

# General Terms and Conditions for Sale and Delivery of BIT Analytical Instruments GmbH

## 1. Scope of Supply

All our present and future sales and other supplies and services shall exclusively be governed by the following General Conditions of Sale and Delivery. Any deviating conditions or confirmations of the Contracting Partner shall be applicable only if and insofar we have expressly consented to them. Our mere silence with respect to such deviating conditions or confirmations shall not be construed as acknowledgement or consent. We hereby expressly object to all such deviating conditions or confirmations of the Contracting Partner.

## 2. Offer, Contract

**2.1** Our offers are always made without legal commitment. An Agreement is only contracted after we have given written confirmation of the order placement or if we have already delivered the goods.

**2.2** No verbal agreements are reached. Ancillary arrangements, commitments, amendments to contract and other diverging agreements are always to be made in written form.

**2.3** The quantity of goods delivered or services provided depends on our written confirmation. Written notification of the delivery of surplus quantities or short shipments must be given immediately within 3 (three) workdays, otherwise the shipment is considered as approved.

**2.4** Information on the item to be delivered or the service to be provided, such as weights, measurements, technical data etc. as well as presentations thereof are only non-binding product descriptions. The Contracting Partner placing the order undertakes to specify whether the order being placed is derived from product descriptions and if so, which ones. These only become binding if they have been explicitly confirmed by us in written form. Data and information in the shipment documents are carefully produced by us. For inaccurate information we are liable according to our general liability as set forth in Section 9.

## 3. Prices, Billing, Offset, Default in Payment

**3.1** All prices are in principle in Euro "ex works" and do not include the costs to be borne by the Contracting Partner of packaging and shipment and the respective value added tax required by law. Our prices only apply to the service and shipment agreed. Extra and special services are billed separately.

**3.2** The prices do not include taxes, fees, customs duties or similar levies imposed outside the Federal Republic of Germany on the business transacted. Should such levies be imposed upon us, we are entitled to bill the Contracting Partner accordingly. The same applies if, after contracting the Agreement, insurance costs and public duties such as those described above are newly launched or increased within the Federal Republic of Germany.

**3.3** Our invoices are net and due for net payment immediately, unless otherwise contracted. In objectively justified instances, we retain shipments for delivery against prepayment (for example with shipments to other countries). Payment by bills of exchange is in principle not accepted. Payment has only been effected in full after the amount of the bill plus all ancillary claims has been credited.

**3.4** The Contracting Partner is only allowed to offset claims or assert the right of retention if the counterclaim is undisputed or has been established by a judgment not appealable.

**3.5** In cases of default in payment and grounds to doubt the solvency or credit worthiness of the Contracting Party, we are authorized - notwithstanding our other rights - to call for prepayment or collateral for shipments not yet dispatched. Should payment or collateral not be made within an appropriate period of time set by us, we are entitled to cancel the Agreement and to demand damage. Outstanding duties to dispatch for consignments that await delivery are suspended for as long as the Contracting Partner defaults in due payment.

**3.6** If the Contracting Partner is in default, the amount in arrears is charged interest of 8% in excess of the basic rate of the European Central Bank. The right is retained to assert further damages. The Contracting Partner is entitled to furnish proof that no damage has been suffered or lesser damage.

**3.7** Objections to the billing of our deliveries and services must be filed in written form 2 (two) weeks at the latest after receipt of the bill. Failing such objection in the form and time period required, the bill is deemed to be approved.

## 4. Delivery Deadline, Delayed Performance

**4.1** The delivery dates and time periods for delivery and for providing the service are all agreed in writing. They start to run on the date of the order confirmation. In those cases in which shipment or service can only be carried out depending on the involvement of the Contracting Partner (e.g. because documents, plans etc. are required) or other involvement, the delivery deadline does not begin until such duty to involvement on the part of the Contracting Partner has been fully and correctly satisfied. If the shipment itself depends on the Contracting Partner's involvement, yet the Contracting Partner fails to meet this duty fully and accurately, the delivery deadline will be considered complied with if the Contracting Partner was notified of readiness for delivery inside the delivery deadline. The right is retained to assert damages caused by a breach of the duty to involvement.

