



**TERMS AND CONDITIONS OF SALES OR ACKNOWLEDGEMENT**

Supersedes all previous Terms and Conditions of Sale | Revised August 1, 2022

**ACCEPTANCE OF TERMS AND CONDITIONS**

The acceptance of the Terms and Conditions (the "Terms and Conditions") contained herein is an essential prerequisite to any contract of sale (the "Agreement") or binding order acknowledgement (the "Order Acknowledgement") made by Auguste Cryogenics Slovakia s.r.o. or Auguste Cryogenics Germany GmbH (collectively known as "Seller"). Any offer or acceptance by Seller is made subject to the Terms and Conditions contained herein and no additional or different terms offered by Buyer shall become a part of the Agreement between Seller and Buyer or Order Acknowledgement unless such terms have been expressly approved in writing by Seller or an authorized agent of Seller. If this document has been issued with an offer (the "Offer"), acceptance of this offer is expressly limited to the terms hereof, and Seller reserves the right to withdraw this offer at any time. If this document has been issued by Seller in response to a written suggestion made by Buyer, Seller's acceptance of Buyer's suggestion is expressly conditioned on Buyer's assent to the additional or different terms contained herein. If these Terms and Conditions are not acceptable, Buyer shall notify Seller in writing at once. Buyer's action in (a) accepting any goods manufactured and delivered hereunder (the "Goods"), or (b) receiving this document without disaffirmance within three (3) business days of receipt shall constitute an unqualified acceptance by Buyer of the Terms and Conditions contained herein.

**PAYMENT TERMS**

Payment terms are thirty (30) days net after date of invoice if not agreed to any other schedule. Payment of shipping costs will be in accordance with the provisions of the offer or Order Acknowledgement. Payment terms appear on the face of Seller's invoice. The invoice shall include all the essentials required by legal regulations applicable in the place of taxable business. All orders are subject to credit approval. Buyer agrees that if any invoice or part thereof is not paid, Seller shall impose penalty in the amount of one (1%) percent per month of the purchase price. Buyer shall not be entitled to set-off its receivables against Seller towards receivables of Seller against Buyer if not agreed otherwise by the Seller. In the case when Seller refers Buyer's account to a third party for collection or for Seller to take other enforcement actions against Buyer, Buyer agrees to pay all attorney and arbitration fees, collection costs and legal expenses associated with a collection of the due amounts.

**TAXES**

National, local, value-added tax, sales, and any other taxes if applicable is the responsibility of the Buyer and are not included in the price of the Goods. If requested by Seller, the Buyer's Value Added Tax number must be provided.

**DELIVERY**

All delivery terms and dates are subject to the availability of the necessary shop space, transportation, and production hours. Delivery of the Goods as specified in INCOTERMS 2022 EX Works and shall be made by Seller placing the Goods at the Buyer disposal to be collected in Seller's facility at the date shown on the face of the Agreement or Order Acknowledgement (if any serious obstacle should occur, the Seller reserves the right to postpone the delivery by the duration of the obstacle and shall notify the Buyer of the new delivery date in advance). Delivery shall be deemed to have occurred at that day if not specified and agreed otherwise between the Seller and the Buyer. Such action shall trigger any payments due at delivery. For storage longer than 30 days the Seller is entitled to demand a penalty in the amount of 1% of the purchase price per month to cover the costs of relocation and storage unless special storage conditions have been agreed. The penalty is limited to a maximum of 5% of the total purchase order value. If required by Buyer, Seller shall insure the Goods at the cost of Buyer. Buyer is responsible for timely inspection of the Goods upon receipt and initiating and pursuing all claims for freight damage.

**TRANSFER OF RISKS**

Risk of damage to or loss of the Goods or deterioration in its quality shall pass to Buyer as follows: In the case of Goods to be delivered at Seller's premises (Ex Works as defined in INCOTERMS 2022) at the date shown on the face of the Agreement or Order Acknowledgement if not specified and agreed otherwise by the Seller and the Buyer; or in the case of Goods to be delivered otherwise than at Seller's premises in accordance with applicable delivery terms as stated by INCOTERMS 2022.

