

General Terms and Conditions of EPHYMESS Gesellschaft für Elektro-Physikalische Messgeräte mbH

1. Conclusion of a Contract, Quality, Order Confirmation

- 1.1 Our offers are without engagement. We are only bound to our offers if they have been expressly designated as binding. Otherwise, they are considered to be an invitation to make an offer. In such cases, the bringing about of a contract requires our written order confirmation.
- 1.2 We reserve the copyright and the ownership at all in connection with an offer or other reasons committed documents, in particular calculations, drawings and other documentation. It is strictly forbidden to make them accessible to any third party.
- 1.3 Our written order confirmation is the authoritative document defining the scope of the delivery.
- 1.4 Verbal supplementary agreements or assurances from our employees or representatives require our written confirmation to be legally binding.
- 1.5 With respect to orders acknowledged and accepted by us, under no circumstances will we accept requests by customer to (i) cancel an order, or (ii) delay or re-schedule delivery of products. Exceptions to this prohibition must be in writing and approved by our managing director or his representative. We reserve the right for compensation of suffered losses in this case.
- 1.6 Properties of the products which the purchaser of our product ("customer") can expect, based on our public statements in particular in our advertising or labeling of the products, or which fall under trade usages, shall only be deemed as contractually agreed properties if they are expressly set forth in an offer or an order confirmation. Guarantees are only binding for us if they are designated as such in an offer or an order confirmation and our specific obligations from the guarantee are set down therein.
- 1.7 No responsibility is taken for the ability of our products for specific applications wished by our customer. Our recommendations or proposals are made to the best of knowledge. They are for information only and without engagement and any duty of replacement for damages and harms regardless of its nature. They don't exempt the customer from own tests and examinations.

2. Pricing

- 2.1 Our prices are understood to be net prices plus the respective legal value added tax delivered seller's plant (FCA Wiesbaden Incoterms 2000) excluding packaging.
- 2.2 Unless otherwise agreed in written, all after conclusion of the contract newly rolled out or raised fees as well as any increases of the prices of raw or auxiliary materials, wages, carrying costs, custom duties et cetera which increase the products directly or indirectly be at the expense of the customer and we are entitled to increase our prices adequate.

3. Conditions of Payment

- 3.1 Our prices are due immediately and payable within thirty (30) days after invoice and delivery, the receipt of payment by us being the decisive date. Payments are, if there is no other written agreement expressly permitting otherwise, to be made directly non-cashly or per money transfer to us

without deduction. Cheques are accepted only for means of payment after special agreement. All resulting additional costs and charges are transferred to the customer.

- 3.2 In the case of the customer being in default with payment we are entitled to demand interest at the date of eight (8) percentage points above the respective applicable basic interest rate as published by the Central Bank of Germany from time to time without prejudice to our other or further rights.
- 3.3 If we find it necessary to refer an account to an attorney or an agent for collection of delinquent accounts, the customer shall pay all costs of collection including, without limitation, reasonable attorneys' fees.
- 3.4 Set-off or application of the right of retention due to counter claims by the customer which are disputed by us and not res judicata are excluded. The application of the right of retention is also excluded as far as the counter claims of the customer are not based on the same contractual relationship.
- 3.5 We reserve the right to change the credit terms provided herein if we are of the opinion that this is justified or required by the financial condition or the previous payment record of the customer.

4. Deterioration of Customer's financial situation

- 4.1 The customer's acceptance of delivery of any products shall constitute a declaration of his solvency.
- 4.2 If the customer becomes unable to pay his debts after contract conclusion, if an application is filed to open insolvency proceedings regarding customer's assets or if conditions arise after contract conclusion, which essentially influence the creditworthiness of the customer, we can refuse our delivery until the consideration is performed or the customer has provided security for it. This shall also apply if these facts already existed prior to entering into contract, but were not known to us.
- 4.3 If the customer does not perform the consideration or provide security for it within an adequate time period, we are entitled to withdraw from the contract or to claim damages. If we select to claim damages, we can charge lump sum damages in the amount of twenty (20) percent of the value of the order (Incl. Value Added Tax). The right of proof of a lower or higher damage is reserved to both contracting parties.

