

GENERAL TERMS AND CONDITIONS OF SALE OF HOTTINGER BRÜEL & KJAER AUSTRIA GMBH



Valid as of September 2020

In these General Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions") the term "Contract" means an agreement between Hottinger Brüel & Kjaer Austria GmbH, Lemböckgasse 63/2, 1230 Vienna, Austria, UID-Number: ATU14770700 (hereinafter referred to as the "Supplier") and the Purchaser, which comes about in consequence of an order from the Purchaser for products of the Supplier. These Terms and Conditions will apply to all Contracts, unless they have been modified or excluded with the express written consent of the Supplier. The Purchaser's terms and conditions will not apply to Contracts, regardless of whether or not the Supplier has expressly rejected them. If and to the extent to which any Purchaser's terms and conditions include provisions on matters that are not regulated by these Terms and Conditions, only the relevant dispositive statutory law will apply, and in no event will a provision of the Purchaser apply that deviates therefrom.

1. Offers

- 1.1 Offers as well as prices, specifications and delivery dates given in the Supplier's offers are non-binding and informational in nature. The Supplier is not bound by them until all technical requirements have been agreed on and the Supplier has accepted the Purchaser's order. Offers lose their validity unless they are accepted by the Purchaser within 60 days, or respectively, within any shorter period specified in the relevant offers.
- 1.2 The period of validity of offers in the Supplier's online sales portal can be viewed there (in the special offers area). Despite careful stocking, it may happen that articles sell out more quickly than anticipated. Because of this, the Supplier does not offer any supply guarantee. The general rule is: Only as long as stock lasts. No Contracts shall be deemed concluded with regards to goods that are not available.

2. Orders

- 2.1 All orders must be submitted in good faith. They are binding and must contain exact prices and specifications of quantities as well as the agreed delivery dates. The Supplier will be under no obligation to execute an order until such order has been accepted in writing by the Supplier, regardless of whether or not the order was submitted in response to an offer from the Supplier. Orders placed by the customer via the Supplier's online sales portal ("HBKshop") constitute an offer to enter into a Contract. The offer must first be accepted by the Supplier transmitting an electronic order confirmation to the Purchaser. The written order confirmation determines the scope of the Supplier's deliveries and services. The decision whether to accept an order is at the Supplier's discretion. The place of performance for deliveries and payments (also including exchange and checks) is Vienna. A confirmed order will be deemed accepted by the Purchaser, even if the order confirmation deviates from the original order unless the Purchaser clarifies within 14 days after the Supplier has transmitted the order confirmation that the Purchaser is not in agreement with the terms and conditions of the order confirmation. In every case the terms and conditions in the Supplier's order confirmation will apply to the order.
- 2.2 When an order is placed through the HBKshop, the ordering process comprises a total of 3 steps: In the first step the Purchaser registers or, if it is already registered, logs in under its user account. In the second step the Purchaser selects the desired goods and places them in the shopping cart. In the third step the Purchaser checks his or her order information (billing and delivery address, payment method, order) to ensure correctness. At the end of the process the Purchaser can send off the order to the Supplier by clicking the "Order now" button. After the order has been sent off, the Purchaser has the opportunity to print out the order. Consumers are excluded from using the HBKshop.
- 2.3 These Terms and Conditions apply only to entrepreneurs (see § 1 of KSchG [Österreichisches Konsumentenschutzgesetz/Austrian Consumer Protection Law]).
- 2.4 The Supplier's employees are not authorized to make supplementary agreements and assurances which go beyond the content of the Contract that has been agreed on. The content of the Supplier's order confirmation shall determine the Supplier's performance obligation.

