

1. SCOPE

- 1.1. These Standard Terms & Conditions of Business (hereinafter "T&C") apply to each delivery of products, including devices delivered individually or with software or software packages, of spare parts and consumables (hereinafter "Product(s)") by Fritz Gyger AG, domiciled in Gwatt (Thun), Switzerland (hereinafter "FGAG"). They shall also apply to all other legal relationships between FGAG and the customer (jointly referred to as the "Parties"), unless the Parties have explicitly agreed otherwise in writing.
- 1.2. Upon accepting our offer or ordering Products, the customer agrees to these T&C and they become an integral part of the contract. Any deviating agreements must be in writing and the customer's standard terms and conditions shall be binding on FGAG only if FGAG has expressly accepted them in writing.

2. OFFER AND ACCEPTANCE, CONFIDENTIALITY, RETURN OF DOCUMENTS

- 2.1. Unless agreed otherwise, a purchase offer (hereinafter "Offer") is valid for 30 days from the date of the Offer.
- 2.2. All Offer documents and other documents provided to the customer by FGAG may not be disclosed to third parties or copied, unless FGAG has given its express written consent. At FGAG's request, the customer is obligated to return all documents provided to it, unless they constitute the accepted Offers or the documentation as specified in Clause 4.1 below.
- 2.3. The contract of sale shall be entered into by written acceptance of the Offer or a separate purchase order for Products by the customer. Both, the acceptance of the Offer and the purchase order may also be declared or placed, respectively, by fax or email.

3. PRICES AND DELIVERY

- 3.1. Unless expressly agreed otherwise, the prices stated in FGAG's Offers are quoted in Swiss Francs (CHF) exclusive of customs, shipping and insurance costs. Those shall be paid by the customer in addition. Value-added tax is shown separately on the invoices if this tax is payable by the customer.
- 3.2. The prices listed in the Offers are based on the production costs at the time the Offer is made.
- 3.3. FGAG shall arrange shipment and transport insurance at its own discretion; however, unless otherwise agreed in writing, the shipping and insurance costs shall be at the customer's expense.
- 3.4. All Products shall be delivered to the customer EXW FGAG warehouse (current set of Incoterms) ex FGAG works.
- 3.5. In cases of unforeseeable events beyond the control of both Parties, such as force majeure, which prevent FGAG from making timely delivery, and provided that FGAG is not responsible for the delay, agreed delivery dates shall not be binding on FGAG. If these events prevent any of FGAG's parts suppliers to supply FGAG with products in due time, and if neither the parts supplier nor FGAG is responsible for the delay in delivery, the agreed-upon delivery periods will be extended accordingly. Should such an excusable delay exceed one month, the customer shall be entitled to terminate the contract of sale (rescission).
- 3.6. Delivery shall be deemed to have been made on time if FGAG has dispatched the Product to the customer by the agreed delivery date at the latest; this shall not take into account any installation, function or performance tests that may be required, unless otherwise agreed in writing between FGAG and the customer.

4. SOFTWARE LICENSE AND LIMITATIONS

- 4.1. Subject to the customer's payment of the price specified in the Offer, FGAG grants the customer a non-exclusive right of use of the FGAG software specified in the Offer as well as of all related documentation provided by FGAG (the "Documentation", together with the software referred to as "Software Products") solely for the purpose described in the Documentation. This right of use shall apply for the period during which the relevant Product can be used by the customer.
- 4.2. The customer is not entitled to carry out the following activities itself or have them carried out by third parties:
 - (a) reassembling, decompiling or any other reverse engineering as well as reconstruction and decryption of the software;
 - (b) providing, renting, leasing or any other use or granting of use of the Software Products for the benefit of third parties;
 - (c) copying, editing, modifying, integrating into other software or combining with other software.
- 4.3. The Software, including all related updates, modifications and enhancements, as well as all Documentation provided by FGAG, shall at all times remain the sole and exclusive property of FGAG. Furthermore, it is understood with regard to the relationship between FGAG and the customer that any inventions, discoveries, procedures, methods, techniques, knowledge, derivations, improvements and enhancements resulting from or related to the Software shall be the exclusive property of FGAG.
- 4.4. In addition to these T&C, a EULA (End User License Agreement), if any, may apply. In the event of discrepancies between the EULA and these T&C, these T&C shall prevail. However, if the EULA provides for more stringent license terms than these T&C, the EULA shall take precedence.

5. PASSING OF RISKS

- 5.1. The risk of accidental damage and/or destruction of Products shall pass from FGAG to the customer upon shipment ex works and/or ex warehouse. In the event of late shipment, for which the customer is responsible, the risk shall pass to the customer upon readiness of the goods for shipment.

