

**I. Scope and Conclusion of Contract**

1. Our General Terms and Conditions of Delivery and Services shall apply in the most recent version on the date of the respective conclusion of contract for all of our performance. In addition, our billing rates are valid in the most recent version on the date of the respective conclusion of contract.

2. Our General Terms and Conditions of Delivery and Services and our rates of service charges, each in the most recent version on the date of conclusion of contract, shall also apply for future business with Customer.

3. The provisions listed under clause I.1. hereof shall apply exclusively, subject to contractual agreements. No other provisions shall become an element of the content of the contract even if not expressly contradicted by us.

4. Our offers are non-binding. No contract shall have been made until our written confirmation of order has been given. The scope of our performance shall be set down exclusively by our written confirmation of order, including the written schedules thereto. Unless otherwise stated in the order, we shall be entitled to accept the order confirmation within four weeks after receipt. If our order confirmation represents a new offer, this shall be deemed to have been accepted by you if you do not immediately object to it in writing receivable within one week.

5. Collateral agreements and changes shall only come into effect upon our written confirmation. This shall also apply for any agreement ruling out the present provision.

In case a flat-rate payment has been agreed for the products and/or a deadline for delivery has been fixed, the following shall apply:

As far as reasonable changes and/or requests by Customer after placing the order entail an increased expenditure of labour on our part and/or might lead to our inability to meet the deadline, we shall be entitled to demand an appropriate increase in remuneration and/or postponement of the time target if we submit a corresponding claim in writing within three months after the necessity to make modifications has arisen and/or after we have received Customer's request. If we already specify a new remuneration or new deadlines in this claim, these shall be deemed to be accepted if Customer does not contradict them within two weeks. We will notify the Customer of any such cause within Customer's sphere of responsibility which increases our expenditure or might lead to our inability to keep to the deadlines.

6. Our fulfilment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that the required licenses are issued to us.

7. The documents delivered and information given by us such as pictures, drawings, weights and measures are only binding if we have expressly specified them as an element of contract or make specific reference to them.

8. We reserve all ownership and copyrights to the documents delivered and information given by us (e.g. samples, cost estimates, drawings, documentation) – even if in electronic form; they may not be made available to third parties without our express written consent.

9. Written form according to Sec. 126 German Civil Code may be replaced by text form unless otherwise prescribed by law.

10. These General Terms are not intended for use in relation to consumers as defined in Sec. 13 German Civil Code.

**II. Prices and Payment, Set Off and Retention**

1. Our prices shall apply ex works and are exclusive of packaging, loading and additional VAT in the statutory amount.

a. In the case of delivery within the European Union, Customer must provide us with his VAT identification number as proof of his exemption from VAT when placing the order. In the event that such notification is not given or not given in good time, we reserve the right to charge the appropriate VAT.

b. In the case of delivery outside the European Union we are entitled to charge VAT in the statutory amount after delivery if Customer does not send us a proof of exportation within one month after shipment.

2. Cost estimates are only valid if made according to section I. 9.

3. Unless otherwise agreed, Customer shall make payment as follows:  
The specified prices are to be understood net, excluding the legally prescribed VAT valid at the time of invoicing.

Unless in the case of legally required acceptance, 40% of the order value when the order is placed and 60% of the order value at the time of delivery or notification of our readiness for dispatch, if delivery is delayed for causes which are not attributable to us.

In the case of work contracts for work and labour or express agreement to the necessity of an acceptance of our performance, 40% of the order value shall be due for payment at the time of invoice and 50% of the order value at delivery or notification of our readiness to dispatch, if the delivery is delayed for causes which are not attributable to us, as well as 10% of the order value after acceptance. In order to secure any claims by the customer for the repayment of advance payments and prepayments, we undertake to provide the customer with an advance payment/prepayment bank guarantee by a credit institution or credit insurer registered in the EU in the amount of each made down payment, waiving the defences of unexhausted remedies (§ 771 BGB). The guarantee shall be limited until acceptance; it serves exclusively for the above-mentioned security purpose and in particular not as a warranty guarantee.

