

Optics Balzers AG – General Terms of Offer and Sale

1. General

1.1 These General Terms of Offer and Sale (hereinafter referred to as General Terms) are binding if they have been declared applicable in the offer (also called "quotation") or confirmation of order. Any other terms defined by the customer or in other documents are only valid if they have been expressly accepted by Optics Balzers AG ("OPTICS BALZERS") in writing or electronically.

THESE GENERAL TERMS EXPRESSLY LIMIT ACCEPTANCE TO ITS TERMS AND CONSTITUTES NOTICE OF OBJECTION TO ANY ADDITIONAL OR DIFFERENT TERMS IN CUSTOMER'S DOCUMENTS SO AS TO PRECLUDE THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS IN ANY RESULTING CONTRACT. IF THESE GENERAL TERMS ARE CONSTRUED AS AN ACCEPTANCE OR AS A CONFIRMATION OF AN EXISTING CONTRACT, SUCH ACCEPTANCE OR CONFIRMATION IS EXPRESSLY CONDITIONED ON CUSTOMER'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN.

1.2 All quotations are valid for 30 days from date of quotation, unless OPTICS BALZERS states otherwise in writing.

1.3 Only the written or electronic confirmation of order is binding. If OPTICS BALZERS does not give a confirmation of order the invoice shall serve as the confirmation of order.

1.4 If any one or more of the provisions of these General Terms or any part or parts thereof shall be declared or adjudged to be illegal, invalid or unenforceable under any applicable law, such illegality, invalidity or unenforceability shall not vitiate the remainder of these General Terms and the illegal, invalid or unenforceable provision shall be replaced by a new provision the content of which shall be as close to the legal and economic effect of the replaced provision as possible.

1.5 Ownership of customer-specific production means (e.g. coating tools) and drawings. Unless expressly agreed otherwise in writing, customer-specific production means and drawings shall remain property of OPTICS BALZERS, even if the customer bears the related costs in part or in whole, and in no event shall OPTICS BALZERS be under any obligation to hand over these production means. Due to reasons of secrecy, the production means will not be handed over even after termination of the business relationship. However, OPTICS BALZERS commits itself to treat and retain them with care. Costs incurred as a result of use and wear shall be borne by the customer. Such production means will be retained at OPTICS BALZERS' own expense during three years after their last use.

2. Placing of order

2.1 To be effective orders must be made in writing or electronically.

2.2 The order must contain all information relevant to OPTICS BALZERS such as number and date of OPTICS BALZERS offer, sales person etc.

3. Scope of sale and services

OPTICS BALZERS scope of sale and services referred to in the confirmation of order shall form part of the contract only. Further goods and services not specified therein shall be charged extra.

4. Technical documentation

4.1 Sales brochures and catalogues are not binding unless expressly stated otherwise. Specifications in technical documents are only binding as far as they have been expressly guaranteed.

4.2 OPTICS BALZERS reserves all rights to any technical documentation supplied to the customer. Without prior written consent of OPTICS BALZERS, such documentation shall neither in whole nor in part be disclosed to others or used for any purposes other than those for which they have been supplied to the customer. In particular the customer is not entitled to reproduce or replicate components or parts thereof and services specified therein.

5. Prices

5.1 Prices are net, FCA OPTICS BALZERS, FL-9496 Balzers, Liechtenstein, as determined by OPTICS BALZERS, according to INCOTERMS, and exclusive of value added tax, sales tax and packing, unless expressly otherwise provided for in OPTICS BALZERS offer.

5.2 Payment shall be made in freely available monetary units in the currency stipulated in OPTICS BALZERS confirmation of order or invoice without any deductions whatsoever.

5.3 The cost of producing customer-specific production means (e.g. coating tools) which are ordered by the customer for fulfilling an order shall be separately invoiced.

5.4 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 OPTICS BALZERS against adequate evidence in case OPTICS BALZERS is liable for them.

