General Terms and Conditions of Fritz Gyger AG for Sale and Delivery

1. SCOPE OF APPLICATION

1.1. These General Terms and Conditions (the "GTC") apply to the sale and delivery of Products by Fritz Gyger AG, which has its registered office at Gwatt (Thun), Switzerland ("FGAG") to the Customer, as well as to all other related activities of FGAG, unless explicitly agreed otherwise in writing by FGAG and the Customer (each a "Party" and together the "Parties"). Products as referred to in these GTC also include parts of Products such as software and hardware components, spare parts and consumables. FGAG has all rights required in order to sell and distribute the Products according to these GTC to its customers.

1.2. Notwithstanding Section 1.1 above, all support and maintenance work on Products carried out by FGAG is governed by FGAG's General Terms and Conditions for Support and Maintenance, provided that their application in connection with the relevant Product has been agreed in writing between the Parties.

2. QUOTE, ACCEPTANCE AND COMPONENTS OF THE PURCHASE CONTRACT

2.1. Unless otherwise stipulated in FGAG's quote for Products (the "Quote"), the Quote will be valid for 30 days from the date of the Quote and will expire thereafter without further notice.

2.2. FGAG's Quote and all other related documents provided to the Customer by FGAG may neither be disclosed to third parties nor copied by Customer unless FGAG has given its explicit written consent.

2.3. The written acceptance of the Quote by the Customer constitutes a purchase contract between the Parties (the "Purchase Contract"). In principle, FGAG will then send the Customer an order confirmation. Its content is binding on the Customer unless the Customer objects to the order confirmation in writing within 5 calendar days of receipt.

2.4. The Purchase Contract consists of the following documents:
- the Quote from FGAG accepted by the Customer;
- these GTC; and
- FGAG's official price list (the "Price List").

2.5. In addition to the Purchase Contract, the Customer may have to conclude an End User License Agreement (EULA) with Fritz Gyger AG.

2.6. In the event of contradictions between the various components of the Purchase Contract, the order of precedence pursuant to Section 2.4 above will apply, i.e. the Quote will take precedence over these GTC, unless explicitly agreed otherwise between the Parties. Notwithstanding the preceding sentence, Sections 10, 11, 12 and 15 of these GTC will always take precedence over the provisions of the Quote and all other components of the Purchase Contract. In the event of contradictions between parts of the Purchase Contract on the one hand and the EULA on the other, the Purchase Contract will take precedence. However, if the EULA provides for stricter license conditions than these GTC, the EULA will take precedence, notwithstanding the preceding sentence.

2.7. Each Party warrants that it has all the necessary powers and authorizations to enter into the Purchase Contract and that the conclusion of the Purchase Contract does not breach any law or agreement by which it is bound.

2.8. Once the Purchase Contract has been concluded in accordance with the above provisions, it is binding on each Party. Withdrawal or termination is not possible unless explicitly stipulated otherwise in the Purchase Contract. Mandatory provisions of the applicable statutory law remain reserved.

2.9. The Purchase Contract constitutes the entire legal relationship between the Parties in relation to the sale and delivery of the Products concerned. Any agreements that differ from the Purchase Contract must be made in writing, and the Customer's General Terms and Conditions shall only be binding on FGAG if FGAG has expressly accepted them in writing.

2.10. The Parties may conclude multiple Purchase Contracts for the sale and delivery of several Products. The validity of each individual Purchase Contract is independent of any other Purchase Contracts.

3. PURCHASE PRICE AND PAYMENT

3.1. The purchase price stated in FGAG's Quote (the "Purchase Price") has to be paid – unless otherwise expressly agreed in writing – in Swiss francs (CHF).

3.2. Any services provided in connection with Products by FGAG at the Customer's request that are not explicitly covered by the Purchase Price according to the terms of the Purchase Contract shall be paid for by the Customer in addition to the Purchase Price (the "Additional Fee"). An Additional Fee may be incurred, for example, due to activities carried out by FGAG in the event of a warranty exclusion or additional installation or training services. It shall be charged on a time and material basis unless otherwise agreed in writing between the Parties. The hourly rates for services and costs of materials are based on the applicable FGAG Price List.

3.3. The Purchase Price and the Additional Fees do not include any customs, shipping and insurance costs, VAT, sales tax or other taxes. If owed, these sums must be paid additionally by the Customer.

3.4. The Quote may include an obligation for the Customer to provide a bank guarantee or other security. FGAG is free to decide on such securities at its own discretion.

