

# TERMS OF TRADE



## Terms of Trade of the EndoLab® GmbH

These Terms of Trade apply as at the date of publication. EndoLab® GmbH reserve the right to alter their Terms of Trade and before placing an order please enquire as to whether our Terms of Trade have been altered.

### 1. INTERPRETATION

1.1 "BUYER" means the person, firm or company whose order for the Services offered by EndoLab® GmbH is accepted by the Seller. "SELLER" means EndoLab® GmbH (registered in Traunstein/Germany under the registration number HRB 10976). "SERVICES" means all work which the Seller is to supply in accordance with these Terms of Trade. "TERMS OF TRADE" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller. "CONTRACT" means the contract for the purchase and sale of the Services. "WRITING" includes telex cable facsimile transmission and comparable means of communication. "FORCE MAJEURE" means in relation to either the Seller or the Buyer any circumstances beyond the reasonable control of that part (including without limitation any strike lockout or other form of industrial action).

1.2 The headings in these conditions are for convenience and shall not affect their interpretation.

### 2. BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Services in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller subject in either case to these Terms of Trade which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is purported to be made by the Buyer.

2.2 No variation of these conditions shall be binding unless agreed in Writing between the authorised representative of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representation which is not so confirmed.

2.4 The Buyer accepts the actual test procedures as indicated in the offer.

2.5 Any typographical clerical or other error or omission in any web site quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. ORDERS AND SPECIFICATION

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2 The quantity and description of any specification for the Services shall be those set out in the Seller's confirmation in Writing sent pursuant to clause 3.1 hereof.

3.3 The Seller reserves the right to make any changes in specification of the Services following the date the Seller shall send the Seller's confirmation in Writing pursuant to clause 3.1 hereof which are required to conform with any

applicable safety or other statutory requirements or which do not impair the quality or performance of the Services.

3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller.

3.5 All test procedures will be performed according to international standards, internal standards or confirmed specifications. No responsibility will be accepted for the correctness of the standards and specifications as indicated above.

### 4. ALTERATIONS AND MODIFICATIONS

4.1 The scope of the services is fixed by the order. Changes of the scope have to be arranged before the test procedure or other services have been started. The Seller may withdraw from the contract if the changes of the scope can not be expected to be accepted by the Seller. In That case a reasonable fee has to be paid by the Buyer.

4.2 The Seller can entrust laboratories audited by the Seller with services related to the order without written agreement of the Buyer.

### 5. PRICE OF THE SERVICES

5.1 The price of the Good shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price quoted in the Seller's published price list current at the date of acceptance of the order. All prices quoted unless otherwise provided are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

5.2 The price is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay.

5.4 The price is exclusive of the costs ('the delivery costs') of delivering the Services (together with Value Added Tax thereon) which the Buyer shall be additionally liable to pay the Seller.

### 6. TERMS OF PAYMENT

6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Services on or at any time after the Services have been despatched to the Buyer.

6.2 Advances corresponding to the services already performed may be claimed at any time.

6.2 The Buyer shall pay the price of the Services and the delivery costs together with any Value Added Tax payable thereon within 15 days following date of the invoice. The time of payment of the price of the Services the delivery costs and any Value Added Tax payable thereon shall be of the essence of the Contract.

6.3 If the Buyer fails to make full payment of the price of the Services and the delivery costs together with any Value Added Tax payable thereon by the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

6.3.1 Cancel the Contract or suspend any further deliveries (including any deliveries due to be made under any other contract between the Buyer and the Seller) to the Buyer and;

6.3.3 Charge the Buyer interest (both before and after any Judgement) on the amount unpaid at the rate of 24 percent per annum until payment in full is made. If the Buyer fails to make full payment of the price of the Services and the delivery costs and any Value Added Tax

# TERMS OF TRADE

payable by the due date all of the Seller's invoice rendered (or to be rendered) to the Buyer (whether in respect of the Contract or any other Contract between the Seller and the Buyer) shall become immediately due and payable to the Seller (or in respect of those invoices to be rendered shall become due and payable to the Seller upon the date those invoices are despatched by the Seller to the Buyer) and the Seller shall be entitled to charge interest thereon calculated in accordance with clause 6.3.3.

