

## GTC German Lab Sites EN

# GENERAL TERMS AND CONDITIONS OF THE GERMAN LABORATORIES

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of the AGROLAB-Laboratory Group with its enterprises AGROLAB LUFA GmbH in Kiel, AGROLAB Agrar und Umwelt GmbH in Sarstedt and Kiel, AWW-Dr.Busse GmbH in Plauen, AGROLAB Labor GmbH in Bruckberg, Stuttgart and Eching (Dr.Blasy-Dr.Busse), AGROLAB Agrarzentrum in Leinefelde, AGROLAB Potsdam GmbH in Potsdam, AGROLAB GmbH in Landshut, hereinafter referred to as: "Laboratory Group".

Version: March 2020

### **Important: Law applicable and priority of the German version of the GTC**

It is explicitly pointed out that only the laws of the Federal Republic of Germany are applicable to legal relationships with the Laboratory Group. Therefore, the solely decisive and binding version of these GTC is the German version. The present English version is solely a translation for orientation and easier understanding. The wording of the English version can not be taken in account for the interpretation or legal evaluation of the German version.

## **I. Scope of application, written form, modification, applicable law and partial ineffectiveness**

1. All Laboratory Group's supplies or other services shall be exclusively governed by these General Terms and Conditions (GTC). They also govern all future business relationships, even if not expressly agreed upon again. We expressly object the validity of the Customer's General Terms and Conditions.
2. Amendments or supplementations to these GTC by separate agreement or to the contracts concluded in the scope of application of these GTC shall only be effective if made in writing. This also applies to the abrogation of the requirement of written form. Notice of termination and other declarations, which are directed towards the termination or cancellation of contractual relationships, shall also be effected in writing. Amendments or supplementations to these GTC only apply to the supply or performance, which the separate agreement refers to. The staff members of the Laboratory Group are not authorised to undertake amendments by separate agreement. Only the management of the relevant company of the Laboratory Group can conclude such agreements. General amendments or supplementations to these GTC by the Laboratory Group shall become effective after specific notification of the Customer, also for current contractual relationships, if the Customer does not contradict within four weeks of notification.
3. The privity of contract between the Customer and the Laboratory Group including the issue of its coming about is solely subject to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.
4. The inefficacy of individual provisions of these GTC leaves the effectiveness of the remaining provisions and of the contracts concluded unaffected as such. As far as individual provisions of such contracts should be ineffective or contain a loophole, the Customer and the Laboratory Group shall be obliged to create an effective provision, closest to the economic intention of the Parties, in place of an ineffective provision or loophole.

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### II. Conclusion of contract, contents of the contract, inquiry, information and performance by third parties

1. Offers of the Laboratory Group are subject to change without notice and are not binding. Orders of the Customer shall not be considered as accepted by the Laboratory Group before confirmation of the order, which can also be given verbally, unless the Laboratory Group indicates that the order has been accepted by undertaking appropriate activities based on the order or by other explicit means.

2. Contents and scope of the assignment ensue from the confirmation of order by the Laboratory Group. A specific economical success is not owed. The Laboratory Group is entitled to determine the method and manner of the performance of services according to appropriate discretion unless otherwise agreed in writing.

In the case of a conformity assessment in which no information on the use of the measurement uncertainty is given, the sites of AGROLAB GROUP apply the discrete approach as a decision-making rule. This means that in such a case the measurement uncertainty is not taken into account in the conformity assessment, unless otherwise agreed with the customer.

3. As far as the Laboratory Group performs analytical services, laboratory reports shall be transmitted to the Customer in principle by e-mail with electronic signature. Therefore, the Customer shall inform the Laboratory Group of an e-mail account. The Customer is obliged to regularly check the e-mail account named by the Customer for new e-mails and to inquire of the Laboratory Group if a laboratory report has not been received within the usual period. The Laboratory Group has the right to communicate laboratory reports also by other means (letter, telefax, customer portal etc.).

