

Brüel & Kjær Vibro GmbH

Standard Terms and Conditions of Sale (January 2005)

I. Scope of Application

- The following Standard Terms and Conditions ("Standard Terms and Conditions") shall exclusively govern all contracts for the supply of our products and services. Purchase orders, supplementary agreements, amendments and other agreements require written form to be valid. Same applies to a waiver of written form. Our Standard Terms and Conditions shall apply exclusively. When placing the order they are considered to be agreed upon between the Buyer and us; they shall also govern future transactions even if they are not explicitly referred to, provided that they reached the Buyer on the occasion of our approval of a purchase order. In case a purchase order is placed that deviates from our Standard Terms and Conditions, our Standard Terms and Conditions shall apply even if we do not object. Deviations from our Standard Terms and Conditions are therefore only binding upon us if they were expressly approved by us in writing. Buyer's standard terms and conditions are only binding for us, as far as they do not conflict with our provisions below.
- The performance of any contract for products subject to governmental export regulations shall be conditional upon our obtaining the necessary permits.

II. Formation and Scope of Agreement

- Our offers are subject to confirmation. The agreement shall not be deemed concluded until we have acknowledged receipt of the order in writing.
- Our order acknowledgment shall be binding as to the scope of the products and services to be provided.
- All quantities, dimensions, colours and declarations of weight, indicated in our offers and brochures are subject to tolerances that are customary in trade. Miscalculations and arithmetic errors at our expense entitle us to correction, if:
 - the bases of calculation, that were relevant for pricing, were subject of the agreement and therefore known to the other party, or
 - the other party acknowledged the miscalculation or arithmetic error. Claims for damages by the other party because of such correction are excluded, if the other party detected the miscalculation or arithmetic error or had to detect such miscalculation or arithmetic error.

III. Prices

- Unless otherwise agreed, prices are ex works, duty unpaid and inclusive of cardboard packing. The prices do not include installation, initiation of service, training for service staff and any other costs.
- We can provide installation, initiation of service, tests, repairs and any other services to be charged on a time and material basis at our then-current rates – provided upon request -, unless a lump sum has been expressly agreed.
- The prices are exclusive of VAT.
- Any taxes, fees and charges incurred outside of the Federal Republic of Germany shall be borne by Buyer.
- If the delivery of ordered good shall take place at least four months after conclusion of the contract, we shall be entitled to adapt the agreed prizes accordingly to the cost increase occurred in the meantime, especially for material, externally procured goods and wages. If we exercise such option of cost increase and demand for an increase of more than 5%, the Buyer has the right to withdraw from the contract.

IV. Payments

- Payments shall be made – within 14 days after date of invoice - to one of our accounts without any deduction. All costs incurred to fulfill the payment obligation shall be borne by Buyer. Payment by transfer or direct debit is accepted.
- Buyer may not withhold or set off payments against receivables that are disputed.
- If undisputed invoices become overdue, we will initiate our standard reminding procedure. For this, we reserve the right to charge a handling fee of EUR 50, and incurred interest amounting to 8% above European Central Bank's base interest rate.

V. Delivery

- We are entitled to partial deliveries and invoices.
- The parties agree to the application of the "Incoterms 2000". Deliveries shall be EXW (ex works) and unless otherwise agreed from the manufacturing facility.
- If acceptance is to take place and Buyer arranges transport of the products from the manufacturing facility to the site before such acceptance, Buyer shall bear the risk of loss or damage in transit.
- Buyer may not refuse to take delivery of products in case of insignificant non-conformity, without prejudice to its rights pursuant to **Clause X**.
- If the Buyer does not accept the delivery of the products in time, although they were offered, the risk passes to the Buyer at the time of information of readiness of dispatch. If the Buyer is in default of acceptance or in delay in informing us about the shipping instructions, we are, after expiration of a four-week grace period that is calculated beginning at the time of readiness of dispatch, entitled to damages for non-performance or to withdraw from the contract.

