

## **General Terms and Conditions**

**of Union Instruments GmbH, Zeppelinstraße 42, 76185 Karlsruhe (valid as of August 2012)**

### **1. Scope of application**

The following terms and conditions shall apply to all offers and deliveries, including those resulting from future business transactions. An express rejection of differently formulated terms and conditions of the Buyer shall not be required on our part. Deviating terms shall require our express written consent.

### **2. Offers and order confirmation**

Our offers are non-binding even if they have been made in writing; this also applies to the documentation accompanying the offer, i.e. images, drawings, weight and measurement data, provided these are not expressly deemed to be binding. We shall hold all ownership rights and copyrights to cost estimates, drawings and other documents. Our written order confirmation alone shall govern the nature and scope of the delivery. Collateral agreements and amendments shall require our written consent.

### **3. Prices**

The prices of our offers invariably remain non-binding and shall serve as non-committal recommended prices. The valid prices on the date of delivery shall be charged. The prices are quoted ex-works and are exclusive of statutory VAT. The valid freight and shipment costs on the day of the offer shall also be added. Packaging material shall be charged at cost price; seaworthy packaging shall be charged on an additional basis. Disposal costs are not included in the price and must be borne by the Buyer.

The cancellation of orders shall only be permitted with our consent and shall be subject to a reimbursement of costs incurred by us plus 10% of the sales price as flat-rate compensation for damages. The Buyer reserves the right to prove that no or significantly less have been incurred.

If the Buyer wishes to receive a cost estimate before the execution of repair work, he must expressly inform us of such. The costs incurred within the scope of determining the necessary repair works shall be reimbursed to us by the Buyer, even if he decides not to proceed with the repair work.

### **4. Payment**

Our invoices shall be payable without delay and within 30 days of the **invoice date**. If this payment deadline is exceeded, we shall reserve the right to charge default interest at 8% above the base interest rate.

If delivery is delayed due to the absence of complete shipping information or other non-punctual measures on the part of the Buyer, the date of notification of readiness for dispatch shall apply.

We shall be entitled to make partial deliveries insofar as this is reasonable for the Buyer. No additional shipping costs shall be borne by the Buyer in the event of a partial delivery.

### **5. Shipment and delivery**

The delivery deadline shall begin upon sending order confirmation. Compliance with the delivery deadline is contingent on the timely receipt of all documentation and data to be supplied by the Buyer.

The delivery deadline shall be considered to have been met if the delivery item has left our premises or the notification of readiness for dispatch has been issued before the lapse of the delivery deadline. In cases of force majeure and unforeseeable events (e.g. war, riots, boycotts, strikes or lockouts) for which we are not responsible, the delivery deadline shall be extended accordingly. The Buyer shall be informed immediately of the start and end of such obstacles. Should delivery become extremely difficult or impossible due to such events and should the obstacle not only be temporary in nature, both

parties shall be entitled to withdraw from the contract. The unconditional acceptance of the goods by the Buyer shall waive any rights to object to the delayed delivery and any subsequent claims therefrom.

## **6. Passage of risk**

For traders, legal entities under public law or a public-law special fund, the risk shall be passed to the Buyer upon the handover of the goods to the forwarder, the carrier or any other third party charged with the execution of the shipment. If the shipment of goods is delayed for reasons for which the Buyer is responsible, the risk shall pass to the Buyer upon the declaration of readiness for dispatch.

## **7. Installation and commissioning**

The Buyer shall be responsible for the installation and assembly of the supplied devices. Upon receipt of a written request from the Buyer, we can commission a specialised team with the installation and commissioning of our devices. Our assembly instructions shall also apply to the installation, commissioning, repair and servicing of our devices.

## **8. Warranty**

Immediately after delivery, the Buyer must carefully inspect the supplied goods, particularly with regard to their completeness and functionality (§ 377 German Commercial Code). The goods shall be deemed to have been accepted if, for visible defects or defects which were detected after careful inspection of the goods, we do not receive a written notification of defects within 30 working days of delivering the goods or within 30 working days of discovering the defect or at any other earlier date on which the defect was discovered by the Buyer within the scope of normal use of the product without a closer inspection. The timeliness of the notification shall be based on the date on which it was sent.

Warranty shall be granted in accordance with statutory regulations. For traders, legal entities under public law or a public-law special, the limitation period for claims for defects shall be one year from delivery of the goods, or from the date of acceptance provided an acceptance is necessary. All defects arising during this time for which we are responsible shall be remedied free of charge on our premises, either through repair work or the supply of new parts. The rejected goods should be sent to us for this purpose. Upon request from the Buyer, the repairs can also be performed on the Buyer's own premises; however, in this case we shall be entitled to a reimbursement of travel costs, travel time and waiting time as well as personal allowances; the necessary working time to remedy the defect on our device shall be borne by us. The Buyer may only perform the repair work himself or have said works performed by a third party, upon receiving express written consent from us. In this case, the costs shall be capped at those costs that would have arisen from the deployment of our personnel. If the subsequent performance fails, the Buyer shall be entitled to withdraw from the contract or to request a corresponding reduction of the purchase price. The regulation stipulated under clause 9 shall apply to any possible damage claims in addition to, or in lieu of, the performance.

