

General Terms and Conditions of Sale and Delivery (GTS) Hamilton Central Europe

Edition February 2018

General Terms and Conditions of Sale and Delivery of Hamilton Central Europe SRL

(Hereinafter called "Hamilton")

1. Commencement and scope

1.1 With effect from February 1, 2018, all goods sales and deliveries performed by Hamilton shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (hereinafter called "the GTS"), insofar as these are not amended by means of individual written agreements. Furthermore, these GTS shall replace the previously valid General Terms and Conditions of Sale and Delivery of Hamilton.

1.2 General terms and conditions of business of the contracting Party which contradict these GTS shall be applicable only insofar as Hamilton expressly approves these in writing. The following GTS apply to all goods sales and deliveries performed by Hamilton, insofar as the wording of the order confirmation does not contain different provisions, or insofar as different provisions have not been agreed between the parties on an individual contractual basis.

1.3 Hamilton reserves the right to amend these GTS at any time.

2. Price lists and offers

2.1 Price information and other terms and conditions shown in catalogues, brochures and price lists merely represent invitations to submit offers; they are time-limited pursuant to the information printed therein, and may be amended without prior notification once this period has expired.

2.2 The validity of the Hamilton offers is limited to 60 (sixty) days from the date of the offer, although at the most to the duration of the respective relevant price lists.

2.3 The offers are applicable only to the respective addressees.

3. Prices and order volumes

3.1 Deliveries and sales prices are shown ex works in Swiss francs, unless otherwise agreed. The prices are applicable plus statutory taxes, fees and duties.

3.2 Orders placed by the contracting Party shall be subject to the prices and conditions which are valid on the day on which the order is recorded.

3.3 If the net value of the order fails to reach the minimum order value of CHF 200.00, Hamilton shall impose a minimum quantity surcharge of CHF 25.00.

3.4 Hamilton shall impose a handling fee for all deliveries amounting to CHF 12.00 (Europe) or CHF 25.00 (rest of the world) per delivery or partial delivery. In individual cases Hamilton may however refrain from imposing this fee.

4. Payment, offsetting

4.1 Payment must be performed within 30 (thirty) days of the invoice date. Cheques shall be deemed to have been received only once they have been credited.

4.2 Hamilton does not accept bills of exchange, WIR credit notices and other non-standard means of payment.

4.3 Hamilton may at any time demand advance payment or an irrevocable documentary credit, or may insist upon other payment procedures. The resulting costs shall be borne by the contracting Party.

4.4 The contracting Party may by means of a written declaration only offset a claim brought by Hamilton if his counterclaim is uncontested or if a legally-binding ruling has been made; in other respects the contracting Party shall be expressly prohibited from offsetting.

4.5 Hamilton is entitled to refuse to perform the delivery if it becomes apparent following the conclusion of the agreement that its entitlement to payment for the delivery is jeopardized by the inability of the contracting Party to pay. This right to refuse to withhold the performance shall be waived if the payment is performed or if the contracting Party provides adequate collateral. Hamilton is entitled to impose a reasonable deadline upon the contracting Party within which the contracting Party must either perform the payment contemporaneously upon delivery, or must provide collateral for the delivery. Following the fruitless expiry of the deadline, Hamilton shall be entitled to withdraw from the agreement without delay, without this having any compensatory consequences for Hamilton.

5. Payment default and collection

5.1 The contracting Party shall be deemed to have fallen into arrears at the time of the expiry of the payment period specified in Section 4.1. In this event, 6% default interest shall be owed each day from this time onwards.

5.2 In addition, Hamilton must be reimbursed for the costs which it incurs collecting the outstanding sums, including the legal and court expenses of Hamilton.

5.3 The default of the contracting Party shall moreover entitle Hamilton to stop all open deliveries of all types as well as all further performances, to withdraw from the agreement, to demand the return of the delivered products or following written notification to collect these products with immediate effect, and to rescind any possible associated legal agreements without further formalities, and to demand compensation for further losses.

6. Scope of delivery, delivery deadline, partial deliveries and taking back the packaging

6.1 The scope of the delivery does not include further technical specifications, assembly, fitting, intellectual property rights of all kinds, environmental tests or other tests which go beyond the normal Hamilton standard tests, certification and packaging which goes beyond the Hamilton standard packaging. Additional charges shall be imposed in respect of performances rendered by Hamilton in these fields.

