

# Terms and Conditions of Sale and Supply



**HighFinesse**  
Laser and Electronic Systems

**HighFinesse GmbH**  
Laser and Electronic Systems

Wöhrdstraße 4  
72072 Tübingen  
— GERMANY —

Contract

Tel: +49 (0)7071 53 918 0  
Fax: +49 (0)7071 53 918 99  
eMail: [info@highfinesse.de](mailto:info@highfinesse.de)

CEO/Geschäftsführer

Dr. Thomas Fischer

Commercial Registry/Handelsregister

Handelsregister Stuttgart  
HRB 382133  
VAT/USt-ID: DE 211299846  
St-Nr.: 86113/98800  
WEEE-Reg.Nr.: DE 14593317

## 1. General

I. These “terms of conditions” apply for all offers, order confirmations, deliveries and services from/ by HighFinesse GmbH (in the following “the vendor”) as an integral part of the contractual relationship. Changes, differing conditions and/or supplements to the agreement are binding only in the case of a written confirmation from the vendor.

II. The customer’s conditions of purchase are invalid even if they have not been explicitly dissented.

III. The terms of conditions come into force with receipt of the order confirmation at the latest.

IV. The information provided from the customer in connection with the order is not considered confidential unless explicitly agreed otherwise in writing or specified by the customer in writing.

V. In doubt, in each case, valid INCOTERMS will be basis of any interpretation of International Commercial Terms.

## 2. Offer and Price, Right to Documentation

I. Unless otherwise agreed in writing, the vendors’ offers are subject to change and non-binding. This remains subject to the goods being unsold.

II. The scope of the vendor’s obligation to deliver will be determined solely by the written order confirmation. The order remains subject to technical changes, which do not affect the function of the ordered items, prior to delivery.

III. Details given in catalogues and prospectuses, as well in documents, diagrams, drawings, weights and measures given in offers and orders are non-binding and for information only, as long as not specifically mentioned in the order confirmation.

IV. The vendor retains ownership and copyright of/to any diagrams and other documents. They may not be sent, copied, or made available to third parties and bestow no right to replicate/reverse engineer individual parts.

V. The prices relate to the scope of services and products described in the order confirmation.

VI. The stated prices are for goods delivered from Tübingen and include/exclude, as agreed upon, customs duties, with the addition of VAT based on the rate at the time of billing. Prices are calculated depending on the type and extent of the scope of work as agreed upon in the order confirmation and are subject to change if the customer requests additions or changes. Prices are based upon the current prices of the vendor’s suppliers, wages, currency parities and customs and import tariffs at the time of the order confirmation. Fixed prices require prior written agreement. The vendor also reserves the right to alter prices subject to changes in quantities.

### 3. Payment Conditions

- I. The vendor's invoice is to be paid within 30 days after receipt without deductions. The customer is responsible for paying any transaction fees.
- II. Subject to proof of greater losses/damage, the vendor may charge default interest of 8% above the basic rate.
- III. In the event of default/delay with a payment, the vendor's outstanding claims become due. In addition, the vendor has the right to put any outstanding work on hold. Agreed delivery times are extended accordingly.
- IV. Counter-claims by the customer are effective only if recognized by the vendor or legally certified. A lien may only be exercised when it is based on the same contractual obligations.

### 4. Delivery

- I. All stated delivery times are, unless otherwise agreed, approximate and subject to current circumstances such as production capacity and market situation. If the delivery time is determined by a specified period, this period begins after the conclusion of the contract as soon as all associated requisites on the part of the customer (e.g. transfer of documents, required data etc.) are fulfilled, licenses or permissions obtained and agreed numbers are specified.
- II. Subsequent desired changes from the customer, subject to consideration by the vendor, lead to an appropriate shift of delivery times and deadlines.
- III. Timely delivered devices, received by the customer, which have only inconsequential imperfections, are considered to fulfill the delivery time requirements. Part deliveries are permissible. Delays to delivery due to unpredictable events beyond the vendor's control such as Acts of God, strikes, lock-outs, black-outs, shortages of important tools/raw materials, sabotage or delays to deliveries of necessary tools/raw materials, bring an appropriate delay to the delivery deadline into effect. Rights to cancellation and further claims from the customer are not effective in such cases. The same applies when, due to unpredictable events, the vendor is already in default. A right to cancellation due to delivery delays exists only under the stipulations of clause 9 and claims to damages only in accordance with clause 8.

