

GAMMADATA – GENERAL CONDITIONS

1. APPLICABILITY

These general conditions shall apply for delivery of products from Gammadata Instruments AB (“the Seller”) to customer (“the Buyer”). Once the Buyer confirms an order by written contract or otherwise all conditions below are accepted. Deviations from these conditions (“the Conditions”) are not valid unless agreed in writing. Information in marketing material, price lists and other product information are binding only to the extent that they are expressly referred to in the contract.

2. PRICES

All prices stated on the Seller’s website or elsewhere are excluding VAT unless otherwise specified.

3. DELIVERY

3.1 If no trade term has been agreed, the delivery shall be ”Ex Works” at the Sellers place of business in Uppsala. If the parties have agreed on any other trade term, it shall be interpreted in accordance with the INCOTERMS in force at the date of the agreement.

3.2 If the Seller, at the request of the Buyer, arranges the transport of the products, the Seller’s liability with regard to the time of delivery, the risk associated with the transportation etc. shall not be affected.

4. TIME FOR DELIVERY

4.1 If the Seller finds that it will not be able to deliver the products at the agreed time, or if delay on the Seller’s part seems likely, the Seller shall, without undue delay notify the Buyer thereof in writing, stating the reason for the delay and, if possible, the expected time of delivery.

4.2 If delay in delivery is caused by a circumstance that according to section 12 constitutes ground for relief or by an act or omission on the part of the Buyer, the time of delivery shall be extended by a period that is reasonable with regard to the circumstances in the case. The time for delivery shall be extended even if the reason for delay occurs after the originally agreed time for delivery.

4.3 If the Seller fails to deliver the products on time, the Buyer is entitled to liquidated damages calculated from the date occurring fifteen (15) working days after the day on which delivery should have taken place. The calculation base for the liquidated damages is the part of the purchase price that is attributable to the part of the products that, due to the delay, cannot be put to its intended use. If the calculation base amounts to SEK 500,000 or less, the Seller shall pay liquidated damages with an amount corresponding to 0.5 per cent of the calculation base for each full week of delay. If the calculation base exceeds SEK 500,000, the Seller shall pay liquidated damages with an amount corresponding to 0.25 per cent of the calculation base exceeding SEK 500,000. The liquidated damages shall in no event exceed 5 per cent of the calculation base. The liquidated damages become due at the Buyer’s written demand but not before the complete products have been delivered. The Buyer loses its right to liquidated damages if the Buyer has not lodged a written claim for such damages within thirty (30) days after delivery initially should have taken place.

4.4 If the Buyer is entitled to maximum liquidated damages under Clause 4.3 and the products are still not delivered, the Buyer may in writing demand delivery within a reasonable period, which shall not be less than thirty (30) days. If the Seller fails to deliver within such final period and this is not due to any circumstances for which the Buyer is responsible, the Buyer may, by written notice to the Seller, terminate the contract in respect of that part of the products that cannot be taken in intended use due to the delay. The Buyer loses its right to terminate the contract if the Buyer has not terminated in writing within thirty (30) days from expiry of such final reasonable delivery period.

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- 4.5 If an order is made in the Seller's web shop, the Buyer is not entitled to liquidated damages as stated under Clauses 4.3 and 4.4 if the order value is below SEK 300,000.
- 4.6 Except for liquidated damages under Clause 4.3 and termination of the contract under Clause 4.4, the Buyer is not entitled to any other remedies in respect of the Seller's delay. All other claims against the Seller based on such delay shall be excluded, except where the Seller has been guilty of gross negligence.
- 4.7 If the Buyer finds that it will be unable to accept delivery of the Products on the agreed date, or if delay on his part seems likely, the Buyer shall without undue delay notify the Seller thereof in writing stating the reason for the inability and, if possible, the time when he will be able to accept delivery. If the Buyer fails to accept delivery on the agreed date, the Buyer shall nevertheless make any payment which is dependent on delivery as if the Products had been delivered. The Seller shall arrange storage of the Products at the Buyer's risk and expense. If the Buyer so requires, the Seller shall insure the Products at the Buyer's expense.
- 4.8 If the Buyer fails to accept the delivery according to Clause 4.7 the Seller may, by written notice require the Buyer to accept delivery within a reasonable final period. If, for any reason for which the Seller is not responsible, the Buyer fails to accept delivery within such final period, the Seller may, by written notice to the Buyer, terminate the contract in respect of that part of the Products which is ready for delivery but has not been delivered due to the Buyer's default. In that case, the Seller shall be entitled to compensation for the loss he has suffered due to the Buyer's default.

