

# General Business Terms and Conditions of FISBA AG and its affiliates

## 1. Scope and Applicability

These General Business Terms and Conditions (herein abbreviated "GT&C") apply to all business relationships with FISBA AG and its affiliates (i.e. (i) FISBA Photonics GmbH, Berlin, Germany und (ii) FISBA LLC, Tucson, Arizona, USA; FISBA AG and its affiliates together referred to as the "FISBA Companies" and each of them as a "FISBA Company").

These GT&C shall apply to all business relationships with FISBA Companies without requiring their express incorporation in an agreement or arrangement. These GC&T shall apply at any given time in the version which is in force and effect at that time. Other general terms of business, in particular those of customers and suppliers of FISBA Companies (herein each referred to as "Contracting Party" and together referred to as "Contracting Parties") and deviations from these GT&C shall only be binding upon a FISBA Company if the FISBA Company has expressly agreed thereto in writing (e.g. by e-mail). Silence of a FISBA Company to general business terms of a Contracting Party must under no circumstances be deemed to be an acceptance of that Contracting Party's general business terms by a FISBA Company.

## 2. Offer

Unless provided for otherwise in a specific offer, any offer of a FISBA Company shall be binding upon that FISBA Company for three months from its issuing date. As long as such offer has not been accepted and an agreement was made, any data, documents and information which a FISBA Company has disclosed together with or at the occasion of its offer remains the sole and unencumbered property of the FISBA Company and must not be used in any manner whatsoever.

## 3. Agreement

An agreement between a FISBA Company and a Contracting Party shall be deemed to be concluded with the written order confirmation of the FISBA Company, exchanged by letter or e-mail. If a FISBA Company and a Contracting Party have agreed that an agreement shall be made in writing and require the signatures of all parties to be binding upon them, such agreement shall only be binding upon the parties having signed the agreement by their duly authorized representatives. Any ancillary agreements (Nebenabreden) and other commitments (Zusagen) whatsoever shall always require the signatures of the relevant FISBA Company as well as the respective Contracting Party.

## 4. Amendments

Any amendments to any agreement with a FISBA Company shall only be binding upon the FISBA Company upon its written consent, transmitted by letter or via e-mail. Each FISBA Company shall have the right to change design or engineering related details of their products without having to inform the Contracting Party and without triggering any rights of a Contracting Party whatsoever, if and to the extent such changes do not impair the contractually agreed suitability or run contrary to any express contractual specifications of a product.

## 5. Scope and Manner of Performance

The scope and the manner of performance shall be governed by the written offer and the order confirmation of a FISBA Company or by the specific agreement which a FISBA Company has concluded with a Contracting Party. The Contracting Party shall provide the FISBA Company with all data, documents and information which the FISBA Company may require in order to fulfill its duties and obligations under an agreement.

## 6. Prices

All prices of each FISBA Company are in Swiss francs (CHF) net ex factory, in particular excluding any public dues (taxes, fees, customs duties) and without any deduction whatsoever. Unless agreed otherwise, any ancillary costs (such as for packaging, shipping/freight, insurance) shall be at the expense of the Contracting Party, also any dues, fees, customs duties and taxes in relation to the delivery of products or the provision of services. The FISBA Companies shall have the right but not the obligation to change any prices if cost factors have changed between the date of the offer and the contractually agreed delivery date.

## 7. Payment Conditions

Any invoices of a FISBA Company shall be due for payment net without any deductions in the currency or at the exchange rate stated in the invoice within 30 days from the date of the invoice, unless specifically agreed otherwise between a FISBA Company and a Contracting Party. Place of performance shall be the domicile of the FISBA Company. Payment by offsetting the purchase price with a counterclaim shall only be permitted if the FISBA Company has expressly consented thereto or such counterclaim has been finally (rechtskräftig) determined by a court or governmental body. If a payment is not made by the due date, the relevant FISBA Company shall have the right to apply a default interest in a customary amount, however at least 5 per cent. p.a. Complaints do not entitle to withhold any payments.

