

General Terms and Conditions of Sale and Delivery (GTS) of Quantifoil Instruments GmbH

(hereinafter called „QInstruments“)

1. Commencement and scope

- 1.1 With effect from January 1, 2012, all goods sales and deliveries performed by QInstruments shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (hereinafter called “the GTS”), insofar as these are not amended by means of individual written agreements. Furthermore, these GTS shall replace the previously valid General Terms and Conditions of Sale and Delivery of QInstruments.
- 1.2 General terms and conditions of business of the contracting Party which contradict these GTS shall be applicable only insofar as QInstruments expressly approves these in writing. The following GTS apply to all goods sales and deliveries performed by QInstruments, insofar as the wording of the order confirmation does not contain different provisions, or insofar as different provisions have not been agreed between the parties on an individual contractual basis.
- 1.3 QInstruments reserves the right to amend these GTS at any time.

2. Price lists and offers

- 2.1 Price information and other terms and conditions shown in catalogues, brochures and price lists merely represent invitations to submit offers; they are time-limited pursuant to the information printed therein, and may be amended without prior notification once this period has expired.
- 2.2 The validity of the QInstruments offers is limited to 14 (fourteen) days from the date of the offer, although at the most to the duration of the respective relevant price lists or special offers.
- 2.3 Any offers which have been issued only apply to the recipient who is shown on the address contained in the offer.

3. Prices and order volumes

- 3.1 Deliveries and sales prices are shown ex works and are quoted in Euros, unless otherwise agreed. The prices which are offered are subject to the applicable, statutory taxes, fees and duties.
- 3.2 Orders placed by the contracting Party shall be subject to the prices and conditions which are valid on the day on which the order is recorded.
- 3.3 Orders to the net value of 10,000 Euros will be subject to a shipping and packing fee. Orders above 10,000 Euros will be dispatched without any surcharges for shipping and packing (CPT / INCOTERMS® 2010). Separately negotiated, individual orders may be subject to a waiver of the shipping and packing fees.

4. Payment, Invoicing

- 4.1 Payment must be performed within 14 (fourteen) days of the invoice date. Cheques shall be deemed to have been received only once they have been credited.
- 4.2 QInstruments does not accept bills of exchange and other non-standard means of payment.
- 4.3 QInstruments may at any time demand advance payment or an irrevocable letter of credit, or may insist upon other payment methods. Any resulting costs shall be borne by the contracting Party.
- 4.4 The contracting Party may by means of a written declaration only offset a claim brought by QInstruments if his counterclaim is uncontested or if a legally-binding ruling has been made; in other respects the contracting Party shall be expressly prohibited from offsetting.
- 4.5 QInstruments is entitled to refuse to perform the delivery if it becomes apparent following the conclusion of the agreement that its entitlement to payment for the delivery is jeopardised by the inability of the contracting Party to pay. This right to refuse to withhold the performance shall be waived if the payment is performed or if the contracting Party provides adequate collateral. QInstruments is entitled to impose a reasonable deadline upon the contracting Party within which the contracting Party must either perform the payment contemporaneously upon delivery, or must provide collateral for the delivery. Following the fruitless expiry of the deadline, QInstruments shall be entitled to withdraw from the agreement without delay, without this having any compensatory consequences for QInstruments.

5. Payment default and collection

- 5.1 The contracting Party shall be deemed to have fallen into arrears at the time of the expiry of the payment period specified in Section 4.1. In this event, 8% default interest per annum shall be owed.
- 5.2 In addition, QInstruments must be reimbursed for the costs which it incurs collecting the outstanding sums, including the legal and court expenses of QInstruments.
- 5.3 The default of the contracting Party shall moreover entitle QInstruments to stop all open deliveries of all types as well as all further performances, to withdraw from the agreement, to demand the return of the delivered products or following written notification to collect these products with immediate effect, and to rescind any possible associated legal agreements without further formalities, and to demand compensation for further losses.

6. Scope of delivery, delivery deadline, partial deliveries and taking back the packaging

- 6.1 The scope of the delivery does not include further technical specifications, assembly, fitting, intellectual property rights of all kinds, environmental tests or other tests which go beyond the normal QInstruments standard tests, certification and packaging which goes beyond the QInstruments standard packaging. Additional charges shall be imposed in respect of performances rendered by QInstruments in these fields.
- 6.2 Orally promised delivery dates shall only be binding insofar as they have been confirmed by QInstruments in writing.

