

General Terms and Conditions of Delivery

of the ARTIS Gesellschaft für angewandte Meßtechnik mbH

(ARTIS GmbH)

1. Application of these Conditions

1.1 Contract provisions agreed upon individually between ARTIS GmbH and the customer shall prevail over these general conditions of delivery insofar as the former differ from the latter.

1.2 In any other case, these conditions exclusively shall apply to the entire existing and future business relationship between ARTIS GmbH and the customer. Conditions of purchase or other terms and conditions of trade of the customer will not be applied.

ARTIS GmbH is entitled to unilaterally alter its Terms and Conditions of delivery with effect for the entire future business relationship with the customer.

1.3 Should any of the provisions of these conditions be or become invalid, it shall be replaced by the corresponding statutory provisions. Under no circumstances shall the affected provision in these conditions be replaced by terms and conditions of the customer.

1.4 If an umbrella agreement or a distributor agreement exists between the customer and ARTIS GmbH, these conditions shall apply to the umbrella agreement or a distributor agreement as well as to any individual order. A reference made in these conditions to the contract or to the conclusion of the contract is a reference to the particular individual order and its acceptance and not to the umbrella agreement or a distributor agreement.

2. Conclusion of Contract, Written Form

2.1 Offers made by ARTIS GmbH are valid for three months commencing with the date of the offer.

2.2 The customer is bound by any order placed by it. Such orders shall be accepted by ARTIS GmbH by way of invoice / confirmation of order included with the delivery provided that the orders do not already constitute an acceptance and provided that no other written confirmation by ARTIS GmbH is made.

2.3 If the customer is a merchant (Kaufmann), the written confirmation by ARTIS GmbH is exclusively decisive with respect to the contents of orders and agreements if the recipient does not object immediately in writing. This applies in particular to orders and agreements made orally or by telephone. If no further written confirmation is made, the invoice is deemed a confirmation of the order.

2.4 Any amendment or supplementary agreement to the contract requires the written confirmation of ARTIS GmbH in order to be effective. This also applies to any waiver of or deviations from contractual written form requirements.

2.5 Terminations, notices of rescission of contract, demands for price reduction or for compensation for damage are only effective if made in writing.

3. Delivery, Date of Delivery

3.1 ARTIS GmbH is entitled to make partial deliveries in so far as this does not fall short of what is minimally acceptable.

3.2 The customer shall review and acknowledge receipt of the delivery note (Lieferschein). Any objections shall be presented immediately in writing to ARTIS GmbH. Otherwise, the quantity delivered as per the delivery note is deemed acknowledged.

3.3 Delivery dates and delivery periods are approximate. They are subject to the receipt of delivery by ARTIS GmbH itself in a proper and timely manner.

3.4 Delays in delivery due to operational breakdowns, to measures taken by a public authority or to *force majeure* give rise to a reasonable extension to the date of delivery. *Force majeure*, with its resulting acceptable extension to the date of delivery, also includes measures as the result of a legal labor conflict including strikes and lock outs at the ARTIS GmbH operations or its suppliers.

Claims of the customer for compensation for damage caused by delays in delivery due to such events are excluded.

3.5 ARTIS GmbH is liable for delivery delays only if it is responsible for these. If the customer suffers loss proven to have been caused by the delivery delay for which ARTIS GmbH was responsible, the customer may demand compensation in an amount not exceeding 5% of the value of the respective part of the whole delivery.

In the case of delay in delivery, the purchaser may, subsequent to fixing a reasonable extension of the original delivery date and with an express declaration that upon expiry of this time for delivery it refuses to accept performance, set aside the contract if performance fails to take place within the extended time for delivery.

Further claims based on delay in delivery, in particular claims for compensation for damage, are excluded in accordance with the provisions contained in section 9 (Liability).

4. Shipment and Transfer of Risk

4.1 The shipment of the goods takes place at the risk of the customer (sale to destination according to buyer's instructions pursuant to § 447 German Civil Code). This also applies even if ARTIS GmbH has entered into a separate agreement obliging it to bear the transport costs and/or the costs for transport insurance.

Delivery by ARTIS GmbH takes place ex works. ARTIS GmbH causes the shipment to the customer to be made on the latter's behalf and at their risk.

