

Standard Terms and Conditions for Sales and Deliveries of SPECTRO Analytical Instruments GmbH (SPECTRO)

§ 1 Exclusive Applicability

To the extent not otherwise expressly agreed in the individual case overall or with respect to individual provisions, all SPECTRO's deliveries and services are made exclusively on the basis of these Terms and Conditions. These Terms and Conditions shall apply to future business relationships as well. We will not acknowledge any standard terms and conditions of the Purchaser, even in those cases where we have not expressly objected thereto.

§ 2 Offer, Written Form Requirement, Cancellation

1. Our offers are subject to change (non-binding) even where made in writing.
2. Orders and acceptances shall only be legally binding and effective if confirmed by us in writing. In cases of immediate delivery, the invoice may serve as the written confirmation.
3. If and to the extent deliveries and/or services of SPECTRO are subject to the approval of an governmental authority, particularly subject to an approval according to the German Foreign Trade Ordinance (AWV), respective contracts with the Purchaser are entered into subject to the condition precedent that approval has been granted.
4. Any deviations, modifications and/or supplements to agreements made between the Purchaser and SPECTRO, including these

Terms and Conditions, must be made in writing; the foregoing shall also apply to any waiver of this writing requirement.

5. To the extent that these Standard Terms and Conditions for Sales and Deliveries ("Terms and Conditions") or individual legal transactions between SPECTRO and the Purchaser provide for the written form requirement, the mitigating provisions of § 127 (2) German Civil Code (*Bürgerliches Gesetzbuch*/"BGB") shall apply.

6. Should the Purchaser cancel the Agreement on grounds for which we are not liable, we have the right to claim compensatory damages in an amount equivalent to 5% of the contract price. The Purchaser retains the right to show in the individual case that no damage was incurred or that the damage was substantially less than the fixed amount. Payment of the fixed amount shall not operate to preclude filing a claim for any further damage.

7. Unless the Customer qualifies as a consumer within the meaning of the German Civil Code ("BGB"), sentence 1 numbers 1 through 3 and sentence 2 of § 312e (1) BGB will not apply with respect to transactions executed in connection with electronic commerce.

§ 3 Periods for Delivery and Performance

1. To the extent not otherwise expressly agreed in writing, dates and periods for delivery shall be non-binding. Our stipulation of

any specific delivery deadlines or delivery dates is subject to the proviso that we are supplied correctly and seasonably by our suppliers and manufacturers.

2. The period for delivery will be tolled during any periods of *force majeure*, operational or transportation disruptions, or other non-foreseeable events for which we are not liable (this specifically includes war, acts of war, flood and earthquake, orders by regulatory agencies, failure to grant import, export or transit permits, national measures to restrict trade). If as a result of the foregoing delivery is delayed by more than 3 (three) months, the parties will have the right to rescind the Agreement either in whole or in part (i.e., with respect to the quantity affected by said delivery disruption). The delivery period shall also be extended for that period of time in which the Purchaser itself is in default with respect to the performance of its contractual obligations.

3. If in applying subsection 2, the delivery period is extended, or if as a result of a party rescinding the Agreement we are discharged from our obligation, this shall not operate to give the Purchaser any compensatory damages claims.

4. If due to factors for which we are liable, we are in delay with respect to a delivery, our liability for delay damages shall be limited to a maximum of 5% of the delivery value in the case of minor negligence. Where delay is due

to wilful or grossly negligent conduct or involves the breach of any material contractual obligation, our liability shall be governed by statute.

5. If the Purchaser has set a reasonable deadline for delivery and such deadline expires without result, it shall have the right to rescind the Agreement; the Purchaser shall only be entitled to damages instead of specific performance or compensation for wasted expenses where default is based on wilful or grossly negligent conduct, and in the case of ordinary negligence, only in those cases where a material contractual obligation has been breached. In the latter case, the amount of compensatory damages or compensation for expenses shall be limited to reasonably foreseeable damage/expenses. No deadline need be set if we seriously and unequivocally refuse delivery, if it involves a transaction where time is of the essence, or if special circumstance exists, such that it would be unreasonable for the Purchaser to wait for a reasonable deadline to expire.

