

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF ANALYTICON DISCOVERY

1. Scope of validity

1.1. Sales, deliveries and services of AnalytiCon Discovery GmbH (hereinafter: "AnalytiCon Discovery") are exclusively governed by the following General Terms and Conditions of Sale and Delivery (hereinafter: "Terms of Delivery"), which the customer recognises by placing the order or accepting the delivery.

They shall also apply to any future business transactions with the customer. The application of different or supplementary terms and conditions of the customer shall be excluded, even if AnalytiCon Discovery does not expressly reject the same or effects delivery to the customer without reservation being aware of the latter's contradictory or different terms and conditions.

1.2. The terms and conditions below shall not apply to contracts with consumers within the meaning of § 310 paragraph 3 BGB (German Civil Code).

2. Entry into contract

2.1 The offers of AnalytiCon Discovery shall be subject to change without notice. A contract shall only come into being after AnalytiCon Discovery has confirmed the order in writing.

2.2 The contract shall be exclusively governed by the terms of the order confirmation and by these General Terms.

2.3 Oral agreements or commitments shall require AnalytiCon Discovery's written confirmation in order to be effective.

2.4 AnalytiCon Discovery reserves all rights, especially ownership rights and copyrights, to sales records (in particular pictures, offers, cost estimates, descriptions, processes) and to samples. They must not be made available to third parties except with AnalytiCon Discovery's explicit approval and shall be promptly returned to AnalytiCon Discovery upon request, if no order is placed,

3. Delivery periods and deadlines

3.1 Delivery deadlines and periods shall not be binding unless they have been expressly confirmed as binding by AnalytiCon Discovery.

3.2 Observance of delivery periods shall be subject to the condition that the customer provides AnalytiCon Discovery with all information, records, approvals and clearances required for the execution of the delivery sufficiently in advance and complies with all agreed terms of payment, especially down payments.

3.3 Agreed periods shall commence on the date of the order confirmation. If supplementary orders are placed or existing ones are enlarged at a later point in time, such periods shall be extended accordingly.

3.4 All delivery deadlines shall be subject to the condition that AnalytiCon Discovery's own supplies are received in a timely and correct manner.

3.5 If AnalytiCon Discovery is prevented from delivering due to unforeseeable and unavoidable circumstances or events beyond the control of AnalytiCon Discovery and for which AnalytiCon Discovery is not answerable, such as acts of God, war or natural disasters, AnalytiCon Discovery shall be relieved from its duty to deliver or perform in due time as long as such cir-

cumstances last. The periods agreed shall be extended by the time such obstruction continues to exist; The customer shall be informed about the occurrence of the obstructing event in an adequate manner. If it cannot be foreseen when the obstruction will end, or if it continues for more than two months, each party shall be entitled to withdraw from the contract.

3.6 In the event that AnalytiCon Discovery is in default with a delivery or service the customer shall only be entitled to withdrawal after expiry of a reasonable period of grace to be determined by it.

3.7 In the event that the customer is in default with acceptance or breaches any other duty of co-operation AnalytiCon Discovery shall be entitled to adequately store the products at the customer's risk and expense. As regards the occurrence and the consequences of the customer's default with acceptance, the legal regulations shall apply.

3.8 AnalytiCon Discovery shall be entitled to effect part deliveries.

4. Dispatch, passage of risks, insurance

4.1 Where the customer has not given specific instructions, the products shall be dispatched through an adequate mode of shipment and packed as usual.

4.2 Once the product has been handed over, the risk passes to the shipping agent or the customer itself (INCOTERM: EXW). If such handing over or dispatch is delayed for reasons which the customer is answerable for, the risk shall pass to the customer on the day when it is notified of the fact that the product is ready for delivery.

4.3 Insurance policies shall only be taken out at the customer's request and expense.

5. Prices, terms of payment

5.1 If the contracting parties have not agreed on a specific price, the price shall be determined according to the price list of AnalytiCon Discovery, as applicable on the date when the parties enter into the contract.

5.2 All prices of AnalytiCon Discovery shall be deemed to be ex works (EXW) and exclusive of any applicable statutory turnover tax, customs duties, bank charges and costs of packaging and shipment, which shall be charged separately.

5.3 Unless agreed otherwise, each invoice shall be due and payable without any deduction on the day the invoice is made out. Customer payments shall only be deemed to have been made once AnalytiCon Discovery is able to dispose of the amount.

