



## TERMS AND CONDITIONS OF SALE, DELIVERY AND SERVICES

### Sakura Finetek Europe B.V.

#### 1. General provisions

1.1 These terms and conditions will apply to all offers of and agreements of sale, delivery and services concluded or to be concluded by Sakura Finetek Europe B.V. ("Sakura") and any buyer, i.e. primarily - but without limitation - **a reseller/distributor** (a party (re)selling any Sakura goods or services to third parties in its own name and for its own risk and account) and/or **first end-user** (any buyer to which Sakura directly sells goods or delivers goods, i.e. not a buyer to which a reseller/distributor has sold any goods or delivered any services), any such buyer hereinafter collectively "**Buyer**", and to all other legal relationships between them.

#### 2. Orders and agreement

2.1 Any oral offers or commitments will bind Sakura only after and to the extent that Sakura has confirmed them in writing. All offers of Sakura, however they are made, will be free of obligation unless provisions to the contrary have been laid down in writing.

2.2 Sakura is allowed to accept and reject orders of Buyer at its sole discretion. An agreement will be deemed to have been concluded after Sakura has confirmed an order placed by the Buyer, or has commenced the execution of that order.

2.3 In the event that an agreement is concluded by e-mail, or in the event that an agreement is concluded through another means of electronic communication (such as the Sakura ERP-system), such e-mail message or statement made through another means of electronic communication is deemed to be equal to a written statement and the principle will apply, without prejudice to the provisions laid down in Article 2.2, that an agreement may be concluded without Sakura having to fulfil any conditions provided by law pertaining to electronic communication and/or the conclusion of contracts by electronic means (including but not limited to the parties agreeing that the provisions of art. 227b and 227c of Book 6 of the Dutch Civil Code shall not apply).

2.4 Sakura is at all times entitled to effect adjustments in the (design and model of the) goods to be delivered in order to improve them or comply with government regulations.

2.5 The Buyer will be entitled to cancel an order only after receiving written consent from Sakura, which consent may be made subject to conditions as deemed appropriate by Sakura.

2.6 If Sakura, by virtue of law, is under any obligation, other than resulting from an improper performance, to take back the goods sold, the Buyer shall pay to Sakura all costs related to such taking back of the goods.

#### 3. Prices

3.1 Unless otherwise agreed in writing, the prices apply as applicable at the time of delivery in accordance with the delivery terms as set out in Article 4 and are quoted in accordance with the applicable Incoterm as indicated in Article 4.1, exclusive of VAT and all other costs, to be determined in accordance with these terms and conditions. Unless otherwise agreed in writing, all payments must be made in euros.

3.2 Sakura will be entitled to adjust prices agreed upon in the event of increases in cost-determining factors such as fluctuations in exchange rates, raw materials, labor costs or in the event of government measures, provided that such increases or measures occurred after the conclusion of the agreement but before delivery.

3.3 Any and all images and specifications of goods in catalogues, price lists, advertisements, etc. must be deemed to be representations by approximation only, unless Sakura has explicitly indicated the contrary in writing with regard to a specific delivery.

3.4 Sakura will be entitled to charge the costs of any packaging separately. The packaging will not be taken back. Should Sakura, however, be obliged by law or any regulations to take packaging back, any costs related to taking back or processing packaging will be borne by the Buyer.

#### 4. Delivery

4.1 Unless otherwise agreed in writing, delivery will be effected (i) in case of a distributor FCA and (ii) in case of an first end-user DDP Incoterms 2010 or, if any, a more recent version of the Incoterms. The Buyer will be obliged to take delivery of the goods upon Sakura's first request.

4.1.1 Extra charges of € 500,- will be applicable for orders under € 5.000,- for distributors, and € 50,- for orders under € 600,- for first end-users .

4.1.2 Extra handling charges will be applicable for Legalization, Certification (Chamber of Commerce/Embassy) or RUSH orders.

4.2 Any delivery times quoted by Sakura may not be considered to be firm deadlines, unless provisions to the contrary have been explicitly agreed upon in writing between the parties. In the event of late delivery, Sakura must be declared to be in default in writing, in which connection Sakura will be granted a reasonable term of at least fourteen (14) working days as of the date of the receipt of notification to fulfil its obligations. In the event that such extended term is exceeded, the Buyer will be entitled to dissolve the agreement or part of the agreement only with respect to the goods not delivered. In such an event, Sakura will not be liable to pay damages, unless such damages are the consequence of an gross negligence or wilful misconduct of Sakura's executive management.



