

THE TERMS AND CONDITIONS OF SALE CONTAINED HEREIN ("THIS AGREEMENT") SHALL APPLY TO ALL QUOTATIONS AND OFFERS MADE AND PURCHASE ORDERS ACCEPTED BY Fibotec Fiberoptics GmbH („SELLER"). IF THESE TERMS AND CONDITIONS CONFLICT WITH TERMS AND CONDITIONS OF A PURCHASE ORDER OR PROCUREMENT DOCUMENT ISSUED BY BUYER, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL GOVERN. SELLER'S ACCEPTANCE OF BUYER'S ORDER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS IRRESPECTIVE OF WHETHER THE BUYER ACCEPTS THEM IN WRITING, BY IMPLICATION OR BY ACCEPTANCE OF AND PAYMENT FOR PRODUCT SOLD HEREUNDER, AND IRRESPECTIVE OF WHEN BUYER'S PURCHASE ORDER OR PROCUREMENT DOCUMENT IS ISSUED OR WHETHER IT PRECEDES OR FOLLOWS ISSUANCE OF THIS AGREEMENT. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS HEREIN.

1. DELIVERY, TITLE AND RISK OF LOSS – Shipment will be made in a manner determined by Seller if Buyer does not advise shipment at the time of the order. Title (except as provided in Section 8, "RIGHTS IN INTELLECTUAL PROPERTY") and risk of loss or damage to the product shall pass to Buyer at the time Seller delivers possession of the product to a carrier at Seller's plant or warehouse or other facility without regard to notification of shipment or selection of carrier. Product held by Seller at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Freight shall be prepaid by Seller and invoiced back to Buyer if shipment is not done on Buyer's expenses. Buyer shall be responsible for expenses incurred by Seller where, at Buyer's request, Seller ships or packs product in other than its normal manner.

2. LICENSED PRODUCTS – No title or other ownership rights in any licensed products or any copies thereof shall pass to Buyer under this Agreement or any performance hereunder. Buyer agrees that it will not alter any notices on, prepare derivative works based on, or reproduce, reverse engineer, disassemble or decompile any software embodied in licensed products or recorded in the purchased products furnished under this Agreement.

3. TERMINATION OR CHANGE – Buyer shall not terminate, suspend performance, reschedule or cancel delivery or issue a "hold" order under this agreement, in whole or part, without Seller's prior written consent and upon terms that will compensate Seller for any loss or damage resulting from such action. Buyer's liability shall include, but not be limited to, the price of product delivered or held for disposition and the price of services already performed, plus Seller's loss of profits thereon, incurred costs and a reasonable allocation of general and administrative expenses. Any such termination shall be subject to a minimum termination charge of fifteen percent (15%) of the Euro amount of the sales terminated.

4. TERMS OF PAYMENT – Buyer shall pay the invoiced amount within thirty (30) days from the date of Seller's invoice. Delinquent payments are subject to an interest charge at the rate of one and one-half percent (1-1/2%) per month, or portion thereof (but not to exceed the maximum lawful rate). Buyer hereby grants to Seller a purchase money security interest in the product to secure the purchase price of the product until the purchase price is paid in full. Buyer agrees to execute and deliver all documents requested by Seller to perfect and maintain Seller's security interest. Orders are subject to a maximum outstanding credit limit (measured counting all outstanding invoices, whether or not past due, combined with the value of all accepted orders) as reasonably determined by Seller. Seller may refuse to accept purchase orders, if such acceptance would result in Buyer exceeding such credit limit. The amount of credit or terms of payment may be changed or credit withdrawn by Seller at any time. Each shipment shall constitute an independent transaction and Buyer shall pay for same in accordance with the specified payment terms, if shipments are delayed by Buyer. Seller may invoice Buyer when Seller is prepared to ship.

5. TAXES – Any tax or related charge that Seller shall be required to pay to or collect for any government upon or with respect to services rendered or the sale, use or delivery of products shall be billed to Buyer as a separate item and paid by Buyer, unless a valid exemption certificate is furnished by Buyer to Seller.