4. Without an appropriate deviating agreement, placed orders do not include the obligation of the Laboratory Group to give information, advice or similar statements. As far as the Laboratory Group makes such statements nevertheless, they shall be considered as noncommittal suggestions. The Customer is thereby obliged to request written confirmation for verbal statements, which are of substantial importance to him or are provided to be the basis for substantial decisions. Otherwise, the customer cannot refer to the binding character of the statement, unless the Laboratory Group would be obliged to issue such a statement in individual cases and on account of the placed order and had issued an incorrect statement by intent or gross negligence.

5. The Laboratory Group is entitled to use one or more subcontractors or otherwise suitable third parties for the fulfilment of its contractual obligations.

### III. Invoices, remuneration, price increase, advance, cost estimate

1. Invoices of the Laboratory Group are to be paid without discount within 3 weeks after receipt by the Customer. Subject to the Customer's prior consent, invoices can be sent also electronically. In this case, clause II.4. shall apply accordingly. Agreed recurring payments are to be paid at the end of the respective month or at the end of the period stipulated otherwise. In the absence of a deviating agreement, the prices result from the currently valid price lists of the Laboratory Group and are to be understood as net, thus exclusive of VAT, which is to be collected in consideration of the appropriate statutory requirements.

2. As far as not otherwise agreed, the remuneration or any other pecuniary claim of the Laboratory Group accrues for each individual supply or performance as soon as it has been furnished. All supplies and performances, which are not expressly included in the agreed fee, are to be remunerated separately.

3. The Laboratory Group reserves the right to a reasonable price increase, if specific sample characteristics, which were unknown at the time of acceptance of an analysis order, require additional

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work. Furthermore, such a price increase is possible, if valid legal provisions or other generally accepted regulations, which have to be considered by the Laboratory Group, are modified during the processing of the order and the appropriate supply or performance expenditure for the Laboratory Group is thereby increased. We reserve the right to increase prices, due to rising personnel or material costs while furnishing services or work performances. This does not apply to fixed price agreements. At the time the customer is informed about the increase in prices he shall be given detailed reasons for the increase.

4. The Laboratory Group is entitled to request advances, which become due for payment within one week after notification of the demand for payment. Advances can also be requested for non-self-contained parts of a supply or performance.

5. Cost estimates of the Laboratory Group are noncommittal. The Laboratory Group will immediately notify the Customer, if it becomes foreseeable that the estimated costs will be exceeded.

### IV. Dates, additional respite, acceptance, notice of defect and subsequent performance

1. The Laboratory Group observes dates and terms of delivery with the diligence of an orderly businessman. The conclusion of a fixed transaction always requires a special and written agreement. Dates and periods stated by the Laboratory Group, when supplying services or work performances, are based on an estimation of the work according to Customer's specifications. Dates and periods are only binding, if this is agreed upon in writing. Definitely agreed periods only commence, if the Customer has performed his obligation to cooperate in a particular case. Agreed fixed dates are deferred according to the duration of the Customer's failure to perform.

2. The Customer has to grant a period of two weeks for subsequent delivery or performance to the Laboratory Group, if the Laboratory Group does not meet binding dates or periods for supply or other performances. The additional respite may not however be longer, than the period originally provided for the execution of the supply or other performance.

3. The Laboratory Group can separately present any self-contained part of a performance to be rendered for acceptance.

4. The Customer shall inform the Laboratory Group in writing of objections on account of apparent defects within four weeks after receipt of the delivery item or of the result of any other performance. Otherwise the delivery item or the result of the performance is considered to be free of the aforementioned defects. The statutory provision of § 377 German Commercial Code concerning the obligation to investigate and notification of defects shall be applied, if the Customer is an entrepreneur, a public law entity or separate estate subject to public law. If the Laboratory Group furnishes a service or a work performance to one of the aforementioned Customers, the result of such a performance shall be examined and the Laboratory Group shall be notified of apparent defects in writing immediately and at latest within a week after receipt of the samples. The performance is otherwise considered free of the aforementioned defects. The dispatch of the notification in good time shall be sufficient for the observance of the deadline. The following applies to all Customers: Defects appearing later on a delivery item or in the result of any other performance are to be notified to the Laboratory Group in writing within four weeks of detection. Otherwise the delivery item or the result of the performance is to be considered free of the aforementioned defects, as well.

