

**Virotech Diagnostics GmbH**  
**(hereinafter called the “Company”)**  
**General Terms and Conditions of Delivery**

**Version dated 10 January 2024**

**1. Scope of application, Hierarchy**

- 1.1 These General Terms and Conditions of Delivery (“GTC”) apply exclusively to all contracts between Company and Customer (“Customer”), and to any and all performance of Company and Customer, including all future contracts, even if these GTC are not expressly agreed to.
- 1.2 Customer’s contradictory or complementary terms are not accepted by Company even if Company does not expressly refute them. Unconditional performance by Company or acknowledgement by Company of payments will not be construed as acceptance of Customer’s terms. These will not apply unless expressly accepted by Company.
- 1.3 If other contractual provisions in an offer, order confirmation or a signed supply agreement conflict with these GTC, those other contractual provisions have priority. In all other respects the different provisions apply in parallel.

**2. Offers, Conclusion of contracts**

- 2.1 Company’s offers are non-binding unless expressly stated to the contrary in the offer. Customer’s orders are binding. Company may accept them within two weeks of receipt.
- 2.2 A contract is concluded as a result of Company accepting an order from Customer in accordance with statutory provisions by means of a written order confirmation. If an offer by Company is binding, Customer may accept that offer within the offer period.

**3. Price, Price adjustment, Invoices, Payment, Default**

- 3.1 Agreed prices are generally understood to be in Euro, unless agreed otherwise. Unless the contracting parties have concluded a specific agreement stipulating otherwise, the agreed price is quoted ex works, in particular excluding packaging and transportation, and plus statutory value added tax.
- 3.2 If costs which are the basis of Company’s calculation change following the conclusion of a contract, in particular the cost of labour, equipment, raw materials or power supply, or due to exchange rate fluctuations, Company will make such adjustment to the agreed price as corresponds to the change in profit originally calculated by Company. In such an eventuality Company will notify Customer of the change in price, and provide Customer immediately with a reasonable explanation of the change in costs. The change in price applies upon receipt of the notification and takes effect as of the date on which the underlying costs changed. If a price increase is based on circumstances for which Company is responsible and which conflict with the duty of care and diligence of a prudent businessman, a price increase may not be implemented. If a price increase exceeds 5 %, Customer has an extraordinary right of termination without notice for two weeks from receipt of the notification by Company, except in cases of exchange rate fluctuations. Notice of termination must be made in writing. Company is not required to take or seek measures which would result in a reduction in agreed prices.

- 3.3 In the absence of any agreement to the contrary, invoices will be paid without deduction immediately upon receipt.
- 3.4 Company reserves the right to invoice Customer up to 100% of the agreed price prior to performance and to require payment in advance if Customer repeatedly fails to meet its payment obligations or duty to cooperation towards Company, or if Customer undergoes a significant deterioration in its financial circumstances which jeopardise Company’s claims.
- 3.5 If Customer fails to pay an invoice it has received within two (2) weeks of the invoice date or by the agreed payment deadline, Customer will be deemed in default without the need for a reminder. Customer is also deemed in default in accordance with statutory provisions.
- 3.6 In the event of default in payment, the statutory default interest will be owed.

**4. Offsetting, Right of retention, Assignment**

- 4.1 Customer may only offset its claims against Company’s claims or exercise rights of retention insofar as its claims / counterclaims have been finally established by a court of law, acknowledged by Company, are undisputed or at least ready for decision. Offsetting or the exercise of a right of retention is also permissible if the claim on the part of Customer and the claim on the part of Company are based in law on a reciprocal relationship.
- 4.2 Customer must not assign or transfer any claims or rights against Company to a third party. The provision in Section 354 lit. a) of the German Commercial Code (*HGB*) remains unaffected.

**5. Delivery, Passage of risk, Performance period, Force majeure, Delay in performance and acceptance**

- 5.1 Unless expressly agreed otherwise, Company will only be required to make the goods available (ex works Incoterms 2020). Customer must collect the goods as agreed, or else at the loading stations specified by Company. Company will therefore in particular not be responsible for any delivery or packaging of the goods. Even where ex works is agreed, Company will ship the goods at the behest of Customer and will insure the goods at Customer’s request and expense. Company is therefore not liable for delays in despatch, delivery, and customs clearance, in particular with regard to temperature-sensitive goods.
- 5.2 Unless expressly agreed otherwise, the risk passes to Customer as soon as Company makes the goods available as agreed. Insofar as acceptance is required by law this will be the determining factor with regard to the passage of risk.
- 5.3 Partial performance is permissible to a reasonable extent. Partial performance will not be reasonable, for example, if Customer has no interest in partial performance or if, prior to partial performance, a small quantity has not (yet) been performed or remains to be performed after partial performance.
- 5.4 Performance periods stipulated by Company are in principle not binding.

