

# General Terms and Conditions for Sales and Services of Analytik Jena GmbH

## I General

### 1 Scope

Unless otherwise agreed in writing, the following conditions apply exclusively to all - including future - deliveries of goods and services. The Customer's terms and conditions shall only apply where we have agreed to them in writing.

In particular, our silence shall not be construed as recognition or consent including in the case of future contracts. These Terms and Conditions (T&Cs) shall apply in place of the customer's T&Cs even where the latter provide that order acceptance represents unconditional acceptance of the T&Cs.

### 2 Applicable Law, Jurisdiction

- 2.1 German law applies. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 2.2 In the event of any dispute pursuant to the underlying contract, we shall be entitled to choose between recourse to general courts of law and to arbitral tribunals. Should any claim be asserted against us, we shall be obligated to exercise our option within a reasonable period of time prior to the start of legal proceedings if the other Party so requests in due course. In the event of a refusal to choose or a late choice do we waive the defense of arbitral jurisdiction already now.
- 2.3 If recourse to arbitration proceedings is chosen, the following shall apply:  
Any dispute arising pursuant to the underlying contract shall be finally decided pursuant to the Arbitration Rules of the German Institution of Arbitration e. V. (DIS) in force on the date when the contract is concluded and without recourse to the ordinary courts of law. The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be our place of our registered office. The procedural law of this place shall apply if the Rules of DIS do not provide for any relevant relations. The substantive law of the Federal Republic of Germany shall apply. The application of the UN Convention of the international Sale of Goods (CISG) and the reference regulations of the private international law shall be excluded. The reasons for the arbitration award shall be given in writing. The court of arbitration shall also decide on the costs of the proceedings and Parties necessarily incurring expenses.
- 2.4 If recourse to general courts of law is chosen, the legal venue for all disputes arising pursuant to the underlying contracts shall be the court with jurisdiction over our registered office. We are, however, also entitled to sue the Customer in the court with jurisdiction over the Customer's registered office.

## II Delivery of Goods

### 1 Offers

- 1.1 Our offers are subject to change. Contracts only come into effect by way of our written order confirmation or delivery.
- 1.2 Our employees are not authorised to make oral ancillary agreements or undertakings which go beyond the content of the written contract or to amend these General Terms and Conditions for the Delivery of Goods and Services in any way which would be to our detriment.

1.3 Technical data, illustrations, drawings, weight specifications and measurements accompanying the offer are non-binding unless they are (a) expressly designated as binding or (b) material.

1.4 We reserve the right to make changes to the design which are appropriate from a technical point of view.

1.5 The Customer shall be responsible for checking the usability of our goods.

### 2 Passing of Risk, Shipping and Delivery Date

- 2.1 Unless otherwise agreed, delivery shall be EXW (location specified in the order confirmation) Incoterms 2020. Risk shall also pass to the Customer according to EXW Incoterms 2020 where, in the exceptional case, we assume other responsibilities such as e.g. shipping costs or shipping (including by our own transport personnel) and set-up.
- 2.2 Where it is agreed that we are to assume responsibility for the shipping, we will choose what we consider to be the safest and most cost-effective solution.
- 2.3 The delivery period commences on dispatch of the order confirmation but not before clarification of all details relating to execution of the order as well as receipt of any documents and permits to be obtained by the Customer and not before any agreed advance payment.
- 2.4 Where dispatch is delayed as a result of circumstances for which we are not responsible,
  - risk shall pass to the Customer on the agreed delivery date, but in any case no later than the date of readiness for shipment,
  - the Customer shall nevertheless remain under a duty to accept delivery and render payment for the goods,
  - we are entitled to issue the invoice,
  - we shall store the goods at the Customer's expense and risk, in the case of storage on our respective works premises, the Customer shall bear the costs thereof but in any case no less than 0.5 % of the invoice amount for the stored shipment per month,
  - we shall be entitled to rescind the contract and claim damages in lieu of performance following the expiry of a reasonable extension of time,
  - the Customer shall, in particular, bear the cost and risk arising from the failure to carry out instructions and undertake necessary formalities, on time, in accordance with its obligations.
- 2.5 Insofar as we accept requests for changes made by the Customer, these shall extend the delivery time until we have examined their feasibility and for the period required for incorporating the new requirements into the production.
- 2.6 Where a delivery is delayed due to our fault, the Customer shall be entitled to claim flat-rate damages for every full week of the delay, provided that the Customer can prove that it has suffered loss as a result. The flat-rate damages shall amount to 0.5 % per full week of the delay, but limited to a maximum of 5% of the net invoice amount for that part of the delivery affected by the delay. We reserve the right to prove that the Purchaser did not incur any loss at all or that the loss incurred was substantially less than the foregoing flat rate. This shall be without prejudice to the right to claim damages in lieu of performance pursuant to Clause 10. The statutory right of rescission remains unaffected but requires that we are to blame for the delay.

