

# IRUBIS GMBH GENERAL TERMS AND CONDITIONS

## 1. SCOPE OF APPLICATION

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(1) These General Terms and Conditions for Supplies and Services to Clients ("GTC") are the foundation of all contracts between the legal entity placing this order (the "Buyer") and IRUBIS GmbH ("IRUBIS" or "Seller") and apply to all future contracts, even if not explicitly agreed upon in each instance. All supplies and services provided by IRUBIS, including goods, work performance, consultancy, information, and ancillary services (collectively referred to as "Performance"), are exclusively based on these GTC, even if not explicitly mentioned.

(2) These GTC are exclusively applicable. IRUBIS does not acknowledge any conflicting or supplementary terms from the Buyer, even if IRUBIS does not explicitly object to them. IRUBIS's unreserved performance, acceptance of collaborative action, or receipt of payment from the Buyer does not imply acceptance of the Buyer's terms. The Buyer's terms will only apply if IRUBIS explicitly agrees to them.

(3) Individual agreements have priority over these GTC. If a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

## 2. OFFER AND ACCEPTANCE, SCOPE OF PERFORMANCE, DESCRIPTIVE DETAILS

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(1) Unless otherwise clearly stated in writing, quotations made by IRUBIS are free of any commitment. The contract is concluded only when IRUBIS confirms an order by written notice (the "Order Confirmation"). The Buyer's orders and commissions are generally binding.

(2) The scope of Performance due is fully determined from the content of the Order Confirmation. There are no verbal ancillary agreements in existence.

(3) Information given in catalogues, on data sheets or other paper work in accompaniment of the quotation as well as descriptive details of Performance (e.g. technical data, tolerances, measurements, weights etc.) and presentation thereof are purely descriptions and designations which are not binding unless expressly confirmed by IRUBIS.

## 3. PRICES, PRICE ADJUSTMENT, EXTRA COSTS

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(1) Agreed prices are euro prices unless otherwise agreed. Prices encompass only the due scope of Performance and are quoted, in principle, **ex works (Incoterms 2024)**. Unless otherwise agreed, collection is for the Buyer to arrange at its own expense. The costs of essential permits and papers, export licenses and customs duty as well as any agreed carriage insurance or other insurance cover is to be borne – subject to any other agreement – by the Buyer.

(2) Where after conclusion of the contract there is a change in costs on which IRUBIS's calculations are based, especially the cost of labor, materials, raw materials, transport or energy, IRUBIS will make a price adjustment. The price adjustment will be made in accordance with IRUBIS's original calculation. IRUBIS will promptly inform the Buyer of the price adjustment and provide a comprehensible explanation for it. No price increase may be made if the change in cost is due to circumstances for which IRUBIS is responsible and which contradict the principle of due commercial care. If a price increase exceeds 10 % the Buyer will have two weeks from receipt of notification by IRUBIS in which to cancel the order concerned free of charge. Cancellation must be made in written form. IRUBIS is not obliged to take or seek out any measures which would result in a reduction in agreed prices.

(3) All Performance over and above the scope of Performance due as defined in section 2 which is requested by the Buyer will be charged for by IRUBIS plus the costs and disbursements incurred (e.g. materials, travelling expenses, fees).

(4) The Buyer will bear any extra costs arising from the fact that work is delayed or must be repeated or extended due to details being late, incorrect or incomplete or as a result of collaborative action not being properly carried out. This also applies where a fixed or maximum price has been agreed.

#### **4. TAXES**

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The quoted price is exclusive of any applicable federal, state, or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by the Buyer. All such taxes will be for Buyer's account and will be paid by the Buyer to IRUBIS upon submission of IRUBIS's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If the Buyer is exempt from any applicable sales tax or similar tax but fails to inform IRUBIS of this exemption or provide its Sales Tax Exemption Number in a timely manner, and IRUBIS must pay the tax, the Buyer will reimburse IRUBIS for any such payments upon receiving IRUBIS's invoices.