**CANCELLATION**

Cancellation of the order must be delivered in the written form to Seller and will be subject to cancellation fees and charges, including all costs incurred by Seller through the date of the cancellation, material costs for material ordered or delivered that cannot be returned. If the material can be returned Seller shall charge to the Buyer all associated costs – transport, insurance, handling, and cancellation fee will be subject to cancellation fees.

**JURISDICTION AND VENUE**

All disputes arising in connection with this Agreement, or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Hamburg, Germany. The language of the arbitral proceedings is English language.

Buyer agrees that all claims under the Agreement shall expire unless brought within one year of the date of the occurrence of the event giving rise to the claim.

**CLAIMS**

The Seller will not be responsible for handling, storage, demurrage or any other transportation or accessorial service on orders for shipment outside Seller's premises.

**TOLERANCES & VARIATIONS**

Unless otherwise specified by Seller in writing on the offer or Order Acknowledgement all Goods will be subject to tolerances and variations consistent with usual trade practices and industry standards regarding dimensions, straightness, section, composition and mechanical properties and normal variations in surface and internal conditions and quality and will also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods.

**TIME LIMIT**

All proposals and quotations (the "Offers") submitted by the Seller are valid for thirty (30) days only if not otherwise specified in the Offer document issued by the Seller.

**TITLE**

Seller will retain all legal and beneficial title to the Goods until all invoices for the Goods have been fully paid by the Buyer.

**COMPLIANCE**

Buyer agrees to use the Goods with a strict compliance with their purpose and with all relevant laws, regulations, and requirements of governmental or other regulatory authorities relating to Buyer's use of the Goods in accordance with the Seller's published Code of Ethics. Seller assumes no liability for any infringement of intellectual property or violation by Buyer of any law, regulation or requirement relating to Buyer's use of the Goods. Seller shall have no liability for defects, whether hidden or apparent, resulting from the improper use, processing, or treatment of the Goods by parties other than Seller. Buyer shall be liable for any loss resulting from any failure to apply all professional standards, customary instructions, and written instructions from Seller, if any, in relation to any of the Goods.

**FORCE MAJEURE**

Seller shall be relieved from the partial or full failure to perform the obligations under the Agreement or Order Acknowledgement, provided the reason of this failure is force majeure. As the force majeure events shall be deemed acts of God, war, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, plant machinery breakdown, strikes, differences with workmen, delays in transportation, shortage of cars, fuel, labor or materials, manufacturing facilities or any cause beyond the reasonable control of the Seller and which Seller could not foresee nor prevent. Seller shall notify and prove by reliable documents to Buyer on the occurrence of force majeure event with no delay, however, within five (5) days at latest.

**BUYER'S WARRANTY**

In the case of the Export sale Buyer warrants that it is in full compliance with all applicable export and import laws, US Sanction regulations, EU trade laws and regulations, all applicable international laws and regulations and any valid and applicable embargo and boycott regulations. Buyer agrees to provide written assurance of compliance if requested by Seller.

**DATA PRIVACY**

Seller's data privacy policy is applicable to all related parties resident in the European Union concerning Buyer's personal data. Seller shall restrict the use of Buyer's personal data to the minimal amount required to fulfill the contractual relationship with Buyer.

**LIMITED WARRANTY**

*General:*

This warranty does not cover damage caused by unauthorized modification, misuse or negligence and does not apply to any product, accessory, part or attachment and warrants only the tank or container portion of this product. The valves and related fittings, regulators, gauging devices, hoses and hose-end connections and similar equipment which may be sold with Seller's Goods are manufactured by others and are not covered by this warranty.

The above express warranty is in lieu for any warranty of merchantability fitness for a particular purpose and all other express or implied warranties with respect to the Goods.

This warranty gives Buyer specific legal rights and Buyer may also have other rights which vary from country to country.