5.5 Agreed performance periods commence in principle on the date of conclusion of the contract, however

5.5.1 Not before all outstanding questions, in particular technical matters, have been clarified and it has therefore been established what Company's performance is to cover, and

5.5.2 Not before Customer has duly and in its entirety provided all cooperation necessary for performance to be rendered, and

5.5.3 Not before Customer has made any advance payment that may be due. In such cases agreed performance periods may be extended accordingly.

5.6 Modifications requested by Customer and agreed by Company, as well as force majeure, in particular unforeseen and unavoidable events for which Company is not responsible (e.g., pandemics, strikes, unforeseeable difficulties in the procurement of materials and power supplies or delays in transit, and official measures) will extend performance periods accordingly and agreed times of performance will be postponed appropriately.

If the force majeure event is not just of temporary nature, both contracting parties will have a right of withdrawal. In such an eventuality claims in damages will be precluded in the absence of fault. Company will inform Customer of the commencement and ending of force majeure as soon as possible.

Notwithstanding the above provisions the parties agree, in light of the coronavirus crisis that occurred in the year 2020, that an unexpected situation can always arise in which Company through no fault of its own, although still able to fulfil its contractual obligations, finds that its performance is not only marginally impeded so that Company is justified in suspending performance for the duration of that impediment and then resuming it once the impediment has been eliminated. The parties agree that in such an eventuality Company will have the right to temporarily suspend performance.

5.7 Company's liability in damages for delays in delivery is exclusively governed by clause 8 of these GTC.

If collection or despatch is delayed at the request or due to the fault of Customer, Company will store the goods at Customer's expense and risk. Company may charge for storage on a weekly basis in the amount actually incurred subject to a minimum of 0.5 % of the net value of the goods stored. Customer will be at liberty to collect the goods stored at its own expense and risk.

## 6. Retention of title

6.1 Company retains title to goods supplied until payment has been made in full ("Retained Goods"). Customer is required to treat Retained Goods with care and, in particular, insure them at Customer's own expense for loss, damage, water and fire at replacement value. Customer's rights under its insurance cover are hereby assigned to Company, which accepts same. The assignment is subject to the condition subsequent of the acquisition of title by the Customer.

6.2 Customer is entitled to resell or process Retained Goods or combine same with other products in the ordinary course of business. However, Customer hereby assigns to Company in full and in advance all claims that it might have against a customer or third party as a result of such resale, processing or combination for such customer. This assignment encompasses in particular those claims against credit institutions that Customer derives from payments by its customers. Company accepts such assignment.

The processing and combination of Retained Goods by Customer will always be undertaken on behalf of Company without imposing any obligation on Company.

6.3 Customer may recover claims assigned to Company as long as Customer meets its payment obligations. If Customer fails to meet its payment obligations, Company may assert its right of ownership to the Retained Goods and require them to be handed over without Company having to

rescind the contract.

6.4 Customer must not transfer or pledge Retained Goods as security without the written consent of Company.

6.5 If the value of security exceeds Company's claims by more than 10 %, then Company will release such security as requested and selected by Customer.

## 7. Notice of defects, Warranty, Warranty period

7.1 Customer must inspect the goods immediately upon delivery. If such inspection reveals defects, Customer will be obliged to notify Company thereof immediately and in any event within no more than five (5) working days of receiving the goods. If a defect manifests at a later stage, Customer must also notify Company thereof immediately and in any event within no more than five (5) working days of its discovery. In all other respects Section 377 of the German Commercial Code (*HGB*) applies.

7.2 All notices of defect by Customer must be sent by email to the following email address of Company:

[product\\_support.frankfurt@eu.goldstandarddiagnostics.com](mailto:product_support.frankfurt@eu.goldstandarddiagnostics.com)

In the absence of any agreement to the contrary, any deviations in quality, colour, dimensions, quantity, weight or equipment that are customary in the trade, or of minor value and unavoidable for technical reasons or due to conformity with standards will not constitute defects.

7.3 The quality owed is determined exclusively by the expressly agreed performance features and specifications. Company does not assume any warranty over and above such quality, in particular for a specific application or fitness for a specific use, period of use or durability.

7.4 The goods or product may only be used as duly supplied and properly installed, maintained and used in accordance with its intended purpose. The intended purpose in this sense means the use for which a device is intended according to the data supplied by the manufacturer on the label, in the instructions for use or in promotional or sales materials or statements or as specified by the manufacturer in the performance evaluation.

7.5 Insofar as Company's performance is defective and notice is given by Customer in accordance with clause 7.1 of these GTC, Company may choose at its own discretion whether to remedy the defect or render faultless performance. Company must always be given an opportunity to do so within a reasonable period unless the setting of a deadline is expendable. If subsequent performance fails or is expendable, Customer may rescind the contract, reduce the agreed price or claim damages provided the statutory requirements are met and, in the case of damages, the additional requirements under clause 8 of these GTC are satisfied.

7.6 If Company sells used goods to Customer and if these goods are not intended for use by a consumer within the meaning of Section 13 of the German Civil Code (*BGB*), any and all claims of Customer against warranty are excluded. This does not apply to any liability of Company in damages, which is governed exclusively by clause 8 of these GTC.

