

# General Terms and Conditions

Valid as of February 2021

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## § 1 Scope of Application

- 1.1 Specialty Diagnostix GmbH (hereinafter S.D. GmbH) provides customers with goods on the basis of sales contracts and provides services on the basis of working and service contracts. The legal relationships of S.D. GmbH and its customers, including all future legal relationships, are governed exclusively by these General Terms and Conditions (GTC). Should S.D. GmbH change these GTC in the future, the GTC in effect at the time of the respective contract shall be valid.
- 1.2 These General Terms and Conditions shall only apply to customers who are not customers within the scope of § 13 BGB.

## § 2 Conclusion of the Contract

- 2.1 Quotations by S.D. GmbH are subject to change and shall remain non-binding, unless they are specifically identified as binding or only temporary quotations. A contract is constituted by S.D. GmbH's written acceptance of the purchase order or by S.D. GmbH's execution of the contract. Changes in performance after the contract has been concluded are permissible, provided they are customary, reasonable and insignificant or necessary to fulfil legislative requirements.
- 2.2 The quantity, quality and description of goods and services are governed by S.D. GmbH's quotation or order confirmation. Customer specifications will only be included in the terms of the contract after explicit written approval by S.D. GmbH.
- 2.3 S.D. GmbH will not verify the correctness of any customer specifications that form the basis of the quotation or order confirmation.
- 2.4 Insofar as not otherwise specifically agreed by S.D. GmbH in writing, S.D. GmbH shall supply goods and provide service within the accepted tolerances applicable to the valid German technical standards (DIN, VDE, etc.).
- 2.5 As long as S.D. GmbH provides goods and services according to customer requirements and specifications, the customer shall indemnify S.D. GmbH against any third party claims with regard to infringement of copyrights or industrial property rights.
- 2.6 Quantities, descriptions, representations, quality descriptions, advertising claims, etc. shall not constitute a warranty, unless they have been explicitly confirmed in writing by S.D. GmbH.

## § 3 Prices

- 3.1 Prices are "ex works", unless otherwise stated in the quotation, order confirmation or price list. In addition to the previously agreed prices specified in the price list, the respective VAT has to be paid. If S.D. GmbH delivers goods to a different address, the customer shall bear the costs for transport, packaging, insurance, export, import, customs and any other related expenses. S.D. GmbH reserves the right to regularly adjust pricing and applicable price lists.
- 3.2 S.D. GmbH shall provide services on a cost basis, in the form of man-day rates and according to the standard rates of S.D. GmbH.
- 3.3 For services that S.D. GmbH performs at any location other than its business headquarters, expenses for travel and overnight accommodation shall be invoiced separately. Travel by car shall be invoiced in accordance with the prices valid at the time of travel. Travel with public transport and accommodation fees will be invoiced according to expenditure actually incurred. Expenses for meals are included in the man-day rates.

## § 4 Terms of Payment

- 4.1 Unless otherwise stated by S.D. GmbH in either the order confirmation or quotation, payments are due immediately on receipt and without deductions. Compensation for customer services is payable without deductions immediately after receipt of invoice and approval. The date of receipt of payment on the S.D. GmbH bank account shall determine whether the payment terms have been met. All payments have to be made by bank transfer only.
- 4.2 S.D. GmbH reserves the right to specify individual terms of payment, in particular deposits or advance payments. Payments shall be effected by bank transfer and free of transfer charges to the S.D. GmbH account. Cheques and bills of exchange shall be accepted as payment on a provisional basis only. The acceptance of bills of exchange requires express written approval and shall not imply any respite for payment, unless something different has been explicitly confirmed.
- 4.3 If the customer delays in effecting payment, S.D. GmbH shall be entitled to charge interest at a rate of 8% per annum above the respective base rate and to ask for immediate payment of all accounts receivable. The enforcement of a higher claim in individual cases shall remain unaffected.
- 4.4 The customer shall only be entitled to offset a payment against undisputed or legally valid claims. The customer shall have the right of retention or the plea of non-performance only, if S.D. GmbH itself is guilty of serious negligence or has already received part of the payment for poor performance corresponding to the value of the services rendered, or if the customer's counter-claim forming the basis of the right of retention or the plea of non-performance is indisputable and legally valid.