- 6.3 Information provided by QInstruments about the weight and dimensions of the products represent merely approximate values. Until the time of delivery QInstruments shall not be liable for such values.
- 6.4 Partial deliveries are permitted; they will be invoiced as and when they have been performed.
- 6.5 QInstruments is willing to collect and /or take back the packaging which forms part of the consignment, any resulting costs for such services will be charged to the contractual partner.
- 6.6 Deliveries will be carried out in accordance with the terms of INCOTERMS® 2010.

7. Transport

- 7.1 Unless otherwise agreed, any delivery costs arising from transportation (loading and un-loading) will be charged to the contractual partner.
- 7.2 Transport costs will be calculated in accordance with INCOTERMS® 2010.

8. Transfer of risk and adherence to control regulations

- 8.1 The risk of destruction, of loss or damage of the goods shall be transferred to the contracting party as soon as the goods have been sent out for transportation and/or dispatched/dispatch. If the goods are returned to QInstruments for any possible reason, then the risk and liability shall be retained by the contracting Party until these have been unloaded in Jena. In the event of the delayed acceptance of the goods by the contracting Party, then the risk shall be transferred to the contracting party from the date and /or commencement of the delay.
- 8.2 Insofar as the respective applicable law does not stipulate any other relevant clause(s), then the contracting Party shall in all cases be exclusively responsible for adhering to all export, import, transit and control regulations and formalities.

9. Checks and notice of defects

- 9.1 The contracting Party must inspect the products (quality and quantity) at their own expense.
- 9.2 In the event of visible defects, the contracting Party must report these to QInstruments in writing without delay following receipt of the products, although at the latest within 10 (ten) days following receipt of the goods (or in the case of assembly or fitting performed or commissioned by QInstruments, immediately following the completion of these works), describing the defects in detail. Transport damage and delivery shortfalls must also be reported immediately to the haulage contractor and to the forwarding agent in writing.
- 9.3 Concealed defects must be reported in writing immediately following their discovery, although at the latest within 10 (ten) days following the ascertainment of the defects, describing the defects in detail.
- 9.4 If the contracting Party fails to issue the correct notice of defects, then the product shall be deemed to have been approved without reservation.
- 9.5 In the event of defective goods, QInstruments retains the right to rectify the situation by performing repairs or carrying out subsequent deliveries (subsequent fulfilment). QInstruments shall be entitled to repeat a subsequent fulfilment which has failed to produce the desired effect. QInstruments may refuse to perform the subsequent fulfilment if this incurs disproportionate costs.
- 9.6 Claims brought by the contracting Party on account of defects shall be excluded in the case of minor material defects. If the subsequent fulfilment has failed to produce the desired effect, has been refused or is unreasonable, or if the contracting Party fruitlessly granted QInstruments a reasonable grace period for subsequent fulfilment, then the contracting Party shall be entitled to demand a price reduction or to withdraw from the agreement.

10. Force Majeure, contractual obstacles

- 10.1 Force majeure of all kinds, unforeseeable operating, transport or consignment disruptions, fire damage, flooding, unforeseeable fuel, energy, raw material or auxiliary material shortages, lawful strikes, lawful lockouts, official decrees or other hindrances for which the Party which owes the performance is not responsible, which delay or prevent the manufacture, the dispatch, the delivery or the acceptance, or which render these unreasonable, shall free QInstruments from the obligation to perform the delivery or the acceptance for the duration and scope of the disruption. This shall also apply if the circumstances occur in relation to the suppliers.
- 10.2 QInstruments shall also not be deemed responsible for the aforementioned circumstances if these occur during an already existing delay. If the delivery or acceptance is delayed for more than 8 (eight) weeks as a result of the disruption, then both parties shall be entitled to withdraw from the contractual agreement, and to this extent no compensation claims shall be established.