- 4.3 Sakura shall deliver the goods available in stock and if applicable with a minimum shelf life of 6 months. goods that are out of stock shall be delivered by "back order"; outstanding products on back order will be delivered as soon as the goods are in stock to complete the order.
- 4.4 The Buyer is obliged to accept delivery of the goods upon Sakura's first request thereto. If Buyer fails to accept delivery, the Buyer will be liable for all costs and damages resulting there from, including but not limited to the costs of storing and redelivering the goods.
- 5. Payment**
- 5.1 Unless otherwise agreed in writing, the Buyer will pay the entire purchase price, or the remainder thereof in the event of advance payment, within thirty (30) days after the invoice date, at the discretion of Sakura, by transfer to or deposit into an account indicated by Sakura, without any deduction, discount or set-off. Submission of a complaint will not suspend the Buyer's obligation to pay.
- 5.2 If the Buyer fails to pay within thirty (30) days, after the invoice date, Buyer will be in default and all claims of Sakura will become fully due and payable immediately. In that event, Sakura will also be entitled to compensation of the European Central Bank rate + 7% with respect to the outstanding amount until the date of payment in full. The amount subject to this contractual interest will, as the case may be, be calculated after the end of each year, and increased by the interest owed over that year.
- 5.3 In the event of untimely payment, Sakura will be entitled to compensation of all extra-judicial costs, including but not limited to costs involved in sending reminders, one or more notices of default or demand notices, which extra-judicial costs will amount to at least fifteen percent (15%) of the total amount payable, subject to a minimum of € 500,-.
- 5.4 Sakura will be entitled to require the Buyer to effect advance payment of an amount to be determined at Sakura's discretion before it commences the execution of an order or commission.
- 5.5 In the event that Sakura is fully or largely successful in legal proceedings against the Buyer, the Buyer will be obliged to compensate all costs incurred by Sakura in connection with such proceedings, even to the extent that such costs exceed the cost award made by the court. Sakura may invoke this clause irrespective of whether the Buyer has appealed against the relevant judgement at the court of appeal or the Supreme Court.
- 6. Retention of title**
- 6.1 Sakura will retain title to the goods delivered and to be delivered to the Buyer until full payment of all purchase amounts has been received under any agreement on the basis of which Sakura delivers any goods to the Buyer, as well as any amounts owed by the Buyer pertaining to work performed by Sakura in connection with such agreements and any claims pursuant to any attributable failure in the performance of such agreements on the part of the Buyer.
- 6.2 The Buyer will be obliged to store the goods delivered under retention of title with due care, ensuring that they are recognizable as the property of Sakura. In addition, it will be obliged to insure such goods against, inter alia, fire and water damage and theft. The Buyer will pledge to Sakura any claims it has pursuant to such insurance policies upon Sakura's first request, as additional security with respect to Sakura's claims against the Buyer.
- 6.3 In the event that the Buyer fails in the performance of any obligation vis-à-vis Sakura, or in the event that Sakura has good reason to fear that the Buyer will fail in the performance of its obligations, Sakura will be entitled to recover the goods delivered under retention of title or to have such recovered, even when the goods have to be detached. The Buyer will cooperate accordingly. The Buyer will bear the costs of recovery, without prejudice to Sakura's right to further damages.
- 7. Installation**
- 7.1 If the Buyer is a first end user,
- 7.1.1 if agreed to in writing, Sakura will install the goods ready for operation at the address designated by the Buyer. All necessary costs related to the installation ready for operation will be borne by Buyer unless otherwise agreed in writing between parties.
- 7.1.2 If necessary, the Buyer will be responsible for timely installing or having installed the required electrical systems and cables/pipes up to the location, of the goods in order to ensure that Sakura is able to perform its services at the agreed upon time schedule and Buyer shall ensure power supply.
- 7.1.3 The Buyer will inform Sakura of all circumstances which may be of importance with regard to the delivery and/or installation of the goods. Sakura assumes that it will not encounter any circumstances related the Buyer's or designated third party's premises that may hinder Sakura in the installation of the goods. Any costs related to such hinder will be born by the Buyer.
- 7.2 If the Buyer is a distributor,
- 7.2.1 Installation and all related cost ready for operation will be borne by the Buyer. The Buyer is only entitled to perform installation after completing the required training at Sakura. Unless agreed otherwise, distributor is required to pay the applicable list price - as amended from time to time - to Sakura for this training, plus any out of pocket expenses and plus VAT.
- 7.2.2 If so desired and if agreed upon between Sakura and distributor, at Buyer's request Sakura may perform the installation at distributor's end-user on-site. Unless agreed otherwise, distributor is required to pay the applicable list price - as amended from time to time - to Sakura for this service rendered, plus any out of pocket expenses and plus VAT.
- 8. Intellectual property and software**
- 8.1 Sakura shall grant to the first end-user of the respective goods a non-exclusive and non-transferable right to use the programs, software and other intellectual property rights in connection with the delivered goods, subject to these terms and conditions. All copyrights and other rights to the programs remain with Sakura. The programs may not be made accessible to third parties and may not be copied, with the exception of the creation of one back-up copy or otherwise with the prior written approval by Sakura.



## 9. Force majeure

- 9.1 If Sakura fails in the performance of its obligations due to an event of force majeure, it will not be liable. To the extent that the circumstance making performance impossible is not of a permanent nature, Sakura's obligations will be suspended. In the event that the period during which performance is not possible due to force majeure exceeds three (3) months or is expected exceed three (3) months both parties will be entitled to cancel the agreement, without any obligation to pay the damages that may arise as a result.
- 9.2 In the event that Sakura has already partially fulfilled its obligations upon the occurrence of the situation of force majeure, or is only able to fulfil its obligations in part, it will be entitled to separately invoice the part already supplied or the part that can still be supplied and the Buyer will be obliged to pay that invoice as if it pertained to a separate agreement.
- 9.3 A situation of force majeure affecting Sakura within the meaning of this article will be deemed to have occurred in the event of, inter alia, strikes, a shortage of raw materials, delay, transport problems, war or threat of war, full or partial mobilization, riots, sabotage, floods, fire or other forms of destruction within Sakura's company, lockouts and industrial actions, breakdowns of machines or tools or other breakdowns within Sakura's company. A situation of force majeure must also be deemed to have occurred on the part of Sakura in the event that one or more of the above-mentioned circumstances occurs within the companies of Sakura's suppliers and Sakura cannot or could not perform its obligations, or cannot or could not perform such in good time, as consequence.

## 10. Warranty

- 10.1 Sakura warrants to the Buyer that any new Good supplied by it will not have any defects for the period of time as follows:
- a) In case the supplied goods concern "instruments": i) if the Buyer is a distributor 24 months from the date of delivery by Sakura to the distributor in accordance with the delivery terms as set out in Article 4.1 or if delivery is postponed due to an act or omission on the Buyer's part, following day on which delivery would otherwise have been effected or ii) if the Buyer is a first end-user 12 months from the date of installation with the first end-user.
  - b) In case the supplied goods concern "spare parts": i) if the Buyer is a distributor 6 months from the date of its delivery by Sakura to the distributor in accordance with the delivery terms as set out in Article 4.1 or if delivery is postponed due to an act or omission on the Buyer's part, following day on which delivery would otherwise have been effected or ii) if the Buyer is a first end-user 3 months from the date of installation with the first end-user.
  - c) in case the supplied goods concern "consumables" (single use products): 6 months after delivery of the goods by the Buyer in accordance with the delivery terms as set out in Article 4.1.
- 10.2 The warranty as stated in Article 10.1 will lapse in the event that:
- a) the Good is not used in accordance with its intended use and in violation of the instructions given by Sakura;
  - b) a third party other than designated by Sakura, replaces or repairs the Good or any part thereof;
  - c) the first end-user sells the good within the warranty term; or
  - d) the defect occurs pursuant to breakage and/or external damage.
- 10.3 The aforementioned Articles 10.1 and 10.2 are without prejudice to Articles 12.1 and 12.3 of these General Terms and Conditions.

