

## Terms of Payment and Delivery – Hach Lange GmbH, Germany

### 1. Scope of application

All our quotes and deliveries are made exclusively on the basis of the following General Terms of Payment and Delivery in their respectively most recent version. These General Terms of Payment and Delivery will also apply to all future business. The customer's terms of purchase are herewith expressly excluded. Any agreements other than these terms of payment and delivery will only apply in the event that we have expressly confirmed them as an addendum to these General Terms of Payment and Delivery. This will also apply in the event that we make the delivery without reservation while being aware of possible other terms by the customer.

### 2. Contract formation

Our quotes are subject to change without notice and do not yet constitute an obliging application for the conclusion of a contract. The contract will only come into existence with our confirmation of the order or through the execution of the order. The contractual composition of the item to be delivered will be defined exclusively by our confirmation of the order. Information about the composition not expressly included or referenced in the confirmation of order will not become the subject matter of a contract. The lack of composition specifications other than those expressly included or referenced in the confirmation of order does not constitute a defect in the item of delivery.

### 3. Prices and terms of payment

If no other specific written agreement has been made, the prices are stated in euros and are net and ex works, the statutory value added tax to the respective amount must be added to these prices. Payments for deliveries will be due within 30 days of the delivery without any deduction. Invoices for repairs and other services will become due on the day on which their execution has been concluded. If both delivery performances as well as repairs or other services are owed, a term of payment of 30 days from delivery will be deemed to have been agreed. The deduction of cash discounts is not permitted.

### 4. Delivery and the transfer of risk

4.1. Part deliveries are permitted to a reasonable extent.  
4.2. Sale and delivery are subject to our receiving correct and punctual deliveries.  
4.3. The risk will be transferred at the latest to the customer with the handover of the item of delivery to the forwarding agent, freight carrier or other third parties commissioned with shipping. The commencement of the loading process is relevant. This also applies in the event that part deliveries are made or if we have assumed other performances (e.g.

shipping or installation) or the costs of shipping. If shipping or handover is delayed due to a circumstance whose cause lays with the customer, the risk will be transferred to the customer on the day on which the item of delivery is ready for shipping and we have notified the customer accordingly.

4.4. Where deliveries are concerned, packaging and freight costs will also be charged according to the value of the goods. Special packaging will be charged at cost prices. **Shipping and packaging costs will be charged as follows:**

*Order value/shipping and packaging costs*

up to 150.00 €:	15.00 €
(10.00 € freight, 5,00 € minimum quantity surcharge)	
from 150.00 € to 1,000.00 €:	15.00 €
from 1,000.00 € to 2,500.00 €:	30.00 €
from 2,500.00 €:	56.00 €
from 10,000.00 €:	1.5% of the order value

### 5. Delayed performance and impossibility, default in acceptance, storage costs

5.1. If we should fall behind with our delivery duty, the customer may demand compensation for each commenced week of the delay to an amount of 0.5%, but 5% at most, of the value of that part of the total delivery that as a result of the delay cannot be contractually used or cannot be used on time. This amount of damage must be reduced or increased if we are able to demonstrate less damage has been suffered or the customer is able to demonstrate that greater damage has been suffered. The provisions set out in No. 8 will apply to the scope of liability.

5.2. As a result of a breach of duty that is not due to a defect, the customer may only withdraw or give notice of termination if we are responsible for this breach of duty. Free right to give notice of termination by the customer (in particular in accordance with Paragraphs 651, 649 of the Bürgerliches Gesetzbuch (BGB – German Civil Code) is excluded.

5.3. In the event of delayed performance, withdrawal or compensation in place of the performance will also require that the customer has set a suitable prior time limit in writing and when doing so has made it expressly clear that the customer will withdraw from the contract and/or will claim compensation if the time limit is not fulfilled. Usually, a time limit of four weeks is deemed to be suitable.

5.4. The setting of a time limit as defined in Section 5.3 will not be necessary if we seriously and finally refuse to make the contractually owed performance or in the event that special circumstances exist that would, following consideration of both parties' interests, justify the immediate withdrawal and/or claiming of compensation.

5.5. Withdrawal due to only an insignificant breach of duty is

excluded. Finally, withdrawal will be excluded if the customer is solely or largely responsible for the circumstances that would entitle it to withdraw from the contract or a circumstance for which we cannot be held responsible occurs during the customer's default in acceptance.

