

## GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND SERVICE

### § 1

#### Scope of application

- (1) The deliveries and services of Bruker Optik GmbH (“**Seller**”) shall be exclusively subject to these General Terms and Conditions of Sale, Delivery and Service as long as no other conditions have been expressly approved by the Seller in writing. These General Terms and Conditions of Sale, Delivery and Service shall apply even if Seller delivers the goods or accepts the order or performs services without reservation in the knowledge that Buyer’s general terms contradict or differ from Seller’s General Terms.
- (2) The General Terms and Conditions of Sale, Delivery and Service shall only apply if Buyer is an entrepreneur (as defined in § 14 German Civil Code (*Bürgerliches Gesetzbuch*)), a legal entity under public law or a special fund under public law.
- (3) These General Terms and Conditions of Sale, Delivery and Service shall also apply to all future contracts with Buyer regarding the sale and/or delivery of movable goods and/or services without Seller having to refer to them in each individual case.

### § 2

#### Offer, conclusion of contract

- (1) Seller’s offers shall be non-binding and subject to confirmation unless otherwise indicated in the offer. In the event of a binding offer from Seller, Seller shall be bound to the offer for a period of three months unless otherwise indicated in the binding offer.
- (2) Any statements made by Seller about the goods, in particular but not limited to colors, dimensions and weights, consumption and performance information as well as Seller’s visual representations in this regard (e.g. drawings and illustrations) shall be considered approximate unless the contractually agreed purpose to which the goods are to be intended requires precise compliance. These are not guaranteed attributes (“*garantierte Beschaffenheitsmerkmale*”), but rather descriptions or designations of the delivery. Deviations that are customary in the trade and deviations due to legal requirements or technical improvements are permitted as long as these do not hinder the usability of the goods for the contractually intended purpose.
- (3) Seller reserves ownership rights and copyrights to drawings, illustrations, plans and calculations (including cost estimates), product descriptions and other documentation. These documents shall be used exclusively for the contractual purpose, and must not be made accessible to third parties without express prior written permission from Seller.
- (4) Buyer’s order shall constitute a legally binding offer to conclude a contract.
- (5) A contract shall only take effect by way of a written contract confirmation by Seller (including by email). The content of this confirmation shall be binding for the content of the contract. If Buyer does not immediately object, the content shall be used as a basis for the contract. If no confirmation is issued, a contract (subject to these General Terms and Conditions of Sale, Delivery and Service) shall take effect by placing at disposal the goods or providing the services. In this case, Buyer shall waive the receipt of a written confirmation. The above declarations shall apply correspondingly in the event that Buyer later expands the scope of delivery or service.
- (6) When services are ordered (with the exception of the additional installation of the delivery item in the sense of § 8), Seller shall provide Buyer with the expected price of the service at the time the contract is concluded – unless the Parties have expressly agreed to a flat rate – as part of a cost estimate, where possible. If it is discovered during the provision of the service that this service cannot be provided for the price given in the cost estimate, or if additional work and/or additional materials are needed, Seller shall obtain permission from Buyer if the estimated prices are exceeded by more than 15%.
- (7) Technical protection devices are only included in the scope of delivery where required by law, or where expressly agreed between the Parties.

### § 3

#### Prices / payment conditions

- (1) Unless the Parties have agreed otherwise in individual cases, Seller’s

prices for deliveries shall be “EXW Ettlingen” (Incoterms 2010) plus any packaging costs.