5. PAYMENT

- 5.1 Unless otherwise agreed, payment shall be made against invoice thirty (30) days after the date of the invoice. If a delay in delivery of the products is caused by a circumstance on the part of the Buyer, the delivery shall for the purposes of this paragraph nevertheless be considered to have been made on the agreed date.
- 5.2 If the Buyer fails to pay the full amount on time, the Seller shall be entitled to interest with a yearly rate of 15 per cent from the due date.
- 5.3 If the Buyer fails to pay the amount due within one (1) month after the due date, the Seller shall be entitled to terminate the contract, in whole or in part, by written notice to the Buyer. If the Seller, due to the Buyer's delay in payment, suffers any loss or damage, the Buyer shall, in addition to interest on late payment, compensate the Seller for such loss and damage.

6. RETENTION OF TITLE

The products shall remain the property of the Seller until paid for in full, to the extent that such retention of title is valid.

7. RIGHT TO USE SOFTWARE

7.1 Definitions

- 7.1.1 The provisions of this Section 7 shall apply to deliveries of products containing and/or consisting of software products ("**Software Products**"). Software Products may be either Gammadata programs ("**Gammadata Programs**") or Software Products licensed from a third party ("**Third Party Programs**"). Gammadata Programs consist of software products to which the Seller is the owner of the intellectual property rights. Third Party Programs consist of software products to which a third party is the owner of the intellectual property rights.
- 7.1.2 Software Products are considered as any Software Product sold by the Seller, irrespective whether it is included in a delivered hardware product or delivered separately.

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7.2 Gammadata Programs

- 7.2.1 The Seller retains the copyright to and any other intellectual property right in Gammadata Programs.
- 7.2.2 The Buyer acquires a right to use the Gammadata Program for the purposes for which it is intended, with the restrictions set out below.
- 7.2.3 Gammadata Programs delivered incorporated into a hardware product may only be used together with such product or other hardware product specified by the Seller.
- 7.2.4 The Buyer shall have a right to make one copy in machine-readable form of each Gammadata Program. Such copy may only be used for back-up purposes and such copy shall contain the same copyright information as the original. The Buyer may not make copies of Gammadata Programs to any further extent than what is permitted under mandatory law and/or under this Section 7.2.
- 7.2.5 The Buyer may not modify, decompile, reverse engineer, disassemble or otherwise discover Gammadata Programs, in whole or in part to any further extent than what is permitted under mandatory law. The Buyer may not remove and/or obscure any copyright notices or proprietary legends contained within the Gammadata Programs. The Buyer shall have a right to transfer/assign its right to use the Gammadata Programs to a third party only on the terms and conditions and with the limitations set out under these Conditions.
- 7.2.6 The Seller is not obligated to provide the source code to Gammadata Programs or updated versions of such software.
- 7.2.7 The Seller shall indemnify the Buyer against damages and costs suffered or incurred by the Buyer due to a final judgement or decision by court of law or as a result of an agreed settlement provided that the judgment, decision or settlement is a result of an infringement of any third party patent, copyright or other intellectual property right caused by the Buyer's legitimate use of the Gammadata Program. The Seller's liability for and obligation to indemnify the Buyer against such damages and costs only applies if the Seller is notified in writing without delay of any claim brought against the Buyer in respect of such actual or claimed infringement and if the Seller is given sole control over the defense against such claims and over the settlement negotiations and final content of the settlement.
- 7.2.8 In case of an infringement for which the Seller is liable, or if such infringement, in the Seller's opinion, seems likely, the Seller shall (without any right for the Buyer to demand a specific measure) at its own expense either secure the Buyer's right to continued use of the Gammadata Program, or replace the infringing part of the Gammadata Program with a non-infringing Gammadata Program that allows the Buyer to use the products as contemplated by the parties, or modify the Gammadata Program so that an infringement does no longer exist, or recover the Gammadata Program and refund the Buyer an amount corresponding to the value of the recovered Gammadata Program.. The Seller's liabilities in case of an infringement by a Gammadata Program are limited to what is stated under this Clause 7.2.8.
- 7.2.9 The Seller shall not be liable for infringements due to,
- a) the Buyer's use of the Gammadata Programs for other purposes than the intended,
 - b) modifications of the Gammadata Programs made by the Buyer, or
 - c) the Buyer's use of the Gammadata Programs together with other hardware products than the hardware products that the Gammadata Program was incorporated into at the time of delivery, or, in case the Gammadata Program was delivered separately, other hardware products than hardware products specified by the Seller.

