



## GENERAL TERMS AND CONDITIONS OF SUPPLY GMS INSTRUMENTS B.V.

### Article 1 - Definitions

In these terms and conditions of supply the following terms are to be given the following meanings:

- Supplier: G.M.S. Instruments B.V. established in Rotterdam;
- Purchaser: every natural person or legal entity to whom/which the Supplier makes an offer or with whom/which the Supplier concludes an agreement, or enters into negotiations regarding this;
- offer: every offer, tender, or invitation to conclude an agreement, in whatsoever form;
- agreement: every agreement between the Supplier and the Purchaser;
- goods: all goods, including (service) goods, which are the subject of an offer from or made on behalf of the Supplier, or of an agreement.

### Article 2 - Applicability

- 2.1 These terms and conditions of supply apply to all agreements between the Supplier and the Purchaser, to all offers from or made on behalf of the Supplier and to all negotiations with regard to these agreements and offers.
- 2.2 Any derogations from these terms and conditions of supply exclusively apply insofar as these have been accepted in writing by the Supplier.
- 2.3 The Supplier expressly does not accept any reference to the applicability of other general terms and conditions.
- 2.4 If and insofar as a provision of these terms and conditions of supply is null and void or voided, this provision will be converted in the legal relationship between the Supplier and the Purchaser into a legally valid provision, the contents and meaning of which will be as closely as possible in line with the contents and meaning of the original provision.
- 2.5 If these terms and conditions are translated, then in the event of a difference of opinion concerning the interpretation of the Dutch text and the translated text, the Dutch text will prevail.

### Article 3 - Offers and agreements

- 3.1 The Agreement will only come into effect by means of the acceptance or confirmation in writing by the Supplier of an assignment from the Purchaser, or by means of the actual (commencement of) the execution by the Supplier of the assignment concerned.
- 3.2 The Supplier will not be bound by the data set out in catalogues, images, drawings, lists of dimensions, weights, datasheets and suchlike, except for insofar as these are expressly included in an agreement as binding for the Supplier.
- 3.3 The Supplier will be entitled to terminate the Agreement, wholly or in part (without the intervention of the courts), as well as to suspend the fulfilment of its own obligations, in the following events:
  - the failure by the Purchaser to fulfil, or the failure to fulfil in a timely manner, or the failure to completely fulfil one or more of the obligations vested in the Purchaser towards the Supplier, or if the Supplier has a well-founded suspicion that the Purchaser will not, or will not in a timely manner, or will not completely fulfil the obligations;
  - the bankruptcy, moratorium, or placement under a guardianship order of the Purchaser and/or otherwise if (a well-founded suspicion of) a lack of liquidity of the Purchaser becomes apparent;
  - the decision to and/or the proceeding with the liquidation of the Purchaser, the termination/sale of the Purchaser's business activities, or if the nature of the Purchaser's business activities materially change in the Supplier's opinion;
  - if attachment is levied on the entirety or a part of the Purchaser's assets and this attachment is not lifted within fourteen days;
  - if the Purchaser does not enable the Supplier to deliver/supply, or as the case may be does not provide cooperation there to.

### Article 4 - Ownership and confidentiality of data

- 4.1 Offers from or made on behalf of the Supplier, as well as drawings, calculations, descriptions, models, tools and suchlike originating from the Supplier remain the property of the Supplier.
- 4.2 The Purchaser guarantees towards the Supplier and will ensure that these offers, drawings, calculations, descriptions, models and suchlike and the data contained therein will be treated with confidentiality and will not be copied, or shown or disclosed to third parties, or used by third parties, without prior permission from the Supplier.
- 4.3 All rights of an industrial or intellectual nature, such as inter alia copyright, with regard to the designs, drawings, calculations, descriptions, models, working method, advice etc., originating from the Supplier will be and/or remain during the performance of the Agreement as well as afterwards, the express and exclusive inalienable property of the Supplier.

### Article 5 - Prices

The prices included in offers and agreements and otherwise stated by the specifications are:

- excluding turnover tax, import and export duties and all other levies and charges imposed by authorities;
- ex factory or ex warehouse of the subcontractor of the Supplier, or as the case may be – at the discretion of the Supplier - ex warehouse of the Supplier;
- excluding packaging costs;
- excluding the costs of loading, shipping, unloading, transport, dispatch and insurance;
- excluding assembly and other (service) work.

