

General Terms and Conditions of Sales

1. General

1.1 These General Terms and Conditions of Sales and Delivery apply to all goods and support transactions between Kbiotech and the customer. Other terms or conditions of the Customer are binding only if acknowledged separately in writing by Kbiotech, hereinafter referred to as "Kbiotech".

1.2 These General Terms and Conditions of Sales and Delivery remain in force even when they are not enclosed. The General Terms and Conditions of Sales and Delivery are also downloadable at www.kbiotech.ch

1.3 In case these General Terms and Conditions of Sales and Delivery are held invalid partially or completely, both parties should add a new agreement instead.

1.4 Offers are not binding.

1.5 All agreements and legally important declarations by both parties are only valid in writing. In case of conflict between special agreements and General Terms and Conditions of Sales and Delivery, the special agreements have priority.

2. Execution of contract

2.1 The contract will be executed upon written Order Confirmation by Kbiotech or Invoice.

2.2 Deviations from the order confirmation or invoice become part of the contract, unless disputed in writing by the customer within five business days after receipt of order confirmation. Kbiotech reserves the right to correct invoicing errors.

3. Scope of goods and services supplied

3.1 Goods and services of Kbiotech will be specified in the Order Confirmation and invoice.

3.2 Kbiotech is entitled to engage subcontractors.

4. Pricing

4.1 All prices are understood as net, without any deductions.

4.2 Shipping and packing costs, small-lot and express charges, costs of special requirements of the customer, will be invoiced additionally, if not agreed separately. Customer is liable for the value-added tax VAT.

4.3 In case of changes in pricing due to unforeseeable circumstances between the execution of the contract and delivery (particularly currency fluctuations and supplier prices), Kbiotech is entitled to adjust the prices accordingly.

5. Terms of delivery

5.1 The lead time specified in the order confirmation or invoice shall apply and shall begin with the execution of the contract.

5.2 The lead time will be extended, if :

5.2.1 Kbiotech does not receive the information required for performance of the contract in advance or if the customer changes the specifications afterwards.

5.2.2 Hindrances arise which Kbiotech can't overcome despite application of due care, regardless of whether problem a rised at Kbiotech, at the customer or at a third party.

5.3 In case of late delivery the customer has neither the right to indemnity or additional performances nor has the customer the right to withdraw from the contract.

5.4 In case Kbiotech is unable to deliver on time or at all, due to events beyond is to control occurring at Kbiotech or its suppliers, Kbiotech has the right to withdraw from the contract in whole or partially. Kbiotech has the right to effect partial deliveries, which may be charges separately, unless otherwise agreed.

6. Passage of benefit and risk

6.1 Benefit and risk will pass to the customer no later than upon arrival of the goods at the agreed place of delivery.

6.2 If the shipment is delayed at customer's request or for other reasons which are not caused by Kbiotech fault, the risk will pass to the customer at the time originally specified for delivery.

7. Despatch, transport and insurance

7.1 Kbiotech arranges despatch and transport to the agreed destination and will be charged separately, unless otherwise agreed.

7.2 Despatches from Kbiotech to the customer are secured by Kbiotech transit insurance. Additional insurances against losses are in responsibility of the customer from the moment of passage of risk.

7.3 Complaints in relation to the despatch or transportation have to be reported directly to the last carrier and Kbiotech upon receipt of the shipment or shipping documents.

8. Inspection and acceptance of shipments

8.1 The customer has to inspect the shipments within 5 business days of receipt. Complaints have to be reported to Kbiotech in writing. After this period the goods are considered accepted.

8.2 Any defects reported as to section 8.1, which Kbiotech acknowledges, have to be replaced or repaired by Kbiotech.

8.3 The customer has no right of claims arising from defects of any other kind in shipments than stated in sections 8 and 9.

9. Warranty and liability

9.1 The warranty starts for a period of twelve (12) months upon arrival of the shipment at the point of destination

9.2 The warranty given by Kbiotech is limited to the agreed materials and appearance.

9.3 Exclusions from the Warranty:

The following items are not covered under our Warranty:

1. Customer maintainable components, such as valves and motors.
2. Consumables, such as probes , filters , septa, sealings , vessels, and reagents;
3. Third party manufactured items, including, without limitation, personal computers, components and accessories (each of which shall be subject only to the warranty, if any, provided by the original manufacturer);
4. Used, reconstructed, refurbished or previously owned instruments, which are sold by us "As Is". A one-year service plan may be purchased and is highly recommended by us for used equipment. Demonstration units, however, are covered under our Warranty.