- (2) The provision of services shall be invoiced on a time basis (per quarter hour or part thereof) unless the Parties have expressly agreed on a flat rate. For invoicing on a time basis, Buyer must also pay a “flat travel fee” for travel costs (including travel to and from the site) and accommodations (including hotel and per diem). If the Parties have agreed to an additional installation of the delivery item in the sense of § 8, separate compensation as per the above Sentences 1 and 2 shall not apply.
- (3) Prices are plus the applicable statutory value-added tax at the time when the invoice was issued.
- (4) In general the current prices at the time of the contract’s conclusion shall apply. Price adjustments are permitted if the period between the date of the conclusion of the contract and the agreed date for the delivery or provision of services is more than four months. If wages or material costs increase thereafter but before the delivery or service is provided, Seller may increase the price appropriately according to the cost increases. Buyer may only withdraw from the contract if the price increase substantially exceeds the increase in the general cost of living between the time of the order and the delivery or provision of services.
- (5) Unless otherwise agreed in individual cases, invoices must be paid without deductions within 30 calendar days of the delivery of goods or provision of services and the invoice date.
- (6) If the Parties have also agreed to the installation of the delivery item in the sense of § 8, the following shall apply in deviation from the regulation in Para. (5) with regard to the start of the payment period of 30 calendar days, unless otherwise established by the Parties in individual cases:
  - 30% of the gross contract value shall be payable after order confirmation
  - 60% of the gross contract value shall be payable after delivery of the goods
  - 10% of the gross contract value shall be payable after the transfer of risk (as a rule, acceptance (“*Abnahme*”) or default of acceptance (“*Annahmeverzug*”) by Buyer). Default of acceptance by Buyer shall take place at the latest 90 days after delivery if Buyer does not demand or permit the installation of the delivery item by this point despite a request from Seller.
- (7) Buyer shall be in default on expiry of the term for payment named in Para. (5) and (6) above. If Buyer is in default, Seller may demand default interest equal to the statutory interest rate. The right to assert claims for further damages shall not be excluded. Furthermore, in the event that Buyer defaults on at least two sequential (partial) payments, Seller may declare the entire balance owed due for immediate payment.
- (8) The above conditions shall apply correspondingly for partial deliveries in the sense of § 7 Para. (5).
- (9) Seller is entitled to perform any outstanding deliveries and services only against prepayment or with a security deposit if, after the conclusion of the contract, Seller learns of any circumstances that would significantly reduce Buyer’s creditworthiness and that threaten Buyer’s ability to pay Seller’s open claims from the respective contractual relationship.
- (10) All payments must be made in Euros.

### § 4

#### Special conditions for deliveries / services outside Germany

- (1) Buyer is hereby informed that, in the event of deliveries to a foreign country or services provided in a foreign country, Seller must comply with the applicable German legal provisions for foreign trade (e.g. Foreign Trade Law (“*AWG*”), German Foreign Trade Regulations (“*AWV*”).
- (2) If the goods will be delivered to a location outside Germany or the service will be provided in a location outside Germany, and if Seller is obligated to obtain an export permit, the effectiveness of the contract shall be subject to the condition precedent of the granting of an export permit. Upon request, Buyer must immediately provide Seller with all of the information and documentation needed to grant the export permit (including any end-use certificates).
- (3) Obtaining an import permit shall always be Buyer’s responsibility.
- (4) If the destination for the goods is outside Germany, Seller can request that suitable security deposits be provided, for instance in the form of irrevocable and confirmed letters of credit from a major bank.

- (5) Serious incidents, particularly cases of force majeure (e.g. embargoes, unrest, warlike or terrorist conflicts), that are beyond Seller's influence and that fully or partially prevent Seller from fulfilling its obligations shall release Seller from its obligation to deliver goods or provide services for the duration and scope of their effect. This shall not automatically nullify the contract. Seller must inform Buyer about the start of any such incidents. Sentences 1 through 3 shall apply correspondingly if Seller is undertaking an export and Buyer does not immediately provide the necessary information or documentation for the export once the export permit is obtained.
- (6) Buyer shall only use the delivery item for peaceful, non-military purposes.
- (7) In particular, Buyer must provide Seller with a hand-signed end-use certificate upon request. Buyer must ensure that the conditions of the end-use certificate are fulfilled. In the event that Buyer violates the provisions of the end-use certificate, Buyer is obliged to pay damage compensation to Seller.
- (8) The delivery item may be subject to (re-)export restrictions, for instance by the United States of America or the European Union. Buyer must observe these provisions in the event of a further sale or other export. Seller cannot be held liable for any violations by Buyer of the legal requirements to which Buyer is subject. If Seller suffers damages due to a violation of these legal requirements for which Buyer is responsible, Buyer is obliged to pay damage compensation to Seller.