## 11. Technical Services

- 11.1 In case the supplied goods concern "instruments" and after elapsing of the warranty period Sakura offers to the Buyer certain technical services with respect to the such goods:
- 11.1.1 if the Buyer is a first end-user,
- a) at Buyer's request Sakura will technically service the instrument ("Technical Service"). Sakura may provide Technical Service through a separate service agreement with pre-agreed specific terms and conditions ("Service Agreement"), or may provide Technical Service on-call in case Buyer elects not to enter into a Service Agreement with Sakura. In case of a Service Agreement, Sakura will charge the Technical Services to Buyer at applicable prices agreed upon in the Service Agreement. In case of on-call services Sakura will charge the Technical Services on the basis of time spent multiplied by the hourly rates of the Sakura service engineer and the cost for materials and spare parts used at list prices, plus out of pocket expenses and plus VAT.
  - b) If between Sakura and Buyer a Service Agreement is applicable with regard to Technical Service (e.g. preventive and corrective maintenance) of one or more Sakura goods (i.e. Sakura systems or instruments) as defined in the Service Agreement, or a good is covered by warranty defined in the purchase agreement under which that good was sold, the provided Technical Service by Sakura will be in accordance with the terms and conditions as set out in the Service Agreement and the warranty in such purchase agreement respectively, if any.
- 11.1.2 if the Buyer is a distributor,
- a) Buyer is responsible for offering the Technical Services in its territory. The Buyer is only entitled to render Technical Services after completing the required training at Sakura. Unless agreed otherwise, distributor is required to pay the applicable list price to Sakura for this training, plus out of pocket expenses and plus VAT. In addition, Buyer is responsible at its own costs to: i) comply with service guidelines as described in Sakura service recommendations and product launch modules, ii) ensure local availability of spare parts to provide Technical Service, and iii) perform mandatory upgrades in the territory.
  - b) If so desired and if agreed upon between Sakura and distributor, at Buyer's request Sakura may render Technical Services at distributor's end-user on-site. Unless agreed otherwise, distributor is required to pay Sakura the time spent times the hourly rates of the Sakura service engineer and the cost for materials and spare parts used at list prices, plus out of pocket expenses and plus VAT.



## **12. Application and Other Services**

- 12.1 Sakura may offer to the Buyer to render certain application services or other services to the Buyer ("Application or Other Services"):
- 12.1.1 If the Buyer is a first end user, Buyer can request Sakura to perform Application or Other Services periodically or on-call. Unless agreed otherwise, the Application or Other Services are performed at cost of Buyer. The cost will comprise of the time spent by Sakura's application specialist or other Sakura employees, times the hourly rate plus any out of pocket expenses and plus VAT.
- 12.1.2 In case Buyer is a distributor,
- a) Buyer is responsible for offering these Application or Other Services in its territory. The Buyer is only entitled to render Application or Other Services after completing the required training at Sakura. Unless agreed otherwise, distributor is required to pay the applicable list price to Sakura for this training, plus any out of pocket expenses and plus VAT.
  - b) If so desired and if agreed upon between Sakura and distributor, at Buyer's request Sakura may render Application or Other Services at distributor's end-user on-site. Unless agreed otherwise, the Application or Other Services are performed at cost of Buyer. The cost will comprise of the time spent by Sakura's application specialist or other Sakura employees, times the hourly rate plus any out of pocket expenses and plus VAT.

## **13. Inspection complaints and vigilance**

- 13.1 The goods delivered must be checked by or for the Buyer upon delivery with respect to numbers and visible defects and any shortages or visible defects must be reported to Sakura immediately after delivery. The Buyer must report defects not visible upon delivery within 48 hours of their discovery, though in any event within 48 hours after the time that the Buyer should reasonably have discovered them. The possibility of submitting a complaint will lapse in the event that the relevant defect can be attributed to the Buyer.
- 13.2 The Buyer will be obliged to perform the inspection with due care or to have the inspection performed with due care, be it by the hauler engaged or another party. The Buyer will bear the risk for inspecting the goods by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it - or a third party engaged by it - did not inspect the entire shipment.
- 13.3 If the Buyer is a distributor, the following applies. In the event of a complaint on good grounds, Sakura will be obliged - at its own discretion - only to repair the defect, to replace the relevant Good or to credit or refund the amount charged in connection with the defective Good in whole or in part, according to its own reasonable judgment and under the following conditions:
- 13.3.1 Any inquiry from first end-users regarding defective goods should immediately be directed to the local Sakura Product Support Department or local distributor.
- 13.3.2 Any inquiry from a distributor regarding defective goods should immediately be directed to Sakura Finetek Europe B.V. Product Support Department (Support@sakura.eu) by means of a Product Complaint Form, which Form must support all returns of defective goods.
- 13.3.3 Returned and/or defective goods will only be accepted when the Return Authorization Number ("RAN") has been obtained.
- 13.3.4 The goods have been directly purchased from Sakura or authorized Distributor.
- 13.4 Any and all claims for payment of an amount of money and/or repair of the relevant Good and/or replacement of the Good and/or supply of any missing part, on whatever basis, as well as any right to dissolve the agreement will lapse at the earliest of the following times: a) upon late reporting pursuant to Article 11.1 or b) 12 months after the delivery date.
- 13.5 **Vigilance**  
The Buyer is responsible to ensure that any malfunction or deterioration in the characteristics and/or performance of a device, as well as any inadequacy in the labelling or the instructions for use which, directly or indirectly, might lead to or might have led to the death of a patient, user or other persons or to a serious deterioration in their state of health, is immediately communicated to Sakura Finetek Europe B.V. Product Support Department (Support@sakura.eu). A serious deterioration of health is an accident that is life threatening or results in permanent impairment of a body function or permanent damage to a body structure, or necessitates medical or surgical intervention to preclude this.

