

**Standard terms and conditions of eagleyard Photonics GmbH,
Rudower Chaussee 29 (IGZ), 12489 Berlin**

1 Scope and validity

- 1.1 These standard terms and conditions shall apply to all eagleyard Photonics GmbH's deliveries and performance, whether commenced, continuing or future, in the absence of written agreement to the contrary. They shall also apply to all future transactions with the customer, even where eagleyard Photonics GmbH does not send them to the customer again or refer the customer to them again on such subsequent occasions.
- 1.2 Notwithstanding any previous objections which may have been raised by the customer, the receipt by the customer of deliveries and the customer's acceptance of contractual performance by eagleyard Photonics GmbH generally shall constitute acceptance of these standard terms and conditions.
- 1.3 Deviation from these standard terms and conditions, in particular the validity of any relevant terms and conditions of the customer, requires the express written consent of eagleyard Photonics GmbH. eagleyard Photonics GmbH hereby expressly rejects any terms and conditions of the customer which the customer may refer to any orders, acceptances or confirmations.
- 1.4 The customer shall observe any protective rights which third parties may have in relation to the delivered goods.

2 Entry into the contract

- 2.1 Offers made by eagleyard Photonics GmbH may be withdrawn at any time. Any samples and trials are for information purposes only and are provided without obligation. Orders and oral agreements shall only become binding upon written confirmation by Eagleyard Photonics GmbH. Any amendments or additions to the agreement as between the parties must be made in writing.
- 2.2 eagleyard Photonics GmbH has the right to fulfil its contractual duties through third parties. eagleyard Photonics GmbH is responsible for the performance of such third parties.
- 2.3 eagleyard Photonics GmbH has the right to include the name of the customer's business and the customer's trademark in references and publications.

3 Prices

- 3.1 The agreed price is exclusive of value added tax. Prices are stated net, 'ex works' and do not include freight, insurance, installation, postage, delivery or any other applicable costs. Unless agreed to the contrary, packaging is included in the price.
- 3.2 eagleyard Photonics GmbH reserves the right to alter the price of the goods where changes in the price of component materials, wages or other circumstances for which eagleyard Photonics GmbH is not responsible result in an increase in production costs.

- 3.3 eagleyard Photonics GmbH may exceed any price estimate by up to 10% without recourse to the customer, insofar as eagleyard Photonics GmbH considers that additional labour is necessary in order to fulfil its obligations under the contract.

4 Dispatch, packaging and duty to co-operate

- 4.1 Dispatch and packaging are effected at the expense and risk of the receiver and without insurance.
- 4.2 The customer may specify a particular means of packaging or delivery or alternatively, it may require delivery according to its own particular delivery protocol. Such specifications or requirements shall only be binding on eagleyard Photonics GmbH insofar as eagleyard Photonics GmbH is informed of them and confirms them in writing. Any resulting additional costs shall be borne by the customer.
- 4.3 At the request of eagleyard Photonics GmbH, the customer shall return the packaging to eagleyard Photonics GmbH.
- 4.4 eagleyard Photonics GmbH is not obliged to provide the customer with dispatch advice.
- 4.5 The customer is obliged to inform eagleyard Photonics GmbH of any permits, licences, approvals, authorisations or other requirements or preconditions relating to delivery which exist in the jurisdiction in which the customer is located. The customer is obliged to take all steps necessary for compliance with these at its own expense.
- 4.6 The customer shall provide eagleyard Photonics GmbH with all assistance necessary to ensure compliance with any export regulations. Any costs incurred in relation to compliance with such regulations are to be borne by the customer.

5 Risk

- 5.1 The risk in the goods passes to the customer as soon as they have left the storage of eagleyard Photonics GmbH. Where the goods are ready for dispatch and dispatch is delayed as a result of circumstances for which eagleyard Photonics GmbH is not responsible, then risk in the goods shall pass to the customer as soon as eagleyard Photonics GmbH has informed the customer (either orally or in writing) that the goods are ready for dispatch.
- 5.2 The customer shall accept delivery of the goods even where such goods are faulty. This provision does not affect any rights the customer has under the warranties.
- 5.3 Insurance against damage in transit will only be effected at the customer's request and at the customer's expense.
- 5.4 The costs and risk of returning faulty goods are to be borne by the customer.

