

# General Terms and Conditions

## Grabner Instruments Messtechnik GmbH

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### Part I General provisions

#### § 1 Scope of application

- (1) The following General Terms and Conditions apply to all business relationships between us and the Customer. The version valid at the time of the conclusion of agreement shall be relevant.

We reserve the right to amend the General Terms and Conditions without prior notice.

- (2) General Terms and Conditions deviating from the present ones, conflicting with the present ones or complementing them shall not become part of the agreement, even if they are known, unless we explicitly agree to their validity in writing. The present General Terms and Conditions shall also apply if we carry out delivery to the Customer without any reservations despite having knowledge of General Terms and Conditions which conflict with ours or deviate from them. Upon placing an order, the Customer accepts these General Terms and Conditions; also in the case of future orders where the present form is not used.

### II Special provisions for sale agreements

#### § 2 Conclusion of agreement

- (1) Our offers are without engagement and not binding. We reserve technical and other changes to the extent they are reasonable and necessary.
- (2) Offers and project-related documents such as cost estimates, plans, drawings and operating instructions and any other documents may not be duplicated, passed on or made accessible to third parties. We expressly and unrestrictedly reserve all ownership rights and copyrights to the documents. Upon our request, all documents shall be immediately returned to us and any electronic files shall be irretrievably deleted.
- (3) Upon placing the order the Customer makes a binding contractual offer. After receipt of the offer we shall verify its feasibility, whereby we shall be free to accept the offer within five working days. Acceptance shall be declared by a written order confirmation sent to the Customer. Such confirmation includes the amount of invoice, a listing of the ordered goods

and the expected time of delivery. If the order confirmation contains different goods or deviating prices, the Customer shall be entitled to refuse the confirmation within five working days and to thus reject it. Otherwise, the confirmation - including the goods, prices and delivery times indicated therein - shall be deemed as accepted.

- (4) The Customer is entitled to withdraw from the agreement if we are finally unable to provide the entire performance before handing over.

If there is a delay in performance, the Customer shall grant us a grace period by means of an explicit written declaration that he shall refuse to accept the performance after expiry of that period. Only after expiry of that period, without the delay in performance having been rectified, shall the Customer be entitled to withdraw from the agreement.

If the aforementioned impossibility occurs during the delay of acceptance or due to a fault of the Customer, the latter shall remain obliged to provide his counter-performance.

- (5) We are entitled to refuse acceptance of the order also without stating any reasons, for example after verification of the credit standing of the Customer.
- (6) We shall reserve the right to not deliver or to only make partial deliveries if we receive incorrect or irregular deliveries from our supplier.

In the event of non-availability or only partial availability of the performance, the Customer shall be immediately notified thereof by us and the counter-performance shall be immediately returned insofar as and to the extent that we are not able to perform.

- (7) In general, deliveries are carried out "ex works" (INCOTERMS 2010) through collection of the goods by the Customer. The goods ordered have to be collected by the Customer from the agreed place during the business opening hours within five working days after notification of readiness of dispatch, respectively the Customer is obliged to name a carrier or haulier, who collects the goods from the agreed place during the business opening hours within five working days at the Customer's expenses. Should the reasonable period of five working days prove to be fruitless, the goods will be shipped to the Customer. The selection of the carrier or haulier is up to us on the expenses of the customer. The risk of accidental destruction, of accidental

loss and/or of accidental damage of the goods is transferred to the customer at the latest of being notified that the goods are ready for delivery respectively collection or transfer to the carrier or haulier, however, at the latest after expiration of five days of the collection period.

We do not accept any obligation to load the goods on the collecting vehicle.

Other terms of delivery require our express prior written approval. If delivery is delayed thereby, the risk shall be transferred to the Customer at the time of the beginning of the delay. The sending is always made "ex works" at the expenses of and, from the beginning of the loading, at the risk of the customer. The place of loading, the carrier or haulier, the kind of sending and the way of sending is exclusively determined by us. We shall be not liable for loading and/or transport damages, of whatsoever kind, except in case of our gross negligence or our intent in connection with the damage.

### § 3 Prices and terms of payment

- (1) Prices shall be ex works without assembly, installation costs, shipping charges, customs or insurance costs. The prices offered shall be valid until revoked. Unless otherwise agreed upon in writing, payment shall be made in advance or by an irrevocable letter of credit (L/C). Failing to fulfil advanced payment or submitting a L/C will cancel the order. Given different payment terms in case of a default of payment the legal interest rate of currently 8% shall apply.

All costs in connection with the default of payment on the part of the Customer shall be invoiced to the latter, together with any costs of any possible involvement of a debt collection office or a law firm.

- (2) If the last reminder, which is identified as such, is not paid within the deadline stipulated, we shall be free to request the goods to be returned to us, whereby any costs and risks in connection therewith shall be entirely borne by the Customer.
- (3) Offset by the Customer shall only be admissible with counter claims which have become res judicata or have been accepted by us in writing.
- (4) We shall establish a new price list every year. At least 30 days before entry into force of such price list the Customers shall be informed about any price increase. Upon entry into force of the new price list the prices indicated therein shall be relevant for all those orders of the Customer for which we have not yet sent a confirmation of order.