4. Installation and services shall be invoiced at the current rates for our service charges applicable from time to time, which can be requested from us. Premiums shall be charged for work outside normal business hours. Travel and waiting time shall be deemed to be work time.

5. Payments are to be made to our account without any discounts. For assemblies, repairs and other services, section XIII. 6. j. applies instead of this section II. 5.

6. Customer may only set-off or withhold payment with counterclaims whose legal basis or amount are not disputed or are final and absolute.

7. Customer shall be in default of payment 30 days after the receipt of invoice without the necessity of any reminder.

8. The prices of an offer shall only apply for orders for the full scope of the offered performance.

**III. Delivery, Passing of Risk, Receiving, Termination of Work Performances**

1. We reserve the right to make reasonable partial deliveries.

2. Incoterms 2020 are deemed to have been agreed according to our offer.

3. In case of work performance the risk shall pass to Customer upon the acceptance of such work performance. If Customer takes over the transport of the item from the place of manufacture to the site of its use, Customer shall bear the burden of risk for the duration of the transport.

4. The foregoing provisions on the passing of risk shall also apply if partial deliveries are made or other services are to be performed by us.

5. Should delivery or acceptance be delayed or not take place as a result of circumstances which are not attributable to us, risk shall pass to Customer as of the day of the notice of the readiness for shipment or acceptance. We agree to take out the insurance requested by Customer at his expense.

6. Notwithstanding his rights under section VIII hereof, Customer may not refuse the receipt of delivery in the event of insignificant defects or deviations in volume.

7. In the event of a termination of work performances by the Customer in accordance with § 648 BGB (German Civil Code), we shall be entitled to payment of the sales value of services and goods already provided, completed or partially completed. In addition to this we shall be entitled to payment of the remuneration for services not yet rendered by us in the amount of at least 10% of the agreed total net selling price. We shall be allowed to prove that a higher loss has actually been incurred and / or higher expenses have been incurred and we shall be entitled to claim these losses / expenses from the Customer instead of the lump sum. The Customer is allowed to prove that no or only a significantly lower loss and / or substantially lower expenses than in the amount of the lump sum have been incurred.

**IV. Reservation of Title**

1. Ownership to the subject of delivery shall not pass to Customer until payment has been made in full. If the validity of this reservation of title is subject to certain conditions or special formal requirements in the country of destination, Customer shall ensure that they are fulfilled.

2. Customer may not pledge, sell or assign as security the subject of delivery prior to the passage of title. In the event of attachments and seizures or other dispositions by third parties, Customer must inform the third party of our title and notify us without undue delay.

3. In the event of actions on the part of Customer in breach of contract, including, but not limited to, default of payment, we shall be entitled to repossession of the subject of deliveries under the reservation of title following a notice of default, and Customer shall be obliged to surrender possession. Neither the request for repossession nor the pledge of the subject of delivery by us shall be deemed to be a rescission of contract.

4. An application for the initiation of insolvency proceedings concerning Customer's assets shall entitle us to rescind the contract and to demand immediate return of the reserved goods.

5. If Customer is domiciled in the Federal Republic of Germany, the following shall apply in addition to the foregoing:

a. In deviation from section IV.1 hereof, we reserve ownership to the subject of delivery until all of our claims against Customer within our current business relationship have been satisfied.

b. In deviation from section IV.2 hereof, Customer is entitled within the scope of his normal business transactions to resell the subject of delivery for which we reserve ownership under the following conditions: He must resell the subject of delivery under reservation of ownership if the subject of delivery has not already been paid in full by the third-party customer. There shall be no entitlement to a resale if Customer is in default of payment. Customer hereby assigns the claims arising under the resale or under any other legal grounds regarding the reserved goods to us to secure our claims. In the event of combination / processing with other movable things and that co-ownership is created, the assignment shall only encompass the percentage of claims corresponding to our co-ownership.