6. PAYMENT

- 6.1. The purchase price is due for payment within thirty (30) days of the date of invoice. After expiry of this thirty-day payment period, the customer shall automatically be in default without further notice and shall pay default interest at a rate of five (5) percent p.a. The customer is not entitled to offset unless its claim has been expressly acknowledged by FGAG in writing or has been established as final and binding and no longer subject to ordinary legal remedies by the competent court. The customer shall not have the right to assign claims to third parties without FGAG's written consent.
- 6.2. If the customer is in default with any payment, FGAG shall be entitled to withhold purchase orders placed and confirmed by FGAG at that time until all due payments have been settled by the customer. Furthermore, FGAG may demand advance payment for all current and future purchase orders in the event of default and if there is reasonable doubt as to the customer's solvency. FGAG reserves any and all further rights in case of default.

7. RETENTION OF TITLE

- 7.1. FGAG retains full title to all Products delivered to the customer as long as the customer has not fully met its payment obligations in connection with the delivery of the respective Products. For as long as this retention of title is in place, the customer may not sell, pledge, mortgage, use as security or otherwise dispose of the respective Products. The customer authorizes FGAG to make any necessary registrations or submissions to the appropriate authorities that may create such retention of title.

8. VALIDATION: INSTALLATION TEST, FUNCTION TEST, PERFORMANCE TEST

- 8.1. Depending on the nature of the delivered Products and as per agreement between the Parties, FGAG may carry out an installation test at the customer's premises and support the customer in a function test. Installation test means a test carried out at the time of installation to demonstrate that all aspects of the installation meet the manufacturer's specifications. Function test means a test to be carried out after installation to demonstrate that all components of the supplied equipment perform consistently within certain limits and tolerances agreed between FGAG and the customer.
- 8.2. The customer shall sign a test report confirming that the installation test and the function test have been carried out. This report shall be deemed the customer's acceptance of performance.
- 8.3. In any event, it is the customer's responsibility to carry out a performance test to ensure, through appropriate test and/or calibration procedures, that the final result of specific processes or samples meets all the requirements for release of the equipment in terms of flawless operation, measurement and safety. FGAG shall offer merely assistance services in this performance test in accordance with the conditions to be agreed separately between the Parties. Unless provided otherwise in that agreement, FGAG shall not be liable for the performance parameters tested in this performance test.

9. TRACEABILITY

- 9.1. If the customer intends to resell, lease out or otherwise dispose of Products subject to statutory provisions on medical devices or similar provisions, to third parties or to another business unit, or to relocate them, it shall notify FGAG of such intention in writing and at least four (4) weeks before the actual implementation thereof, stating the serial numbers of the Products as well as the identity, registered office and business activity of the respective recipient. This obligation shall not affect the general right of the customer to sell the Products within the limits of the applicable law. The customer shall at all times maintain appropriate records to ensure traceability of each Product purchased from FGAG and shall allow FGAG and the competent authorities access to these records during customary business hours.

10. WARRANTY

- 10.1. FGAG warrants that the Products are free from defects and comply with the specifications agreed upon in writing between the Parties.
- 10.2. FGAG shall not be liable for defects, which are not within its area of responsibility, including but not limited to defects that are due to the following conduct of the customer: inadmissible or improper use, non-compliance with the operating instructions, modification of the Products, faulty commissioning, faulty handling, faulty installation, use of unsuitable accessories or unsuitable spare parts (including software, equipment or reagents) and improperly performed repairs. FGAG shall not be liable for natural wear and tear. Furthermore, FGAG shall not be liable if the Products or parts of the Products are used together with instruments or software not supplied by FGAG. FGAG does not assume any guarantee that the use of the software will be without interruptions or disturbances.

- 10.3. The warranty period (limitation period) shall be twelve (12) months and shall start to run upon receipt of the Products by the customer.
- 10.4. The customer must inspect the Products for defects immediately upon receipt and shall notify FGAG in writing of any obvious defects within ten (10) days of receipt of the Product. Hidden defects must be reported to FGAG immediately after their discovery. If the customer fails to inform FGAG in due time about obvious or discovered hidden defects, warranty claims regarding these defects shall be excluded.
- 10.5. For Products of the Certus product group, the customer must include a confirmation of decontamination according to the available documentation of FGAG with the notice of defects to FGAG, failing which the corresponding warranty claims will be excluded.
- 10.6. If the customer has a justified warranty claim under these T&C, FGAG may either remedy an existing defect or replace the defective Product. In the event that
 - (I) such remedial action fails; or that
 - (II) the replacement is also defective
 The customer shall have the right to rescind the underlying contract and return the Products.
- 10.7. Limited obligations to provide a cure for Products not serviced by FGAG: If FGAG neither performs an installation test nor supports the customer in a function test, and if the Products are not serviced by FGAG or its affiliated companies, the customer's warranty claim shall be limited to free delivery of the spare parts necessary to repair the defective Products.
- 10.8. Any and all warranties and rights of the customer exceeding the warranties and rights specified in this Clause 10 shall be excluded to the extent permitted by law.

