

General – Scope

These General Terms of Sale and Delivery apply to all sales and deliveries to customers of MIPM - Mammendorfer Institut für Physik und Medizin GmbH, Oskar-von-Miller Str. 6, 82291 Mammendorf, Germany.

Our Terms of Sale and Delivery apply exclusively; we do not accept contrary or deviating customer terms, unless we have expressly accepted their validity in writing. Our Terms of Sale and Delivery also apply if we carry out the delivery without reservations in the knowledge of customer terms contrary to or deviating from our terms of sale and delivery terms.

All agreements made between us and the customer for the performance of this contract are recorded in this contract.

Our Terms of Sale and Delivery apply only to entrepreneurs within the meaning of § 310 (1) BGB [German Civil Code].

Offer - Scope of Delivery - Offer Documents

Our offers are always non-binding. The orders are deemed accepted upon confirmation or upon fulfillment by us.

For the scope of delivery, our offer is decisive. Weight and size specifications in brochures and offers are not quality guarantees. We reserve the right to reasonable execution deviations and design changes. The functions of the offered software are limited to the specifications in our service description. As long as it is acceptable for the customer, we reserve the right to use as-new or as-new reprocessed parts.

Technical norms are used solely for the description of services unless we accept an express guarantee of compliance with a technical norm. Quality or durability guarantees require written form.

We reserve all unlimited property protection rights, copyrights and industrial property rights on figures, drawings, calculations and any other documents, whether in tangible or intangible form - including in electronic form. This also applies to such written documents designated as "confidential". Before forwarding them to third parties, the customer requires our express agreement in writing.

Software

Insofar as software is included in the scope of delivery, we hereby grant the customer a non-exclusive, non-transferable and non-sublicensable right of use according to the following terms. The information in the supplied documentation on the intended use of the software shall be strictly observed.

If software is delivered as component of a piece of equipment or for a certain piece of equipment, the customer may use it only with the designated piece of equipment. The use of that software with another piece of equipment requires our express agreement in writing.

Insofar as we do not expressly grant the customer a multiple license, the customer receives a single license on the software, i.e. the software can be only be used on a single terminal at one time. In the case of a multiple license, the customer has to strictly observe the instructions submitted by us.

The customer is not entitled - not even for backup purposes - to make copies of the software.

The customer is not entitled to modify, reverse engineer or translate the software, remove parts of it or merge it with other programs. The customer may not remove identifiers and manufacturer information from the software or the related media. The software acquired together with a piece of equipment may be resold only with the related piece of equipment. In the case of resale, the customer may not retain any copy of the software. Multiple licenses may be resold only as a whole.

Insofar as we provide to the customer Open Source Software or other third-party software, i.e. software for which we own only a derived utilization right, the conditions of use agreed between us and the licensor apply additionally and shall take precedence. We provide these to the customer upon request. In the case of a breach of these terms of use by the customer, not only we, but also the licensor, are entitled to assert claims and rights arising therefrom in their own name.

Prices – Payment Terms

Unless otherwise stated in the order confirmation, our prices are "ex works" (EXW Incoterms 2010); the costs of packaging, dispatch, freight, customs and insurance shall be borne by the buyer

Statutory VAT is not included in our prices; it is stated separately on the invoice at the statutory amount on the invoicing date.

Unless otherwise stated in the order confirmation, the purchase price is payable net (without deduction) upon receipt of the invoice. The statutory regulations on payment default shall apply. The payment-related costs shall be borne by the customer.

The deduction of discount requires separate agreement in writing.

We reserve the right to ask for advance payment or provision of security of the amount of the invoice value of the delivery and to withhold our service if, after conclusion of the contract, circumstances occur or become known which give rise to justified doubts as to the solvency or willingness of the customer.

The customer is entitled to rights of set-off only if his/her counterclaims are finally adjudicated, undisputed or acknowledged by us.

