

GENERAL TERMS & CONDITIONS OF DELIVERY

General Terms and Conditions of Delivery of Solid Optics EU N.V. holding office at De Huchtstraat 35, 1327 EC Almere (the Netherlands) with Chamber of Commerce No.: 39099087

Applicability, definitions

- The following definitions apply:
 - "*Agreement*": any more-sided (multilateral) juridical act, which comes to existence as detailed in [article 3](#).
 - "*Buyer*": the party which purchases or intends to purchase Items from the Company.
 - "*Company*": Solid Optics EU N.V.
 - "*General Terms and Conditions*": these general terms and conditions of delivery.
 - "*In writing*": by letter, e-mail, fax or any other mode of communication that is regarded as equivalent to writing in view of advances in technology and conventional practices.
 - "*Items*": the products as detailed on the Offer and Sales Order.
 - "*Offer*": any offer or proposal from the Company, whether or not in the form of a written quotation.
 - "*Sales Order*": the order confirmation of the Company.
 - "*Services*": services provided as specified in the Offer and Sales Order.
 - "*Website*": the website of the Company: www.solid-optics.com.
- These General Terms and Conditions apply exclusively to the relationship between the Company and Buyer, including all Offers and Agreements concluded between them.
- The applicability of the general terms and conditions of the Buyer, inclusive those which are implied by trade, custom, practice or course of dealings, are explicitly excluded and insofar as these are previously agreed upon and either conflict with or supplement these General Terms and Conditions shall no longer be recognized, unless a separate overriding written contract has been entered into and signed by the parties. (Standard) reference(s) to terms and conditions of the Buyer in e-mails, letters, orders and other (contractual) documents are objected to. No rights can be derived from such reference.
- Once these General Terms and Conditions have been applicable to a legal relationship between the Company and Buyer, Buyer is deemed to have consented in advance that these General Terms and Conditions shall also apply to any other orders and Agreements entered into and to be entered into between the Company and/or any of its affiliates acting as seller, and the Buyer.
- Additions or amendments to the Agreement or the General Terms and Conditions have to be mutually agreed upon by both parties in writing.
- The possible invalidity of (any part of) a provision contained in these General Terms and Conditions or any Agreement shall not affect the validity of the remaining provisions. An invalid provision will be replaced by a valid provision that approximates the invalid provision where possible in terms of purpose and scope.
- The Company is entitled to unilaterally alter the General Terms and Conditions. Any alteration will become valid once it has been published on the Website.

Offers, prices

1. Each Offer is in force during the term referred to in the Offer. An Offer without a validity term is non-binding. The Company is entitled to withdraw any Offer, within two (2) working days after receipt of the acceptance at the latest.
2. The prices stated in Offers or on price lists from the Company are exclusive of BTW (Dutch VAT) and other governmental levies and exclusive of other costs such as transport costs, dispatch costs, shipping costs, administrative costs, handling fees, installation costs and expense claims of third parties engaged, unless stated otherwise.
3. If the Offer is based on information provided by the Buyer and this information appears to be incorrect or incomplete or should change at a later date, the Company shall have the right to adjust the prices and/or delivery terms stated therein.
4. The Offer and the prices do not automatically apply to repeat or partial orders.
5. Cost increases between the date of concluding the Agreement and the execution thereof, due to legislation and regulations, government measures, currency fluctuations or price changes of the required materials and/or raw materials, may be charged to the Buyer.
6. Arrangements made with the Company's staff shall not be binding, unless confirmed by an authorised representative of the Company in writing.

Establishing agreements

1. An Agreement is established following:
 - a. acceptance in writing by the Buyer of an Offer of the Company, unless the acceptance materially deviates from the Offer, in which case the Agreement shall only be concluded after the Company has explicitly agreed with these deviations in writing;
 - b. signing of a written contract by both parties;
 - c. the confirmation of an order from the Buyer by means of a prevailing Sales Order of the Company
 - d. the Company commencing the execution of the Buyer's order.
2. The Buyer shall not have the right to object to the manner in which the Agreement was executed as a defence to the enforcement of the Agreement.
3. The Company shall never be bound to:
 - i. an order of the Buyer without a corresponding prior Offer; and/or
 - ii. oral agreement(s).
4. Data extracts from (computer) systems of the Company provide compelling proof regarding the content of received and/or sent data unless irrefutable counter evidence is provided.