6. PRODUCT CHANGES – Seller may at any time (i) make changes in the products that do not materially affect physical or functional interchangeability or performance or (ii) make more substantial changes or discontinue delivery of the product when required for purposes of safety.

7. WARRANTY – Seller warrants to Buyer that products of its manufacture will be on the date of shipment of the product, free from defects in material and workmanship and will substantially conform to seller's written specifications provided to Buyer or to the specifications, if any, identified in an order and agreed to in writing by Seller, other than specifications specifying performance for a period of time. If any defect in material or workmanship or failure to meet said published specifications (a "defect") appears in the product, Seller will, at its option, either repair or replace the defective product without charge at Seller's manufacturing or repair facility or credit or refund the

purchase price of the defective product provided: (i) the defect appears within twelve (12) months from the date of shipment of the product, (ii) Buyer notifies Seller in writing of the claimed defect within thirty (30) days after Buyer knows or reasonably should know of the claimed defect, and (iii) Seller's examination of the product discloses that the claimed defect actually exists.

Buyer shall follow Seller's instructions regarding return of defective product, and no product will be accepted for repair, replacement, credit or refund without the written authorization of and in accordance with Seller's instructions. Replaced products shall become Seller's property, in no event shall Seller be responsible for deinstallation or reinstallation of defective products or for the expenses thereof. If Seller determines that the returned products are not defective, Buyer shall pay Seller all costs of handling, inspection, repairs and transportation at Seller's then prevailing rates. Repairs and replacements covered by the above warranty are warranted to be free from defects as set forth above except that the defect must appear (i) within (3) months from the date of repair or replacement or (ii) prior to the expiration of the above twelve (12) month period, whichever is later.

With respect to products not manufactured by Seller, Seller, to the extent permitted, extends the warranties and affords the remedies to Buyer given to Seller by its vendor of said products.

Seller makes no warranties with respect to experimental products or prototypes or to products which have been subjected to misuse, neglect, accident or abuse or have been improperly installed, stored, maintained, repaired or altered by anyone other than Seller, or had their serial numbers or month and year of manufacture or shipment removed, defaced or altered. EXCEPT AS STATED IN THIS SECTION 7, SELLER, ITS SUBSIDIARIES AND AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS WELL AS OTHER IMPLIED WARRANTIES, IN LAW OR EQUITY. BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL BE SELLER'S OBLIGATION TO REPAIR OR REPLACE OR CREDIT OR REFUND AS SET FORTH ABOVE.

8. RIGHTS IN INTELLECTUAL PROPERTY – Seller exclusively shall own all right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works of authorship fixed in any tangible medium of expression, mask works or other forms of intellectual property, whether or not patentable, copyrightable or subject to mask work rights or other forms of protection, which are made, created, developed, written, conceived or first reduced to practice by Seller solely, jointly or on its behalf, in the course of, arising out of or as a result of work done under this Agreement..

9. INTELLECTUAL PROPERTY INDEMNITY – Seller shall (i) defend or settle, at its option and expense, any claim against Buyer alleging that any product furnished hereunder, in the form in which it is furnished by Seller, infringes any patent copyright or trademarks (ii) reimburse Buyer for any costs incurred at Seller's written request; and (iii) pay all damages and costs assessed by final judgment against Buyer and attributable to such claim. Seller shall have the right, at any time and at its option and expense to: (i) procure for Buyer the right to continue using such product: (ii) replace or modify any such product provided or to be provided to be free of the infringement claim and, or discontinue further deliveries of the product or (iii) require return of such product and refund the purchase price paid less a reasonable allowance for use, damage and obsolescence. Seller's obligations hereunder are conditioned upon: (i) Buyer giving Seller prompt written notice of any such claim; (ii) Seller having complete control of the defense and settlement thereof and (iii) Buyer cooperating fully with Seller to facilitate the defense or settlement of such claim.

