

General Terms & Conditions of Sale (GTCS) **/(Germany)**

1. Scope of application and derogations from the GTCS

1.1 The following General Terms and Conditions of Sale ("GTCS"), in the version applicable on the conclusion of the contract, shall be applicable to all purchase orders (i.e. offers) which are accepted by the Contractor or its subsidiaries or sister companies (referred to hereinafter as "ES") (the undertaking with which individual purchase orders are placed shall be referred to hereinafter as the "Contractor"). They shall also apply to purchase orders made by telephone that are not confirmed in writing and to those purchase orders that arise through the provision of samples. A contract subject to these GTCS shall arise as a consequence of the Contractor's acceptance of a purchase order. This shall occur either through (a) the Contractor's performance of the purchase order (in such a case the written confirmation of the Contractor shall not be required) or (b) the Contractor's written acceptance of the purchase order.

1.2 Apart from the managing director and the authorised representatives (holder of *Prokura*) of the Contractor, no employee, representative/agent or sub-contractor of ES shall be entitled to authorise any derogation from the provisions of the GTCS or to waive their application or to bind the Contractor in any manner which would lead to the applicability of any contrary provisions which in terms of their content might conflict with the GTCS or take precedence over them. Such a modification or waiver of the applicability of the GTCS shall only be binding upon the Contractor to the extent that it is recorded or given in writing and is signed by the managing director of the Contractor or by one of its authorised representatives (holder of *Prokura*).

2. Placing of purchase orders; non-applicability of contrary contractual terms and conditions; no order for collection

2.1 In order to be placed effectively, a purchase order must be issued by a Customer using its letterhead by post, fax or electronic form of communication or by using an ES-approved order form ("Sample Submission Form") or an electronic order form. It shall furthermore be necessary to have reached an agreement at the date of the placement of purchase order in relation to all of the necessary commercial details which are not covered by these GTCS (including price, estimated period for performance and the delivery date). On request, the Customer must immediately confirm in writing those purchase orders which have been placed by means of telephone. In the event that a Customer provides to the Contractor samples, this shall also be deemed to be the placement of a purchase order. The Contractor shall not be obliged to commence any analysis before all of the terms of the purchase order are absolutely clear and prior to having been provided with all of the necessary information.

2.2 To the extent that no contrary provisions are expressly agreed in writing and signed by a managing director or an authorised representative (holder of *Prokura*) of the Contractor, the General Terms & Conditions of Business of a Customer shall be without any effect, even if such Customer refers or has referred at some point in time to its General Terms & Conditions of Business. Furthermore, any earlier acceptance of special terms and conditions in the context of a previous purchase order (including special provisions in relation to price) shall not mean that such special conditions shall be accepted in the future in the context of any subsequent purchase orders. Each purchase order which is accepted by the Contractor shall to such an extent be viewed as a separate contract between the Contractor and the Customer.

2.3 In the event that the Customer subsequently stipulates additional requirements in connection with an existing contract, the Contractor shall be entitled to invoice a management and administration fee in the amount of up to € 25.00. Should the Customer stipulate additional requirements in connection with samples which have already arrived at the laboratory, this shall be deemed to constitute a new purchase order and may lead to a corresponding postponement of the previously estimated delivery dates.

2.4 The collection and delivery of the sample or any other logistical measures shall be a matter for the Customer and shall be carried out or organised by the Customer at the Customer's own risk. If the Contractor renders assistance in organising the transport or in logistical measures outside the laboratory, the Contractor shall act in the name of and on the authority of the Customer, so that the risk of transport or any delays in transport, e.g. by messengers/couriers, shall be the Customer's responsibility and the consequences shall be borne by the Customer. The messenger/courier is not the Contractor's vicarious agent and shall contract only with the Customer.

3. Prices and payment terms

3.1 Prices shall be stipulated "ex works" (Incoterms 2010) and shall not include packaging, which shall be invoiced separately. This shall not apply should any provisions to the contrary be agreed. All additional costs or expenditure (e.g. such costs and expenditure as may be incurred by the Contractor in connection with the contract) shall be borne by the Customer.

3.2 Prices shall be stipulated net of any taxes payable (including value-added tax) on the basis of the rates applicable at the date of the issue of the invoice.

3.3 Any query or objection in relation to an invoice must be submitted within a period of 45 days from the date of receipt of such invoice. In the event that the Customer has doubts in relation to the accuracy of the results of any analysis, this shall not entitle the Customer to withhold payment, insofar as the defective nature of the results of the analysis and the Customer's counter-

claims resulting therefrom are not undisputed, are not acknowledged by the Contractor or have not been judicially established. Should the Customer default on any payment, all sums owed to the Contractor by the Customer – including any sums owed pursuant to other contracts – shall become immediately due and payable. The Contractor shall be entitled in the event of default to apply default interest of 8 percentage points above the base rate. The right of the Contractor to assert its claims in respect of any demonstrable damage suffered as a result of such default which may exceed such rate shall not be affected hereby.

3.4 If at the request of the Customer a new invoice must be issued, the Contractor may invoice an administration fee of €15.00.

3.5 Payments shall be made by way of a bank transfer or by direct debit. Other means of payment shall require the prior consent of the Contractor. The Customer shall be obliged to provide the required bank account details to the Contractor.

3.6 The Contractor shall be entitled to make the execution of a contract contingent upon the advance payment of up to 100% of the estimated consideration payable.

4. Obligations of the Customer in connection with the delivery of samples or materials

4.1 Samples or materials must be in a condition which permits the production of reports/analyses or the production of the products commissioned without any problems arising. The Contractor shall be entitled to carry out an examination of any sample or materials on their delivery in order to establish their condition prior to the processing of the sample or the preparation of a report or their use in the production process. The Customer shall be obliged to bear the costs of such an inspection on delivery, should it emerge that the sample or materials do not comply with the requirements set out in section 4.1. In the event that the result of the inspection on delivery reveals that analysis or production will be impossible or only possible in more onerous circumstances than originally anticipated – for example because the sample or materials contain foreign materials or substances in respect of which the Customer has provided no information or if they have degraded or decomposed – the Contractor shall be entitled to withdraw from the contract or to suspend the performance of the purchase order. In such a case the Customer shall bear the costs which the Contractor has incurred until such point in time.

4.2 The Customer warrants and has an obligation towards the Contractor to ensure that all samples sent to the Contractor for purposes of analysis are in a safe and stable condition. The Customer must ensure and hereby warrants that the samples shall constitute no danger to the property and any other legal interests of the Contractor or ES and to their employees and other agents or third parties – neither on the facility premises of the Customer nor during shipment, in the laboratory

or on any other premises belonging to the Contractor or ES. If a sample is dangerous or represents special waste or hazardous materials, the Customer must inform the Contractor in writing prior to its dispatch. At the request of the Contractor, the Customer shall be obliged to inform the Contractor of any substances known to the Customer and of the exact origin of the sample. It shall be the responsibility of the Customer to comply with the statutory provisions relating to special waste and hazardous materials. Such obligations shall also relate to the provision of information, the inscription/labelling on the packaging, shipment and removal/disposal. In particular, the employees or other agents of the Contractor must be informed of any health or safety concerns in connection with the samples. Such concerns shall include in particular those in connection with known or presumed toxic substances or any other contamination of a sample and the presumed level of contamination, as well as any risks to the property and other legal interests of the Contractor or ES and to their employees and other agents or third parties in connection with such contamination. In the event of any breach of these obligations, the Customer shall be liable for any costs, damage and any other prejudice which are incurred or suffered by the Contractor or ES or their personnel or other agents as a result thereof; this shall be the case irrespective of whether such costs, damage or prejudice are incurred or suffered on the premises of the Customer (for instance in the context of the taking of a sample), during shipment, in the laboratory or on any other premises belonging to the Contractor or ES. Such liability shall also include a corresponding obligation to indemnify the Contractor and ES in the event of any proceedings being instigated against them by third parties. The Customer shall not be liable under the foregoing provisions if the Customer cannot be held responsible for the breach of contract.

4.3 The Customer shall bear the costs of the reasonable removal/disposal of special waste and hazardous materials which are incurred as a result of the nature of the samples provided by the Customer. This shall be the case irrespective of whether or not the sample has been designated as special waste or a hazardous material.

5. Rights of title in the samples; storage of samples

5.1 All samples shall be the property of the Contractor to the extent that this is necessary in order to perform the purchase order. To the extent that storage, which shall be invoiced separately, has not been agreed, the Contractor shall not be obliged to ensure the storage and/or refrigeration of any sample. If storage, which shall be invoiced separately, has been agreed, the Contractor shall take commercially reasonable measures in accordance with standard professional practices to store the samples.

5.2 The Contractor shall be entitled to dispose of or destroy sample material in order to prepare and carry out the analysis and to dispose of and destroy the actual samples immediately upon the completion of

analyses, unless the Parties have agreed in writing to a retention. If a specific retention period has been agreed, the Contractor shall be entitled to dispose of or destroy the sample without prior notice on the expiry of such period. Should such disposal or destruction be subject to specific statutory provisions (e.g. in the case of special waste or hazardous materials), the Customer shall bear any costs which are incurred in connection therewith. In the event that the Customer requests the return of sample materials no longer required, the Contractor shall return such sample materials at the expense and risk of the Customer.

6. Delivery dates and completion periods

6.1 Delivery dates and completion periods shall be estimates and shall not be binding upon the Contractor. The Contractor shall nonetheless be required to use its commercially reasonable endeavours to comply with the estimated periods.

6.2 Results shall as a rule be sent on the completion of the analysis by e-mail and/or post or by any other electronic means to those persons designated by the Customer on placing the purchase order.

7. The transfer of title and other rights; residual rights in the results of the analyses

7.1 The rights of title and any other rights in the results of the analyses, products, equipment, software or similar services provided by the Contractor to the Customer shall be retained by the Contractor until such time as all invoices relating thereto have been paid in full by the Customer. Until such invoices have been paid in full the Customer shall have no rights of title in or any other rights to exploit the services provided. Should the Customer be in arrears with the settlement of any sums which are payable to the Contractor or ES, the Contractor shall be entitled to suspend the execution of the purchase order and any other work being carried out on behalf of the Customer. This shall also apply if the payment which is late is payable pursuant to another purchase order.

7.2 Even after a payment has been made in full by the Customer, the Contractor shall have the right to retain the results of any analyses carried out and to make use of such results in an anonymised form which does not permit the identification of the Customer, and to publish such results to the extent that this does not cause a prejudice to any legitimate interests of the Customer which are known to the Contractor.

8. Limitations on warranties and responsibilities; liability and indemnity obligations of the Customer

8.1 Insofar as nothing to the contrary has been agreed, the service to be provided by the Contractor shall be limited to performing analyses and preparing an analysis report. The Contractor has no obligation to give advice or provide more detailed expert opinions unless expressly agreed otherwise in the individual case. Purchase orders shall be executed under the conditions

available to the Contractor in accordance with the state of the art. It is not necessary to comply with specific DIN/EN rules. The Contractor shall select a method suitable for fulfilling its contractual obligations and may also abandon this method and choose another suitable method. Results cannot be 100% accurate and/or relevant in all cases. Depending on the method of analysis, the result of the analysis notified to the Customer shall correspond to a value in a range of values that may result from various methods of analysis according to the state of the art. Analyses, interpretations, estimates, consultancy services and inferences shall be completed, arrived at, compiled, provided and drawn with a commercially reasonable degree of care. However, the Contractor cannot warrant that such analyses, interpretations, estimates, consultancy services and inferences shall in all cases be accurate or wholly relevant. The warranty period shall be twelve months from the date of acceptance. This shall not affect the statutory limitation periods for claiming damages. The parties agree that services, goods, etc. shall at all events be deemed accepted unless the Customer notifies the Contractor that such acceptance has been refused, within one week of the date of receipt. In each case the Customer shall be obliged to verify the cogency of the results, interpretations, estimates and inferences provided by the Contractor with a reasonable degree of care and at its own risk, in the event that the Customer wishes to rely on such results, interpretations, estimates and inferences in any material connection. If the results of the analysis cause the Customer to carry out cost-intensive or other far-reaching measures, the Customer must contact the Contractor before the measure is taken in order to give the latter the opportunity to verify or at least discuss the results of the analysis.

Should it be apparent that the results are inaccurate, the Customer shall be obliged to contact the Contractor immediately and to inform it of such fact. In the event that the Customer is a merchant within the meaning of the German Commercial Code [*Handelsgesetzbuch*] and does not comply with this obligation, the performance given by the Contractor shall be deemed compliant with the agreement. Section 377 of the German Commercial Code [*Handelsgesetzbuch*] shall be analogously applied *mutatis mutandis*.

8.2 Each report on an analysis shall relate exclusively to the sample analysed by the Contractor. To the extent that the Contractor is not expressly commissioned to produce a sample schedule (including a determination of which samples of which raw materials and finished products are to be analysed with which frequency), subject to the specification of the precise scope of the analyses to be carried out, the Contractor shall have no liability should it emerge that the sample schedule and/or the specification of the scope of the analysis is insufficient or inappropriate. The same shall apply if and to the extent that the Customer does not follow relevant recommendations made by the Contractor.

8.3 Unless otherwise agreed in writing between the Parties, the Customer and the Contractor shall be the

sole parties to the contract. No contract shall be formed for the benefit or the protection of third parties that may give rise to obligations for the Contractor or ES vis-à-vis these third parties if and to the extent that nothing else results from the contract and/or these GTCS.

8.4 The Customer undertakes to indemnify the Contractor and ES and their personnel or other representatives/agents against all third-party claims based on a breach of duty by the Customer unless the Customer cannot be held responsible. This particularly applies to third-party claims asserted due to the fact that a sample is dangerous or unstable.

8.5 If the storage of samples has been agreed in writing, contrary to the provisions of section 5, the Customer must provide advance information regarding any specifics of storage and ensure that the Contractor accepts these as part of the agreement.

8.6 In the event that the Contractor delivers any software to the Customer, the Customer must use such software in accordance with any applicable licence conditions, instructions and manuals.

9. Limitation on liability

9.1 Claims against the Contractor, its parent company, subsidiaries and sister companies and their manual workers, employees, representatives/agents, directors of the company and advisers (referred to hereinafter as "liability-privileged persons") in respect of compensation for damages suffered and costs incurred shall be excluded, unless it is a case of intent, gross negligence or the breach of a material contractual obligation. A material contractual obligation shall be understood as every contractual obligation essential to the proper performance of the contract on whose fulfilment the Customer is entitled to rely.

9.2 Insofar as there is no evidence of intent, the liability of liability-privileged persons shall be limited to compensation for foreseeable damage that is typical for the type of contract. It is generally incumbent on the customer to insure himself sufficiently against other damage.

9.3 The liability of such liability-privileged persons under the German Product Liability Act [*Produkthaftungsgesetz*], in the event of the breach of any warranty and in respect of claims for damages arising from the death, physical injury or damage to the health of a person, shall not be limited by these GTCS.

9.4 It shall be a prerequisite for the acceptance of a purchase order by the Contractor that the Customer shall compensate and indemnify liability-privileged persons in respect of all losses, infringements, claims and costs which the latter may suffer or incur as a result of the wrongful conduct of the Customer. The placing of a purchase order by the Customer shall constitute the provision of such an indemnity.

10. The carrying out of new analyses

Complaints in relation to test results may only be notified subject to the provisions set out in section 8.1. In each case where the inaccuracy of the first results of the analyses is not established, the Customer shall bear the costs of any new tests it requests or the verification of the foregoing tests.

11. Force majeure

In the case of delays, errors, damage or other problems which are caused by events or circumstances which were unforeseeable by the Contractor or which are beyond its control or which result from compliance with official orders, legislation or regulations the time limits shall be prolonged for the duration of the obstruction. If it is unreasonable for the Customer to accept an associated delay in the execution of the order, the Customer shall be entitled to withdraw from the contract.

12. Confidentiality and the processing of customer data

12.1 The Contractor shall be entitled to store and process any personal or commercial data which it receives in any manner whatsoever from the Customer in accordance with the applicable statutory provisions relating to data protection, irrespective of whether or not such data is provided directly by the Customer or by a third party. The Contractor shall be obliged to use its commercially reasonable endeavours to deal with such data confidentially in accordance with the law.

12.2 For the purposes of the execution of the purchase order, personal data – for example in relation to corporate bodies, contact persons and/or project managers – shall be processed and utilised. The Customer is aware that in order to be in a position to ensure the provision of the best service possible, including the use of existing capacity and know-how, not only personal data but also contract-related data, such as any issues examined in the context of an analysis and the results thereof, may be disclosed to affiliated Group undertakings in Germany, Austria or Switzerland which are the holders of an accreditation pursuant to ISO 17025. The affiliated Group undertakings shall be bound by a corresponding confidentiality agreement, a copy of which shall be provided on request. In addition the Contractor may process and make use of such data for the purposes of winning further contracts. The Customer may prohibit such processing and use by so notifying the Contractor.

12.3 The Contractor shall be obliged to use its commercially reasonable endeavours to keep all results of the analyses and service reports confidential. These obligations shall not apply to the rights of the Contractor pursuant to section 7.2 or to any requirement to adduce proof of an entitlement to receive payment for services rendered.

12.4 The results of any analyses shall be produced and disclosed for the exclusive use of the Customer only and shall not be made available to third parties for any purposes whatsoever without the prior written consent of the Contractor. Furthermore, the Customer shall be obliged to ensure confidentiality in connection with all of the services provided by the Contractor. In addition, any results and the composition of products and software which are delivered by the Contractor, as well as the results of any analyses, may not be published or used for purposes other than internal purposes without the prior written consent of the Contractor. Furthermore, in the event that such written consent is given, the Customer shall remain (a) liable for any consequences of the disclosure of such results to a third party and any reliance placed by such third party on such results, and (b) hereby undertakes to indemnify the liability-privileged persons (see section 9.1) in respect of any claims brought by a third party as a result of the disclosure of such results and/or any reliance placed thereon and any – actual or alleged – damage resulting therefrom.

13. Governing law / Place of jurisdiction

All contracts to which these GTCS apply shall be governed by German law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The exclusive place of jurisdiction shall be the location of the Contractor, to the extent that the Customer is a merchant, a legal person in accordance with public law or special fund constituted in accordance with public law or has no registered office in Germany. However, the claimant shall alternatively be entitled to commence proceedings before the Arbitral Tribunal of the German Institution of Arbitration (DIS e.V.), instead of before the ordinary courts. In such a case the Arbitral Tribunal shall have exclusive jurisdiction. The place of arbitration shall be Hamburg.

As at January 2013