

Terms and Conditions of Sale

1. Definitions

For the purpose of this Agreement, the following definitions shall apply: (a) WITec: WITec Wissenschaftliche Instrumente und Technologie GmbH; (b) Products: The equipment, parts, accessories and services to be sold by WITec to Buyer and listed on the face hereof; (c) Buyer: The person or entity listed on the face hereof who is purchasing the Products and such person's or entity's heirs, executors, administrators, successors by merger or consolidation, or permitted assigns; (d) Collateral: The products and their proceeds, together with any additions, accessions, increases, substitutions and replacements which are subject to WITec's security interest pursuant to this Agreement.

2. Order of Precedence

These terms and conditions of sale take precedence over and supersede any additional or different terms and conditions set forth in any purchase order or other communication of Buyer, to which notice of objection is hereby given by WITec. WITec's acceptance of such purchase order is limited to these terms and conditions which shall be construed as a counter offer to Buyer, and is expressly made conditional on Buyer's assent to these terms and conditions. Acceptance by Buyer of the Products or any portion thereof shall be deemed to constitute Buyer's assent to all of the terms and conditions set forth herein. Neither WITec's commencement of performance nor delivery shall be deemed or construed as acceptance by WITec of Buyer's additional or different terms and conditions.

3. Price

Unless otherwise indicated on the face hereof, prices shown (i) do not include any additional fittings or adjustments, and (ii) are net prices F.O.B. Ulm, Germany or such other shipping point as designated by WITec, exclusive of delivery and installation charges, taxes and duties. Buyer shall pay all delivery charges including, without limitation, rigging and transportation charges, the cost of any transit insurance at the cost of installation. Any tax, duty, fee, levy, assessment, exaction, imposition or other charge imposed by any local, state, or federal government now or hereafter levied upon the production, sale, use, import, export, ownership or shipment of the Products, shall be paid by Buyer.

4. Claims for Damage in Transit

WITec's responsibility shall cease upon delivery of the Products to the carrier F.O.B. Ulm, Germany or such other shipping point as designated by WITec. Buyer shall examine all Products carefully immediately upon delivery and before signing any receipt. If the Products are visibly damaged or there is any shortage, Buyer shall note same on the shipping receipt and send notice of such damage or shortage to WITec within three (3) days of receipt of delivery. Buyer's signature on a receipt without notation of damage or shortage or Buyer's failure to send notice to WITec of damage or shortage within such three (3) day period shall constitute conclusive evidence of Buyer's receipt of the Products in satisfactory condition. All risk of loss or damage to the Products is assumed by Buyer after WITec has made delivery of the Products to the carrier for the shipment to Buyer, and Buyer's sole recourse for any loss or damage to the Products shall be against the carrier.

5. Delivery Dates

Delivery dates quoted or acknowledged by WITec are not an agreement as to delivery by a specific date but, rather, are an estimate of the delivery date. Shipments of Products purchased hereunder are subject to WITec's determination of availability. WITec shall use reasonable efforts to meet delivery dates stated in the acknowledgement. However, WITec shall not be liable for any delay in shipment or any failure to ship Products against an accepted order or for any damages suffered thereby. Buyer's sole remedy in the event that any delivery of Products is delayed shall be to cancel this Agreement by notice received by WITec prior to shipment. Such remedy may only be exercised in the event that delivery of Products is delayed more than sixty (60) days beyond the delivery date stated in the acknowledgement.

6. Failure to take Delivery

In the event that WITec is ready to ship, or has shipped, Products conforming to this Agreement to Buyer in accordance with the delivery terms stated herein, and Buyer fails to take delivery or delays delivery or notifies WITec that delivery will be delayed or rejected, WITec may, at its election, threat such as failure, delay or notice of delay or rejection as a repudiation of this Agreement by Buyer and pursue all remedies available to it at law, including, without limitation, storage of the Products for the account of Buyer at Buyer's sole cost and expense, in which event all risk of loss or damage to the Products shall be assumed by Buyer, and/or cancellation of this Agreement. In the event of cancellation of this Agreement by WITec, Buyer shall be liable to WITec for its damages, including loss of profits and WITec's reasonable attorneys' fees, court filing fees and other disbursements incurred in collecting such damages.

7. Force Majeure

WITec shall not be liable to Buyer for any delay or failure by WITec to perform its obligations hereunder when such delay or failure is directly or indirectly due to accident (in manufacture or otherwise), fire, flood, seizure, riot, war, embargo, labour shortages or difficulties, inadequate transportation facilities, shortage of material or supplies, delay or default on the part of WITec's suppliers, regulation or order by government authority, or any other casualty or cause beyond the control of WITec. WITec may, at its option cancel this Agreement or delay performance hereunder for any period by necessary due to any of the foregoing, during which time this Agreement shall remain in full force and effect. WITec shall have the further right to allocate its available materials and products between its own uses and its customers in such manner as WITec may consider fair and reasonable. WITec shall have the right to make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced.

