

**General Terms and Conditions (GTC)  
of CLADE GmbH**

**1. General**

- 1.1** These GTC apply to all products and services provided by CLADE GmbH (CLADE) to its Customers. General terms and conditions of Customers do not apply.
- 1.2** CLADE is a successful technology service provider in the field of chemical analysis of liquids and offers various products in this area.
- 1.3** The products and services offered by CLADE particularly include the following list – it being noted that this list is not conclusive but may be extended or further developed by CLADE (hereinafter together also referred to as “Products”):
- 1.3.1** Purchase of Analyzer and its Software
- 1.3.2** MIRA Analyzer-as-a-Service (subscription of the hardware (Analyzer) with on-site technical support including the sale or provision of consumables)
- 1.3.3** Support Services
- 1.3.4** Software-as-a-Service (cloud-based provision of software)
- 1.3.5** Consulting services (contractual consulting services)
- 1.3.6** Analytical services (development services under a contract for work)
- 1.3.7** Digital Quality Center / “DQC” (provision of analysis by CLADE or third parties)
- 1.4** The Customer is interested in obtaining certain Products from CLADE.
- 1.5** These GTC apply to the provision of CLADE's Products to the Customer.

**2. Contractual Object**

- 2.1** The Customer orders from CLADE certain Products from CLADE’s product portfolio.
- 2.2** Contents, prices and any service levels for the Products arise from a corresponding Individual Agreement between the Parties (which - if appropriate - may consist of an offer by CLADE, but in any case consists of the Customer’s order and CLADE’s acceptance of the agreement) and/or the Delivery Note by CLADE.

- 2.3** CLADE will provide the ordered Products according to the respective Individual Agreement or Delivery Note and these GTC.
- 2.4** To the extent that CLADE's Products and/or supplied or provided consumables are subject to the REACH Regulation (EC) No. 1907/2006, CLADE shall provide the relevant safety data sheets at [www.clade.io/downloads](http://www.clade.io/downloads). With regard to these safety data sheets the Customer undertakes to provide CLADE in writing with sufficient information on how the Customer uses the substance so that the relevant use can be, if applicable, taken into account in the registration dossier of the substance, and to inform CLADE in writing if that Customer becomes aware of new information on hazardous properties of the substances or mixtures and/or if he obtains information that may result in the risk management measures provided for in the safety data sheet no longer being appropriate.
- 2.5** Any delivery and installation as well as any maintenance and/or care of Products shall be carried out by CLADE or the service provider authorized by CLADE and named to the Customer.
- 2.6** After delivery and installation of the Analyzer, CLADE or the service provider shall inform the Customer of its readiness for operation and instruct the Customer in its use. The Customer is then obligated to test the Analyzer within three (3) working days and to inform CLADE immediately of the test result. If CLADE does not receive any notification within the afore-mentioned period, the Analyzer shall be deemed to have been accepted by the Customer and to be in accordance with the Individual Agreement and these GTC.
- 2.7** In case of delivery of Products by CLADE to Customer, Customer will inspect them immediately upon delivery and notify CLADE of any defects within five (5) business days. If this period expires, the Products will be deemed approved and in conformity with the contract. § 377 paras. 2 to 5 HGB (German Commercial Code) applies accordingly.
- 2.8** Any warranty claims of Customer become statute-barred within one (1) year after acceptance of the Analyzer or delivery of Products.
- 2.9** Depending on the specific provisions in the service contract with CLADE or a service provider, the First Level Support for the Analyzer is provided to the Customer by CLADE.
- 2.10** The Products shall be deemed to be in conformity with the contract if its intended use is possible in accordance with the Individual Agreement and/or the Delivery Note and these GTC.

