

# Terms and Conditions

## 1. Conditions of Contract

(1) The following general terms and conditions ("Terms and Conditions") apply to all agreements for sale and/or for services that are entered into between PEPPERPRINT GmbH, Heidelberg ("PEPPERPRINT" or "Seller") and its customer ("Customer") with the view of Customer either purchasing any of the products manufactured by PEPPERPRINT and/or requesting any of the services offered by PEPPERPRINT (collectively "goods").

(2) By placing an order for goods, Customer expressly agrees to the following Terms and Conditions. Any contradictory or additional terms and conditions contained in the purchase order or any other document submitted by Customer are herewith expressly rejected and will have no legal effect.

## 2. Prices and Orders

(1) Unless otherwise indicated, prices in any price lists or individual written price quote are quoted in Euro and do not include any taxes, including value added tax, which will be invoiced to Customer at the prevailing rate as provided by the relevant laws.

(2) We guarantee our written quotations for 30 days. When placing your order, please reference our quoted prices or our pro forma number. Orders have to be made in writing by letter, facsimile or e-mail and are subject to acceptance by PEPPERPRINT, such acceptance at the sole discretion of PEPPERPRINT to be made either in the form of a written confirmation by letter, facsimile or e-mail or by immediately affecting the delivery of goods to Customer.

(3) No quotations given by PEPPERPRINT shall constitute an offer open for acceptance by Customer. The goods are offered subject to availability.

## 3. Delivery

(1) Determination of the manner of shipping and of the carrier used shall be made by PEPPERPRINT unless Customer otherwise instructs PEPPERPRINT. Shipping and handling costs are prepaid and added to the invoice. Shipping conditions are Ex Works (EXW).

(2) Without prejudice to the passing of property in and title to the goods, delivery of the goods shall take place when the goods are delivered by PEPPERPRINT into the possession of the carrier at which point risk in the goods shall pass.

(3) The goods must be examined and signed for by Customer at the time of passing to Customer's possession or control or at the earliest opportunity thereafter. PEPPERPRINT shall assist Customer in pursuing any claim made against the carrier. No claims by Customer in respect of damage to, shortage or loss of some or all of the goods in transit prior to delivery shall be made unless notice in writing of such damage, shortage or loss on delivery is given to PEPPERPRINT and the carrier within 3 days of their arrival at Customer's premises or eventual place where Customer takes control or possession of the goods as stipulated in the order. Customer accepts that this allows a reasonable period to allow such inspection.

(4) Any time or date for delivery given by PEPPERPRINT to Customer is Seller's estimate of the date on which the goods will be delivered to Customer, and PEPPERPRINT will make every reasonable endeavour to meet such delivery date, but time shall not be of the essence with regard to delivery at such time or date. PEPPERPRINT shall not be liable (in contract, delict, tort or otherwise howsoever) in respect of any liability, loss, expense, claim or damage incurred by Customer arising from any reasonable delay in delivery of the goods or any part thereof or any delay due to circumstances beyond Seller's control (as described in condition 9.2) and in no event shall PEPPERPRINT be so liable for any special, indirect, consequential damage or economic loss including, without prejudice to the foregoing generality, loss of profit, arising from any delay in delivery, howsoever caused.

(4) PEPPERPRINT shall be entitled to deliver the goods by instalments and in such case each instalment shall constitute a separate contract. Any failure in delivery of any one or more instalments shall not entitle Customer to repudiate the contract for the supply of a series of instalments as a whole or to cancel any subsequent instalment. In times of shortage of availability of the goods, PEPPERPRINT shall be entitled to allocate supplies as it sees fit without being in breach of the contract or incurring liability hereunder to Customer.

## 4. Payment Terms

(1) Unless otherwise agreed by the parties, payment of the price of each consignment of the goods shall be made by Customer within 30 days of the date of the invoice issued in respect of such consignment (Due Date), and time shall, in respect of payment, be of the essence of the contract.

