



# SERVICE CONDITIONS

## of Bruker AXS GmbH, Germany

### I. Scope of Validity

- These Service Conditions shall apply for purchase orders placed with BRUKER AXS GmbH (hereinafter referred to as "BRUKER") for *assembly, commissioning, repairs, maintenance and similar services* (hereinafter referred to collectively referred to as "services" or individually referred to as "service") provided at home and abroad.
- The incorporation of deviating conditions or of the Purchaser's diverging Terms and Conditions has to be agreed upon in written form at the time of contract formation.
- These Service Conditions only apply towards purchasers that are businesses in the sense of section 14 of the German Civil Code.

### II. Hourly Rates for Services

#### 1. Hourly Rates:

All working, waiting, assembly preparation, and travel hours at home and abroad will be invoiced according to our current price list.

#### 2. Extra Charges:

For work performed from 8 am to 5 pm, Monday through Friday (regular working hours), the hourly rates of BRUKER apply without extra charges. For work performed out of these regular working hours, extra charges are due as follows:

<b>25%</b>	First two hours of daily overtime (Monday through Friday)
<b>50%</b>	Any additional overtime or work performed on Saturdays and Sundays
<b>30%</b>	Work performed at night (7 pm – 6 am)
<b>100%</b>	Work performed on public holidays which are a Saturday or Sunday
<b>150%</b>	Work performed on public holidays which are on a regular working day as well as work performed on Easter Sunday, Pentecost and Christmas holidays.

#### 3. Allowance

Allowance is due to cover the expenses of board and lodging at the place of assembly from the start of every working day as well as on Sundays and holidays when no work is performed, but service engineers are available.

#### HOME

- a) Board according to our current price list
- b) Lodging according to our current price list

In case the flat rate according to the price list is not sufficient, additional costs, evidenced by vouchers, shall be borne by the purchaser.

#### ABROAD

Special rates which are to be agreed on a case to case basis are applicable for assembly interventions abroad.

#### 4. Expenses

Expenses of obtaining identity papers and work permits, vaccinations, telephone calls, transportation of baggage, tools and demonstration devices (also for return shipment) shall be charged. The Purchaser will assist in obtaining the permits required in his country. All charges, fees and taxes arising outside the Federal Republic of Germany shall be invoiced to the Purchaser's account. As far as these costs have been paid by BRUKER or its service staff, they shall be reimbursed to BRUKER by the Purchaser.

#### 5. Transportation Expenses

Transportation expenses (round trip), including journey home, for service staff shall be reimbursed by the Purchaser. Train fares for service engineers are based on second class plus possible extra charges, plane fares are based, as far as possible, on tourist and economy class. In case a motor vehicle (passenger car) is used, car mileage is charged according to the current price list of BRUKER. Transportation expenses are calculated with Karlsruhe or the home workplace as place of departure and return at BRUKER's sole discretion.

#### 6. Waiting Time

In the event of interruptions during assembly/putting into operation/maintenance BRUKER is not liable for, this waiting time shall be invoiced as working time plus extra charges.

#### 7. Regular Working hours

#### HOME

Regular working hours are Monday through Friday from 8.00 am to 5 pm.

#### ABROAD

Service staff will adapt, to the possible extent, to the working hours of the Purchaser. All usual days off of the respective workplace are considered as days off.

### III. Service Prices, Invoicing, Payment

- Services are charged on the basis of actual hours, according to the valid rates, unless a flat rate price has been agreed expressly.
- Service invoices are payable immediately in cash without deduction. A reasonable advance payment shall be made upon request of BRUKER. The rates are net rates, VAT excluded.
- The Purchaser shall confirm the BRUKER service staff the hours performed, material expenditure and works carried out as a basis for invoicing. If the signature is missing, independent of the reason, possible complaints against BRUKER shall be made in writing without delay.

