



## General Terms and Conditions

### § 1 General

- (1) The Terms and Conditions set out below shall form part of the agreement concluded with MICRODYN-NADIR GmbH, Kasteler Straße 45, 65203 Wiesbaden, Germany.
- (2) These General Terms and Conditions of Sale shall apply in accordance with the most recent version and to all subsequent transactions without any need of explicit reference thereto or agreement thereon at the conclusion of such transaction.
- (3) We hereby object to any counter confirmation, counter offer or other reference by the buyer to its General Terms and Conditions; any dissenting terms and conditions of the buyer shall only apply if we have confirmed the same in writing.
- (4) The buyer may not assign any claims arising from transactions with us to a third party without our written consent.

### § 2 Quotations; Bidding Documents and Orders

- (1) Our quotations shall not be binding; in particular with reference to quantities, price and delivery time.
- (2) Orders placed by the buyer shall not be regarded as accepted until we have confirmed these in writing by mail, fax or email. Such confirmations have to be approved by both parties. Transmission confirmation shall be deemed to be the acknowledgement of receipt. The same applies to any amendments to the contract. If we should fail to confirm an agreement in writing which we have entered into verbally in person or via a telephone conversation, then the invoice issued subsequently shall be regarded as order confirmation.
- (3) 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 specifications, sales documents, quotations shall be strictly confidential and must not be made available to third parties.
- (4) Technical specifications and illustrations of the delivery item in quotations, brochures and other informational materials shall not constitute warranted characteristics as defined by law.
- (5) The buyer must ensure the accuracy of the terms of any order submitted by the buyer, and the buyer shall further be responsible to provide any necessary and required information to the seller relating to the ordered goods within an adequate period of time in order to enable the

seller to fulfill the order according to contract.

- (6) If the goods are to be manufactured, converted or adapted by the seller in accordance with a specification submitted by the buyer, the buyer shall indemnify the seller against all loss, damages, costs and other expenses held against or incurred by the seller in connection with any settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual rights of any other person which results from the seller's use of the buyer's specification.

### § 3 Prices

- (1) The price of the goods shall be the seller's quoted price.
- (2) We reserve the right, with the precondition of notifying the buyer in a timely manner and prior to the actual delivery of goods, to increase the price of the goods if necessary to reflect any external price developments resulting from factors beyond our control (such as foreign exchange fluctuation, currency regulations, alteration of duties, significant increase in cost of material or manufacturing costs) or resulting from any change in suppliers.
- (3) Unless stated differently in the offer or quotation or unless agreed otherwise in writing between the seller and the buyer, all prices given are based on the Incoterm EXW (Ex-works; Incoterms 2010). If the seller agrees to deliver the goods to any other location other than the seller's premises, the buyer shall be liable to cover any charges for transport, packaging and insurance.
- (4) The quoted prices are exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay if required by law.

### § 4 Shipment; Delivery

- (1) Unless otherwise agreed, the delivery shall be EXW (Incoterms 2010). Notwithstanding a differing provision, our contractual obligations are deemed to be fulfilled as soon as the goods have been handed over to the forwarding agent or carrier. The goods shall be transported uninsured and in any event at the risk of the buyer. This shall also apply in cases of any delivery free of charge and regardless of which means of transport shall be used. Any cargo insurance shall be provided only upon express demand of the buyer. Any costs arising therefrom shall be at the expense of the buyer only.
- (2) The selection of the place of dispatch and the transport route as well as the means of transportation shall, in the



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absence of any written agreement dictating otherwise, be subject to the seller's reasonable discretion and be without any liability for the cheapest and fastest transport.

- (3) If the buyer provides the means of transportation, he shall be responsible to ensure a timely availability. Possible delays need to be communicated to the seller in due time. Any costs arising therefrom shall be at the expense of the buyer.
- (4) The seller shall have the right to split the order into reasonable partial deliveries.
- (5) The seller's delivery obligation shall at all times be with reservations to timely and orderly receipt of goods and material from the seller's suppliers.
- (6) Unless agreed explicitly otherwise in writing, any indicated time of delivery or unloading shall be non-binding.
- (7) Any failure to deliver as a result of force majeure or other unforeseen incidents beyond the seller's responsibility including, without limitation, disruption of operations, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities, new embargos for prohibition on deliveries and reservation of a timely allocation of the seller's own supplies in accordance with subsection (5) above shall, for their duration and in accordance with their impact, relieve the seller from the obligation to comply with any agreed delivery and unloading times. These shall also entitle the seller to withdraw from the contract without resulting in any compensation or other claims of the buyer.
- (8) If any agreed time of delivery or unloading shall be exceeded without any incident in accordance with subsection (7) above, then the buyer must grant the seller a reasonable respite of minimum two weeks. If the seller shall fail to deliver within this grace period, then the buyer shall have no right to seek compensation for breach of contract or default unless in cases of wilful misconduct or gross negligence of the seller's part.