IV. When the contract relates to the supply of non-fungible goods which are to be manufactured or created, the customer only has a unilateral right of termination until transfer of the risk (see clause 5) if an important ground exists. If the vendor is not liable for said ground, the vendor's claim to remuneration shall amount to 30% of the order value, unless the statutory claims are higher or lower, the latter to be proven by the customer. If the contract relates to other articles, the subsequent termination of contract will be subject to the vendor's approval and the vendor will charge 30% of the order value, unless agreed otherwise.

### 5. Transfer of Risk/Perils (under German Civil Law, the "Gefahrübergang", or Transfer of Risk, Refers to the Point at Which Responsibility for Goods, including Loss or Damage, Passes from the Vendor to the Customer)

- I. Risk is transferred to the customer upon dispatch of goods. This also applies to part deliveries and if the vendor has taken on the transport and/or installation costs.
- II. If the delivery is delayed due to circumstances for which the vendor is not liable, risk is transferred to the customer upon written notice of readiness to dispatch.

### 6. Responsibility for Defects

- I. The vendor guarantees that the product and its performance are defect free at the point of risk transfer. Unless agreed otherwise, the agreed quality corresponds to the vendor's specifications, as amended and published at the time of the order confirmation. The statutory inspection and complaint obligations must be observed.
- II. If the goods or services are not of the agreed quality at the time of risk transfer, the vendor will rectify the situation (provide supplementary performance) in accordance with section 439 of the German Civil Code, unless otherwise stipulated in the following provisions.
- III. Supplementary performance may be provided by the rectification of defects or, at the vendor's discretion, by new delivery. The vendor may rectify a certain defect several times and, again at the vendor's discretion, may proceed from a rectification of defects to new delivery. Transport costs due to the

goods being brought to a location other than the place of delivery are borne by the customer.

IV. The customer may set an appropriate period of at least two weeks for the vendor to affect the new delivery and, if the new delivery does not occur during such period, may demand reduction of the price or, unless the defect is insignificant, withdraw from the contract after expiry of the period. Damages for defects of quality may be claimed only subject to clause 8 below.

V. Rights and claims based on defects of quality expire twelve months after delivery, except in the case of willful intent. However, damage claims based on defects of quality also expire after the statutory period even in the case of loss of life, bodily harm, detriment to health or gross negligence.

VI. The vendor is not liable for regular wear and tear, customer-procured material, or adjustments made by the customer, damage resulting from improper storage, installation or operation, insufficient maintenance, or for damage resulting from a modification or repair not authorized by the vendor in writing.

VII. With respect to goods or services which the vendor receives from a third party for resale to the customer, the vendor assigns all warranty rights against such a third party to the customer. Claims can be advanced against the vendor only if they have first been asserted against the third party without success.

## **7. Liability for Property Rights Infringements**

I. The vendor warrants upon risk transfer that no third party patents or other proprietary rights exist which may be claimed with respect to the goods or services if these are used as intended. Clauses 6.2 to 6.5 and 6.7 shall apply accordingly.

II. The vendor's liability will be excluded if a third party patent or proprietary right is infringed because the vendor has adhered to a design provided by the customer or has complied with an instruction given by the customer, or because the goods are used for a purpose, in a country, or in connection with other goods or other software, without this having been communicated to the vendor before execution of the contract.

III. During the period of the vendor's liability, the customer has the obligation to inform the vendor in writing as promptly as possible in the event that

a third party claims any patent or other proprietary right or asserts any claims in or out of court with respect to the goods or services. Before recognizing any claim advanced by a third party in or out of court, the customer shall give the vendor the opportunity to comment. Upon request, the vendor shall be given the authority to handle the negotiations or legal dispute with such a third party at the vendor's own cost and responsibility. The customer shall be liable to the vendor for any damage sustained as a result of a culpable violation of said obligations.

