

GENERAL TERMS AND CONDITIONS OF SALE
– For transactions with merchants only –
– Version 01/2014 –

1. Scope

Unless otherwise agreed in writing, the below General Terms and Conditions of Sale shall apply to all offers, deliveries and performances of Waters GmbH, including consultation services and the provision of information. Service deliveries are subject to special terms and conditions specified in the Service Report or in the General Terms and Conditions for Service, forming part of the service agreements. Deviating terms and conditions of the buyer shall not be binding for Waters GmbH unless expressly accepted to in writing.

2. Contract conclusion

The conclusion of a contract between the seller and the buyer requires the receipt of a written order confirmation by Waters GmbH.

3. Description of merchandise

3.1 All drawings, figures, measurements, weights or other performance specifications in brochures and other publications of Waters GmbH are approximations only. They shall constitute agreements on the legal and factual nature, if expressly confirmed in writing only.
3.2 Modifications to shape and execution which do not or only insignificantly impair or even improve the function, value and intended use of goods, shall not constitute a deviation from the agreed quality; the same shall apply for usage restrictions for software due to provisions by third-party manufacturers.

4. Prices

4.1 The prices of Waters GmbH are ex works and exclusive of packaging.
4.2 For order values of less than EUR 1,000.00, freight and packaging costs are billed in the form of a lump amount as specified in the respectively valid price list.
4.3 Agreed ancillary services are billed in addition.
4.4 The applicable statutory value added tax is added to the prices.

5. Payment

5.1 Unless otherwise agreed in writing, the purchase price shall be payable without discount within 30 days from the invoice date.
5.2 Cheques and B/Es are only accepted as payment upon specific agreement; In the case of payment by cheque or B/E, the payment will be considered as having been made only when the relevant amount has been irrevocably credited by a bank account of Waters GmbH.
5.3 In the event of a default in payment by the buyer, default interest in the statutory amount shall be payable. This shall not affect the right of Waters GmbH to claim reimbursement of additional damages incurred as a result of the default. Section 353 HGB [German Commercial Code] shall remain unaffected.
5.4 The buyer shall only be entitled to a netting of claims if his counterclaims have been recognised by declaratory judgement, are uncontested or recognised by Waters GmbH. Only in this case shall the buyer also have a right of retention.
5.5 If, after the conclusion of a contract, Waters GmbH learns of circumstances putting into question the solvency of the buyer (e.g. request to open insolvency proceedings, slow payment service, unfavourable information), Waters GmbH shall have the right to refuse the execution of the contract (if not yet been executed) until Waters GmbH has received reasonable guarantees for the payment. If Waters GmbH has already delivered, it may request—in derogation from section 5.1—the immediate payment of outstanding amounts or the provision of guarantees. Should the buyer fail to comply with this request within a reasonable period of time, Waters GmbH shall be entitled to rescind the contract; in this case, the buyer shall not be entitled to claim damages.

6. Delivery period and delivery conditions

6.1 Delivery periods and delivery conditions are only bindingly agreed if expressly confirmed in writing by Waters GmbH. Delivery periods shall start on the day when the written confirmation is sent; they shall be deemed as complied with if the merchandise has left the warehouse of Waters GmbH by the end of the delivery period.
6.2 Waters GmbH shall have the right to make partial deliveries. Each partial delivery shall be considered as a separate transaction. Complaints pertaining to this transaction shall not impact the further execution of the contract, unless partial delivery is of no interest to the customer.
6.3 If the buyer is in default with a payment to be made or with a service to be provided, potentially agreed delivery periods shall be suspended for the duration of the default; in this case, the delivery periods shall be extended accordingly.
6.4 Should Waters GmbH be in default with the provision of deliveries or services due to circumstances for which it is responsible, the buyer shall be entitled to set an adequate respite period in writing and, after the unsuccessful expiration of such respite period, to withdraw from the contract. Damage claims shall be excluded unless a mandatory liability of Waters GmbH according to section 11 applies.
6.5 Unforeseeable and unavoidable events (war, war-like circumstances, lack of energy or raw materials, sabotage, strike, legitimate lockouts, and all other disruptions of operation or official interventions for which Waters GmbH is not responsible) shall release Waters GmbH from its delivery and performance obligation for the duration of such circumstances, even if they occur in a period in which Waters GmbH is already in default. Delivery dates and delivery periods shall be extended to an adequate extent. The same shall also apply in the case of late or not correctly executed deliveries or services by suppliers of Waters GmbH for which Waters is not responsible. If such circumstances last more than six weeks, the buyer shall be entitled to withdraw from the contract. The same shall apply to a withdrawal from the contract by Waters GmbH.
6.6 Any re-export of our goods shall require our written consent.