6 Delay and deadlines

- 6.1 eagleyard Photonics GmbH is not obliged to deliver the goods as long as the customer has yet to perform one or more of its obligations under the contract.
- 6.2 The agreed time periods for delivery and performance by eagleyard Photonics GmbH begin to run upon entry into the contract. The contract is entered into on the date on which the customer receives valid confirmation of an order from eagleyard Photonics GmbH . eagleyard Photonics GmbH shall not be obliged to comply with these deadlines unless the customer has supplied eagleyard Photonics GmbH with all requested documentation and has adhered to all terms relating to payment. The deadlines shall be deemed to have been met if the goods have left the works or the storage of eagleyard Photonics GmbH before expiry of the deadline in question.
- 6.3 Dates for delivery are only binding where these have been expressly confirmed in writing by eagleyard Photonics GmbH.
- 6.4 eagleyard Photonics GmbH is entitled to deliver the goods in instalments.
- 6.5 Where delivery is delayed because of the customer, then commencing on the 14th day after notification to the customer that the goods are ready for delivery, the customer shall pay eagleyard Photonics GmbH a storage charge of 5% of the agreed purchase price of the goods per annum for each month commenced that the goods remain undelivered, unless eagleyard Photonics GmbH is able to establish that it has incurred higher costs. Where eagleyard Photonics GmbH can establish that it has incurred higher costs, then the customer shall pay eagleyard Photonics GmbH a storage charge equal to the costs which eagleyard Photonics GmbH can establish it has incurred.
- 6.6 Late delivery does not entitle the customer to withdraw from the contract or to claim damages unless the delay occurs as a result of intentional or grossly negligent behaviour on the part of eagleyard Photonics GmbH. This shall not apply where the delay in delivery jeopardizes the realisation of the purpose of the contract. If the customer extends the deadline for delivery and delivery is not effected by expiry of this extended deadline, the customer has the right to withdraw from the contract on the grounds of non-fulfilment of the contract.
- 6.7 For the purposes of clarification only, eagleyard Photonics GmbH is not obliged to pay any contractual penalty, should it delay in delivering the goods.
- 6.8 Should delivery be delayed or fulfilment of the contract be otherwise hindered by reason of force majeure (for example power cuts, strikes, delay in delivery resulting from war or unstable political conditions, prohibitions or other measures enacted by any authorities), eagleyard Photonics GmbH may withdraw from the contract or alternatively, delay delivery of the goods for the duration of the obstruction without liability for damages or other claims.

7 Terms of payment

- 7.1 Invoices are payable net within 30 days of the date of the invoice.

- 7.2 Payment may only be made by means of bill of exchange if eagleyard Photonics GmbH has consented to this. Associated costs of such payment, as well as the risk for timely production and of any protestations are to be borne by the customer.
- 7.3 If the customer does not make timely payment, or if eagleyard Photonics GmbH extends the time in which the customer has to pay, then the customer shall pay interest to eagleyard Photonics GmbH at the prevailing bank debt rate, but in any event no less than 5% above the base rate of the European Central Bank.
- 7.4 eagleyard Photonics GmbH reserves the right to claim for any additional damage it may suffer as a result of any delay by the customer.
- 7.5 Where the customer delays in payment, or where there is reason to doubt the customer's willingness or ability to pay, then in addition to any other rights eagleyard Photonics GmbH may have, eagleyard Photonics GmbH may demand immediate fulfilment of all the customer's outstanding obligations under the contract and / or demand security or prepayment in relation to future deliveries, withhold future deliveries due under this or any other contract. Eagleyard Photonics GmbH may have with the customer (either in whole or in part), take back (at the customer's expense) any goods which have already been delivered to the customer but have not yet been paid for, or to withdraw from all existing contracts with the customer. Where goods are delivered in instalments, each instalment constitutes a separate payable transaction.
- 7.6 The customer shall only be entitled to set-off or retention in relation to obligations of eagleyard Photonics GmbH which eagleyard Photonics GmbH does not dispute, or which have been enforceably determined by a court.

