

General Terms and Conditions of DILAS DIODENLASER GmbH for the Leasing and Loaning of Products

A. General Provisions

I. Applicability of Terms and Conditions, Validity of Agreements:

1. All offers and agreements for the temporary paid (lease) or unpaid (loan) letting of products for testing purposes are subject to the following terms and conditions. Unless otherwise agreed, these terms and conditions also apply to deliveries made abroad, as well as to any future transactions. Any conflicting terms and conditions of Customer have no binding force, unless expressly confirmed in writing by the Company.
2. The validity of all agreements, as well as of any subsequent modifications or amendments thereto, is subject to written confirmation by the Company.

II. Period for Delivery and Performance

1. Periods for delivery or performance are non-binding for the Company, unless agreed otherwise in writing. All shipping dates are target dates only and are conditional upon receipt of all necessary information to be furnished by Customer.
2. The leasing or loaning of all products is subject to timely receipt of the correct products from the Company's suppliers. The Company has the right to rescind the lease or loan agreement, in particular, if the Company has ordered the product subject to the agreement from a supplier and has not received delivery from the supplier. In such cases, Customer will be promptly notified that the product is unavailable. Customer shall have no claims for damages of any kind against the Company in such cases.
3. In the event of any unforeseeable events or impediments as a result of which delivery or performance is delayed in whole or in part, including, without limitation, strikes, lockouts, unforeseeable interruptions of the operations of the Company or any of the Company's suppliers, unavoidable raw material shortages, destruction of any completed performances by third parties or force majeure (e.g., fire, flood, earthquakes), or any impediments caused by circumstances for which Customer is responsible, the Company shall have the right, unless such events are due to the fault of the Company, to extend the period for delivery or performance by the duration of the impediment upon notification of the impediment to Customer. If the impediment to delivery or performance lasts for more than three months and a grace period of not less than three weeks set by Customer has expired without performance or delivery, Customer shall have the right to rescind the agreement. Any additional rights or claims of Customer, including, without limitation, claims for damages, are hereby excluded.
4. The Company shall not be deemed in default with delivery or performance except upon written demand, even if the parties have agreed upon dates certain for delivery or performance that can be determined or calculated based upon the calendar.

III. Responsibility for Costs

1. Customer is responsible for the costs of packaging, loading, shipping, shipping insurance, customs and clearance fees, as well as the costs of assembly and installation. Unless otherwise agreed, invoices shall be due without deduction within 15 days of the invoice date. The Company reserves the right to make delivery only upon prepayment, cash payment, or cash on delivery, in particular for first orders or if any amounts are past due from Customer.
2. Customer is responsible for the costs of ongoing operation and use of products leased or loaned from the Company.
3. If Customer is in default with payment or any part thereof, interest on the amount past due shall accrue at the rate of 8% p.a. above the applicable base interest rate, unless the Company proves greater damages.

IV. Reservation of Title

1. The Company reserves title to all leased or loaned products for the entire lease or loan term. Customer may not damage, remove or deface any numbers or lettering on the products.
2. Customer shall provide the Company with prompt written notification if any third parties attempt to gain access to the leased or loaned products. In particular, Customer shall notify the Company of any attachment or other execution proceedings, as well as of any dispositions made by third parties with respect to the secured goods, providing the Company with all documentation necessary for intervention. Customer shall also provide the Company with written notification of any transfer of possession to a third party, as well as of any change of Customer's address. Customer is liable for all damages and costs resulting from any violation of the foregoing obligations or from any intervention by the Company in attempts by third parties to gain access to leased or loaned products, including, without limitation, the costs of any legal action in accordance with German Code of Civil Procedure (ZPO) § 771, provided that the third party is unable to pay such costs.

3. Customer has no right to dispose of any leased or loaned products or to transfer the products to any third parties except with the Company's prior written consent. Customer hereby assigns to the Company, and the Company hereby accepts assignment of, all claims accruing to Customer as a result of any lease or loan of the products to third parties. Claims assigned to the Company shall be settled prior to settlement of Customer's own claims. Customer shall however have the right to collect claims as long as Customer is not in default with the performance of any obligations to the Company and Customer is not bankrupt. Upon demand Customer shall, to the extent necessary for collection, provide the Company with all information and documentation related to the assigned claim, and provide the debtor with notice of assignment.
4. Any modification or processing of the secured goods by Customer shall be for the benefit of the Company, without creating any obligations for the Company. In the event that secured goods are processed, combined, mixed or intermingled with any other items not owned by the Company, the Company shall acquire a co-ownership interest in the resulting product based upon the proportion of the value of the secured goods to the third-party goods as of the time of processing, combination, mixing or intermingling. The parties hereby agree that if Customer acquires exclusive ownership of the resulting product, Customer shall grant to the Company a co-ownership interest in the resulting product based upon the proportion of the value of the secured goods to the third-party goods and that Customer shall hold the resulting product in bailment for the Company at no cost to the Company. If secured goods are resold along with any other goods, whether or not processed, combined, mixed or intermingled with such other goods, the above assignment shall be limited to the amount of the value of the secured goods that are resold together with the other goods.
5. If the enforceable amount of the foregoing security interests exceeds the secured claims of the Company by more than 10%, the Company shall, upon demand of Customer, release a corresponding part of its security interests; the security interests subject to release shall be selected by the Company.

