

## General terms and conditions for laboratory services

### 1. Scope of application

- 1.1 All Eurofins BioPharma Product Testing Munich GmbH ("**Eurofins BPT Munich**") services are provided exclusively on the basis of these General Terms and Conditions ("**GTC**"). These form an integral part of all contracts concluded by Eurofins BPT Munich with its contractual partners ("**Customers**") for the provision of laboratory services ("**Service**" or "**Service Provision**") ("**Service Contract**"). The provision of services takes place exclusively in respect of entrepreneurs within the meaning of § 14 of the German Civil Code ("**BGB**"). The Customer shall expressly inform Eurofins BPT Munich within the scope of the contract initiation if the Customer is not an entrepreneur within the meaning of § 14 BGB (German Civil Code). The GTC also applies to all future services to the Customer, even if they are not separately agreed again.
- 1.2 The Customer's or third parties' terms and conditions do not apply, even if Eurofins BPT Munich does not expressly object to their application in individual cases. Even if the Customer refers to a letter containing or referring to the Customer's or a third party's terms and conditions, this does not constitute an agreement to the validity of these terms and conditions.
- 1.3 This clause 1 may only be deviated from with the written consent of the Managing Director, a Head of Business or a Head of Department at Eurofins BPT Munich.

### 2. Conclusion of contract

- 2.1 The Customer guarantees to have all necessary public law authorisations for the receipt of services at the time of completion of the service contract (if required). Eurofins BPT Munich must be notified immediately of the termination of such authorisation and no further acceptance of services is made until Eurofins BPT Munich has provided a response.
- 2.2 The presentation of services in catalogues or on the Eurofins BPT Munich website does not constitute an offer for conclusion of a service contract.
- 2.3 The Customer submits a legally binding offer in writing or in text form (email/fax).
- 2.4 Eurofins BPT Munich may accept the Customer's offer within two weeks of receipt by means of an expressly declared acceptance (order confirmation) in writing or by email/fax. Confirmation of receipt immediately after an offer has been sent does not constitute acceptance.
- 2.5 The Customer is only entitled to assign claims against Eurofins BPT Munich with the express consent of Eurofins BPT Munich. Eurofins BPT Munich will not withhold consent without good reason if the Customer has a legitimate interest.

### **3. Service content / service implementation**

- 3.1 The content and nature of the service owed by Eurofins BPT Munich results from the relevant order confirmation and is agreed between Eurofins BPT Munich and the Customer in writing or by email/fax before the conclusion of a service contract.
- 3.2 Eurofins BPT Munich does not owe any fulfilment in the sense of the law for contracts for work and services.
- 3.3 The benefit may be a one-off benefit, also to be provided in parts, or it may be permanent.
- 3.4 Unless otherwise agreed in individual cases, the place of performance and fulfilment of the service is the registered office of Eurofins BPT Munich.
- 3.5 Eurofins BPT Munich selects the employees who are to perform the service. The Customer is not entitled to provision of a service by a specific employee. Eurofins BPT Munich will give due consideration to the Customer's interests when selecting the employee. Eurofins BPT Munich provides services using personnel suitably qualified to provide them.
- 3.6 Eurofins BPT Munich determines the manner of service performance in accordance with the service owed.
- 3.7 Partial performances are permissible to a reasonable extent.
- 3.8 Eurofins BPT Munich is entitled to subcontract provision of the Services in whole or in part.
- 3.9 The Customer has no right to issue instructions to Eurofins BPT Munich.

### **4. Dates and deadlines**

- 4.1 Deadlines and dates for the performance of services promised by Eurofins BPT Munich is always approximate unless a fixed deadline or date has been expressly agreed. Eurofins BPT Munich otherwise provides the service within the time limits customary in the market.
- 4.2 Observance of dates and deadlines requires, insofar as necessary, timely receipt of samples and/or documents to be supplied by the Customer.
- 4.3 If Eurofins BPT Munich is unable to meet binding deadlines for reasons for which Eurofins BPT Munich is not responsible, Eurofins BPT Munich informs the Customer thereof without delay and provides a new deadline.
- 4.4 If Eurofins BPT Munich is in default of performance in whole or in part, the Customer's damages and reimbursement of expenses due to default is limited to 0.5% of the price for the part of the performance which cannot be used due to default for each complete week.

Liability for delay is limited in total to 5% of the total price of the respective service. This does not apply insofar as the delay is due to gross negligence or intent on the part of Eurofins BPT Munich.

- 4.5 The occurrence of default is governed by the general regulations. In any case, however, a reminder by the Customer is required.
- 4.6 If there is a delay in performance, the Customer is only entitled to withdraw from the contract in accordance with the statutory provisions if Eurofins BPT Munich is responsible for the delay.
- 4.7 The rights of the Customer pursuant to clause 9 of the GTC and the statutory rights of Eurofins BPT Munich, in particular in cases of exclusion of the obligation to perform (such as in case of impossibility or unreasonableness of performance and/or subsequent performance), remains unaffected.

