

**General Terms and Conditions of Accurion Inc.  
(Translation of the German original)**

**§ 1  
Area of validity**

1. Deliveries, services and quotations by our company exclusively take place on the basis of these general terms and conditions.  
Purchaser's general terms and conditions are only effective insofar as we have expressly consented to them in writing.
2. Accurion is allowed to assign its claims to third parties.
3. Our general terms and conditions are available to our customers for retrieval or printout under the homepage: [www accurion.com](http://www accurion.com) .

**§ 2  
Quotations and conclusion of the contract/Deadlines for deliveries / services**

1. Quotations are without commitment and subject to alteration.
2. Accurion remains bound to especially prepared quotations for a maximum period of 90 calendar days as of the date of quotation.
3. The contract is concluded with the reservation that the sub-contractors of Accurion provide their services in due time and in conformity with the contract. If performance becomes impossible for Accurion or is delayed due to a circumstance for which the sub-contractor is responsible, Accurion will notify the customer of this immediately. In this case assertion of indemnification is excluded, unless the delay is the result of intent or gross negligence on the part of Accurion. A declaration of the supplier of the vendor is regarded as adequate proof that Accurion is hindered from delivery without fault.
4. Agreements on delivery dates or delivery periods require written form. A fixed date only exists if an express written agreement is made in this regard.

**§ 3  
Terms of payment**

1. In the case of any delay of agreed payment terms, all payment obligations will become due immediately.
2. All payments have to be done exclusively to VR Factorem GmbH, Ludwig-Erhard-Strasse 30, 65760 Eschborn, Germany to whom Accurion assigned all existing and future claims. Accurion also assigned its reservation of title to the VR Factorem GmbH.
3. Offsettings from the purchaser with own claims is not allowed as long as those claims are accepted by Accurion or by a german court. The purchaser cannot claim a right of retention as long as it is not caused by the same purchase contract or it is accepted by Accurion or by a german court.

**§ 4  
Price alterations**

1. The prices are net plus the respective statutory turnover tax.
2. All prices are without costs of packing, freight, customs fees and other taxes or fees.
3. The customer is not entitled to withhold or offset payments on account of any counterclaims, inclusive of claims due to possible defects. This does not apply to customer's claims that have been found valid or that are ripe for decision, beyond dispute.
4. In case of late payment of the purchaser Accurion is entitled to charge from due day interest in the height of 8 % over the actual base interest rate, according to §§ 288, 247 BGB. Accurion is allowed to claim a higher damage for delay.
5. If Accurion acquires knowledge of circumstances that cast doubt on the customer's creditworthiness, particularly if the customer fails to cash a check or stops his payments,

Accurion is entitled to call due the entire remaining debt immediately. In this case deliveries may become subject to contemporaneous payment

