

**General Terms and Conditions of Delivery and Services of HORIBA Europe GmbH
(Germany)**

I. Scope of application and conclusion of contract

1. Deliveries and services of HORIBA Europe GmbH (Germany) (hereinafter: "HORIBA „") shall be exclusively governed by these General Terms and Conditions of Delivery and Services (hereinafter: "Terms and Conditions"), as amended upon conclusion of the respective contract, which are accepted by the Customer by placing the respective order or receiving the respective delivery or service. These Terms and Conditions shall also apply to any future transactions with the Customer. The cost rates of HORIBA, as applicable upon conclusion of the respective contract, shall apply in addition.
2. Any deviating or supplementary terms and conditions of the Customer shall not become an integral part of the contract, even if HORIBA does not expressly object to such deviating or supplementary terms and conditions of the Customer.
3. Offers by HORIBA shall be non-binding. A contract shall only become effective once it has been confirmed by HORIBA in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms and Conditions. Oral agreements or promises shall only be valid if an authorized employee of HORIBA has confirmed them in writing.
4. Side agreements and changes shall only become effective once they have been confirmed by HORIBA in writing. This shall also apply to a waiver of this provision.
5. Documents and data provided by HORIBA, such as pictures, drawings, data on weight and measurements, shall only be binding to the extent that they are explicitly mentioned as integral parts of the respective contract and/or explicitly referred to.
6. HORIBA reserves all rights and any and all know-how pertaining to any information and documents provided (e.g. samples, cost estimates, drawings, documentation), including in electronic form. These items must not be made available to third parties without HORIBA's prior written consent and shall be returned to HORIBA upon request without undue delay.
7. The Customer may not assign any of its claims under the contract without HORIBA's consent. Section 354a German Commercial Code (*Handelsgesetzbuch*; "HGB") shall remain unaffected hereby.

II. Prices and payment

1. HORIBA's prices shall be net prices. Value added tax at the statutory rate and transportation and packaging costs shall be charged separately. The Customer shall bear any public charges such as customs duties that may arise in connection with the import of the delivery and service item. HORIBA will not refund any return transport costs related to packaging material.
2. HORIBA reserves the right to charge applicable taxes unless the Customer unsolicitedly submits all supporting documents required as proof of the eligibility for tax exemption within one month from invoicing.
3. Cost estimates shall only be binding if they are made in writing or sent by email.
4. Unless otherwise specified, payments shall be effected without any discount in the following manner at the latest 30 days after the invoice date:
 - a. In case of contracts regarding deliveries including assembly and/or commissioning by HORIBA:
30% advance payment upon conclusion of the contract.
60% upon delivery and/or notification of readiness for shipment (on a pro rata basis in case of partial delivery).
10% after acceptance, and/or at the latest 90 days after delivery and/or notification of readiness for shipment in the event that acceptance is delayed for reasons outside HORIBA's sphere of responsibility (on a pro rata basis in case of partial delivery).
 - b. In case of contracts regarding deliveries excluding assembly and/or commissioning by HORIBA (order value at least EUR 100,000):
30% advance payment upon conclusion of the contract.
70% upon delivery and/or notification of readiness for shipment (on a pro rata basis in case of partial delivery).
 - c. In case of contracts regarding deliveries excluding assembly and/or commissioning by HORIBA (order value below EUR 100,000):
100% upon delivery and/or notification of readiness for shipment (on a pro rata basis in case of partial delivery).
 - d. In case of contracts regarding mere services:
100% after provision of the service; services partially rendered may be invoiced at any time.
5. Unless otherwise quoted, assemblies, repair work and other services will be charged at the applicable cost rates, which can be requested from HORIBA. Extra charges will be payable for any work performed outside the normal working hours. Travel and waiting times shall be regarded as working time.
6. The Customer's rights to set-off or retention shall only extend to claims that are uncontested on the merits and in terms of amount or have been recognized or finally adjudicated. In the event of any defects of the delivery item or

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service item, the Customer's rights to set-off and retention due to rights based on defects, if any, shall remain unaffected.