8. Acceptance

Buyer shall be deemed to have accepted the Products upon the earliest of (a) delivery to Buyer, if installation by WITec is not included in the purchase price; or (b) certification by WITec in such form as WITec shall prescribe that the Products have been installed and meet WITec's specifications, if installation by WITec is included in the purchase price; or (c) utilisation of the Products or any portion thereof by Buyer for any propose.

9. Payments

Payment for Products shipped on credit shall be made within thirty (30) days of the shipment date without any deductions or offsets. Payment terms will be strictly enforced on all accounts. Amounts past due are subject to a service charge at the maximum rate of interest permitted by law. Buyer shall pay all of WITec's costs and expenses incurred in the collection of any outstanding amounts, including reasonable collection agency or attorney's fees, court filing fees and other disbursements.

10. Security Agreement

This is a security agreement to secure payment of the purchase price of the Products. Buyer, by its signature on the face hereof, hereby grants, and WITec reserves, a purchase money security interest, for the full amount of the purchase price, in the Collateral. A description of the Collateral appears on the face hereof. Buyer hereby authorises WITec or its assignee to sign any document required to perfect WITec's security interest in the Collateral including, without limitation, financing statements under the Uniform Commercial Code Payment in full of the purchase price for the Products shall release the security interest. At Buyer's expense, the Collateral shall be insured by Buyer in favour of WITec against loss or damage from fire and other casualty. Buyer shall be in default under this security agreement, and WITec shall be entitled to enforce all of its rights and remedies, including all rights and remedies of a "secured party under the Uniform Commercial Code, if (a) Buyer fails to insure the Collateral in favour of WITec as required by this security agreement, or (b) Buyer, without WITec's express prior written consent, sells, leases, disposes of or permits the Collateral to be encumbered in any way, or (c) Buyer fails to maintain the Collateral in good order or repair, or (d) Buyer fails to pay WITec the purchase price for the Collateral when due.

11. Insolvency

Except as may otherwise be prohibited by law, in the event that Buyer becomes insolvent or unable to pay its debts as they become due, or in the event of any voluntary or involuntary bankruptcy proceedings by or against Buyer, or appointment of a receiver or assignment by Buyer for the benefit of its creditors, WITec may elect to cancel any of its obligations hereunder and all obligations of Buyer to WITec, whether arising out of this Agreement or otherwise, shall immediately become due and payable.

12. Limited Warranty

12.1 WITec warrants that the Products are free from defects in material and workmanship. Upon notice of any defect in material and workmanship, WITec shall have the right to inspect the

Products and to investigate all claims for the purpose of determining whether the Products are defective. If WITec determines that the Products are defective and covered by this limited warranty, then WITec shall, at its option, have the right either to repair or replace any defective Products. WITec's liability, and Buyer's exclusive remedy, for defective Products shall be limited solely to such repair or replacement. No Products shall be returned to WITec without WITec's prior written consent. 12.2 The effectiveness of the warranty contained herein shall, with respect to any other particular defect, be conditional upon (i) Buyer's substantiation that the Products have been stored, maintained and operated in accordance with such instructions as are given by WITec to Buyer and with standard industry practice and have not been damaged as a result of negligence, improper handling or accident on the part of any person other than WITec, and (ii) Buyer's payment of all invoices for the Products or other charges to which WITec may be entitled, and (iii) Buyer's exclusive use of persons approved or authorised by WITec to effect any repairs to the Products, and (iv) Buyer's substantiation that no modification or alteration of the Products have been made without the prior written consent of WITec. Subject to the foregoing, the warranty contained herein shall remain in effect for 12 months from the date that the Products are shipped by WITec, unless a different warranty period shall be stated on the face hereof or required by law. 12.3 Different warranty terms are available for some product types, and are incorporated herein if noted on the face hereof. Such different warranty terms supersede the terms hereof only to the extent that they are inconsistent herewith. 12.4 THE WARRANTY CONTAINED IN THIS SECTION IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BUYER'S SOLE AND EXCLUSIVE REMEDY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN ANY WAY RELATED TO THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS SHALL BE AS PROVIDED HEREIN AND SHALL IN NO CASE EXCEED THE LESSER OF THE COST OF REPAIR OR REPLACEMENT. WITEC SHALL NOT BE LIABLE IN CONTRACT OR IN TORT TO BUYER OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO WITEC'S OBLIGATIONS HEREUNDER, SUCH AS, BUT NOT LIMITED TO, DAMAGE TO, LOSS OF, OR LOSS OF THE USE OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUES OR CLAIMS OF BUYER OR OF CUSTOMERS OF BUYER FOR; LOSSES OF ANY KIND. 12.5 This warranty is non-transferrable and non-assignable and may be enforced only by Buyer. 12.6 WITec gives no warranty whatsoever with respect to parts with a limited technical lifetime such as data discs and cassettes. Components of products produced by other manufacturers are warranted by WITec only to the extent that such components are warranted by the manufacturer supplying such components to WITec and to the extent that such warranties may be assigned by WITec to Buyer. If WITec's software is included in this Agreement, WITec warrants that its software, which is designed for use with a particular hardware product, where properly installed, will not fail to execute its programming instructions due to defects in materials and workmanship. If WITec receives notice of a defect during the applicable warranty period, WITec will repair or replace software media which do not execute programming instructions due to such defect. WITec does not warrant that the operation of the software will be uninterrupted or error-free.