Engaging third parties

1. If the Company deems this necessary, it shall have the right to have the Agreement or part thereof carried out by third parties.
2. The Buyer is not entitled to assign any right or obligation or any part thereof towards the Company to third parties, or to cede or pledge to third parties any rights or claims that the Buyer may have against the Company, without the written consent of the Company.

Obligations of the Buyer

1. The Buyer ensures that it has obtained all necessary permits, (IP) licenses, rights, authorizations, consents, etc. needed for the execution of the Agreement and shall make available to the Company all information required for the execution of the Agreement in a timely and orderly manner, ensuring the correctness and completeness of such information. 'All information' includes:
 - i. the purpose of the Items/Services to be delivered;

- ii. the location where the Items/Services are to be delivered;
 - iii. the availability of utilities;
 - iv. detailed information (brand, type, series etc.) regarding connectivity options, and
 - v. other (special) requirements or information.
2. If the above obligations are not fulfilled in full or on time, the Company is entitled to suspend the execution of the Agreement until the Buyer has fulfilled all of its obligations. The costs and the other consequences arising from this shall be at the expense and risk of the Buyer.
 3. If the Buyer fails to comply with its obligations and the Company fails to require performance by the Buyer, it shall not affect the Company's right to require performance at a later date.

Confidential information

1. Parties shall treat and undertake to observe confidentiality of all information concerning the (contents of the) Agreement or the order as well as all (other) information that the Parties have obtained in the context of concluding and executing the Agreement from or about the other Party in confidence, such as transactions contemplated by these General Terms and Conditions, and negotiations concerning the same, secrets or confidential commercial, financial, marketing, technical or other information, compatibility information, Knowhow, trade secrets and other information in any form or medium whether disclosed orally or in writing before or after the date of the Agreement which the other Party knows or has reason to know is confidential, together with any reproductions of such information in any form or medium or any part(s) of this information. Each party shall only provide this information to its employees or other third parties insofar as necessary for the execution of the Agreement.
2. Each Party shall take every reasonable precautionary measure in order to maintain confidentiality of this information. This duty of confidentiality also applies to its employees and third parties which are involved in the execution of the Agreement.
3. The obligation of confidentiality shall not apply to information which i. was at the time of disclosing publicly available or will become publicly available through no breach of confidentiality, ii. was lawfully obtained through third parties, provided that such parties did not act in breach of any confidentiality obligation regarding such information, iii. as a result of law and/or regulations or a court order must be disclosed by the disclosing Party and/or iv. was obtained prior to concluding this Agreement at which time said information was not subjected to confidentiality.
4. The Buyer may not use the name of the Company and/or the content of the Agreement as a reference, without the prior written approval of the Company.

Delivery, delivery terms

1. Delivery terms shall never be considered as strict deadlines. If the Company fails to meet its delivery obligations in full or on time, the Buyer must give notice of default to the Company and grant the Company a reasonable time to meet these delivery obligations at a later date.
2. The Company is entitled to deliver in phases, whereby each partial delivery may be invoiced separately.
3. The risk concerning the Items to be delivered shall pass to the Buyer at the time of delivery, which shall be the earliest of a) the moment that the Items leave the premises, warehouse or shop of the Company, or b) the moment that the Company has informed the Buyer that it may collect the Items.
4. Dispatch or transport of the Items shall take place at the expense and risk of the Buyer in a manner to be decided by the Company. The Company is not liable for any damage of whatever nature that is related to the dispatch or the transport of the Items.

5. If the Company itself delivers the Items to the Buyer, the risk will pass at the moment that these Items arrive at the Buyer's recorded address or are in fact at its disposal.
6. If delivery cannot take place due to a cause at the risk of the Buyer, the Company shall have the right to store the Items at the expense and risk of the Buyer.
7. An agreed delivery term will not take effect until the moment that the Company has received all information required for the delivery and in case of pre-paid delivery the agreed (advance) payment of the Buyer. If a delay arises from this, the delivery term shall be extended accordingly.