- 2.11** The Customer is obligated to use the Products exclusively in accordance with the Individual Agreement and/or the Delivery Note and these GTC.
- 2.12** The requirements of CLADE regarding environment, location and installation including the Customer's local and technical infrastructure for the use of the Products (e.g. online connection of the Products to the CLADE Cloud), are listed in the relevant Annex to the Individual Agreement or the Delivery Note which also clarify the respective responsibilities of CLADE or the Customer.
- 2.13** Any requirements of CLADE with regard to the use, cleaning and maintenance of the Analyzer as well as the validation of the measurement results shall arise from the corresponding Individual Agreement or the Delivery Note.
- 2.14** The Individual Agreement and/or the Delivery Note, any user documentation possibly provided by CLADE and these GTC together form the contractual relationship or respectively the Agreement between the parties, whereby the order of precedence corresponds to the above list.
- 2.15** CLADE is entitled to have any services owed to Customer performed by subcontractors or third parties.

### **3. Property and Rights**

- 3.1** Unless CLADE sells Analyzer to Customer, the sole ownership of the Analyzer and any other physical objects provided (hereinafter also collectively referred to as "Contractual Hardware") shall lie and remain with CLADE for the entire duration of the Agreement.
- 3.2** Unless expressly provided otherwise below, all industrial property rights and copyrights as well as all associated usage and distribution rights to the Contractual Hardware and the software provided by CLADE within the scope of the Products are and shall fully remain with CLADE.
- 3.3** CLADE grants Customer a simple, non-exclusive, non-transferable and non-sublicensable right to use the Contractual Hardware and its software depending on the Product for the purposes of the Agreement for use in Customer's own corporation. With regard to the software, the granting of a simple right of use is limited to the playing or use of the software in connection with the Contractual Hardware by any number of the Customer's employees at Customer's site. The end user license terms for the use of the software installed on the Contractual Hardware are set out in CLADE's EULA which Customer must accept for commencing use of the Contractual Hardware.

- 3.4** Customer is not entitled to rent out the Contractual Hardware and/or to further license the software and/or to copy, distribute and/or make the software available to third parties. The Customer is not entitled to reverse-engineer or reverse-translate the software or to remove program parts.
- 3.5** Customer is not entitled to remove identifiers, trademarks and/or copyright notices from the Contractual Hardware and/or the software provided within the scope of the Products.
- 3.6** Customer is not entitled to make any changes or manipulations to the Contractual Hardware.
- 3.7** Customer is not entitled to request the source code of the software.
- 3.8** Customer is obligated to use the Contractual Hardware and the software provided within the scope of the Products exclusively in accordance with the Individual Agreement and/or the Delivery Note as well as in accordance with these GTC.
- 3.9** In addition, Customer is obligated not to infringe applicable law and/or the rights of third parties, in particular trade secrets, within the scope of use of the Products of CLADE. Insofar as Customer violates the above obligation, it shall indemnify CLADE against all third-party claims including reasonable legal defense costs based on an attorney's hourly fee customary in the industry.
- 3.10** The mandatory provisions of §§ 69 a et seq. UrhG (German Act on Copyright and Related Rights) as well as all property rights of Customer in case of purchase of the Analyzer remain unaffected by the provisions of this Section 3.

#### **4. Remuneration**

- 4.1** Customer undertakes to pay to CLADE the remuneration for the Products of CLADE listed in the Individual Agreement and/or the Delivery Note on the dates provided for therein, unless the Parties expressly agree therein on the provision of the Products free of charge for a limited period of time.
- 4.2** The remuneration shall be invoiced in EURO and shall be settled in EURO. Exchange rate risks shall be charged to Customer. The remuneration shall be net plus statutory value added tax. Any additional (withholding) taxes attributable to the remuneration shall be borne by Customer.
- 4.3** The regulations governing the reimbursement of travel expenses are set out in the Individual Agreement and/or the Delivery Note or the corresponding annex.

