

# General Terms and Conditions

General Terms and Conditions of PhytoLab GmbH & Co. KG, Vestenbergsgreuth, hereinafter "PhytoLab"

## § 1 Scope

1. The legal relations between PhytoLab and the Client in connection with supplies and/or services of PhytoLab (hereinafter referred to as "Services") shall be solely governed by the present General Terms and Conditions ("Ts&Cs") provided the Client is an entrepreneur, legal person under public law or a special fund under public law (§ 310 I BGB [German Civil Code]). The Ts&Cs also apply if PhytoLab, even when knowing of the conflicting or different terms, performs its Services without reservation; such conflicting or different terms are only binding on PhytoLab if PhytoLab has expressly agreed to their application in text form.

## § 2 Offer, Conclusion of Contract, Subcontractor, Audits

1. Offers from PhytoLab are non-binding. Orders from the Client are only binding based on these Ts&Cs if they are accepted by PhytoLab in text form or carried out by PhytoLab without reservation (conclusion of contract). If PhytoLab confirms the order in text form (order confirmation), then the order is deemed to have been accepted on the terms of the order confirmation unless the Client immediately rejects these terms on receipt of the order confirmation in text form.

2. Deliveries from PhytoLab shall be *Ex Works* Vestenbergsgreuth, Germany (EXW Incoterms® 2010) at the expense of the Client.

3. If the Client requires that part of the Services be performed by a dedicated party appointed by the Client, whether the Client or PhytoLab concluded the respective contract with such party, the Client shall be responsible for (1) auditing such party's facility, (2) ensuring the appropriate conduct of the assigned work, and (3) the fulfillment of the obligations of the contract by such appointed party.

4. If the Client or a national or foreign public authority conducts an audit or inspection in relation to the Services performed by PhytoLab for the Client, the Client shall bear PhytoLab's respective expenses.

## § 3 Time of Performance, Delay

1. The time of performance starts upon complete clarification of all technical and commercial details of the order and, if necessary for the performance of the Services, after receipt by PhytoLab of any material to be provided

by the Client, including, but not limited to, test samples and any information or documents from the Client required for the Services to be performed. The fulfilment of the contract is subject to the proviso that there are no impediments arising from German, US-American or other applicable national, EU- or international provisions, embargoes or sanctions.

2. Information by PhytoLab regarding the timing of performing the Services is non-binding unless a binding time of performance has exceptionally been confirmed in text form.

3. PhytoLab is entitled to provide partial performance.

4. If PhytoLab is responsible for delay (hereinafter "Delay") and the Client has demonstrably suffered a loss therefrom, the Client may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Services which due to the Delay could not be put to the intended use.

5. The Client's claims for damages due to delayed Services as well as claims for damages in lieu of performance exceeding the limits specified in No. 4 above are excluded in all cases of delayed Services, even upon expiry of a time set to PhytoLab to effect the Services. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Client based on statute is limited to cases where PhytoLab is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Client.

## § 4 Supplementary Provisions for Analysis Services, Marketing Authorisation Dossiers and Expert Opinions

1. If for an analysis a statement of conformity is required, the Client has to provide the rules and standards or the specification of the desired values against which the assessment is to be performed.

As to assess the compliance of a numerical limit the decision rules of the "European pharmacopoeia (Ph.Eur.), General Instructions, 1.4 Monographs, Tests and Assays, "Limits" and "Indication of permitted limit of impurities" will be applied.

In relation to pesticide-multi-methods the assessment „variation range“ may

be applied if the result matches the specification only after deduction of the measurement uncertainty of 50 % (SANTE 11813/2017).

In the evaluation of microbiological quality according to Ph.Eur. 5.1.4 and Ph.Eur. 5.1.8 the acceptance criteria described therein will be applied.

Non-numeric results will be assessed against the characteristics described in the specifications and rated "conform" or "not conform".

The request for a statement as to conformity according to a specific, Client-mandated decision rule is negotiable.

2. If test samples are not used up during the tests, PhytoLab will keep them for six months after reporting the results of the tests and will then dispose of them without further notice to the Client; the storage for a longer period or the return to the Client would require a separate agreement.

3. PhytoLab will transmit the results of analytical tests in the form as agreed in the contract, e. g. as a certificate of analysis. Additional Services, especially e.g. additional documentation, require a separate agreement and remuneration. PhytoLab will store electronic copies of the Service results and raw data as well as any agreed additional documentation for a period of five years after provision of its Services and will then dispose of or delete them without further notice to the Client; the storage for a longer period would require a separate agreement. On request the Client will get such electronic copies as available at reasonable prices.

## § 5 Supplementary Provisions for the Supply of Reference Substances

1. Reference substances supplied by PhytoLab may fall under the Chemicals Prohibition Ordinance (Chemikalien-Verbotsverordnung), the European regulation for Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and other regulatory provisions.

2. Reference substances may solely be used for research and scientific teaching and formation purposes as well as for analysis purposes and may not be used for other ends, especially not for use in, or for the production of, food, animal feed, human or veterinary drugs, cosmetics, medical devices and diagnostics including in-vitro-diagnostics.

