

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

### **1. General**

- 1.1 These GTC apply to all products and services provided by CLADE GmbH (hereinafter referred to as “**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 Sale of MIRA Analyzer and its Software (hereinafter referred to as “**Analyzer**”, see definition in 3.1)
  - 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, any service levels and further contractual obligations 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.

**Individual Agreement** means all agreements concluded between the Parties relating to the Products.

- 2.3 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 contract between the parties, whereby the order of precedence corresponds to the above list (hereinafter referred to as "Contract").
- 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 only by CLADE or a service provider authorized by CLADE and named to the Customer.
- 2.6. 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.
- 2.7 Any warranty claims of Customer become statute-barred within one (1) year after acceptance of the Analyzer or delivery of Products.

- 2.8 Depending on the specific provisions in the individual service agreement with CLADE or a service provider, the first level support for the Analyzer is provided to the Customer by CLADE.
- 2.9 The Products shall be deemed to be in conformity with the contract if its intended use is in accordance with the Individual Agreement and/or the delivery note and these GTC
- 2.10 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, the site acceptance report 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.
- 2.15 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, which consist of hardware in the form of an analyzer including the respective operating system software and standard application software (hereinafter "**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 Contract.
- 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 (hereinafter referred to as "**EULA**") for the use of the software installed on the Contractual Hardware are set out in CLADE's respective EULA which Customer must accept for commencing use of the Analyzer.
- 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. Renumeration**
- 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 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 14 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 within 4 weeks after after the announcement of the price increase 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. Warranty and liability for defects in terms of German Civil Code**

- 6.1 CLADE warrants that the Contractual Hardware is fit for use as provided by the contract and meets, at the time of delivery according to section 2.6., the specifications set forth in Annex 1. CLADE warrants that the Contractual Hardware is fit for the measurement of aqueous fluids if using apps (applications) especially designed and designated by CLADE for such use. Minor errors of the Contractual Hardware and Software do not affect the performance of CLADE if the overall functionality of the Analyzer is not impeded in any way.
- 6.2 CLADE does not assume any warranty for the accuracy and/or correctness of measurement results obtained by Customer through the use of Contractual Hardware. Likewise, CLADE does not assume any warranty for uninterrupted production to the degree it is based on the use of CLADE's Contractual Hardware and software.
- 6.3. The statutory regulations shall apply to the Customer's rights in case of defects of quality and title insofar as not otherwise determined below.
- 6.4. No warranty shall be provided for wear parts as defined in the valid user manual.
- 6.5. No warranty shall be provided for the Contractual Hardware and CLADE shall not be liable for any defects or any damages resulting from
  - a. any changes, modifications, repairs, services, de-installations, re-installations or any other interventions performed by persons or service providers not authorized by CLADE in writing.

- b. abuse, misuse, improper operation or mishandling due to non-compliance with the specifications and requirements in the valid user manual, in particular, but is not limited to the use of the Analyzer at a location other than that approved by CLADE, the modification of the environmental conditions specified by CLADE, the use of the Analyzer in an environmental condition not authorized by CLADE, failure to perform preventive maintenance in accordance with the valid user manual (including keeping an accurate log of preventive maintenance).
  - c. changing the network configuration or network infrastructure specified by CLADE for the Analyzer, the use of the Analyzer in a network configuration or network infrastructure not authorized by CLADE, linking the Contractual Hardware and/or software not approved by CLADE.
  - d. damage due to forces external to the Analyzer including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work
  - e. transportation, foreign equipment/attachments or Customer-supplied replacement parts or utilities or services.
- 6.6. CLADE's warranties do not apply to any defects resulting from misuse, neglect, or accident on the part of the Customer, including without limitation: operation with solvents or samples that are not supplied or approved by CLADE for use with the Analyzer; operation outside of the environmental or use specifications or not in conformance with the instructions for the instrument system, software or accessories; improper or inadequate maintenance by the user of the Analyzer; installation of the Analyzer or interfaces, or use thereof in combination with products and/or software not supplied or authorized by CLADE; and modification or repair of the Analyzer not authorized by CLADE.
- 6.7. CLADE's warranties do not cover, and CLADE has no obligation to repair, replace or refund the price of, any product, component, software, wetted part, consumable, or service part, if a defect or failure arises or is caused by: externally caused short circuits, incorrect voltages or other improper external inputs; failure to store or failure to use the Analyzer in accordance with CLADE's instructions; failure to use the Analyzer in accordance with good laboratory practices by technically qualified persons; other misuse or neglect, including but not limited to improper storage, maintenance, shipping, handling, improper or abnormal use, including operation outside of the environmental or use specifications specified by CLADE; unauthorized change or modification; use with chemicals, reagents or any other product not supplied or authorized in writing by CLADE for use with the products; accidents of any kind or nature; and any non-CLADE designated products including without limitation software (including without limitation viruses, Trojan horses or other malicious software) that is attached to, loaded on or otherwise connected with, or that accesses, the CLADE products.