## **5. Prices and terms of payment**

- 5.1 Any analytical service must be paid for in full by the Customer unless cancelled by the Customer prior to sample registration.
- 5.2 Any logistical service related to the collection of samples or the holding of samples outside the laboratory must be paid for, unless the corresponding service has been cancelled by the Customer in due time. Timeliness is considered to be 48 hours for (i) collection; (ii) holding for 96 hours; and (iii) an audit one week – in each case before the agreed date.
- 5.3 Remuneration for the provision of services will be agreed in writing or by email/fax upon conclusion of a service contract. Prices are subject to statutory VAT without discount.
- 5.4 Remuneration is due and payable within 14 days of the invoice date. Eurofins BPT Munich has, however, the right to demand performance of the service against partial prepayment or payment in advance.
- 5.5 The Customer is in default upon expiry of the aforementioned payment deadline. During the period of default, the remuneration is subject to interest at the statutory default interest rate applicable from time to time. Eurofins BPT Munich reserves the right to claim further damages for delay. The entitlement to commercial due date interest (§ 353 German Commercial Code ("HGB")) remains unaffected with respect to merchants.
- 5.6 Eurofins BPT Munich is entitled to withdraw from the service contract after setting a reasonable deadline and the occurrence of the due date if the Customer does not provide remuneration within this deadline.
- 5.7 In the event of unforeseeable obstacles or additional costs in connection with the provision of the Services, Eurofins BPT Munich informs the Customer thereof and is entitled to charge the Customer for any additional expenses incurred.

- 5.8 The Customer is only entitled to rights of set-off and retention insofar as his claim has been legally established or is undisputed.

## **6. Protection of work results**

- 6.1 The Customer ensures that test certificates, expert reports, advice and information ("work results") produced within the framework of the investigations by Eurofins BPT Munich itself are only used for its own purposes. Reproduction of work result extracts requires the express prior consent of Eurofins BPT Munich. The Customer undertakes not to pass on the work results to third parties, not even in modified form. This does not apply to legally required distribution to authorities. If the Customer is part of a subordinate or equal-ranking group, these are also considered third parties within the meaning of the GTC. Copyright remains reserved.
- 6.2 Any know-how used or acquired by Eurofins BPT Munich during performance of services remains property of Eurofins BPT Munich. Eurofins BPT Munich reserves the right to freely use its own know-how, in particular for the provision of services to other Customers.

## **7. Sample storage**

Unless otherwise agreed in writing, the samples provided for testing are stored at Eurofins BPT Munich for a maximum of up to three months, insofar as the nature of the samples permits this. After this period the samples can be destroyed. If a return shipment of samples is required, this occurs at the expense and risk of the Customer.

## **8. Service failure**

- 8.1 If a service is not provided in accordance with the contract and if Eurofins BPT Munich is culpably responsible for this, Eurofins BPT Munich is obliged to provide the service in accordance with the contract in whole or in part without additional cost to the Customer within a reasonable period of time, unless this is only possible with disproportionate effort. Unless otherwise agreed, this obligation on the part of Eurofins BPT Munich only exists if the Customer notifies Eurofins BPT Munich of the defect in performance in writing and without delay, but no later than two weeks after becoming aware of the non-conforming performance. The Customer must reasonably observe the performance of services by Eurofins BPT Munich for this purpose, insofar as this is possible in the individual case.
- 8.2 If Eurofins BPT Munich is responsible for a service which does not comply with the contract and if it does not succeed in providing the service in accordance with the contract even within the reasonable period of grace set by the Customer for reasons for which it is responsible, the Customer is entitled to terminate the service contract without notice. The right to extraordinary termination for good cause remains unaffected.
- 8.3 In the event of termination pursuant to clause 8.2 of the GTC Eurofins BPT Munich is entitled to remuneration for the services rendered until the effective date of termination. The

claim does not apply to those services in respect of which the Customer provides qualified evidence within two weeks of receipt of the notice of termination that they cannot be used and are of no interest to him.

8.4 If Eurofins BPT Munich is not responsible for a service which does not comply with the contract, Eurofins BPT Munich will, within the scope of its possibilities, offer the Customer its performance in accordance with the contract. If the Customer accepts this offer, Eurofins BPT Munich may claim related expenses and proven costs.

8.5 Customer claims for damages or reimbursement of futile expenses also apply in the event of a default in performance only in accordance with clause 9 of the GTC and are otherwise excluded.

