

**FOSS' TERMS AND CONDITIONS OF SALE OF PRODUCTS AND SERVICES**  
*(APPLICABLE TO PRODUCTS SOLD IN Denmark, Sweden, Iceland and the Faroe Islands)*

**1. Acceptance**

These terms and conditions of sale ("Terms") are applicable to all quotations ("Quote"), purchase orders, lease and rental arrangements, and/or requests for service (collectively, "Orders"), and are the only terms and conditions applicable to the sale or other provision of FOSS's products, including but not limited to, instruments ("Instruments"), consumables ("Consumables"), and software (Instrument, Consumables and software collectively "Products") and/or services ("Services") to Customer, except those that relate to prices, quantities, delivery schedules and the description and specifications of the Products and/or Services. FOSS hereby objects to and rejects any other terms and conditions appearing on, incorporated by reference in, or attached to, Customer's Orders unless otherwise specifically accepted in writing by FOSS. Customer's acceptance of Products and/or Services requested in an Order will constitute acceptance of these Terms. "FOSS" refers to FOSS Nordic A/S or its FOSS branded corporate affiliate, branch or representative offices as identified in the Quote.

**2. Price, Billing and Payment**

- (a) Customer shall pay the prices for Products and/or Services as stated in FOSS's Quote or, if not stated in the Quote, the upon delivery current price list.
- (b) Unless otherwise agreed in writing, the purchase price is due 30 (thirty) days net from date of invoice.
- (c) FOSS may charge a late monthly fee and interest on all amounts overdue at the rate of the lesser of 2 % or the maximum legal interest rate. FOSS may require full or partial payment in advance before proceeding with Orders based on FOSS's credit and prior payment history.
- (d) Regardless of the above, if Customer defaults on its payment obligation, FOSS at its option, without prejudice to its other lawful remedies, may defer delivery or cancel the Order.
- (e) All prices are inclusive packaging as required under normal transport conditions by airfreight or truck. Extra packaging is subject to a charge.
- (f) Unless otherwise specifically indicated by FOSS, prices quoted are exclusive of, and Customer agrees to pay transportation (from FOSS to the Customer) and insurance, inclusive related fees, foreign, federal, state, local excise, sales, use, duty, custom, personal property or any other taxes or duties, except only taxes based on FOSS's income. Any certificates or other evidence of applicable exemptions to such taxes or duties must be provided to FOSS prior to delivering or such taxes or duties will be charged to Customer; provided, however, if FOSS does not collect such items from Customer and is later requested or required to pay the same to any taxing authority, Customer shall promptly make payment to FOSS or directly to such taxing authority if requested by FOSS.
- (g) Payments are not subject to setoff or recoupment for any present or future claim Customer may have.
- (h) Pricing is subject to change only by FOSS upon any change in information and/or requirements during the course of an Order. Otherwise all pricing is firm as stated in the Quote or Order confirmation.

**3. Delivery and Acceptance**

- (a) As soon as ready-to-ship FOSS may ship – and invoice – any portion of an Order which, in FOSS' opinion, comprises a unit.
- (b) Delivery dates are approximate and not guaranteed. FOSS will not be liable for any damages or costs resulting from any delays. Delivery terms are CPT named place of destination (Incoterms 2010). FOSS will re-invoice freight and insurance in separate line of invoice, cf. section 2(f).
- (c) Orders for export Products are subject to FOSS's ability to obtain export licenses and other necessary papers within a reasonable period. Customer will furnish all Customs declarations and the like and will accept and bear all responsibility for penalties resulting from errors or omissions thereon.
- (d) Customer has the right and duty to inspect goods at receiving point and file remarks of the outer packaging condition on the proof-of-delivery.
- (e) Customer shall have 20 (twenty) days from invoicing to inspect the Products and provide FOSS with written notice of any claims for

shortages, defects, or damages within such time period or a shorter period agreed to in writing by the parties. Instrument will be deemed accepted upon the earliest of Customers acknowledgment of acceptance, installation, or 20 (twenty) days from invoice date. If not an Instrument acceptance will be deemed upon delivery.

(e) All Product returns shall be subject to FOSS' policies for return using FOSS' Return Material Authorization form.

**4. Security Interests**

- (a) The risk of loss or damage to the Products passes from FOSS to the Customer upon delivery.
- (b) Title to the Products shall pass to Customer upon full payment for the Products. The ownership includes the right to the goods as delivered or converted and the right to the assets or to the money, which the Customer may have acquired from disposing of the Products.
- (c) Products loaned, leased or rented to Customer, if any, are owned exclusively by FOSS. Customer will (i) keep such Products in its sole possession and control, (ii) have no interest whatsoever in such Products other than the lease or rental rights granted in the Order, (iii) keep such Products free and clear of all liens and encumbrances, (iv) not move such Products from its installed location without the prior written consent of FOSS, and (v) take appropriate action to store, maintain, and protect such Products in accordance with instructions in the applicable manuals. Customer will not affix or attach such Products to real property or any improvements.

**5. Warranty**

FOSS warrants that Products and Services are in accordance with FOSS' Global Warranty Policy available via [www.fossanalytics.com](http://www.fossanalytics.com) or via your local FOSS representative. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

**6. Software License**

All licenses to software sold by FOSS are subject to a separate software license agreement accompanying such software product, if any, or in the absence of such one, FOSS' Standard End User License Agreement ("EULA") available via [www.fossanalytics.com](http://www.fossanalytics.com) or via your local FOSS representative.

