

# General Terms and Conditions (GTC)

-for Business Customers-

of Dr. Brill + Prof. Bockmühl GmbH Institute for Applied Hygiene · Wiesenstraße 35 · 47533 Kleve · Germany

## § 1. Validity

Unless otherwise agreed in individual cases, the following General Terms and Conditions shall apply to all performance rendered to its Customers by Dr. Brill + Prof. Bockmühl GmbH, Institute for Applied Hygiene, Wiesenstraße 35, 47533 Kleve, Germany, e-mail: [Info@bb-appliedhygiene.com](mailto:Info@bb-appliedhygiene.com) (hereinafter: DBB). Any terms and conditions of the Customer which are in conflict with or which deviate from or supplement these General Terms and Conditions are explicitly ruled out. Accordingly, any supplementary or deviating general terms and conditions of the Customer shall apply only if they have been explicitly agreed with DBB. Employees of DBB are not authorised to enter into any agreement which amends these General Terms and Conditions. Such an agreement can only be concluded with DBB itself. Any supplementary or deviating general terms and conditions of the Customer and any subsidiary agreements, amendments and/or addenda to the agreement between DBB and the Customer must therefore be recorded in writing in order to be valid. The foregoing shall also apply to any waiver of this written form requirement.

## § 2. Conclusion of Contract

All offers submitted by DBB are without obligation and subject to change. Orders submitted by the Customer (for example by sending in test samples/test items or by handing over test samples/test items to DBB) shall be deemed accepted only on issue of confirmation of receipt (including oral confirmation) by DBB, unless DBB indicates that the order has been accepted by rendering performance or in any other unambiguous manner. The order contents and scope of performance shall be determined by the order placed by the Customer. The order shall refer to execution of the contractually agreed performance in accordance with the service portfolio offered by DBB as amended from time to time, but not a specific result or a specific success. DBB is not obliged to advise the Customer of values or facts or to report any such values or facts which are outside the scope of the specific instructions issued by the Customer, the scope of generally accepted best practice or the relevant statutory regulations. Deviations from the order shall be permissible if they appear advisable for technical or scientific reasons. Special forms of examination shall require a separate telephone or written agreement. Place of performance shall be the facilities of DBB at its company locations in Hamburg or Bremen. In discharge of its contractual obligations to the Customer, DBB reserves the right to subcontract the order to other laboratories / institutes in consultation with the Customer. The results shall be indicated accordingly in the test reports. The Customer agrees that DBB shall not be responsible for the condition or calibration of any apparatus, instruments or measuring devices used by third parties.

## § 3. Performance

The services to be performed by DBB shall be provided within the customary periods for this market sector. Agreed dates and delivery periods shall be binding only if they have been explicitly agreed in writing as binding between DBB and the Customer and are stated as deadlines by which performance must be completed at the latest. The tests shall be conducted in accordance with generally accepted best practice and the relevant statutory and official regulations. In some cases, this may result in damage to or total destruction of the test items (including but not limited to devices, device components) and/or test samples (including but not limited to liquids, gels, creams, powders, ointments, cosmetics, wound dressings). DBB reserves the right to alter the scope of performance without prior notice for technical reasons, in case of any amendments in the statutory and/or official regulations or owing to new scientific findings; such alterations may, however, lead to an increase in the prices which apply at the time of order placement. This shall be handled in consultation with the Customer. The Customer shall receive appropriate confirmation (by e-mail, fax or telephone) of receipt of the test sample/test item. In case of any doubts as to the suitability of the received test sample/test item for the test concerned (e.g. damage, incompleteness), or if a test sample/test item does not conform to the description supplied or if the necessary test has not been specified in sufficient detail, DBB shall first await further instructions from the Customer after confirmation of receipt before continuing with testing of the material and, if necessary, request a new test sample or new test item. Specimens and test samples shall be stored in a dry and dark sample cabinet. Refrigerated storage is possible if necessary. Unless otherwise agreed in writing, DBB shall not be obliged to keep specimens, test samples and test items. Test samples and specimens shall routinely be disposed of or discarded on completion of the tests, unless otherwise agreed with the Customer. Test items shall routinely be returned to the Customer on completion of the tests unless otherwise agreed. On completion of the tests the Customer shall receive a written test report, which may also be generated electronically and not bear a signature. Customers are explicitly advised that the results stated in the test report refer solely to the specimen or test sample and not to the remainder of the test material from which the specimen / test sample was taken. The Customer authorises DBB to forward test reports to third parties if this was ordered by the Customer or results from the circumstances, established customs, common trade usage or practice. Periods of time which have been agreed as binding shall commence only when the Customer has satisfied its obligations to cooperate in each individual case (cf. § 4 of these GTC). Unless the Customer submits a written complaint to DBB within one week of receipt of the test report, performance by DBB shall be deemed accepted provided it is essentially free of faults. If non-compliance with a delivery date is attributable to force majeure, industrial action or other events beyond the control of DBB, the delivery date shall be extended accordingly. The foregoing shall also apply if such obstructions occur during the delay or if they affect a supplier.

