



GENERAL TERMS AND CONDITIONS

PHYSIX PHOTONICS B.V.

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Article 1 - Definitions and applicability of general terms and conditions

1. For the purposes of these general terms and conditions, the following definitions apply:
 - **Physix Photonics b.v.:** a private company under Dutch law, Chamber of Commerce number 09032574, VAT number NL 00 591 99 88 B 01, located at Papenkamp 20, 6836 BD Arnhem, The Netherlands (hereafter 'Physix Photonics');
 - **Contract party:** any legal entity or natural person, acting in professional practice or business;
 - **Customer:** every contracting party that is in a contractual relationship with Physix Photonics under a purchase agreement concluded with Physix Photonics, as well as any contracting party that wishes to enter into a different type of agreement with Physix Photonics.
2. These general terms and conditions apply to all quotations, offers, agreements and all resulting obligations with a customer made by Physix Photonics. Insofar as the customer (also) orders other products or services to which special general terms and conditions apply, these will also be declared applicable to the agreement between the customer and Physix Photonics.
3. These general conditions do not apply to offers to and agreements with natural persons who do not act in professional practice or business.
4. Deviations from these general terms and conditions are only valid if explicitly agreed in writing by Physix Photonics and the customer and only apply to the specific agreement to which the deviations relate.
5. If the customer declares his own general terms and conditions to an agreement with Physix Photonics or refers to them, these general terms and conditions will not be accepted by Physix Photonics and the general terms and conditions of Physix Photonics will prevail, unless expressly agreed otherwise at an earlier stage.
6. The general conditions are communicated to the customer in advance and can always be consulted via the website and can also be downloaded there as a PDF file. The general terms and conditions will be sent free of charge on request.
7. All provisions stipulated in these general terms and conditions and in any further agreements for Physix Photonics are also stipulated for intermediaries and other third parties engaged by Physix Photonics.

Article 2 - Quotations / offers

1. All quotations / offers of Physix Photonics are without engagement and can always be revoked at any time, even if they contain a term for acceptance. Quotations / offers can be cancelled in writing by Physix Photonics within seven calendar days after receipt of acceptance, in which case no agreement has been concluded between the parties.
2. Quotations / offers can only be accepted in writing (including an acceptance by fax or electronically)
3. What is stated above under paragraphs 1 up to 3 also applies to additional work to be calculated by Physix Photonics, including performing installation work outside normal working hours and making additional provisions. Less work must be agreed in writing in all cases.
4. Information contained in advertising material in the broadest sense of the word, such as catalogues, websites of third parties, etc., shall never be binding on Physix Photonics.
5. Notwithstanding the provisions of article 3 and unless otherwise express and written agreements, statements of sizes, weights and other data are as reliable estimates as possible.
6. Physix Photonics is not responsible for any optical / mechanical designs.

Article 3 - Prices

1. All prices used by Physix Photonics are based on the price-determining factors known at the time of the quotation / offer.
2. Unless explicitly agreed otherwise in writing, the quoted prices indicated by Physix Photonics are always exclusive of VAT and exclusive of shipping, postage and packing costs.
3. Physix Photonics is entitled to adjust the prices or parts thereof for not yet delivered and / or unpaid goods or services to any changes in price-determining factors, such as raw material prices, wages, taxes, production costs, currency exchange rates and such.
4. Physix Photonics is always authorized to adjust the prices without delay if a statutory price-determining factor gives cause for this.

Article 4 - Payment

1. Physix Photonics is at all times entitled to require certainty from the customer for the correct and timely fulfilment of its payment obligations.
2. If delivery takes place in parts, each part can be invoiced separately by Physix Photonics, unless otherwise agreed in writing with customer.
3. Physix Photonics is also entitled to charge the costs of agreed additional work as referred to in Article 2 of these General Terms and Conditions and to issue invoices for this.
4. The payment condition is net cash within thirty (30) days after invoice date unless otherwise agreed.
5. If customer does not pay within the agreed payment term, customer is legally in default and is due - without the need for a notice of default - an interest of 1% per (part of a) month from the invoice date on the outstanding amount with a minimum of € 50,- without prejudice to the rights vested in Physix Photonics.
6. In the event of payment default, all judicial costs, as well as the extrajudicial collection costs incurred by Physix Photonics in order to effect fulfilment of the customer's obligation, will be borne by the customer. The extrajudicial collection costs amount to 15% of the amount due by the other party including the aforementioned interest with a minimum of € 250.
7. In case of payment default, Physix Photonics is entitled to suspend or terminate the performance of the agreement and all related agreements.
8. All payments must be made to a bank account number to be designated by Physix Photonics in The Netherlands.
9. Payments made by the customer always serve to settle all interest and costs owed and then the due and payable invoices that have been outstanding the longest, even if the customer states that the payment relates to a later invoice.
10. Settlement by the customer is not permitted, unless Physix Photonics has fully and unconditionally acknowledged the counterclaim in writing.
11. Making payments from the customer to Physix Photonics electronically, including via Internet and by means of credit cards, is at the risk of the customer. Physix Photonics is not liable for damage of the customer related to the result of payments by electronic means, via Internet or by means of credit cards. The provision of credit card data by the customer to Physix Photonics via Internet or otherwise is at the customer's own risk.
12. Physix Photonics reserves the right to use a down payment of 50 to 100% with newly registered companies.