3.5. Unless otherwise stipulated in the Quote or agreed in writing, fifty percent (50%) of the Purchase Price (plus Taxes, and agreed upon expenses) shall be due upon conclusion of the Purchase Contract (the "Prepayment") and fifty percent (50%) of the Purchase Price (plus Taxes and agreed upon expenses) at the time of delivery of the Products ordered. The Additional Fees shall be due upon conclusion of the corresponding services, subject to any deviating provisions in the applicable Quote.

3.6. The Purchase Price or the owed parts thereof, as well as the Additional Fees, shall be paid without deductions within 30 days of the invoice date. After expiry of this payment deadline, the Customer shall automatically be in default without any further reminder and shall be liable to pay default interest at a rate of five percent per annum. Notwithstanding the foregoing provision, in case a Prepayment is due according to Section 3.5 above, FGAG is only obliged to deliver the purchased Products after it received the Prepayment.

3.7. If the Customer defaults on a payment, FGAG shall be entitled to withhold orders already placed and confirmed by FGAG at that time until all payments due have been settled by the Customer. FGAG reserves all further rights in the event of a payment default.

3.8. In the event of default, and if there are justified doubts as to the Customer's ability or willingness to pay, FGAG may, at its own discretion and notwithstanding any agreements to the contrary, also demand advance payment, bank guarantees or other securities for all orders already placed and to be placed in the future.

3.9. The Customer shall have no right to offset payments unless their claim has been expressly acknowledged in writing by FGAG or has been established in a final judgment by the competent court. The Customer shall not have the right to assign claims to third parties without the written consent of FGAG.

4. DELIVERY

4.1. FGAG arranges shipping and transportation insurance for the Products at its own discretion. The relevant costs shall be borne by the Customer, unless otherwise agreed in the Quote.

4.2. All Products are delivered to the Customer EXW Gwatt (Thun) (current Incoterms), unless certain aspects such as delivery or insurance are otherwise specified in the Quote or these GTC.

4.3. Notwithstanding any provisions to the contrary in the Purchase Contract, FGAG shall not be obliged to deliver the ordered Products to the Customer unless any partial payments owed for them have been credited to FGAG's relevant account.

4.4. Delivery shall be deemed to have been made on time if FGAG has dispatched the Product to the Customer on the agreed delivery date at the latest, without taking into account any installation, function or performance tests that may have to be carried out, unless otherwise stipulated in the Quote.

4.5. FGAG shall endeavor to meet any milestones or deadlines agreed in the Quote, but gives no guarantee that it will be able to do so. FGAG shall inform the Customer in advance of any impending postponements of milestones and deadlines, insofar as this is possible and reasonable. If the delay lasts for more than three months, the Customer is entitled to withdraw from the Purchase Contract with regard to the Products affected by the delay. All further claims by the Customer arising from delays, in particular claims for damages, are excluded.

4.6. The risk of accidental damage to or destruction of Products shall pass to the Customer from FGAG upon shipment ex works. In the event of a delayed shipment for which the Customer is responsible, the risk is transferred to the Customer on the date on which the Products are ready for shipment.

4.7. FGAG shall retain full ownership rights to all Products delivered to the Customer until the Customer has fully complied with their payment obligations in connection with the delivery of the relevant Products. As long as this retention of ownership rights exists, the Customer may not sell, pledge, mortgage, use as security or otherwise dispose of the Products concerned. The Customer hereby authorizes FGAG to complete any registrations or entries with the competent authorities that may be necessary to ensure this retention of ownership rights.

5. SOFTWARE LICENSE AND RESTRICTIONS

5.1. Subject to payment of the Purchase Price owed by the Customer, FGAG grants the Customer a non-exclusive right to use the FGAG software listed in the Quote and all related documentation provided by FGAG (the "Documentation", referred to in conjunction with the software as the "Software Product") solely for the purpose described in the Documentation. This right of use applies throughout the period during which the corresponding Product can be used by the Customer and is also specified in the Documentation if necessary.

5.2. The Customer is not permitted to carry out the following activities themselves or to have them carried out by third parties:
- Reassembly, decompilation or other reverse engineering or the reconstruction and decryption of the Software Product;
- Provision, rental, lending and any other use or granting of use of the Software Products for the benefit of third parties;
- Reproduction, editing, modification, integration into other software or combination with other software.

5.3. The Software Products, including all related updates, modifications and enhancements, as well as all Documentation provided by FGAG, shall remain the sole and exclusive property of FGAG at all times. In addition, the relationship between FGAG and the Customer shall be governed by the fact that FGAG is the sole owner of any inventions, discoveries, processes, methods, techniques, knowledge, derivations, improvements and enhancements resulting from or in connection with the Software Products, insofar as these relate to FGAG's Products or Software Products.

