

## GENERAL CONDITIONS OF INSPECTION AND TESTING SERVICES

### 1. General

(a) Unless otherwise agreed in writing, all offers or services and all resulting contractual relationship(s) between SGS Germany GmbH or SGS Technical Staffing Services GmbH or SGS INSTITUT FRESENIUS GmbH or SGS INSTITUT FRESENIUS Berlin GmbH & Co. KG or Chemisches Laboratorium Dr. Merten GmbH (hereinafter each the "Company") and the Client (hereinafter the "Contractual Relationships") shall be governed by these general conditions of inspection and testing services (hereinafter the "General Conditions").

(b) The Company may perform inspection or testing services (hereinafter the "Services") for persons or entities (private, public or governmental) issuing instructions (the "Client").

(c) Unless the Company receives prior written instructions to the contrary from the Client, no other party is entitled to give instructions, particularly on the scope of the Services or the delivery of reports or certificates resulting therefrom (the "Reports of Findings"). The Client hereby irrevocably authorises the Company to deliver Reports of Findings to a third party where so instructed by the Client or, at its discretion, where it implicitly follows from circumstances, trade custom, usage or practice.

(d) The Client's general terms and conditions or condition of purchase as well as oral side agreements shall only be binding upon prior written approval by the Company.

### 2. Provision of Services

(a) The Company will provide Services using reasonable care and skill and in accordance with the Client's specific instructions as confirmed by the Company or, in the absence of such instructions:

- (i) the terms of any standard order form or standard specification sheet of the Company; and/or
- (ii) any relevant trade custom, usage or practice; and/or
- (iii) such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

(b) Information stated in Reports of Findings is derived from the results of inspection or testing procedures carried out in accordance with the instructions of the Client, and/or our assessment of such results on the basis of any technical standards, trade custom or practice, or other circumstances which should in our professional opinion be taken into account.

(c) Reports of Findings issued further to the testing of samples contain the Company's opinion on those samples only and do not express any opinion upon the lot from which the samples were drawn.

(d) Should the Client request that the Company witness any third party intervention, the Client agrees that the Company's sole responsibility is to be present at the time of the third party's intervention and to forward the results, or confirm the occurrence, of the intervention. The Client agrees that the Company is not responsible for the condition or calibration of apparatus, instruments and measuring devices used, the analysis methods applied, the qualifications, actions or omissions of third party personnel or the analysis results.

(e) Reports of Findings issued by the Company will reflect the facts as recorded by it at the time of its intervention only and within the limits of the instructions received or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in clause 2(a). The Company is under no obligation to refer to, or report upon, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

(f) The Company shall provide the testing results or the Reports of Findings in written and signed form. In the event the Client requests the

Company to transmit the testing results or the Reports of Findings via internet, nevertheless, solely the written and signed form of the testing results or the Reports of Findings sent to the Client by the Company shall be binding. The Client accepts that messages sent via internet may – through or without any fault of a third party – be lost, modified or falsified, that conventional emails are not protected against any third party's access, and that the Company therefore assumes no liability for the confidentiality and the integrity of emails that have left the Company's sphere of responsibility. The Company assumes no responsibility for any possible computer virus occurring in connection with the electronic transmission of data and resulting possible technical damage at the Client.

(g) The Company may delegate the performance of all or part of the Services to an agent or subcontractor and the Client authorises the Company to disclose all information necessary for such performance to the agent or subcontractor.

(h) Should Company receive documents reflecting engagements contracted between the Client and third parties or third party documents, such as copies of sale contracts, letters of credit, bills of lading, etc., they are considered to be for information only, and do not extend or restrict the scope of the Services or the obligations accepted by the Company.

(i) The Client acknowledges that the Company, by providing the Services, neither takes the place of the Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of the Client to any third party or that of any third party to the Client.

(j) The Client shall bear the costs and the risk with regard to the delivery of the samples, unless a pickup by the Company has been agreed. In case of transport through the Client, the sample material shall be packed properly and any possible instructions by the Company shall be taken into account.

(k) All samples shall be retained for a maximum of 3 months or such other shorter time period as the nature of the sample permits and then returned to the Client or otherwise disposed of at the Company's discretion after which time Company shall cease to have any responsibility for such samples. Storage of samples for more than 3 months shall incur a storage charge payable by the Client. The Client will be billed a handling and freight fee if samples are returned. Special disposal charges will be billed to the Client if incurred.

### 3. Processing Time

(a) The Company shall render the Services at such time which is customary on the market. Deadlines and time limits with regard to the rendering of the Services are solely binding, if and to the extent confirmed in writing by the Company beforehand.

(b) Observance of any time limits requires the timely receipt of all and any documents and samples to be provided by the Client as well as the Client duly meeting its obligations according to Section 4.

### 4. Obligations of the Client

The Client will:

(a) ensure that sufficient information, instructions and documents are given in due time (in any event not later than 48 hours prior to the desired intervention) to enable the required Services to be performed;

(b) procure all necessary access for the Company's representatives to the premises where the Services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services;

- (c) supply, if required, any special equipment and personnel necessary for the performance of the Services;
- (d) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of Services and will not rely, in this respect, on the Company's advice whether required or not;
- (e) inform Company in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons; to this extent, the Client shall be liable for all and any damage arising of the dangerous nature of the sample material;
- (f) fully exercise all its rights and discharge all its liabilities under any relevant sales or other contract with a third party and at law.

