and conditions shall supersede any conflicting, differing or additional terms contained in any purchase order of the Buyer.

2. Offer and Acceptance

- a) All orders have to be placed in written form. Telephone orders shall only be binding after the Buyer's written confirmation. The Seller's written order acknowledgement shall constitute a binding contract between the parties. Failure by the Buyer to immediately object to the Seller's order acknowledgement in writing shall constitute an acceptance thereof.
- b) Orders may be changed or cancelled only upon the Seller's written approval. Any change or cancellation will be subject to the following charges: standard orders 10% of the order value, minimum 50 €, orders for custom made products: all costs incurred by the Seller relating to the change or cancellation up to the full order value.
- c) Where the goods are supplied for export from Germany, the contract is subject to the Seller obtaining the necessary export licenses and all other relevant consents, authorizations and permits relating to the export of the goods. Any contract is deemed invalid, if delivery of the goods would violate ANY legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties on them.

3. Price and Payment Terms

- a) All prices shall be ex works Darmstadt plus the applicable VAT at the time of purchase. All transportation costs shall be paid by the Buyer unless otherwise agreed to in writing by the Seller. Any costs for the disposal of the goods according to the German Electricity Act (ElektroG) are not included in the price.
- b) Should any of the third-party costs mentioned in the Seller's order acknowledgement rise later than four weeks after completion of the contract, e.g. due to monetary parity, the Seller reserves the right to change the price without prior notice.
- c) Duty-free delivery (if agreed) has to be accepted by customs authorities. If the Seller is charged customs fees, these will be charged to the Buyer together with an additional, reasonable handling fee.
- d) Unless otherwise stated in the Seller's order acknowledgement, payment is due upon receipt of the goods and invoice. Payment will be considered past due, if received later than eight days after the original due date. If the Buyer fails to pay any invoice when due, the Seller may charge the Buyer a default interest at a rate equal to 5% above the ECB base rate. Additionally, the Seller reserves the right to claim any damages that incur due to the Buyer's default. Check payments will only be considered effected after bank clearance.

- e) In the event of default by the Buyer on stipulated prepayments, the Seller will have the right to cancel the purchase and demand compensation. Compensation will be 15% of the purchase price, unless the Buyer can prove a lower or the Seller can prove a higher actual damage.
- f) Unless the Buyer's counterclaims are legally ascertained, the Buyer has no right to withhold any payments or charge payments against counterclaims.

4. Delivery and Delay in Supply

- a) All delivery dates are non-binding unless otherwise agreed by both parties in writing. The Seller reserves the right to deliver earlier than the agreed date.
- b) Observance of agreed delivery dates is always subject to complete and timely delivery by the Seller's supplier. The Seller shall notify the Buyer of any foreseeable delay.
- c) In the event of failure by the Seller to deliver all of or any part of any order as a result of Acts of God, labor disputes or other causes beyond the Seller's control, the delivery time will be extended accordingly. The Seller will inform the Buyer of the beginning and end of any such circumstances as soon as possible.
- d) The Seller reserves the right to make partial deliveries of any part of any order unless a partial delivery is of no use to the Buyer.
- e) Fulfillment of all terms on the part of the Seller is subject to all obligations on the part of the Buyer to be strictly observed.
- f) If the Seller fails to observe *binding* delivery times and the Buyer incurs damage as a result thereof, the Buyer is entitled to a fixed default compensation. For each complete week of the default, compensation shall be 0.5% but not more than a maximum of 5% of the value of that portion of the total delivery which cannot be used on time or in accordance with the terms of contract as a result of the delay.
- g) In the event that upon the Seller's default the Buyer sets the Seller a written time limit of at least 12 weeks to fulfill the order, always considering the exceptions stipulated by law, and should the Seller fail to comply with this limit, the Buyer shall have the right to cancel the order within all legal regulations.
- h) All other default claims are set forth in section 8.b) of these terms.
- i) If shipments are postponed due to the request or fault of the Buyer, the Seller reserves the right to claim damage remedy. All risk of loss or damage shall pass to the Buyer at the time when goods are ready for shipment.

5. Risk of Loss

- a) The Buyer shall assume all risk of loss or damage upon delivery of the goods to the carrier or as soon as the goods have left the Seller's warehouse for shipment. This holds true even if the shipment is effected in the Seller's vehicles or by the Seller's employees. The choice of carrier lies with the Seller, unless otherwise agreed in writing by both parties.
- b) If the Buyer delays shipment, all risk of loss shall pass to the Buyer at the time when goods are ready for shipment.

c) All shipments will be covered by the Seller's transport insurance. In the event of transport damage, all claims against the carrier or insurance company are assigned from the Seller to the Buyer. All further claims cease to exist. The Buyer shall report any transport damage immediately.

