

**ASL Analytic Service Laboratory GmbH**  
**General Terms and Conditions (Abroad)**

January 2014

**1. Preamble**

**1.1** Agreements between us and yourself shall be exclusively concluded on the following terms and conditions. Acceptance of an order will not imply acceptance of different contract purchase conditions.

**1.2** Subject matter of the contract can be chemical and physical analyses as well as vapour analyses and additional special analyses according to state-of-the-art technology in the area of tobacco-, tobacco product- and foodstuff analytics. The scope of services of the respective order shall be determined prior to order placement and confirmed in the form of an order confirmation pursuant to Clause 2.2, after receipt of the samples.

**2. Contract Conclusion and Performance**

**2.1** Any agreements between us and any changes to the scope of services must be in writing in order to be effective.

**2.2** A contract is concluded with our written order confirmation. Our order confirmation must be issued in writing after receipt of the samples. If it contains minor modifications or additions compared to your order, you will be deemed to be in agreement therewith unless you object in writing within two working days after receipt.

**2.3** The order shall be carried out in an unbiased way and to the best of our knowledge and in good faith.

**2.4** We are entitled, for the proper processing of your order, to perform the necessary and customary examinations and measurements at our discretion, or to have these performed by competent subcontractors, without requiring your express consent in this regard. If unforeseen, time-consuming or cost-intensive examinations, relative to the purpose of the analysis order, become necessary, we shall obtain your prior consent.

**2.5** You shall not issue any instructions which may distort the results of a test/analysis.

**3. Intellectual Property**

**3.1** Plans, methods and other documents and information will remain our property. They shall be used only to the extent permitted by ourselves and must not be modified, reproduced or made available to third parties.

**3.2** We are prohibited from disclosure, dissemination or utilisation of the facts and documents that were entrusted to us in the context

of our work, or otherwise were made known to us, without authorization. The obligation of secrecy encompasses all facts which are not common knowledge and applies beyond the duration of the order processing. We are authorised to disclose, disseminate or utilise for own purposes knowledge obtained in the course of our activities if we are obligated to comply with statutory provisions or if you expressly release us from the obligation of secrecy in writing. Furthermore, following consultation with you, we are authorised to use and publish any examination results attained within the context of rendered activities for scientific purposes and to subject these to independent scientific evaluation, in compliance with data protection provisions.

**3.3** The publication of the scope of services, of certificates, their utilisation, reproduction and distribution is only permitted within the context of the contractually specified intended purpose and by naming ASL Analytic Service Laboratory GmbH.

**4. Delivery Time and Method**

**4.1** Deadlines for the performance of an order are considered non-binding if not expressly agreed in writing as being binding.

**4.2** An agreed delivery period will begin as soon as the contract has been concluded, all official formalities have been completed and all details, information and materials necessary for processing the order have been made available free of charge, and the agreed prepayments have been made.

**4.3** Compliance with the delivery period will be dependent on performance of your contractual obligations, in particular making available, free of charge and in a timely manner, all necessary information and materials.

If modifications to the scope of services are agreed at your request after the contract has been concluded, the delivery period may be extended accordingly.

**4.4** In the event of delay in delivery you will have the right to withdraw from the contract only if we are solely responsible for such delay, if the delay in delivery exceeds the period of three months and if you grant us a reasonable grace period and expressly state at the same time that you refuse to accept performance of the contract after expiry of that period, and if we do not then effect performance within the grace period set.

**4.5** If the delay in services in full or in part is our fault, you may demand liquidated damages for the damage demonstrably suffered by you as a result of delayed performance. For each full week of delay these will be 0.2%, up to a maximum of 5%, of the respective order value. There will be no entitlement to liquidated damages for the first two weeks of delay.

No further claims for compensation will be allowed on the basis of a delay for which we are responsible, subject to Clause 6.2.

**4.6** Delivery will take place, unless contractually agreed otherwise, via courier service.

**4.7** If delivery is delayed due to reasons for which you are responsible, we will charge you for the costs incurred through the delay.

## **5. Warranty**

We warrant the quality and title of the delivered scope of services, including any features promised, to the exclusion of further claims, subject to Clause 6.2 as follows:

### **Defects of quality**

**5.1** We warrant that the execution of your order is free from defects.

**5.2** The warranty period will be six months and begins with delivery of the scope of services.

**5.3** Apparent defects must be reported in writing immediately following delivery otherwise your warranty claim is void. Apart from that the following applies: We will correct defects which occur and are reported to us in writing within the warranty period free of charge by either making replacement deliveries or by duly rectifying the defects, at our discretion.

**5.4** The following circumstances will not be covered by our warranty:

**5.4.1** if you fail to notify us of the defect immediately in writing or fail to provide us with reasonable assistance to enable us to correct the defect, or

**5.4.2** if, without our consent, modifications are made to the scope of services, or

**5.4.3** if the defects are not demonstrably based on the execution of the scope of services.

**5.5** If at any time you default on performance of your contractual obligations towards us, we will be entitled to refuse to honour warranty claims. The warranty period stipulated under Clause 5.2 will not be extended for this reason.

**5.6** If, despite a reasonable time limit and an additional extension if necessary, we culpably fail to meet our obligation to rectify a defect we have a duty to correct, you will be entitled to have the defect duly remedied at our expense with all due care after you have notified us in writing.

You are always obliged to take all necessary measures to minimize losses immediately.

**5.7** If, in the event of a defective scope of services, it proves impossible or economically not viable to rectify such defects, or if repeated attempts to do so should ultimately fail, you will have the right to cancel the contract only where agreement is not reached on a reasonable reduction in the purchase price.

