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## **General Terms and Conditions**

**MILabs B.V.**

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## 1. GENERAL

### 1.1. Applicability

- 1.1.1 These General Terms and Conditions ("GTC") apply to any and all offers, quotations and/or agreements and/or deliveries by Milabs B.V., hereinafter to be referred to as "MILABS", and all agreements and/or any other legal relations between Customer and MILABS, as well as to resulting provisions and related activities whether verbally, written and/or electronically agreed upon, unless expressly otherwise agreed upon in writing and irrespective under which trade name MILABS operates, and irrespective of Customer's signature or initials being present or not on these GTC.
- 1.1.2 Any purchase- and/or other general terms and/or conditions of Customer do not apply and are rejected by MILABS unless expressly accepted in writing.
- 1.1.3 MILABS is always authorized to change or amend these GTC, which changes or amendments will apply unless written objection is made no later than 30 (thirty) days after the date of the amendment or change.
- 1.1.4 Changes in and/or additions to these GTC as well as changes in and/or additions to agreements between MILABS and Customers are valid only if made in writing.
- 1.1.5 In case Customer can be considered to do business from several legal entities, each entity is severally and jointly liable for performance of all obligations under the agreement with MILABS and these GTC apply to all of them.
- 1.1.6 The headings above the articles of these GTC are only intended to improve readability. The content and scope of the article under a particular heading is thus not confined to that designation.
- 1.2. **Definitions**
- 1.2.1 In these GTC the following words and terms are capitalized. All of the following words and expressions in the singular have the same meaning as in the plural and vice versa.
- 1.2.2 **Customer:**  
Anyone who requests and orders to provide the Products and/or Service(s) with whom MILABS consequently has an agreement.
- 1.2.3 **Product(s):**  
Molecular and optical imaging systems as further described in MILABS' offers, quotations, agreements or other documentation.
- 1.2.4 **Service(s):**  
Any and all services as from time to time agreed upon between MILABS and Customer for the purpose of installation and/or maintenance and/or operation of the Products.
- 1.2.5 **Sales Order(s):**  
Written acknowledgement of receipt of Customer order and confirmation of exact delivery scope by MILABS
- 1.2.6 **Third Party Terms:**  
Under Third Party Terms amongst other are to be understood the conditions used by others, licensing, warranty and other conditions.
- 1.2.7 **Third Party Products:**  
All services and products provided by MILABS and originating from third parties and who's intellectual and/or industrial property rights do not belong to MILABS.

- 1.2.8 **MILABS:**  
MILABS B.V., registered at the Chamber of Commerce in Utrecht, the Netherlands, under number 30207515, and its successor(s) or any affiliate or partner that contracts with Customer and declared these GTC applicable. In any case MILABS is the supplier of the Product(s) to Customer.
- 1.2.9 **Working days:**  
Normal Dutch working days (Monday / Friday) excluding national holidays and office hours (8.00-18.00 CET).
- 1.3. **Confirmation**
- 1.3.1 All verbal agreements, assignments and/or other statements of any kind from employees of MILABS are only valid and binding if confirmed in writing by authorized representatives of MILABS.
- 1.4. **Offers and Quotations**
- 1.4.1 All offers and quotations are initially non-binding unless expressly indicated otherwise and are open for acceptance within the period stated therein, or – when no period is stated – within a period of sixty days from the date thereof.
- 1.4.2 MILABS will send written confirmation on Customers order and/or draw up a Sales Order/agreement which specifies the Product(s) sold and in which is indicated what is included in the Service(s) and what amount(s) will be due. Only the Service(s) as described in the agreement, quotation, offer and/or written confirmation are binding.
- 1.4.3 In case incorrect information is provided by Customer, or Customers preparatory work is incomplete in any way, MILABS has the right to adjust prices accordingly.
- 1.5. **Agreements**
- 1.5.1 If a proposal, offer, quotation, contract or other similar legally binding document is sent to Customer and Customer fails to return this document signed to MILABS, by way of confirming written notice or order (by email or otherwise) relating to such document or in the absence of such by way of first payment Customer is considered to fully agree with the content of such document and these GTC and agreement between Customer and MILABS is reached.
- 1.5.2 MILABS has the right, to annul, terminate or cancel an offer, quotation or agreement with immediate effect and without judicial intervention, by means of an extrajudicial statement in whole or in part, in case Customer submits a request for bankruptcy or suspension of payment, or in case bankruptcy or suspension of payment is granted or if the Customer's company is liquidated or terminated, other than for reorganization purposes. In all of these situations, any and all claims on Customer by MILABS are immediately due.
- 1.6. **Guarantee and Force Majeur**
- 1.6.1 MILABS guarantees the good quality of the Product(s) supplied for the period stated, or, when no period is stated, for a period of 12 months from the date of final acceptance or 13 months from date of dispatch (whichever comes first), but in no event for more than fifteen months from the date of dispatch, against all defects or failures which appear therein under proper use and maintenance,

