

TERMS AND CONDITIONS OF SALE AND SUPPLY

BRÜEL & KJAER DISCOM

1. Definitions

For the purposes of these Terms and Conditions of Sale and Supply (Conditions):

“Buyer” means the person, firm or company, which places an order for purchase of Products and/or Services as identified in any such order or Proposal as the case may be.

“Contract” means the agreement between the Supplier and the Buyer arising as a result of the Buyer’s submission of an order for the Supplier’s Products and Supplier’s written acceptance and/or, in the case of Services, an agreement between such parties for the provision of Services by Supplier, as constituted by a Proposal.

“Products” means goods supplied under any Contract including, if applicable, any software. “Proposal” means a proposal document signed by the Supplier and the Buyer describing Services to be provided to or for the Buyer, subject to these Conditions.

“Services” means any services, which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the relevant Proposal.

“Supplier” means Brüel & Kjaer Discom or any of its affiliates as named in any quotation or Proposal.

2. Basis of Sale

These Conditions shall apply to all deliveries of Products or Services from Supplier to Buyer and take precedence over any other terms and conditions exchanged between Buyer and Supplier. No term or condition other than these Conditions shall be binding upon Supplier and Buyer unless explicitly agreed to in writing by the Supplier. Receipt by the Buyer of any Products delivered by the Supplier, receipt by the Buyer of any Services performed by the Supplier, or payment by the Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions.

These Conditions shall only apply to business transactions with entrepreneurs (incl. companies), legal persons under public law or public-law special estates in terms of § 310 Subsection 1 of the German Civil Law Code (Bürgerliches Gesetzbuch “BGB”).

3. Quotations

Prices, payment terms, specifications and dates for delivery referenced in the Supplier’s quotations are for information purposes 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 not accepted by the Buyer within 90 days from date of quotation.

4. Orders

By submitting an order to the Supplier, the Buyer agrees to be subject to these Conditions in their entirety, cf. Section 2. 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.

5. Prices, Taxes and VAT

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 or, in either case, as otherwise agreed between the parties in writing. Prices do not include taxes, transport charges, insurance, exports and/or import charges and VAT, including duties and levies, which taxes and other charges may, in the Supplier’s discretion, be added by the Supplier to the sales price or billed separately. Any such taxes and other charges shall be paid by the Buyer.

6. Shipment and Delivery

6.1 The Supplier shall deliver the Products FREE CARRIER (FCA, INCOTERMS 2010). The Supplier shall not be liable for any delay in delivery of Products howsoever caused.

6.2 The Supplier reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment. When delivery by instalments, a delay in the delivery of any one or more instalments or the delivery of a non-conforming delivery for whatever reason will not entitle the Buyer to damages or to treat the Contract in whole or in part as repudiated.

7. Risk and the Passing of Property

7.1 Risk of loss and damage to the Products shall pass to the Buyer when the Products are delivered in accordance with Section 6. Any claims for loss, damage or misdelivery shall be filed with the carrier (if any) and notified to the Supplier without delay. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to the Supplier within such period.

8. Retention of Ownership

8.1 Supplier will retain title to the delivered goods until receipt of all payments arising from the business relationship with the Buyer. In the event of breach of contract by the Buyer, in particular default of payment after a reasonable grace period has lapsed unsuccessfully, Supplier will be entitled to repossess the delivered goods.

8.2 The cancellation of the contract does not exclude the assertion of claims for damages against the Buyer. After repossession of the delivered goods, Supplier will be entitled to their disposition. The proceeds of the disposition will be credited to Buyer’s liabilities after deduction of reasonable disposition costs.

8.3 The Buyer is obligated to treat the delivered goods with due care; it is in particular required to insure at its own cost the delivered goods at their replacement value, against the risk of damages caused by fire, water and theft. If any maintenance or inspection work is required, the Buyer will conduct such work at its own cost and in a timely manner.

8.4 The Buyer shall inform Supplier in writing without delay in the event of a seizure or any other intervention by a third party. The Buyer will be liable towards Supplier for all judicial and extrajudicial costs of any action which Supplier may take in its reasonable opinion to safeguard its interests (including without limitation third-party action claiming title to attached property (Drittwiderrspruchsklage)).