VI. Title

We retain title to all products delivered by us until full payment of any outstanding claim against the Buyer resulting from the business relationship that has been made. The same applies if payment has been made towards a specified claim. In case of a running account the retained title serves as collateral for the balance in our favour. The Buyer is basically entitled to resell the products in due course of business. In order to serve as Collateral for all our open claims against the Buyer, he already assigns his claim against his buyer, resulting from the resale, to us. We accept such assignment. As long as we are still owner of the Collateral, we are entitled to rescind the Buyer's resale right at any time. The Buyer is, revocably at any time, entitled to collect the assigned claims.

Our entitlement to collect the claims ourselves remains unaffected, however, we commit not to collect such claims, as long as the Buyer properly observes its payment obligations.

The Buyer is obliged to notify us on all assigned claims and the debtors' names, to give us any and all information needed with regard to the collection of such claims, to hand out the corresponding documentation and inform the debtors about the assignment. In case of the processing, the union or the confusion of the Collateral with other goods, we are entitled to the co-ownership of the new goods at the proportion of the Collateral's invoice value to the other good's invoice value. All processing, uniting and confusing in due course of business is deemed to be made on our account. If the Collateral is sold together with other goods after processing,

uniting and confusing, the assignment of the claim resulting from the resale only applies at the ratio of the Collateral's invoice value to the other goods' invoice value..

In case of a sale of Products, in which we have an co-owner's interest, the claim shall be assigned to us in proportion to our co-owners interest. We hereby offer the Buyer to grant him the expectant right with regard to the arisen co-owners interest. The Buyer accepts such offer. Our co-owners interest passes to the Buyer if all claims, we are entitled to, are balanced.

As long as there is a Retention of Title, the pledging, the transferring of title by way of security, the leasing or other kinds of surrendering of the Products impairing our collateral or changes made to it are only permitted upon our prior written consent. The Buyer's right to resell the Products in due course of business and on the aforementioned conditions remains unaffected.

In case of third party's actions, especially in case of attachments of the sold Products or in case a workshop exercises its contractor's lien, the Buyer has to inform us instantly in writing and give notice to the third party with regard to our retention of title.

In case of Buyer's breach of the contract, especially in case of default of payment, he has, after giving notice to him, to return the Products to us. Our acceptance of such returned products shall not be deemed to be a withdrawal from the contract unless otherwise indicated by us in writing. After giving notice to the Buyer and setting an appropriate time limit, we are entitled to resell such Products on the free market at the best price possible whereas such rate shall be set-off against the outstanding purchase price. In case our securities resulting from retention of title, transfer by way of security and assignment exceed the total of our claims by more than 25%, we shall release deliveries of our own choice that are fully paid.

We are entitled to exercise our rights resulting from the Retention of Title – especially the taking back of goods subject to retention of title – without prior withdrawal from the respective sales contract.

VII. Times of Delivery

- Delivery dates given by us are not binding. Agreed delivery dates are observed to the best of our capability. The products shall be delivered in compliance with the delivery dates, provided all commercial and technical questions between us and Buyer have been clarified, and provided Buyer has fulfilled all the obligations incumbent upon it, such as obtaining all necessary governmental consents or permits, or paying an advance amount. If this is not the case, the delivery deadline shall be extended.
- In case of a damage caused by delay the Buyer can only demand such damage in addition to delivery of the Product if we are responsible for an intentional or grossly negligent behaviour unless a cardinal duty is violated. We are not liable for a delay in delivery, if delivery to us has not been made or not been made in time. If it appears certain that we ourselves shall not be supplied with ordered products, we are entitled to withdraw from the contract.
- The delivery deadline shall be deemed complied with if, before its expiration, the products to be delivered have left our manufacturing facility, or Buyer has been noticed that the products are ready for shipping. If acceptance with inspection has been agreed, the acceptance date shall be conclusive, alternatively our notification that the products are ready for acceptance.
- In the event of a delay in delivery caused by force majeure, labor disputes or other circumstances, whether in our facilities or in those of our suppliers, we are not responsible for, e.g. modification of the products to be delivered rendered necessary by non-compliance with governmental permits, the delivery term shall be reasonably extended.