- 4.4** Unless otherwise agreed CLADE's invoices are to be paid by Customer within 30 days of the invoice date.
- 4.5** Payment shall be deemed to have been made as soon as CLADE can dispose of the amount.
- 4.6** In the event of default in payment CLADE shall be entitled to claim default interest in the amount of 9% above the base interest rate and to withhold further products and services until all outstanding claims have been settled.
- 4.7** Unless CLADE sells Analyzer to Customer, CLADE is entitled to increase the remuneration appropriately after the end of the agreed initial contractual term or after two years of the contractual term. If the Customer does not agree with the increase and informs CLADE of this in writing, each party shall be entitled to terminate the Agreement which in this case is continuous in relation to the previous remuneration rules by giving six months' notice.
- 4.8** In the event of justified doubts as to the solvency or creditworthiness of Customer, CLADE shall be entitled to demand advance payment or a suitable security with regard to the payment to be made by Customer. If Customer is not prepared to pay in advance or to provide the security, CLADE shall be entitled to withdraw from the contract after a reasonable grace period and to claim damages for non-performance.
- 4.9** Customer shall only be entitled to set-off and retention rights vis-à-vis the claims of CLADE, if the counterclaim has been acknowledged or legally established and it is a counterclaim from the same contractual relationship. The assignment of claims against CLADE requires the consent of CLADE.

## **5. Audit**

- 5.1** CLADE is entitled, subject to a notice period of one week, to audit Customer's business premises once a year during normal business hours on working days, either itself or by a third party obligated to secrecy, and to check whether Customer uses the Contractual Hardware and software provided by CLADE within the scope of the Products in accordance with the provisions of the Individual Agreement or Delivery Note and these GTC and transmits any information that is relevant to calculate the remuneration correctly, completely and punctually.
- 5.2** CLADE will ensure that the audit does not unduly impair Customer's business processes.

- 5.3** If the audit reveals breaches of contract by Customer or incomplete information or payment arrears on the part of Customer, Customer shall bear the costs of the audit, otherwise CLADE. Any outstanding payments shall be settled by Customer without undue delay. Further claims of CLADE remain unaffected.
- 5.4** Section 5 does not apply in case CLADE sells the Analyzer to Customer.

## **6. Liability**

- 6.1** The parties shall be liable to each other without limitation for intent and gross negligence as well as in case of injury to life, body or health.
- 6.2** Each party shall only be liable for ordinary negligence, if essential contractual obligations (main obligations) are breached. Main obligations are those obligations the fulfilment of which is essential for the proper performance of the respective agreement and the observance of which the contractual partner regularly relies on and may rely on. In these cases, the liability of the respective party is limited to the direct, contract-typical and foreseeable damage.
- 6.3** Insofar as the prerequisites for an amount of limited liability pursuant to Section 6.2 on the part of CLADE exist, the liability of CLADE shall - in addition to Section 6.2 - be limited to the amount of the remuneration to be paid by Customer for a contractual month.
- 6.4** Liability for indirect and unforeseeable damage, loss of data, data network failures, loss of production and use, loss of turnover, loss of profit, loss of savings and/or financial loss due to claims by third parties shall be excluded in the event of ordinary negligence according to Section 6.2.
- 6.5** The limitations or exclusions of liability pursuant to Sections 6.2 to 6.4 shall not apply to statutory strict liability (e.g. under the German Product Liability Act) or liability arising from a strict guarantee.
- 6.6** CLADE is not liable for direct and/or indirect damages and/or expenses of Customer and/or false measurement results, as far as these are caused by the fact that Customer uses the Products contrary to or in violation of the provisions of the Individual Agreement and/or the Delivery Note or these GTC.

This includes, but is not limited to, the use of the Products in a device environment not authorized by CLADE and/or contrary to the user documentation, the linking of the hardware and/or software by CLADE with hardware and/or software not authorized by CLADE for this purpose, furthermore modifications, repairs and/or other interventions in hardware and/or software by CLADE by service providers or persons not authorized for this purpose as well as damages and/or expenses caused on the part of Customer by a non-conforming device environment and/or a non-conforming IT environment and/or an IT environment not complying with general IT security requirements.

**6.7** CLADE shall not be liable for direct and/or indirect damages and/or expenses of Customer and/or false measurement results, insofar as these have arisen as a result of Customer using the Products contrary to or in violation of the provisions of the Individual Agreement and/or the Delivery Note or these GTC. This includes, but is not limited to, the following cases:

- the use of the Products at a device location other than the one approved by CLADE,
- the modification of the device environment specified by CLADE for the Products,
- the use of the Products in a device environment not authorized by CLADE,
- the modification of the network configuration or network infrastructure specified by CLADE for the Products,
- the use of the Products in a network configuration or network infrastructure not authorized by CLADE,
- the use of the Products contrary to the user documentation and/or requirements set out in Sections 2.11 to 2.13,
- the connection of the hardware and/or software of CLADE with hardware and/or software not authorized by CLADE for this purpose,
- modifications, repairs and/or other interventions in hardware and/or software of CLADE by unauthorized service providers or persons,
- interruptions in the connection and linking of the Products to the CLADE Cloud for reasons within the sphere of Customer and for which CLADE is not responsible,
- an IT environment on the part of Customer that does not comply with the Agreement and/or general IT security requirements.

