

To any **Bruel & Kjaer Nederland B.V.**'s ("Supplier") offers, supplies and services, and agreements concluded by Supplier, the following terms and conditions apply at all times, and the receipt of any goods ("Products") and services ("Services") constitutes acceptance of these terms and conditions ("Conditions"). No other Conditions (whether contained in buyer's purchase order or otherwise) shall be binding on Supplier unless and to the extent they are expressly agreed to in writing between Supplier's customer (the "Buyer") and Supplier.

1. Quotations and orders

Prices, specifications and delivery date referenced in the Supplier's quotations are for information only and shall not be binding on the Supplier until all technical requirements have been agreed and the Supplier has accepted the Buyer's order. Quotations terminate if the Buyer does not place an order with the Supplier within 60 days. By submitting an order to the Supplier, the Buyer agrees to be subject to these Conditions in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by the Supplier, shall be binding upon the Supplier until accepted in writing by the Supplier. The coming into force of any and all agreements shall be subject to the granting of an export license by the Dutch authorities. The purchase and sales agreement so constituted between the parties shall hereinafter be referred to as the "Contract".

2. Prices

The prices for Products shall be the price quoted by the Supplier to the Buyer, and the fee for Services shall be the fee agreed in the proposal ("Proposal") or, in either case, as otherwise agreed between the parties in writing. Prices and fees do not include taxes, transport charges, insurance and export and/or import charges or duties including without limitation sales, value added tax, use or excise taxes, applicable to the Products sold and/or Services supplied under any Contract, which taxes and other charges may, in the Supplier's discretion, be added by the Supplier to the sale price and or fees or billed separately and which taxes and other charges shall be paid by the Buyer unless the Buyer provides the Supplier with any necessary tax exemption certificate. Unless otherwise agreed in writing, the Buyer shall be liable to pay the Supplier's charges for transport, packaging, insurance and export and/or import clearance.

3. Payment

Each shipment of Products shall be a separate transaction and the Buyer will be invoiced on delivery. The Supplier shall be entitled to invoice the Buyer, in respect of Services, monthly in advance. Terms of payment shall be net thirty (30) days from date of invoice. All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim. The Supplier may, in its sole discretion, determine at any time that the Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by the Buyer in a form satisfactory to the Supplier. If the Buyer fails to make any payment when due then the Buyer will be in default and all claims of Supplier will become fully due and payable immediately, without prejudice to any other rights and remedies available to the Supplier. The Supplier shall be entitled to compensation of the statutory interest (as it applies to trade agreements) with respect to the outstanding amount until the date of payment in full. The amount subject to this contractual interest shall be calculated daily. In the event of untimely payment, the Supplier shall be entitled to compensation of all extra-judicial costs, including but not limited to costs involved with sending reminders, notices of default or demand notices, which latter costs shall amount to at least 15% of the total payable amount, subject to a minimum of €500.

4. Risk and passing of Title

Title to, and risk of loss and damage to, the Products shall pass to the Buyer on delivery in accordance with Section 7. Any claims for loss, damage or misdelivery shall be filed with the carrier and notified to Supplier within 5 days of the date of delivery. Products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given to the Supplier within such period. Acceptance shall constitute acknowledgement of full performance by the Supplier of all obligations under the Contract except as stated in Section 9.

5. Services

The Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Proposal. Each Proposal shall be deemed to incorporate and be governed by these Conditions. The Buyer shall, upon the Supplier's reasonable request and otherwise as required, provide the Supplier with all necessary information and materials to enable the Supplier to provide Services in accordance with the terms of any relevant contract. The Buyer will be responsible for the completeness and accuracy of all such information and materials provided, and will ensure that it is and remains entitled to provide the same to the Supplier for use in connection with provision of the Services.

6. Products

The Supplier may modify specifications provided the modifications do not adversely affect the performance of the Products. In addition, the Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from its suppliers. All descriptions, illustrations and any other information relating to the Products contained in the Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of the Buyer. They shall not constitute warranties or representations by the Supplier nor shall they form part of any Contract.