VIII. Delay

- In case of delay on our parts, Buyer may claim compensation for damages caused by the delay for every full week of delay 0,5%, however limited to 5% of the part of the products which could not, as a result of the delay, be used in time or as agreed.
- Further delay-related claims are set forth exclusively in Clause XI.

IX. Acceptance after Inspection

- If Buyer puts our products into operation, acceptance after inspection must take place according to the agreed schedule. The products shall be deemed accepted if this schedule has been overrun by more than 2 weeks through no fault of our's.
- If no formal acceptance has been issued and if no schedule has been agreed, our products shall be deemed accepted no later than 4 weeks after arrival of the last significant partial delivery.
- In case of insignificant non-conformity, Buyer may not refuse acceptance of the products.

X. Warranty

- We warrant that the Products delivered by us are free of substantial defects. Marginal discrepancies deviating from the specifications or immaterial impairments of usage shall not constitute defects as to quality. Public utterances, advertisements, promotions, technical data and information contained in product descriptions shall not constitute declarations of quality in addition to those agreed upon.

Immediately after delivery, Buyer has to examine the goods as to whether they comply with the agreed quality and amount; in case of defects he has to inform us immediately. In case of apparent defects notice of defect shall only be admissible within one week. Notice has to be in writing. For the purpose of calculation of such period, the time of actual delivery and the day of receipt of such notice are decisive. If Buyer omits to submit such notice, the products are deemed to be approved unless the defect was not recognizable during inspection. In case of such defect it has to be reported immediately after discovery. Otherwise the products shall be deemed to be approved in respect of such defects, too. Buyer's obligation of inspection and to give notice of defects also applies if a good or quantity other than stipulated has been delivered, unless the delivered goods apparently vary that much from the order that we could not regard such products approvable.

In case of defects, reported on time, we shall comply with our warranty obligations according to the statutory rules, unless stated differently below:

- The Buyer can only withdraw from the contract or demand a reduction of the purchase price, if a defect could not be eliminated after two attempts at rectification or additional supply or after at least three attempts at rectification of defects or additional supply in technically difficult cases or in cases where a rectification of defects or a further rectification respectively or an additional supply or further additional delivery respectively are unreasonable for the Buyer. However the Buyer can only withdraw from the contract or demand a reduction of

the purchase prize, if he gave us the chance to transport the product on our expenses to our place of business for a last attempt at rectification of defects.

- b) At first we have the choice between rectification of defects and additional delivery.
- c) In case the Buyer withdraws from the contract due to a defect after failed supplementary performance (rectification of defects or additional supply) he is not entitled to further damages.
- d) The replaced parts in case of a rectification of defects become our property.
- e) We are under no circumstances obligated to deliver a new product or remanufacture a product.
- f) The warranty period is 12 months from delivery or performance. If acceptance after inspection is to take place, the warranty period is 12 months from the acceptance date. If shipping, installation or initiation of service is delayed in such case through no fault of our's, the warranty period shall expire at the latest 15 months after the passing of risk.

2. We do not assume any liability for defects due to normal wear and tear, or due to alterations or maintenance work improperly performed by Buyer or third parties as well as for inappropriate use or misuse, faulty installation or initiation of service, false or careless handling, use of inappropriate operational or substitute materials, defective construction works, inappropriate building ground, environmental conditions unknown to us and chemical, electro-chemical or electrical influences, to the extent that they are not caused by our fault. Defective parts shall be properly packed and returned to the original place of shipment, followed by a description of the defect.

