

## **General Terms and Conditions**

These General Terms and Conditions are valid as of 20 July 2004. They are in accordance with the stipulations of the Distance Selling Act.

General Terms and Conditions of Wölfel Meßsysteme · Software GmbH + Co. KG.

### § 1 Applicability of the Contract Terms

(1) Any and all services by Wölfel Meßsysteme · Software GmbH + Co. KG are exclusively offered on the basis of the following Terms and Conditions. These Terms and Conditions apply for all present and future legal transactions between the Customer and Wölfel Meßsysteme · Software GmbH + Co. KG. In addition, the manufacturers' license conditions accompanying the products apply.

(2) Customers in the sense of these Terms and Conditions are non-traders, i.e. end users/users, and traders. Non-traders are natural persons who enter into a business relation with Wölfel Meßsysteme · Software GmbH + Co. KG and who cannot be assumed to pursue a trade or to do freelance work. Traders in the sense of these Terms and Conditions are natural or artificial persons or companies having legal capacities that enter into a business with Wölfel Meßsysteme · Software GmbH + Co. KG in pursuit of their trade or freelance work.

(3) Any general terms and conditions of the Customer's are herewith repudiated; any deviations from the General Terms and Conditions of Wölfel Meßsysteme · Software GmbH + Co. KG are invalid unless confirmed in writing.

### § 2 Conclusion of Contract

(1) Data indicated by Wölfel Meßsysteme · Software GmbH + Co. KG in prospectuses, advertisements, catalogs, on Internet websites etc. are not binding; prices are subject to change without notice. We reserve the right to change prices by reason of modified customs duties, import and export fees, exchange rate fluctuations etc.

(2) An order of goods constitutes the respective Customer's binding declaration of intent to purchase such goods. Wölfel Meßsysteme · Software GmbH + Co. KG has the right to accept the contract offer conveyed in the order within a period of 10 days after receipt of the order at Wölfel Meßsysteme · Software GmbH + Co. KG's.

(3) The contract between Wölfel Meßsysteme · Software GmbH + Co. KG and the Customer is concluded by means of the written order confirmation of Wölfel Meßsysteme · Software GmbH + Co. KG or the provision of the services by Wölfel Meßsysteme · Software GmbH + Co. KG.

(4) Any modifications and amendments to the contract are invalid unless confirmed electronically or in writing by Wölfel Meßsysteme · Software GmbH + Co. KG.

(5) The receipt of orders placed by a non-trader by electronic media is confirmed immediately. Confirmation of receipt does not constitute a binding acceptance of the order and thus no

conclusion of contract. Confirmation of receipt may be combined with acceptance of the order.

(6) Conclusion of contract is subject to the proper and timely delivery by the suppliers of Wölfel Meßsysteme · Software GmbH + Co. KG. unless Wölfel Meßsysteme · Software GmbH + Co. KG is to blame for such non-delivery. If the ordered goods are unavailable, Wölfel Meßsysteme · Software GmbH + Co. KG shall immediately inform the Customer and refund any down payments made.

(7) If a non-trader orders the goods by electronic media, the contract wording is saved by Wölfel Meßsysteme · Software GmbH + Co. KG and sent to the Customer on request via e-mail together with these General Terms and Conditions.

### § 3 Delivery and Utilization Rights

(1) Delivery comprises the program package and, as far as available from the manufacturer, a user manual. Manual and program are copyright protected.

(2) By opening the original package, the Customer accepts the copyright protection and the warranty conditions.

(3) The program may only be used and run in the scope defined in the following, unless the terms of the program manufacturer provide for special conditions of utilization:

(a) The Customer is allowed to use the program only on one computer of his/her choice. Utilization is understood to mean any permanent or temporary copying of the program in whole or in parts by loading, saving, running or indicating for the purpose of program execution and processing of data by the computer. It is not permitted to copy the user manual.

(b) Modification of or amendment to the program is only permitted as far as comprised in the intended use of the program. Company names, brands, copyright information or other notes on legal reservations may not be changed and must be taken over into modified or amended versions of the program.