#### **5. INVOICE, PAYMENT, DEFAULT, RIGHT OF RETENTION, SET-OFF**

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(1) IRUBIS will invoice the Buyer for the payment owed as agreed. This may include pre-payments if stated on Quotation and Order Confirmation.

(2) The Buyer will pay any invoice within 30 days of receiving it, unless another agreement has been made. No deductions or offsets are permitted. Any overdue amounts will incur a service charge at the highest interest rate allowed by law until they are paid. The Buyer will cover all costs and expenses IRUBIS incurs in collecting overdue amounts, including reasonable fees for collection agencies or attorneys, court filing fees, and other related costs. If the Buyer defaults on payment, IRUBIS has the right to revoke any agreed-upon discounts, rebates, and other benefits. Additionally, in case of payment default, IRUBIS is entitled to require pre-payment for any further services. Moreover, all outstanding amounts owed to IRUBIS will become immediately due and payable if there is a payment default.

(3) In the event of permissible partial Performance, IRUBIS may issue partial invoices (see Section 6.3).

(4) IRUBIS is not obligated to accept checks and bills of exchange. Any credits for these instruments are conditional upon their being honored (as payment, not as a substitute for payment); they become effective on the date their counter-value is available to IRUBIS.

(5) Bank charges and exchange fees for foreign transfers are the responsibility of the Buyer.

(6) IRUBIS will not accept any Product returns, unless it gives written consent.

## **6. MODE OF DELIVERY AND OBSTACLES TO DELIVERY**

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(1) All shipments are made ex works (Incoterms 2024) from IRUBIS's shipping points, unless otherwise agreed. The Buyer is generally responsible for obtaining all necessary permits and documents (e.g., for exports/imports).

(2) Shipping dates are estimated delivery dates and are not a material term of the Quotation. IRUBIS will make all reasonable efforts to meet the delivery date. Unless otherwise agreed, IRUBIS may ship the products earlier than the originally quoted date.

(3) Partial Performance is permissible if mutually agreed.

(4) Binding deadlines and time periods will be met if IRUBIS has notified readiness for dispatch as agreed by the expiry of the deadline or period, or if the performance has left IRUBIS's works.

(5) Periods of time agreed to be binding begin, in principle, on the date of conclusion of the contract, although not before the provision of documents, permits, clearances and information to be obtained by the Buyer and clarification of all technical issues, nor before accomplishment by the Buyer of any collaborative action essential to Performance or before any advance payment due has been received. Deadlines agreed to be binding will be put back accordingly, where necessary.

(6) If unforeseen obstacles arise for which IRUBIS is not responsible and which IRUBIS cannot avoid despite taking all reasonable precautions – whether these obstacles occur at IRUBIS or a subcontractor – such as force majeure events (e.g., wars, natural disasters, fires, strikes, or lockouts), the agreed-upon deadlines or time periods will be extended by the duration of the obstacle. IRUBIS will promptly inform the Buyer of such circumstances. If an obstacle causes a delay of more than one month, IRUBIS has the right to withdraw from the contract regarding the affected performance. Similarly, the Buyer has the right to withdraw from the contract if the delay makes the performance no longer of interest. If a contracting party withdraws from the contract, § 346 et seq. BGB (German Civil Code) will apply.

(7) In the event of delay in Performance IRUBIS's liability in damages is governed exclusively by Section 11 of these GTC.

## **7. SERVICES**

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IRUBIS will provide the services explicitly described in the Order Confirmation (collectively referred to as the "Services") during normal business hours, unless otherwise specified in the Order Confirmation. Any services requested or required by the Buyer outside of these hours, or in addition to the quoted or agreed-upon services, will be charged according to IRUBIS's current rate schedule, including applicable overtime charges. These charges will be in addition to those outlined in the Order Confirmation.

## **8. RETENTION OF TITLE**

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(1) Items that IRUBIS provides to the Buyer within the scope of due Performance remain the property of IRUBIS until all accounts receivable from the business relationship with the Buyer have been paid ("Retention Goods").

(2) The Buyer is obliged to treat Retention Goods carefully. The Buyer is also obliged to adequately insure Retention Goods against theft, fire and water damage at replacement value at its own expense.