V. Use of Products by Customer, Liability of Customer, Maintenance

1. The Company's products may be used only by Customer and, with the consent of Customer, also by Customer's employees and any other intended users of the products as determined by the purpose of the agreement.
2. Customer shall use the leased or loaned products only at a suitable location, treat the products properly and with due care, maintain the products in operational condition, and protect the products adequately against loss and theft. Customer is required to comply with all technical requirements for use of the products, including, without limitation, the operating instructions and product information, and to review on a regular basis whether the leased or loaned products are still in good condition. Customer allows the Company to check at any time that the leased or loaned products are in good condition. Customer shall provide insurance coverage for the leased or loaned products in the exercise reasonable business care.
3. The leased or loaned products shall not be modified, no additional parts shall be installed in the products, and the products shall not be installed in any existing systems by Customer, except with the prior written consent of the Company.
4. Customer shall provide the Company with prompt notification of any damages or malfunctions of the leased or loaned products. In the event that the products are damaged by any third parties, notification shall include a description of the event or circumstances that caused or resulted in the damages. Customer is liable to the Company for any additional damages resulting from delayed notification.
5. Customer is liable to the Company for any damages, loss, destruction and/or premature wear and tear of the leased or loaned products, unless damages are the result of use in accordance with the terms and conditions of the agreement and are not due to any fault of Customer. Customer is liable for any wrongdoing by employees, visitors, suppliers, customers and other persons using the leased or loaned products with the consent of Customer, to the same extent as for Customer's own wrongdoing.
6. Any necessary maintenance or repair work shall be performed exclusively by a Company-authorized service provider, and Customer shall be responsible for all costs of such maintenance or repair work.
7. Customer undertakes not to furnish third parties with technical information of the Company without the prior written consent of the Company. This especially applies to the operating instructions and its included diagrams, schemes and descriptions.

VI. Term, Termination, Return of Products

1. In the event that the parties have agreed upon a fixed loan or lease term, the agreement shall terminate without notice upon expiration of the agreed term. If the parties have not agreed upon a fixed loan or lease term, the agreement may be terminated by either party at any time upon two weeks' prior notice. The right to terminate the agreement for good cause shall remain unaffected thereby.
2. Notice of termination shall be invalid unless effected in writing.

3. In the event of a product loan, Customer may return the loaned products to the Company at any time.
4. Any continued use of the products by Customer after expiration of the agreement shall not be construed as an implied renewal of the agreement.
5. Upon termination of the agreement, all products leased or loaned to Customer, including any accessories and related documentation provided to Customer, e.g. handbooks and operating instructions shall be returned to the Company at the cost and risk of Customer in operational condition, subject to normal wear and tear.
6. Any equipment installed in or attached to the products, with or without the prior consent of the Company, shall be removed prior to return.

VII. Limitation of Liability

1. The Company assumes no liability for any damages resulting from improper use, treatment, defective assembly and installation or operation of the products by Customer or any third parties, normal wear and tear, inappropriate operating materials or supplies, or for any chemical, electrical or electrochemical effects beyond the Company's control.

Improper use shall include, without limitation, any failure of Customer to use the products in conformity with the operating conditions set forth in the applicable agreement or -- if the applicable agreement does not specify any operating conditions -- the operating conditions specified in the Company's data sheets and brochures. The operating conditions may be inspected at the Company's offices at any time or will be mailed to Customer upon request.

2. The Company assumes no liability for any indirect damages, including, without limitation, lost profits, unforeseeable damages, consequential damages resulting from defects, or any other financial damages of Customer, except in cases of intentional or grossly negligent actions or omissions by the Company.
3. The Company assumes unlimited liability for any intentional or grossly negligent actions or omissions of the Company's legal representatives or agents. In the event of ordinary negligence, the Company shall be liable only for wrongful death or personal injuries, material breach of contract, and claims under the German Products Liability Act (*Produkthaftungsgesetz*). Liability for material breach of contract shall be limited to reasonably foreseeable damages. Except as provided above, any liability of the Company is hereby excluded.