c. Customer shall remain entitled to collect the claims assigned to us after their assignment for as long as he complies with his payment obligations to us in accordance with the terms of this contract. We may demand at any time that Customer discloses the assigned claims and the debtors thereof, provides us with all information necessary for collecting such claims, delivers to us the documents pertaining thereto and informs the debtor of the assignment.

d. Any processing of the reserved goods by Customer shall always be on our behalf as manufacturer. If the reserved goods are blended, bonded or processed with items to which we do not own title, we shall acquire co-ownership in the ratio of the invoiced value of the reserved goods to the other processed items at the time of processing. If our goods are blended, bonded or processed with other movables to a single item and if the other item is to be viewed as the main item, it shall be deemed that Customer shall transfer proportionate co-ownership to us, provided that he is the owner of the main item. Customer shall act as custodian of the property or joint property for us. In all other respects, the same provisions shall apply for the item created by processing, bonding or blending as in the case of reserved goods.

e. We agree to release the security to which we are entitled to the extent that its invoiced value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 15%.

f. Provided that the subject of our deliveries are affixed to the land or have been integrated into a building, such affixing or integration shall only take place for temporary purposes.

**V. Delivery date**

1. Compliance with the agreed delivery date requires that all commercial and technical issues between Customer and us have been settled and that Customer has performed all of his obligations. If this is not the case, the delivery period shall be extended accordingly. The foregoing shall not apply if the delay is our responsibility.

2. Compliance with the delivery date shall be subject to the condition that deliveries to us are correct and on time. We shall notify Customer of any foreseeable delays.

3. The delivery period has been honoured if notice of the readiness for shipment has been given. If acceptance must be made, the acceptance date or, alternatively, our notice of the readiness for acceptance shall govern timeliness.

4. If non-compliance is attributable to acts of God, labour disputes, delays in receiving government licences or other events outside our scope of influence, the delivery period shall be reasonably extended. This shall also apply if we are in default of rendering our performance. We shall inform Customer as soon as possible of the beginning and end of any such event.

5. If the shipment or acceptance of the subject of delivery is delayed on grounds for which Customer must bear responsibility, the costs incurred by the delay shall be charged to him. We reserve the right to assert further damage compensation claims and claims for reimbursement of expenses.

6. We reserve the right to dispose of the subject of delivery if Customer has allowed a reasonable period for delivery or acceptance set by us to expire, and to supply Customer in a reasonably extended period.

**VI. Delays in Delivery, Impossibility**

1. In the event of partial impossibility, Customer may only rescind the contract if it can be proven that partial performance is of no interest for Customer. If this is not the case, Customer must pay the prices according to the terms of contract attributable to the partial delivery. For all other matters, section IX shall apply. If impossibility occurs while Customer is in default of acceptance or because of Customer's sole or predominant fault, he shall remain obliged to pay consideration less our saved expenses.

2. If the responsibility for impossibility is not to be borne by either party, we shall have a claim to the portion of the remuneration attributable to the work performed by us.

3. Within the scope of the statutory provisions, Customer is entitled to rescind the contract if, taking into account the exceptions under statute, a reasonable period of grace for the rendering of our performance set for us by him during our default has been allowed to expire.

4. Any further claims because of a default in delivery shall be governed exclusively by section IX.

**VII. Acceptance**

1. Our work performance products shall be deemed to have been accepted 2 weeks after our notice of readiness for acceptance unless Customer issues a written notice of significant defects received by us within this period.

2. Customer is only entitled to refuse acceptance if the defect cancels out or significantly reduces the normal and/or contractually stipulated use of the work and/or its value. If the work contains defects not entitling Customer to refuse acceptance, acceptance shall be made under the reservation that the defects are remedied.

3. Refusals of acceptance, objections to acceptance or reservations against acceptance must be made without undue delay in writing and accompanied by the designation and description of the reported defect.

4. The use of the subject of delivery by Customer in accordance with the intended purpose shall be deemed to be acceptance.