7.7 The warranty period is twelve (12) months from the date of delivery of the goods or – insofar as acceptance is required by law – from the date of acceptance. In cases under Sections 438 para. (1) Nos. 1 and 2, 438 para. (3), 634 lit. a) para.(1) No. 2, and 634 lit a) para. (3) of the German Civil Code (*BGB*) the limitation period provided therein applies. Where Company is liable in damages under a warranty pursuant to clause 8 of these GTC, the warranty period with regard to the claim in damages is governed by statutory provisions.

## 8. Company's limited liability in damages

8.1 If Company, its statutory representatives, employees, or agents are in breach of duty, in particular a duty under the contractual relationship, with gross negligence or wilful intent, or should commit a tortious act with gross negligence or wilful intent, Company will be liable for the resultant damage to Customer in accordance with statutory provisions.

8.2 Insofar as Company, its statutory representatives, employees, or agents are

in breach of duty due to simple negligence, Customer's claims in damages against Company of any kind and on any grounds whatsoever, in particular for breach of duty under the contractual relationship or in tort, are excluded. This does not apply in the event of a breach of a material contractual obligation due to simple negligence. In that eventuality liability is limited to foreseeable damage typical of the contract concerned. A material contractual obligation in this sense means one the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which Customer regularly relies and may rely.

8.3 The aforementioned exclusion and/or limitation of liability does not apply in the event of liability based on culpable loss of life, personal injury or damage to health, nor in the event of liability based on fraudulent concealment of a defect, in the event of liability based on breach of a guarantee of quality (Section 443 of the German Civil Code (*BGB*)), or in the event of liability under Product Liability Act or German Medicines Act.

8.4 The statutory rules on burden of proof are not affected by the above rules.

## **9. Rights over materials provided**

9.1 Company retains title to all documents, records and other items belonging to Company which Company provides to Customer in the course of performance of the contract, such as documents concerning the goods, texts, drafts, drawings, calculations etc. and to the information contained therein (together called "**Materials**"), unless Company has transferred title to Materials to Customer by way of a contractual agreement.

9.2 All copyright, registered designs, trademarks, patents, utility models and other industrial property rights over Materials remains the exclusive property of Company. Customer must not make Materials available to third parties or pass them on to third parties nor may it reproduce same for that purpose.

9.3 Reproductions of Materials are only permitted if expressly agreed in writing. Company may require Materials to be returned at any time. Customer must return Materials to Company at the latter's request. In such an eventuality Customer must destroy any copies and ensure that they are completely destroyed.

## **10. Confidentiality of business secrets**

10.1 Both contracting parties are obliged to safeguard all of the other contracting party's trade secrets that come to their attention in the course of their collaboration and to treat as confidential all documents and information relating thereto and only use same in the performance of the contract. This requirement applies for as long as the other contracting party, which must first agree to disclosure to any third party, considers the documents and information to be of a sensitive nature and in any event for at least five (5) years beyond the end of the contractual relationship. Business partners, agents and the parties' own staff are to be bound by the same obligation even after they have left. Any more extensive statutory claims remain unaffected.

10.2 The duty of confidentiality does not extend to information which was already known at the time of its communication or when it came to their attention, which is public knowledge, which the other contracting party has agreed in writing to disclose, which the contracting party concerned has lawfully received from a third party without any duty of confidentiality being imposed, or which the contracting party concerned is required to disclose to third parties by law, in particular in the course of judicial proceedings or under an official order. In the event of an obligation to disclose the contracting party concerned must inform the other contracting party of that requirement as soon as it becomes known.

## **11. Subcontractors, Place of performance, Applicable law, Jurisdiction, Severability clause**

11.1 Company may engage third parties or subcontractors in the performance of any contract.

11.2 In the absence of any agreement to the contrary the place of performance for all performance under the contract is the registered office of the Company.

11.3 German law alone applies to the exclusion of private international law and the UN Convention on the International Sale of Goods.

11.4 The place of international jurisdiction is Germany. The exclusive place of local jurisdiction is Frankfurt am Main if the Customer is a merchant, a legal entity under public law or a special fund governed by public law. Company may also bring court action at Customer's general place of jurisdiction.

11.5 If a provision in these GTC is or becomes invalid, unenforceable or incomplete, the validity of the remaining provisions will not be affected thereby.

## **12. Minimum Handling Fee**

### **12.1 National Purchase Orders**

For all national purchase orders with a total value under €500, a minimum handling fee of €250 will be charged.

### **12.2 International Purchase Orders**

For all international purchase orders with a total value under €1000, a minimum handling fee of €500 will be charged.

### **12.3 Exemptions**

Purchase orders exceeding the specified thresholds will be exempt from the minimum handling fees outlined above.

### **12.4 Payment**

The minimum handling fees are in addition to the total order value and must be settled along with the invoice for the respective purchase order and are listed on the invoice.