5. Inspection and Acceptance

- 5.1 The customer is obliged to give written notice of any defect at the latest within five (5) business days after taking delivery of the products for recognizable defects and at the latest within five (5) business days after their discovery for hidden defects. These deadlines are preclusion periods. If the customer fails to give such notice, the products shall be deemed accepted and to conform to the terms of the contract of sale.
- 5.2 We will not accept return of products, defective or otherwise, unless you have requested and received a return material authorization ("RMA") from us. We will only accept product returns that are not based on warranty claims, if

customer notifies us hereof in writing within thirty (30) days of receipt of the invoice. Products authorized to be returned shall be shipped to our specified location (DDP Incoterms 2010).

5.3 When we have accepted the return of nonconforming products, conforming shipment may be made in accordance with clause 6 and clause 8 of these General Terms and Conditions without further liability on our part.

5.4 We will reimburse the customer any transportation charges in the event that the products returned to us are defective or not in accordance with these terms and conditions.

6. Delivery, Packaging and Risk of Loss

6.1 Deliveries and the transfer of risk shall be pursuant to Incoterms 2010 (FCA Wiesbaden, excluding packaging). Place of fulfillment for all our performance obligations shall be our premises, unless otherwise specified in the order confirmation.

6.2 All transport costs incurred shall be borne by the customer, unless otherwise explicitly agreed in writing. This can be claimed in the form of a flat charge that covers the costs incurred by us.

6.3 Specified delivery deadlines are considered to be only approximate agreed upon time guidelines unless they have been expressly stated as binding in our order confirmation. Every delivery period is extended by the length of the interruption of our work operation caused by impediments due to measures in connection with labour disputes in our company or those of our sub-suppliers, in particular strikes and legal lock-outs as well as the occurrence of unforeseen events which do not fall under our responsibilities. The foregoing circumstances do not fall under our responsibility only because they emerge during an already existing default. If, by reason of such circumstance, our supplies of the products covered hereby are limited, we shall have the right to allocate the available supply among our customers in such manner as we, in our sole discretion, deem appropriate. The customer will be informed of the beginning and ending of these kinds of impediments as soon as possible.

6.4 Partial deliveries are permissible insofar as these are economically acceptable for the customer. We shall be entitled to invoice an appropriate partial amount for every partial delivery.

6.5 If delivery periods have not been designated expressly as binding, we come into default with delivery at the earliest four (4) weeks after expiration of the delivery period by means of a written demand issued by the customer. In the case of delay in delivery caused by slight negligence the claim for damages which arises from breach of a contractual duty or default is limited to a maximum of five (5) percent of the total price of the products affected by the delay.

6.6 Products will be packed for shipment in a manner suitable to the method of shipment specified by the customer or to the method selected by us in the absence of instructions from the customer. In the absence of customer's specifications the shipment will be effected in our discretion on the most favourable conditions weighting the risks, costs and expenditure of time.

6.7 Should the scope of services and supply include software installed on the product, we reserve all software rights, in particular copyrights and associated rights of use and exploitation, unless these have been explicitly granted to the customer in a separate agreement. Otherwise the customer shall only be granted the limited right to use the software in accordance with the purpose and scope of the contract

based on a specially concluded software license agreement.

6.8 We reserve the title to all items delivered by us until complete settlement of invoice. If the customer sells the items supplied by us prior to settlement of invoice, the items delivered by us shall be substituted with the claim of the customer against his purchasers (prolonged reservation of title). The customer here and now assigns to us the corresponding claim; we hereby accept this assignment. If the customer processes the items supplied by us or combines or mixes them with other items, our title shall be substituted with a co-ownership of the new item in the ratio of the value of the items (extended reservation of title). In the event of sale of the new product prior to complete settling of our invoices, we reserve the extended title to that part of the claim of our customer against his purchasers which corresponds to the ratio of the value of the items delivered by us to the total value of the new items. The customer here and now assigns this claim to us; we hereby accept this assignment.

7. Taxes

7.1 The customer is responsible for the ultimate payment of all taxes on the products sold or the services provided to the customer, irrespective of their type or reason.

7.2 If the customer claims that a transaction is not subject to any such tax, that customer is exempt, or that we are not required to collect such tax, the customer agrees to provide us with all documentation necessary to support such a claim, to allow us to document any decision not to collect such tax(es), and to indemnify and hold us harmless from and against any and all fines, penalties, interest, taxes, and other expenses, including, without limitation, reasonable legal defense costs, incurred by us as a result of reliance upon customer's position.

