

# **General Conditions of Purchase of SPECTRO Analytical Instruments GmbH**

## **Revision: January 2016**

### **§ 1 Exclusive Application**

1. For all orders, purchase orders and calls placed by us as well as all contracts concluded thereupon – hereinafter called “purchase order(s)” -, the present conditions of purchase shall apply exclusively, provided it was not otherwise agreed upon expressly in writing in the individual case as a whole or for individual provisions. They shall also apply to future purchase orders. Any general terms and conditions of the contractor or supplier – hereinafter called “supplier(s)” – will not be accepted by us, not even if we do not expressly object to them or unreservedly accept the supplier(s) deliveries/services and/or unreservedly pay the latter’s invoices in knowledge of the supplier’s general terms and conditions.

2. Deviations, modifications of and/or supplements to agreements between the supplier and SPECTRO, including the present conditions of purchase, shall be in writing. A waiver of the written form shall also be made in writing.

3. To the extent the present conditions of purchase or individual legal transactions between SPECTRO and the supplier provide for the written form, the relieves of § 127 (2) German Civil Code shall apply.

### **§ 2 Offer, purchase order, order confirmation**

1. Any offers of the supplier shall be made free of charge and shall not constitute any obligation on our part. In his offer, the supplier

shall strictly adhere to our inquiry and shall expressly point out any deviations.

2. The supplier agrees to accept in writing (order confirmation) our purchase order within a time-limit of 5 business days from receipt; otherwise we shall be entitled to revoke the purchase order free of any charge – and without any further obligations on our part. If the order confirmation deviates from the purchase order, we shall only be bound by it if the supplier expressly points out this fact and we agree in writing to the deviation. The acceptance of deliveries or services as well as payments by us does not constitute any approval.

### **§ 3 Prices and payment**

1. The agreed prices shall be fixed prices. Later price increases, also because of increased labour or material costs, shall be excluded. If not otherwise agreed upon in writing in the individual case, the prices shall include delivery “free domicile”, including packaging; the return of the packaging shall require a separate agreement.

2. Order confirmations and invoices shall be issued in the currency mentioned on the purchase order.

3. Payments by SPECTRO shall be made within 60 days with a deduction of 3% discount or within 90 days net cash, both calculated from the receipt of a proper and verifiable invoice.

4. We shall be entitled to the statutory rights of set-off and retention without any limitations.

#### **§ 4 Delivery time and delivery**

1. The agreed upon delivery time shall be binding and shall be strictly observed. The timeliness of the deliveries shall depend on the receipt at SPECTRO's or the receiving centre stated by SPECTRO; the timeliness of deliveries including installation and/or assembly as well as of other services shall depend on their acceptability. In case of identifiable delays with regard to delivery or service, SPECTRO shall be informed immediately – stating the reasons and the estimated duration – and SPECTRO's decision shall be obtained; the claims due to us because of belated delivery or service shall remain unaffected.

2. If the supplier is in delay, we shall be unrestrictedly entitled to any statutory rights.

3. In the event of delayed delivery, we shall be entitled to claim a contractual penalty for delayed delivery in the amount of 10% of the order sum ordered for this delivery date, however, a minimum of Euro 5,100.00, for each case of culpable non-observance of the delivery date agreed upon – excluding the grouping of several actions into one legal entity. The assertion of further claims for damages shall remain unaffected. SPECTRO shall be entitled to offset the contractual penalty for delayed delivery with a remuneration claim still due to the supplier.

4. Deliveries and services shall be made "free domicile", including packaging.

5. Partial deliveries and premature deliveries shall only be permissible if we expressly agreed to them. The payment claim shall, however, become due on the (originally) agreed date of delivery at the earliest - if not otherwise agreed upon.

6. In the event of force majeure, business or traffic disruptions, in particular strikes or other unforeseeable events which are beyond our control and which render impossible or significantly make difficult the acceptance or use of the delivery/service in our company or at our customers', our obligation to accept shall be accordingly postponed corresponding to our actual needs. If for this reason, the acceptance is delayed by more than 2 weeks, we shall also be entitled – in our discretion – to withdraw from the contract in whole or in part (in the scope of the quantity concerned).

#### **§ 5 Passing of risk, acquisition of ownership**

1. The risk of accidental damage or accidental destruction (loss) of the delivery shall pass on to us only upon receipt at the receiving centre stated by us, in case of (additionally) to be rendered services (installation, assembly, etc.) upon acceptance – even if we should have agreed to bear the freight charges.

