

# General Terms and Conditions of Sale and Delivery for Spare Parts of Lascom Laser GmbH ('LASCOM' or 'Supplier')

Last update: January 2021

## 1. Scope

- 1.1. To the extent permissible under applicable law, the following provisions shall apply to all items ('spare parts') associated with these General Terms and Conditions of Sale and Delivery for Spare Parts and mentioned in quotations and/or order confirmations.
- 1.2. In the event that individual provisions shall be or shall become (partially) ineffective, this shall not affect the remaining (other) provision(s).

## 2. Delivery

Unless otherwise agreed, delivery of spare parts shall be 'ex-works' at the Supplier's registered address (Incoterms 2010).

## 3. Payment terms

- 3.1. Unless agreed otherwise, all payments shall be due without deductions 10 working days (Monday to Friday) after the invoice date.
- 3.2. If the Purchaser's payment is delayed, the Supplier may take the following measures, regardless of any of his other rights:
  - a) postpone performance of his own obligations until outstanding payments or other performances are settled,
  - b) call outstanding debts due and charge monthly interest on arrears in respect of these amounts after the respective due date of 8 per cent above the basic interest rate.

## 4. Retention of title

- 4.1. Spare parts shall remain the property of the Supplier until payment has been received in full.
- 4.2. If spare parts are combined or mixed with other items, the Supplier shall acquire joint ownership of any interim and end products generated as a result in proportion to the pro-rata value of the spare parts. If spare parts are machined or processed with other items and the Purchaser obtains sole ownership of the new item, the Purchaser and Supplier agree that the Purchaser will grant joint ownership of the new item to the Supplier in proportion to the value of the spare parts. In all cases, the Purchaser will store the new item for the Supplier free of charge.
- 4.3. In the event of garnishment or other claims, the Purchaser shall be required to assert the Supplier's right of ownership and inform the Supplier of this immediately.
- 4.4. Payment arrears shall entitle the Supplier to request the return of the spare part(s).
- 4.5. If spare parts are sold by the Purchaser to a third party, the Supplier shall be entitled to consideration in this respect. To this end, the Purchaser hereby assigns his claims against the third party, together with all ancillary rights, to the Supplier, in such a way that no particular act of transfer is required should such claims arise.

## 5. Warranty

- 5.1. Spare parts are delivered or handed over on the assumption that they are free from any defects. Par. 924 of the Austrian Civil Code (ABGB) shall not be applicable and therefore the Purchaser shall bear the burden of proof regarding the presence of a defect.
- 5.2. A spare part is defective if the spare part does not have the quality and characteristics that have been expressly agreed in the contract.
- 5.3. Visual aspects, which do not adversely affect functionality, shall not constitute a defect. (Assumed) quality and characteristics and/or possible use for purpose and/or functionalities, which have not been contractually agreed, shall not be covered by a warranty claim.
- 5.4. Spare parts, which are repaired by the Purchaser himself or by third parties without the prior agreement of the Supplier, shall not be subject to warranty claims.
- 5.5. **Procedure in the event of a potential defect**
  - 5.5.1. Spare parts must be checked carefully upon receipt within five working days (Monday to Friday) and any defects must be notified to the Supplier in writing within this period providing detailed proof of their existence (at least the spare part and/or delivery note number, clear description of the defect as well as meaningful photographic evidence). In any case, the Purchaser must send or hand over a potentially defective spare part to the Supplier within 14 calendar days.
  - 5.5.2. In the event of a scheduled replacement in the course of a potential warranty claim, the method of dispatch/handover, date of dispatch/handover and recipient of the respective spare part shall always be mutually and provably agreed with the Supplier in advance, otherwise the Purchaser shall bear any related costs.
  - 5.5.3. At the Supplier's discretion, spare parts that are actually defective may be repaired or replaced within a reasonable period of time. The Supplier may exercise this right for each defective spare part on two occasions in succession to the exclusion of other warranty remedies.
  - 5.5.4. Simply replacing a spare part shall not represent per se an acknowledgement of a defect.