6. SPECTRO has the right to make partial deliveries and render partial performance. In the case of delivery agreements, every partial delivery made and partial performance rendered shall be deemed an independent performance.

§ 4 Default of Acceptance

1. For the period in which the Purchaser is in default of acceptance, we have the right to warehouse the delivered goods at the Purchaser's risk and expense and to retain the services of a freight forwarder or warehouse for this purpose.

2. For the period of any delay of acceptance and without any further proof being required, the Purchaser shall pay us a monthly fixed amount of 5% of the purchase price to reimburse us for any storage costs incurred. In the event storage costs are incurred over and above this amount, we may require the Purchaser to reimburse these costs upon providing proof thereof. The Purchaser retains the right to show in an individual case that no damage was incurred or that substantially less damage was incurred than the fixed amount.

3. If for reasons for which we are not liable, the Purchaser refuses to accept the delivered goods, we have the right, upon expiration of a reasonable deadline, to rescind the Agreement and/or demand compensation for wasted expenses or compensatory damages instead of specific performance. In the latter case, we have the right to demand from the Purchaser as compensatory damages - at our option - either a fixed 40% of the agreed purchase price or reimbursement of any loss specifically incurred. The Purchaser's right to show in the individual case that no loss or damage was incurred, or that substantially less damage was

incurred than the fixed amount, shall remain unaffected.

§ 5 Risk of Loss

The risk of loss for any accidental damage to or the accidental destruction (loss) of the delivered goods shall pass to the Purchaser upon their despatch or their delivery to the despatch agent, however not later than upon leaving our factory. The foregoing shall apply regardless of whether the delivered goods were sent from the place of performance or which party bears the freight costs. If the Purchaser is in delay of acceptance, the risk of loss shall pass to it at the time delay occurs. If the Purchaser has requested us to hold off on despatching the goods until specifically instructed, the risk of loss shall pass at such time as we have indicated that we are ready to send the item. The risk of loss shall also pass when we indicate we are ready to send the goods where despatch is then delayed or becomes impossible due to reasons for which we are not at fault.

§ 6 Notification of and Liability for Defects

1. Upon delivery, the Purchaser shall promptly inspect the goods to ensure that the quantity and quality are in conformance with the contract and that they are suitable for their intended use. If any defects/deviations in quantity are ascertained, the Purchaser must give SPECTRO prompt written notification thereof within 14 days at the latest; latent defects/deviations in quantity must be notified

promptly upon their discovery and no later than 1 (one) year after the goods have been delivered to the Purchaser. Such notification must contain the order information and the invoice and delivery note number, as well as a short description of the defect. If the Purchaser fails to give reasonable notice of defects, any claims against us for breach of warranty shall be precluded, unless we fraudulently concealed such defect or have assumed a guarantee.

2. If our operating or maintenance instructions are not followed, if modifications are made, or parts are changed or interchanged, or if consumable materials are used that do not correspond with the original specifications, this shall operate to discharge us from any liability for defects, except the Purchaser proves that the defect is not based on any of the aforementioned actions and that they do not impede the defect be repaired. The foregoing shall also apply to the extent that the defect was caused by improper use, storage or operation of the devices or any actions by third parties, as well as opening the devices.

3. Our liability for defects is restricted to subsequent performance, i.e., the Purchaser's right to, at its option and our cost, demand that the defect be repaired or that defect-free ("conforming") goods be delivered; § 439 (3) BGB shall remain unaffected. If for whatever reason subsequent performance fails after a reasonable period, the Purchaser may at its option demand a reduction in the purchase

price or rescind the Agreement; its right to assert claims for compensatory damages or to claim reimbursement of wasted expenses shall, subject to the provisions in § 7, remain unaffected in this case. In those cases where we refuse subsequent performance or where subsequent performance would not be reasonable for the Purchaser for other reasons, the foregoing rights will accrue to the Purchaser immediately, i.e., without requiring the expiration of any reasonable deadline. The foregoing provisions shall not affect any claims of the Purchaser arising under any guarantee assumed by SPECTRO.

