

General Terms and Conditions

1. General - Scope of Application

1.1 Our General Terms and Conditions (hereinafter referred to as „Terms and Conditions“) shall apply for TentaConsult Pharma & Med GmbH a member of the Tentamus Group GmbH (herewith Tentamus)

1.2 The Terms and Conditions shall apply exclusively. We do not accept Clients' conditions which are contrary to or deviate from our Terms and Conditions, as well as Clients' conditions, which are not regulated in these Terms and Conditions, unless we have explicitly consented in writing to their application. Our Terms and Conditions shall also apply if, despite being aware of Clients' conditions, which are contrary to or deviate from our Terms and Conditions or are not regulated in our Terms and Conditions, we provide services to Clients without reservation or if Clients refer to the application of their General Terms and Conditions in their enquiries or their orders.

1.3 All agreements that are made between Clients and us for the purpose of executing a contract are made in writing in the contract and in these jointly applicable Terms and Conditions.

1.4 Our Terms and Conditions shall only apply to an entrepreneur as defined in § 14 of the German Civil Code (BGB).

1.5 Within the scope of ongoing business relations, these Terms and Conditions shall also apply to additional and follow-up orders.

2. Scope of Services - Service Provision - Subcontractors

2.1 We analyze and/or assess companies, products or other services provided by manufacturers, distributors and/or other service providers (hereinafter collectively referred to as „Clients“) on the basis of national or international rules and methods.

2.2 The agreed Services shall be provided in accordance with the contractual agreements, in accordance with the generally accepted rules of technology at the time the contract is concluded and in compliance with the relevant provisions applicable at the time the contract is concluded.

2.3 We shall be entitled to determine the method and/or the type of Service provision at our proper discretion,

(a) unless agreed otherwise in writing and
(b) unless mandatory provisions prescribe a specific method and/or type of Service provision.

2.4 Each order refers exclusively to the specimen(s) provided by the Client or taken by us or other Services hereinafter referred to as „Service“) and shall be completed with dispatch of the written investigation or test report on the test results we have identified to the Client, unless otherwise agreed in writing. The written test reports reflect our specific opinion regarding the specimen(s) provided to or taken by us. However, the written test reports do not apply to the complete production charge the specimen is taken from.

2.5 We are entitled to let analyses issued to us to be carried out, in part or fully, by (companies associated with us or) carefully selected, suitable subcontractors within or outside the Tentamus. Any appeal against this point has to be supplied in writing at the time of commissioning. Existing specifications of the accreditation norm ISO/IEC 17025 have to be observed.

2.6 The sample provided will be partially or fully used during analysis and therefore becomes part of Tentamus property.

3. Quotations - Conclusion of Contracts

3.1 Our quotations are always subject to change unless we have agreed otherwise.

3.2 Orders addressed to us are binding.

4. Duties and Obligations of the Client to provide Assistance and to Cooperate

4.1 The Client is obliged to provide all the assistance and cooperation needed to provide the agreed Services without delay, free of charge, in full and correctly. In particular the Client is obliged - in each case in accordance with the guidelines paraphrased above:

- to provide the required information, records, documentation and data.

- to grant or procure for our employees, auditors and agents insight into the required information, records, documentation and data and access to the goods, commercial premises, buildings, installations, means of transport or other organizational units owned by the Client.

- to provide specialist instruments needed for the execution of the order.

- to ensure secure working conditions for our employees, auditors and agents, if these fall within the Client's sphere of influence.

- to ensure that any obstacles and interruptions to our Services are avoided or rectified.

4.2 The Client shall nominate one or more agents, who will support our employees, auditors and agents in providing the contractually agreed Services and shall act as a point of contact to the Client.

4.3 The Client is obliged to notify us of any defects in our Services in written form immediately when our Services have been provided. The Client must notify us of any hidden defects in writing immediately when they have been detected.

5. Terms, Deadlines - Force Majeure

5.1 The agreed terms and deadlines for Services provided are based on estimates of the scope of work according to our tender specifications.

5.2 If terms and deadlines were agreed as binding, they will only begin to run when the Client has duly fulfilled all its duties and obligations to provide assistance and cooperation in time. The defense of non-fulfillment of the contract remains reserved.

5.3 If the Client defaults or breaches other duties and obligations to provide assistance and cooperation culpably, we are entitled to demand reimbursement of any losses incurred in this respect including possible additional expenditure. Further claims remain unaffected hereby.

