

## General Terms and Conditions of Sale and Delivery of

Leica Mikrosysteme Vertrieb GmbH - Distributor Sales Area (DSA)

### 1. General

- 1.1 The following Terms and Conditions of Sale and Delivery ("Terms and Conditions") shall apply to all deliveries and services of Leica Mikrosysteme Vertrieb GmbH (hereinafter referred to as Leica). The application of the customer's conflicting or supplementary terms and conditions shall be excluded, unless they have been approved by us in writing. Unless otherwise agreed in writing, such approval shall only be valid for one specific agreement and not for any subsequent agreement.
- 1.2 All agreements, side agreements and contractual amendments shall require the written form. The same shall apply to a waiver or amendment of the written form requirement. No addition to or variation or exclusion of any provisions of these Terms and Conditions and/or the order confirmation shall be binding on us, unless agreed to by our management (Geschäftsführer) or Prokurists in sufficient number for representation. Our in-house and field sales representatives shall not be authorized to conclude any deviating agreements or grant any special conditions.
- 1.3 An order shall only be deemed as accepted by us if it has been confirmed in writing or accepted by a conclusive action (e.g. direct delivery of the ordered goods).
- 1.4 We reserve the right to make slight changes or customized improvements to the products supplied by us. The same shall apply to texts and figures in our documents.
- 1.5 Unless otherwise explicitly agreed, the information published by us in text or picture form (e.g. descriptions, figures or drawings) in catalogues, brochures and other publications shall only indicate the nature of the services we render, the goods we supply and describe their possibilities for application. Other information given by the manufacturer shall not be binding. The information provided by us shall under no circumstances constitute a guarantee for any specific quality of the goods or services; it shall conform with our current state of knowledge. We shall not be liable for successful application.

### 2. Delivery

- 2.1 Delivery deadlines and dates shall commence on the date of our order confirmation, but not prior to the receipt or any possibly agreed advance payments and not prior to explicit clarification of all the details of the order, including the provision of all the necessary certifications, documentation and items. The deadline or date shall be deemed as adhered to if, prior to its expiry, the delivery item has left the manufacturer's factory or warehouse, or the readiness for dispatch has been notified, if the goods cannot be sent off in time or the services rendered in time through no fault of ours.
- 2.2 Unless the order confirmation explicitly states that "time is of the essence", the customer shall set us a reasonable final deadline for delivery, or for rendering the services, after they have expired. We shall not be in default until this final time-limit has expired.
- 2.3 The performance of deliveries and services shall be subject to correct and punctual supply to ourselves.
- 2.4 Unpredictable, extraordinary occurrences for which we are not responsible, such as industrial disputes, operating disturbances, official measures, transport disturbances or other cases of force majeure, irrespective of whether they occur at our location or that of our sub-supplier, shall exempt us from the obligation arising from the respective contract - in the case of obstacles of a temporary nature, however, only for the duration of the hindrance, plus a reasonable startup time-limit. If due to

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occurrences of this kind the delivery should subsequently become impossible or unreasonable for one of the parties, both parties shall be entitled to rescind the contract.

- 2.5. We shall not be liable for damages due to delay caused by slight negligence.
- 2.6. We shall be authorized to make partial deliveries, provided they are reasonable for the customer. Partial deliveries shall be invoiced separately.

### **3. Prices**

- 3.1 Unless a fixed price has been agreed upon in writing by the parties, the calculation of the price of the goods sold by us to the customer shall be determined by our binding price lists as of the date of delivery.
- 3.2 All our prices shall be in Euro, net and plus VAT (if applicable) in the legally stipulated amount. Unless otherwise explicitly agreed, the customer shall also bear all additional fees, public charges and customs duties. Unless otherwise agreed in writing, we shall not remunerate for or accept the return of special packaging material.

### **4. Shipment, transfer of risk**

- 4.1 Unless otherwise agreed, the delivery shall be effected EXW (Incoterms 2000).
- 4.2 The risk shall be transferred upon notifying the customer of the readiness for shipment. After transfer of the risk, the warehouse costs shall be borne by the customer.