**VIII. Claims because of Defects**

1. For defects in materials and title, Customer shall have the following claims:  
a. Claims on the part of Customer because of defects shall require that he has duly complied with the obligations of inspection and notification owed under Sec. 377 German Commercial Code (HGB).

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b. In our discretion we shall deliver a defect-free item or remedy the defect, provided the subject of delivery is proven to have already been defective upon the passing of risk pursuant to section III of these General Terms and Conditions. Customer shall provide written notice of the material defects, accompanied by a description of the defect, without undue delay. Replaced parts provided within the scope of the replacement procedure shall become our property.

c. No claims for defects shall be created by causes which are not attributable to any fault on our part, such as: Normal wear and tear, excessive use, improper interference or repair work on the part of Customer or third parties, incomplete or false information given by Customer, inappropriate or improper use, faulty operation, installation or start-up, faulty or careless handling, improper maintenance, use of unsuitable operating materials/substitute materials, defective construction work, unsuitable subsoil, hazardous ambient conditions unknown to us, chemical, electro-chemical or electrical influences, changes to the subject of delivery made without our consent.

d. Customer must grant us the required time and opportunity for subsequent performance. If we are not given this opportunity, we shall not be liable for any consequences resulting from such failure. Customer shall only have the right to remedy the defect himself or through a third party and demand compensation from us for his necessary expenses in emergencies where plant safety is endangered or to avoid unreasonably greater damage, in which case we must be informed immediately.

e. In the event of supplementary performance we shall bear all of the costs required for the purpose of remedying the defect, particularly transport and travel costs and the costs of labour and materials, provided these costs are not increased because the subject of delivery was moved to a site other than the place of performance.

f. In the event that Customer culpably contributes to the cause of the defects, including, but not limited to, his failure to comply with the duty to avoid or reduce damage, we shall have a damage compensation claim with the supplementary performance which corresponds to Customer's contribution to the cause of the defect.

g. Customer shall have at his option a right to rescind the contract or reasonably reduce the contract price if – taking into account the exceptions under statute – a period of grace set for us for supplementary performance with respect to a defect is allowed to expire. If the defect is only insignificant, Customer may only demand a reasonable reduction of the contract price.

h. For installation, repair and other services, section XIII.14 shall apply instead of section VIII.1.g.

i. If the use of the subject of delivery within the periods set down in sections XII results in the infringement of intellectual property rights or copyrights, we shall generally procure the right to continued use for Customer or alter the subject of delivery in such manner that an infringement of the intellectual property or copyright no longer exists. If this is not possible under commercially reasonable terms or within a reasonable period, the parties shall be entitled to rescind the contract. We shall indemnify Customer within these periods against undisputed or final and absolute claims of the owners of the intellectual property rights.

j. Subject to section IX., our obligations described in section VIII.1.i. are final and conclusive for the case of infringements of intellectual property and copyrights.

k. The claim to supplementary performance for infringements of intellectual property rights and copyrights as well as the claim to indemnification as mentioned in section VIII.1.i. shall only exist if – Customer informs us without undue delay in writing with the designation and description of the alleged infringements of intellectual property rights or copyrights; – Customer reasonably supports us in the defence against asserted claims or enables us to carry out the modifications pursuant to section VIII.1.i. hereof; – we are reserved the right to undertake all defensive measures, including out-of-court arrangements; – the infringement of intellectual property or copyrights is attributable to INSTRON, which is e.g. not the case, if the infringement is based on instructions or specifications provided by of Customer, or if the infringement of intellectual property or copyrights was caused by the fact that Customer arbitrarily modified the subject of delivery or used it in a manner not conforming to the terms of contract.

2. All other claims for defects under warranty (including, but not limited to, compensation for damages not occurring to the subject of delivery itself) are governed exclusively by sections IX and XIII.9.

#### **IX. Liability**

1. We can only be held liable, irrespective of the legal grounds, (including, but not limited to, compensation for damage caused other than to the subject of delivery itself) in the case of:

- intent;
- culpable breach of major contractual obligations;
- gross negligence on the part of corporate bodies or executive officers;
- culpable bodily injury, death and damage to health;
- defects we have fraudulently concealed;
- breach of the guarantee of quality or durability;
- personal injury and property damage to personal items, provided that liability exists under the Product Liability Act for privately used items.

