

General Business Terms for the Supply of Products and Performance of Work

Brooks Instrument GmbH
Zur Wetterwarte 50, 01109 Dresden

April 2016

§1 General - Scope of Application

(1) Our General Business Terms will apply to the supply of our products and to the performance of work and services on the basis of the contract concluded between us and the Client unless otherwise stipulated in the respective clause.

(2) Our General Business Terms will apply exclusively; any terms by the Client contrary to or deviating from our General Business will not be recognized by us unless we explicitly approved their validity in writing. Our General Business Terms will apply even where we unconditionally render the delivery or service despite being aware of terms by the Client that are contrary to or deviate from our General Business Terms.

(3) All agreements between us and the Client for performance of the contract are recorded in writing in the contract.

(4) The Client is giving us his approval for awarding work contracts to third parties.

(5) Our General Business Terms will only apply in relation to entrepreneurs as defined by §310 Sect. 1 BGB.

§2 Offer-Acceptance

(1) Our offers are subject to change and we will not be obligated to accept an order. All orders placed in writing or verbally must be confirmed in writing by us unless acceptance is by performance of the order by us. Issue of an invoice will likewise be equivalent to acceptance. The offer signed by the Client is a binding offer. We have the right to accept this offer within two weeks.

(2) The information, drawings, illustrations, technical data, weight, measurement and performance specifications in brochures, catalogs, circulars, advertisements, price lists or documents corresponding to the offer will only be binding where compliance therewith is explicitly agreed on in the contract or where reference was made to the aforementioned documents in the contract.

(3) We reserve the ownership rights and copyright to the illustrations, drawings, calculations and other documents. This will also apply to written documents marked as "classified". The Client will require our explicit written approval prior to disclosure to third parties.

§3 Scope of Services

The scope of work and services will be primarily based on the written contract and specs.

§4 Special Terms for the Manufacture of Customized Products for the Client

(1) Upon placement of the order, the area of assignment and purpose of use of the product being manufactured is to be specified.

(2) Supplementary information material and documents necessary for manufacture of the products are to be provided to us by the Client without requirement of a special request upon placement of the order. Where the information material provided is inadequate we will have the right to request further information material from the Client.

(3) The assignment, procedure and type of results will be regulated in written agreements between the contracting parties. Any deviations, amendments or additions to the assignment, procedure and type of results or verbal ancillary agreements will only be unconditionally valid subject to our written confirmation.

(4) The Client will ensure that the reports, organizational plans, drafts, drawings, lists and calculations made by us within the scope of the order are only used for his own purposes and are not passed on to third parties.

§5 Special Terms for the Software Contained in the Products

(1) The software in our products is subject to copyright and intellectual property rights as well as our rights of use.

(2) Unless expressly agreed otherwise, the Client will acquire a simple, non-exclusive right of use to the software contained in the supplied product. In other respects, the provisions of the Copyright Law (§§69 a ff. UrhG) will apply supplementarily to the rights of use.

(3) Editing of the software contained in the supplied products is not permitted unless otherwise permitted by the provisions of the law or otherwise agreed on in the contract or applicable business terms.

§6 Description of Products/ Client's Possibility to Participate / Guaranteed Feature

(1) Features of samples are only binding after express written agreement. The data contained in data sheets, brochures and other advertising and information material are regarded as a guideline and will only become a binding part of the contract where this was expressly agreed on in writing.

(2) Specified features will only be regarded as guaranteed features if expressly designated as such.

(3) Where there is an analysis certificate for a product, the information therein will be regarded as the agreed features of the product.

§7 Exclusion of Types of Use

(1) Our products may not be sold in countries subject to an embargo. Moreover, our products may not be used in nuclear plants and nuclear systems components or similar plants/systems components or in military equipment and for military purposes.

(2) The Client will ensure that he and his clients comply with the cases of exclusion of use specified in Sect. 1 as well as with all statutory and official regulations, in particular with regard to shipping, storage and use of our products. The Client will be obligated to release us from all customs duties, levies, fines and penalties incurred by acts and omissions of his clients.

§8 Prices - Payment Terms

(1) The prices agreed on in the respective contract will be authoritative. Work and services going beyond the substance and scope of the contractually agreed work must be remunerated additionally.

(2) Our prices are exclusive of value added tax; it will be charged separately on the invoice at the statutory rate on the date of the invoice.

(3) Deduction of discount will require a separate written agreement.

(4) Unless otherwise agreed our invoices are payable net (without discount) within 30 days after the invoice date. The legal provisions regarding the consequences of delayed payment will apply.

(5) The Client will only have a right of set-off where his counterclaims have been determined as res judicata, are uncontested or have been acknowledged by us. Moreover, he will have the right to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

§9 Price Change

(1) We reserve the right to change our prices accordingly where cost decreases or cost increases arise after conclusion

of the contract, in particular on the basis of tariffs or changes in the prices of materials. We will provide proof of this to the Client upon request.

