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## General Terms and Conditions for laboratory, testing and consultancy services

### These conditions apply exclusively to entrepreneurs

#### 1. General

Our following terms and conditions apply exclusively to all laboratory, testing and consultancy services provided by us to entrepreneurs as defined in Section 14 of the German Civil Code (BGB). This applies to all future transactions, even if no specific reference is made to these terms and conditions in each individual case. Contradictory conditions, or conditions of the Buyer that deviate from our terms and conditions are hereby expressly rejected. They do not represent any obligation for us even if we do not expressly reject them once again at the time of signing a contract.

#### 2. Quotes

Our quotes are subject to change with regard to the price and ability to deliver.

#### 3. Cooperation of Buyer / Order execution

1. The Buyer must immediately notify or communicate all facts that are required for the execution of the order and also fulfil his other obligations to cooperate, at his own costs.
2. The performances, information or data provided by the Buyer as well as other supplies or cooperation will not be checked by us for completeness or correctness unless an agreement has been made to the contrary.
3. We are not liable for damage to or destruction of items belonging to the Buyer if the damage or destruction takes place in the course of the proper execution of our order. Save as provided herein, claims for damages can only be made as set forth in the following Section 9.
4. Goods or materials provided by the Buyer will be returned by uninsured delivery at the cost and risk of the Buyer. Packing costs will be charged separately.
5. We are entitled to have our services executed either in whole or in part by a suitable subcontractor.

#### 4. Delivery periods

1. Delivery due dates and delivery periods are only approximate. The delivery period starts with the issuing of our order confirmation, but not before the provision of the supplies or services to be provided by the Buyer, the paperwork to be procured, or other required cooperation and also not before receipt of any agreed advance payment. If there is a delay on the part of the Buyer in fulfilling any required cooperation, the delivery time will be extended accordingly. Our legal and contractual rights of withdrawal as well as claims for damages will not be affected thereby.
2. This is subject to our own timely and correct receipt of deliveries. We are not responsible for delayed works, works not carried out properly, or works not carried out at all, if such circumstances are caused by our subcontractor, provided that no fault on our part is present. We will inform the Buyer as soon as possible about such obstacles to delivery.
3. For delays caused by Acts of God, disturbances, strikes, blockades, exhausting of raw material stocks or operational shutdowns beyond our control, and also if our subcontractors are affected by the aforementioned events, the delivery period will be extended by the period required to remedy the cause of the delay, insofar as the cause of the delay has an effect on the production or delivery of the delivery item. If long-term operational disturbances are caused as a result, we shall also have the right to completely withdraw from the contract without being subjected to any claims for compensation whatsoever. We shall inform the Buyer of the start and end of such disruptions as soon as possible.
4. If there is a delay on our part, claims for damages can be filed against us only as defined in the provisions of Section 9. Further claims for damages are excluded.



## **5. Prices**

1. The prices are quoted in euros, not including the applicable statutory turnover tax. The return of products provided by the Buyer, including packing, will be charged additionally.
2. If nothing to the contrary is agreed, the price specified in the order confirmation shall apply or - if no order confirmation was sent and no other definite price was agreed either - the price applicable at the time of delivery.
3. If a delivery period of more than four months has been agreed, we are entitled to pass on to the Buyer, in the Buyer's price, the corresponding extent of any additional cost increases for materials, personnel or the like that may have occurred in the meantime.

## **6. Payment / Exclusion of setoff / Right of retention**

1. Our invoices are payable immediately without any deductions.
2. In case of a delay in payment, the Buyer shall be liable to payment of interest on arrears of 12% p.a., however not less than the legal rate of interest on arrears in accordance with Section 288 of the BGB. Insofar as the interest rate according to clause 1 exceeds the legal rate of interest on arrears according to section 288 of the BGB, the Buyer is entitled to prove that delay damages have not been incurred, or have not been incurred in this amount. If we prove a higher level of damages due to delay, we have the right to claim such damages.
3. If there is a delay in payment by the Buyer, all receivables will be come due immediately, even if we have accepted a bill of exchange for the settlement of such payment.
4. If a significant deterioration occurs in the financial circumstances of the Buyer which endangers our claim, we are entitled to demand advance payment or reasonable security accordingly. This shall apply also if we subsequently learn of such circumstances already in existence at the time of the conclusion of the contract. If no advance payments or security are provided within the period of grace notwithstanding a reasonable extension of the original term and notification of default, we shall be entitled to cancel the contract or to claim damages for non-performance. In the aforementioned cases, payment or provision of security cannot be made contingent on the return of current bills of exchange.
5. A setoff by the Buyer against counterclaims is excluded, unless such counterclaims are legally undisputed or have been established to be legally effective. The assertion of a right of retention by the Buyer is excluded, unless such right is based on the same contractual relationship, or if counterclaims are undisputed or have been determined to be legally effective..

## **7. Acceptance**

1. The Buyer is under an obligation of immediate acceptance as soon as our services require acceptance. We can demand partial acceptance for completed parts of services.
2. Expert's reports and other intellectual services are to be considered to have been accepted if the Buyer does not notify us of any shortcomings within 30 days of receipt with specific descriptions of defects.

## **8. Warranty rights**

1. We do not provide any warranty for the correctness of the safety specifications, rules of safety, or for the correct operability of the software used by us, if and insofar as we have not ourselves created the cause because we have produced it ourselves, or it was our job to produce it.
2. In the event that a justified complaint is lodged against us, the remedial fulfilment will be either in the form of repair or replacement at our discretion, insofar as we are legally obliged to do so. For this purpose, if we require additional material as was previously provided by the Buyer, the Buyer must provide such material to us. We shall bear the costs of this only to the extent that we are legally obliged to do so. In addition, the Buyer shall have the further legal rights to withdraw from the contract and to a reduction of the purchase price, provided the legal preconditions for this have been met.
3. Claims for damages can only be filed against us if the preconditions as stipulated in Section 9 below are fulfilled. Further claims for damages are excluded.
4. Insofar as an acceptance is not required and the Buyer is a merchant, Section 377 of the German Commercial Code (HGB) is applicable. Accordingly, it is the responsibility of the Buyer to immediately examine our work and if applicable, to report any defects immediately. Otherwise, the Buyer shall lose his rights to liability for material defects.

## 9. Buyer's claims for damages

The Buyer is entitled to claim damages in accordance with the statutory provisions to an unlimited amount if

- a. these are arising from injury to life, limb or health **or**
- b. these are based on intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents **or**
- c. these are based on the German Product Liability Act **or**
- d. we have assumed a procurement risk or a guarantee and are liable hereunder **or**
- e. we are liable due to initial incapability or impossibility of performance.

If damage is only based on negligent breach of a material duty (fundamental breach of contract) by us, by any of our legal representatives or our vicarious agents, without the simultaneous existence of a claim based on the above provisions under a) to e), we shall likewise be liable for damages, however the amount shall be limited to the amount of the typically incurred and foreseeable damage. Material duties (material contractual obligations) within the meaning of the above provisions are such duties whose due fulfilment the Buyer relies upon and may also rely upon as they form the nature of the contract. Furthermore, we shall be liable if such claims for damages are covered by a third-party liability insurance policy. The legal provisions regarding the burden of proof shall remain effective. Any claims for damages in excess of the above against us, our legal representatives or vicarious agents are excluded, whatever their legal grounds may be.

## 10. Statutory limitation of claims based on quality defects

Any claims asserted by the Buyer for quality defects shall expire by limitation within one year from the date on which the statutory period of limitation begins unless:

- a. the legal statute of limitations lapses after five years or more, **or**
- b. the claims are claims for compensation of expenses under Section 479 of the BGB, **or**
- c. the defect has been maliciously concealed or is based on an intentional breach of duty by us, by any of our legal representatives or by our vicarious agents.

The cases listed in clauses 1 to 3 and damage claims as defined in Section 9 shall be subject to the statutory periods of limitation. The same shall apply to claims resulting from guarantees and procurement risks assumed by us. The legal provisions on suspension, interruption and renewed beginning of the statute of limitations shall remain in effect.

## 11. Copyright

Insofar as it is necessary for the fulfilment of the contract for us to provide services, in particular an expert's report, protected by copyright, we confer a simple, non-transferable right of use to such copyright as far as this is necessary for the contractually specified purpose. The transfer of any further rights is explicitly excluded. Under no circumstances is the Buyer entitled to modify or process or use test results, expert's reports, calculations or similar outside of its commercial business.

## 12. Applicable law

These Terms and Conditions shall be governed by the substantive law of the Federal Republic of Germany as if between two contractual partners with registered offices in Germany. 13. Place of performance/Jurisdiction  
If the Buyer is a merchant or a legal person under public law or a special fund under public law, the place of jurisdiction and performance also for all claims arising from cheques and bills of exchange shall be Bielefeld.