

General Terms and Conditions of business of ac.biomed GmbH

1. General

- 1.1 The general terms and conditions of ac.biomed apply to all and any services provided by ac.biomed GmbH. Notwithstanding this, all and any cooperation with customers shall additionally be covered by a separate agreement, which may be either an official quotation of ac.biomed GmbH or an explicit contract.
- 1.2 The customer's Terms and Conditions of Business, including the customer's purchasing terms or guidelines or general corporate policies, if any, shall not apply and shall hereby be explicitly excluded. No contractual terms and conditions of the customer shall form part of the contract even if ac.biomed GmbH does not explicitly object to them.
- 1.3 ac.biomed GmbH uses all media and may send out communication including quotations, order confirmations, invoices and project documentation also by electronic means. This shall be considered valid, unless the customer explicitly objects.

2. Quotations

Unless otherwise expressed by ac.biomed GmbH, all quotations submitted by ac.biomed GmbH shall be open and subject to change without notice.

Indications of contractual periods and dates of performance are based on estimates of the work involved which are prepared in line with the details provided by the customer. They shall only be binding if confirmed as binding by ac.biomed GmbH in writing.

3. Coming into effect, duration, change, suspension and termination of contracts

- 3.1 Any cooperation or contract shall come into effect upon the written order confirmation of ac.biomed GmbH or a separate contractual document being signed by both contracting parties, or upon the works requested by the customer being carried out by ac.biomed GmbH, without the objection of the customer. If the customer instructs ac.biomed GmbH without receiving a prior quotation from ac.biomed GmbH, ac.biomed GmbH is – at its sole discretion – entitled to accept the order by giving written notice of such acceptance or by performing the requested services.
 - 3.2 The contractual term starts upon the contract coming into effect in accordance with article 3.1 and shall continue for the term agreed in the contract.
 - 3.3 If binding periods of performance have been agreed, these periods shall not commence until the customer has submitted all required documents to ac.biomed GmbH. This also applies, even without express approval by the customer, to all extensions of agreed dates for performance not caused by ac.biomed GmbH.
 - 3.4 Contracts may be changed, amended or modified, including, but not limited to, prolongation of term, only in writing and through written acceptance of both parties prior to the change becoming effective.
 - 3.5 ac.biomed GmbH shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of:
 - (a) failure by the customer to comply with any of its obligations hereunder and such failure is not remedied within 10 days that notice of such failure has been notified to customer; or
 - (b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by customer.
 - 3.6 Contracts may be prematurely terminated only for important reason. In such case the services rendered by ac.biomed GmbH up to this point shall be paid pro rata and after said payment ac.biomed GmbH shall transfer to the client all research results achieved so far, if any. The client shall hold ac.biomed harmless from any obligation incurred at the time of termination, being understood that such compensation shall not exceed the total remuneration for still ongoing individual projects.
- ### 4. Scope and provision of services
- 4.1 The scope of the services shall be described exclusively in a formal and signed quotation of ac.biomed GmbH or a signed contract between the parties.
 - 4.2 The agreed services shall be performed in compliance with the regulations in force at the time the contract is entered into. ac.biomed GmbH will provide services using reasonable care and skill and in accordance with customer's specific instructions as confirmed by ac.biomed GmbH.
 - 4.3 ac.biomed GmbH is entitled to determine at its sole discretion the method and nature of providing its services unless otherwise agreed in writing or if mandatory (e.g. regulatory or standards) provisions require a specific procedure to be followed.

- 4.4 Any test results elaborated by ac.biomed GmbH does refer to the subjected test item(s) only. Test reports of ac.biomed do not express, implicitly or explicitly, judgment about the general product design, the construction, selection of materials and assembly thereof, fitness for a particular purpose, including, but not limited to, an "Intended use", unless these questions are expressly subject of the assessment covered by the contract.
- 4.5 All samples as provided by customer shall be retained for a maximum of 3 months after performance of services or such other shorter time period as the nature of the sample permits and then returned to customer or otherwise disposed of at ac.biomed GmbH's discretion after which time ac.biomed GmbH shall cease to have any responsibility for such samples. Storage of samples for more than 3 months shall incur a storage charge payable by customer. Customer will be billed a handling and freight fee if samples are returned. Special disposal charges will be billed to customer if incurred.

5. Intellectual and other property, Copyright

- 5.1 The test methods employed and test equipment, fixtures, etc. used by ac.biomed GmbH, also if individually manufactured for customer, are proprietary to and owned by ac.biomed GmbH or its cooperation partners. They may not be copied, reverse-engineered or otherwise transferred to the customer unless the contract was made explicitly to this purpose.
- 5.2 ac.biomed GmbH shall retain all copyrights in the format and design of expert reports, test results, calculations, presentations etc. prepared by ac.biomed GmbH.
- 5.3 The customer may only use expert reports, test results, calculations, presentations etc. prepared within the scope of the contract for the contractually agreed purpose.
- 5.4 The customer may use test reports, test results, expert opinions, etc. only complete and in full, without omissions. Any publication or duplication for advertising purposes needs the prior written approval of ac.biomed GmbH.

6. Obligations of the customer to cooperate

- 6.1 The customer shall guarantee that all cooperation required on its part, its agents or third parties will be provided in good time and at no cost to ac.biomed GmbH.
- 6.2 Customer shall supply, if required, any special equipment and personnel necessary for the performance of the services.
- 6.3 Documents, supplies, auxiliary material, etc. necessary for performance of the services shall be made available free of charge by the customer. Moreover, collaborative action of the customer must be undertaken in accordance with legal provisions, standards, safety regulations and occupational health instructions.
- 6.4 Customer shall inform ac.biomed GmbH in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of toxic or noxious or explosive elements or materials, environmental pollution or poisons.
- 6.5 The customer shall bear any additional cost incurred on account of work having to be redone or being delayed as a result of late, incorrect or incomplete information or lack of proper cooperation. Even where a fixed or maximum price is agreed, ac.biomed GmbH shall be entitled to charge extra for such additional expense.

7. Payment terms

- 7.1 Invoicing shall be based on costs incurred, unless otherwise stated in the official quotation of ac.biomed GmbH or a contract. All fee agreements are made in EURO unless otherwise agreed in writing.
- 7.2 All invoice amounts shall be due for payment without deduction on receipt of the invoice. No discounts shall be granted, unless explicitly specified in a formal quotation from ac.biomed GmbH.
- 7.3 Payments shall be made to the bank account of ac.biomed GmbH as indicated on the invoice, stating the invoice and customer numbers. Any payment shall be made free of charge for ac.biomed GmbH.
- 7.4 In cases of default of payment, ac.biomed GmbH shall be entitled to claim default interest at a rate of 8% above the base interest rate of the German central bank (Deutsche Bundesbank). At the same time, ac.biomed GmbH reserves the right to claim further damages. Customer shall pay all of the ac.biomed GmbH's collection costs, including attorney's fees and related costs.
- 7.5 Should the customer default in payment of the invoice despite being granted a reasonable grace period, ac.biomed GmbH shall be entitled to cancel the contract, claim damages for non-performance and refuse to continue performance of the contract.

- 7.6 The provisions set forth in 7.5 shall also apply in cases of failed finance transfer and/or cases of upcoming, proven and/or dismissed insolvency or bankruptcy.
- 7.7 Objections to the invoices of ac.biomed GmbH shall be submitted in writing within two weeks of receipt of the invoice. Customer shall not be entitled to retain or defer payment of any sums due to ac.biomed GmbH on account of any dispute, counter claim or set off which it may allege against ac.biomed GmbH. Only legally established and undisputed claims may be offset against claims by ac.biomed GmbH
- 7.8 ac.biomed GmbH shall be entitled to raise its fees during a contractual term, if overheads and/or purchase costs have increased. In this case, ac.biomed GmbH shall notify the customer in writing of the rise in fees. This notification shall be issued one month prior to the date on which the rise in fees shall come into effect (period of notice of changes in fees). If the rise in fees remains under 5% per contractual year, the customer shall not have any special right of termination. If the rise in fees exceeds 5% per contractual year, the customer shall be entitled to terminate the contractual relationship by the end of the period of notice of changes in fees. If the contract is not terminated, the changed fees shall be deemed to have been agreed upon expiry of the above period.

8. Acceptance

- 8.1 Any part of the services ordered which is complete in itself may be presented by ac.biomed GmbH for acceptance to the customer. The customer shall be obliged to accept it immediately.
- 8.2 If the customer fails to fulfil its acceptance obligation in due time, acceptance shall be deemed to have taken place 4 calendar weeks after performance of the services if ac.biomed GmbH has specifically made the customer aware of the aforementioned deadline.

