

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. Sales Agreement.

- a) The sale of products and performance of services by Dantec Dynamics GmbH ("Dantec Dynamics") is exclusively governed by the following terms and conditions ("Terms and Conditions").
- b) Dantec Dynamics' offer to sell products and perform services to the buyer ("Buyer") is expressly limited by Buyer's acceptance of these Terms and Conditions, as evidenced by Buyer's issuance of a purchase order for product(s), and/or services, or Buyer's acceptance of any product or service under the purchase order, or Buyer's payment for any product or service under the purchase order.
- c) Deviant, supplementary or contradictory terms and conditions of Buyer, if any, included on any Buyer's purchase orders, acknowledgment forms or any other document shall not apply and Dantec Dynamics hereby expressly contests such terms, except any such terms are expressly agreed to in writing by Dantec Dynamics regardless of whether such orders are fulfilled without any retention by Dantec Dynamics even if Dantec Dynamics is aware of contradictory, deviant or supplementary terms and conditions of Buyer.
- d) Any offers to sell products or to perform services by Dantec Dynamics must be in writing to be valid, and all such offers shall be valid for thirty (30) days from issuance, unless otherwise set forth in such offer. Such offers shall be deemed accepted only upon Dantec Dynamics' receipt of Buyer's written acceptance, provided that Dantec Dynamics receives such acceptance within one (1) week of the expiration of such time limit (such accepted offer, an "Order").
- e) Dantec Dynamics shall not be liable for any errors or miscalculations in Buyer's Orders.
- f) Buyer may not cancel any Order without Dantec Dynamics' prior written approval, such approval at Dantec Dynamics' sole discretion. In the event Dantec Dynamics expressly agrees in writing to permit Buyer to cancel an Order, Buyer will compensate Dantec Dynamics for all costs and losses attributable to the cancellation. Subject to the warranty set forth in Section 11, products purchased

under these Terms and Conditions are not returnable.

g) Each party shall designate a primary representative, prior or subsequent to the acceptance of the applicable Order, who each shall be responsible for directing the specific activities of their respective employees, consultants and agents, and who shall have sufficient authority to represent Dantec Dynamics and Buyer, respectively, on all technical, administrative and supervisory matters arising in connection with the performance of any services hereunder. Each party may replace its primary representative upon reasonable notice to the other party.

2. Prices.

- a) All prices include air freight packing, but exclude (and Buyer shall be solely responsible for) costs of loading, shipping, delivery, insurance, installation and commissioning. Prices do not include any fees, taxes or duties relating to the shipment and delivery of any of the products, including without limitations value-added tax (VAT), duty, import and export tariffs and other forms of taxes and excise duties in Germany and/or the recipient country.
- b) In addition, Dantec Dynamics shall invoice Buyer for expenses incurred as a result of performing any services in accordance with an Order. Such expenses shall be limited to travel and out-of-pocket expenses actually incurred by Dantec Dynamics in the performance of its services hereunder.
- c) If the currency fixed in an Order is devalued, such that the rate of exchange between the currency chosen and the EURO varies by more than two percent (2%) as from the date of the Order, Dantec Dynamics may, at its sole discretion, suspend all performance under the Order and notify Buyer of any price adjustment resulting from the devaluation. Buyer must then notify Dantec Dynamics in writing within eight (8) days of the date of Dantec Dynamics' notification whether Buyer wishes to purchase the products and/or services at the adjusted price. If Buyer fails to notify Dantec Dynamics during such 8-day period, then Buyer's



Order will be automatically cancelled. Dantec Dynamics shall not be liable for any costs or losses of Buyer attributable to such cancellation.

3. Time of Delivery.

a) The estimated date of delivery shall be stated in Dantec Dynamics' initial offer to sell products to Buyer and Dantec Dynamics will use commercially reasonable efforts to deliver the products within the estimated time to the extent possible. Delivery dates are estimates only and Dantec Dynamics does not guarantee delivery of products on or by any estimated delivery date. Dantec Dynamics shall not be liable to Buyer for any costs, fees, penalties or price reductions as a result of any failure to deliver products in accordance with any estimated delivery dates.

b) Partial deliveries by Dantec Dynamics are permitted unless otherwise upon agreed in writing by the parties.

4. Delivery.

Delivery shall be made Ex Works (EXW) (Incoterms 2010), Dantec Dynamics' shipping point. Unless otherwise agreed upon by the parties in writing, Buyer shall arrange for transportation and transport insurance. If Buyer fails to arrange for transportation, Dantec Dynamics will choose a method of transportation that it deems appropriate. In all cases Buyer is responsible for all expenses involved in the shipment and delivery of products (including without limitation loading, freight, shipping, insurance, forwarding and handling charges).