§ 5  
**Retention of title**

- (1) Seller reserves ownership of the delivered items until payment for all claims that had already been incurred at the time the respective contract was concluded.
- (2) Buyer hereby agrees to adequately insure the goods subject to retention of title, at their replacement value, against damage from fire, water and theft at its own expense.
- (3) Where possible in the context of the ordinary course of business, the goods subject to retention of title shall be stored separately from the goods owned by Buyer or third parties, and shall be clearly identified as the property of Seller.
- (4) Unless other resale restrictions apply, Buyer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business even before the full acquisition of ownership.
- (5) Buyer's claims from the resale of goods subject to retention (including amounts due from insurance claims or claims arising from tortious acts in the event of loss or destruction) are hereby assigned to Seller in advance by way of security. Seller hereby accepts the assignment. Buyer shall be entitled to collect the assigned claims as long as it fulfills its payment obligations. In the event of a payment default by Buyer, Seller shall be entitled to revoke this collection authorization. In this case, at Seller's request, Buyer must provide Seller with all of the necessary information for collection, and must allow an authorized representative to review the status of the assigned claims as well as informing the debtors of the assignment.
- (6) If the goods subject to retention of title are processed by Buyer, it is hereby agreed that this processing shall take place in the name and on the account of Seller as the manufacturer, and that Seller shall directly acquire ownership or co-ownership (if the processing is performed from or in conjunction with materials from multiple owners or if the value of the processed item is greater than the value of the delivered goods) of the newly created item, in the relationship of the value of the delivered item to the value of the newly created item. To the extent that Seller would lose its title by way of a combination or mixture, or if it would not be considered the owner of the delivered item in the event of its processing, Buyer hereby transfers a co-ownership share of the resulting item to Seller in advance, according to the proportional value of the delivered item within the resulting item. Seller hereby accepts this offer. The handover shall be substituted by the item's storage free of charge.
- (7) Until the secured claims are paid in full, the delivery items subject to retention of title can neither be pledged to third parties nor assigned by way of security. Buyer must immediately inform Seller of any third-party access to Seller's property.
- (8) Seller hereby agrees, at the request of Buyer, to release the securities it holds, to the extent that these exceed the value of the claims to be secured by more than 10% if these have not yet been paid. The securities to be released shall be selected by Seller.

§ 6  
**Delivery**

- (1) Unless otherwise agreed by the Parties in individual cases, the goods shall be delivered "EXW Ettlingen" (Incoterms 2010).
- (2) If the delivery is delayed at Buyer's request, or if a delivery has been arranged on call and Buyer does not call off the delivery within a month of availability notification, the goods shall be safely stored or warehoused at Seller's facilities and at Buyer's risk and expense. In the event of warehousing by Seller, the warehousing costs (including insurance costs) shall be 0.5% of the invoice value for the delivery items to be warehoused, for each month or part thereof. The right to assert and demonstrate additional or lower warehousing costs is reserved.
- (3) Seller is not obligated to accept returned packaging of any kind. This excludes pallets, which can be sent back at Buyer's expense. Buyer must dispose of packaging at its own expense.

§ 7  
**Delivery period / dates for providing services**

- (1) The dates for deliveries and/or for providing services shall be agreed by the Parties. If the Parties have agreed to a delivery period, this period shall begin on the date of the order confirmation or – if no confirmation took place – at the time of placing at disposal the goods. The delivery period is met as long as the goods leave the plant or readiness for shipment is declared before the end of the period.
- (2) Compliance with all agreed delivery and service dates requires the timely receipt of all documents that are to be provided by Buyer, as well as the timely provision of all necessary information and the fulfillment of all other obligations by Buyer. If these requirements are not fulfilled on time, the periods shall be appropriately extended; this shall not apply if Seller is responsible for the delays.
- (3) If Seller recognizes that an agreed date cannot be met, Seller shall inform Buyer of this immediately.
- (4) Seller shall not be liable for delays due to force majeure or other incidents that were unforeseeable at the time when the contract was concluded (e.g. strike, operational disruptions, failure to receive supplies in good time, transport delays, poor weather conditions, etc.) and that are not the responsibility of Seller. The period and/or agreed dates shall be extended and/or shifted according to the length of each temporary hindrance of performance that is not the responsibility of Seller.
- (5) Seller shall be entitled to make partial deliveries to the extent that (i) the partial delivery can be used by Buyer in the context of the contractually intended purpose, (ii) the delivery of the remaining goods is ensured and (iii) Buyer does not incur any additional costs as a result.
- (6) Claims for compensation due to the inability to deliver goods or provide a service, or due to delays in delivery or provision of services, shall be limited as per the regulations in § 13 of these General Terms and Conditions of Sale, Delivery and Service.