## **9. CLIENT'S DUTY TO COLLABORATE, INDEMNITY**

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(1) The Buyer guarantees to promptly and without charge take all necessary collaborative actions for IRUBIS's performance or for any rectification work, adhering to all relevant standards, especially safety and accident prevention regulations.

(2) Insofar as IRUBIS is meant to support the Buyer in the proper use of one or more purchased device(s) (e.g., good measurement practices, connection to the pre-existing laboratory set-up), IRUBIS shall inform the Buyer of the specific information required to render such support. The Buyer is obligated to provide IRUBIS with the requested information, which may include, but is not limited to, a) process information (e.g., sample composition) and b) the Buyer's usage of the device(s). IRUBIS shall use the information provided by the Buyer solely for the purpose of supporting the proper use of the device(s) and for no other purpose. In the event that the Buyer fails to provide the necessary information or otherwise collaborate as required, IRUBIS shall be deemed to have fulfilled its contractual obligations.

(3) The Buyer warrants that it holds the necessary copyright/exploitation rights for the documentation, data media, software, materials and other items of any kind whatsoever to be supplied by it and that they are free of defects.

(4) The Buyer warrants that it fulfils all duties imposed upon it by law or contract. The Buyer is obliged, in particular, not to export or re-export goods or items supplied by IRUBIS without obtaining any export permit required from the competent authority. The Buyer will provide IRUBIS with the export permit and all documents connected therewith without having to be asked for same.

(5) The Buyer warrants that it will apply IRUBIS's Performance properly, safely and in accordance with both the rules applicable and IRUBIS's valid specifications.

(6) Should the Buyer fail to meet its obligations, it must compensate IRUBIS for any loss or damage incurred and indemnify IRUBIS from any third-party claims resulting from the breach, unless the Buyer is not responsible for the breach. Additionally, under relevant product liability laws, if both IRUBIS and the Buyer are liable, the Buyer's liability towards IRUBIS will correspond to the extent the loss or damage is due to the Buyer's breach of duty.

## **10. RIGHTS TO INTELLECTUAL PROPERTY, USE FOR ADVERTISING PURPOSES**

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(1) IRUBIS retains ownership of all design drawings, models, cost estimates, information, and other company property, both tangible and intangible ("Knowhow"), including all copyrights, utility models, trademarks, patents, registered designs, and other industrial property rights. The Buyer agrees not to assert any rights regarding intellectual property applications, prior use, or licensing in relation to Knowhow. The Buyer must not disclose Knowhow to third parties without the express prior consent of IRUBIS. In case of a breach of this obligation, the Buyer will be fully liable to IRUBIS as per statutory provisions.

(2) Use of IRUBIS's name or trademarks is permissible only with prior consent from IRUBIS.

## **11. IRUBIS' LIMITED LIABILITY IN DAMAGES**

(1) If IRUBIS, its legal representatives, staff or agents should be in willful or grossly negligent breach of duty, particularly under the contractual relationship, or if they should commit a tortious act either willfully or due to gross negligence IRUBIS will be liable for the resultant loss to the Buyer pursuant to statute.

(2) If IRUBIS, its legal representatives, staff, or agents commit a breach of duty due to simple negligence of any kind, whether under the contractual relationship or in tort, the Buyer's claims for damages against IRUBIS will be excluded, except in cases of simple negligence involving a fundamental contractual obligation. In such cases, IRUBIS's liability is limited to foreseeable loss or damage typical for the contract. A fundamental contractual obligation is one essential for fulfilling the contract, and which the Buyer regularly relies on and can expect to be observed.

(3) The above exclusion and/or limitation of liability also extends to IRUBIS's legal representatives.

(4) The above exclusion and/or limitation of liability does not apply to culpable harm to life, limb or health, nor to liability under product liability legislation.

(5) The statutory rules on burden of proof are not affected by these provisions.