6.2 Oral delivery deadlines are not binding. They shall only be binding insofar as they have been confirmed by Hamilton in writing.

6.3 The contracting Party shall not acquire any rights against Hamilton arising out of delays or non-delivery, irrespective of the causes.

6.4 Information provided by Hamilton about the weight and dimensions of the products represent merely approximate values

6.5 Partial deliveries are permitted; these shall be charged once they have been performed.

6.6 Hamilton is willing to take back the packaging which it has delivered; the corresponding costs shall be borne by the contracting Party.

6.7 Unless otherwise agreed, the contracting Party shall always bear the delivery costs

7. Transport

7.1 The contracting Party is responsible for the transport as well as for transport documents, means of transport and transport routes.

7.2 The contracting Party shall be responsible for insuring the transport.

7.3 The cost of the transport (incl. loading and unloading) shall be borne by the contracting Party.

8. Transfer of risk and adherence to control regulations

8.1 The risk of destruction, of loss or damage of the goods shall be transferred to the contracting Party as soon as the goods have been sent out for transport/dispatch (Ex Works, Incoterms 2010). If the goods are returned to Hamilton for any possible reason, then the risk and liability shall be retained by the contracting Party until these have been unloaded at Hamilton in Timisoara. In the event of the delayed acceptance of the contracting Party, the risk shall be transferred at the latest at the time of the commencement of the delay.

8.2 Insofar as the respective applicable law does not stipulate otherwise on a mandatory basis, the contracting Party shall in all cases be exclusively responsible for adhering to all export, import, transit and control regulations and formalities.

9. Checks and notice of defects

9.1 The contracting Party must check the products (quality and quantity) at his own expense.

9.2 In the event of visible defects, the contracting Party must report these to Hamilton in writing without delay following receipt of the products, although at the latest within 10 (ten) days following receipt of the goods (or in the case of assembly or fitting performed or commissioned by Hamilton, immediately following the completion of these works), describing the defects in detail. Transport damage and delivery shortfalls must also be reported immediately to the haulage contractor and to the forwarding agent in writing.

9.3 Concealed defects must be reported in writing immediately following their discovery, although at the latest within 10 (ten) days following the ascertainment of the defects, describing the defects in detail.

9.4 If the contracting Party fails to issue the correct notice of defects, then the product shall be deemed to have been approved without reservation.

9.5 In the event of defective goods, Hamilton may initially at its own choice perform repairs or subsequent deliveries (subsequent fulfilment). Hamilton shall be entitled to repeat a subsequent fulfilment which has failed to produce the desired effect. Hamilton may refuse to perform the subsequent fulfilment if this entails disproportionate costs.

9.6 Claims brought by the contracting Party on account of defects shall be excluded in the case of minor material defects. If the subsequent fulfilment has failed to produce the desired effect, has been refused or is unreasonable, or if the contracting Party fruitlessly granted Hamilton a reasonable grace period for subsequent fulfilment, then the contracting Party shall be entitled to demand a price reduction or to withdraw from the agreement.

10. Force majeure, contractual obstacles

10.1 Force majeure of all kinds, unforeseeable operating, transport or consignment disruptions, fire damage, flooding, unforeseeable fuel, energy, raw material or auxiliary material shortages, lawful strikes, lawful lockouts, official decrees or other hindrances for which the Party which owes the performance is not responsible, which delay or prevent the manufacture, the dispatch, the delivery or the acceptance, or which render these unreasonable, shall free the respective Parts from the obligation to perform the delivery or the acceptance for the duration and scope of the disruption. This shall also apply if the circumstances

10.2 The Party which owes the performance shall also not be deemed responsible for the aforementioned circumstances if these occur during an already existing default. If the delivery or acceptance is delayed for more than 8 (eight) weeks as a result of the disruption, then both Parties shall be entitled to withdraw, and to this extent no compensation claims shall be established.

11. Warranty

11.1 Hamilton guarantees that its products are free of material and manufacturing defects.

11.2 Warranty shall be 12 (twelve) months for equipment and 3 (three) months for other products. The time period of warranty starts with the date of delivery of the goods.