4.2 ARTIS GmbH is prepared to take out an individual transport insurance policy upon demand by and at the expense of the customer. ARTIS GmbH is entitled to name itself as beneficiary. In the choice of the transport insurance, ARTIS GmbH is liable only for the standard of care it would ordinarily apply to itself.

4.3 If there is a delay in shipment due to circumstances for which the customer is responsible, risk passes to the customer on the day on which shipment was ready to be made. ARTIS GmbH stores the goods in this case, as in the case of delay in acceptance, at the risk and expense of the customer.

4.4 If the shipment to the customer by ARTIS GmbH is not prepaid, the recipient is obliged to pay the freight costs upon delivery. If, based on a corresponding individual agreement, ARTIS GmbH is obliged to bear the shipment costs, the customer may, in this case, deduct the freight costs paid by it from payment of the invoice.

If, based on an individual agreement, ARTIS GmbH is obliged to bear the costs of shipment, this shall, at the outset, refer to the distance between the ARTIS GmbH factory and the place of destination named in the confirmation. Any increase in the freight costs due to subsequent alterations to the method of shipment, the shipment route, the place of destination or similar circumstances affecting the freight costs shall be borne by the customer.

If delivery is effected to a destination that is closer to the ARTIS GmbH factory than the destination named in the confirmation, freight costs will be borne by ARTIS GmbH as they actually arise but not insofar as they exceed the costs of shipping to the destination named in the confirmation in accordance with the above provisions.

4.5 Loss or damage occurring in the course of shipment shall be immediately reported to the shipping company by the customer and all measures required to ensure the rights of the ordering party shall be initiated immediately by the customer. This applies regardless of whether the shipment is at the expense of ARTIS GmbH or of the customer.

Furthermore, loss or damage caused by shipment shall be noted on the acknowledgement of receipt which is to be submitted to the shipping company and shall also be reported to ARTIS GmbH within a time limit of one week; otherwise, all compensation claims for such

loss or damage are precluded.

In the case of transport damage pursuant to § 39 of the Road Haulage Ordinance (Kraftverkehrsordnung), any claims based thereon expire if the goods were accepted without objection. The customer is therefore obliged in the case of visible transport damage (surface damage etc.) to note an objection on the acknowledgement of receipt as a reservation of rights.

- 4.6 Damage or loss caused by shipment does not release the customer from payment of the purchase price to ARTIS GmbH. The customer assigns to ARTIS GmbH in advance, and the latter accepts this assignment, all claims against third parties based on loss or damage caused by the shipment. This assignment and any benefits paid by the transport insurance obtained in accordance with section 4.2 are carried out exclusively on account of performance.

5. Prices and Price Alteration

- 5.1 The prices are *ex works*. In each case the value added tax in effect at the time at which the contract was concluded is also payable.

- 5.2 If, pursuant to the respective statutory provisions, the costs for disposing of packing materials must be borne by ARTIS GmbH, these costs will be charged to the customer.

- 5.3 The price does not include the any performance of services by ARTIS GmbH, such as commencement of operation and initial instruction, repairs or training. These will be charged separately and additionally according to the agreed upon or, alternatively, according to ARTIS GmbH's hourly rates, effective at the time, for working and travelling time plus travelling costs and employee remuneration for additional expenditures. Value added tax is to be applied in each of these cases.

6. Conditions of Payment, Set-Off, Right of Retention

- 6.1 The payment of delivered goods shall be made no later than 14 days commencing with the date of invoice with a 2% cash discount or no later than 30 days net cash; where payment is made by a bank debit entry with the receipt of invoice, a 2% cash discount is granted.

Payment for services performed is due immediately and payable without deductions.

With respect to performance, timeliness of payment and the availability of cash discounts, the entry in a bank account of ARTIS GmbH is decisive. Payment by cheque and/or bill of exchange is exclusively a payment made pending full discharge of the debt. In the case of payment by cheque or bill of exchange, payment is only deemed fully discharged upon the expiration of ARTIS GmbH's liability for these instruments subsequent to final payment thereof (including the costs connected with this) by the customer.

- 6.2 No cash discounts shall be granted in the case of bills receivable and the maker's own promissory notes (Eigenakzepten). Maker's own promissory notes and bills receivable must be received by ARTIS GmbH no later than 30 days subsequent to the date of invoice and the term shall not exceed 90 days commencing with the date of invoice. Discounts and other charges are at the expense of the customer in the case of bills receivable and maker's own promissory notes. There is no obligation to accept bills receivable or maker's own promissory notes. Acceptance of bills receivable or maker's own promissory notes requires the special prior consent of ARTIS GmbH.