8.5 The Buyer is entitled to resell the delivered goods in the ordinary course of business; however, the Buyer hereby assigns any and all claims resulting from the commercial resale of the goods supplied by Supplier up to the amount of the outstanding purchase price receivables (including value added tax) of Supplier, irrespective of whether the delivered goods were resold without – or after – being processed.

8.6 The Buyer will remain entitled to collect these receivables even after the assignment. Supplier will be authorized, however, to collect the receivables itself, if the Buyer does not comply with its payment obligations, defaults in payment or files for insolvency or suspends payments. In these cases, Supplier may demand that the Buyer identifies the assigned receivables and the respective debtors, makes any statements necessary to collect such claims, delivers all related documents, and informs the debtor(s) (third parties) about the assignment.

8.7 Any processing or alterations of the delivered goods by the Buyer will be deemed to have been made on Supplier's behalf. If the delivered goods are mixed with or joined to items not owned by Supplier, Supplier will acquire joint ownership of the item in a proportion equal to the value of the delivered goods (final invoice amount including value added tax) to those other processed items as of the time of processing. The provisions that apply to goods delivered under title retention shall also apply to items created by processing.

8.8 For use as collateral for Supplier's claims against the Buyer, Buyer will also assign its claims, which arise against third parties due to the combination of delivered goods that are subject to retention of title with real estate.

8.9 Supplier will, at the Buyer's request, release the collaterals to which it is entitled, if and when the value of such collaterals exceeds the secured receivables by more than 20%. Supplier reserves the right to select the items of collateral for release.

8.10 If the delivered goods are located outside Germany, the following shall apply:

8.10.1 If the goods were delivered prior to payment of all amounts owed by the Buyer under the contract, then Supplier will retain ownership until complete payment; to the extent permissible under the applicable local laws of the place where the delivered goods are located. If these laws do not permit reservation of title, but rather allow Supplier to retain other rights in the delivered goods, then Supplier will be entitled to exercise any of these other rights.

8.10.2 The Buyer is obligated to assist Supplier with respect to any action Supplier may take to safeguard its title or the right to the delivered goods which replaces such title.

9. Quality, Warranty, Duty to Inspect the Delivered Goods

9.1 Upon passing of the risk the goods shall be of the agreed quality. The agreed quality will exclusively be determined by the specific written agreement concerning the characteristics, features and specifications of the goods.

9.2 Information provided in sales catalogues, price lists or any other information material provided by Supplier, as well as any other descriptions of the goods shall under no circumstances constitute a guarantee for any specific quality of the goods or services; such specific quality guarantees must explicitly be made in writing.

9.3 Supplier reserves its right to make minor modifications to the goods, including modifications to colour, form, size and material, unless other arrangements have been made between the parties and provided that such modifications do not impair their contemplated use. The same shall apply with regard to modifications that are due to legal provision and with regard to the substitution of components by equivalent components.

9.4 Any protective measures required due to particular conditions which exist in the Buyer's operational facility will be implemented at the Buyer's own expense. The same applies if installation, assembly and commissioning are done by the Supplier.

9.5 Unless expressly agreed otherwise on a case-by-case basis, the delivered goods are not suitable and intended for use in areas requiring special levels of safety (e.g., nuclear power plants and critical medical areas).

9.6 The Buyer's warranty rights (warranty claims) may only be asserted if the Buyer has inspected the delivered goods without undue delay upon receipt and has notified the Supplier in writing of any discovered defects after carrying out such inspection, or respectively of any latent defects without undue delay after their discovery, providing a detailed description of the defect (§ 377 of the German Commercial Code (Handelsgesetzbuch, HGB)).

9.7 With respect to goods or services which exhibit a defect during the warranty period specified in Clause 9.10, the Supplier will, at its option, either cure the defect at no extra charge, provide replacement goods or supplementary performance, provided the cause of the defect already existed at the time that the risk of loss passed. Goods which have been replaced by the Supplier shall – on the Supplier's request – be returned to the Supplier.

9.8 If – for reasons that the Supplier is not responsible for – the Buyer wrongly issues a notice of defect, the Supplier will be entitled to charge the Buyer for any reasonable expense incurred for the identification and/or rectification of the alleged defect.

9.9 Any claims of the Buyer for reimbursement of expenses incurred for the purpose of supplementary performance, in particular costs of shipping, travel, labour and material, are excluded, if and to the extent that such costs were increased because the goods have subsequently been transported to a location other than the agreed place of delivery.

9.10 The warranty period is 24 months from the passing of risk. This will not apply with regard to defects of goods used for buildings (§ 438 Subsection 1 No. 2 BGB), where the statutory period of limitation shall apply. Furthermore, the statutory periods of limitation will be applicable to damages which were not caused by defects of the goods.

10. Services

10.1 The Supplier shall provide Services in accordance with these Conditions and the terms of the relevant Proposal.

10.2 The Buyer shall, upon the Supplier's request and otherwise as required, provide the Supplier with all necessary information and materials for the Supplier to provide its Services and the Buyer will be responsible for the completeness and accuracy of all such information and materials.

11. Terms of Payment

11.1 Each shipment shall be a separate transaction and the Buyer will be invoiced on delivery. In respect of Services the Supplier is entitled to invoice the Buyer in advance. Unless otherwise stated in the Supplier's invoice, terms of payment shall be net thirty (30) days from date of invoice.

11.2 All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever.

11.3 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 other assurance of payment satisfactory to the Supplier and, if such requirement is not met, cancel the order or any part thereof and receive reasonable cancellation fees.

11.4 If the Buyer fails to pay any payment when due, the Supplier shall (at its option) be entitled: (i) to treat the Contract repudiated by the Buyer or (ii) to affirm the Contract. Furthermore, the Supplier may

suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract and claim damages and/or receive reasonable cancellation fees and recover, in addition to the payment, interest thereon at the rate of one point five percent (1.5%) per month.

12. Force Majeure

The Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any event beyond the reasonably control of the Supplier, including but not limited to, war, terrorism, sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, embargo in deliveries by Supplier's subcontractors, refusal or delay in granting of export license, act of any government or any agency or subdivision thereof, judicial action, labour dispute, accident, fire, explosion, floods, storm, shortage of labour, fuel or other energy supply, raw material or machinery, or technical failure. If any such events occur, the Supplier may allocate production and deliveries among the Supplier's customers at its sole discretion, and the Buyer is not entitled to any kind of damages or to make a claim whatsoever in case of cancellation or delayed delivery due to such events.

13. Software

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

14. Intellectual Property Rights

14.1 Notwithstanding delivery of and the passing of title in any Products and subject to Section 12 and 13.3, 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.

14.2 The 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.

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

14.4 If any claim is made against the Buyer that the Products or Services infringe any patent, copyright or other rights subsisting in Denmark 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 thereunder 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) 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, and the Supplier may, at its expense and option, either (a) procure for the Buyer the right to continue using said Product, (b) replace the said Product with a suitable non-infringing product, (c) suitably modify said Product, or (d) refund the purchase price of said Product, less depreciation at twenty percent (20%) per year.

14.5 The Supplier shall have no obligation or liability under Section 14.4 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.

14.6 This Section 14 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 14 shall be subject to the limits of liability in Section 15.

15. Liability and Damages

15.1 Subject to the provisions of Clause 15.4 the Supplier's liability for damages, irrespective of their legal grounds, will be limited as follows: 15.1.1 For damages caused by a slightly negligent breach of a material contractual obligation the Supplier will only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract.

15.1.2 The Supplier will not be liable for any damages caused by a slightly negligent breach of a non-material contractual obligation.

15.1.3 Material contractual obligations are understood as such obligations that characterize the contract and on which the Buyer may normally rely.

15.2 The Buyer shall take reasonable measures to avert and mitigate damages. The Buyer shall inform the Supplier without undue delay in writing about any costs, expenses and damages for which compensation is due.