5.4. If the Customer has not concluded a support and maintenance agreement with FGAG in relation to the Product concerned, the following provisions shall apply:
- Inquiries to FGAG in connection with Software Products or hardware for FGAG's Products shall result in additional costs for the Customer, unless they concern a warranty case in accordance with these GTC;
- Updates and releases of the software of the affected Product will only be made available during the corresponding warranty period;
- If the Customer wishes support requests to be handled by a third-party provider commissioned by the Customer, this must be agreed in the Purchase Contract or approved in advance and in writing by FGAG.

5.5. The Customer acknowledges and accepts that FGAG's Products must generally be registered in order for them to be executable or fully executable.

5.6. The Customer acknowledges and accepts that FGAG may send them newsletters. They can unsubscribe from these newsletters at any time.

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

6.1. Depending on the type of Products supplied and the corresponding agreements in the Quote, FGAG may carry out an installation test on the Customer's premises and assist the Customer with a function test. An installation test means a test carried out at the time of installation to verify that all aspects of the installation meet the manufacturer's specifications. A function test means a test to be carried out after installation which proves that all components of the delivered device function consistently within certain limits and tolerances agreed between FGAG and the Customer.

6.2. The Customer signs a test report confirming that the installation test and function test have been carried out. This report is deemed to represent the Customer's acceptance of fulfillment.

6.3. If no test report has been drawn up within 30 days of delivery of the corresponding Product, or if the Customer puts the device into operation themselves, the test is also deemed to have been fulfilled successfully after the 30 days have expired.

6.4. In any event, it is the Customer's responsibility to carry out a performance test to ensure by means of appropriate testing and/or calibration procedures that the final result of specific processes or sample-taking meets all the requirements for approval of the device in terms of correct operation, measurement and safety. FGAG shall only offer its assistance with a performance test of this kind to the extent of the terms and conditions to be agreed separately in writing between the Parties. Unless otherwise specified in an agreement of this kind, FGAG accepts no liability whatsoever for the performance parameters tested in the course of any such performance tests.

7. FURTHER OBLIGATIONS OF THE CUSTOMER

7.1. The Customer is solely responsible for the procurement and maintenance of the Products covered by the Purchase Contract and all related Products and services from third parties that are necessary for the safe and proper operation of the Products, unless and insofar as this is otherwise stipulated in the Purchase Contract or other written contracts drawn up between the Parties.

7.2. The Customer acknowledges and accepts that it is solely responsible for ensuring that their personnel are trained in the proper use and operation of the Products.

7.3. The Customer is obliged to inform FGAG immediately of any errors, malfunctions or problems, as well as of any legal violations asserted by third parties (including authorities), in relation to the purchased Products, and at the latest within three working days of becoming aware of them.

7.4. The Customer warrants that it will always comply with the applicable laws and provisions of the Purchase Contract.

8. INTENDED USE

8.1. The Products may only be operated or used by the Customer in accordance with the purposes, specifications and areas of application set out in the product description issued by FGAG (the "Intended Purpose"). The Products may not be modified or combined with other products or components. The Intended Purpose also includes the relevant definition as disposable Products, as Products intended exclusively for research purposes and as general laboratory supplies.

8.2. The Customer understands and accepts that it is not entitled to use the Products in the field of coatings for wearable optics (the "Field"), to be provided with services by FGAG in the Field, or to use Products or services provided by FGAG outside the Field intending to operate within the Field.

8.3. If the Customer breaches Section 8.1 or 8.2 above, it shall be obliged to indemnify FGAG against claims by third parties, including official requests, insofar as such claims are the result of this breach. This also applies in cases in which the Customer has resold Products to third parties that have been modified or combined contrary to their Intended Purpose. Moreover, if Customer breaches Section 8.1 or 8.2 above, FGAG is entitled to terminate some or all agreements between the Parties with immediate effect.

9. COMPLIANCE WITH REGULATORY REQUIREMENTS BY THE CUSTOMER

9.1. 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 the FGAG operating instructions enclosed with the Products. In particular, the Customer must report all incidents, near-incidents and recalls to the competent authorities in accordance with the applicable legal provisions, and must provide FGAG with a copy of the report immediately after its submission.

9.2. Without prejudice to the Customer's reporting obligations imposed by law, the Customer must always inform FGAG in writing of any incident of which it becomes aware, as defined below: malfunction, failure or alteration of the characteristics or performance or inadequacy of the labeling or operating instructions of a Product. Such incidents must be reported to FGAG immediately after the Customer becomes aware of them, and within three working days at the latest.