7. Payments shall be effected without any discount free HORIBA 's paying agent at the latest 30 days after the invoice date. If this deadline is not met, the Customer shall be in default of payment without further warning. Failure to effect payment by the respective dates shall result in default interest being charged by HORIBA. HORIBA shall remain entitled to claim further damage due to a default.
8. The prices quoted in HORIBA 's offers shall only be applicable if all deliveries and services offered are ordered in their respective full scope.

III. Performance, passing of risk, acceptance

1. HORIBA reserves the right to make reasonable partial deliveries or render reasonable partial services.
2. Deliveries shall be made EXW (Incoterms 2010), unless otherwise agreed, ex place of manufacture.
3. In case of rendering works, the risk shall pass to the Customer upon acceptance. If the Customer effects transport of the item from the place of manufacture to the place of use, the Customer shall bear the risk for the duration of such transport.
4. The provisions governing the passing of the risk shall also apply to services partially rendered or if HORIBA must provide further services.
5. In the event of a delay or failure of delivery or acceptance of the service as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer on the day notice of readiness for delivery and/or acceptance is given. HORIBA undertakes to obtain insurance cover requested by the Customer at the latter's expense.
6. Without prejudice to its rights under Section VIII, the Customer must not refuse to accept the delivery or service in the event of immaterial defects and minor variations in quantity.

IV. Retention of title

1. The Customer shall not acquire ownership of the delivery items until they have been paid in full. To the extent that the validity of the retention of title is subject to specific conditions or specific formal requirements in the country of destination, the Customer shall ensure fulfillment of such conditions or requirements.
2. The Customer may neither pledge, sell, assign by way of security nor otherwise dispose of the delivery item before the transfer of title in a manner that would endanger HORIBA 's ownership. In the event of a pledge, seizure or other third-party disposal, the Customer shall point to HORIBA 's position as owner and notify HORIBA without undue delay.
3. If the Customer is in default of material obligations such as payment to HORIBA and rescinds the contract, HORIBA may, without prejudice to any other rights, request surrender of the retained items and make other use thereof in order to satisfy its matured claims against the Customer. The Customer shall tolerate the removal of the retained items and grant access to its offices and business premises for this purpose.
4. A petition for the institution of insolvency proceedings over the Customer's assets shall entitle HORIBA to rescind the contract and request immediate return of the delivery item.
5. To the extent that HORIBA 's delivery items are to be firmly connected to the land and/or integrated into a building, they shall only be connected or integrated for a temporary purpose.

V. Performance period

1. Delivery dates and delivery periods shall only be binding if they have been agreed as binding in the contract and if the Customer has provided HORIBA in due time with all information and documents required to effect the delivery and has made agreed advance payments, if any, as agreed. Delivery periods shall commence on the date of the confirmation of order. In the event of additional or supplementary orders entered later, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.
2. The performance period shall be deemed complied with if the item's readiness for pick-up has been communicated by its expiry. To the extent that an acceptance procedure is required, the relevant date shall be the acceptance date, alternatively the communication of the item's readiness for acceptance by HORIBA, if the Customer refuses acceptance although the Customer is not entitled to do so.
3. If failure to comply with the performance period is due to force majeure, labor disputes, delayed receipt of necessary or recommended government approvals, notices or other events that are beyond HORIBA 's sphere of influence, the performance period shall be extended reasonably. This shall also apply if HORIBA is in default as regards the provision of its services. The Customer shall be informed of the occurrence of the disturbance in a reasonable manner. If the end of such disturbance is not foreseeable or should it continue for more than three months, either party may rescind the contract.
4. HORIBA reserves the right to otherwise dispose of the delivery item and effect delivery to the Customer within a reasonably extended delivery period after a reasonable grace period for delivery and/or acceptance has been set and expired to no avail.