7. Shipment and Delivery

The Supplier shall deliver or arrange for delivery of Products Delivered Duty Paid (DDP Incoterms 2000) to the Buyer's premises or other delivery point agreed between the parties. Any dates quoted by the Supplier for delivery of Products are approximate only and the Supplier shall not be liable for any delay in delivery of Products whatsoever caused and time for delivery is not of the essence. The Supplier reserves the right to make delivery of Products by instalments and to tender a separate invoice in respect of each instalment. When delivery is to be by instalments or the Supplier exercises its right to deliver by instalments or if there is delay in the delivery of any one or more instalments for whatever reason the Buyer shall not be entitled to treat the Contract as a whole as repudiated.

8. Retention of Title

The Supplier shall retain title to all Products delivered or to be delivered to the Buyer until full payment of all purchased amounts has been received, as well as any amounts owed by the Buyer pertaining to work performed by the Supplier in connection with such purchase agreements and any claims pursuant to any attributable failure in the performance of such agreements on the part of the Buyer. The Buyer shall be obliged to store the Products delivered under retention of title with due care and recognisable as the property of the Supplier. In addition, it shall be obliged to insure such Products against, inter alia, fire and water damage and theft. The Buyer shall pledge to the Supplier any claims it has pursuant to such insurance policies upon the Supplier's first request, as additional security with respect to the Supplier's claims against the Buyer. In the event that the Buyer fails in the performance of any obligation vis-à-vis the Supplier, or in the event that the Supplier has good reason to fear that the Buyer will fail in the performance of its obligations, the Supplier shall be entitled to recover the Products delivered under retention of title or to have such recovered. The Buyer shall cooperate accordingly. The Buyer shall bear the costs of recovery, without prejudice to the Supplier's right to further damages.

9. Warranty

The Supplier warrants that all Products shall be free from defects in material and workmanship under normal use for a period of one year from delivery to the Buyer save that the Supplier does not warrant that operation of the Software (defined in Section 11) will be uninterrupted or error free or that all program errors will be corrected. The Buyer shall be responsible for determining that the Product is suitable for the Buyer's use and that such use complies with any applicable law. This warranty does not include any consumables such as filaments, lamps, fuses or other parts, which fail as a result of normal usage.

The Supplier warrants that it shall perform the Services substantially in accordance with the Proposal and with reasonable skill and care.

In the event of any warranty claim, provided that the Buyer notifies the Supplier in writing of any claimed defect in the Product immediately upon discovery and any such Product is returned at the Buyer's risk to the Supplier, transportation charges prepaid, within one year from date of delivery and upon examination the Supplier determines to its satisfaction, after a reasonable period to inspect such Products, that such Product is defective in material or workmanship, the Supplier shall, at its option, repair or replace the Products, shipment to the Buyer prepaid.

The Supplier shall have a reasonable time to make the repairs or to replace the Product. Any repair or replacement of Products shall not extend the period of warranty. The warranty period is limited to a period of one year, without regard to whether any claimed defects were discoverable or latent on delivery.

Services which do not conform with the warranty under this Section and which are notified to the Supplier within 10 days of the Buyer becoming aware of the same, and in any event no later than 2 months after the date on which the Services were performed, shall, if the Supplier agrees they were non-conforming, be reformed as soon as reasonably practicable after the Supplier's receipt of notice of the non-conforming Services.

If the Supplier finds that it should not be required to reperform the Services, or to replace or repair the Products or that such reperforming of the Services, or replacement or repair of the Products is impossible, the Supplier shall credit the price or fees received regarding the respective Services or Products to the Buyer.