5. Passing of Risk, Title Transfer.

Title to products and the risk of loss (*Leistungsgefahr*) shall pass to Buyer as soon as the products have been placed with a transport agent.

6. Drawings, Descriptive Documents, etc.

All data, in particular measurements, dimensions, design and description of the products included in catalogues, prospects, circulars, advertisements, illustrated matter and price lists are approximate and shall not be binding unless otherwise expressly agreed upon in writing by the parties.

7. Confidential Information.

Drawings, descriptive documents, parts lists and other documentation (collectively, "Documentation") provided or made available to Buyer by Dantec Dynamics are confidential information of Dantec Dynamics and may be used by Buyer only in connection with the use of the products. Buyer may not copy Documentation or disclose Documentation to any third party.

8. Use of Dantec Dynamics' Products.

Dantec Dynamics points out to Buyer and Buyer acknowledges and agrees that the products must be used in accordance with the Documentation and all other instructions provided by Dantec Dynamics and, where stated, products must be operated only by personnel who have received the appropriate training. Any Dantec Dynamics products that are to be connected to an electricity supply must be operated only by appropriately trained and qualified personnel, and must not be made available to any personnel without the proper training and qualifications.

9. Rights and Software.

a) Certain Dantec Dynamics software (including, without limitation, any third party software incorporated in a Dantec Dynamics product or otherwise provided with any Dantec Dynamics product) may be provided to the Buyer along with the Dantec Dynamics products. Buyer acknowledges and agrees that all such Dantec Dynamics software (including any such third party software incorporated in a Dantec Dynamics product or otherwise provided with any Dantec Dynamics product) is subject to the terms and conditions of the Dantec Dynamics Software License Agreement provided with such Dantec Dynamics product and Buyer hereby agrees to abide by such Dantec Dynamics Software License Agreement. Further, Buyer shall not copy Dantec Dynamics' software or any related documentation, other than as is necessary for the creation of a single back-up copy thereof. Buyer acknowledges that the Dantec Dynamics software provided with the Dantec Dynamics products may be used solely for the purpose of operating the products in accordance with Dantec Dynamics' written documentation.

b) Notwithstanding that title to the products may pass to Buyer, no title to the Dantec Dynamics software shall pass to the Buyer and Dantec Dynamics shall remain the exclusive owner of all intellectual property rights of whatever nature



including, without limitation, copyrights, patents and patentable inventions, know-how, trade secrets, trademarks and design rights (whether registered, registrable or otherwise) embodied in or otherwise relating to the products (including any Dantec Dynamics software contained therein or provided with same). Other than as permitted by applicable law, Buyer shall not reverse engineer the products or any part thereof. Buyer shall not remove any proprietary notices and/or branding contained in or otherwise affixed to the products or any Dantec Dynamics software (including, without limitation, any third party software incorporated in a Dantec Dynamics product or otherwise provided with any Dantec Dynamics product).

10. Confidentiality, Proprietary Rights. The term "Confidential Information" of a party means technical, business and financial information relating to the disclosing party that is made available or disclosed, in whatever form or medium, regardless of whether tangible, intangible, visual or oral, and regardless of whether or not marked or otherwise identified as confidential.

Each of Dantec Dynamics and Buyer shall not copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose Confidential Information of the other to any third party, or use such Confidential Information for any purposes not specifically permitted hereunder, without the express, prior written consent of the disclosing party. Without limiting the generality of the foregoing, Dantec Dynamics and Buyer shall each advise their employees, consultants, agents and representatives of their obligations regarding such Confidential Information and use at least the same degree of care to protect the other party's Confidential Information as they do to protect their own like Confidential Information, but in no event less than reasonable care.

Notwithstanding the obligations set forth herein, the confidentiality obligations shall not extend to Confidential Information that: (i) the receiving party can show by written record was previously known to the receiving party free of any obligation to keep confidential and free of any restriction on use and disclosure; or (ii) is received from third persons without restrictions on use and disclosure and without breach by such third person of any agreement with the owner of the Confidential Information; or (iii) is or becomes publicly available without breach of these Terms and Conditions by the receiving party. The foregoing exclusions shall

not apply to any software, in any form, that is included in the Confidential Information.