4. No liability for defects shall attach in the case of normal wear and tear. Furthermore, no claims for breach of warranty shall exist in respect of parts that are particularly subject to wear and tear, such as e.g., cleaning cartridges for gas circulation systems or electrodes for the spark stand.

5. Any claims against us for breach of warranty shall become statute-barred 1 (one) year after delivery of the goods, unless we fraudulently concealed the defect or the Purchaser claims damages resulting from injuries to life, limb or health or from gross negligence on the part of SPECTRO or one of its legal representatives or employees or agents for which SPECTRO is vicariously liable, in which cases the statutory limitation periods shall apply.

6. Any claims for breach of warranty accrue solely to the Purchaser and are not assignable.

§ 7 Limitation of Liability

1. We are liable for damage or wasted expenses - whatever the legal grounds - only in those cases where they are based on the wilful or grossly negligent breach of a duty and/or tortious conduct on the part of SPECTRO or one of its legal representatives, or employees or agents for which SPECTRO is vicariously liable. We are therefore not liable in cases of ordinary negligence. The foregoing disclaimer of liability shall not apply in those cases where we or our legal representative or an employee or agent breaches a material contractual obligation. In such case and to the extent this does not involve wilful or grossly negligent conduct, compensation of damages/expenses shall however be limited to the amount of those damages/expenses that, based on SPECTRO's knowledge of the circumstances at the time the Agreement was executed, SPECTRO should have been able to reasonably foresee and thus were reasonably foreseeable at the time.

2. The foregoing provision shall not affect our liability for loss or damage resulting from injuries to life, limb or health as well as any liability under German Product Liability Law or arising out of the assumption of any guarantee.

3. The liability provisions under subsections 1 and 2 shall apply with respect to any advice or

suggestions given with respect to technical applications.

4. To the extent that we disclaim or limit our liability under the aforementioned provisions, such disclaimer or limitation also apply with respect to the personal liability of our staff or salaried or hourly-wage employees, representatives, or other employees or agents for which we are vicariously liable.

§ 8 Reservation of Title

1. We reserve title to any goods delivered by us until such time as any and all receivables arising out of the business relationship with the Purchaser have been paid in full. Title shall not pass to the Purchaser until such time as it has paid its debts to us in full.

2. Any treatment or processing that may be done is always done for us as a manufacturer within the meaning of § 950 BGB, however no obligation attaches for us in this regard. If, as a result of mixing or combining, our title lapses, it is agreed here and now that the proportionate value of the Purchaser's (co) title to the unit passes to us (in the case of processing, the proportion of the value of the reserved goods to the value of the other goods). The Purchaser shall hold the goods in question for us at no charge with the due care of a prudent businessman. If goods that are created as a result of processing or combining are sold, the advance assignment agreed below shall apply

only with respect to the value of the reserved goods.

3. The Purchaser has the right to process and/or sell the reserved goods in the due course of business as long as it is not in delay. Transferring title to the goods by pledging them or furnishing them as collateral is not permitted. As a precaution, the Purchaser assigns to us here and now the full amount (including VAT) of any receivables (including any claims on current account balances) arising in connection with the reserved goods as a result of their sale or on any other legal grounds (insurance, tort). We hereby accept this assignment here and now. We revocably authorise the Purchaser to collect the receivables assigned to us in its own name and for its account. The authorisation to collect may, however, only be revoked if the Purchaser does not duly meet its payment obligations.