VI. Delays in performance, impossibility of performance

1. In case of a partial impossibility of performance, the Customer may only rescind the contract if partial performance is demonstrably of no interest to the Customer. If this is not the case, the Customer shall pay the contract price allocable to the possible partial performance. In all other respects, Section IX shall apply. If the impossibility of performance occurs during the default of acceptance or is predominantly the Customer's fault, the Customer shall remain obliged to render consideration.
2. If the impossibility of performance is not the fault of either of the contracting partners, HORIBA is entitled to receive a portion of the remuneration corresponding to the portion of the work performed by HORIBA.
3. If HORIBA is in default and the Customer suffers damage as a result, the Customer can demand a lump-sum compensation for default. This compensation for delay shall amount to 0.5% for each full week of delay from the date on which HORIBA receives the claim in writing but shall not exceed a total of 5% of the value of that part of the total performance which cannot be used in time or in accordance with the contract as a result of the delay. Further claims for damages due to default in delivery are excluded.]
4. Within the scope of the statutory provisions, the Customer may rescind the contract if – considering the exceptions provided for by statutory law – a reasonable deadline for performance set to HORIBA during the default on the part of HORIBA has expired to no avail and HORIBA is responsible for the delay.

VII. Acceptance

1. The works rendered by HORIBA shall be accepted without undue delay upon notification of the readiness for acceptance. The works shall be deemed accepted if the Customer does not give notice of actual material defects within two weeks.
2. The Customer may only refuse acceptance in case of defects that void or materially reduce the agreed or usual use of the delivery item and/or its value. If such defects do not exist, acceptance shall be made with the reservation of removal of these defects.
3. Refusals of acceptance or acceptance with reservations must be made without undue delay in writing, specifying and describing the claimed defect, for example in the acceptance protocol.
4. The complete or partial use of the delivery item by the Customer shall constitute acceptance.

VIII. Warranty Claims

1. Upon passing of the risk, the delivery items and service items shall be of the agreed quality; the quality shall exclusively be determined by the specific agreements between the parties regarding the characteristics, features and specifications of the delivery items and service items.
2. In the event of defects as to quality and title, the Customer shall be entitled as follows:
 - a. All Customer's claims in case of defects shall be subject to the condition that the Customer has duly complied with its duty to examine and notify defects pursuant to Section 377 HGB.
 - b. At HORIBA 's discretion, HORIBA may deliver an item free of defects or eliminate the defect provided that it can be proved that the delivery item was already defective upon passing of the risk. Any parts replaced using the substitution method shall pass into the ownership of HORIBA.
 - c. Causes for which HORIBA cannot be held responsible shall not give rise to any claims based on defects; these causes include for example: normal wear and tear, excessive use, interventions or repair work improperly carried out by the Customer or third parties, incomplete or incorrect information provided by the Customer, incorrect or improper use, incorrect operation, installation or commissioning, incorrect or negligent treatment, improper maintenance, use of inappropriate operating materials/substitution materials, poor construction works, inappropriate building ground, harmful environmental conditions unknown to HORIBA, chemical, electrochemical or electric influences, modifications to the delivery items or service items performed without the consent of HORIBA .
 - d. HORIBA shall be granted reasonable time and opportunity by the Customer to effect the subsequent performance. If HORIBA is not given such opportunity, HORIBA shall not be liable for the resulting consequences. Only in urgent cases where the safety of operations is endangered or in order to avert disproportionately extensive damage, in the case of which HORIBA must be informed without undue delay, shall the Customer have the right to remedy the defect itself or have the defect remedied by a third party and demand compensation of its necessary expenses from HORIBA.
 - e. HORIBA shall bear the necessary expenses for any justified subsequent performance to the extent that this does not constitute a disproportionate burden for HORIBA.
 - f. If a reasonable deadline for subsequent performance due to a defect set to HORIBA has elapsed to no avail, the Customer – considering the exceptions provided for by statutory law – shall be entitled to rescind the contract. In case of minor defects, the Customer shall only be entitled to reduce the contract price. With respect to assemblies, repair work and other services, the Customer's right to reduce the price shall be governed by Section XIII.9.
 - g. If an infringement of intellectual property rights or copyrights occurs within the periods of time set forth in Section XII. due to the use of the delivery items and service items, HORIBA, as a rule, grants the Customer a right of further use or modifies the delivery items and service items in a way that such an infringement of

