

**GTC AL-WEST EN**  
**General Terms and Conditions for AL-West**

## **GENERAL TERMS AND CONDITIONS AL-WEST B.V.**

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### **I Scope of application, requirement for writing, applicable law and partial unenforceability**

1. These general terms and conditions (GTCS) are exclusively applicable to the creation, the content and the performance of all contracts concluded between AL-West B.V. and its client. These GTCS will also be applicable to all future business relations and/or assignments between AL-West B.V. and the client, even if they are not expressly (orally or in writing) agreed again. AL-West B.V. explicitly rejects the applicability of the general terms and conditions of the client, or any other conditions.

2. Changes to or additions to these GTCS agreed in a separate contract, or in contracts which are entered into within the scope of application of these GTCS, are only valid if they are agreed in writing. Any withdrawal of the requirement for writing must itself also be agreed in writing. Cancellation and other notifications aimed at the ending or dissolution of contractual relations must also take place in writing. Changes to or additions to these GTCS only apply to the specific service or deliverable that the exceptional agreement in question relates to. The employees of AL-West B.V. are not authorised to conclude any exceptional agreement whereby the GTCS are changed. The authority to change the GTCS or to conclude any exceptional agreement to that effect is reserved to the directors of AL-West B.V.. General changes or additions to these GTCS by AL-West B.V. are deemed to have been duly agreed, also in relation to existing contractual relations, if they are notified to the client and the client has not objected to them within four weeks of this notification.

3. Dutch law is applicable to these GTCS and all legal relations between the client and AL-West B.V., and Dutch law is also applicable to their creation, this being subject to the express exclusion of the applicability of the Vienna Convention on Contracts for the International Sale of Goods.

4. If any provision of the GTCS should prove to be void or voidable, or is declared nonbinding or, for whatever reason, should prove to be unenforceable, this does not affect the validity of the other provisions of these GTCS and those of any contracts entered into which are subject to the GTCS. If it should emerge that any provision of any such contract is void or voidable, or contains a deficiency, then the client and AL-West B.V. undertake to replace the provision in question with another provision which is binding, and which reflects as far as possible the intention of the parties with the original provision in question.

### **II Creation of the contract, contents of the contract, communication, investigation, (binding nature) information and performance by third parties**

1. Quotations from AL-West B.V. are made without commitment and are nonbinding. An order from the client is only deemed to have been accepted following confirmation of the order by AL-West B.V., which may also be communicated orally, unless AL-West B.V. demonstrates its acceptance of the order by performing the activities in question on the basis of the order, or this is otherwise clear for the client.

2. The content and scope of the order are as laid down in the order confirmation from AL-West B.V. No commitment shall ever arise to achieve a particular result. AL-West B.V. is entitled to determine for itself, using its professional judgement, how and by what method the services are to be provided. A quotation or an order confirmation from AL-West B.V. is based on the information supplied by the client. If the information supplied by the client proves to be inaccurate or incomplete, AL-West B.V. is entitled to revise or withdraw the quotation or order confirmation, or to amend the contract. Clients bears the risk for the costs and damage caused by faults or deficiencies in the information supplied by the client.

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In the cases of conformity assessments whereby no information is given on the use of the measurement uncertainty, the divisions of the AGROLAB GROUP, which AL-West B.V. forms part of, use the discrete approach as their 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.

Clients bears the risk for the costs and damage caused by faults or deficiencies in the information provided by client.

3. Insofar as AL-West B.V. performs analytical services, in principle the investigation reports are sent to the client via email, and are signed with an electronic signature. The client will supply an email address to AL-West B.V. for this purpose. The client is bound to regularly check the email address for new emails, and to enquire with AL-West B.V. if an investigation report has not been received within the usual or agreed time period. AL-West B.V. is entitled to send the investigation reports by other means instead of by email (by letter, fax, client portal [of the website], etc.).

4. Unless otherwise specified in a particular contract, an order that is placed or agreed does not infer that AL-West B.V. is bound to supply information, to give advice, or to give any similar notification. Insofar as AL-West B.V. nevertheless does give any such notifications, these notifications are to be regarded as nonbinding suggestions or recommendations. If an oral or written report made by AL-West B.V. is of significant importance for the client, or is to be used by it as the basis for taking important decisions, client is bound to request written confirmation from AL-West B.V. of the binding nature of the notifications in question. If this request is not made prior to the making of the decision, AL-West B.V. is not obliged to confirm this binding nature. In all other cases the client cannot rely on the binding nature of the notification, unless in the particular case AL-West B.V. has a duty to give such notifications on the basis of the assignment that was awarded.