- 6.8. CLADE's warranties do not cover de-installation, reinstallation, transportation of hardware, routine services such as cleaning, optimization or connection to peripheral components not ordered through CLADE. Repair or service by a person not authorized by CLADE voids CLADE's warranties.
- 6.9. In case a defect is reported, Customer shall give CLADE an opportunity to review the complaint, particularly by making available respective Analyzer to CLADE for inspection. For this purpose, CLADE shall have the choice of attempting to remedy the complaint by telephone or by remote maintenance first. If the problem cannot be remedied in this way, Customer shall allow CLADE or its service provider access to the business premises on site during business hours and, after prior consultation, also outside business hours in accordance with its security and access. At CLADE's request, Customer must send the Analyzer subject to complaint back to CLADE, following CLADE's shipping instructions. Freight charges and shipments to CLADE are Customer's responsibility.
- 6.10. If the delivered Analyzer is defective, CLADE shall be entitled to its choice of supplementary performance, either by rectifying the defect (repair) or by providing a new, non-defective Analyzer (replacement). Customer shall give CLADE the opportunity to supplementary performance at least twice, setting a reasonable deadline. If it is not possible to effect supplementary performance or if the attempt to supplementary performance is unsuccessful, or if the reasonable deadline for effecting supplementary performance has expired without result or can be dispensed with according to statute, Customer may, at its election, rescind the contract or reduce the purchase price. However, there is no right of rescission in the case of minor defects. Removed parts become the property of CLADE:
- 6.11. In the event of a justified defect complaint, CLADE will cover the necessary expenses for the purpose of examining the Analyzer and effecting supplementary performance, particularly including transport, shipping, infrastructure, labor and material costs.
- 6.12. The limitation period for claims based on defects shall be 12 months from the date of acceptance according to section 2.6. The statutory limitation period shall apply to claims for damages in the event of intent and gross negligence as well as in the event of injury to life, body and health based on an intentional or negligent breach of duty.
- 6.13. Further claims by Customer are excluded. This applies in particular to claims for indirect and unforeseeable damage, loss of data, data network failures, loss of production and use, loss of turnover, loss of profit or rent or purchase of a replacement product loss of savings and/or financial loss due to claims by third parties.



This shall not apply if:

- a. CLADE has fraudulently concealed a legal or material defect or has provided a guarantee for its absence, or for a characteristic of the Analyzer.
- b. the damage is due to intent or gross negligence on the part of CLADE, one of its legal representatives or vicarious agents, or is due to a negligent violation of material contractual obligations on the part of CLADE or these persons. Material contractual obligations are obligations whose fulfillment is material to due and proper implementation of the contract and which the contractual partner regularly expects and can trust to be fulfilled.
- c. a culpable breach of obligations on the part of CLADE or its legal representatives or vicarious agents has led to personal injury or damages to health; or
- d. CLADE is liable under the German Product Liability Act (“Produkthaftungsgesetz”).
- e. a delivery date has been guaranteed and the delivery has not been made until the guaranteed date.

6.14. Insofar as the prerequisites for an amount of limited liability pursuant to Section 6.13 on the part of CLADE exist, the liability of CLADE shall be limited to 100.000 Euro per claim and one (1) Million Euro in total.

6.15. Insofar as CLADE's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of CLADE's employees, representatives and vicarious agents.

## **7. Third Party Rights**

7.1. In case a third party asserts claims against the Customer in connection with usage of the Product, CLADE shall indemnify the Customer against such claims.

7.2. The indemnification obligation on the part of CLADE pursuant to clause 7.1 requires that the customer informs CLADE without undue delay about the claims asserted by third parties, does not independently acknowledge any infringements and has not modified the product or used it in a manner not in accordance with the license or operating instructions and makes available without undue delay any information requested by CLADE for the assessment of the situation or defense against the claims.

7.3. CLADE's indemnification obligation pursuant to Section 7.1 requires that the 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 to a reasonable extent free of charge.

## **8. Confidentiality**

8.1 The Parties will treat all information relating their business, this Agreement or the Analyzer, business transactions and documents which become known to them in connection with the Agreement and which are either marked as confidential or are by their nature recognizably to be classified as confidential (hereafter also referred to as "Confidential Information") as strictly confidential, shall use it exclusively for the purposes of this Agreement and will not disclose it to third parties.

