

# General Terms and Conditions of Sale and Delivery of Allied Vision Technologies GmbH

## § 1 GENERAL INFORMATION, SCOPE

(1) The following General Terms and Conditions of Sale and Delivery (hereinafter referred to as “GTC”) are applicable to all deliveries, repairs and other services provided by Allied Vision Technologies GmbH (hereinafter referred to as “Allied Vision”). They are also applicable to all future deliveries, repairs and other services, even if they are not separately referred to. Allied Vision shall not recognize any conditions of purchase or other general terms and conditions of a customer, even if their validity is not expressly rejected in a given case, unless Allied Vision agrees to their validity in writing.

(2) The contents of side agreements and changes to this contract shall be applicable only if confirmed by Allied Vision in writing.

(3) These GTC shall only apply to those persons who upon conclusion of the contract act in exertion of their commercial or independent professional activity (so-called “entrepreneurs”) as well as to legal entities under public law or public sector funds.

## § 2 CONCLUSION OF THE CONTRACT ORDER AND ORDER CONFIRMATION

(1) Our offers are subject to change (nonbinding) and are made subject to availability. The contract shall not become effective until we have confirmed the order in writing.

(2) The mutual written declarations shall determine the scope of deliveries and services. If a contract has been concluded in the absence of such mutual declarations, either the written order confirmation by Allied Vision or – if such an order confirmation was not issued– the written order placed by the buyer shall prevail.

## § 3 SCOPE OF SERVICES

(1) The scope of services shall be determined by the components or other services described in more detail in the written order confirmation and also includes the software and technical documentation required for operation, if so agreed.

(2) Deliveries shall be made in the order in which orders were received. If, after the conclusion of contract, it becomes apparent that the entitlement to payment of Allied Vision is at risk as the result of the customer’s inability to pay, Allied Vision shall be entitled to withhold performance and any preparatory actions necessary for performance. The right to withhold performance shall no longer apply once payment has been made or security has been furnished. Allied Vision may set a reasonable additional period for the customer to make the payment/furnish the security. Once this additional period has expired and payment has not been made/security has not been furnished, Allied Vision shall be entitled to revoke the contract. For contracts relating to the manufacture of non-fungible goods (custom-made items), Allied Vision may declare revocation of the contract immediately; the legal provisions concerning the dispensability of specifying a period of time shall remain unaffected.

(3) Allied Vision reserves all property rights and copyrights in quotations, drawings and other documents; these may be made available to third parties only upon prior written release by Allied Vision. Any drawings and other documents that are part of an offer shall be returned promptly on request by Allied Vision if the contract

is not awarded to Allied Vision. The same applies, conversely, to the customer's documents. These, however, may be made available to third parties to whom Allied Vision has permissibly transferred deliveries and services.

- (4) If technical improvements are introduced after an order has been accepted, Allied Vision reserves the right to deliver the improved products.
- (5) If software is included in the scope of delivery, the customer shall be granted the non-exclusive right to use the software provided to it, including its documentation, for the purposes agreed. The software shall be provided to the customer specifically for use on the delivery item intended for this purpose only. All further rights are reserved.
- (6) The software provided by Allied Vision essentially corresponds to the product description. Claims for defects do not exist if the variance from the agreed or presumed quality is negligible and if usability is only insignificantly impaired. Product descriptions are not deemed to be guarantees without a special written agreement. For update, upgrade and new version deliveries claims for defects shall be limited to the alterations in the update, upgrade or new version deliveries compared to the previous version. Apart from that, the customer's claims for defects shall be determined by Section 8 of these GTC.

#### § 4 DELIVERY

(1) The delivery conditions are based on the 2010 International Commercial Terms (Incoterms® 2010). Provided there is no arrangement between Allied Vision and the customer to the contrary, the place of delivery in the event of Incoterms® 2010 EXW (Ex Works) and FCA (Free Carrier) clauses is the Allied Vision factory with the address:

Allied Vision Technologies GmbH, Taschenweg 2 a, 07646 Stadtroda/Deutschland, EXW or FCA Stadtroda, 07646, Taschenweg 2 a, Germany (Incoterms® 2010)

and/or

Allied Vision Technologies GmbH, Weisse Breite 7, 49084 Osnabrück/Deutschland, EXW or FCA Osnabrück, 49084, Weisse Breite 7, Germany (Incoterms® 2010)

The order confirmation stipulates which of the two aforementioned factory addresses serves as the place of delivery (place of execution) for the contractual relationship.