11.3 The following special provisions are applicable to the below- specified products:

a) Consumables such as syringes, tubes, valves, sensors, etc. have a limited useful life on account of the application. For this reason the warranty for signs of natural wear or for improper utilization shall be excluded.

b) Syringes and pH sensors from Hamilton are made of glass and are consequently sensitive to shocks and impacts. No replacement under warranty shall be granted for damage of this type which is not reported as transport damage immediately following the receipt of the goods by the customer.

c) In the case of conventional pH, redox and reference electrodes, oxygen sensors and accessories, viable and total cell density sensors as well as conductivity cells, the warranty shall apply only on the date of dispatch.

d) In the case of viable and total cell density sensors and accessories (such as ArcView controllers and Pre-Amplifier) as well as of ARC sensors and components and general accessories (such as armatures, transmitters), a 12 (twelve) month warranty shall be applicable, commencing on the date of delivery. In case of ARC sensors, this warranty shall not apply to the parts of the sensors which are exposed to the application. In the case of sensors where the part which is exposed to the application is not separable from the electronic part, in the event of defective electronics no warranty shall be granted on the entire sensor if the part which is exposed to the application is defective or has been used intensively.

e) In the case of buffers, electrolytes and reagents, Hamilton guarantees adherence to the specifications up to the expiry date. This date is printed on the packaging or in the analysis certificate. If no such date is specified, then the maximum storage duration is 12 (twelve) months from the date of dispatch for buffers and electrolytes and 3 (three) months from the date of dispatch for reagents. This is contingent upon the products being stored permanently within a temperature range of 4 to 30°C, with air humidity of 25% to 85% (without condensation) and in an air pressure range of 0 to 3,000 meters above sea level; if the packaging or the analysis certificate contains deviating specifications, then these shall be relevant. The onus shall be on the contracting Party to provide the corresponding proof.

11.4 In the event of replacement or repair, no new warranty shall commence; instead, only the remaining part of the original warranty period shall apply.

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- 11.5 The contracting Party shall lose his claims:
- a) if the products or their parts were not connected, assembled, fitted, deployed, utilised or serviced properly or as intended and in accordance with the details set out in the operating instructions and/or the material safety data sheets or in accordance with their specifications;
 - b) if the damage was caused by the impact of force (e.g. accident);
 - c) if the products or their parts (incl. electronics and software) were not set, amended, repaired or services by Hamilton or by specialized authorized by Hamilton;
 - d) if non-original Hamilton parts were used when replacing parts;
 - e) if serial numbers have been amended, deleted or removed.
- 11.6 Whosoever asserts a warranty claim must demonstrate that the product defect was caused by material or manufacturing defects.
- 11.7 If the contracting Party asserts a warranty claim, then he must inform Hamilton in writing about the product, its serial number, date of dispatch and the nature of the problem, enclosing a copy of the original invoice. Once this has been done, the instructions issued by Hamilton for the settlement of the matter must be adhered to. In addition, the following provisions shall apply:
- a) If the product is to be sent back to Hamilton, the contracting Party shall be responsible for packaging the product properly; he shall bear the risk during the transport. Hamilton shall organize the transport in both directions, and shall assume the corresponding costs as follows: full vis-à-vis end customers, one half vis-à-vis distribution partners. If the contracting Party wishes for a special means of transport to be used (e.g. express consignment), then he shall be required to cover the resulting additional costs.
 - b) Hamilton shall not accept any return consignments which do not contain a copy of the original invoice and prior product Return Goods Authorization (RGA). The product return authorization number must be clearly specified on the packaging and on the forwarding documents. All costs resulting from unilateral steps undertaken by the contracting Party shall be borne by the contracting Party.
 - c) If the products or parts are radioactively, microbiologically or otherwise contaminated, then this must be correspondingly declared and these products or parts must be decontaminated before these are returned. If this has not been properly performed, then Hamilton may – at the expense of the contracting Party – send the products or parts back, or may decontaminate these itself; in this event the contracting Party shall furthermore be obliged to pay all consequential damages.
- 12. Liability**
- 12.1 Liability on the part of Hamilton – irrespective of the legal grounds upon which this is asserted – shall be established only if the loss was caused by the breach of an essential contractual obligation, or is attributable to gross negligence or willful intent on the part of Hamilton. Hamilton shall not be liable in cases of slight negligence.
- 12.2 Insofar as the liability of Hamilton is excluded or restricted this shall also apply to the personal liability of its employees, representatives, vicarious agents and other possible substitutes.
- 12.3 Hamilton shall not be liable for the consequences of the improper amendment or treatment of the goods, and
- in the case of technical medical equipment in particular not for the consequences of faulty maintenance performed by the contracting Party or any third party, as well as for defects which were based upon normal wear or which were caused by the transport.
- 12.4 Defect claims brought against Hamilton shall in particular be excluded in respect of losses and consequences resulting from the fact that the contracting Party used delivered hardware or software together with incompatible hardware, software or other components, or with hardware, software or other components which had not been tested and correspondingly approved by Hamilton. The same shall apply to alterations made to the hardware or software delivered by Hamilton. Hamilton shall moreover not be liable for any loss of data attributable to the improper utilization of the hardware and software and the lack of reasonable data backup precautions.
- 12.5 Should a party issue an order while deputizing for a third party, then he shall be jointly and severally liable along with the third party for all claims issued by Hamilton arising out of this order.
- 12.6 Any material warranty or legal warranty or warranty in respect of losses of all kinds (i.e. direct and indirect losses) which go beyond the guarantee and liability provisions shall be excluded – insofar as this is permitted by law. Hamilton shall not assume any liability that its products are suitable for the purpose intended by the contracting Party.
- 12.7 In the case of products which are subject to official permits (in particular explosion protection ATEX and IVD), the contracting Party is obliged to ensure that these can be traced to the end customer. The customer furthermore undertakes to adhere to the procedures prescribed by public authorities for the commissioning, the operation and the maintenance of the product (operating instruction, EC type-examination certificate), as well as the reporting and recall procedures. Hamilton rejects any liability for losses or operating interruptions which result from failure to adhere to these regulations. The customer shall be responsible for ensuring that the operating instructions in paper form are enclosed with the ATEX or IVD product, drawn up in at least in one of the official languages of the country in which the product is to be installed.
- 12.8 The contracting Party shall be responsible for ensuring the fulfilment of legal requirements before the goods sold by Hamilton abroad are commissioned.
- 12.9 Hamilton shall not be liable for direct or indirect losses arising out of the utilization of the sensors. It must in particular be ensured in this conjunction that malfunctions can occur on account of the inherently limited useful life of sensors contingent upon their relevant applications. The user is responsible for the calibration, maintenance and punctual replacement of the sensors. In the case of critical sensor applications, Hamilton recommends using redundant measurement points in order to avoid consequential damages. The user shall be responsible for taking suitable precautions in the event of a sensor failure. Hamilton shall furthermore not be liable for consequential damages arising out of the glass construction of the pH sensors. pH sensors made by Hamilton consist of glass and are therefore susceptible to blows and impacts. The user shall be responsible for approving the use of pH sensors made of glass in the respective application.