### IV. Assistance of the Purchaser

The Purchaser shall ensure that the services can be started immediately upon arrival of service staff and can be performed until acceptance without delay. The Purchaser is obligated to help the service staff and provide technical assistance at his expense, in particular to

- provide required qualified personnel who shall follow the instructions of the responsible Bruker service staff. such personnel, however, remains in the working relationship, responsibility and insurance obligation of the Purchaser. Non-qualified personnel may be rejected by Bruker and shall be replaced by qualified personnel at the Purchaser's expense.

- provide the required equipment and tools (e.g. lifting appliances) and required commodities and substances (e.g. water, gas) and other materials needed for proper execution of the services.
- provide heating, electric power, air conditioning, operating power, water, and required connections
- provide dry, lockable rooms for the storage of tools of the service staff as well as intrusion-proof recreation and working rooms for such staff
- provide in due time required protective clothes and safety devices as a result of special conditions at the place of service intervention as well as continuous monitoring and supplementing of such items; provide the necessary first-aid material in case of accidents.
- provide documents required for proper execution of the services (e.g. plans, instructions, drawings, calculations).
- transportation of parts to the place of assembly, protect parts from damaging influences and theft.
- obtain all permits and approvals required for import and export of BRUKER tools, equipment, vehicles and material.
- free access to all places of service intervention.
- The purchaser must perform data backup prior to the start of the performance of service.

### V. Service Interventions Abroad

- Should the language spoken at the place of service intervention not be German, the Purchaser shall at his own expense make a competent translator available to BRUKER service staff during working hours.
- BRUKER service staff are covered under health and workmen's compensation insurance according to the legal provisions of the Federal Republic of Germany. In the event of illness and accidents during service interventions abroad, the Purchaser shall bear the costs of medical care, medicine, stay in hospital, transportation and transfer, as far as these costs are not reimbursed by the German insurance. In the event of disability for work, the service engineer shall return to the Federal Republic of Germany at the Purchaser's expense, if transportation is possible, and BRUKER will send a substitute at the Purchaser's expense.
- Taxes, fees, social insurance contributions and other charges (also future charges) which are collected from BRUKER or their staff in the country of service intervention related to the performance of services abroad, shall be borne by the Purchaser.

### VI. Acts of God

BRUKER shall not be held liable for Acts of God or any other circumstances beyond his control. Such circumstances are in particular, but not limited to fire, flood, earthquakes, mobilization, war (whether declared or not), riot, requisition, industrial disputes, restrictions of currency transfer, embargo, delay or non-granting of import permits, restrictions of permissions to enter and leave a country for staff, restrictions of transportation, general lack of raw material and utility supplies and limitation of energy supply.

### VII. Service Times, Risk

- All data related to service times are only approximate.
- In the case where the performance of service is delayed by circumstances as mentioned in Section VI, the assembly time shall be prolonged correspondingly. Costs incurred by the delay shall be borne by the Purchaser. The risk of performance of the service shall be borne by the Purchaser too.

### VIII. Default in Performance of BRUKER – Compensation of Damages

- In case of BRUKER being in default in performance, the Purchaser may, in derogation of the provisions in Section XI, after a waiting period of 2 weeks, charge for every completed week of delay in performance 0.5 percent, and maximally 5 percent of the remuneration agreed upon for the services. Should purchaser assert this claim, he is excluded with further claims for damages because of the delay in performance.
- Putting BRUKER in default requires a written request of Purchaser to the BRUKER head office in Karlsruhe to complete the agreed services within a fixed period of time.

### IX. Acceptance

- The Purchaser shall be obligated to accept the device once he is notified of the completion of the agreed service and a possibly contractually agreed trial has taken place.
- In case the acceptance is delayed through no fault of BRUKER, acceptance is considered as being made upon expiry of a week after notification of completion of the service. Notwithstanding the foregoing, acceptance is considered as being made, once the Purchaser has begun usage of the object on which the service has been provided.
- With the acceptance, responsibility of BRUKER for apparent defects ends, unless the Purchaser has reserved assertion of a certain apparent defect.
- Acceptance costs shall be borne by the Purchaser, in case they exceed the standard procedure of acceptance.