4. In the event third parties gain access to the reserved goods, the Purchaser shall point out and promptly inform such third parties that we hold title to the goods. The Purchaser shall also inform us thereof, so that if necessary we can file a claim under § 771 ZPO. To the extent that the third party is unable to reimburse us for the in and out-of-court expenses associated with a claim under § 771 ZPO, the Purchaser shall be liable for any amount still owed to us in this regard.

5. If the Purchaser is in delay of payment or culpably fails to perform any other material contractual obligations, we shall have the right to reclaim the reserved goods or, if applicable, to require that any restitution claims of the Purchaser as against third parties be assigned to us. If we reclaim or attach the reserved goods, this shall not constitute rescission of the Agreement, unless we have expressly declared rescission.

6. If the value of the collateral exceeds that of our receivables (including any interest and incidental costs) by 10%, we will at the Purchaser's request release the collateral of our choosing to that extent.

7. To the extent that the aforementioned reservation of title provisions do not have the same effect of securing the goods in other countries as they do in the Federal Republic of Germany, the Purchaser shall do its utmost to promptly procure corresponding security rights for SPECTRO. The Purchaser shall co-operate with all measures necessary and expedient to ensure the validity and enforceability of such security rights.

§ 9 Prices, Payment

1. To the extent not otherwise agreed, we shall be bound by any prices stipulated in our offer for a period of 90 days from the date the offer is made. The prices specified in the order confirmation shall be controlling. Any additional

deliveries or services shall be charged separately.

2. All prices are subject to change without notice in the event of any changes in cost of materials or labor, specifications, quantities, delivery schedules, customs duties, other factors beyond Seller's control, or in the event of delays caused by instructions of the Buyer, or failure of the Buyer to give Seller adequate information. Further, prices payable by the Buyer shall be subject to immediate increase, should the Seller as a result of governmental action or regulation including, without limitation, those contemplated by an investigation under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862), incur additional duties, tariffs or restrictions on products sold hereunder, or on the raw materials that are used in making such products. In no event shall prices include any amounts imposed on the Buyer in connection with Buyer's purchases from Seller, such as taxes, including but not limited to Value Added Tax (VAT) or excise taxes, duties, tariffs, or any other costs assessed against the Buyer by a governmental authority.

Without limiting the foregoing, all prices are subject to adjustment without notice at any time prior to shipment in the event that the prices or costs related to any component, materials, parts, or commodities utilized in the goods or services have increased following the acceptance of any order for any goods or services (a "Component Adjustment"). Any

Component Adjustment, as determined by SPECTRO, shall be reflected in the invoice for goods or services that is transmitted from SPECTRO to Purchaser in accordance with the Terms and Conditions hereof.

Without limiting the foregoing, all prices are subject to adjustment without notice at any time prior to shipment due to increases in inflation occurring following the acceptance of any order for any goods or services (an "Inflation Adjustment"). The Inflation Adjustment for any goods or services shall be made by multiplying (a) the ratio obtained by *dividing* the (i) Consumer Price Index (CPI) in place at the time of invoice by (ii) the Consumer Price Index (CPI) in effect at the time of acceptance of an order *times* (b) the price or cost for any applicable goods/services as set forth in the order. Any Inflation Adjustment, as determined by SPECTRO, shall be reflected in the invoice for goods or services transmitted from SPECTRO to Purchaser in accordance with the Terms and Conditions hereof.

3. Our prices apply "ex works" (EXW) plus applicable statutory VAT, however exclusive of packing and transport insurance. The net amount of our invoices are due and payable in full (no discount) within 14 days of the date of invoice.

4. Notwithstanding any conflicting provisions of the Purchaser, we have the right to set off payments against existing debts of the

Purchaser. If costs and interest have already been incurred, then we have the right to set off payment of the costs first, then the interest and lastly the primary performance. The Purchaser shall be notified thereof.

5. Payment shall be deemed effected only when the relevant funds are available for our disposal. Cheques shall only be accepted in accord and satisfaction of performance (*erfüllungshalber*) and shall only constitute payment once they have been presented and honoured.

