

# General Terms and Conditions

Valid from June, 1st 2016

## 1. Scope

- 1.1 These General Terms and Conditions apply to all deliveries of goods, works or services by Piezocryst Advanced Sensorics GmbH (the "Supplier").
- 1.2 Unless Supplier expressly agrees in writing, Supplier shall not be bound by any terms or conditions, whether written, oral or otherwise, that are different, or vary from or are in addition to these General Terms and Conditions and any such terms or conditions shall be null and void and of no effect whatsoever.

## 2. Offer and Acceptance

- 2.1 Offers by the Supplier are made without obligation and any sales contract shall become effective and binding on Supplier only when Supplier delivers to Customer its written Order Confirmation, or if Supplier, at its election effectively delivers the goods to Customer.
- 2.2 Specifications and quotes in catalogues, brochures etc., are only binding if expressly referred to in the Order Confirmation.
- 2.3 Supplier's offer and project documentation must not be reproduced nor disclosed to third parties without the Supplier's written consent.

## 3. Prices

- 3.1 Prices are quoted ex Supplier's works or warehouse, excluding packaging, dispatch and VAT. All expenses, duties, tariffs, and taxes related to the delivery are paid by Customer.
- 3.2 If a Customer's order should differ from the offer, the Supplier reserves the right to change prices accordingly.
- 3.3 Prices are based on the material and labor costs valid at the time of the first offer. Any changes to these costs prior to the date of delivery entitle the Supplier to change prices accordingly.

## 4. Delivery and Dispatch

- 4.1 Delivery periods do not start to run before the date of the Order Confirmation and are deemed to be fulfilled when the goods are dispatched from the Supplier's factory or warehouse.
- 4.2 If not explicitly agreed to otherwise by Supplier, any governmental or other permits required for delivery in the Customer's country may delay, unless received in time, delivery dates. Such governmental or other permits must be obtained in the Customer's country by Customer.
- 4.3 Terms and obligations of delivery may at the election of Supplier be suspended during any period in which Customer's payments are in arrears.
- 4.4 Supplier, at its election, may ship all or part of its goods and immediately invoice Customer for such partial or preliminary shipments.
- 4.5 The agreed delivery periods are subject to events of force majeure, or unforeseen events or events beyond the control of the Supplier, such as war, terrorism, Acts of God, governmental interventions and bans, energy and raw material shortages or outages, strikes, transport damages or delays. These events entitle the Supplier to extend the time of delivery, also if they affect any of its sub-suppliers.
- 4.6 In case delivery of the goods ready for dispatch is not possible or not desired by Customer, the goods will be stored at the Customer's cost and risk. The delivery shall then be considered as performed and Supplier may, at its election, invoice for such delivery.
- 4.7 Compensation for commercially unreasonable delays in delivery by Supplier shall be payable only upon separate agreement, and shall be limited to an eventual monetary penalty in an amount to be agreed to by the parties, even if delays are caused by the Supplier's negligence.

## 5. Performance of Contract and Transfer of Risk

- 5.1 Costs and all risks of loss are transferred to the Customer at the time of dispatch of the goods from the Supplier's factory or warehouse, in default of the agreed delivery terms.

- 5.2 All periods depending on the Supplier's performance of contract begin on and run from the dates specified in this section, irrespective of any quality tests or trial runs.

## 6. Payment

- 6.1 All invoices of the Supplier shall be due and payable within 30 days from the date of invoice.
- 6.2 Partial invoices are due immediately upon receipt. This also applies to payments which have to be made for additional performances, beyond the initial terms of contract, regardless of the conditions of payment applicable to the main performance.
- 6.3 Payment shall be made without any deduction in the agreed currency to the Supplier's bank. Cheques or bills of exchange shall be accepted on account only, and all connected expenses shall be charged to the Customer's account.
- 6.4 Customer shall not be entitled to any right of set off or to withhold or reduce any payments due because of warranty or compensation claims.
- 6.5 In case of delayed payment the Supplier is entitled at its election to do any of the following:
  - a) postpone performance of its own obligations until receipt of the payments due
  - b) accelerate and fix a due date for all outstanding payments (cancellation of periods for payment by Customer)
  - c) charge to Customer from such due date or maturity interest at the current discount rate (main refinancing operations) of the European Central Bank plus 8 percent per year or
  - d) rescind and cancel the contract if the Customer fails to pay within a reasonable period of grace.
- 6.6 Until Customer has fulfilled all financial obligations, the goods supplied shall remain the Supplier's property. Customer shall be obliged to meet all legal requirements in order to safeguard Supplier's property or security interest. In case of attachment or other kinds of seizure Customer shall evidence Supplier's title and notify the latter immediately. By signing and returning to Supplier the Customer Order Form or by accepting delivery of goods Customer hereby agrees that it has granted Supplier a secured interest in the goods until such time as Supplier is paid in full.

## 7. Warranty

- 7.1 Unless otherwise agreed to in writing the warranty period shall be six months from the date of transfer of risk as stated in 5.1, regardless of the legal qualification of goods delivered or works performed.
- 7.2 Claims will be accepted only if Supplier is immediately notified of the defect in writing. Supplier's obligations for such claims are restricted to the repair or replacement of the defective goods. All other costs are to be borne by Customer.
- 7.3 Defects which are due to abuse, misapplication, failure to follow the instructions for use, warnings, safety or other regulations provided by Supplier, improper or prolonged storage or other mistakes on the part of the Customer, are excluded from the warranty. In case of products which have been produced at the order of or according to the Customer's instructions or formulae, warranty will only cover the proper production of the goods. Normal wear will not be covered under warranty.
- 7.4 Supplier's warranty obligations cease if any changes or repairs are caused by Customer or a third person without Supplier's prior written consent. The performance of a warranty obligation does not prolong the original warranty period.