7. Shipping

7.1 Unless specifically agreed in the order confirmation, Waters GmbH shall organise shipping at its best discretion.
7.2 Should the buyer wish to take out insurance for the transport, this shall be at the buyer's expense.

8. Risk assumption

8.1 The risk of accidental loss or accidental degradation of the merchandise will pass to the customer once the merchandise leaves the warehouse of Waters GmbH for the purpose of shipping. This shall also apply in the case of partial deliveries.
8.2 If the buyer is in default of acceptance, the risk of accidental loss or accidental degradation of the merchandise shall pass to the buyer upon notification that the merchandise is ready for shipment.

9. Reservation of title

9.1 Waters GmbH reserves the title in the delivered goods and in the products resulting from their handling or processing (reserved goods) until all receivables due to Waters GmbH in connection with the business relationship with the buyer have been received.
9.2 The buyer shall store the reserved goods for Waters with the due diligence of a proper merchant and adequately insure it against all customary risks, especially fire, theft, water damage. Proof of insurance shall be presented upon request.
9.3 The buyer shall only be permitted to resell the reserved goods in the context of normal business operations and under reservation of title as long as he complies with his payment obligations to Waters GmbH.
9.4 Any treatment or processing of reserved goods shall be done by the buyer for Waters GmbH. If reserved goods are mixed, combined or blended with other goods not owned by Waters GmbH, the buyer shall grant co-ownership in the new products to Waters GmbH in the invoiced amount of the reserved goods, as per contract between Waters GmbH and the buyer.
9.5 The buyer assigns to Waters GmbH already now all future receivables arising for him from a resale or another legal transaction in connection with the reserved goods, in the invoiced amount as per contract between Waters GmbH and the buyer. If the buyer resells the reserved goods together with other goods, the buyer shall assign already now the purchase price claim in the invoiced amount of the reserved goods as per contract between Waters GmbH and the buyer to Waters GmbH. The buyer shall be entitled to collect the receivables as long as he is not in default with his payments. At the request of Waters GmbH, the buyer shall disclose the debtors of the assigned receivables, inform them of the cessation and hand over all required documents to Waters GmbH, should Waters GmbH collect the receivables itself if the buyer is in default with his payments.
9.6 If the realisable value of our securities exceeds the cover limit of 110 % of the securitised receivables or if the respective estimated value of the securities is 150% of the securitised receivables, the buyer shall be entitled to claim release of the exceeding securities.

10. Defects

10.1 In the case of defective new goods, the cause of which already existed at the time of the passing of the risk, Waters GmbH shall, at the request of the buyer, first provide supplementary performance. The right to choose the type of supplementary performance shall lie with Waters GmbH.
10.2 The buyer shall grant Waters GmbH sufficient opportunity for supplementary performance. In addition, the buyer shall be obligated to communicate and specify potential complaints in writing, stating the ordering information as well as invoice and shipping numbers and including the packing and control slips. Rejected goods must be returned at the request of Waters GmbH.
The provisions of section 377, 378 HGB shall remain unaffected. Claims for defects and any rights arising from them shall be excluded if Waters GmbH is not informed of the defects in writing and within eight days from the delivery of the merchandise in the case of obvious defects, or from the discovery of the defects in the case of hidden defects.
10.3 Damage claims and rights shall not extend to natural wear and tear or damages occurring after the delivery as a result of improper or negligent handling, excessive strain or strain not provided for in the product specification or due to the use of inadequate equipment. They shall also not apply to damages occurring as a result of improper modifications of the goods by the buyer or alterations occurring as a result of specific environmental circumstances which are not provided for in the contract.
10.4 Should subsequent performance owed by Waters GmbH fail, the buyer shall be entitled, at his discretion, to reduce the purchase price or to withdraw from the purchase of the defective merchandise. Additional damage claims and rights, especially claims for the reimbursement of damages, shall be excluded if no statutory liability by Waters GmbH in accordance with section 11 applies.
10.5 All damage claims by the buyer shall lapse after one year from the delivery of the goods to the buyer. No damage claims can be asserted after the expiry of this period.
10.6 Damage claims and rights for used goods shall be excluded.
10.7 The above provisions shall not apply if Waters GmbH has fraudulently concealed a damage or provided a guarantee for the quality of the goods.

