

# General Terms and Conditions of Delivery and Service of

Gläser GmbH, 72160 Horb, Germany

(as at: January 2022)

## 1. General/Area of application

- 1.1. These General Terms and Conditions of Delivery and Service (hereafter referred to as "Sales Conditions") apply to all offers and contracts concerning deliveries and services (hereafter referred to in total as "Deliveries") that we as sellers provide to a buyer. This particularly includes the sale of machines (test facilities and manipulators), trading goods (microscopes and small goods) and services (laboratory services, training courses, assembly work, commissioning, maintenance work such as repairs and service work as well as other services).
- 1.2. Our Sales Conditions apply exclusively.
- 1.3. We do not recognise any conflicting conditions or conditions of the buyer that differ from these Sales Conditions unless we have specifically agreed to their validity in writing (text form is sufficient).
- 1.4. These Sales Conditions shall also apply if we carry out the delivery to the buyer without reservation in the knowledge that there are conflicting conditions or conditions of the buyer that differ from our Sales Conditions.
- 1.5. These Sales Conditions shall also apply to contract extensions, amendments and ancillary agreements without the need for an explicit reference thereto.
- 1.6. The contracting parties shall confirm oral agreements immediately in writing.
- 1.7. Any individual agreements made with the buyer in individual cases (including ancillary agreements, supplements and amendments) shall take priority over these Sales Conditions. A written contract or our written confirmation is authoritative for the content of such individual agreements (text form is sufficient).
- 1.8. Legally relevant declarations and notices that are to be made towards us by the buyer after conclusion of the contract such as deadlines, reminders, withdrawal declarations, require text form.
- 1.9. These Sales Conditions shall only be valid for legal entities under public law, special funds under public law and companies within the meaning of Section 310 Paragraph 1 BGB (German Civil Code).
- 1.10. Information delivered verbally, by telephone or by representatives that does not correspond to the information in the offers as well as that for special orders requires our written confirmation (text form is sufficient).

## 2. Brochures and descriptions of deliveries

The descriptions of deliveries in the brochures or other descriptions do not constitute any guarantees according to Section 443 BGB (German Civil Code). The information concerning weights, measurements, capacities and prices in the catalogues, brochures, advertisements and price lists are only binding if this is expressly confirmed by us in writing.

## 3. Offer/Offer documents

- 3.1. Our offers are non-binding.
- 3.2. An order issued by the buyer is regarded as a binding contract offer; unless the order deviates from this, we can accept this application to execute a contract within 10 working days of receipt. Acceptance can be declared at our discretion either by a written order confirmation, a down-payment invoice or by making the delivery to the buyer.
- 3.3. We retain the property rights to illustrations, drawings, details of weights and measurements and other documents, and if subject to copyright protection, also copyright.
- 3.4. These documents are only to be used for purposes in accordance with our offer. The buyer requires our

express written consent before passing these documents on to third parties, the regulations in clause 14 of these Sales Conditions shall also apply. The documents are to be returned to us on request at any time; the buyer is not entitled to a retention right.

#### 4. Prices and payment

- 4.1. Prices relate to delivery ex works including loading in the works and excluding packaging, transport costs and installation and are exclusive of statutory sales tax.
- 4.2. If a cost component of the overall costs changes (e.g. personnel costs or hourly rates or material costs that can be proved to be third-party related) we can adjust the overall costs or the overall payment amount proportionally, however only proportionally with regard to the corresponding cost element. We will provide proof of the cost change at the buyer's written request.
- 4.3. If the buyer requests changes to the scope of work during the processing period, we reserve the right to adjust the price and the delivery date.
- 4.4. Unless otherwise agreed, payment for machines and plants shall take place without any cash discount deductions as follows:
  - 50% down payment after receipt of order confirmation,
  - 40% on notification of readiness to despatch to the buyer,
  - 10% within one further month.
- 4.5. For technical services (training courses, assembly work, commissioning, maintenance and repairs etc.), the payment must be made immediately on receipt of the invoice without any deduction.
- 4.6. For spare parts and other consumables, payment is to be made 14 days after delivery without deduction of cash discounts.
- 4.7. The buyer only has a right of set-off and/or retention due to legally established or undisputed counterclaims or those which are ready for judgement in any proceedings pending at law.
- 4.8. If the payment conditions are not complied with or if we become aware after conclusion of the purchase contract that payment is endangered due to the buyer's lack of solvency, we are entitled to make outstanding deliveries contingent on corresponding advance payments or the provision of security.
- 4.9. If the buyer demands security for down payments that exceed a guarantee of our insurance, he must bear the resulting fees. If it is not possible to make a safe delivery of these certificates by post, the buyer shall bear the costs for the method of document despatch he either desires or that is required.