9.3. The Customer must ensure that Product support and maintenance work is carried out exclusively by qualified specialists. At FGAG's request, the Customer must provide FGAG with all relevant maintenance documents.

9.4. If the Customer breaches statutory or regulatory provisions when operating or using the Products, the Customer shall be obliged to indemnify FGAG against all damages, losses, claims and costs resulting from the aforementioned breach of duty.

10. WARRANTY

10.1. FGAG warrants that the Products covered by the Purchase Contract shall be free from defects during the warranty period and shall comply with the specifications agreed upon in writing between the Parties.

10.2. FGAG's warranty is excluded and FGAG shall not be liable for defects for which it is not responsible. This applies, in particular, to the following defects:
- Defects caused or partially caused by the Customer, such as in particular unauthorized or improper use, failure to observe the operating instructions, modification of the Products, incorrect commissioning, incorrect handling, incorrect installation, use of unsuitable accessories or unsuitable spare parts (including software, devices or reagents) and improper repairs.
- Defects that exist because Products or parts thereof are used with instruments, software or other elements that were not supplied by FGAG.
- Defects attributable to normal wear and tear of the Products concerned or parts thereof.

10.3. Notwithstanding the foregoing provisions, FGAG does not guarantee that the use of the Software Products or any other software related to the Products will be uninterrupted or error-free.

10.4. In addition, all warranties by FGAG in connection with the legal and regulatory conformity of the Products are excluded, unless explicitly stipulated otherwise in the corresponding Purchase Contract. The Customer alone is responsible and liable for ensuring that use of the Products in the specific area of application and territory complies with the statutory regulations.

10.5. The warranty period (limitation period) is twelve months, unless otherwise stipulated in the corresponding Quote, and begins upon receipt of the Products by the Customer.

10.6. The Customer shall 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 as soon as they are discovered. If the Customer fails to inform FGAG in due time about obvious or detected hidden defects, any warranty claims regarding these defects shall be excluded.

10.7. When submitting a defect report to FGAG for a Product from the Certus product group in the context of return shipments, the Customer must enclose a decontamination confirmation in accordance with FGAG's available Documentation. Otherwise, all corresponding warranty claims are excluded.

10.8. If the Customer has a justified warranty claim under the Purchase Contract, FGAG may, at its own discretion, either remedy an existing defect or replace the defective Product. In the event that a remedy of defects fails for at least three months or that the replacement delivery is defective at least three times, the Customer shall have the right to withdraw from the Purchase Contract with regard to the affected Product and to return it to FGAG in exchange for the reimbursement of the price (the "Right of Withdrawal"). To avoid any misunderstandings, it is noted that the Right of Withdrawal only applies to those Products for which the conditions are met. The Right of Withdrawal is not permitted for any other Products purchased.

10.9. Limited subsequent performance obligations for Products not maintained by FGAG: if FGAG neither carries out an installation test nor assists the Customer with a function test, and if the Products are not maintained by FGAG or its affiliated companies, the Customer's warranty claim shall be limited to free delivery of the spare parts required to repair the defective Products.

10.10. The above provisions of Section 10 conclusively define FGAG's warranties and the Customer's rights in the event of any breaches thereof. All further warranties, in particular any existing statutory warranties, as well as the corresponding rights and legal remedies of the Customer, are hereby explicitly excluded.

11. LIABILITY

11.1. FGAG shall only be liable to the Customer in connection with the Purchase Contract for damage caused intentionally or by gross negligence. FGAG shall not be liable for auxiliary persons. Any further liability for damages in connection with the Purchase Contract is excluded to the extent permitted by law. This exclusion of liability applies irrespective of the legal grounds on which the claims are asserted. In particular, it is also applicable to warranties and guarantees.

11.2. The Customer must take all reasonable measures to avert damage and minimize the amount of damage.

11.3. FGAG shall not be liable for defects for which it is not responsible, in particular for defects resulting from the following conduct by the Customer: unauthorized or improper use of Products, failure to observe the operating instructions, modification of the Products, incorrect commissioning, incorrect handling, incorrect installation, use of unsuitable accessories or unsuitable spare parts (including software, devices or reagents) and improper repairs. FGAG shall not be liable for normal wear and tear. Furthermore, FGAG shall not be liable if the Products or parts thereof are used with instruments or software not supplied by FGAG.

