

General Terms and Conditions for Testing and Inspection Services for Companies

1. Scope of application

1.1 All testing and inspection services (hereinafter: 'Services') or offers for services (hereinafter: 'Offers')* and all resulting contractual relations between ifp Privates Institut für Produktqualität GmbH and their dependent branch offices and independent subsidiaries (each hereinafter referred to independently as 'ifp') and the natural/legal person who has commissioned them (hereinafter: the 'Client') shall be governed by these General Terms and Conditions (hereinafter: 'GTC'). These General Terms and Conditions do not apply to Clients who are consumers within the meaning of section 13 of the German Civil Code [BGB].

* except contracts concluded via 'www.wasserschnelltest.de'

1.2 Deviating agreements and oral side agreements will be binding only after prior written consent by ifp.

2. Placing and fulfilling orders

2.1 ifp will provide their services with due care in accordance with the criteria or methods defined in the offer and confirmed by the Client in the order or in accordance with the specific requirements of the Client, provided those are deemed to be appropriate and have been confirmed by ifp. In the absence of an offer or other specific instructions on the part of the Client, the order will be fulfilled at the due discretion of ifp.

2.2 The Client can place an order in writing, by telephone or by dispatching the sample(s). The order is deemed to have been accepted if ifp has accepted the order in writing or orally or starts to execute the service ordered. Any change requests after ordering must be communicated in writing.

2.3 ifp is entitled to engage a subcontractor to execute all or part of the ordered services after prior consultation with the Client. With their consent, the Client authorises ifp to disclose to the subcontractor all information required to execute the services ordered.

2.4 The Client authorises ifp to obtain the information required for the compilation of the expert opinion in a neutral and confidential manner from the parties involved, the authorities and third parties and to conduct surveys. If necessary, the Client shall issue a special power of attorney to ifp to this end.

2.5 ifp may forward test and inspection reports to third parties, provided the Client has so instructed ifp, or if ifp may reasonably assume from the specific circumstances or commercial practice that they have been implicitly authorised to do so.

3. Processing time

3.1 The 'standard analysis time' stated in the offer is calculated from the date the samples are received at the laboratory; this period is, however, only indicative and does not amount to a binding commitment.

3.2 A binding schedule can be agreed on a case-by-case base in writing. If a time limit (fixed period) has been agreed for the delivery of the service, this period shall commence upon receipt of the sample(s) at the laboratory or, if no service is to be performed on a sample, with the placing of the order. Compliance with the time limit or fixed date is contingent on the timely fulfilment of the Client's duties of collaboration pursuant to No. 4.1.

3.3 Processing times may be extended due to force majeure if such circumstances prevent ifp from carrying out the necessary work.

4. Obligations of the Client

4.1 The Client shall ensure that the samples, information, instructions and documents required for the performance of the services are provided to ifp in good time to enable ifp to deliver the required services in accordance with the contractual terms.

4.2 For the purpose of inspection, employees of ifp shall be granted access to all areas where the services are to be performed. The Client shall ensure that the services can be performed without obstruction or interruption. If necessary, ifp shall be provided with support staff and equipment to support them in the performance of the services.

4.3 Unless ifp has agreed to collect, the costs and risks for the delivery of samples shall be borne by the Client. If the Client dispatches the samples, they must be packed properly and with due consideration of any instructions that ifp may have issued.

4.4 The Client shall comply with the provisions on information about and marking, packaging, transport and disposal of hazardous waste and hazardous substances. ifp must be informed in advance about any known hazards or risks that may result from the order. This includes for example radioactive, toxic, explosive or other harmful or environmentally damaging components; to this extent, the Client shall be liable for any damage caused by the hazardous properties of the sample material. If ifp finds that samples cannot be examined, e.g. because they are contaminated (e.g. by mildew) or on account of the health risks associated with examining them, ifp is entitled to reject the sample(s) or carry out the examination as required subject to safety precautions and any additional work and costs involved in consultation with the Client.

4.5 If ifp incurs any costs for the proper disposal of hazardous substances and special waste due to the samples submitted by the Client, the Client shall bear those costs irrespective of whether the need for such disposal was known before the order was placed or not.

5. Work results and copyright protection

5.1 All details stated in the test or inspection reports are derived from the results of the testing or inspection procedures, which have been followed in compliance with the specifications, methods or instructions pursuant to no. 2.1 and/or from the evaluation of those results based on technical standards, commercial practices or other circumstances that ifp deems to be applicable.