- (2) Allied Vision shall be entitled to make partial deliveries only if
  - the partial delivery is useful for the customer for the purposes of the contractually intended purpose,
  - the delivery of the remainder of the goods ordered is ensured, and
  - the customer does not incur any significant additional expense as a result (unless Allied Vision agrees to pay the costs)
- (3) Terms of delivery and delivery deadlines shall be confirmed by Allied Vision separately or agreed in writing with the customer and shall be binding only in such cases. Early delivery is permitted.
- (4) The beginning of the stated delivery time requires that all technical issues have been clarified.

- (5) Compliance with our delivery obligation shall furthermore be contingent on the customer meeting its contractual obligations properly and in a timely manner. We reserve the right to refuse performance until the other party performs.
- (6) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the losses incurred by us in this regard including any additional expenses. Further claims remain reserved.
- (7) Allied Vision shall not be liable for impossibility of delivery or delays in delivery due to force majeure or due to events that could not be anticipated at the time of the conclusion of the contract (e.g. interruptions of operations of all kind, strike and lockout, ban on exports and imports, failure to grant authorization, transportation delays, or if we do not receive our own deliveries, or receive incorrect or late deliveries), for which Allied Vision is not responsible. If such events make delivery or performance considerably more difficult or impossible for Allied Vision and if the obstruction is not merely transitional in nature, Allied Vision shall be entitled to revoke the contract. In the case of temporary obstacles, the delivery and performance deadlines will be extended accordingly.

#### § 5 PRICES AND TERMS OF PAYMENT

- (1) Prices are according to our current price list ex works pursuant to Section 4 (1), plus statutory value-added tax on the delivery date exclusive setup or assembly, inclusive packaging, provided that packaging does not exceed 0.5% of the merchandise value per shipment. Differing supply conditions (Incoterms® 2010) can result in a different cost-sharing.
- (2) We will ship the merchandise according to commercial practices and in sales packaging which is suitable for normal shipping. The customer shall be charged for special packaging requests.
- (3) Invoices by Allied Vision are payable net within 30 days after the invoice date. A payment shall be deemed to have been made on time, if Allied Vision can dispose of the credited amount without reservation. Legal provisions apply if the customer fails to make a payment.
- (4) The prices confirmed by us in the order confirmation shall apply only if the contractually agreed quantities are accepted.
- (5) If more than four months pass between the conclusion of the contract and the period of time agreed for the entire delivery or partial delivery, and if the cost of the delivery item is increased by more than 5 % after the conclusion of contract for reasons beyond the control of Allied Vision, especially due to price increases by the suppliers of Allied Vision, Allied Vision shall be entitled to increase the price appropriately for any partial deliveries that are still open. If the price increase applied by Allied Vision exceeds 5% of the price of the complete delivery, the customer shall be entitled to revoke the contract within two weeks after receiving the price increase notification from Allied Vision.
- (6) The customer shall be entitled to offset rights or rights of retention only to the extent that its claim has been finally and non-appealable established or is uncontested. In case of defective delivery, the customer's opposing rights in accordance to Section 8 of these GTC shall remain unaffected.

#### § 6 DISPATCH AND PASSING OF RISK

- (1) The risk of accidental destruction or deterioration shall pass to the customer with dispatching to the customer, and no later than when the goods are handed over to the carrier. This also applies in case of partial

deliveries and in case Allied Vision has agreed to pay the shipping costs as an exception. If acceptance is agreed, this shall govern the dispatch and passing of risk.

(2) It is understood that risk is passing even if although the goods are ready for dispatch, delivery is not made due to a circumstance caused by the customer. In this case, the prerequisite for the passing of risk is that the customer had been informed that the goods were ready for dispatch.

#### § 7 RETENTION OF TITLE

(1) Allied Vision shall retain title in the sold goods until all current and future claims arising from the contract and an ongoing business relationship (secured receivables) have been paid.

