General Terms and Conditions – status as of November 2019

for the purchase of goods, in particular publications, from the Fraunhofer-Informationszentrums Raum und Bau IRB, Stuttgart.

1. Subject; Contract Partner

1.1 Fraunhofer-Informationszentrums Raum und Bau IRB (hereinafter referred to as “Fraunhofer IRB”) offers interested parties to purchase publications (hereinafter referred to as “goods”), in particular from Fraunhofer IRB Verlag and Fraunhofer Verlag. Goods are delivered in various formats, namely as print editions, as digital content for electronic procurement (e.g. by download or as a push service) or on data carriers (e.g. CD/DVD), and as single documents or, for magazines, databases and leaflets, also by subscription.

1.2 Fraunhofer IRB is a legally dependent entity of

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V., Hansastr. 27c, 80686 München, Registry Court: Amtsgericht München, Register of Associations No. VR 4461 (hereinafter referred to as: “Fraunhofer”).

Purchase agreements for goods are therefore concluded with Fraunhofer.

1.3 Contact and correspondence address for all questions in connection with the ordering of goods is

Fraunhofer-Informationszentrums Raum und Bau IRB
Nobelstraße 12, 70569 Stuttgart

Customer service is available at:
Telephone: +49 711 970-2500
Fax: +49 711 970-2508
Email: irb(at)irb.fraunhofer.de

1.4 The following provisions apply to agreements on the purchase of goods. Any other divergent, conflicting or supplementary conditions preformulated by the customer shall not constitute an inherent part of this agreement unless Fraunhofer IRB provides its express consent thereto.

2. Orders; Entering into an Agreement; Wording of the Agreement

2.1 Orders are accepted by telephone, post, fax or email. The agreement is then entered into by mutual declarations made in textual form (e.g. letter, fax, email) within the meaning of Section 126b of the German BGB [Bürgerliches Gesetzbuch, engl.: Civil Code] or orally (e.g. by phone).

2.2 For orders via the online shop of Fraunhofer IRB, the following shall apply:
Presentation of the goods in the online shop of Fraunhofer IRB does not constitute a legally binding offer to enter into an agreement on the purchase of the goods. Rather, it constitutes a non-binding invitation to customers to order goods via the online shop. Only by clicking the button “Kaufen (Buy)” the customer makes a legally binding offer to purchase the ordered goods, in the meaning of Section 145 BGB. The agreement is concluded by express acceptance of the offer by email (order confirmation) or through sending an invoice or through delivery of the ordered goods. The electronic confirmation of the receipt of the order, which the customer automatically receives subsequent to his order via screen display does not represent acceptance.

2.3 The text of the agreement will be stored on the internal systems of Fraunhofer IRB. When placing an order in the online shop, the customer will receive his order information and these General Terms and Conditions by email. The General Terms and Conditions may also be viewed at any time on the internet
pages of the online shop. After the order has been completed, the order information will no longer be available on the internet.

2.4 The contract languages are German and English. There is also a German version of these general terms and conditions. In the event of inconsistencies between the different language versions, the German version takes precedence over the English version.

3. Delivery

3.1 Unless otherwise agreed, goods in printed form or on physical data carriers shall be delivered by sending the goods to the delivery address specified by the customer. Fraunhofer IRB reserves the right to have the goods delivered by a third party.

3.2 For digital content the customer receives electronically (e.g. by download), delivery takes place by providing a link. The link has to be activated by the customer in order to start the download on the selected storage medium. The customer must ensure that he has suitable internet access. Costs incurred in receiving the goods (e.g. connection and/or telecommunications charges) shall be borne by the customer.

3.3 Delivery of physical goods is subject to the availability of the goods. If the goods are not in stock or have not yet been published at the time of the order, the customer will receive notice of the expected date of delivery and the order will be marked as ‘pending’ by Fraunhofer IRB. As soon as the goods are available, they will be delivered to the customer without further notification. In case of new publications that are not yet deliverable, or out-of-print publications of which a new edition is in preparation, the order of the new publication/new edition will be marked as ‘pending’. In the event of non-availability, the customer will be informed by Fraunhofer IRB that delivery is not possible. Payments that have already been made by the customer will then be reimbursed without delay.

3.4 In the case of loose-leaf editions and publications on data carriers (e.g. CD/DVD) the most recent, updated edition will be delivered.

3.5 Unless otherwise stated in the online shop, the customer shall bear the shipping costs incurred for the delivery. Unless otherwise agreed shipping costs shall be also charged on deliveries to booksellers, other traders and wholesale traders.

3.6 If the customer is a merchant within the definition of the German HGB [Handelsgesetzbuch, engl.: Commercial Code], a legal entity under public law or a special fund under public law, the place of performance of the services of Fraunhofer shall be the registered office of Fraunhofer IRB. Place of performance for customer payments shall be Munich.