2. In the event of the breach of major contractual obligations we shall also be liable for gross negligence on the part of non-executive employees or for slight negligence on the part of corporate bodies and executive officers. In the event of slight negligence, our liability is limited to reasonably foreseeable damage typical to the given type of contract.

3. Our liability for the destruction of data is limited to the costs which would be required for their reconstruction if the data had been properly saved by Customer.

4. Compensation for mere financial loss is limited by the general principles of good faith and reasonableness, such as in the case of a disproportionate discrepancy between the value of the contract and the amount of loss.

5. In particular where the performance of work in accordance with Customer's specifications is concerned, any liability for the infringement of industrial property rights of third parties shall be excluded. The contractor shall not be obliged to check whether industrial property rights of third parties are affected.

6. We shall not be liable for the consequences of defects for which no claims for defects are provided for under section VIII.1.c.

7. Liability for defects for the sale of used goods shall be excluded, except in the case of intent, gross negligence, and in the case of injury to life, body or health.

#### **X. Insurance Claims**

To the extent we have direct claims as a joint policy holder against Customer's insurer with respect to the subject of delivery, Customer hereby gives his consent to the assertion of such claims.

#### **XI. Software**

1. The general terms and conditions of software providers for their software products contained in our deliveries shall have priority over these General Terms and Conditions. Should such terms and conditions not be available, we shall have them sent to Customer upon request.

2. Our General Terms and Conditions shall be in supplement to the general terms and conditions of other providers; sections XI.3 and XI.5 shall apply mutatis mutandis. In the event that the general terms and conditions of other providers are invalid, our General Terms and Conditions shall apply.

3. Customer shall be granted a perpetual, simple, non-exclusive right of use to our software products and documentation. The granting of sublicenses is not permitted.

4. We are generally not obliged to provide the source code on which the software product is based.

5. Customer may only process our software products to the extent permissible under law. Customer may neither remove nor change the manufacturer's product information - including, but not limited to notices of copyright - without our prior written consent.

#### **XII. Prescriptive Periods**

1. Customer's claims because of defects shall be barred 12 months as of the passing of risk.

2. Customer's claims because of defects to buildings or for work whose success consists in the rendering of planning or monitoring services for buildings, shall be barred 5 years as of the passing of risk.

3. With the exception of section XII.4, all other claims by Customer, regardless of the legal basis of claim, shall be barred 12 months as of the passing of risk.

4. For personal injury, death or damage to health, grossly negligent acts and omissions by corporate bodies and executive officers, intentional or fraudulent acts and omissions, the breach of major contractual obligations or of guarantees and for claims under the Product Liability Act, the statutory provisions shall apply.

5. The commencement of the prescriptive period shall be governed by the statutory regulations.

#### **XIII. Installation, Repairs and Other Services**

For installation, repairs and services, the following provisions shall apply in supplement:

1. Repair orders are only accepted in writing.

2. With our written order confirmation, we recognize the repair order. The Customer is thus given the current "Terms and Conditions of Supply and Service of INSTRON GmbH" as well as the current price list conditions for the provision of service, assembly and training personnel.

3. We reserve the right to change the hourly rates, in particular circumstances, in particular changes in the salary rate.

4. INSTRON reserves the right to reschedule confirmed repair dates at short notice for important scheduling reasons. The Customer shall be informed in good time.

5. Quotations submitted refer to the information provided by the Customer. The actual cost of repair can only be ascertained on site by checking and disassembling our specialist personnel and therefore deviating from the original offer.