9.4 Warranty on Service and Spare/Replacement Parts:

We warrant the services we perform and the spare and replacement parts we install, for a period of ninety (90) days from the date of performance of such services and the date of installation of the spare or replacement part, respectively.

9.5 Warranty on Our Software**:

We warrant that our licensed software, for a period of ninety (90) days from the date our software is received by the customer, shall perform substantially in accordance with the standards set forth in the user documentation related to such software. Our software Warranty, however, does not extend and shall not apply to the extent that any breach of such Warranty is caused by the licensed software being: (a) not used in accordance with the user documentation supplied by us; (b) used in combination with any program material not licensed by us; (c) modified by the customer; or (d) used with equipment other than the designated equipment for such software.

9.5 Additional Exclusions and Limitations:

1. The Warranty excludes any equipment or accessories which are identified on applicable price lists, quotations, or special promotional materials for which our Warranty may be further limited. Included within this category are items which are sold at specially reduced prices with reduced Warranty protection (in some cases, extended Warranty protection may be available for purchase).
2. The Warranty does not cover loss, damage, or defects resulting from: transportation to the customer's facility, improper or inadequate maintenance by the customer, customer-supplied software or interfacing, unauthorized modification or misuse, operation outside of the environmental specifications for the instrument, and/or improper site preparation or maintenance.
3. The Warranty applies only to instruments within the country of original delivery. Instruments transferred outside the country of original delivery, either by us at the direction of the customer or by the customer's actions subsequent to delivery, may be subject to additional charges prior to Warranty repair or replacement of such instruments, based on the actual location of such instruments and our Warranty and/or service surcharges for such location(s).
4. Except in the case of an authorized distributor, authorized in writing by us to extend the Warranty to distributor's customers, the Warranty applies only to the customer as the original purchaser from us and may not be assigned, sold or otherwise transferred to any third party.

9.6 The claim of the customer is limited to replacement or repair of the defective goods.

9.7 The warranty expires early in case the customer or a third party undertakes any changes or repairs improperly or if the customer does not immediately give Kbiotech the possibility to repair the defect.

9.8 Kbiotech is not liable for defects arising from inaccurate or imprecise information provided by the customer. Kbiotech shall furthermore not be liable for defects arising in consequence of natural wear and tear, improper maintenance, improper use, excessive load or other causes not imputable to Kbiotech.

9.9 For risk productions Kbiotech is not liable for defects arising from inaccurate or imprecise information provided by the customer.

9.10 Kbiotech is not liable for indirect or consequential losses from the use, for loss of income or any additional efforts by the customer.

9.11 In case a product liability is being claimed against Kbiotech by a third party for a defect not imputable to Kbiotech, the customer has to indemnify Kbiotech for all costs incurred.

10. Confidentiality

10.1 Information supplied by Kbiotech to the customer for purposes of contract performance, may neither be used for other purposes of customer nor disclosed to third parties.

11. Terms of payment

11.1 The customer has to effect payments as per the agreed terms of payment, net, plus value-added tax.

11.2 In case Kbiotech' rights are at risk because the customer has become insolvent, Kbiotech may suspend performance of contract until the agreed obligations from the contract are fulfilled. Kbiotech is allowed to withdraw from the contract if performance is not ensured within a reasonable period.

12. Reservation of title

12.1 All goods sold by Kbiotech remain property of Kbiotech until the terms of the contract are fulfilled and all payment obligations are discharged.

12.2 Kbiotech and our suppliers have sole reservation of title and copyrights for all drawing and drafts. The mentioned documents are entrusted to the customer and may neither be made available to third parties nor copied without written consent by Kbiotech. The documents have to be returned to Kbiotech upon request.

13. Applicable law and place of jurisdiction

13.1 The present contract is subject to Swiss Convention.

13.2 The sole place of jurisdiction of any legal disputes between the contracting parties is Lugano, Switzerland.