3. The Client shall comply with all applicable regulatory provisions and restrictions for the use of the reference substances and shall, insofar the Client passes reference substances on to third parties, impose respective obligations on the recipients.

### **§ 6 Prices, Payment, Setting-off, Right of Retention**

1. If there is no separate agreement, the prices usually charged by PhytoLab for comparable services at the time the contract is concluded will apply. All prices are in EURO and exclusive of value-added tax at the applicable rate at the time of the Service.

2. Invoices from PhytoLab are due immediately on receipt.

3. Offsetting by the Client is only permitted in the case of claims that are undisputed or have been legally determined. Exercising the right of retention is only permitted for undisputed or legally determined counterclaims which are based on the same contractual relationship.

### **§ 7 Defects Liability**

The Supplier shall be liable for defects of the Services (hereinafter "Defects"), as follows:

1. Defective Services shall be, at PhytoLab's discretion, repaired or replaced free of charge, provided that the reason for the Defect had already existed at the time when the Services are handed over to the Client.

2. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply in the case of rescission and price reduction. This shall not apply in the case of

- a) intent,
- b) fraudulent concealment of the Defect or
- c) non-compliance with guaranteed characteristics (Beschaffenheitsgarantie).

The legal provisions regarding suspension of the statute of limitations (Ablaufhemmung, Hemmung) and recommencement of limitation periods shall remain unaffected.

3. Notifications of Defect by the Client shall be given in written form without undue delay.

4. In the case of notification of a Defect the Client may withhold payments to an amount that is in a reasonable proportion to the Defect. The Client has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle PhytoLab to demand reimbursement of its expenses from the Client.

5. PhytoLab shall be given the opportunity to repair or to replace the defective good (Nacherfüllung) within a reasonable period of time.

6. If repair or replacement is unsuccessful the Client is entitled to rescind the contract or reduce the price; any claims for damages the Client may have according to No. 9 shall be unaffected.

7. There shall be no claims based on Defect in cases of only minor impairment of usability of the achievements.

8. The Client shall have no claim with respect to expenses incurred in the course of supplementary performance to the extent that expenses are increased due to reasons that were not assumed under the contract.

9. The Client shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health and/or intentionally or grossly negligent breach of contract on the part of PhytoLab. The above provisions do not imply a change in the burden of proof to the detriment of the Client. Any other or additional claims of the Client exceeding the claims provided for in this § 7, based on a Defect, are excluded.

### **§ 8 Liability for Damages, Waiver of Recourse by the Client**

1. Except as otherwise provided for elsewhere in these Ts&Cs the Client has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort. This shall not apply in the case of

- a) intent,
- b) gross negligence,
- c) fraud,
- d) failure to comply with a guarantee granted,
- e) negligent injury to life, limb and health, or
- f) negligent breach of a fundamental condition of contract (wesentliche Vertragspflicht), i.e. such condition the breach of which would endanger the scope of the contract and the compliance with which the Client may legitimately rely on.

However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above cases applies.

The above provision does not imply a change in the burden of proof to the detriment of the Client.

2. If the Client is liable for damages in relation to third parties in accordance with the Medicines Act or foreign legal regulations which regulate the liability of pharmaceutical companies in the case of death or other damage to body or health, and if the damages can be traced to a breach of duty by PhytoLab, then the Client waives the right to seek compensation from

PhytoLab as far as the damages to be paid are covered by the Client's third-party liability insurance. The Client is aware that this waiver of compensation claims may require the consent of its third-party liability insurer.

### **§ 9 Confidentiality, Copyrights and Rights of Use, Data Protection**

1. PhytoLab shall treat confidential all information it gets from the Client or it develops for the performance of the Services unless the Client has given its prior consent in text form for a dissemination or publication. This shall not apply to information that was or became publicly available, was already lawfully in PhytoLab's possession, was independently from the contract developed by PhytoLab, was received from a third party source that, to the knowledge of PhytoLab, was not bound by a confidentiality obligation, or is required to be disclosed to comply with a judicial or official order or decree.

2. PhytoLab is not obliged to disclose the details of its analysis methods. If according to a separate agreement and in return for separate payment PhytoLab provides the Client with its analysis methods, the Client is only permitted to use these for the agreed purpose (e.g. evidence for authorities, for the Client's own tests) and must otherwise keep the analysis methods confidential in relation to third parties.

3. PhytoLab retains the copyright to all documents supplied by PhytoLab (certificates of analysis, additional documentation, expert reports, opinions etc.). These documents may only be used for the purposes defined in the contract. Any use, even in a modified form, for other purposes, including, but not limited to, transfer to third parties, publication or use for promotional purposes, requires PhytoLab's express consent in text form.

4. PhytoLab will treat all personal data that it receives in confidence. These data will be processed, used and stored for the sole purpose of performing the order and responding to inquiries and will be immediately deleted upon justified request of the person concerned.

### **§ 10 Place of Performance, Applicable Law, Legal Venue**

1. The place of performance is the registered office of PhytoLab.

2. German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

3. The legal venue for all disputes arising out of or in connection with the contract is the competent court for PhytoLab's registered office. However, PhytoLab is entitled to bring a lawsuit at the competent court for the Client.