11. Warranty and guarantee

- 11.1 QInstruments guarantees that its products are free of material and manufacturing defects.
- 11.2 The guarantee issued by QInstruments shall extend from the day of dispatch (or in the case of assembly or fitting performed or commissioned by QInstruments, from the date of the completion of these works) for the guarantee period agreed in the individual agreement by and between QInstruments and the contracting Party, or in the absence thereof for the duration of 24 (twentyfour) months, unless otherwise stipulated below.
- 11.3 The following special provisions are applicable for the products as specified below:
 - a) Expendable goods such as for example seals, valves, actuators, etc. have a limited useful life on account of the application. For this reason the guarantee for signs of natural wear or for improper utilisation shall be excluded.
 - b) In the case of buffers and reagents, QInstruments guarantees adherence to the specifications up to the expiry date. This date is printed on the packaging or in the analysis certificate. If no such date is specified, then the maximum storage duration is 12 (twelve) months from the date of dispatch for buffers and 3 (three) months from the date of dispatch for reagents. This is contingent upon the products being stored permanently within a temperature range of 4 to 30°C, with air humidity of 25% to 85% (without condensation) and in an air pressure range of 0 to 3,000 metres above sea level; if the packaging or the analysis certificate contains deviating specifications, then these shall be relevant. The onus shall be on the contracting Party to provide the corresponding proof.
- 11.4 In the event of replacement or repair, no new guarantee period will commence; the original, remaining period of the original guarantee period shall apply.

11.5 The contracting Party shall lose his claims:

- a) if the products or their parts were not connected, assembled, fitted, deployed, utilised or serviced properly or as intended and in accordance with the details set out in the operating instructions and/or the material safety data sheets or in accordance with their specifications;
- b) if the damage was caused by the impact of force (e.g. accident);
- c) if the products or their parts (incl. electronics and software) were not set, amended, repaired or services by QInstruments or by specialised authorised by QInstruments;
- d) if non-original QInstruments parts were used when replacing parts;
- e) if serial numbers have been amended, deleted or removed.

11.6 Whosoever asserts a guarantee claim must demonstrate that the product defect was caused by material or manufacturing defects.

11.7 If the contracting Party asserts a guarantee claim, then he must inform QInstruments in writing about the product, its serial number, date of dispatch and the nature of the problem, enclosing a copy of the original invoice. Once this has been done, the instructions issued by QInstruments for the settlement of the matter must be adhered to. In addition, the following provisions shall apply:

- a) If the product has to be returned to QInstruments, then the contracting party assumes all responsibility for the correct and/or safe packaging for the product; the contracting party shall bear any risks as well as the resulting costs incurred during any transportation to QInstruments.
- b) QInstruments will not accept any return consignments which do not contain a copy of the original invoice. All costs resulting from unilateral steps undertaken by the contracting party shall be borne by the contracting party.
- c) If the products or parts are radioactively, microbiologically or otherwise contaminated, then this must be correspondingly declared and these products or parts must be decontaminated before these are returned. If this has not been properly performed, then QInstruments may – at the expense of the contracting Party – send the products or parts back, or may decontaminate these itself; in this event the contracting Party shall furthermore be obliged to pay all consequential damages.

12. Liability

12.1 Liability on the part of QInstruments – irrespective of the legal grounds upon which this is asserted – shall be established only if the loss was caused by the breach of an essential contractual obligation, or is attributable to gross negligence or wilful intent on the part of QInstruments. QInstruments shall not be liable in cases of slight negligence.

12.2 Insofar as the liability of QInstruments is excluded or restricted, this shall also apply to the personal liability of its employees, representatives, vicarious agents and other possible substitutes.

12.3 QInstruments shall not be liable for the consequences of the improper amendment or treatment of the goods, and in the case of technical medical equipment in particular not for the consequences of faulty maintenance performed by the contracting Party or any third party, as well as for defects which were based upon normal wear or which were caused by the transport.

12.4 Defect claims brought against QInstruments shall in particular be excluded in respect of losses and consequences resulting from the fact that the contracting Party used delivered hardware or software together with incompatible hardware, software or other components, or with hardware, software or other components which had not been tested and correspondingly approved by QInstruments. The same shall apply to alterations which have been made, without approval, to the hardware or software which has been supplied by QInstruments. QInstruments shall moreover not be held liable for any loss of data which can be shown to be attributable to the improper utilisation of the hardware and software and the lack of reasonable data backup precautions.

