

1. Application

- 1.1 Our terms of delivery shall apply to all legal transactions which are entered into with us. This also applies if our customer, in his correspondence with us, refers to his own general terms of delivery.
- 1.2 These terms shall also apply to any consulting or testing work carried out by us, no matter in which context or whether a fee is charged therefore or not.

2. Conclusion of Contract

- 2.1 No contractual relationship with our customers shall have been entered into until we have provided written confirmation of the order or a legally binding written agreement has been concluded with one of the employees of our company duly authorised to represent it.
- 2.2 Any agreements at variance with these terms of delivery shall only be valid if they have been set down in writing. This shall also apply to release the binding requirement of writing.
- 2.3 To the extent that it is reasonable for the customer, we reserve the right to carry out any technical alterations, in particular improvements of a minor nature. Moreover, we reserve weight and measurement differences within the normal limits of the business. The customer shall check the correctness of the order confirmation, particularly its compliance with the order, immediately upon receipt.
- 2.4 All photocopies, drawings, prices, measurements, recommended analyses or delivery periods contained in our catalogues, advertising brochures, price lists or other documents are approximations only and subject to alteration without notice, in particular in relation to price and delivery possibilities, and shall not be deemed to constitute a contractual offer within the meaning of Art. 145 of the German Civil Code.

3. Prices

- 3.1 Our prices are net ex works, excluding packaging and plus value added tax, as determined by statute from time to time.
- 3.2 The customer shall bear all other ancillary costs, such as possible insurances, export, import or other permits, bank charges etc.
- 3.3 If more than four months expire between the date of the contract and the date of delivery then we shall be entitled, unless an agreement to the contrary has been entered into, to charge those prices which are valid at the date of delivery. In the event that these are more than minor price increases the customer has a right to rescind the contract.
- 3.4 Unless an agreement to the contrary has been reached we shall be entitled to invoice our expenses for the erection, installation and/or assembly of the machines on site.

4. Risk

- 4.1 Goods shall be forwarded on the account and at the risk of the customer. Risk shall pass to the customer as soon as the goods have left our works (see § 15) or have been put at the disposal of the customer there or notification that the goods are ready for dispatch has been given.
- 4.2 We shall be entitled to take out insurance for the transportation of the goods and to invoice the customer for same unless the customer gives us contrary written instructions.
- 4.3 In the event that goods insured by us are damaged in transit we shall require a statement of the facts from the carrier or a certificate of average, as the case may be, to be provided without delay.

5. Delivery periods

- 5.1 Delivery periods are set out in our order confirmations and shall apply on the basis that all contractual obligations and preliminary performance requirements have been fulfilled by the customer, in particular, for example, the provision of documentation, approvals, clearances and payments on account, in so far as the latter have been agreed. The delivery period shall be deemed to have been complied with if, by the time of its expiry, the goods have been handed over to the forwarding agent or we have notified the customer that the goods are ready for dispatch.
- 5.2 In the event of force majeure or any other unforeseeable and unusual event which does not occur due to the fault of the parties, such as, for example, strike, lock-outs, difficulty in procuring materials, import and export prohibitions (including if these affect the supplier), then the delivery period shall be extended by that amount of time for which these unusual circumstances continue. If these circumstances make delivery impossible or unreasonable after the information of the customer we shall be released from the obligation to deliver. In the event that the delivery period is extended or we are released from our obligations to delivery, this shall not give rise to a right by the customer to claim damages against us.

- 5.3 If we do not dispatch the order or have it ready for dispatch within the delivery period stated by us, then the customer shall grant us an extension of at least six weeks during which time we must fulfil our delivery obligations.

- 5.4 If the customer suffers damage due to delay in delivery, which occurred due to our fault and taking into account Clause 5.3 above, he shall be entitled to assert a claim for damages for delay, to the exclusion of any further claims. For each entire week of delay this shall amount to 0.5% of the value of that part of the entire delivery which, due to the delay, could not be put into operation in time or in compliance with the contract, up to a maximum of 5% of such value.