## § 5 Delivery

- 5.1 Goods shall be deemed delivered as soon as the customer accepts the goods on the premises of S.D. GmbH, after S.D. GmbH has notified the customer that the goods are ready to be collected. If a different place of delivery has been agreed upon with S.D. GmbH, the goods will be delivered to this address. Packaging shall not be taken back.

- 5.2 Unless otherwise specified, dates of delivery or performance are estimates only. Compliance with the deadlines is determined by the date of transfer of risk (see § 6). All contracts and delivery dates are subject to the correct and timely delivery by our own suppliers, unless S.D. GmbH is responsible for any non-delivery by its suppliers. The delivery period shall commence only after all documents, materials, and information, including all necessary licenses and permits required for the proper fulfilment of the contract have been provided and submitted to S.D. GmbH by the customer with the proper content and in the agreed upon quality.
- 5.3 Delivery and performance deadlines shall be extended by the period for which S.D. GmbH is able to prove that, through no fault of its own, it has been prevented by labour disputes, force majeure and other unforeseen events to procure, produce or deliver goods or provide services, and by a reasonable response time after the disruption. In addition, delivery and performance deadlines shall be extended by the period during which the customer does not meet its obligations in providing cooperation required under contract. This shall also apply if these events occur at a time when S.D. GmbH is already in default.
- 5.4 Any reminders and setting of deadlines on the part of the customer must be in writing to become effective.
- 5.5 If the customer fails to accept the delivery of goods, he shall be liable for any expenses incurred. In this case, S.D. GmbH shall put the goods into storage at the customer's risk and expense.
- 5.6 S.D. GmbH shall be entitled to deliver goods in reasonable instalments. Domestic deliveries are duty paid and taxed, international deliveries are duty unpaid and untaxed.
- 5.7 If S.D. GmbH is in default due to its own slight negligence or the slight negligence of its legal representatives or vicarious agents, the customer's possible claims for the damages caused by the delay are excluded.

## **§ 6 Transfer of Risk**

- 6.1 The risk of damage to or loss of goods shall pass to the customer:
- 1) In the case of goods to be delivered at the premises of S.D. GmbH, at the time when S.D. GmbH notifies the customer that the goods are ready to be collected;
  - 2) In the case of goods not to be delivered at the premises of S.D. GmbH, with the passing of the goods to the freight forwarder or the person the customer has chosen for the transport.
- 6.2 If S.D. GmbH chooses the mode of delivery, route of delivery or the freight forwarder, it will only be liable for negligence with regard to the respective choice.
- 6.3 Unless otherwise agreed upon in writing, it is the responsibility of the customer to insure the freight at his own expense. S.D. GmbH will not act either in its own name or in the name of the customer.

## **§ 7 Reservation of Title**

- 7.1 The ownership of the goods delivered (goods subject to retention of title) shall pass to the customer only if all claims (including secondary claims, interest on arrears and claims for damages) of S.D. GmbH have been met.
- 7.2 The customer is entitled to re-sell the reserved products in the ordinary course of business prior to full payment of the outstanding claims referred to in the previous Section 7.1, unless a prohibition of assignment has been agreed upon or will be agreed upon with third parties for future claims already assigned to S.D. GmbH, as set forth in Section 7.3.
- 7.3 When reselling the goods, the customer shall retain ownership of the reserved goods against his customers until the purchase price has been paid in full. By way of security, the customer assigns in advance all claims arising from such sales to S.D. GmbH in the amount of the invoice for the reserved goods (plus VAT). According to Section 7.4, the customer remains entitled to collect the transferred claims. The customer may neither pledge the reserved goods nor assign them as security.
- 7.4 The customer may collect the assigned future claims outlined in Section 7.3, within the scope of his ordinary course of business. The authorisation of collecting assigned future claims includes direct debiting of claims, provided the customer ensures by prior agreement with his bank that the amounts received are exempt from the bank's lien and that the customer is thus able to meet his obligation to transfer his proceeds to S.D. GmbH at any time. This authorization of collecting assigned future claims shall expire as soon as the customer defaults in paying his liabilities to S.D. GmbH. Upon the expiration of such authorisation, S.D. GmbH is entitled to disclose the assigned claims and demand any and all information and documentation from the customer required to assert such claims.
- 7.5 The customer is entitled to resell and process the reserved goods in the ordinary course of business. S.D. GmbH shall be considered as manufacturer in accordance with § 950 BGB. If the processing is done with items that do not belong to S.D. GmbH, S.D. GmbH will become co-owner of the processed item. This shall also apply if the reserved goods are inseparably mixed with other goods. The reservation of title and the authorisation to resell shall also apply to the processed item.
- 7.6 If the goods have been attached by third parties, the customer has to inform said third party about S.D. GmbH's ownership of the reserved goods and to immediately inform S.D. GmbH, so that S.D. GmbH is able to file legal action according to § 771 ZPO. If the customer fails to comply with this obligation, he shall be held liable for the damages caused.
- 7.7 If the customer is in default of payment, S.D. GmbH is entitled to take back the reserved goods from the customer or a third party at the customer's expense; the customer shall therefore assign his rights of surrender against the third party to S.D. GmbH.
- 7.8 If, because of this retention of ownership clause or any other collateral the aggregate value of the securities existing for S.D. GmbH exceeds the secured claims of S.D. GmbH by more than 10%, S.D. GmbH is obliged to release additional securities of its own choice at the customer's request.

