

# General Purchase Order Terms and Conditions of BIT Analytical Instruments GmbH

## 1. Applicability

- 1.1 All present and future purchase orders of goods and services by BIT Analytical Instruments GmbH ("Buyer") shall exclusively be governed by the following Purchase Order Terms and Conditions.
- 1.2 Any deviating conditions or confirmations of the Seller shall be applicable only if and insofar Buyer has expressly consented to them. Buyer's mere silence with respect to such deviating conditions or confirmations shall not be construed as acknowledgement or consent. Buyer hereby expressly objects to all such deviating conditions or confirmations of the Seller.
- 1.3 Seller agrees to perform the services ("Services") and/or provide the goods or deliverables (collectively, "Goods") described in the Purchase Order ("PO"), in accordance with the terms and conditions set forth herein and in the PO, including any statements of work or other documents attached to or specifically incorporated into the PO by reference.

## 2. Quotations

Any quotation prepared by Seller in response to an inquiry from Buyer shall conform exactly to such inquiry and the terms thereof except to the extent such quotation clearly and expressly deviates therefrom. All such quotations shall be prepared free of charge.

## 3. Order and order confirmation

Only orders set forth in written, signed POs shall be binding on Buyer. Orders in any other form shall only become binding if confirmed in a written, signed PO. This Agreement may not be added to, modified, superseded, or otherwise altered, except by a writing signed by an authorized representative of Buyer.

## 4. Delivery period

- 4.1 Time is of the essence for all Goods and Services covered by this Agreement. Delivery of Goods shall be made pursuant to the schedule specified on the applicable PO. If no delivery schedule is specified, the order shall be filled promptly and delivery will be made by the most expeditious form of transportation by land or sea. Early delivery may only be made with the prior written consent of Buyer and shall not affect the agreed upon payment schedule.
- 4.2 If Seller determines that it will not be able to meet the agreed upon delivery schedule it shall immediately notify Buyer of such determination and the reasons therefor, so that Buyer can make timely alternative arrangements. Such notice shall not affect Seller's obligation to meet the agreed upon delivery schedule.
- 4.3 Seller may only rely on the absence of documentation to be provided by Buyer as a defense against a claim for late delivery if and to the extent that Seller has requested such documentation in writing and not received it promptly thereafter.
- 4.4 If notice of delayed delivery is given promptly, Buyer shall, solely to the extent not inconsistent with its business needs, grant Seller a grace period. If such grace period shall expire before delivery is made, Buyer shall be entitled to cancel the applicable PO in whole or in part, cover, require payment of damages or pursue any other remedy available at law. There shall be no obligation for payment of damages or reimbursement of fruitless expenses if Seller is not responsible for the delay.
- 4.5 If, as a result of a delay by Seller, a delivery is no longer of interest to Buyer, Buyer shall be entitled, with or without granting a grace period, to cancel the applicable PO in whole or in part and require payment of damages and pursue any other remedies available at law.
- 4.6 Acceptance of delayed deliveries by Buyer shall not constitute a waiver, or otherwise affect, Buyer's right to require payment of damages.

## 5. Acceptance

Goods that are to be installed in Buyer's facilities shall be deemed accepted when installation has been completed upon the agreed terms and successful acceptance testing shall have been performed.