(2) All amendments of the agreement based on the order, in particular where the changes were caused by discrepancy between the information provided and the actual possible performance must be remunerated as additional costs where additional costs are incurred.

§10 Order Cancellation

Where the Client cancels a confirmed order, we can demand 10% of the delivery value for the costs incurred by processing the order and for lost profit.

§11 Delivery Period for the Products

(1) The prerequisite for the start of the specified delivery period is the settlement of all technical issues.

(2) The further punctual and proper performance of the Client's duty is the prerequisite for compliance with our delivery duty. The right to the plea of non-performance of the contract is reserved.

(3) Where the Client delays acceptance or where he culpably breaches other participation duties, we will have the right to demand compensation for the damage incurred, including any additional expenses. The right to further-reaching claims is reserved.

(4) Where the prerequisites in Sect. (3) are given, the risk of accidental loss or deterioration of the purchase item will pass to the Client at the time at which the delayed acceptance or obligations started for him.

(5) We will be liable on the basis of the statutory provisions to the extent that the underlying purchase contract is a fixed transaction as defined by §286 Sect. 2 Nr. 4 BGB or §376 HGB. We will likewise be liable on the basis of the statutory provisions where the Client has the right to claim that he is no longer interested in further performance of the contract due to delayed delivery for which we are responsible.

(6) We will furthermore be liable on the basis of the statutory provision where the delayed delivery is due to a willful or gross negligent breach of contract by us; the fault of our representatives or vicarious agents will be attributed to us. Unless the delivery delay is not based on the willful breach of contract for which we are responsible, our damage compensation liability will be limited to foreseeable, typical damage.

(7) We will also be liable on the basis of the statutory provisions where the delayed delivery for which we are responsible is due to the culpable breach of a cardinal duty; in such a case, however, the liability of damage compensation will be limited to foreseeable, typical damage.

(8) In other respects, we will be liable in the case of delayed delivery for each full week of delay within the framework of lump-sum damage compensation of 0.5% of the delivery value, but at maximum, however, not less than 5% of the delivery value.

(9) Further statutory claims and rights of the Client will remain unaffected.

§12 Force Majeure and Performance Impediments

Where production, completion and delivery deadlines have been specified by us and made the basis of our order placement, such deadlines will be extended in the case of strike or other cases of force majeure for the duration of the delay. The same will apply to all unforeseeable damage, impediments and difficulties for which we are not responsible such as lack of raw materials, operational disruption, labor disputes/strikes, official measures, cessation of delivery sources, breach of participation duties of the Client, etc. In such cases we will have the right to perform and complete the work with the respective delay and to delivery with an adequate preparation period.

§13 Delivery- Passing of Risk- Packaging Costs

(1) Delivery will be in accordance with the agreed trade clauses, to be interpreted in conformity with the Incoterms valid upon conclusion of the contract.

(2) Unless otherwise to be concluded from the order confirmation, delivery "ex works" (EXW) is being agreed on in accordance with Incoterms. The risk of accidental loss and deterioration of the goods will pass to the purchaser upon hand over, in the case of shipment purchase, upon delivery of the item to the shipping agent carrier, or other party or institution assigned with the shipment.

(3) Separate terms will apply to the return of packaging.

§14 Inspection and Acceptance of Work

To the extent that the products were installed in accordance with a separate agreement or we performed the work the Client will test the products together with us and our employees upon request. Where the products are essentially in compliance with the contract, the Client will declare acceptance immediately in writing.

§15 Liability for Defects

(1) In the case of defective work we can choose a guaranteed rectification or manufacture of a new product.

(2) Where we seriously and finally refuse performance or rectification of the defect and make-up performance due to disproportionately high costs or where rectification or make-up performance objectively fails, the Client can demand either reduction of the price of the work or damage compensation within the framework of the liability restrictions set out below.

(3) The prerequisite for the Client's rights in the case of defects of purchase items is that the Client has properly complied with his inspection and reporting duty pursuant to §377 HGB.

(4) In the case of a defect, we will reserve the right to choose the type of make-up performance. In the case of defect rectification we will be obligated to bear all necessary expenditure for rectification of the defect, including transport, travel, work and material costs to the extent that these are not increased by transfer of the purchase item to a site other than the place of performance.

(5) Where the make-up performance fails, the Client will have the right to demand either rescission or price reduction.

(6) Where the Client claims damage compensation based on willfulness or gross negligence, including willfulness or gross negligence of our employees, workers, associates, representatives or vicarious agents we will be liable on the basis of the statutory provisions. Where willful breach of contract by us is not alleged, damage compensation will be limited to typical, foreseeable damage.