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7.3 **Third Party Programs**

7.3.1 The Buyer acquires a right to use Third Party Programs and to assign such right to a third party, to the extent and on the terms and conditions set out in the special license conditions provided by the third party providing the Third Party Program. The license conditions provided by the third party are published on the Seller's website at www.gammadata.se.

7.3.2 The license conditions of the third party supplier shall apply to the Buyer's use of the Third Party Program. The Seller shall not be liable for any infringement of any third party's copyright or other intellectual property rights due to the Buyer's use of any Third Party Programs and the Buyer may not assert any claims towards the Seller on account hereof.

7.3.3 The Seller shall not be obliged to provide source code to Third Party Program or to provide updated versions of such software.

8. **TECHNICAL DOCUMENTS AND TECHNICAL INFORMATION**

All technical documentation regarding the Products or its manufacturing provided by the Seller prior or subsequent to the purchase shall remain the Seller's property and the Seller shall remain the sole owner of all intellectual property rights in or related to such documents. Documents received by the Buyer may not be used for any other purpose than the purpose for which they were delivered. The documents may not, without the prior written consent of the Seller, be copied, reproduced, delivered or disclosed to a third party.

9. **WARRANTY AND LIABILITY FOR DEFECTS**

9.1 **Hardware Products**

9.1.1 Unless otherwise is specifically agreed between the parties, the Seller warrants that all of Seller's hardware products with respect to material and design correspond to applicable technical specifications for such hardware products and that such hardware products are free from defects or nonconformities resulting from faulty workmanship. This warranty applies for a period of one (1) year from the date on which the products were delivered from the Seller and with the limitations set out below, provided that the Buyer shall notify Seller in accordance with 9.4.2 below.

9.1.2 The Seller shall, in accordance with the provisions below, by repair or replacement remedy any defect or nonconformity in the warranty under Clause 9.1.1 which appear during the above stated warranty period. The Seller shall not be liable for defects or nonconformities arising out of material provided by the Buyer or a design stipulated or specified by the Buyer.

9.1.3 If the Buyer is unable to use a hardware product for more than a month due to a defect or nonconformity, the warranty period shall be extended with the time the Buyer has been unable to use such hardware product.

9.2 **Software Products**

9.2.1 The Seller warrants that each of the Gammadata Programs will, during a period of ninety (90) days from the date of delivery to the buyer, in all material aspects, function in accordance with the technical specifications relating to the relevant Gammadata Program, with the limitations set out below.

9.2.2 The Seller undertakes to remedy any defects or nonconformities appearing in the Gammadata Program during that warranty period. A defect shall be deemed to have occurred if the function of a Gammadata Program does not operate in accordance with the technical specifications for such Gammadata Program.

9.2.3 Remedy of defects or nonconformities in Gammadata Programs may be made through correction, work-around solutions, instructions regarding circumvention of the defect or replacement by a

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Gammadata Program. In case of correction or replacement of a Gammadata Program, the Buyer shall be responsible for reinstalling the software.

9.3 **Functional check**

9.3.1 Within reasonable time from Seller's delivery, the Buyer shall perform a functional check of the delivered products. If the Seller has undertaken to install the product, the Buyer shall carry out a functional check immediately after completion of such installation. The functional check shall be as comprehensive as necessary to ensure the product performs in accordance with the technical specifications.

9.3.2 If a defect is found through the functional check, the Buyer shall notify the Seller in writing without undue delay and no later than fifteen (15) business days after the time of delivery or completion of installation according to Clause 9.3.1. If the Buyer fails to notify the Seller of a defect or nonconformity within the time limits set forth in this Clause, the Buyer shall be deemed to have accepted the product and shall have no right to have the product remedied.

9.4 **Limitations of Warranty, Notice of defects and nonconformities, Damages etc**

9.4.1 The warranties provided by the Seller shall only apply if the Buyer has had the products properly serviced and maintained according to the technical specifications. The Seller's liability does not cover defects or nonconformity due to working conditions that deviate from those anticipated in the contract or improper use of the products. Nor does it cover defects or nonconformities due to negligent use of the products. The liability does not cover defects or nonconformities caused by circumstances, which arise after the risk has passed to the Buyer. Furthermore, the Seller's liability for defects or nonconformities in Gammadata Programs does not cover defects or nonconformities that are due to or arise from the Buyer's use of Gammadata Programs for other purposes than the intended or the Buyer's use of Gammadata Programs together with other hardware products than the hardware products that the Gammadata Programs were incorporated into at the time of delivery, or in case Gammadata Programs were delivered separately from any hardware products, other hardware products than the hardware products specified by the Seller. The Seller's liability does not cover normal wear and tear or deterioration.

