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Privates Institut für Umweltanalysen

General Terms and Conditions of Sale and Delivery

1. General

- a) All our general quotations, sales and deliveries are based on contractual conditions as stated below.
- b) All and any conflicting purchasing, delivery and payment conditions of the purchaser are already contradicted herewith. These are also not applicable even if they are contained in a letter of confirmation of the purchaser following our order confirmation, and we do not contradict in such because our silence shall be understood as being a rejection thereto. All and any oral agreements, including such by telephone, shall require our written confirmation for legal effectiveness. The same shall apply for all and any supplementary agreements and promises or assurances of our representatives and employees which are only then binding for us upon receipt by the purchaser of our written confirmation.
- c) Even in the event of contradictions in the preceding mutual contractual declarations or letters of confirmation, the contract shall be effective in any case in accordance with our contractual terms and conditions as stated here, following acceptance of our delivery or any other fulfilment performances.

2. Quotations

- a) The quotations of the seller are subject to confirmation and are non-binding. The order by the purchaser is a binding quotation. The seller can accept this quotation according to his choice within two weeks by sending a confirmation of order, or in such a way that the ordered goods are sent to the purchaser within a period of time. A contract can also be effective with the acceptance of the delivery by the purchaser after this period of time.
- b) Our prospectus material serves the purposes of information. All and any details stated therein are not assurances for any certain properties or characteristics and are non-binding.



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3. Prices / Technical Details

- a) Unless otherwise agreed, the prices are understood ex Ottendorf. They are based on the costs as applicable on the date of conclusion of contract. If the delivery period is more than 4 months, and in the event of belated introduction or increase of customs duties, taxes, freight, energy costs, wages etc., or in the event of an increase of our initial prices as a result of fluctuations in the rates of exchange, we are entitled to charge these to the purchaser – even if and when such costs become effective retrospectively.
- b) Cost estimates, drawings, technical documentation and similar material shall remain the property of the seller, even in such cases where they have been handed out before an order and are merely proposals for the solution to a problem. Without the explicit approval of the seller, these shall not be disclosed or made available to others. Usage is only allowed company-intern and only within the contractually stipulated limits. The seller retains the copyrights at all times.
- c) Shipping costs for specimens shall be at the expense of the purchaser. The specimens shall remain the property of the seller. All and any metal allowance costs shall be at the expense of the purchaser.

4. Shipment, Transport and Insurance

- a) Even if we have sold the goods carriage paid, FOB or C&F, the transport of the goods is nevertheless at the risk of the purchaser. In such cases where we select the mode of transport, the transporting person or the transport route, the goods travel at the risk of the purchaser under exclusion of all and any responsibility / liability on our part.
- b) Shipments will only be insured by us against transport damage when explicitly requested by the purchaser to do so. In such a case, the purchaser shall bear the costs for premiums and any expenses involved therewith.



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5. Delivery Dates / Right of Retention for Self-Delivery / Partial Deliveries / Default of Seller

- a) Dates of delivery will be stated in the order confirmation according to our best knowledge and as precisely as possible. The period of delivery begins with the receipt of the order confirmation by the purchaser, however, not before the purchaser has provided all documentation, approvals, releases and not before the receipt of an agreed down-payment.
- b) All strikes, lock-outs (also involving suppliers and sub-suppliers of the seller) and all other cases of force majeure, for which the seller is not responsible but which are to be notified to the purchaser, shall free the seller for the duration of their occurrence from the fulfilment of the contractually accepted delivery obligation. This shall also apply for unforeseeable and for the seller unavoidable operative disturbances. If it is impossible for the seller to render performance because of such events, he is be entitled to withdraw from the contract.
- c) If the seller, despite conclusion of a congruent covering transaction, is not supplied in due time or incorrectly by his supplier with the goods as ordered by the purchaser, and where the seller is not responsible for the incorrect or delayed self-delivery, the seller has the right to withdraw from the contract with the purchaser. If the incorrect or delayed self-delivery according to para. 1 involves only individual items of a uniform order of the purchaser, the seller shall also have the right to withdraw from the contract, unless the purchaser has an interest in partial fulfilment pursuant to the contract. If the latter is the case, the seller shall be rendered free from his performance obligation for those items which are affected by the incorrect or delayed self-delivery, without the necessity of any special or separate declaration or statement by the seller in this respect. The incorrect or delayed self-delivery is to be notified to the purchaser. If the seller withdraws, he shall be rendered free from his performance obligation for the duration of the delayed or incorrect self-delivery.



