

# General conditions of inspection and testing services

## 1. GENERAL

- (a) Unless otherwise expressly agreed in writing, all offers or services and all resulting contractual relationship(s) (hereinafter "Contractual Relationships") between SGS Germany GmbH or SGS INSTITUT FRESENIUS GmbH or SGS-TÜV Saar GmbH or Trait-Genetics GmbH (hereinafter each the "Company") and the client (hereinafter "Client") shall be governed by these general conditions of inspection and testing services (hereinafter the "General Conditions").
- (b) These General Conditions only apply in the relationship to companies in terms of Section 14 of the German Civil Code (BGB), public law entities, and special funds under public law which have placed an order ("Client").
- (c) The written form as herewith agreed between the Client and the Company according to these General Conditions for the preparation and communication of documents within the scope of the contractual relationships (i.a. offer, acceptance, side agreement, addendum) is also met in case of electronic data transfer. Transfer via internet per unencrypted email or other digital transmission technology (e.g. Client's interface, online portal etc.) or per fax is sufficient.
- (d) The Client accepts, that unencrypted messages sent via internet may – through or without intervention of third parties – be lost, modified or falsified. Conventional e-mails are not protected against any third party's access, and the Company therefore assumes no responsibility for the confidentiality and the integrity of e-mails that have left the Company's sphere of responsibility. The Company assumes no liability either for data security during the transmission via internet nor for data security while in the Client's sphere of responsibility. Malware appearing in connection with the electronic transfer of data and resulting possible damage for the Client are herewith likewise excluded.
- (e) 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 expert opinions 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 the discretion of the Company, where it implicitly follows from circumstances, trade custom, usage or practice.
- (f) 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.
- (g) Every Company may transfer the contractual relationship to an affiliated enterprise within the meaning of Sect. 15 ff. of the German Stock Corporation Act (Aktengesetz – AktG) and the Client herewith agrees to the transfer upon concluding the Contractual Relationship. This concerns the Companies mentioned in Clause 1 (a) only.
- (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. The definition of samples in terms of these General Conditions includes retention samples.
- (d) Should the Client request that the Company witnesses 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 specific instructions received by the Client or, in the absence of such instructions, within the limits of the alternative parameters applied as provided for in Clause 2 (a). The signed Report of Findings (manually or electronically signed) is the only legally binding document (see Clause 2 (f)). The Company is under no obligation to refer to, or report upon, any facts or circumstances which are outside

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

the specific instructions received or alternative parameters applied under Clause 2 (a).

- (f) The Company shall provide the the Reports of Findings according to the agreement with the Client either/or in electronic form or in paper form. In absence of an agreement , it will be in the Company's sole discretion if it will deliver in electronic or paper form.

The Report of Findings in paper form is an original. If the Report of Findings will be transmitted in electronic form, it will be regarded as an original according to Art. 3 and 17 b UCP 600 (Uniform Customs and Practice for Documentary Credits, ICC 2007 Revision). When transmitted in electronic form, the Company assumes no responsibility as to whether the electronic form will suffice the purposes of the Client. When transmitted in electronic form, the Report of Findings will be presented in a digitally signed pdf format. The Client may check the authentication within the document itself. If generated and provided via SGSONSITE, the authentication may be made via SGSONSITE.

The transfer of the electronic Report of Findings will take place via internet per unencrypted e-mail or via other digital transmission technology (e.g. via Client's interface, online portal etc.).

- (g) The Company may delegate the performance of all or part of the Services to a subcontractor. The Company may disclose all information necessary for such performance to the subcontractor.
- (h) Should the Company receive documents reflecting engagements contracted between the Client and third parties or third party documents, such as copies of sales 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) By providing the Services, the Company neither takes the place of the Client or any third party. The contract which forms the basis of the Services shall not affect any contractual relationships between the Client and third parties.
- (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 period of 3 months unless the nature of the samples necessitates a shorter period or a longer period has been agreed in writing between the Parties (e.g. due to statutory or other regulations). The Client shall pay the agreed storage fees for samples which are stored for longer than 3 months. After the expiry of such period, the samples are disposed of at the Client's cost or, provided an agreement to this effect has been concluded with the Client, sent back to the Client at the Client's cost and risk.

### 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 of cooperation according to Clause 4.

### 4. OBLIGATIONS OF THE CLIENT

The Client will

- (a) ensure that the information, instructions and documents necessary for the performance of the Services are given to the Company in due time (in any event not later than 48 hours prior to the agreed intervention);
- (b) procure all necessary access for the Company's or Subcontractor'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 to the Company, if required, any special equipment and personnel necessary for the performance of the Services;
- (d) ensure that all necessary measures are taken under their sole responsibility for safety and security of working conditions, sites and installations during the performance of Services;

- (e) inform the 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; 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 contract or at law against a third party.

### 5. PRICES AND CONDITIONS OF PAYMENT

- (a) Fees not established between the Company and the Client shall be at the Company's current price lists (which are subject to change). All and any prices shall be exclusive of VAT applicable for the time being: The Company reserves the right to invoice the costs for packaging and transport separately.
- (b) The Client will 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 properly calculated fees. The Client is considered in default even without a reminder being necessary. If the Client is a company, interest at a rate of 9 % above the base rate will become due from the beginning of default.
- (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 and collection charges.
- (e) In the event of any unforeseen problems or expenses arising in the course of carrying out the Services the Company shall endeavour to inform the Client and shall be entitled to charge additional fees to cover extra time and cost.
- (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.
- (g) The invoice is usually sent by e-mail as a PDF file from our electronic mailbox ([de.billing@sgs.com](mailto:de.billing@sgs.com)).

