

# **General Terms and Conditions of Sale and Delivery of OxyGuard International A/S (Hereinafter referred to as “OxyGuard”)**

## **1 Scope of Application**

These General Terms and Conditions of Sale and Delivery shall apply to all sales and deliveries of measurement instruments from OxyGuard, save as modified by written agreement between the customer and OxyGuard.

## **2 Quotations and Orders**

- 2.1 Prices and quotations made by OxyGuard are exclusive of VAT and any other Danish or foreign taxes, rates or duties. All prices and quotations are stated ex works (INCOTERMS 2010) Farum, Denmark.
- 2.2 Price quotations made in writing by OxyGuard are valid and binding for a time period of 3 months from date of the quotation, unless a different time period is stated in the quotation or unless it is stated that the quotation is only indicative.
- 2.3 Once the customer has placed an order, the customer has no right of cancellation.
- 2.4 OxyGuard is not bound by an order until OxyGuard has submitted an order confirmation.

## **3 Time of Delivery**

- 3.1 Time of delivery is stated in the order confirmation
- 3.2 If the customer does not pay in due time an amount stated in the order confirmation as payable prior to delivery, OxyGuard shall be entitled to cancel the delivery agreement. OxyGuard shall further be entitled to claim compensation - irrespective of whether the delivery agreement is cancelled or upheld. OxyGuard shall have the right to claim compensation, e.g. for loss of profit of up to 20 percent of the invoice price for instruments covered by the delivery agreement without having to substantiate the loss suffered.
- 3.3 If delivery by OxyGuard is delayed by more than one month without the occurrence of any of the circumstances listed in clause 4 below, the customer shall be entitled to terminate the agreement, provided, however, that OxyGuard - despite a written request submitted after the end of the said month - fails to effect delivery within a reasonable time limit. Irrespective of whether the customer

terminates or upholds the agreement, the customer shall only be entitled to claim compensation for delays in accordance with the general rules for compensation under Danish law. Except if OxyGuard has demonstrated gross negligence, OxyGuard shall in no event be liable for any consequential loss, loss of profit, or any other indirect losses whatsoever.

## **4 Grounds for Relief - Force Majeure**

- 4.1 If delivery is delayed by more than three months or prevented because of force majeure, both parties shall be entitled to terminate the delivery agreement and the customer shall not be entitled to claim any kind of compensation whatsoever for direct or indirect losses. Force majeure includes but is not limited to strikes or other labour disputes, defects or delays in deliveries from sub-suppliers, wars, riots, inability to obtain supplies, damage by fire and water or any acts of god.
- 4.2 OxyGuard is entitled to terminate the delivery agreement if changes in public taxes, rates or dues or in the supply of raw materials, foreign exchange fluctuations, or any other circumstances beyond OxyGuard's control make an agreed price lower than OxyGuard's costs of executing the order.

## **5 Passing of Risk and Transportation**

- 5.1 The instruments are sold ex works (INCOTERMS 2010) Farum, Denmark.
- 5.2 If the instruments are sold under terms requiring that OxyGuard arrange the transportation the customer will be charged for any safety measures and protection required under normal transport conditions to prevent damage to the instruments.

## **6 Retention of Title**

- 6.1 The instruments shall remain the property of OxyGuard until paid for in full to the extent that such retention of title is valid.

## **7 Payment**

- 7.1 Unless otherwise stated in the order confirmation or the invoice, all deliveries shall be paid 30 days after the date of invoice. The customer shall not be entitled to withhold payment by reason of any counterclaims not recognised in writing by OxyGuard.
- 7.2 Interest on overdue payments is charged from 30 days after the date of invoice. The interest rate is 1 percent per month and is compounded monthly.
- 7.3 Notwithstanding clause 6.1, if the customer fails to pay in due time, OxyGuard shall be entitled to cancel the delivery agreement, to retain deliveries in whole or in part, and to claim compensation, cf. clause 3.2.