#### 5. Delivery/delay

- 5.1. The compliance with agreed delivery times assumes that all commercial and technical matters between ourselves and the buyer have been clarified and the buyer has met all the obligations incumbent on him such as obligations to cooperate and/or supply and/or other secondary obligations or the making of a down payment. If this is not the case, the delivery time shall be extended appropriately. This shall not apply if we are responsible for the delay.
- 5.2. Compliance with the delivery time is subject to correct and punctual self-delivery with materials and raw materials etc. We shall inform the buyer of any likely delays.
- 5.3. Delivery deadlines are complied with if the goods have left our works or warehouse up to their expiry, the goods have been handed over to the transport company or the readiness for delivery has been announced.
- 5.4. We are entitled to make early and also partial deliveries if this is reasonable for the buyer.
- 5.5. In cases of force majeure and other unforeseeable and unavoidable damaging events for which we are not responsible, in particular also industrial disputes, the delivery deadlines shall be extended appropriately if these disruptions can be proved to have a serious impact on delivery. This shall also apply if these circumstances affect our suppliers. We shall inform the buyer of the beginning and end of such hindrances immediately.

- 5.6. If there is a delay on our part and the buyer suffers a loss as a result, he is entitled to demand lump-sum compensation. This shall amount to 0.5% of the net price for every full week of delay, at the most 5% of the net price of that part of the total delivery that cannot be used in good time or in accordance with the contract due to the delay. If the buyer sets us an appropriate deadline for delivery after the due date - taking due account of exceptions provided by law - and the deadline is not complied with, the buyer is entitled to withdraw from the contract in accordance with statutory regulations. Further claims of the buyer are determined exclusively according to clause 11.1 of these Sales Conditions.
- 5.7. If the buyer delays in accepting the delivery by 14 days, measured from the notification of readiness to despatch, we can set him a further deadline of 14 days to accept the delivery under threat of withdrawal from the contract and when the deadline has expired withdraw from the contract and otherwise dispose of the goods. At the same time, we can demand lump-sum compensation from the buyer amounting to 15% of the agreed price. We expressly reserve the right to claim further damages. During the period of the acceptance delay, calculated from the notification of readiness to deliver, the costs of warehousing etc. shall be charged separately at a rate of at least 0.5% of the invoice amount for each month commenced. The buyer is at liberty to prove that we have not suffered any loss at all or any depreciation in value as a result of the acceptance delay or that substantially lower costs have arisen than the lump sum claimed.

## 6. Transfer of risk

The risk shall be transferred to the buyer when the delivery has left our works, and this shall also apply when partial deliveries are made or we take on other services such as transport or shipping costs or installation.

If acceptance is to be carried out, this is authoritative for the transfer of risk. In the case of an agreed sales shipment, the risk is transferred to the buyer on handover to the freight forwarder or carrier or the person entrusted to execute the despatch.

## 7. Technical services

- 7.1. Our technical services include in particular assembly, maintenance services on machines and control units, instruction of machine operators and programming assistance for program-controlled machines.
- 7.2. We only perform the technical services to the extent expressly specified in our order confirmation or otherwise agreed in writing with the buyer.
- 7.3. Our technical service personnel is not entitled to either give or receive any legally binding declarations. The agreements made in writing between us and the buyer apply exclusively.
- 7.4. The buyer must protect machines and parts delivered from moisture, dust and dirt. The preliminary work to be carried out by the buyer at his expense for the execution of assembly, maintenance and commissioning work shall include:
- placing the machine on a corresponding foundation in line with the operating regulations
  - setting up and aligning the machine in accordance with operating instructions;
  - electrical connection of the machine in accordance with VDE regulations and operating instructions; the laying of other connections such as ventilation ducts or pipes, compressed air, technical equipment to serve these ducts and pipes, the control of such connections, the operating licences for such connections etc. whilst complying with all relevant regulations of DIN, VDE etc. as well as accident prevention regulations.
  - unpacking and viewing the goods, connecting in line with operating instructions and setting up the laboratory. In this connection, we would like to point out that any loss of small parts that may be disposed of together with packaging shall be borne by the buyer.
  - If this preliminary work is not carried out by the buyer in good time, we shall charge the buyer for any additional work we are obliged to carry out as a result.
- 7.5. Any necessary support facilities such as cranes, lifting equipment, scaffolding timbers, wedges and other tools must be provided to the extent necessary and free of charge by the buyer. The buyer shall make support staff available free of charge for any necessary extra work. Furthermore, a suitable, dry and lockable room must be made available for the storage of tools and machine parts.

