

## IBIS Technologies - International Terms of Delivery

Version 2011/8

### GENERAL

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**1.1** In these Terms: The "Buyer", means the person, firm, company or other organization who or which has ordered Products and/or Services from IBIS; "IBIS" means IBIS Technologies bv with an address at Pantheon 5, 7521 PR Enschede, The Netherlands; to "Contract" means any contract for the sale and purchase of Products and/or Services between IBIS and the Buyer being any written quotation of IBIS which is accepted by the Buyer or any written order of the Buyer which is accepted by IBIS whichever first occurs; The " Instruments" means all items manufactured or supplied by IBIS which are of a capital nature that require electricity for their operation including without limitation, surface plasmon resonance equipment, auto samplers, spotters, spin coaters, computers and printers. The "Other products" means all items manufactured or supplied by IBIS over than Instruments including without limitation, sensing devices, chemicals, software and spare parts. The "Services" means all services performed by IBIS; The "Products" means the instruments, Other Products or Services agreed to be supplied by IBIS; The "Incoterms" means the International rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made; and the "Euro" means the currency adopted as the intended single currency of the European Monetary Union.

**1.2** These Terms shall be incorporated into each Contract and shall govern each Contract to the exclusion of any Terms of the Buyer unless expressly accepted by IBIS in writing. These Terms may not be varied or waived except with the express written agreement of IBIS. The failure of IBIS to enforce its rights under the Contract at any time for any period of time shall not be accepted as a waiver of any such rights.

**1.3** Without prior written notification by IBIS, all Products of IBIS are only to be used for R&D purposes and not for diagnostic, drug or food use.

### PRICES AND QUOTATIONS

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**2.1** The price of the Products and/or Services will be IBIS's quoted price exclusive of any duties and exclusive of value added or other taxes. All quotations issued by IBIS for the supply of Products and/or Services shall remain open for acceptance for the period stated in the quotation or, if none is stated, for ninety (90) days. In all other cases, prices payable are those currently in effect.

**2.2** Notwithstanding Terms 2.1 or 5.1, unless otherwise agreed in writing, IBIS shall be entitled to make extra charges for all applicable handling, freight, containment, packaging, insurance or similar costs.

**2.3** IBIS shall not modify prices at any time before delivery to the Buyer unless to reflect any changes to its costs resulting from any alteration in or addition to the Buyer's requirements.

**2.4** Payment obligations arising under these Terms will be expressed in Euro's. Any translation if needed, shall be made at the official rate of exchange recognized for that purpose by the central bank of such country.

### PAYMENT

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**3.1** Unless otherwise agreed in writing payment of all invoices shall be made to IBIS In full in Euro's no later than thirty (30) days from the date of invoice.

**3.2** In the event of late payment IBIS reserves the right:

**3.2.1** to suspend deliveries and/or cancel any of its outstanding obligations under the Contract; and

**3.2.2** to charge interest to cover administrative and other associated costs in relation to the late payment at an annual rate equal to 12 % on all unpaid amounts calculated on a day to day basis until the actual date of payment.

**3.3** The Buyer shall have no right to set off any amounts owing to or alleged to be owing to it by IBIS against unpaid

invoices due to IBIS.

**3.4** Any claim or query in respect of the invoiced price must be notified to IBIS by the Buyer within the credit period referred to in Condition 3.1.

#### **CHANGES**

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**4.1** IBIS reserves the right to make any change on prior notice in the specification of the Products which does not materially affect the installation, performance or price thereof. The Buyer shall confirm or cancel any order promptly on receipt of such notice.

**4.2** Subject to Condition 4.1, if IBIS shall cease to manufacture any Products ordered by the Buyer, it shall give notice of the fact in writing to the Buyer (but shall not be liable for any loss or damage occasioned thereby to the Buyer) whereupon the Buyer will have the option, to be exercised within twenty one (21) days of the date of such notice either to take equivalent products (if available from IBIS) or to cancel its order without further liability upon IBIS or the Buyer. If the Buyer has not exercised such option within such period, the order shall be deemed to be continued with the equivalent products.

#### **DELIVERY**

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**5.1** Unless otherwise agreed in writing, delivery shall occur when the products are passed to the Buyer or its representative. Any term of delivery shall be construed according to the latest edition of Incoterms. If no other term of delivery is specified the delivery shall be \*Ex Works', Enschede.

**5.2** The Buyer shall not be entitled unreasonably to delay delivery or refuse to accept delivery. If the Buyer fails to give IBIS adequate instructions or fails to comply with the provisions of Term 11.1 (in whole or in part) or fails to accept delivery of the Products within a reasonable period after receiving notice from IBIS that they are ready for delivery, IBIS may dispose of the Products, store them at the Buyer's expense or otherwise deal with the Products in any way it thinks fit. The risk of loss of or damage to the Products (other than loss or damage caused by the negligence or default of IBIS or its employees or agents) shall be declared to the Buyer at the end of such period.