9.4.2 The Buyer shall notify the Seller in writing of a defect or nonconformity without undue delay after the defect or nonconformity has appeared and in no case later than ten (10) business days after the date on which the defect or nonconformity was discovered or should have been discovered. The warranty does not cover defects or nonconformities that should have been detected at a properly conducted functional check in accordance with section 9.3 and that has not been notified to Seller within the time limits set out in that section. Notice of a defect or nonconformity shall be given immediately if there is reason to believe that the defect or nonconformity may cause damage. The notice shall contain a description of the defect or the nonconformity and its appearance. The Seller reserves the right to demand additional information regarding the defect or nonconformity. If the Buyer fails to notify the Seller of a defect in writing within the time limits set forth in Clause, the Buyer shall lose his right to make any claims in respect of the defect.

9.4.3 Upon receipt of a written notice, the Seller shall at its own cost and with the urgency demanded by the circumstances remedy the defects according to what is stated under this section. Remedial work shall be carried out at the Seller's premises or at the premises of a service provider appointed by the Seller. The goods shall, at the Buyer's expense, be sent to the Seller's premises or, if Seller so instructs, to the premises of a service provider appointed by the Seller. Any costs for redeliveries under the Seller's warranty obligations shall be borne by the Seller.

9.4.4 If the Buyer gives notice and in case no defect or nonconformity is found for which the Seller is liable, the Seller shall be entitled to compensation by the Buyer for the work and costs incurred as a result of the notice. The Seller shall inform the Buyer if the Seller is not liable for the found defect or nonconformity. If remedy of the alleged defect or nonconformity has not started, the Buyer

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shall immediately give notice to the Seller if the remedy shall be carried out; if so, the remedy is carried out at the Buyers expense. If the Seller already has remedied the defect or nonconformity, the Buyer shall within thirty (30) days from notice that the alleged defect or nonconformity is not covered by the Seller's warranty in writing notify the Seller if the Buyer wants to have the product back. If the Buyer fails to give such notice, the products will become property of the Seller. The Buyer shall, if applicable, bear the costs of redelivery of such product.

- 9.4.5 Defective or nonconforming parts that are replaced shall be placed at the Seller's disposal and shall become the Seller's property.
- 9.4.6 If the Seller fails to fulfil its obligations under Clause 9.4.3 within three (3) months from the receipt of the Buyer's notice, the Buyer may by written notice require the Seller to do so within a final reasonable time, not less than thirty (30) days. If the Seller fails to fulfil its obligations within the final reasonable time, the Buyer shall be entitled to demand a reduction of the agreed purchase price not exceeding 15 percent of the purchase price attributable to the defective or nonconforming product. If the defect or nonconformity is material, the Buyer may instead choose to terminate the part of the contract as regards to the materially defective or nonconforming product by written notice to the Seller. In case of termination, the Buyer shall be entitled to compensation for the loss suffered. The compensation shall not exceed fifteen (15) per cent of the agreed price for the defective or nonconforming delivery. Notice of termination shall be made to the Seller no later than within ten (10) days after the Buyer's designated final time limit has expired.
- 9.4.7 Save as stipulated in this section 9, the Seller shall not be liable for defects or nonconformities. This applies to any loss the defect or nonconformity may cause, including but not limited to loss of production, loss of profit and any other consequential or indirect loss. This limitation of the Seller's liability shall, however, not apply if the Seller has been guilty of gross negligence.

10. LIABILITY FOR DAMAGE TO PROPERTY CAUSED BY THE PRODUCTS

- 10.1 The Buyer shall indemnify and hold the Seller harmless against any liability or damage incurred by Seller towards any third party, resulting from any damage caused by the products
- a) to any movable or immovable property if the damage occurs while the products are in the Buyer's possession, or
 - b) to products manufactured by the Buyer, or to products of which the Buyer's products form a part, or for loss or damage to any property, where the damage is caused by such products.
- 10.2 The Seller shall under no circumstances be liable for loss of production, loss of profit or any other consequential loss caused by a product provided by the Seller.
- 10.3 If a third party makes a claim for compensation against the Seller or the Buyer for such loss or damages as referred to in Clause 10.1-10.2, the other party shall immediately be notified.
- 10.4 The Seller and the Buyer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal that examines a claim against either of them, where such claim is based on damage alleged to have been caused by the products. The liability as between the Seller and the Buyer shall, however, always be settled by arbitration in accordance with Clause 14.

11. INSTALLATION OF PRODUCTS

- 11.1 Installation means that the Seller has undertaken to physically install the products at the Buyer's site or in the Buyer's premises and, if agreed upon between the parties, put the products in operation. The installation shall be carried out upon delivery if the parties have not agreed otherwise.
- 11.2 The Buyer shall arrange so that necessary preparation work is carried out for the Seller to carry out the installation. The Buyer shall provide electricity and other resources to make the installation possible as well as provide personnel to assist the Seller if necessary.

