Terms and Conditions of Business of Eurofins BioPharma Product Testing Munich GmbH and BSL Bioservice Scientific Laboratories Munich GmbH

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") shall be applicable to all contracts which are accepted by Eurofins BioPharma Product Testing Munich GmbH or BSL BIOSERVICE Scientific Laboratories Munich GmbH or its subsidiaries or sister companies" (referred to hereinafter as "ES") (the undertaking to which individual contracts are awarded shall be referred to hereinafter as the "Contractor"). They shall also apply to contracts concluded by telephone which are not confirmed in writing and to those contracts which arise through the provision of samples. A contract subject to these GTCS shall arise as a consequence of the Contractor's acceptance of a contract. A contract notified to the Contractor shall either be accepted pursuant to (a) the Contractor's performance of the contract (in such a case the written confirmation of the Contractor shall not be required) or (b) the Contractor's written acceptance of the contract.

1.2 Apart from the Director and the authorized representatives of the Contractor, no employee, representative or sub-contractor of ES shall be entitled to authorize 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 director of the Contractor or by one of its authorized representatives.

2. The conclusion of contracts, the non-applicability of contrary contractual terms and conditions and the non-acceptance of logistical services

2.1 In order to be concluded effectively, a contract must be notified by a Customer on its letterhead by post, fax or e-mail 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 on the date of the conclusion of the contract 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). The Customer must immediately confirm in writing those contracts which are concluded over the telephone. In the event that a Customer provides to the Contractor samples with a reference to its Customer number, this shall also be deemed to be the conclusion of a contract. The Contractor shall not be obliged to commence any analysis before all of the terms of the contract 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 director or an authorized representative 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 contract (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 contracts. Each contract 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 already concluded contract, the Contractor shall be entitled to invoice a management and administration fee in the amount of up to €180.00. 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 contract and may lead to a corresponding postponement of the previously estimated delivery dates.

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) and shall be based upon the tariffs applicable on the date of the conclusion of the contract. Taxes shall be calculated on the basis of the rates applicable on the date of the issue of the invoice.

3.3 To the extent that no express agreement to the contrary is reached, payments must in all cases be made within a period of 30 days, for domestic bills 14 days from the date of the invoice. Any query 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 it to withhold payment, to the extent that 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 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 losses 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 in an amount of up to €180.00.

3.5 Payments shall be made by way of a bank transfer. Other means of payment shall require the prior consent of the Contractor.

3.6 The Contractor shall be entitled to make the conclusion of a contract contingent upon the advance payment of up to 100% of the estimated consideration payable. With a contractual value up to 10.000, - € net normally 55% of the volume of orders will be charged after contract award.

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.

4.2 The Customer must ensure and hereby warrants that any dangers to the property and any other legal interests of the Contractor or ES and to their employees and other agents – emanating from the samples and known at the time of commission will be disclosed to the Contractor or ES. It shall be the responsibility of the Customer to comply with the statutory provisions relating to special waste and hazardous materials. Such obligations shall relate to the provision of information, shipment and removal. 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 the 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 pursuant to such contamination. In the event of any wrongful 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 damage is 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 bear the costs of the reasonable removal 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. At the request of the Contractor the Customer shall be obliged to notify to the Contractor the precise composition of any sample.

5. Rights of title in the samples and the 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 contract. 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 industrial practices to store the samples.

5.2 The Contractor shall be entitled to dispose of or destroy samples immediately upon the completion of analyses, unless the Parties have agreed in writing that the Contractor shall retain the sample. 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, unless there is a different written agreement between the parties. 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 unused sample materials, the Customer shall return such sample materials at the expense and risk of the Customer. The Contractor will archive any documentation for the time as laid down in statutory periods. After expiry of these periods archived documents will be destroyed unless Customer requests return at his own expense prior to expiry.

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 completion 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 the conclusion of the contract.

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

The rights of title and any other rights in the results of the analyses, products, equipment, software or like items held by the Contractor in the context of the services provided to the Customer shall be retained by the Contractor until such time as all invoices relating to such services 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 performance of the contract 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 contract.

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

8.1 Contracts shall be performed under the supervision of the Contractor in the best possible conditions in accordance with the state of the art. Results cannot be 100% accurate and/or relevant in all cases. 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 for such limited warranty shall be twelve months from the date of acceptance. The parties agree that services, goods etc. shall be deemed to have been accepted in the event that the Customer notifies nothing to the contrary within the period of three weeks from 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. 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 to have been given in accordance with the contract. Section 377 of the German Commercial Code [*Handelsgesetzbuch*] shall be analogously applied *mutatis mutandis*.

8.2 Each report shall relate exclusively to the sample analysed by the Contractor. To the extent that the Contractor is not expressly commissioned to produce a test strategy or a sample schedule (including a determination of which samples of which raw materials and which finished products are to be analysed with which frequency), subject to the specification of the precise scope of the analyses to be carried out, or if and to the extent that the Customer fails to comply with the relevant recommendations of the Contractor, 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.

8.3 The Customer shall be responsible for the due and proper delivery of samples and the materials to be examined or analysed and which are being provided for the purposes of production. If and to the extent that nothing is agreed to the contrary in writing, the Contractor shall have no liability in the event that a sample is lost or damaged during shipment. The Customer shall be exclusively and at all times liable for the security, packaging and insurance of the sample from the time of its dispatch to the time of its delivery to the offices or laboratories of the Contractor.