## **9. Other liability**

9.1 Unless otherwise resulted from the GTC including the following provisions, Eurofins BPT Munich is liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

9.2 Eurofins BPT Munich is liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In case of ordinary negligence Eurofins BPT Munich is, subject to statutory limitations of liability (e.g. diligence in own affairs; insignificant breach of duty), only liable for

- (a) damage arising from injury to life, limb and health; and
- (b) damages arising from the breach of a material contractual obligation (obligation the performance of which enables the proper implementation of the contract in the first place and observance of which the contracting party regularly relies on and may rely on); in this case, however, Eurofins BPT Munich's liability is limited to compensation for foreseeable, typically occurring damage.

9.3 The limitations of liability resulting from clause 9.2 of the GTC also apply with respect to third parties as well as in the case of breaches of duty by persons (also in their favour) for whose fault Eurofins BPT Munich is responsible according to statutory provisions. They do not apply insofar as a defect was fraudulently concealed or a guarantee was assumed and for Customer claims under the Product Liability Act.

## **10. Regular termination**

10.1 Eurofins BPT Munich is entitled to terminate a service contract at any time.

10.2 If termination is effected after prior consent of Eurofins BPT Munich by the Customer, the Customer reimburses Eurofins BPT Munich for any material, travel and expenses incurred by Eurofins BPT Munich up to that point. Eurofins BPT Munich is entitled to a percentage of the agreed remuneration as a result of termination. This share is calculated by comparing the actually elapsed time of performance with the time estimated for performance of the service.

In this case, however, the Customer has no claim to handover and surrender of the documentation on completed partial sections or partial results of the service performance.

- 10.3 If Eurofins BPT Munich terminates the contract, the Customer is entitled to documentation of the partial results achieved up to that point, but must reimburse Eurofins BPT Munich for the hours worked pro rata temporis as well as for material and travel costs and expenses.

## **11. Irregular termination**

- 11.1 Should it become apparent during the service performance that complete performance of the service is impossible for factual, legal or economic reasons, Eurofins BPT Munich is entitled to terminate the contract for good cause, whereby Eurofins BPT Munich is entitled to a percentage of the agreed remuneration in addition to remuneration for the material and travel costs incurred as well as expenses. This share is calculated in accordance with section 10.2 of the GTC. In this case, the Customer is entitled to handover of documentation for the previous partial sections and partial results.
- 11.2 The right to irregular termination for other important reasons remains unaffected for both parties.

## **12. Limitation**

- 12.1 The limitation period for Customer claims due to performance defects is one year from the statutory commencement of the limitation period.
- 12.2 Claims for damages by the Customer pursuant to clause 9.2 of the GTC become time-barred exclusively in accordance with the statutory limitation periods.

## **13. Compliance with international sanctions lists and embargoes**

- 13.1 The Customer continuously verifies and ensures, in relation to economic and trade sanctions imposed by the European Union, the United Nations, the United States of America or any other state, that
- (a) the Customer is not subject to an economic sanction;
  - (b) the Customer is not, to the best of his knowledge, controlled by or economically benefiting from a natural or legal person subject to economic sanctions;
  - (c) the Customer complies with all laws and regulations applicable to him in relation to economic sanctions; and
  - (d) the Customer is not involved in proceedings or the subject of investigations by public authorities due to (alleged) violations of legal provisions on economic sanctions applicable to him.

- 13.2 The Customer indemnifies Eurofins BPT Munich against all losses, liabilities, damages, penalties, costs and expenses incurred by or against the Customer as a result of the Customer's breach of Clause 13.1 of the GTC.
- 13.3 Eurofins BPT Munich is entitled to terminate any contractual relationship with immediate effect by written notice to the Customer if the Customer is in breach of the provisions of Clause 13.1 of the GTC without prejudice to any other claim or remedy. In this case the customer is not entitled to compensation or other payments.

#### **14. Confidentiality**

Eurofins BPT Munich and the Customer mutually undertake to keep secret and neither publish nor disclose to third parties any confidential information, business and trade secrets ("**Information**") of the respective other party obtained in connection with the service performance. No distribution or publication of information is made without the express written consent of the other party.

#### **15. Data protection**

Personal data collected in connection with performance of the contract is processed in compliance with the applicable provisions of data protection law. The Customer has the right to information, correction, blocking or deletion of his stored personal data free of charge at any time.

#### **16. Final provisions**

- 16.1 The GTC and the contractual relationship between Eurofins BPT Munich and the Customer are governed exclusively by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- 16.2 If the customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from or in connection with this agreement is Munich. Eurofins BPT Munich is, however, entitled to assert claims alternatively at the customer's general place of jurisdiction. The applicability of regulations on exclusive places of jurisdiction remains unaffected.
- 16.3 Changes and supplements to all contracts concluded between the parties are only agreed in writing. An email or fax is sufficient to meet the written form requirement.
- 16.4 Insofar as these GTC contain loopholes, those legally effective provisions are deemed agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives and the purpose of these GTC if they had known about the loophole.

- 16.5 If any provision of these GTC is or becomes void for any reason, the validity of the remaining provisions is not affected. The invalid provision is replaced by the relevant statutory regulations.

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