3. Prices and taxes

Prices are ex works, including loading at the Supplier's location but excluding packaging, packaging fees, insurance and taxes, in particular VAT, and transport costs. At the Supplier's discretion, these costs and charges may be figured into the sales price or may be invoiced separately and paid by the Purchaser

4. Shipping and delivery, delay and failure to perform

- 4.1 Deliveries shall be made FCA (Free Carrier), Hottinger Brüel & Kjaer Austria GmbH, Lemböckgasse 63/2, A-1230 Vienna, Incoterms 2010. Unless the Purchaser provides specific written instructions otherwise with its order, the Supplier will arrange freight of the goods via an independent forwarder. Freight of the goods shall be at the Purchaser's risk and the Purchaser shall pay to the Supplier the shipping costs (based on the net order value).
- 4.2 The risk of loss or damage to the goods shall be transferred to the Purchaser as soon as the goods have been loaded onto the means of transport provided (and cleared for export if applicable). The same will apply in case of partial deliveries or if the Supplier has also accepted to provide other services (such as shipping or assembly).
- 4.3 In case of delay and failure to perform, the Supplier will only be liable if an extension set by the Purchaser has expired without the Supplier having met its obligations. The Supplier's obligation to pay compensation to the Purchaser due to delay or failure to perform is limited to 0.5% for each entire week in which there was a delay, but in any case to no more than 5% of the part of the delivery that could, due to delay or failure to perform, not be used timely or in accordance with the Contract. This limit shall not apply if the Supplier deliberately caused the delay or failure to perform.
- 4.4 The Supplier reserves the right to make partial deliveries and to invoice each partial delivery separately.
- 4.5 In the event of partial failure to perform, the Purchaser may rescind the Contract only if it can demonstrate that partial performance is of no interest to the Purchaser. In all other cases the Purchaser can only claim an appropriate reduction in the purchase price.
- 4.6 If neither party is responsible for the failure to perform, the Supplier is entitled to partial compensation commensurate with the work performed. If performance should become impossible after the Purchaser has refused to accept the delivery of the goods, or if the Purchaser is responsible for the failure to perform, then the Purchaser will still be responsible for payment of the purchase price.
- 4.7 All other claims are subject to the provisions of sections 5, 10 and 12.

5. Unforeseen events

- 5.1 The Supplier shall not be liable for delay or failure to perform, regardless of whether they occur in regard to the entire order or parts thereof, if such delay or failure is due to an unforeseen event beyond the control of the Supplier, such as, without limitation, war, failure of or delays in means of transportation, governmental action, judicial acts, labor disputes, accident, fire, explosion, storm or other acts of force majeure, lack of workforces, fuel, raw materials or machines or technical failure, and provided that the Supplier has exercised normal caution to avoid such delays or failures to perform. This provision also applies if an unforeseen event as described above affects a sub-contractor of the Supplier. If such an unforeseen event occurs, the Supplier shall be entitled to divide the produced goods among its customers.
- 5.2 If the Supplier delays the delivery at the request of the Purchaser or if delivery is delayed due to circumstances beyond the Supplier's control, the Purchaser shall be invoiced for storage costs incurred beginning with the month after notification that the products were ready for delivery; in the event of storage at the Supplier's facility, at least 0.5% of the amount invoiced for each month of storage. However, the Supplier is entitled to dispose of such products through other means after it has set a reasonable time, to deliver to the Purchaser at a later appropriate time, to withdraw from the Contract or to demand compensation for damages.

6. Transfer of risk and transfer of ownership

- 6.1 The risk of loss of or damage to the products shall pass to the Purchaser when the products leave the Supplier's or its sub-contractor's delivery outlet. The same shall apply even if delivery is being made in installments or the Supplier has agreed to provide other service such as delivery or transport, installation or documentation. The Purchaser must take out its own transport insurance policy. If delivery is delayed for reasons for which the Purchaser is responsible, the risk of loss or damage shall pass to the Purchaser at the time when the Purchaser is notified that the products are ready for delivery.
- 6.2 Notwithstanding the transfer of risk in accordance with section 6.1, ownership of the products shall not be transferred to the Purchaser until the Supplier's receivables and claims (main and accessory) in regards to the products have been settled in full. This retention of title will serve also as a surety for all remaining receivables from the previous business relation until full repayment of all claims. The Purchaser is authorized to use the products in normal

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business operations or to resell them, but is not entitled to transfer or pledge the products to third parties before complete compensation of all receivables cited above. As an additional surety for all of the Supplier's receivables, the Purchaser assigns to the Supplier in, upon entering into a Contract based on these Terms and Conditions and until all of the Purchaser's receivables have been settled in full, in advance all claims related to such products against the Purchaser's customers arising from the resale of products delivered by the Supplier to such customers or from any other legal grounds.