**4.2** The Contracting Partner knows that the subject matter of our deliveries and services may consist of special components which are not always immediately available in the market and which cannot be replaced by other components because of the verification being required for them. We are not responsible for delays resulting therefrom, they are regarded as forth majeure according to para. 4.4 below. The same applies if technical problems arise in case of the development of an instrument for the Contracting Partner which are caused by faulty specifications of the Contracting Partner or in case of other technical problems which were unpredictable for us and if the Contracting Partner insists on a continuation of the development work despite of our warning that the production of the instrument might be uneconomically.

**4.3** If we are in default and the Contracting Partner is entitled to compensation for default our liability shall be limited to 0,5 % per week having begun, on the whole however not more than 5 % of the value of the part of the delivery or service which cannot be used in time or as agreed upon due to our default. This limitation shall also apply in cases of damage claims instead of performance or claims of reimbursement of fruitless expenses made according to statutory provisions. The limitation shall not apply in cases of liability for gross negligence and intent and in cases of injury of life, body and health of a person. The Contracting Partner is entitled to withdraw from contract according to other statutory rights if we are responsible for the delay.

**4.4** Instances of force majeure and other unforeseeable impediments at the time the Agreement was contracted (e.g. operational breakdowns, failure to keep the delivery date or shortfalls on the part of suppliers, deficiencies in energy or raw materials, road traffic difficulties and strikes, lock-outs and orders issued by the authorities), for which we are not responsible, discharge us from all duties to effect delivery or provide a service for the duration of the disturbance and to the extent of its repercussions. Should the impediment last for longer than 3 (three) months, the two Contracting Partners may cancel the components of the Agreement that are still outstanding, without being bound to compensate for damages.

## 5. Part Shipments, Partial Services

Part shipments and partial services are permissible.

## 6. Shipment, Transfer of Risk

**6.1** Unless otherwise agreed or otherwise instructed, we transport shipments uninsured and at the risk of the Contracting Partner.

**6.2** Once the goods to be delivered are handed over to the Contracting Partner, the forwarding agent, the haulage contractor or other parties appointed to effect shipment, at the latest, however, when the goods leave the works or the depot, the risk is transferred to the Contracting Partner. The same also applies if we effect delivery ourselves and/or have it carried out by our own staff.

**6.3** If shipment is delayed because we exercise our right of retention on the grounds of total or partial default in payment, or for another reason for which the Contracting Partner is responsible, the risk is transferred to the Contracting Partner at the latest from the date the Contracting Partner was notified of readiness for delivery. The Contracting Partner bears the costs of storage after the transfer of risk. The Contracting Partner undertakes to call for shipment immediately upon notification of readiness for shipment and delivery has been made. If goods that are ready for shipment are not called for and accepted immediately, we may choose to either dispatch the goods or to store them at the expense and risk of the Contracting Partner.

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6.4 Should the consignment be collected from the delivery depot, the Contracting Partner or its authorized parties are responsible for loading the vehicles. In this, compliance with GGVS

[Regulations on the Transportation of Hazardous Cargo by Road] is to be assured. For the delivery or collection of "loose" goods, the Contracting Partner is responsible for providing appropriate storage containers.

6.5 Where our staff is involved in an assisting capacity, however, they act at the sole risk of the Contracting Partner. Liability for injury to life, body or health thus caused and for gross negligence is not affected hereby.

### 7. Retention of Title

7.1 We retain title to the goods we deliver until the purchase price has been paid in full and all other claims derived from business relations are satisfied. If transfers have been made to an operating account, title to the goods is retained until the total balance has been settled in our favour.

7.2 If the goods in which we have retained title are assembled or mixed with other items or processed into a new product, the Contracting Partner herewith transfers co-title to said mixed stock or goods generated from procedures of mixing or processing to the proportion of the value of the goods in which we retain title to the other items at the time of mixing, combining or processing. At any rate, the Contracting Partner acts as custodian of the goods for us free of charge and is liable for all negligence. The thus generated rights of co-title are deemed to embody title to goods in which we have retained title.

7.3 The Contracting Partner is entitled to dispose of the goods in which we have retained title within the ordinary course of business. The Contracting Partner is not entitled to dispose of them otherwise, particularly not to assign them or use them as lien. If the goods in which we have retained title are resold but not immediately paid for by the third party, the Contracting Partner undertakes to point out the existing retention of title that exists in our favour to its customer. The Contracting Partner is only entitled to resell the goods if, for its part, it retains title thereto, on condition that our claim against the Contracting Partner in respect of these goods is satisfied.