5.5 The prices will be adjusted appropriately if:

- The term of delivery has been subsequently extended due to any reason for which the customer is responsible, or
- the nature or the scope of the agreed supplies or services has changed, or
- the coating material or the execution of the coating of the substrates has undergone changes because the information and documents provided by the customer were not in conformity with the actual conditions or were incomplete.

6. Terms of payment

6.1 Payments have to be effected in accordance with the confirmation of order or invoice as the case may be. Payment will be deemed to be made when the total price agreed on has been paid to OPTICS

BALZERS in the currency stipulated in OPTICS BALZERS confirmation of order or invoice.

6.2 No interest will be reimbursed for advance payments.

6.3 Any dates agreed for payment shall remain in full effect even where through no fault of OPTICS BALZERS delays arise in the performance of the contract. The late delivery of minor components, the absence of which does not restrict the use of the goods or any further work within the scope of OPTICS BALZERS warranty obligations, do not affect the time fixed for payment.

6.4 If OPTICS BALZERS does not receive payment by the date stipulated interest shall thereafter accrue on the sum due and owing and shall be charged immediately to the customer at the current base lending rate in the customer's domicile in accordance with LIBOR plus 4%, provided that such rate shall not be less than 1.5% per month.

6.5 The retention of or deduction from payments because of complaints, disputes or claims on the part of the customer which have not been expressly agreed by OPTICS BALZERS is inadmissible. The customer may only set off possible counterclaims against payments due under this contract where OPTICS BALZERS has expressly agreed to the same in writing.

7. Reservation of title

7.1 OPTICS BALZERS shall remain the owner of all goods until having received the full payments in accordance with the contract.

7.2 The customer shall cooperate in any measures necessary for the protection of OPTICS BALZERS title. In particular upon entering into the contract it authorizes OPTICS BALZERS to enter or notify the reservation of title in the required form in public registers, books or similar records, all in accordance with relevant national laws, and to fulfill all corresponding formalities, at the customer's cost.

7.3 During the period of the reservation of title, the customer shall, at its own cost, maintain the goods and insure them for the benefit of OPTICS BALZERS against theft, breakdown, fire, water and other risks. The customer shall further take all measures to ensure that OPTICS BALZERS title is no way prejudiced.

8. Delivery time

8.1 The time for delivery shall start as soon as the contract is entered into, the scope of sale and the specifications are defined, all relevant official formalities have been completed, payments due with the order have been made and any agreed securities have been given. The date of delivery shall be deemed to be observed if by that time OPTICS BALZERS has sent a notice to the customer informing that the goods are ready for dispatch.

8.2 OPTICS BALZERS compliance with the time for delivery is conditional upon customer's fulfilling its contractual obligations.

8.3 The time for delivery will be extended correspondingly in case of, and OPTICS BALZERS is not responsible for claims or damages resulting from, contingencies beyond the reasonable control of OPTICS BALZERS. As soon as the contingencies delaying the delivery no longer exist, the date of delivery will be fixed anew in writing.

8.4 Unless otherwise explicitly provided for in writing, agreed delivery dates are not binding. However, six weeks after failure to deliver by an agreed non-binding delivery date, the customer shall be entitled to request OPTICS BALZERS in writing to make delivery within a reasonable period. Failure to deliver within a reasonable period after the notice shall constitute late performance by OPTICS BALZERS.

8.5 Blanket orders may be scheduled over a 12 months or greater period. Unless otherwise stated, all goods must be delivered within 12 months of order placement. An initial schedule release of 120 days is required, with a rolling 120 day firmly booked shipping schedule to follow by the first day of each calendar month. Delivery delays of more than 60 days are not accepted.