### **5. Insurance**

- 5.1 All deliveries shall be insured by the customer to the normal extent against transport risks, unless Leica is instructed to arrange for insurance at the expense of the customer.

### **6. Payment**

- 6.1 Payments shall be rendered in Euro (€) and shall be postage paid and free of expense. They shall only be paid to the paying agents named by us. Checks shall only be accepted if a special agreement has been made and shall not be valid as payment until their encashment. The customer number, invoice date and invoice number shall be quoted in all payments.
- 6.2 Standard payment terms should be 'Irrevocable Letter of Credit at Sight' or 'Full Advance Payment' unless different payment terms are shown explicitly on this document.
- 6.3 Should the payment deadlines be exceeded, we shall be entitled to charge interest to the amount of 8% per annum above the base rate as published from time to time by the Deutsche Bundesbank pursuant to Article 247 BGB [*German Civil Code*].

### **7. Retention of title**

- 7.1 We shall retain title of the goods sold and delivered by us to the customer (goods subject to retention of title) until all claims and subsidiary claims arising from the business relationship with the customer for whatever legal reason have been paid, including future claims and conditional claims, also from contracts concluded at the same time or at a later date. This shall also be valid if payments are rendered for specially designated claims. Should criteria exist, justifying the assumption that the customer is unable to pay or that this is threatened, we shall be entitled to rescind the contract without notice and demand surrender of the goods.
- 7.2 The customer shall only be entitled to resell the goods subject to retention of title within the scope of proper business operations and provided that it is not in default. Any other disposal of the goods subject to retention of title shall not be permissible. The customer shall immediately report any

pledges undertaken by a third party or any other access to the goods subject to retention of title. All intervention costs shall be born by the customer, insofar as they cannot be collected from the third party (opponent of the third party action against execution) and the third party action against execution has justifiably been filed. Should the customer grant his purchaser respite for the purchase price, he shall then retain the title of the goods subject to retention of title at the same conditions under which we retain our title for the delivery of the goods subject to retention of title; however, the customer shall not be obligated also to retain the title with respect to future claims against his purchaser. Otherwise the customer shall not be entitled to resale.

- 7.3 The customer hereby assigns its claims under the resale of the goods to us, and we hereby accept such assignment. The customer is granted the revocable authorization to collect in trust the claims assigned to us in its own name.  
We shall be authorized to revoke the authorization should the customer fail to meet his due obligations to pay arising from his business connection with us, or should circumstances become known to us, that would be capable of reducing the customer's credit worthiness considerably. Should the prerequisites for exercising the right of revocation be given, the customer shall inform us immediately, at our request, of the assigned claims and their debtors, provide all the information necessary for collecting the claims, hand us over the pertaining documentation and inform the debtor of the assignment. We ourselves shall also be authorized to inform the debtor of the assignment. The customer shall not otherwise be entitled to assign the claims. *[This prohibition of assignment shall not apply in the case of an assignment by way of genuine factoring, that we are notified of and for which the factoring proceeds exceed the value of our secured claim. Our claim shall be due for payment immediately after the factoring proceeds are credited.]*
- 7.4 Should the realizable value of the securities exceed all of our claims by more than 10%, we shall release securities to such extent.
- 7.5 For as long as we have the retention of title to our deliveries, the customer shall insure the products delivered to him sufficiently at his own expense against theft, fire, water and other similar cases and provide us evidence of an insurance of this kind at our request.
- 7.6 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, the customer shall do everything to create equivalent security rights for us without undue delay. The customer shall cooperate in all measures such as registration, publication etc., that are necessary and/or beneficial to the validity and enforceability of such security rights.

## **8. Liability for defects**

- 8.1 We shall not be liable for improper or inappropriate use, in particular for excessive load, incorrect assembly or incorrect application by the customer or third parties, extraordinary external influence, natural wear and tear, or incorrect and negligent treatment and handling, particularly by untrained personnel.
- 8.2 The customer undertakes to check the completeness and orderliness of the goods sold and delivered by us to the customer carefully, immediately after they have arrived – even if samples have previously been sent. Customer's rights in case of defects of the goods shall require that it inspects the goods upon delivery without undue delay and notifies us of any defects in writing or by fax and without undue delay, but no later than 10 workdays following delivery; hidden defects must be notified to us in writing or by fax without undue delay upon their discovery. This shall also apply for excess-deliveries.

