

## GENERAL TERMS AND CONDITIONS OF SALE (English version)

### 1. General

1.1 All supplies and services of SUSS MicroOptics SA are subject to the conditions stated hereafter. General Conditions and Terms of Sale of the customer are of no validity, even if not expressly contradicted by Suss MicroOptics.

### 2. Quotation/Order Confirmation

2.1 Unless otherwise clearly stated in writing, quotations made by SUSS MicroOptics are free of any commitment. The contract is concluded only when SUSS MicroOptics confirms an order by written notice.

2.2 Orders without prior quotation are binding for SUSS MicroOptics only when SUSS MicroOptics confirms the order by written notice. This applies also if a customer modifies a quotation made by SUSS MicroOptics.

2.3 The customer shall, at the latest when receiving the quotation, draw the attention of SUSS MicroOptics to the standards and regulations applicable to the execution of the supplies and services, to their operation as well as to the health and safety of the personnel.

### 3. Documentation

3.1 Information given in catalogues, on data sheets or other paper work in accompaniment of the quotation are mere indications and as such are not binding, unless otherwise specified.

3.2 In special cases SUSS MicroOptics shall be entitled to make constructive changes and employ other materials in case of deficient base material, provided such changes do not contradict the outweighing interests of the customer previously notified to SUSS MicroOptics.

3.3 SUSS MicroOptics shall retain all rights of property and copy right on documents put at the disposition of the customer; the customer shall not use nor copy nor show them to a third party for a purpose different from the one intended by SUSS MicroOptics. These documents do not entitle to copy single parts of the devices. These documents shall be returned to SUSS MicroOptics on its first request.

### 4. Prices, Packing, Insurance

4.1 Unless otherwise clearly agreed upon in writing, all prices shall be calculated in CHF (VAT excluded) and shall be deemed to be net ex works excluding packing, without any deduction whatsoever (ex works, Incoterms 2000). Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the customer. Likewise, the customer shall bear any and all taxes, fees, levies, customs duties and the like which are levied out of or in connection with the contract, or shall refund them to SUSS MicroOptics against adequate evidence in case SUSS MicroOptics is liable for them.

4.2 The customer shall inform SUSS MicroOptics, with the order at the latest, of special wishes regarding forwarding, transport and insurance. Transport shall be at the risk and at the expense of the customer. Objections regarding forwarding or transport shall be immediately submitted upon receipt of the supplies or of the shipping documents by the customer to the last carrier.

4.3 The customer shall be responsible for taking insurance against risks of any kind.

### 5. Passing of benefit and risk

5.1 The benefit and the risk of the supplies shall pass to the customer at latest by the date of their leaving the works. The same applies for partial deliveries.

5.2 If dispatch is delayed due to reasons beyond SUSS MicroOptics' control, the risk of the supplies shall pass to the customer at the time when SUSS MicroOptics notifies the customer that supplies are ready for dispatch.

### 6. Lead times / delivery time

6.1 Lead time shall start on the day when all commercial and technical points for the fulfillment of the order have been settled with the customer, all official formalities have been completed, all payments due up front have been credited to an account of SUSS MicroOptics and SUSS MicroOptics has received all documentation to be provided by the customer.

Lead time shall be deemed to be observed - provided the customer has fulfilled all his contractual obligations - if by that time SUSS MicroOptics has handed supplies over to the first carrier or alternatively has sent a notice to the customer informing him that supplies are ready for dispatch. Partial deliveries shall be authorized. Any delay of delivery does not entitle the customer to any rights or claims.

6.2 If dispatch is delayed upon request of the customer or for any other reason beyond the SUSS MicroOptics' control, SUSS MicroOptics shall store the supplies at the risk and at the expense of the customer and invoice it as dispatched net ex works. Furthermore SUSS MicroOptics shall be entitled - passed an acceptable delay - to dispose otherwise of the supplies and to deliver the customer with an accordingly extended delivery time.

6.3 If delivery is delayed by force majeure delivery time is accordingly extended. Cases of force majeure are reputed to be serious events or circumstances which cannot be attributed to the supplier, such as but not limited to total or partial suspension of activity of SUSS MicroOptics' suppliers, mobilization, war, terrorism, natural disaster, strikes, fire, blocking of import or export, lack of authorization or permission, as well as all other unforeseeable events.

### 7. Terms of payment

7.1 In the absence of contrary provisions, indicated in writing in the quotation or the order confirmation, invoices are to be settled net, without any deduction, within 10 days of receipt. Partial deliveries will be invoiced accordingly.

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7.2 Payments shall be credited exclusively to an account of SUSS MicroOptics. Additional fees or other expenses resulting from a different mode of payment previously agreed upon (e.g. cheque or bill of exchange) shall be borne by the customer.