- 6.3 Notwithstanding an agreed upon time allowed for payment, ARTIS GmbH may demand immediate payment of all debts and/or may make deliveries contingent upon advance payment if a substantial deterioration of the earnings or financial situation of the customer arises or if such a situation can be expected in the future based upon an objective evaluation of the circumstances.

In the case of deferment of payment or agreement to pay in instalments, all debts owed by the customer shall be immediately due and payable if the customer absolutely refuses to make a payment or is in default of a due and payable payment for more than 14 days. This does not apply if the unpaid sum amounts to less than 10% of the outstanding debts.

- 6.4 When the customer defaults, ARTIS GmbH can assert claims for damages from delayed performance, particularly interest on the outstanding amount, together with costs of 5.00 per reminder. The customer is entitled to provide evidence to the fact that ARTIS GmbH has not suffered any damage or the damage is essentially negligible. Alternatively, ARTIS GmbH can demand the interest which it in turn

has to pay as debtor interest on loans it has had to take out. If the customer is a businessman, interest is charged on the claim from the due date at a rate of 5 percent points above the base interest rate of Deutsche Bundesbank, but at least at the statutory interest rate. Any interest paid for the period from the start of the period of delay is to be offset from the damages caused by delayed performance.

7. Quality and Warranty

- 7.1 ARTIS GmbH warrants the quality of the object of the sale in accordance with ordinary trade usage for the time at which risk passes. The warranty period is 24 months commencing with delivery.

Express representations must be expressly designated as such in the contract. Statements and description made orally or in documents of ARTIS GmbH do not constitute warranties. Specifications such as sizes and descriptions of performance are simply for the purposes of particulars and do not represent legal representations.

- 7.2 The goods of ARTIS GmbH meet the requirements of applicable German standards. ARTIS GmbH does not warrant that the technical design / structuring complies with foreign standards.

- 7.3 Warranty claims of the customer are, at the option of ARTIS GmbH, limited to a claim to having the defect remedied or to a claim to replacement.

If the defect is to be remedied, the customer is obliged to ship the affected goods to ARTIS GmbH at its own expense. If necessary, ARTIS GmbH shall supply the customer with a replacement on a loan basis for the period of time during which the defect is being remedied, and such replacement shall be returned to ARTIS GmbH upon termination completion of the repairs at the expense and at the risk of the customer. The costs for the installation and the removal of the goods is borne exclusively by the customer.

Should the attempts at remedying or the replacement prove unsuccessful, the customer has the option to rescind the contract (Wandlung) dealing with the delivery in question or to reduce the purchase price (Minderung).

The above also applies to claims of the customer under any warranty of ARTIS GmbH.

- 7.4 Any other claims, in particular claims to compensation for damage, are excluded pursuant to the provisions of section 9 (Liability). The exclusion of liability does not apply if there are deficiencies with regard to legal representations.

ARTIS GmbH is not liable for consequential damage caused by a defect. Liability for consequential damage caused by a defect is excluded, in particular, if the basis of the claim constitutes a breach of contract and the claim is not based on gross negligence or intention on the part of ARTIS GmbH, its legal representative or a person used by it to fulfill its obligations.

- 7.5 If the customer asserts service or warranty claims against ARTIS GmbH which prove to be unjustified, the customer is obliged to reimburse ARTIS GmbH for services performed on the basis of the alleged rights. Section 5.3, *supra*, applies.

8. Duty to Perform, Impossibility and Non-Performance

- 8.1 The duty to perform on the part of ARTIS GmbH and the time of delivery are subject in each case to ARTIS GmbH obtaining delivery itself in a proper and timely manner.

- 8.2 If, prior to the transfer of risk, the entire performance on the part of ARTIS GmbH becomes impossible or if ARTIS GmbH, for any other reason, is not able to effect performance, the customer is entitled to set aside the contract.

In the case of partial impossibility or partial inability, the aforementioned provision only applies to the affected part. The customer is entitled, however, in this case to set aside the entire contract if it can show a justified interest in the rejection of the entire delivery under such contract.