- 5.5 If delivery is delayed at the request of the customer then storage costs shall be invoiced to the customer, commencing one month after notification of readiness for dispatch was given. Instead of the storage costs actually incurred, we shall be entitled to charge 0.5% of the invoice amount for each month that delivery is delayed.

- 5.6 We shall be entitled to make partial deliveries as long as it is not unreasonable to expect the customer to accept this.

- 5.7 In the event of default of performance or if a customer has, at the time of extending the time limit, expressly declared that, upon the expiration of such extension of time, he shall not accept delivery of the goods and the extended time limit is not complied with then the customer is entitled to rescind. In this event, unless we have caused damage either willfully or due to gross negligence, any claims other than those set out under Clause 5.4, above, are excluded.

- 5.8 If the customer is in financial difficulties, in particular if cheques or bills are dishonoured or protested, respectively, or if an application for the making of a Pauper's Oath has been made or if there has been or is to be a change in the ownership of the customer, then we shall be entitled to deliver the goods only against payment, even if other terms of payment were previously agreed.

- 5.9 If the customer defaults in accepting the goods we shall be entitled to rescind the contract or demand damages for non-performance. Without prejudice to additional claims we shall, without proof of damage, be entitled to claim 25% of the order price, plus value added tax, as damages unless the customer proves that we suffered substantially less damage. In this case the customer needs only pay the actual amount of damage suffered, plus value added tax.

6. Notice of Defects

The customer shall inspect the goods immediately after receipt for defects and if agreed, guaranteed characteristics, and report any identified defects without delay. The customer shall also inspect goods without delay upon delivery for transport and packaging damages, as well as quantitative and dimensional discrepancies. Deviations should be noted on the waybill or delivery note. Any defects not identifiable at that time should be reported in writing immediately after detection. If defects are not reported or are not reported in a timely manner, the delivered goods shall be deemed to be free of defects and in conformance with the contractual agreement. Agreed upon characteristics of a given product shall be only those characteristics, properties, qualities, performance data, functionalities or other attributes described in the performance specifications included in our order confirmation or the product description of the manufacturer. Public statements, promotional information or advertisements shall not constitute contractually binding information on characteristics of the goods. Deviations from a specification in the operating instructions or other functionalities described in the agreement shall be considered to be defects only if they significantly impair the use of the goods. Returns shall not be accepted without prior notice to us.

7. Warranty

- 7.1 In the case of defects, we shall remedy the defect or replace the goods at our discretion. If the remedy or replacement delivery fails the customer shall have the right to reduce the price or rescind the contract at his discretion. In the case of a minor breach of contract, in particular only minor defects, the customer shall not be entitled to rescind the contract. If the customer rescinds the contract as entitled following failed remedy or replacement delivery, he shall not be entitled to additional damages related to the defect. If the customer asserts a claim for damages after failed remedy or replacement, the goods shall remain at the customer's location insofar as this is reasonable. Claims for damages shall be restricted to the difference between the purchase price and the value of the defective goods. This restriction shall not apply if acted willfully.