8.6 Only if agreed expressly in writing prior to order placement, the customer is entitled to claim liquidated damages for delayed services if it is proven that the delay has been caused solely by the fault of OPTICS BALZERS and that the customer has suffered a loss caused by such delay

8.7 In the case of delayed goods or services the customer has no rights and claims other than those expressly stipulated in this clause 8; in particular he has no right to rescind the contract. This limitation, however, does not apply to gross negligence or willful misconduct of OPTICS BALZERS.

9. Passing of benefits and risk

9.1 Benefit and risk of the goods shall pass to the customer by the date of shipment FCA Balzers, Liechtenstein, according to INCOTERMS.

9.2 If delivery is delayed at the request of the customer or otherwise due to no fault of OPTICS BALZERS, the risk shall pass to the customer at the date originally agreed for delivery FCA. From this date onwards the goods shall be stored and insured at the customer's expense and risk and all payments shall become due at the agreed date of delivery.

10. Shipping, transport and insurance

10.1 All units will be shipped via courier such as Federal Express, TNT or similar unless expressly directed otherwise by the customer.

10.2 Transport shall be at customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the goods or of the shipping documents be immediately submitted by the customer to the last carrier.

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

10.4 Customer shall comply with all applicable domestic, foreign, import, export, security and controller access laws and regulations, including obtaining all necessary security clearances for airports, cargo transport areas, and related facilities,

governmental approvals and licenses in connection with the purchase of goods.

11. Inspection and acceptance of goods and services

11.1 OPTICS BALZERS shall check the goods before dispatch and the services upon completion as far as usual. Any further controls requested by the customer have to be agreed upon separately and paid for by the customer.

11.2 The goods shall be considered to have been finally accepted thirty (30) days after receipt of shipment unless before then notice of rejection or notices of claims have been given in writing to OPTICS BALZERS.

11.3 OPTICS BALZERS shall rectify defects notified in accordance with clause 11.2 as soon as possible and the customer shall give OPTICS BALZERS the possibility of doing so.

11.4 The customer has no other rights and claims in respect of any defects whatsoever in relation to goods or services than those expressly named in clause 11 and clause 12 (Warranty).

12. Warranty

12.1 For a 12-month period commencing from date of shipment, OPTICS BALZERS warrants that the units satisfy applicable optical performance specification.

12.2 OPTICS BALZERS undertakes to repair or replace at its option free of charge to the customer any parts defective to the extent as defined in the warranties above within the corresponding warranty periods.

12.3 Expressly excluded from the above warranties is damage caused by normal wear, defective maintenance and handling by the customer, failure to comply with the operating instructions, electrostatic effects, excessive usage of aggressive cleaning agents, operation beyond recommended temperature levels, application of materials, equipment and spare parts not recommended by OPTICS BALZERS, defective repairs which have not been carried out by OPTICS BALZERS or its agents, as well as in case of modifications made by the customer or improper system integration, provided that the respective burden of proof is with the customer if a dispute regarding exclusion of warranty may arise.

12.4 OPTICS BALZERS will determine the warranty status of any failed units.

12.5 All costs of OPTICS BALZERS out of or in connection with the repair or replacement of defective parts, such as transport, packing, insurance, customs, labor, accommodation, and traveling expenses of OPTICS BALZERS shall be borne by OPTICS BALZERS.

12.6 The customer shall not be entitled to any warranty, express or implied, except those specifically set forth in clause 12 and OPTICS BALZERS shall have no liabilities for any other claims, including but not limited to, claims arising out of injury to or interference with customer's production or any other consequential damages. This limitation, however, does not apply to gross negligence or willful misconduct of OPTICS BALZERS.

13. Returns/Repairs

Customer shall obtain a Return Materials Authorization (RMA Number) from OPTICS BALZERS Customer Service Department prior to the return/repair of any goods.

Returns will only be accepted within thirty days of receipt of the respective RMA number by the customer. Goods must be returned to OPTICS BALZERS in original packaging. The RMA number should be displayed on the outside of the package.

