

Sale and Delivery - Terms and Conditions for Foss Fibre Optics, s.r.o.

1 AGREEMENT

- 1.1 These Standard Terms and Conditions shall apply to all offers made by Foss Fibre Optics, s.r.o. (hereinafter referred to as «the Seller»), and all contracts (hereinafter referred to as «the Contract») made between the Seller and any person, firm or entity (hereinafter referred to as «**the Buyer**») purchasing products, material, parts and services (hereinafter referred to as «the Products») from the Seller.
- 1.2 These Standard Terms and Conditions shall have precedence over and be preferred to any conditions appearing on the Buyer's purchase order document or other document emanating from the Buyer and any such Buyer's conditions shall be of no force and effect unless expressly accepted in writing by the Seller. These Standard Terms and Conditions and any particular conditions agreed by the Seller shall constitute the entire agreement between the parties with respect to the sale and delivery of the Products.

2 OFFERS AND ORDERS

- 2.1 Unless previously withdrawn, the Seller's offer is open for acceptance within thirty (30) days from the issuing date of the offer. All brochures, price lists and other literature are as accurate as possible and shall only be binding on the Seller if they are expressly confirmed in writing. The Seller reserves the right to modify them at any time for any reason as it may determine. No order for the Products may be cancelled by the Buyer without the prior consent of the Seller. Order cancellation procedure is defined as follows:
 - The Buyer is entitled to cancel the order at any time prior to receiving the order confirmation from Seller's representative/s;
 - Should the Buyer cancel the order within 3 working days following the day of order confirmation – Seller is entitled to charge a cancellation fee amounting to 20% of order value;
 - Should the Buyer cancel the order within 4-6 working days following the day of order confirmation – Seller is entitled to charge cancellation fee amounting to 50% of order value;
 - Should the Buyer cancel the order after 7 and more working days following the day of order confirmation – Seller is entitled to charge cancellation fee amounting to 70% of order value.

3 PRICES AND PAYMENT

- 3.1 The quoted prices in the offers of the Seller are based on the costs of materials and labour prevailing on the date of quotation. After this date, if variations occur in the abovementioned costs, the Seller shall be entitled to revise the prices quoted to provide for such variations.

- 3.2 The quoted prices are excluding Value Added Tax (“VAT”) or other relevant taxes/fees/duties.
- 3.3 If the quotation is denominated in the currency other than EUR (e. g. USD), the prices would be based on conversion rate of European Central Bank valid on the date of quotation. Should the FX rate between the date of quotation and the date of order change +/- 3%, the Seller has right to revise the pricing of the order accordingly.
- 3.4 The Seller’s standard term of payment is fourteen (14) days from the date of invoice unless otherwise specified in writing by the Seller. The Seller may invoice each shipment separately and each shipment shall be considered a separate and individual contract. The Buyer agrees to pay the Seller’s invoice in full without any deductions or set-off.
- 3.5 Payments shall be processed wireless to the Seller’s bank account and shall be received in full, i. e. all bank charges and fees shall be borne by the Buyer.
- 3.6 Interest on late payment will be charged to the Buyer at a rate of ten (10) percentage points above the rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question, on the amount still outstanding, from the contractual due date. If the Buyer fails to effect payment on the due date, the Seller reserves the right, in addition to any other legal rights and remedies available to it, to suspend further deliveries of Products until such time as complete payment is received from the Buyer. Furthermore, all costs and expenses, legal, judicial or otherwise, incurred by the Seller in recovering the sums due shall be fully borne by the Buyer.

