

# General Terms and Conditions of Delivery of SIGRIST-PHOTOMETER AG, CH-6373 Ennetbürgen/Switzerland Status 01.01.2013

## 1 General

- 1.1 The contract is concluded upon receipt of the written confirmation by the supplier that he accepts the order (order confirmation). Offers which do not contain a deadline for acceptance (validity) are not binding.
- 1.2 These General Terms and Conditions of Delivery are binding if they are declared to be applicable in the offer or in the order confirmation. Different conditions of the client are valid only if they have been specifically accepted in writing by the supplier.
- 1.3 All agreements and legally significant declarations made by the contracting parties are valid only if they are made in writing.

## 2 Scope of deliveries and services

The deliveries and services of the supplier are listed in full in the order confirmation, including any attachments thereto.

## 3 Plans and technical documents

- 3.1 Brochures and catalogues are not binding, save where otherwise agreed. The information given in technical documents is binding only if an express assurance is given to that effect.
- 3.2 Each contracting party reserves all rights in plans and technical documents which he has issued to the other. The receiving contracting party acknowledges these rights and will not use the documents for any purpose other than that for which they were handed over to him.

## 4 Prices

- 4.1 Save where otherwise agreed, all prices are net excluding VAT, ex-works, excluding packaging and without any deductions of any kind.
- 4.2 The supplier reserves the right to adjust the price if, between the time at which the offer is made and the time of contractual performance, wage rates or material prices change. An appropriate price adjustment will also be made if the delivery lead-time is subsequently extended for one of the reasons referred to in Section 7.2 or if the documents supplied by the client did not correspond to the actual circumstances or were incomplete.

## 5 Payment terms

- 5.1 Payments are to be made at the domicile of the supplier without deduction of any discount, expenses, taxes, charges, fees, customs duties and similar.
- 5.2 Save where otherwise agreed, the price is payable within 30 days of delivery.  
For invoiced amounts of CHF 50,000.- or more the following payment terms shall apply:  
 $\frac{1}{3}$  with the order;  
 $\frac{1}{3}$  on readiness for despatch;  
 $\frac{1}{3}$  within 30 days of delivery.
- 5.3 If the client fails to respect the agreed payment dates, he shall be required to pay interest at the rate of 5% without the need for any warning from the agreed due payment date. Compensation for further damage is reserved.

## 6 Reservation of ownership

The supplier remains the owner of all of his deliveries until he has received payment in full as stipulated in the contract. The client is required to participate in measures which have become necessary to protect the supplier's property; in particular, upon the conclusion of the contract, he authorises the supplier to effect entry or a record of the reservation of ownership in the public registers, books or similar in compliance with the relevant national legislation and to perform all the accompanying formalities.

The client will maintain the delivered objects at his own expense for the duration of the reservation of ownership and insure them in favour of the supplier against theft, breakage, fire, water damage and other risks. Moreover he will take all measures to ensure that the supplier's right of ownership is neither impaired nor cancelled.

## 7 Delivery lead-time

- 7.1 The delivery lead-time begins as soon as the contract has been closed, all the official formalities such as import, export, transit and payment permits obtained, the payments which are to be made with the order effected, any sureties put up and the essential technical points clarified. The delivery lead-time is respected if notification of readiness for despatch has been sent to the client before it expires.
- 7.2 The delivery lead-time shall be extended appropriately:
- a) if the supplier does not receive in a timely manner the indications which he requires for performance of the contract or if the client subsequently

amends them, thereby causing a delay in delivery or provision of the services;

b) if obstacles occur which the supplier is unable to avert, despite exercising an appropriate degree of care, regardless of whether these arise on his own premises, with the client or with a third party. Such obstacles are, for example, epidemics, mobilization, war, riot, substantial interference with operations, accidents, labour conflicts, late or defective delivery of the necessary raw materials, semi-manufactured or manufactured products, loss of important workpieces, official actions or omissions, natural events;

c) if the client or third parties is or are late in the performance of work to be done by them or in the performance of their contractual obligations and, in particular, if the client fails to respect the payment terms.

7.3 In the event of late deliveries, the client is authorised to claim compensation for late performance in so far as the delay was demonstrably caused by the supplier and the client is able to provide evidence of damage as a consequence of this delay. However, this compensation must not exceed the loss which the party who is in breach of contract anticipated when the contract was closed as a possible consequence of delay. If the client is assisted by a substitute delivery, the entitlement to compensation for late performance shall lapse.

For each full week of delay, the compensation for late performance amounts to not more than ½%, subject to a maximum of 5% calculated on the contractual price of the part of the delivery which is late. The first two weeks of late performance do not give entitlement to compensation for delay.

When the maximum compensation for late performance has been reached, the client must set a reasonable period of grace for the supplier in writing. If that period of grace is not re-

spected for reasons for which the supplier is responsible, the client is entitled to decline acceptance of that part of the delivery which is late. If partial acceptance would be unreasonable for him to accept for economic reasons, he is entitled to withdraw from the contract and to require payments already made to be refunded against the return of deliveries made.

7.4 The client has no rights and claims in respect of late delivery or performance of services other than those specified in Section 7. This limitation does not apply to unlawful intent or gross negligence on the part of the supplier, but it does likewise apply to unlawful intent or gross negligence on the part of servants.

