

GENERAL TERMS AND CONDITIONS OF TRADE OF SCIENION AG

§ 1. General

1. The following provisions regulate exclusively the contractual relations between SCIENION AG (hereinafter referred to as "SCIENION") and other businesses for all supplies of goods and any other services rendered. Other businesses means natural persons or corporate bodies or partnerships having legal capacity which trade in a commercial or freelance capacity and with whom trade relations are established (hereinafter referred to as "Customers").

2. By entering into the contract, the Customer thereby accepts the instant terms and conditions of trade. Any of the Customer's conditions which conflict with these conditions are not binding even if SCIENION does not expressly object to them.

3. The law of the Federal Republic of Germany shall apply exclusively both to the inclusion and interpretation of the instant general terms and conditions of trade as well as to the entering into and interpretation of legal transactions with the Customer. The application of the uniform law on Contracts for the International Sale of Goods (UN Law of Sales) is excluded.

4. The invalidity of individual provisions of this contract or parts thereof shall not affect the validity of the remaining provisions. The parties to this contract undertake, within the ambit of what is appropriate in accordance with the principles of good faith, to replace an invalid provision with a valid one which reflects the commercial intentions of the parties, provided that this does not lead to a significant modification of the contractual content. The foregoing shall also apply to facts and circumstances which are not expressly regulated but where such regulation is required.

§ 2. Conclusion of the Contract

1. Contractual offers by SCIENION are subject to change. An order placed by the Customer constitutes a binding offer. Contracts do not materialize until confirmation of the order or delivery.

2. Confirmation of the order by SCIENION is exclusively definitive in determining the extent of the contractual obligations to be performed. Details concerning attributes and performance characteristics of the goods are for illustrative purposes and are not binding. In the same way, public announcements, puffs or advertising do not constitute contractual provisions relating to the quality of the goods.

3. SCIENION reserves the right to make modifications even after dispatch of the confirmation of the order provided these modifications do not conflict with the confirmation of the order or the specification of the Customer. The Customer shall consent to modification proposals by SCIENION which go beyond this provided that it is reasonable for the Customer to do so.

4. The right is reserved to deviate to a minimal degree from the details concerning dimensions, weights, condition and quality.

§ 3. Samples

Samples of products distributed by SCIENION especially development samples are deemed to be experimental samples and not on approval or as samples within the meaning of § 454 German Civil Code (Bürgerliches Gesetzbuch - "BGB").

§ 4. Supply of Goods / Rendering of Services

1. As far as the order is concerned, delivery dates and times allowed for delivery shall be agreed in writing between the Customer and SCIENION. The supply of goods and rendering of services shall take place in accordance with the operational conditions. No warranty is given for the adherence to a delivery date.

2. Freight insurance cover shall only be arranged by SCIENION at the express wish of the Customer and at his expense. The risk passes to the Customer on hand-over of the goods to the railway, forwarding agent or to any other type of cargo carrier. If dispatch is delayed because of the behavior of the Customer, all of the risk shall pass to the Customer when the goods are ready for dispatch. If the Customer is in arrears with payments due to SCIENION, SCIENION shall be entitled to withhold delivery until all arrears are paid, without giving any special notice and with no obligation to compensate for any damage which thereby ensues.

3. If SCIENION is prevented from fulfilling its contractual obligations on time as a result of manufacturing or delivery problems at SCIENION or the freight carrier, e.g. as a result of force majeure, traffic hold-ups, strikes or lock-outs, the time allowed for delivery shall be extended as appropriate. The Customer may repudiate the contract if, after the expiry of an additional period of time allowed for delivery, he stipulates an appropriate extension of the deadline in writing and SCIENION does not deliver by then. The withdrawal must be in writing.

4. If it is impossible for SCIENION to fulfill the contractual obligations for reasons stipulated in clause no. 3, SCIENION shall be released from the obligation to deliver. SCIENION shall inform the Customer of the impossibility without delay. Any claims for damages by the Customer because of delay or failure to fulfill obligations are excluded.

5. Partial delivery of goods and services are permissible and may be invoiced separately.

6. For orders on call, the request for delivery of the goods ordered must be received at least four weeks before the desired delivery date.

7. Deliveries and services rendered shall also be accepted if they show signs of defects which are of a minor nature.

§ 5. Prices

1. Prices are ex works excluding packaging and other dispatch and freight costs. All prices are net prices.

2. If there is a period of more than four months between conclusion of the contract and delivery, without there being a delivery delay for which SCIENION is responsible, SCIENION may increase the price as appropriate to take account of increases in the costs of materials, wages and any other ancillary costs to be borne by SCIENION. If the purchase price increases by more than 40%, the Customer shall be entitled to repudiate the contract.