### Article 6 - Delivery periods

- 6.1 The delivery periods stated or agreed by the Supplier are only indicative and will commence when the Supplier has confirmed the agreement in writing, the Supplier has the possession of all documents, data, permits and suchlike necessary for the performance of the Agreement, and all formalities necessary for this have been completed, and the down payment owed by the Purchaser, insofar as agreed, has been received by the Supplier.
- 6.2 Any exceeding of the delivery periods will not give the Purchaser the right to compensation, or to termination, suspension, or non-fulfilment of any obligation entered into towards the Supplier, except for if and insofar as this exceeding is the result of gross negligence on the part of the Supplier.

### Article 7 - Delivery, transfer of risk and transfer of ownership

- 7.1 The delivery of goods by the Supplier will take place ex factory or ex warehouse of the subcontractor of the Supplier, or as the case may be - at the discretion of the Supplier - ex warehouse of the Supplier. Ex factory or ex warehouse has the meaning of: "ex works" in conformity with the INCOTERMS 2000. The delivery constitutes, and takes place when, the goods are ready for dispatch or transport to the Purchaser and the Purchaser has been informed of this. The goods, including the storage of the goods, will be at the expense and risk of the Purchaser from that time. These restrictions do not affect the (extended) retention of title of the Supplier as referred to in article 7.3 of these terms and conditions of supply.
- 7.2 The dispatch, loading and shipping, transport and unloading of the goods are at the expense and risk of the Purchaser. In the event that the Supplier ensures the dispatch, loading, or shipping, transport, or unloading of the goods, this will also take place at the expense and risk of the Purchaser.
- 7.3 The Supplier retains the ownership of all goods delivered to the Purchaser for as long as all that which the Purchaser owes to the Supplier pursuant to the deliveries of any goods and

additional services, including interest and costs, has not been paid in full. The Purchaser will provide the Supplier upon first request with the opportunity to exercise this retention of title on the goods, by taking the goods back, including any disassembly of the goods required for this purpose. The Purchaser will provide the Supplier for this purpose upon first request with inter alia unhindered access to the goods.

### Article 8 - Payment

- 8.1 The payment of the invoices from the Supplier must effectively take place in Euro within 30 days after the invoice date to an account designated by the Supplier, without any reduction, deduction, or setoff. Unless mentioned differently by the Supplier.
- 8.2 In addition to the statutory provisions with regard to the occurrence of being due and payable and being in default, all claims of the Supplier against the Purchaser will be furthermore immediately due and payable in full and the Purchaser will be furthermore immediately in default regarding the fulfilment of the obligations towards the Supplier, without notice of default, in each of the following events:
  - if any applicable payment term for the Purchaser towards the Supplier is exceeded;
  - if a petition for bankruptcy, or an application for moratorium of the Purchaser, is submitted or declared;
  - if attachment is levied on one or more of the Purchaser's assets;
  - if (the enterprise of) the Purchaser is dissolved or liquidated, or a decision to this effect has been made;
  - if the Purchaser does not comply within a period set out by the Supplier with a request from the Supplier to provide, in the opinion of the Supplier, sufficient security for the fulfilment of the Purchaser's obligations.
- 8.3 From the time when a claim of the Supplier against the Purchaser is due and payable, the Purchaser will owe to the Supplier over the amounts owed interest equal to four percentage points above the statutory commercial interest applicable pursuant to Section 119a Book 6 of the Civil Code, as well as the extrajudicial costs related to the collection of the claim, which costs are determined at 15% of the principal sum owed, as well as the judicial costs. All this applies without prejudice to the other rights and entitlements of the Supplier, including the entitlement to suspend the personal obligations of the Supplier and the entitlement to terminate agreements.

### Article 9: Force majeure

If the Supplier, due to force majeure of a permanent nature, or for a period of more than thirty days, is prevented from giving (further) performance of the Agreement, the Supplier will be entitled, regardless of the question of whether the force majeure was foreseeable and without any obligation of compensation, to terminate the Agreement wholly or in part, by means of a notification to this effect and without judicial intervention, without prejudice to the right of the Supplier to payment by the Purchaser for the goods and services already executed by the Supplier prior to the occurrence of a force majeure situation, or as the case may be the Supplier will be entitled to suspend the (further) performance of the Agreement, wholly or in part. The Supplier will inform the Purchaser as soon as possible of any force majeure situation.