8.2. Confidential Information does not include information which can be proved to

- a. be already known to the Recipient prior to disclosure by CLADE and without breach of this confidentiality agreement, or
- b. be already known or generally available to the public prior to disclosure to the recipient by CLADE, or
- c. become known or generally available to the public after disclosure to the Recipient by without the cooperation or fault of the Recipient, or
- d. disclosed or made available to the recipient at any time by an authorized third party without breach of any confidentiality obligation, or
- e. has been developed by the Recipient or under the guidance of the Recipient independently of the knowledge or use of the information, and/or
- f. must be disclosed due to official or court orders.

## **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 Force majeure is any event that was not foreseeable at the time of the conclusion of the Agreement or respective Contract, is beyond the control of the Parties and that makes it impossible or unreasonably difficult to fulfill the contractual obligations. Force majeure shall be deemed to include for instance strikes, wars, insurrection, embargos, acts of terrorism, pandemics, break downs, earthquakes, hurricanes or floods, shortages of

raw materials, import or export sanctions, governmental interference or industrial disputes as well as non-performance by suppliers.

10.2. In the event of force majeure, CLADE is entitled to suspend the performance of the Agreement for the duration of the force majeure situation, without CLADE being obliged to pay any damages.

10.3. If the event of force majeure lasts more than three months or if it is foreseeable that it will last more than three months, the respective Lease Contract may be terminated by either Party. In this case, CLADE is not obliged to pay any compensation to the Customer.

## **11. Data generated by the Product**

The use of the Product generates measurement results that contain analysis data. CLADE reserves the right to use and store analysis data in an anonymous form that excludes identification of the customer, if and to the extent that no legitimate interests of the customer known to CLADE are affected. Analysis results will not be transmitted or published to third parties for any purpose without prior written consent of the Customer.

## **12. Data Privacy**

Insofar as the two parties exchange personal data (Art. 4. No. 1 DSGVO) with each other for the purpose of fulfilling this agreement, this data may only be used by the respective receiving party for the purposes for which it was transmitted. The processing of personal data shall only be carried out by employees who have been committed to confidentiality in the processing of personal data. If a party uses processors for the processing of personal data, they shall be obliged to likewise do so. The transfer of received personal data to third parties is prohibited, unless this is permitted by the respective other contracting party or it is permitted or ordered by law. Unless statutory retention obligations require otherwise, personal data received shall be deleted immediately after the purpose of use has ceased to apply.

## **13. Communication**

13.1 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.

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

#### **14. Terms of Agreement**

14.1 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.

14.2 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.

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

14.4 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.

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

14.6 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.

14.7 Any termination must be made in writing.

14.8 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.

14.9 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.

14.10 If the Customer breaches the obligations pursuant to Section 8 (Confidentiality), Section 12 (data privacy) and/or Sections 14.8 to 14.9, he undertakes to pay a contractual penalty of Euro 50,000.00 CLADE for each case of breach.

## **15. Miscellaneous**

15.1. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements, understandings, writings and discussions between the Parties relating to said subject matter, except if explicitly exempted in this Agreement.

15.2. All additions or modifications to this Agreement must be made in writing and must be executed by both Parties, expressly stating that it is an amendment to this Agreement. Digital signatures, electronically signed and/or scanned copies shall be sufficient.

15.3. Customer shall be entitled to assign the rights and obligations under this Agreement to its Affiliates. Affiliates shall mean

- a. organization, which directly or indirectly controls Customer
- b. organization, which is directly or indirectly controlled by Customer
- c. organization, which is controlled, directly or indirectly, by the ultimate parent company of Customer

Control as per a. to c. is defined as owning more than fifty percent of the voting stock of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organization.

15.4. Customer is not entitled to assign this Agreement nor any right under or obligation pursuant to this Agreement, without the prior written consent of CLADE.

15.5. Export of the Analyzer to countries outside the EU is strictly prohibited.

- 15.6. The Parties are not entitled to use each other's trademarks or trade names without the other Party's prior written consent.
- 15.7. CLADE is entitled to subcontract its obligations under this Agreement.
- 15.8. Nothing in this Agreement shall be deemed or construed to constitute an agency relationship, employment relationship, partnership or joint venture between or among the parties hereto. No party hereto shall have the authority to act on behalf of any other party hereto or to bind the other party in any manner.
- 15.9. This Agreement shall be governed and construed in accordance with the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 15.10. The Parties submit to the exclusive jurisdiction of the competent courts in Stuttgart, Germany, with the exclusion of any other jurisdiction or arbitration.
- 15.11. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the validity of the Agreement as a whole, unless the invalid or unenforceable provisions are so essential to the Agreement that it is reasonable to assume that the Parties would not have concluded the Agreement without these provisions. If the invalid or unenforceable provision cannot be replaced by a statutory provision, it shall be replaced by a provision which reflects the concordant will of the Parties. The corresponding shall apply in the event of an omission.