

## General Terms and Conditions

### § 1 General

- (1) The terms and conditions set out below shall form part of the agreement concluded with us.
- (2) Our General Terms and Conditions shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.
- (3) We hereby object to any counter confirmation, counter offer or other reference by the Customer to its general terms and conditions; any dissenting terms and conditions of the Customer shall only apply if we have confirmed the same in writing.
- (4) The Customer may not assign any claims arising from transactions with us without our written approval.

### § 2 Offers and Orders

- (1) Our offers shall not be binding unless made and accepted in writing; in particular with reference to price and delivery time.
- (2) Orders placed by the Customer shall not be regarded as accepted before these have been confirmed by us in writing. If we should fail to confirm an agreement in writing which we have entered into verbally or in a telephone conversation, then our delivery or invoice shall be regarded as confirmation.
- (3) In general the customer agrees on the environmental conditions fixed in our installation requirements. In case of absence of such installation requirements SPECS expects and the Customer agrees that the conditions at Customer's site shall be as stated in the manual or existing as per usual in German laboratories.

### § 3 Documentation

- (1) The drawings, specifications and all other documentation that shall have been and will be prepared by us in conjunction with this Agreement shall remain the property of SPECS which does and shall retain all and full copyrights therein. The Customer has only the right to use such documentation for the operation and maintenance of the technical plant and for the procurement of spare parts. If of the documentation, drawings and or other information provided by SPECS is to be used by the customer for any other purpose, the Customer shall inform SPECS in advance in writing and a Non-Disclosure Agreement (NDA) must and shall be signed before such any prospective use by the Customer and/or its agents and/or affiliates.
- (2) Customer reference information is only disclosed by SPECS in individual agreement with the listed customers. They shall not be used for the purpose of third party information.

### § 4 Prices

- (1) If not stated differently all prices given by SPECS shall exclude any statutory VAT which might be payable at the due date of respective invoices.
- (2) If, as a result of a change of law between the agreement date and the delivery date, additional or increased charges – in particular duties, levies, currency compensation payments, shall be payable, then we shall have the right to increase the price accordingly. The same shall apply to any fees for examination and/or inspections

### § 5 Shipment and Delivery

- (1) If not agreed differently the technical goods shall be transported and insured at the sole cost and risk of the Customer. Customer shall also bear the risk in cases of any delivery free of charge and regardless of which means of transport shall be used. Any separate transport insurance obtained by SPECS shall be provided only upon and after express written request of the Customer. Any costs of insurance and/or transportation arising therefrom shall be at the expense of the Customer only.
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- (2) The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable care and be without liability for the cheapest and fastest transport.
- (3) If the Customer provides the means of transport, then Customer shall be held responsible for its availability on time. SPECS shall immediately be informed of any delays in writing by the Customer. Any costs arising therefrom shall be at the expense of the Customer.
- (4) SPECS shall have the right to reasonable delivery in instalments.
- (5) SPECS' delivery obligation shall at all times be subject to timely and orderly receipt of the technical goods from our own suppliers.
- (6) Unless otherwise expressly agreed in writing, any indicated time of delivery or installation shall be non-binding.

## **§ 6 Acceptance**

- (1) SPECS shall notify the customer in writing as soon as the manufacturing of the instrument or component ordered by the customer is completed. In mutual agreement a factory acceptance test can be performed before shipping.
  - (2) In the event that SPECS performs an installation of the instrument or component on customer's site the customer is obliged to finalize the preparation of the laboratory according to the installation requirements provided by SPECS on ordering in time before arrival of the goods. All costs arising from delays or failures in the room and/or site preparation shall be borne by the customer.
  - (3) The customer and SPECS shall perform and complete the acceptance test within two months after arrival of the goods. In the event that such installation and acceptance cannot be completed after this period of time due to laboratory preparation issues as stated in paragraph (2) above or due to such other limitations on the customer's side, the system installation and acceptance shall be deemed to be satisfactorily completed.
  - (4) If major deficiencies shall be encountered and if the same shall cause a material adverse effect on the use of the technical plant or parts thereof,
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then the acceptance period and process shall be repeated. For such purposes we shall fix a date that shall be set as soon as possible after the date of the unsuccessful preliminary acceptance.

- (5) We shall prepare minutes of the acceptance; such minutes shall contain a list of deficiencies and a proposed deadline for the corrections, as required. The minutes shall contain the date at which the acceptance has been completed and shall be signed by both parties.
- (6) If the Customer starts to use the technical plant without an acceptance in due form and without an agreement with us then the entire technical plant shall be regarded as accepted.