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intellectual property rights or copyrights no longer exists. Should this not be possible on commercially reasonable terms or within a reasonable period, the parties are entitled to rescind the contract. Within these periods of time, HORIBA shall indemnify the Customer against uncontested or finally adjudicated claims of the respective property rights holder.

Without prejudice to the provisions of Section IX., HORIBA 's obligations set forth in Section VIII.2.h. shall be exhaustive in the event of infringements of intellectual property rights or copyrights.

- h. A claim for subsequent performance due to an infringement of intellectual property rights or copyrights shall only exist if
 - the Customer notifies HORIBA in writing of the asserted infringement of intellectual property rights or copyrights, identifying and describing them, without undue delay;
 - the Customer gives HORIBA reasonable support in connection with the defense against the asserted claims and/or enables HORIBA to perform the modifications in accordance with Section VIII.2.h.;
 - all defense measures, including out-of-court settlements, remain reserved to HORIBA;
 - the infringement of intellectual property rights or copyrights is not based on an instruction or specification of the Customer,
 - the infringement of intellectual property rights or copyrights is not due to the Customer having changed the delivery item without authorization or having used it in any manner not compliant with the contract.
3. Any damage claims of the Customer shall be governed by Section IX.
4. In case of the sale of used goods, any claims based on defects shall be excluded unless the mandatory statutory provisions provide for a warranty claim.

IX. Liability

1. HORIBA 's obligation to pay damages shall be limited as follows:
 - a. For any damage caused by a breach of a material contractual obligation, HORIBA shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract. HORIBA shall not be liable for any damage caused by a breach of a non-material contractual obligation.
 - b. The limitation of liability as set out above shall not apply to damage caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act (*Produkthaftungsgesetz*) and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent that HORIBA has assumed a guarantee.
2. If none of the cases mentioned in Section IX.1.b. applies, HORIBA 's liability for damage that did not occur to the delivery item or service item itself is excluded.
3. HORIBA 's liability for the destruction of data is limited to the costs that would have been incurred for its reconstruction if the Customer had properly backed up this data.
4. The Customer is obliged to take reasonable measures to avert and mitigate any damage.

X. Claims under an insurance contract

To the extent that HORIBA, as co-insured party, has direct claims against the insurance of the Customer as regards the delivery items or service items, the Customer hereby gives its consent to HORIBA to assert these claims.

XI. Software

1. With respect to software products from other providers included in the scope of delivery, the license terms / general terms and conditions of such other providers shall prevail. Should such terms and conditions not be available, HORIBA will provide them to the Customer upon request.
2. In addition to the license terms / general terms and conditions of the software provider, Sections XI.3. through XI.5 shall apply.
3. The Customer shall be granted on a consistent basis a simple, non-exclusive right to use HORIBA 's software products including the related documentation. The reproduction or granting of sub-licenses shall not be permitted.
4. Generally, HORIBA is not obliged to disclose the source code underlying the software product.
5. The Customer may alter HORIBA 's software products only to the extent permitted by law. The Customer may not remove manufacturer information – copyright notices – nor change it without prior written consent of HORIBA.