## 8 Transfer of benefit and risk

8.1 Benefit and risk are transferred to the client at the latest when the delivery leaves the works.

8.2 If the consignment is delayed at the request of the client or for other reasons for which the supplier is not responsible, the risk shall be transferred to the client at the time originally scheduled for delivery ex-works. From that point in time onwards, deliveries will be stored and insured for the account and at the expense of the client.

## 9 Verification and acceptance of deliveries and services

9.1 The supplier will perform sample checks of deliveries and services prior to despatch. If the client requires more extensive tests, these must be separately agreed and paid for by the client.

9.2 The client must verify the deliveries and services within a reasonable period of time and notify possible defects to the supplier without delay in writing. If he fails to do so, the deliveries

and services shall be deemed to have been approved.

9.3 The supplier must remedy the defects notified to him pursuant to Section 9.2 as soon as possible and the client must give him an opportunity to do so. Repair shall be effected at the place of delivery. In the event of repair at the place where the object is located, the client must pay the resulting additional costs.

9.4 Performance of an acceptance test and definition of the conditions for this require special agreement.

9.5 The client has no rights and claims for defects of any kind in deliveries or services other than those specifically stated in this Section 9 and in Section 10 (Warranty, Liability for defects).

## 10 Warranty, Liability for defects

10.1 The warranty period is 24 months. It begins when the deliveries leave the works or, where applicable, upon the agreed acceptance of deliveries and services or in so far as the supplier has also accepted responsibility for assembly when that is completed. If despatch, acceptance or assembly are delayed for reasons for which the supplier is not responsible, the warranty period shall end no later than 24 months after notification of readiness for despatch.

The warranty period begins to run again for replaced or repaired parts and lasts for six months from replacement, completion of repairs or from acceptance, but ends no later than upon the expiry of a period equivalent to twice the warranty period stipulated in the previous paragraph.

The warranty expires prematurely if the client or third parties have performed unprofessional modifications or repairs or, should a defect have occurred, if the client fails to take all suitable measures without

delay to limit the damage and give the supplier an opportunity to remedy the defect.

- 10.2 At the written request of the client, the supplier undertakes to repair or replace at his own discretion and at the earliest opportunity all parts of the supplier's deliveries which are demonstrably defective or unusable because of poor materials, defective design or poor workmanship until the warranty period expires. Replaced parts become the property of the supplier unless he specifically waives ownership.

The supplier shall bear the costs of repair incurred in his own works. Transport of the material to be repaired from the client to the works of the supplier and back again shall be paid by the client. If repairs are effected on site the client shall pay the resulting additional costs.

- 10.3 Assured properties are only those expressly designated as such in the order confirmation or in the specifications. The assurance shall apply until the warranty period expires at the latest.

If the assured properties are not met or are met only in part, the client shall be entitled in the first instance to repair without delay by the supplier. For this purpose, the client must grant the supplier the necessary time and opportunity. Should this repair prove unsuccessful or prove possible only in part, the client shall be entitled to the compensation agreed for such a case, or in so far as such an agreement was not made, to an appropriate reduction of the price. If the defect is so serious that it cannot be repaired within a reasonable period of time and if the deliveries or services are not usable for the notified purpose or can only be so used to a substantially reduced extent, the client is entitled to decline acceptance of the defective part or, if partial acceptance would be unreasonable for him for economic reasons, he may withdraw from the contract. The supplier can only be required to repay the amounts

which had already been paid for the parts affected by the withdrawal.

- 10.4 Glass parts, seals, lamps and fuses are excluded from the warranty and liability of the supplier. Damage which has not been demonstrably caused by poor material, defective design or workmanship, e.g. because of natural wear and tear, defective maintenance, failure to comply with operating instructions, excessive strain, unsuitable operating resources, chemical or electrical influences, failure by the supplier to effect installation or assembly work and for other reasons for which the supplier is not responsible are likewise excluded. Moreover the supplier shall only be liable for damage which he predicted when the contract was closed as a possible consequence of breach of contract.

- 10.5 The client has no rights and claims other than those expressly stated in Sections 10.1 to 10.4 in respect of defects in material design or workmanship and the absence of assured properties.

## 11 Exclusion of further liabilities of the supplier

All cases of breach of contract and its legal consequences, together with all claims made by the client for whatever legal reason are expressly dealt with in full in these conditions. In particular, all claims to compensation, reduction, contract cancellation or withdrawal from the contract are excluded unless they are specifically stated. In no case does the client have any entitlement to compensation for damage which did not occur on the delivered object itself, in particular loss of production, loss of use, loss of orders, loss of profit and other direct or indirect damage. This exclusion of liability does not apply to unlawful intent or gross negligence on the part of the supplier, but it does apply to unlawful intent or gross negligence of servants.

The liability of the supplier is further excluded for damage caused to material supplied by the client if this is particularly sensitive and the supplier's attention was not called to that fact. If therefore the client fails to give such information, the supplier shall not be liable even if he could or should himself have recognised the special sensitivity of the material.

This exclusion of liability likewise does not exist in cases where binding law opposes such exclusion.

## 12 Place of jurisdiction and applicable law

- 12.1 The place of jurisdiction for the client and supplier is the place where the supplier has his registered office. However, the supplier is also entitled to take action against the client at his place of business.
- 12.2 The legal relationship shall be governed by substantive Swiss Law (to the exclusion of Vienna Purchasing Law).