2. With passing of the risk, we shall acquire the unrestricted ownership in the goods.

#### **§ 6 Liability for defects**

1. We will inspect the goods at acceptance for integrity of the packaging and the number of the stated packages. Materials which are integrated into the production process will be inspected immediately – normally within 3

business days - by random sampling for quantity, material properties, and dimensional accuracy. Defects and/or quantity differences observed during these inspections will then be immediately reprehended to the supplier. Nonidentifiable defects – e.g. defects which are only observed in the processing process or during material processing or in the planning process for production – will be reprehended by us immediately after being observed. If we receive a so-called inspection test certificate by the supplier in which the supplier states that the delivered goods meet the agreed upon (quality) characteristics, our inspection and reprehension obligation shall be limited to the inspection of the integrity of the packaging and the number of the packages upon the receipt of the goods; otherwise it shall be deemed waived.

2. We shall be unlimitedly entitled to the statutory claims for defects. In particular our claims for expenses and damages shall neither be limited nor excluded with regard to reason or amount. Irrespective of this, SPECTRO shall be entitled to claim from the supplier – and at the supplier's expenses - at first supplementary performance, i.e. - in our discretion - the remedy of the defect or the delivery of goods free of defects or rendering of services free of defects; § 439 (3) German Civil Code shall remain unaffected. In addition, we shall be entitled to remedy the defect ourselves at the expense of the supplier, provided danger is imminent or if time is of essence.

3. The statutory provisions shall apply to the limitation of claims for defects – if not otherwise expressly agreed in writing in the individual case. Our rights of recourse

pursuant to § 478, 479 German Civil Code shall not be affected.

### **§ 7 Liability**

1. The liability of the supplier – for whatever legal ground – for all and any damages and/or expenses which are incurred by us in connection with the delivered goods and/or rendered services, in particular through the use of the delivered goods as intended, shall be subject to the statutory provisions.

2. If third parties assert claims against SPECTRO of whatever kind and for whatever legal ground because of a defect or a fault in the delivered goods and/or the rendered services, the supplier shall indemnify us against such claims if and to the extent the cause for these are within the supplier's field of control and organisation. Within this scope, the supplier also agrees to compensate us for all and any expenses, which are incurred by us because of our defence against such claims, as well as for all other expenses incurred by us in this respect, including the expenses in connection with any possible recall campaigns or similar (precautionary) measures. Other statutory claims shall remain unaffected.

### **§ 8 Rights in documentation, confidentiality and limitation of use**

1. SPECTRO reserves its property and other rights, in particular intellectual and industrial property rights (e.g. copyrights), in drawings, standards, guidelines, analysis methods, samples, calculations, and other documentation which are provided to or become otherwise known to the supplier from time to time or within the scope of the contract

performance or initiation of the contract relationship.

2. The supplier shall treat strictly confidential the documentation mentioned as well as all and any other information of technical and/or business type as well as our know-how which were provided to the supplier or became known to the supplier in connection with the execution and processing of an order during the duration of the contract and after, shall only use them for the purposes of the relevant contract, and shall impose corresponding obligations on his employees, suppliers, subcontractors and other third parties to whom such documentation or information or knowhow are made accessible. The above obligations, however, shall not apply to such information or such know-how which were already known to the supplier at the time of getting knowledge of, are (were) part of the generally accessible state of technology or became known later without the supplier's fault.

3. After the processing of the orders, drawings, standards, guidelines, analysis methods, figures, templates, calculations, and other documentation provided to the supplier as well as all and any copies thereof shall be immediately returned to SPECTRO.

4. The supplier shall provide SPECTRO with all and any required documentation which is necessary to discuss the subject matter of delivery. Such a discussion or other participation of SPECTRO shall not release the supplier neither from the supplier's liability for defects nor from his other statutory or contractual obligations. Documentation of any

kind which is required by SPECTRO for the use, installation, assembly, processing, warehousing, operation, maintenance, inspection, servicing, and repair of the subject matter of delivery shall be provided to SPECTRO in time and unsolicitedly as well as free of charge.

#### **§ 9 Rights in workshop facilities**

1. If we provide moulds, models, tools etc. – hereinafter called “workshop facilities” – to the supplier, we reserve the title in these. Any processing or alteration shall always be made for us as manufacturer in the sense of § 950 German Civil Code, however, without any obligation for us. If our goods subject to reservation of title are processed with other objects not in our possession, we shall acquire the co-ownership in the new object in the relation of the value of our object (purchase price plus value added tax) to the other processed objects at the time of processing. If the workshop facility provided by us is joined to or inseparably mixed with other objects not belonging to us, we shall acquire the coownership in the new object in the relation of the value of the good subject to reservation of title (purchase price plus value added tax) to the other joined or mixed objects at the time of joining or mixing. If joining or mixing is performed such that the object of the supplier is to be deemed the main object, the (co-) ownership of the supplier in the uniform object shall pass to us prorata the value. The supplier shall keep the objects in question for us free of charge with the diligence of a prudent businessman.