Any further claims on the part of the customer, in particular claims to compensation for damage, are excluded as provided for in section 9 (Liability).

- 8.3 If the impossibility occurs during default in accepting delivery or is due to the fault of the customer, the latter remains under the duty to per-

form.

8.4 Subsequent to the setting aside of the contract or subsequent to the fixing of a time limit which contains a warning of rejection by ARTIS GmbH pursuant to § 326 German Civil Code, ARTIS GmbH is entitled to dispose freely of the goods which have been taken back. The customer shall be credited with the proceeds of the goods disposed of minus the reasonable costs for retrieving, reconditioning and selling the goods, not to exceed, however, the original purchase price or, in the case of manufacture by ARTIS GmbH, its direct cost price without administration costs. If the purchase value of the goods is less than the purchase price or the cost price, the purchase value at the point in time at which the contract was concluded is decisive.

9. Liability of ARTIS GmbH

9.1 ARTIS GmbH is only liable for acts of gross negligence and (wrongful) intention. Furthermore, ARTIS GmbH is not liable for acts of ordinary negligence on the part of persons used to perform obligations.

These limitations of liability do not apply to breaches of fundamental contractual obligations. Furthermore, they do not apply if the damage is covered by the employer's liability insurance in accordance with what is customary in this branch of business and adequate for the business operations of ARTIS GmbH.

9.2 In the case of culpable breach of fundamental contractual obligations, ARTIS GmbH is, with the exception of cases of (wrongful) intention and/or gross negligence on the part of the corporate organs or the executive personnel, only liable for damage which is typical for the contract and which can reasonably be foreseen.

9.3 ARTIS GmbH's monetary liability is limited to those amounts covered by an employer's liability insurance in accordance with what is customary in this branch of business and appropriate to the business operations of ARTIS GmbH. Any self-retention by ARTIS GmbH based on the insurance contract shall be paid by ARTIS GmbH to the customer if the requirements for entitlement to benefits under the liability insurance are fulfilled.

9.4 If the customer is a merchant, claims for compensation for damage against ARTIS GmbH are excluded if they have not been asserted by action in court within a period of 3 months subsequent to the rejection of the claims by ARTIS GmbH or its insurer.

9.5 The aforementioned limitations of liability are applicable to all contractual claims to compensation for damage including claims based on future misconduct in connection with the conclusion of contract. Furthermore, these limitations apply to all non-contractual liabilities arising in connection with the business relationship.

The limitations of liability do not apply to claims based on the Statute for Product Liability.

9.6 All claims to compensation for damage on the part of the customer expire after 1 year subsequent to the customer's knowledge of its claim, unless the law provides for a shorter limitation period. For claims based on the Statute for Product Liability, the statutory limitation period applies.

10. Retention of Title

10.1 The delivered goods (goods subject to a retention of title) remain the property of ARTIS GmbH until full payment to ARTIS GmbH of all debts owing to it in connection with the business relationship. Furthermore, the goods subject to a retention of title remain the property of ARTIS GmbH until full payment of all future debts owed by the customer.

10.2 The joining, adapting / processing or restructuring within the meaning of § 950 of the German Civil Code (hereinafter uniformly referred to as "processing") of the goods subject to a retention of title takes place free of charge for ARTIS GmbH, i.e. the latter is legally the manufacturer of the new goods within the meaning of § 950 of the German Civil Code.

Where the customer or its subcontractor join goods subject to a retention of title to objects owned by others, the joining takes place simultaneously for ARTIS GmbH (free of charge) and for the customer, and in addition, if the customer has entered into an agreement in this regard with the owners of other objects involved in the joining, the joining also takes place for these other owners with the understanding that ARTIS GmbH, the customer and, if applicable, the other owners shall be regarded at all times and in all aspects of the joining as joint manufac-

turers of the single, new objects. ARTIS GmbH then acquires joint ownership in the individually manufactured objects in the amount represented by the invoice value of the particular attached goods subject to a right of retention in proportion to the total value of the resulting manufactured objects. The total value means that value which is realized at the point in time of securing the object or which is subsequently realized upon resale. If necessary, the value shall be determined by way of assessment by a certified expert retained by ARTIS GmbH. The costs of such expert shall be borne by ARTIS GmbH. The provision of § 957 subsection 2 German Civil Code is explicitly excluded. In the case of the processing of goods subject to a right of retention within the meaning of § 950 German Civil Code, these provisions on joint ownership of ARTIS GmbH shall be applied in analogy.