3.7 If, at the request of the customer, the goods are delivered to a place other than the place of performance, the risk of loss or damage to the goods shall be transferred to the customer at the time the goods are handed over to the shipping company. This shall only apply where the customer is an entrepreneur. An entrepreneur within the definition of the German BGB is any person who, when entering into a legal transaction, acts in exercise of his trade, business or profession (Section 14 BGB).

3.8 In the event of defective or unsuitable packaging, Fraunhofer shall provide compensation for damage during shipment due to such packaging and shall bear the costs of returning the damaged goods.

4. Copyright and Rights of Use

The goods delivered are protected by copyright. Copyright protection applies regardless of the manner and form of delivery of the goods. In addition, the following shall apply with regard to digital content:

4.1 The customer shall be granted a simple, non-transferable right to use the digital content for an unlimited period. The right shall only be granted for non-commercial purposes. The customer may not distribute (Section 17 UrhG [Urheberrechtsgesetz, engl.: German Copyright Act]), exhibit, make publicly available (Section 19a UrhG) or in any other way publicly reproduce the purchased work, whether in digital or
printed form, either in whole or in parts. The right of reproduction (Section 16 UrhG) shall be restricted to acts of reproduction that exclusively serve private use.

4.2 Non-commercial use includes private or – in the event of purchase by an entrepreneur within the meaning of Section 14 BGB – internal company use. The latter shall be permitted only for the customer’s own use at a single workstation, i.e. the work may only be stored on one computer or electronic displaying device and shall only be used at one workplace.

4.3 Any use other than private or internal company use, in particular any commercial use, shall require the express consent of Fraunhofer IRB. Consent must be granted in textual form within the meaning of Section 126b BGB (e.g. letter, fax, email).

4.4 The customer shall not be entitled to remove copyright notes, brand names or other references to protective rights from the goods or to edit the goods. In particular, he shall not be entitled to modify the content or presentation of the goods or to translate or redesign the goods.

4.5 When digital content is purchased, the customer’s own use at a single workstation is permitted, i.e. the work may only be stored on one computer or electronic displaying device and may only be used at one workplace (“single-user licence”).

4.6 Customers that are entrepreneurs within the definition of Section 14 BGB also have the option of purchasing a “multi-user licence” for digital content used for non-commercial, company-internal purposes. Purchase of a multi-user licence authorises the simultaneous use of the content by more than one person. To prepare the order for such a multi-user licence, an individual request from the entrepreneur is required (via email, telephone, fax or post to the contact data of Fraunhofer IRB listed in clause 1.3 of these General Terms and Conditions), indicating the desired scope of use. Fraunhofer IRB will then inform the customer of the price of the requested scope of use and the specific steps to be taken to order the desired multi-user licence via the online shop. This notice from Fraunhofer IRB does not represent a legally binding offer as defined in Section 145 BGB. The provisions of clause 2.2 of these General Terms and Conditions shall also apply to an order for a multi-user licence.

4.7 Fraunhofer IRB shall be entitled to individually personalise digital content with visible and invisible markings to facilitate the identification and legal prosecution of the original customer in the event of wrongful use.

4.8 The customer shall not be entitled to remove or circumvent existing protective mechanisms against the unauthorised use of digital content (including markings pursuant to clause 4.7 of these General Terms and Conditions), unless this is necessary to achieve error-free usage. Nor may copyright notices, serial numbers or other characteristics serving to identify the software be removed or altered. The same shall apply to suppression of the monitor display of such characteristics.

5. Statutory Right of Withdrawal for Consumers; Information on the Exercise of the Right of Withdrawal

5.1 If the customer is a consumer within the meaning of the German BGB, he has a statutory right of withdrawal. Information on this right is provided below. A consumer is a person who enters into a legal transaction for a purpose that cannot be attributed to his commercial or independent professional activity (Section 13 BGB).

<table>
<thead>
<tr>
<th>Right of Withdrawal from Agreements on the Delivery of Goods</th>
</tr>
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<tbody>
<tr>
<td>You have the right to withdraw from this agreement within fourteen days without giving grounds.</td>
</tr>
<tr>
<td>The withdrawal period shall be fourteen days from the date on which you or a third person named by you, who is not the shipping agent, has taken possession of the goods.</td>
</tr>
</tbody>
</table>
In order to exercise your right of withdrawal, you must notify us of your decision to withdraw from this agreement by means of an unequivocal declaration (e.g. a letter sent by post, fax or email). This notice must be sent to us:

Fraunhofer-Informationszentrum Raum und Bau IRB
Nobelstraße 12, 70569 Stuttgart
Telephone: +49 711 970 2500, Fax: +49 711 970 2508
E-Mail: irb(at)irb.fraunhofer.de

You can use the attached model withdrawal form for this; however, use of this form is not mandatory. In order to comply with the withdrawal period, it is sufficient for you to send the notification of exercising the right to withdraw before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this agreement, we shall reimburse you all payments we have received from you including delivery costs (except any additional costs arising from your choice of a form of delivery other than the least expensive standard delivery we offer) without delay and no later than fourteen days from the date on which we receive your notice of your withdrawal from this agreement. We will use the same means of payment used by you in the original transaction for such refund, unless expressly agreed otherwise with you and in no case will you be charged for such refund.