6.3 Until ownership of the products has been transferred:

- (a) The Purchaser must insure the products against theft, destruction, damage by fire or water and any other type of damage. If the Purchaser does not demonstrate that the products have been insured, the Supplier is entitled to insure the products at the Purchaser's expense.
- (b) The products must be kept in good, proper and fully functional condition.
- (c) The Purchaser must ensure that the products are not subject to any mortgage, encumbrance, lien or other security right of any nature whatsoever, regardless of how such a right is being created or comes into being. The Purchaser is not entitled to pledge the products as collateral security or to assign them. The Purchaser must refrain from all other actions that could impair the ownership of the products. If the products that have not been transferred to the Purchaser's ownership are pledged or seized or if they are disposed of or accessed in any manner by a third party, the Purchaser must notify the Supplier immediately.

6.4 The Supplier is entitled to credit, at its sole discretion, at any time payments of the Purchaser against any outstanding debts of the Purchaser, regardless of any classifications or provisions made by the Purchaser.

6.5 Until ownership of the products is transferred to the Purchaser, the Supplier will be entitled to refuse to make deliveries if the Purchaser becomes unable to make payments, if bankruptcy proceedings have been initiated against the Purchaser, if bankruptcy proceedings have been rejected due to a lack of insolvency assets, or (if the Purchaser is a corporation) if the Purchaser goes into liquidation or is subject to dissolution or liquidation in accordance with any other procedure available under foreign law.

6.6 If the Purchaser is in breach of Contract, especially if the Purchaser is in default with payments, the Supplier may demand the products be returned. Reclaiming the products does not constitute a cancellation of the relevant Contract.

6.7 If products that have not yet been transferred to the Purchaser's ownership are handled or processed or mingled with other goods, the Supplier shall acquire ownership in the new goods produced by such handling, processing or mingling, proportionate to the value of the products with retained title which is included in the value of the new goods at the time of the handling, processing or mingling.

7. Terms and conditions of payment

7.1 Each delivery represents an independent transaction. An invoice shall be issued to the Purchaser on the day of delivery. Unless anything to the contrary is stated on the Supplier's invoice, the terms of payment shall be 30 (thirty) days from the date of invoice without any deductions. If the Purchaser does not pay after an appropriate extension set by the Supplier has expired, the Purchaser must pay interest on the outstanding amount in accordance with § 1333 (2) of the Austrian Civil Code, however, at least 10% or the interest rate which the Supplier would have to pay to its bank at the relevant time for an overdraft loan, whatever rate is higher. This shall not affect the Supplier's right to compensation for additional damage.

7.2 If the Purchaser has provided to the Supplier an email address, the Supplier shall also be entitled to transmit its invoices to the Purchaser exclusively in electronic format to this address, provided such electronic invoices meet all legal requirements.

7.3 The Purchaser will only have a right to set-off, or to withhold or refuse payment if its counterclaims are adjudicated or uncontested.

7.4 If the Purchaser has not paid according to the Contract, the Supplier can set an appropriate extension and, if the Purchaser has still failed to pay prior to expiry of the extension, elect either to insist on further fulfillment or to rescind the Contract, but in either case to demand compensation.

8. Products

The Supplier shall be entitled to modify specifications of products, provided the change does not negatively affect the performance of products to be delivered under a Contract or unduly affect the Purchaser's interests in any other manner. Under the same circumstances the Supplier may use a suitable replacement for materials that cannot be obtained from sub-suppliers due to priorities or non-availability of materials.