Retsch Technology GmbH, Haan

General Terms of Delivery and Payment

- 7.2 For goods produced by third parties, our liability shall be limited to the assignment of claims to which we are entitled against our suppliers.
- 7.3 We shall not be liable except under applicable law for defects caused by normal wear and external influences or operating errors such as improper use. This exclusion of liability applies equally to defects caused by a modification of the goods that was not undertaken by us. We make no warranty that the delivered products will meet specific intended uses of the customer or work without problems or impairment in conjunction with other goods/devices of the customer or other manufacturers. Retsch Technology assumes no liability for consulting obligations. No warranty will be made with respect to calculation help, recommendations, proposed solutions, etc. that are dependent on or related to the customer's equipment or facilities.
Our warranty shall also be invalidated if individuals other than those commissioned by us perform repairs or other interventions or modifications on goods delivered by us, or if inappropriate accessories are used, insofar as the defect is caused by such performance or use. Compliance with our operating and use instructions is a necessary condition of the warranty.
- 7.4 If the goods are installed in and/or attached to or incorporated in, or processed in other systems or production facilities by the customer without our prior approval, our liability shall be limited exclusively to the components that we delivered.
- 7.5 Our warranty expires in 12 months starting from the passing of risk or acceptance. This warranty is based on single-shift laboratory operation. For multiple-shift operations, the warranty period will be respectively shorter.
- 7.6 The remedying of defects or replacement of defective parts shall, at our discretion, be carried out on site or at the seat of our company. If the repair is carried out on site the customer shall ensure that our employee or agent has access, unlimited in either time or space, to the purchased item. In addition, the customer may only demand that the work necessary to fulfil warranty obligations be carried out during normal business hours of the location where the work is performed. The customer shall bear the additional costs of any work carried out at the customer's request outside of our normal business hours.
- 7.7 In addition, with respect to software, we warrant that the software will comply in general with the program specifications, if it is installed according to our specifications on the hardware designated by us. Insofar as we make available to the customer software and interfaces, etc. as third-party products, our liability shall be limited to the assignment of claims to which we are entitled against the manufacturer and supplier. We warrant only those software defects that can be reproduced at any time. We retain the right to choose whether to remove defects through the installation of a corrected software version or by providing instructions on a work-around solution. We shall not warrant the software to work error-free in other than the specified combinations. To the maximum extent permitted under applicable law, we shall not be liable for damages arising out of the use of our software, without limitation to direct or indirect damages for personal injury, loss of business profits, business interruption, loss of data, or any other financial loss.
- 8. Other liability**
- 8.1 We shall be liable for damages insofar as they result from the wilful actions or gross negligence of our lawful agents or persons employed by us to fulfil our obligations or from the absence of contractual warranties or guaranteed characteristics of the goods that are intended to insure the customer against non-typical risks of damage. In the case of simple negligence we shall be liable only for breaches of essential obligations under the contract or if insurance protection exists, and limited specifically to typical damages that are foreseeable upon conclusion of the contract. Further subsequent damages are excluded from liability.
- 8.2 Liability of any type shall be excluded in the case of defects that are caused by external influences, such as voltage fluctuations, improper installation, wear, improper operation, use, servicing or modification to the goods by the customer or third parties commissioned by the customer.
- 8.3 Lump-sum payment of damages pursuant to §§ 280 (2), 286 of the German Civil Code, barring other agreements, shall be limited in amount to 5% of the purchase price.
- 8.4 The warranty claims described above do not relate to claims of the customer under product liability law. Furthermore, the limitations of liability shall not apply in cases of physical injury or harm to health or loss of life of the customer or his agents or other third parties caused by us.
- 9. Payment**
- 9.1 Payment shall be made net within 30 days from the date of the invoice. Payments for customer services are due within 14 days net. Payments are to be made without the deduction of a discount.
- 9.2 We shall be entitled to refuse to accept bills. Cheques or, if applicable, bills are only accepted pending payment in full. The customer shall bear all discount and bill charges and pay these immediately. We do not accept any liability for the timely presentation of the bill, nor for the timely lodging of a protest.
- 9.3 If the customer wholly or partially defaults in payment we shall be entitled to make all payment obligations immediately due and payable, irrespective of the terms of payment agreed or any accepted bills. This also applies for other not yet mutually fully valid contracts with the customer. Furthermore, we shall be entitled to demand the provision of security for all our claims or to make delivery dependent on a concurrent payment.
Independently thereof, upon default of payment the customer shall, without prejudice to any other default in payment, pay interest at the same rate as our bank interest rate. In any event the customer shall pay interest at a minimum rate of 5% above the applicable basic interest rate pursuant to § 247 BGB (German Civil Code) without the necessity of any proof, unless he can demonstrate that we suffered no damage or suffered considerably less damage.
- 9.4 The customer shall only be entitled to set-off or withhold payments if such set-off is in relation to counterclaims which are undisputed and have been finally and absolutely determined.
- 10. Retention of Title**
- 10.1 We shall retain title in the goods delivered ("Reserved Goods") until all our claims arising out of the business relationship with the customer have been settled in full.
- 10.2 Any work on or processing of the Reserved Goods is carried out by the customer on our behalf without any obligations on our part being created thereby. If the customer combines the Reserved Goods with goods not owned by us then we shall be entitled to co-ownership of the new goods in that proportion which the value of the Reserved Goods had to the value of the other processed goods at the time of the processing. In the event that our interests are thereby over-secured by more than 20% we undertake to provide an appropriate release.
- 10.3 The customer shall be entitled to process and on-sell the Reserved Goods within the framework of his usual business operation. He shall not be entitled to create a lien or a chattel mortgage over the Reserved Goods. The customer shall immediately notify us in writing of any encroachment on our rights, in particular liens, by third parties. The customer shall bear the costs of any intervention, including legal action, to the extent that these are not borne by the third party.
- 10.4 The customer hereby validly assigns to us his claims against third parties for the payment of debts arising from the sale or processing of the Reserved Goods. We hereby accept this assignment. The customer is revocably entitled to collect the debts as long as he fulfils the obligations arising out of the contractual relationship with us. The customer shall, upon being so requested by us, provide the necessary information for the collection of the assigned debts and shall notify the debtors of the assignment without delay.
- 10.5 The customer shall insure the goods at his own cost in such a manner that we shall be entitled to the rights from the insurance to cover our claims. If, despite being called upon to do so, the customer does not fulfil this obligation or does not provide proof of insurance, we shall be entitled to take out the insurance policy at the customer's expense. The customer may be required to provide proof of insurance at any time after delivery.
- 10.6 If the customer defaults in payment or if, based on fact, a suspicion is raised that the customer is or will be suffering from a deterioration of assets of if, despite repeated warnings, the customer significantly breaches his obligations arising out of the business relationship, then we shall be entitled to take the Reserved Goods into our possession and this shall not be deemed as rescission of the contract. The customer irrevocably declares that the consents to the collection of the goods by a person employed by us. During the time in which the Reserved Goods are stored by us we shall be liable only for acts committed wilfully or with gross negligence. We shall be entitled to payment of appropriate storage fees.
- 11. Acceptance**
- 11.1 If the customer does not accept the goods within 14 days after receipt of a notification of readiness for dispatch we shall be entitled to impose an extended time limit of 14 days containing a declaration that, upon expiry of this time limit, we shall no longer deliver. Upon