5. AL-West B.V. is entitled to arrange for the activities pursuant to the assignment to be performed by one or more subcontractors or other expert third parties.

### **III Invoicing, payment, price increase, advance payments, cost estimate**

1. Invoices from AL-West B.V. are to be paid in full by client within a period of 3 weeks following invoice date. Following the prior consent of the client, invoices may also be sent electronically. In that case, article II.3 of these GTCs is similarly applicable. Agreed periodic payments are to be made at the end of the month in question, or at the end of some other agreed period. Unless otherwise stated in a contract or order confirmation, the fees which are charged are based on the latest price lists of AL-West B.V. The amounts stated in these are net amounts, i.e. excluding btw. The btw payable, if applicable, is collected in accordance with the ruling legal requirements.

2. Unless otherwise agreed, AL-West B.V.'s entitlement to remuneration, and any other financial claim of AL-West B.V. on the client in respect of each separate service, supply or other deliverable, arises as soon as it is performed. All supplies and services which are not explicitly included in the agreed fees are charged for separately.

3. AL-West B.V. is entitled to unilaterally apply an appropriate price rise, if a sample submitted for investigation proves to have properties including, for example, but without limitation, severe contamination, which were unknown in any case to AL-West B.V. at the time of acceptance of the order and/or were not made known time by the client to AL-West B.V. at that time, and these properties necessitate extra work and/or costs. AL-West B.V. is also entitled to apply a similar price increase if, after acceptance of the assignment or during its performance, a change occurs in the law or regulations which AL-West B.V. is bound by, as a result of which AL-West B.V. is compelled to perform extra work or incur extra costs in performing the assignment. AL-West B.V. is also entitled to apply a price increase as a result of increasing material and personnel costs during the performance

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of the services and activities. The latter possible grounds for increasing the price do not apply if a fixed price has been agreed. In the event of a price increase, the client will be notified of the reason for the price increase.

4. AL-West B.V. is entitled to request an advance payment, which becomes claimable within one week of submission of the request for this advance payment. Payment of an advance payment can also be requested for parts of the services or deliverable to be supplied.

5. Any cost estimates made by AL-West B.V. are made without commitment and are nonbinding. AL-West B.V. will inform the client as soon as possible if it is anticipated that a cost estimate will be exceeded.

**IV Delivery period, delay, partial delivery, complaints, investigation and advertising**

1. AL-West B.V. will adhere to the agreed delivery dates and periods to the best of its professional ability. A final deadline must always be specifically agreed in writing. The delivery dates and periods stated by AL-West B.V. are based on an estimate of the work to be performed or the services, based on the information supplied by the client. Delivery dates and periods are only binding if they are agreed in writing. Agreed (final) delivery periods only commence on the day after the client has complied with its duty to cooperate (such as, among other things but without limitation, the provision of the information and samples needed for the activities), or when the client has made it possible for AL-West B.V. to start the activities. The dates, c.q. duration of (final) delivery dates and periods will be suspended by AL-West B.V. for as long as the client is in default in the performance of its obligations (such as, among other things, but without limitation, if the samples are significantly more heavily contaminated than the client had indicated prior to concluding the contract).

2. AL-West B.V. may supply and invoice each independent part of the activities to be performed.

3. Objections or complaints relating to the work performed by AL-West B.V. are to be submitted in writing to AL-West B.V. within a period of fourteen days following their discovery, and in any case within four weeks of completion or delivery of the work, c.q. sending of the investigation report, in the absence of which the work will be deemed to have been performed and delivered free of any deficiencies. The objections or complaints are to include the clearest possible description of the deficiencies identified. If the objections or complaints are well-founded, AL-West B.V. will then perform the activities in the manner agreed, unless this is no longer possible, or has become demonstrably worthless for the client. If the performance of (a part of) the agreed activities is no longer possible or worthwhile, AL-West B.V.'s liability will be limited in accordance with the provisions of these GTCs.

**V Samples - delivery, liability, storage and transport risk**

1. Unless samples are required to be collected by AL-West B.V. under the terms of a written agreement, the delivery of samples is entirely for the account of and at the risk of the client. If the client deals with the submission of the samples personally, they are to be packaged with the greatest possible care and in accordance with the applicable standards and regulations and any instructions from AL-West B.V., if applicable. The delivery of hazardous (for example, poisonous, corrosive, explosive, highly inflammable or radioactive) samples and sample materials which may contain harmful or dangerous elements (for example chlorine, bromine, mercury, fluorine, arsenic etc) can only take place following written notification of this and consent by AL-West B.V., and in accordance with the instructions given by AL-West B.V.. The client is bound to give AL-West B.V. all risk and handling instructions that are known to him.