Packaging

1. Packaging that is designated to be used several times shall remain the property of the Company. This packaging may not be used by the Buyer for any purpose other than for which it is designated.
2. The Company shall determine if the packaging must be returned by the Buyer without additional charge to the Company or that it shall collect the packaging itself at the expense of the Buyer.
3. The Company is entitled to charge the Buyer a fee for this packaging. If the packaging is returned by the Buyer within the term agreed and without additional charge to the Company, the Company must take back this packaging and pay back the fee charged for this to the Buyer or deduct it from the fee that the Buyer has to pay for packaging on the following delivery. The Company shall at all times have the right to deduct a 10% handling fee from the amount to be paid back.
4. If the packaging is damaged, incomplete or has been destructed, the Buyer shall be liable for the damage.
5. Packaging for single use does not have to be taken back by the Company and may be left at the Buyer's. Possible costs for removal shall be at the expense of the Buyer.

Complaints and returns

1. The Buyer is obliged to check the delivered Items immediately after receipt and to state any visible failures, defects, damage and/or deviations in numbers, within two (2) working days after receipt of the Items.
2. Other complaints must be reported to the Company in writing – accompanied by a full test-report – immediately after discovery, yet ultimately within fourteen (14) days of the receipt of the relevant Services and/or Items.
3. In the absence of timely notification as referred to under subclauses 1 and 2, the right to complain shall lapse and the Items shall be deemed to have been received in good condition and to meet the Agreement.
4. No complaints can be lodged;
 - a. about small differences in view of specified measures, weights, numbers, discolouration and small colour deviations etc., acceptable within the industry;
 - b. about Items that have changed in nature and/or composition or that have been fully or partially treated or processed.
5. Complaints shall not suspend the Buyer's payment obligations.
6. The Buyer must give the Company the opportunity to investigate the complaint and must provide all information to the Company that is relevant for the complaint. If the Items need to be returned for investigating the complaint, this will be at the expense of the Buyer unless the complaint proves to be well-founded. The transport risk will always be borne by the Buyer. The Items can only be returned to the Company after prior authorisation by the Company by means of an assigned RMA number. Items which are returned without an RMA number will not be processed and returned to the Buyer at Buyer's expense. The Buyer may only return the Items to the Company, after the Company has been given the opportunity to try to repair the Items from a distance.

7. In all cases, returning the Items shall take place in a manner to be determined by the Company and in the original packaging or deposit packaging.

Intellectual property

1. The Buyer acknowledges that the Company is an independent supplier. Unless explicitly stated otherwise in writing, any usage of the name (or part of the name) of an OEM manufacturer in the coding of the Company's optical components is solely used as an indicator and/or as a necessity for product compatibility between the optical component and the OEM's router/switch it is being used in. Any such usage is not intended to be, nor shall it be regarded as, a representation that the Company is an agent and/or authorized reseller of the OEM brand, or that the Company's optical components are approved or certified by the OEM brand manufacturer. The usage of the OEM brand name does not further imply any relationship between the Company and the OEM brand manufacturer. The Buyer hereby irrevocably waives any right to claims for any relief based on such usage.
2. The Buyer will not in part or as a whole hold the Company responsible or liable for damage and losses arising out of (alleged) claims, lawsuits and settlements made against the Buyer, either directly or indirectly, due to (alleged) infringement of a patent, copyright, trademark, registered designs or other (intellectual property) right under any name whatsoever in connection with the Items delivered and/or installed by the Company.
3. All intellectual property rights vested in the Services and/or Items provided within the framework of the Agreement and/or in the content thereof are held only by the Company and/or its licensors, unless explicitly indicated otherwise in writing. No part of these General Terms and Conditions implies a transfer of intellectual property rights.
4. In case an intellectual property right is owned by a licensor of the Company, the Buyer may have to accept the license provisions and conditions of this licensor in order to use (all functions of) the Services and/or Items. If the Buyer chooses not to accept said license conditions then it will forfeit any relevant claim it may have against the Company.