## **8. Damage Claims**

I. The vendor will be liable to the customer only for damage caused with intent or by gross negligence. In the event of a breach of obligations, which are essential for the fulfillment of the contract, the vendor shall be liable for each fault of its personnel that causes damage (statutory representatives, executive employees and other vicarious agents).

II. Except in case of intentional damage by the vendor's personnel or causation of damage due to gross negligence by the vendor's statutory representatives or executive employees, the vendor's liability shall be limited, in each case, in terms of amount, to the damage which is typically foreseeable at the time of conclusion of the contract.

III. In case of doubt, the amount of typically foreseeable damage shall be limited to the order value, up to a maximum of € 50,000.

IV. Claims to damages which result from loss of life, bodily injury or detriment to health, as well as damage claims under the Product Liability Act remain unaffected.

## **9. Rescission**

A breach by the vendor which is not a defect entitles the customer to rescind only if the vendor is responsible for such a breach and if the other statutory requirements are met.

## **10. Retention of Title**

I. The vendor retains title to the goods delivered until full payment of the vendor's claims due under this contract, including ancillary claims and future claims arising from the business relationship with the customer.

II. The customer is entitled to resell the goods delivered subject to the vendor's retention of title in the ordinary course of business. The goods must not be pledged or assigned by way of security. If a third party intends to seize the goods subject to the vendor's retention of title, the customer will advise the third party of the vendor's title and inform the vendor immediately.

III. The customer will assign its claims resulting from any resale to the vendor. The customer is authorized and obliged to collect the claims in the ordinary course of business. At the vendor's request, the customer will name the claims assigned and the debtors concerned. To secure payment claims, the vendor is entitled to disclose the assignment of the claim at any time.

IV. If goods to which the vendor holds title are connected or intermixed with other goods to which the vendor holds no title, the vendor becomes proportionate joint owner in relation to the invoice value of the goods delivered to the other goods. Any processing or conversion of the goods by the customer will always be undertaken for the vendor, as manufacturer, without this obliging the vendor in any manner. The vendor becomes co-owner of any processed or converted goods in the sense of the aforesaid provisions.

V. If the customer is in delay of payment, including with respect to ancillary or future goods delivered or services provided, or if the customer becomes insolvent, the vendor may claim retention of title and retrieve the goods, even by entering the premises of the customer. If the vendor claims retention of title, the vendor will not be deemed to have rescinded the contract, unless the vendor declares otherwise.

VI. If the value of the collateral should exceed the vendor's payment claims by more than 20%, the vendor will release the excess collateral at the request of the customer.

## 11. Onward Delivery

I. The vendor draws attention to the fact that parts of the product range are covered by German and/or American export specifications and are not intended for re-export. Before any onward sale or application of products drawn from the vendor to areas outside the Federal Republic of Germany, the customer takes it upon themselves to make appropriate enquiries to the relevant authorities or industrial or trade bodies and to conduct themselves lawfully in this respect.

II. The customer agrees to account for the whereabouts of the products if the vendor requests this stating justifiable reason to do so.

III. The customer commits to imposing the in I. and II. aforementioned obligations to any third party customer with a view to dissemination. If the customer becomes aware of any breach of these obligations by his third party customers he will inform the vendor of this immediately.

## 12. Miscellaneous

I. The vendor's legal relationship with the customer is subject to the substantive law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

II. The place of fulfillment of the parties' mutual obligations is Tübingen, Germany.

III. If the customer is a fully qualified merchant in the sense of the German Commercial Code or has no general place of jurisdiction in Germany, the vendor may elect that the Landgericht Tübingen (Regional Court) or the Landgericht at the customer's place of business shall have exclusive international, local and subject-matter jurisdiction.

IV. If any provision of these General Terms and Conditions of Sale and Supply is or becomes invalid or unenforceable, the other provisions shall remain in full force and effect. The invalid provision shall be replaced by such provision which is valid and comes closest to the intended economic purpose of the invalid provision.