- and arise solely from faulty materials or workmanship, it being understood that:
- (a) Such guarantee does not cover damage sustained by normal wear and tear or any damage arising in consequence of negligence or improper manipulation of MILABS' Products or parts thereof, or of improper storage in the event of MILAB's Products by Customer;
  - (b) Such guarantee shall not include separate deliveries of spare parts and components to which a specific manufacturer's guarantee applies.
  - (c) Such guarantee does not cover services at the premises of the Customer
- 1.6.2** MILABS' liability under this guarantee shall be to supply to the Customer, free of charge, replacements of such parts as have proved to have such defects as set out here above or, at MILABS' sole discretion, repair such parts or have them repaired at MILABS' order, provided that MILABS is informed by the Customer in writing or by facsimile within fourteen days after the defects have revealed themselves and the defective Product(s) or part(s) thereof have been placed at MILABS' disposal; the defective parts shall become MILABS' property as soon as they have been replaced. Compliance with MILABS' guarantee undertaking mentioned above or with any agreed modification thereof shall be considered to give full satisfaction to the Customer; any claim of the Customer for compensation or for dissolution of the contract shall be excluded. EXCEPT FOR THE FOREGOING, MILABS EXCLUDES AND DISCLAIMS ALL WARRANTIES, CONDITIONS OR STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY.
- 1.6.3** In the event of the occurrence of force majeure, which circumstances include but are not restricted to: acts of God, war (whether declared or not), civil war, insurrection, seizure, fires, floods, strikes, epidemics, governmental regulations, embargoes, non-availability of any permits and/or licenses and/or authorizations required and defaults of our suppliers or sub-contractors caused by any such circumstances referred to in this clause, MILABS shall be entitled to suspend delivery of the Product(s) for the duration of the prevention or delay caused by such force majeure, without being held responsible for any damage resulting there from to the Customer. In that case, the times given for delivery and the rendering of services shall be extended for the period of prevention or delay caused by such force majeure. In the event of the period of prevention or delay caused by force majeure having lasted for a period exceeding twelve consecutive months, then and in that case, MILABS is entitled to cancel the order to the extent not yet executed without being liable for any indemnity whatsoever towards the Customer. The expression "force majeure" shall mean and include any happening or event beyond MILABS' reasonable control - whether foreseeable or not at the time of MILABS' order confirmation - in consequence of which MILABS cannot reasonably be required to execute its obligations.
- 1.7. Confidentiality**
- 1.7.1** Customer and MILABS commit themselves to the confidentiality of all data and information about each other's organization, Customers, files and products which they become aware of.
- 1.7.2** MILABS is entitled to mention the name and logo of Customer or its Customers to which the Products are provided on the website of MILABS and/or to place name and/or logo of Customer on a reference list and present such to third parties.
- 1.8. Liability**
- 1.8.1** Total liability of MILABS will, subject to Article 1.8.2 and 1.8.3, be limited to direct damages and then only up to the amount of the agreed price (excluding VAT) with a maximum of the amount payable by the insurer, were a series of events is regarded as one event.
- 1.8.2** If the agreement also includes a long term agreement of more than 1 (one) year and the liability of MILABS stems from this agreement, the agreed price is set at the total of the fees (excluding VAT) actually paid by Customer to MILABS based on this agreement over a period of 1 (one) year (this being the year when the damage occurred) with a maximum of the redemption amount payable by the insurer.
- 1.8.3** MILABS is insured against damages. MILABS is not liable for indirect, consequential and/or further or other losses, which will not be reimbursed to Customer under this agreement, including possible claims of third parties to Customer. And in any case reimbursement will never exceed what is covered and actually paid out by insurer plus MILABS's own risk, unless in case of mal intent or deliberate recklessness.
- 1.8.4** MILABS's total liability for damages will in no case exceed €2,500,000, - (two million and five hundred thousand Euro) per event with a maximum of €5,000,000, - (five million Euro) per annual aggregate.
- 1.8.5** As direct damage are exclusively considered:
- a) Reasonable costs incurred in determining the cause and extent of the damage;
  - b) Reasonable costs incurred to prevent or limit damage, if Customer demonstrates that these expenses resulted in mitigation of damages.
- 1.8.6** Liability of MILABS for indirect damages, including consequential damages, loss of profits, lost savings, destruction or loss of files and/or data, delays, losses, damages caused by the lack of information and/or assistance by Customer, business interruption or damage claims by third parties on Customer, is expressly excluded.
- 1.8.7** Other than mentioned in Article 1.8.1 MILABS cannot be held liable for damages, regardless of the grounds on which an action for damages would be based.
- 1.8.8** MILABS can only be held liable if Customer gives written notice to MILABS of default, immediately and appropriately, mentioning a reasonable period for remedying the failure and then only after that period elapsed and MILABS attributably continues to fail its obligations. The notice must give as detailed a description as possible of the shortcoming, so MILABS is able to respond adequately.
- 1.8.9** A condition precedent for the existence of any right to damages is that Customer within 60 (sixty) days after the occurrence of the damage gives notice to MILABS in writing by registered letter and takes the necessary measures so that the damage is minimized.
- 1.8.10** Customer indemnifies MILABS against any and all claims for liability resulting from a defect in a product, system or service delivered or rendered by