3. If SCIENION complies with modifications desired by the Customer after the order has been given, the additional costs which thereby arise shall be charged to the Customer.

4. Taxes, customs duties, statutory charges, etc., levied on the transaction in the country of the consignee, shall not be paid by SCIENION.

§ 6. Payment Conditions

1. Unless otherwise agreed, payment of SCIENION's invoices is due thirty days after the date of the invoice.

2. If the Customer is in arrears then, subject to any other alleged claims, interest, at the rate of 8% above the European Central Bank's basic rate of interest at that time, shall be demanded. Any other alleged damage is hereby unaffected.

3. If installments are agreed, the whole of the remaining debt shall immediately become due for payment – irrespective of the date of any bill of exchange – if the Customer is fourteen days in arrears with an installment, or, he ceases to make payments, or, an application for insolvency proceedings to be instituted in respect of his assets has been filed.

4. SCIENION reserves the right to accept or refuse bills of exchange and checks on a case by case basis. Acceptance is only on account of payment. The credit entry is conditional only. For bills of exchange SCIENION shall calculate the discount and collection charges in accordance with banking practice. SCIENION does not warrant timely collection or protest. In the event that a bill of exchange or check is not timely paid or cashed, or, circumstances arise at the Customer from which it becomes clear that SCIENION's claim is in jeopardy as a result of the inability of the Customer to pay, SCIENION may claim the whole amount immediately, even if bills of exchange or checks have been made over to cover this.

§ 7. Set-Off and Retention

Set-off and retention are excluded unless the set-off amount is undisputed or has been finally and conclusively determined by the court.

§ 8. Retention of Title

1. SCIENION shall retain title to the goods delivered until payment has been made in full. The retention of title also remains valid until all claims, including future and conditional claims, arising from the business relationship of the Customer and SCIENION, have been satisfied.

2. If the Customer is in breach of contract, especially in arrears with payment, SCIENION shall be entitled to repudiate the contract and demand the return of the goods.

3. If the goods are worked on or processed by the Customer, the retention of title also extends to the whole of the new article. The Customer shall acquire joint ownership in proportion to the ratio of the value of his goods to the value of the goods delivered by SCIENION.

4. If the value of all security lodged for the benefit of SCIENION continuously exceeds the value of existing claims by more than 10%, then, at the request of the Customer, SCIENION shall release security as it sees fit.

§ 9. Selling On

The goods supplied by SCIENION may only be used for the Customer's own needs. The Customer is obligated to notify SCIENION at the time the order is made if selling on or passing on free of charge is planned.

§ 10. Export Controls

1. The Customer undertakes not to export, re-export or otherwise dispose of the services rendered by SCIENION if this infringes the laws of Germany or other countries or is contrary to provisions of international law.
2. In recognition of the American or any other export control legislation, the Customer undertakes to obtain at his own expense all the required permissions before the export of goods or services which he has received from SCIENION.
3. The refusal of export licenses shall not entitle the Customer to repudiate the contract or claim for damages.