## 8. Shipment

Any shipment of products by a FISBA Company will be made in accordance with the pertinent INCOTERM provisions (currently INCOTERMS 2010) ex works of the premises of the FISBA Company for the account and at the risk of the Contracting Party. Any products shall be deemed to be properly packed if the carrier (Spediteur, Frachtführer), railway company or postal service has accepted the products without any objection. If the Contracting Party encounters any visible defects of the packaging or any damages in transit (Transportschäden), it shall immediately inform the carrier and shall protocol the damages. If the damages are not protocol-

led, the FISBA Company shall be released from any and all liabilities and duties for indemnification with respect to any defects of the products which relate to the damages which have not been protocolled.

## 9. Term of Delivery/Acceptance/Delays

Any term of delivery (Lieferfrist) for a FISBA Company shall start upon the agreement having been made, the FISBA Company having received all data, documents and information which it requires to execute the order and any due payments having been made. Any delivery deadline (Lieferfrist) shall be deemed to be met by the relevant FISBA Company if it has dispatched its notice of its readiness to deliver (Versandbereitschaft) to the Contracting Party in writing by letter or via e-mail before the delivery deadline.

The term of delivery shall be reasonably prolonged if force majeure events such as an act of nature beyond control, strikes, accidents, a material disruption of business or governmental measures at a FISBA Company or its suppliers or agents make it impossible for that FISBA Company to timely deliver. The term of delivery shall further be prolonged if the Contracting Party amends its order or is in delay with its own contractual duties and obligations, in particular does not timely provide necessary data, documents and information or securities or delays any payments. Neither a delay of a FISBA Company in delivering or rendering nor a delay of a FISBA Company in accepting goods and services entitles a Contracting Party to compensation for damages or losses.

## 10. Examination and Acceptance

A Contracting Party shall examine any deliveries from a FISBA Company (duty to examination, Prüfungspflicht) with respect to, and notify that FISBA Company immediately in writing by letter or via e-mail (duty to notify, Rügepflicht) of, any defects immediately upon reception, at the latest within 14 calendar days from reception. If the Contracting Party does not examine a delivery and notify the relevant FISBA Company within 14 calendar days from delivery, the delivery shall be deemed to be approved by the Contracting Party and the Contracting Party shall forfeit all its warranty rights. If a Contracting Party disco-

vers any defects which it could not have detected within 14 calendar days from reception of a delivery, it shall notify the relevant FISBA Company in writing by letter or via e-mail immediately upon having detected them.

#### **11. Warranties**

Each FISBA Company warrants that the products which it delivers are free from any defects as to the material and their function at the time at which they leave the premises of the relevant FISBA Company. A defect may also consist in characteristics which are missing but which the product should have according to the written specification of the product. Any warranties as regards precision (Genauigkeit) of a FISBA Company shall be assessed solely based on technical data provided by the relevant FISBA Company. A Contracting Party shall immediately forfeit its entire warranty rights if that Contracting Party or any third party amends or repairs delivered products without the prior written consent of the relevant FISBA Company or uses any delivered products improperly or against the express instruction of the relevant FISBA Company or does not timely notify the relevant FISBA Company of any defect. Any warranty claims of a Contracting Party shall be time barred twelve months from delivery unless an applicable statutory provision mandatorily provides for a longer limitation period. Goods and services provided by a third party which are part of a delivery of a FISBA Company shall exclusively be subject to the warranties of such third party.

Until expiration of a warranty period and provided a delivery is demonstrably defective, the FISBA Companies shall undertake, at their free and absolute discretion, to either replace the defective products (Ersatz) or to deliver products free from defects (Nachbesserung) or to reduce the purchase price for the defective products in an amount equaling the decrease in value of the defective products. Any other warranties, any guarantee whatsoever as well as any other liability of any FISBA Company shall expressly be excluded unless the agreement with respect to the affected products expressly provides for otherwise.

#### **12. Liability**

The FISBA Companies exclude any liability to the largest extent permitted by law. The FISBA Companies in particular exclude any liability whatsoever for any negligence other than gross negligence and for any auxiliary persons (Hilfspersonen). No FISBA Company shall be liable for any indirect (indirekt) or consequential (mittelbar) damages and losses which are caused by delivered products, nor for any damages whatsoever which arise out of or in connection with the use or the installation of any products delivered by a FISBA Company. Consequential damages include, but are not limited to, production downtimes, loss of orders or data, lost profit, and any third party claims. Moreover, the FISBA Companies exclude any liability for any delays or other defaults which are caused by a Contracting Party, which originate from the sphere of risk of a Contracting Party or which are caused by any force majeure events.

Any technical advice by a FISBA Company shall be given with the exclusion of any liability to the extent permitted by law. A technical advice by a FISBA Company does not release a Contracting Party from its duty to examine the delivered products as regards their suitability for the intended purpose and the intended application.

A Contracting Party undertakes to strictly apply the protective regulations (Schutzvorschriften) of which the Contracting Party was informed by the relevant FISBA Company as well as the protective regulations which apply in the relevant countries and jurisdictions.

#### **13. Reservation of Property Rights (Eigentumsvorbehalt)**

Any products delivered by a FISBA Company shall remain the sole and unencumbered property of that FISBA Company until all amounts are fully paid which are due in relation to the particular delivery of such products.

A Contracting Party shall assist the FISBA Company upon its first demand in taking any measures which are required to protect the property of the relevant FISBA Company, in particular with respect to a registration of the products with the relevant register for the reservation of property rights (Eigentumsvorbehaltsregister).

#### 14. Confidentiality

The Contracting Party undertakes to keep confidential any data, documents and information for any time before, during and after the business relationship with a FISBA Company which it receives from a FISBA Company, from third parties about a FISBA Company or about products of a FISBA Company (including, but not limited to parts and procedures) and which are either designated as confidential or similar or whose confidential nature is recognizable (e.g. assembly instructions or process descriptions).

Disclosure shall be permitted if required by a final court verdict or administrative order or towards employees or agents of a Contracting Party, provided that, with respect to agents, they are subject to an at least similar confidentiality undertaking and further provided that any disclosure shall always be limited to the absolutely necessary extent. The FISBA Companies shall have the right to take any measures which they deem fit in their sole and absolute discretion against any violation of this clause by a Contracting Party as well as any third party. In any case, the fact that a FISBA Company takes such measures shall not entitle a Contracting Party and any third party to further violate the confidentiality undertaking.

Confidentiality undertakings which have been specifically agreed with a Contracting Party shall precede the above stated confidentiality undertaking.

#### 15. Intellectual Property Rights

Any intellectual property of a FISBA Company including knowledge which has been developed and/or provided by a FISBA Company in rendering the relevant delivery or service remain the sole and unencumbered property of the FISBA Company. The intellectual property is protected by intellectual property rights such as patents, trade mark, design and copy rights. The Contracting Party shall fully respect and honor these rights. The Contracting Party must not make available any intellectual property to third parties including any of its affiliates.

#### 16. Compliance

The Contracting Party covenants to fully adhere to any applicable laws, rules and regulations, in particular any anti-bribery and anti-trust laws, rules and regulations. A Contracting Party particularly co-

venants not to grant, offer or promise any unlawful advantages to any employee or affiliate of any FISBA Company. The same duties and obligations apply to any employees, agents and auxiliary persons of the Contracting Party as well as other third parties who act in accordance with instructions of the Contracting Party.

The Contracting Party shall solely and exclusively be responsible for making sure that its products and services in which products of a FISBA Company are integrated or on which its products and services are based do not violate any intellectual property rights of a FISBA Company or any third party intellectual property rights. In case of any violation of third party intellectual property rights, the Contracting Party undertakes to take over any dispute with the third party and to fully indemnify and hold harmless the relevant FISBA Company.

#### 17. Place of Jurisdiction, Place of Debt Enforcement, Applicable Law

The place of jurisdiction and, in case of a Contracting Party domiciled outside Switzerland, the place of debt enforcement (Betreibungsort) for all matters arising out of or in connection with a business relationship between a FISBA Company and the Contracting Party shall be the domicile of **FISBA AG in St.Gallen (Switzerland)**. The FISBA Companies shall have the right, however, to institute proceedings against a Contracting Party at any other competent authority or court.

Any business relationship between a FISBA Company and a Contracting Party shall in its entirety be governed by Swiss law with the exclusion of any laws of conflict (such as the Swiss Private International Law) and any international treaties (such as the United Nations Convention on Contracts for the International Sale of Goods).

#### 18. Salvadorian Clause

If a provision of these GT&C turns out to be ineffective, the reminder of the GT&C shall not be affected by such ineffectiveness. The Parties agree to replace the ineffective provision by an effective provision which approximates the ineffective provision to the largest extent possible.

St.Gallen, 14. March 2017