5.4 As regards the occurrence and consequences of default with payments, the legal regulations shall apply.

5.5 Bills of exchange and cheques shall only be accepted as conditional payment upon special agreement at no cost and charge to AnalytiCon Discovery.

5.6 The customer shall not be entitled to setoff unless its counterclaim is undisputed or established by a court of law.

5.7 The customer shall only be entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is undisputed or established by a court of law.

5.8 If AnalytiCon Discovery becomes aware of a substantial deterioration of the customer's financial situation after the contract has been concluded, AnalytiCon Discovery shall be entitled to effect or perform any outstanding deliveries or services only against advance payment or provision of collateral; if the same is not made or provided even after expiry of an adequate period of grace, AnalytiCon Discovery may withdraw from the contract, notwithstanding any other rights it may have.

6. Warranty, duty to inspect

6.1 The customer's warranty rights shall presuppose that the customer inspects the products promptly upon receipt, advising AnalytiCon Discovery in writing of any defects without delay, at the latest, however, two weeks after receipt; AnalytiCon Discovery shall be notified in writing of any hidden defects promptly after their detection.

6.2 Details contained in catalogues, price lists and any other information material left to the customer by AnalytiCon Discovery and statements made in product descriptions shall not constitute warranties for quality or any other warranties must be explicitly defined as such in writing.

6.3 AnalytiCon Discovery shall be liable for the suitability of the merchandise delivered for the customary use and for the customary quality of items of the same type, unless the parties have made individual agreements to the contrary. AnalytiCon Discovery shall not give any warranty for damage incurred by unsuitable or improper use on the customer's part or by natural wear or tear, unless AnalytiCon Discovery is answerable for such damage.

6.4 Under warranty AnalytiCon Discovery may either opt for subsequent performance by rectifying the defects or for delivery of a new item free from defects or performance of a new service free from defects, as the case may be.

6.5 The expenses required for the purpose of rectifying defects, in particular costs of transportation, travel, labour and material, shall be borne by AnalytiCon Discovery, unless such costs are increased by the fact that the object purchased has been moved to a place other than the place of performance.

6.6 The customer may not retain payments unless a complaint has been lodged whose justification is undoubted.

6.7 The customer shall give AnalytiCon Discovery the time and opportunity required for subsequent performance. If the customer refuses to do so without justified reason, AnalytiCon Discovery shall be released from liability for defects.

6.8 In the event that the rectification of a defect under warranty by subsequent performance fails, the customer may, at its election, demand a price reduction or withdraw from the contract.

6.9 In case of dispute it shall be incumbent upon the customer to prove that public utterances within the meaning of § 434 paragraph 1 sentence 3 BGB were causal to its decision to buy.

6.10 Warranty claims shall become statute-barred 12 months after delivery of the item concerned.

6.11 Any more extensive claims of the customer shall be excluded, except where section 7 provides for otherwise.

7 Damages and limitation of liability

7.1 Liability for damages sustained by the customer shall be excluded. This shall not be true in case of

- (i) culpable personal injury or bodily harm;
- (ii) intentional and grossly negligent breaches of duty on the part of AnalytiCon Discovery, its legal representatives or vicarious agents;
- (iii) culpable breaches of material contractual duties;
- (iv) breaches of mandatory provisions of Product Liability Law;
- (v) assumption of a guaranty.

7.2 Liability shall be limited to compensation for the foreseeable damage typically incurred in case of

- (i) grossly negligent breaches of contract;
- (ii) breaches of material contractual duties;
- (iii) customer claims for damages in lieu of performance.

7.3 Sub-paragraphs 7.1 and 7.2 shall apply to all claims for damages, no matter on which legal ground, including but not limited to liability on account of tortious acts, positive violation of contractual duties and culpa in contrahendo.

7.4 The customer shall take adequate action to avoid and reduce damage.

7.5 Liability shall not cover damage sustained after the passing of risks due to natural wear and tear, improper or negligent treatment, excessive use or unsuitable means of operation.

8. Reservation of title

8.1 Until full payment of all present and future claims of AnalytiCon Discovery out of or in connection with the business relationship with the customer the products delivered shall remain the property of AnalytiCon Discovery.

8.2 For current accounting purposes such reservation of title shall be deemed to secure the balance owed to AnalytiCon Discovery.