14. Special terms for substrates to be coated by OPTICS BALZERS

14.1 Delivery of the substrates

14.1.1 The order must contain all information relevant to OPTICS BALZERS such as description of the substrate, number of items, dimensions, type of material, etc. In addition thereto, the customer shall provide mutually agreed upon drawings and coating specifications based on international standards. OPTICS BALZERS is entitled to require the customer to provide any additional information, which it might consider necessary for the proper treatment of the substrates.

14.1.2 For all goods (except supplied by Liechtenstein and Swiss customers) the following information shall be additionally provided in a proforma invoice:

Price of each item and total value, number of packages, gross and net weight, country of origin with proof by means of EUR.1 or declaration of origin on invoice, mode of transport for delivery and desired mode of transport for return to the customer. The substrates delivered have to be in conformity with the drawings and coating specifications as per clause 14.1.1 above and be in a state fit for coating. Insofar as no special agreement was made with Customer, OPTICS BALZERS will not conduct any incoming inspection of such customer supplied substrates.

OPTICS BALZERS will however randomly verify a limited number of substrates immediately prior to coating. Should this verification show that these substrates are not in conformity with the agreed upon drawings and specifications as per clause 14.1.1 above and are not fit for coating, these substrates will be treated as "yellow uncoated" as defined in clause 14.2.2 below. In this case, OPTICS BALZERS will return these substrates at the customer's expense, and should OPTICS BALZERS' efforts for this verification exceed reasonable efforts, OPTICS BALZERS is entitled to charge Customer for these additional efforts. In the case of expensive substrates, the packing used for the delivery shall be fit for use for the return to the customer.

14.2 Inspection and acceptance of the substrates

14.2.1 OPTICS BALZERS shall check the coated substrates to the usual extent before dispatch and mark the same by differently colored marks. Further checks requested by the customer shall be agreed on separately and paid for by the customer.

14.2.2 Colored marks indicate the following:
White:

The coated substrates comply with agreed specifications and OPTICS BALZERS services shall be charged accordingly.

Yellow coated:

The coated substrates contain defects, which are due to defects of the substrates supplied by the customer. OPTICS BALZERS services shall be charged for as agreed.

Yellow uncoated:

The delivered substrates contain defects prior to coating, which in OPTICS BALZERS opinion are not in conformity with the drawings and/or specifications as per clause 14.1.1 above and are not fit for coating. These substrates will be returned to the Customer without any coating. OPTICS BALZERS services shall not be charged.

Grey:

The coated substrates contain minor defects caused by OPTICS BALZERS, which do not affect the fitness for use.

OPTICS BALZERS service shall be charged unless the customer establishes within two weeks after receipt of the coated substrates that they are not usable.

Red:

The coated substrates contain defects, which were caused by OPTICS BALZERS. No charge shall be made by OPTICS BALZERS.

14.2.3 Claims will have to be proven by the customer. The disputed substrate shall be made available for inspection by OPTICS BALZERS if requested. The claims shall be submitted to OPTICS BALZERS as follows:

- In the case of obvious defects as soon as possible but not later than 2 weeks after delivery;

- In the case of non-obvious defects as soon as possible after discovery, but not later than 6 months after delivery.

If no claims are made within the time limits stipulated above the coated substrates are deemed to have been approved and accepted.

The acceptance shall also be deemed completed if the customer refuses the acceptance of coated substrates or services without being entitled thereto.

14.2.4 The customer has no other rights and claims in respect of any defects whatsoever in relation to the coated substrates or services than those expressly named in clause 14.3 (Liability for coating defects).

14.3 Liability for coating defects

Should OPTICS BALZERS not define the estimated production yield specifically in the respective offer for the coating service to customer, then OPTICS BALZERS reserves a quota of rejects up to a maximum of 5% of the supplied substrates, i.e. up to 5% of the quantities supplied to OPTICS BALZERS may contain defects with regard to the coating or the substrate which have been caused by OPTICS BALZERS for which the customer may not claim compensation.

