

General Terms and Conditions of Order of BioChem Labor für biologische und chemische Analytik GmbH

1. Scope

The following Terms and Conditions of Order (Terms and Conditions) apply to all business dealings between BioChem Labor für biologische und chemische Analytik GmbH, Daimlerstrasse 5b, 76185 Karlsruhe, Germany – referred to hereinafter as BioChem - and the Client, even if reference is not made hereto in subsequent contracts. By placing an order, the Client acknowledges these Terms and Conditions as legally binding. The General Terms and Conditions of the Client are hereby revoked in full, unless it has been agreed separately and in writing that they are to apply. These General Terms and Conditions also apply if BioChem performs services for the Client without reservation, in full knowledge of its contradictory, supplementary or deviating terms.

Terms and Conditions that supplement or deviate from these General Terms and Conditions that are concluded between BioChem and the Client in execution of a contract must be set forth in writing in the contract. This also applies to the waiver of this written form requirement.

Rights going over and above these General Terms and Conditions to which BioChem is entitled under the statutory provisions or under other agreements remain unaffected.

2. Conclusion, Scope and Performance of the Order

Unless otherwise agreed, all offers issued by BioChem are non-binding. Information concerning the services and other specifications set forth in the information and documentation that form part of the offer do not constitute any form of binding agreement or guarantee, unless such characteristics are explicitly designated binding. BioChem reserves all ownership, copyright, proprietary and other rights in all offer documentation. Such documentation is not permitted to be made available to third parties.

As a rule, the Client must place all orders in writing. In the case of orders placed by other means, the Client bears the transmission risk. The contract is concluded upon written order confirmation by BioChem. Verbal declarations, confirmations or commitments issued by employees of BioChem are subject to written confirmation. BioChem has the right to determine the method and type of analysis or tests at its reasonable discretion, unless otherwise agreed, in writing. Amendments or additions to the order placed must be made in writing and are deemed agreed only once they have been confirmed by BioChem in writing. If through no fault of its own BioChem is not able to perform the order, BioChem is entitled vis-à-vis the Client to withdraw from the contract, in whole or in part. In this case, the Client will be notified without delay.

If the Client applies for the initiation of insolvency proceedings or comparable proceedings concerning its assets or if a legitimate application by a third party for the initiation of insolvency or comparable proceedings concerning the assets of the Client is rejected due to lack of assets, BioChem is entitled to withdraw from the contract, in whole or in part.

3. Client Obligations

The Client shall to the best of its ability provide comprehensive support to BioChem in the performance of its services. In particular, the Client will immediately provide BioChem with all documentation and information necessary and expedient to the performance of the service. The nature and scope of further cooperation duties of the Client arise out of the offer or the order.

If fixed time periods are agreed between BioChem and the Client, these commence only once the Client has provided BioChem with all necessary documentation and all applicable preconditions (e.g. approvals, test samples, reference products) have been fulfilled by the Client. Where reasonable, the Client will grant BioChem an appropriate additional deadline within which to perform the order, even if BioChem is responsible for any failure on its part to meet agreed deadlines.

4. Prices

The price is always that stated in writing in the offer or in the order confirmation. The most recent service specification is always to be taken as the basis for the price for standardised services, in particular analyses or tests. The prices stated therein are basic prices for such services. BioChem will charge additional fees or deduct discounts based on the actual effort for the individual case. For all other services not listed in the service specification, the price is agreed on a project-specific basis. On request, BioChem will issue project-specific written offers. The price is in Euros, plus VAT at the statutory rate. Prices quoted by telephone are not binding.

5. Terms of Delivery and Payment

For samples sent from Clients within the EU, including Germany, INCOTERMS 2020 DPU Karlsruhe, sample receipt at BioChem's site, is deemed to be agreed. For samples sent from Clients outside the EU, INCOTERMS 2020 DDP Karlsruhe, sample receipt at BioChem's site is deemed to be agreed; consequently, in deviation from INCOTERMS 2020 DDP, the Client also owes the unloading of the samples from the incoming means of transport.

Unless agreed upon otherwise, all invoices are due eight days after the billing/invoice date without deductions and to the stated account. Based on the order volume, BioChem reserves the right to invoice a partial amount as advance payment upon placement of the order, upon return of the test plan, or upon attainment of certain testing phases.

6. Liability

The coverage amount under existing liability insurance is Euro 6,000,000 for personal injury and damage to property (maximum coverage amount Euro 6,000,000 for each individual), and Euro 100,000 for financial loss. The Client has expressly acknowledged the foregoing. BioChem is liable without limitation for losses relating to the breach of a guarantee or relating to damage to life, limb or health. The same applies to intentionally caused damage and gross negligence. BioChem is liable for slight negligence only in the event of the breach of material duties that are inherent to the nature of the contract and of material importance to the attainment of the contractual purpose (cardinal obligations). In the event of the breach of such duties, as well as in instances of default and frustration of contract, BioChem's liability is limited to typically foreseeable damage for this type of contract.

