

DaTARIUS GmbH TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Contract" means a contract for the sale of Goods and Services made by or on behalf of the Supplier with a Customer; **"Customer"** means a person to whom the Supplier supplies or is to supply Goods and Services pursuant to a Contract; **"Goods"** means the goods which the Supplier supplies pursuant to a Contract; **"Order"** means an order in writing for the Goods and Services received by the Supplier from the Customer; **"Services"** means the services which the Supplier provides pursuant to a Contract; **"Supplier"** means DaTARIUS GmbH, a company incorporated under the laws of Austria whose principal place of business is at Reutte, Austria.

1.2 Unless expressly provided otherwise in these Conditions, the Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence, Order, documentation submitted by the Customer or elsewhere or implied by custom, practice or course of dealing.

1.3 Any general terms and conditions of the Customer shall only apply if explicitly accepted by the Supplier in writing, which acceptance shall not be deemed given even if the Supplier fails to object to such terms and conditions after receipt thereof. By ordering Goods from the Supplier the Customer is deemed to have accepted the Conditions of the Supplier.

1.4 The Customer's acceptance of delivery of the Goods or performance of the Services shall (without prejudice to Conditions 1.4 and/or 1.5 or any other manner in which acceptance of these Conditions may be evidenced) constitute unqualified acceptance of these Conditions.

1.5 A quotation by the Supplier does not constitute an offer and the Supplier reserves the right to withdraw or revise a quotation at any time prior before it accepts an Order.

1.6 The Supplier's acceptance of any Order shall be effective only where such acceptance is in writing on the Supplier's order acceptance form and signed by an authorized representative of the Supplier ("**Order Confirmation**").

2. DELIVERY AND PERFORMANCE

2.1 The dates mentioned in any quotation, Order, acceptance form, Order Confirmation or elsewhere for delivery of the Goods or performing the Services are approximate only and time for delivery or performance is not of the essence.

2.2 The Supplier will deliver the Goods or provide the Services at the Supplier's premises unless otherwise stipulated or agreed by the Supplier.

2.3 The Customer is solely responsible for unloading the Goods at the point of delivery.

3. EXPORT SALES

3.1 If the Goods are sold CIF or FOB or on the basis of other international trade terms, the meaning given to such terms in the International Chamber of Commerce INCOTERMS (as revised from time to time) shall apply, except where inconsistent with any of the provisions contained in these Conditions.

3.2 The Customer shall secure the price of any Goods sold under an international supply contract as defined in the United Nations Convention on Contracts for the International Sale of Goods by establishing in the Supplier's favor an irrevocable letter of credit on terms satisfactory to the Supplier immediately upon receipt of the Supplier's acceptance of an Order and confirmed by an Austrian bank acceptable to the Supplier.

4. RISK AND TITLE

4.1 Risk for the Goods passes on delivery but title to the Goods remains with the Supplier until the Customer pays to the Supplier the agreed price for the Goods (together with any accrued interest at the rate specified in Condition 6.3).

4.2 At any time before title to the Goods passes to the Customer (whether or not any payment to the Supplier is then overdue or the Customer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights):

4.2.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorize others to do so) which the Customer hereby authorizes;

4.2.2 require delivery up to it of all or any part of the Goods.

5. PRICE

5.1 The price for the Goods and/or Services shall be as stated by the Supplier.

5.2 All prices are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, insurance and other incidental costs.

5.3 Notwithstanding the terms of any quotations, price lists or Order Confirmation, the Supplier may at any time prior to delivery of the Goods or performance of the Services revise prices to take account of increases in costs.

5.4 The Supplier shall (if applicable) add to the price of the Goods and Services, and the Customer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Goods and Services.

6. PAYMENT

6.1 The Customer shall make all payments due to the Supplier under any Contract in accordance with the terms set out in the Supplier's quotation and/or Order Confirmation or if there are no such terms in Euros in cleared funds within 7 days of the date of the Supplier's invoice.

6.2 The Customer is not entitled to withhold payment of any amount due to the Supplier by way of any set-off or counterclaim.

6.3 If the Customer fails to pay any amount due to the Supplier under any Contract on the due date for payment, the Supplier may charge the Customer interest (both before and after any judgment) at the rate of 8% above the base interest rate calculated on a daily basis until payment in full is made and the Supplier shall be entitled to recover the cost of all expenses incurred by it in attempting to recover the debt.

6.4 The Supplier may offset any amount owing to it from the Customer against any amount owed to the Customer by the Supplier.

6.5 Notwithstanding any appropriation by the Customer to the contrary, all payments made by the Customer to the Supplier shall be appropriated first to Goods which have been resold by the Customer and then to Goods which remain in the Customer's possession or control.

7. INFRINGEMENTS OF THIRD PARTY RIGHTS

7.1 If at any time it is alleged that the Goods or Services infringe the rights of any third party or if in the Supplier's reasonable opinion such an allegation is likely to be made, the Supplier may at its option and its own cost: modify or replace the Goods or re-perform the Services without reducing the overall performance of the Goods or Services in order to avoid the infringement; or procure for the Customer the right to continue using the Goods or benefit from the Services; or repurchase the Goods at the price paid by the Customer less depreciation at the rate the Supplier applies to its own equipment.

7.2 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party: the Customer shall notify the Supplier as soon as it becomes aware of any such claim; the Supplier shall have control over and, at its own cost, shall conduct any such proceedings in such manner as it shall determine; and the Customer shall provide all reasonable assistance as the Supplier may request.

8. WARRANTY AND LIABILITY

8.1 The Supplier warrants that the Goods and Services will for the period specified in the Order Confirmation, or if there is no such period specified in the Order Confirmation a period of one year from the date of delivery or performance: comply with their specification; and be substantially free from defects in materials and workmanship.