## § 4. Obligations of the Customer

Due and proper performance by DBB presupposes due and proper handling of the test samples/test items by the Customer. This refers in particular to prompt submission of the test samples/test items, compliance with statutory periods where applicable, the use of suitable media for taking samples and due and proper packaging which provides protection against breakage, any necessary refrigeration of the test samples / test items as well as due and proper labelling. The Customer is therefore obliged to notify DBB of all relevant circumstances for execution of the tests (including but not limited to the Customer's own reservations, information about risks and handling), to keep DBB permanently informed of such circumstances and to submit all

documents required by DBB for performance of its work in due time. DBB reserves the right to plead the defence of non-fulfilment of the Customer's contractual obligations. Unless the parties have agreed on sample taking / collection of the test samples from the Customer's premises, the Customer shall bear the risk and costs of due and proper shipment of the test samples to DBB. As protection for the employees of DBB, when submitting any dangerous substances, the Customer is obliged to affix clearly visible labelling to the packaging of the submitted test samples/test items, stating that the shipment contains dangerous substances. The Customer shall therefore be liable for any injury sustained by DBB or its employees owing to infringement of the above obligations. The Customer shall also warrant and represent that the test samples/test items do not contain any substances which would make the agreed performance impossible or make it significantly more difficult. The Customer shall also be liable for ensuring that the exterior of the sample receptacles are clean and free of contamination by the test material.

## § 5. Liability for Defects and General Liability

Pursuant to § 3 of these General Terms and Conditions, the Customer shall submit written notification of any manifest defects within a period of one week as from receipt of the test report, including an explicit specification of the defect. If the Customer fails to submit a complaint within the above period, it shall forfeit all rights relating to this defect, inclusive of any rights resulting from contractual and statutory liability for defects, unless the defects were fraudulently concealed by DBB, unless DBB has already given explicit written acknowledgement of its obligation to remedy the defects concerned or unless DBB is liable on grounds of intent. If, despite careful examination of the performance rendered by DBB, a defect only becomes apparent at a later date, the Customer is also obliged to submit written notification of the complaint to DBB, including an explicit specification of the defect, within five working days after the defect concerned has become apparent. The performance shall otherwise be deemed approved, irrespective of the defect, which shall also cause the Customer to forfeit its entire claims based on liability for defects. In order to maintain its rights, it is sufficient for the Customers to dispatch notification of the defect within the above periods. The Customer's claims arising from defects shall become statute barred within 12 months of acceptance / occurrence of the assumption of acceptance. In case of execution of repairs by DBB, the limitation period shall merely be suspended from the time of receipt of the written complaint until completion of the repair or until complete failure of the attempted repair. The statutory regulations on liability for defects shall otherwise apply. DBB shall be liable to its Customers for damage which is attributable to intent or gross negligence on the part of DBB or any agents employed in performance of DBB's obligations. DBB shall also be liable for simple negligence in cases of infringement of cardinal obligations which are essential for fulfilment of the contract and for achieving the object of the contract. In case of liability for simple negligence, DBB's liability shall be limited to the direct damage and to the level of the payment to be rendered for the order or alternatively to the typical and foreseeable damage for this type of contract if the latter is higher. DBB is covered by liability insurance for damage amounting to a maximum of EUR 3,000,000.00. DBB shall not be liable for any delay in the provision of services or for failure to provide services in full or in part if this results directly or indirectly from events which are beyond the control of DBB (including but not limited to infringement of the Customer's obligations pursuant to § 4 of these GTC). The foregoing liability disclaimers and limitation shall not apply if a warranty has been given by DBB, nor in cases of damage to life, limb or health, nor in cases of mandatory statutory liability. The Customer shall indemnify DBB and any agents employed in performance of DBB's obligations for third-party claims for damages filed in connection with the order which exceed the liability of DBB and/or any agents employed in performance of its obligations pursuant to the foregoing provision. The Customer shall give DBB written notification of any circumstances which constitute grounds for such claims within 30 days of discovery of these circumstances. Claims for compensation based on infringement of obligations shall become statute barred within 12 months, beginning from the commencement of the statutory limitation period.