The Supplier shall not be liable for the breach of the warranty in respect of Products supplied if: (i) the Buyer makes further use of such Products after giving the notice required in this Section; (ii) the defect arises from the Buyer's own fault; (iii) the defect arises from any drawing, design or specification supplied by the Buyer or from other materials or other property supplied by the Buyer or from any parts or items that have not been completely manufactured by the Supplier; (iv) the defect arises other than out of manufacture including without limitation, circumstances of accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing; (v) the defect arises out of the use of the Products in conjunction with products or materials not reasonably contemplated by the Supplier; (vi) the defect results from the Buyer's unauthorised addition to or modification of, or failure to comply with the Supplier's written instructions relating to, the Products or Services; and (vii) the defect arises out of any breach by the Buyer of its obligations to provide information to the Supplier under the Contract.

If the Buyer fails to pay when due any portion of any payment due from the Buyer to the Supplier under a Contract or otherwise, all warranties and remedies granted under this Section may, at the Supplier's option, be terminated. The foregoing warranties are exclusive and form the Supplier's entire obligation in regard to the conformation of the Products and are in lieu of all other warranties, terms and conditions, to the extent permitted by law, including without limitation warranties of quality or fitness for a particular purpose. The Supplier's sole and exclusive liability, and the Buyer's sole and exclusive remedy, for breach of the warranties in this Section shall be as set forth in this Section.

10. Liability

Supplier's liability on the basis of an improper performance of any obligation or on the basis of wrongful act or tort is limited to the obligations set out in Section 9.

The Supplier shall not be liable for consequential damage, including but not limited to loss of profit, loss of income, loss of use, loss of business, loss of revenue, loss of goodwill, or damage resulting from late delivery, damage resulting from incorrect or improper use of the Products and/or Services by the Buyer, nor for damage resulting from any incorrect and/or incomplete information supplied by the Buyer.

Without prejudice to the Supplier's obligations under the warranty as set forth in Section 9, Supplier's other liability shall be limited to the amount received for the Products and/or Services that gave rise to the relevant liability.

The liability limitations set forth in these Conditions shall not apply if the damage was caused intentionally by or due to gross negligence of the Supplier's executive management.

Any claim for damages or for the repair or replacement of the Products and/or for the delivery of missing parts, or for defective Services, on whatever basis, as well as any right to dissolve the Contract, shall lapse if the defect or the damage is reported too late or one year after the delivery of the Products or performance of the Services, whichever occurs first, unless a different time period has been agreed upon.

11. Software

The Supplier shall at all times have and retain title and full ownership of all software, firmware, programming routines, and documentation relating to such software supplied by the Supplier for use with the Products, and of all copies made by the Buyer (collectively "Software") and grants the Buyer a non-exclusive and non-transferable licence to use such Software solely for use with the Products.

12. Intellectual Property Rights

Notwithstanding delivery of and the passing of title in any Products and subject to Section 11 and this Section, nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any Products and/or Services.

Buyer acknowledges and agrees that all property, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.

The Supplier grants to the Buyer a non-exclusive, non-transferable licence to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilise the intended benefit of the Services.

If any claim is made against the Buyer that the Products or Services infringe the patent, copyright or other rights subsisting in the Netherlands of any third party, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against, or incurred by, the Buyer in connection with the claim or paid, or agreed to be paid, by the Buyer in settlement of the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier; (iv) the Buyer shall do nothing which would or might vitiate any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavours to recover any sums due there under and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover; (v) the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) without prejudice to any duty of the Buyer, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this Section, which steps may include (at the Supplier's option) accepting from the Supplier non-infringing modified or replacement Products or Services.

The Supplier shall have no obligation or liability under this Section insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, otherwise than by the Supplier or with its prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.

Without prejudice to Section 10, this Section states the entire liability of the Supplier and the exclusive remedy of the Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the performance of any Contract. This Section shall be subject to the limits of liability in Section 10.