§ 11. Warranty

1. The Customer is obligated to inspect the goods without delay on receipt provided this is possible in the ordinary course of business and, if a defect comes to light, to notify SCIENION in writing without delay.
2. If the Customer fails to give this notification, the goods are deemed to be approved unless it concerns a defect which was not discernible during the inspection. Otherwise, the provisions of §§ 377 et seq. German Commercial Code (Handelsgesetzbuch – "HGB") apply. Even hidden defects may no longer be alleged if one year has passed since the delivery.
3. Warranty claims are, at the option of SCIENION, limited to the remedying of defects or substitute delivery. If the remedying of defects or substitute delivery is unsuccessful, the Customer shall have the right to demand either a reduction in the price or cancellation of the contract.
4. If the remedying of defects is not successful and the Customer then opts for compensation, the Customer shall retain the goods if it is reasonable for him to keep them. The compensation is limited to the difference between the purchase price and the value of the defective goods.
5. If the remedying of defects is not successful and the Customer opts to cancel the contract, he shall not be entitled to claim in addition damages on account of the defect.
6. Any further claims of the Customer are excluded, in particular on account of consequential damage as a result of the defect, provided this does not result from the absence of guaranteed attributes. The foregoing shall not apply in cases of willful intent, gross negligence or breach of material contractual obligations on the part of SCIENION.
7. SCIENION products are intended to be used for scientific research. They were developed for this purpose. Use of the products for human medicine or diagnostic purposes or as medicinal products is only permitted if such use is permitted in accordance with the statutory provisions applicable for the Customer and the user, and, where required, approval has been obtained from the competent authorities. In addition, such use of the products requires the prior written consent of SCIENION. Express instructions for use on the packaging (e.g. "in vitro diagnosticum") are equivalent to a written approval; they do not, however, replace official approvals which are required in the country of the user.
8. Customers who use the products of SCIENION in industrial production do so at their own risk. Since SCIENION can neither predict nor control the possible modus operandi and processes for such industrial use of the products, SCIENION must reject any warranty or liability. In such cases, SCIENION's instructions for use are simply to be regarded as recommendations which are not binding.
9. SCIENION gives no warranty that the goods offered or supplied are suitable for the purposes envisaged by the Customer.
10. Warranty claims shall not prevail where goods delivered are defective because of failure to maintain and clean in the proper manner or because of damage, or inappropriate storage, use, treatment or repair.
11. The Customer shall receive no guarantees on the part of SCIENION.

§ 12. Liability Otherwise

1. Any claims for damages by the Customer, irrespective of the legal grounds, are excluded - in particular those arising from breach of contract (other than with respect to delay or impossibility), breaches of duty during contractual negotiations or in tort. The foregoing does not apply in cases of strict statutory liability or willful intent,

gross negligence or material breaches of contract on the part of the seller or the absence of attributes guaranteed in writing. Damages for material breaches of contract are, however, limited to damage which is contractually typical and foreseeable, provided willful intent or gross negligence is not present. Any change in the burden of proof to the detriment of the Customer is not linked to the aforementioned provisions.

2. If the Customer disposes of the goods delivered in an unchanged state or after combining them with other products, he shall indemnify SCIENION inter partes against product liability obligations of third parties where he is responsible for the defect giving rise to the liability.

3. Modification of the goods and any labeling which passes for a mark of origin of the Customer or third party are not permitted.

§ 13. Exclusion of Liability

The exclusions or limitations of liability stipulated in the instant general terms and conditions of trade do not apply for

- damage resulting from injury to life, limb or health caused by a negligent breach of duty by SCIENION or by a willful or negligent breach of duty by a statutory agent of SCIENION or by an employee of SCIENION for whose acts SCIENION is vicariously liable,
- other damage caused by a grossly negligent breach of duty by SCIENION or by a willful or grossly negligent breach of duty by a statutory agent of SCIENION or by an employee of SCIENION for whose acts SCIENION is vicariously liable.

§ 14. Place of Performance, Legal Venue

1. Place of performance for all obligations arising indirectly or directly from this contractual relationship, including the obligation to make payment, is Berlin.

2. Legal venue is Berlin.

§ 15. Intellectual Property Rights

1. SCIENION accepts no responsibility for ensuring that goods sold, or the use to which they are put, or goods manufactured to the Customer's specifications do not infringe any intellectual property rights or copyrights of third parties. The Customer shall inform SCIENION without delay of all claims made against him for this reason.

2. If the Customer prescribes, via particular instructions, details, documents, designs or drawings, how SCIENION should manufacture the products to be delivered, then the Customer adopts the warranty that rights of third parties, such as patents, utility patents and any other intellectual property rights and copyrights, are not infringed by SCIENION neither with regard to the manufacturing process nor with regard to the products manufactured in accordance therewith.

The Customer shall indemnify SCIENION against all claims of third parties brought against SCIENION alleging such an infringement.

§ 16. Order changes/cancellation

Orders for Products may not be changed or cancelled once placed. If Customer cancels an order, Customer forfeits to SCIENION any deposit paid related to such order.

In case SCIENION accepts a cancellation, a fee of 10% for standard products and 30% for customized products may be charged. SCIENION's right to assert damages over and above this amount remains unaffected.

§ 17. Notification Pursuant to § 33 Federal Data Protection Act (Bundesdatenschutzgesetz – "BDSG")

The attention of the Customer is drawn to the fact that SCIENION stores electronically personnel-related data of the Customer for the purposes of contractual administration, invoicing and statistical analysis. What is meant here is data such as name, address and bank details as well as data arising from the implementation of the contract. This data is not passed on to third parties.

(As at: November 2017)