6.3 Complaints about the invoice have to be substantiated and must be drawn up in writing within 14 days.

## 7. TECHNICAL COMPLAINTS

7.1 Complaints about the services performed by the Seller have to be substantiated and must be drawn up in writing within 30 days.

7.2 The Buyer will get a confirmation of receipt within 5 days after receipt of the complaint at the Seller.

7.3 If the complaint is regarded by the Seller to be unsubstantiated, the Buyer has the right to demand a repetition of the Services within 3 months. The repetition can be performed by the seller. The Buyer has the right to refuse the repetition by the Seller. In that case, a written agreement has to be drawn about the laboratory to repeat the Services.

7.4 The complaint is regarded to be justified if the standard deviations of both results do not touch or overlap or if the standard deviation of comparable literature results do not touch or overlap.

7.5 The costs have to be paid by:

7.5.1 The Seller if the complaint is justified

7.5.2 By the Buyer if the complaint is not justified

## 8. TIME LIMIT AND DELAY

8.1 Any time for the delivery of the Services agreed between the Buyer and the Seller is an estimate only of the anticipated time of delivery and time for delivery is not of the essence.

8.2 The Seller shall not in any way be liable for any damages or loss (including loss of profit) howsoever arising by reason of the failure to deliver the Goods on any agreed delivery date.

8.3 If the Seller is responsible for the delay, the Buyer shall be entitled to give notice to cancel or rescind the Contract if the Seller has not delivered the Services by any date agreed for the delivery thereof.

## 9 WARRANTIES AND LIABILITY

9.1 Subject to the conditions set out below the Seller warrants that the Services will correspond with their specification at the time they are despatched to the Buyer.

9.2 The above warranty is given by the Seller subject to the following conditions:

9.2.1 The Seller shall be under no liability in respect of any defect of the Services arising from any drawing design specification or information supplied by the Buyer:

9.2.2 The Seller shall be under no liability under the warranty given in clause 9.1 (or any other warranty condition or guarantee) if the price of the Services the delivery costs and any Value Added Tax payable has not been paid by the due date.

9.3 The Seller shall be under no liability in respect of any clinical application of the products tested or R&D services performed.

9.4 The Seller shall be under no liability in respect of any delay in manufacturing of the products tested or R&D services performed.

9.5 The Seller will return the products tested after test finish. The Buyer will cover the transportation fees. The seller will not be liable for any damage, loss or delay during shipment.

## 10 FORCE MAJEURE

10.1 The Seller shall be entitled to cancel or rescind the Contract and shall not be liable for any loss or damage as a result of such cancellation or remission if its ability to perform its obligations under the Contract is any way adversely affected by reason of Force Majeure.

## 11 BANKRUPTCY

11.1 If the Buyer becomes bankrupt or goes into liquidation or makes a composition with its creditors or has a receiver or manager appointed over all or part of its assets then the Seller shall be entitled to withhold delivery of any undelivered Services and to stop any Services in transit or to cancel the Contract.

11.2 Nevertheless unless the Seller expressly elects the Contract shall remain in existence notwithstanding any exercise by the Seller of its rights pursuant to clause 11.1

## 12 COPYRIGHT

12.1 The name ENDOLAB shall not be used for any kind of publications and documentation without the written approval of the Seller.

12.2 The seller reserves the copyright for all reports, technical procedures and documentation drawn up by the seller.

## 13 CONFIDENTIALITY

13.1 All information obtained or created during the performance of laboratory activities are treated confidentially by the Seller. The publishing of these information is not intended. Anonymous information e.g. test results without any conclusion to the customer or product can be published.

13.2 When the Seller is required by law or authorized by contractual arrangements to release confidential information, the customer – unless prohibited by law - will be notified of the information provided.

## 14 APPLICABLE LAWS

14.1 The construction validity and performance of these Terms of Trade and the Contract shall be governed in all respects by German Law.

14.2 The Seller and the Buyer agree to submit to the exclusive jurisdiction of the German Courts as regards any claim or matter arising under these Terms of Trade or the Contract.

14.3 If any provision of these Terms of Trade is held by any Court or other competent authority to be void or unenforceable in whole or in part these Terms of Trade shall be continue to be valid as to the other provisions thereof and the reminder of the affected provision.

EndoLab® GmbH  
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