If and as far as BioChem's liability is excluded or limited, this also applies to the personal liability of BioChem executives, employees, staff, representatives and agents.

7. Usability of Work Results/Copyright

The results of the services performed as contractually agreed apply only for the test samples submitted and used as contractually agreed. Statements going above and beyond this based on the results are not permissible.

All data used or provided by BioChem in performance of its services are and remain the property of BioChem. BioChem without limitation reserves all rights in the method development and validation processes. All results, in particular the test results, reports, recommendations and information provided by BioChem in connection with the order are, and remain, the property of BioChem. BioChem thus reserves all rights herein without restriction. BioChem grants the Client, without temporal or geographical restriction and without the right to grant sub-licenses, a simple, non-transferable right in the results for all known types of use. The duplication and publication of test results, reports, recommendations or information for purposes other than the contractually agreed purpose is subject to BioChem's written consent.

8. Confidentiality

The parties are mutually obliged to maintain strict confidentiality with respect to all information that becomes accessible to them and that is marked confidential, or which, based on other circumstances, can be identified as business secrets, for a period of five years beginning with the disclosure of the confidential information and, unless required for the business relationship, not to record, disclose or utilise such information.

The obligation of secrecy does not apply if

- (a) the information has been proven to already be known to the receiving party before the commencement of the business relationship or was generally known or generally accessible before the commencement of the business relationship; or
- b) become generally known or accessible without fault of the receiving party; or
- c) the receiving party is obliged by law, by administrative or other legal act or by court order to disclose the confidential information; in this case, the party requested to disclose shall immediately inform the party whose confidential information is affected of the request in writing; disclosure shall be limited to the respective judicial or administrative proceedings.

The receiving party shall bear the burden of proof.

The parties will ensure by means of appropriate contractual agreements with their employees and contractors that they, too, refrain from any own exploitation, reproduction or unauthorised recording of such business secrets for a period of five years beginning with the disclosure of the confidential information.

BioChem undertakes in particular to make available all results attained in connection with the order to the Client and without its consent not to publish or disclose the same to third parties. The Client is indefinitely not permitted without BioChem's written consent to pass on method developments and validation processes to third parties.

9. Claims Based on Defects and Statute of Limitation

The Client is required within twelve days of notification of the work result to accept it, or in the event of evident serious defects, to submit a written objection. In the case of such defects in the analyses, tests or other services rendered (advice, information) the Client is entitled to subsequent performance. If a second attempt to render subsequent performance is unsuccessful, the Client has the right to reduce the remuneration or to withdraw from the contract. The Client's right to withdrawal is excluded if it is unable to return the service received and this is not attributable to the fact that the return is impossible on account of the nature of the service received or is within the responsibility of the Contractor.

The claim to the rectification of defects (subsequent performance) must be asserted by the Client without delay and in writing.

Claims to the rectification of defects are statute barred on expiry of one year, calculated from the date of notification of the work results by BioChem. Obvious errors in the work results, e.g. spelling errors or formal defects, may be rectified by BioChem at any time.

10. Storage of Samples and Documents

Unless otherwise agreed, in writing, residual material from the samples provided for analyses – where the characteristics allow – are to be stored for up to two weeks from the date of analysis. Documents will be stored in accordance with the test specifications used (e.g. GMP, GLP). After expiry of the storage period they will be disposed or destroyed at the expense of the Client at the discretion of BioChem. If a return of residual material or documents is desired, this must be agreed in writing when the contract is concluded. The costs of return shipment shall be borne by the Client.

If the test specification requires the storage of a sample or a retained sample, the stored sample or the retained sample will be disposed or destroyed at the expense of the customer at the end of the storage period at the discretion of BioChem. Sentence 3 and sentence 4 of this number 10 apply accordingly.

11. Applicable Law, Place of Performance and Place of Jurisdiction

The legal relationship between BioChem and the Client is governed exclusively by the laws of the Federal Republic of Germany. The place of performance for all services of the Client and BioChem is Karlsruhe. The exclusive place of jurisdiction for all disputes arising under and in connection with the business relationship between BioChem and the Client is Karlsruhe. BioChem is also entitled to file suit at the Client's seat and at any other permissible place of jurisdiction.

12. Final Provisions

Counterclaims of the Client entitle it to set-off only if these have been conclusively legally determined or are uncontested. The Client may assert a retention right only if its counterclaim is based on the same contractual relationship. This is without prejudice to the Client's claims based on defects.

Should any provision of these General Terms and Conditions be or become invalid or unenforceable, in whole or in part, or should these General Terms and Conditions contain a gap, this shall not affect the validity of the remaining provisions. In place of the invalid or unenforceable provision the valid or enforceable provision is deemed agreed that comes as close as possible to attaining the purpose of the invalid or unenforceable provision. In the event of a gap, the provision is deemed agreed that corresponds to what the parties would have agreed, in view of the purpose of these General Terms and Conditions, had they considered the matter from the outset.