

General Business Terms of the Weihenstephan Research Center for Brewing and Food Quality for Analyses, Consulting and other Services

§ 1 General, Scope of Validity

(1) The present General Business Terms (GBT) apply to all contracts for the analysis of yeast and food samples as well as to the rendering of consulting and other services between the Weihenstephan Research Center for Brewery and Food Products at the Technical University of Munich, Alte Akademie 3, 85354 Freising, as the Contractor (in this document also called “we” or “us”) and his clients. In their respective version, the General Business terms also apply to future contracts with the same client without us being required to specify this in each and every case. Different general business terms will apply to our online shop.

(2) Our GBT will apply exclusively. Any general business terms by the Client that deviate, are in contrast or are supplementary will only and insofar become part of the contract if we have expressly approved their validity. This requirement of approval will apply in every case, for instance, even where we render services or supply goods unconditionally in knowledge of the Client’s terms. Individual agreements concluded with the Client (including ancillary agreements, addenda and amendments) will, however, take precedence over the GBT. A written contract or our written mandatory confirmation will be authoritative and mandatory for the subject matter of such agreements.

(3) Legally relevant declarations and notices to be submitted to us by the Client after conclusion of the contract (e.g. stipulation of deadlines, report of defects, notice of rescission or price reduction) must be in writing in order to be valid.

(4) The laws of the Federal Republic of Germany, excluding the United Nations Sales Convention (CISG) will apply to the present GBT and all legal relations between us and our clients.

(5) The place of jurisdiction is Freising, provided that the Client is a businessman or a legal entity in public law or an estate in public law. The same will apply where the Client does not have a general place of jurisdiction in Germany or his domicile or habitual abode is unknown at the time the lawsuit is being filed.

§ 2 Services by the Weihenstephan Research Center, Conclusion of the Contract

(1) Our offers are directed exclusively at commercial clients, government agencies and associations. We offer our clients the analysis of food and yeast samples as well as consulting and other services. The individual services are listed in the specs, which the Client may inspect and download on our website in the respective valid version.

(2) Our offers are subject to change and non-binding. This will also apply where we have provided the clients with catalogs, technical documentation or documents, including in electronic form, to which we reserve ownership and copyrights.

(3) Hiring services by the Client and/or sending samples for analysis will be regarded as a binding contractual offer. To the extent that nothing else can be concluded from the assignment we have the right to accept the contractual offer within 7 days after we receive it. Acceptance may be declared either in writing (such as through order confirmation) or through performance of the agreed services or analyses.

(4) We may stipulate that services will only be rendered if the Client effects an adequate advance payment. Where the assignment includes analyses only, the advance payment may be 100% of the order value and will be due immediately after conclusion of the contract. In the case of consulting or other services, the advance payment will be usually 50% of the order total plus the anticipated travel expenses.

(5) We have the right to have work and services performed by qualified subcontractors. We will in any event remain the contractual partners of the clients.

§ 3 Client's Duties

(1) The Client will be obligated to support our work to the necessary extent. In particular, the Client will create all spatial and technical conditions in his work environment that are necessary for rendering the work free of charge. To the extent that the required adequate prerequisites are not being met, the Client must pay separately for the waiting period incurred, which will be documented.

(2) Moreover, the Client must ensure that all documents necessary for the performance of our work are submitted to us in good time and that we are informed of all relevant processes and circumstances, even if they become known to us during our work. We may demand that the Client confirm in writing the accuracy and completeness of the documents and information submitted by him as well as verbal declarations.

(3) At our request, the Client will appoint a reference partner in charge of all questions within the framework of the performance of the hired services.

§ 4 Performance of Analyses

(1) The prerequisite for the performance of analyses is that that Client has stipulated the nature and scope of the requested analysis in accordance with our specs and that the sample quantity is sufficient and adequate for the examinations being carried out. Where the above conditions are no longer given we will contact the Client.

(2) The analysis orders received by us will be processed in the chronological order of their receipt.

(3) For every sample inspected, the Client will receive an inspection report. All results refer exclusively to the samples being inspected. According to his request, we will send the Client the inspection reports by mail, fax or e-mail.