- Customer to a third party and which product, system or service consisted in part of by what is delivered by MILABS.
- 1.8.11** MILABS accepts no liability for damages of any nature whatsoever caused by Third Party Products which MILABS delivered to Customer. If possible, MILABS will subrogate his rights to claim damages from the supplier of the Third Party Product in question to the Customer.
- 1.8.12** Customer shall defend, indemnify and hold harmless MILABS, its affiliates and their respective directors, officers, employees and agents and their respective successors, heirs and assigns (the "MILABS Indemnitees"), from and against any and all liabilities, damages, losses, obligations, costs and expenses, including attorney's fees (collectively a "Loss") that any MILABS Indemnitee may incur by third parties in connection with a claim for damage to or loss of tangible personal property or for bodily injury, sickness and/or death sustained by Customer (collectively "Damage") if or where the Damage is caused by or arises in connection with (a) improper use of MILABS' products or software associated with the product, (b) improper disposal of MILABS' products or software or (c) unauthorized modification of MILABS' products or software.
- 1.9. Transfer**
- 1.9.1** Any agreement between Customer and MILABS and the rights and obligations resulting there from cannot be transferred to third parties without prior written permission from MILABS.
- 1.9.2** Customer authorizes MILABS in advance to transfer the entire agreement, or parts thereof without the express consent of the Customer to:
- mother, sister and/or subsidiaries;
  - a third party in the event of a merger or acquisition of MILABS.
- If the latter occurs MILABS will inform Customer.
- 1.10. Non-attributable Shortcoming**
- 1.10.1** MILABS is not obligated to fulfill any obligation if prevented from doing so due to circumstances beyond its influence, nor under the law, legal act or in the prevailing opinion should come at its expense. The aforementioned circumstances include circumstances beyond the control of MILABS as well as business risks of MILABS, including but not limited to, failures of suppliers of MILABS, failure to timely availability of required information and/or specifications, changes to such provided data, not quite correct specifications and/or functional descriptions of Third Party Products and/or any third party products, bad weather, fire, explosion, power failure, faults in networks, flood, disease, lack of staff, strike or other labor disputes, accidents, acts of government, the impossibility of a required permit or consent, lack of materials, theft, traffic and/or transportation problems.
- 1.10.2** If force majeure of a temporary nature occurs MILABS may suspend the agreement until the force majeure has ceased to exist, without any compensation being due.
- 1.11. Nullity**
- 1.11.1** If any provision (or part of a provision) of the agreement is void, annulled, voidable or lost its validity otherwise the remaining provisions (or the remaining portion of the relevant provision) of the Agreement remain in full force.
- 1.11.2** Parties shall with regard to terms (or parts of a term) which are void, annulled, voidable, or lost its validity otherwise, in consultation with each other try to reach a substitute arrangement, inasmuch as the parties shall strive that the scope of the agreement (or the remaining part in question) as a whole is maintained.
- 1.12. Applicable Law and Jurisdiction**
- 1.12.1** Dutch law is applicable, unless parties agree otherwise. Parties expressly declare that the Vienna Sales Convention (CISG) does not apply.
- 1.12.2** To the extent permitted by mandatory law all disputes that may arise from the Agreement will be submitted to the competent Dutch court in Utrecht.
- 1.12.3** The foregoing shall not in any way exclude parties to take protective measures before applying to the competent Dutch court in order to preserve their existing rights.
- 2. Product Delivery and Installation**
- 2.1. Ownership**
- 2.1.1** MILabs retains title to, and ownership of, the Product(s) and all parts thereof until the purchase price is paid in full.
- 2.1.2** All software associated with the Product(s) and developed by MILABS or its licensors is and shall remain the sole property of MILABS at all times.
- 2.2. Tests**
- 2.2.1** All Products are carefully inspected and, where practicable submitted to standard tests at the factories before dispatch. If special tests in the presence of the Customer or his representative are required, these must be specified by the Customer when giving the order and shall, unless otherwise agreed, be made before dispatch; all costs connected with such tests will be charged extra. In the event of any delay on the part of Customer in attending such tests after fourteen days notice that the goods are ready to be tested, the tests will proceed in the Customer's absence and shall be deemed to have been made in his presence.
- 2.3. Installation and Acceptance**
- 2.3.1** In case an offer, quotation or agreement includes installation of the Product(s), Customer shall be responsible for timely execution and completion of the preparatory activities, in conformity with any requirements that MILABS shall indicate or has indicated to Customer. MILABS' Technical Installation Requirements are applicable for all installations worldwide and will be send in due time. In case installation of the Products is offered, MILABS shall notify Customer when the installed Product(s) will be ready for testing and acceptance, inviting Customer to attend the standard tests or such tests as may have been agreed upon in writing to demonstrate compliance with the agreed specifications and/or to inspect the installation.
- 2.3.2** In case preparatory activities required and/or other requirements necessary for the proper implementation of the agreement, are not met by Customer in time and/or not in accordance with the agreements made, or Customer otherwise does not meet its obligations, MILABS has the right to terminate or dissolve the agreement or suspend the