13. Return of Merchandise

WITec shall not accept any return of the Products unless previously authorised by WITec in writing, whether under warranty or otherwise. Any returns other than under warranty will be subject to a reasonable restocking charge.

14. Patent Indemnity

WITec shall defend or settle any claim made or any suit or proceeding brought against Buyer which is based on an allegation that any Products infringe a third-party patent, provided that WITec is timely notified of any such claim, suit or proceeding and is given, by Buyer all necessary information, cooperation, and the sole authority to defend or settle the same at WITec's expense. In the event that the Products are, in such suit or proceeding, held to infringe any patent and the use of such Products is enjoined, or in the case of a settlement of such suit or proceeding, WITec shall have the option, at its own expense, (i) to procure for Buyer the right to continue the use of the Products, or (ii) to modify the same so that the Products become non-infringing or (iii) refund the depreciated value of the Products and accept return thereof. WITec shall have no liability for claim of infringement resulting from compliance by WITec with Buyer's designs, specifications or instructions, or in the event of modification of the Products by Buyer, or use by Buyer of the Products other than as specified in WITec's publications, or use by Buyer of the Products together with products not supplied by WITec. In no event shall WITec have any liability for any infringement in excess of the purchase price of the infringing Products.

15. Notices

All notices consents, requests instructions, approvals and other communications hereunder shall be in writing and given by personal delivery, or by certified mail, return receipt requested, or by express delivery service to the address of Buyer or WITec has shown on the face hereof or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to be effective on the date personally delivered, or three (3) days after deposited in the mail as certified mail, or one day after deposited with an express delivery service, as the case may be.

16. Applicable Law

This Agreement shall be governed by and construed under the laws of the Germany.

17. Jurisdiction and Venue

Buyer hereby submits to the jurisdiction of the courts of Germany for the resolution of any dispute arising directly or indirectly from this Agreement. The exclusive venue of any action, proceeding or dispute resolution procedure arising directly or indirectly from this Agreement shall be Ulm, Germany. Buyer waives any objection to venue in Ulm, Germany, and waives any right to assert that Ulm, Germany is an inconvenient forum.

18. Entire Agreement

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. This writing supersedes any previous or contemporaneous communications, representations or agreement by either party whether verbal or written. No representations, understanding or agreements have been relied upon in making this Agreement other than as specifically set forth herein. This Agreement can only be modified in a writing signed by the parties hereto

19. No Waiver

Failure or delay by WITec in seeking enforcement of any term or condition hereof at one time shall not constitute a waiver of the right to enforce such term or condition in the future, nor of WITec's right to enforce any other term or condition hereof.

20. Severability of Provisions

In the event that any one or more of the provisions contained in this Agreement are determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. Assignment

No assignment of rights or transfer of obligations under this Agreement shall be made by WITec or Buyer without the prior written consent of the other party, provided, however, that WITec may, without the consent of Buyer, assign its rights and transfer its obligations under this Agreement to any corporation which is a parent, subsidiary or affiliate of WITec.

22. Quotations

Any quotation issued by WITec shall not constitute an offer by WITec to sell the Products to Buyer, and WITec reserves the right to withdraw or modify any quotation issued by it at any time without notice to Buyer. Such quotation shall constitute an invitation to Buyer to submit a purchase order to WITec, which purchase order may be accepted (by WITec's issuance of its acknowledgement) or rejected by WITec. Any contract for the purchase and sale of the Products between WITec and Buyer may only result from WITec's issuance of a written acknowledgement.

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