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### 3 Force Majeure

- 3.1 Unforeseen or unavoidable events or events for which we cannot be held responsible (Force Majeure), in particular (i) natural disasters, extreme natural events, (ii) war, revolution, acts of terrorism, (iii) currency or trade restrictions, (iv) official measures, government orders, (v) epidemics, pandemics or diseases, (vi) strikes, lockouts, operational breakdown, and problems in the procurement of material or energy, transport delays or difficulties in obtaining authorizations especially import or export licenses, shall extend the delivery time by the duration of the period of disruption and its effects. This also applies where our own suppliers are subject to hindrance or during an existing period of delay.
- 3.2 Where the obstruction is not purely temporary, we are entitled to rescind. Where, as a result of the delay, it is unreasonable to expect the Customer to accept delivery, the Customer can rescind the contract by way of a written declaration addressed to us.
- 3.3 The right to claim damages is excluded in the cases referred to in this Clause 3.

### 4 Proviso for Obtaining Permits

- 4.1 Where we are responsible for obtaining permits, particularly for the export/shipment/import of our goods, our deliveries (contractual performance) shall be subject to the proviso of there being no obstacle to obtaining a permit as a result of national or international provisions, particularly export control provisions and embargoes or other sanctions. In this case, the Customer undertakes to provide us with all the information and documentation necessary for the export/shipment/import.
- 4.2 Where a required permit applied for by us is not issued, the contract relating to the affected delivery is deemed not to have been concluded; damages claims against us in this regard are excluded.

### 5 Partial Deliveries

We are entitled to make partial deliveries to the extent reasonable for the Customer.

### 6 Prices and Payments

- 6.1 Unless otherwise agreed, our prices are EXW (location specified in the order confirmation) Incoterms 2020, net in Euro, plus the applicable value added tax and excluding packaging.
- 6.2 Payments must clear our paying office within 30 days from the invoice date without any deductions. Payments are only deemed to have been made to the extent that we have free disposal over them at a bank. Cheques and bills of exchange are only accepted on account of payment; discount and expenses shall be borne by the Customer. They are due immediately.
- 6.3 In the event of late payment, we charge default interest of 9 % points above the base interest rate, but in any case a minimum of 10%, without issuing a reminder. This shall not prevent the assertion of additional damages claims.
- 6.4 Where there is legitimate reason to doubt the Customer's ability to pay, such as, for example, slow payment, default on payment, protests on bills of exchange or cheques, we can require provision of security or payment in cash pari passu with delivery. Where the Customer fails to comply with this requirement within a reasonable time limit, we can rescind that part of the delivery contract which has not yet been fulfilled and claim compensation. The time limit is unnecessary where the Customer is obviously

unable to provide security, for example where there has been an application to initiate insolvency proceedings against the Customer's assets.

- 6.5 The Customer can only assert a right of set-off or retention insofar as its counterclaims are uncontested, due for a decision or have been upheld by a final court judgement.

### 7 Reservation of Title

- 7.1 We reserve title to the goods delivered until all payments have been received which arise under the business relationship with the Customer. Where there is a current account relationship, the reservation of title extends to the recognised balance.
- 7.2 Treatment or processing of the reserved goods by the Customer shall be undertaken for us as manufacturer without involving any obligations on our part. Where the reserved goods are mixed or combined with other goods, we shall acquire co-ownership of the new product in accordance with the ratio of the invoice value of the retained goods to the other materials. The same applies where the reserved goods are processed together with other items. Where the item is combined or mixed in such a way that the Customer's item is regarded as the main item, it is hereby agreed between the Customer and ourselves that the Customer shall transfer co-ownership of this item to us on a pro rata basis. We hereby accept the transfer.
- 7.3 The Customer can only sell the reserved goods in the ordinary course of business and cannot pledge them or transfer them by way of security. The Customer shall notify us of any attachment, without delay. The costs arising as a result of defending an attachment shall be borne by the Customer insofar as they cannot be recovered from the third party.
- 7.4 The Customer shall insure the reserved goods sufficiently against any loss or damage, at its own expense, for the replacement value. Confirmation of the insurance policy and evidence of payment of the premiums must be submitted to us on request. The Customer hereby assigns to us any rights under the insurance contracts.
- 7.5 The Customer hereby assigns to us, by way of security, all receivables to which it becomes entitled as a result of the resale of the reserved goods.
- 7.6 The Customer itself is entitled to recover the receivables which have been assigned to us. The right to use and resell the reserved goods, as well as the right to recover the receivables, shall cease if the Customer defaults on payment; if insolvency proceedings are initiated against the Contractor's assets or the Customer ceases to make payments. In these cases, the Customer is also no longer permitted to process the goods.
- 7.7 In the cases specified in Clause 7.6, the Customer shall enable us to take back the reserved goods, disclose to us the assigned receivables and the respective debtors, notify its customers of the assignment of receivables and provide us with all the information and documentation necessary to effect recovery. We are entitled to disclose the assignment to its customers. Redemption of the retained goods does not constitute rescission of the contract. If we declare rescission of the contract we shall be entitled to sell the goods as we think fit.