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- 11.3 If the installation is not carried out on time, the Buyer may require that the Seller carries out the installation within a final reasonable time, which shall not be less than fifteen (15) working days. If the Seller does not carry out the installation within the final reasonable time, the Buyer may carry out the installation itself or have the installation carried out by a third party at the Seller's expense. The Buyer shall make such demand within five (5) working days from the expiry of the final reasonable time. If the delivery is delayed due to any circumstance under section 12, which constitutes grounds for relief, the delivery time shall be extended with a reasonable time taking the circumstances in to consideration. The Buyer shall have no other rights in case of delay of the installation than as set out in this Clause.
- 11.4 For defects in the installation for which the Seller is responsible, the Buyer is entitled to compensation with an amount not exceeding 15 percent of the installation costs. If the price of the installation is not specified, the price shall be calculated as a percentage of the calculation base, which is the total invoiced cost, as follows. The installation costs shall be deemed to constitute 5 percent of the calculation base up to SEK 1,000,000. If the calculation base exceeds SEK 1,000,000, the installation costs shall be deemed to constitute 3 percent of the exceeding part of the calculation base. If the Seller finds it appropriate, he is entitled to correct the fault at his own expense, instead of compensation.
- 11.5 If the installation is delayed due to circumstances attributable to the Buyer, and not due to any circumstance under section 12, the Seller shall nevertheless be entitled to deliver and invoice the products subject to installation. The Seller shall also be entitled to compensation for expenses, extra work and standstill costs, waiting time, all according to the standards applied by the Seller from time to time.
- 11.6 The Seller is only liable for defects in its installation that appear within six (6) months from completion of the installation.

12. GROUNDS FOR RELIEF (FORCE MAJEURE)

- 12.1 A party is relieved from liability for a failure to perform any of its obligations under the contract, if such failure is due to any circumstance beyond its immediate control, which impedes, delays, or aggravates the party's fulfilment thereof, such as changes in laws and regulations or in the interpretation thereof, acts or omissions of authorities, labor disputes, blockades, fires, floods, shortage of transportation, general shortage of materials, restrictions in the use of power, major accidents and defects or delays in deliveries from sub-contractors caused by any such circumstance.
- 12.2 The party wishing to claim relief under Clause 12.1 shall, without delay notify the other party in writing on the occurrence and on the cessation of such circumstance. In case of delayed notification, the other party shall be entitled to compensation for damages incurred to the extent such damages could have been avoided if the notification had been made immediately.
- 12.3 If grounds for relief prevent the Buyer from fulfilling its obligations, the Buyer shall compensate the Seller for expenses incurred by the Seller in securing and protecting the products without regard to the provision in Section 12.
- 12.4 Notwithstanding other provisions of these Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party, if performance of the contract is delayed more than nine (9) months by reason of any grounds for relief as described in Clause 12.1.

13. SECRECY

- 13.1 The Buyer undertakes without limitation in time not to disclose to third parties confidential information that the Buyer receives or has received concerning the products or the manufacturing or sale thereof.

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- 13.2 For the purpose of this Section 13 confidential information shall mean any and all information - including but not limited to technical, practical and commercial information – except information, which is known or which will become known in full detail to the public other than by breach of the obligations herein contained.
- 13.3 The Buyer undertakes to ensure that its employees do not reveal confidential information to a third party. The Buyer has to ensure that those employees, who are likely to come in contact with confidential information, are bound to keep the information, to the same extent as the Buyer.
- 13.4 The Buyer undertakes to, without limitation in time, not without compelling reason reveal
- a) the existence of agreements with the Seller or any arbitration award related to such agreement,
 - b) the contents of an agreement with the Seller, or
 - c) any information regarding negotiations or arbitration or mediation proceedings related to an agreement with the Seller.

14. DISPUTES, APPLICABLE LAW

- 14.1 Any dispute, controversy or claim arising out of or in connection with these Conditions shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC Institute).
- 14.2 The Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply, unless the SCC Institute, taking into account the complexity of the case, the amount in dispute and other circumstances, determines, in its discretion, that the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply. In the latter case, the SCC Institute shall also decide whether the arbitral tribunal shall be composed of one or three arbitrators.
- 14.3 The seat of arbitration shall be Stockholm, Sweden.
- 14.4 These Conditions shall be governed by and construed and enforced in accordance with the substantive laws of Sweden without regard to its principles of conflict of laws.