5.6. No. 8 of these General Terms of Payment and Delivery will apply to claims for damages.

5.7. If the customer defaults in acceptance, does not carry out an act of cooperation or if our delivery is delayed for other reasons for which the customer is responsible, we will be entitled to demand compensation for the damages caused by the above, including additional expenses (e.g. storage costs). To this end, we will charge a flat compensation totalling ... EUR per calendar day, commencing with the term of delivery or, if such has not been agreed, with notification that the goods are ready for shipping. This will not affect our ability to demonstrate greater damages and our statutory claims; the flat rate must be offset against further claims. The customer will be entitled to demonstrate that no damage or only considerably less damage than the flat rate mentioned has been suffered.

## **6. Complaints about defects**

6.1. Notification of apparent defects, i.e. defects in title and material; excess or insufficient or incorrect deliveries as well as the lack of a property we have under certain circumstances warranted or the shelf life of the delivery or performance (defects), must be made in writing immediately, at the latest, however, 14 days after receipt of the goods, while notification of defects that could not be detected during normal goods-receipt inspections must also be made in writing immediately, at the latest, however, 14 days after they have been discovered.

6.2. All warranty claims against us will be excluded if we are not notified of defects or other complaints within the time limits specified in the above section.

## **7. Warranty**

7.1. In the event of a defect, we shall, if a complaint was made in time in accordance with No. 6 of these General Terms of Payment and Delivery, at our discretion effect the elimination of the defect (later improvement) or replacement delivery. There will be no claim to later improvement or replacement delivery if such would only be possible at disproportionate cost.

7.2. If we have carried out two later improvements or a single replacement delivery and if the existing defect could not be eliminated by these later improvements or this replacement delivery, the customer will be entitled to the statutory warranty claims. Insofar as the claims depend on culpability, the liability restriction set out in No. 8 will apply.

7.3. Where external products are concerned, our warranty will be limited to the assignment of claims that we are able to make against the supplier of the external product. In the event that the customer is unable to assert its warranty rights against the supplier of the external product out of court, he/she will be at liberty to assert the warranty claims he/she is permitted to make in accordance with the statutory provisions and these

conditions against us.

7.4. The period of limitation for warranty claims for products acquired from us which are not products from external suppliers is 24 months. The period of limitation for warranty claims for external products we have only delivered is 12 months.

7.5. Should it be necessary to change parts within the scope of later improvement, the replaced parts will become our property.

7.6. If notification of a defect that was not a defect in the above sense was made, we will be entitled to demand that the customer reimburses us for the expenses we have incurred.

7.7. We will not assume any warranty for only insignificant deviations from the agreed composition or for insignificant impairment of usability or for damage caused in particular as a result of the following: incorrect use of the item of delivery or use by the customer or third parties that is not covered by the contract purpose, natural wear, incorrect treatment, in particular excessive exposure to wear, the use of unsuitable replacement materials, chemical or electrical effects, insofar as we are not responsible for these occurrences.

7.8. All documents, e.g. images, drawings, network plans or pictures of screen displays, etc. belonging to our delivery are only relevant as approximations insofar as we have not expressly described them as binding. Also, information contained in these materials and references to DIN standards do not constitute composition or shelf-life guarantees insofar as not otherwise agreed.

7.9. In the event that the goods have been transported at a later point in time to a place other than the place of fulfilment and if this does not comply with the intended use of the goods and if this increases the expenses, in particular transport, travelling, working and material costs for the later improvement or replacement delivery, these increased expenses must be borne by the customer.

7.10. If certain equipment-specific maintenance and inspection work has to be carried out during the warranty period by the customer (maintenance) or the customer has to have such carried out by the supplier (inspection) and if these requirements are not fulfilled, our warranty obligation will not cover the resulting damage.

## **8. Liability**

8.1. Liability for us will be excluded insofar as not otherwise indicated in the provisions below.

8.2. The exclusion of liability does not apply to damages caused by the culpable breach of a significant contractual duty in a way that endangers the achievement of the contract purpose. Significant contractual duties are such duties that need to be fulfilled before the proper execution of the contract becomes possible and in regard to which the contract partner routinely trusts and may trust that they will be fulfilled. Liability will, however, be limited to the contract-typical damage that each contract party would have come to expect as a result of the circumstances of which they were aware at this point in time.

8.3. The exclusion of liability furthermore does not apply to damages caused by injury to life, limb or health resulting

from a negligent breach of duty caused by us or our legal representative or vicarious agents.