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In the event of a default of the seller, the purchaser can withdraw from the contract after expiration of an appropriate and reasonable additional

period, which must be combined and joined with the notification that the purchaser will reject the performance after expiration of the period, if the goods are not announced as being ready for dispatch before the expiry date. The delivery period only then commences when the seller receives the written stipulation of the additional period of the purchaser. A claim to damages due to non-fulfilment, which is to be selectively asserted to the right of withdrawal, only then exists if the default is based on at least gross negligence on the part of the seller. In the latter case, the claim for damages is limited to the contract-typical damage.

- e) Partial deliveries are acceptable.
- f) The delivery of service performances, development and research performances, software performances shall be regarded as realised if these have been submitted or sent to the purchaser in the agreed execution.

6. Invoicing and Payment

- a) Our invoices are payable without deduction within 14 days after issue. If payment is made ahead of time, the purchaser is not entitled to deduct discount. Bills of exchange and cheques, which we are not obligated to accept, shall be exclusively treated on the basis of fulfilment. Payment has been made only after such bills and cheques have been redeemed in cash.
- b) If the payment target deadline is exceeded we have the right, as from the due date, to demand payment of interest on delay to the value of 4% above the respective discount rate of the Deutsche Bundesbank (German Federal Bank), plus any expenses and costs pertaining thereto. In all cases, we have the right to withdraw from the contract or to demand compensation for damages for reasons of non-fulfilment if a payment deadline period of one week, fixed by us after the due date, is



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not adhered to. Our withdrawal will not affect claims for damages (e.g., due to fruitless expenditures, loss of profit etc.).

- c) If the financial circumstances considerably worsen after conclusion of the purchase contract, or if we find out later that they are considerably worse than we had assumed, we are entitled to make the delivery dependent on the advance fulfilment of all payment obligations of the purchaser – also from other deliveries on our part. If delivery has already been made, we are entitled to demand the return of the goods and to retain such until fulfilment of all payment obligations of the purchaser towards us. Demands, for which bills of exchange were given and which are overdue later, are due for payment immediately. The provisions of this paragraph are also applicable if we have taken in bills of exchange and we receive an unfavourable information on the financial circumstances of the accepting or issuing party.
- d) The purchaser can only offset such demands and claims which are determined as being undisputed or legally effective (*res judicata*). The purchaser has no right of retention.
- e) The seller has the right at all times to demand a down-payment, bank guarantee or anything similar.

7. Reservation of proprietary rights and title

- a) Our deliveries remain our property up to payment of all claims and demands – irrespective of the reason, particularly also from previous mutual transactions. With current account, the reserved property shall apply as a security for our balance claims. We have and retain the right of determination as regards to which parts of the overall liabilities the payments for account made by the purchaser are to be allocated.
- b) If the delivered goods are joined to another movable item in such a way that they are to be regarded as being a substantial part of a new item, the purchaser now transfers to us at this stage, on a quota basis, co-ownership of the new item. The purchaser exercises the ownership of the new item for us.