VIII. Offset, Right to Refuse Performance

Customer shall have no right to offset any counterclaims unless such counterclaims have been established by a final and conclusive court judgment or are undisputed. The same shall also apply to any right to refuse performance based upon counterclaims.

B. Special Provisions for Product Leases

I. Rent, Payment Due Date, Payment Default of Customer

1. Unless otherwise agreed, the agreed rent shall be due in euros and excludes legal VAT.
2. Unless otherwise agreed, the rent for the entire lease term shall be prepaid, at the latest when the leased products are delivered to Customer.
3. For long-term lease agreements with a lease term of more than three months, the rent shall, notwithstanding Section 2 above, be prepaid for the time period from the effective date of the lease until the end of the calendar month in which the products are delivered, at the time the leased products are delivered, and for each calendar month thereafter on the first calendar day of each calendar month.
4. The Company reserves the right to demand payment up to the amount of the anticipated rent for the lease prior to delivery of the leased products.
5. Customer is in default without demand if payment is not made within the agreed payment period or on the agreed payment due date. Timely payment requires that the Company is able to access the funds (amount credited to the Company's account, check cashed).
6. In the event of Customer's payment default, interest on the amount past due shall accrue at the rate of 8% p.a. above the applicable base interest rate, without prejudice to any additional claims of the Company.

II. Warranty, Right to Terminate For Impaired Use

1. Customer shall inspect the leased products at the time of delivery and provide the Company with prompt written notice of any defects. Any failure of Customer to notify the Company of defects shall result in forfeiture of Customer's warranty rights.

2. The warranty for any present or future defects of the leased products is limited to defects for which the Company bears responsibility. Customer shall have no warranty claims if Customer is aware, or as a result of gross negligence is unaware, of a defect or has failed to comply with its obligation to provide the Company with prompt notice of defect.
3. Customer shall have no right to a reduction of the agreed lease payments unless Customer's claims have been established by a final and conclusive court judgment or are undisputed. Any claims of Customer to demand a refund of overpaid rent shall remain unaffected thereby.
4. Rescission of the agreement for failure to provide use of the products, withdrawal of use, or impaired use is permitted only if the impairment of use is substantial, Customer has by written notification afforded the Company a reasonable grace period for providing use of the products as agreed in writing, and the grace period has expired without use of the products having been provided to Customer as agreed.

III. Late Return

1. If Customer, for any reason, fails to return leased products upon termination of the agreement, or returns the products late or incompletely, the Company may demand that Customer pay rent for the holdover period in the amount of the agreed leasing rate for the unreturned products.
2. Any additional rights and claims, including, without limitation, claims for damages, shall remain unaffected thereby.

C. Special Provisions for Product Loans

I. Exclusion of Warranties

The Company makes no warranty that the loaned products are operational or suitable for the purpose contemplated by the agreement.

II. Late Return

1. Customer is in default with the return of loaned products, if the products are not returned to the Company upon expiration of the agreed loan term or, if the agreement does not provide for a definite loan term, upon expiration of the notice period for termination. No further demand shall be necessary.
2. The provisions of Section B III. shall apply analogously if Customer is in default with the return of any loaned products.

D. Final Provisions

1. If any provisions are invalid in whole or in part, the validity of the agreement and the remaining terms and conditions shall remain unaffected thereby. The parties agree to replace any invalid or impracticable provisions or terms and conditions with such valid provisions or terms and conditions as most closely reflect the intent and purpose of the original provisions or terms and conditions.
2. All claims of Customer are subject to a limitation period of one year, except for wrongful death or personal injury claims, claims based upon defects for which the Company is responsible, or claims based upon gross wrongdoing by the Company or the Company's agents.
3. Provided that Customer is a merchant under German commercial law -- with the exception of merchants whose business is of such type and scope as not to require the establishment of commercial business operations -- or a public entity, or public special fund, any disputes arising from or in connection with the agreement shall be determined exclusively by a court of competent jurisdiction in Mainz, Germany. Provided that Customer is a merchant or entity within the meaning of sentence 1, the place of performance for all obligations arising from the agreement shall be Mainz, Germany.
4. The agreement shall in all cases be governed by and construed in accordance with German law (including, without limitation, the German Civil Code (*BGB*) and German Commercial Code (*HGB*)), with the exception of all conflict of laws provisions and the provisions of the UN Convention on Agreements for the International Sale of Goods (CISG).

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