5.4 If non-compliance with a term or a deadline by us is attributable to a case of Force Majeure, i.e. to an unforeseen event, over which we can exercise no influence and for which we are not responsible, (e.g. official measures and decrees (regardless of whether these are valid or not), fire, floods, storms, explosions or other natural disasters, mobilizations, wars, insurgency, industrial disputes including strikes and lock-outs), the agreed terms and deadlines will be extended by the events causing the delay, if these impediments to our provision of Services can be proved to be of not merely insignificant influence. This is also the case if these circumstances occur during a default.

6. Billing - Remuneration - Due Date - Offset - Deterioration in the Financial Position

6.1 If the type of remuneration (e.g. time involved, daily rates, flat rate etc.) is not set down in writing when the contract is concluded, billing will take place in accordance with the type of remuneration envisaged in our valid price list at the time the Service is provided. If no fee is agreed in writing at the time the contract is concluded, billing will take place at the prices laid down in our valid price list at the time the Service is provided.

6.2 All invoice amounts are due for payment in full from the date the invoice is received, unless otherwise agreed in writing.

6.3 The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the date the invoice is issued.

6.4 The Client has rights of offset only if its counterclaims are legally established, undisputed or acknowledged by us. The Client is only entitled to exercise a right of retention in as much as its counterclaim is based on the same contractual relationship.

6.5 In the event of actual indications of a deterioration in the Client's financial position following conclusion of the contract or if there are other facts following conclusion of the contract, which justify the assumption that our claim for consideration will be jeopardized by a lack of capacity on the part of the Client, we are entitled to demand the provision of collateral and/or to revoke agreed payment terms. In the event that the Client is not in a position to provide the requisite collateral within an appropriate period, we shall be entitled to withdraw from the contract. Existing claims arising from Services provided or on account of default remain unaffected hereby.

7. Test Reports

7.1 All copyrights to the opinions, test results, calculations, presentations etc. prepared by us as part of the Services provided to the Client (hereinafter collectively referred to as „Test Reports“) will remain with Tentamus.

7.2 If the Client has a claim for restitution of the Test Reports, the Client may only use these Test Reports for the purpose for which they are destined according to the agreements. The Client may not change them in any way. Complete or partial publication of the Test Reports requires our prior, written consent.

7.3 If there is a corresponding obligation in the respective contract we shall store Test Materials to the extent specified there and for the periods specified there.

7.4 We store Test Specimens (cf. Section 2.4) for a maximum of 2 months following conclusion of our Services, if they can be stored for so long, and unless otherwise agreed in writing or required by law. After this period, we shall be entitled to destroy or dispose of the Test Specimens.

8. Limitation of possible Claims based on Defects

If the statutory preconditions for claims based on defects are met and these Terms and Conditions do not conflict with possible claims based on defects, claims based on defects will become time-barred one year from the start of the statutory limitation period.

9. Liability

9.1 We shall be liable to pay compensation for damages and to reimburse futile expenditure as defined in § 284 of the BGB (hereinafter referred to as „Compensation“) on account of defects in our Services or on account of breaching other contractual or non-contractual duties, in particular, from unauthorized action, only in the case of intent or gross negligence. The above restriction on liability shall not apply to injuries to life, limb or health, to the assumption of a guarantee or procurement risk, the breach of material contractual duties and in the case of liability under the Product Liability Act.

9.2 Compensation on account of breach of material contractual duties is limited to reimbursement of those losses, which we would have had to foresee as possible when the contract was concluded on the basis of circumstances discernible to us (typical contractual losses), unless intent or gross negligence is involved or we are liable on account of injury to life, limb or health or the assumption of a guarantee or a procurement risk.

9.3 Typical contractual losses for the purposes of the above Section 9.2 amount to

a) per loss: the maximum total amount equates to ten times the remuneration, which the Client paid for those Services provided by us that led to the loss;

b) in the case of several losses with regard to the same Client within one year: maximum EUR 250,000.00.

9.4 Irrespective of the above Section 9.3, when determining the amount of the claims for damages against us, appropriate account in our favor is to be taken of our economic circumstances, the type, extent and duration of the business relationship, possible contributory causes and/or fault on the part of the Client in accordance with § 254 BGB. In particular, the payments of Compensation, costs and expenses that we are obliged to bear must be commensurate with the remuneration for our Services.