5. The Customer is entitled to subsequent performance, if the supply or any other performance by the Laboratory Group is defective. The subsequent performance can be carried out by elimination of the defect or by supply of a defect-free item at the Customer's discretion. The Laboratory Group is entitled to refuse subsequent performance as requested by the Customer, if this leads to unreasonable costs. Reduction or rescission of the contract by the Customer is excluded during subsequent performance. A subsequent improvement is to be considered as unsuccessful after the

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second futile attempt. At his discretion, the Customer can reduce the remuneration or declare the rescission of the contract, if the subsequent performance is unsuccessful or if the Laboratory Group has refused subsequent performance altogether.

**V. Liability for defects, period of limitation, other damages and guarantee**

1. The Customer's entitlement to subsequent performance, reimbursement of damages and expenses (§ 437 German Civil Code) on account of defects of delivery items or to subsequent performance, self-execution, reimbursement of damages and expenses (§ 634 German Civil Code) on account of defects of the results of any other performance falls under the statute of limitations (differing from § 438 and § 634a German Civil Code) within one year. The aforementioned does not apply in the following cases: If the Laboratory Group has maliciously concealed the defects; if the supply of the Laboratory Group is a building; if the delivery item is usually used for a building and causes a defect there; if any other performance of the Laboratory Group represents a building or a performance, whose success consists of a planning or monitoring performance for a building; if the Laboratory Group has taken on a guarantee for the condition of another performance; if the Customer is a consumer. Even if the Customer is a consumer, the statute of limitations regarding the aforementioned claims on account of defects of other performances is also limited to one year, if the performance of the Laboratory Group neither consists of the supply of chattel nor of chattel produced by the Laboratory Group. The Laboratory Group does not take over any liability for defects in the case of the supply of used chattel. The aforementioned claims on account of defects of used chattel fall under the statute of limitations within one year, if the Customer is a consumer.

2. The right of the Customer to assertion of further claims for damages remains unaffected.

3. As far as the Laboratory Group has guaranteed for a delivery item or for the result of any other performance, it is also liable in the context of this guarantee. However, for damages that are based on the lack of guaranteed characteristics, condition or durability, but do not accrue on the delivery item or the result of the performance itself, the Laboratory Group is only liable, if the risk of such damages is evidently encompassed by the guarantee.

**VI. Delivery of samples, liability and storage; transportation risk**

1. The delivery of samples takes place at the Customer's risk and expense, inasmuch as the sample material is not to be picked up by the Laboratory Group on account of a written agreement. The sample material must be packed properly and with consideration to possible instructions given by the Laboratory Group, if the shipment is carried out by the Customer. The delivery of dangerous (for example poisonous, corrosive, explosive, highly inflammable, radioactive) sample material as well as of samples with harmful and troublesome components (for instance chlorine, bromine, mercury, fluorine, arsenic etc.) can only be carried out after appropriate coordination with the Laboratory Group. The Customer is obliged to provide the Laboratory Group with all known danger and handling instructions.

2. The Customer is obligated - for protection of the Laboratory Group and its employee's purposes - to outline and make visible that hazardous substances are being delivered. This has to be done by using a special label referring to hazardous substances. The term hazardous substance (*Gefahrenstoff*) is defined by section 3a subsec. 1 and section 19 subsec. 2 of the German Chemicals Act (*ChemG*) and sections 3 and 4 of the German Ordinance on Hazardous Substances (*GefStoffV*). If the Customer intends to deliver potentially explosive substances, the Customer is obligated - simply due to the dangerous character of the delivery- to notify the Laboratory Group prior to delivery and adhere to all given instructions. The Customer is liable for all damages arising for the Laboratory Group or its employees due to breach of the aforementioned duty.