Article 5 - Delivery

1. Place of delivery is in all cases - unless otherwise stated in writing - the place of business indicated by the customer when ordering, or his branch which was contracted.
2. The specification of delivery periods in quotations / offers, confirmations and / or contracts will be made to the best of our knowledge and these will be taken into account as much as possible, but they can never be regarded as a deadline.
3. Articles will be manufactured specifically to customer specifications, Physix Photonics reserves the right to increase or decrease the quantities ordered by the customer by a maximum margin of 10% at delivery, and also to pass this on directly if this is necessary for production-technical reasons.

Article 6 - Guarantees customer

1. Customer undertakes to enable Physix Photonics to be able to perform the delivery.
2. Customer guarantees at his own expense and risk that:
 - a. Physix Photonics is provided with the cooperation necessary for performance;
 - b. the ordered items or services are taken;
 - c. the delivery can take place under normal working conditions during normal working hours from 08.00-16.30 hours;
3. If the ordered items or services to the customer have been offered for delivery, but delivery has not been possible on the grounds that the customer has failed to fulfil one of the obligations referred to in paragraphs 1 and 2 of this article, acceptance shall be deemed to have been refused.
From this moment on the customer is legally in default without further notice of default being required by Physix Photonics. The day on which refusal of acceptance takes place is deemed to be the delivery date of the ordered items or services. The goods are also from this moment on at the risk of the customer, in accordance with article 8.
4. Without prejudice to the obligation to pay, customer is obliged in the case referred to in paragraph 3 to compensate damage suffered by Physix Photonics as a result of the refusal; including the costs of storage and transport, the latter costs being related to the customary rates on the spot.

Article 8 - Risk transfer

1. Regardless of what has been agreed between Physix Photonics and the customer regarding costs of transport and insurance, the items remain at the risk of Physix Photonics, until they are in the actual disposal power of the customer or of the third party (s) engaged by the customer, proceeded by signing consignment notes, checklists and / or packing lists or by actual delivery. or depending of the agreed terms of delivery (INCO - terms)
2. As soon as the goods have been transferred to the actual disposal power of the customer or the third party (parties) engaged by the customer in accordance with the provisions of paragraph 1, the customer is obliged to insure these items adequately against theft, damage, destruction and such.

Article 9 - Retention of title

1. The ownership of the goods delivered by Physix Photonics to the customer will only be transferred to the customer if the latter has fulfilled all that Physix Photonics may have or should claim under the terms of all sales agreements with the customer and the services or work performed in that context.
2. Customer is entitled, notwithstanding the provisions of paragraph 1, to use the items that he has received from Physix Photonics in the context of his normal business operations.
3. Customer shall never be entitled to encumber, pledge, transfer and / or lend on loan and / or hand over any goods delivered subject to retention of title in any way. Nor is the customer entitled to make any changes to the product.

Article 10 - Guarantee

1. On all components and or optical systems Physix Photonics gives a 2 (two) full year guarantee. Only for surface and or coating imperfections the guarantee is max. 2 weeks after receiving date at the customer site.
2. If a product within the warranty period does not function or no longer functions properly, the customer must report this as soon as possible in writing to Physix Photonics. To return the product itself, the customer must await the return instructions from Physix Photonics.
3. Any defect of the components and or optical system has arisen in a normal and judicious use according to the destination of the products will be repaired or replaced free of charge by Physix Photonics at the written request of the customer within the warranty period
4. Under the same conditions, Physix Photonics grants a 2 years guarantee on repaired or replaced components or optical systems . In this case, the transport costs are borne by Physix Photonics; however, the customer must carefully comply with the shipping regulations.
5. The guarantee granted will expire in the event of normal wear and tear, or if the damage or the defect is apparently the result of:
 - negligent maintenance, intent or gross negligence;
 - improper use or handling of components and or optical systems.
 - Exposure of components and or optical systems to humidity, extreme heat, cold or drought;
 - (attempts to) repairs carried out by the customer or by third parties, or if the customer does not give Physix Photonics sufficient opportunity to remedy the complaint in a timely manner;
 - External calamity (such as fire, flood, water damage, lightning, natural disasters, etc.);
6. Physix Photonics is not liable for damage suffered by the customer or a third party through the use of a product supplied by Physix Photonics, unless the customer demonstrates that the damage was caused directly by intent or gross negligence of Physix Photonics.
7. (In)direct costs or damage to the customer or a third party, caused by the (temporary) out of use of a defective product, are not eligible for reimbursement,
8. Even after the warranty period, products supplied by Physix Photonics can be offered for repair. In that case, a specification of the costs will be provided to the customer in advance. If the customer decides not to have the article repaired, the costs of the specifications will be for his account.