### Article 10 - Guarantee

- 10.1 The Supplier guarantees the sound condition of each individual good during a therefore tolerable period of time from the date of the delivery of the goods.
- 10.2 The Purchaser is obliged, at the risk of forfeiting any guarantee claims, to inspect and test the goods within fourteen days after the delivery for any defects. The Purchaser must report in writing any defects noticed, also at the risk of forfeiting guarantee claims, to the Supplier within eight days after the discovery of these defects, or after these defects reasonably ought to have been discovered.
- 10.3 The Supplier does not provide any guarantee for defects that are (partly) the result of installations, assembly, modification, or repair of the goods by parties other than the Supplier, insufficient or incorrect maintenance of the goods, improper use of the goods, or the usual wear and tear of the goods.
- 10.4 The Purchaser cannot rely towards the Supplier on guarantee claims if the Purchaser at the time of the arising of these claims, or at any time afterwards, is in default relating to the fulfilment of any obligation towards the Supplier.
- 10.5 In the event of a valid guarantee claim by the Purchaser, the Supplier will at the discretion of the Supplier (i) replace (have replaced) the goods concerned, or (ii) deliver replacement goods, or (iii) credit the price paid by the Purchaser for the goods concerned. In the event that the Supplier wishes to repair (have repaired) the goods, the Purchaser will offer the opportunity to do this. In the event that the Supplier opts for delivery of replacement goods, or crediting of the price paid, the original delivered goods will become the property of the Supplier and the Purchaser will be obliged upon first request to deliver these goods back to the Supplier.
- 10.6 The failure by the Supplier of obligations on the basis of this article will not constitute a ground for the Purchaser for suspension of the fulfilment of the Purchaser's obligations towards the Supplier, or for termination of any agreement.

### Article 11 - Liability and indemnity

- 11.1 The Supplier's liability is limited in all cases to fulfilment of the guarantee obligations described in article 10 of these terms and conditions of supply. Every further-reaching liability of the Supplier for damage suffered by the Purchaser or third parties is therefore expressly excluded, except for insofar as this damage is the direct result of gross negligence on the part of the Supplier.
- 11.2 Insofar as a manufacturer of the goods or a subcontractor of the Supplier have limited their guarantee or liability toward the Supplier further than the limitation of the guarantee and the limitation of liability of the Supplier ensuing from article 10 and 11.1 of these terms and conditions of supply, the further-reaching limitation of the guarantee and limitation of liability of this manufacturer or subcontractor will apply between the Supplier and the Purchaser.
- 11.3 The Purchaser is obliged to indemnify and compensate the Supplier regarding all claims by third parties for compensation of damage caused by defects of goods delivered by the Supplier.
- 11.4 The Supplier will not be liable for consequential loss of whatsoever nature (including trading loss. Lost profits and/or damage to one's image).
- 11.5 Notwithstanding the provisions of article 11.1 up to and including 11.4 of these general terms and conditions of supply, in the event of liability of the Supplier only the damage for which the Supplier is insured will be eligible for compensation, and this will not exceed the amount for which the Supplier's insurance provides cover. If the insurance in any case does not offer cover or does not proceed to pay out, and the Supplier is liable, the Supplier's liability will be limited to twice the invoice amount.

### Article 12 - Applicable law and disputes

- 12.1 The law of the Netherlands exclusively applies to all agreements and offers from or made on behalf of the Supplier, and to the negotiations related thereto.
- 12.2 At first instance the Rotterdam District Court has jurisdiction concerning disputes related to agreements, offers from or made on behalf of the Supplier and the negotiations related thereto, without prejudice to the right of the Supplier to make a dispute pending before another judicial body with jurisdiction pursuant to the applicable law.
- 12.3 If the Purchaser on the basis of the applicable law, these general terms and conditions, or as the case may be on the basis of any Agreement, is liable and the Supplier is sued in that context by a third party, the Purchaser will fully indemnify the Supplier and will compensate the Supplier for the damage suffered by the Supplier.