13. Force majeure

The Supplier shall not be liable for any damage incurred by the Buyer in the event of improper performance if this is due to the occurrence of events, which cannot be attributed to the Supplier on the basis of either the Supplier's fault, or by virtue of law, agreement or generally prevailing opinion ("force majeure"). If the period during which the Supplier cannot fulfil its obligations exceeds or will exceed two months, either party shall be entitled to terminate the Contract without judicial intervention and without any obligation to pay damages to the other party. If the Supplier has performed part of its obligations when the situation of force majeure arises or if it can only perform part of its obligations, it shall be entitled to separately invoice the Buyer for the partial performance and the Buyer shall be obliged to pay such an invoice as if it concerned a separate agreement. Within the meaning of this Section, force majeure shall include strikes, export regulations or export prohibitions, lack of raw materials, delays in deliveries by suppliers and transportation problems, war, civil war, insurrection, fires, floods, labour disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any required permits, licences and/or authorisations, defaults or force majeure of suppliers or subcontractors, or any other causes falling beyond the reasonable control of the Supplier. These circumstances shall constitute force majeure for both the Supplier and its suppliers.

14. Confidential Information

Each party undertakes to keep confidential, not use for its own purposes and not without the prior written consent of the other party disclose to any third party, any information of a confidential nature belonging or relating to the other party which may become known to it unless such information is or becomes public knowledge (other than by breach of this Section) or is required to be disclosed by order of a competent authority.

15. Cancellation, Rescheduling and Termination

Orders for Products accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the written consent of the Supplier (which consent the Supplier may withhold for any reason) and the Buyer shall indemnify the Supplier against the cost of all labour and materials used in connection with the order so cancelled or varied and against all loss, damage, cost, charges and expenses suffered or incurred by the Supplier as a result of that cancellation or variation.

Contracts for Services shall commence on the commencement date identified in the relevant Proposal and, subject to earlier termination in accordance with this Section, shall continue in force for the initial term as prescribed in such Proposal and thereafter for any renewal period (if any) set out in the Proposal and thereafter without limit of period unless or until terminated by either party in accordance with this Section.

Without prejudice to this Section, either party may terminate a Contract for Services by giving ninety days (90) written notice to the other party.

Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which it fails to remedy within thirty days (30) of receiving written notice requiring it to be remedied.

Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise of perform its continuing rights, or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.

Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.

16. Suspension and dissolution

Without prejudice to the Supplier's rights under these Conditions or under the law, the Supplier shall at any rate be entitled to suspend (further) performance or to dissolve any Contract, in whole or in part, if: (i) any goods of the Buyer become subject to attachment, (ii) the Buyer is granted a suspension of payments or is declared bankrupt, (iii) any permits or licences are withdrawn required for the performance of any Contract, (iv) the Buyer fails to fulfil one or more of its obligations ensuing from any Contract, (v) the Suppliers has sound reasons to believe that the Buyer is or will be unable to fulfil its obligations under any Contract, or (vi) the Buyer ceases its business or if a change occurs in the control of that business. Any right of the Buyer to suspend performance is hereby excluded.

17. Applicable law

All offers and any Contract shall be governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded. Claims or disputes arising out of or in connection with these Conditions or any Contract shall be referred to the exclusive jurisdiction of the courts of the Netherlands. This clause shall not preclude the Supplier from its right to file the dispute with any other competent court.

18. Miscellaneous

Failure by the Supplier to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bear the exercise or enforcement thereof any time or times thereafter.

If any provision or part of a provision of these Conditions is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision.

The Buyer may not assign, transfer or otherwise dispose of all or any of its rights or delegate any of its obligations there under, in whole or in part, without the prior written consent of the Supplier.

Variation to any Contract must be in writing and signed by the authorised representatives of the parties.

All notices given under these Conditions shall be sent to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice. Notice shall be regarded as properly given if sent in writing and shall be deemed to have been served on delivery if sent by hand, 2 days after despatched if sent by post, and on confirmation of transmission, if sent by facsimile.