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- 8.3 If the customer accepts a defective item although he is aware of the defect, he shall only be entitled to the claims and rights for defects if he reserves these claims and rights for defects at acceptance.
- 8.4 For claims of the customer due to defects of the delivered goods we shall hold liability for 1 year, commencing at the time of delivery. The liability for defects of title in accordance with the legal regulations shall remain unaffected. The liability for damages due to defects shall be subject to No. 9. A shorter, legal or separately agreed period of limitation shall remain unaffected.

## **9. Liability for damages**

- 9.1 We shall be liable in accordance with statutory law insofar as the customer asserts claims for damages or compensation of expenses (hereinafter referred to as claims for damages) caused by intent or gross negligence - including intent or gross negligence of our representatives, or persons employed for fulfilling an obligation. In addition, we shall hold liability in accordance with statutory law for damages caused by a breach of material contractual obligation, and also in cases of injury to life, body or health and insofar as we have accepted guarantees.
- 9.2 Our liability for damages caused by a breach of a material contractual obligation shall be restricted the amount of the typically foreseeable damage, except in cases of wrongful intent or gross negligence, or where liability is held for damage to life, body or health, or accepted guarantees.
- 9.3 Otherwise, the liability for damages shall be excluded - irrespective of the legal nature of the asserted claim. In this respect, we shall not be liable, particularly, for consequential damages, such as e.g. lost profit or any other financial losses of the customer.
- 9.4 The above liability restrictions shall apply likewise for the customer's claims to the compensation of expenses. Claims of the customer such as these shall be restricted however, deviant from 9.2, to the amount of the interest that he may have in fulfilling the contract.
- 9.5 Claims for damages asserted against us, for whatever legal reason, shall lapse within two years as from the legally regulated commencement of the period of limitation, but at the latest upon delivery of the item. A shorter legal or separately agreed period of limitation shall remain unaffected.
- 9.6 Insofar as our liability is excluded or restricted, this shall also apply to the personal liability of our personnel, representatives and persons employed for fulfilling an obligation.
- 9.7 The limitation of liability as set out above shall not apply to any liability under the German Product Liability Act.

## **10. Return consignments**

- 10.1. Return consignments beyond our liability of No. 8 and 9 shall require our prior consent. Return consignments that have not been agreed with us, shall be returned to the customer. The costs thereby incurred shall be borne by the customer. The act of taking back alone shall not mean that an obligation to take back has been accepted.
- 10.2. A return consignment that is not based on obligations or exercising rights shall always be excluded for goods deviating from the normal design that have been produced or changed as ordered, or provided with a company label or other sign of the customer, or if they are no longer brand-new or were delivered more than 4 months ago.
- 10.3. Spare parts delivered in accordance with the order shall not be taken back as a general rule. For return consignments, it shall be mandatory to quote the invoice number, invoice date and customer number.

## **11. Assignment of claims, setoff, right of retention**

- 11.1. Claims of the contractual party may only be assigned with our written consent.

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11.2. Setoff by the customer with counterclaims shall only be permissible if these counterclaims are uncontested or finally adjudicated. This shall also apply to a right of retention of the customer.

**12. Place of fulfillment, place of jurisdiction, applicable law, other provisions**

- 12.1** The place of fulfillment for the obligations of both parties shall be the premises of Leica Mikrosysteme Vertrieb GmbH in Wetzlar.
- 12.2** Exclusive venue for all disputes for businessmen shall be Wetzlar. However, we shall be authorized to take legal action against the customer at any other court having statutory jurisdiction.
- 12.3** The relationship between us and the customer shall be subject to German law. The UN Convention on the International Sale of Goods (CISG) and the regulations of International Private Law shall not apply.
- 12.4** The legal invalidity of a clause of these General Terms and Conditions of Trade (GTCT) shall not affect the legal validity of the remaining clauses or of the contract on which they are based. The contractual parties undertake to replace an ineffective clause by an effective regulation.
- 12.5** These Terms and Conditions have been translated from the German original. The German language version shall prevail.