**6.8** With regard to the cases listed in Section 6.7, the parties hereby state that the resulting functional impairments of the Products by CLADE neither fall under 1st, 2nd or 3rd Level Support nor are they defects which trigger warranty claims or other claims of Customer.

## **7. Third Party Rights**

**7.1** If a third party asserts claims against Customer in connection with Customer's use of the Products, in particular the use of the Analyzer, CLADE shall indemnify the Customer against such claims.

- 7.2** The indemnification pursuant to Section 7.1 shall not apply if Customer makes use of the Products in a way that culpably violates provisions of the Individual Agreement and/or the Delivery Note and/or these GCS and/or if Customer knowingly or negligently violates applicable law or the rights of third parties.
- 7.3** The obligation to indemnify pursuant to Section 7.1 requires that Customer immediately informs CLADE of the claims raised by a third party, leaves the defense of rights to CLADE depending on CLADE's decision and supports CLADE in this to a reasonable extent free of charge.

## **8. Confidentiality**

- 8.1** The parties will treat all information, business transactions and documents which become known to them in connection with the Agreement in relation to the other party and which are either marked as confidential or are by their nature recognizably to be classified as confidential (“Confidential Information”) as strictly confidential, shall use them exclusively for the purposes of this Agreement and will not pass them on to third parties. This obligation shall remain in force even after the end of the Agreement.
- 8.2** The above obligations shall not apply to Confidential Information to the extent that such Confidential Information is subject to proof to be furnished by the recipient:
- were already lawfully known to the recipient beforehand,
  - were or become generally known without the recipient being responsible for this,
  - are lawfully communicated to or transferred to the recipient by a third party,
  - have been developed independently of the recipient and without recourse to confidential information,
  - are to be disclosed pursuant to a binding administrative or judicial order or mandatory legal provision, provided that the other party has been notified in writing of the disclosure in good time in advance, or
  - have been released for publication in writing by the surrendering party.

## **9. Insurance**

Unless CLADE sells Analyzer to Customer, Customer is obligated to insure the Contractual Hardware, in particular the Analyzer, against damages caused by fire, water, etc. to an appropriate amount for the duration of this Agreement and will submit CLADE with the corresponding insurance policy at the request of CLADE prior to conclusion of the Agreement.



**10. Force Majeure**

- 10.1** In the event of force majeure, each party shall be released from its obligation to perform for the duration of the force majeure event.
- 10.2** The term force majeure covers events outside the sphere of influence of the respective party, such as strikes, natural disasters, fire, acts of terrorism, etc., which are beyond the control of the respective party.
- 10.3** If the event of force majeure lasts for longer than three months, each party shall be entitled to terminate this Agreement and/or individual orders concluded under it without notice.

**11. Data of the Products and personal data**

- 11.1** The use of the Products, in particular the Analyzer, by Customer generates measurement results that contain analysis data.
- 11.2** Insofar as the measurement results are obtained with starting materials and/or from substances that are not subject to separate legal protection (e.g. by registered property rights or as know-how or trade secrets) but are freely available or can be acquired, the exclusive rights to the measurement results, all data contained therein and any know-how contained therein, unlimited in terms of content, place and time, shall remain with CLADE.
- 11.3** Insofar as the measurement results are obtained with starting materials and/or from substances to which Customer holds exclusive rights (registered property rights and/or exclusive rights resulting from know-how or trade secrets), the exclusive rights to the measurement results, all data contained therein and any know-how contained therein, unlimited in terms of content, place and time, shall in principle remain with Customer. In this case Customer grants CLADE - unless otherwise agreed - simple rights of use to the measurement results limited to the duration of the contractual cooperation for the purpose of the execution of the respective concluded contract.
- 11.4** Notwithstanding the provisions in Sections 11.2 and 11.3, CLADE is and shall remain entitled to use all measurement results for the improvement and further development of CLADE's IR Spectroscopy Technology, including CLADE's algorithms, software, databases and Products, without limitation in terms of place and time.
- 11.5** Section 11.1 through 11.3 do not apply if CLADE sells Analyzer to Customer without Customer concluding a Software-as-a-Service Agreement with CLADE on CLADE's cloud product. In case that Customer concludes a Software-as-a-Service Agreement on CLADE's cloud product next to purchasing the Analyzer, the parties will conclude a separate agreement on the measurement results and analysis data.