If ARTIS GmbH's ownership in the goods subject to a right of retention should nevertheless lapse due to factual or legal circumstances resulting from any adapting/processing, restructuring, joining, combining and/or mixing, the customer hereby transfers the ownership of the resulting objects to ARTIS GmbH, effective as of the time of manufacture. Where there are several consecutive manufacturing processes, this applies in each case. In the case of the processing of objects belonging to various owners, and in the case of a joining within the meaning of § 947 German Civil Code or in the case of combining within the meaning of § 948 German Civil Code, the customer transfers joint ownership to ARTIS GmbH to the extent described above. ARTIS GmbH hereby accepts the transfer of ownership. The customer shall hold the objects in safe custody for ARTIS GmbH free of charge.

In each and every of the aforementioned cases, the customer acquires an expectancy right (Anwartschaftsrecht) in the united objects which are the result of the joining or the processing. The objects resulting from the joining or processing, as well as the objects the ownership of which has passed to ARTIS GmbH, are deemed goods subject to a right of retention within the meaning of these conditions.

The customer shall supply ARTIS GmbH with all the information required for the determination of its share of ownership.

10.3 Pledges or transfers of ownership to third parties by way of security of the goods subject to the right of retention and the assignment or pledging of expectancy rights are excluded. In the case of a levy of execution and (legal) seizure attachment by a third party, including the assertion of rights of lien such as the landlord's lien, and in the case of any other impairments to the rights of ARTIS GmbH, the latter shall be notified immediately thereof. The costs of an intervention by ARTIS GmbH shall be borne by the customer provided that such costs cannot be obtained from a third party.

10.4 In the case of default of payment on the part of the customer, the goods subject to the right of retention shall, upon demand, be returned immediately to ARTIS GmbH without the need for ARTIS GmbH to first repudiate the contract. The same applies where there is a substantial deterioration in the financial situation of the customer.

10.5 If the customer acquires the goods subject to the right of retention for the purpose of reselling, or of joining or processing to be followed by their resale, the customer is entitled to sell the goods subject to the right of retention in the ordinary course of business. If the customer does not buy the good subject to the right of retention for the purpose of reselling or of joining or processing to be followed by their resale, a resale without the prior consent of ARTIS GmbH is not permitted.

All claims arising from a resale of the goods subject to a right of retention are hereby assigned to ARTIS GmbH effective as of the time at which they come into existence, in the full amount and together with all secondary and security rights. ARTIS GmbH hereby accepts the assignment. If goods subject to a right of retention are sold together with other goods, the assignment extends to that amount which ARTIS GmbH has invoiced the customer for the particular goods subject to a right of retention, such assignment ranking first. In the case where ARTIS GmbH is only entitled to a joint ownership share of the goods subject to a right of retention, the assignment is then deemed to extend to that amount equivalent to the proportionate value of the particular goods subject to a right of retention which form the basis of the joint ownership share which ARTIS GmbH has invoiced the customer, such also ranking first.

If the customer puts the claims arising from a resale of the goods subject to a right of retention into a running account (Kontokorrent) with its buyers, then each of the acknowledged claims to the outstanding balance and to the final balance are assigned to ARTIS GmbH to

the extent to which they are comprised of individual claims or partial claims of ARTIS GmbH which would have been assigned in accordance with the above provisions had the claims not been put into a running account.

Any other assignment of or encumbrance on these claims or parts of claims is not permitted.

For the ascertainment of third party debtors according to their first name and surname, address and the amount of the debt, the books of the customer are decisive. ARTIS GmbH has the right to inspect such books during the normal business hours of the customer.