2. For the protection of AL-West B.V. and its employees, when delivering sample materials with hazardous properties the client is bound to indicate clearly and visibly on the packaging that

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hazardous substances are being delivered. In doing so, use is made of special labels which state that these are hazardous substances. If the client is intending to deliver explosive substances, then the client is bound – due to the dangerous nature of the delivery - to inform AL-West B.V. about this in writing prior to their shipment, and to follow all instructions given by AL-West B.V..

3. Client shall inform AL-West B.V. prior to concluding the contract whether or not the samples to be submitted are expected to have a free iron content of more than 5%, this being to prevent the possibility of unnecessary investigations by AL-West B.V.. Failure to do so will result in AL-West B.V. charging the client for the costs of extra investigations.

4. Sample containers must be clean on the outside. AL-West B.V. reserves the right to refuse to investigate samples if this requirement is not met.

5. AL-West B.V. reserves the right to refuse to investigate samples, and to charge the client for any costs, if the conditions stated above are not satisfied.

6. The client is liable for all damage that AL-West B.V. and/or its employees and/or any third parties suffer as a result of failing to (fully) comply with the above obligations and instructions. The client is liable for all damage and consequential damage to AL-West B.V. and/or its employees and/or any third parties arising as a result of the hazardous and harmful properties of samples.

7. Insofar as AL-West B.V. personally collects the samples or arranges for them to be collected (for example by the sample collection service ('Monster Ophaal Dienst - MOD')), then the transport risk only passes to AL-West B.V. once the transport docket has been signed by the client and has been received by the driver from or on behalf of AL-West B.V..

8. Samples sent to or collected by AL-West B.V. which do not result in an (analysis) assignment or contract for services by AL-West B.V. will at AL-West B.V.'s discretion either be stored, destroyed or returned for the account of and at the risk of client.

9. AL-West B.V. will not keep the samples in storage for longer than the legally prescribed period, unless otherwise agreed in writing. The normal retention period is four weeks, and for water samples it is two weeks. Samples which are not used or processed, or whose maximum retention period has expired, will at AL-West B.V.'s discretion be stored or destroyed for the account of the client. If samples are capable of being designated as hazardous waste, AL-West B.V. is entitled to choose to send the samples back to the client, for the client's account, instead of storing them or destroying them/having them destroyed. In all other cases the samples will not be sent back or returned to the client.

10. Documentation and other possessions or property of the client, including information, are only sent to or otherwise supplied to AL-West B.V. for the account of and at the risk of the client. The return of these items by AL-West B.V. to the client also takes place for the account of and at the risk of the client.

### **VI Set-off, retention right, right to withhold performance and non-assignment clause**

1. The client is not entitled to set off a claim by AL-West B.V. against a claim he may have or purports to have on AL-West B.V., unless AL-West B.V. has given its consent to this in writing. The client cannot rely on any right of suspension or retention.

2. If objective grounds exist for doubting the creditworthiness of the client, AL-West B.V. is entitled to make the further performance of its contractual obligations dependent on an advance payment by the client or the payment by the client of outstanding invoices, notwithstanding any previously agreed payment date or scheme.

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3. The client can only assign its claims on AL-West B.V. to a third party if AL-West B.V. has agreed to this in writing.

#### **VII Dissolution of contracts, reimbursement of expenses and claim for payment of fees**

In the case of the (early) termination of the contract by dissolution, cancellation, annulment or revocation, AL-West B.V. is entitled to claim for the reimbursement of all expenses incurred until then and for payment for all work performed by it up to that time. AL-West B.V. may claim the aforementioned payment for costs incurred and work performed separately, or call for the payment of a one-off sum amounting to 20% of the budgeted expenses or the agreed fees for the whole of the contract. The client is entitled to contest the amount calculated by AL-West B.V. by demonstrating that in reality the costs incurred or the fees for the work performed up to that time represent a significantly lower amount.

#### **VIII Copyright and confidentiality**

1. AL-West B.V. explicitly reserves the copyright and any other intellectual property rights relating to the expert advice given, test reports, analyses and comparable deliverables and investigation results on which such rights may arise.

2. AL-West B.V. only grants to the client user rights over its advice, test reports, analyses and comparable deliverables which are subject to copyright or any other intellectual property rights, insofar as this is necessary for the purpose of the assignment and contract. This means that the user rights are only granted to the client as regards the content, time and place if this ensues from the contract.

3. AL-West B.V. will only make the results of the analysis and similar insights gained in connection with the assignment accessible to the client, unless otherwise agreed in a specific case. AL-West B.V. will treat information which is not yet generally known or accessible, as confidential. AL-West B.V. is entitled to make use of the investigation results obtained for internal evaluation, and has the right to make and retain copies of the documents received and supplied for its own documentation.

#### **IX Liability and force majeure**

1. AL-West B.V. is only liable for damage caused by its attributable failure to perform or to properly perform a contractual obligation, the performance of which is essential for achieving the purpose of the contract, for example the performance of an accurate analysis and/or reporting the investigation results (essential obligations). In all other cases liability on the part of AL-West B.V. is excluded, subject to the following provisions.

2. AL-West B.V. is solely liable for direct damage. Direct damage shall be exclusively understood to mean:

- a. the reasonable costs of identifying the cause and extent of the damage, insofar as the identification relates to damage within the meaning of these conditions,
- b. any reasonable costs incurred in order to hold AL-West B.V. to account for its failure to properly comply with the contract such as, for example, but without limitation to re-sampling, insofar as these costs can be attributed to AL-West B.V., and
- c. reasonable costs incurred in preventing or limiting damage, insofar as the client demonstrates that these costs have led to the limitation of direct damage within the meaning of these general terms and conditions.

AL-West B.V. will never be liable for indirect damage, including consequential damage, loss of profit, lost savings, and damage due to business interruption.

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3. In the absence of a deliberate act or wilful recklessness on the part of AL-West B.V. or its management - therefore excluding employees - the liability of AL-West B.V. for damage pursuant to a contract or for an unlawful act committed against the client is limited to a maximum of the amount that AL-West B.V.'s insurer pays out in respect of the case in question. If – for whatever reason – no payment should be made by AL-West B.V.'s insurer, all liability is limited to the amount of the invoice that relates to the part of the assignment that was carried out, less the costs incurred by AL-West B.V. for engaging third parties, subject to the proviso that this amount shall not exceed € 25,000

4. All claims for damages expire one year after performance or supply of the agreed activities, c.q. the sending of the investigation reports.

5. The client indemnifies AL-West B.V. against all claims of third parties associated with an assignment or analysis or other services provided for the client, in the absence of a deliberate act or gross negligence on the part of AL-West B.V. The legal costs incurred by AL-West B.V. in defending itself against such claims by third parties are for the account of the client. Claims by third parties are explicitly understood to include claims by third parties for damages resulting from the application or use of investigation results.

6. If the assignment granted brings with it the risk of significant (economic) damage for AL-West B.V., and/or its employees, and/or third parties, the client shall inform AL-West B.V. of this in writing in the description of the assignment, in the absence of which the client will be liable without limit to compensate AL-West B.V. for any damage arising as a result of the performance of the assignment.

7. AL-West B.V. is released from its obligation to perform the contract if and insofar as it is not capable of doing so as a result of force majeure, labour conflicts, riots, government measures and other unforeseeable, unavoidable and grave circumstances, for as long as these circumstances continue. This also applies if such a circumstance arises at a time when AL-West B.V. is in default. AL-West B.V. will immediately inform the client of the changed circumstances insofar as it can reasonably be expected to do so, and will attempt to perform its obligations to the best of its ability in a form adapted to meet these changed circumstances.

### **X Location and choice of forum, and General Data Protection Regulation**

1. The location where the contract is performed is the place where AL-West B.V. has its registered office, or a location to be further specified by AL-West B.V. for its performance.

Any disputes between AL-West B.V. and the client pursuant to the contract between AL-West B.V. and client will be subject to the jurisdiction of the court where AL-West B.V. has its registered office.

2. The court where AL-West B.V. has its registered office also has jurisdiction if the place of residence or establishment of the client is unknown at the time when proceedings are brought, or if it has relocated its place of establishment to an area beyond the scope of application of Dutch law after the conclusion of the contract.

3. Insofar as AL-West B.V. processes personal data pursuant to the contract, within the meaning of the General Data Protection Regulation (GDPR), or arranges for it to be processed, reference is made to the company's Privacy statement, as published on its website [www.agrolab.com](http://www.agrolab.com).