## **12. LIABILITY FOR MATERIAL DEFECTS AND DEFECTIVE TITLE IN CONTRACTS OF SALE AND CONTRACTS FOR LABOR AND MATERIALS**

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Where there is in existence a contract of sale or a contract for labor and materials the following will apply regarding liability for material defects and defective title:

(1) There will not be any warranty rights or warranty claims (§ 437 BGB [German Civil Code]) unless there is a material defect or defective title in the legal sense. There will be no material defect in the legal sense and hence no warranty claim either in the following instances, in particular: improper or unskilled usage, defective assembly, installation or implementation by the Buyer or a third party, natural wear and tear and normal usage, improper or careless handling, excessive use, use of unsuitable equipment (especially outside equipment), chemical, electrochemical or electrical influences (unless IRUBIS should be responsible for same), absence of power, improper modifications or repair work carried out by the Buyer or a third party without IRUBIS's consent. Natural wear and tear parts include, but are not limited to, the motor and its attached components. The quality due is governed exclusively by the expressly agreed performance characteristics. IRUBIS does not give any warranty over and above the quality agreed (especially for an unforeseen type of use, for a specific period of use or for durability after the passage of risk) unless this has been specifically agreed. It is for the Buyer itself on its own responsibility to check the use of goods for an unforeseen purpose. The risk of fitness for use and application therefore lies exclusively with the Buyer in this respect. IRUBIS is not, in principle, aware of the actual place of use or application of goods. It is therefore for the Buyer itself to check whether there are any breaches of intellectual property or other rights at the place of delivery or use caused by the supply or application of goods and whether goods can also be deployed at the place of use.

(2) Buyer shall inspect the Goods within 10 days of receipt (the "Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies IRUBIS in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by IRUBIS. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. If a defect should not be revealed until later on the Buyer will be obliged to report the defect to IRUBIS immediately and in any event within 8 calendar days (incl. weekends and public holidays) of discovery of the defect and to do so at least in text form (email or fax will suffice). Otherwise the goods will be deemed approved notwithstanding the defect. The provision in § 377 HGB [German Commercial Code] will also apply.

(3) If Buyer timely notifies IRUBIS of any nonconforming Goods, IRUBIS shall, in its sole discretion, (i) promptly repair such nonconforming goods to conform to the agreed-upon specifications or replace such nonconforming Goods with conforming Goods ("rectification") or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. IRUBIS will inform the Buyer whether the product will be sent back to IRUBIS for refund or rectification. To ensure safe transportation, Buyer is obliged to keep the original packaging for the goods and use it for transportation purposes. If the Buyer should be in breach of such duty the Buyer will bear the resultant loss to IRUBIS (especially extra costs) unless the Buyer is not responsible for that breach of duty. If the Buyer should not use the original packaging for the goods for transportation purposes the Buyer will bear the risk of any damage in transit. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to IRUBIS's Shipment Point. If IRUBIS exercises its option to replace nonconforming Goods, IRUBIS shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to IRUBIS's Shipment Point. (4) If rectification should fail the Buyer will have the option to either reduce the purchase price accordingly or cancel the contract in accordance with the law.

(4) Buyer acknowledges and agrees that the remedies set forth in Section 12.3 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 12.3, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to IRUBIS.

(5) The warranty period is 12 months from the delivery of goods. The warranty period may be extended by mutual agreement in writing.

(6) Guarantees and assurances are not valid unless expressly given by IRUBIS.

### **13. PRODUCT COMPATIBILITY DISCLAIMER**

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IRUBIS does not warrant that the Product(s), Components or Software will be compatible or function as intended with Buyer's, or any third party, systems, computers, networks or software not purchased through IRUBIS. IRUBIS is not responsible for virus, malware or other similar system problems arising from Buyer's connection of the product(s) to the internet or from Buyer's internal networks. Software is not warranted to be error free or to operate without problems or interruptions. IRUBIS does not assure compatibility with updates to third party software or operating systems and will not be responsible for problems arising from such updates.