### § 5 Default of Acceptance

- (1) In case of default of acceptance or any other violation of obligation caused by the buyer, we are entitled to claim for compensation of the loss occurred as well as for any other potential additional expenditure.
- (2) The risk of accidental perishing or deterioration will be passed over to the contractual partner at the time of default of acceptance.

### § 6 Consequences of default

If the buyer fails to accept the agreed quantity of goods delivered at the agreed time and place even though the goods meet the specifications, the buyer is obliged to pay a lump sum compensation of 5% of the agreed price. This does not affect further claims of MICRODYN-NADIR.

### § 7 Duty to Inspection and Objection

- (1) Upon delivery at the agreed destination or (in the event of collection by the customer) upon taking possession, the buyer shall immediately check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note and/or the acknowledgement of receipt/warehouse removal note and conduct a random quality check.
- (2) In case of a notice of defect the buyer shall comply with the following procedures and deadlines:
  - a. The notification shall be made immediately but no later than the end of the working day on which the goods have been delivered to the agreed destination or on which possession of the goods has been taken. The detailed notice shall be sent to the seller within the aforementioned deadlines in writing, by telegraph, telex or fax. Any notice by telephone conversation shall not be accepted. Any notice to sales representatives, commercial agents or agents shall not be valid.
  - b. The notice must clearly specify the kind and scope of the alleged defect.
  - c. The buyer is obliged to make the objected goods either available for inspection, which can be performed either by the seller, the seller's supplier or any appointed expert at the place of inspection; or, upon request of the seller, to send them back to the seller for inspection bearing the costs and risk.
- (3) Any good for which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.

### § 8 Warranty; Limitation of Liability

- (1) The seller assures all items delivered are free from defects in material and workmanship and in conformity with the applicable specifications and - if agreed upon - the buyer's specifications.



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- (2) The seller shall not be liable for the goods being applicable for a particular purpose unless otherwise agreed upon.
- (3) The liability is subject to restriction according to the following conditions:
- The seller shall not be liable for any defects of the goods arising from any design or specification provided by the buyer;
  - The seller shall not be liable for any defects if the total price due for the goods has not been paid by the due date and the date of the imposition of the objection or the demand for any warranty;
  - The seller's responsibility does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given to the seller by the manufacturer;
  - Any liability resulting from warranties as well as damages and losses shall be limited to 80% of the agreed net delivery price of every single contract.
- (4) This warranty does not cover product defects caused by incorrect installation or maintenance, misuse, negligence or any other cause other than ordinary commercial application.
- (5) Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract by the seller. The same applies if the seller may be held responsible for the breach of any further essential contractual obligation.
- (6) Should a valid claim based on a product defect be made and is communicated to the seller in due form and time, then the seller shall be entitled at his sole discretion to either perform compensation delivery free of charge or removal of defects. If the seller is not prepared or capable to perform compensation delivery or removal of defects, then the buyer shall be entitled at his sole discretion to claim either redhibitory action (rescission of the contract) or abatement of the purchase price.
- (7) Liability for indirect consequential damages, system or production failures and losses of profit is excluded. Additional claims for damages, independent from their legal basis, are excluded, unless the defect is due to intent or gross negligence.
- (8) The buyer shall bear the risk for all deliveries, also for returns – with the exception of returns due to deficiency of the goods – even if delivery free of charge, foa/fca/clf,

has been agreed upon.