(7) We will be liable in accordance with the statutory provisions where we culpably breach a cardinal contractual duty; in such a case, damage compensation liability will be limited to foreseeable, typical damage

(8) Where the Client is entitled to damage compensation in lieu of performance our liability will also be limited to foreseeable, typical damage within the framework of Sect. (2) and Sect. (5). No liability for material defects is being assumed for damage caused by improper equipment, in particular electrochemical or physical impact, non-compliance with installation, operating and maintenance instructions as well as improper alterations or repair work. In particular, the Seller will point out that the relevant regulations for accident prevention, storage and transport as well as all additional relevant regulations, in particular official permits, warning signs, instructions for use are to be complied with.

(9) Liability due to culpable injury to life, limb or health will remain unaffected; this will also apply to compulsory liability on the basis of the Product Liability Act.

(10) Unless otherwise stipulated, liability is excluded.

(11) §634a BGB will apply to the statute of limitations for the claims based on defects of work.

(12) For sold products, the statute of limitations for claims based on defects is 12 months from putting such Goods into operation or 18 months after their delivery, whichever period expires the sooner.

(13) Services are warranted for twelve (12) months from the date of shipment and are limited to the service work provided.

§16 General Liability

(1) Further-reaching liability for damage compensation other than that set out in §14 is excluded, without consideration for the legal nature of the claim being made. This will apply in particular to damage compensation claims from culpa in contrahendo, due to other breaches of duty or to tort claims to the compensation for material damage pursuant to §823 BGB.

(2) The limitation as set out in Sect. (1) will also apply where the Client demands compensation of useless expenditure instead of performance in lieu of a claim to damage compensation.

(3) To the extent that damage compensation toward us is excluded or limited, this will also apply to personal damage compensation of our employees, workers, representatives and vicarious agents.

§17 Reservation of Ownership/ Use

(1) We reserve the right to ownership of the products supplied to us within the framework of the purchase and/or work contract as well as the right of use to the software contained in the supplied product (§5 Sect. 2) until complete satisfaction of our claims from the contract.

(2) In the case of breach of contract by the Client, in particular delayed payment, we will have the right to take back the purchase item. Taking back the purchase item will constitute rescission of the contract. After taking back the purchase item we will have the right to sell it and the proceeds are to be deducted from the Client's liabilities, minus adequate sales costs.

(3) The Client must treat the products supplied and/or purchase item with care; in particular he will be obligated to insure it adequately at replacement value against damage by fire, water or theft. Where maintenance and inspection work is necessary, the Client must carry it out in good time at his own expense.

(4) In the case of seizures or other type of intervention by third parties the Client must notify us immediately in writing, enabling us to bring a third party appeal pursuant to §771 ZPO. To the extent that the third party is unable to pay us the court and out-of-court settlement fees of a lawsuit pursuant to §771 ZPO, the Client will be liable for the loss incurred to us.

(5) The Client has the right to resell the purchase item in the routine course of business; however, he is already assigning to us all claims to the amount of the final invoice amount (including VAT) of our claim incurred to him against his clients or third parties from resale irregardless of whether the purchase item was resold without or after processing. The Client will remain authorized to collect this debt even after assignment. Our authorization to collect the debt ourselves will remain unaffected. However, we will be obligated not to collect the debt as long as the Client complies with his payment duties from the proceeds earned, is not in arrears with payment and where in particular conciliation or insolvency proceedings have not been filed for or payment has ceased. Where however, this is the case, we may demand that the Client disclose the assigned claims and the debtors thereof, provide all necessary information for collection, distribute the corresponding documents and inform the debtors (third parties) of the assignment.

(6) Processing or alteration of the purchase item will always be carried out for us by the Client. Where the purchase item is processed with other items not belonging to us we will acquire

co-ownership in the new item on the basis of the ratio of the value of the purchase item (invoice final amount, including VAT) to the other processed items at the time of processing. For the item originating through the processing the same will apply as in the case of the purchase item delivered subject to reservations.

(7) Where the purchase item is inseparably mixed with items not belonging to us we will acquire co-ownership of the new item on the basis of the ratio of the value of the purchase item (invoice final amount, including VAT) to the other mixed items at the time of the mixing. Where the mixing is carried out in such a way that the Client's item is to be regarded as the principal item, it is agreed that the Client will assign co-ownership to us proportionally. Thus, the Client will safeguard the ensuing sole ownership or co-ownership on our behalf.

(8) We will be obligated to release the securities we are entitled to at the Client's request to the extent that the realizable value of our securities exceed that of the claims being secured by more than 10%; the selection of the securities to be released will be incumbent on us.

§18 Form of Declarations

Legally relevant declarations and notifications which the Client must submit to us or to a third party must be in writing.

§19 Place of Jurisdiction - Place of Performance

(1) Where the Client is a businessman, our business domicile will be the place of jurisdiction; however, we will also have the right to sue the Client at the court at the place of his domicile.

(2) The laws of the Federal Republic of Germany will apply; the UN Sales Convention will not apply.

(3) Unless otherwise to be concluded from the order confirmation, our place of business will be our place of performance.