## **§ 8 Liens**

- 8.1 The customer and S.D. GmbH agree, that S.D. GmbH has a lien on the customer's items that have come into the possession of S.D. GmbH in the course of the contract period, covering the existing or future claims that S.D. GmbH holds against the customer because of the existing legal relationship. This applies also to the customer's remainder to acquisition of ownership.
- 8.2 The customer and S.D. GmbH further agree that S.D. is entitled to a lien on the demands of the customer against S.D. GmbH from already closed or probably future contracts.
- 8.3 The warning of intended sale may be sent to the last known address of the customer if a new one cannot be established by the residents' registration office. S.D. GmbH may sell the pledged item in the open market and bill the customer for the costs incurred by such a sale.

- 8.4 If, because of this retention of ownership clause or any other collateral, the aggregate value of the securities existing for S.D. GmbH exceeds the secured claims of S.D. GmbH by more than 10%, S.D. GmbH is obliged to release additional securities of its own choice at the customer's request.

## **§ 9 Warranty for Defects of Quality or Title**

- 9.1 S.D. GmbH shall warrant that the delivered goods are free of any defects of quality that may impair their contractual use to more than only a negligible extent, that third party rights do not impair the contractual use of the delivered goods by the customer.
- 9.2 S.D. GmbH shall provide warranty by supplementary performance and be entitled to choose between remedying deficiencies or delivery of non-faulty product. If S.D. GmbH fails to provide such supplementary performance within a reasonable period of time set in writing by the customer, even after he has given S.D. GmbH at least two opportunities for supplementary performance, the customer is entitled to cancel the contract or to reduce the purchase price; granting a grace period is not required, if it has been ordered by law. S.D. GmbH shall pay damages or compensation for futile expenses caused by faulty products in accordance with legal requirements, governed by the disclaimers and limitations of liability specified in § 10. Any other warranty claims are excluded.
- 9.3 As a precondition for the warranty, the customer is obliged to inspect the products and services immediately upon receipt to ascertain their contractual quality, and to report and describe any deviations or defects immediately and in writing (see § 377 HGB). The customer has to obtain a written damage report from the freight forwarder and, after immediate consultation with S.D. GmbH, has to have an insurance adjuster issue a certificate of damage, if required.
- 9.4 The customer shall support S.D. GmbH in remedying defects by granting the necessary time and opportunity to investigate and remedy these defects and, if necessary, by allowing S.D. GmbH to remedy these effects on its own premises. The customer may only involve third parties or claim expenses for preventive measures, if the operational safety is in imminent danger and disproportionate damage may occur. The prerequisite for this is that the customer has notified S.D. GmbH immediately of these circumstances.
- 9.5 The customer shall cover any additional expenses that are caused by the fact that the subject of performance has been delivered to a place other than the place where the customer was located at the time the contract was concluded, or where S.D. GmbH might legitimately assume the goods would have been used according to their intended purpose, or that the remedy of the defects has been complicated by inappropriate changes to the goods or that the defect was caused by a customer requirement. S.D. GmbH does not assume liability for defects or damages caused by premature consumption, operational or natural wear and tear, breakage of glass, unprofessional or excessive use, handling errors, connection to unsuitable power sources, operation with the wrong current, inadequate repair through a third party or force majeure.
- 9.6 Should a third party assert copyrights or intellectual property rights against the customer, the customer shall inform S.D. GmbH immediately in writing. S.D. GmbH is entitled to defend at its own expense the customer against claims by this third party. In this case, the customer shall inform S.D. GmbH about his own defensive measures and a potential trial to a reasonable extent and not impede the defence against these claims (e.g. by the acknowledging the claims of the third party). The customer shall be under such an obligation, if S.D. GmbH indemnifies the customer from all disadvantages and risks caused by the claim asserted by the third party and sufficiently protects him against these disadvantages and risks.
- 9.7 The statute of limitations for warranty claims on the grounds of material defects expires after one year; in the case of fraudulent concealment of defects or deficiencies of title based on a right in rem of a third party that constitute his right to demand the surrender of the goods or services, the statutory limitation period shall apply. According to its own best judgement and in accordance with Section 6, S.D. GmbH reserves this right even after expiry of the statutory limitation period for the warranty of title.