## **8 Defects – Complaints and Limitation of Liability**

- 8.1 On receipt of the instruments it is the customer's responsibility to ascertain whether the shipment is undamaged, the number of instruments received corresponds to the number of

instruments ordered, the instruments meet the description of the instruments ordered and whether the instruments are free from defects.

- 8.2 The customer loses his right to invoke any defect in the instruments or variance of quantity or quality in relation to the agreed delivery, if the customer does not make a written complaint to OxyGuard within 30 days from date of delivery. If it was not possible to identify the defect upon delivery the time to invoke defects is counted from the date when it was possible for the customer to identify the defect.
- 8.3 OxyGuard's liability for defects in the instruments existing at the time of delivery, is limited to defects that appear within a period of 24 months after the time of delivery. OxyGuard does not warrant merchantability, fitness for a specific purpose or other implied warranties with respect to the instruments. OxyGuard is under an obligation to remedy defects, which are notified to OxyGuard by the customer in accordance with clause 8.1 and 8.2. At OxyGuard's option, OxyGuard shall remedy defects by repair or replacement of the defective instrument. Costs relating to packaging and transport of defective instrument to and from OxyGuard shall be paid by the customer.
- 8.4 OxyGuard's duty to remedy defects shall only extend to defects occurring under normal operating conditions. Hence, OxyGuard's duty to remedy defects shall not extend to malfunction of the instruments caused by insufficient maintenance, incorrect use, repairs made by others than OxyGuard (or a repair company approved by OxyGuard), or changes made without OxyGuard's prior written acceptance,
- 8.5 Except if OxyGuard has demonstrated gross negligence OxyGuard's obligation to remedy defects in the instruments by repair or replacement, as set forth in clause 8.3 above shall be OxyGuard's exclusive obligation in relation to defects and OxyGuard shall not be liable to undertake other remedial action or to compensate the customer for any other loss, including - without limitation - loss of profit, or any other indirect loss or consequential damage whatsoever, punitive damages, etc.

## **9 Product Liability and Insurance**

- 9.1 OxyGuard shall be liable for injury to persons and property only to the extent that it follows from mandatory Danish law and the clauses below.
- 9.2 OxyGuard shall in no way be liable for any damages to real and personal property occurring while the products are in the customer's possession. Nor will OxyGuard be liable for any damages to the products manufactured by the customer or any products which these products are part of or for loss or damage to any property where the damage is caused by these products because of OxyGuard's products. OxyGuard shall not be liable for any operational loss, loss of profits, or any other indirect or consequential losses. OxyGuard shall not be liable for punitive damages. The above limitations of OxyGuard's liability shall not apply if damages are due to gross negligence demonstrated by OxyGuard.

- 9.3 If OxyGuard incurs product liability towards any third party, the customer shall indemnify OxyGuard to the extent that the incurred liability of OxyGuard exceeds the limitations in its liability stated above. The customer shall maintain adequate insurance to cover any such claims from OxyGuard and the insurance company shall be obliged to reimburse OxyGuard directly upon request.
- 9.4 In the event that any third party makes a claim against either party for compensation according to this clause, such party shall forthwith notify the other party thereof. Both parties shall be mutually obliged to let themselves be summoned to the court or to the arbitral tribunal which examines claims against either of them based on damages or losses alleged to have been caused by the instruments.
- 9.5 OxyGuard shall in no way be liable for any damages whatsoever caused directly or indirectly by or as a result of EMF and/or EMI (electromagnetic fields and/or electromagnetic interference) and/or earthing voltage differences, poor or lacking earthing or similar.

## **10 General Limitation of Liability**

- 10.1 In no event shall OxyGuard be liable for defects in the instruments, for product liability or for any other item or service provided in an amount exceeding € 1 mill.
- 11 Governing Law and Venue
- 11.1 Danish law governs all matters between OxyGuard and the customer.
- 11.2 The Maritime and Commercial Court of Copenhagen in Denmark shall settle any dispute between OxyGuard and the customer.