7.4 The Contracting Partner hereby assigns all claims arising from the resale of the goods delivered under retention of title including securities and ancillary rights, in respect of the end contracting partner or third parties. The Contracting Partner is not permitted to enter into any agreement with his contracting partners that rules out or impairs our rights in any form whatsoever or which frustrates the advance assignment of the claim to us. If the goods delivered under retention of title are sold together with other items or as a part of joint ownership, the claim in respect of a third contracting party to the amount of the delivery price agreed by us with the Contracting Partner is deemed assigned, unless the individual amounts for the individual goods can be derived from the bill.

7.5 If the Contracting Partner receives claims from the resale of the goods delivered by us under retention of title on an existing operating account for payments from its contracting partners, the Contracting Partner hereby assigns its recognized final balance in our favour in the amount corresponding to the total amount of the claims transferred to the operating account from the resale of our goods to which we retain title.

7.6 The Contracting Partner undertakes to notify us immediately of all unauthorized third party access to the goods to which we retain title or to claims assigned to us.

7.7 If the value of the securities existing pursuant to the above provisions exceeds the secured claims by more than 10%, we undertake at the request of the Contracting Partner to choose the securities that may be released.

### 8. Intellectual Property Rights

The intellectual property rights concerning the products developed by us for the Contracting Partner remain with us unless otherwise expressly agreed upon between the parties. The Contracting Partner shall be granted a royalty-free, non-exclusive and transferable license for the use of the products and our intellectual property rights in connection with the products. The right to manufacture remains exclusively with us. A reproduction without our license in writing is not permitted.

### 9. Material Defects, Liability for Material Defects

9.1 Claims of the Contracting Partner with respect to material defects are subject to a limitation period of one year after delivery, assembly or repair of goods or services if not otherwise agreed upon. Claims for wearing parts with a shorter shelf-life or which underlie a shorter period of wear and tear are subject to a limitation period according to the shelf-life or the period of wear and tear of the wearing parts. In case of fraudulent concealment of defects, deliberate acts or giving of a guarantee for the condition of the goods the statutory limitation periods shall apply. The same shall apply to recourse claims coming from sales contracts for consumer goods of the Contracting Partner or his customers.

9.2 The Contracting Partner undertakes to have the delivered consignments and services inspected immediately either itself or by the designated recipient as its vicarious agent. The goods must be fully unpacked, Section 377 HGB [German Commercial Code] applies to the duty to inspect and file objection. Obvious defects – including deviations from the conditions of the goods as agreed – must be notified to us in writing without undue delay after delivery. Other defects must be notified in writing without undue delay immediately after they have been detected, at the latest, however, within the limitation periods stated in para. 9.1. Failure to report defects in due form and time shall be deemed approval of the goods.

9.3 The Contracting Partner undertakes to transfer title to all replaced and exchanged parts to us.

9.4 In case of justified complaints because of defects we shall at our option be obliged to replace such defective goods by faultless goods or to repair any defects at no cost for the Contracting Partner unless the expenditure of the remedy is disproportionate and a burdensome charge to us. In case of failure of the supplementary performance the statutory regulations shall apply subject to the following stipulations under 11.

### 10. Software

10.1 Insofar as software (e.g. maintenance software or control software) is included in the scope of delivery, we grant the ordering party a simple, non-exclusive and non-transferable right to use the respective software that is handed over. The right to use is considered granted with the orderly acquisition of ownership of the subject of the contract. The ordering party is only entitled to use the software handed over to it with regard to the subject of the contract and only for the total economic lifespan of the subject of the contract. The customer has no claim to handover of the source code of compiled programs unless this is required by law in a compulsory manner. Claims to the ordering party to services for installation, maintenance, upgrade, and support for the software are not founded by the license.

10.2 The ordering party is prohibited to provide, make available, or grant access to the software handed over to it and any associated user handbook to a third party with the exception of its employees. Furthermore, the ordering party may not duplicate the software or the documentation belonging to the software in whole or in part by means of photocopies, electronic storage, or any other process. A backup copy of the software is only available pursuant to the conditions in Section 69d subsection 2 of the German Copyright Act [Urheberrechtsgesetz]. The ordering party will apply the notice "backup copy" along with the manufacturer's copyright notice in a visible manner on any backup copy that is made. The backup copy is to be destroyed after the use has ended in a final manner.

10.3 The ordering party may not change labels, copyright notices, or information about ownership in any form on the handed-over software.

10.4 It is prohibited to disassemble, reverse-engineer, or decompile the software and the ordering party may neither induce nor allow this unless the conditions of Section 69e of the Germany Copyright Act are fulfilled; in this case the ordering party is to inform us in writing.

