

TERMS AND CONDITIONS OF SALE – QCM PRODUCTS

Johannes Kepler University Linz, *version: 16.03.2015*

§1 General

(1) The Seller has developed *QCM - Flow Through Liquid Cell System LCS01*, *QCM – Flow Cell Holder CH01* and *QCM – Flow Through Liquid Cell LC01* (“QCM Products”) and offers them for sale under the following terms and conditions (“TCS”).

(2) Information concerning the sale of QCM Products, in particular technical data sheets, prices, purchase order address and the TCS are available on the Website (as defined in § 2).

(3) The TCS shall apply to all contracts concluded between the Seller and the Buyer concerning the sale of QCM Products. QCM Products are sold solely in compliance with the current version of the TCS.

(4) Regulations deviating from these provisions are not accepted, unless the Seller explicitly accepts the validity of such regulations in writing.

(5) Conflicting or deviating terms and conditions of the Buyer are not binding for the Seller even if the Seller does not expressly contradict them, or if the Seller, although being aware of the Buyer’s conflicting or deviating terms and conditions, renders performance without reservation.

§2 Definitions

(1) In these TCS, the following words and expressions shall have the following meanings:

“*Buyer*” means the person, firm, company, university or other organization from whom the Purchase Order is issued.

“*Contract*” means the agreement which is a legal contract between Seller and Buyer made by the way of Order Confirmation form.

“*Delivery Item*” means QCM product/s covered by the Purchase Order.

“*Order Confirmation*” means Seller’s written confirmation of order, sent by e-mail to the e-mail address stated in the Purchase Order.

“*Purchase Order*” means Buyer’s written Purchase Order, sent by e-mail to the purchase order (e-mail) address, which shall contain at least the following information: ordered QCM Product, billing address, delivery address (if different from billing address), name and contact data of a contact person (including e-mail address for Order Confirmation; if no other e-mail address is stated, the Seller may sent Order Confirmation to the e-mail address from which he received the Purchase Order), acknowledgement about notice of the TCS.

“*Seller*” means Johannes Kepler University Linz, Department of Applied Experimental Biophysics, Altenberger Straße 69, 4040 Linz, Austria.

“*TCS*” means the Seller’s terms and conditions for sale of QCM Products.

“*VAT*” means Value Added Tax.

“*Website*” means <http://www.jku.at/biophysics/content/e257206>

“*QCM Products*” means the products offered for sale as described in the technical data sheet. QCM Products can also be purchased individually.

(2) In these TCS the masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires.

§3 Conclusion of contract, integral parts of contract, cancellation

(1) The information on the Website are subject to change and do not represent a binding offer. Purchase Orders can only be made by written order to the purchase order address. By placing a Purchase Order the Buyer submits a binding offer to enter into a Contract and he declares that he has registered the TCS and agrees to all of them.

(2) The Seller reserves the right to refuse the Contract without stating reasons.

(3) A Contract is concluded upon Order Confirmation by the Seller. Confirmation takes place to the e-mail address stated in the Purchase Order.

(4) Type and scope of the owed delivery and services are determined solely by the Contract.

(5) Integral parts of the Contract are: Purchase Order, Order Confirmation and the TCS. Terms and conditions of the Buyer shall not constitute part of the Contract.

(6) Cancellation and interruptions of Purchase Orders are not accepted unless both parties mutually agree. If cancellation or interruptions are made by Buyer after Order Confirmation any incurred costs shall be borne by the Buyer.

§4 Delivery

(1) Delivery is made by transport (in accordance to §5) to the address stated in the Purchase Order. In case of false, incomplete or unclear address details given by the Buyer, the Buyer shall bear all costs arising from that.

(2) Delivery dates and deadlines are generally without obligation unless the Seller has expressly agreed to a binding delivery date or deadline in writing and the Buyer has provided to the Seller in a timely manner all of the information required for the performance of such delivery and - if applicable - the Buyer has paid advance payments in the manner and amount as agreed upon by both parties.

(3) An agreed delivery deadline starts with the date of the Order Confirmation, however, not before the Buyer fulfilled all advance performances to be provided by the same. Any modifications regarding the delivery requested by the Buyer within the term of delivery shall interrupt and extend the term of delivery accordingly. The Seller reserves the right to go below binding delivery dates.

(4) Compliance with the agreed delivery deadline is subjected to the reserve of the timely, complete and correct supply from the suppliers of the Seller or to the lack of force majeure occurrences like for instance strikes etc., which fall outside the sphere of influence of the Seller. The Seller will notify the Buyer as early as possible of the beginning and ending of such circumstances.

(5) If the Buyer has ordered several QCM products the Seller is entitled to part deliveries at any time, as far as this is reasonable for the Buyer.