12.5 Should any party issue an order while acting for and/or deputising for a third party, then they shall be jointly held liable – alongside the third party for any claims which may be submitted by QInstruments arising out of this order.

12.6 Any material warranty or legal warranty or warranty in respect of losses of all kinds (i.e. direct and indirect losses) which go beyond the guarantee and liability provisions shall be excluded – insofar as this is permitted by law. QInstruments shall not assume any liability that its products are suitable for the purpose intended by the contracting Party.

12.7 If the products are subject to official permits (in particular explosion protection ATEX and IVD), then the contracting party is obliged to ensure that these product permits are observed and/or upheld from the time of delivery up to /and including the end-customer. The customer furthermore undertakes to adhere to the procedures prescribed by public authorities for the commissioning, the operation and the maintenance of the product (operating instruction, EC type-examination certificate), as well as any relevant reporting, documentation, compliance and recall procedures. QInstruments rejects any liability for losses or operating interruptions which result from failure to adhere to these regulations. The customer and/or contracting party accepts full responsibility for providing hard-copies of the operating instructions for products complying with ATEX, or respectively, IVD. The instructions must be written in the native language of the country of operation and/or installation. Where more than one language is spoken in a particular country, then the operating instructions must be written in the official language of that country.

12.8 The contracting Party shall be responsible for ensuring the fulfilment of legal requirements before the goods sold by QInstruments abroad are commissioned.

12.9 QInstruments shall not be liable for direct or indirect losses arising out of the utilisation of the actuators. It must in particular be ensured in this conjunction that malfunctions can occur on account of the inherently limited useful life of actuators contingent upon their relevant applications. The user is responsible for the calibration, maintenance and punctual replacement of the actuators.

13. Withdrawal and compensation in place of the performance

13.1 If QInstruments should fail to render a due performance and/or service, or should QInstruments fail to render this in accordance with the contractual provisions, then the contracting party will then, and only then, be entitled to withdraw from the agreement or to demand compensation in place of the performance and/or service which has not been provided:-

- a) when this constitutes a non-insignificant breach of contract on the part of QInstruments;
- b) when the customer submits a written request to QInstruments, requesting that QInstruments renders the performance and/or service within a reasonable period of at least 14 days, and
- c) when QInstruments has not already rendered the performance and/or service within this deadline.

13.2 If QInstruments has still not rendered the performance within the deadline imposed by the contracting Party, or has not rendered this performance in accordance with the contractual provisions, then QInstruments may demand that the contracting Party declares, within a reasonable deadline, whether he continues to insist upon the rendering of the performance. QInstruments shall not be obliged to render the performance before the contracting Party has communicated his decision.

14. Orders and return consignments of wrongly-ordered goods

14.1 QInstruments requires the following information for orders:

1. Customer number (in the case of existing customers);
2. Names of the company and of the person responsible for placing the order;
3. Telephone and fax numbers of the ordering party;
4. Order date and order number;
5. Product designations and product numbers;
6. Quantities;
7. Prices;
8. Invoice address and delivery address;
9. Additional information, e.g. relating to delivery data or partial deliveries.

14.2 QInstruments shall credit 80% of the charged price to the contracting party, insofar as the products are received by QInstruments within 30 calendar days from the date of the original dispatch by QInstruments, in a flawless condition, bearing the RMA number, and with an enclosed copy of the original invoice. The cost of ascertaining the condition shall be borne by the contracting Party.

14.3 QInstruments shall not, however, take back any custom-made items or products which have been manufactured especially for the contracting party, nor shall it take back any radioactive, microbiologically or otherwise contaminated products.

15. Utilisation restrictions

Goods delivered by QInstruments may contain products whose use by the contracting Party are subject to statutory patents or licensing restrictions.

16. Intellectual property

16.1 All intellectual property (such as e.g. trademarks or the company designation) shall be retained by QInstruments.

16.2 The contracting Party may not use the intellectual property of QInstruments without the prior written approval of QInstruments. The use of QInstruments advertising material remains reserved.

16.3 Should third parties claim that their intellectual property is being breached by QInstruments products, then the contracting Party must inform QInstruments thereof in writing without delay. The contracting Party must to the best of his ability, and in accordance with QInstruments's instructions, help QInstruments defend itself against such claims. QInstruments shall not be liable vis-à-vis the contracting Party for any possible damages resulting from such claimed or actual breaches.