5.2 Unless a representative sample was collected in terms of an EU regulation or national provision applicable to the purpose of the examination, test reports and expert opinions refer exclusively to the specific samples and do not permit any inferences about the remainder of the batch or delivery from which the samples were taken. Test reports only reflect the findings and/or evaluations made at the time of examination in accordance with the scope of services ordered. ifp is not obliged to point out facts or aspects or compile reports that do not form part of the scope of the ordered services, examinations or procedures.

5.3 ifp will make test or inspection reports available electronically, unless the Client has specifically requested transmission of the reports in printed and signed form, which incurs additional costs. In consultation and with the consent of the Client, the results can also be transmitted in a form other than test reports (e.g. tabular reports, interface reports). The substantive responsibility of ifp ends with the start of the transmission procedure. Any falsification of these results by third parties beyond the control of ifp shall not give rise to any liability on the part of ifp. The provision in no. 10 remains unaffected. Any test reports submitted electronically are valid even if not signed.

5.4 ifp retains copyright in the provided services, to the extent that they can be copyrighted. The Client may use the test or inspection reports or assessments, including all calculations, tables, images and other details compiled in accordance with the contract only for the contractually agreed purpose. The Client is not entitled to change, edit, publish them or use them only in extract without the consent of ifp. The same applies for quotes, prospectuses, catalogues, trade marks or other corporate documentation or designations. Test or inspection reports or evaluations may be transmitted to authorities or other public institutions to the extent that the contractual purpose so requires.

5.5 ifp reserves the title to all testing methods, devices and/or equipment that they develop themselves, unless the aforementioned were developed exclusively for the Client as part of a service provided based on a written agreement.

6. Confidentiality

The Client and ifp undertake to keep the mutually disclosed business and trade secrets confidential, not to transmit them to third parties without the written consent of the other party and not to use them in an unauthorised manner for their own purposes. Information received or obtained in the course of the contractual relations will be treated as confidential by ifp, unless it has been made public or publicly accessible, or it was already known to ifp, or it was made known to ifp by a third party without any breach of a duty of confidentiality. ifp is authorised to use examination results in an anonymised form for scientific purposes, publish them and to analyse them statistically for in-house purposes. However, ifp is authorised to disclose the information if disclosure is intended and required by statutory provisions. In this case, the Client will be informed about the disclosure.

7. Ownership and storage of samples

Upon receipt, all samples shall become the property of ifp. Samples will be stored for a period determined at our discretion, unless the samples require cool storage or are samples for microbiological tests, in which case the samples will be stored for a period of only four weeks, unless another arrangement has been agreed by the Client and ifp. Unless the Client wishes the samples to be returned, they will be disposed of, at which point ifp's responsibility for the samples will expire. If the Client wishes to have the samples returned to them, they shall pay a handling and freight fee and pay the costs for the return shipment.

8. Prices and payment terms

8.1 Our quotes are non-binding and subject to change. Obligations may be regulated in separate contracts. ifp reserves the right to adapt prices accordingly if costs increase.

8.2 As long as no specific price agreement has been concluded prior to the order, the Client shall be charged ifp's applicable standard rates. All prices are inclusive of any applicable statutory value-added tax. The VAT is determined by the residency of the Client's company. In case of Germany, the statutory VAT applies. If the Client's company is based outside of Germany, net prices apply. ifp reserves the right to separately charge packaging and transport costs for the shipping of sample containers or other auxiliaries.

8.3 The compilation of the test or inspection reports will be charged separately. Any subsequent changes or supplements to orders already placed or any changes or re-issues of invoices at the request of the Client will also be charged separately.

8.4 The Client shall be responsible for customs clearance. If the Client insists on processing by ifp or a broker commissioned by ifp, then the Client shall pay any resulting costs including an administrative fee appropriate to the effort incurred.

8.5 Regarding the costs for storage and return of the samples, see no. 7; for costs in connection with the disposal of hazardous substances and hazardous waste, see no. 4.4.

