

# General Terms of Sale

## JENOPTIK Polymer Systems GmbH

### 1. General provisions

1.1 All our current and future deliveries, services and offers are exclusively governed, even in the absence of an express agreement, by the present terms of sale. Contrary or divergent terms of the purchaser are not recognised by us. We hereby contradict the purchaser's general terms and conditions. Our terms of sale shall also apply where we meet our contractual obligations without reservations while being aware of contrary or divergent terms of the purchaser.

Any changes to these GToS including this provision are subject to our written approval and/or a written agreement in order to be effective.

1.2 The present terms shall apply mutatis mutandis to contracts for work, contracts for work and materials and mixed contracts.

1.3 These terms of sale shall only apply if the purchaser is an entrepreneur, a legal person under public law or a special fund under public law. The same applies to purchasers engaging in business activities abroad that are comparable to those of a domestic entrepreneur and to foreign institutions comparable to domestic legal persons under public law or a domestic fund under public law. An entrepreneur is a natural or a legal person or a partnership having legal capacity and acting when concluding a legal transaction in the performance of its business or self-employed vocational activity.

### 2. Contracting

2.1 All covenants made between us and the purchaser regarding a contract and its performance require the written form in order to be effective.

2.2 Our offers and any drawings, images, measurements, weights and other performance data therein contained are subject to confirmation and non-binding unless expressly marked as being binding or specifying a certain period for acceptance. As for prices quoted in offers expressly marked as being binding, we consider ourselves committed to them for four weeks starting from the date of the offer unless the offer specifies a different period for acceptance.

2.3 If the purchaser's order is an offer within the meaning of § 145 German Civil Code (BGB) we are free to accept it within two weeks of its receipt unless the purchaser has specified a different period for acceptance.

2.4 A contract shall not be deemed to come into being until confirmed by way of an order confirmation in writing. If there is no such confirmation in an individual case or if a contract comes into being without it, our offer shall be authoritative in determining the substance of such contract. Where the purchaser and the seller have jointly signed a written document on a delivery and if such document contains all terms of contract, such document shall be equivalent to a written order confirmation.

2.5 Where an export permit is required for the performance of a contract, closing shall be subject to the condition precedent of such permit being issued.

2.6 We have sole ownership and copyrights to our written offers, images, drawings, calculations and other records – including in electronic form. Such items must not be made accessible or known to third parties nor reproduced by the given counterparty itself or by third parties.

2.7 Any particulars made known to us by the purchaser shall not be deemed confidential.

### 3. Subject matter of contract

3.1 We shall supply the hardware identified in the order confirmation and – to the extent agreed – software conforming to the specifications set forth in the order confirmation.

3.2 Software shall be supplied in an executable form (object code). The source code does not form part of the subject matter of contract and is not included.

3.3 Our hardware and software is delivered complete with the documentation provided for and made available by us or the manufacturer (manuals).

3.4 The allocation and application of the hardware and software supplied by us shall be the purchaser's responsibility. Pertinent counselling is provided only if specifically agreed.

3.5 Installation, configuration and briefing do not form part of our duties except where expressly agreed.

### 4. Payment terms

4.1 The prices quoted in the order confirmation shall be deemed agreed. Except as otherwise agreed, prices shall be deemed to be quoted in EURO, "ex works" and exclusive of packaging. Packaging and other additional or special services shall be charged separately.

4.2 Our offers, cost estimates and order confirmation do not contain the statutory VAT except where such tax is expressly stated as such. In case of exports, this shall also apply to customs duties and other public charges. VAT shall be separately stated on the invoice at the statutory level as of the date of invoicing.

4.3 Except where otherwise stated in the order confirmation, the purchase price shall be due for payment without discount within 30 days of the invoice date. The criterion for adherence to this deadline shall be the date of receipt of payment by us. Discounts are subject to specific written agreement.

4.4 Payments of the purchaser may initially be set off, contrary to its repayment terms, against its more senior debts. The purchaser shall promptly be advised of the specific manner of set-off applied by us.