## **§ 5 Reservation of title**

1. The delivery items (reserved goods) remain property of Accurion until settlement of all claims against the customer due to Accurion from the business connection. If the value of all security rights to which Accurion is entitled exceeds the amount of all secured claims by more than 10 percent, Accurion will release, at its own option and reasonable discretion, an appropriate proportion of the security rights, should the customer request this.
2. The customer is prohibited from pledging or transfer by way of security during the existence of the reservation of title and resellers are only permitted to resell during the ordinary course of business and only on the condition that the reseller receives payment from his customer or that he makes the reservation that the ownership is not transferred to the customer until the customer has fulfilled his payment obligations.
3. If the customer resells reserved goods, then he now already assigns to Accurion as a precaution his future resale-related claims against his customers, inclusive of all ancillary rights and any balance claims and all securities, without subsequent special explanations becoming necessary. If the reserved goods are resold together with other objects, without a unit price having been agreed upon for the reserved goods, then the purchaser assigns to the supplier the proportion of the total asking price that corresponds to the reserved goods price invoiced by the supplier. In the event of substantiation of a legitimate interest, the customer must provide Accurion with the information and documents required for assertion of its rights against the customer.
4. The customer commits himself to safekeep the reserved goods and to insure them against loss and damage at his own expense. The customer hereby assigns to Accurion its claims from the insurance contracts in advance. Accurion accepts this assignation.
5. In the event of processing with other objects not owned by the customer, Accurion is entitled to joint ownership of the new object, equivalent to the share that arises from the proportion of the value of the processed, mixed or combined (hereinafter: processed) reserved goods in comparison to the value of the remaining processed goods at the time of processing.
6. The customer is revocably authorised to collect the assigned claim from the resale. On existence of an important reason, particularly in the event of delayed payment, cessation of payment, application for opening of insolvency proceedings, protest of a bill or well-founded indications for over-indebtedness or impending insolvency on the part of the customer, Accurion is entitled to revoke the customer's authorisation to collect. Accurion may disclose the assignment of security, use the assigned claims and request the customer to disclose the assignment of security to his customer, after prior warning and under adherence to an appropriate term.
7. The customer commits himself to inform Accurion immediately in the event of any levies of execution, seizures or other third party orders or interventions.
8. Accurion is entitled to withdrawal and retraction, should the customer infringe upon his contractual obligations or particularly if he gets into arrears, once the time limit for performance granted to the customer has expired. The legal provisions regarding the dispensability of fixing a time limit remain unaffected. The customer is obliged to retribute.
9. To claim rights out of the reservation of title, Accurion does not need to resign from the contract with the customer unless the customer is not an ultimate consumer.

## **§ 6 Defects**

1. The customer is obliged to give written notice of any defects 14 days after goods receipt at the place of destination at the very latest.
2. Accurion must be granted the opportunity of subsequent fulfilment within an adequate period.

3. The customer is not entitled to independently undertake changes to the rejected goods, in which case the customer loses his claims arising from defects.
4. Accurion removes proven defects free of charge or provides gratuitous replacement against restitution of the rejected goods, at its own option. Should Accurion fail to fulfil its obligations to provide subsequent fulfilment or substitute delivery, the customer must set Accurion an appropriate time limit for subsequent fulfilment. In the event of expiry of the time limit, the customer is entitled to withdraw from the contract or reduce the remuneration.
5. Claims arising from defects do not exist in the event of irrelevant deviation from the agreed quality, insubstantial impairment of usability, in the event of natural wear and tear or damages arising after the transfer of risks as a result of faulty or negligent treatment, excessive strain, unsuitable operating resources, defective construction work or special influences not presumed in accordance with the contract.
6. The customer's claims on account of material defects become statute-barred as follows:  
in 24 months as of transfer for all products from the Halcyonics product line,  
in 12 months as of transfer for all products from the Nanofilm product line.  
Accurion will deliver the warranty terms of third suppliers in case of accessories provided by third parties.  
Accurion does not provide any warranty for consumables (incl. lasers, light sources, etc.).  
This neither applies if the law prescribes compulsory longer time limits, nor in cases of injury to life, bodily harm or damage to health in the event of an intentional or grossly negligent breach of duty by the supplier or fraudulent concealment of a defect.

## **§ 7 Transfer of risks**

1. On delivery of equipment, the risk is transferred to the customer upon delivery, even if Accurion or the customer must still assemble the equipment and subsequent initial operation through Accurion is agreed.
2. Incidentally, the risk (even that of official seizure) is also transferred to the purchaser on handover to a haulier, yet at the latest on departure from the factory or warehouse of Accurion.
3. If dispatch, commencement, performance of installation or assembly is delayed for reasons for which the customer is responsible, the risk is transferred to the customer as of the start of delay.

## **§ 8 Installation and assembly**

1. If installation, assembly or initial operation is delayed due to circumstances for which Accurion is not responsible, the purchaser must bear the costs of waiting time and additionally required travels of the supplier or assembly personnel to an appropriate extent.
2. The customer commits himself to provide for suitable installation conditions of the equipment or systems. Accurion informs the customer of these prior to installation and assembly.
3. If Accurion requests acceptance of the delivery in writing, the customer must undertake this within two weeks. If this fails to occur, acceptance is considered effected. Acceptance is also considered effected if the customer has taken the delivery into use.