8. Claims in the case of defects

8.1 In case of a defect we are entitled at our choice to either rectify the defect or provide a replacement delivery (subsequent performance). Any further claims based on defects on the part of the customer shall be precluded except for damage claims restricted by the provision in clause 9 of these General Terms and Conditions.

8.2 If subsequent performance is not successful, the customer is entitled, at his choice, to either withdraw from the contract or to demand an appropriate reduction of the purchase price.

8.3 In order to permit us to properly administer this warranty, customer shall (a) notify us promptly in writing of any claims; (b) provide us with an opportunity to inspect and test the products claimed to be defective (such inspection may be on customer's premises or we may request customer to return the products at customer's expense; such expense will be reimbursed if the Product is found to be defective); and (c) Customer will not return product without an RMA pursuant to clause 5.2 of these General Terms and Conditions.

8.4 Products transferred outside the country of original delivery, by actions subsequent to delivery, may be subject to additional charges prior to warranty repair or replacement of such products based on the actual location of such products and our warranty and / or service surcharges for such location(s). These additional costs shall be borne by the customer.

8.5 No liability is accepted for loss, defects or blemishes, as long as that are caused by unsuitable or improper handling and/or defective installation or commissioning by the cus-

tomer or by third parties not instructed or authorized by us (also in reference to intervention in the software), natural wear and tear, false or careless treatment, unsuitable equipment by the customer, replacement materials, faulty construction, creation of chemical, electromechanical or electrical influences. Also excluded from claims for defects are changes to the products or unskilled repairs to the products which are attributable to the customer or third parties authorized by the customer to do so.

8.6 We reserve the right to alter the outer appearance or the equipping or technical details of our products insofar these modifications are reasonable to the customer or the changes are insignificant to the designated use. Any claims for faults due to such changes are precluded.

8.7 The subsequent performance is effected without recognition of a legal obligation and does not cause the limitation period to start anew. This also applies when spare parts have been installed in the course of rectification of a defect. Replaced parts will become our property and are to be handed over to us.

8.8 If an inspection of the claimed defects shows that no claim for defects exists, the customer is obliged to bear the costs brought about by the inspection.

8.9 If used objects, including demonstration units, are subject of the contract, all liability for defects is excluded, as far as we are not guilty of fraudulent behavior.

8.10 The limitation period for claims for defects is twelve (12) months starting at the date of the passing of the risk, if nothing to the contrary has been explicitly agreed in writing.

9. Limitation of Liability

9.1 Unless by virtue of compelling statutory provisions, e.g. regarding product liability, relief from liability is precluded or otherwise explicitly agreed with the customer in writing, the following disclaimers and liability restrictions shall apply to all cases of statutory or contractual liability.

9.2 Liability shall be precluded in cases of slight negligence except in cases of injury to life, limb or health.

9.3 If a corresponding liability restriction is permitted by law, we shall only be liable for the foreseeable damage which is typical of the contract. Liability for indirect damage, consequential damage or lost profit shall be precluded. In addition our liability shall be restricted to a maximum of three times the price of our contractual services, however, to a maximum of 1,500,000.00 EURO, and in the case of pecuniary damage to twice the price, to a maximum of 1,000,000.00 EURO, if this liability restriction is permitted by law.

9.4 The limitation period for damage claims is two years starting from the date on which the customer became aware of the damage or, irrespective of the knowledge thereof three years starting from the date on which the damaging event occurred for the first time.

9.5 The foregoing liability limitations also apply in the case of damage claims by the customer against our employees or agents.

10. Indemnification against third party claims

10.1 We agree to defend or settle, at our own expense, any claims against the customer alleging that the use of the products infringes an intellectual property right (patent, copyright, trademark or other commercial property right), and assume all costs and compensation payments incurred to the customer in this connection. The foregoing

obligations are conditional on: (a) our being promptly notified in writing of the assertion of such claim, (b) our being given sole control of the defense relating thereto and any related settlement negotiations, (c) our being provided with, at our expense, all reasonable assistance in such defense, and (d) our being liable for the infringement of third party intellectual property rights in accordance with clause 9 of this General Terms & Conditions.

