

# General Terms and Conditions of Sale

## 1. Application, Scope

These General Terms and Conditions for the Sale of Goods shall exclusively apply to the sale and supply of any goods, including goods with associated software, by Synapticon (seller) to its customer (buyer).

The offer, order acknowledgment, or order acceptance of sale of any goods covered herein is conditioned upon the terms contained herein. Any conditional or different terms proposed by the buyer are objected to and will not be binding upon the seller unless expressly accepted in writing by the seller.

These General Terms and Conditions shall govern any future individual contract of sale between the seller and the buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.

These General Terms and Conditions shall also apply if seller unconditionally performs the delivery despite being aware of conflicting or deviating terms and conditions of the buyer. These General Terms and Conditions shall apply both to consumers and merchants, unless to the extent a distinction is made in the relevant clause.

## 2. Orders and Specifications

No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller or the seller's representative within 30 days after submittal.

The quantity, quality and description of and any specification for the goods shall be those set out in the seller's quotation (if accepted by the buyer) or the buyer's order (if accepted by the seller). Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties and any property rights and copyrights in and to illustrations, drawings, calculations or other information contained in such documents shall remain with the seller.

The buyer shall be responsible to the seller for ensuring the accuracy of the terms of any order submitted by the buyer, and for giving the seller any necessary information relating to the order within a sufficient time to enable the seller to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the goods by the seller in accordance with a specification submitted by the buyer, the buyer shall indemnify the seller against all loss, damages, costs and expenses awarded against or incurred by the seller in connection with or paid or agreed to be paid by the seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from the seller's use of the buyer's specification.

The seller reserves the right to make any changes in the specification of the goods which are required to conform to any applicable statutory requirements or, where the goods are to be supplied to the seller's specification, which do not materially affect their quality or performance.

## 3. Price of the Goods

The price of the Goods shall be the seller's quoted price or, where no price has been quoted, the price listed in the seller's published price list current at the date of acceptance of the order. Where the goods are supplied to consumers, prices shall include the applicable VAT; where the goods are supplied to merchants, VAT shall be stated separately.

Except as otherwise stated under the terms of any quotation or in any price list of the seller, and unless otherwise agreed in writing between the buyer and the seller, all prices are given by the seller on an ex works basis, and where the seller agrees to deliver the goods otherwise than at the seller's premises, the buyer shall be liable to pay the seller's charges for transport, packaging and insurance.

## 4. Terms of Payment

The buyer shall pay the price of the Goods within 15 days of delivery. Payment shall be effected by bank transfer only, except if otherwise expressly agreed in writing.

The buyer shall only be entitled to set-off any amounts if buyer's counterclaim is finally adjudicated by a court of competent jurisdiction, undisputed, or expressly acknowledged by seller.

If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the seller, the seller shall at his discretion be entitled to suspend any further deliveries to the buyer; and/or charge the buyer interest on the amount unpaid at the applicable statutory interest rate until payment in full is made.

## 5. Delivery

Delivery of the goods shall be EXW seller's facility (INCOTERMS 2010) and the buyer shall collect the goods at the seller's facility promptly after the seller has notified the buyer that the goods are ready for collection.

If the buyer fails to accept delivery on due date, the seller may arrange for the storage of the goods at the risk and cost of the buyer. If required by the buyer the seller will insure the goods at the cost of the buyer.

## 6. Transfer of Risks

Risk of damage to or loss of the goods shall pass to the buyer at that time when the seller notifies the buyer that the goods are available for collection at seller's facility.

## 7. Retention of Title

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, title to the goods shall not pass to the buyer until the seller has received payment in full of the price of the goods.

Until such time as title to the goods passes to the buyer, the buyer shall hold the goods as the seller's fiduciary agent, and shall keep the goods properly stored, protected and insured.

Until that time, the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the seller for the proceeds of sale or otherwise of the goods (including insurance proceeds), and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties.

If the goods are processed or reshaped by the buyer and if processing is done with goods that seller has no title to, seller shall become co-owner of the goods. The same shall apply if seller's goods are completely reshaped and mixed with other goods.

The seller shall on demand of the buyer release any part of the collateral if the value of the collateral held in favor of the seller exceeds the value of the claims being secured. It is to the seller's decision to release those parts of the collateral suitable for him.

## 8. Warranties and Exclusion Clauses

The buyer shall examine the goods according to the provisions of applicable law.

The seller warrants that all items delivered under this agreement will be free from defects in material and workmanship and conform to the agreed specifications. The seller shall not be liable for the goods being fit for a particular purpose unless otherwise expressly agreed upon in writing.

The above warranty is given by the seller subject to the following conditions:

- The seller shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the buyer;

- The above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to the seller.

- The above warranty does not cover defects in or damage to the goods which are due to improper handling, storage, installation, interfacing, operation outside of design limits or under improper conditions, or improper or unauthorized maintenance, repair or modification, misuse, neglect or any cause other than ordinary commercial application by or on behalf of the buyer. The seller shall not be liable in regard to and the warranty does not cover product samples, as such are provided to the customer for evaluation purposes only.

Subject to Sec. 9, first sentence, below, the above warranty shall be for a period of 1 year from the date of delivery.

Where any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is duly and timely notified to the seller, the seller shall be entitled at the seller's sole discretion to either replace the goods free of charge or repair the goods. If the seller is neither ready nor able to either repair or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

## 9. Limitation of Liability

In all cases of injury of life, body or health, and in case of liability under the German Product Liability Act or other statutory mandatory liability, as well as in case of intent, seller's liability shall be according to applicable law (including the applicable statute of limitation). In all other cases, seller's liability shall be limited to the contractually typical, foreseeable damage. In case of simple negligence, seller is only liable for damages from breach of fundamental contractual obligations.

None of the foregoing does imply any change to the burden of proof according to applicable law.

## 10. Use of Software

Should the use of software be part of the delivered goods, such use of software shall be governed by the seller's End User License Agreement ("EULA").

## 11. Confidentiality

Either party ("Recipient") shall treat all information received from the other party ("Discloser") that is either marked as being, or otherwise generally considered to be, of confidential or proprietary nature ("Confidential Information") strictly confidential and only use such Confidential Information for purposes of performing its obligations under this contract. Without limiting the generality of the foregoing, the Recipient shall not disclose or

transfer any such Confidential Information to any third party without the Discloser's prior written consent. Any disclosure of Confidential Information to Recipient's employees, agents and/or affiliates, or any permitted third party recipient, shall be subject to confidentiality obligations and use restrictions comparable to those contained herein.

Promptly upon request by the Discloser, the Recipient shall return such Confidential Information and all embodiments containing Confidential Information, or, at the Discloser's request, delete and destroy such Confidential Information and embodiments.

The foregoing obligations of confidentiality shall survive any termination and/or expiration of the contract between the seller and the buyer.

**12. Choice of Law; Place of Jurisdiction**

The contract between the seller and the buyer shall be governed by and construed in accordance with German law under exclusion of the UN-Convention on Contracts for the International Sale of Goods (CISG). If the buyer is a merchant, public law entity or special fund under public law, the place of jurisdiction shall be the place of seller's registered seat.

Notwithstanding the foregoing, the seller shall have the right to bring a claim before a court at the buyer's principal place of business or at his discretion before any other court being competent for the place of performance of the obligation in question.