## **§ 9 Liability**

1. In the event of breach of any other duties from the contractual obligation, liability of Accurion – particularly for consequential damages – is excluded, unless the breach of duty is intentional.
2. In the event of an essential breach of duty on the part of Accurion, the legal representatives or executive employees are liable for intent and gross negligence. In cases of essential breach of duty, the customer's claim is limited to substitution of the typically occurring damage that is foreseeable at the time of conclusion of the contract, in fact limited to the total policy values of the existing employer's liability insurance or product liability insurance with current total policy

values amounting to at least \$ 500.000 or \$ 2 million. Liability is excluded in the event of negligence and nonessential breach of duty.

3. The aforementioned limitation of liability does not apply, if liability is governed by the Product Liability Law and in cases of intent and gross negligence due to injury to life, bodily harm, damage to health and breach of essential contractual obligations.

4. Accurion is not liable for the accuracy of measurements, which the customer undertakes by means of the purchased system on the basis of non-observed installation conditions, false operation or other factors. Accurion reserves the right to check the customer's measurements.

## **§ 10 "force majeure"**

In the case that act of Gods and other circumstances outside of the responsibility of Accurion (interruption of operation, strike, lock out, governmental interference and other) – also if those acts of Gods take place at Accurion's supplier – are causing a delay in delivery, Accurion becomes the right to prolong the delivery time accordingly. In the case a delivery will be impossible caused by act of Gods, Accurion becomes the right to refuse its obligation (according to §§ 275, II and III BGB) and is allowed to withdraw the contract. In the case of prolongation of the delivery time and withdraw of the contract, the customer is not allowed to claim any damages.

## **§ 11 Instruction and product liability**

1. The customer is obliged to carefully observe the product information issued by Accurion and to forward this to his customer.
2. The customer commits himself to reach a corresponding agreement with his customers and to provide Accurion with proof of this on demand.
3. Should the customer fail to fulfil this obligation and should this result in product liability claims against Accurion, the customer internally releases Accurion from such claims at the first request.
4. Any product liability claims are internally limited according to the total policy value of the product liability insurance of Accurion.

## **§ 12 Export regulations**

If products by Accurion are exported, the customer must observe the appropriate export and inspection regulations. The customer must obtain corresponding licenses in due time and must present these to Accurion. Should the customer fail to meet this obligation, Accurion is entitled to withdraw from the contract without being liable to pay damages to the customer. Inspection and assessment as to whether a product requires an export license and / or exportation is subject to particular inspection regulations is sole responsibility of the customer.

## **§ 13 Copyrights**

Accurion reserves all proprietary rights and copyrights to drawings, plans and suggestions. These documents and / or pieces of information may only be used in connection with the goods supplied by Accurion, in accordance with the contract, and may not be disclosed to third parties without the express written consent of Accurion.

## **§ 14**

### **Court of jurisdiction and applicable law**

1. For all legal relations between Accurion and the customer the law of the federal republic of Germany applies exclusively, especially the law written in the German BGB and HGB. The use of UN right (United Nations Convention on Contracts for the International Sale of Goods ) does not apply.
2. Place of fulfilment and place of jurisdiction for all arising disputes in accordance with the contract and this general terms and conditions is the location of Accurion's headquarter or Frankfurt am Main, Germany. Accurion is also allowed to claim the customer at the court of the location of the customer site (optional right).

## **§ 15**

### **Miscellaneous**

1. There are no subsidiary agreements beside the written contract and these general terms and conditions. Alterations and supplementations require written form, whereby the formal requirement can only be waived in individual cases via express written declaration.
2. Should individual provisions of these general terms and conditions be or become ineffective, this does not affect the validity of the remaining provisions of these general terms and conditions. The parties are obliged to replace an ineffective regulation with a provision by means of which the intended legal and economic purpose can be achieved to the greatest possible extent. Should this be impossible, the potentially ineffective regulations must be reduced to a measure with which they are legally effective (validity-preserving reduction of ineffective provisions).

(Version May 2010)