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13. Withdrawal and compensation in place of the performance

13.1 Should Hamilton fail to render a due performance, or should Hamilton fail to render this in accordance with the contractual provisions, then the contracting Party shall only be entitled to withdraw from the agreement or to demand compensation in place of the performance

- a) if this constitutes a not-insignificant breach of contract on the part of Hamilton;
- b) if he demands in writing that Hamilton renders the performance within a reasonable period of at least 14 days, and
- c) if Hamilton has not already rendered the performance within this deadline.

13.2 If Hamilton has still not rendered the performance within the deadline imposed by the contracting Party, or has not rendered this performance in accordance with the contractual provisions, then Hamilton may demand that the contracting Party declares, within a reasonable deadline, whether he continues to insist upon the rendering of the performance. Hamilton shall not be obliged to render the performance before the contracting Party has communicated his decision.

14. Orders and return consignments of wrongly-ordered goods

14.1 Hamilton requires the following information for orders:

1. Customer number (in the case of existing customers);
2. Names of the company and of the responsible person
3. Telephone and fax numbers of the ordering party;
4. Order date and order number;
5. Product designations and Hamilton product numbers;
6. Quantities;
7. Prices;
8. Invoice address and delivery address;
9. Additional information, e.g. relating to delivery data or partial deliveries.

14.2 Hamilton shall however not take back any custom-made items or products which have been manufactured especially for the contracting Party, nor shall it take back any radiologically, microbiologically or otherwise contaminated products.

15. Utilizations restrictions

15.1 Goods delivered by Hamilton may contain products whose use by the contracting Party is subject to statutory patent or licensing restrictions.

16. Intellectual property

16.1 All intellectual property (such as e.g. trademarks or the company designation) shall be retained by Hamilton.

16.2 The contracting Party may not use the intellectual property of Hamilton without the prior written approval of Hamilton. The use of Hamilton advertising material remains reserved.