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3. The Customer is liable for all damages and consequential damages resulting from the dangerous or harmful properties of sample material. This liability ends with the issue of the analysis record by the Laboratory Group, except for the case that the Customer has not orderly complied with his information duty regarding dangers and proper handling and this resulted in damages or consequential damages.

4. The samples are only kept at the Laboratory Group for the length of time required by legal obligations, as far as not agreed in writing otherwise. Sample materials not used or processed will be stored or disposed of at the expense of the Customer at the discretion of the Laboratory Group. The Laboratory Group can also return the sample material at its own discretion and at the expense of the Customer to the consumer instead of disposing it, as far as the sample material is to be classified as special refuse. In all other cases, there will be no reconsignments or restitutions to the Customer.

5. Documents and other possessions or property of the Customer including data are dispatched or otherwise forwarded to or by the Laboratory Group exclusively at the Customer's risk and expense.

## **VII. Software**

Software provided by the Laboratory Group is developed with extraordinary diligence and has been carefully tested on diverse computer systems. Approved versions of the products show no defects. Nevertheless, software free from defects does not exist under the current state of the art. For this reason, the Laboratory Group is not liable for incompatibilities of hardware components and other software products of components. The software is only provided by the Laboratory Group without any guarantee for a specific application. Any risk arising from using the software has to borne by the Customer. The Laboratory Group is not liable for any direct or indirect damage arising from using the software, unless, cases of intentional or gross negligent conduct of the Laboratory Group. The Laboratory Group will make best efforts to resolve defects and offer a version free from defects within the realms of possibility.

## **VIII. Set-off, right of retention, right to withhold performance and prohibition of assignment**

1. The Consumer's setting-off of a claim of the Laboratory Group is only possible on account of his own undisputed claims or claims established as non-appealable by a court of law. If the Customer is an entrepreneur, a public law entity or separate estate subject to public law, the assertion of the right to withhold performance or the right of retention is excluded, unless this right is undisputed or established as non-appealable by a court of law.

2. Objectively justified doubts on the solvency of the Customer entitle the Laboratory Group to make the continuation of the performance dependent on pre-payments and on the settlement of outstanding invoices without consideration of an originally agreed date of payment.

3. The assignment of claims of the Customer requires the written consent of the Laboratory Group.

## **IX. Winding up of contracts, reimbursement of expenses and claim for remuneration**

The Laboratory Group is entitled to the reimbursement of all expenses, which have accumulated hitherto, as well as payment of remuneration according to the actual performance expenses in the case of rescission, notice of termination, avoidance or revocation. The Laboratory Group can calculate the reimbursement of expenses as well as the remuneration individually or across the board and then demand up to 20 % of the expenditures or the remuneration for the entire order. The Customer is entitled to prove in such a case that the actual expenditures or that the remuneration appropriate to

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the actual performance expenditure is substantially less than the lump sum determined by the Laboratory Group.

### X. Copyright and confidentiality

1. The laboratory group expressly reserves copyrights to expert opinions, test reports, analyses and similar deliverables and performance results to which such rights may arise.
2. The laboratory group assigns the rights of use required for the respective purpose to the customer. Rights of use are therefore only transferred to the customer to the extent that this arises from the order placement in terms of content, time and location.  
In cases of publication or distribution to third parties, the customer must ensure that personal data relating to the employees of the laboratory group (names of customer advisors and samplers) are made illegible.  
The customer shall remain responsible for any consequences resulting from the disclosure of such results to third parties and the reliance of such third party on such results. The customer hereby undertakes to indemnify the laboratory group and its employees and members of the management of the company against any claims by a third party arising from the dissemination of such results and/or trust in the same and resulting damages – actual or alleged.
3. The laboratory group will share analysis results, and similar knowledge gained in connection with an order, with the customer alone, unless otherwise agreed on a case-by-case basis. The laboratory group will treat information that is not already publicly known or accessible as confidential. However, the laboratory group may use the results for internal evaluation and may, for its own records, take copies of the documents it receives.
4. In accordance with the GDPR and the German Federal Data Protection Act, the laboratory group is entitled to store and process personal or business-related data received from the customer, irrespective of whether these data originate directly from the customer or from third parties. In accordance with the law, the data will be treated confidentially by the laboratory group and used for commercially reasonable activities.
5. The laboratory group processes and uses the client's personal data (such as contact persons or project managers) for order processing. The client recognises that in order to provide the best possible service and make optimum use of AGROLAB's expertise and capacities, personal data as well as order-related survey data and, in exceptional cases, test results, can be transmitted to the member companies of the AGROLAB GROUP or its partners. The partners and laboratories of the AGROLAB GROUP are bound to data secrecy or are subject to an agreement on order processing. The client may object to this by writing to the laboratory group.  
In addition, the laboratory group processes and uses the data for the purposes of acquiring further business. The client can object to this by writing to the laboratory group or by sending an e-mail to [datenschutz@agrolab.de](mailto:datenschutz@agrolab.de).
6. Further information and contacts regarding data protection can be found at <https://www.agrolab.com/de/data-privacy-statement-de.html>.