9.5 All restrictions on liability apply to the same extent for performing and vicarious agents.

9.6 An amendment to the burden of proof to the detriment of the Client is not associated with the above regulations.

9.7 Material contractual duties for the purposes of Sections 9.1 and 9.2 are those obligations whose fulfillment makes proper execution of the contract at all possible and on compliance with which the Client may rely.

10. Non-Disclosure

10.1 „Confidential information“ for the purpose of this Section 10 is all information of an economic, commercial, technical, data privacy or otherwise confidential nature, which the Client makes accessible to us in connection with our Services.

10.2 We shall protect the Client's Confidential Information from disclosure to third parties, use by third parties or publication with at least the same degree of care, which we apply to protecting our own confidential information of equal importance.

10.3 We shall not use the Client's Confidential Information for any other purposes than the provision of the Services owed by us, unless the Client has consented to our using it otherwise in writing.

10.4 We shall only pass the Client's Confidential Information to those employees and agents for which disclosure of or access to the Confidential Information is necessary for the provision of our Services and who are also subject to a corresponding duty of non-disclosure.

10.5 The confidentiality remains in place and applies beyond the duration of this agreement itself.

10.6 Knowledge and information excluded from the non-disclosure; a) which were already evident to us or generally known or best available technology at the time of their notification;

b) which were already known to us at the time of notification;

c) which subsequently become evident or generally known or best available technology without us being responsible for this;

d) which are disclosed to us or made accessible by a third party authorized to do so;

e) with regard to which the Client has consented to their transmission, disclosure or access to third parties, are exempted from the duties of non-disclosure pursuant to this Section 10.

10.7 An obligation of non-disclosure pursuant to this Section 10 does not apply in the following cases either:

a) If we are asked to disclose confidential information by the courts or are obliged to do so by law.

b) If there is a suspicion that damage to persons or property could be caused by a product for which we have provided Services on behalf of the Client.

c) With regard to inspection bodies.

d) If the Client breaches material duties of these Terms and Conditions.

e) If it is ruled in these Terms and Conditions or agreed elsewhere that no duty of non-disclosure applies.

11. Data Privacy

11.1 In the course of the initiation, conclusion, processing and reversal of an order, personal data necessary for the fulfillment of the contract will be collected, stored and processed on the basis of Art. 6, Paragraph 1 lit.b DSGVO.

11.2 Separate consent will be obtained for the use of personal data for further processing purposes

11.3 All technical and organisational measures necessary for the protection of personal data shall be taken.

11.4 In principle, personal data shall not be passed on to third parties unless the customer has consented to the passing on of data or we are entitled or obliged to pass on data due to statutory provisions, state authorities or court orders. In particular, this may include providing information for the purposes of criminal prosecution, averting danger and protecting ownership rights.

11.5 Insofar as we transfer personal data to external service providers (contract processors) for the performance of electronic processes, this contract processor is contractually obliged in accordance with Art. 28 DSGVO and compliance with the contract is monitored.

11.6 Personal data of the Customer shall only be processed and stored for the period of time necessary to achieve the purpose of processing or as required by law. If the processing purpose no longer applies or if a prescribed storage period expires, the personal data shall be routinely blocked or deleted in accordance with the statutory provisions.

11.7 The client has the right at any time and free of charge to receive information about his personal data stored by us as well as a copy of this data.

11.8 Furthermore, he has the right to demand the correction of incorrect personal data concerning him.

11.9 The client has the right to delete and restrict the processing of personal data stored by us if the legal requirements are met.

11.10 The client has the right to have his personal data made available in a structured, common and machine-readable format.

11.11 The client has the right to object to the processing of his personal data. In this case, the processing will be terminated unless we can prove compelling reasons for the processing which outweigh the interests, rights and freedoms of the client, or the processing serves the assertion, exercise or defence of legal claims.

11.12 The Customer has the right to revoke his consent to the processing of personal data at any time with effect for the future.

11.13 The client has the right to complain to a supervisory authority responsible for data protection about our processing of his personal data.

12. Place of Performance - Place of Jurisdiction - Applicable Law

12.1 For all rights and duties arising from our Services, our company's registered office counts as the place of performance for both parts.

12.2 For any involved party the Terms and Conditions shall be governed by and construed in accordance with the laws of Muenster. We are also authorized to take action at the Client's registered office.

12.3 The contractual relationship is subject to the law of the Federal Republic of Germany excluding its conflicts of law provisions.

July 2020, V04

TentaConsult Pharma & Med GmbH
Wienburgstr. 207
48159 Muenster - Germany