(2) The goods held under retention of title may not be pledged to third parties nor assigned by way of security before the secured receivables have been paid in full. The customer shall inform Allied Vision promptly and in writing if and to the extent to which third parties assert claims against the goods belonging to Allied Vision. If the third party is unable to reimburse Allied Vision for the cost of the legal proceedings and the out-of-court costs of a successful lawsuit by Allied Vision against asserted claims by the third party, the customer shall be liable for the loss incurred by Allied Vision.

(3) If the customer's conduct violates the contract, especially in the event of non-payment of the due purchase price, Allied Vision shall be entitled to revoke the contract in accordance with the legal provisions and request that the goods be returned on the basis of the retention of title and the revocation. If the customer does not pay the purchase price due, Allied Vision may assert these rights only if Allied Vision has first set a reasonable additional period or if the specification of such an additional period of time can be dispensed with in accordance with statutory requirements.

(4) The customer shall be authorized to resell and/or further process the goods that are subject to retention of title within the ordinary course of business. In this case, the following supplemental provisions apply.

(a) The retention of title extends to the products created by processing, mixing or combining the goods at their full value, where Allied Vision is considered the manufacturer. If the right of ownership by third parties remains in force when the goods are processed, mixed or combined with third-party goods, Allied Vision shall acquire co-ownership in the processed, mixed or combined goods in proportion to their invoice value. Apart from that, what applies to the goods delivered under retention of title shall apply to the resulting product as well.

(b) The customer assigns the receivables against third parties that arise from the resale of the goods or of the product to Allied Vision now already, as a whole or in the amount of the potential co-ownership of Allied Vision according to the previous paragraph, by way of collateral. Allied Vision accepts the assignment. The customer's obligations referred to in Section 7 (2) of these GTC shall apply in view of the assigned receivables as well.

(c) The customer remains authorized to collect the claim along with Allied Vision. Allied Vision undertakes not to collect the claim provided the customer meets its payment obligations to Allied Vision, does not fall behind in its payments, does not initiate insolvency proceedings, and there is no other impediment to its ability to make payment. If this is the case, however, Allied Vision can demand that the customer disclose to Allied Vision the assigned claims, provide Allied Vision with all information required for collection, hand over the relevant documents, and inform the debtors (third parties) of the assignment.

(d) If the realizable value of the collateral exceeds the receivables of Allied Vision by more than 10%, Allied Vision shall release securities at the customer's request and at Allied Vision's option.

#### § 8 LIABILITY FOR DEFECTS

- (1) Legal regulations apply to the customer's rights in case of material and legal defects (including wrong deliveries and short deliveries as well as incorrect assembly or defective assembly instructions), unless otherwise specified below. Special legal provisions that apply when the goods are delivered to the end consumer shall remain unaffected in all cases (supplier's redress).
- (2) The basis for the liability of Allied Vision for defects is the agreement concluded concerning the quality of the goods in particular. Product descriptions referred to as such that were provided to the customer prior to his order, or that were included in the contract in the same manner as these GTC, shall be deemed an agreement concerning the quality of goods.
- (3) If quality has not been agreed upon, the evaluation of whether a defect exists or not shall be carried out in accordance with the legal regulation. However, Allied Vision shall assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising messages).
- (4) Claims for defects by the customer require that it has duly met its inspection and complaint obligations. If a defect is apparent during the inspection or subsequently, Allied Vision must be notified of such defect in writing or in textform immediately. The notification shall be deemed to have been given immediately if it is sent within two weeks of discovery of the defect, whereby timely dispatch of the notification shall suffice for compliance with the deadline. If the customer fails to properly inspect the goods and/or give notice of defects, they shall be considered accepted.
- (5) If the purchased goods have any defects, AVT shall be entitled and obligated, at its discretion, to supplementary performance either by correcting the defect (making repairs) or delivering a new, defect-free item (subsequent delivery). The costs for supplementary performance, particularly transport, infrastructure, work, and material costs, shall be paid as follows: the customer shall assume the cost of transport to the Allied Vision support center pursuant to DAP (delivered at place) in line with Incoterms® 2010; Allied Vision shall assume all other costs, particularly the costs of the return shipment if there is, in fact, a defect, except for any taxes and tolls for the reimport of the goods in the customer's country of destination, and provided the costs do not increase because the goods were transported to a place other than the place where they were designated for use. The supplementary performance does not include upgrades to defective items or reinstallation if we were not originally obligated to carry out installation.
- (6) Allied Vision shall be entitled to make the supplementary performance owed by it contingent on the customer paying the purchase price due. However, the customer shall be entitled to deduct a portion of the purchase price that is appropriate in proportion to the defect.
- (7) If supplementary performance fails, or if an additional period for supplementary performance to be set by the customer has passed without success, or if it is dispensable according to legal regulations, the customer shall be entitled at its option to demand revocation or reduction. The right to revoke does not exist, however, if the defect is insignificant.
- (8) Warranty claims shall not apply in case of operator errors, in case of damage caused by operator error, unauthorized changes and interventions, at influences of foreign products, and for all other errors that are attributable to the sphere of the customer. Additional expenses as a result of such disturbances can be charged by Allied Vision.
- (9) The customer's claims for compensation or to be reimbursed for futile expenditures shall exist only in accordance with Section 11 of these GTC and shall otherwise be excluded.