All Goods shall be thoroughly inspected by the Buyer instantly upon receipt. Any visible damages shall be reported immediately after discovery. To make a claim under these warranties, the Buyer must: 1) give Seller written notice within ten (10) days after discovery of a claimed defect; 2) immediately discontinue use of the Goods or parts thereto; and 3) return such Goods freight prepaid to the location specified by Seller for evaluation to validate the warranty claim. This warranty is voided by alterations or repairs of Goods or parts thereto. Seller shall not be liable under this warranty, or otherwise, for defects caused by negligence, abuse or misuse of Goods, corrosion, fire, heat, or the effects of normal wear. Seller's sole liability under these warranties shall be limited to the repair, or at its option, replacement, or refund of the purchase price, of such equipment which proves to be defective.

During the specified warranty periods, should any failure to conform to the applicable warranties occur, Buyer shall appropriately decontaminate the Goods and provide Seller with prompt written notice detailing the problem(s) within 30 days of Buyer's discovery of any failure. So long as Buyer has fulfilled all of its obligations under the Agreement and complied with all provisions, procedures, and all other material terms of this agreement, Seller shall inspect the Equipment within 10 business days after Seller's receipt of Buyer's notice. Seller's only obligation, and Buyer's only remedy, is for Seller to correct such failure by, at Seller's option: (a) repair or replace the Equipment or parts thereof causing such failure(s); or (b) refund the purchase price of the Equipment or parts causing such failure(s); and (c) in the case of any failure of Services, Seller may choose to provide the Services again or may refund the price paid for such Services. Repairs or replacements made under (a) above shall be warranted for (1) the greater of the remaining time under the original warranty or (2) 30 days, whichever is longer. Any arrangements to transport any Equipment to and from Seller's repair facility and back to Buyer's location shall be made by Seller but any such costs shall be borne by Buyer at Buyer's risk and expense. In the event Seller chooses to make any repairs or replacements on site at Buyer's facility, Buyer shall be responsible for providing appropriate working access, including disassembly and reassembly of any equipment. If Seller determines that the failure described in Buyer's notice to Seller was not covered by the warranty granted under this agreement, then Seller will invoice Buyer for all related inspection, travel, time, repairs and other expenses which Buyer agrees to promptly pay.

*The remedies set forth herein are exclusive. Seller shall not be liable for any consequential, special or incidental damages resulting from the delivery, use or failure of the Goods (including loss of any material stored in Goods), or from any other cause whatsoever including negligence. By accepting delivery of the Goods sold hereunder, the Buyer accepts this limitation of remedies as reasonable and enforceable. In no event shall Seller's liability exceed the purchase price for the Goods. Bulk Cryogenic Storage Tank and MicroBulk:*

Seller warrants to the original Buyer that each cryogenic storage tank and MicroBulk vessel, control manifold and vaporizer will be free from defects in material and workmanship and will perform in accordance with Seller's standard specifications under normal use during a period of eighteen (18) months from delivery or twelve (12) months from the date of initial operation of the equipment (whichever is first) so long as used, operated and maintained according to Seller's written instructions. These products are further warranted against vacuum failure for a period of five (5) years from the date of shipment to the original Buyer if the products are maintained according to Seller's published instructions. Seller's warranty as to components manufactured by third parties and used in any equipment described herein will be limited to extending to the original Buyer such warranty as may be offered by such original manufacturer, if not required otherwise by local statutory law.

*Cryogenic Freezers, Dewars, and Cryogenic Liquid Cylinders:*

Seller warrants to the original Buyer that each of its refrigerators and dewars, including AC Medical Family products, and Liquid Cylinder will be free from defects in material and workmanship, in the normal service for which the product was manufactured, for a period twelve (12) months from date of shipment to the original Buyer. These products are further warranted against vacuum failure for a period of five (5) years from the date of shipment to the original Buyer, if the products are maintained according to Seller's published instructions. Any electronic controller(s) and displays used on AC Medical products are warranted by the Seller to be free from defects in material and workmanship, in the normal service for which the product was manufactured, for a period of two (2) years from date of shipment to the original Buyer. All other parts, components and accessories are warranted by the Seller to be free from defects in material and workmanship, in the normal service for which the product was manufactured, for a period of twelve (12) months from date of shipment to the original Buyer, if not required otherwise by local statutory law.

XXX