8 Warranties and damages

- 8.1 All information concerning eagleyard Photonics GmbH's products is given to the best of eagleyard Photonics GmbH's knowledge. However, such information does not free the customer from the need to carry out its own checks and tests. The customer is obliged to check the goods (and in appropriate circumstances, to conduct any relevant tests) without delay, in order to ascertain the existence of any defects in relation to composition and fitness for purpose.
- 8.2 The customer must notify eagleyard Photonics GmbH in writing of any defects without delay, and in any event within 8 days from the date of receipt of the goods. Defects which could not be discovered within 8 days from receipt shall be notified to eagleyard Photonics GmbH within 8 days of the date on which they first became apparent. The customer shall lose its rights in relation to any defects which are not reported to eagleyard Photonics GmbH within the relevant time limits.
- 8.3 Should the customer ascertain that an incorrect quantity of goods has been delivered, then the customer shall inform eagleyard Photonics GmbH of this in writing without delay.
- 8.4 The warranty period shall commence on delivery and shall run until the end of the period prescribed by law. During the warranty period, the customer shall only be entitled to the remedies of repair and replacement, at the option of eagleyard Photonics

GmbH. eagleyard Photonics GmbH has the right to repair or replace the goods on repeated occasions. No claim under a warranty may be made in the case of inappropriate use, incorrect installation, incorrect servicing and non-adherence to all relevant rules and instructions including any rules relating to safety in the workplace and laser safety. A right under a warranty will not arise where the customer makes changes to the goods or overhauls the goods without the previous consent of eagleyard Photonics GmbH.

- 8.5 Where measures taken to bring the goods into conformity with the contract fail, the customer is still entitled to exercise its statutory rights.
- 8.6 Insofar as nothing to the contrary is specified in this contract, eagleyard Photonics GmbH excludes liability for all damages (other than liability for death or personal injury), except where such damages result from intentional or grossly negligent behaviour. eagleyard Photonics GmbH is therefore not liable for physical damage to any property other than the goods themselves. In particular, eagleyard Photonics GmbH is not liable for loss of profits or other financial losses of the customer.
- 8.7 eagleyard Photonics GmbH shall not be liable for any damages which are caused by inappropriate use of the goods. eagleyard Photonics GmbH does not guarantee the suitability of the goods for any particular purpose and does not undertake any obligations relating to the provision of advice, unless this has been agreed in writing.
- 8.8 Where the customer asserts a right of retention on the grounds that the goods do not comply with the contract, it shall put all the retained monies on deposit in accordance with the procedure prescribed by law.

9 Retention of title

- 9.1 Title in the delivered goods remains with eagleyard Photonics GmbH until the customer has paid the price in full and all the customer's other obligations (both existing and future) which arise from the business relationship between the customer and eagleyard Photonics GmbH have been complied with. Further, eagleyard Photonics GmbH retains title in all such goods, even where they are incorporated into other products by the customer, until all rights of eagleyard Photonics GmbH resulting from the business relationship between eagleyard Photonics GmbH and the customer (both existing and future), have been realised ('privileged goods').
- 9.2 If the customer alters the privileged goods, or incorporates the privileged goods into other products, such work shall be deemed to be carried out on behalf of eagleyard Photonics GmbH. Where the goods are incorporated into other products, eagleyard Photonics GmbH shall be a co-owner of the resulting products in the same proportion that the value of the privileged goods bear to the value of the resulting products.
- 9.3 The customer will treat and store the privileged goods with the care of an orderly trader.
- 9.4 The customer shall only dispose of the goods in the usual course of business and subject to the retained title in such goods.
- 9.5 The customer hereby assigns to eagleyard Photonics GmbH all rights in relation to third parties which it may acquire from any subsequent

sale of, or other transaction affecting the privileged goods, as security for the customer's existing and future obligations which arise from the business relationship between the two parties. In the case that the customer sells the privileged goods on to a third party, then the customer hereby assigns to eagleyard Photonics GmbH its right to that proportion of the purchase price which is equivalent to the value of the privileged goods. eagleyard Photonics GmbH hereby agrees to this assignment. As long as the customer complies with its contractual obligations, then the assignment of the foregoing rights will be treated as an undisclosed assignment. The customer is hereby authorised to call in all claims resulting from such rights on behalf of eagleyard Photonics GmbH unless and until eagleyard Photonics GmbH revokes this authorisation. On request, the customer shall provide eagleyard Photonics GmbH with all information necessary for eagleyard Photonics GmbH to call in such claims itself and shall inform the third party of the transfer of such rights to eagleyard Photonics GmbH.

