



# GENERAL TERMS AND CONDITIONS of Bruker Nano GmbH, Germany

## I. General Information

1. These General Terms and Conditions (hereinafter: GTC) of BRUKER Nano GmbH (hereinafter: BRUKER) shall apply

a. exclusively; deviating Conditions of Purchase of the purchaser shall not be effective unless

BRUKER expressly accept them; such acceptance shall be in writing if given during the phase of contract formation;

b. towards purchasers that are businesses in the sense of section 14 of the German Civil Code;

c. on all future relations between the parties, even if not agreed upon expressly.

2. BRUKER reserves all kinds of rights it has in samples, cost estimates, drawings and similar tangible and intangible items or information – also in electronic format; such items or information shall not be disclosed to any third party. BRUKER undertakes not to disclose without the consent of the purchaser any information and documents defined by the purchaser as being confidential to a third party.

3. The respective Service Conditions of BRUKER apply additionally for assembly, commissioning, repairs, maintenance and similar services with the tariffs mentioned therein.

## II. Offers

BRUKER shall revoke its offers until their acceptance unless BRUKER designates them as binding.

## III. Written Form and Authorization of Employees

1. Additional or different agreements, representations or amendments have to be made in written form unless they are not made at the time of the formation of the contract. BRUKER is entitled to charge an adequate price increase for modifications made on a request of the purchaser, placed after its placement of the order.

2. Employees of BRUKER are not authorized to make oral representations in the course of the formation of the contract or agree orally upon additional clauses or amendments of the contract with the purchaser unless their authorization hereto is prescribed by law.

## IV. Prices and Payment

1. Prices are valid ex works, loading within the premises included, but packing and unloading excluded, unless otherwise agreed. Prices do not include VAT. Payment shall be considered as being made when the full amount of invoice has been credited to the account of BRUKER.

2. Payment shall be made, unless otherwise agreed, without any deduction, free BRUKER's place of payment, in the following way:

100% advance payment payable immediately upon receipt of the acknowledgement of order and - on purchaser's request - against submission of an advance payment guarantee.

3. The purchaser shall not be entitled to any right of retention or refusal or offset of his counterclaims against our claims, unless the counterclaims the purchaser exercises retention or refusal for or sets them off against our claims are uncontested or res judicata.

4. In the event the financial situation of the purchaser deteriorates considerably, jeopardizing BRUKER's claim for payment, BRUKER shall be entitled to withhold the shipment until payment has been made or sufficient securities have been provided.

## V. Delivery times and delays

1. The observance of the agreed upon delivery time by BRUKER requires that all commercial and technical questions reasonably to be clarified before delivery are clarified between the Parties and that purchaser has rendered all cooperation (for example, submission of necessary certificates from authorities or approvals of such) necessarily or reasonably to be rendered before delivery, and fulfilled all obligations to be performed in advance (for example an advance payment). Otherwise, the delivery time is prolonged correspondingly, unless BRUKER would be liable for the delay.

2. The observance of the delivery time is subject to correct and timely delivery to BRUKER by the subcontractors with which BRUKER has entered into corresponding hedgings.

3. The delivery time is met if either the goods to be delivered have left BRUKER's facility or the notification of readiness for dispatch has been sent until its expiry. In the event delivery has to be taken, the date of acceptance, or, subsidiary, the collection note is decisive – except for a justified refusal to take delivery.

4. In the event dispatch or acceptance of goods is delayed for reasons the purchaser is responsible for, costs arising from the delay shall be charged to his account, starting 10 working days after the dispatch note or, respectively, collection note has been sent.

5. Should non-compliance with the agreed-upon delivery time be caused by industrial actions or other events, arising after contract formation and beyond the control of BRUKER, delivery time shall be prolonged correspondingly unless BRUKER would be responsible for such temporary impossibility. This applies correspondingly if such events arise with subcontractors. BRUKER shall notify the purchaser of the beginning and end of such circumstances without undue delay. The prolongation of the delivery time due to such events is limited to 6 months.