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7.8 Where the value of securities exceeds our claims by more than 10%, we shall, at the Customer's request, release securities in this regard at our own discretion.

### 8 Rights to Documentation and Confidentiality

The Customer undertakes to maintain the secrecy of all confidential information (in particular details of our offers, such as technical solutions, prices and conditions etc., as well as samples, drawings and other operational and trade secrets) which it receives from us, to refrain from disclosing them to third parties and from using them for its own purposes or those of a third-party.

We retain all rights of ownership and copyright to this confidential information.

### 9 Liability under Warranty

9.1 Obvious material defects in the delivered goods must be reported to us in writing without delay following receipt; hidden defects, without delay following discovery.

9.2 Where the Customer returns rejected goods to us for verification of the rejection, the following applies for the protection of our employees:

The Customer must send us the decontamination declaration (Download: [https://www.analytik-jena.de/Declaration\\_of\\_decontamination\\_en.pdf](https://www.analytik-jena.de/Declaration_of_decontamination_en.pdf)) which must be fully completed and signed. The decontamination declaration must be attached to the outside of the shipping package. The products will not be examined or processed by our Service department unless we have received the decontamination declaration.

The Customer shall return the rejected goods to us in the original or equivalent packaging, at its own expense, for examination of the notified defect.

9.3 Where rejection of the goods is justified, the following applies:

- (a) We will either repair or replace the goods according to our own discretion, but such action shall not constitute recognition of any obligation on our part but only a gesture of goodwill. If repair fails, the Customer can demand a price reduction or - in the case of substantial defects - rescind the contract. Where subsequent performance fails, the Customer is also entitled to claim damages in lieu of performance in accordance with Clause 10.
- (b) We will not assume the cost of supplementary performance which arises due to the fact that, following delivery, the item delivered is transported to a location other than the customer's place of business.
- (c) There is no right to reimbursement of the costs of disassembly and installation if we are not responsible for the defect.

9.4 With regard to replacement parts installed under warranty, we shall be liable until expiry of the limitation period applicable to the original delivery item. However, in accordance with Section 203 (2) German Civil Code (BGB), the limitation period shall commence no earlier than three months after rectification of defects or delivery of the replacement part.

9.5 Where rejection is unjustified, we reserve the right to invoice for the costs incurred as a result of the rejection (including internal costs).

### 10 General Liability

10.1 In case of intent or gross negligence, fraudulent concealment of defects, death, personal injury or damage to health or under the Product Liability Act, we shall be liable in accordance with the statutory provisions. In the case of claims under a guarantee, we shall be liable according to the provisions of the guarantee.

10.2 In the case of simple negligence, we are only liable for the breach of a material contractual condition, which is one which must be fulfilled in order for the contract to be properly implemented and compliance with which the Customer generally expects and is entitled to expect and the breach of which jeopardises the purpose of the contract; this liability is however limited - in the absence of any provision to the contrary relating to damages for delay under Clause 2.6 - to compensation for foreseeable and customary loss. In all other cases, liability is excluded.

10.3 Claims by the Customer under warranty shall lapse 12 months from the passing of risk, other claims 12 months after commencement of the statutory period of limitation. In derogation from sentence 1 of this Clause 10.3, where we are liable under a guarantee, the guarantee provisions shall apply and, in the case of the fraudulent concealment of a defect and claims for damages under the Product Liability Act, for death, personal injury or damage to health and due to the intentional or grossly negligent breach of obligations, the statutory limitation provisions.

10.4 In the event of a breach of obligation, the Customer can only rescind the contract where we are responsible for such a breach. In other respects, the statutory provisions and legal consequences apply.