- 9.6 The customer shall not charge or otherwise deal with the privileged goods in a way that interferes with or otherwise endangers eagleyard Photonics GmbH's rights in such goods without eagleyard Photonics GmbH's previous consent. The customer shall immediately inform eagleyard Photonics GmbH of the actions of any third party which may affect eagleyard Photonics GmbH's rights in relation to the goods. Should such situation arise, then the customer shall provide eagleyard Photonics GmbH with all information necessary to initiate legal proceedings to protect its rights. The costs of any such legal proceedings shall be borne by the customer, insofar as these are not borne by the third party.
- 9.7 Should retention of title not be recognised in the jurisdiction in which the goods are located, then the customer shall provide eagleyard Photonics GmbH with a security which has the same or similar effect to retention of title. If the cooperation of the customer is required in order to create such security, then the customer will, at its own expense, immediately take all action required by eagleyard Photonics GmbH.
- 9.8 Should the customer behave in a way which does not conform to the contract, in particular in the case of non-payment or insufficient payment, then eagleyard Photonics GmbH is entitled to demand that the goods be returned and in such a case, the customer shall be obliged to return them.
- 9.9 The customer shall insure the goods against theft, damage, fire, water and other damage at its own expense.

10 Non-performance

If the contract remains unperformed as a result of breach of contract or withdrawal by the customer, then eagleyard Photonics GmbH is entitled to a contractual penalty of a sum equal to the total costs already incurred by eagleyard Photonics GmbH, but in any event no less than 10% of the net value of the ordered goods. Insofar as eagleyard Photonics GmbH withdraws from the contract on the such grounds, the customer shall reimburse eagleyard Photonics GmbH for all costs incurred by eagleyard Photonics GmbH as a result, subject to a minimum payment of a liquidated sum of 10% of the agreed net value of the contract.

11 Confidentiality

- 11.1 eagleyard Photonics GmbH shall treat all trade secrets of the customer which are disclosed during the performance of the contract as confidential and shall not disclose such trade secrets to third parties. eagleyard Photonics GmbH shall obtain the same agreement from any employees or agents to which it may disclose such information in order to perform its obligations under the contract.
- 11.2 eagleyard Photonics GmbH hereby prohibits the forwarding of information concerning its business relationship with the customer to third parties.

12 Intellectual property

- 12.1 eagleyard Photonics GmbH retains all intellectual property in its products and any items which are intended for use in conjunction with such products.
- 12.2 A third party who alters or further develops eagleyard Photonics GmbH's products will only obtain intellectual property rights in such products if eagleyard Photonics GmbH consents to this.

13 Governing law, jurisdiction and place for fulfilment

- 13.1 The legal relations of the parties are governed exclusively by German law. The laws on international trade resulting from the United Nations Convention on contracts for the International Sale of Goods shall not apply.
- 13.2 The place for fulfilment of the contract in relation to deliveries by eagleyard Photonics GmbH, payment to eagleyard Photonics GmbH and all other obligations of the customer is Berlin.

14 Miscellaneous

- 14.1 The above terms and conditions and any additional agreements made in writing at the time of entering into the contract constitute the entire contract and replace all earlier oral and written agreements.
- 14.2 The invalidity of any individual clauses does not effect the validity of the contract's remaining terms and conditions. The parties are under a duty to replace an invalid or unenforceable clause with the enforceable clause which is most similar in economic effect to the invalid or unenforceable clause.
- 14.3 Changes or additions to the above terms and conditions and to any other additional terms and conditions agreed at the time of entering into the contract must be in writing. This provision shall apply equally to the amendment of any requirement relating to written form. This provision also applies to this clause.

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eagleyard Photonics GmbH

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