

M+W Instruments GmbH

A. General Terms and Conditions of Sale and Delivery

I. General Provisions

1. The delivery of goods and services by M+W Instruments shall exclusively be based on the General Terms and Conditions set out below. Terms and conditions of the Customer which are contrary to or deviate from these Terms and Conditions of Sale shall not be recognized unless M+W Instruments has expressly agreed to them in writing. These Terms and Conditions of Sale shall also apply in the event that M+W Instruments unconditionally fulfils orders of the Customer being aware of terms and conditions of the Customer which are contrary to or deviate from these Terms and Conditions of Sale.

2. These Terms and Conditions of Sale shall only apply vis á vis merchants within the meaning of Section 310, Paragraph 1 BGB (*Bürgerliches Gesetzbuch*, German Civil Code).

II. Placing of Orders, Delivery Dates

1. Orders of the Customer that are to be qualified as an offer within the meaning of Section 145 BGB shall become binding upon their confirmation by M+W Instruments, or upon delivery of the goods.

2. Statements of any kind contained in brochures and similar documents shall not be binding. M+W Instruments therefore reserves the right to modify the design of its products if required by technological progress.

3. The delivery dates specified by M+W Instruments do not constitute binding delivery dates, but approximate delivery times. Any delivery time stated by M+W Instruments shall not commence until all technical questions have been clarified. Compliance with delivery dates is conditioned upon timely and proper performance of all duties of the Customer. A binding delivery deadline, which may be agreed upon as an exception, shall be considered to be met if the consignment left the factory, or the Customer was notified that the order is ready for shipment before the deadline expired. The delivery obligation of M+W Instruments shall at all times be subject to timely and orderly receipt of the goods from its own suppliers. In cases where a delivery time is exceeded as a result of force majeure or other interruptions of operations caused by incidents which are not the fault, or are beyond the control of M+W Instruments, M+W Instruments shall be entitled to postpone delivery, after appropriate notification to the Customer, for the duration of the hindrance. It is irrelevant whether such circumstances occur at M+W Instruments or at its pre-suppliers or subcontractors. If, as a result of this, the delivery time is extended by more than three months the Customer shall be entitled to rescind the contract in writing. M+W Instruments shall have the same right.

III. Prices / Payment Terms

1. List prices are not binding; the prices specified by M+W Instruments in the order confirmation shall apply exclusively. The prices are "ex works", exclusive of packaging, which will be charged separately. Statutory VAT is not included in the prices; it will be listed separately on the invoice at the rate applicable at the invoice date.

2. Unless otherwise specified in the order confirmation, all payments shall be due and payable to the full amount and in the currency agreed upon within 30 days from the invoice date. The purchase price is to be paid by wire transfer or by a check for deposit, unless otherwise agreed in writing. The timeliness of a payment shall be determined by the date at which it is credited to the account of M+W Instruments. Upon expiry of 30 days from the invoice date the Customer shall be in default of payment without any reminder or notice of default being required. Then the Customer shall owe interest in the amount of 8 percent above the respective base interest rate. No discount shall be deducted unless separately agreed upon in writing. The statutory provisions governing payment delays shall remain unaffected.

3. The Customer shall be entitled to offset only insofar as its counterclaims are assessed in a legally binding judgment, undisputed, or acknowledged by M+W Instruments. In addition, the Customer shall be entitled to exercise any retention right only to the extent such counterclaim is based on the same contractual relationship.

4. If after the conclusion of the contract circumstances shall become known that are capable of reducing the Customer's creditworthiness and endangering the claims of M+W Instruments against the Customer, all receivables shall immediately become due and payable irrespective of any period allowed for payment or the term of any bill of exchange accepted. In addition, such circumstances shall entitle M+W Instruments to make any outstanding delivery only if security is provided, or to rescind the contract and/or claim damages. The rights to use the software provided to the Customer shall cease.