During the course of providing services hereunder, Dantec Dynamics may design, develop for or deliver to Buyer computer software, documentation, training materials, and other tangible work product (collectively, "Work Product"). "Work Product" specifically excludes software, documentation and other materials which are owned by a third party and not Dantec Dynamics. Unless otherwise specified in the applicable Order, all Work Product or other work performed under any Order, and all materials, products, deliverables developed or prepared for Buyer by Dantec Dynamics under such Order (whether or not such Order is completed), are Confidential Information and the property of Dantec Dynamics, and all title and interest therein (including intellectual property therein or thereto) shall vest in Dantec Dynamics and Dantec Dynamics shall own all rights, title and interest in and to such materials, products and deliverables. Dantec Dynamics hereby grants to Buyer, subject to Buyer's payment of all applicable fees and expenses, a non-exclusive, non-transferable, royalty-free license to use the Work Product solely for purposes of Buyer's own internal business.

11. Warranty, Remedying Defects and Shortcomings, Complaints.

- a) For a period of one (1) year following the date of delivery, and subject to the other provisions of this Section 11, Dantec Dynamics warrants that all new products purchased directly from Dantec Dynamics shall be free of defects.
- b) As all products are specially customized for the Buyer, Buyer's sole and exclusive remedy, and Dantec Dynamics' sole and exclusive obligation, in the event of any failure of this warranty shall be for Dantec Dynamics to, at its option, repair or replace such products free of charge, unless Dantec Dynamics' attempts to repair or replace such products have failed.
- c) In no event shall Dantec Dynamics be liable for ordinary wear and tear. For probes, fibers and similar accessories produced by Dantec Dynamics, the foregoing warranty shall apply only for a period of three (3) months following the date of delivery.
- d) In no event shall Dantec Dynamics provide any further warranties with respect to third party parts, components, or products (including without limitation computers, lasers, traverses, and

cameras) that are not manufactured by Dantec Dynamics than it is entitled to against the third party. Dantec Dynamics does not provide any warranty for such third party parts, components or products directly. Such parts, components or products may be warranted by third parties on a “pass through” basis.

e) The foregoing remedies shall not apply to any product failure caused in whole or in part by (i) Buyer’s failure to operate, maintain or service the products in accordance with Dantec Dynamics’ Documentation and/or not in accordance with the obligations under Section 8 above, (ii) any alteration, modification or repair made to the products other than by Dantec Dynamics, or (iii) use of the products for a purpose other than that for which it is intended.

f) In order to get the benefit of the foregoing warranties, Buyer must immediately inspect the products upon receipt and notify Dantec Dynamics in writing immediately after discovering of any defect or shortcoming. This also applies in case the defect appears after the inspection (hidden defect). In case Buyer does not inspect or notify in accordance with these provisions, any warranty for this defect shall be excluded. This does not apply to defects due to willful misconduct by Dantec Dynamics. Buyer shall not ship products back to Dantec Dynamics for any reason without Dantec Dynamics’ prior written consent. Notwithstanding such consent, Dantec Dynamics reserves the right to inspect the products at its facility and to refuse, at its sole discretion, the return of any item if Dantec Dynamics determines that the products’ warranty is not applicable for the reasons set forth above. Any defective products or parts forwarded by Buyer to Dantec Dynamics for repairs or replacement, shall be carriage paid and at Buyer’s risk. Buyer must clearly indicate the nature of the defect or shortcoming.

g) The remedy obligations of this Section 10 shall apply also to any replacement products or parts for the same duration of time as for the replaced products or parts.

h) Dantec Dynamics further warrants that any services performed hereunder shall be done so in a good and workmanlike manner. In the event of a breach of this warranty, Dantec Dynamics shall re-perform the applicable services within a reasonable time, provided that Buyer notifies Dantec Dynamics within ten (10) business days after the breach for

which the claim is asserted was identifiable (*erkennbar*) for the Buyer. Buyer is entitled to further rights only after Dantec Dynamics has failed to remedy any breach of the warranty set forth in this paragraph.

j) THE FOREGOING EXPRESS WARRANTIES ARE THE EXCLUSIVE TERMS AVAILABLE TO BUYER AND EXTEND ONLY TO THE ORIGINAL CUSTOMER OF DANTEC DYNAMICS. DANTEC DYNAMICS DISCLAIMS ALL FURTHER WARRANTIES WITH RESPECT TO DANTEC DYNAMICS’ PRODUCTS OR THE WORK PRODUCTS, INCLUDING THE PERFORMANCE THEREOF AND ANY SERVICES PROVIDED TO BUYER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, TITLE, NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE EXCEPT FOR THE ORDINARY USE OR UNLESS EXPRESSLY GUARANTEED.