§ 5 Rendering of Services

(1) Where the subject of the service is a consulting service or other service the scope of service, procedure and type of work results will be set out in the written order agreement in conjunction with our specs. Amendments of, addenda to or expansion of the scope of service, procedure and type of work results must be agreed on in writing.

(2) Performance deadlines will be agreed on individually or specified by us upon acceptance of the order. To the extent that we are unable to keep binding deadlines for reasons for which we are not responsible, we will inform the Client immediately, simultaneously re-stipulating the anticipated new performance and/or delivery deadline. Compliance with agreed deadlines by us will be dependent on the prerequisite of the Client's fulfillment of his contractual duties.

(3) The service will be rendered when the necessary analyses have been performed and/or the necessary data recorded, the resulting conclusions and recommendations have been elaborated and declared to the Client. It is irrelevant whether and when the Client implements the conclusions or recommendations.

(4) In the case of work contracts the Client will be obligated to accept our work at the agreed dates.

§ 6 Prices, Expenditure/Travel Expenses, Value Added Tax

(1) Our prices in accordance with the specs valid at the time of the assignment will apply unless otherwise agreed on in the contract.

(2) Travel expenses in connection with an assignment will be charged to the Client in accordance with the Bavarian Travel Expenses Act. Air travel will be at the business class fares. The Client may directly fully or partially assume the travel expenses. Other expenses and outlay in connection with performance of the assignment will be charged to the Client on the basis of a proof record.

(3) Unless otherwise specified, our prices do not include value added tax at the statutory rate. It will be charged and recorded separately at the statutory amount at the date of invoicing.

§ 7 Payment Terms

(1) Our invoices will be payable to the full amount within 4 weeks as from the date of the invoice to the account specified by us.

(2) The invoice amounts are payable in Euros together with the corresponding statutory taxes (VAT) and charges.

(3) The Client will only have the right to set-off where his respective counterclaims have been acknowledged by us or are *res judicata*. The Client will only have the right to exercise a right or retention where his counterclaim is based on the same contract.

§ 8 Protection and Use of the Work Results, Confidentiality

(1) The reports, plans, designs, lists and calculations made by us may only be used for contractually agreed purposes. Any use of the work outside of the contract, in particular the publication thereof, will require our prior written consent, unless publication is for compliance with statutory reporting duties. The above provisions will apply even where the work rendered is not the subject of special statutory rights, in particular of copyrights.

(2) We have the right to use the work results for scientific evaluations and publications. In such a case we will be obligated to neutralize the results and to omit any reference to the Client and his issues. Publications with specification of names are only permissible with the approval of the Client.

(3) We will be obligated to observe confidentiality on all matters and procedures, in particular business and company secrets, which become known to us during our work for the Client. We will impose this duty on any subcontractors hired by us. The confidentiality agreement also refers to the period after termination of cooperation with the Client.

§ 9 Liability

(1) The statutory provision will apply to the Client's rights in the case of material and legal defects.

(2) With the exception of liability for material and legal defects, we will be liable without restrictions provided that the cause of damage is based on willfulness or gross negligence. We will also be liable for the breach of cardinal duties due to minor negligence (duties, the breach of which would jeopardize attainment of the contractual purpose as well as for the breach of cardinal duties (duties whose fulfillment is essential for the proper performance of the contract and on whose compliance the Client regularly relies), but only for the foreseeable damage typical of the contract. We will not be liable for the breach of other duties not specified above due to minor negligence.

(3) The liability restricted in the above paragraphs will not apply in the case of injury to life, limb or health, to a defect after assumption of a guarantee for features of the product and in the case of willfully concealed defects. Liability according to the Product Liability Act will remain unaffected.

(4) Where our liability is excluded or restricted, this will likewise apply to the personal liability of our employees, representatives and vicarious agents.

§ 10 Data Protection

(1) The Client is aware and consents to the storage on data carriers of personal data necessary for performance of the present contract. The Client expressly consents to the recording, processing and use of personal data. The stored personal data will of course be treated by us as confidential. Recording, processing and use of the Client's data will be in compliance with the Federal Data Protection Act (BDSG) and Telemedia Act (TMG).

(2) The Client has the right to revoke his consent at any time with effect for the future. We will then be obligated to immediately delete the personal data. In the case of ongoing business relations, the data will be deleted after termination of the relations.

as per Jan. 1st , 2017