**7. Limitation of Liability**

In no event will FOSS be liable for special, indirect, exemplary, incidental, consequential, third party or punitive damages including without limitation those based on breach of warranty, breach of contract, negligence, tort, or any other legal, equitable or statutory claim, cause of action or legal theory. In any event, of liability, FOSS' liability shall be limited to actual damages, excluding loss of profit etc., to the extent directly and solely caused by FOSS' material breach. Except as otherwise prohibited by law, FOSS' maximum liability hereunder regardless of legal theory will not exceed the price of FOSS' Product and/or Service giving rise to the claim. In no event will FOSS be required to indemnify any other party.

**8. Proprietary Rights**

FOSS will retain all intellectual property rights in and to designs, technology, technical data and information, and technical processes, whether patentable or not, in its Products and/or Services.

**9. Resale and Third Party use**

Customer represents and warrants that it is purchasing the Products for its own use and not for resale purposes. If Customer breaches the foregoing, FOSS may: (a) void, eliminate and/or refuse to continue to make available to Customer any volume; (b) cancel the Order; and/or (c) refuse to accept any further Orders from Customer. This provision does not apply to FOSS's authorized third party contractors, including distributors and OEMs.

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**10. Confidentiality**

Both parties shall keep the content of the Orders confidential and shall not disclose it to any third party. Both parties shall take reasonable steps to prevent unauthorized disclosure or use of the confidential information provided and to prevent it from falling into the public domain or into the possession of unauthorized persons. Neither party have an obligation to protect any confidential information which: (i) is or becomes publicly available other than as a result of an act or failure to act by the receiving party; (ii) is lawfully obtained, directly or indirectly, from a non-party which was under no obligation of confidentiality; or (iii) is required by law to be disclosed. Any use or disclosure of this information for any purpose other than that for which it has been provided may cause substantial competitive harm to FOSS and is prohibited.

**11. Cancellation and Suspension**

(a) Customer is not allowed to – without agreement by FOSS and still subjected to the 25% cancellation fee – cancel Orders for Products that have left FOSS's premises. All other Orders are subject to a 25% cancellation fee.

(b) Any of the following events or conditions will be deemed a default under these Terms: (i) FOSS has not received any required payment in full, including but not limited to payments for invoices and shortfall amounts, within 30 (thirty) days after such payment is due; (ii) Customer has become insolvent, is liquidated or dissolved, is declared bankrupt or has made an assignment for the benefit of creditors (where such assignment for the benefit of creditors is not part of an approved scheme of arrangement for the express purpose, stated in the application to the court, of avoiding being wound up in insolvency); or (iii) Customer breaches any term or condition of these Terms and fail to correct such violation within 30 (thirty) days after receipt of written notice from FOSS. In case of Customer's default, FOSS may without prejudice to its other rights demand immediate payment of all due or payable amounts and suspend further deliveries and cancel this contract without any liability in respect of such suspension or cancellation and charge Customer with any loss sustained thereby.

**12. Force Majeure**

Except for Customer's payment obligations, neither party shall be liable for delays in performance, in whole or in part, or any loss, damage, cost or expense, resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, epidemics, embargos, acts of government or other civil or military authority, war, riots, delays in transportation, difficulties in obtaining labor, materials, manufacturing facilities or transportation, or other similar causes ("Force Majeure Event"). In such event, the party delayed shall promptly give notice to the other party. The party affected by the delay may: (a) extend the time for performance for the duration of the Force Majeure Event, or (b) cancel all or any part of the unperformed part of these Terms if such Force Majeure Event lasts longer than 60 (sixty) days. If a Force Majeure Event affects FOSS's ability to meet its obligations at the agreed upon pricing, or FOSS's costs are otherwise increased as a result of such Force Majeure Event, FOSS may increase pricing accordingly upon written notice to Customer.

**13. Governing Law**

The Terms shall be governed by the laws of Denmark. The Terms shall in all respects be interpreted and all transactions subject to the Terms, and all rights and liabilities of the parties thereunder, shall be determined and governed as to their validity, interpretation, enforcement and effect by the laws of Denmark, except for local filing requirements if relevant. Customer consents to and agrees that personal jurisdiction over it and subject matter jurisdiction over the Instrument shall be with the Courts of Copenhagen, Denmark solely at FOSS's option with respect to any provision of the Terms.

**14. Entire Agreement, Modifications, and Waiver**

Unless otherwise specifically agreed in writing these Terms are the entire agreement between the parties, there being no other promises, terms, conditions, or obligations, referring to the subject matter not contained herein. If any provision of this Term shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be

affected or impaired and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. FOSS's failure to strictly enforce any of these terms shall not be considered a waiver of any of its rights hereunder. If any term herein is declared invalid or unenforceable to any extent, the remainder of these Terms will not be affected thereby, and each term herein will continue to be valid and enforceable to the fullest extent permitted by law.

**15. Assignment**

Customer may not assign, pledge, encumber, sublease or transfer any rights or obligations under the Terms without FOSS's prior written consent.

**16. Service Programs**

FOSS shall provide preventive maintenance and other services identified in a FOSS Service Program subject to the terms and conditions thereof. No service assistance is automatically granted to the Customer.

**17. Digital Services**

FOSS shall provide digital services identified in a separate Digital Service Agreement between FOSS and the Customer subject to the terms and conditions thereof and such agreement taking precedence over this Terms. However, in lack of specific terms these Terms apply.

**18. Personal Data**

FOSS is the data controller for the purpose of the applicable data protection rules. By placing an Order and submitting your details, you agree that FOSS may keep your Personal Data in its files and further process it in accordance with FOSS' Privacy Policy to be found at: [www.fossanalytics.com/en/news-articles/policies/data-privacy-policy](http://www.fossanalytics.com/en/news-articles/policies/data-privacy-policy).