6. Reservation of Title

- a) The Seller shall retain all rights and title to all goods until payment in full for all sums due for all goods supplied has been received.
- b) All goods remain property of the Seller. The Buyer has the right to sell or process the goods as long as he has paid in full all sums owed to the Seller. Pledging or transfer of security interests are prohibited.
- c) The Buyer transfers all claims resulting from the sales of the goods subject to retention of title to the Seller by way of security. The Buyer is entitled to assert the claims transferred to the Seller for the Seller's account on his own behalf. This collection authorization may be revoked if the Buyer fails to meet his liabilities.
- d) In case of failure of the Buyer to meet his obligations, particularly payment obligations, the Seller is entitled to take back the delivered goods and the Buyer is obliged to release them. Filing of petition in insolvency entitles the Seller to withdraw from the contract and demand the immediate release of the goods. Due to the reservation of title, the Seller may only demand release of the goods if he has withdrawn from the contract.

7. Warranty

All other claims excluded and subject to section 8. of these terms, the Seller warrants the following for material defects and defects of title:

Material defects

- a) The Buyer shall inspect the goods immediately upon delivery and give written notice of any defects to the Seller. If goods turn out to have been defective prior to the transfer of risk, the Seller will either repair the defective part or replace it free of charge at his sole option.
- b) Upon agreement with the Seller, the Buyer shall allow for an appropriate time period for all necessary repairs and/or replacements. The Seller shall not be liable for any damage arising from lack of time for proper repairs/replacements.
- c) The Buyer has the right to withdraw from the purchase order if the Seller does not repair or replace the defective parts within an appropriate set period of time, all legal exceptions taken into account. If the defect is only minor, the Buyer may not withdraw from the order but has the right to decrease the purchase price. The Buyer may not decrease the price under any other circumstances.
- d) The Seller is not bound to solely deliver goods which are approved by the European Association for Electrical, Electronic & Information Technologies (VDE) or which are CE certified, as common technical and/or safety regulations are also guaranteed by other foreign regulations. Other claims are set forth in section 8.

e) Warranty exclusions:

Goods which are in any way altered by the Buyer or third parties; Goods subjected to improper installation, misuse, negligence in use or handling by the Buyer or third parties; Goods which are considered to require repair or replacement due to normal wear and tear.

Defects of title

f) In case that the use of the goods causes an infringement of industrial property rights within the domestic territory, the Seller shall procure the right of further use for the Buyer or modify the goods in a way acceptable to the Buyer that the infringement no longer exists.

If this is not possible under economically reasonable conditions or within an adequate period of time, the Buyer is entitled to withdraw from the contract. Under the above mentioned conditions, the Seller is also entitled to withdraw from the contract.

In addition, the Seller shall release the Buyer from uncontested claims or claims recognized by declaratory judgment of the respective holder of property rights.

The above mentioned obligations of the Seller are binding for infringement of industrial property and copy rights, except as provided in section 8.b.

These obligations only exist if

- the Buyer notifies the Seller without delay of asserted infringements of industrial property or copy rights.
- the Buyer assists the Seller to a reasonable extent in rejecting asserted claims or enables the Seller to execute modification actions according to section 7.f.
- the Seller reserves the right to all defensive measures, including out-of-court arrangements.

8. Liability

- a. In case the product cannot be used by the Buyer as stipulated in the contract as a result of the Seller's faulty or failed execution or implementation of suggestions made and advice given before or after the conclusion of the contract, or as a result of the infringement of other contractual collateral obligations, the stipulations of sections 7 and 8 shall be valid accordingly, to the exclusion of further claims of the Buyer.
- b. Irrespective of the legal reasoning used, the Seller shall only be liable for damage that has not occurred on the goods themselves
- if the damage was done intentionally.
 - in case of gross negligence of the owner / organs or executive personnel.
 - in case of culpable injury of life, health and body.
 - if defects were fraudulently concealed or their absence had been guaranteed.
 - for defects of the goods, in so far as the Seller is responsible for personal injuries and property damage of items used privately according to the German Product Liability Law.

In the event of a fundamental breach of contract, the Seller shall also be responsible for gross negligence of non-executive staff and for slight negligence, the latter being limited to reasonably foreseeable damage that can be considered typical for the contract. Any further claims are excluded.

9. Disposal of Goods

If the goods ordered are electronic goods according to the German Electricity Act (ElektroG), the Seller assumes the "responsibilities of a manufacturer of old electric products for other users than private households, as stipulated in §10.2 ElektroG". The Buyer shall treat and dispose of the goods at his own expense according to the Electricity Act. In case of further transfer of the goods, the Buyer shall pass this obligation to the recipient. The Buyer shall exempt the Seller from all obligations resulting from the Electricity Act towards authorities and other third parties.

The claims of the supplier of this agreement do not become time-barred before two years after the final abandonment of use of the goods. The two-year period shall begin no sooner than with a written notice of the Buyer that the use has been abandoned.

For adequate compensation, the Seller is prepared to dispose of the goods on behalf of the Buyer. If desired, the Seller shall provide the Buyer with addresses of qualified disposal companies.

10. Statute of Limitation

The statute of limitation applicable to any of the Buyer's claims shall be twelve (12) months. Any claims as set forth in paragraph 8.b) shall be subject to the legal limitation periods.

11. Governing Law, Jurisdiction and Venue

- a) These terms and conditions shall be governed by the laws of Germany only. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- b) Jurisdiction and venue for any actions relating to these terms and conditions will be either Darmstadt or the Buyer's domicile, according to what is determined by the Seller.

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For our general terms and conditions see:

<http://www.zygot.de/agb>