8.6 The Client shall make payment to ifp for all duly calculated remuneration immediately after the invoice date or within whichever deadline is stipulated on the invoice. Any complaint relating to an invoice must be asserted within 30 days after receipt of the invoice. If the Client questions the correctness of an examination result, they shall not be entitled to withhold payment based on the complaint, unless the inaccuracy of the examination result and the resulting counter-claims of the Client are undisputed, have been accepted by ifp or established to be final and binding by a court of law.

8.7 If the Client is in default of payment, ifp reserves the right to charge dunning fees. In the event of non-compliance with any payment terms, ifp shall also be entitled to claim all outstanding payments as due with immediate effect.

8.8 ifp is not obliged to accept bills of exchange or cheques.

8.9 If the Client is in default of payment of an ifp invoice for an amount that is not unsubstantial in the context of the business relationship, all obligations under the business relationship will become immediately due (irrespective of any accepted bills of exchange). ifp is entitled to carry out any outstanding services only against prepayment or security as well as to withdraw from the contract after a reasonable deadline and/or demand compensation for non-performance.

8.10 An offset or right of retention can be asserted against claims of ifp only if the Client's counterclaim is uncontested or has been determined to be final and binding by a court of law.

9. Suspension or termination of services

ifp shall be entitled without incurring any liability to cease the performance of services with immediate or permanent effect, to terminate the agreement without notice and to reject an order if the Client fails to comply with the obligations resulting from the contractual relations within 14 days after a corresponding notice of caution and/or in the event of any payment suspension, agreement to avert insolvency, commencement of insolvency proceedings, application for commencement of insolvency proceedings or sequestration on the part of the Client. The provision of no. 10 remains unaffected thereby. ifp shall be entitled to remuneration for the partial services provided up to the time of termination.

10. Liability and guarantee

10.1 ifp is neither the insurer nor the guarantor and accordingly does not accept any related responsibility.

10.2 The test or inspection reports compiled based on the information, records and/or samples provided to ifp by the Client or on the latter's behalf shall be used exclusively for the benefit of the Client. The Client shall draw the necessary conclusions at their own responsibility from the test or inspection reports. Neither ifp nor their employees or sub-contractors are responsible vis-à-vis the Client or third parties for any type of action that is taken or not taken based on conclusions from test or inspection reports or for faulty examinations that are based on incorrect, incomplete, unclear or misleading information transmitted by the Client.

10.3 Any claims by the Client for damages, lost profit and/or production downtime will not be accepted. This does not apply to the Client's claims for damages from injury to life, body or health, or from the infringement of essential contractual obligations (cardinal duties), as well as liability for other damage that is based on an intentional or grossly negligent breach of obligation on the part of ifp, their legal representatives or persons used by them to fulfil their obligations. Essential contractual obligations are those that are necessary to meet the contractual objectives.

10.4 In the case of essential contractual obligations, ifp shall be liable only for the contract-typical, foreseeable damage if such damage is caused by simple negligence, unless the Client's claims for damages result from an injury to life, body or health. These limitations apply also in favour of the legal representatives and persons used to perform one of ifp's obligations, if claims are asserted directly against them. The provisions of the German Product Liability Act remain unaffected.

10.5 In the event of claims for damages, the Client shall notify ifp in writing within 14 days after discovery of the circumstances establishing the damage. Any claims on the part of the Client shall be time-barred within one year after the start of the statutory start of prescription. A test report is deemed to have been accepted if the Client does not object to it in writing within 14 days after receipt.

10.6 Any inconsistent or false results transmitted by ifp must be promptly notified to us to allow us to undertake a second analysis. A second analysis will only be possible if ifp still has sample material available. If the second analysis shows the result to be correct, the Client shall bear the costs of the second analysis.

11. Privacy

We comply with the requirements of the EU General Data Protection Regulation (GDPR). We process personal data as part of the order only to the required extent. This includes, in particular, the names and business contact details of contact persons. The data is processed exclusively for the specific purpose of executing the commission, invoicing and transmitting the results of the analysis. For further information in this regard, we refer contracting partners to the privacy policy on our website.

12. Jurisdiction

12.1 Contracts concluded by ifp and the Client shall be governed by the law of the Federal Republic of Germany subject to exclusion of the UN Convention on Contracts for the International Sale of Goods. The statutory provisions on restrictions on the choice of law and the applicability of peremptory norms remain unaffected.

12.2 The Parties submit to the jurisdiction of the courts of Berlin.

Last updated: 22 October 2019