8.3 The sale of reserved products in the ordinary course of business shall be permitted to the customer. Already now the customer assigns, in the amount of our final invoice (incl. VAT), all purchase price claims which arise for the customer from such resale against the purchasers or third parties involved, regardless of whether the item purchased was resold without being processed or after being processed.

8.4 Even after the assignment the customer shall remain empowered within the scope of the ordinary course of business to collect the claim arising from resale. AnalytiCon Discovery's authority to collect the claim on its own shall remain unaffected thereby. but AnalytiCon Discovery shall be obligated not to collect the claim as long as the customer complies with its payment obligations in connection with the proceeds drawn, is not in default with payments and, in particular, as long as no application for the opening of insolvency proceedings has been filed and payments have not been stopped. Should this be the case, however, AnalytiCon Discovery may demand of the customer to disclose to AnalytiCon discovery the claims assigned and their debtors, to furnish all details re-

quired for collection, to hand over pertinent records and to advise the debtors (third parties) of the assignment.

The processing or transformation of the object purchased by the customer shall always be deemed to have been effected on behalf of AnalytiCon Discovery. If the object purchased is processed with other items AnalytiCon Discovery shall acquire a joint interest in the new item in proportion to the value of the object purchased (final invoice amount including VAT) compared to that of the other processed items at the time of processing. Otherwise, the provisions concerning the delivery of the objects purchased subject to reservation of title shall equally apply to the item created by processing.

The customer shall not be entitled to pledge, transfer as security or otherwise dispose of the reserved products in a way jeopardising the ownership status of AnalytiCon Discovery.

8.5 The customer shall make available to AnalytiCon Discovery at any time all information requested in respect of the reserved products. If third parties have access to, or assert claims in respect of, reserved products the customer shall immediately notify AnalytiCon Discovery, handing over the necessary records. The cost of warding off such access or claims shall be borne by the customer.

8.6 The customer shall treat the reserved products with care throughout the period during which title is reserved.

8.7 If the estimated value of collateral exceeds AnalytiCon Discovery's aggregate claims to be secured by more than 10%, the customer shall be entitled to demand release to that extent. AnalytiCon Discovery shall be entitled to decide which part of the collateral shall be released.

8.8 In the event that the customer is in default with material obligations, such as for example payment to AnalytiCon Discovery, AnalytiCon Discovery shall be entitled, notwithstanding any other rights, to demand the return of the reserved products and to exploit them otherwise for the purpose of satisfying claims due against the customer. In this case the customer shall immediately grant access to the reserved products to AnalytiCon Discovery or authorised representatives of AnalytiCon Discovery and shall surrender these products. If AnalytiCon Discovery demands surrender pursuant to this provision, this shall not be construed as withdrawal from the contract.

8.9 If goods are delivered to other jurisdictions where the above arrangement as to reservation of title does not have the same protective effect as in Germany, the customer shall make best efforts to create relevant security rights for AnalytiCon Discovery without delay. The customer shall co-operate in all measures, e.g. registration, publication, etc., which are necessary and expedient for the effectiveness and enforceability of such security rights.

9. Product liability

If the customer sells the products, it shall release AnalytiCon Discovery internally from any third-party product liability claims, to the extent that the customer is responsible for the defect giving rise to such liability.

10. Industrial property rights

Where the customer, by furnishing certain instructions, details, records, designs or

drawings, prescribes how AnalytiCon Discovery is to manufacture the deliverables, the customer shall warrant that AnalytiCon Discovery does not infringe third-party rights, such as patents, utility-model patents or other protected rights and copyrights. The customer shall indemnify AnalytiCon Discovery against all third-party claims as may be asserted on account of such infringement against AnalytiCon Discovery.

11. Assignment

Assignments of customer claims under this contract shall only be effective if AnalytiCon Discovery has consented thereto in writing.

12. General provisions

12.1 If any provision of this contract and/or these terms of sale are ineffective in whole or in part, the effectiveness of the remaining provisions shall not be affected thereby. In this case the contracting parties undertake to replace the ineffective provision by such effective provision as comes closest to the economic purpose of the ineffective one.

12.2 Exclusive venue for all disputes arising from the contractual relationship shall be Potsdam. This shall equally apply if the customer's general place of jurisdiction is not located within the Federal Republic of Germany or if the customer moves its usual place of abode abroad after the contract has been concluded. However, AnalytiCon Discovery shall be entitled to bring an action against the customer at any other legal venue.

12.3 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Sales Convention (CISG).