Article 11 - Complaints

1. Customer must investigate at or immediately after delivery whether the goods delivered or the services rendered comply with the agreement.
2. Customer cannot invoke the fact that goods delivered or services provided do not comply with the agreement if he neglects this investigation or has not notified Physix Photonics in writing within the period of the defects stated below.
3. Visible defects must be reported to Physix Photonics in writing within ten working days after the delivery or after the performance of the relevant services. Only for surface and or coating imperfections the guarantee is max. 2 weeks after date of receipt at the customer site.
4. Hidden defects must be reported in writing immediately after the customer has discovered them, but no later than three months after delivery of the items or performance of service.
5. Complaints may only be returned to Physix Photonics with the explicit prior permission of Physix Photonics . Return shipments must be provided with the original packaging. Returns must be carriage paid for in all cases
6. In the event that according to Physix Photonics the complaint is legitimate and properly submitted, Physix Photonics is obliged, at its discretion, taking into account the interests of the customer and the nature of the complaint, either:
 - To replace or repair the goods delivered or services provided or;
 - To grant a price discount.
7. The right of complaint lapses if the item delivered is no longer in the same condition as it was delivered.
8. Complaints about invoices must be submitted in writing within five working days after the date of dispatch of the invoices.

Article 12 - Liability

1. If one of the Parties fails to comply with one or more of its obligation(s) of the agreement, the other Party shall give notice of default to it, unless fulfilment of the obligation(s) in question is already permanently impossible, in which the negligent Party is in default immediately. The notice of default will be given in writing, whereby the negligent Party will be given a reasonable period to still fulfil its obligations. This term has the character of a fatal term. The liability of Physix Photonics towards the customer for direct damage in the event of non-performance, late or improper performance is limited to the net invoice value of the relevant items or services, however, this up to a maximum of € 50,000.
2. The restriction referred to in paragraph 1 also applies also if Physix Photonics is held liable by the customer for any reason other than the agreement concluded between them.
3. Direct damage is exclusively understood to mean:
 - a. the reasonable costs that a party would have to incur in order for a performance of the other party to comply with the contract. However, this damage will not be compensated if that other party has terminated the agreement;
 - b. reasonable costs incurred to determine the cause and extent of the damage insofar as the determination relates to direct damage within the meaning of these General Terms and Conditions; reasonable costs incurred to prevent or limit damage in so far as the damage sustaining party demonstrates that these costs have led to limitation of direct damage within the meaning of these conditions.
4. Physix Photonics is never liable for indirect damage, including consequential damage, loss of profit, lost savings, damage due to business stagnation, re-call cost and all damage that is not covered by direct damage within the meaning of these General Terms and Conditions.
5. Physix Photonics is never liable for the materials made available by the customer to Physix Photonics in connection with the agreement. Customer is obliged to take out adequate insurance with regard to these materials.
6. Without prejudice to the above, Physix Photonics is not liable if the damage is due to intent and / or gross negligence and / or culpable actions or injudicious or improper use of the delivered goods by the customer.
7. Physix Photonics delivers build to print. Physix Photonics is not responsible for the functioning of components and or optical systems.

Article 13 – Indemnity

1. Customer indemnifies Physix Photonics to the extent permitted by law, in respect of liability towards one or more third parties, which arises from and / or is connected with the execution of the agreement, regardless whether the damage is caused or inflicted by Physix Photonics or by its auxiliary staff, auxiliary or delivered goods or services. In addition, customer indemnifies Physix Photonics, insofar as the law allows, for all claims of third parties in connection with any infringement of intellectual property rights of these third parties.
2. Customer shall ensure adequate insurance in respect of the above-mentioned risks.
3. Customer is always obliged to do everything in his power to limit the damage.

Article 14 - Force majeure and unforeseen circumstances

1. If fulfilment on the part of Physix Photonics or purchase by customer is delayed for longer than one month due to force majeure, each party is entitled to dissolve the agreement in accordance with the law, with the exclusion of further rights. What has already been paid or performed under the agreement will then be settled pro rata between the parties.
2. Force majeure of Physix Photonics means in any case:
 - the circumstance that Physix Photonics does not, not timely, or not properly receive a service (including a performance from the customer) that is important in connection with the performance to be delivered;
 - strikes;
 - disruptions in traffic;
 - government measures that prevent Physix Photonics from fulfilling its obligations on time or in a proper manner;
 - riots, rebellion, war;
 - extreme weather conditions;
 - fire;
 - import, export and / or transit bans;
3. In the event of unforeseen circumstances that are of such a nature that the customer may not expect fulfilment of Physix Photonics in all reasonableness and fairness, the court may, at the request of one of the parties, dissolve the agreement in whole or in part.