12. INTELLECTUAL PROPERTY

12.1. All copyrights and other intellectual property rights to the Products, the related documents and the work results, if any, created by FGAG under the Purchase Contract are and shall remain the sole property of FGAG. This also applies in particular to the software contained in the Products. In accordance with the Purchase Contract, no intellectual property rights to Products are transferred to the Customer.

12.2. The rights to all suggestions, enhancement requests, feedback, recommendations or other information communicated by the Customer with respect to the Purchase Contract or the Products shall be owned by FGAG, and the Customer hereby makes all assignments and takes all reasonable actions necessary to fulfill the foregoing ownership rights.

13. CONFIDENTIALITY AND DATA PROTECTION

13.1. "Confidential Information" within the meaning of the Purchase Contract shall refer to all information which one Party (the "Disclosing Party") provides or has already provided to the other Party (the "Receiving Party"), provided that this information has been marked as "confidential" in a clearly visible place. Without this marking, the information provided is never Confidential Information, unless otherwise stipulated in the Purchase Contract. Confidential Information may, for example, take the form of data, figures, documents, samples, drawings, plans, business intentions, Customer names, problems or solutions to problems that have been made accessible. Notwithstanding the foregoing provisions, Quotes issued by FGAG and related documents shall always be deemed Confidential Information of FGAG.

13.2. Information shall not be regarded as Confidential Information
- if it was or is already generally known at the time of communication due to circumstances that did not constitute a breach of Section 13 of these GTC or of a confidentiality agreement with a third party;
- if the Receiving Party already knew the information before it was disclosed to it by the Disclosing Party;
- if the Receiving Party obtained the information independently without using Confidential Information of the Disclosing Party to do so; or
- if the Disclosing Party had agreed to disclose the information to third parties in advance and in writing.

13.3. The Receiving Party undertakes to treat the Confidential Information as confidential.

13.4. The confidentiality obligations pursuant to Section 13 of these GTC shall apply for a period of five years after conclusion of the corresponding Purchase Contract.

13.5. The Parties may conclude a confidentiality agreement that goes beyond and is more detailed than Section 13 of these GTC. Its validity requires the written form.

13.6. Each Party is obliged to comply with all applicable legal provisions on data protection.

14. FORCE MAJEURE

14.1. Events beyond FGAG's control and for which FGAG is not responsible, such as force majeure, war, natural disasters, strikes, lockouts, pandemics, official measures, delays or other problems at suppliers or similar events, shall in any case release FGAG from its obligation to deliver or perform on time for the duration of such events.

14.2. Deadlines which have been agreed upon as binding shall be extended by the duration of the disruption. If the disruption lasts longer than two months, either Party is entitled to withdraw from the corresponding Purchase Contract with immediate effect. Claims for damages by the Customer are excluded in all cases.

15. FINAL PROVISIONS

15.1. FGAG shall be entitled to engage third parties to provide the services under the Purchase Contract without requiring the Customer's consent. Upon request, FGAG shall inform the Customer of any third parties involved and shall ensure that such third parties enter into a confidentiality agreement with provisions similar to those set out in Section 13 above.

15.2. The requirement for the written form within the meaning of the Purchase Contract also includes e-mails.

15.3. Should one or more of the provisions of the Purchase Contract be or become void or ineffective, this shall not affect the remaining parts of the Purchase Contract. In the event that a clause is invalid or ineffective, it shall be replaced by a clause that comes closest to the economic purpose of the invalid provision.

15.4. FGAG shall be entitled to assign the Purchase Contract and the rights and obligations contained therein or parts thereof in whole or in part without the Customer's prior written consent.

15.5. The failure or omission of FGAG to enforce any of the provisions of the Purchase Contract shall not be construed or deemed to be a waiver of FGAG's rights, nor shall it affect the validity of the entire Purchase Contract or any part thereof. It in no way affects the rights of FGAG to take subsequent measures.

15.6. Titles in the Purchase Contract serve only as a general guide and do not conclusively define the scope of the provisions. Any translations of these GTC or other parts of the Purchase Contract are intended solely as a reading aid. In the event of disputes or questions of interpretation, only the English version shall be used.

15.7. All contractual relationships between the Parties concerning the Purchase Contract are subject to Swiss substantive law, excluding the conflict of laws rules and international agreements, in particular the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980).

15.8. The exclusive place of jurisdiction for all legal disputes arising from contractual relationships between the Parties or otherwise in connection with the Purchase Contract shall be Gwatt (Thun), Switzerland. Notwithstanding the preceding sentence, FGAG shall also be entitled to sue the Customer at the Customer's place of business.

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