## 5. Fees and Payment

- (a) Fees not established between the Company and the Client at the time the order is placed or a contract is negotiated shall be at the Company's standard rates (which are subject to change). All and any prices shall be exclusive VAT applicable for the time being. The Company reserves the right to invoice the costs for packaging and transport separately.
- (b) The Client will promptly pay not later than 14 days from the relevant invoice's date or within such other period as may be established by the Company in the invoice (the "Due Date") all fees due to the Company failing which interest will become due at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.
- (c) Against the Company's claims the Client may only set off or lay a lien on claims that are undisputed or non-appealable.
- (d) The Client shall pay all of the Company's collection costs, including attorney's fees, collection charges and related costs.
- (e) In the event of any unforeseen problems or expenses arise in the course of carrying out the Services the Company shall endeavour to inform Client and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the Services.
- (f) If the Company is unable to perform all or part of the Services for any cause whatsoever outside the Company's control, including failure by the Client to comply with any of its obligations provided for in clause 4 above, the Company shall nevertheless be entitled to payment of:
  - (i) the amount of all non-refundable expenses incurred by the Company; and
  - (ii) a proportion of the agreed fee equal to the proportion of the Services actually carried out.

## 6. Suspension or Termination of Services

The Company shall be entitled to immediately and without liability either suspend or terminate provision of the Services in the event of:

- (a) failure by the Client to comply with any of its obligations under the Contractual Relationships and such failure is not remedied within 10 days that notice of such failure has been notified to the Client; and/or
- (b) any suspension of payment or arrangement with creditors, a petition to institute bankruptcy proceedings is made or bankruptcy proceedings are instituted with regard to the Client's assets, receivership or cessation of business by the Client.

## 7. Liability

- (a) The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Clients seeking a guarantee against loss or damage should obtain appropriate insurance.
- (b) Reports of Findings are issued on the basis of information, documents and/or samples provided by, or on behalf of, the Client and solely for the benefit of the Client who is responsible for acting as it sees fit on the basis of such Reports of Findings. Neither the Company nor any of its officers, employees, agents or subcontractors shall be liable to the Client nor any third party for any actions taken or not taken on the

basis of such Reports of Findings nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Company.

- (c) The Company shall not be liable for any delayed, partial or total non-performance of the Services arising directly or indirectly from any event outside the Company's control including failure by the Client to comply with any of its set forth in clause 4.

(d) The Company shall be liable for damages resulting from ordinary negligence regarding essential contractual duties (material contractual duty or essential secondary obligation), for default or impossibility of performance attributable to ordinary negligence, but limited to those damages that are foreseeable and typical to a contract. The liability of the Company for ordinary negligence of non-essential contractual duties is excluded.

(e) The liability of the Company pursuant to lit. (d) above shall be limited per damaging event to a maximum total amount equal to 10 times the amount of the fee to be paid in respect of the specific Services which give rise to such claim. In no circumstances shall the liability of the Company, however, exceed a maximum total amount of 100.000,00 € per damaging event.

(f) The Company shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Client.

(g) In the event of any claim, the Client must give written notice to the Company within 30 days of discovery of the facts alleged to justify such claim. In any case, claims resulting from breach of duty by the Company become time-barred within 12 months as of the legally applicable beginning of the prescription period.

(h) The limitations of liability of this clause 7 shall not apply to damages to the extent that they result from acts of intent or gross negligence. The same applies to damages that occur as the result of injury to life, body or health as far as the negligence was within the control of the Company. Any negligence on the part of the Company's legal representatives or agent shall be treated as if originating from the Company.

## 8. Confidentiality and Intellectual Property

(a) The Client and the Company undertake to keep confidential all and any business and trade secrets obtained within the Contractual Relationships, not to disclose them to third parties without the prior written approval of the other party and not use them without permission for own purposes. Information acquired or gained within the Contractual Relationships shall be treated confidentially by the Company, unless publicly known or accessible, already known to the Company or disclosed to the Company by a third party without breach of any obligation of secrecy.

(b) The Company reserves its rights related to all and any test methods and/ or test procedures as well as to all and any instrument and/ or equipment that the Company develops independently or generally uses, unless such test methods and/ or test procedures as well as instrument and/ or equipment have been developed within the conduction of the Services for the Client exclusively according to a written agreement.

## 9. Protection of Results

The Company retains the copyright on Services rendered, as far as such is applicable. The Client may use all issued Reports of Findings or expert reports with all tables, calculations and any other details issued within the Contractual Relationships only for the purpose determined by agreement. The Client shall not modify, work on or use in extracts the Reports of Findings or expert reports. A disclosure of the Reports of Findings or expert reports to public authorities or other public institutions is permitted, if and to the extent necessary according to the contractually provided purpose or statutory. Beyond, any publication or reproduction of the Reports of Findings or expert reports, also in extracts, in particular via the internet or for promotional

purposes, as well as any other disclosure to third parties requires the prior written approval of the Company.

#### **10. Miscellaneous**

(a) If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(b) During the course of providing the Services and for a period of one year thereafter, the Client shall not directly or indirectly entice, encourage or make any offer to Company's employees to leave their employment with the Company.

(c) Use of the Company's corporate name and/ or registered marks for whatever advertising purposes is not permitted without the Company's prior written authorisation.

#### **11. Governing Law, Jurisdiction and Dispute Resolution**

All disputes arising out of or in connection with Contractual Relationships hereunder shall be governed by and construed in accordance with the substantive laws of Germany exclusive of any rules with respect to conflicts of laws. All these disputes shall be submitted to the exclusive jurisdiction of the competent courts of the registered office of the Company assigned to render the Services, as far as the Client is a registered merchant, a corporate entity under public law or a special public-law entity. The Company is, however, entitled to sue the Client as well at Client's place of general jurisdiction.