4 DELIVERY

- 4.1 Times specified for delivery of the products start either from the date of the acknowledgement of the order or from the date where any initial payment required by the Seller is received to Seller’s bank account. Delivery times are given and intended as estimates only; in case of postponed delivery time, the Buyer shall neither be entitled to cancel the order, nor to claim the payment of any penalty or indemnity, unless otherwise agreed in writing by the Seller. Delivery within the time specified by the Seller shall be made only if the Buyer has fulfilled its obligations at such date. If the shipping of the Products is delayed by an event which is beyond the Seller's reasonable control, the Products shall be stored if necessary, and all relating storing and handling costs shall be borne by the Buyer.
- 4.2 The Seller shall deliver (or procure delivery of) the Products to the location set out in the order or such other location as the parties may agree in writing (“Delivery Location”) at any time after the Seller notifies the Buyer that the Products are ready for dispatch.
- 4.3 Unless the Seller elects otherwise (or if both parties agree in writing), the Buyer agrees that the Seller provides the Products to the Delivery Location under the EXW (Ex Works) or FCA (Free Carrier) rules (in whole or part). The Buyer acknowledges that the EXW (Ex Works) or FCA (Free Carrier) rules (as applicable) are expressly incorporated in the Contract / order and if there is any conflict or inconsistency between the Incoterms® 2020 and these conditions, these conditions shall prevail.

5 ACCEPTANCE BY THE BUYER

- 5.1 Unless specifications are proposed by the Buyer and accepted by the Seller, the Products will be deemed as complying with the specifications of the Seller. The Buyer shall inspect the Products delivered and shall notify the Seller in writing of any discrepancies regarding the quantity, specification or quality of the Products to the order within fourteen (14) days of receipt of the Products. Once the term of fourteen (14) days has elapsed, the Buyer shall be deemed to have accepted the Products.
- 5.2 Once the Buyer has accepted the Products (during warranty period under Clause 9), the Seller shall, at its choice and expense, either repair or replace defective Products or credit the Buyer the purchase price of such defective Products, and in case of missing Products deliver additional Products to meet the ordered quantity, and the Buyer shall have no claim to compensation whatsoever. Any return of Products by the Buyer is subject to the prior written permission of the Seller. Return of faulty Products will be accepted by the Seller provided that (i) the Buyer shall state in detail the reason for return and, (ii) the Products shall be returned in their original packing and, (iii) the Products shall not display any damage whatever the cause (storage, inspection, assembly, disassembly, etc.) and, (iv) the Products shall not have been modified by the Buyer or any third party. Freight and insurance costs for return of the Products shall be borne by the Buyer.

6 TITLE AND RISK

- 6.1 The risk in the Products shall pass to the Buyer on dispatch from the Seller's (or its agent's) premises.
- 6.2 Title to the Products shall pass to the Buyer (Clause 11 of these SaD – TaC) once:
- (a) The Seller receives payment in full for the Products and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and
 - (b) the Buyer resells the Products, in which case title to the Products shall pass to the Buyer at the time specified in clause 6.4. below.
- 6.3 Until title to the Products has passed to the Buyer, the Buyer shall:
- (a) store the Products separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - (b) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (including those Products delivered under the EXW (Ex Works) or FCA (Free Carrier) rules (as applicable));
 - (c) give the Seller such information as the Seller may reasonably require from time to time relating to the Products.

6.4 Subject to clause 6.5, the Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products. However, if the Buyer resells the Products before that time:

- a) it does so as principal and not as the Seller's agent;
- b) title to the Products shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs; and
- c) the entire proceeds of sale or any insurance proceeds payable in respect of the Products shall be held on trust for the Seller.

6.5 At any time before title to the Products passes to the Buyer, the Seller may:

- a) by notice in writing, terminate the Buyer's right under clause 6.4 to resell the Products or use them in the ordinary course of its business; and/or
- b) require the Buyer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored to recover them. If the Products are in the possession of a third party, the Buyer shall use its best endeavours to procure the consent and cooperation of such third party to facilitate repossession of the Products by the Seller.

7 PACKAGING

7.1 Unless otherwise agreed in writing, the Buyer shall be responsible for recycling or destruction of packaging of the Products.

8 EXPORT CONTROL AND USE OF PRODUCTS

8.1 The Buyer confirms that it will be the recipient of Products to be delivered by the Seller. The Buyer agrees that the Products and Services will not be used for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity or any other military use, nor will they be re-sold if it is known or suspected that they are intended to be used for such purposes.