## **14 Liability**

- 14.1 Any liability on the part of Sakura on the basis of an attributable failure with respect to the offers and agreements as referred to in Article 1.1 will be restricted to the provisions laid down in Article 11.3. These provisions are the sole remedy of the Buyer.
- 14.2 Sakura will assume no liability with respect to damage as a consequence of or related to any errors or omissions in advice rendered by it, nor will it assume any liability with respect to damage as a consequence or related to errors or omissions in the processing instructions recommended by it.
- 14.3 Sakura will assume no liability with respect to damage as a consequence of or related to (installation) services performed by Sakura.
- 14.4 Sakura will not - irrespective of the legal basis of the Buyer's claim - be liable with respect to any damage, direct or indirect, or consequential such as, inter alia, losses due to delays, lost profits and penalties forfeited by the Buyer.
- 14.5 The above-mentioned restrictions with respect to liability will not apply in the event that the damage is the consequence of gross negligence or wilful misconduct on the part of Sakura's executive management.
- 14.6 The Buyer will indemnify Sakura against any claims by third parties in connection with goods supplied and/or services performed by Sakura.



**15. Suspension and dissolution**

15.1 Without prejudice to Sakura's rights under these terms and conditions or under the law, Sakura will at any event be entitled to suspend (further) performance or to dissolve any agreement concluded with the Buyer, in whole or in part, if (i) any goods made available by Sakura to the Buyer become subject to attachment, (ii) the Buyer is granted a suspension of payments or is declared bankrupt, (iii) any permits or licenses required for the performance of the agreement are withdrawn, (iv) the Buyer fails to fulfil one or more of its obligations ensuing from any agreement with Sakura, (v) Sakura has sound reasons to believe that the Buyer is or will be unable to fulfil its obligations under any agreement, or (vi) the Buyer ceases its business or if a change occurs in the control of that business. Any right of the Buyer to suspend performance is hereby excluded.

**16. Permits**

16.1 If applicable, Buyer shall obtain and maintain all necessary permits and guarantees to comply with all applicable laws and regulations in relation to the purchased goods.

**17. Applicable law and dispute resolution**

17.1 All offers and agreements as referred to in Article 1.1 will be governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods ("CISG") does not apply.

17.2 In the event that the Buyer is domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland at the time that proceedings are commenced, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect Sakura's power to submit a dispute to the court that would be competent in the absence of this provision. In the event that the Buyer is not domiciled in a Member State of the European Union or in Norway, Switzerland or Iceland upon the commencement of proceedings, any and all disputes relating to the offers and agreements as referred to in Article 1.1 will be settled in accordance with the rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut, or NAI). Arbitration will take place in Amsterdam, the Netherlands. The case will be submitted to three arbitrators who shall apply Dutch law and the arbitration proceedings will be conducted in Dutch.

**18. Waste of Electrical and Electronical Equipment (WEEE)**

18.1 Pursuant to the Directive 2012/19/CE on waste electrical and electronic equipment (WEEE) and to the applicable national transposition legislation and/or regulations, as amended from time to time, the financing of the management of WEEE may be transferred from the manufacturer to the users.

18.2 Unless otherwise agreed in writing between Sakura Finetek Europe B.V. and the Buyer, the Buyer hereby accepts such charge and shall therefore:

- Be responsible for financing the collection, treatment, recovery, recycling and environmentally sound disposal of (i) all WEEE arising or deriving from the Products and (ii) all WEEE arising or deriving from products already on the market where such products are to be replaced by the Products and such products are of an equivalent type or are fulfilling the same function as that of the Products;
- Comply with all additional obligations placed upon the users by the WEEE regulations by virtue of the Buyer accepting the responsibility set out in this sub-article 16.2.

18.3 The above-mentioned obligations shall be passed on by successive professional buyers to the final user of the WEEE, always under the Buyer's responsibility. Non compliance by the Buyer with the above-mentioned obligations may lead to the application of criminal sanctions, as laid down in the applicable national transposition legislation and/or regulations.

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