## **§ 10 Liability**

- 10.1 S.D. GmbH assumes contractual or extra-contractual liability only to the following extent:

S.D. GmbH shall pay compensation within the legal limits for damages caused by a wilful act or gross negligence during contract negotiations, the contractually agreed performance and/or infringement of public safety, due diligence and secondary obligations.

If S.D. GmbH's breach of duty puts the achievement of the contractual objective or the customer's life and limb at jeopardy, S.D. GmbH shall be liable in case of slight negligence for damages insurable to the value that might be expected during the normal course of events. Damages caused by business shutdowns or machinery failure at the customer site or his loss in profit caused by minor negligence will not be indemnified. Contractual penalties that the customer has to pay to a third party will not be compensated on any account.

S.D. GmbH accepts liability in the scope mentioned above also for its legal representatives and vicarious agents. The liability provisions mentioned above shall be final.

Any further liability for damages by S.D. GmbH is excluded. This also applies to the tortious liability of S.D. GmbH. Claims in accordance with the Product Liability Act of 15.12.1989, however, shall remain unaffected.

- 10.2 Claims against S.D. GmbH for damages or compensation for futile expenses due to contractual or non-contractual liability are subject to a limitation period of one year – except in cases of personal injury or wrongful intent. The period will start with the end of the year in which the claim occurred and the customer learned or would have learned without gross negligence about the circumstances causing the claim and S.D. GmbH's responsibility, and becomes effective at the latest with the expiry of the maximum time limits specified in § 199 Abs. 3 and 4 BGB. The regulations on the limitation of claims due to material defects and defects of title (Section 8.7) shall remain unaffected.

## **§ 11 Services**

- 11.1 The customer shall request changes and extensions (changes) in writing. S.D. GmbH will only have to apply such changes after a written consensus has been achieved that may, in particular, contain changes in delivery and performance deadlines and an additional remuneration. In the absence of a consensus, S.D. GmbH will fulfil the contract without regard to the requested changes. S.D. GmbH shall be entitled to receive remuneration based on cost for the assessment of the requested changes and the preparation of a revised quotation.
- 11.2 Unless otherwise agreed, S.D. GmbH shall perform, in close cooperation with the customer, contractually agreed or legally required acceptance tests and implementations (tests) within ten days of delivery. During these tests, the customer and S.D. GmbH shall jointly prepare a protocol, in which all test cases and data, functional checks and the detected errors are listed.
- 11.3 Any errors detected during these tests shall be categorised as follows:
- 1) Category 1: errors impairing procedure; the product/service cannot be used;
  - 2) Category 2: errors impairing procedure; the use of the product/service is compromised, but may essentially be used. The problem may be bypassed by organisational or other reasonable means;
  - 3) Category 3: other errors; no relevant effects on functionality and usability of the product/service.

The customer and S.D. GmbH shall assign error categories by mutual agreement. The customer shall declare his acceptance if no category 1 error has occurred. If possible, category 2 errors shall be remedied during the test. Category 2 and 3 errors remaining after acceptance or implementation will be remedied within the warranty period.