7.3 If the customer does not pay according to due date, he shall be in default without formal notice and shall be liable for default interest at a rate of 4 per cent above the current discount rate of the Swiss National Bank. The right to claim further damage caused by default is reserved.

## **8. Retention of Title / Intellectual Property**

8.1 SUSS MicroOptics retains all rights of property on all sold products until receipt of full payment of the purchase price. If in the country of the supplier the validity of retention of title is subject to special formal regulations or other conditions, the customer shall be responsible for taking them into account and fulfill them.

8.2 The customer assigns to Suss MicroOptics all claims upon resale of the purchased Products or Goods that customer has not fully paid; Suss accepts this assignment. At Suss MicroOptics request, the customer shall produce all data required for collection of the assigned claims and inform the debtor of the assignment. Suss MicroOptics will, upon customer's request, release in Suss MicroOptics discretion, those securities to which Suss MicroOptics is entitled under the aforementioned provisions, in so far as their value exceeds the claim to be secured by 10% or more. For delivered Products or Goods, purposed as component incorporation but used in different equipment, to become an essential of it, Suss MicroOptics shall therefore acquire a share in the title to the resulting part or equipment in a proportional ratio to the value of Suss MicroOptics delivered goods at the time of their connecting. Upon customer acquisition of sole ownership to the new equipment, the mutual understanding shall be agreed, that customer will grant Suss MicroOptics co-ownership to the aforesaid equipment, proportional to the value of Goods subject to Suss reservation. Customer shall protect Suss MicroOptics interests in this co-ownership free of charge.

8.3 All products of SUSS MicroOptics are unique elements that may not be replicated or copied in any form. An agreement from SUSS MicroOptics is required before these elements can be copied or replicated in any form. A license fee will apply.

8.4 Suss MicroOptics shall retain its right of ownership and copyright with respect to pictures, wiring diagrams, drawing, sketches, function descriptions, manuals, masks, tools and other documentation or equipment used by SUSS MicroOptics to arrange the supply or the services for the customer. The customer shall not be entitled to use the information or intellectual property rights of Suss MicroOptics without the prior written consent of Suss MicroOptics.

## **9. Warranty**

9.1 The warranty period of SUSS MicroOptics is 12 months and runs from the day of delivery or upon termination of assembly and during the specified time. The warranty shall extend and be limited to all defects which occur as a proven result from bad quality material, faulty design or poor workmanship. It is however limited to replacement or repair of defective parts or products or to refunding of the invoice price of non-replaceable or - according to SUSS MicroOptics' choice, non-replaced products. Any other claim not expressly mentioned such as damage, reduction in price, termination of or withdrawal from the contract is excluded.

SUSS MicroOptics accepts no further responsibility. This in particular refers, but shall not be limited to, loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damage or third parties damage.

9.2 SUSS MicroOptics can assume no responsibility for modifications or repairs which have not been carried out by SUSS MicroOptics' personnel or by specialists appointed by SUSS MicroOptics. The customer loses all claims of warranty if any modifications or repairs have been carried out by people not specifically appointed by SUSS MicroOptics.

## **10. Claims**

10.1 The customer shall inspect the supplies and services thoroughly within 14 days after receipt and shall immediately notify SUSS MicroOptics in writing of any deficiencies; the same applies to possible hidden deficiencies which only appear later. If the customer fails to do so, the supplies and services shall be deemed to have been accepted and all respective warranty claims become extinct.

10.2 Shipments damaged during transport must be accepted without guarantee and immediately be reported to the shipping agent in order to establish a certified report. Otherwise the customer shall lose all and any warranty claim.

10.3 If protected rights of third parties are infringed by drawings or information passed on to SUSS MicroOptics by the customer, only the customer shall be liable for this infringement and shall liberate SUSS MicroOptics from all claims.

## **11. Exclusion of further liability**

11.1 All cases of breach of contract as well as all rights and claims on the part of the customer, irrespective on what legal grounds they are based, are exhaustively covered by these general terms and conditions of sale.

## **12. Export, Re-Export**

12.1 SUSS MicroOptics supplies may not be exported, re-exported or re-imported unless customer ensures to comply with all relevant regulations of the Swiss, the German or the US-government and the applicable law. SUSS MicroOptics supplies may not be used in products or equipment or equipment comprising materials that are restricted or prohibited in any ways related to export, re-export or re-import by the Swiss, the German or the US-government and the applicable law, unless customer ensures to comply with all relevant regulations.

## **13. Place of Legal Venue and Applicable Law**

13.1 The contract shall be governed by Swiss substantive law. The applicability of the UN Agreement dated April 11th, 1980 for contracts governing international Purchase of Goods is excluded.

13.2 Exclusive place of jurisdiction shall be in the Commercial Court in CH-8000 Zürich.

SUSS MicroOptics SA