§ 8  
**Installation / participation and technical assistance from Buyer during installation**

- (1) The Parties can agree when concluding the contract that Seller must install the delivery item (setup, assembly and startup) in addition to delivering it. In this case, the following Para. (2) through (6) shall also apply unless the Parties have established agreements to the contrary.
- (2) Buyer must provide Seller with appropriate support for the installation, at its own expense.
- (3) Buyer must take all necessary measures to protect people and objects at the installation site. If special safety measures must be taken, Buyer must inform the installation workers of such measures and must ensure that the installation workers follow these measures.
- (4) Buyer must provide technical support, particularly by:
- a) Providing suitable support teams in the necessary numbers and for the necessary amount of time. These assistants must follow the instructions of the installation workers. Seller shall not assume any liability for the support teams unless defects or damages arise as a result of the installation workers' instructions; in this case, the regulations in § 13 shall apply correspondingly;
  - b) Providing all of the necessary equipment and heavy tools as well as the necessary consumable goods and materials;

- c) Providing heating, general illumination, operating resources (especially power and technical gases) and water, including the necessary connections;
  - d) Undertaking all excavation, construction, foundation, scaffolding, plastering and other auxiliary work, including procurement of the necessary construction materials;
  - e) Providing the necessary dry, lockable rooms for storing the installation workers' tools;
  - f) Protecting the installation site and installation materials from harmful influences of all kinds, including cleaning the installation site;
  - g) Providing the materials and undertaking all other actions that are needed for calibrating/starting up the delivered item and for performing any contractually agreed tests. Where agreed by Seller and Buyer in individual cases, this provision shall particularly also include the provision of a data system that fulfills Seller's specifications and includes administrator rights for installing the spectrometer software. If Buyer has any questions regarding the provision of the data system, Buyer must clarify these with Seller in a timely manner before the agreed installation date (IT Department);
  - h) Observing the requirements given in a document to be provided to Buyer in individual cases for preparing the installation ("Site Preparation Specification").
- (5) Buyer's technical support must ensure that installation can begin immediately after the arrival of the installation workers and can be performed without any delays up through acceptance, if required. In particular, Buyer must ensure that all of the necessary delivery items for installation are present at the installation site before the start of installation. Buyer must provide Seller with any and all necessary information (especially information about the location of any covered power, gas or water lines or similar systems, as well as statistical information) before the start of installation, and must provide any necessary maps and instructions.
- (6) If Buyer fails to fulfill its obligations, Seller shall be entitled to set an appropriate grace period, after which it can undertake Buyer's obligations at Buyer's expense. However, Seller shall not be obligated to do so. Seller's statutory rights shall remain otherwise unaffected.

#### § 9

#### Participation and technical assistance from Buyer for other services

The regulations in § 8 Para. (2) through (6) shall apply correspondingly to the provision of other services.

#### § 10

#### Acceptance ("Abnahme")

- (1) To the extent that the Parties have agreed to an acceptance, Buyer must accept the service as soon as Buyer has been notified of its completion and a contractually agreed trial has been performed in the individual case.
- (2) In the event of a delay in acceptance for which Seller is not at fault, the service shall be considered accepted two weeks after it has been declared complete or ready for acceptance.
- (3) The above statements shall apply correspondingly if the service to be provided is the contractually agreed installation of the delivery item in the sense of § 8. In this case, the acceptance shall refer to the delivery item.