All coating defects beyond this quota of 5% shall, if possible, be rectified by OPTICS BALZERS, free of charge or the relevant coating costs will be credited to the customer's account.

OPTICS BALZERS, however, shall not provide reimbursement or payment for substrates damaged by OPTICS BALZERS (scratches, cracks, fractures) and polishing costs even where the quota of rejects exceeds 5%. This limitation, however, does not apply to wrongful intent or gross negligence by OPTICS BALZERS.

In any case OPTICS BALZERS liability is limited to the cost of the uncoated substrates.

No compensation shall be paid where the coated substrates have been processed by the customer or a third party after coating.

14.4 Exclusion of liability for coating defects

14.4.1 Incorrect information

OPTICS BALZERS liability is excluded for all differences and damages, which are due to late, incorrect, incomplete or inaccurate information and advice in customer's order.

14.4.2 Defective substrates

OPTICS BALZERS liability is excluded for damages which are due to the unsuitable condition of the substrates supplied, e.g. those resulting from defects in material, deviations in dimensions, manufacturing faults, residues from previous treatments or auxiliary agents which cannot be removed.

In particular OPTICS BALZERS has no liability where particular coating procedures are being used which, due to the strong increase in contrast, make visible after coating spots and other defects which had not been visible before coating.

14.4.3 Inaccurate labeling of the Substrates
OPTICS BALZERS has no liability for losses, delayed deliveries, confusion, etc. which are due to inaccurate labeling of the substrates by the customer, carrier or customs authorities.

14.4.4 Storage damage

OPTICS BALZERS has no liability for any damage, which despite taking all reasonable care may arise out of the storage of the substrates. In the case of highly sensitive substrates special provisions as to storage shall be agreed with OPTICS BALZERS.

14.4.5 Limitation of liability for defects
In the case of defective coating customer has no rights and claims other than those expressly stipulated in clause 14.3.

15. Exclusion of further liability

15.1 OPTICS BALZERS ASSUMES NO RESPONSIBILITY FOR ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS SPECIFICALLY PROVIDED IN THESE GENERAL TERMS.

Without limiting the generality of the foregoing, this exclusion from liability includes, but is not limited to, claims, arising out of interference with the customer's production, expenses for downtime, lost profits, lost sales, injury to person or property or any other incidental or consequential loss.

15.2 These exclusions, however, shall not apply to gross negligence or willful misconduct of OPTICS BALZERS.

15.3 Notwithstanding the foregoing, nothing herein shall limit OPTICS BALZERS liability if, and only to the extent that, limitation or exclusion of such liability is prohibited by or contrary to the Product Liability Act or other applicable law, provided that the customer will indemnify OPTICS BALZERS for all non-contractual claims for product liability raised by third parties if the occurrence of the damages is not clearly imputable to OPTICS BALZERS.

16. No liability for additional obligations

OPTICS BALZERS is not liable for claims of the customer arising out of insufficient information or faulty advice and the like or out of breach of any additional obligations whatsoever except where caused by OPTICS BALZERS gross negligence or willful misconduct.

17. Applicable Law and Place of jurisdiction

17.1 This General Terms shall be construed and the legal relations between the parties shall be determined in accordance with the substantive laws of Liechtenstein. The uniform UN law of sales (CISG) shall not be applicable.

17.2 Any dispute arising in connection with these General Terms or any related contract shall be submitted to the courts of Vaduz, Liechtenstein.

17.3 In any action or arbitration brought under or in connection with these General Terms or any related contract, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

17.4 The parties acknowledge that the only official text of these General Terms and related documents is that written in English and that any translations into other languages, even if signed by both parties shall not be binding. In case of difference between the various texts, the English text shall prevail.

OPTICS BALZERS AG
Neugrüt 35
LI-9496 Balzers
Liechtenstein
T +423 388 9200
F +423 388 9390