8.4 The Customer warrants and undertakes to the Contractor to ensure that all samples which are sent to the Contractor for the purposes of carrying out any analysis shall be in a secure and non-volatile form. The Customer furthermore undertakes to indemnify the Contractor and ES and their personnel or other agents in respect of any loss, costs and other damage suffered or incurred by them due to the fact that a sample is hazardous or volatile, unless such fact is not attributable to the Customer. In the event that a sample at the time of commissioning is known as dangerous or is constituted by special waste/a hazardous medium, the Customer must so inform the Contractor in writing prior to its dispatch. The Customer shall be furthermore obliged to appropriately label any packaging, samples and/or containers.

8.5 To the extent that the Parties do not agree anything to the contrary, the contractual relationship shall exist only as between the Customer and the Contractor. No contract shall be concluded on behalf of third parties or with a protective effect for third parties pursuant to which the Contractor or ES may be bound by any obligations owed to such third parties, if and to the extent that such an arrangement does not arise pursuant to the contract and/or these GTCS. The Customer shall be obliged to indemnify the Contractor and ES in respect of all third party claims which may be brought against the Contractor or ES in connection with the Customer or the contract with the Customer, if and to the extent any wrongful conduct has been engaged in by the Customer.

9. Limitation on liability

9.1 Claims against the Contractor, its parent company, subsidiaries and sister companies and their manual workers, employees, members and directors and advisers (referred to hereinafter as “liability-privileged persons”) in respect of compensation for losses suffered and costs incurred shall be excluded, in the absence of intent, gross negligence or the breach of a material contractual obligation. A material contractual obligation shall in this connection mean any contractual obligation with which compliance enables the due and proper performance of the contract and on compliance with which the Customer may duly rely.

9.2 The liability of liability-privileged persons for any breaches of material contractual obligations based on simple negligence shall be limited to losses which are typical for the contracts pursuant to which such losses arise and which are foreseeable.

9.3 The liability of liability-privileged persons for the gross negligence of those employees of the Contractor who do not occupy a management position shall be limited to the payment of compensation in respect of typically foreseeable losses. This limitation on liability shall not apply to the breaches of the material contractual obligations described in section 9.1.

9.4 The provisions set out in sections 9.1 to 9.3 shall be subject to the prior-ranking provisions contained in section 9.5 for claims in respect of compensation, and in particular in the case of compensation in the event of impossibility, a breach of contract, performance which is defective or which is not given in accordance with the contract, other breaches of the contract and any *culpa in contrahendo*.

9.5 The liability of the liability-privileged persons in accordance with the provisions of the German Product Liability Act [*Produkthaftungsrecht*], 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.

9.6 It shall be a prerequisite for the acceptance of a contract by the Contractor that the Customer represents and that it 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 conclusion of a contract by the Customer shall constitute the giving of such an indemnity.

10. The carrying out of new analyses

Complaints in relation to test results may only be notified subject to the rules 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 or the verification of the foregoing tests.

11. Force majeure

The Contractor shall not be liable to pay any compensation in respect of any 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.

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 The Contractor shall be obliged to use its commercially reasonable endeavours to keep all results of the analyses and service reports confidential.

12.3 The Customer warrants that for the Term of this Agreement, in relation to any economic and trade Sanctions imposed by the United Nations, the European Union, the United States of America or any other country, that:

a) it is not the target of any Economic Sanctions;

b) to the best of its knowledge, it is not controlled or beneficially owned by any person subject to Economic Sanctions;

c) it shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Customer shall not (i) directly or indirectly export, re-export, transship or otherwise deliver the services or any portion of the services in violation of any Economic Sanctions Law, or (ii) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law;

d) it is not engaged in any proceedings or subject to any investigations from authorities for the alleged breach of any Economic Sanctions Law.

12.4 The Customer shall indemnify ES against any losses, liabilities, damages, fines, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, Customer as a result of any breach of clause 1.1 by the Customer.

12.5 Without affecting any other right or remedy available to it, Contractor may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer commits a breach of clause 12.3, and the Customer shall not be entitled to claim compensation or any further remuneration.

For the purpose of this clause:

1. **Economic Sanctions** means any economic Sanctions, restrictive measures or trade embargoes adopted by the UN Security Council, the European Union, the United States of America or any other sovereign government.
2. **Economic Sanctions Law** means any law, regulation or decision enacting Economic Sanctions.

13. Miscellaneous provisions

13.1 These GTCS shall be amended in writing from time to time by the Contractor. In each case the version of these GTCS in force on the date of the acceptance of the offer shall be the version applicable to the resulting contract.

13.2 In the event that a court strikes down any provisions of these GTCS, limits them in their application or finds them to be invalid, unlawful or unenforceable, the remaining provisions shall remain valid to the fullest extent possible.

13.3 In the event that either the Contractor or the Customer refrains from asserting any rights which arise pursuant to these GTCS, this shall neither constitute a waiver of such rights nor shall it result in the forfeiture of such rights.

14. Governing law / Place of jurisdiction

14.1 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 Munich [*München, Germany*] 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. 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.

Valid from: 01/2012