**5.3** While IBIS will use all reasonable endeavors to avoid and to give the Buyer sufficient notice of any delay in delivery on the notified delivery dates, failure to deliver by the specified date will not be a sufficient cause for cancellation, nor will IBIS be liable for any direct, indirect, consequential or economic loss or damage due to delay in delivery however caused. Where delivery is to be made by installments, delay in delivering one installment shall not entitle the Buyer to refuse to accept the remaining installments.

**5.4** The Buyer shall carefully examine the Products on delivery and shall notify to IBIS within five (5) working days in writing of any short delivery or defects reasonably discoverable on careful examination. IBIS shall at its option replace or repair any defective Products or refund the purchase price of any undelivered Products failing within this paragraph but shall not be under any other liability to the Buyer in this respect. If IBIS does not receive any such notification, it shall be discharged from all liability (whether arising in negligence or otherwise) arising from non-delivery, short delivery or from such defects.

**5.5** The Buyer shall promptly notify IBIS in writing in the event the Products do not arrive within five (5) days of their anticipated receipt.

**5.6** Where delivery of any Product requires an export license or other authorization before shipment, IBIS shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

#### **RISK AND TITLE**

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**6.1** Without prejudice to Term 5.2, the Products supplied under a Contract shall be at the Buyer's risk on delivery.

**6.2** Full legal and equitable title and interest in the Products shall remain in IBIS and shall not pass to the Buyer until IBIS shall have received payment in full of all amounts due and owing from the Buyer to IBIS for the time being (including any interest accruing and owing to IBIS) and until such receipt:

**6.2.1** the Buyer agrees to store the Products in such a way that it is readily identifiable as the property of IBIS and to maintain the Products in good working order and condition unless prior written permission has been given by IBIS to refrain from this; and,

**6.2.2** the Buyer agrees not to dispose of or, without prior written permission of IBIS, to resell the Products until it has been paid total.

**6.3** The Buyer shall at the request of IBIS assist it in taking any measures necessary to protect IBIS's title to the Equipment in the country concerned.

**6.4** Nothing in this Condition shall confer any right upon the Buyer to return the Equipment or to refuse or delay payment for it.

### **SERVICES**

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**7.1** Where IBIS is to provide Services the Buyer shall ensure that:

**7.1.1** adequate and safe facilities and procedures exist at its premises and that IBIS is properly notified in advance of any relevant regulations or statutory requirements that affect such premises;

**7.1.2** IBIS is notified in advance of any relevant national or international regulations, consents or statutory requirements it has to comply with; and

**7.1.3** the Buyer shall comply with all relevant regulations and provide all necessary licenses and certificates.

**7.2** IBIS shall be entitled to refuse to perform the Contract if the provisions of Condition 7.1 are not strictly complied with by the Buyer.

### **WARRANTY**

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**8.1** Other Products - IBIS warrants that its Goods meet specifications at the time of shipment. All warranty claims on other Products must be made as soon as possible and in any event within fourteen (14) days of receipt by the Buyer; all claims shall be deemed waived in the event the Buyer fails to notify IBIS within such period. IBIS's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to replacement or refund at the sole option of IBIS.

**8.2** Instrument - Subject to Term 15 and to any special warranty, IBIS's instruments of its own manufacture or that are manufactured by others according to IBIS specifications are warranted from date of shipment to be free of defects in workmanship or materials under normal usage for a period of one year. All claims shall be deemed waived in the event the Buyer give to notify IBIS within such period. Computers, printers and their spare parts or other goods which are not manufactured but are distributed by IBIS are covered by whatever warranty is provided by the original manufacturer. IBIS's sole liability and Buyer's exclusive remedy for a breach of this warranty is limited to replacement or refund at the sole option of IBIS.

**8.3** Services - IBIS warrants that all Services will be carried out with reasonable care and skill but IBIS's sole liability for breach of this warranty shall be at its option give credit for or re-perform the Services in question. This warranty shall only extend for a period of sixty (60) days after the completion of the Services.

**8.4** All other warranties, representations, terms and conditions statutory, express, implied or otherwise) as to quality, condition, description, merchantability or fitness for purpose (except for the implied warranty of title) are hereby expressly excluded.

### **LIMIT OF LIABILITY**

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**9.1** IBIS shall have no liability under the warranties contained in Term 8 In respect of any defect In the Products arising from: specifications or materials supplied by the Buyer; fair wear and tear willful damage or negligence of the Buyer or its employees or agents; abnormal working conditions at the Buyer's premises; failure to follow IBIS's instructions (whether oral or in writing); misuse or alteration or repair of the products without IBIS's approval; or if the total price for the products has not been paid.

**9.2** Except as expressly provided in these Terms, IBIS shall not be liable to the Buyer by reason of any representation, or any express or implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss or damage (whether for loss of profit or otherwise), costs expenses or other claims for compensation whatsoever (and whether caused by the negligence of IBIS, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Buyer.