### **§ 7 Warranty and Limitation of Liability**

- (1) The warranty term, within which claims may be raised shall be limited to 12 (twelve) months. The warranty, during this twelve month period, covers all repair costs, except transportation, customs, local handling fees and taxes.
- (2) Warranty starts with delivery or final acceptance of the system. In the event the final acceptance test is caused by delay caused by the customer, then the warranty period starts automatically 3 (three) months after delivery.
- (3) The Customer shall not be entitled to any further rights or remedies. In particular, by way of example, but without limitation, SPECS shall not be responsible for any claims of economic loss, compensation based on breach of contract or default. This limitation of liability shall also include the personal liability of employees, legal representatives and vicarious agents. Any liability according to § 1 of the German Product Liability Act shall not be affected.

### **§ 8 Unforeseen Barriers, Force Majeure**

- (1) In case, that due to force majeure or other unforeseen incidents or reasons in accordance with subsection § 5 (5) a delay in delivery cannot be avoided, SPECS is not obliged to comply with any agreed time for delivery and installation for the duration of this exceptional situation.
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- (2) If agreed delivery time shall be exceeded and not regulated in subsection (1) above, then the Customer must specify to us a reasonable cure period of minimum two weeks. If we shall fail to meet such deadline also, then the Customer shall have the right to cancel the agreement but shall have no other right to seek compensation for breach of contract or default except in cases of provable wilful misconduct or gross negligence on our part.
- (3) If, during the development and/or production of the instrument or component, SPECS encounters unforeseen physical or other barriers that may hinder or delay the agreed performance, then SPECS shall notify the Customer thereof by no later than 15 (fifteen) days. These circumstances relieve SPECS from the obligation to comply with any agreed time for installation.
- (4) If, during the development of the instrument or component, a case of force majeure should occur, then the affected party to this agreement shall immediately notify its counterpart of such event in writing; if possible, within 15 (fifteen) days after becoming aware thereof. It shall describe the event in detail and specify which contractual duties cannot be discharged or discharged without delay as a result of Force Majeure. The affected party shall not be responsible for the delay or inability caused by such incident.
- (5) If the delay as described in section (4) is expected to exceed 2 (two) months then the deliveries and services performed until date of notification including any uncompleted deliveries or services may, upon demand of SPECS, be invoiced and paid in accordance with the contracted prices.
- (6) With regard to “force majeure”, only incidences can be claimed, that are out of control of the active parties of the agreement. Especially incidences like acts of war (whether declared or undeclared), insurrection, revolution, rebellion, military or civil putsch, revolt, uproar, riot, blockade, embargo, government act, sabotage, strike, go-slows, lock-out, epidemic disease, fire, flood, storm, hurricane, heavy storm or other thunderstorm with disastrous effects, earthquakes, landslide, lightning, general shortage of fuel, heavy transport accidents.

## § 9 Payment and Transfer of Ownership

- (1) Our invoice amounts are net cash amounts and payable free of any deduction on the delivery or acceptance and upon receipt of the invoice unless other payment terms shall have been agreed.
  - (2) We shall accept promissory notes and cheques only by specific written pre-arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Customer and immediately payable.
  - (3) If the invoice amount shall not have been settled within 30 calendar days after the date of invoice or as at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in a proven amount but in any event an amount equalling 5% above the base rate of the European Central Bank.
  - (4) The Ownership of the component or system is transferred from SPECS to the customers on receipt of the final payment completing 100% of the final amount contracted.
  - (5) If the Customer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act or any bankruptcy proceedings shall have been petitioned or initiated, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Customer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the agreement.
  - (6) In the event of shortages or defects in the delivered goods or services, the customer is not entitled to withhold payment unless the shortages or defects are immediately obvious at delivery (e.g. shipping damage), in which case the customer has the right to refuse to accept the goods. Where there are shortages or defects in the delivered goods or services the customer is only entitled to withhold payment of an amount proportional to the value of the
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missing or defective items or services plus the anticipated costs of correcting the delivery (in particular the replacement and repair of missing or defective items). The customer is not entitled to obtain replacement or repair of missing or defective items if payments by the customer which have become due remain unpaid. The value of due payments may be up to the total contract value but will be reduced in proportion to the missing or defective items.

### **§ 10 Applicable Law**

- (1) If not agreed differently in writing between the parties, the place of jurisdiction is Berlin for all disputes arising from agreements with SPECS as well as with regard to any performance, actions and/or any other relationship between the parties and/or their agents.
- (2) The laws of Germany shall apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods. International purchase laws shall not apply.

### **§ 11 Changes, Validity and Data Protection**

- (1) Any and all amendments or supplements to any agreement shall only be effective when in writing. These documents shall be signed by both parties. Each party shall receive one copy thereof.
- (2) If a provision of this agreement shall be or become invalid, then this shall not affect the validity of the other provisions. The parties of this agreement shall co-operate to replace the invalid provision by a legally permissible and valid provision that shall achieve the result that should have been achieved by the invalid provision. This shall apply accordingly to any gaps in the agreement.
- (3) All stored data of customers are handled in accordance with the German Data Protection Act.