Warranty

1. The Company shall ensure that the deliveries are carried out appropriately and in accordance with the standards applicable in its sector but shall never provide a more extensive warranty than explicitly agreed in writing between the Parties.
2. The Company shall be responsible during the warranty period for the usual quality and reliability of the Items delivered in accordance with the standards applicable in its sector at the time of purchase.
3. If the manufacturer or supplier provides a warranty for the Items delivered by the Company, this warranty applies in the same manner between the Parties.
4. If the purpose for which the Buyer wishes to treat, process or use the Items differs from the customary use of these Items, the Company shall only warrant that the Items are suitable for this if it has confirmed so in writing to the Buyer.
5. The warranty provisions shall only apply:
 - a. if the payment obligations have been complied with, and
 - b. if the operating instructions have been complied with, and
 - c. if sufficient maintenance is carried out, and
 - d. if the Buyer or a third party does not without Company's written consent assemble and/or repair and/or put the delivered Items into operation, and
 - e. if the Company is notified in writing of any warranty claim immediately after a defect has arisen, and

- f. if the Buyer provided to the Company all information concerning the claimed defect and gave the Company the opportunity to inspect and test the Item.
6. If the Buyer rightly makes a claim under the warranty, the Company shall, at its own discretion, take care of the repair or replacement of the Items, or refund or reduce the agreed price.
7. In the event of Service activities, the Company is obliged to perform these Services solely on the basis of a best efforts obligation.
8. In case of any Service being provided by means of a service license to the Buyer, this service license is exclusive, non-transferable and linked exclusively to each individual serial number of the hardware. If additional hardware is required, the service subscription will not transfer and a new agreement needs to be entered into.
9. The Company does not represent that the use of the Items will produce any specific results, or that the Items delivered will be fit for any purpose other than its intended use or will not cause any damage or harm.

Liability

1. The Company is not liable for damage or loss due to an (attributable) failure in the performance of the Agreement, unlawful act or other ground, excepts as provided for in this article.
2. The exclusions and limitations of liability of the Company referred to in this article also apply with regard to any warranty and/or indemnification obligation of the Company.
3. The Company shall accept no liability exceeding the obligation of the Company to repair or replace the defective Items or part(s) thereof as per the warranty agreed or given by the Company.
4. Subject to the provisions of the previous paragraphs, the total liability of the Company will be limited to compensation of direct damage. Any liability for punitive damages and consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
5. Any liability of the Company shall at all times be limited to the maximum amount paid under the Company's liability insurance. If the insurer does not pay or if the damage is not covered by the insurance taken out by the Company, the total liability of the Company in contract, tort (including negligence) or otherwise shall be limited to an amount equal to the amount of the invoice to which the claim relates.
6. The Buyer is obliged to take all measures needed to prevent or limit the damage, failing which the Buyer is liable for any damage resulting there from.
7. As a condition to the right to claim for compensation of damage the Buyer is obliged to i. notify the existence thereof as soon as possible after it has occurred and ii. give the Company a reasonable term to remedy the situation. The right to compensation of damage by virtue of this article lapses if the Buyer has failed to unambiguously claim compensation for damage in writing by means of a registered letter to the legal business address of the Company within one (1) month as of the moment on which the damage manifested itself for the first time.
8. The Company is not liable – and the Buyer cannot make a claim under the applicable guarantee or otherwise – if the damage is due to:
 - a. improper/incompetent use, use contrary to the purpose for which the Items delivered were intended or use contrary to the directions, advice, operating instructions, leaflets, etc. provided by or on behalf of the Company, and/or
 - b. incompetent safekeeping (storage) of the Items, and/or
 - c. failure to properly install or maintain the Items, and/or
 - d. power peaks, and/or
 - e. errors or incompleteness in the information provided to the Company by or on behalf of the Buyer, and/or