(6) In case of late delivery the Buyer shall be entitled to cancel the Contract only if the Seller is responsible for the delay and a reasonable period, set by the Buyer, for the delivery has expired unsuccessfully. Further claims from default in delivery are exclusively determined in accordance with § 8.5.

(7) If the Seller has already made part deliveries as set out in § 4.5 the Buyer may only withdraw from the Contract if he demonstrably has no interest in part delivery.

(8) If the Buyer falls into default of acceptance or infringes other duties to cooperate, the Seller is - without prejudice to any other rights or remedies - entitled to store the Delivery Item appropriately at the risk and the expense of the Buyer and to withdraw from the contract after an appropriate period of time.

§5 Transport, Transfer of risk

(1) In the absence of special agreements, the Seller is free to choose the transport company, as well as the means of transport.

(2) All transportation and packaging expenses shall be borne by the Buyer. Transport insurance policies shall only be taken out at the express written request of the Buyer. Moreover the Buyer shall also be responsible for obtaining an import license should one be required. All costs applicable to this shall be borne by the Buyer. In case of shipment abroad customs, taxes, fees and similar expenses shall be borne by the Buyer.

(3) Irrespective of the prior transfer of risk (in accordance to §4.8 and §5.4) risk shall pass over to the Buyer as soon as the delivery item has been handed over to the person providing transportation or has left the premises of the Seller for transport (e.g. because the delivery item is picked up by the Buyer).

(4) If the transport is delayed for reasons within the Buyer's responsibility, the risk shall pass over on the date of allocation.

§6 Prices, Additional Expenses, Payment

(1) The prices of the QCM Products are provided on the Website and apply – price mistakes and misprint reserved - as provided at the time of Purchase Order.

(2) All mentioned prices are final prices in Euro (the Seller is not liable to VAT) plus costs as set out in § 5.2.

(3) Invoices are to be paid without deductions to the disclosed account of the Seller within ten workdays from receipt of Delivery Item.

(4) Should the Buyer fall into late payment, the Seller is entitled to charge default interest at the legal rate and to withdraw from Contract by granting a reasonable final deadline. After expiration of the final deadline the Buyer shall return the Delivery Item at first demand and shall bear the return transport costs. This shall be without prejudice to the Seller's right to claim any further damage.

(5) The setting off with counterclaims of any kind is excluded.

§7 Retention of Property, Intellectual Property Rights

(1) The Delivery Item shall remain the property of the Seller until all claims of the Seller arising from the contract relationship with the Buyer have been paid in full. For the duration of the retention of property, the Buyer may not pledge the retained Delivery Item or use it as security or for resale. The Buyer shall bear the costs of any intervention.

(2) On receipt of payment in full (in accordance to §7.1) the Buyer shall acquire property and a non-exclusive right to use the Delivery Item for any usage. All intellectual property rights (in particular copyright, know-how) concerning the delivery item (including, among others, concepts and technical specifications developed in the context of QCM products) belong to the Seller. The Buyer acknowledges to acquire no intellectual property rights and not to try to acquire or to register any intellectual property rights.

§8 Warranty, Limitation of Liability

(1) The Buyer shall inspect the Delivery Item for defects immediately upon receipt of the Delivery Item and shall notify the Seller in writing of any detected defects within 14 days after receipt. Any defects not recognizable in such an inspection are to be notified without delay in writing after being detected.

(2) If a defect is not notified, not timely or not in proper form, the Seller has no warranty obligation. The same does apply if the defect is based on circumstances within the Buyers responsibility (e.g. through incorrect use).

(3) As far as there are any defects of the Delivery Item that are due to the responsibility of the Seller and written notification was given in time by the Buyer, the Seller shall always first have the opportunity to resolve the defect within an appropriate time. Only in case of final failing of rectification the Buyer has the right to demand reduction of payment or cancellation of the Contract.

(4) The warranty period shall be limited to six months from the date of transfer of risk.

(5) Any liability of the Seller is entirely excluded insofar as this is legally permissible. In particular the Seller is not liable for infringement of third parties property rights, nor for other damages concerning the use of the Delivery Item which might arise for the Buyer or for third parties. Moreover the Seller is not liable for loss of profit, indirect damages and consequential damages or for the constant and consistent access to the Website, nor for any technical or electronic disruptions.

§9 Miscellaneous

(1) Should individual provisions of these TCS be or become ineffective, invalid and/or impracticable, the effectiveness, validity or practicality of the remaining TCS are not affected.

(2) The place of fulfillment for delivery and payment shall be the Seller's registered office.

(3) All disputes arising in connection with these TCS and from contracts concluded on the basis of these terms and conditions are governed exclusively by the substantive laws of Austria with exclusion of UN international trade law.

(4) Place of jurisdiction is Linz.