8.2 The Supplier shall not be liable for a breach of the warranty in Condition 8.1 if:

8.2.1 the Customer makes any further use of such Goods after giving such notice; or

8.2.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

8.2.3 the Customer replaces, repairs or fits parts to the Goods which were not supplied by the Supplier, or without the written consent of the Supplier;

8.2.4 in respect of any defect in the Goods arising from any free issue materials or any drawing, design or specification supplied by the Customer;

8.2.5 the defect in the Goods or Services is caused by fair wear and tear or an act, neglect or default of the Customer or a third party;

8.2.6 the defect in the Goods or Services is not notified to the Supplier within 8 working days of the date of delivery or performance or, if the defect would not be apparent on reasonable inspection, within 8 working days of the date of detection.

8.3 The Supplier is not liable for:

8.3.1 non-delivery of the Goods or non-performance of the Services unless the Customer notifies the Supplier of the claim within 7 working days of the date of the Supplier's order confirmation;

8.3.2 shortages in quantity delivered unless the Customer notifies the Supplier of a claim within 7 working days of receipt of the Goods;

8.3.3 for damage to or loss of all or part of the Goods in transit (where the Goods are carried by the Supplier's own transport or by a carrier on behalf of the Supplier) unless the Customer notifies the Supplier within 15 working days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

8.4 The Customer shall comply with the carrier's rules, regulations and requirements so as, when appropriate, to enable the Supplier to make a claim against the carrier in respect of any damage or loss in transit.

8.5 Subject to Conditions 8.2 and 8.3, if any of the Goods do not conform with the warranty in Condition 8.1, the Supplier shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate or re-perform the Services provided that, if the Supplier so requests, the Customer shall at the Customer's expense, return the Goods or the part of such Goods which is defective to the Supplier.

8.6 If the Supplier complies with Condition 8.5 it shall have no further liability for a breach of the warranty in Condition 8.1 in respect of such Goods.

8.7 Any Goods replaced will belong to the Supplier and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the warranty period.

8.8 Except as set out in this Condition 8, all conditions, warranties and representations, expressed or implied by statute, law or otherwise, in relation to the supply, use or failure to supply the Goods, or the performance or non-performance of the Services are excluded to the extent permitted by law.

8.9 Subject to the provisions in Condition 8.10, the Supplier is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or the Supplier was advised of the possibility of them in advance:

8.9.1 loss or damage incurred by the Customer as a result of third party claims;

8.9.2 loss of actual or anticipated profits;

8.9.3 loss of business opportunity;

8.9.4 loss of anticipated savings;

8.9.5 loss of goodwill; or

8.9.6 any indirect, special or consequential loss or damage howsoever caused.

8.10 The entire liability of the Supplier under or in connection with the use of, supply of or failure to supply the Goods, or the performance or non-performance of the Services, whether for negligence, breach of contract, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, to the net amount invoiced to the Customer of the defective, damaged or undelivered Goods which give rise to such liability.

8.11 Nothing in these Conditions shall operate to exclude or restrict the Supplier's liability for: death or personal injury resulting from negligence; or fraud, deceit or willful behavior.

9. TERMINATION

9.1 On or at any time after the occurrence of any of the events in Condition 9.2, the Supplier may: stop any Goods in transit; suspend further deliveries to the Buyer or performance of the Services; exercise its rights under Condition 4; terminate any Contract forthwith by giving notice to that effect to the Customer.

9.2 The events are:

9.2.1 the Customer being in breach of any obligation under a Contract or these Conditions;

9.2.2 the Customer ceasing or threatening to cease carrying on business.

9.3 On termination of a Contract pursuant to Condition 9.1 or 11.2, any indebtedness of the Customer to the Supplier shall become immediately due and payable and the Supplier is relieved of any further obligation to supply Goods or perform Services to the Customer pursuant to that Contract.

10. CONFIDENTIALITY AND SPECIFICATIONS

The Customer shall treat all product, customer or business information, drawings, designs and specifications submitted to it by the Supplier as confidential and shall not disclose it to any third party without the Supplier's prior written consent or use it for any purpose except where authorized to do so by the Supplier.

11. GENERAL

11.1 If a license or consent of any government or other authority is required for the supply, carriage or use of the Goods or Services by the Customer, the Customer will obtain such license or consent at its own expense and produce evidence of it to the Supplier on demand.

11.2 In this Condition 11.2, "**Force Majeure Event**" means any circumstance beyond the control of the Supplier. If the Supplier is prevented, hindered or delayed from or in supplying the Goods or performing the Services under these Conditions by a Force Majeure Event the Supplier may, at its sole option, and without being liable for any loss or damage suffered by the Customer as a result: suspend deliveries or performance while the Force Majeure Event continues; terminate any Contract forthwith by giving notice to that effect to the Customer.

11.3 The Customer may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, a Contract.

11.4 Any notice given by one party to the other in connection with a Contract must be in writing and must be delivered by post and will be deemed to have been given 2 working days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract

11.5 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect. If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

11.6 A person who is not party to a Contract shall have no rights under the Contract.

11.7 The rights and remedies provided by any Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Supplier shall not constitute a waiver of that right or remedy or of any other rights or remedies.

11.8 No variation or alteration of any of the provisions of a Contract or these Conditions shall be effective unless it is in writing and signed by or on behalf of each party.

11.9 A Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with Austrian law and the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

11.10 Each party irrevocably agrees to submit to the exclusive jurisdiction of the competent Austrian courts over any claim or matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract.