

## Hohenstein General Terms and Conditions of Business applicable to Hohenstein Laboratories GmbH & Co. KG and Hohenstein Innovations gGmbH

### 1. SCOPE

- 1.1 Legal relationships of Hohenstein with the Hohenstein Laboratories GmbH & Co. KG and the Hohenstein Innovations gGmbH (Contractor: "the Contractor") are defined under the terms of the following contractual terms and conditions for commercial business dealings and if permissible for commercial dealings with non-commercial persons.
- 1.2 The contractual conditions also apply to existing business relationships for further and follow-up orders.
- 1.3 Client's ("the Client") differing terms and conditions of business only become a constituent part of the contract if they are recognised by the Contractor expressly and in text form (purs. to sec. 126b BGB: email, telefax, sms etc.).

### 2. ASSIGNMENT

- 2.1 The subject of assignment is any manner of expert opinion, testing, investigation (including procurement of testing apparatus and equipment) research work, auditing, inspection or certification (hereinafter referred to collectively as "expert opinion"), i.e., establishment of facts, presentation of empirical findings, determining causes, assessment and review.
- 2.2 The precise expert opinion topic and purpose of use must be defined in text form at the point of awarding the assignment.
- 2.3 The Client has been made aware that the completed expert opinion is a private expert opinion based on which the outcome of an expert opinion cannot be achieved in any court ordered conservation of evidence proceedings (§ 485 ff. ZPO – Civil Procedure Code). In particular, the preparation of an expert opinion by the Contractor shall not interrupt any limitation periods in the relationship between the Client and third parties.

### 3. FULFILMENT OF THE ASSIGNMENT

- 3.1 The assignment will be executed by the Contractor impartially and to the best of their knowledge and belief, according to the recognised rules of technology based on the best-available knowledge and technology and using existing knowledge and/or knowledge and experience gained during the duration of the assignment.
- 3.2 The Contractor can only guarantee a certain success, in particular a result desired by the Client, within the framework of objective and impartial application of the expertise of the experts working for the Contractor.
- 3.3 The Contractor shall be entitled to transfer his expert opinion activities to third parties either wholly or in part.
- 3.4 If, to ensure professional completion of the assignment, the involvement of specialists in other disciplines should prove necessary their engagement shall be authorised on behalf of the Client.
- 3.5 In other respects, the Contractor shall be entitled to carry out or have carried out necessary and customary investigations and experiments for processing the assignment at the Client's cost and in the light of his own best judgement. Should it transpire during any investigation that for confirmation of measurement result findings an analysis must be repeated, or the analysis procedure must be extended to include a repeat run, this shall not be deemed to be an unforeseen event or a costly investigation in terms of time and expense in relation to the purpose of the expert opinion.
- 3.6 If service changes or enhancements compared to the original assignment become necessary during the execution of the assignment, the Contractor may demand the conclusion of a change agreement in text form before any change or enhancement to individual services, in which any questions of reasonable additional remuneration and deadline changes are to be dealt with.
- 3.7 The expert opinion to be compiled by the Contractor shall be provided to the Client in writing in single copy indicating the specialist responsible for its composition. Additional copies will be charged separately. Instead of the written copy, digital provision is also permissible. Only the authorized expert opinion is legally binding.

- 3.8 The Contractor's expert opinions reflect only those facts established at the point in time of testing based on the specific instructions provided by the Client or, in the absence thereof, the specifications in the assignment specification form, relevant commercial customs, usages or practices and such procedures as the Contractor deems appropriate on technical, business organisational and/or commercial grounds. The Contractor is under no obligation to indicate facts or values or to report on the latter if these lie outside the specific instructions issued by the Client.
- 3.9 The Client acknowledges that in providing his services the Contractor neither adopts the position of the Client or any third party nor releases the latter from any obligations or in any other way assumes, restricts, or cancels Client obligations vis-à-vis third parties or of third parties vis-à-vis the Client or releases him therefrom in any other manner.
- 3.10 Following completion of the assignment and payment of the remuneration agreed the Contractor shall retain the Client's test material in safekeeping at the Client's risk and in observance of his own customary care. If the Client has not yet collected the documentation and samples three months after acceptance of the expert opinion the Contractor is released from any liability.

### 4. CLIENT OBLIGATIONS

- 4.1 The Client may not issue the Contractor any instruction which might falsify the latter's actual findings or the results of his expert opinion.
- 4.2 The Client shall ensure that the specialist receives free of charge and in good time all information, documentation, and test material necessary for completion of the assignment.
- 4.3 A Client wishing to use the results of the expert opinion during any test event is under the obligation to procure the test material on his own responsibility regarding selection of the test material and sending the test material to contractor.

### 5. CONFIDENTIALITY

- 5.1 The Contractor shall not disclose, pass on or exploit without authorization the expert opinion or facts or documents which have been entrusted to it or otherwise become known to it during its expert activities. The obligation to maintain secrecy shall include all facts that are not in the public domain and shall apply beyond the duration of the contractual relationship.
- 5.2 This obligation to maintain secrecy shall also apply to all employees working for the Contractor.

### 6. COPYRIGHT, DATA PROTECTION

- 6.1 The Contractor shall retain copyright to the services provided – insofar as these are appropriate in that regard.
- 6.2 Any publication of the expert opinion, its use by way of reproduction and dissemination is only permitted in the context of the contractually defined purpose of use and by acknowledging the Contractor.
- 6.3 If the Client intends to refer to the fact that individual products or product groups have been assessed by the Contractor in its product or company advertising, either by quoting extracts from the present expert opinion or by naming the Contractor alone, this shall require prior contractual agreement. If such an agreement has not been made, the quoting of excerpts from the results of the expert opinion, both in product advertising and in company advertising, shall also be excluded.
- 6.4 The Client is not permitted to amend, edit, or use the expert opinion in merely extract form. Any disclosure of investigation reports or expert opinions to official authorities or other public offices is permissible if and to the extent that this is necessary or prescribed under statute in the light of the contractually assumed use or to the extent required by law.
- 6.5 The Contractor processes Clients' personal data for correct order execution and for his own purposes. The Contractor uses data processing systems for this. The data processing complies with all applicable data protection requirements.

## **7. PAYMENT TERMS**

- 7.1 Unless otherwise expressly agreed the remuneration is due for payment 30 days from the date of invoicing.
- 7.2 The Contractor shall be entitled to demand advance payments or reasonable cost advances or to issue partial invoices in accordance with services already rendered.
- 7.3 In the event of failure to observe payment terms the Contractor shall be entitled to enforce all remuneration claims due for payment with immediate effect.
- 7.4 The Client may only offset against Contractor claims if the Client's counterclaim is undisputed or if a legal title exists. The Client may only exercise any right of retention if this is based on claims arising from the contract agreed.

## **8. CANCELLATION**

- 8.1 Client and Contractor may cancel the contract in text form at any time on significant grounds.
- 8.2 Significant grounds which entitle the Client to cancel are, amongst other things, any infringement of the obligations to provide an objective, independent and impartial expert opinion.
- 8.3 Significant grounds which entitle the Contractor to cancel are, amongst other things, refusal of necessary collaboration by the Client (in particular as defined in Point 4.2) attempted impermissible influence on the part of the Client on the specialists commissioned with preparation of the expert opinion, use of expert opinion findings and partial results over and above the contractually defined purpose of expert opinion preparation, impermissible reproduction of expert opinions and if, following acceptance of the assignment, the Contractor discovers that he does not possess the necessary expertise to complete the assignment.
- 8.4 In other respects, cancellation of the contract is excluded.
- 8.5 If the contract is cancelled on significant grounds for which the Contractor is responsible, he shall be due any remuneration for partial services provided up to the point of cancellation only to the extent that this is objectively of use to the Client.
- 8.6 In all other cases the Contractor retains claim to the full contractually agreed remuneration - subject however to deduction of expenses saved. If in any individual case the Client can demonstrate no higher proportion of expenses saved, this is agreed to be 40% of the remuneration for services not yet provided by the Contractor.

## **9. DEADLINES, DEFAULT**

- 9.1 Any deadline set by the Client for delivery of the expert opinion shall only be deemed agreed if expressly confirmed by the Contractor in text form. Such an agreement on a time limit does not constitute an agreement on a fixed transaction.
- 9.2 If a deadline is agreed between Client and Contractor for delivery of the expert opinion this period shall commence upon conclusion of the contract or receipt of the samples on a laboratory working day. If the Contractor requires documentation from the Client for preparation of the expert opinion or if payment of an advance is agreed the period allowed for the deadline only commences following receipt of the documentation or the advance.
- 9.3 The Contractor shall only be deemed to be in arrears if he is responsible for the delay in delivering the expert opinion. In the event of obstacles to delivery for which he is not responsible, such as for example force majeure, illness, industrial disputes, and lockouts resulting from an event involving no blame and leading to grave operational disruptions delayed delivery shall not apply. The period for delivery shall be extended in such cases by the duration of the hindrance. If it becomes completely impossible for the Contractor to provide the expert opinion due to such obstacles to delivery, the Contractor shall be released from its contractual obligations. In this case, too, the Client shall not be entitled to claim damages. However, the Contractor is obliged to inform the Client immediately in text form about the event, the suspended performance obligations, and the expected duration of the suspension of the performance obligations.
- 9.4 In addition to deliver the Client may only demand damages compensation if intent or gross negligence is demonstrated on the part of the Contractor.

## **10. GUARANTEE**

- 10.1 No guarantee is assumed for the economic benefits of the results of the assignment.
- 10.2 Test results relate only to the samples examined. The evaluation of the measured values is carried out regardless of the measurement uncertainty, because in practice it is already considered at

limit determination.

- 10.3 Initially the Client may only demand cost-free rectification of a deficient expert opinion. This shall require a grace period of reasonable duration, but not less than the duration of the originally agreed delivery period.
- 10.4 If there is no rectification within an appropriate time or if rectification fails, the Client may demand a cancellation of the contract or a reduction in the fee (abatement).
- 10.5 Defects must be notified to the Contractor immediately and in text form; otherwise, the guaranteed claim shall lapse.
- 10.6 Claims for supplementary performance, cancellation, or abatement due to defective expert services which are not subject to the statute of limitations of § 438 para. 1 no. 2 BGB (German Civil Code) or § 634 a para. 1 no. 2 BGB shall become statute-barred one year after the statutory commencement of the statute of limitations unless the Contractor has fraudulently concealed the defect.

## **11. LIABILITY**

- 11.1 Expert opinions are prepared based on information, documentation, quality requirements and/or samples provided by the Client and are for the exclusive use of the Client. The latter shall draw necessary conclusions from the expert opinion on his own responsibility. Neither the Contractor nor his senior staff, employees or subcontractors are responsible to the Client or third parties for any manner of actions taken or omitted based on such expert opinions, including faulty tests based on imprecise, false, incomplete, or misleading information provided by the Client.
- 11.2 The Contractor is not liable for delayed, partial, or incomplete services if this derives directly or indirectly from events beyond the control of the Contractor.
- 11.3 The liability of the Contractor shall be limited to gross negligence and intent. Irrespective of the degree of fault, the Contractor shall only be liable for damage caused by the violation of obligations essential for the achievement of the purpose of the contract, as well as in case of injury to life, body, health, and claims under the ProdHG (German Product Liability Act). Essential contractual obligations are those whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Client may regularly rely. For all damages not caused intentionally or by gross negligence, the claim for damages shall be limited to typical damages foreseeable at the time of conclusion of the contract.
- 11.4 The limitation of liability according to clause 11.3 shall also apply to breaches of duty by or for the benefit of persons for whose fault the Contractor is responsible according to statutory provisions as well as to any personal liability of organs and other employees of the Contractor.
- 11.5 Claims for damages which are limited according to this Clause 11 shall become statute-barred after one year from the statutory commencement of the limitation period unless they are subject to the limitation period of § 438 para. 1 No. 2 BGB or § 634 a para. 1 No. 2 BGB. The statutory limitation period shall apply to claims for damages in the event of intent and gross negligence as well as in the event of injury to life, body and health based on an intentional or negligent breach of duty by the Contractor.

## **12. PLACE OF FULFILMENT, LEGAL JURISDICTION, APPLICABLE LAW, ALTERNATIVE DISPUTE SETTLEMENT**

- 12.1 Place of performance is the registered place of business of the Contractor.
- 12.2 If the Client is a registered trader, juristic person under public law or special public-law entity the Contractor's main registered place of business is the exclusive legal venue.
- 12.3 If the Client has no general legal venue within this country or if following conclusion of the contract his customary domicile is not known at the point of filing the action, the Contractor's main registered place of business shall be the legal venue.
- 12.4 The contractual relationship and all legal relationships are exclusively subject to the laws of the Federal Republic of Germany, excluding the conflict of laws for private international law (IPR) and the UN sales law (CISG).
- 12.5 The European Commission provides an online platform for online dispute resolution for goods or services purchased online at [ec.europa.eu/consumers/odr](https://ec.europa.eu/consumers/odr). The Contractor is available in this context at [info@hohenstein.com](mailto:info@hohenstein.com). However, the Contractor is neither obligated nor willing to participate in a dispute resolution procedure before a dispute resolution body.