11. LIMITATION OF LIABILITY

- 11.1. FGAG shall be liable to the customer in connection with the contracts in place between the Parties only for loss or damage caused by willful misconduct or gross negligence. FGAG shall not be liable for auxiliary persons. Any further liability for damages directly or indirectly related to the contracts between the Parties shall be excluded to the extent permitted by law. This exclusion of liability shall apply regardless of the cause in law on which the asserted loss or damage is based. It shall, in particular, also apply to warranties and guarantees.
- 11.2. The customer must take all reasonable measures to avert losses or damage and minimize their amount.

12. INTENDED USE AND LIABILITY OF THE CUSTOMER

- 12.1. To the extent required by applicable regulations governing medical devices or similar provisions of the law to which the use of the Products is subject, the Products may only be operated or used in accordance with the purposes, specifications and areas of application defined in the Offer and/or the Product description issued by FGAG (hereinafter referred to as "Intended Purpose"). The Products may neither be modified nor combined with other products or components. The Intended Purpose shall also include the definition as disposable products, as products intended exclusively for research purposes and as common laboratory equipment. FGAG does not assume any liability towards the customer and does not warrant any legal or regulatory conformity with regard to Products operated or used and/or modified and/or combined with other products/components contrary to their Intended Purpose.
- 12.2. In cases where the customer operates or uses the Products and/or modifies and/or combines them with other products/components contrary to their Intended Purpose, the customer shall indemnify FGAG against third-party claims, including requests from authorities, to the extent that such claims are the consequence of the customer's intentional or negligent operation or use of the Products, their modification or combination with other products/components contrary to their Intended Purpose. This shall also apply if the customer has resold to third parties Products that have been modified or combined contrary to their Intended Purpose.

13. COMPLIANCE WITH REGULATORY REQUIREMENTS BY THE CUSTOMER AND NOTIFICATION OF INCIDENTS

- 13.1. The customer undertakes to operate, use, maintain and service the Products exclusively in accordance with the applicable legal and regulatory provisions and in accordance with the specifications of FGAG's operating instructions supplied with the Products. The customer shall, in particular, report all incidents, near-incidents and recalls to the competent authorities in accordance with applicable laws and regulations, and immediately thereafter provide FGAG with a copy of the report. Regardless of the customer's reporting obligations imposed by the law, the customer shall in any case notify FGAG in writing of any incident defined below that comes to its attention: Malfunction, failure or change in the characteristics or performance, or improper labeling or operating instructions of a Product, which have resulted, could have resulted or could result, directly or indirectly, in the death or serious deterioration in the health of a patient, user or other person; these incidents must be reported to FGAG without undue delay upon becoming known to the customer, but no later than three (3) business days thereafter.
- 13.2. The customer must ensure that the Products are maintained exclusively by qualified specialists. Upon FGAG's request, the customer shall provide FGAG with all relevant maintenance documents.

- 13.3. To the extent that the customer, when operating or using the Products, violates any laws, rules or regulations, it shall be obligated to indemnify FGAG from all damages, losses, claims and costs resulting from any of the aforementioned breaches of duty, if and to the extent the customer has committed such breach of duty by willful misconduct or negligence.

14. MISCELLANEOUS

- 14.1. Should any one or several of the provisions of these Standard Terms & Conditions of Business or of the contracts entered into by the Parties be or become void or ineffective, the remainder of the Standard Terms & Conditions of Business or of the contracts entered into by the Parties shall not be affected thereby. In the event of invalidity or ineffectiveness of a clause, it shall be replaced by a clause which most closely corresponds to the economic purpose of the invalid one.
- 14.2. Any translation of these Standard Terms & Conditions of Business or any other contract entered into by the Parties is provided for convenience only. In the event of disputes or questions of interpretation, the German version shall be used exclusively.
- 14.3. All contractual relations between the Parties shall be governed by Swiss substantive law, exclusive of the choice of law rules and international treaties, namely the Vienna Convention (UN Convention on Contracts for the International Sale of Goods of April 11, 1980).
- 14.4. The exclusive place of jurisdiction for all legal disputes arising from contractual relations between the Parties or otherwise in connection therewith shall be Gwatt (Thun).

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