We may refuse to refund until we have received the goods or until you have provided evidence that you have returned the goods, whichever is the earlier date. You must return the goods to us without delay and in any event no later than fourteen days from the date on which you notify us of withdrawal from this agreement. The time limit is met if you send the goods before expiry of the time limit of fourteen days.

You shall bear the immediate cost of the return of the goods.

You shall only be liable for any loss in value of the goods if this loss of value is due to handling of the goods that is not necessary to examine their condition, properties and functionality.

Model Withdrawal Form

If you wish to withdraw from the agreement, please fill out this form and send it back.

To
Company: Fraunhofer-Informationszentrum Raum und Bau IRB
Address: Nobelstraße 12, 70569 Stuttgart
Email: irb(at)irb.fraunhofer.de
Fax: +49 711 970 2508

I/we hereby withdraw from the agreement I/we (*) concluded for the purchase of the following goods (*):

Ordered on (*)/received on (*)

Name of the consumer(s):

Address of the consumer(s):

Signature of the consumer(s): (only if notice of withdrawal is made on paper)

Date:

(*) Please delete as applicable

End of information on withdrawal
Right of Withdrawal from Agreements on Digital Content

You have the right to withdraw from this agreement within fourteen days without giving grounds.

The withdrawal period shall be fourteen days from the date the contract was concluded.

In order to exercise your right of withdrawal, you must notify us of your decision to withdraw from this agreement by means of an unequivocal declaration (e.g. a letter sent by post, fax or email). This notice must be sent to us:

Fraunhofer-Informationszentrum Raum und Bau IRB
Nobelstraße 12, 70569 Stuttgart
Telephone: +49 711 970 2500, Fax: +49 711 970 2508
E-Mail: irb(at)irb.fraunhofer.de

You can use the attached model withdrawal form for this; however, use of this form is not mandatory. In order to comply with the withdrawal period, it is sufficient for you to send the notification of exercising the right to withdraw before the expiry of the withdrawal period.

Consequences of Withdrawal

If you withdraw from this agreement, we shall reimburse you all payments we have received from you including delivery costs (except any additional costs arising from your choice of a form of delivery other than the least expensive standard delivery we offer) without delay and no later than fourteen days from the date on which we receive your notice of your withdrawal from this agreement. We will use the same means of payment used by you in the original transaction for such refund, unless expressly agreed otherwise with you and in no case you will be charged for such refund.

The right of withdrawal expires in the case of a contract for the delivery of digital content that is not on a physical data carrier, even if we have begun to execute the contract after you have expressly agreed that we begin to execute the contract before the expiry of the withdrawal period and you have confirmed your knowledge that you lose your right of withdrawal through your consent with the commencement of the execution of the contract.

Model Withdrawal Form

If you wish to withdraw from the agreement, please complete and return this form.

To
Company: Fraunhofer-Informationszentrum Raum und Bau IRB
Address: Nobelstraße 12, 70569 Stuttgart
Email: irb(at)irb.fraunhofer.de
Fax: +49 711 970 2508

I/we hereby withdraw from the agreement I/we (*) concluded for the purchase of the following goods (*):

Ordered on (*)/received on (*)

Name of the consumer(s):

Address of the consumer(s):

Signature of the consumer(s): (only if notice of withdrawal is made on paper)

Date:
5.2 There shall be no right of withdrawal in the event of the delivery of goods which are not prefabricated and for the production of which an individual selection or destination by the consumer is significant or goods which are clearly tailored to the personal requirements of the customer or, in the event of the delivery of audio or video recordings or computer software in a sealed package, if the seal has been removed after delivery.

5.3 Customers are requested to avoid damage and contamination of the goods and to return goods to Fraunhofer IRB, if possible in the original packaging, with all accessories and with all packaging components, (where applicable, we recommend the use of a protective outer packaging). If the original packaging is lost, the customer must make sure that the packaging is suitable to ensure adequate protection against shipping damage and to avoid claims for compensation on the ground of damage due to defective packaging. These modalities are not a prerequisite of effective exercise of the right of withdrawal.

5.4 A right of withdrawal expires according to Section 356, paragraph 5 BGB in case of a contract for the delivery of digital content that is not on a physical data carrier, if Fraunhofer IRB has already begun to execute the contract after the consumer has expressly agreed that Fraunhofer IRB begins with the execution of the contract before the expiration of the withdrawal period and the customer has confirmed his knowledge that he loses his right of withdrawal by his consent with the beginning of the execution of the contract.