the expiry of this time limit we shall be entitled to rescind the contract without written notice and claim damages for non-performance.

- 11.2 If the customer has seriously or definitively refused to accept the goods or is clearly not in a position to pay the purchase price if an extension of time is granted then we shall not be under a duty to call upon acceptance or to set an extended time limit. If we claim damages then, in the absence of substantive proof of damage, we shall be able to claim damages of at least 15% of the purchase price.

12. Infringement of Patents

If a third party asserts a justified claim against the customer as a result of a violation of an intellectual property right, a patent, an industrial design right, or a copyright (hereinafter referred to as "property rights") through goods delivered by us or through their use according to contract, we shall be liable to the customer only based on the following conditions:

- We shall at our discretion and expense either obtain a right of use for the goods, modify the goods in such a way that the property rights are not violated, or replace the goods. If these options cannot be accomplished under reasonable conditions, we shall accept a return of the goods against reimbursement of the purchase price.
- The obligations described above exist only if the customer notifies us immediately in writing of claims asserted by the third party, does not acknowledge a violation of property rights to the third party, and reserves to us all rights with respect to defence measures and settlement negotiations. If the customer discontinues the use of the product for mitigation or other reasons, he shall be obligated to notify the third party that the discontinuation of use shall not constitute acknowledgement of a violation of property rights.

Claims from the customer related to property rights violations shall be excluded, insofar as the customer is responsible for the violation. Claims shall also be excluded if the violation is caused by a specific instruction of the customer, an application that was not foreseeable to us, or if the goods were modified or used together with devices that were not delivered by us. Further claims against us shall be excluded, unless we are liable to the customer under applicable law. The right of the customer to withdraw from the agreement under the conditions described above shall remain intact.