- 11.4 Acceptance shall also be considered as declared, if the customer uses the product/service in regular operation for more than a month, shows his approval by other means, or if, although no category 1 error has occurred, he does not declare his acceptance or refuses acceptance within the given grace period, although the product/service is ready for acceptance and a reasonable grace period has been given.
- 11.5 S.D. GmbH shall be entitled to demand partial acceptance for self-contained parts of performance. In this case, the entire performance or goods delivered shall be deemed as accepted upon final acceptance. Partial acceptances already completed shall not be affected by the success of the final acceptance.

## **§ 12 Customer's Participation**

- 12.1 The customer shall provide S.D. GmbH with all information necessary for the execution of the contract in a timely manner.
- 12.2 To the extent necessary or useful for the fulfilment of the contract, the customer shall support S.D. GmbH in the execution of the contract free of charge, by providing personnel, working space, appropriate IT-environment, telecommunication equipment and data in a timely manner and to the required extent and by assisting in specifications, tests, inspections, etc.
- 12.3 In general, the customer is responsible installation and implementation of the goods/services delivered. The customer shall provide installation and other ancillary tasks outside our industry sector, in particular the equipment necessary for installation and implementation as well as electrical power. In addition, he shall be responsible for protection and safety measurements, unless these are included in the products/services.

## **§ 13 Confidentiality**

- 13.1 The customer shall keep any information he receives from S.D. GmbH during the initiation and execution of the contract as confidential, even if this information is not legally protected (e.g., by copyright. This specifically applies to all technical information (e.g., drawings, description of material, calculations), sales documentation (e.g., specifications and price lists) or any other economic information (e.g. supply capacities). S.D. GmbH shall retain right of ownership for cost estimates, quotations, drawings and other documents. If required, the customer shall return all documentation to S.D. GmbH.
- 13.2 The obligation for confidentiality shall not apply, if the information has been made public by S.D. GmbH, has been communicated to the customer by a third party or if the customer is obliged to provide such information to authorities or courts.
- 13.3 The obligation for confidentiality shall also apply after the contract has been executed or has not been implemented.

## **§ 14 Off-set – Retention**

- 14.1 The customer may only set off payments due against uncontested or legally recognised claims.
- 14.2 The customer shall only be entitled to rights of retention according to § 273 BGB and §§ 369 pp. HGB, insofar as these rights are based on the same contractual relationship, as is the claim of S.D. GmbH. This limitation shall not apply if the customer's counterclaims are uncontested or legally recognised. The customer shall not be entitled to satisfy his claim in accordance with § 371 HGB.

## **§ 15 Termination of Contract**

- 15.1 Each contractual partner shall be entitled to terminate the contract for good cause or withdraw the acceptance of an order. In particular, good cause is given, if
- 1) Insolvency proceedings have been opened or declined for lack of assets, or if an out-of-court conciliation procedure has been filed;
  - 2) Compensation claims of the other contractual partner have been attached and the attachment has not been lifted within two weeks;;
  - 3) The customer has infringed on copyright or right of use regulations (§ 11).

A termination due to good cause has to be preceded by a written warning with threat of termination, the reason for termination and a deadline, unless the delay is infeasible for the terminating party.

## **§ 16 Export Regulations**

- 16.1 The customer may not transfer or export the delivered products and services under any circumstances to any country for which a US embargo applies. They may also not be made available to persons, companies or institutions mentioned on certain specific lists of the American Authorities. The same reservation applies to the export regulations of the European Union and the Federal Republic of Germany.

## **§ 17 Other Provisions**

- 17.1 Changes, additions, ancillary agreements as well as deadlines, terminations and the assumption of guarantees shall only be valid in written form. The contractual partners shall meet the written form requirement by sending documents via fax or E-Mail; this shall also apply to cases not mentioned in the preceding sentence, where a written form is required. Attachments are part of the contract.
- 17.2 Should individual or several provisions of these terms and conditions be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected.
- 17.3 S.D. GmbH shall be entitled to electronically save and process any customer data that becomes known within the scope of the contractual relationship.
- 17.4 These Terms and Conditions shall replace any earlier agreements between the contractual partners.
- 17.5 All legal relations between the contractual partners shall be subject to German law, excluding the UN Sales Convention. Place of performance and jurisdiction for all disputes shall be the registered place of business of Specialty Diagnostix GmbH. S.D. GmbH shall be entitled to file legal action at the customer's place of jurisdiction or any other place of jurisdiction according to national and international law.