- (9) The warranty period for filter modules, membranes, replacement parts and auxiliary equipment shall be 4000 hours of operation with a maximum of 12 months as of delivery, in case of agreed installation as of completed installation, in case of agreed trial runs as of the time these have been carried out without interceptions. Product related warranty periods are recorded in the corresponding handling instructions and can be checked there. The afore-mentioned handling instructions can be found in the download area of the MICRODYN-NADIR homepage [www.microdyn-nadir.com](http://www.microdyn-nadir.com)). The warranty is valid only in case of use compliant with the manufacturer's specifications. Any defects occurring within the aforementioned warranty period must be notified immediately and not later than within one month of their discovery. In addition to his auxiliary rights, the buyer may demand subsequent improvement of the goods. Any defective goods may only be returned upon the explicit approval of the seller. In all other respects Sections 439, 440 BGB (German Civil Code) shall apply.
- (10) In the event the products covered by the contract are, due to their properties and condition or their designated purpose of use, subject to a shorter lifetime than the aforementioned hours of operation, warranty is debared, unless otherwise agreed individually and in writing.

### § 9 Force Majeure

- (1) Any disruptions of operations, exceedance of delivery times or delivery failures of pre-suppliers, shortfall of energy and raw materials, traffic disruptions, insofar such events shall not have been foreseeable, as well as strikes, lockouts, official decrees or cases of force majeure shall release the affected party from its delivery or acceptance obligation for the duration of the disruption and to the extent of its impact. Should delivery and/or acceptance be delayed by more than one month as a result of the disruptions, the seller, with the exclusion of all other claims, shall be entitled to withdraw from the contract with respect to the volume affected by the disruption in delivery and/or acceptance.
- (2) The seller shall be entitled to partial deliveries within a reasonable scope.

### § 10 Payment

- (1) The seller's purchase price claims are net cash amounts and payable without any deductions immediately upon receipt of the invoice unless other payment terms have been agreed upon in writing.



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- (2) The seller shall accept promissory notes and checks only upon specific arrangement and only in lieu of payment. Any fees for discount bills or promissory notes shall be at the expense of the buyer and payable immediately.
- (3) If the invoice shall not have been settled within 15 calendar days after the invoice date or at another due date that has been specified, then the seller shall, without a specific warning notice, have the right to recover default interest in a proven amount but in any event at least an amount equaling 8% above the base rate of the European Central Bank.
- (4) If the buyer's business shall be operated beyond the ordinary course of business which shall include, without limitation to, acts of seizure or protests regarding promissory notes or checks or delays in or suspension of payments or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with the German Insolvency Act shall have been petitioned, then the seller shall have the right to declare all its claims arising from the business relationship as immediately due and payable, even if the seller shall have accepted promissory notes or checks. The same shall apply if the buyer shall be in payment delay towards the seller or other circumstances are emerging which give rise to doubts about his creditworthiness. Moreover, the seller may in such event demand prepayments or security deposits or rescind the Agreement.
- (5) The buyer shall only have the right to enforce set-off, retention or reduction if the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by the seller. The buyer's right of retention shall only come into force in case his counterclaim is based on the same contractual relationship.

### § 11 Retention of Title

- (1) The seller shall retain full title of the goods that have been delivered until the buyer has settled all claims arising from the business relationship which shall include any account balance receivables arising from current account and claims from refinancing or reverse promissory notes.
- (2) The buyer shall have the right to sell the goods delivered by the seller within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in § 9 (4) below. Moreover, the seller may withdraw the sales authority of the buyer through written notice if he shall be in breach of any obligation toward the seller and shall in particular be in payment delay or we shall become aware of other

circumstances that give rise to doubts about his creditworthiness.