## 5.6. Acceptance of costs in the event of unjustified defect notifications

The Purchaser shall bear the costs of unjustified defect notifications (in particular costs of analysis, experts, employees, transport and repairs). In any case a minimum handling fee of EUR 150.00 will be charged to the Purchaser.

## 6. Incorrect orders and cancellation

6.1. Spare part orders can only be cancelled upon agreement with LASCOM. Already delivered spare parts that are ordered incorrectly or are not required may not be sent back or credited for subsequent spare part requests in general.

- 6.2. In the exceptional event of an agreement between the parties to cancel the order or take back spare parts that are not needed, the Purchaser shall bear the partly or total accrued costs for accomplished work, undertaken procurement activities **and** back delivery in connections with the order. Those costs will be invoiced to the Purchaser. In general, only unused and brand-new parts will be taken back.
- 6.3. If agreed as per clause 6.2. spare parts that are ordered incorrectly must be checked carefully within five working days (Monday to Friday) upon receipt and the goods shall be registered in writing at the Supplier's office for back delivery. The goods shall be sent back or handed over to the Supplier within 14 days after registration of back delivery at the Supplier. In case that a back delivery is not announced in advance, LASCOM reserves the right to send the material back to the Purchaser at the Purchaser's costs.
- 6.4. Cycle parts (being parts nominated by LASCOM (clearly marked in the order confirmation of LASCOM) for buy back and reconditioning) may be sent back. Back delivery shall be registered by the Purchaser in writing at the Supplier. All freight costs shall be borne by the Purchaser. The Purchaser will be granted a credit note for the back delivery in the amount of 50 % of the purchase price (in case of new material) or 25 % of the discounted purchase price (in case of used material).
- 6.5. In general, used spare parts cannot be returned unless they were sold as refurbished spare parts.

## 7. Liability

- 7.1. The Supplier is only liable for damage that is proven to be caused by wilful intent or blatantly gross negligence.
- 7.2. The Supplier shall in particular not be liable for damage, which the Purchaser could have prevented by taking reasonable measures, for example, by using adequately trained staff or through careful checking.
- 7.3. The Supplier shall in no event be liable for loss of profit, loss of production, loss of revenue, loss of orders and other indirect damage and/or consequential damage, irrespective of their legal grounds.
- 7.4. Irrespective of the legal grounds and to the extent permissible under applicable law, liability for compensation shall be limited to the total value of the respective spare part.
- 7.5. All liability claims of the Purchaser shall be finally settled in these Terms and Conditions.

## 8. Limitation periods

Unless shorter limitation periods are laid down in law, any claims by the Purchaser, on whatever legal basis, shall expire by limitation six (6) months after delivery as per clause 2. A warranty period of three (3) months from receipt of a spare part by the Purchaser shall apply to used spare parts. This shall not apply insofar as longer mandatory periods are prescribed by law.

## 9. Force majeure

- 9.1. The Supplier shall be exempt from on time contractual performance in the event of a force majeure.
- 9.2. Events, which are unforeseeable and unavoidable for the Supplier, such as strikes, riots, (civil) war, epidemics, travel warnings, fire, confiscation, embargoes, general lack of supplies and materials and means of transport, limitation of energy use, natural disasters etc. are referred to as force majeure.

## 10. Choice of law and Interpretation

- 10.1. These Terms and Conditions shall be governed by Austrian substantive law under exclusion of any conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods.
- 10.2. For all deliveries and services regarding machines, software licenses and software services the General Terms and Conditions of Sale and Delivery of the LASCOM Group as well as the General Terms and Conditions for Service and Maintenance Agreements of LASCOM.

## 11. Arbitration

All disputes shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Economic Chamber in Vienna (Vienna rules) by three arbitrators appointed in accordance with these Rules. Proceedings shall be held in the English language. If the Purchaser is based in the German-speaking area, proceedings shall be held in the German language. The Supplier is, however, also entitled to take action in the place or country where the Purchaser has his registered office, and to involve the ordinary local courts that have jurisdiction.