## VI. Default in Delivery, Partial Deliveries

1. In case of BRUKER being in default in delivery the purchaser may, in derogation of the provisions in Section X, after a waiting period of 2 weeks, charge for every completed week of delay 0.5 percent, and maximally 5 percent of the value of the part of the overall delivery which cannot be used in due time or as contractually agreed as a result of the delay, if the delay has been caused by BRUKER and a provable loss has occurred to the customer. Should purchaser assert this claim, he is excluded with further claims for damages because of the delay in delivery.

2. Should BRUKER be in delay in delivery, the purchaser may only withdraw from the contract if he set a time limit accompanied from a warning to withdraw.

3. Partial deliveries are admissible insofar they are reasonable to the purchaser.

## VII. Passing of Risk, Acceptance, Insurance

1. The risk passes – also for delivery freight paid – to the purchaser when the product has left the facility, even if partial deliveries are made or BRUKER has taken over other obligations such as, for example, shipping costs or delivery and installation.

2. Acceptance shall be performed immediately at the date of acceptance, or, if no such date is agreed upon, after dispatch note of BRUKER, unless the purchaser would be entitled to reject acceptance. Should the purchaser be entitled to reject acceptance, such rejection shall be declared without undue delay and in writing, submitting the supporting arguments.

3. In the event dispatch or acceptance is delayed or does not happen because of circumstances BRUKER is not liable for, the risk passes to the purchaser from the day of dispatch or acceptance note if passing of risk to the purchaser did not already occur earlier.

4. BRUKER will insure goods upon purchaser's specific wish and at its expense and advance payment against normal transport risks, and against such further risks the purchaser wishes them to be insured against. BRUKER may insure the goods at the purchaser expense against theft, breakage, fire, water and similar occurrences even without the purchaser's request, unless the purchaser evidences having entered in such an insurance itself.

## VIII. Reservation of title

1. BRUKER reserves the title to the product until entry of all payments from the Supply Contract.

2. The purchaser may not sell the product, except such sale would occur in the ordinary course of its business. Additionally, during BRUKER's retention of title, the purchaser may not pledge or transfer the product as security. In the event of pledges and seizure or other disposal by third parties, he shall notify BRUKER immediately.

3. The purchaser herewith assigns as security to BRUKER all claims accruing from resale against another purchaser or third parties. The purchaser shall remain entitled, even after assignment, to recover debts, if he meets his financial obligations punctually and is not obliged to file for insolvency.

4. In the event of purchaser's breach of contract, included but not limited to delay in payment, BRUKER shall be entitled to take the product back after a reminder and set period of time, and the purchaser shall be obligated to return it. The assertion of the reservation of title and seizure of the product by BRUKER shall not be considered as a withdrawal from the contract with the purchaser.

5. The application for instituting insolvency proceedings shall entitle BRUKER to withdraw from the contract with the purchaser and to claim for the immediate return of the product.



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## of Bruker Nano GmbH, Germany

### IX. Warranty

BRUKER makes the following warranties for material defects and defects in title:

#### Material defects

1. Purchaser has to examine the goods without undue delay and notify us in writing of any recognizable defects and shall, as far as possible with reasonable efforts, specify the defects found. At any rate, the purchaser has to examine the goods without undue delay on apparent damages in transit and report such to the transport person and BRUKER.

2. In case of a material defect that substantially reduces the suitability of the work for the contractually presupposed use, BRUKER may, at its discretion, improve or replace the delivered goods. However, if BRUKER's effort to improve or replace fails, the purchaser has the right to either reduce the price or to withdraw from the contract (rescission of contract). The exercise of the respective remedy is subject to the purchaser's prior notice hereof.

3. Should an alleged defect prove to be no defect or exclusively result from fault of the purchaser, BRUKER may claim for a service charge. Purchaser may prove BRUKER that the cost is less than what BRUKER charges. Should, however, the alleged defect prove to be a defect, BRUKER shall bear the necessary cost of improvement or replacement delivery, except the cost of the purchaser's personnel. BRUKER will bear the cost of the purchaser's personnel too, if such personnel is qualified for the disassembly/assembly of the delivered items to the same extent as BRUKER's personnel and if the purchaser has proven that additional costs for his personnel arose due to the defectiveness of the items.