8.2 The sale, resale or other disposition of certain Products and related technologies or documentation may be subject to the export control laws, regulations and orders of the Slovak Republic, European Union and may also be subject to the export and/or import control laws and regulations of other countries. The Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. The Buyer acknowledges its responsibility to obtain any required licence for the acquisition, carriage, use, export, re-export or import of the Products. Failure to obtain such licence(s) shall not entitle the Buyer to withhold or delay payment of the price for the Products. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

8.3 The Buyer agrees that Products sold by the Seller are not designed for use in life support, life sustaining or nuclear applications, or other applications or products for which a product failure may result in personal injury, death, or catastrophic property damage. If the Buyer sells or otherwise uses the Products for such applications, or breaches its obligations relating to export restrictions, product use or misuses the Products in any manner, the Buyer agrees that it does so completely at its own risk and shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller resulting from such sale, use and/or misuse.

9 WARRANTY

9.1 Unless otherwise agreed in writing, the Seller warrants to the Buyer that the Products, when properly used, stored and maintained and if properly assembled and installed, shall comply with the technical specifications pertaining thereto and shall be free from defects in materials and workmanship and the Seller undertakes, at its sole option, either to repair or replace in its premises and at its expense the Products found to be defective within twenty four (24) calendar months of the date of shipment, to the exclusion of any other obligations. The Seller's warranty does not extend to (i) any damage or loss due to misuse, accident, disaster, abuse, neglect, and/or (ii) damage or loss due to work not performed by the Seller, and/or (iii) damage or loss caused by Product which has been repaired or altered by the Buyer or a third party without the Seller's prior written approval, and/or (iv) defects arising out of incorrect or insufficient specifications, data or instructions furnished by the Buyer.

9.2 In case any returned Product is being found on investigation by the Seller to be outside the scope or duration of the warranty or the fault being unconfirmed, the Seller is entitled to charge the Buyer all costs incurred by the Seller in connection therewith. The Buyer must provide the Seller with a written "Return of Material" report (either in letter or official email format) about the defect prior to returning faulty Products covered by the Seller's warranty. Freight and insurance cost for return of faulty Products to the Seller will be borne by the Buyer and freight and insurance cost for the delivery of repaired Products and replacement Products to the Buyer will be borne by the Seller. Repair or replacement of defective Products shall not extend the original warranty duration. The warranty given in this Clause constitutes the only representations and warranties made by the Seller with respect to the Products supplied by the Seller and any other warranties, whether expressed or implied by law or otherwise, are expressly disclaimed and excluded. This Clause describes the absolute limit of the Seller's liability. In no event shall the Seller be liable for any special, indirect or consequential damages.

10 FORCE MAJEURE

10.1 The Seller shall not be liable for the non-performance or delayed performance of any of its obligations under the Contract, if such performance is hindered or delayed by an event which is beyond the Seller's reasonable control, including, without limitation, acts of God, war, civil unrest, embargos, pandemics, natural disasters, fire, explosions, accidents, strike, lock-down and other general labour disputes, exceptional breakdown or general unavailability of transport facilities, weather conditions, general shortages of energy and



materials. The performance of the Seller's obligations shall be suspended for the term of the event.