### § 4 Retention of title

- (1) We retain the title of the goods until full payment of the purchase price (retention of title) has been received.
- (2) The Customer shall be obliged to treat the goods with proper care during the period of retention of title. Insofar as service and maintenance works are necessary, the Customer shall

carry out such works at his own expense on a regular basis. If these works are carried out by us due to a separate agreement, the special provisions as set out in Part III of the present General Terms and Conditions shall apply.

The Customer shall immediately inform us of any third parties gaining access to the goods, in particular of any compulsory executions or any damage caused to the goods or any destruction of the goods. The Customer must immediately notify us of any change in possession of the goods as well as of any change of his own address.

The Customer shall reimburse us in respect of any damage, expenses and costs caused by a violation of these obligations and by necessary interventions against the access of third parties to the goods.

- (3) In the case of any conduct of the Customer which is in contravention of the agreement, in particular in the event of delayed payment, we shall be entitled to withdraw from the contract and to request the goods to be returned to us. In addition, we shall be entitled to withdraw from the contract in the case of a violation of duty according to § 4 Z 2 and to request the goods to be returned to us if we can no longer reasonably be expected to maintain the contract.
- (4) Any handling and processing of the goods by the Customer shall always be in our name and on our behalf. If the goods are processed, we shall acquire co-ownership of the new item in the proportion of the value of the goods delivered by us.

### § 5 Transfer of risk

- (1) The risk of accidental loss and accidental deterioration of the goods shall be transferred to the Customer at the time the goods are made available for collection by him, at the latest after expiration of five days of the collection period.

If in contrast to the contents of the General Terms and Conditions shipment of the goods is agreed upon, the risk of accidental loss shall in such case be transferred to the Customer at the time of handing over to the forwarding agent.

- (2) Deliveries may be insured against damages to be precisely defined, if full costs thereof are borne by the Customer.

### § 6 Warranty

- (1) For any defects of the goods we shall for the time being offer warranty at our option either by repairing or replacing the good. Such warranty applies for a period of two years after handing over.
- (2) If repair or replacement is not possible or not expedient, a conversion of the agreement may at any rate only be requested by the Customer in the case of major defects that cannot be remedied.
- (3) The Customer shall examine the delivered goods, including any accessories and documentation, for defects and shall

inform us in writing about any such defects within a period of five working days after handing over of the goods. Otherwise, assertion of any warranty claims is excluded.

Hidden defects shall be notified to us in writing within a period of five working days after the first opportunity of discovering such defects, otherwise the warranty entitlement shall cease to exist.

Timely dispatch of a notice of defects shall suffice for the observance of the period mentioned above.

The contractor shall bear full burden of proof with regard to any claim entitlements, in particular concerning the defect itself, the time of detection of the defect and the timeliness of the notice of defect.

(4) Warranty claims shall cease to exist if the goods are operated improperly or if they have been manipulated. This also includes improper servicing which is carried out in deviation of our instructions and indications. Warranty claims shall be excluded if damage is caused by improper operation or handling, if the equipment has been subjected to improper interventions or if non-original spare parts and/or accessories have been used for the equipment. The Customer's warranty claim shall cease to exist if third-party consumable material is used or if third-party parts are installed.

(5) We shall bear the costs of transport if goods are sent to us based on a justified warranty claim.

We shall only assume the risks for the goods sent to us and warranty claims in relation thereto shall only exist if shipment is carried out in an appropriate manner. No liability is assumed and no warranty claims shall arise in the event of damage caused to the goods due to the transport, for example if the goods have not been packaged in a manner safe for transport. Consequently, the original packaging should be used for the transport. We advise the Customer to have the handing over of the goods to the forwarding agent documented accordingly.

(6) If we accept a piece of equipment for repair within the warranty period, the warranty period shall not start to run for the entire period but only for the parts newly installed or repaired by us. With regard to parts that are not newly installed or not repaired, the warranty period shall start with their original handing over.

#### **§ 7 Restrictions of liability – Indemnity**

(1) Outside of the scope of application of the product liability act, our liability shall be limited to intent or gross negligence. Cases of liability shall be claimed within six months after they have become known, at any rate within two years after handing over.

To the extent this is legally permissible, liability for slight negligence, compensation of consequential loss and pecuniary loss, savings not obtained, loss of interest and

damage due to third-party claims against the Customer shall be excluded.

#### **§ 8 Export control regulations**

(1) The contractual products delivered may contain technologies and software which are subject to the relevant export control regulations or the Austrian foreign trade law and the export control regulations of the USA or other countries to which the products are delivered or where they are used. The Customer undertakes to adhere to these regulations. In particular, the products may - in accordance with the aforementioned export regulations - not be delivered or licensed to defined users or countries or to users who are involved in activities regarding mass destruction weapons or genocide.