- 10.6 The customer may, provided that it fulfills its payment obligations towards ARTIS GmbH, collect the debts on its own account in the ordinary course of business. The assignment of the debt, even for the purposes of collecting the debt in the course of factoring, is excluded unless the assignee, simultaneously with the assignment and for the duration of time for which ARTIS GmbH has claims against the customer, is obliged, to the extent of the debt owed to ARTIS GmbH, to pay this to the latter immediately.
- 10.7 The customer's right to processing or joining/combining as well as the right to resell the goods subject to a right of retention and also the right to collect on the debt lapses upon discontinuance of payment, a protested cheque or bill by the customer (in so far as ARTIS GmbH in any way is the beneficiary of this cheque or bill), an effected pledging of the goods subject to a right of retention, a petition in bankruptcy or a petition in bankruptcy pursuant to the bankruptcy law in force in the former East Germany or judicial or extrajudicial composition proceedings (to avert bankruptcy) in relation to the assets of the customer. ARTIS GmbH shall be immediately informed of the aforementioned events. A list of the existing goods subject to a right of retention shall be sent to ARTIS GmbH. The goods subject to a right of retention shall be separately stored and shall be returned to ARTIS GmbH immediately upon demand.

In these cases, ARTIS GmbH is also entitled to collect on the debts which have been assigned to it. ARTIS GmbH shall be informed immediately of the assigned debts with regard to the basis of the debt, the amount and the date of origin including the information concerning the third party debtor as set out in section 10.5, last paragraph. This also applies to all information necessary for the ascertainment and the collection of the debts. Third party debtors shall be informed immediately by the customer of the effected assignment. The customer shall supply ARTIS GmbH upon demand with the appropriate assignment documentation. Subsequent to the expiry of the right to collect the debt, the funds received in payment of the claims assigned to ARTIS GmbH shall be collected on behalf of ARTIS GmbH up to the amount of all secured claims and shall be immediately paid out to ARTIS GmbH or shall be deposited in a separate bank account bearing the description "Money Held in Custody for ARTIS GmbH". The customer agrees with ARTIS GmbH that the money collected is the property of ARTIS GmbH. All rights with regard to the aforementioned bank account are hereby assigned to ARTIS GmbH. ARTIS GmbH accepts this assignment.

- 10.8 Subsequent to a setting aside of the contract or subsequent to an unsuccessful fixing of a time limit which contains a threat to reject pursuant to § 326 German Civil Code and upon expiry of the time limit without performance, ARTIS GmbH is entitled to freely dispose of goods which have been taken back. The customer shall be credited with the proceeds of the disposition. The reasonable costs for retrieving, reconditioning and selling the goods will be deducted from the proceeds of the disposition. The maximum to be credited, however, is the amount a dealer at the marketing level of ARTIS GmbH would normally pay as a purchase price for the returned goods subject to a right of retention considering their condition at the time at which they were taken back. For goods which were manufactured by ARTIS GmbH, the maximum amount to be credited is the direct cost price of ARTIS GmbH without administration and distribution costs. The amounts credited shall be set off against the claims of ARTIS GmbH until such claims have been satisfied.
- 10.9 The customer is obliged, at its own expense, to adequately insure the goods subject to a right of retention for their original value and to the usual extent, in particular however, to insure against loss occasioned by fire, storm, water and theft and to provide evidence of such insurance protection to ARTIS GmbH upon its request. The customer hereby assigns to ARTIS GmbH the claims to which it is entitled against the insurer and/or other third parties in conjunction with the goods subject to the right of retention in the amount corresponding to ARTIS GmbH's share of the goods subject to the right of retention. ARTIS GmbH accepts the assignment.

10.10 If and when the secured claims are secured to more than 115% by goods subject to a right of retention and/or assignments or by other collateral securities, ARTIS GmbH shall, upon demand by the customer, release security rights, at ARTIS GmbH's choice, up to the aforementioned limit. The assumed value for the assessment of the security is that which would be obtained upon realization by its sale. Under no circumstances, however, is a higher value to be allotted than that amount which, in compliance with the aforementioned provisions, the customer is credited with in the case of retrieving the goods or collecting on the debt by ARTIS GmbH. Claims are to be assessed in accordance with the principles of proper bookkeeping and, if applicable, to be discounted for unaccrued interest. The customer shall supply ARTIS GmbH with the information necessary for this assessment at the time at which the release is requested.

11. Place of Performance, Place of Litigation, Applicable Law

- 11.1 The place of performance of payment and delivery of goods is Bisingen.
- 11.2 For customers who / which are merchants possessing full commercial capacity, legal entities under public law or special funds under public law, it is agreed that the place of litigation is Soltau/Germany.
- 11.3 German law is exclusively applicable, but excluded all unified international law, in particular excluding the application of the CISG.