- 7.6. When assembly and repair work has been completed, the corresponding record of such work must be signed by the buyer; similarly, the corresponding training record for training carried out must be completed and the corresponding commissioning or acceptance report must be completed after commissioning, unless this takes place in the seller's company.
- 7.7. If assembly, maintenance or commissioning work is delayed and we are not responsible for the delay, the buyer shall bear the resulting costs, in particular for waiting times and additional journeys of our service personnel. This shall also apply if the delivery item is not used immediately after completion of our work or if the work to be carried out by us takes longer than previously agreed for reasons for which we are not responsible.
- 7.8. Travel costs incurred by our service personnel to and from the buyer's company will be charged at cost as working hours.
- 7.9. The deployment of technical service personnel from our subcontractors shall take place at the prices in our currently valid price list based on an 8-hour working day. Additional hours, regardless of whether these are working, waiting or travelling hours, shall be charged as overtime.

## **8. Laboratory services**

- 8.1. Laboratory services shall be carried out at our company. The buyer shall convey the object of investigation to us at his own expense and at his own risk. The objects of investigation must be made available in a clean condition and demagnetised. We reserve the right to define further technical requirements in the respective underlying offer. The objects of investigation shall be scrapped in our company unless the buyer expressly requests the return of the object of investigation in writing excluding packaging in accordance with Incoterms 2010.

## **9. Training measures**

- 9.1. These Sales Conditions and in addition the statutory provisions of service contract law also apply generally to the execution of training measures in connection with testing and machine technology and also with respect to sensitisation for technical cleanliness.
- 9.2. The written training material is protected by copyright and may therefore not be copied or disseminated without our consent. The relevant copyright notice must be strictly observed; it is forbidden to remove such notices.
- 9.3. We accept no liability for any loss or damage resulting from incorrect and/or incomplete content of presentations and/or training material, unless we have committed a wilful or grossly negligent violation of duty. Apart from this, the provisions in clause 11.1. apply.

## **10. Warranty**

- 10.1. We do not accept any responsibility for defects resulting from natural wear and tear, incorrect or negligent handling, improper storage, unsuitable or improper use or failure to observe the instructions for processing and use as well as the use of inappropriate operating materials if we are not responsible for these failures. In particular, we do not accept responsibility for the operation of the plants with inflammable, explosive, corrosive or other dangerous chemicals and other substances, compounds or products.
- 10.2. The buyer must comply with accident prevention regulations.
- 10.3. The buyer must train corresponding safety specialists.
- 10.4. If the delivery is made in accordance with drawings, specifications, models etc. provided by the buyer, the buyer shall bear the risk of the suitability for the intended purpose.
- 10.5. We are entitled at our discretion to supply a replacement or a new product or make good defective deliveries. We must bear the costs required for the purposes of supplementary performance. We must not bear additional costs arising from the delivery being made to a place other than the registered office of the buyer's commercial establishment unless the delivery to this place corresponds to the intended use of the delivery.

- 10.6. The defective replaced parts shall become our property. At our request, the defective delivery is to be sent back to us in the condition it is in or is to be made available for inspection. If the supplementary performance fails repeatedly after an appropriate period, the buyer can at his discretion reduce the payment due or withdraw from the contract.
- 10.7. Claims for defects lapse 12 months from the transfer of risk. This limitation period does not apply if it concerns defects of a building or items for a building and these have caused the material defect. This limitation period also does not apply in cases of entrepreneurial recourse according to Sections 478, 479 BGB (German Civil Code) and in cases of any claims of the buyer according to clause 11.1 of these Sales Conditions.