### X. Warranty

- After acceptance of the performed service or after the date when the Purchaser was obligated to accept it, BRUKER shall be liable only for essential defects. The Purchaser shall notify BRUKER without undue delay of any identified defect.
- Defects identified and properly notified during the warranty period shall be corrected free of charge, at the choice of Bruker AXS GmbH, by rectification or rendering new services. The warranty period for rectification works or new rendering of services is one year.
- Liability of BRUKER is not applicable if the Purchaser has carried out modifications or repair works without prior consent of BRUKER.
- Warranty shall not cover natural wear and tear, damages occurring after transfer of risk which are caused by incorrect or negligent handling, excessive load, inappropriate operating material defective building works, inappropriate building ground and influences which are not prerequisite according to the contract.
- In the event of works with used spare parts, provided by the Purchaser, BRUKER shall not be liable for proper functioning of the parts taken over.



# SERVICE CONDITIONS

## of Bruker AXS GmbH, Germany

### XI. Liability

1. BRUKER shall be liable for purchaser's damage, irrespective of the legal grounds therefore, including but not limited to, (i) liability under tort, (ii) breach of contractual duties, and (iii) breach of duties upon contracting, only if such claims are based either on intent or gross negligence, except as otherwise provided in the following section X. 2.

2. Not included under the limitation of liability pursuant to the above section X. 1. are (i) claims for damages because of personal injuries, (ii) damages due to breach of material contractual obligations („cardinal obligations “), and (iii) if purchaser relies on the due performance of our obligations due to reasons, creating a specific bond of trust recognized by law.

3. BRUKER is not liable for consequential damages, including, but not limited to lost profit, except such damages have been caused by its executive organs or managers or with intent. In any case of liability, such liability is limited to the amount of the foreseeable damage typical to such contracts and shall as well not exceed the value of the respective order, except that the liability claim is based on intent. If BRUKER is not liable, and, insofar holds claims against third persons, BRUKER will, on purchaser's request, assign its claims against such third persons to purchaser.

4. Not included under the limitation of liability pursuant to this section X. are claims (i) under the Product Liability Act and (ii) any other mandatory statutory liability regulations as well as claims because of (iii) misrepresentation or (iv) lack of assured characteristics or (v) our assumption of the risk of procurement of the product.

### XII. Limitation of actions

Purchaser's rights resulting from breach of warranty against defects of movable property that is usually not meant to be used for a building, are subject to a limitation period of 12 months, in derogation of sections 438 para 1 No. 3 and 634a para 1 No. 1 of the German Civil Code. All further claims of purchaser – for whatever legal grounds - are subject to a limitation period of 12 months too, except such claims are based on intentional or fraudulent behavior of BRUKER or on the Product Liability Act.

### XIII. Safety

The Purchaser shall be responsible for the observance of safety regulations and other legal provisions. He shall inform BRUKER service staff in writing about existing safety regulations. The Purchaser shall notify BRUKER of service staff's violations of security regulations and to point out explicitly special situations of risk.

### XIV. Miscellaneous, Applicable Law, Place of Jurisdiction

1. All legal relations between BRUKER and Purchaser are exclusively subject to the law of the Federal Republic of Germany.

2. Place of jurisdiction is the court Karlsruhe, Germany. BRUKER is, however, entitled, to take legal action at the purchaser's seat. Both parties shall reserve the right to finally settle possible disputes ousting the jurisdiction of a court in accordance with the Rules of Arbitration of the German Institution for Arbitration (DIS). Should in such case the amount of litigance be below EUR 150,000.00 , the panel shall consist of one arbitrator, in other cases it shall consist of three arbitrators.

### XV. Representation of Integrity

1. BRUKER complies with the German and U.S. laws against corrupt practices and requires the same from the purchaser.

2. The purchaser guarantees in the sense of a guarantee pursuant to Section 311 para 1 of the German Civil Code that (a) no one of its managing directors, holders of a special statutory authority, other representatives or employees has paid or contributed, or will pay or contribute, anything of any material value to any customer, governmental entity or governmental employees or agents in exchange for doing business with the purchaser, and that (b) he will strictly comply with the German and U.S. laws against corrupt practices.

Version of October 14, 2009