#### § 11

#### Reservation of right of withdrawal

- (1) In the event of a payment default by Buyer; an application to initiate insolvency proceedings regarding Buyer's assets; cessation or imminent cessation of Buyer's business operations; or a transfer of Buyer's business operations to third parties, Seller may withdraw from the contract according to the statutory provisions and to request the return of previously delivered goods. If Buyer does not pay the purchase price owed, Seller can only assert these rights if it has already set an appropriate payment deadline without result or if such a deadline is not required as per the statutory provisions. Seller can enter Buyer's premises for the purpose of requesting the return of the goods. After taking back the goods subject to retention of title, Seller shall be entitled to dispose freely of the reserved goods. The proceeds from realization shall be offset against Buyer's liabilities (minus appropriate realization costs).
- (2) Seller may withdraw from the contract if force majeure, strike or natural

disaster, or an incorrect or delayed delivery from an upstream supplier significantly hinders or prevents the delivery or provision of services and if this hindrance not caused by Seller is not merely temporary.

- (3) Seller shall be entitled to withdraw from the contract if Buyer has provided incorrect or incomplete information about the circumstances defining its creditworthiness.
- (4) Seller shall be entitled to withdraw from the contract if Buyer has provided incorrect or incomplete information in particular about the person of Buyer or the intended use of the goods, and if this information substantially threatens the purpose of the contract.

#### § 12

#### Offsetting / withholding / assignment

- (1) Offsetting with counterclaims by Buyer, and the withholding of payments due to such claims, shall only be permitted if the counterclaims are undisputed or legally established.
- (2) The assignment of Buyer's counterclaims shall only be effective with prior written permission from Seller.

#### § 13

#### Warranty ("Gewährleistung") / damage compensation / liability

- (1) No warranty ("Gewährleistung" in terms of German Civil Code) shall be provided for standard wear and tear for this type of contract (particularly for optical materials such as windows, crystals or optical radiation sources), for unsuitable or improper storage, use, handling or startup, or for a failure to observe the general and specific technical information (e.g. operating requirements, assembly instructions, etc.) found in the documents provided to Buyer (e.g. the user manual) and/or noted in the corresponding documentation.
- (2) Buyer must inspect the received goods for defects upon delivery. Any obvious defects must be reported to Seller in writing immediately, but no more than 10 business days (Monday through Friday) of the delivery; latent defects must be reported in writing immediately, but no more than 7 business days of their discovery. Otherwise the delivery shall be deemed to have been approved.
- (3) Buyer must give Seller an opportunity to review the complaint, particularly by making available damaged goods and their packaging to Seller for inspection. At Seller's request, the goods subject to complaint must be sent back to Seller within 14 days, carriage paid. In the event of a justified defect complaint, Seller shall reimburse the costs of the least expensive shipping method; this shall not apply if the goods are in a location other than the intended usage location.
- (4) If a defect is found in the item or the service, Seller shall be entitled to its choice of supplementary performance ("Nacherfüllung"), either by rectifying the defect or by providing a new, fault-free item or performing the service again. Supplementary performance in the event of a defective item shall not include the dismantling of the defective item or reinstallation if Seller was not originally contractually obligated to install the item.
- (5) The warranty shall not apply if Buyer modifies the delivery item without permission from Seller or has it modified by a third party, or undertakes or commissions improper modifications or measures to the subject of the service, thereby unreasonably hindering or preventing the defect rectification. However, Buyer shall bear the additional costs for defect rectification in every case resulting from such modification.
- (6) If supplementary performance is not possible or is refused, or fails or does not take place within an appropriate period defined by Buyer for other reasons that are Seller's responsibility, Buyer can also choose to withdraw from the contract or reduce the purchase price. A grace period is not necessary in cases where this is not required by law.
- (7) Further claims by Buyer, particularly for damage compensation in place of performance and compensation for other direct or indirect loss – including accompanying or consequential loss, regardless of legal grounds – are hereby excluded. This shall not apply if
  - (i) Seller has fraudulently concealed a legal or material defect or has provided a guarantee for its absence, or for a characteristic of the goods or services;
  - (ii) the damage is due to intent or gross negligence on the part of Seller, one of its legal representatives or assistants, or is due to a negligent violation of material contractual obligations on the part of Seller or these persons. Material contractual obligations are obligations whose fulfillment is material to due and proper implementation of the contract and which the contractual partner regularly expects and can trust to be fulfilled. However, in