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- c) Provided the purchaser is not in default with regard to payment of the purchase price, he can sell further our delivery subject-matter in orderly business trade under reservation of property rights and title against cash or payment by a bill of exchange. As long as the reserved goods are in the hands of the purchaser, he shall treat and retain these for us with all the necessary care and diligence of an orderly businessman.
- The rights and claims incurred by the purchaser – including those for payment of damages or insurance performance - resulting from the further sale of the reserved goods or resulting from another legal reason concerning the reserved goods shall be assigned to us with all additional and supplementary rights, this being understood to mean to the full value of our entire claims towards him at the date and time of the further sale.
- d) If the purchaser sells the reserved goods together with others, he herewith assigns the claims from the further sale of the reserved goods to the full value, in the case of previous mechanical treatment or processing and/or mixing with goods not belonging to us to the value of the processed reserved goods. If such a sale takes place at an overall price, the purchaser assigns to us his purchase price claim to the value of the reserved goods which are the subject-matter of this purchase contract.
- e) The purchaser is obligated, upon our demand, to notify to the third party debtor the assignment to us, stating the value of our claim. He shall give all necessary information to us as well as hand out all documentation to us for the purpose of asserting our rights. If the value of the claims assigned to us exceeds our still outstanding total claims towards the purchaser by more than 20%, we are obliged, upon demand of the purchaser, to return the surplus part, in which case we have the right of selection.
- f) Pledging, chattel mortgage and assignment for security purposes of our reserved goods as well as of the rights to which we are entitled and other disposals by the purchaser affecting our rights are not allowed. Influential actions by third parties – whether these affect the reserved goods, the



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claims assigned to us or the rights as stated in the paragraphs above – shall be notified to us immediately by the purchaser and he shall give us at the same time all the documentation as necessary for an intervention. All costs of an intervention by us shall be at the expense of the purchaser.

- g) The assertion of the reservation of proprietary rights and title as well as the taking back of the reserved goods by us shall not be deemed as a withdrawal from the contract, but take place only to safeguard and secure our claims.

8. Licence Conditions for Software

Insofar as we also give software to the purchaser in connection with the sale of a plant (hardware) – irrespective of the fact whether operating system software or user software is involved – the following licence conditions shall be applicable:

- a) The purchaser receives the non-transferrable and non-exclusive right to use the software given by us as well as written documentation in relation to the equipment which are subject-matter of this purchase contract, and with which or for which the software is given. Copying of the software is only allowed for security purposes. Copying for other purposes, giving the software to third parties or distributing the software in any other form whatsoever is not allowed for the purchaser. All and any software extensions or alterations to the software itself or any other intervention in a program, based on the intention of the purchaser, shall be notified beforehand to us in good time and is not allowed without our explicit approval.
- b) We retain all rights with reference to the software, in particular the software remains – our exclusive intellectual property – in the sense of the copyright law, irrespective of whether the software is patented or not, in any other way protected or is not protected. Handing on the software or related written documentation to third parties shall require our prior explicit written approval.



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- c) The licence fee is included in the purchase price for the hardware.
- d) We are entitled to terminate without notice the licence relationship existing with the purchaser if the purchaser violates the licence conditions as stated above, and if the purchaser fails to reverse the violation within 15 days after receiving a warning from us and/or if he fails to eliminate his consequences or if he again violates the licence conditions despite a warning.
- e) With the sale of exclusive software products or performances, special conditions are applicable which are indicated with the respective goods. Point 11 applies for software development performances. The detailed licence conditions are shown in Annex 1.

9. Warranty for Deficiencies

- a) We give a warranty for the parts delivered by us for the duration of 6 months for an 8-hour-operation, day and night operation on a continual basis 3 months, assuming a contractual-related usage of the goods, calculated from the date of delivery. This is in such a way that all parts, which turn out to be unsuitable as a result of deficient material or poor workmanship, are repaired by us at our own expense at the purchaser's or as quickly as possible at our works or delivered anew. We accept no responsibility for damage resulting from natural wear. The customer bears the burden of proof that the deficiency existed at the time of delivery or that the deficiency did not occur particularly as a result of incorrect handling or caused by external influence. This applies also in such cases where alterations, improvement or repair work is carried out without our approval by the purchaser or by a third party. Point 9 c) applies for service, development and research performances.
- b) Detected deficiencies shall be notified to us immediately in writing. Evident deficiencies shall be reported within 8 days following delivery. Where complaints are concerned, the purchaser is not entitled to make any changes at our expense or to do any re-working without our approval. Objectionable parts become our property. For performed improvement/repair work or delivered spare parts, the liability exists only