15.3 Written and oral statements and information provided by the Supplier that regards suitability and application of its products will not release the Buyer from its obligation to assure by inspections and examinations the suitability of the offered products for the Buyer's intended use. The Supplier will not be liable for any damages or futile expenditures caused by advice that it has provided on the occasion of or in connection with the conclusion of a contract and that has not been provided within the scope of a contractual obligation, unless such advice has either been rendered under a separate written agreement, or the said damages or futile expenditures were caused by

intentional or grossly negligent conduct on the part of the Supplier. Unless the Supplier is liable for intent or for grossly negligent conduct of its legal representatives or its executive staff, the Supplier's liability shall be limited to the foreseeable typically occurring damages.

15.4 The exclusions and limitations of liability as set out above do not apply to mandatory statutory liability, in particular to liability under the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG), nor to any liability for assuming a specific guarantee, nor to liability for maliciously concealed defects, nor to any liability for culpably caused personal injuries or death.

15.5 Wherever the Supplier's liability is excluded or limited, this shall also apply with regard to the personal liability of its representatives, employees and vicarious agents.

15.6 If and to the extent to which damage claims are not subject to the limitation period applicable to claims based on material defects, a limitation period of 24 months from the beginning of the statutory limitation period shall apply. This will not apply with regard to personal injury claims, liability for damages caused intentionally or by grossly negligent conduct, liability for characteristics guaranteed, liability for maliciously concealed defects, and with regard to liability under the ProdHaftG. In such cases the statutory limitation periods shall apply.

16. 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.

17. Rescheduling and Cancellation

17.1 Orders accepted by the Supplier may be cancelled or rescheduled by the Buyer only with the written consent of the Supplier and upon payment of the Supplier's cancellation or rescheduling charges. The Supplier shall have the right without penalty or payment to cancel any order accepted (i) if the Buyer fails to make any payment when due to the Supplier under the Contract or any other contract with the Supplier, (ii) if any act or omission of the Buyer delays the Supplier's performance, (iii) if the Buyer violates any of these Conditions, or (iv) if the Buyer's credit becomes impaired; and in the event of such cancellation the Supplier shall be entitled to receive reimbursement for reasonable and proper cancellation charges.

17.2 Without prejudice to Section 17.3, either party may terminate a Contract for Services by giving ninety (90) days written notice to the other party before the end of the term of the Contract.

17.3 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 (30) days of receiving written notice requiring it to be remedied.

17.4 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.

18. Insolvency of the Buyer

If the Buyer or any of its affiliated companies enters into restructuring proceedings (in German: "Umstrukturierung") or bankruptcy proceedings (in German: "konkurs") or undergoes any analogous act or proceedings under an applicable foreign law; then, without prejudice to any other right or remedy available to the Supplier, the

Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

19. Trade Control Compliance

19.1 If the Buyer transfers goods (hardware, software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by the Supplier, or works and services (including all kinds of technical support) performed by the Supplier, to a third party, the Buyer shall comply with all applicable national and international (re-) export control regulations.

19.2 If required to enable authorities or the Supplier to conduct export control checks, the Buyer, upon request by the Supplier, shall promptly provide the Supplier with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by the Supplier, as well as any export control restrictions existing.

19.3 The Buyer shall indemnify and hold harmless the Supplier from and against any claim, proceeding, action, fine, loss, cost and/or damages arising out of or relating to any noncompliance with export control regulations by the Buyer, and the Buyer shall compensate the Supplier for all losses and expenses resulting thereof.

20. Non-Waiver

No waiver of any breach of these Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the Contract.

21. Applicable Law and Actions to Recover Damages

The Contract shall be governed by and construed in accordance with German law (the United Nation's Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded), with the exception of the conflict of laws provisions. All disputes arising in connection with the Contract that cannot be solved amicably shall be submitted to the jurisdiction of Göttingen (Germany). Nothing in this Section 21 shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief without provision of security. If any provision of these Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision.

22. Notices

All notices given under the Contract shall be in writing.

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