2. The supplier shall be liable for all and any damages caused by the fact that the workshop

facilities provided by SPECTRO are improperly processed by the supplier or the supplier's servants or vicarious agents or are destroyed or are rendered useless by natural hazard.

3. Workshop facilities which were produced by the supplier for the performance of the order shall become our property based on the payment, even if they remain in the supplier's possession. In the latter case, it shall be deemed agreed that the supplier possesses the workshop facilities for SPECTRO. SPECTRO may claim their surrender any time. Rights of retention of the supplier shall be excluded, unless they are based on counterclaims which are acknowledged by us or have been determined legally binding.

4. The supplier agrees to use the workshop facilities exclusively for the production of goods ordered by SPECTRO. The supplier furthermore agrees to effect all and any required insurance policies to protect the workshop facilities belonging to SPECTRO at the supplier's own expense, to insure them in a sufficient amount at replacement value, in particular against loss, fire, water, theft, burglary, explosion, lightning stroke, storm, and other natural hazards which are typically covered by property insurance policies; the supplier's liability, however, shall in case of culpable acts not be limited to the insurance benefits. At the same time, the supplier already now assigns all and any claims for compensation from these insurance policies to SPECTRO; SPECTRO herewith accepts the assignment. The supplier agrees to perform in time at the supplier's expense all and any required maintenance and inspection work as

well as all and any service and repair work in the workshop facilities.

#### **§ 10 Assembly, maintenance, inspection, repair, external workers, third party companies**

If assemblies, maintenance work, inspections, repairs etc. are performed, the entrusted persons/groups of persons shall behave according to the instructions of our safety experts or our safety officer. Otherwise, the responsibilities pursuant to § 8 shall apply correspondingly to them.

#### **§ 11 Third party rights**

1. The supplier shall be responsible for the fact that no rights, in particular no property rights of third parties (e.g. patents, copyrights, trademarks or other intellectual or industrial property rights) are infringed in connection with the supplier's delivery or service.

2. Should SPECTRO be claimed upon by third parties because of the infringement of property rights, the supplier agrees to indemnify us against such claims. Without the consent of SPECTRO, the supplier shall not be entitled to make any agreements with third parties on the settlement of this party's claims because of infringements of property rights, in particular not to make any compromise. The indemnification obligation of the supplier shall also refer to all and any expenses incurred by SPECTRO from or in connection with a claim by third parties.

#### **§ 12 Origin Certification, Compliance „Conflict Minerals“**

Supplier shall provide SPECTRO with a certificate of origin for each and every goods

sold hereunder and such certificate shall indicate the origin rule that the supplier used in making the certification.

Supplier acknowledges that SPECTRO is required to comply with Section 1502 of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”) which includes requirements related to the use of tin, tantalum, tungsten, and gold (“Conflict Minerals”). Supplier shall source and track the chain of custody of all Conflict Minerals contained in any Products in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. At SPECTRO’ request, Supplier shall execute and deliver to SPECTRO declarations in the form of the EICC-GeSI Conflict Minerals Reporting Template as adopted by EICC-GeSI or in any other form that SPECTRO reasonably requests. Supplier shall immediately disclose any changes to the conflict-free minerals status of any goods. If SPECTRO has reason to believe the minerals in any goods are not conflict-free, SPECTRO shall place the supplier under contract review and research alternative supply sources, and may immediately terminate the relevant purchase order. All goods provided after December 31, 2014 shall be “Conflict Free”, as defined in the Dodd-Frank Act.

### **§ 13 Electronic Invoicing**

Supplier shall send invoices only to [invoice.spectro.de@ametec.com](mailto:invoice.spectro.de@ametec.com).

### **§ 14 Final clauses**

1. For the present conditions of purchase as well as the entire legal relationship between SPECTRO and the supplier, the laws of the Federal Republic of Germany shall apply, excluding the UN Convention on the International Sale of Goods (CISG) or other bilateral or multilateral conventions serving the harmonisation of international sales.
2. The place of performance for the delivery or service shall be the place to which the goods are to be delivered or at which the service is to be rendered – corresponding to the purchase order; the place of performance for our payments shall be the headquarters of our company.
3. The place of jurisdiction for all and any disputes from or in connection with the present general conditions of purchase as well as from the entire legal relationship between SPECTRO and the supplier shall be Kleve – provided the supplier is a merchant. However, SPECTRO shall also be entitled to sue the supplier at the place of jurisdiction having general competence for the latter.
4. Should individual or several provisions of the present conditions of purchase or provisions in legal transactions between SPECTRO and the supplier be or become void, the validity of the remaining provisions shall in no way be affected.

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