**11.6** The Parties agree that they are each responsible for the protection and - in particular with regard to the GDPR (General Data Protection Regulation) and the BDSG (German Federal Data Protection Act) - legally compliant handling of personal data and that they fully comply with all relevant legal requirements.

## **12. Communication**

**12.1** CLADE is entitled to use the fact of the contractual cooperation with the Customer for advertising purposes to the extent customary in the industry and will agree the details thereof with the Customer in advance. The Customer may only prohibit the corresponding use of CLADE for objectively justified important reasons.

**12.2** All rights with respect to the promotion of the Products and their distribution are and shall rest solely with CLADE.

## **13. Terms of Agreement**

**13.1** An Individual Agreement under these GTC shall enter into force with the contractual acceptance of the Customer's order by CLADE or by the signature of both Parties.

**13.2** Unless otherwise agreed on by the parties, the duration of any Individual Agreement shall correspond to the agreed subscription period for the Products in accordance with the Individual Agreement and/or the Delivery Note.

**13.3** The termination or expiration of the contractual period of an Individual Agreement shall not affect the validity of this Agreement of further Individual Agreements.

**13.4** Contractual periods agreed in Individual Agreements shall be automatically extended by one year at a time, unless terminated by either Party with six months' notice.

**13.5** The right of the Parties to extraordinary termination and termination without notice of this Individual Agreement for good cause remains unaffected.

**13.6** CLADE is entitled to terminate an Individual Agreement extraordinarily without notice if Customer continues to violate contractual obligations despite a warning with the setting of a deadline or defaults on payment obligations arising from the Individual Agreement for more than two months. In this case, the termination of the Individual Agreement shall not affect the validity of further Individual Agreements insofar as Customer behaves in accordance with the Agreement with regard to these further Individual Agreements.

**13.7** Any termination must be made in writing.

- 13.8** Unless otherwise agreed in the Individual Agreement and/or the Delivery Note (e.g. in case of purchase of the Analyzer by Customer) Customer is obligated to return any Contractual Hardware received in the course of providing the Products, in particular the Analyzer, to CLADE or a service provider designated by CLADE immediately after the end of the Agreement - cleaned in accordance with the specifications of CLADE - undamaged at its own expense and risk. If Customer violates the above obligations, he shall be liable to pay damages to CLADE.
- 13.9** After termination of the Agreement, Customer is also obliged to return all documents and information received from CLADE to CLADE immediately or to destroy them permanently and to prove the destruction in a suitable form at the request of CLADE.
- 13.10** If the Customer breaches the obligations pursuant to Section 8, Section 11 and/or Sections 13.8 to 13.9, he undertakes to pay a contractual penalty of Euro 50,000.00 CLADE for each case of breach.

#### **14. Miscellaneous**

- 14.1** Amendments and supplements to these GTC must be made in writing. This shall also apply to any waiver of this written form clause.
- 14.2** Should individual provisions of these GTC be or become invalid, the validity of the remaining provisions shall remain unaffected. In place of the invalid provisions, the Parties shall agree on a valid provision that comes as close as possible to the invalid provision in factual, legal and economic terms. The same shall apply if there is a gap in these GTC.
- 14.3** These GTC and the Individual Agreements concluded thereunder shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of conflict of laws' provisions.
- 14.4** The exclusive place of jurisdiction for all disputes arising from this Agreement is Stuttgart.