XI. Liability

1. Claims for damages resulting from any legal ground, especially resulting from any breach of contract, liability in tort, manufacturer's liability, wrong or neglected consultancy, culpa in contrahendo or positive violation of contractual duties are excluded if there is not only negligence or slight negligence on our side or our agents', employees' and vicarious agents' side, unless stated differently hereafter.
2. We are liable due to statutory law concerning the culpable infringement of obligations that are substantial for the proper execution of the contract ("cardinal duties")
3. As far as we are liable for slight negligence due to paragraph 2 our liability is restricted in value to the typical, predictable damage, at maximum to the amount of indemnification due by our product liability insurance.
4. In case of gross negligence of vicarious agents our liability is also restricted in value to the typical, predictable damage, at maximum to the amount of indemnification due by our product liability insurance.
5. In case of data loss and recovery we are only liable, if such data loss would not have been avoidable through a back-up of Buyer's data and in so far as electronic data can be reconstructed from machine-readable and ready kept data with justifiable effort.
6. The damage payable pursuant to the previous provisions is limited to the amount payable as compensation for such software that is subject of such a claim or has directly caused such damage. The damage cap is calculated on basis of such amount payable at the time of accrual of the claim, excluding VAT.
7. We are not liable for absence of economic success, lost profit, missing economisation or indirect damages. Furthermore we are not liable for improper installation by third party or negative interdependencies of conducted services with existent or later added Buyer's software or hardware. Furthermore we are not liable for unsuitable or improper use as well as improper or negligent Buyer's or third party's maintenance.
8. The aforementioned disclaimers of liability and limitations of liability do not apply as far as due to statutory law a liability is compulsory, especially (i) in case of liability regardless of negligence or fault, like pursuant to the Product Liability Act, (ii) in case of liability for initial impossibility of performance, (iii) in case of damage of health or personal injury including death.
9. As far as our liability is excluded or restricted, this applies also to the liability of our agents, employees and servants.
10. The Buyer shall notify us immediately about all damages and losses for which we have to pay and let us survey the damage. The raising of the aforementioned claims shall be time-barred after six months upon receipt of the Products by the Buyer. Sec. 852 of the German Civil Code (BGB) remains unaffected. If negotiations are pending between the Buyer and us concerning the payment of damages, then the prescription of claims shall be suspended until one Party refuses the continuation of the negotiations.

XII. Software

1. The use of third party software provided with the products shall be governed by the third party standard terms and conditions. If these terms are not attached to the products, we shall provide them to Buyer upon request.
2. In addition to the third party standard terms and conditions, our Standard Terms and Conditions of Sale shall be applicable; Clause XII.3 - XII.11 shall apply analogously. Should the third party standard terms and conditions be invalid, our Standard Terms and Conditions shall control.
3. Our own software is subject to copyright protection. We are entitled to all rights in our software unless differently stated below.
4. Buyer shall be granted an ordinary, non-exclusive, perpetual right to use our software products for the number of concurrent users contractually agreed upon. If no number of users has been set forth contractually, only one user may use the software concurrently. Buyer may not change our software nor sublicense the software. Without our prior written consent, the Buyer shall not be entitled to grant a third party capacity of computer performance concerning the licensed software ("outsourcing services").
5. The parties agree that an on-line user manual also fulfills the requirements of an ordinary manual.
6. We shall not be obligated to provide the source code on which the software product is based.
7. Changes to the software by the Buyer are inadmissible. In particular the Buyer has no permission for: Translation, treatment, arrangement and other re-writings of the software as well as no permission for duplication of the obtained results. Furthermore interference with the source code of the software is forbidden without our written consent. This does not apply to changes, which are necessary for the correction of errors, if we are in delay with the recovery of such error, or if we reject error correction or if we are not able to correct such errors due to the initiation of insolvency proceedings
8. Decompiling or reverse engineering of the software left to the Buyer is forbidden, unless it is essential to gain the necessary information for the programming of the interoperability of an independently created computer program with the delivered software or with other programs, as long as it is conducted under the preconditions of Sec. 69 e para. 1 German Copyright Act (UrhG) and such necessary information

cannot be procured otherwise. Before decompiling or reverse engineering the Buyer has to request the necessary information from us in writing.

9. The information gained under number 8 has to be used exclusively for the programming of the interoperability of the independently created program. They may not be passed to a third party, unless it is necessary for the interoperability of the independently created program. Furthermore, the use of the information for the development, production or marketing of a program with a materially similar style or for any other actions infringing our copyright is also illegal.
10. Labels on the software products or the data medium, in particular copyright notices, marks, serial numbers or other types of identification of the software must not be removed, changed or garbled.
11. If not stated differently above, the Buyer may copy, modify, translate, distribute our software products or reverse engineer their source code only to the extent permitted under mandatory law (§§ 69 c-e of the German Copyright Act). Without previous written consent, Buyer may not remove the manufacturer's notices including, in particular, copyright notices.