- f. instructions or directions from/on behalf of the Buyer, and/or
 - g. a choice of the Buyer, which deviates from the Company's advice and/or what is customary, and/or
 - h. repairs or other work or processing being carried out on the Items delivered by or on behalf of the Buyer, and/or
 - i. any (type of) modification to the Items delivered and/or any software component thereof by or on behalf of the Buyer and/or in case (any part(s) of) the Items delivered are produced and/or modified by the Company in accordance with the Buyer's order or request, and/or
 - j. the electronic systems, carriers, software and documentation provided and/or made available by the Buyer not being covered by adequate licenses, and/or
 - k. any infringement of third parties' patents, licenses, trademarks, registered designs and other rights under any name whatsoever in connection with the Items supplied by the Company, and/or
 - l. infringement by a third party and/or any act of any third party disturbing the interoperability of the Items delivered with the Buyer's hardware. In the latter the Buyer will grant the Company the irrevocable right as stated under article 6, section 1 under a of Directive 2009/24/EC, and/or
 - m. the use of electronics means of communication such as – but not limited to – damages due to a delay in the delivery of data, the non-delivery of data, the interception or manipulation of data by third parties, the usage of program software for transmitting data, the recipient or processing data, viruses and malfunctions in the network equipment needed for transmitting data, and/or
 - n. any other circumstances which are not attributable to the Company.
9. The Buyer is fully liable for all damage arising from all cases listed in the previous paragraph and indemnifies the Company explicitly against any claims from third parties to compensate such damage.
 10. The provisions of this article and all other limitations and exclusions of liability referred to in these General Terms and Conditions shall also apply for the benefit of all natural persons and legal entities that the Company engages in the performance of the Agreement, including but not limited to its suppliers.
 11. The limitations of liability as included in this Article do not apply if the damage can be attributed to intent or gross negligence by the Company.

Payment

1. Payment of an invoice must be received within thirty (30) days of the invoice date. The Buyer is obliged to provide to the Company (partial) advance payment or other security for payment at Company's first request.
2. The invoice shall be considered correct if no objections have been made within seven (7) days after the date of the invoice.
3. The payment terms are final deadlines. If an invoice is not fully paid after expiry of the payment term or if it was not possible to pay the amount by direct debit, the Buyer, without a demand or notice of default being required, will automatically be in default of payment and obliged to pay to the Company a fixed interest of 1.5% per month, to be charged on a monthly basis. Parts of a month are computed as a full month.
4. If the Buyer still fails to pay after receiving notice, the Company will furthermore have the right to charge the extrajudicial collection costs to the Buyer, amounting to 15% of the invoice sum, with a minimum of € 150.00 exclusive of VAT, to be calculated on the basis of the principal sum plus interest, notwithstanding its right to claim the actual extrajudicial collection costs.
5. The Buyer shall pay all invoices without reduction or setoff.
6. For the due payment of invoices the Company at its sole discretion is entitled to assign the right to collect invoices for and on behalf of the Company to a third party company, after which discharge of

a payment obligation only takes place after payment in full of all outstanding amount on the bank account of the third party.

Collection of data by the Company

The Company may collect and process personal data, such as e-mail, phone number, names and other contact details of the Buyer's representatives, employees, ultimate beneficiary owner and other data subjects, in connection with the preparation and due execution of its Services and/or the Agreement. The Buyer confirms that it has informed its employees, its representatives, its contact persons, the beneficial owners and the Data Subjects of the processing undertaken by the Company and of the sharing of the (personal) data as described in this article and the privacy statement on the Website.

Retention of title

1. The Company shall retain title of all Items delivered and to be delivered up until the point at which the Buyer has completely fulfilled all payment obligations towards the Company.
2. The payment obligations referred to in the previous paragraph consist of the purchase price of the Items/Services and all related obligations of the Buyer. If this refers to the delivery of identical, non-individualized Items, the consignment of Items relating to the oldest invoice shall be considered to have been sold first. Therefore, retention of title always remains with the Items delivered that are still in stock, in the shop and/or form a part of the inventory and equipment of the Buyer.
3. All Items subject to the retention of title may not be sold by the Buyer, whether or not in the framework of the ordinary business operations, unless it has also stipulated retention of title with its customers in relation to the Items delivered.
4. As long as the title is retained in the Items delivered, the Buyer may not pledge the Items in any manner or bring the Items under the (actual) control of a financier.
5. The Buyer must notify the Company immediately if third parties pretend to have ownership or other rights to the Items in which the title is retained.
6. The Buyer must store the Items carefully and as identifiable property of the Company for as long as the title is retained.
7. The Buyer has to take out a business interruption or contents insurance and to ensure that the Items delivered which are subject to retention of title are included in the policy and the Buyer will allow the Company inspection on demand into the insurance policy and the accompanying proofs of premium payments.
8. If the Buyer breaches the provisions of this article or if the Company claims retention of title, the Company and its employees shall have the irrevocable right to enter the Buyer's premises and take back the Items subject to retention of title. This applies without prejudice to the Company's entitlement to compensation of damage, lost profit and interest and the right to terminate the Agreement without any notice of default by a written statement.