10.2 To the extent that a final legally valid title of prohibition exists against the use of the product by the customer or a settlement in accordance with clause 10.1 has been concluded, we, at our own reasonable discretion and at our own expense, either (a) supply the customer with the further right to use the product or (b) replace or modify the product in such a way that no further third party intellectual property rights are infringed while still maintaining in essence the performance properties. To the extent that none of the foregoing alternatives is reasonably practicable in our view, we will take back the product and reimburse the license fees paid less a reasonable compensation for use for the time during which the product was in the customer's possession, calculated on the basis of a total utilization period of three (3) years.

10.3 The claims of the customer pursuant to infringement of an industrial property right as described in clauses 10.1 and 10.2 do not exist in the case of infringements of intellectual property rights attributable to (a) use of product contrary to the provisions of the respective manuals, (b) use of the product in combination with other products, accessories, software or data not supplied by us, unless this is expressly provided for in the documentation, (c) modification of the product by the customer or third parties, or (d) continued use of the product by the customer after we made a modified version of the product not infringing these intellectual property rights available to the customer.

10.4 Subject to the provisions in clause 9, the provisions set out in this clause 10 shall be deemed to finally regulate our liability and the claims of the customer relating to intellectual property infringement by the product.

10.5 With the exception of claims based on malice, any claims of the customer pursuant to clauses 10.1 to 10.4. shall become statute-barred within 12 months of delivery of the product.

11. Software Licences and Copyright Material

11.1 We provide software products by license only. The terms of the license are available from us and are deemed accepted by the customer on delivery of licensed software.

11.2 Unless otherwise specified, our copyright material (software, firmware, and printed documentation) may not be copied except for archive purposes, to replace a defective copy, or for program error verification by the customer.

12. Export

12.1 The customer shall undertake not to export or re-export our products or technology or related technical data insofar as this conflicts to the export control regulations of the Federal Republic of Germany or of the European Community. The customer acknowledges as well that our products and the related technical information, accessories and the software data are subject to export control regulations which may prohibit their delivery to certain countries or end-users, or make such delivery subject to export licensing prior to any shipment.

12.2 We may refuse the fulfillment of our obligations in accordance with order confirmations if and for as long as such

fulfillment may violate German or EC export control legislation. Such refusal shall give not rise to any claim against us.

13. Protection of data and intellectual property

- 13.1 All personal data shall be collected, processed and used in compliance with the applicable data protection provisions.
- 13.2 If we are requested or deem it appropriate in connection with the sale, purchase, use or service of the products to communicate data or information which we deem to be confidential or protected by law, we are under no circumstances are obliged to supply such data or information unless the customer enters into an Non-Disclosure Agreement (NDA) on the handling of this information, its use, copying, retention and return in accordance with our instructions. We shall not accept any customer information which is protected by law or confidential unless such a written agreement signed by one of our authorized representatives exists.

14. Final Clauses

- 14.1 The terms stipulated herein are the contractual basis of our business relation with the customer. These General Terms and Conditions shall likewise agree for all future business transactions with the customer.
- 14.2 We shall not accept the customer's Terms and Conditions, unless we have explicitly consented to them in writing. This shall also apply if we execute a delivery without having explicitly repudiated the Terms and Conditions of the customer.
- 14.3 German law applies with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.4 Exclusive place of jurisdiction for disputes arising from our business relationships with the customer is the seat of our company.
- 14.5 The customer shall neither assign nor transfer nor delegate his rights or obligations in connection with the business relationship or cede them to use to third parties without our prior written consent. Any purported assignment of such rights or obligations without our explicit prior written consent shall be null and void.
- 14.6 In the event of individual provisions of these General Terms and Conditions being or becoming null and void, this shall not affect the efficacy of the remaining provisions. A legally permissible provision which as closely as possible approaches the legal and economic purpose of the ineffective provision shall replace the ineffective provision. All parties to the contract shall be entitled and obliged to cooperate in any necessary alterations or amendments to the agreement. The same shall apply in case of a loophole in the contract.
- 14.7 The captions of the individual provisions are set for clear view only. They do not possess a legal binding, in particular not with regard to a concluding regulation.
- 14.8 The English version of these general terms and conditions is provided for convenience purposes only. In case of conflict, the German version shall prevail.