4.5 If we learn about circumstances that are apt to substantially diminish the purchaser's creditworthiness and to jeopardise settlement of our accounts receivable, we are permitted to render outstanding performances only against payment in advance or to require the provision of additional collateral security. Moreover, we are in that case and in particular in case of default on payments due free to declare immediate maturity of the entire residual debt.

4.6 The purchaser may only declare set-off where its counter claims are uncontroversial, acknowledged by us in writing or non-appealably established. The purchaser may only exercise a right of retention to the extent that an uncontroversial counter claim acknowledged by us in writing or non-appealably established is based on the same contractual relationship.

### 5. Terms of performance

5.1 Delivery is made „ex works“ from our address as named in the order confirmation pursuant to INCOTERMS 2010 except to the extent otherwise agreed. Upon delivery, the risk passes to the purchaser, including in case of partial delivery.

5.2 The dates and time limits of delivery anticipated by us are always tentative except where a fixed time limit or deadline has expressly been promised or agreed. Compliance with a fixed date or period of delivery presupposes that the purchaser meets its co-operation obligations in that it, in particular, assists in fully clarifying the technical details of the order, provides us on time with records and documents within the agreed scope, punctually makes down payments and furnishes payment security.

5.3 We are entitled to make partial deliveries and partial performances if

- such partial delivery or partial performance is usable by the purchaser,
- it is assured that the remaining delivery or performance will in fact be made,
- the purchaser does not incur any substantial additional expense as a result of such partial delivery or performance.

5.4 Unless differently provided for by the order confirmation, the place of performance of our services and the purchaser's payment obligation is our business address.

5.5 Where formal acceptance is required, our delivery or performance shall be deemed to have been formally accepted if and when -

- delivery or performance, where appropriate with installation, has been completed;
- the seller has accordingly advised the purchaser while drawing its attention to the implied form of acceptance provided for above and has requested the purchaser to accept the delivery or performance;
- twelve days have passed since delivery or installation or, alternatively, the customer has begun to use the delivery or performance result and six business days have in that case elapsed since delivery or installation and -
- the purchaser has neglected to declare acceptance within that period for any reason except where the use of the purchased object is rendered impossible or substantially impaired by a defect communicated to the seller.

### 6. Warranty

6.1 Our deliveries and performances shall carefully be inspected immediately following delivery or performance. The purchaser is required to immediately notify the seller in writing of any material and/or legal defects.

6.2 Statements made in the offer or the order confirmation do not constitute any guarantee of quality within the meaning of § 443 BGB unless specifically agreed otherwise.

6.3 If the object of purchase is found to be defective, the purchaser may either require the defect to be remedied or delivery of a new, flawless object. The latter option is not available to the purchaser until after we have made at least two unsuccessful attempts at remedying the defect or have found it impossible or unreasonable or have refused to do so. If rectification and/or substitute delivery have failed, the purchaser may either withdraw from the contract or reasonably reduce the purchase price.

6.4 The cost of supplementary performance shall be borne by the purchaser if such performance takes place at the purchaser's request or instigation at a place other than the place of delivery.

6.5 Warranty rights against us may not be assigned to a third party without our written consent.

6.6 In case of withdrawal from the contract we shall refund the purchase price reduced by reasonable compensation for the benefits derived pending completion of such reversal.

6.7 The purchaser is obliged to make arrangements for proper data protection commensurate with the risk posed.

6.8 Where building components supplied by other manufacturers are found to be defective and the seller is unable to remedy such defects for licensing or physical reasons, the seller shall be free to either assert its warranty claims against the manufacturer or supplier for the purchaser's account or assign such rights to the purchaser. Warranty claims against the seller in respect of such defects are deemed to exist under these terms only if any judicial enforcement of the a.m. claims against the manufacturer and the supplier has proved unsuccessful or is considered bound to fail e.g. in case of an insolvency. While such litigation is pending, the statute of limitations in respect of the purchaser's pertinent warranty claims against the seller shall be suspended.

6.9 All warranty rights shall lapse where changes are made to our performance results without our consent, where parts are exchanged or materials used which do not conform to our original specifications and where, as a result, any analysis or rectification of defects becomes impossible or is inordinately hampered. In these cases we are entitled to a refund of any costs we may have unnecessarily incurred for the analysis and rectification of such defects. The same shall apply if our operating or maintenance instructions are not observed or if our performance results are not used in accordance with contract or with our product specifications or operating instructions. This shall also apply where our performance results are used in combination with third-party performances in a way that is incompatible with our product specifications or operating instructions or where the defect of the given performance is based on design records or other standards provided by the purchaser. The above provisions shall not apply if the purchaser can prove that the given defect is not attributable to any of the aforementioned circumstances.

6.10 In regard to deliveries of software, we warrant compliance with the agreed and stated programme specifications provided that the given software is installed on such device systems as are confirmed by us to be compatible as per the given product specifications and that such use by the purchaser is confined in accordance with contract to the hardware and software environments specified by us.

## **7. Liability**

7.1 We shall be liable in accordance with statutory provisions where the purchaser asserts claims for damages involving intent or gross negligence including on the part of our representatives or vicarious agents. In the absence of any deliberate breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.

7.2 We shall be liable in accordance with statutory provisions to the extent that we or our representatives or vicarious agents culpably breach a cardinal contractual duty. In these cases, too, liability for damages shall be limited to the foreseeable, typically occurring damage. Cardinal contractual duties are the obligation to make delivery and install the object of purchase on time and free from major defects and to provide the consultancy, protective and custodial services contractually assumed by us in a manner enabling the purchaser to make use of the object of purchase as contracted for and affording protection of the life, body and health of the purchaser, its representatives and vicarious agents and of the purchaser's property against major damage.

7.3 Any liability attributable to us for any loss of data shall be limited to the cost of reproducing the data of the backup copies to be provided to the purchaser and to the cost of recovering such data as would have been lost also if the data had been regularly protected in a risk-adequate manner. We shall not be liable for any breach by the purchaser of the duty specified in 6.7.

7.4 To the extent that we furnish technical information or provide consultancy services and that such information or advice does not fall within the scope of the performances owed and contractually agreed to by us, we do so free of charge and to the exclusion of any liability.

7.5 Our liability for culpable injury to life, body and health remains unaffected. The same applies where our mandatory liability under the product liability act is concerned.

7.6 Our liability under a guarantee furnished by us is not based on the above covenants but rather on the terms of the given guarantee and

statutory provisions.

7.7 The above covenants are valid regardless of the legal ground of the given liability and shall also apply but not be limited to non-contractual and tortious claims.

7.8 Any liability on the seller's part is excluded to the extent not otherwise agreed in this sub-section 7.

## **8. Reservation of title**

8.1 All goods delivered shall remain our property (reserved goods) pending satisfaction of all receivables, including future and contingent accounts, based on deliveries agreed on the basis of these terms, and of claims to credit balances in current accounts pertaining to the a.m. receivables.

8.2 The purchaser is entitled to process within the meaning of § 950 BGB and re-sell the reserved goods in the ordinary course of business as long as it is not in default. Pledging or transfer by way of security is not permissible. Where the value of the collateral securities granted to us exceeds by more than 50 per cent the receivables secured and not yet satisfied, we shall, on request and at our choice, release collateral in whole or in part.

8.3 The purchaser shall insure the goods against the usual risks.

8.4 Processing is made on our behalf as manufacturers without committing us. We become co-owners of the new item at the ratio between the invoice value of the reserved goods and the value of the other items processed. The purchaser shall provide storage at no charge to us. Any new item emerging from such processing shall be subject to the terms applicable to reserved goods.

8.5 Where reserved goods are inseparably combined or mixed with other items not belonging to us, we become co-owners of the new items at the ratio between the invoice value of the reserved goods and the value of the other combined or mixed items. Where such combination or mixture is made in such a manner that the item of the purchaser must be looked upon as the principal item, it shall be deemed agreed that the purchaser shall transfer to us a proportionate co-owner's interest therein. The purchaser shall provide storage at no charge to us. Any new item emerging from such combination or mixing shall be subject to the terms applicable to reserved goods.

8.6 The purchaser assigns to us already now in full by way of security all accounts receivable deriving from the re-sale or further processing of reserved goods, including all claims to credit balances in current accounts pertaining to the a.m. receivables. However, the purchaser is entitled to collect such receivables in its own name but for our account so long as we do not revoke the direct debit authorisation by reason of delay in payment by the purchaser.

8.7 Where third parties have recourse to reserved goods, in particular in the form of attachment, the purchaser shall draw attention to our ownership status and shall notify us immediately. The purchaser shall be liable for all costs incurred by us in this connection.

8.8 Where the purchaser acts contrary to contract, in particular where it fails to make payment when due, we are entitled, after setting a reasonable time limit, to require surrender of the reserved goods. The purchaser is obliged to comply.

## **9. Industrial property rights and copyrights**

9.1 The purchaser shall immediately notify us in writing whenever a third party asserts a claim against it by reason of the latter's use of a consignment/performance, invoking infringement of industrial property rights or copyrights. We reserve, in respect of these cases, the right to legal defence by all available defensive and extrajudicial measures. The purchaser is obliged to assist us in this endeavour.

9.2 Our liability for infringement of any third-party industrial property rights or copyrights shall be confined to those cases where the subject rights are owed to the given third party also in respect of the territory of the Federal Republic of Germany or of the country of destination of the given consignment or of those states where the object of purchase is to be used according to the stated contractual purpose. The latter provision shall only apply to the extent that the states covered by the contractual purpose are specifically named in the order confirmation.

## **10. Rights to software**

10.1 The following rules shall apply where the subject matter of contract includes or is exclusively confined to the delivery or permanent transfer for use of software unless a separate licensing agreement has been concluded.

10.2 The purchaser is granted a non-exclusive right unlimited in terms of time and place to the use of the software. Where, according to the contract, the given performance result is not used by the purchaser itself but is rather passed on by it to a third party (end customer) in its entirety or as part of another performance pursuant to sub-section 10.7, the rights specified in this section 10 are only owed to such end customer. The purchaser is obliged to procure that the end customer gives an undertaking to this effect.

10.3 The use of the given software must be confined to the scope defined in the pertinent contract. In case of a licence confined to a specific device, the software may be installed and used only on a single device. In case of a server licence, the software may be installed and used only on a single server. Use shall be limited to the number of natural persons that corresponds to the number of licences acquired. Any use beyond the contractually agreed measure is not in conformity with the contract.

10.4 Permissible use comprises the installation of the software on a device or server, loading thereof onto a working memory, in each case to the extent required and feasible, and use thereof by the purchaser for the intended purpose. In no event is the purchaser entitled to let or otherwise sub-license the acquired software, to publicly communicate it or make it accessible wireless or wire-bound or to make it available to third parties against payment or free of charge. Sub-section 10.7 shall remain unaffected.

10.5 The purchaser is not allowed to alter, copy or otherwise reproduce the software transferred for its use. The purchaser may produce a backup copy. The purchaser will clearly display the words "backup copy" on the copy produced along with the manufacturer's copyright notice.

10.6 The inter-face information required to achieve inter-operability (§ 69e Copyright Act) may be ordered from us for a reasonable charge.

10.7 The purchaser is entitled to transfer the acquired software to a third party for permanent – not, however, for temporary – use. In that case, the purchaser shall

- completely cease using the software,
- remove and erase all copies installed with the purchaser and -
- erase all copies installed on other data carriers with the purchaser (complete with backup copies) unless it is obliged by law to preserve them for a longer period.

10.8 The purchaser is required to confirm to us in writing at our request that it has carried out the measures listed in sub-section 10.7 or to state the reasons for preserving the software for a longer period. Where software is transferred to the purchaser for its permanent use, the latter is obliged to communicate to us the name and the full address of the acquirer. The acquirer is obliged to confirm to us in writing that it has received the software from the purchaser. The purchaser is obliged to procure a pertinent undertaking from the acquirer.

10.9 Where software supplied by us is installed on hardware and expressly labelled as OEM software, the acquired software may be transferred for use to a third party only jointly with such hardware. Data carriers supplied by us complete with OEM software copies are merely backup or recovery data carriers which are not independently transferable. In all other respects, sub-section 10.7 shall apply.