16.4 If the contracting Party ascertains a possible impairment of QInstruments intellectual property, then he must inform QInstruments thereof in writing without delay, and must to the best of his ability, and in accordance with QInstruments's instructions, help QInstruments safeguard its rights.

16.5 The contracting party guarantees that any performance and/or service which are carried out by QInstruments as part of the manufacturing of products in accordance with the contracting party's specifications, designs, technical data or instructions as stipulated by the contracting party shall not cause QInstruments to breach any intellectual property rights. The contracting party shall be comprehensibly liable for all consequences arising out of any such claimed or actual breach.

17. Confidentiality

17.1 The contracting Party must – including after the end of the business relationships – treat all details of his business relationships with QInstruments as well as its business secrets in a strictly confidential manner. He shall also impose this obligation upon his managing officers, employees as well as lawfully involved third parties. The offers made by QInstruments shall in particular also be deemed to be of a confidential nature. Any breach of this obligation shall entitle QInstruments to demand compensation and to withdraw from the legal agreement with immediate effect.

18. Reservation of title

18.1 The title to all sold products shall be retained by QInstruments until QInstruments has received the full purchase price. The title held by QInstruments also extends to the new products created by processing the goods which are subject to reservation of title. The processing shall be performed for QInstruments in the capacity of a manufacturer. In the event of any processing, connection or blending or mixing with items which do not belong to QInstruments, QInstruments shall acquire co-ownership thereof in proportion to the invoice value of its goods which are subject to the reservation of title relative to the invoice values of the other materials.

18.2 The contracting Party must treat the goods which are subject to the reservation of title with due care. He is obliged to insure the goods which are subject to the reservation of title adequately at his own expense against fire, water and theft damage at their new value, and shall in advance assign to QInstruments his claims for compensation arising out of these insurance agreements.

19. Place of fulfilment

19.1 The place of fulfilment for all of the obligations of the contracting parties is D-07749 Jena, Germany

20. Miscellaneous provisions

- 20.1 All agreements concluded between QInstruments and the contracting party pertaining to the execution of the sale of goods must be made in writing in order to be valid (validity requirement).
- 20.2 The waiving of requirement for written form is only valid in writing.
- 20.3 The contracting party may not assign their claims vis-à-vis QInstruments to any third party.
- 20.4 QInstruments may draw upon the services of third parties for the purpose of fulfilling its obligations.
- 20.5 In the event of differences and/or questions of interpretation between the various language versions of these GTS, the German version shall prevail.
- 20.6 Any communications relating to this document and/or other matters should be addressed to Quantifoil Instruments GmbH, Loebstedter Str. 101, 07749 Jena, Germany.

21. Severability clause

- 21.1 Should any of the individual provisions contained in this Agreement prove to be wholly or partially invalid or unenforceable, or should they subsequently prove to be invalid or unenforceable as a consequences of amendments in legislation which take place following the conclusion of the Agreement, then this shall not affect the other contractual provisions and the validity of the Agreement as a whole. Such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which comply as closely as possible with the meaning and purpose of the invalid provisions.
- 21.2 Should the Agreement prove to contain omissions, then the provisions which are contained within the Agreement shall be deemed to have been agreed as those which correspond with the meaning and purpose of the Agreement and which would have been agreed if this matter had been considered.
All legal relationships between QInstruments and the contracting party are governed by German law, whereby the UN Sales Convention shall be excluded.
The ordinary courts at the registered domicile of QInstruments shall have exclusive jurisdiction for the judicial assessment of all disputes between the contracting party and QInstruments. QInstruments shall however also be entitled to bring claims against the contracting party before any other responsible jurisdiction and/or court of law.

All legal relationships between QInstruments and the contracting Party are governed by German law, whereby the UN Sales Convention shall be excluded. The ordinary courts at the registered domicile of QInstruments shall have exclusive jurisdiction for the judicial assessment of all disputes between the contracting Party and QInstruments. QInstruments shall however also be entitled to bring claims against the contracting Party before any other responsible court of law.

Released by: Olaf Simmat
Position: Managing Director

Date of issue: January 1th, 2018
Place of issue: Jena, Germany