9. Software

The Supplier has and retains at all times the intellectual property rights to all software, licenses, installed programming routines and corresponding documentation that are delivered by the Supplier for use with the products, as well as to all copies of the aforesaid prepared by the Purchaser (referred to collectively hereinafter as "Software"). The Supplier grants the Purchaser a non-exclusive and non-transferable license for the use of such software, exclusively in connection with the products. The Purchaser must take all appropriate steps to protect the Supplier's rights to the software and must not transfer the software to third parties or make it available or sub-license it in any other manner.

10. Limited warranty

10.1 The Supplier shall be liable to the Purchaser for a period of two years from the day of delivery for all defects of the products in material and workmanship during normal use, with the exception that the Supplier shall not be liable for uninterrupted and error-free operation of software or for correction of all program errors. In the event that the Supplier offers the Purchaser a warranty for delivered products by means of a specific written statement, all other warranty rights of the Purchaser shall be excluded. All information regarding quality and quantities as well as quality samples of products are only binding if the Supplier has explicitly warranted this. The Purchaser shall be responsible for ensuring that the products are suitable for its use and that such use is lawful. The Purchaser shall remain obligated to pay the agreed price even if it is demonstrated that the use of the products is not feasible or possible. Provided that the Purchaser notifies the Supplier in writing without delay of a defect in the products after such defect has been discovered, or, if a defect was not detectable during an inspection, within six months after delivery at the latest, and provided that the Supplier determines in a follow-up check that there is a defect in the materials or workmanship of the products (i.e. a defect that existed before the transfer of risk to the Purchaser), the Supplier shall at its discretion either repair or replace the defective products. The right to a reduction in price or redhibitory action is excluded. The Supplier shall be granted a reasonable amount of time for the repairs or replacement of defective products. The Supplier's obligations under warranty or liability for compensation for damage shall in any case be time-barred after two years from delivery, regardless of whether defects are detectable or hidden at the time of delivery. If the customer delays acceptance, the warranty period begins with this delay in acceptance. The Purchaser must assert its rights claims and rights under the warranty by way of legal action or plea in objection within the warranty period. Otherwise the Purchaser's warranty rights are excluded. Out-of-court notification of a defect shall not extend the period specified above for enforcement of warranty rights by way of objection. The place of performance for warranty claims is the Supplier's head-office in Vienna.

10.2 The Purchaser must inspect each delivery without delay and inform the Supplier in writing within 2 weeks after delivery or (if the Purchaser is an enterprise and is acting in the context of its business operations) within one week after delivery, in either case with an accurate description, of each defect discovered during said inspection. Neglecting to notify the Supplier of such defects shall render void all claims of the Purchaser for warranty and compensation for damages with regards to such defects that were detectable during such an inspection.

10.3 The Purchaser shall be entitled to withdraw from the Contract if the Supplier does not repair or replace the products after an appropriate extension set by the Purchaser has expired with no avail. The same applies if repair or replacement is impossible, or the Supplier is not capable of repairing or replacing the products.

10.4 The Supplier offers no warranty for products to which the Purchaser has made changes or repairs without the Supplier's approval. The warranty does not cover defects arising as a result of failure to comply with the installation and operating instructions, due to improper non-normal use of the products and/or through external influences. Regardless of these factors, compensation for damage of a purely financial nature, consequential damages, indirect damages, losses or lost profits shall be excluded in all cases.

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10.5 If the Purchaser is in default with any part of the purchase price or any other payment owed to the Supplier under the Contract, the Supplier shall be released from all obligations to provide warranty or compensate for damages for as long as the Purchaser remains in default.