Liability for defects shall apply to direct damage to our devices, however, it shall not apply to damage resulting from natural wear and tear, chemical influences, incorrect and negligent handling, improper set-up, unsuitable operating equipment, unusual operating conditions or non-compliance with our provisions. For unjustified complaints or those relating to operating errors or improper handling on the part of the Buyer, the Buyer shall be obliged to reimburse all costs arising within the scope of our inspection of the alleged defects.

## **9. Limitation of liability**

Our liability for compensation on whatever legal grounds, particularly due to impossibility, delay, defective or incorrect delivery, a breach of the contract, a violation of obligations in contractual negotiations or unlawful acts, shall be limited as per this provision insofar as it is subject to culpability.

We shall not be liable for cases of simple negligence by our legal representatives, employees or other vicarious agents, provided there has been no breach of cardinal contractual obligations. Cardinal contractual obligations include the obligation to punctually deliver non-defective goods as well as consultancy, protection and care obligations which should allow the customer to use the goods in conformance with the contract or for the protection of life or limb of the personnel of the customer or to protect the property of the latter against material damage.

If we are liable for compensation, this liability shall be limited to damages which we have foreseen as a possible consequence of a contractual violation or which we should have foreseen by applying due diligence. Indirect damage and consequential damage shall only be subject to compensation if such damage is typically to be expected in accordance with the intended use of the goods.

In the event of liability for simple negligence, our obligation to reimburse material damage and further financial loss resulting therefrom shall be limited to an amount of 100.000 EURO per loss event, even if an essential contractual obligation has been breached.

The aforementioned exclusions and limitations of liability shall apply in equal measure for our legal representatives, employees and other vicarious agents.

The aforementioned limitations shall not apply to our liability with regard to willful conduct, guaranteed characteristics, personal injury to life, body or health, or product liability laws.

## **10. Retention of title**

The supplied goods shall remain our property until the purchase price has been paid in full. We shall retain ownership rights to the goods over traders, legal entities under public law, or a public-law special fund, until all claims arising from the business relationship with the Buyer, including ancillary claims, have been paid in full; in the case of a current account, the reserved title shall constitute security for our balance claim.

Upon request from the Buyer, we shall be obliged to release the pledged collateral at our own discretion if the total realisable value of the pledged collateral exceeds the value of the claims secured by 110% or the nominal value of the pledged collateral exceeds the value of the claims secured by 150%, in both cases not only temporarily.

In the event of an installation in third-party goods, we shall become co-owners to the new products based on the value of the goods delivered in relation to the value of the other goods used. If the delivered goods are mixed or combined with other objects, the Buyer shall assign his co-ownership rights to the mixed stock or to the new product, to us.

The Buyer shall be permitted to resell the goods before a complete payment of the purchase price only in the normal course of business. In the event of a permissible or non-permissible re-sale, the Buyer shall assign to us all claims arising from the re-sale, up to the invoice amount (incl. VAT). This shall apply irrespective of whether the goods are resold without being processed or after processing. The Buyer shall be entitled to the collection of receivables provided he has remained faithful to the contract. Otherwise, we shall reserve the right to assign the Buyer's claims to a third party or to take the remaining goods back from the Buyer after a corresponding warning. In this event, the Buyer shall be obliged to surrender the goods. The assertion of the reservation of title shall not constitute a withdrawal from the contract.

The Buyer shall inform us immediately and in writing of any attachment or other impairment of the pledged collateral by a third party and provide all the necessary documentation for an intervention. If the third party is not in a position to reimburse costs, the Buyer shall bear all judicial and extra-judicial

costs associated with the repeal of access and shall be obliged to replace the goods. This shall not apply if the costs are disproportionately high in relation to the value of the goods.

#### **11. Offsetting**

The Buyer shall not be entitled to offset claims against us, provided the claim is not undisputed, legally binding or ready for decision.

#### **12. Data protection**

The Buyer is aware of and consents to the fact that his personal data required for processing and handling the order shall be stored on data carriers in compliance with the Federal Data Protection Act and the German Telemedia Act and shall be treated in the strictest of confidence. We reserve the right to transfer data to affiliated companies within the scope of processing the order as well as to SCHUFA (credit rating agency) or other business information services for the purposes of credit and solvency checks. The Buyer shall have the right to revoke this consent at any time with immediate effect. In these cases, we hereby agree to ensure the careful deletion of all personal data as soon as the order procedure has been completed in full.

#### **13. Place of performance and venue**

Venue for all disputes arising from the business relationship between us and the Buyer and in relation to traders, legal entities under public law, or a public-law special fund, shall be our business premises or those of the Buyer to be decided upon at our own discretion. Mandatory legal provisions concerning exclusive jurisdiction shall remain unaffected by this provision.

The place of performance for all obligations arising from the contractual relationship shall be our business premises, unless stipulated otherwise.

#### **14. Applicable law, other**

The contractual relationship shall be subject exclusively to the law of the Federal Republic of Germany for both parties, to the exclusion of the UN Purchasing Law (CISG).

The invalidity of individual provisions in these General Terms and Conditions shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall then be replaced by a valid provision which comes as close as possible to the economic and legal intent of the original provision. The also applies for possible gaps in the contract.

Union Instruments GmbH, Karlsruhe