Bankruptcy, loss of power to dispose of property, etc.

1. The Company may terminate (*ontbinden*) the Agreement with immediate effect and without any notice of default being required by a written statement to the Buyer, if the Buyer:
 - a. is declared bankrupt or files for bankruptcy, and/or
 - b. applies for or is awarded (temporary) suspension of payment, and/or
 - c. is affected by enforceable seizure, and/or
 - d. is placed under guardianship or judicial supervision, and/or
 - e. otherwise loses the power to dispose of its property or loses legal capacity regarding (parts of) its assets.

2. The Buyer shall always inform the guardian or administrator of the (content of the) Agreement and these General Terms and Conditions.

Cancellation, suspension

1. The Buyer shall not be permitted to suspend or terminate the Agreement at any time without the prior written consent of the Company. In case of suspension or termination, the Company shall be entitled to a compensation, to be determined by the Company. This compensation shall comprise all costs already incurred by the Company and its damage suffered due to the suspension or termination, including lost profits.
2. The Buyer is liable towards third parties for the consequences of the suspension or termination and indemnifies the Company against any claims from third parties arising from this.
3. The Company is entitled to settle the amounts paid by the Buyer with the compensation due by the Buyer.
4. Solely with respect to the delivery of Services Parties may terminate (*opzeggen*) the Agreement – which includes access to the Services and the hardware it is connected to – giving thirty (30) days prior written notice. No refunds will be made for the remaining portion of the annual subscription and any amount that may have been paid.

Force majeure

1. In the event of force majeure on the part of the Buyer or the Company, the Company shall have the right to terminate (*opzeggen*) the Agreement by a written statement to the Buyer or to suspend the performance of its obligations towards the Buyer for a reasonable term without being obliged to pay any compensation.
2. Force majeure means circumstances beyond a party's control in the sense of section 6:75 Dutch Civil Code and shall on the part of the Company include the following circumstances: a non-culpable shortcoming by the Company, a non-culpable shortcoming of third parties or suppliers engaged by the Company, other serious grounds on the part of the Company, war, revolt, mobilization, riots at home and abroad, government measures, strikes within the company of the Company and/or of the Buyer, or a threat of these and other circumstances, disruption of existing exchange rates at the time the Agreement was concluded, operational failures due to fire, burglary, sabotage, power failure, internet or telephone failures, natural phenomena, (natural) disasters and suchlike, as well as transport problems and delivery problems arisen from weather conditions, roadblocks, accidents, and import and export hindering measures.
3. Force majeure on the part of the Buyer in any event does not include: shortage of personnel, strikes, default by third party called in by the Buyer, breakdown of auxiliary materials, liquidity or solvency problems of the Buyer and government measures against the Buyer.
4. If a force majeure occurs when only part of the Agreement has been executed, the Buyer shall in any case be obliged to fulfil its obligations towards the Company until that moment/for that part.
5. The Buyer shall inform the Company with immediate effect of an occurring or impending force majeure situation on its part, followed by a written confirmation stating the consequences that the force majeure situation is expected to have for the Agreement.

Miscellaneous

1. Samples and models that are displayed and/or provided and specifications of colours, dimensions, weights and other descriptions in brochures, promotional material and/or on the Website shall be as accurate as possible but shall only be intended as a guide. The Buyer may derive no rights from these specifications.
2. The samples and models provided shall remain the property of the Company and must be returned to the Company at the expense of the Buyer if so requested by the Company.

3. All notices to be given under the Agreement shall be in writing and in the English language.

Applicable law, jurisdiction

1. These General Terms and Conditions as well as any Agreement shall exclusively be governed by Dutch law. Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by the court in the place where the Company is established, although the Company shall always retain the right to submit a dispute to the competent court in the place where the Buyer is established.
2. The applicability of the Vienna Convention on the International Sale of Goods (CISG) is explicitly excluded.

Date: December 2019