11. Limitation of liability

11.1 Waters GmbH shall be liable in the full statutory amount for damages to life, limb and health of the buyer due to a negligent breach of duty by Waters GmbH or to an intentional or negligent breach of duty by a legal representative or vicarious agent of Waters GmbH.
11.2 Furthermore, Waters GmbH shall be liable in the event of a breach of cardinal contractual duties whose fulfilment the customer can regularly rely upon, even in cases of minor negligence.
11.3 For other damages incurred by the buyer, Waters GmbH shall only be liable if such damages are the result of an intentional or grossly negligent breach of duty by Waters GmbH or by a legal representative or chief executive.
11.4 In the event of a minor breach of cardinal contractual duties or in the event of an intentional act or gross negligence of vicarious agents who are not a chief executive of the company, Waters GmbH shall only be liable for damages in the amount of the loss typically to be expected considering all relevant and foreseeable circumstances.
11.5 Any liability for consequential damages (e.g. claims based on business interruption, loss of profit, failure to make savings, loss of data or information) shall be excluded.
11.6 The above limitations of liability cover all claims for damages by the buyer, irrespective of their legal basis. A liability according to the Product Liability Act, based on warranty or fraud shall, however, remain unaffected.
12. Obligation to accept returned goods pursuant to section 10 (2) ElektroG [German Electrical and Electronic Equipment Act]
12.1. For new devices and objects manufactured and marketed by Waters after 13 August 2005 falling within the scope of ElektroG and used by the buyer for business purposes (so-called b2b devices), Waters will create a reasonable option for the return and disposal of legacy devices at its own expense or commission a company with proper disposal. The acceptance of returned goods according to sentence 1, however, is subject to the condition that the returned devices are in a cleaned, decontaminated condition and that the user has provided a corresponding written safety and health declaration on the return certificate incl. the corresponding safety data sheets. Waters has the right to reject acceptance of such devices if these conditions are not met. Any costs incurred by Waters in connection with the rejection shall be borne by the customer. In the event of a rejection by Waters, the customer shall assume the duties of Waters pursuant to section 10 (2) ElektroG at its own expense.
In connection with the disposal of returned data carriers—irrespective of the type of data carrier—Waters expressly excludes any responsibility or obligation for confidential or sensitive data potentially contained on such data carriers.
12.2. If, in accordance with section 1, the buyer hands over goods and devices delivered by Waters to a third party, irrespective of the legal basis on which this is done, the obligation to take back returned goods shall cease to apply. In this case, the buyer becomes the party responsible for disposal within the meaning of section 10 (2) sentence 4 ElektroG and is obligated to treat the devices and objects at his own expense and carry out proper disposal. The buyer shall be free to impose disposal obligations on the third party. Waters shall, in any case, be indemnified against all third-party claims.

13. Place of jurisdiction, place of performance

13.1 The place of jurisdiction for all current and future disputes arising from the business relationship—including bills receivable and cheques—is Frankfurt am Main.
13.2 Waters GmbH reserves the right to also sue the buyer in another place of jurisdiction.
13.3 The place of performance for the execution of our delivery and for payment is Eschborn.

14. Applicable law

The relationship between the parties is governed by the laws of the Federal Republic of Germany to the exclusion of the law on the international sale of goods (CISG).

15. Miscellaneous

15.1 The above provisions and the additional written agreements between the parties are complete and replace all previous oral or written agreements.
15.2 Should one of the above provisions or of the written agreements made upon the conclusion of the contract be invalid or unenforceable, this shall not affect the validity of the other contractual provisions. The parties shall be obligated to replace an invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to what the commercial result of the invalid or unenforceable provision would have been.