## 6. Deficiencies

- 6.1 Seller warrants that all Goods provided will be of good material and workmanship, new, and free from all liens or encumbrances. Seller further warrants that for a period of two years from the date of Buyer's acceptance of the Goods, or, if sooner, three years from delivery of the Goods to the agreed upon delivery site, all Goods shall be free from all defects, shall conform to the specifications, drawings, samples, data or other descriptions furnished to or by Buyer and shall be fit and sufficient for the purpose(s) intended. In case of a building or that Goods are used in a building and cause a defect in such building, the warranty period described above shall be extended to five years from the date of Buyer's acceptance of the Goods, or, if sooner, six years from delivery of the Goods to the agreed upon delivery site. Notwithstanding the foregoing, in the event that a longer warranty period is required by law, such longer warranty period shall apply.
- 6.2 Any inspection and re-inspection periods shall begin on delivery of the Goods to the agreed upon delivery site. Buyer shall, as soon as reasonably practicable, inspect the Goods and report patent defects to Seller within 14 days of discovery. Any defects that are only discoverable through processing or use, as well as any other latent defects, shall be reported to Seller within 14 days of discovery. Notwithstanding the foregoing, to the extent that longer inspection or re-inspection periods are provided for by law or in the applicable PO, such longer periods shall apply.
- 6.3 If Goods fail to pass inspection, fail to meet applicable specifications or otherwise contain warranty defects, Buyer may, at its option, demand repair or replacement of such Goods within a reasonable time period.
- 6.4 Notwithstanding any earlier expiration otherwise provided for herein, the warranty period shall remain in effect from such time as Buyer gives Seller notice of any defects until such time as Seller declares the completion of its response to such defects and/or refuses to make a further response.
- 6.5 In the event Seller fails to repair or replace defective Goods within a reasonable period of time, or in Buyer's opinion Seller will not be able to repair or replace within such period of time, Buyer shall be entitled, in each case at Seller's expense, to effect repairs either itself or through a third party, or to cover. Such remedies of Buyer shall be in addition to, and not in lieu of, other remedies available to Buyer, including without limitation the right to rescind the purchase, reduce the purchase price and seek other damages.
- 6.6 All costs arising out of the rejection and return of Goods shall be borne by Seller.
- 6.7 This Agreement shall also apply with respect to all repaired and replacement Goods. Buyer reserves all rights and remedies of Buyer with respect to defects and breaches. Seller shall bear the burden of proving that it is not responsible for any defects or damages.

## 7. Intellectual Property Rights; Indemnification

Seller shall indemnify, hold harmless, and at Buyer's request, defend Buyer, against any claim by a third party against Buyer alleging that the Goods or Services, the results of such Services, or any other products or processes provided pursuant to this Agreement, or the use of any of the foregoing, infringe any patent, copyright, trademark, trade secret, or other proprietary right of a third party, except to the extent such infringement is found to result from Buyer's combination of Goods with other materials not provided by Seller or from any drawing or other specification supplied by Seller. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including attorneys' fees. Without limiting the foregoing, should the use of any Goods or Services by Buyer or its customers be enjoined, be threatened by injunction, or be the subject of any legal proceeding, Seller shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing Goods or Services, (b) modify the Goods or Services so that they no longer infringe but remain fully equivalent in functionality, (c) obtain for the benefit of Buyer and its customers the right to continue using the Goods or Services, or (d) if none of the foregoing is possible, at Buyer's option, refund all amounts paid for any affected Goods or Services.

## 8. Safety precautions

Seller shall fill each order in compliance with all applicable safety and accident prevention regulations and provide all necessary safety devices. In the case of installation or assembly, Seller shall further comply with all applicable factory regulations. Seller shall familiarize itself with all such regulations before beginning installation or assembly. If potentially necessary safety devices are not included in the total price for the applicable order, Seller shall give Buyer express notice thereof.

## 9. Invoice and payment terms

Invoices shall not be included with shipments, but shall be submitted separately in duplicate form, with order numbers, by mail. Buyer shall pay, at its election, (a) within 30 days with a 3% discount, (b) within 60 days net, after receipt of the invoice and shipment of the Goods or performance of the Services. Method of payment (e.g. wire transfer, check) shall be at the election of Buyer. Rights to receive payment from Buyer may only be transferred to third parties with the prior written consent of Buyer.