8.4. The liability exclusion does not apply to damage caused by a wilful or grossly negligent breach of duty by us or the wilful or grossly negligent breach of duty by our legal representatives or vicarious agents.

8.5. Insofar as our liability is excluded or limited, this will also apply to the liability of our legal representatives, staff and vicarious agents.

8.6. Insofar as we have provided a guarantee for the composition of the goods, the content of this guarantee will not be affected by the above liability restriction.

8.7. Liability in accordance with the product liability law remains unaffected.

## **9. Force majeure**

The delivery time will be extended appropriately should we or our sub-contractors experience force majeure events. This will also apply in the event of interventions by the authorities, supply difficulties, strikes, lock-outs and unforeseen delivery difficulties insofar as we are not responsible for such. If the above circumstances make delivery impossible or unreasonable, we shall be relieved of our obligation to deliver. We shall immediately notify the customer accordingly. If the delivery delay lasts longer than two months, the customer will be entitled to withdraw from the contract. Any previous statutory withdrawal rights for the customer, for instance, due to the frustration of the contract, will remain unaffected.

## **10. Intellectual property/liability for the customer's items**

10.1. Insofar as we possess industrial property rights in the items we have provided to the customer, in particular the sold products or products made or adapted for the customer, our drawings, samples and models, the customer will only be granted a simple and non-exclusive right of utilisation that is non-transferable to third parties. The customer will not be entitled to make such materials accessible to third parties. The provisions set out in No. 14 will apply. Further rights, in particular exclusive rights of utilisation or licences will only be granted to the customer on conclusion of a separate licence contract that expressly regulates exclusive licensing.

10.2. If we are to deliver according to samples, drawings and models by the customer, the customer will guarantee that such work does not violate third-party industrial property rights. Insofar as a third party makes claims against us on the basis of an industrial property right to which this third party is entitled, the customer must release us from these claims and reimburse us for the costs for the appropriate legal defence. The customer must also provide all the information and documents required to this end. Insofar as the claim by the third party is not obviously unjustified, we will be entitled to cease any work that carries the risk of further infringement of the third party's rights until the matter has been finally clarified.

10.3. We shall only be liable for the acceptance and storage of

items and documents belonging to the customer in accordance with No. 8. The risk of accidental destruction or accidental damage will be borne by the customer.

## **11. Offsetting, right of retention, ability to pay and assignment**

11.1. Our claims arising out of this contract may only be offset against counter claims based on our warranty for defects and in all other cases only with undisputed counter claims or counter claims that have been determined in a legally effective manner. A right of retention may only be exercised by the customer for such claims for which offsetting would not be excluded in accordance with Clause 1.

11.2. In the event of doubts regarding the customer's ability to pay, particularly in the event of not insignificant payment arrears for which the customer is responsible, we may, while reserving the right to make further claims, demand advance payments or collateral for further deliveries and cancel any payment periods granted.

11.3. The customer may not assign rights and duties arising out of the purchasing contract to third parties without our express approval.

## **12. Reservation of ownership/cell test**

12.1. The delivered goods will remain our property until our invoice has been settled in full and until all previous performances and deliveries, including all secondary claims, have been paid and, in the event of payment by cheque or bill of exchange, until the point in time at which the amount is at our disposal (Paragraph 449 I BGB). The inclusion of individual claims in a current invoice and the balancing and the recognition of such will not affect the reservation of ownership.

12.2. Cell tests we have supplied will, insofar as not otherwise agreed, remain our property. The customer may only use and employ them in the manner we have specified (instructions of use/manuals) and they will be re-collected after use following punctual notification to the customer within the region of the Federal Republic of Germany. Cell tests from medical diagnosis (in-vitro diagnostics) are excepted from this provision.

12.3. If goods in which ownership has been reserved are combined with goods that do not belong to us in accordance with Paragraphs 947, 948 BGB, we will become co-owner of the overall item to the proportion of the invoiced value of the deliveries and performances in relation to that of the other processed goods at the time of processing, combination, mixing or mingling. If the customer becomes the sole owner through mixing or mingling, the customer already assigns co-ownership to the above-mentioned ratio to us and undertakes to store the new items on our behalf at no cost.

12.4. If goods in which ownership has been reserved are sold by themselves or in conjunction with goods belonging to us, the customer already assigns the claims arising out of the sale to the extent equalling the value of the goods in which ownership is reserved along with all secondary rights to us. If the goods sold are co-owned by us, the assignment of the claim will extend to the amount that is equivalent to the value

of the share of our co-ownership. We authorise the customer with the reservation that this authorisation may be withdrawn to collect the claims assigned to us. If the customer defaults on his/her obligations towards us, the customer must disclose the debtors of the assigned claims to us and notify these of the assignment. In such cases we will also be entitled to notify the respective debtors of the assignment ourselves and to exercise our collection authority.