Transfer of Risk – Delivery Period

Unless otherwise stated in the order confirmation, the delivery is agreed as "ex works" (EXW Incoterms 2010). We are always entitled to partial deliveries.

We will cover the delivery by a transport insurance policy; the costs incurred in this respect will be borne by the customer. The customer can reject the conclusion of a transport insurance policy.

The beginning of delivery time as presented by us presupposes the clarification of all technical issues.

The fulfilment of our delivery obligation also presupposes the timely and proper fulfilment of the customer's obligation. The right to raise objection against the non-performance of the contract remains reserved.

Delivery time is met if the delivery item has left our factory before expiration of delivery time or we have notified the customer of readiness for dispatch. Inasmuch as an acceptance procedure must be followed, the acceptance date shall be decisive - except for a justified refusal of acceptance, or alternatively, the notification that the goods are ready for acceptance.

If the customer delays acceptance or otherwise culpably breaches duties of cooperation, we will be entitled to demand compensation for the losses we incur in this respect, including any extra expenditure. Additional claims and rights shall be reserved.

In the case of software transfer by means of electronic communications media (e.g. via the internet), the risk is transferred when the software leaves our scope of influence.

As long as the conditions from paragraph 5 and paragraph 7 exist, the risk of accidental loss or deterioration of the purchased item will pass to the customer at the moment in which he/she enters default of acceptance, refusal or debtor's default.

We are liable in accordance with statutory provisions insofar as the delivery delay is founded on an intentional or grossly negligent contractual violation on our part; a fault on the part of our representatives or vicarious agents can be attributed to us. Insofar as the delivery delay is founded on an intentional or grossly negligent contractual violation on our part, our liability for compensation is limited to the foreseeable damage that may typically occur.

We are also liable in accordance with statutory provisions insofar as the delay in delivery is based on a culpable violation of a material contractual obligation; in such case, however, our liability for compensation is limited to the foreseeable damage that may typically occur.

The customer's further statutory claims and rights remain reserved.

Warranty

Customer claims arising from defects assume that the customer has, in accordance with § 377 HGB [German Commercial Code], duly satisfied his/her obligations of inspection and notification of defects. Otherwise, customer claims can be only be made if the purchased item, insofar as this is prescribed in the instructions for use, was subjected to the necessary safety checks and maintenance activities carried out by us or by a party authorized by us.

Repairs and other modifications of the purchased item, made by the customer him/herself or by a third party, without our prior express consent, are not included by our warranty obligation, unless we have culpably not met our obligation or we unjustly refused it. The costs of such unauthorized repairs of the purchased item shall not be compensated for by us. We do not provide warranty for damages of the purchased item, caused by nonconforming operating conditions, overload or improper handling.

All parts that prove to be deficient within 24 months of delivery due to circumstances which occurred before the transfer of risk, shall be, at our discretion, repaired or replaced by us free of charge. Unless otherwise agreed, the attributes of the purchased item due under the contract shall be solely as set out in our product specifications which were valid at the conclusion of the contract. Replaced parts shall pass into our ownership.

For repaired or replaced parts, the warranty period is 6 months, however it runs at least until the expiration of the original warranty period for the purchased items of 24 months after transfer of risk.

Insofar as the supplementary performance, has, in our opinion, to be carried out in our factory, the customer has to send the purchased item to us according to our instructions. In this case, we bear the cost of transport and transport insurance.

If the supplementary performance is ultimately unsuccessful, the customer can, at his/her discretion, withdraw from the contract or reduce the purchase price.

Liability

We are liable in accordance with statutory provisions insofar as the customer asserts damage compensation claims based on intention or gross negligence, including intention or gross negligence of our representatives or vicarious agents. As far as we are not accused of willful breach of contract, the liability for compensation of damages is limited to foreseeable, typically occurring damages.

We are liable according to the statutory provisions if we culpably breach a material contractual obligation; in this case the liability for compensation for damages is also limited to foreseeable, typically occurring damages.