## **11. Other liabilities of the seller**

- 11.1. We shall only be liable for damages not occurring to the delivered item itself - for whatever factual reasons and on whatever legal grounds -
- in cases of wilful intent,
  - or gross negligence of the owner/the executive bodies or senior executives,
  - in the case of culpable injury to life, body or health,
  - in the case of defects that were fraudulently concealed,
  - within the context of a guarantee promise,
  - in the case of defects of the delivery item if there is liability according to product liability law for personal or material damage to privately used objects.
- 11.2. We are also liable in the event of culpable breach of major contractual obligations in the case of gross negligence on the part of non-executive employees and in the case of minor negligence, in the last case limited to the reasonably foreseeable damage typical for the type of contract.
- 11.3. Further claims for compensation are excluded.

## **12. Property rights of third persons**

- 12.1. We shall provide the delivery item in the country of the place of delivery free of industrial property rights (e.g. patents, copyrights), hereafter referred to as "property rights". In the event that third persons raise justified claims from property rights against the delivery item or parts thereof, we shall at our discretion and initially at our expense either obtain a right of use for the relevant delivery item or change it in such a way that the property right is not violated. Claims of the buyer are excluded if the property right violation is caused by specifications of the buyer, by a possible application or use that could not be foreseen by us or caused by the fact that the delivery item was changed by the buyer or is used together with products not delivered by us and a violation of property rights occurred as a result.
- 12.2. The buyer is obliged to inform us immediately in writing of any claims asserted by third parties. He must not recognise any claims asserted by third parties. We reserve the exclusive right to take defensive measures or carry out settlement negotiations.
- 12.3. In the case of a violation of third-party property rights, the provisions in clauses 10 and 11 of these Sales Conditions also apply accordingly.

## **13. Retention of title**

- 13.1. We shall retain the title to all delivery items up to full payment of all accounts receivable due to us from the business relationship with the buyer.
- 13.2. If our reserved goods are processed by the buyer to a new moveable object, the processing shall take place for us without any obligations being incurred by us and the new object shall become our property. In the case of processing together with goods that do not belong to us, we acquire co-ownership of the new object according to the proportion of the value of the reserved object to the other object at the time of processing.
- If reserved goods are combined, mixed or blended with goods that do not belong to us in accordance with Sections 947, 948 BGB (German Civil Code), we shall become co-owners in accordance with

statutory provisions. If the buyer acquires sole ownership through combining, mixing or blending, he already agrees to transfer co-ownership to us according to the proportion of the value of the reserved object to the other object at the time of combining, mixing or blending. In these cases, the buyer shall keep safe the object in our ownership or co-ownership, which is also regarded as a reserved object within the meaning of the following provisions, and this free of charge.

- 13.3. If the reserved goods are sold by the buyer, the buyer already assigns to us the accounts receivable resulting from the resale of the processed and unprocessed reserved goods from his buyers or third parties in the sum of the value of the reserved goods with all their ancillary rights and with priority over all other claims. We hereby accept the assignment. The value of the reserved goods is our invoice amount. If the resold reserved goods are in our co-ownership, the assignment of the accounts receivable extends to the amount that corresponds to our proportional share of the ownership.
- 13.4. This also applies to the extended reservation of ownership. Furthermore, the buyer assigns to us all accounts receivable resulting from the rental of the reserved goods for which we have given the buyer permission.
- 13.5. If reserved goods are integrated by the buyer as a major component in the real estate of a third party, the buyer already assigns to us the remuneration arising towards the third party or towards the person it concerns in the amount of the value of the reserved goods with all ancillary rights including that of the right to the granting of a debt-securing mortgage, with priority over all other claims. If reserved goods are integrated by the buyer as a major component in the real estate of the buyer, the buyer already assigns the claims arising from the commercial sale of the real estate or of land rights to us in the amount of the value of the reserved goods with all rights and with priority over all other claims. We hereby accept the assignments.
- 13.6. The buyer is only entitled to resell, use or integrate the reserved goods in the usual, proper course of business as long as he meets his obligations from the business relationship with us in good time and in particular is not in default of payment and only in accordance with the authorisation and entitlement that the claims actually devolve to us within the meaning of the above paragraphs. The buyer is not entitled to dispose of the reserved goods in any other way. He is not entitled to pledge the reserved goods or to collateralise them. In the event of a credited resale of the reserved goods, he must protect our rights. The buyer shall remain authorised to collect his claims after assignment. Our authorisation to collect the claims shall remain unaffected by this. We shall, however, not collect the claims as long as the buyer meets his payment obligations from the appropriated proceeds, does not default in payment, there is no application to open insolvency proceedings and no cessation of payments. If this is the case however, we can demand that the buyer discloses the assigned claims and their debtors, provides us with all the particulars necessary for collection, hands over the related documents and informs the debtors (third parties) of the assignment.
- 13.7. The buyer is obliged to handle the reserved goods carefully, to keep them separately from other goods and to insure them sufficiently at his own expense against the usual risks, in particular against fire, water damage and theft.
- 13.8. The buyer must inform us immediately of any enforcement measures of third parties concerning the reserved goods, the assigned claims or other securities and hand over the necessary documents for an intervention. This shall also apply to other sorts of impairment. The buyer shall bear the costs for out-of-court efforts for release and return. This shall also apply to the costs for a justified judicial intervention if they cannot be recovered from the third party.
- 13.9. If the total value of existing securities exceeds the secured claims by more than 10%, we are obliged at the buyer's request to release securities at our discretion.
- 13.10. We revocably authorise the buyer to collect the claims assigned to us for his own account and on his own behalf. The buyer must inform us on request of the debtors of the assigned claims.
- 13.11. If the buyer falls into default with his payment, we are entitled to take possession of the reserved goods when an appropriate deadline set by us has expired without any results. If the reserved goods are in the possession of a third party, the buyer is obliged upon our first request to inform us of the whereabouts of the reserved goods, arrange access for us and agrees that we can take possession of the reserved