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up to the expiry date of the guarantee period for the original delivery. The regulation on the reservation of proprietary rights and title shall also apply for subsequent deliveries (Point 7, above)

- c) With the delivery of services, development and research performances, these are to be accepted at the latest 4 weeks after delivery/handover by the seller. Deficiencies shall be notified in writing. Justifiable deficiencies will be eliminated by the seller within an appropriate and reasonable period of time. After this, the performance shall be deemed as completely accepted. If no deficiencies are notified within 4 weeks, the performance is deemed as accepted.
- d) If the repair or substitute delivery fails (e.g., because it is impossible, fails twice or fails to succeed within an appropriate period of time), the customer can, at his choice, demand a reduction of the remuneration or a rescission of the contract. We do not accept any further liability, particularly for damages of all kinds. This does not apply insofar as liability exists e.g., for personal injury or damage to privately used items according to the product liability law or in cases of intent, gross negligence or the non-existence of assured characteristics.
- e) Claims for damages by the purchaser from positive claim violation, from the violation of obligations during contractual negotiations and from non-allowed actions are excluded. This does not apply insofar as liability imperatively exists e.g., for personal injury or damage to privately used items according to the product liability law or in cases of intent or gross negligence.

10.Export

The delivered goods are subject to German and American export controls and export provisions. Their export from the Federal Republic of Germany is only allowed with the approval of the Bundesamt für gewerbliche Wirtschaft (Federal Office for Industry and Trade) in Eschborn/Taunus and the Office of Export Control in Washington. The purchaser shall pass on this instruction to his customers in order to warrant, insofar as it is in his power, adherence to the provisions all the way up to the final consumer.



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The seller draws attention to the fact that a violation against these provisions is punishable by law.

11.Services, Calculations, Expertise Reports, Approval Procedures,

Development and Research Performances and similar

- a) In principle, the same conditions are applicable as for the delivery of goods. The services, calculations, expertise reports and similar remain our property up to the full payment of such. If payment after a corresponding warning is not made, the seller can demand back all documentation and can forbid their further use. This also applies if the documentation is in the hands of governmental authorities, agencies or similar. All costs in this respect are at the expense of the purchaser. This does not free the purchaser from the overall payment obligation. For all and any damage occurring in this respect, the purchaser is liable to the full.
- b) The seller establishes the calculations, expertise reports, approval procedures according to his best knowledge and belief. The seller is in no way liable for consequential damage, non-issue of approvals and similar, except in a case where gross negligence on the part of the seller can be verified.
- c) The seller establishes development and research performances, software performances including the development of electronic components with the relevant software according to his best knowledge and belief. The seller is in no way liable for consequential damage, loss of production, non-issue of all and any approvals and similar (insofar as this is not explicitly agreed and described in the order or in the contract, respectively)

12.Supplementary provisions

- a) Should any provisions of these contractual terms and conditions be or become ineffective, the effectiveness of the remaining terms and conditions of the contract shall not be affected by such. The contractual



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parties shall carry out the contract with an effective substitute regulation which comes as closely as possible to the economic purpose of the ineffective term or condition.

- b) German law applies exclusively for the contract and its implementation. The application of the Uniform Purchasing Laws is excluded.
- c) Place of performance and payment is Ottendorf.
- d) Exclusive place of jurisdiction for all claims arising from the contract and its implementation is Chemnitz with the provision that we can also select as a place of jurisdiction the general place of jurisdiction of the purchaser and, according to our choice, we can bring a legal dispute, independent of the amount of the dispute value, to the local court as being competent in such a case.

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