11. Patent rights, copyright and trademarks

11.1 The Supplier shall support the Purchaser in the defense of all complaints and legal proceedings brought against the Purchaser to the extent that such complaints or proceedings are based on the assertion that products manufactured by the Supplier infringe a European, German or US patent, and provided that the Purchaser notifies the Supplier in writing without delay of such assertions, makes complete and comprehensive information available to the Supplier and provides assistance for supporting the Purchaser against such a claim. If the products directly infringe a European, German or US American patent in their construction or design, or if there is a risk in the Supplier's view that the products might infringe such a patent, the Supplier shall be entitled at its discretion either (a) to acquire the right to be able to continue using the products without any infringement of rights or (b) to replace or appropriately modify the affected products with suitable products that do not infringe any patent or (c) to refund the purchase price to the Purchaser minus a depreciation in value of 20% (twenty per cent) for each year since delivery in exchange for return of the products to the Supplier. The Supplier shall not be liable for costs incurred by the Purchaser. The Supplier shall not be obligated to provide support. The Supplier shall not be liable for costs and compensation for damages if the reason for the infringement of a third-party patent is that the products have been manufactured in accordance with the Purchaser's specifications, or a combination with products that were not produced or developed by the Supplier, or changes to the products by the Purchaser after delivery that were not approved in writing by the Supplier. In addition, the Supplier shall not be obligated to provide warranty or compensate for damages to the Purchaser stemming from alleged patent or copyright violations.

11.2 The entire content of the Supplier's website, including texts, graphics, photos, pictures, animations, sounds, illustrations and software is the property of the Supplier or of companies, licensees and/or content providers associated with the Supplier. All of this content is protected by copyrights and other rights. It may only be used with the Supplier's explicit consent. Unless otherwise indicated, all trademarks used on the website are the trademarks of the Supplier or of the Supplier's affiliated companies. They may not be used without the Supplier's prior written consent.

12. Limitation and exclusion of liability

12.1 With the exception of the warranty obligations under Section 10 of these Terms and Conditions, the Supplier shall not be liable for defects, failure to perform, violation of accessory obligations, violation of precontractual obligations, warranty, compensation for damage, tort or any other reason. This exclusion of liability shall not apply if the Supplier or a third party for whose actions the Supplier is responsible acted willfully and knowingly. In any case the Supplier's liability shall be limited in terms of value to the purchase price of the delivered product. This shall not affect the validity of mandatory legal provisions.

12.2 If the products or software are not operated properly or are used negligently, all liability of the Supplier under warranty, or for compensation for damages or on any other legal basis shall be excluded.

13. Protected information

13.1 The Purchaser agrees to take the necessary precautions to ensure that protected information as defined below is protected within the Purchaser's sphere and also that there shall be suitable binding agreements for working and service relationships between the Purchaser and third parties. The Purchaser agrees to use protected information only to the extent required for the use of the products. The Purchaser shall not disclose protected information to third parties and shall not transfer any documents or copies thereof containing protected information to third parties unless authorized in writing by the Supplier to do so. This section 13 shall survive termination of the Contract. If the Purchaser violates this obligation regarding protected information, the Purchaser will indemnify the Supplier in full from and against any and all third party claims.

13.2 Protected information in terms of the preceding paragraph means information or data of the Supplier or a third party which the Supplier has agreed to handle confidentially and which has been given to the Purchaser in written, graphical or machine-readable format and identified as protected information or as confidential. Copies or information and data in alternative formats are considered to be protected information if at least one of the copies or

alternative formats is identified as protected or confidential. Non-protected information is information which the Purchaser can demonstrate was already in the Purchaser's possession before it was received from the Supplier or which is generally accessible and is or already was general knowledge in the industry sector, provided this did not happen as a result of misconduct on the part of the Purchaser.