(2) Payment shall be made net to the bank account of PEPPERPRINT as shown on the invoice.

(3) PEPPERPRINT shall be entitled without prejudice to any other of its rights to charge interest on all sums which may at any time be overdue for payment by Customer to PEPPERPRINT in terms of the contract (from the time such sums become due for payment until such sums have been paid to PEPPERPRINT in full) at the rate of 1 % for each month or fraction thereof or the maximum interest allowed by law, whichever is lower. Such interest shall be paid by Customer on demand by PEPPERPRINT.

(4) Payments may not be withheld or set off for any reason without Seller's consent, and PEPPERPRINT may sue for the Price of the goods and any other sums due even if title and property to the goods have not passed to Customer.

(5) PEPPERPRINT reserves the right at any time to withdraw or vary credit terms in respect of further new consignments without explanation.

(6) Without prejudice to any other rights of PEPPERPRINT, failure to make payment of the price on the Due Date shall entitle PEPPERPRINT to suspend any outstanding deliveries in respect of any contract until payment is made and PEPPERPRINT may treat such outstanding order as repudiated if Customer fails within 14 days to rectify any failure to pay.

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## 5. Passing of Property

Property and title in the goods delivered to Customer shall not pass to Customer until the price for the goods has been received by PEPperPRINT. Where the goods to be supplied in terms of a contract are supplied by part deliveries this condition will apply to each part delivery as if it formed the subject matter of a separate and independent contract. Until the price has been received by PEPperPRINT, Customer will hold and store the goods at Customer's risk as agent for PEPperPRINT and in a manner which clearly distinguishes them from other goods of Customer and indicates that they are the property of PEPperPRINT.

## 6. Liability

(1) Without prejudice to condition 3.3, where any of the goods supplied by PEPperPRINT to Customer are claimed by Customer to be defective in material or workmanship or not to conform to the agreed or stipulated specifications, Customer shall notify PEPperPRINT in writing of such defect or non-conformity without delay following discovery of the defect or non-conformity, and Customer shall give to PEPperPRINT full opportunity to inspect and test such goods. Should such goods be shown to the reasonable satisfaction of PEPperPRINT to have been defective at the time of delivery to Customer, PEPperPRINT shall at its sole option either repair or replace such goods or (if the goods shall have been paid for in full) refund to Customer the price thereof, but in no circumstances whatsoever, subject to any regulatory or statutory provision from time to time in force and subject to the further conditions below, shall the liability of PEPperPRINT in connection with any such goods exceed the cost of replacement thereof or the price paid or agreed to be paid by Customer therefore.

(2) PEPperPRINT shall not be liable for any claims, losses, liabilities, expenses or damages arising from any defects in the goods which defects occur as a result of or are reasonably attributable to: 1. improper use of the goods or use for purposes which are not expressly indicated by PEPperPRINT in writing as suitable for such goods or, without limitation, use or supply in breach of condition 7 hereof; 2. negligence on the part of any person other than PEPperPRINT; 3. improper storage or treatment of the goods or any part of the goods by Customer or any subsequent user or use by Customer or any subsequent user of the goods which are retained after expiry of the shelf life recommended by PEPperPRINT; 4. loss or theft of the whole or any part of the goods.

(3) Subject to condition 6.5, PEPperPRINT shall not be liable for any special, indirect, incidental, consequential or exemplary loss or damage, including loss of profit, business, contracts or goodwill, whether notice of the likelihood of such damage is given to seller and whether arising, without limitation, through breach of contract, negligence, strict liability in tort, warranty, or statutory duty, howsoever arising, which Customer may sustain in connection with the goods supplied or to be supplied under the contract.