(2) The Customer is aware of the fact that the export control regulations contain different limitations depending on the goods acquired and that such regulations are modified on a regular basis. He thus undertakes to independently obtain information about these regulations before every export or re-export from the relevant Austrian authority or in accordance with US regulations from the US-Department of Commerce, Office of Export Administration, Washington, D.C. 20230. Irrespective of whether the Customer indicates the final destination of the contractual product delivered, it lies within the responsibility of the Customer to obtain any necessary authorization from the relevant authority before he exports such products.

(3) Any forwarding of contractual products to third parties by the Customer, irrespective of whether this occurs with or without our knowledge, also requires the transfer of the export authorization conditions. The Customer is liable towards us for the proper observance of these conditions. Embargo regulations set out in international conventions or determined by international organisations (such as the UN) shall be strictly adhered to.

(4) In the event of an export of contractual products the Customer shall solely be obliged to obtain the necessary export and customs permits at his own expense. We do not assume any warranty or guarantee with regard to the admissibility of export of the products bought.

#### **§ 9 Repair**

(1) If a piece of equipment is sent to us for repair, this is deemed to be a repair order. The Customer shall be provided with an estimate of the repair costs for acceptance, without any warranty.

(2) Expenses for the estimate of costs are charged, currently EUR 300.00 plus 20% VAT. If after submission of an estimate of the repair costs an order to carry out these repair work is placed, the costs for the estimate of costs shall be credited against the repair costs.

(3) The estimate of costs shall be confirmed or rejected in writing within five working days after delivery of the request

for acceptance. If this period is exceeded, we reserve the right to charge storage fees for the storage of the goods.

- (4) If during the repair we realize that the costs of repair will exceed the estimate of costs by more than 10%, the Customer will be notified thereof in writing by means of a new estimate of costs.
- (5) Costs of transport shall always be borne by the Customer.

#### **§ 10 Rental equipment**

- (1) If required, we provide the Customer with rental equipment. However, we are under no obligation whatsoever to do so. A separate rental agreement shall be concluded with regard to the duration of the rent, the rental fees and the details of the rights and obligations of the lender and the borrower.

#### **§ 11 Availability of spare parts**

- (1) From the time of the handing over of the equipment we guarantee the availability of spare parts for a period of 10 years.

### **Part III Special provisions for the conclusion of a service and maintenance agreement**

#### **§ 12 Scope of service**

- (1) Servicing and maintenance works shall be carried out once a year. For this purpose the equipment to be maintained shall be sent to us. The corresponding costs of transport shall be fully borne by the Customer.

If the equipment is not packed in the original packaging during the transport, the Customer shall be liable for any damage resulting therefrom.

If the equipment is not sent to us in its original packaging, we shall charge the packaging separately for the transport back to the Customer.

#### **§ 13 Scope of performance**

- (1) From the time of the first handing over of the equipment, we shall grant the opportunity of servicing and maintenance of our equipment against payment for the period of 10 years.

In the case of equipment which is older than 10 years but not older than 15 years we shall - upon request of the Customer - verify the serviceability of the equipment against payment. This will cause costs in the amount of EUR 300.00 plus any applicable VAT. If after verification of the serviceability a servicing and maintenance order is placed, the costs of verification shall be credited against the servicing and maintenance costs.

Equipment which is older than 15 years will no longer be serviced by us.

- (2) The date of handing over shall be deemed to be the date of delivery of the equipment.

#### **§ 14 Terms of payment**

- (1) Payment shall be made within 30 days of the date of invoice. Upon expiry of that period, the Customer is deemed to be in default with his payments. During such period of default legal interest in the amount of currently 8% shall accrue.

#### **§ 15 Warranty**

- (1) By means of analogous application of § 6 of the present General Terms and Conditions, we shall grant warranty for all parts replaced in the course of maintenance for a period of 12 months after handing over.

#### **§ 16 Liability**

- (1) The service and maintenance works shall only be carried out by our expert staff, whereby the restrictions of liability as set out under § 7 of the present General Terms and Conditions shall apply mutatis mutandis.

#### **§ 17 Transfer of risk**

- (1) In the event of provision of services, the place where the service is provided is deemed to be the place of performance. The risk is transferred to the Customer upon completion of the performance, at the latest at the time the equipment is handed over to the forwarding agent or any other person appointed to carry out the shipment.

#### **§ 18 Termination**

Servicing and maintenance is agreed upon for a period of 12 months and shall in each case be extended by another 12 months, unless the Customer or we terminate the agreement in writing one month before the expiry of the agreement.

### **Part IV General final provisions**

#### **§19 Final provisions**

- (1) Austrian law shall apply, excluding its conflict-of-law principles.

The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.

- (2) Jurisdiction for all disputes directly or indirectly arising out of the agreement shall be with the court in Vienna having jurisdiction *ratione loci* and *ratione materiae* for our seat of business.

- (3) If individual provisions of the agreement with the Customer, including the present General Terms and Conditions, should be or become wholly or partly invalid, the validity of the remaining provisions shall not be affected thereby. The partly or wholly invalid provision shall be replaced with provisions whose commercial success comes as close as possible to the one of the invalid provisions.