(c) Decompilation of the program code is permitted only as provided for in § 69 e UrhG (German Copyright Act). To ensure future program utilization, the Customer may generate a safety copy of the program package. The program package must be provided with technical copy protection in the form of a hardkey. If the hardkey is lost, a second license must be bought on the basis of the currently valid price list. A damaged hardkey can be returned to have it replaced by a new one.

(d) The Customer has the right to pass on to a third party the program package in its original state and entirety together with a copy of these conditions of utilization. Copies of the program package in whole or in part etc. must not be passed on. Having passed on the program package to a third party, the Customer's utilization right is forfeited. Utilization right passes to such third party in accordance with these terms. Having passing on the program package, the customer shall delete or otherwise destroy all copies, partial copies, amended or modified program versions and copies or partial copies of these, as well as all safety copies. The above stipulations also apply when third parties are temporarily permitted access to the program package. The Customer has no right to rent the program package in whole or in part out to third parties.

(e) Wölfel Meßsysteme · Software GmbH + Co. KG reserves all further rights on utilization of the program package. Neither the Customer nor subsequent users are permitted to use the program or modified or amended versions of the program simultaneously on more than one computer, or to distribute copies of sections of the program package in its original state or in modified or amended versions, even if such copied sections are limited to significant parts of the amended versions. This provision does not affect the Customer's right to use its own programs developed or operated with the help of the program package, used as intended, and to make use of all results of work done under utilization of the program package.

(4) The goods are sent to the address stated by the Customer. Unless agreed otherwise with the Customer, Wölfel Meßsysteme · Software GmbH + Co. KG reserves the right to select the shipping route and method.

(5) Partial shipments are permissible and considered independent shipments.

#### § 4 Prices and Terms of Payment

(1) The purchasing price offered is binding. The purchasing price comprises the statutory turnover tax. Net prices are only indicated for industry, trade and commerce, associations and equivalent institutions, and freelance Customers. If the parties agree on delivery periods exceeding 4 months, the prices of Wölfel Meßsysteme · Software GmbH + Co. KG valid at the time of delivery or provision of the program package apply.

(2) For goods bought by mail order, the Customer shall pay per product bought an additional flat charge for shipping and packaging. For orders executed via digital communication channels, no additional charges are payable. The packaging materials must be disposed of by the Customer.

(3) Depending on the selected shipping method, the purchasing price must be paid in advance via bank transfer, or COD. In case of payment in advance, the goods will only be shipped after receipt of the payment at Wölfel Meßsysteme · Software GmbH + Co. KG.

(4) If another mode of payment has been negotiated, the Customer agrees to pay the purchasing price within 10 days after receipt of the goods. After expiry of this period, the Customer will be in default. For the period of default, a non-trader shall pay on the money owed interest in the amount of 5% above the respective base interest rate, while a trader shall pay on the money owed interest in the amount of 8% above the respective base interest rate. Wölfel Meßsysteme · Software GmbH + Co. KG reserves the right to prove and assert against a trader a higher damage caused by delayed performance. If the Customer is in default, Wölfel Meßsysteme · Software GmbH + Co. KG furthermore has the right to refuse all deliveries to the Customer, also those from other contractual relations.

(5) Any Customer's right of retention is excluded unless based on the same contractual relation. The Customer can only offset claims if its counterclaims are undisputed.

(6) Delivery dates are only binding if agreed in writing. The delivery period is extended by a reasonable period in case of measures in the context of work stoppage (strike/lockout), statutory or official decrees (import/export restrictions), force majeure. In case of delayed performance by

the seller, the Customer has the right to withdraw from the contract after setting a reasonable period of grace. Further damages in this respect are excluded unless Wölfel Meßsysteme · Software GmbH + Co. KG acted intentionally or with gross negligence.

#### § 5 Return Privilege

(1) A non-trader has the right to return ordered goods within two weeks after receipt. The return privilege can only be executed by returning the goods proper, or for goods not shipped in the form of a package, by demanding repurchase in writing on a permanent data carrier (letter / fax). A non-trader can return the goods without stating any reasons.