## 10. Ordering documents

- 10.1 At the request of Buyer, Seller shall provide plans, specifications, technical drawings, calculations etc. to Buyer for review and approval and, after such approval, shall provide such items to Buyer in such number as Buyer shall request. At the request of Buyer, Seller shall also deliver technical drawings and specifications for spare parts in sufficient detail to enable Buyer to procure spare parts. Buyer shall only disclose such items to third parties to the extent necessary in connection with replacements, improvements, repairs or resales of the Goods.
- 10.2 Documents, models, forms and tools of Buyer – including any such items that were manufactured by Seller for Buyer – shall be the sole and exclusive property of Buyer, and Seller shall return all such items to Buyer, in usable condition, no later than upon the final delivery of Goods or Services. Seller shall not disclose or grant access to such items to any third parties, nor use any such items for any purpose other than fulfilling the applicable PO. Seller shall exercise due care in keeping all such items, and shall maintain such items in usable condition at all times. For purposes hereof, "third parties" shall include, without limitation, any distributors of Buyer's products.
- 10.3 The same shall also apply with respect to products, models or documents that were created jointly by Buyer and Seller or that were modified at the suggestion, or with the cooperation, of Seller.

## 11. Shipment

- 11.1 Seller shall pack and ship all Goods free of charge to the delivery site specified by Buyer.
- 11.2 Shipping documents (waybill, dispatch form, bill of lading etc.) shall clearly indicate the labeling, number and order date as well as delivery site. The delivery address provided by Buyer shall be strictly observed.
- 11.3 Each shipment shall be accompanied by a bill of delivery indicating the order number. Each order shall be indicated separately in all delivery documents. In case of delivery by any means other than rail, the shipping documents and invoice shall indicate the name of the shipper (shipping company, airline, carrier), vessel or other vehicle and, if applicable, the name of the captain or driver.
- 11.4 In the case of bulk goods, express shipments, shipments by mail and combined shipments, each individual item shall be labeled with a sticker or identification tag indicating labeling, number and date of order as well as delivery site. In the case of truckloads containing only Goods subject to a PO, the placing of such an identification on the truck will suffice.
- 11.5 Except as otherwise agreed, weights and fixed prices shall be determined in accordance with applicable law. Tools and equipment shall not be shipped together with Goods, and any re-shipment costs arising out of any such shipment of tools or equipment shall be borne by Seller. Actual shipping weights shall be within  $\pm 5\%$  of the weights quoted by Seller.
- 11.6 In no event shall Buyer be responsible for costs associated with late partial deliveries, or for costs arising out of the use of expedited transport to reduce the extent of a delay in shipment.

## 12. Risk of loss

Risk of loss shall pass to Buyer only upon receipt at the delivery site designated by Buyer.

## 13. Transport insurance

Unless otherwise agreed upon Seller shall bear the risk of transport and obtain transport insurance for the delivery of the Goods to the applicable delivery site.

## 14. Liability

Seller shall be liable in accordance with the legal provisions; he shall bear the burden of proof that damages had not been caused through his fault.

## 15. Retention; Set-off

Seller shall be entitled to withhold or set-off only in respect of not disputed counter-claims or counter-claims finally assessed in court.

## 16. Place of performance; Venue; Applicable Law

- 16.1 The place of performance for delivery and payment shall be the destination specified by Buyer, with respect to any payment it shall be the place of the ordering division of Buyer.
- 16.2 Exclusive jurisdiction for all legal disputes is the place of the ordering division of Buyer. However, Buyer is entitled to have recourse to the competent courts at the place of jurisdiction of the Seller.
- 16.3 All and any legal relationship between Seller and Buyer shall exclusively be governed by the laws of the Federal Republic of Germany. However, the UN Sales Convention (CISG) shall not apply.

## 17. Severability

If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

## 18. Assignment; Sub-Contracting

Seller may not assign or transfer this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Buyer. Any assignment or transfer without such written consent shall be null and void. Seller shall not without Buyer's prior written consent delegate or subcontract any of its obligations hereunder to any other party.

## 19. Confidentiality

Each party's obligations with respect to the other party's confidential information shall be as set forth in a separate non-disclosure or similar agreement.

## 20. Relationship of the Parties.

Seller is and shall perform the Services and provide the Goods as an independent contractor of Buyer. Nothing contained in this Agreement or elsewhere shall be construed to create an agency, joint venture, partnership or similar relationship.