- the event of simple negligence, Seller's liability for damages other than personal injury or damage to health shall be limited to the foreseeable loss typical for this type of contract;
- (iii) a culpable breach of obligations on the part of Seller or its legal representatives or vicarious agents has led to personal injury or damages to health;
  - (iv) Seller is liable under the German Product Liability Act ("*Produkthaftungsgesetz*").
- (8) The provisions as per the above Paragraph shall apply correspondingly to any direct claims by Buyer against Seller's legal representatives and vicarious agents.
  - (9) Contractual penalties (penalties for non-performance, flat-rate damages, etc.) to which Buyer is subject by a third party can only be claimed as damage compensation from Seller – regardless of the other requirements – if this has been expressly agreed in advance between Buyer and Seller and/or if Seller has been expressly informed in writing of a potential contractual penalty agreed between Buyer and a third party before the conclusion of the contract. For the avoidance of doubt, contractual penalties stipulated in Buyer's general terms are explicitly ruled out.
  - (10) In every case, the statutory provisions for final delivery to a consumer who is a private individual shall remain unaffected (supplier's recourse as per §§ 478, 479 German Civil Code).
  - (11) The above Para. 4 through 10 shall apply correspondingly if the delivery item violates a third party's industrial property right or copyright. As an alternative to the supplementary performance options listed in Para. 4, Seller shall be entitled to grant usage rights to Buyer by concluding a licensing agreement. The Parties shall immediately inform one another in writing (including by email) if they are subject to claims due to the violation of such rights.

#### § 14

##### **Limitation period**

- (1) All claims by Buyer, regardless of legal grounds, shall be subject to a limitation period – where legally permissible – of 12 months after delivery of the goods or performance of the service. If an acceptance ("*Abnahme*") has been agreed, this period shall begin upon acceptance.
- (2) The limitation period in the event of supplier's recourse as per §§ 478, 479 German Civil Code shall remain unaffected.

#### § 15

##### **Data protection / use of data from test measurements**

- (1) Buyer hereby acknowledges that Seller shall save data from the contractual relationship as per § 28 of the German Federal Data Protection Act ("*BDSG*") for the purpose of data processing and that it reserves the right to share this data with third parties (e.g. insurance companies) to the extent required for the fulfillment of the contract.
- (2) Seller is entitled to use any spectra created during test measurements with spectrometers at Buyer's, including the associated reference values, for its own purposes. In doing so, Seller shall ensure that third parties cannot establish any relationship between this data and its source.

#### § 16

##### **Disposal of electrical and electronic equipment**

If Buyer replaces a device that is subject to disposal as per the provisions of the "Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment" by making a new purchase from Seller, Seller shall be responsible for disposing of the old equipment. Otherwise, Buyer shall be responsible for disposal. Sentences 1 and 2 shall apply correspondingly to deliveries within the European Union.

#### § 17

##### **Place of fulfillment / jurisdiction / applicable law / language / miscellaneous**

- (1) Unless otherwise expressly agreed, Ettlingen shall be the place of fulfillment, as Seller's registered place of business.
- (2) The exclusive place of jurisdiction for all disputes arising from the delivery relationship – including internationally – shall be Ettlingen. Seller shall also be entitled to bring legal action against Buyer at Buyer's place of jurisdiction.
- (3) The laws of the Federal Republic of Germany are hereby agreed as applicable. The UN Convention on the International Sale of Goods (CISG) is hereby excluded.

- (4) If individual provisions of these General Terms and Conditions of Sale, Delivery and Service should be void or invalid in whole or in part, this shall not affect the validity of the remaining provisions. To the extent that the contract or these General Terms and Conditions of Sale, Delivery and Service contain omissions, these omissions shall be considered filled by the legally valid provisions that the contractual partners would have established if they had been aware of the omission, such valid provisions reflecting the commercial aims of the contract and the purpose of these General Terms..
- (5) The General Terms and Conditions of Sale, Delivery and Service are written in German and English. The English version is for informational purposes only and is not a component of the General Terms and Conditions of Sale, Delivery and Service. Thus in the event of deviations between the German and the English version, only the German version shall apply.

As of: June 2013