5. The sales tax provisions of the 6th EC Directive, as amended, shall apply to the invoicing of any deliveries from one EU member state to another, unless otherwise provided for by national legislation.

IV. Passing of Risk and Packaging

1. Unless otherwise specified in the order confirmation, delivery shall be "ex works". If desired by the Customer, M+W Instruments will arrange transport insurance cover for the delivery; any costs incurred in this respect shall be borne by the Customer. If the loading or transportation of the goods is delayed by reason of matters within the Customer's control M+W Instruments shall be entitled to store the goods, at the Customer's risk and expense, and to take all measures deemed appropriate to preserve the goods, at the Customer's risk and expense. The same shall apply if any goods reported to be ready for shipment are not called off within an appropriate period of time.

2. The taking back of packaging materials is governed by separate agreements.

V. Liability for Defects / Liability for Other Reasons

1. The goods comply with the contract if they do not, or only slightly deviate from the agreed specification at the time risk passes.

2. Precondition for any warranty claim of the Customer is the Customer's full compliance with all requirements regarding inspection and objection established by Section 377 HGB (*Handelsgesetzbuch*, German Commercial Code).

3. In case of complaints the Customer has immediately to give M+W Instruments the opportunity to examine the goods. If such examination shall be carried out at the installation site of the goods, the Customer has to ensure that no circumstances exist which might in the opinion of M+W Instruments lead to dangers to the health and lives of its employees.

If requested by M+W Instruments the Customer has at its own risk to return the goods complained of, or a sample thereof to M+W Instruments. The Customer has to fill in a decontamination statement for each product and attach it, together with the shipping documents, in a freely accessible manner to the outside of the packaging. Unless specifically otherwise agreed, the Customer shall bear the shipping charges. If a complaint is found to be unjustified, the Customer has also to bear the costs associated with the examination of the complaint.

4. Insofar as the object of purchase is defective, M+W Instruments shall be entitled at its option to remedy the defect or to deliver a new, defect-free item. If such alternative performance (*Nacherfüllung*) fails, the Customer shall be entitled at its option to withdraw from the contract, reduce the purchase price, or claim damages in accordance with the following agreements. Defective goods are to be returned before any replacement is delivered, unless this requirement has been waived by M+W Instruments in writing.

5. M+W Instruments shall be liable for any material defects and defects of title (*Sach- und Rechtsmängel*) provided for by the provisions of applicable law, should the Customer claim damages based on intent or gross negligence including intent or gross negligence of representatives or vicarious agents (*Erfüllungsgehilfen*) of M+W Instruments. Insofar as M+W Instruments is not charged with intentionally violating the contract, its liability for damages shall be limited to foreseeable and typical damage.

Furthermore, M+W Instruments shall be liable for any culpable breach of a material contractual duty (*wesentliche Vertragspflicht*), i. e. a duty the discharge of which allows the proper performance of the contract in the first place and on the fulfilment of which the Customer can regularly rely; in such a case the liability of M+W Instruments for damages shall also be limited to foreseeable and typical damage.

6. The limitation period for claims based on defects is two years calculated from the passing of the risk, unless M+W Instruments has fraudulently concealed a defect. Any claims of the Customer resulting from defects that were concealed fraudulently shall be subject to a limitation period of two years from the date

the Customer becomes aware thereof. The rectification of a defect (*Nachbesserung*) and/or delivery of substitute goods (*Ersatzlieferung*) shall not restart the limitation period.

All other rights of the Customer resulting from any culpable breach of a material contractual duty shall be subject to a limitation period of two years from the date the Customer becomes aware of the circumstances giving rise to the claim, and of the responsibility of M+W Instruments for the breach.

7. The assembly or disassembly, respectively, of the goods in the Customer's systems, machines, plants, etc. shall be the Customer's own responsibility. M+W Instruments will not assume liability for any damage incurred by a failure to properly assemble/disassemble the goods.

8. In case of goods that were sold as downgraded goods, the Customer shall not be entitled to any claims based on defects that result from the reasons for which the goods were downgraded.