12.5. In the event of not insignificant non-contractual behaviour by the customer and for which the customer is responsible, in particular, in the event of payment arrears, we will until the cessation of the non-contractual behaviour be entitled to take back the goods in which ownership has been reserved after having issued a corresponding warning and setting a time limit and the customer will be obliged to hand over such goods. The assertion of reservation in ownership and the seizure of the item of delivery will not be deemed to constitute a withdrawal from the contract. The customer already declares that he/she agrees to those persons assigned the task of collecting the goods in which ownership has been reserved entering and/or driving on to the customer's premises insofar as necessary.

12.6. The customer will only be entitled and authorised to sell, use or install the goods in which reservation of ownership has been reserved to the extent that the claims assigned to us (No. 12.3) are actually transferred to us. The customer will not be entitled to make any other disposals of the goods in which ownership has been reserved. The customer may not pledge or transfer ownership as collateral in the item of delivery.

12.7. The customer must immediately inform us about compulsory enforcement measures by third parties relating to the goods in which ownership has been reserved or the assigned claims while providing us with the documents and information required to object to such intervention.

12.8. All goods in which ownership has been reserved must be insured by the customer at the customer's cost, in particular, against fire and theft. All claims against the respective insurer are in regard to the goods in which ownership has been reserved hereby assigned to us; we hereby accept this assignment.

12.9. If the value of the collateral assigned to us exceeds our claims by more than 20%, we will be obliged to release to the customer the collateral assigned to us to the extent that it exceeds the agreed cover limit.

### **13. Work performances**

For performances to which the regulations of the "Werkvertrag" ("Contract for Work and Services") apply, the Verdingungsordnung für Bauleistungen Part B (VOB – German Construction Contract Procedures) in the respectively valid version will apply. The applicable VOB Part B may be requested from us at any time.

### **14. Confidentiality**

The customer may only use confidential information about our company and our products for the agreed purposes and

may not provide such information to third parties. Confidential information constitutes technical and commercial information that a party is made aware of by the other party within the scope of this contract and individual orders. Confidential information particularly includes information about the flow of goods (especially tracking numbers). Such information that has entered the public domain or that the customer was already aware of at the time the contract was concluded without this being due to a breach of contract by the customer is not deemed to be confidential. The duty of confidentiality will also not apply to the extent that a statutory, court or official duty of disclosure of the information exists. In the event of such required disclosure, we must be informed immediately insofar as permissible.

### **15. Compliance**

The customer undertakes to initiate all necessary and reasonable measures within the framework of the respectively applicable laws and provisions to prevent corruption during the execution of this contract. This obligation applies to us in the same way. The customer will within the scope of the contractual relationship in particular ensure that

- the further sale, installation, use and import of our products are also carried out in compliance with the respectively applicable laws and regulations;
- the customer observes all the import and export regulations applicable in the Federal Republic of Germany, the European Union, the United States of America as well as in each of the states affected by the import and export of the products;
- all the permits required for all imports and exports, re-imports, transports and the use of products and technologies have been procured;
- the products we have manufactured and technologies we have developed are not offered, sold, transported and imported and exported in relation to activities that are connected to the development, manufacture, use or storage of nuclear, chemical or biological weapons and warfare agents and are not used in facilities that are involved in such activities;
- all business transactions carried out in connection with this contract comply with the US Foreign Corrupt Practices Act dating from 1977, the UK Bribery Act 2010, the German anti-corruption regulations and any other applicable anti-corruption regulations;
- the customer, the customer's staff or other vicarious agents the customer employs do not offer or grant officials, authorities and staff at authorities, political parties and decision carriers any advantages either directly or indirectly or have advantages offered or granted to such persons in order to achieve dishonest advantage for the customer itself or the customer's company in regard to the execution of this contract.

### **16. Place of fulfilment, place of jurisdiction and applicable**

**law**

16.1. Place of fulfilment for the customer's payments and for our deliveries is the headquarters of our company in Berlin/Germany. Exclusive place of jurisdiction for all disputes is Berlin-Mitte. The plaintiff is also entitled to take action at the respondent's domicile.

167.2. The laws of the Federal Republic of Germany apply to the contractual relationship with the customer.