- execution of the agreement and is entitled to charge for the costs incurred at its usual rates.
- 2.3.3** In case changes or new facts arise in previously made available data, information, requests and/or requirements MILABS at all times is entitled to dissolve, terminate or adjust the agreement to these new conditions in consultation with Customer.
- 2.3.4** In case MILABS performs on site(s) other than its own, Customer will provide facilities reasonably required, such as an office space and telecommunication facilities, free of charge.
- 2.4. Delivery**
- 2.4.1** Unless otherwise agreed, delivery of the Product(s) by MILABS will take place ExWorks (EXW) MILABS, Utrecht, The Netherlands (Incoterms 2010 issued by the International Chamber of Commerce). Customer bears the costs and risk associated with transport of the Product(s) and import of the Product(s) in the designated country.
- 2.5. Dispatch**
- 2.5.1** Full forwarding instructions must be sent with the order. The times given for dispatch are estimated and not binding; they have to be reckoned from the date of receipt of first payment or, where a Letter of Credit has been asked for, from the date of the bank's advice that it has been opened, and, if agreed, confirmed, in conformity with our requirements. We reserve the right to dispatch the ordered Product(s) as and when they are ready for dispatch; the Product(s) may be sent in partial shipments. Unless otherwise agreed, the Product(s) shall remain our property until paid for in full.

### 3. THIRD PARTY PRODUCTS

- 3.1. Third Party Products**
- 3.1.1** MILABS is entitled to provide Third Party Products or Third Party Products involved in fulfilling its obligations under any agreement. MILABS is not responsible for Third Party Products, unless otherwise agreed in writing.
- 3.1.2** In case MILABS delivers Third Party Products to Customer, in addition to these GTC also Third Party Terms apply to the agreement.
- 3.1.3** MILABS provides rights to Third Party Products under the conditions as specified in the Third Party Terms.
- 3.1.4** There will be no Maintenance, Support or other services with respect to Third Party Products, unless otherwise agreed in writing.
- 3.2. Third Party Terms and Conditions**
- 3.2.1** Third Party Terms as applicable shall, if available to MILABS, be sent upon request. Third Party Terms will be made available in the same format and language as MILABS received them.
- 3.2.2** These GTC have priority over any Third Party Terms unless otherwise indicated. In case of conflict between these GTC and Third Party Terms, MILABS will decide what provision applies.