9. Unless otherwise agreed above, all liability shall be excluded. In particular, any further liability of M+W Instruments for damages shall be excluded irrespective of the legal nature of the claim asserted.

Our liability for culpable damage to life, body or health shall remain unaffected; the same shall apply to our mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).

VI. Retention of Title

1. Title to all products delivered shall remain with M+W Instruments until receipt in full of all payments to be made by the Customer under the supply contract. The same shall apply to any future and conditional claims, e. g. those resulting from return bills of exchange. M+W Instruments shall be entitled to assign all claims.

2. The Customer may resell goods subject to the above retention of title only in the ordinary course of business and on its normal business terms, provided that the Customer is not in default. The Customer hereby assigns all claims arising out of such resales to M+W Instruments, in the amount of the final invoice amounts (including VAT). The Customer shall be entitled to collect payments due with respect to such resales. The right of M+W Instruments to claim direct payment shall remain unaffected. However, M+W Instruments undertakes to not demand payment on the assigned claims to the extent the Purchaser complies with all its payment obligations with respect to the revenues received and does not default on payments and does in particular not become subject to an application for composition or insolvency proceedings or to any stay of payments. But if this is the case, then M+W Instruments may require the Purchaser to disclose to it any claims assigned, to provide it with all information required for collecting payments, to deliver to it the documents associated therewith, and to notify any debtors (third parties) of the assignment.

3. The machining and processing of goods subject to the above retention title shall be done for M+W Instruments as the manufacturer. If the object of purchase is processed together with other objects that are not the property of M+W Instruments, M+W Instruments shall acquire co-ownership of the new item proportionately according to the value of the object of purchase (final invoice amount including VAT) in relation to the other objects processed at the time of processing. In all other respects, the same provisions shall apply to the item resulting from the processing as apply to the object of purchase delivered on retention of title terms.

4. If the object of purchase is inseparably blended with other objects that are not the property of M+W Instruments, M+W Instruments shall acquire co-ownership of the new item proportionately according to the value of the object of purchase (final invoice amount including VAT) in relation to the other blended objects at the time of blending. If the blending is done in such a way that the item of the Purchaser is to be regarded as the main component, it is agreed that M+W Instruments is assigned pro-rata ownership rights by the Customer. The Customer shall keep the assets thus generated, whether solely or jointly held, in custody for M+W Instruments.

5. On the request of the Customer, M+W Instruments will release securities assigned to M+W Instruments to the extent that their realizable value exceeds the claims of M+W Instruments by more than 10 %. The choice of which securities should be released shall be at the discretion of M+W Instruments.

6. The Customer must immediately notify M+W Instruments of any attachment or other impairments by third parties.

VII. Non-assignability

None of the claims arising from the contractual relationship between M+W Instruments and the Customer may be assigned in whole or in part to any third parties without the prior consent of M+W Instruments.

VIII. Trial Shipments

Trial shipments shall exclusively be governed by the following terms and conditions:

1. Trial shipments shall be made only upon prior agreement.
2. Trial shipments shall be made free of charge or on payment of a fee, as agreed.
3. Unless expressly otherwise agreed, delivery shall be "ex works". During the trial period, the Customer shall at any time be entitled to return the goods to M+W Instruments at its own risk and cost. A decontamination statement is to be filled in for each product to be returned, and is to be attached together with the shipping documents in a freely accessible manner to the outside of the packaging.
4. During the trial period, the Customer shall be liable as provided for by the provisions of applicable law.
5. During the trial period, M+W Instruments shall be liable for damages only if M+W Instruments or its vicarious agents (*Erfüllungsgehilfen*):
 - acted intentionally or grossly negligently, or
 - culpably breached a material contractual duty.Material contractual duties (*wesentliche Vertragspflichten*) shall be duties the discharge of which allows the proper performance of the contract in the first place and on the fulfilment of which the Customer can regularly rely. In both cases the liability of M+W Instruments shall be limited to foreseeable and typical damage.
6. Title to all goods delivered for trial shall remain with M+W Instruments. In all other respects, the provisions stated in A. VI. (Retention of Title), No. 1 and Nos. 3 to 6 shall apply.
7. Upon return of the goods delivered for trial, the Customer shall be credited for any fee it may have paid before, unless M+W Instruments has any monetary claims against the Customer, on whatever legal grounds. In this case, M+W Instruments may deduct any fee paid from the amount to be paid by the Customer.
8. If the Customer retains a product in excess of the trial period agreed, this shall be deemed as the Customer's automatic consent to purchase such product, and in the case of software as acceptance of the respective licence and payment therefor.