If the goods are produced and delivered in a process or design specifically prescribed by the customer, the customer shall assume responsibility for ensuring that the design shall not violate the rights of third parties, particularly patents, designs, and other industrial property rights and copyrights. The customer shall release us from all claims brought by third parties as a result of such a violation.

Software rights: The customer shall be given a non-exclusive, non-transferable right of use for the software programs and related documentation required for the correct use of our products, which shall be valid for internal use of the products. Further rights to software programs and documentation shall not be granted to the customer. We retain all rights of ownership and copyrights. The disclosure, duplication or other reproduction, decompilation, disassembly, or reverse engineering of our programs, documentation, or subsequently delivered updates shall be prohibited without our prior written approval.

13. Information and Consultation

- 13.1 Unless a written contract for consulting or engineering services is expressly entered into any oral consultation and information provided by us shall not give rise to a consulting contract. In this event the consultation and information are provided to the best of our knowledge and belief; the liability in these cases is ruled in sec. 7.3.
- 13.2 For the preparation of customer samples Clause 13.1, above, shall apply analogously. In this regard, however, we shall be entitled to rely on the details provided by the customer in this context, in particular in relation to their completeness. The German public law safety regulations valid from time to time shall apply to samples of materials which have been sent in, as well as for machines or parts which have been sent in for repair or examination, and which are contaminated with samples. In particular, dangerous goods are to be identified accordingly.
- 13.3 Samples of materials and/or customer samples shall be delivered by the customer free of charge. We shall be entitled to destroy any samples of materials where no request for return is made at the time of delivery or within four weeks of them having been sent in.

- 13.4 At the request of the customer, samples of materials shall be analysed free of charge in our laboratory on the condition that this service is taken advantage of due to a genuine interest in making a purchase and an appropriate cost is not exceeded. Otherwise we shall be entitled to invoice the customer at an appropriate rate for each working hour. The deliverer of the goods shall bear all risk in connection with the transport, storage and preparation of the samples. This applies in particular to damage caused by the sample itself or through its combination with any contact substances (poisonous, corrosive, explosive materials etc.) where the sender has not expressly advised of these dangers in writing. The same applies to the disappearance of the sample.

- 13.5 Customer data will be processed and used in the scope necessary for processing of orders and potential returns. If the customer provides us with his email address, he shall be deemed to have given consent to receiving information by email. The email address of the customer can also be used to send information regarding orders and our own products. The use and processing of personal data of the customer can be revoked at any time by the customer.

14. Handling & Disposal of Used Devices

With respect to used devices and their components, the customer is obligated to handle and/or dispose of the goods received from us in accordance with statutory requirements as a manufacturer. The same obligation including acceptance of returns, applies to the customer as the seller of the goods with respect to third parties, who should be notified of this obligation upon transfer of the goods. The customer releases us from all claims and costs that are incurred by us due to a failure to comply with the obligations regarding handling, acceptance of returns, and disposal of goods purchased from us. The customer shall be free to elect, at his own expense, to accept returned used devices and/or their components and to dispose of them, or to reimburse us for verified costs of disposals that we authorize. The above obligations and release of claims and costs shall not expire prior to two years after the final termination of our business relationship.

15. Place of Performance, Jurisdiction, Severability Clause

- 15.1 Place of performance with respect to the delivery of the products for direct deliveries shall be the respective works of our supplier, respectively its European office; otherwise our company location (Haan/Rheinland). German law shall exclusively apply on all contractual obligations and claims. The application of the UN-Convention Relating to a Uniform Law on the International Sale of Goods (CISG) is hereby expressly excluded.
- 15.2 The applicable Court at the place where our company has its seat shall have exclusive jurisdiction over all disputes with our customers which arise out of these contractual provisions. We reserve the right, however, to commence proceedings against our client in his usual jurisdiction.
- 15.3 In the event that one or more of the provisions contained in these General Terms of Delivery or the other contractual terms entered into with the clients is or becomes invalid then this shall not affect the validity of the remaining contractual terms in so far as these are lawful. In particular, the customer shall not be released from his order.