6. The basis for the billing of service, assembly and training personnel is the respective valid price list.

a. The daily rates are valid for the daily work, travel and waiting time of 7 hours for service / assembly personnel, as well as 8 hours for training personnel. Additional time is calculated according to the above-mentioned hourly rates for overtime.

b. The staff shall receive a certification of performed working hours on the time sheets submitted, as well as the waiting and standstill times for which we are not responsible, as well as their cause.

c. The billing for the application engineering, the provision of tools and measuring instruments, as well as the issuing of calibration protocols and test certificates is carried out according to order.

d. For travel expenses, including expenses for the transport of luggage and the tools and spare parts carried, as well as any costs incurred for daily trips between the accommodation and the assembly site, we will charge for each kilometre travelled, irrespective of the means of transport. We shall also charge actual expenses that are directly related to the trip (e.g. telephone and parking).

e. For weekend home trips with a distance of up to 150 km we calculate the accruing kilometres and travel time. At a distance of more than 150 km we shall charge the calendar day residence rate.

f. The travel costs are calculated from Darmstadt.

g. For home travels for Easter and Christmas we shall bill the travel costs and travel time.

h. Travel costs caused by interruption for which we are not responsible shall be borne by the Customer.

i. Our personnel is insured against work related accidents with the Süddeutsche-Metall-BG. An exemption from § 116 SGB X cannot be granted.

j. Payments must be made to our account without any deduction. In the event of an interruption or longer duration of assembly, we issue partial invoices, which must be paid without deductions upon receipt.

k. The above rates are net rates without VAT. The provisions of § 36 UstDV have already been taken into account.

7. Defects on spare parts or parts exchanged shall be statute barred six months after acceptance. Claims for defects can only be asserted if the replacement of the previously defective part has been carried out by INSTRON authorized personnel.

8. Replaced parts shall become our property.

9. The Customer shall inform our personnel at his expense of existing safety regulations and dangers and take all necessary measures to protect persons and property at the workplace.

10. The Customer shall assist our personnel in carrying out the work to the extent necessary and to provide necessary assistance such as preparation of the construction site, provision of tools, transport and lifting equipment, provision of water and electricity etc. Also the provision of all necessary and suitable connections, e.g. water, electricity and compressed air supply in the immediate area of the construction site is the responsibility of the Customer.

11. The Customer's assistance must ensure that our work can be started immediately upon arrival of our personnel and that it can be carried out without delay until acceptance.

12. If the Customer does not comply with his obligations, we are entitled, but not obliged, to carry out the actions for the Customer in his place and at his expense.

13. If a service cannot be provided for reasons beyond our control, the price for the services and the reimbursement of other expenses incurred, net of any saved expenses, shall be compensated by the Customer.

14. The Customer shall only be entitled to terminate the contract for cause, in particular if the services are demonstrably useless to the Customer.

#### **XIV. General Provisions**

1. All taxes, fees and levies in connection with the performance outside the Federal Republic of Germany shall be borne by Customer and are to be reimbursed to us as the case may be.

2. Personal data shall be stored by us in compliance with the statutory regulations.

3. We shall not reimburse any costs for the return transport of packaging.

4. Customer shall procure at his own expense all of the licences and/or import/export papers for using the products.

5. Place of performance for Customer's obligations in relation to us is the location of our registered offices.

6. Should individual provisions of these General Terms and Conditions be or become invalid, the statutory law applies in their place; this shall not affect the remaining provisions.

#### **XV. Applicable law, Venue**

1. If Customer's registered offices are located within the Federal Republic of Germany, venue for all disputes arising under the contractual relationship shall be the location of our registered offices in Darmstadt. We reserve the right to file an action at the court having jurisdiction over Customer under law.

2. If Customer's registered offices are located outside the Federal Republic of Germany, disputes shall be settled by arbitration proceedings at the International Chamber of Commerce in Paris in accordance with the ICC Rules of Arbitration. The award shall be final and absolute. It is to be made, with the grounds stated, by three arbitrators. It shall be possible for our insurance company to participate in accordance with the opportunities for participation available in proceedings before a court of law. We reserve the right to enter an action before a court of law having jurisdiction.

3. The laws of the Federal Republic of Germany shall apply with the exception of all of the provisions governing the conflict of laws and the UN Convention for the International Sale of Goods (CISG).

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