IX. Copyright / Related Rights

All industrial property rights in the products delivered by M+W Instruments are the property of or are licenced to M+W Instruments. The Customer is not permitted to modify or remove any indication of existing industrial property rights from software that may be included in the scope of supply, or from products or accompanying materials.

X. Software / Accompanying Materials

If M+W Instruments besides products manufactured by M+W Instruments delivers software, e. g. for interface programming at the Customer's site, and/or other accompanying materials, the following provisions shall apply in addition:

1. Provided that the Customer fully complies with all its obligations towards M+W Instruments that arise from the supply contract, M+W Instruments grants the Customer the right to use the software for an unlimited period of time. In case of termination of the contractual relationship the Customer's right of use shall cease.
2. The Customer is not exclusively entitled to use the software, and must not assign the right to use the software to any third parties. The Customer shall be obliged to take appropriate measures in order to prevent third parties from accessing the software.

3. The Customer shall not be permitted to copy, reproduce, translate, adapt, disassemble, decompile, imitate, or modify the software provided by M+W Instruments without the prior written consent of M+W Instruments. With the exemption that a backup copy may be made, which is to be identified as such. If and insofar as the Client is entitled or obliged due to mandatory provisions of applicable law to take one of the measures stated above, the Customer will primarily give M+W Instruments the opportunity to perform these acts against payment of an appropriate remuneration.

4. Also, the accompanying materials provided must neither be copied nor reproduced nor made available to any third parties by the Customer without the prior written consent of M+W Instruments. In case of termination of the contractual relationship M+W Instruments reserves the right to require any documents supplied to be returned.

5. M+W Instruments expressly reserves the right to equip any software provided with a technical protection mechanism. The Client is not permitted to remove or bypass such protection. If the provision of a protection mechanism results in the Client not being able to make a backup copy of the software, M+W Instruments shall provide the Client with an additional copy at the Client's cost, if the Client proves that the original copy has been damaged, destroyed, or lost.

6. If any claims are asserted by third parties limiting or excluding the contractual scope of use, the Customer has to immediately notify M+W Instruments in writing of the claim(s) asserted, i. e. within 3 work days from the date the Customer becomes aware thereof at the latest. The defence against such claims of third parties shall be exclusively reserved to M+W Instruments. The Customer shall, however, give M+W Instruments the assistance, information, and powers of attorney required to carry out the above stated acts.

XI. Evidence of Exportation

If a Customer who is resident outside the Federal Republic of Germany picks up goods and transports or sends them to another EU country or a non-EU country, the Customer has to submit to M+W Instruments the evidence of exportation required by tax law. If no such evidence is provided, the Customer has to pay the value added tax amount applicable to deliveries within the Federal Republic of Germany, in addition to the invoice amount.

B. General Services of M+W Instruments GmbH

I. General Service Portfolio

1. The general service portfolio of M+W Instruments includes in particular the following chargeable services, which are performed at the Customer's request:

- Amendments and/or adjustments to calibrations and valve settings;
- General maintenance and repair work after the expiry of the statutory warranty period.

2. When performing such services, M+W Instruments does not have to observe any instructions given by the Customer. If M+W Instruments does, all additional costs that may be incurred thereby will be charged to the Customer.