Insofar as the customer is entitled to claim compensation for damages in place of performance because of negligent breach of duty, our liability is limited to the compensation of foreseeable, typically occurring damages.

Liability on account of culpable injury to life, limb or health shall not be affected; this also applies to mandatory liability in accordance with the product liability law.

In other respects, customer damage compensation claims for direct and indirect losses, including incidental or consequential – regardless of the legal ground – are excluded.

The limitation according to paragraph 5 also applies if the customer claims compensation of unnecessary expenditure, instead of claiming compensation for damages in place of performance.

Insofar as the liability for compensation against us is excluded or restricted, this shall also be valid with regard to personal liability for compensation of our employees, workforce, staff members, representatives and vicarious agents.

Retention of Title

We reserve title to the purchased item until receipt of all payments from the delivery contract. In the case of customer behavior contrary to the terms of this contract, in particular in the case of default of payment, we are entitled to repossess the purchased item. Our repossession of the purchased item constitutes withdrawal from the contract. On repossession of the purchased item, we are entitled to utilize it and the revenue from its utilization will be offset against the liabilities of the customer – minus reasonable utilization costs.

The customer is obliged to treat the purchased items carefully; he/she is particularly obliged to insure such merchandise at his/her own expense against damage by fire, water and theft at the original value. Provided that service and inspection works are required, the customer has to carry out such work promptly and at his/her own expense.

In the case of seizure of the goods or other interventions by third parties, the customer is to inform us in writing without delay so that we can institute a claim according to § 771 ZPO [German Civil Practice Act]. Insofar as third parties are incapable of reimbursing us for judicial and extrajudicial costs for an action as per § 771 ZPO [German Civil Practice Act], the customer is liable for the loss we incur.

The customer is entitled to resell the purchased items in the ordinary course of business; however, he/she herewith assigns to us all claims to the amount of the invoice sum total (including VAT) of our claim, that arise from reselling the goods to his/her customers or third parties, regardless of whether the purchased item has been resold without or after further processing. The customer shall remain authorized for the collection of this claim even after assignment. Our right to collect the claim ourselves remains unaffected hereof. However, we undertake not to collect the claim as long as the customer fulfils his/her payment obligations arising from the collected proceeds, does not default in payment and, in particular, no motion for initiation of composition or insolvency proceedings is filed or suspension of payments occurs. Should this be the case, however, we may demand that the customer discloses to us the assigned claims and their debtors, provide us with all the particulars required for collection, hands over to us the appurtenant documents, and notifies his/her debtors (third parties) about the assignment.

The processing or modification of the purchased item by the customer will always be carried out on our behalf. If the purchased item is processed with other objects not belonging to us, we shall acquire the co-title to the new item in the ratio of the net invoice value of the purchased item (invoice sum total, including VAT) to the other items processed at the time of processing. For the item resulting from processing, the same also applies as for the purchased item delivered under reservation.

If the purchased item is inseparably mixed with other objects not belonging to us, we shall acquire the co-title to the new item in the ratio of the net invoice value of the purchased item (invoice sum total, including VAT) to the other items processed at the time of mixing. Insofar as the mixing occurs in such way that the item of the customer is to be regarded as the main item, it shall be deemed as agreed that the customer shall transfer co-ownership to us on a proportional basis. The customer shall hold the resulting sole ownership or co-ownership on our behalf.

At the request of the customer, we undertake to release the securities to which we are entitled insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to release is incumbent upon us.

Place of Jurisdiction - Place of Performance

If the customer is a merchant, the place of jurisdiction shall be our registered office; we are, however, also authorized to sue the customer at the court of his/her place of residence.

The laws of the Federal Republic of Germany shall apply.

Unless otherwise stated in the order confirmation, our registered office shall be the place of performance.

Final Provisions

Should any provision of our General Terms of Sale and Supply be or become ineffective, the effectiveness of the remaining provisions shall not be affected.