### 4. PRICES / PAYMENTS

- 4.1. Prices and Payments**
- 4.1.1** All prices are in Euros and exclude VAT and other levies imposed by the government.
- 4.1.2** All prices on the Website, brochures, price list(s) and/or other means of communication of MILABS

- are subject to programming errors and typos. For the consequences of such errors no liability is accepted.
- 4.1.3** If the Agreement is or contains a long term contract MILABS is entitled at any time to make price changes. Customer shall be given notice at least 2 (two) months in advance of any rate or price changes. Customer has the right to terminate the Agreement, subject to a notice period of 1 (one) month at a rate or price change of more than 5%.
- 4.1.4** Notwithstanding the preceding article 4.1.3, MILABS is entitled in case of a long term agreement to increase the price annually, with up to 5%, without the opportunity for Customer to terminate.
- 4.1.5** Unless explicitly agreed upon otherwise, MILABS payment terms are as follows:
- 50% due upon order
  - 40% to be received at the date of shipment
  - 10% due with final acceptance
- 4.1.6** The fees payable to MILABS are due within 30 days after invoice date. Payments that are overdue bear interest of 1,5% per month (whereby a part of a month will be deemed to be a full month).
- 4.1.7** Any payment to MILABS will constitute a valid discharge only in so far as a bank account payable on first demand is credited in MILABS' favor for the amount concerned, irrevocably and free of charge, in the agreed currency and in any case in freely convertible and transferable funds.
- 4.1.8** Any Letter of Credit established in MILABS favor shall be opened and confirmed by banks, which have adopted the Uniform Customs and Practice for Documentary Credits issued by the International Chamber of Commerce. In case of use of a Letter of Credit, such Letter of Credit shall be in place at the date of ordering.
- 4.1.9** All MILABS's costs concerning enforced collection arising from an agreement are borne by Customer.
- 4.1.10** At late payment, in addition to the amount owed and the interest payable, Customer is obliged to full compensation of both judicial and extrajudicial collection costs, including costs for lawyers, bailiffs and collection agencies on the part of MILABS.
- 4.1.11** A claim for payment is immediately due when Customer is in a state of bankruptcy or a moratorium or complete seizure on assets of the Customer is placed, or when customer is liquidated or dissolved.
- 4.1.12** In the aforementioned cases MILABS also reserves the right to postpone implementation of the Agreement or any portion thereof without notice or judicial intervention, or to terminate or suspend an agreement, without right to compensation for damages to Customer that might occur.
- 5. INTELLECTUAL PROPERTY RIGHTS**
- 5.1. Rights of MILABS and Customer**
- 5.1.1** All intellectual property rights on all developed or made available Products, including but not limited to custom made Products or parts thereof, and the preparatory materials are held exclusively by MILABS or its licensors. Any deviation from the above is only valid if explicitly agreed upon in a written and signed document and then applies only to the Products or parts thereof mentioned in such agreement.
- 5.1.2** Customer shall only acquire the use and powers as agreed in writing or arising out of or in connection

- with any agreement with MILABS and otherwise Customer will not reproduce or disclose any information regarding the Products.
- 5.1.3** Customer is not allowed to remove or change any indication concerning copyrights, trademarks, trade names or other intellectual property rights from the Products, including any indications concerning the confidential nature and secrecy of the work, unless otherwise agreed upon in writing.
- 5.1.4** MILABS is allowed to take technical measures to protect the Products. In case MILABS by means of technical measures protected its Products, Customer is not permitted to remove or avoid these measures unless agreed upon otherwise in writing.
- 5.1.5** Every use, duplication or disclosure of Products or parts thereof outside the scope of the Agreement or usage rights granted shall be regarded as a violation. Customer will immediately be due an amount of € 10.000,-, not being subject to judicial mitigation, per infringing act and each day that this continues, payable to MILABS, notwithstanding the right of MILABS to claim full damages caused by the breach or to take other legal action in order to terminate such infringement.
- 5.1.6** Except where intended to serve as instructions for use or advertising, information in relation to the Products and their operation remains property of MILABS and may without written our consent not be utilized or copied, reproduced, transmitted or communicated to any third party. Illustrations, catalogues, colors, drawings, dimensions, statements of weight and measurements etc. made available by MILABS as printed information are only meant to present a general idea of the goods to which they refer: they are approximate only and therefore not binding.

#### Contact information

If after reading our GTC you should have questions, complaints or comments, please do not hesitate to contact us.

MILABS  
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Tel: +31 (0) 88 756 5343 Fax: + 31 (0) 88 756 9032  
[info@MILabs.com](mailto:info@MILabs.com)

For approval,

Customer:

Name:

Function:

City:

Date:

Signature: