

# General Terms and Conditions for the Provision of Services

## 1. Applicability, Individual Agreements, Formation of Contract

- 1.1 These General Terms and Conditions for the Provision of Services ("GTC") apply for the provision of services or work services ("Service") by CUP Laboratorien Dr. Freitag GmbH ("CUP"), including, without limitation, analytical test orders as well as services related to investigation, development, research, consulting, planning and production projects. CUP´s GTC apply -in their respective current version- for all - including future - business relations with customers (hereinafter "Client"), regardless of whether or not CUP expressly refers to them and irrespective of whether CUP provides the Service itself or through third parties. CUP does not accept general terms and conditions of the Client and objects to the application thereof. These GTC also apply if CUP in knowledge of conflicting general terms and conditions of the Client carries out Services without reservation.
- 1.2 As far as not otherwise indicated in an offer, CUP´s offers are subject to change and non-binding until acceptance occurs through confirmation by the Client. An order of a Client shall be deemed to be a binding offer of contract. Orders may be placed in text form (E-Mail is sufficient). If the order does not indicate otherwise, CUP is entitled to accept this order within fourteen (14) working days after receipt. A working day is any day from Monday to Friday, except public holidays in Germany.
- 1.3 The GTC only apply if the Client is an entrepreneur (Section 14 German Civil Code - *BGB*), a legal entity under public law or a special fund under public law.
- 1.4 Individual written agreements deviating from the present terms take precedence over these GTC.
- 1.5 Legal declarations or notices of the Client after formation of the contract (e.g. setting of time limits, declaration of rescission or reduction of price) must be made in writing.

## 2. Services/Shipment/Transfer of Risk

- 2.1 The place of fulfilment for the Services is the registered office of CUP.
- 2.2 If the Client requests the shipment of the Services/Results, the risk is transferred in full to the Client when CUP properly hands over the goods to the transport company. CUP is responsible for selecting the transport company. CUP is not liable for delay, loss or deterioration from the time of dispatch.
- 2.3 In the case of collection, the risk is transferred to the Client upon handover.
- 2.4 CUP provides Services within the framework of its existing technical and operational possibilities whereas a general processing time of twenty (20) working days is applicable, unless otherwise agreed in text form between CUP and the Client.
- 2.5 With respect to the Services provided by CUP, including (but not limited to) development services and/or analytical services, in general no particular result is owed. In connection with the provision of Services CUP does not assume responsibility for a particular result and is entitled to provide the Services through subcontractors. This can be different in the case of a separate contractual agreement.
- 2.6 Formal acceptance of the Services is only required if this has been agreed with the Client. If for the Service exceptionally it is stipulated that an acceptance must occur, the Client is obligated to accept the Services made available by CUP, including partial Services, without delay and to declare the acceptance or partial acceptance, as the case may be, as far as they do not have any defects which materially impair the suitability or the function.
- 2.7 If within ten (10) working days after being provided for acceptance or partial acceptance, as the case may be, there is no objection as to substantial defects or if the Client uses the provided Services or partial Services, as the case may be, the acceptance (partial acceptance) is deemed to have occurred.

### 3. Industrial Property Rights/Know-how

The Client recognizes CUP's know-how as well as its industrial property rights. As far as not stipulated otherwise, CUP reserves ownership and copyright to reproductions, illustrations, calculations and other documents. They may not be made accessible to third parties. This applies in particular for confidential documents. As far as it is not expressly agreed otherwise, CUP does not grant to the Client any rights of use to the know-how or industrial property rights created in the course of its Services. CUP might offer a right of use free of charge, which is limited to the Client only and does not apply to legal successors, unless a separate agreement has been made to this effect.

### 4. Service Periods/delay

- 4.1 Service periods and performance deadlines are non-binding, except if their bindingness is expressly agreed. Expressly agreed performance periods shall commence at the earliest upon conclusion of the contract, but in no case before receipt of the test samples which are to be submitted by the Client.
- 4.2 CUP shall not be responsible for Service delays which arise through the fact that they are not timely or properly delivered by its subcontractor, provided that CUP has carefully selected the subcontractor and timely engaged him such that timely service was to be expected.
- 4.3 The compliance with deadlines for the Services requires the timely receipt of all documents and information to be provided by the Client, including but not limited to the complete order, quotation number, safety data sheets, review of protocols, provision of samples as well as the compliance with the agreed payment terms and other obligations. If these requirements are not timely fulfilled, the delivery deadline for the Services shall be reasonably extended.

- 4.4 As far as CUP cannot comply with Service deadlines or dates, it shall inform the Client thereof without delay and at the same time indicate the probable new deadline or new date. The date of the subsequent delivery will be agreed separately with the Client.
- 4.5 In case of an out-of-specification result (OOS), CUP will follow its internal processes and inform the Client accordingly. With the exception of an internal laboratory failure, CUP has the right to invoice costs for administrative efforts as well as the repetition of the OOS analysis in agreement with the Client. The increase will be documented for the Client accordingly.
- 4.6 Any rights which may exist due to delayed Services can only be asserted by the Client after issuance of an unsuccessful demand notice setting a reasonable deadline.
- 4.7 The provision of partial Services is permissible and can be invoiced as such if the partial Service can be used by the Client within the scope of the agreed purpose in the confirmed offer by CUP. CUP is entitled to make available partial Services for acceptance ("**Partial Acceptance**").
- 4.8 In case of cancellation of a Service at short notice before the agreed, scheduled date by the Client, CUP reserves the right to charge up to 100% of the costs if CUP has already incurred expenses.

## 5. Client's Responsibilities

- 5.1 The Client is responsible to ensure that all samples and materials provided to CUP comply with all applicable laws, regulations and industry standards and are delivered timely.
- 5.2 If the samples, substances and excipients provided by the Client are hazardous substances within the meaning of the German Chemicals Act (*Chemikaliengesetz- ChemG*) or the German Hazardous Substances Ordinance (*Gefahrstoffverordnung- GefStoffV*), the Client is obliged to provide CUP with all necessary information regarding the handling of these substances (e.g. safety data sheets). If this information is not available to CUP at the latest by the scheduled start of the provision of the Services, CUP is entitled to refuse to process the

order and to return the samples/substances or excipients to the Client at the Client's expense. Any damage resulting from the handling of these hazardous substances without the appropriate safety data sheets and prewarning on the outer packaging will be the responsibility of the Client.

- 5.3 It is the Client's responsibility to store retain samples with regard to any subsequent testing (if required).
- 5.4 If Client's sampling proves to be unsuitable for the execution of the order for reasons for which CUP is not responsible (in particular climatic influences or other damage during transport, improper shipping by the Client, incorrect sample designation, insufficient quantities, non-compliance with relevant safety regulations, contaminations, missing or malfunctioning temperature tracker), CUP shall agree with the Client on the next steps of second shipment of samples etc. In these cases, however, CUP is entitled to invoice Services already rendered according to actual expenditure, which would also include return and disposal costs, provided that the unsuitability of the sampling was not recognizable at the time the Service was rendered.

## 6. Prices

- 6.1 Unless the specific offer provides for a certain period, an offer is generally valid for ninety (90) calendar days.
- 6.2 As far as not otherwise agreed, Services shall be invoiced according to CUP's current rates and respective offer. Invoices shall be issued per project upon finalization. CUP is entitled to reasonable downpayments for self-contained portions of the Service or after the end of a project phase (e.g. contract commencement, first partial delivery, making available for acceptance, acceptance).
- 6.3 If VAT applies, it shall be separately stated in the invoice at the rate applicable at the time of delivery. The Client must provide his VAT Number latest at confirmation of an offer.

- 6.4 The right to make reasonable price adjustments of up to five (5) % of the total costs is reserved if there are more than ninety (90) calendar days between the offer and the agreed date for Service or if the acquisition costs (prices for raw, ancillary or operating materials or other advance performance required for the subject matter of the contract) which CUP made the basis for its offer subsequently increase substantially for more than five (5) %.
- 6.5 If the need for additional or special services arises after conclusion of the contract, the necessity of which was not recognizable when the contract was concluded, CUP will only inform the Client separately if the additional expenditure exceeds five (5) % of the original order value. CUP will explain and justify the necessary additional expenditure in the invoice in a comprehensible manner.
- 6.6 CUP is entitled to charge additional costs for additional work not caused by CUP on proof and in accordance with the respective offer such as
- 6.6.1 additional costs arising from the processing of "out of specifications" or other deviations;
  - 6.6.2 items required for the analyses, such as chromatography columns, standard analytical materials, etc.;
  - 6.6.3 additional documentation costs; (in general the results will be sent by email with electronical signature)
  - 6.6.4 required compliant changes to a CoA caused by the Client (e.g. wrong batch number, incorrect labelling);
  - 6.6.5 subsequent changes to project plans/reports that have already been agreed with the Client in writing or text form (unless the reason for the change lies with CUP);
  - 6.6.6 efforts for clarification of an order (e.g. sample allocation, missing specification, missing documentation, unclear formulation of the order);
  - 6.6.7 special requests or changes made by the Client after completion of the contractual work, but also issues such as additional paper copies, translations, etc.
- 6.7 In the case of urgent and special orders, surcharges for the necessary special or additional work will be charged after agreement in text form with the Client and with the assurance of defined processing times; the Services cannot be started before agreement with the Client.

- 6.8 Samples used by CUP within the scope of a project/analysis may be disposed five (5) working days after the CoA has been sent. Any storage of sample material beyond this period upon respective confirmed offer or Client´s written request will be charged accordingly.
- 6.9 Documents are stored for a period of 10 years and will be destroyed thereafter.

## 7. Terms of payment

- 7.1 Unless otherwise agreed payment shall occur without deduction within thirty (30) calendar days after receipt of the invoice. The receipt of payment on the account specified by CUP is decisive for meeting the deadline. The Client shall be in default upon expiry of the aforementioned term of payment. Unpaid amounts will bear interest during the period of default at the applicable statutory default interest rate rate of § 288 German Civil Code. The Service remains the property of CUP until payment of the agreed and complete remuneration and the claims still arising in connection with the contractual relationship. CUP reserves the right to assert further claims for damages caused by delay.
- 7.2 If the Client does not comply with the agreed payment terms or if the financial circumstances of the Client deteriorate such that there is a justified doubt as to his ability to pay or creditworthiness, CUP can make further Services dependent on the Client providing reasonable security or making advance payments. If the Client is not in a position to do so, CUP is entitled – if appropriate after setting of a deadline – to rescind the agreement.
- 7.3 CUP may also demand advance payments of 50 % for projects agreed for the provision of the Services which will be offset against the final invoice. Unless otherwise agreed, the remaining amount will be invoiced according to the work performed.
- 7.4 The Client shall only be entitled to set-off if its counterclaim is either (a) undisputed or (b) legally binding or (c) in a reciprocal relationship to CUP´s claim against which the Client is setting off. The Client shall only be entitled to assert a right of retention insofar as its counterclaim is either (a) undisputed or (b) legally established or (c) based on the same contractual relationship as our claim against which the Client asserts the right of retention.

## 8. Provided information, warranty

- 8.1 The information in CUP´s catalogues, brochures, data sheets and other advertising documents, in specifications, performance specifications and other technical supply terms, in certificates (e.g. certificate of compliance) and other forms or documents are not guarantees extending beyond the normal warranty. Samples are not determinative for the scope of CUP´s warranty. The individual offer or order confirmation is decisive.
- 8.2 *The Client remains solely responsible for the suitability of the deliveries to CUP for the respective intended use, even if CUP advises the Client in this regard.*
- 8.3 As far as not provided otherwise below, the statutory provisions apply for the rights of the Client relating to warranty against physical defects and warranty of title. In the case of delivery of goods by CUP (e.g. for hygiene monitoring), the Client is obliged to inspect them at receipt or have them inspected immediately after delivery for any signs of damage or defect and inform accordingly and promptly on any deviation, otherwise the deficiency will not be accepted.
- 8.4 The Client cannot invoke a defect if he does not notify CUP immediately, at the latest three (3) working days after receipt of the delivery or after discovery of a defect, provided that the defect was not recognizable at the time of delivery. The defect must be documented and notified to CUP and the nature of the defect must be precisely described. Timely dispatch of the notification is sufficient to meet the deadline.
- 8.5 If the Client objects to a defect, then he shall either provide to CUP the alleged defective parts or devices or allow CUP to inspect such parts at his premises during usual business hours and provide CUP with the necessary time and opportunity for replacement performance.
- 8.6 If the delivered item or provided Service is defective by fault acc. to 8.2, CUP can initially choose whether it provides replacement performance through elimination of the defect (improvement) or through delivery of a defect-free good (replacement delivery). For this purpose, the Client must provide stored samples free of charge. Depending on the particular case CUP is entitled to at least three (3) improvement attempts.



- 8.7 If a third party raises justified claims based on a patent, other industrial property rights or know-how against CUP's Deliveries or Services, the replacement performance shall be made at CUP's election through a workaround solution of equivalent value, through the acquisition of a license for the relevant objects or the supply of objects free of property rights with a workaround solution of equivalent value.
- 8.8 If, however, a defect removal request of the Client turns out to be unjustified, CUP can request indemnification of the costs resulting therefrom from the Client.
- 8.9 After an unsuccessful replacement performance the Client reserves the right with respect to the defect elimination to at his option rescind the contract or reduce the agreed compensation. This shall not affect the claim for indemnification of the damage in place of the performance.

## 9. Liability

- 9.1 If not agreed otherwise, notwithstanding other statutory requirements for claims, the following exclusions and limitations apply to CUP's liability to this section, regardless of the legal ground, which also apply in relation to its employees, agents and other third parties whom CUP engages to fulfil the contract.
- 9.2 The following limitations of liability do not apply as far as CUP fraudulently conceals a defect, has assumed a guarantee for the quality of the goods or the Client has claims under the German Product Liability Act or body injuries or damages to health were caused.
- 9.3 The Client can only rescind or terminate the agreement due to a breach of duty which does not involve a defect if CUP is responsible for the breach of duty.
- 9.4 CUP is liable for damages if it is responsible for intentional actions or gross negligence. In case of slight negligence CUP is only liable for damages due to injury to life, body or health as well as for damages due to the violation of a material contract obligation (obligation, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the Client may regularly rely). In this case CUP's liability is however limited to indemnification of the foreseeable, typically arising damages.

- 9.5 Except in case of liability for intentional actions CUP is liable for any damages which do not result from injury to life, body or health only up to a maximum amount of EUR 7.500.000,00 for any one insured case. If the Client wishes to have a greater sum of liability, he may then take out and pay for liability insurance with a higher indemnity limit. No liability shall be accepted in any case for indirect and consequential loss and damage.
- 9.6 If services have been provided by third parties that CUP has engaged as subcontractors and a defect occurs that is clearly attributable to the performance of the third party, CUP is authorized to assign its own warranty claims to the Client. The Client hereby declares acceptance of this assignment. If the third party does not comply with the Client's request to remedy the defect despite repeated requests to do so, if the third party seriously and definitively refuses to provide the service or if it becomes apparent that it does not possess the necessary capacity, the Client can reassert its rights against CUP if it assigns the warranty rights previously assigned to it by CUP back to CUP or offers to assign them.

## 10. Force Majeure

- 10.1 CUP is not liable for any impossibility or delay in the provision of Services to the extent that such circumstances are due to force majeure or any other event beyond CUP's control (including, but not limited to: operational disruptions of any kind, fire, natural disasters, weather, government action relating to monetary and trade policy, strikes and lawful lock-outs, public measures, war, terrorism, civil unrest or insurrection, civil war, blockades, embargoes, sanctions, disasters, epidemics, pandemics, floods, fires, earthquakes, explosions, storms, cyber-attacks, market-related problems in the procurement of materials or components, reduced or discontinued energy supply, delayed or outstanding official authorizations, official / sovereign measures). CUP shall be excused from such of its obligations hereunder as it is unable to perform to the extent of such prevention, restriction or interference for so long as such restriction shall remain in force and shall not be liable for any claim, expense, loss or damage arising from the delay in performing.

10.2 If CUP is prevented from fulfilling its contractually agreed obligations due to force majeure, the contractually agreed deadlines shall be extended appropriately in accordance with the duration of the hindrance. The same applies if certain Services are provided by third parties and these are delayed due to force majeure. CUP shall inform the Client as soon as reasonably possible. The parties will agree to do their best to continue the activities as best as possible under such circumstances. However, if the force majeure event/s continues to subsist for a continuous period of more than one hundred eighty (180) calendar days the other party may terminate the agreement by giving a notice in writing. The Client has to compensate for the partial Service if it can be used by the Client within the scope of the agreed purpose.

## 11. Limitation period

The general limitation period for all claims based on warranties against defects and warranties of title is one year after delivery. As far as acceptance has been stipulated, the limitation period shall begin with the acceptance.

## 12. Rights/Services/ Results/EU-Data protection

12.1 CUP is entitled to all rights in the results resulting from the provision of the Services ("**Results**") such as, including but not limited to, certificates, appraisals, test reports or expert opinions.

12.2 The Client may use Services and Results within the scope of the contractual agreements. Disclosures to third parties beyond this scope or publication require the written permission of CUP and as part of this the Client must ensure that CUP is named as the author of the results.

12.3 The above restrictions do not apply if the disclosure is within the contractually agreed purpose of the Services/Results or is necessary due to an official order, due to a law or requested by authorities.

12.4 CUP is entitled to record order-related data in an internal company database. The processing of Clients' data takes place in compliance with EU applicable data protection laws.

### 13. Regulatory Compliance

13.1 CUP will perform the Services with due care, skill, and diligence in accordance with EU - GMP and industry standards and comply with all applicable laws, regulations and industry standards related to the provision of such services.

13.2 CUP will maintain appropriate quality control and quality assurance measures to ensure accurate and reliable results.

13.3 Client remains responsible for ensuring that the Services comply with regulatory requirements for its specific industry.

### 14. Place of jurisdiction/applicable law

14.1 The exclusive – and international - place of jurisdiction for all disputes arising directly or indirectly from the contract relationship is Dresden (Germany). CUP is nevertheless entitled to select a neutral place of jurisdiction or the place of the company seat of the Client as place of jurisdiction.

14.2 The law of the Federal Republic of Germany shall apply subject to exclusion of UN sale of goods law.

### 15. Final Provisions

15.1 **Severability** - If individual provisions of this terms are invalid, this shall not affect the validity of the terms as a whole. In their place, what is permissibly closest to what was intended shall apply. The same shall apply in the event of a loophole in the contract.

If any of the above provisions should be or become invalid, such provision shall be replaced by a valid provision coming as close as possible to its purpose. The above applies accordingly in the case of gaps, the remaining provisions remain unaffected and valid.

- 15.2 **Heading** - The paragraph headings are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.
- 15.3 **Written form** – Any individual amendment or supplement and any waiver of a right hereunder' must be made in writing executed by the parties and explicitly referring to this GTC to be effective. *This shall also apply to changes to this written form requirement.*
- 15.4 **First stage Consultation**. The parties agree to first try in good faith to resolve and settle all disputes, controversies and differences, which may arise between them in respect the contractual relationship through mutual consultation among senior representatives of the parties within thirty (30) calendar days of a written settlement request of either party.