10.10 The purchaser undertakes to prevent its staff members and other third parties by taking suitable precautions from having unauthorised access to the software supplied and to the pertinent documentation, doing so in particular by storing the original data carriers and the backup copies in a secure place. Copyright notices, serial numbers and other programme identifying marks must not be removed from the data carrier or from the documentation and must not be modified.

10.11 Our deliveries may include third-party software which we undertake to identify as such. The scope of rights of use to such software is primarily defined in the pertinent licensing conditions provided by the third-party producer. The above terms shall apply by way of supplement. The purchaser is required to accept the licensing conditions of the third-party producer, failing which we are entitled to withdraw from the contract.

## 11. Supply constraints

11.1 Events of force majeure or other events not foreseeable by or not attributable to us, in particular measures of public authorities such as import and export restrictions, may prevent us from delivering until after the pertinent impediment is removed. This may also apply to supply bottlenecks not foreseeable by or not attributable to us concerning such raw materials, energy or preliminary or intermediate products as are required for the production of the goods. The purchaser shall be advised by us of the commencement and the end of such bottlenecks.

11.2 The supply bottlenecks referred to in sub-section 11.1 also entitle us to withdraw from the contract without owing damages to the purchaser. In that case, any payments made by the purchaser shall immediately be refunded to it.

## 12. Withdrawal/termination clause

12.1 Either contracting party is entitled to terminate the contract in whole or in part for cause. Cause is deemed to exist where the counterparty files a petition for insolvency or similar proceedings or where it suspends payments not only temporarily or where insolvency or similar proceedings are instituted against its assets and/or have been refused for insufficiency of assets.

12.2 The same applies where a third party has filed a petition for insolvency or a similar proceeding against the purchaser's assets and the insolvency court has ordered precautionary measures pursuant to

§ 21 Insolvency Statute (InsO).

12.3 Further rights of withdrawal are laid down in these terms of sale.

## 13. Environmental safety clause/packaging

13.1 In the area of waste management, the purchaser shall pay heed to the instructions accompanying our products and shall ensure that the items specified on the delivery note are disposed of properly and as required by statute.

13.2 The costs of waste disposal shall be borne by the purchaser. In respect of goods or components re-sold, the purchaser shall transfer this obligation to the purchaser next in line.

## 14. Limitation periods concerning material and legal defects

14.1 At variance with § 438 para. 1 no. 3 BGB, the general limitation period in respect of claims arising from material and legal defects is one year starting with delivery. If formal acceptance has been agreed, the limitation period shall begin to run upon the performance of such formal acceptance. The statutory limitation period applicable to delivery recourse pursuant to §§ 478, 479 BGB shall remain unaffected.

14.2 The above sales law limitation periods shall also apply to the purchaser's contractual or extra-contractual claims for damages that are based on defects of the goods except in those cases where invoking regular statutory limitation (§§ 195, 199 BGB) would entail shorter limitation periods. The statutory limitation periods governing claims under sub-sections 7.1. and 7.5 shall in any event remain unaffected.

## 15. Anti-corruption/compliance

The purchaser undertakes to comply with all statutory provisions, in particular in the areas of anti-corruption, competition and restrictive practices law. In particular, the purchaser represents that it will refrain from offering, promising or granting our staff members and persons close to them any unlawful benefits. The same obligations apply to those staff members of the purchaser, its vicarious agents and other third parties who are acting on the purchaser's instructions and whom the purchaser is required to commit accordingly.

## 16. Transfer of information within the Group

We are entitled to pass on to companies associated with us within the Group (§§ 15 et seq. German Company Act) such data as come to our knowledge in the context of our customer relations with the purchaser except to the extent that this is incompatible with data protection regulations.

## 17. Applicable law, venue

17.1 All legal relations between us and the purchaser shall exclusively be governed by German law to the exclusion of UN sales law.

17.2 Exclusive venue for all disputes directly or indirectly arising from the legal relationship between us and the purchaser is our head office. However, we are entitled to sue the purchaser also before any court of its general venue.

## 18. Partial nullity

Should individual provisions of these general terms of sale be ineffective in whole or in part, its remaining provisions shall remain fully effective.