goods in this case also. We shall only make use of the rights referred to here when we have withdrawn from the contract.

#### **14. Business and trade secrets**

- 14.1. The buyer is obliged to keep all the documents and information received from us strictly confidential, for example specifications, illustrations, drawings, calculations and other documents and information; the same applies to all our other business and trade secrets which we disclose to the buyer. This information may only be disclosed to third parties with our prior express agreement in writing. This confidentiality obligation shall also apply after implementation of this contract; it shall cease to apply if and to the extent that the manufacturing knowledge and/or other information in the transferred illustrations, drawings, calculations, software and other documents becomes common knowledge, at the latest, however, 10 years from the delivery of the delivery item.
- 14.2. The buyer is obliged to handle the commercial and technical details relating to the contract concluded with us and connected with its implementation as business and/or trade secrets. The buyer is also obliged to maintain secrecy concerning the business relationship with us. Exceptions require our prior written consent.

#### **15. Use of software**

- 15.1. If software is included in the scope of delivery, the buyer is granted a non-exclusive right to use the delivered software including its documentation. It is handed over to the buyer for use on the delivery item it is intended for.
- 15.2. The buyer is only permitted to copy, revise or translate the software to the extent permissible by law. The buyer is not permitted to remove or change manufacturer information and copyright notices.
- 15.3. The buyer is not permitted to grant sub-licences.

#### **16. Place of performance, place of jurisdiction and applicable law**

- 16.1. The place of performance and exclusive place of jurisdiction is our place of business if the buyer is a business person, a corporate body under public law or a special fund under public law. This applies to both parties and to all current and future claims. We are, however, also entitled to bring an action at our discretion at the place of performance of the delivery obligation or at the buyer's place of business.
- 16.2. The place of jurisdiction for contracts with foreign buyers is at our discretion our place of business or the competent courts in the capital of the foreign state, for buyers from France, Strasbourg takes the place of the capital, for Austria, Bregenz and for Switzerland Schaffhausen, for Italy Milan.
- 16.3. The applicable law is the law of the Federal Republic of Germany to the exclusion of UN sales law.
- 16.4. The contract language is German.

#### **17. Miscellaneous**

- 17.1. Gläser GmbH is entitled to process the data received concerning the buyer relating to the business relationship or in connection with it, regardless of whether the data comes from the buyer himself or from third parties, within the meaning of the Federal Data Protection Act. We refer in addition to the separately published data protection declaration.
- 17.2. Should any individual clauses of the above clauses or parts of these clauses be invalid, the contract shall otherwise remain effective and in the place of the ineffective regulation, either the legal provision shall be inserted or (if such a provision does not exist) such a provision that the contracting partners would reliably have made in good faith if they had known of the invalidity.