14. Postponements and cancellations

Orders accepted by the Supplier may be canceled or postponed by the Purchaser only with the Supplier's written approval if the Purchaser is an entrepreneur and is acting in the context of its business operations, and if the Purchaser agrees to pay a reasonable cancellation or postponement fee to the Supplier. The Supplier has the right to cancel accepted orders without contractual penalty or payment:

- (a) if the Purchaser is in default with payment to the Supplier according to this Contract or another contract that is part of an ongoing business relationship,
- (b) if an action or omission on the part of the Purchaser delays the Supplier's performance, provided an extension set by the Supplier has expired without avail,
- (c) if the Purchaser has violated a provision of these Terms and Conditions and has not remedied or compensated for the detriment resulting from said violation within a reasonable period set by the Supplier, or if the violation is so fundamental that the Supplier can no longer be reasonably expected to adhere to the Contract or
- (d) if the Purchaser does not disclose during the course of the contractual relationship that it has lost its creditworthiness. In the event of such a cancellation, the Supplier shall be entitled to compensation in the form of a reasonable and customary cancellation fee.

15. Waiver of rights and legal remedies

Failure to enforce claims of the Supplier in the event of a violation of these Terms and Conditions by the Purchaser shall not constitute a waiver of rights regarding earlier or later violations against similar or other provisions, or an amendment to the Contract. All of the Supplier's rights and legal remedies are cumulative and not exclusive. They can be exercised individually or in parallel.

16. Applicable law and legal venue

Austrian law will apply, however to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the provisions of international private law, to all litigation arising from a contractual relationship subject to these Terms and Conditions. The exclusive legal venue for all litigation arising from a contractual relationship subject to these Terms and Conditions shall be the competent court for the first district of Vienna. If a provision of these Terms and Conditions is invalid, this shall not affect the validity of the other provisions.

17. Legal succession

This Contract is binding on and entitles the parties and their respective legal representatives, successors and licensed assignees. The contract is for the Purchaser personally. The Purchaser may not assign its rights under the Contract or delegate obligations under the Contract in whole or in part without the Supplier's prior written consent.

18. Supplementary agreements

There are no oral or written supplementary agreements in addition to these Terms and Conditions. Any changes must be made in writing. The same applies to a waiver of the requirement for written format.

19. Communication

All communication related to a Contract which is subject to these Terms and Conditions must be in writing. If the Purchaser's contact information changes, especially its name, address or email address, the Purchaser agrees to communicate the change in writing without delay, by fax or email or by changing the information in the customer area of the HBKshop on the Internet. If the Purchaser omits this information or provides incorrect information from the beginning, especially an incorrect e-mail address, the Supplier can withdraw from the Contract if a Contract is in force. A message from the Supplier is also legally valid when delivered to the last known address of the Purchaser. The Purchaser is responsible for ensuring that the e-mail account indicated by the Purchaser can be reached as of the time the information is given and reception of messages will not be interrupted due to forwarding, closed account or

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full mail box. Messages to the last address or e-mail address given by the Purchaser are considered to be delivered if the Purchaser does not give notification of the change in address or e-mail address. If the Purchaser has violated the obligations to maintain contact data described above, the Purchaser must compensate the Supplier for resulting damage.

20. Compliance with laws

The Purchaser agrees to comply with all applicable national, European and international anti-terrorism provisions and export control regulations. The Purchaser further agrees to comply with US Export Administration Regulations (EAR) as well as sanctions (OFAC) relating to goods or technical data to which the US regulations apply. If approval by the respective responsible authority is required based on the provisions noted above, the Purchaser shall be required to apply for them independently at its own expense and to inform the Supplier of the process.

21. Online invoice

The Purchaser agrees expressly and irrevocably that invoices for goods purchased in the HBKshop shall be transmitted only online (online invoice) in a form that complies with the requirements of § 11 paragraph 2 of UStG (Austrian VAT act).

The Supplier reserves the right, in the event that an online invoice is not delivered or cannot be delivered to the Purchaser to choose a different form of transmission to send it again (for example by mail).

The invoice shall be considered delivered as soon as the Purchaser is able to access it or become aware of it under ordinary circumstances. All periods of time based on receipt of invoice start to run at this point, for example the period of time to submit complaints.

22. Severability clause

If a provision in these General Terms and Conditions of Sale should be or become invalid, that shall not affect the validity of the other provisions. Invalid provisions shall be replaced by legally admissible provisions that come closest to the financial objective intended by the parties.