16.3 Should third parties claim that their intellectual property is being breached by Hamilton products, then the contracting Party must inform Hamilton thereof in writing without delay. The contracting Party must to the best of his ability, and in accordance with Hamilton's instructions, help Hamilton defend itself against such claims. Hamilton shall not be liable vis-à-vis the contracting Party for any possible damages resulting from such claimed or actual breaches.

16.4 If the contracting Party ascertains a possible impairment

of Hamilton intellectual property, then he must inform Hamilton thereof in writing without delay, and must to the best of his ability, and in accordance with Hamilton's instructions, help Hamilton safeguard its rights.

16.5 The contracting Party guarantees that the manufacture of products in accordance with the specifications, designs, technical data or instructions stipulated by the contracting Party shall not cause Hamilton to breach any intellectual property rights. He shall be comprehensively liable for all consequences arising out of any such claimed or actual breach.

17. Confidentiality

17.1 The contracting Party must – including after the end of the business relationships – treat all details of his business relationships with Hamilton as well as its business secrets in a strictly confidential manner. He shall also impose this obligation upon his managing officers, employees as well as lawfully involved third parties. The offers made by Hamilton shall in particular also be deemed to be of a confidential nature. Any breach of this obligation shall entitle Hamilton to demand compensation and to withdraw from the legal agreement with immediate effect.

18. Reservation of title

18.1 The title to all sold products shall be retained by Hamilton until Hamilton has received the full purchase price. The title held by Hamilton also extends to the new products created by processing the goods which are subject to reservation of title.

The processing shall be performed for Hamilton in the capacity of a manufacturer. In the event of any processing, connection or blending or mixing with items which do not belong to Hamilton, Hamilton shall acquire co-ownership thereof in proportion to the invoice value of its goods which are subject to the reservation of title relative to the invoice values of the other materials.

18.2 The contracting Party must treat the goods which are subject to the reservation of title with due care. He is obliged to insure the goods which are subject to the reservation of title adequately at his own expense against all risks at their new value, and shall in advance assign to Hamilton his claims for compensation arising out of these insurance agreements.

18.3 If the products remain in Romania, then Hamilton shall be entitled to arrange for a corresponding entry to be made in the responsible register of goods which are subject to reservation of title.

18.4 If the products are sent abroad, then the reservation of title shall be subject to the law of the country of destination.

18.5 If an invoice is due, but not yet fully paid, then Hamilton shall be entitled to demand the return of all products delivered in accordance with this invoice, or may take these back itself, without this giving rise to any possible claims on the part of the contracting Party.

18.6 If Hamilton asserts its reservation of title and demands the return of the products – or takes these back accordingly – then any possible partial payment which has already been performed by the contracting Party in respect of the products shall be forfeited to Hamilton within the meaning of a contractual penalty.

19. Place of performance

19.1 The place of performance for all of the obligations of the contracting Parties is Timisoara, Romania.

20. Miscellaneous provisions

20.1 All agreements concluded between Hamilton and the contracting Party pertaining to the execution of the goods sales must be made in writing in order to be valid (validity requirement).

20.2 The contracting Party may not assign his claims vis-à-vis Hamilton to any third party.

20.3 Hamilton may draw upon the services of third parties for the purpose of fulfilling its obligations.

20.4 In the event of differences between the various language versions of these GTS, the English version shall prevail.

20.5 Communications must be addressed to Hamilton Central Europe, Hamilton 2-4, 307210 Giarmata, Timis County, Romania.

20.6 All legal relationships between Hamilton and the contracting Party are governed by Romanian law, whereby the UN Sales Convention shall be excluded.

21. Severability clause

21.1 Should any of the individual provisions contained in this Agreement prove to be wholly or partially invalid or unenforceable, or should they subsequently become invalid or unenforceable as a consequences of changes in legislation which take place following the conclusion of the Agreement, then this shall not affect the other contractual provisions and the validity of the Agreement as a whole. Such invalid or unenforceable provisions shall be replaced by valid and enforceable provisions which approximate as closely as possible to the meaning and purpose of the invalid provisions. Should the Agreement prove to contain omissions, then the provisions shall be deemed to have been agreed which correspond to the meaning and purpose of the Agreement and which would have been agreed if this matter had been considered.

The ordinary courts at the registered domicile of Hamilton shall have exclusive jurisdiction for the judicial assessment of all disputes between the contracting Party and Hamilton. Hamilton shall however also be entitled to bring claims against the contracting Party before any other responsible court of law.