6. Prices

6.1 All prices conform to the price information available in the online shop of Fraunhofer IRB.

6.2 Unless expressly provided otherwise, all prices are inclusive of statutory VAT plus costs for delivery (postage and packing).

6.3 Some goods are offered at a “preferential price” that may apply to e.g. members of a scholarly association, a professional association or subscribers to a specific journal. Information on any preferential prices can be found in the description of the respective goods at the online shop of Fraunhofer IRB.

7. Due Date; Payment

7.1 Payment shall be by credit card, on invoice or by prepayment.

7.2 In the event of payment by credit card, the purchase price shall be debited from the customer’s credit card account at the time of the order.

7.3 In the event of payment on invoice payments shall be due on receipt of the invoice unless otherwise stated in the invoice or unless other payment due dates have been agreed. Payments shall be made without deductions to the account of Fraunhofer IRB named in the invoice, stating the invoice number.

7.4 Fraunhofer IRB reserves the right to demand prepayment in specific cases, in particular when goods have to be delivered to places outside Germany. In these cases, the customer will be notified.

7.5 The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

8. Liability for Defects

8.1
Unless expressly agreed otherwise, the customer’s claims resulting from material and legal defects of the delivered goods shall be governed by the statutory provisions of the law on purchase agreements in the German BGB (Sections 433 et seq. BGB).

8.2 If the customer is a consumer within the meaning of Section 13 BGB (please see clause 5.1 of these General Terms and Conditions for the definition of 'consumer'), the statute of limitations for claims resulting from material or legal defects of the goods is 24 months from the time of receipt of the goods. If the customer is an entrepreneur within the meaning of Section 14 BGB (please see clause 3.7 of these General Terms and Conditions for the definition of ‘entrepreneur’), the statute of limitations for claims resulting from material or legal defects is 12 months from receipt of the goods.

9. General Liability

9.1 Unlimited liability: Fraunhofer shall be liable for wilful acts and gross negligence. For minor negligence Fraunhofer shall be liable according to the provisions of the German Produkthaftungsgesetz [engl.: Product Liability Act] and in case of damage resulting from loss of life, bodily injury or damage to health of a person.

9.2 Limitation of liability: Fraunhofer shall otherwise be liable in cases of minor negligence only

- in the event of a breach of a material contractual obligation, without fulfilment of which the proper implementation of the agreement is not even possible and on compliance with which the contractual partner may regularly rely (cardinal obligation), and
- limited to the amount of the damages that are foreseeable at the time the parties enter into the agreement and limited to the damages typical for the type of agreement.

This limitation of liability shall also apply in favour of vicarious agents of Fraunhofer.

10. Reservation of Ownership; Grant of Rights of Use

Ownership of the delivered goods, including but not limited to books and journals, shall only pass to the customer upon full payment of the purchase price. The grant of rights of use of the digital goods in accordance with clause 4 of these General Terms and Conditions is subject to the condition precedent of full payment.

11. Termination of Continuous Deliveries and Journal Subscriptions

11.1 Unless otherwise agreed, the customer may terminate deliveries of updates of loose-leaf editions at any time.

11.2 Subscriptions to journals at a preferential price and the updating service for CD/DVD/online databases of Fraunhofer IRB may be terminated by the customer with notice of six weeks to the expiration of the minimum subscription period. Otherwise, the subscription shall be renewed for a further 12 months. The contractual term of the subscription shall continue to be renewed unless the subscription is cancelled with notice of six weeks to the end of the relevant renewal period.

11.3 The right to terminate extraordinarily continuing obligations (subscriptions; continuous deliveries) for good cause without notice shall remain unaffected. The right to terminate an agreement for good cause includes but is not limited to cases where the customer, despite being issued with a payment reminder and a deadline, fails to meet his payment obligation in accordance with clause 7 of these General Terms and Conditions.

11.4 Any termination shall only be valid in writing.


12.1 Collateral agreements, amendments and supplements of these General Terms and Conditions shall only be effective if in writing.
12.2
If the customer is a merchant within the meaning of the German HGB (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from or in connection with agreements between Fraunhofer and the customer shall be the city of Munich.

12.3
Agreements between Fraunhofer and the customer shall be governed exclusively by German law, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

12.4
Should any provisions of these General Terms and Conditions be fully or partly invalid or lose validity through circumstances arising at a later date, the validity of the remaining provisions of these General Terms and Conditions shall remain unaffected.

12.5
The European Commission provides a platform for extra-judicial resolution of online shopping disputes (ODR platform) under http://ec.europa.eu/consumers/odr/. Fraunhofer IRB does not participate in dispute resolution procedures before a consumer dispute resolution body.