11 RESERVATION OF TITLE

11.1 Title to any Products sold under any contract shall not pass to the Buyer until the Seller has received payment in full of all sums invoiced together with any interest accrued thereon and other charges (Clause 6). In the meantime, the Seller shall remain the full legal and beneficial owner of the Products and the Buyer shall hold any proceeds of sale of the Products as trustee or as bailee for the Seller free from any charge, lien or other incumbrance. The Buyer agrees that it will assign to the Seller upon the Seller's request all of its rights under a contract of sale against any subsequent purchaser of the Products or any of them or of the equipment in which the Products have been incorporated. Until such time as title to the Products passes to the Buyer or until such time as the Products are sold, the Buyer shall keep the Products fully insured with a reputable insurer and shall store them in such a way as they can be readily identified as being the Seller's property. The Seller has the right to recover possession of all or any of the Products or to seize any of the Products at any time and is entitled to enter upon any of the premises of the Buyer for the purpose of doing so. If the Buyer (i) fails to effect payment of the full price, or part of it, (ii) makes an assignment for the benefit of creditors, (iii) is adjudicated bankrupt or insolvent, (iv) has any proceedings commenced against it for reorganization, readjustment of debt, dissolution or liquidation, or (v) has its business wound up, the Seller shall be entitled to claim back as its property any Products delivered but not yet paid for or not paid for in full, without prejudice to its rights to demand compensation for any losses or damage resulting thereof.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 All drawings, documents, software furnished by the Seller to the Buyer shall remain at all times the exclusive property of the Seller and the Buyer undertakes not to use them, reproduce them or disclose them to any third party, without the prior express permission of the Seller.

12.2 Unless otherwise expressly agreed in writing, all rights in and to the Products shall at all times belong solely to the Seller.

13 LIABILITY

13.1 In no event shall the Seller be liable to the Buyer and any third party for loss of production, loss of business or profit or any other indirect, special or consequential damages. In any other events, the maximum damages paid by the Seller shall not exceed the amount of 2x of the price of the Product, which has been proven to have caused the claimed damages.

14 INDEMNITY

14.1 The Buyer shall indemnify and hold the Seller harmless from any liabilities, claims, costs (including reasonable attorney's fees), expenses and damages in connection with the

infringement by the Seller or a third party's patent, copyright or other intellectual property right which arises from the Seller's compliance with the Buyer's design or specifications.

15 PERSONAL AND CONFIDENTIAL INFORMATION

15.1 The Buyer shall accept that its personal and confidential information will be retained, used and/or stored in accordance with relevant legislation valid in Slovak Republic.

16 ASSIGNMENT

16.1 The Buyer shall not assign the Contract in whole or in part to any third party without the Seller's prior written consent.

17 APPLICABLE LAW

17.1 The contract shall be governed by and construed in accordance with the law of the Seller's country, without giving effect to its conflict of laws rules.

18 INSOLVENCY

18.1 This clause applies if:

- a) the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- b) an encumbrancer takes possession, or an administrator or administrative receiver is appointed, or any of the Buyer's property or assets; or;
- c) the Buyer ceases, or threatens to cease, to carry on business; or
- d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer, and notifies the Buyer accordingly.

18.2 If this clause applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to terminate the Contract or suspend any further deliveries of the Products and/or Services or suspend any further activities without any liability to the Buyer, and if the Products and/or Services have been delivered but not paid for, the price shall become immediately due and payable by the Buyer notwithstanding any contrary agreement.

19 ANTI-BRIBERY

19.1 The Buyer shall comply with all laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption applicable in Slovak Republic, European Union including

Bribery Act 2010 (applicable for UK). The Buyer shall ensure that it has in place adequate procedures to ensure compliance with such bribery laws to prevent bribery and shall use all reasonable endeavours to ensure that all of its personnel, all others associated with it, and all of its subcontractors involved with the Contract so comply.

19.2 Without limitation to the above, the Buyer shall not make or receive any bribe or other improper payment or allow any such to be made or received on its behalf, either in Slovak Republic or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

20 MODERN SLAVERY

20.1 The Buyer shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations, and codes from time to time in force in Slovak Republic, European Union and with Modern Slavery Act 2015 (applicable for UK).

20.2 The Buyer shall not engage in any activity, practice, or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

20.3 The Buyer represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

21 MISCELLANEOUS PROVISIONS

21.1 If any of the provisions hereof is determined to be invalid, illegal, or otherwise unenforceable, the remaining provisions shall remain in full force and effect. Any delay or failure of the Seller to enforce at any time any provision hereof shall not constitute a waiver of the right thereafter to enforce each and every provision hereof.