XIII. Industrial Property Rights

1. In case the Products or software infringe industrial property rights or other rights of a third party, which limit or exclude the use in terms of the content and purpose of the contract, we indemnify the Buyer from third party's claims, that assert an infringement of industrial property rights. The contracting parties will inform themselves mutually immediately in writing, in case of an assertion of infringement of industrial property rights by a third party. The indemnification according to sentence 1 applies only, if a) the Buyer complies with its obligation to inform us pursuant to sentence 2 and b) any and all measures to avert such a danger and settlement negotiations are reserved for us and c) the Buyer supports us by appropriate assistance and information to defend or settle such claims. Paragraph 3 remains unaffected.
2. If the stipulated use of Products or software is impaired by industrial property rights or other rights of a third party, we shall, on Buyer's request and to a reasonable extent, either change the software so that it complies with such infringing rights as well as with this contract or replace the software by a non-infringing one or obtain the right that the software can be used without limitation and without additional charges by the Buyer.
3. Without prejudice to the obligation of indemnification according to paragraph 1 we are only obligated to pay damages to the Buyer because of the injury of intellectual property infringement, if we had knowledge of the infringement of the intellectual property rights or should have had known such infringement.
4. The rights resulting from this clause XIII. do not apply, as far as the infringement is caused due to the fact that the Buyer used a software a) that was not granted due to this contract, b) made changes to the software that were not authorized by us or c) used the software contrary to our instructions or combined it with programs or data-processing systems that were not approved by us.

XIV. Buyer's Obligations

1. Buyer shall inform our personnel about all existing security regulations and hazards and take all measures necessary to protect persons and objects at the work place.
2. Buyer shall be obligated to provide all assistance necessary for the performance of the contract, such as the preparation of the construction site, provision of tools and cranes and elevators, and supply of water and electricity, etc.
3. In case the Buyer offends against the obligations set forth in this clause XIV he shall be responsible for the damage resulting therefrom.

XV. Nondisclosure

1. For the term of the business relationship the contracting parties shall commit themselves to treat all commercial and technical details that are not public coming to their knowledge, as business secrets.
2. Designs, models, templates, samples and similar subjects may not be left to unauthorized third parties or made otherwise accessible. The duplication of such subjects is only permissible in the context of the operational requirements and in accordance with industrial property right regulations.
3. Subcontractors shall be obligated accordingly.
4. The contracting parties may only advertise this business relationship with prior written consent.

XVI. General

1. In the event any provision of these Terms and Conditions or of the agreement is or become invalid in whole or in part, the validity of all remaining provisions shall remain unaffected thereby. A void or non-specific provision shall be replaced by a provision or being interpreted in that way that comes as close as possible to the intended economic purpose.
2. Buyer shall obtain at its own costs all licenses, permits and/or import or export documents necessary for the use of the products.
3. If a contracting party stops its payments or insolvency or composition proceedings are requested, or if initiation of such proceedings is rejected for lack of assets, the other party is entitled to withdraw from the part of the contract that is not fulfilled.
4. Except for fraud claims, Buyer's claims shall become time-barred after 3 years unless these Terms and Conditions or applicable law provide for a shorter limitation period.
5. Our claims against the Buyer shall become time-barred after 3 years unless applicable law provides for a longer limitation period.
6. Europe shall be the place of performance of Buyer's obligations to BKV.
7. Unless otherwise agreed, we shall not reimburse the costs for the return transport of packing materials.

XVII. Governing Law, Place of Jurisdiction

Place of jurisdiction for all disputes arising in connection with the contractual relationship shall be Darmstadt.

The contractual relationship between the parties shall be exclusively governed by the law of the Federal Republic of Germany to the exclusion of its conflict of law provisions and of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Brüel & Kjaer Vibro GmbH