- (3) The buyer's right to process the goods delivered shall also be subject to the limitations set out in subsection (2) above. The buyer shall not acquire title to the fully or partly processed goods; the processing shall be free of charge only for the seller's benefit as manufacturer in the sense of § 950 of the German Civil Code. If the seller should, for whatever reason, lose its rights under the retention of title, then it is hereby agreed between the seller and the buyer that the seller shall acquire title upon processing of the goods and the buyer shall remain custodian of the goods which shall be free of charge.
- (4) If the goods of which the seller has retained title shall be inseparably assembled or mixed with goods that are third party property, then the seller shall acquire co-title in the new goods or the mixed stock. The proportion of title shall result from the proportion of the invoice value of the goods delivered by the seller under retention of title and the invoice value of the other goods.
- (5) Goods in which the seller shall acquire sole or co-title in accordance with subsection (3) and (4) shall, the same as with regard to the goods delivered under retention of title according to subsection (1) above, be regarded as goods delivered under retention of title for the purposes of the following paragraphs.
- (6) The buyer hereby assigns to the seller all claims arising from the resale of the goods delivered under retention of title. Such claims shall also include claims against the bank which, within the scope of such sale, shall have issued or confirmed a letter of credit to the benefit of the buyer (= reseller). The seller hereby accepts such assignment. If the goods delivered under retention of title shall be a processed good or a mixed stock, where, in addition to the goods delivered by the seller, only such goods exist that are either the buyer's property or a third party property as a result of a (simple) retention of title, then the buyer shall assign all claims arising from the resale. In the other case, i. e. in the event of a conflict between pre-assignment claims by other suppliers, the seller shall be entitled to receive any resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of the seller's goods to the invoice value of the other processed or mixed goods.
- (7) Where the seller's claims shall undoubtedly be secured through the assignment and retention by more than 125%, any surplus of receivables and/or goods delivered under retention of title shall, upon demand of the buyer, be released in accordance with the seller's choice.



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- (8) The buyer shall be authorized to collect any receivables arising from the resale of goods. The existence of such authority shall cease in the event that there shall no longer be an ordinary course of business. Moreover, the seller may withdraw the buyer's collection authorization, if it shall be in breach of any obligation owed to the seller and shall in particular be in payment delay or the seller shall become aware of other circumstances that give rise to doubts about his creditworthiness. If the above collection authorization shall cease to exist or be withdrawn by the seller, then the buyer shall upon the seller's demand immediately specify to the seller its debtors in the claims assigned and provide the seller with all information and documentation necessary for collection.
- (9) In the event of any third party action against the goods delivered under retention of title or any receivables assigned to the seller, the buyer shall notify such party of the seller's property/rights and immediately inform the seller about such action. The buyer shall bear the costs of any intervention. In case of a resale, any further processing or mixing the seller shall have the right to receive complete information at any point in time regarding the process in favor of the seller.
- (10) If the buyer shall be in breach of contract, in particular in payment delay, then he shall, upon the seller's demand, immediately return to the seller all goods delivered under retention of title and assign to the seller any repossession claims against any third party in conjunction with such goods. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title shall not be regarded as a rescission of this Agreement.
- (11) In the cases referred to in § 8 (4) above, the buyer must, upon request, provide the seller with all information regarding the claims arising from the resale that have been assigned to the seller in accordance with § 9 (6) above including information about its debtors. Following such information, the seller shall have the right to disclose the assignment as considered appropriate.

### § 12 Cancellation

- (1) In case the buyer commits a profound breach of contract we have the right to withdraw from the contract without previous notice.
- (2) The contractual partner shall only be entitled to withdraw from the contract in case of non-performance, delayed performance or any other non-contractual performance and only in the event we can be held responsible for the aforementioned impairment of

performance and if the given reasonable respite has expired without result.

### § 13 Trademarks

Trademarks may only be used in connection with the products repackaged or produced by the buyer with the express written approval and in compliance with the specifications of the trademark owner.

### § 14 Governing Law, Arbitration, Final Provisions

- (1) All disputes arising in connection with the contract shall be finally settled under the Rules of Arbitration of the Chamber of Commerce in Frankfurt am Main. The number of arbitrators is 1 (one). The language of the arbitral proceedings is German for disputes concerning national transactions and English for disputes concerning international transactions. The arbitrator must have command of the language of arbitration. The place of arbitration is Frankfurt am Main. In addition, respectively in the event of a missing or an invalid arbitration agreement the regional court Frankfurt am Main ("Landgericht") – Chamber for commercial affairs ("Kammer für Handelssachen") – shall settle all disputes arising in connection with the contract or its validity.
- (2) The laws of the Federal Republic of Germany shall apply. The arbitration court shall apply this substantive law. Regardless of the rules of the §§ 305 – 310 of the German Civil Code (BGB), the arbitration court shall be entitled of ascribing the clause to an appropriate content, in the case of the breach of any contract clause against § 307 BGB. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods.
- (3) The invalidity of single provisions of these General Terms and Conditions of Sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.
- (4) The seller shall store data of the buyer in accordance with the German Data Protection Act.

**MICRODYN-NADIR GmbH**  
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