### **14. LIABILITY FOR MATERIAL DEFECTS AND DEFECTIVE TITLE IN SERVICE CONTRACTS**

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Where there is a service contract in existence the following will apply regarding liability for material defects and defective title:

(1) Regarding any warranty rights or warranty claims (§ 634 BGB [German Civil Code]) the provisions in Sections 12.1, 12.3, 12.4 and 12.6 will apply mutatis mutandis to defects in Performance of service contracts.

(2) The warranty period is one year from acceptance. Where IRUBIS is liable in damages for a warranty under Section 11 of these GTC the warranty period for the claim in damages is governed by statute. If IRUBIS should fraudulently conceal a defect the warranty period for all warranty claims and warranty rights is governed by statute.

(3) The Buyer is obliged to promptly effect acceptance. If the Buyer should fail to comply with its duty of acceptance, then acceptance will be deemed effected two calendar days after Performance has been rendered.

## **15. LICENSE FOR USE OF SOFTWARE**

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(1) IRUBIS grants Buyer a non-exclusive, non-transferable license to use the Software, solely for Customer's internal uses. This license does not include the right to make copies of Software, extract, modify or incorporate any part of the Software, nor reverse engineer, decompile, or disassemble the Software. IRUBIS does not have an obligation to supply software upgrades (i.e., new versions, or new, or in-line releases).

(2) Unless otherwise stipulated in writing with the Licensor, the software product may only be used on up to two monitors that are connected to one and the same computer. The Licensee may only use the software on alternative systems in case of emergency.

## **16. PLACE OF PERFORMANCE, JURISDICTION, LAW APPLICABLE, BURDEN OF PROOF**

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(1) The exclusive place of international jurisdiction is the Federal Republic of Germany. Each party agrees to submit the jurisdiction of the courts having jurisdiction for the Seller. IRUBIS is also entitled to sue the Buyer at other lawful places of jurisdiction.

(2) All rights and claims under this contract are governed exclusively by the law of the Federal Republic of Germany to the exclusion of private international law and the UN Convention on the International Sale of Goods (CISG).

(3) Allocation of the burden of proof by law or court order is not intended to be changed by any of the provisions of the GTC.

## **17. FORCE MAJEURE**

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Neither Buyer nor IRUBIS shall be liable for failure to perform under this Order if such failure is due to events which are beyond the reasonable control and without the fault or negligence of such party, and which intervene after the execution of this Order and impede its performance, provided such failure to perform shall only be excused for the duration of such intervening event and shall be subject to the Buyer's right to terminate this Order pursuant to Article 19. Examples of such Force Majeure events include but are not limited to: a strike or labor dispute, war or act of war (whether or not an actual declaration thereof is made), insurrection, riot or civil commotion, act of public enemy, fire, flood, or other act of God, or any act of a governmental authority (including export restrictions). The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and cessation thereof.

## **18. NO THIRD-PARTY BENEFICIARY**

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This Order has been entered into solely for the benefit of the parties and is not intended to create any legal, equitable, or beneficial interest in any third party, or to vest in any third party any interest with respect to the enforcement or performance of this Order. The parties agree no third party has any legal interest in this Order, or in any dispute arising hereunder, and that no third party is a necessary or indispensable party to any action or proceeding for the resolution of any such dispute. The parties further agree not to assert in any such action or proceeding that any third party is necessary or indispensable to such action or proceeding or to a determination of the relief to be granted therein.

## **19. USE OF DATA**

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IRUBIS will use all client data solely for the purpose of conducting business and in accordance with the requirements of valid data protection law. The Buyer is also afforded the right, on request, to be informed of its personal data gathered, processed and used by IRUBIS.

## **20. WAIVER, SEVERABILITY AND REMEDIES**

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The failure or delay of either party to insist on performance of any provision of this Order, or to exercise any right or remedy available hereunder, shall not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of this Order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

## **21. ENTIRE AGREEMENT**

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This Order, including any attachments and documents incorporated by reference, constitutes the entire agreement between the Buyer and IRUBIS, and supersedes all prior representations, agreements, understandings, and communications between Buyer and IRUBIS related to the subject matter of this Order, whether oral or written. No amendment or modification of this Order shall be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both the Buyer and IRUBIS.