**5.8** If the contract is cancelled, all further claims will be excluded, subject to Clause 6.

**5.9** If we are at fault through having given the wrong advice or having failed to fulfil our secondary obligations, the provisions of this Clause 5 (Defects of quality) will apply accordingly.

### **Defects of title**

**5.10** If use of the delivered scope of services within the period referred to in Clause 5.2 leads to the infringement of industrial property rights or copyrights in your home country, we will either obtain the right of continued use for you or we will modify the delivered scope of services to prevent continued infringement of the industrial property right or copyright, at our discretion.

If this is not possible under economically viable conditions, we will refund the contract price.

We will also indemnify you against claims by the owners of the industrial property rights or copyrights concerned, where such claims are undisputed or upheld in a non-appealable judgment.

**5.11** Subject to Clause 6.2, the above undertakings will be final in the event of industrial property right or copyright infringement.

They apply only if

– you inform us immediately of the industrial property right or copyright infringement claims,

– you provide us with reasonable assistance to counter these claims and enable us, where appropriate, to make the modifications referred to in Clause 5.10,

– we reserve the right to take any action to counter these claims, including the right to settle out of court,,

– the scope of services has not been executed or modified in accordance with your instructions and

– the infringement did not occur because you altered the delivered scope of services independently or used it in violation of the contract.

## **6. Limitation of Liability**

**6.1** Subject to binding statutory requirements, we shall be liable for personal injury and damage to property in so far as damages are paid by our liability insurer within the limits of the sums insured and the terms of our insurance policy. We shall supply you with evidence of the extent of our liability insurance on request.

**6.2** You will not be entitled to make claims other than those referred to in Clauses 4, 5 and 6.1, except in cases of willful intent or gross negligence on the part of our company management or one of our senior staff. In the event of gross negligence on the part of our senior staff, our liability will be restricted to a maximum of 10% of the delivery value.

In particular, you will have no claims for compensation for indirect or consequential damage not caused to the delivered scope of services itself (e.g. loss of production or loss of profit).

## **7. Prices**

**7.1** The price for the scope of services shall be agreed on a project basis. In the event of deliveries within the Federal Republic of Germany value

added tax shall be charged at the prevailing statutory rate. This will also apply to agreed advance payments.

**7.2** If, in exceptional circumstances, the agreed price should be in a foreign currency and the exchange rate should alter, we reserve the right to adjust the price up to the time we receive the purchase price.

**7.3** Unless otherwise agreed, the prices plus customs clearance costs and shipping costs apply.

**7.4** Modifications to the scope of services which are to be undertaken at your request by us following conclusion of the contract shall only be binding on us upon prior written agreement. You will bear all the costs incurred thereby.

**7.5** If you withdraw from the contract prior to delivery, our claim for damages shall be determined in accordance with Section 377 of the Swiss Law of Obligations using the deduction method, i.e. the agreed purchase price shall be reduced by expenditures saved by us.

**7.6** The cost incurred in payment transactions will be borne by each Party.

**7.7** Costs which we incur due to late return of bank guarantee/surety documents will be reimbursed by yourselves.

**7.8** Any additional costs incurred at home and abroad such as inspection costs, consulate and certification fees incurred in connection with the scope of services are to be borne by you. The same applies to taxes accrued outside the Federal Republic of Germany.

## **8. Terms of Payment**

**8.1** The purchase price and the additional costs, e.g. shipping, are payable to us without deductions within 14 days of the invoice date. Any payments, including those involving bills of exchange, will be deemed to have been effected when we can dispose of the payments without reservation.

**8.2** You will have the right to withhold payment or to set payments off against counterclaims only as far as your counterclaims are undisputed or upheld in a non-appealable judgment.

**8.3** If you are in default vis-à-vis ourselves, we will be entitled to defer performance of our own contractual obligations until we have received the overdue payments; in particular, we will be entitled to retain all or part of the agreed scope of services.

**8.4** We will charge interest at 5 percent points per annum above the prevailing European Central Bank base rate for failure to observe agreed payment dates.

**8.5** If you default on due payments and fail to make payment even after a grace period has been set, or if you are otherwise in serious breach of contract, we shall be entitled to rescind the contract and demand compensation.

You will then be obliged to return the delivered scope of services to us immediately at our request, free of charge to ourselves and at your risk or to destroy the delivered scope of services.

## **9. Force Majeure**

**9.1** Either Party will be entitled to refuse to fulfill its contractual obligations where and for as long as this is prevented or is not economically viable as a result of the following circumstances: strikes, lockouts, and other circumstances beyond the Parties' control such as natural disasters, fire, earthquake, war (declared or undeclared), terroristic or political acts of force, contagious diseases, epidemics, mobilization, revolt, seizure, distrait, embargo, energy supply restrictions, and faults and delays among sub-suppliers for one of these reasons. **9.2** A circumstance referred to in this Clause and occurring prior to conclusion of the contract will entitle either Party to refuse to perform the contract only if the circumstance has proven repercussions for performance which were not foreseeable at the time the contract was concluded.

**9.3** The Party wishing to invoke force majeure will inform the other Party immediately of the start and end of such circumstances.

**9.4** Each Party will have the right to withdraw from the contract in writing if performance of the contract is prevented for more than six months as a result of force majeure under this Clause.

## **10. Court of Arbitration, Applicable Law**

**10.1** Any disputes arising out of and in connection with our contractual relationship shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration language shall be English.

The court of arbitration will be in Zurich, Switzerland.

**10.2** The contract is subject to Swiss law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

ASL Analytic Service Laboratory GmbH