10.5 We are solely entitled to all ownership, copyright, and other industrial property rights to the software, updates, and documentation; the analogous applies to changes and translations of the programs.

10.6 We are entitled to carry out any necessary software updates at our own expense on account of third-party copyright claims at the ordering party. However, the customer cannot derive any claims from this.

10.7 The ordering party obligates itself to prevent unauthorised access or misuse by its employees and other third parties of the software and associated documentation with suitable preventative measures, in particular safeguarding of the original data media and backup copy at a place safe from unauthorised access.

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**10.8** Software from third party manufacturers may be a component of our delivery insofar as we make this recognisable in a corresponding manner. The scope of the rights to use this software arise as a matter of priority from the respective license terms of the third party manufacturer. The provisions above are applicable as a supplement. The license terms of the third party manufacturer are to be accepted by the ordering party; otherwise we are entitled to withdraw from the contract.

**10.9** The ordering party is not entitled to transfer its rights to use to third parties. The issuance of a sublicense is not allowed. If the ordering party sells the subject of the contract in the scope of its usual course of business to a third party, then the rights defined in this section 9 are transferred completely in the same scope solely to the end customer. With the sale of the subject of the contract, the seller or previous holder gives up its rights to use completely. The documentation and backup copy are to be handed over or destroyed. The ordering party is to subject the end customer to an analogous duty.

**10.10** The contractual partners are in agreement that technical errors in software cannot be excluded according to the current state of the art even when great care is applied. Thus, with regard to the software, we assume solely the duty to produce it according to our best knowledge and belief.

**10.11** For software that is unusable because of a defect we will, according to our choice, attempt to provide a temporary correction for the error or remedy the defect in a new version. A promise of complete rectification of defects cannot be given with a duty to warranty, either.

**10.12** We provide a warranty for third-party software in the scope of the delivery only to the extent that is assumed by the third party.

### 11. Liability

**11.1** If we have to accept responsibility for a damage due to statutory regulations and these General Conditions our liability is limited: We are only liable for violations of fundamental contract obligations. In any case any damage liability on our part is restricted to the typical damage which in view of the circumstances upon signing of this agreement was then foreseeable. Consequential damages with respect to objects unknown to us are generally unforeseeable for us. This limitation shall not apply in cases of liability for gross negligence or intent and in cases of injury of life, body and health of a person. In all other cases our liability for slight negligence is excluded.

**11.2** Regardless of 11.1 above our liability for fraudulent concealment of defects, for given guarantees or the assumption of a purchase risk or according to the Product Liability Law shall remain unaffected according to the statutory regulations.

**11.3** Our liability for default is finally settled in para 4.

**11.4** The personal liability of our legal representatives, vicarious agents and other members of the staff shall be excluded in all cases of slight negligence.

### 12. Statute of Limitation

Claims other than claims for material defects are statute barred after two years. For the beginning of the time limit the statutory regulations shall apply. This limitation shall not apply to our liability for intent, gross negligence, tort, according to the Product Liability Law and injury of life, body or health of a person.

### 13. Remaining Stock of Components

The components we purchase for the manufacture of an ordered product are considered to be ordered by order of the ordering party. The ordering party acknowledges that some components are special components that cannot be kept in inventory as stocks for general use or consumption and which are only available when minimum amounts are accepted. Should these components not be used or consumed for completion of the order after the preliminary or final ending of the contractual relationship, then the ordering party is obligated to purchase the remaining stock from us [at the actual cost of materials / at the actual cost of materials plus administrative costs]. The contractual relationship for the custom made order is considered preliminarily ended if no new order for production is issued within 6 month.

### 13. Place of Performance; Jurisdiction; Applicable Law

**13.1** Exclusive jurisdiction for all legal disputes is Frankfurt am Main. However, we are entitled to have recourse to the competent courts at the place of general jurisdiction of the Contracting Partner.

**12.3** All and any legal relationship between the Contracting Partner and us shall exclusively be governed by the laws of the Federal Republic of Germany. However, the UN Sales Convention (CISG) shall not be applicable.

### 14. Severability

If any clause in these conditions is or becomes invalid, the validity of the remaining conditions shall not thereby be affected. The Parties are obligated to replace the invalid clause by such valid clause which as closely as possible reflects the legal and economic purpose that the Parties hereto had pursued with the invalid clause.

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