### 11 Place of Performance

The place of performance for all deliveries is the location specified in the order confirmation; for payment, our registered office.

## III Services

In the case of all services that we provide for a Customer, in particular advice, help-desk services, engineering, entry into service, maintenance, servicing, repair, calibration, installation, adjustments or use of components acquired or to be acquired from us and any other services (hereinafter referred to as "services"), the following conditions apply:

### 1 Offer, Scope of Services

- 1.1 We specify the scope of our services in our offer.
- 1.2 The source code only forms part of the scope of services where this has been expressly agreed in writing.
- 1.3 In other respects, Part II, Clause 1 shall apply mutatis mutandis.

### 2 Performance of Services

- 2.1 We are entitled to provide the services by way of third parties (experts, sub-contractors).
- 2.2 The Customer has no right to have services provided by a specific employee unless this has been agreed in writing. The designation of an employee in the wording of the offer and order confirmation does not fulfil this requirement.
- 2.3 The Customer has no authority to issue instructions to staff or third parties employed by us.

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### 3 Time Limit and Location for Provision of Services; Working Hours

- 3.1 Clauses 2.3, 2.5 and 2.6 of Part II apply mutatis mutandis to the provision of services.
- 3.2 The time limit for the provision of services shall be extended appropriately if and to the extent that the Customer fails to comply properly with its duties to cooperate.
- 3.3 Where the provision of services is delayed as a result of circumstances for which we are not responsible,
  - the Customer shall nevertheless remain under a duty to accept and pay for the services,
  - we are entitled to issue the invoice,
  - we shall be entitled to rescind the contract and claim damages in lieu of performance following the expiry of a reasonable extension of time.
- 3.4 Where, at the Customer's request, the agreed date for provision of the services has to be deferred, we are entitled to invoice for costs (including internal costs) which we have already incurred or initiated on the basis of the agreed date (e.g. travel costs incurred by us or a third party).
- 3.5 We shall be solely responsible for designating the place and hours of work. In this regard, we will have due regard for the legitimate concerns of the Customer communicated to us promptly and in writing.

### 4 Customers Duties of Cooperation

- 4.1 The Customer shall ensure that all conditions necessary for performance of the services are met, all necessary documentation is submitted in good time, all information is provided and that we have been informed of all the processes and circumstances which are relevant to our services. This also applies to all relevant documentation, information, processes and circumstances which only become known during the performance of our services.
- 4.2 The Customer is obliged to provide the employee with confirmation of the hours worked at the end of each working day.
- 4.3 Where services are carried out on the Customer's business premises, the Customer shall provide us with sufficient work space free of charge and allow us to have access to the necessary (IT) systems.
- 4.4 The Customer shall be exclusively responsible for acquiring any permits - particularly those of an official nature - which are a condition for provision of the services.
- 4.5 Where the Customer fails to comply properly with the duties of cooperation under this Clause 4, or other duties of cooperation, and this gives rise to delay and/or additional costs, we can adjust the remuneration and the agreed deadlines accordingly.

### 5 Remuneration

The agreed remuneration applies. Where we provide services without having agreed the remuneration in advance, the usual remuneration, plus the applicable value added tax, as well as all ancillary costs, e.g. travel costs, travelling time, expenses, allowances etc., shall apply.

### 6 Liability

- 6.1 Unless otherwise expressly agreed in writing, we shall not assume responsibility for achieving a specific result when performing our services.

We nevertheless undertake to perform the services with the level of care customary for the industry and in accordance with the generally accepted codes of practice.
- 6.2 In the event that, in the exceptional case, we assume responsibility for achieving a specific result when performing our services, the following applies:
  - Clause 10 of Part II applies accordingly,
  - Acceptance pursuant to Section 640 German Civil Code (BGB) must be effected. Unless otherwise agreed, the Customer is obliged to effect acceptance without delay, but in any case no later than 14 days after notification of completion. Where the Customer fails to issue an acceptance and nevertheless uses the services, or items on which we have performed services, acceptance is deemed to have been issued unless rejection by the Customer is due to more than just minor defects.

### 7 Rights to the Services and Results

On full payment of the agreed remuneration, the Customer shall receive a non-exclusive, non-transferable right of use, unlimited in duration and area, over the results which we achieve in the course of our services and transfer to the Customer, in line with the contractually agreed purpose of the deployment. In other respects, we reserve all rights.

### 8 Supplementary Provisions

In other respects, the provisions of Clauses 3, 6, 8, 10 and 11 in Part II, relating to the delivery of goods, shall apply mutatis mutandis to services.