**9.3** IBIS shall not be bound by any representations or statements on the part of its employees or agents whether oral or in writing and including those made in catalogues and other promotional material (excluding technical details and specifications) except where such representations or statements are expressly made part of the Contract.

**9.4** The Buyer acknowledges that the price of the Products reflects the limitations contained in this Term 9.

### ***INTELLECTUAL PROPERTY RIGHTS***

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**10.1** Where the Buyer supplies designs, drawings and specifications to IBIS to enable it to manufacture non-standard or custom made Products, the Buyer warrants that such manufacture will not infringe the intellectual property rights of any third party.

**10.2** The Buyer undertakes without prior written approval not to use any trademarks or trade names applied by IBIS to the products nor to do or permit anything whereby the goodwill and reputation of such trademarks or trade names is prejudiced or damaged.

**10.3** All copyright, patent trade secret and other proprietary and intellectual property rights in the Products and information which IBIS may provide to the Buyer or its agents in relation to the Products and/or Services, shall (as between the parties) at all times remain vested in IBIS or the manufacturer of the Products and the Buyer shall not acquire any intellectual property rights or license relating to the Products and/or Services and may not copy or imitate the Products.

### ***HEALTH AND SAFETY***

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**11.1** Where IBIS is to provide Products or perform Services, it is the duty of the Buyer to ensure that:

**11.1.1** the specification of the Products purchased hereunder is suitable and safe for the intended use or environment of use;

**11.1.2** the Products are handled in a suitable and safe manner and are applied and installed in accordance with IBIS's application and installation instructions; and

**11.1.3** all relevant safety information relating to Products or Services is passed on to IBIS and to other users (including purchasers and users of other goods and equipment into which the Products are incorporated).

**11.2** The Buyer warrants to IBIS that the site where it intends to use or take delivery of the Products or where Services are performed is licensed in accordance with any relevant local regulations.

### ***INDEMNITIES***

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**12.1** The Buyer shall hold harmless and indemnify IBIS in respect of any claim which may be made against IBIS:

**12.1.1** arising in connection with any breach of the duty contained in Term 11.1.

**12.1.2** that the use to which the Products are put infringes the patent, copyright or other intellectual property rights of any third party and/or

**12.1.3** arising out of a failure by the Buyer to observe the terms of the Contract.

### ***INSOLVENCY***

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**13.1** In the event that the Buyer becomes bankrupt or makes any composition for the benefit of creditors or, being a company, makes any voluntary arrangement with its creditors or becomes subject to an administrative order or goes into liquidation whether voluntary or compulsory (other than for the purposes of recondition or amalgamation) or an encumbrancer takes possession of or a receiver is appointed in respect of any of its assets IBIS shall be entitled :

**13.1.1** immediately to terminate the Contract without notice and without prejudice to any other rights of IBIS hereunder; and/or

**13.1.2** to enter the premises of the Buyer with such transport as may be necessary and repossess any of the Equipment to which it is entitled under Condition 6.3.

### ***FORCE MAJEURE***

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**14.1** IBIS shall be excused from/not be liable in respect of the performance or non-performance of any of its obligations if and in so far as, and for so long as, such performance is delayed, hindered or prevented by any circumstances beyond its reasonable control including but not limited to strikes, lock-outs or labor disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, compliance with requirements of any government port or international authority, plant breakdown, computer or other equipment failure and inability to obtain equipment, fuel power, materials or transportation.

**14.2** IBIS shall promptly notify the Buyer if an event of force majeure arises and during the period in which IBIS is prevented from performing the Contract the Buyer shall be entitled after giving IBIS written notice of its intention to do so to purchase Products elsewhere at its own cost and risk and IBIS shall not be obliged to make up deficiencies which arise as a result.

**14.3** If an event of force majeure exceeds one month IBIS may cancel the Contract without liability.

### ***COMPUTER PROGRAM LICENCE***

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**15** Where IBIS's instruments are intended to be used in conjunction with particular licensed computer programs supplied by IBIS, the use of any other program or unauthorized modification of a licensed computer program shall void IBIS warranty under Condition 8.2. The Buyer and any users authorized by the Buyer are hereby granted a non-exclusive, non-transferable license to use the licensed computer programs only in conjunction with the instruments supplied by IBIS. The licensed computer programs is supplied only in machine-readable object code form and is based upon the proprietary confidential information of IBIS. No rights are granted under this license or otherwise to decompile, produce humanly readable copies of, reverse-engineer, modify or create any derivative works based upon the licensed computer programs. All other terms and conditions of IBIS's limited warranty shall apply to the licensed computer programs.

### ***GOVERNING LAW***

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**16** The Contract shall be governed by and construed in accordance with the substantive laws of The Netherlands and the parties hereby submit to the non-exclusive jurisdiction of the courts of The Netherlands.