(2) The return charges for goods delivered as ordered are borne by the non-trader for order volumes up to a maximum of 40.00 €. For order volumes exceeding 40.00 €, the return charges are not borne by the non-trader.

(3) The deadline is considered met if the goods are timely sent to Wölfel Meßsysteme · Software GmbH + Co. KG, Max-Planck-Str. 15, 97204 Höchberg.

(4) A non-trader shall pay compensation for any deterioration resulting from the goods having been commissioned as intended. The non-trader has the right to check the goods carefully and circumspectly. For any further utilization that makes it impossible to sell such goods as "new", the non-trader shall pay compensation for deterioration of value.

(5) The return privilege does not apply to downloads and to sealed goods if the sealed package was opened or damaged.

(6) Individually generated or personalized licenses or products, or licenses and products specifically ordered in accordance with a Customer's wishes, are generally excluded from the return privilege.

(7) Software installed by the Customer on one or several devices (personal computer, server, handheld, PDA) is excluded from the return privilege.

#### § 6 Reservation of Title

(1) For contracts with non-traders, Wölfel Meßsysteme · Software GmbH + Co. KG reserves title in the goods until full payment of the purchasing price. For contracts with traders, it reserves the ownership in the goods until full payment of all claims from an ongoing business relation.

(2) As long as the title is reserved, the Customer must handle the goods with care. It is obliged to inform Wölfel Meßsysteme · Software GmbH + Co. KG immediately of any third party appropriation of the goods, for example by way of attachment, and of any damage to or loss of the goods, as well as of any change of ownership of the goods or of its address.

(3) If the Customer defaults, particularly in case of delayed payment, Wölfel Meßsysteme · Software GmbH + Co. KG has the right to take back the goods under reservation of title at its own expense; this action does not constitute withdrawal from the contract.

(4) The trader has the right to resell the goods under reservation of title in the regular course of business. It herewith assigns to Wölfel Meßsysteme · Software GmbH + Co. KG all claims against third parties resulting from the resale to the amount of the invoice. Wölfel Meßsysteme · Software

GmbH + Co. KG accepts such assignment. The trader retains the right to collect such claims. Wölfel Meßsysteme · Software GmbH + Co. KG reserves the right to collect such claim itself as soon as the trader defaults.

#### § 7 Passing of Risks

(1) If the Customer is a trader, the risk of loss and deterioration of the goods passes to the Customer as soon as the goods in question are handed over to the company, institution or individual commissioned to ship the goods.

(2) If the Customer is a non-trader, the risk of loss or deterioration of the goods only passes when the goods bought are handed over to the Customer.

#### § 8 Warranty/Liability

(1) The agreed characteristic of the goods is the suitability of the program package as specified in the program description issued by Wölfel Meßsysteme · Software GmbH + Co. KG and applicable at the time of delivery to the Customer. It is furthermore considered agreed that the program is duly stored on a checked data carrier; and for an ESD sale, that the program package is available for download by the Customer on the server of Wölfel Meßsysteme · Software GmbH + Co. KG. If the Customer is a trader, any public statements, promises, or advertising declarations by the manufacturer do not constitute any contractual affirmation of characteristics of the goods beyond those promised in the contract.

(2) Wölfel Meßsysteme · Software GmbH + Co. KG does not issue any warranties regarding the promised characteristics or any other warranties. This clause does not affect manufacturer's warranties.

(3) If the Customer is a trader, Wölfel Meßsysteme · Software GmbH + Co. KG initially executes its warranty either by rectification or, in its own discretion, by replacement delivery. Customers who are non-traders can initially choose whether warranty is to be executed by rectification or replacement delivery. Wölfel Meßsysteme · Software GmbH + Co. KG has the right to refuse the type of warranty chosen if this type involves unreasonable costs and if the other type of warranty execution does not cause the non-trader to suffer considerable disadvantages.

(4) If supplementary performance has been attempted twice with no avail, the Customer can generally demand reduction of payment or, in its own discretion, withdrawal from the contract. In case of a minor violation of contract, particularly in case of minor defects, the Customer cannot withdraw from the contract.