3. Title to all spare parts installed in the course of general maintenance and repair work shall remain with M+W Instruments until receipt in full of all payments that are to be made by the Customer to M+W Instruments.

II. Liability

1. Insofar as a spare part installed by M+W Instruments is defective, M+W Instruments shall be entitled at its option to remedy the defect or to deliver a new, defect-free spare part. If such alternative performance (*Nacherfüllung*) fails, the Customer shall be entitled to reduce the purchase price or to claim damages in accordance with the following agreements. Defective goods are to be returned before any replacement is delivered, unless this requirement has been waived by M+W Instruments in writing.

M+W Instruments shall be liable for any material defects and defects of title (*Sach- und Rechtsmängel*) provided for by the provisions of applicable law, should the Customer claim damages based on intent or gross negligence including intent or gross negligence of representatives or vicarious agents (*Erfüllungsgehilfen*) of M+W Instruments. Insofar as M+W Instruments is not charged with intentionally violating the contract, its liability for damages shall be limited to foreseeable and typical damage.

2. Furthermore, M+W Instruments shall be liable for any culpable breach of a material contractual duty (*wesentliche Vertragspflicht*), i. e. a duty the discharge of which allows the proper performance of the contract in the first place and on the fulfilment of which the Customer can regularly rely; in such a case the liability of M+W Instruments for damages shall also be limited to foreseeable and typical damage.

3. In case of complaints the Customer has immediately to give M+W Instruments the opportunity to examine the goods. If such examination shall be carried out at the installation site of the goods, the Customer has to ensure that no circumstances exist which might in the opinion of M+W Instruments lead to dangers to the health and lives of its employees.

If requested by M+W Instruments the Customer has at its own risk to return the goods complained of, or a sample thereof, to M+W Instruments. The Customer has to fill in a decontamination statement for each product and to attach it, together with the shipping documents, in a freely accessible manner to the outside of the packaging. Unless specifically otherwise agreed, the Customer shall bear the shipping charges. If a complaint is found to be unjustified, the Customer has also to bear the costs associated with the examination of the complaint.

4. The limitation period for claims based on defects is one year calculated from the passing of the risk, unless M+W Instruments has fraudulently concealed a defect. Any claims of the Customer resulting from defects that were concealed fraudulently shall be subject to a limitation period of one year from the date the Customer becomes aware thereof. The rectification of a defect (*Nachbesserung*) and/or delivery of substitute goods (*Ersatzlieferung*) shall not restart the limitation period.

All other rights of the Customer resulting from any culpable breach of a material contractual duty shall be subject to a limitation period of one year from the date the Customer becomes aware of the circumstances giving rise to the claim, and of the responsibility of M+W Instruments for the breach.

5. Unless otherwise agreed above, all liability shall be excluded. In particular, any further liability of M+W Instruments for damages shall be excluded irrespective of the legal nature of the claim asserted. Our liability for culpable damage to life, body or health shall remain unaffected; the same shall apply to our mandatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).

C. Place of Performance and Jurisdiction

1. Place of performance for the delivery commitment of M+W Instruments shall be the place of the supplying plant or warehouse from which M+W Instruments delivers.

Place of performance for the Customer's payment obligation shall be Munich, Germany.

2. Place of jurisdiction for both parts of the contract shall be Munich, Germany. M+W Instruments shall also be entitled to bring an action against the Customer at its general place of jurisdiction.

3. In international trade, M+W Instruments shall alternatively be entitled to file a suit at its place of jurisdiction, i. e. Munich (Germany).

D. Applicable Law

This shall be governed by the laws of the Federal Republic of Germany with the express exclusion of the "United Nations Convention dated 11th April 1980 on Contracts for the International Sale of Goods".

E. Miscellaneous

Should any of the provisions of these Terms and Conditions be or become in whole or in part invalid, the validity of the remaining provisions shall not be affected. In this case, the Parties shall be obliged to agree a provision which comes close to the economic purpose of the invalid provision.