(4) Customer agrees that Customer has satisfied itself as to the suitability of the goods for the purpose or purposes for which Customer requires them or for which Customer supplies them to customers. PEPperPRINT has no responsibility for any losses, claims, expenses, liabilities, damages

or other consequences of use by Customer or any person receiving the goods from or through Customer for purposes for which the goods are not expressly marketed or labelled by PEPperPRINT as appropriate. Customer shall indemnify, defend, and hold harmless PEPperPRINT, its affiliates, its distributors, and the directors, officers, employees and agents of each such entity (together, the Indemnified Persons) from and against all claims, liabilities, losses, expenses (including without limitation reasonable attorneys' fees and other legal costs and expenses) or damages incurred by the Indemnified Persons which result directly or indirectly from: 1. use of the goods or supply of the goods by Customer to any third party for uses not expressly authorised in writing by PEPperPRINT; 2. breach by Customer of its obligations and/or warranties in condition 7 hereof; 3. use or resale of the goods by Customer in a manner that infringes or is claimed to infringe the Intellectual Property (as defined in condition 8) rights of any third party; or 4. manufacture or sale of the goods by PEPperPRINT in a manner that infringes or is claimed to infringe the Intellectual Property rights of any third party to the extent resulting from any specification or instruction furnished by Customer. Nothing in this condition 6.4 shall be construed as granting any rights in addition to or contrary to the Authorised Uses statement set forth in condition 7 below.

(5) Nothing in these conditions shall limit or exclude Seller's liability for personal injury or death resulting from any negligence of PEPperPRINT or its employees or which may be established as resulting from a proven defect in the goods. Sharp edges and corners, however, are immanent to glass slides and therefore may not be regarded as a proven defect or negligence of PEPperPRINT or its employees. PEPperPRINT shall not be liable for personal injury or death resulting from such immanent features of goods.

(6) Any failure of performance of any of PEPperPRINT's contractual obligations shall not be considered a breach of such contractual obligation if and to the extent that such failure is caused by circumstances beyond Seller's control (as described in condition 9.2). In that case PEPperPRINT shall not be liable (in contract, delict, tort or otherwise howsoever) in respect of any liability, loss, expense, claim or damage incurred by Customer arising from any failure of performance of any of PEPperPRINT's contractual obligations.

(7) The PEPperPRINT shall not be liable or responsible for a failure by the Customer to abide by any administrative or regulatory requirements for use or sale of the goods in the country in which goods are destined for such use or sale.

## 7. Warranty and Use

(1) PEPperPRINT warrants that the goods shall be in accordance with agreed specifications (within accepted or stipulated tolerances); shall otherwise reasonably conform to any description given by PEPperPRINT in writing and shall be of reasonably satisfactory quality.

(2) To the extent that any quotation given by PEPperPRINT is based on Customer's specifications as given to PEPperPRINT, PEPperPRINT shall not be held liable or responsible for the lack of sufficiency, fitness for

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purpose or satisfactory quality in respect of goods insofar as attributable to Customer's specifications.

(3) All goods are intended for in vitro laboratory purposes and, are not intended for use and are not to be used for any other purposes including, but not limited to, in vitro diagnostic purposes, ex vivo or in vivo therapeutic purposes, in foods, drugs or cosmetics of any kind, for consumption by or use in connection with or administration or application to humans or animals or for other unauthorised commercial purposes. Customer acknowledges that the goods have not been tested by or for PEPPERPRINT in relation to any such use. Without limiting the foregoing restrictions, Customer warrants to PEPPERPRINT that should Customer for any reason use or sell the goods for any use other than in vitro laboratory purposes, Customer shall conduct all necessary tests, and comply with all regulatory requirements in the territory in question and shall issue all appropriate warnings and information to subsequent purchasers and/or users.

(4) All other warranties in relation to the goods and in relation to any technical services afforded to Customer by PEPPERPRINT, whether express or implied are hereby excluded, except in so far as such warranties may not validly be excluded by any applicable regulation or statute.