(10) The period of limitation for claims for defects is 24 months for cameras and 12 months for accessories and starts upon delivery of the goods. In the cases of Section 11 (2) and (3), the statutory limitation periods apply.

#### § 9 INTELLECTUAL PROPERTY RIGHTS

(1) In accordance with Section 9, Allied Vision warrants that the deliverable is free from intellectual property rights or copyrights of third parties. Each contracting party shall inform the other contracting party promptly and in writing if claims are asserted against such party for the violation of such rights.

(2) In case the deliverable infringes upon a third-party industrial property right or copyright, Allied Vision shall, at its option and at its own expense, modify or exchange the deliverable such that it no longer infringes upon third-party rights but such that the deliverable continues to fulfill the contractually agreed functions, or shall obtain the right of use for the customer by concluding a licensing agreement. If Allied Vision does not succeed in doing so within a reasonable period of time, the customer shall be entitled to revoke the contract or reduce the purchase price appropriately. Any claims for compensation raised by the client shall be subject to the restrictions of Section 11 of these GTC.

#### § 10 PRODUCT WARRANTY

(1) Pursuant to the following provisions, Allied Vision warrants that the products delivered to customers shall be, depending on the product category, free from defects (so-called product warranty) for a certain period from delivery (so-called warranty period). The respective warranty periods for the relevant products are listed in the table, which can be viewed at the following link:

<http://www.alliedvisiontec.com/emea/support/warranty.html>

(2) This product warranty does not extend to defective sensor pixels that typically occur with CCD and CMOS sensors. A precise description of what can typically be expected in the event of defective pixels with CCD and CMOS sensors can be found in the AVT Sensor Warranty Terms that can be viewed at the following link:

<http://www.alliedvisiontec.com/emea/support/warranty.html>

(3) There shall be no claims from this product warranty

(a) if the product is damaged or there are signs of wear that stem from inappropriate use. Use is considered to be inappropriate in particular if the user deviates from the standard instructions and guidelines provided by Allied Vision in the technical documentation;

(b) if the product has damages that point to repairs or other modifications carried out in shops by the customer themselves or other persons that were not authorized by Allied Vision;

(c) if the product has damages that indicate the accessories or replacement parts were added to the product that were not authorized by Allied Vision; in particular, this includes the unauthorized use of chemical, electrical, or electrochemical substances;

(d) if the manufacturing number is removed or unrecognizable;

(e) if the damage involves normal wear and tear from age or use as a result of the standard use of the product.

(4) In the event the product damage is covered by the product warranty, Allied Vision shall, at its own discretion and its own cost, correct the defect by repairing it or substituting the defective parts by delivering new or rebuilt replacement parts.

(5) Any other claims by the customer against Allied Vision from this product warranty, particularly claims for compensation, are excluded. The assertion of contractual or legal claims by the customer against Allied Vision are not affected by the provisions of this product warranty.