## 8. Liability

- 8.1 The Supplier's liability and obligations according to the Product Liability Act or any other products liability acts or laws in any jurisdiction is excluded if specific provisions regarding the handling of the products, instructions for their use and/or warning and safety regulations as specified by the Supplier have not been observed.
- 8.2 Outside the scope of the Product Liability Act or other products liability acts or laws in any jurisdiction, damages shall be compensated only if the Supplier is held responsible for willful intent or gross negligence. In this case, however, Supplier's obligations for such claims are limited to personal injury and material damage resulting directly from a defect in the products. All other claims, such as consequential loss of property or profit are explicitly excluded. Claims must be made in writing to Supplier within a period of six months from the date of occurrence of

the damage, but not later than two years from the date of delivery, otherwise they are forfeited.

8.3 Customer is liable to subject its customers to the limitations of etc. liability contained in this paragraph.

#### **9. Rescission of Contract**

9.1 Customer at its election may rescind the contract if delivery is delayed more than 60 days because of gross negligence of the Supplier and despite a reasonable period of grace granted in writing.

9.2 Apart from the case of delayed payment according to Para 6.5 d) the Supplier can rescind the contract if:

- a) delivery or performance becomes impossible for reasons attributable to the Customer, or is delayed beyond a reasonable period of grace established in writing;
- b) the Customer's financial situation has worsened notably after ordering the products, and Customer is not prepared to pay in advance, or to provide sufficient security
- c) the Supplier has reasonable cause to suspect that the delivery of goods, works or services by the Supplier or any of its affiliates or any other performance of the contract infringe any sanctions, prohibitions or restrictions under resolutions of the United Nations or laws and regulations of the European Union, the Republic of Austria or any other state which are applicable to the Supplier and/or any of its affiliates;
- d) Supplier's goods, works and/or services become subject to the restrictions imposed by the EC-Dual-use-Regulation No. 28/2009 as amended after the contract has been concluded if the Supplier does not obtain an export license under the EC- Dual-use-Regulation.

Such rescission of contract shall also be permissible if only parts of the delivery or performance, which are still to be fulfilled, are affected.

9.3 In case that, due to events indicated in Para 4.5, the agreed delivery times are delayed by more than one half of the period, but at least six months, either party shall be entitled to rescind the contract with respect to those parts of the delivery or performance which have still to be fulfilled.

9.4 If bankruptcy proceedings are instituted against either party's assets, or these proceedings are not instituted because of insufficient assets, the other party may rescind the contract with immediate effect.

9.5 In case of rescission of contract for other reasons than the one stated in 9.1 all performances or parts thereof which have already been fulfilled by Supplier, shall be settled and paid according to the contractual provisions, notwithstanding and in addition to Supplier's claims for damages. This also applies to deliveries and performances not yet accepted by Customer as well as to any preparatory work undertaken by the Supplier. Alternatively, Supplier is entitled to claim the restitution of products already delivered. Any other consequences resulting from a rescission of contract are excluded.

#### **10. Patent Rights, Copyright**

10.1 If a product is produced according to the Customer's construction, drawings or specifications, Customer agrees to indemnify and hold the Supplier harmless for any infringement of patent rights of third parties.

10.2 All technical documents, in particular plans, drawings, technical descriptions, as well as catalogues, brochures, pictures or models etc. are the Supplier's exclusive property and are subject to legal and statutory restrictions on copy, reproduction, competitive use etc. Para 2.3 also applies to such documents.

10.3 If a product infringes third party property rights the supplier will use commercially reasonable efforts to:

- a) Modify or replace the product to render it non infringing, or
- b) Get a license from the third party.

In no event the Supplier shall be liable for:

- a) Any direct damages or consequential damages attributable to an infringement
- b) Customer's cost of litigation and/or negotiation or
- c) Compensation of any damages awarded to third parties.

#### **11. Place of Jurisdiction, Applicable Law**

11.1 In case of controversies arising from the contract the venue of legal proceedings shall be the Austrian tribunal at the Supplier's registered place of business. The Supplier shall, however, also be entitled to take action before a competent tribunal at the Customer's place of business.

11.2 The parties may also agree to have controversies settled by arbitration.

11.3 The contract shall be construed and interpreted according to Austrian law. It is mutually agreed that the UNCITRAL Agreement of the United Nations on the law of international sales of goods does not apply.

#### **12. Miscellaneous**

12.1 Supplier in its sole discretion may assign or delegate any of its duties or rights under the order or contract at any time without prior notice to or consent of Customer. The order or contract may not be assigned by Customer without Supplier's prior written consent, and in any event shall be binding on Customer's successors and assigns.

12.2 No covenant, term or condition of this order or contract can be waived by Supplier except by its written consent. This order or contract may be amended or modified only by a written instrument signed by Supplier and Customer.

12.3 Special conditions for the purchase of GaPO4-material

- a) Customer shall not use GaPO4-material to manufacture pressure, force, acceleration or strain sensors without prior written permission of Piezocryst. If the customer sells GaPO4-material to third parties he agrees to be responsible for any breach as if he had committed such breach itself.
- b) Customer shall not use GaPO4-material to grow GaPO4-crystals. If the customer sells GaPO4-material to third parties he agrees to be responsible for any breach as if he had committed such breach itself.