Article 15 - Right of retention

Physix Photonics is authorized to retain all customer's goods that Physix Photonics has in its possession until customer has met all its obligations towards Physix Photonics, with which the relevant items are directly or sufficiently coherent. In case items under this right become out of control of Physix Photonics, Physix Photonics is entitled to claim these items as if it was the owner itself.

Article 16 - Dissolution

1. In the cases described below and to the extent given below, each party has the right to terminate the agreement in full or in part with immediate effect without further notice of default and judicial intervention:
 - if the other party has applied for or obtained a suspension of payments or the other party has been declared bankrupt;
 - when the other party's company is liquidated voluntarily or involuntarily;
 - when the enterprise of the counterpart merges or is taken over;
 - when a substantial part of the assets of the other party are seized;
 - when other circumstances arise in which the continuation of the agreement cannot reasonably be required.
2. Each of the parties is entitled to dissolve the agreement, only if the other party, after a proper and as detailed as possible written notice of default with a proposal for a reasonable period of time for purification of the shortcoming, is attributably inadequate in the fulfilment of essential obligations pursuant to the agreement and provided that this shortcoming justifies the dissolution.
3. If the agreement is dissolved, the claims of Physix Photonics on the customer are immediately claimable. If Physix Photonics suspends fulfilment of the obligations, it retains its rights under the law and agreement.
4. Physix Photonics always reserves the right to claim compensation.

Article 17 - Industrial and intellectual property

1. Physix Photonics guarantees that the goods delivered by it as such do not infringe Dutch patent rights, design rights or other rights of industrial or intellectual property of third parties.
2. If Physix Photonics nevertheless has to recognize or if a Dutch judge in a litigation decides in a decision that can no longer be challenged, that any matter supplied by Physix Photonics infringes the rights of third parties as referred to, Physix Photonics at its discretion, after consultation with the customer, replaces the relevant item by an item that does not infringe the right in question or acquires a license fee in this matter, or takes back the relevant item against reimbursement of the price paid for, less normal value depreciation, without being held to further compensation.
3. However, customer loses the right to the performances referred to in paragraph 2, if he has not informed Physix Photonics as timely and fully about claims of third parties as referred to above in this article, as a result of which Physix Photonics has not been able to properly defend its rights in this matter.

Article 18 - Transfer

Customer is not permitted to transfer rights and obligations arising from the agreement to third parties without written permission from Physix Photonics.

Article 19 - Privacy

1. Physix Photonics handles all personal data that is provided to in accordance with the applicable legislation, in particular the Personal Data Protection Act.
2. All data provided by customer will only be used by Physix Photonics if this is necessary for the conclusion and fulfilment of the agreement (including the other provisions, including these General Terms and Conditions), as well as for the operation of Physix Photonics. Data is only provided to third parties if this is necessary for aforementioned purposes.

Article 20 - Changes / additions

1. Changes in these general conditions or additions to this are only valid insofar as these have been agreed in writing by both parties.
2. In the event of invalidity of one or more provisions in these general terms and conditions, the other provisions will remain in full force.
3. Parties will consult on the invalid provisions in order to make a replacement valid arrangement, so that the scope of the agreement is retained.

Article 21 - Right of withdrawal

1. When customer has completed an order, there is an agreement with payment obligation. According to new European legislation customer may revoke this contract within 14 days without giving any reason. That is called right of withdrawal. This period starts on the day customer receives the order or (with a staggered delivery) on the day that the last product of customer order has been delivered.
2. To appeal to the right of withdrawal, customer must inform Physix Photonics, within the withdrawal period of 14 days, that customer wants to cancel the contract. According to the same European legislation it follows that:
3. If customer cancels immediately after ordering there is no need to do anything else
4. Physix Photonics can charge customer for any damage or an unpaid shipment. If there is unnecessary damage to the product, Physix Photonics will charge this depreciation.

Article 22 - Disputes and applicable law

Applicable Law - This Agreement shall be governed exclusively by Dutch law.

All disputes arising out of, or in connection with this agreement will be resolved by the Arnhem District Court following proceedings in English before the Chamber for International Commercial Matters ("Netherlands Commercial Court" or "NCC District Court"), to the exclusion of the jurisdiction of any other courts. An action for interim measures, including protective measures, available under Dutch law may be brought in the NCC's Court in Summary Proceedings (CSP) in proceedings in English. Any appeals against NCC or CSP judgments will be submitted to the Amsterdam Court of Appeal's Chamber for International Commercial Matters ("Netherlands Commercial Court of Appeal" or "NCCA").