(5) The trader is obliged to announce evident defects in writing within a period of one week after receipt of the goods; failing that, assertion of warranty claims is excluded. Timely dispatch of such announcement is sufficient to meet the deadline. The trader has the burden to prove that the conditions for the claim are met, in particular in respect of the defect itself, and to prove the time of detection and the timeliness of the notification of the defect. If non-traders detect that the state

of the goods in not in accordance with the contract, they must inform Wölfel Meßsysteme · Software GmbH + Co. KG in writing of any evident defects within a period of two months after detection. The deadline is met if such notification is received at Wölfel Meßsysteme · Software GmbH + Co. KG in due time. If the non-trader fails to send such notification, the warranty rights are forfeited two months after detection of the defect. This does not apply in case of fraudulent intent by Wölfel Meßsysteme · Software GmbH + Co. KG. The non-trader bears the onus of proof for the time of detection of the defect. If the non-trader made the decision to buy the goods in question on the basis of incorrect manufacturer's statements, the non-trader bears the onus of proof for such alleged fact.

(6) If the Customer, after failure of subsequent performance, opts to withdraw from the contract, the Customer cannot claim any additional damages for the defect in question. If the Customer, after failure of subsequent performance, opts to receive damages, the goods remain at the Customer's if the Customer can reasonably be expected to keep them. Damages are limited to the balance between the purchasing price and the value of the defective goods. This does not apply if Wölfel Meßsysteme · Software GmbH + Co. KG violated the contract fraudulently.

(7) The warranty period is 6 months for software, and 12 months for hardware after delivery of the goods. This is not applicable if the Customer failed notify Wölfel Meßsysteme · Software GmbH + Co. KG of the defect in due time.

(8) If the Customer receives a defective installation manual, Wölfel Meßsysteme · Software GmbH + Co. KG is merely obliged to supply a fault-free installation manual, and only if the defective the installation manual prevents proper installation.

(9) If Wölfel Meßsysteme · Software GmbH + Co. KG, its legal representatives or putative agents are to blame for a mere negligence, liability of Wölfel Meßsysteme · Software GmbH + Co. KG is limited to predictable, direct damage that is typical for the respective type of contract. Wölfel Meßsysteme · Software GmbH + Co. KG does not take liability vis-à-vis traders for slightly negligent violation of insignificant contractual obligations. These restrictions of liability do not apply to Customer's claims from product liability. Furthermore, Customer's physical injuries and loss of life to be blamed on Wölfel Meßsysteme · Software GmbH + Co. KG are not subject to restrictions of liability.

(10) Customer's claims for damages for a defect become statute-barred one year after delivery of the goods unless Wölfel Meßsysteme · Software GmbH + Co. KG is to blame for gross negligence. Claims do not become statute-barred if a Customer has suffered physical injuries or loss of life attributable to the goods supplied by Wölfel Meßsysteme · Software GmbH + Co. KG.

(11) Wölfel Meßsysteme · Software GmbH + Co. KG waives all liability for amended or modified program versions unless the Customer proves that existing defects are in no way associated with such amendments or modifications.

(12) Any other liability claims of the Customer's for whatever legal reason are expressly excluded. In particular, the Seller takes no liability for loss of data, damage to data carriers and other programs, business interruptions etc. This liability restriction does not apply if liability is

attributable to intent or gross negligence.

#### § 9 Miscellaneous

(1) Wölfel Meßsysteme · Software GmbH + Co. KG processes its Customers' data to complete the order and to update ongoing Customer relations. Such data is disclosed to other involved service providers or banks only to the extent required for completion of the order. Other companies are only granted access to such data if they have information that is of special interest to the Customer.

#### § 10 Final Stipulations

(1) These Terms and Conditions are subject to German law under exclusion of the Uniform Law on the International Sale of Goods (CISG).

(2) The only place of jurisdiction for all disputes arising out of this contract against traders, legal entities or special funds under public law is the place of business of Wölfel Meßsysteme · Software GmbH + Co. KG, which currently is Würzburg.

(3) Any invalidity of individual clauses of these Terms and Conditions or the purchasing contract does not affect the validity of the remaining clauses; the clauses invalid in whole or in part shall be substituted by the statutory regulation.