6. If the Purchaser is in default of payment, we have the right to charge default interest at a rate that is 10% higher than the base interest rate. Default interest will be set lower if the Purchaser is able to show that the interest rate (applicable to SPECTRO) was lower.

7. All receivables shall become immediately due and payable if the Purchaser is in delay of payment, culpably fails to comply with other material obligations under the Agreement, or if we become aware of circumstances that could reduce the Purchaser's creditworthiness, in particular discontinuance of payment, application or institution of insolvency proceedings. In the foregoing cases, we have the right to withhold performance of any outstanding deliveries or to effect performance only for payment in advance or against security.

8. The Purchaser is entitled to set off or to exercise its right to withhold performance only where it has counterclaims that are uncontested or have been determined by a final and absolute court decision. The Purchaser is however always entitled to withhold performance where the counterclaims in question stem from the same contractual relationship.

§ 10 Prohibition on Assignment

Receivables payable by us may not be assigned to any third parties unless we expressly give prior consent to such assignment. To the extent this does not involve non-assignable claims under § 6 subsection 6 of these Terms and Conditions, consent is to be granted where the Purchaser is able to show material interests that outweigh our interest in maintaining the prohibition on assignment.

§ 11 Copyright

To the extent that the delivery includes software, such software is provided to the Purchaser solely for its use in conjunction with the spectrometer we deliver with the software, i.e., the Purchaser may not reproduce, further develop or modify such software, in particular the calibration sample databases (libraries) for calibrating the spectrometer delivered to the Purchaser, nor may the Purchaser provide this to third parties for use without our express written consent.

§ 12 Confidentiality

The Purchaser shall maintain for an unlimited term the confidentiality of any and all information it acquires in connection with our deliveries where such information is a recognised trade or business secret and to be treated confidentially, and shall not record such information nor disclose nor disseminate it to any third parties or exploit it in any way, unless this is required to achieve the purpose of the Agreement. The foregoing duty of confidentiality and the prohibition on exploitation shall also apply with respect to our know-how, which the Purchaser may acquire knowledge of in the course of the business relationship; the foregoing shall apply regardless of whether we have provided the Purchaser with such know-how or the Purchaser has acquired it in some other way, unless the know-how has become generally known or readily accessible due to circumstances other than a breach of the Agreement by the Purchaser.

§ 13 Data Protection

We have the right to process as permitted by the Federal Data Protection Act (*Bundesdatenschutzgesetz*) as well as the General Data Protection Regulation any data we receive about the Purchaser in connection with the business relationship, regardless of whether such information stems from the Purchaser or from third parties.

§ 14 Miscellaneous

1. These Standard Terms and Conditions for Sales and Deliveries and all legal relationships between SPECTRO and the Purchaser shall be governed by the law of the Federal Republic of Germany; the UN Convention on the International Sale of Goods (CISG) shall not apply.

2. Legal forum for all disputes arising out of or in connection with these Standard Terms and Conditions and all legal relationships between SPECTRO and the Purchaser shall – to the extent the Purchaser is a merchant – be Kleve. However, SPECTRO shall also have the right to file suit against the Purchaser in the Purchaser's place of general jurisdiction (Purchaser's domicile).

3. Place of performance for deliveries shall be our respective delivery sites; place of performance for payment shall be the registered office of our company in Kleve.

4. Should one or several provisions of these Standard Terms and Conditions for Sales and Deliveries or any provisions forming part of legal transactions between SPECTRO and the Purchaser be or become invalid, this shall not affect the validity of the remaining provisions.

§ 15 Invoice Fraud Prevention

Given the increased risk of invoice fraud, Purchaser should treat any notification to change details of SPECTRO's bank account with sus-

pcion. SPECTRO will not inform or instruct Purchaser to make remittance or money transfers to any other beneficiary, address or bank account via email. Purchaser shall always verify a request to update records or change bank account information BEFORE implementing a change or completing the payment. Purchaser shall verify changes by speaking to a known SPECTRO representative.