12. Limitation of Liability.

a) Dantec Dynamics is only liable for damages – regardless on which legal basis – for willful misconduct or gross negligence.

b) In case of negligence Dantec Dynamics shall only be liable for damages to life, body or health.

c) The above-mentioned limitations of liability do not apply (i) in case Dantec Dynamics has not disclosed the defect in a fraudulent manner, (ii) in case Dantec Dynamics has guaranteed any product specifications or characteristics (*Beschaffheitsgarantie*) or (iii) to the liability under the German Product Liability Act (*Produkthaftungsgesetz*).

d) Any liability not expressly provided for herein above shall be disclaimed to the extent permitted by law. In particular, Dantec Dynamics shall not be liable for any property, special, incidental, consequential or indirect damages (except for damages to life, body or health) or for loss of goodwill or business profits, lost revenue, work stoppage, computer failure or malfunction, or for any and all other exemplary or punitive damages arising hereunder or from the incorrect or faulty use of products or provision of services, provided that Dantec Dynamics or any of its directors, officers,

employees, agents or other person acting on its behalf, has not acted deliberately or with gross negligence. In no event shall Dantec Dynamics' total aggregate liability for any and all damages, losses or liabilities arising hereunder or from the products exceed the amounts actually received by Dantec Dynamics from Buyer with respect to the product or service giving rise to the liability, except in case of damages to life, body or health.

e) Buyer shall indemnify Dantec Dynamics for any liability arising from Buyer's (including its employees' and agents') incorrect or faulty use of the products sold (directly or indirectly) by Dantec Dynamics.

13. Payment.

a) Dantec Dynamics shall invoice Buyer for amounts payable hereunder. Payment shall be due on the date indicated in Dantec Dynamics' invoice. If no date indicated, payment is due and payable within **14** days after issue of the invoice. After that date, Buyer is in payment default without any further reminder being required.

b) For late payments, Dantec Dynamics may, at its sole discretion, charge interest in the amount of eight (8) percent above the applicable base interest rate (*Basiszinssatz*) per annum. All rights for further damages shall be reserved.

c) Buyer may not withhold or set off any payment as a consequence of any counterclaims of Buyer, unless the counterclaim is acknowledged by Dantec Dynamics or awarded by a legally binding judgment by a competent court.

14. Force Majeure/Delays/Impossibilities.

a) Dantec Dynamics shall not be liable for failure to perform or for delay in performance due to fire, flood, strike, or other labor difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources, or due to any cause beyond Dantec Dynamics' reasonable control.

b) In the event of a delay in performance due to any such cause, the estimated date of delivery or time for completion of performance will be extended by a period of time reasonably necessary to overcome the effect of such delay. If Dantec Dynamics reasonably determines that any such delay in performance is likely to extend for a period

of ninety (90) days or more, Dantec Dynamics shall have the right to cancel the applicable order upon notice to Buyer with no liability or further obligation to Buyer with respect to such order.

15. Venue.

These Terms and Conditions and any dispute arising hereunder shall be governed by laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods (*UN-Kaufrecht*), without respect to its conflict of laws rules. Exclusive place of jurisdiction shall be in Munich.

16. Independent Contractor. Either party is acting in performance of these Terms and Conditions as an independent contractor.

17. Non-solicitation. Unless otherwise mutually agreed to by the parties in writing, Buyer agrees not to hire, retain or seek to retain any current and/or former employee, consultant, agent or other personnel of Dantec Dynamics during the term of this agreement and for a period of twelve (12) consecutive months thereafter.

18. Other Agreements.

These Terms and Conditions shall apply to all sales by Dantec Dynamics and may only be modified or amended by a writing executed by an authorized officer of Dantec Dynamics.

19. Miscellaneous.

a) Whenever a notice, declaration, agreement or other statement has to be in writing according to this Terms and Conditions, such writing shall have the form provided in Section 126 b German Civil Code (*Textform*).

b) A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder.

c) In the event any one or more of the provisions of these Terms and Conditions or of any Order is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired. The Sections of these Terms and Conditions pertaining to limitation of liability, warranty disclaimers, confidentiality, non-solicitation and any other sections which by reasonable interpretation are intended to survive the termination or expiration of these Terms and Conditions shall survive termination or expiration of these Terms and Conditions for any reason.