## 8. Intellectual Property Rights

(1) PEPPERPRINT warrants to Customer that the manufacture and sale by PEPPERPRINT of goods manufactured by or for PEPPERPRINT without reliance upon instructions, specifications, or other directions provided by Customer and delivered hereunder will not infringe the claims of any patent, trademark or copyright (= Intellectual Property) of any third party. PEPPERPRINT does not warrant that the manufacture and sale by PEPPERPRINT of goods manufactured in reliance upon instructions, specifications, or other directions provided by Customer or Customer's use or resale of goods delivered hereunder will not infringe the claims of any Intellectual Property of any third party.

(2) Should any claim be made against Customer for infringement of Intellectual Property rights arising from the manufacture or sale of goods by PEPPERPRINT in circumstances in which the manufacture of such goods was not based upon instructions, specifications, or other directions provided by Customer, Seller shall conduct any ensuing litigation and all negotiation for settlement of such claims and will bear the costs of any payment made in settlement or resulting from an award; provided that Customer shall give PEPPERPRINT the earliest possible notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection with such matter and shall permit PEPPERPRINT to have conduct of claim and shall (at Seller's expense) give all reasonable information, cooperation and assistance to PEPPERPRINT (including without limitation lending its name to proceedings) in relation to the conduct of the claim.

(3) The provisions of condition 8.2 shall not apply to any infringement caused by Seller's having followed specifications or instructions furnished by Customer or his agent or representative.

(4) The foregoing provisions shall be Seller's entire liability to Customer and Customer's sole and exclusive remedies against PEPPERPRINT in connection with claims based on or resulting from the infringement of Intellectual Property rights of any kind whatsoever of third parties.

(5) All goods include technologies for which patents have been issued or are pending, or which are protected by any other form of intellectual property rights such as know-how, and for which components have been licensed to make them available, including without limitation PEPPERPRINT's proprietary and protected manufacturing process for goods ("Underlying Technologies"). Not all components may be available for commercial license. It is incumbent upon the interest party to contact the appropriate patent assignees for specific information regarding license issues. Purchase of goods does not grant Customer any rights in Underlying Technologies.

## 9. Confidentiality, Force Majeure, Waiver and Severability

(1) PEPPERPRINT and Customer shall keep confidential and shall not without prior consent in writing of the other disclose to any third party any technical or commercial information acquired from the other as a result of discussions, negotiations and other communications between them in relation to the goods.

(2) PEPPERPRINT shall not be responsible or liable in any manner whatsoever for any loss or damage whether direct, indirect or consequential, arising from any delay or default in the performance of any of Seller's obligations in terms of contract where such delay or default arises as a result of any circumstances or conditions beyond the control of PEPPERPRINT including (but without prejudice to the generality of the foregoing) war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform, failure of production equipment, any statute, rule, by law, order, regulation or requisition made or issued by any government department, local or other duly constituted authority.

(3) No relaxation, delay or waiver by PEPPERPRINT of its rights in respect of any breach of obligation of Customer pursuant to this contract shall constitute a waiver of any other rights in respect of any prior or subsequent breach or obligation.

(4) The invalidity in whole or in part of any of these conditions shall not affect the validity of any other provision. An invalid provision shall be replaced by a valid provision which comes closest to the economic purpose of the invalid provision.

(5) Each of these conditions shall be separate and severable and shall be enforceable accordingly.

## 10. Notification

Any notice to be made to PEPPERPRINT shall be directed to: PEPPERPRINT GmbH, Rischerstrasse 12, 69123 Heidelberg, Germany.

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## 11. Miscellaneous

Place of fulfilment of PEPperPRINT's obligations is Heidelberg, Germany. The legal relationship between PEPperPRINT and Customer, including these Terms & Conditions, and any disputes arising herefrom, will be governed by and construed in accordance with the laws of the Federal Republic of Germany to the express exclusion of the UN-Convention on the international Sale of Goods. The competent courts of Heidelberg, Germany shall have exclusive jurisdiction for any disputes arising out of or in the context of the agreement between PEPperPRINT and Customer.

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