(6) The prerequisite for asserting claims based on this product warranty is presentation of the original invoice with the purchase date by the customer. The customer shall assume the costs of transport to the Allied Vision support center pursuant to DAP (delivered at place) in line with Incoterms® 2010; Allied Vision shall assume all other costs and particularly the cost for return shipment, except for any taxes and tolls for the reimport of the goods in the customer's country of destination. The exact address of the support center will be communicated to the customer upon issuance of the RMA (return merchandise authorization) by the service team. Products sent to Allied Vision without an RMA will be returned to the customer at their expense.

(7) If the review of the product reveals that there is no product defect or that there is no warranty claim arising from one of the reasons specified in the foregoing paragraphs, Allied Vision shall be entitled to charge a service fee. The amount of this service fee can be found in the AVT RMA policy. This can be viewed at the following link:

[http://www.alliedvisiontec.com/fileadmin/content/PDF/Service/AVT\\_RMA\\_Policy\\_Summary\\_2013-March-01\\_English.pdf](http://www.alliedvisiontec.com/fileadmin/content/PDF/Service/AVT_RMA_Policy_Summary_2013-March-01_English.pdf)

(8) For all repairs that Allied Vision carries out, the provisions of the AVT RMA policy also apply.

[http://www.alliedvisiontec.com/fileadmin/content/PDF/Service/AVT\\_RMA\\_Policy\\_Summary\\_2013-March-01\\_English.pdf](http://www.alliedvisiontec.com/fileadmin/content/PDF/Service/AVT_RMA_Policy_Summary_2013-March-01_English.pdf)

#### § 11 LIABILITY

(1) Unless otherwise specified in these GTC including the following provisions, Allied Vision shall be liable in accordance with the relevant legal regulations in the event of a violation of contractual and non-contractual obligations. In accordance with this Section 11, the liability of Allied Vision for damages - for whatever legal reason, especially impossibility, delay, breach of contract, culpa in contrahendo, and tortious acts - shall be limited, to the extent dependent on a question of culpability, according to this Section 11.

(2) Allied Vision shall be liable to pay compensation - for whatever legal reason - in the event of intent and gross negligence. In the event of ordinary negligence, Allied Vision shall only be liable for

(a) damages arising from injury to life, body or health,

(b) damages arising from the breach of a material contractual obligation. Material contractual obligations are those obligations whose fulfillment allows the contract to be executed properly in the first place and compliance with which the contracting party regularly relies on, and is entitled to rely on. In the event of a breach of material contractual obligations however, the liability of ATV GmbH shall be limited to paying compensation for foreseeable, typically occurring damage.

(3) The limitations of liability arising from Section 11 (2) shall not apply if Allied Vision has fraudulently concealed a defect or guaranteed the quality of the goods. The limitations of liability arising from Section 11 (2) shall not apply to claims by the customer under the Product Liability Act.

(4) Compensation claims arising from tortious acts lapse when they become known, and claims arising from grossly negligent ignorance of the circumstances that give rise to the claim and the person liable for compensation in one year. In the cases specified in Section 11 (2) and (3) the statutory limitation periods apply.

(5) Insofar as the liability of Allied Vision is excluded or limited based on the above provisions, this shall also apply to the personal liability of the staff, employees, associates, representatives and persons used to perform an obligation of Allied Vision.

#### § 12 APPLICABLE LAW, PLACE OF FULFILLMENT, AND PLACE OF JURISDICTION

(1) The law of the Federal Republic of Germany applies to these GTC and to all legal relationships between Allied Vision and the customer. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

(2) The place of fulfillment for all liabilities arising from the contractual relationship is Stadtroda if the order confirmation contains the factory of Allied Vision with the address 07646 Stadtroda. The place of fulfillment is Osnabruck if the order confirmation contains the factory of Allied Vision with the address 49084 Osnabruck, Germany (cf. above Section 4 (1)).

(3) If the customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a public sector fund, the exclusive place of jurisdiction for all - even international - disputes arising directly or indirectly from the contractual relationship shall be the registered office of Allied Vision in Stadtroda. However, AVT is also entitled to bring action against the customer with the competent court that has general jurisdiction over the customer.

#### Note:

The customer acknowledges that Allied Vision shall store data from the contractual relationship for data processing purposes.

As of November 2014