



GENERAL TERMS AND CONDITIONS  
FOR AWITE GAS ANALYSIS  
SYSTEMS

GENERAL CONDITIONS OF SALE  
AND DELIVERY



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### § 1.

#### General Notes

Sale and delivery of the products are effected under following conditions. Deviations, sub-agreements, and assurances of any kind require a written confirmation. The purchase conditions of the customer are not included in the contract, even if we do not contradict explicitly. These conditions of delivery and terms of payment are part of all contracts with us concerning the delivery of products, also in current and future business connections.

### § 2.

#### Prices

Our prices are subject to confirmation and are calculated ex works (from Langenbach-Niederhummel).

### § 3.

#### Terms of Payment

Unless otherwise agreed, the payment has to be effected within 30 days after the date of invoice.

Payable: 100% on ordering/conclusion of contract.

We apply a service charge of 2% plus VAT of the corresponding amount for providing a bank guarantee.

On exceeding the term of payment an interest rate of 7,25% above the corresponding discount rate of the German Bundesbank per year is calculated under reservation of asserting further damages.

The customer shall be entitled to offset outstanding payments only in the event that his counter claims have been established in law, are undisputed, or accepted by us.

### § 4.

#### Delivery Period

The delivery periods average between 8-10 weeks after ordering.

The start of the arranged delivery period shall require the clarification of all technical details.

Furthermore, the compliance to our delivery commitment shall require the timely and duly fulfillment of the customer's obligations in terms of payment and co-operation.

A delay in delivery exists only, if we acknowledge it as such and an appropriate period of grace has been granted.

If the customer fails to accept delivery or negligently breaches other obligations to co-operate with us, we shall be entitled to compensation for any loss that we may suffer as a consequence, including any additional expenses or cost that we may incur as a result of the delay. We reserve the right to further claims. Provided that the prerequisites mentioned above exist, the risk of accidental loss or incidental deterioration of the purchased goods shall be passed to the customer from the time when they are in default of acceptance or any other delay.

### § 5.

### Reservation of Proprietary Rights

The delivery of the products is carried out under reservation of proprietary rights under the terms of § 449 BGB. The products remain our property until full payment is received.

The customer is authorised to have the product at their disposal in ordinary course of business.

The reservation of proprietary rights also applies to the manufactures developed through processing, mixing, or combining of our products to their full value, whereat we are legal producers. If in case of processing, mixing, or combining of products of third parties their right of ownership continues to exist, we acquire joint ownership in relation of the invoice values of these processed products. For security reasons, at this point the claims against third parties resulting from the resale are already assigned in full to us by the customer or at the rate of our approximate co-ownership share (comp. § 4 paragraph 3). We hereby accept this assignment. They are authorised to include these in our invoice until cancellation or cessation of their payments.

We have to be informed immediately by the customer via registered mail about any unauthorised access of third parties to our products or claims.

The exertion of the reservation of proprietary rights does not imply the rescission from the contract.

Unless full payment for our claims has been received, the products and their corresponding claims cannot be bonded or transferred for security reasons to any third parties.

If the value of securities exceeds our claims by more than 20 %, on request of the customer we will de-control securities according to our choice.

The customer is obliged to handle the deal with care. They are specifically obliged to insure at their own expense against fire, water and theft in appropriate relation to the replacement value. In case maintenance and service work is required, the customer has to have it carried out in time at their own expense.

### § 6.

#### Warranty for Defects

The customer acquires the gas analysis system with the technical specifications and under the conditions described in the User's Manual. The specifications in the User's Manual offer merely a description of the system and do not constitute a warranty of any kind.

The customer's warranty claims presuppose that they have properly fulfilled the obligations as set forth in § 377 HBG to inspect the delivered goods and notify us about any possible defects.

If a defect exists, the customer is entitled to subsequent fulfillment according to the existing legal directives. If the subsequent fulfillment fails, the customer has the right to either ask for an appropriate reduction of the purchase price or to withdraw from the contract.

We are liable in law in cases where the customer asserts a claim for compensation based on intent or gross negligence by us, including intent or gross negligence on the part of our representatives or appointed agents. As long as there is no intentional breach of the contract, we shall only be liable for foreseeable, typically arising damages.

Furthermore we shall assume liability according to legal regulations if a culpable breach of a fundamental contractual obligation exists on our part. But also in this case we shall only be liable for foreseeable, typically arising damages.

The limitation period for claims due to defects is 12 months. The limitation period shall commence upon passing of the risk.

## General Terms and Conditions for Awite Gas Analysis Systems

Liability for culpable loss of life, injury to body or health, remains unaffected; this also applies for the mandatory liability under the Product Liability Act.

Unless otherwise explicitly governed as aforesaid, the liability is excluded.

The warranty for defects also does not apply to natural wear and tear and furthermore not to damages resulting from a faulty or negligent use, inappropriate means of production or an operation outside the set conditions. Equally excluded are damages resulting from an exaggerated thermal use or electric influences.

The warranty for defects also does not apply to damages caused by lack of maintenance or calibration of the systems.

Also excluded from liability are damages resulting from improper maintenance, alterations and repair operations.

Further excluded are damages resulting from condensing gas, pollutants in the gas or in the supplying gas pipe and excessive pressure.

We furthermore accept no liability if the products are used for operations which they were not developed for.

Excluded from the liability is an excessively high gas concentration above the stated measuring range. If such high gas concentrations occur, the devices have to be switched off immediately.

The customer is obliged to handle the systems with care, thereby reducing the risk of possible damages. On encountering a defect, the customer is obliged to immediately report on the defect in detail and to describe the relevant operating conditions in the plant in view of possible damages.

If the defects are so severe that a further operation of the plant causes a risk of damages, the plant has to be put out of operation and the damage needs to be reported immediately.

### § 7.

#### Joint and Several Liability

Any further liability for compensation, apart from that covered in § 6, is excluded, regardless of the legal status of the asserted claim. This applies, in particular, to claims for compensation for culpability after conclusion of the contract, by reason of miscellaneous breaches of duty or because of tort claims as an alternative to property damage as per § 823 BGB.

The aforementioned limitation also applies if instead of a claim for damages the customer requests compensation for unprofitable expenses rather than the performance of services.

To the same extent that our liability for compensation is excluded or limited, so too is it (excluded or limited) as regards to any personal liability on the part of our salaried personnel, our employees, workers, representatives and appointed agents.

### § 8.

**Shipment and Passing of the Risk**

If we are not responsible for the delivery of the goods, the customer bears the risks of transport. In the customer's own interest any possible damages must be acknowledged in written form on receiving the products in order for them to maintain their claim for compensation. A transport insurance will only be taken out on request of the customer and at their own expense. Any complaints have to be made immediately after receipt of the delivery.

**§ 9.**

**Court of Jurisdiction, Governing Law, Place of Performance**

Provided that the customer is a fully qualified businessman, the locally and internationally sole jurisdiction of the courts of our place of business applies to all contractual and non-contractual cases.

However, in special cases we are authorised to institute proceedings also at the place of business of the customer or in front of other home or foreign jurisdictional courts.

This agreement is governed by the laws of the Federal Republic of Germany excluding UN sales law.

Provided that nothing else arises from the confirmation of ordering, our place of business is the place of performance.

Provided that the customer is not a fully qualified businessman, § 38 paragraph 2 ZPO applies.