## 6. TAX CLAUSE, INTERNATIONAL SERVICES

- (a) This clause shall only apply if either the Client and/or the Subcontractor of the Company are seated outside Germany.
- (b) No taxes are included in any and all prices and costs for the Services rendered by the Company or an affiliated enterprise within the meaning of Sect. 15 ff. of the German Stock Corporation Act (Aktiengesetz – AktG), or a subcontractor. Among others, this comprises VAT or equivalent fees, taxes (in particular income tax, stamp duties, associated charges or withholding tax). Besides, they do not contain any liabilities referring to them (collectively: „Taxes“), billed to the Client under applicable national law.
- (c) Any payment by the Client is to be made free of and without withholding or deducting, any taxes. This shall not apply if such withholding or deduction is required based on applicable law and/or applicable double tax treaties. The Client shall make available to the Company without delay proof of such payment as well as copies of any documents, which have to be submitted when making such payment.
- (d) The Parties shall use their best efforts towards the deducted amounts or the relevant tax being refunded. They shall support each other concerning their obligations in this respect. Any refunded Taxes shall be paid back in accordance with the relevant sums they are entitled to receive.

## 7. SUSPENSION OR TERMINATION OF SERVICES

The Company shall be entitled to immediately and without liability either suspend or terminate provision of the Services or to terminate the Contract without advance notice 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 agreement to avoid insolvency after payments due to be made by the Client were demanded several

times, cessation of business or compulsory administration on the part of the Client.

## 8. LIABILITY

- (a) The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity.
- (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. The Client is responsible for acting as it sees fit on the basis of such Reports of Findings. Neither the Company nor any of its executive staff members, 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. There shall be no liability either, if the inspections are based on unclear, erroneous, incomplete or misleading information provided by the Client.
- (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 obligations set forth in Clause 4 or in the event of force majeure.
- (d) The Company shall be liable for foreseeable damages resulting from ordinary negligence regarding essential contractual duties (material contractual duty or essential secondary obligation) that are 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, however, be limited per damaging event to the amount of EUR 1,000,000. The Company is only liable for indirect or consequential damage if and to the extent that such damage is typical of the respective type of contract and was foreseeable at the time of contract conclusion.
- (f) The liability restrictions in this Clause 8 shall not apply to damage if this is due to gross negligence or intent and in cases of mandatory statutory liability (especially under the Product Liability Act). The same shall apply to damage from injury to life, limb or health if the Company is responsible for the breach of obligation. A breach of obligation of the Company in the meaning of this

Clause 8 shall be equivalent to that of its legal representative or agent.

## 9. LIMITATION PERIODS

- (a) In the event of claims for damages, the Client shall notify the Company of the claim in writing within three months of the detection of the circumstances which give rise to the claim.
- (b) At any rate, claims for damages of the Parties which arise from breaches of duty of the respective other party lapse 24 months after the statutory start of the limitation period.

## 10. CONFIDENTIALITY

- (a) The Client and the Company undertake to keep confidential all and any business and trade secrets obtained from the other party within the Contractual Relationships, not to disclose them to third parties without the prior written approval of the other party and not to 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. The definition of third parties in terms of this Clause 10 does not include affiliated companies in terms of Sect. 15 ff. of the German Stock Corporation Act (Aktiengesetz – AktG), nor subcontractors.

## 11. INTELLECTUAL PROPERTY RIGHTS AND GRANTING OF USAGE RIGHTS

- (a) The Company reserves all rights to the data obtained in the course of the service provision and to the Reports of Findings created.
- (b) The Client may use the Reports of Findings created in the context of the contractual relationship, including all tables, calculations and other details, only after full payment of the fees has been rendered and only for the contractually agreed purpose. However, the Client is not permitted to change, edit or use only extracts of the Reports of Findings. A disclosure of Reports of Findings to authorities or other public bodies is permissible if and to the extent that this is necessary according to the contractually agreed purpose or is prescribed by statute. Any publication or public communication of the Reports of Findings or extracts thereof, particularly via the Internet or for advertising purposes, and any

other disclosure to third parties, is permissible only with the prior written consent of the Company.

- (c) 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.

## 12. DATA PROTECTION

In the course of the provision of the Services, the Company and the Client may each obtain access to the personal data of the respective other party. The Parties shall process the personal data only to fulfill the contractual obligations for which they are responsible. Any further processing which would constitute a change of purpose is prohibited. The Company and the Client shall (i) process the personal data in compliance with

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR) and other statutory requirements and (ii) fulfill the duties to inform imposed by Article 13 ff. GDPR.

For this purpose, the Company provides the Client with the Privacy Policy for Clients, available at <https://www.sgsgroup.de/privacy-customers>. The Client undertakes to inform the workers who perform work within the contractual relationship for the Company of the above and to make the Privacy Policy for Clients available to them.

## 13. MISCELLANEOUS

- (a) If any one or more provisions of these General Conditions are found to be ineffective 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.
- (d) The Company may mention for purposes of reference the cooperation with the Client. Within four (4) weeks after the conclusion of the Contractual Relationship, the Client may object to said use.

## 14. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION

All disputes arising out of or in connection with the contractual relationships hereunder shall be governed by and construed in accordance with the substantive laws of Germany exclusive of any rules under international private law. The exclusive place of jurisdiction for all these disputes shall be Hamburg, as far as the Client is a merchant, a legal entity under public law or a special fund under public law. The Company is, however, also entitled to sue the Client at Client's place of general jurisdiction.