4. Wearing parts are exempted from warranty.

#### Defects in title

5. In case the use of the product causes an infringement of industrial property rights or copyrights, BRUKER shall procure at his expense the right of further use for the purchaser or modify the product in a way acceptable to the Purchaser and avoiding the infringement. Shouldn't this be possible with economically reasonable efforts and within an adequate period of time, the purchaser shall have the right to withdraw from the Agreement. BRUKER shall also be entitled to withdraw from the Agreement under these circumstances.

6. BRUKER shall release the purchaser from uncontested claims or claims recognized by declaratory judgment of the respective holder of property rights if

- the purchaser notifies BRUKER without undue delay of asserted infringements of property or copy rights,
- the purchaser assists BRUKER to a reasonable extent in rejecting asserted claims or enables BRUKER the execution of modification action in accordance with Section IX.5,
- BRUKER reserves all rejections, including settlements out of court,
- the defect in title is not based on an instruction of the purchaser and
- the infringement of a right has not been caused by the fact that the purchaser has changed the product without any authorization or used contrary to the agreement with BRUKER.

### X. Liability

1. BRUKER shall be liable for purchaser's damage, irrespective of the legal grounds therefore, including but not limited to, (i) liability under tort, (ii) breach of contractual duties, and (iii) breach of duties upon contracting, only if such claims are based either on intent or gross negligence, except as otherwise provided in the following section X. 2.

2. Not included under the limitation of liability pursuant to the above section X. 1. are (i) claims for damages because of personal injuries, (ii) damages due to breach of material contractual obligations („cardinal obligations “), and (iii) if purchaser relies on the due performance of our obligations due to reasons, creating a specific bond of trust recognized by law.

3. BRUKER is not liable for consequential damages, including, but not limited to lost profit, except such damages have been caused by its executive organs or managers or with intent. In any case of liability, such liability is limited to the amount of the foreseeable damage typical to such contracts and shall as well not exceed the value of the respective order, except that the liability claim is based on intent. If BRUKER is not liable, and, insofar holds claims against third persons, BRUKER will, on purchaser's request, assign its claims against such third persons to purchaser.

4. Not included under the limitation of liability pursuant to this section X. are claims (i) under the German Product Liability Act and (ii) any other mandatory statutory liability regulations as well as claims because of (iii) misrepresentation or (iv) lack of assured characteristics or (v) our assumption of the risk of procurement of the product.

### XI. Limitation of actions

Purchaser's rights resulting from breach of warranty against defects of movable property that is usually not meant to be used for a building, are subject to a limitation period of 12 months, in derogation of sections 438 para 1 No. 3 and 634a para 1 No. 1 of the German Civil Code. All further claims of purchaser – for whatever legal grounds – are subject to a limitation period of 12 months too, except such claims are based on intentional or fraudulent behavior of BRUKER or on the Product Liability Act.

### XII. Software use

As far as software is contained in the scope of delivery, the purchaser shall be granted a non-exclusive right to use to software delivered including its documentation. The use on the specific product is permitted. Use of the software on more than one system is prohibited. The purchaser may reproduce, revise, translate the software or convert from object code to source code only to the extent permitted by law (sections 69a - 69f of the German Copyright Act). The purchaser is obligated not to remove manufacturer's data, especially copyright notes, or change them without BRUKER's prior express consent. All other rights related to the software and documentation including copies remain with BRUKER or the software supplier. Granting of sub-licenses is not admissible.

### XIII. Miscellaneous, Applicable Law, Place of Jurisdiction

1. All legal relations between BRUKER and Purchaser are exclusively subject to the law of the Federal Republic of Germany.

2. Place of jurisdiction is the court Karlsruhe, Germany. BRUKER is, however, entitled, to take legal action at the purchaser's seat. Both parties shall reserve the right to finally settle possible disputes ousting the jurisdiction of a court in accordance with the Rules of Arbitration of the German Institution for Arbitration (DIS).

### XIV. Representation of Integrity

1. BRUKER complies with the German and U.S. laws against corrupt practices and requires the same from the purchaser.

2. The purchaser guarantees in the sense of a guarantee pursuant to Section 311 para 1 of the German Civil Code that (a) no one of its managing directors, holders of a special statutory authority, other representatives or employees has paid or contributed, or will pay or contribute, anything of any material value to any customer, governmental entity or governmental employees or agents in exchange for doing business with the purchaser, and that (b) he will strictly comply with the German and U.S. laws against corrupt practices.

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