XII. Limitation periods

1. Subject to the exceptions pursuant to Section XII.3, Customer's claims in case of defects shall become statute-barred after 12 months upon delivery to the Customer respectively acceptance, if such is provided for by law or contract.
2. Subject to the exceptions pursuant to Section XII.3, the standard limitation period shall be 12 months.
3. The statutory limitation periods shall continue to apply

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- a. to the Customer's rights with respect to defects concealed in bad faith or caused intentionally;
- b. if and to the extent that HORIBA has assumed a guarantee;
- c. to any claims for damages of the Customer due to culpably caused damage to life, body or health;
- d. to any claims for damages of the Customer due to damage caused by HORIBA intentionally or by gross negligence; and
- e. to any claims under the German Product Liability Act (*Produkthaftungsgesetz*) or in case of other mandatory liability provisions.

In the cases of Section 438 (1) No. 2 German Civil Code (*Bürgerliches Gesetzbuch*; "BGB") (buildings and objects for buildings) and Section 634a (1) No. 2 BGB (construction defects) the statutory limitation periods shall apply. The limitation provision of Section 445b BGB (rights of recourse) shall remain unaffected, provided that the Customer or a subsequent customer in the supply chain sells the delivery item to a consumer within the meaning of Section 13 BGB.

XIII. Assemblies, repair work and other services

The following provisions shall apply additionally with respect to assemblies, repair work and other services:

1. The Customer shall inform the personnel of HORIBA at its expense of existing safety regulations and hazards and shall take all measures to protect persons and property at the workplace.
2. The Customer shall support the personnel of HORIBA in carrying out the work to the extent necessary and at its expense and provide the required assistance, such as preparing the construction site, providing tools and lifting gear, providing water, electricity, etc.
3. The Customer's assistance shall ensure that HORIBA can start work immediately upon arrival of HORIBA 's personnel and that the work can be carried out without delay until acceptance.
4. If the Customer fails to meet its obligations, HORIBA is entitled, however not obliged, to perform the duties incumbent upon the Customer in lieu and at the expense of the Customer.
5. If a service cannot be provided for reasons for which HORIBA is not responsible, the Customer shall pay HORIBA for the services already rendered as well as for expenses incurred.
6. If the service, prior to its acceptance, is lost or deteriorates through no fault of HORIBA, the Customer shall pay HORIBA the price reduced by any expenditures saved.
7. Deadlines for repair work shall be binding only if confirmed in writing by HORIBA.
8. In case of assemblies, repair work and other services, the Customer is entitled to reduce the price in accordance with the statutory provisions if, considering the exceptions provided for by statutory law, a reasonable deadline for performance set to HORIBA during the default on the part of HORIBA has expired to no avail. Such right to reduce the price shall also exist in other cases of failure to remedy the defect. The Customer is only entitled to rescind the contract if the assemblies, repair work and other services are verifiably of no interest to the Customer despite a reduction of the price.

XIV. General Provisions

1. The export of goods, software and technology may be subject in whole or in part to export control regulations. HORIBA is entitled to rescind the contract in whole or in part if and to the extent that HORIBA does not receive necessary or recommended approvals or notices. The delivery period shall be extended accordingly if and to the extent that HORIBA does not receive necessary or recommended approvals or notices in due time.
2. Should the import, establishment and/or operation of the delivery item and service item by the Customer require any approvals, authorizations or similar, the Customer must obtain them at its expense.
3. The place of performance for the Customer's obligations vis-à-vis HORIBA shall be the registered office of HORIBA.
4. Should individual terms of these Terms and Conditions be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions.

XV. Applicable law, legal venue

1. If the Customer has its registered office in Germany, the exclusive venue for any and all disputes arising from or in connection with the parties' contractual relationship shall be the registered office of HORIBA. However, HORIBA reserves the right to bring action at the Customer's statutory place of jurisdiction.
2. If the Customer has its registered office outside Germany, an arbitration proceeding shall be conducted in the English language at the International Chamber of Commerce in Paris under the Rules of Arbitration of the ICC. The decision may not be appealed. The decision shall be made by three arbitrators and shall state the reasons. HORIBA 's insurer may take part in the proceedings according to the possibilities to take part in the ordinary courts of law.
3. The laws of the Federal Republic of Germany shall apply; the application of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.