### XI. Liability and force majeure

1. Concerning the liability of the Laboratory Group the following applies with regard to any type of liability based on fault including claims in tort: The Laboratory Group is liable without restrictions for damages regarding life, bodily integrity and health as well as for all damages based on intent or gross negligent breach of duties or on fraudulent intent of the Laboratory Group, its legal representatives or its vicarious agents. The Laboratory Group is also liable for damages, which are caused by



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negligence, as far as this negligence concerns the breach of such contractual obligations, whose observance is of special importance for achieving the contractual purpose, e.g. due performance of analysis and documentation of results (cardinal obligations). The Laboratory Group is however only liable, as far as the damages are typically connected to the contract and foreseeable. In other respects, the Laboratory Group is not liable in the case of negligent breaches of non-substantial contractual obligations. The liability of the Laboratory Group is limited by the overall performance of a liability insurance, if the Laboratory Group has covered the contract-typical risk with such. As far as the insurer is free of performance, the Laboratory Group will step in with own compensation up to the amount insured, if the respective requirements are met. This also applies to the personal liability of legal representatives and vicarious agents of the Laboratory Group, as far as the liability of the Laboratory Group is excluded or limited.

2. If the placed order includes special risks with respect to the protection goods life, body and health or the danger of the admission of particularly high pecuniary losses, the customer of the laboratory group has to point to it with order.

3. The respective economic circumstances as well as kind, scope and duration of the business relationship and, if necessary, also the value of the performance to be furnished shall be appropriately considered in good faith and in favour of the obligated party in each case when considering the amount of the indemnification to be paid by the obliged party.

4. Force majeure, labour disputes, riots, official measures and other, unforeseeable, inevitable and serious events release the Customer and the Laboratory Group from the obligation to perform for the duration of the disturbance and to the extent of its effect. This also applies, if the events occur at a point in time, at which the contracting party concerned is in delay. The Customer and the Laboratory Group will immediately forward the necessary information as far as reasonable and adapt their obligations to the changed conditions in good faith.

## XII. Place of performance and place of jurisdiction

1. Place of performance is the seat of the assigned laboratory.

2. The seat of the assigned laboratory is the place of jurisdiction for lawsuits concerning business dealings with merchants, public law entities or separate estates subject to public law.

3. The place of jurisdiction of the assigned laboratory is likewise agreed upon, if the domicile or place of residence of the Customer is unknown at the time of filing action or if the Customer has moved his domicile or place of residence out of the area of application of the laws of the Federal Republic of Germany after conclusion of contract.

4. E-Commerce (e.g. ALOORA): For the purpose of dispute resolution relating to contracts concluded online, we refer explicitly and as a precautionary measure in accordance with the Regulation (EU) No. 524/2013 to the upcoming OS platform (<http://ec.europa.eu/consumers/odr/>). It should assist both entrepreneurs ([zentrale@agrolab.de](mailto:zentrale@agrolab.de)) and private consumers in settling conflicts out of court. Both parties should be able to contact this platform in case of conflicts.