Notwithstanding the foregoing. Seller shall have no obligation to defend or settle any claim for any infringement or other violation of any patent or other intellectual property right: (i) arising from compliance with Buyer's specifications, designs or instructions or (i) relating to use of any product furnished hereunder in combination with any other item(s), whether or not furnished by Seller, even if such use is the products necessary or inherent use or the use for which the product is purchased.

The sale of any product by Seller shall not in any way confer upon Buyer, or upon anyone claiming under Buyer, any license (expressly or impliedly, by estoppel or otherwise) under any patent claim of Seller or others covering or relating to any combination machine or process in which such product is or might be used, or to any process or method of making such product.

10. EXPORT CONTROL - Buyer acknowledges that the products sold under this Agreement and technical information transmitted in connection therewith may be subject to export restrictions of Germany or the European Community under applicable law and Buyer agrees to comply fully with same. Buyer assures Seller that it will not transmit, sell, transfer or convey any such products, technical information or software to any country, or citizen or resident of a country or a third party that is assumed to resell to such countries, citizen or residents under export restrictions without first securing written consent, if required, of the „Bundesamt für Wirtschaft und

Ausfuhrkontrolle“ or paralleling authorities within the European Community.

11. EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY

A. FOR PURPOSES OF THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11, SELLER SHALL BE DEEMED TO INCLUDE FIBOTEC FIBEROPTICS GMBH, ITS SUBSIDIARIES AND AFFILIATES AND THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS OF EACH OF THEM AND “DAMAGES” SHALL BE DEEMED TO REFER COLLECTIVELY TO ALL INJURY, DAMAGE, LOSS OR EXPENSE INCURRED.

B. SELLER’S ENTIRE LIABILITY AND BUYER’S EXCLUSIVE REMEDIES AGAINST SELLER FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY WORK REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE STRICT LIABILITY OR OTHERWISE SHALL BE:

1. FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 9.
2. FOR FAILURE OF PRODUCT OR WORK PERFORMED, THE REMEDIES STATED IN SECTION 7.
3. FOR DELAYS IN DELIVERY NONE UNLESS THE DELIVERY IS DELAYED BY MORE THAN THIRTY (30) DAYS CAUSE NOT ATTRIBUTABLE EITHER TO BUYER OR TO FORCE MAJEURE CONDITIONS, IN WHICH CASE BUYER SHALL HAVE THE RIGHT, AS SOLE REMEDY, TO CANCEL THE ORDER WITHOUT INCURRING TERMINATION CHARGES.
4. FOR DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY OR FOR BODILY INJURY OR DEATH TO ANY PERSON PROXIMATELY CAUSED BY SELLER, BUYER’S RIGHT TO PROVEN DIRECT DAMAGES.
5. FOR CLAIMS OTHER THAN SET FORTH ABOVE, SELLER’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES THAT ARE PROVEN IN AN AMOUNT NOT TO EXCEED € 50,000.-.

C. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES THIS PROVISION SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

12. MEDICAL AND LIFE SUPPORT APPLICATIONS – Seller does not recommend the use of any products for medical or life support applications wherein a failure or malfunction of the product may directly threaten life or cause injury and Seller will not knowingly sell its products for such use except pursuant to a written exception to this policy granted on a case-by-case basis. No warranty is made with respect to any such medical or life support use of any product.

13. ASSIGNMENT – Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Seller. Any attempted assignment without the Seller’s consent shall be void and ineffective.

14. NON-WAIVER – No course of dealing or failure of either party to strictly enforce any item, right or condition of this Agreement shall be construed as a waiver of such terms right or condition.

15. FORCE MAJEURE – Except with respect to Buyer’s obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite Seller’s reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control, Seller may, in the event of any such circumstances allocate at its sole discretion its available Production output among itself and its other customers including at Seller’s option those not under contract.

16. CHOICE OF LAW – The construction, interpretation and performance of this Agreement shall be governed by the German Law. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to the sale of product hereunder.

17. ENTIRE AGREEMENT – Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties and shall constitute the entire Agreement between parties with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by a writing signed by Buyer and Seller.