## § 6 Remuneration

Unless the parties have signed a separate agreement to the contrary, DBB's remuneration shall be based on the prices/price lists agreed between DBB and the Customer in each individual case. The agreed remuneration shall cover all performance to be rendered by DBB under the contract, inclusive of all necessary preparatory and ancillary work. The remuneration shall not include any costs and expenses assumed by DBB or any other costs specified in these General Terms and Conditions which are to be reimbursed by the Customer (additional expenditure). If any modifications or supplementary work is carried out at the request of the Customer after placement of the order, the additional expenditure shall be charged separately. Unless otherwise stated on the invoice, all invoices shall be payable within 14 days of the date of invoice in full, without any deductions for cash payments or other discounts, by transfer to the bank account of DBB stated on the invoice. The Customer shall automatically be in arrears without the need for a reminder or fulfilment of any other requirement if it fails to pay by the date stated on the invoice or, if no such date has been stated, within 14 days of the date of invoice. The Customer shall be entitled to lay a lien or set-off payment only if its counterclaims have been legally established as final and non-appealable or are undisputed by DBB. The Customer shall further be entitled to lay a lien only if this refers to the same contractual relationship.

## § 7 Test Results and Copyright

On completion of its analyses, DBB shall provide the Customer with a written test report. At the explicit request of the Customer, DBB shall inform the Customer of the test results in advance by telephone, fax or e-mail. The results refer solely to the analyses of the specimens taken or to the test samples/test items sent in by the Customer; the Customer is not permitted to apply these results to any other untested samples. DBB reserves the rights in all test methods and/or procedures and in all devices and/or equipment which it has developed or generally uses, unless these were developed exclusively for the Customer in the course of provision of the services in accordance with a written agreement. The Customer and DBB undertake to treat all business or trade secrets of the other party which come to their notice in the course of this contractual relationship as strictly confidential, not to disclose them to

third parties without the prior consent of the other party and not to make any unauthorised use of such information for their own purposes. All information acquired by DBB in this manner shall be treated as strictly confidential, unless the information is in the public domain or has been disclosed to the company by a third party without any breach of the foregoing obligation of confidentiality. DBB explicitly retains copyright in all expert opinions, test reports, analyses and similar delivery items and results of its work which are eligible for copyright. DBB shall thus be entitled to all industrial property rights resulting from any invention made in connection with the contractual performance and/or any expert knowledge acquired in that connection. DBB shall be permitted to make use of such expert knowledge solely within the scope of the contractual agreement. DBB shall grant the Customer the necessary rights of use for the individual purpose concerned. These rights of use shall therefore be transferred to the Customer only to the extent of the contents, periods of time and territory resulting from placement of the order. The Customer shall not be permitted to modify or edit the test reports or expert opinions or to use them as excerpts only. In particular, the Customer shall not be permitted to publish or disclose the test reports or expert opinions, including but not limited to publication on the internet or for advertising purposes, nor to disclose them to third parties (with the exception of public authorities or other public bodies) without the prior written consent of DBB.

## § 8 Data Protection

The Customer is explicitly advised that DBB shall collect, process and use the Customer's personal data, as well as its company and business data within the scope of the contractual relationship pursuant to the Federal German Data Protection Act or any applicable regional data protection legislation. On countering these General Terms and Conditions, the Customer consents to the collection, processing and use of such data. DBB shall be permitted in particular to collect, process and use personal data such as name, address, date of birth, occupation, name of company, telephone number, fax number and e-mail address) and data relating to the order (including but not limited to data relating to the test material, purpose of the test, individual analysis parameters, prices, invoice data, payments, outstanding payments, findings and test reports). DBB shall not disclose to third parties any information about the order itself or any data collected by DBB in connection with the business relationship or any other information relating to the order and the Customer. The foregoing shall not apply in cases of any compulsory notification or reporting obligations under public law.

## § 9 Legal Venue and Applicable Law

If the Customer is a business customer within the meaning of the German Commercial Code, a special fund under public law or a legal entity, Hamburg (Federal Land of Hamburg) shall be sole legal venue for all disputes in connection with this contractual relationship. The same legal venue shall apply if the Customer has no general jurisdiction in the Federal Republic of Germany at the time of institution of legal proceedings. These General Terms and Conditions and the entire business relationship between DBB and the Customer shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

## § 10 Amendments to the General Terms and Conditions

DBB reserves the right to amend these General Terms and Conditions at any time without stating reasons provided this does not lead to any change in the contract structure as a whole. The amended terms and conditions shall be submitted to the correspondence address stated by the Customer no later than two weeks prior to their entry into force. If the Customer does not submit a written objection to the entry into force of the new General Terms and Conditions within a period of two weeks of receipt of the new General Terms and Conditions, the amended General Terms and Conditions shall be deemed accepted. In the letter containing the amended terms and conditions, DBB shall advise the Customer of the amended terms and conditions, the Customer's rights to object, the time limit for objections and the meaning of the amendments.

## § 11 Severability Clause

Should one or more provisions of these General Terms and Conditions be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible to the economic intent of the invalid or unenforceable provision in a legally admissible way. The foregoing shall also apply if the General Terms and Conditions prove to contain gaps.

Dr. Brill + Prof. Bockmühl GmbH  
Institute for Applied Hygiene  
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