9. Confidentiality

- 9.1 For the purpose of this agreement, "confidential information" means all information, documents, images, drawings, know-how, data, samples and project documentation which one party (the "disclosing party") hands over, transfers or otherwise discloses to the other party (the "receiving party"). Confidential information also includes electronic copies of such information.
- 9.2 The disclosing party shall mark all confidential information disclosed in written form as confidential before passing it on to the receiving party. The same applies to confidential information transmitted by e-mail. If confidential information is disclosed orally, the receiving party shall be appropriately informed in advance.
- 9.3 All confidential information which the disclosing party transmits or otherwise discloses to the receiving party in accordance with this agreement:
- may only be used by the receiving party for the purposes of performing the purpose of the contract, unless expressly otherwise agreed in writing by the disclosing party;
 - may not be copied, distributed, published or otherwise disclosed by the receiving party, unless this is necessary for fulfilling the purpose of the contract or ac.biomed GmbH is required to pass on confidential information to competent authorities or third parties that are involved in the performance of the contract;
 - must be treated by the receiving party with the same level of confidentiality as the receiving party uses to protect its own confidential information, but never with a lower level of confidentiality than that which is objectively required.
- 9.4 The receiving party shall share any confidential information received from the disclosing party only with those of its employees who need this information to perform the services required for the subject matter of the ordered services and/or contract. The receiving party undertakes to oblige these employees to observe the same level of secrecy as set forth in this confidentiality clause.
- 9.5 The aforesaid does not apply to information which:
- was generally known and/or publicly available at the time of disclosure or has become general knowledge without violation of these terms; or
 - was disclosed to the receiving party by a third party without violation of a valid agreement; or
 - the receiving party already possessed prior to disclosure by the disclosing party; or
 - the receiving party developed it itself, irrespective of disclosure by the disclosing party.
- Such information shall not be deemed to constitute "confidential information" as defined herein.

- 9.6 All confidential information shall remain the property of the disclosing party. The receiving party hereby agrees to
- return all confidential information, including all copies, to the disclosing party, and/or,
 - to destroy all confidential information, including all copies, and confirm the destruction of this confidential information to the disclosing party in writing, and/or,
 - to destroy all confidential information without explicit request after termination or expiry of this contract.

This does not extend to include reports and documentation prepared for the customer solely for the purpose of fulfilling the obligations under the contract. However, ac.biomed GmbH is entitled to make file copies of such reports, documentation and confidential information that forms the basis for preparing these reports and/or documentations in order to evidence the correctness of its results and for general documentation purposes, and as far as required to perform its obligations under tax and other regulations.

10. Liability, indemnification

- 10.1 Unless otherwise agreed herein, in case of a violation of contractual and non-contractual obligations the liability of ac.biomed GmbH is subject to applicable laws and regulations.
- 10.2 Irrespective of the legal basis and in particular in the event of a breach of contractual obligations, the liability of ac.biomed GmbH for all damage, loss and reimbursement of expenses caused by legal representatives and/or employees of ac.biomed GmbH shall be limited to cases of willful misconduct and gross negligence. Liability in such cases will be limited to:
- in the case of contract with a fixed overall fee, a total aggregate sum equal to 10 times the amount of the fee paid in respect or the maximum of 20.000 EUR, whichever is lesser;
 - in the case of contracts for recurring services, to the agreed fee for one term;

The maximum liability of ac.biomed GmbH is limited to the foreseeable, typically occurring damage, but maximum to the commercial value of the services offered (contractual value) or 20.000 EUR, whichever is lesser. The foregoing limitations of liability shall not apply in case of a fraudulent concealment or in case we have given a specific guarantee for properties of the goods. The same applies to claims based on the German Act on Product Liability.

- 10.3 ac.biomed GmbH shall not be liable for personnel made available by the customer to support ac.biomed GmbH in the conduct of agreed services. If ac.biomed GmbH is not liable for personnel made available by the customer under the foregoing provision, the customer shall indemnify ac.biomed GmbH against any claims made by third parties.
- 10.4 ac.biomed GmbH shall not be liable for any delayed, partial or total non-performance of the services arising directly or indirectly from any event outside 3 ac.biomed GmbH's control including failure by customer to comply with any of its obligations hereunder.
- 10.5 The limitation periods for claims for damages shall be based on statutory provisions.
- 10.6 None of the provisions of this article 12 changes the burden of proof to the disadvantage of the customer.
- 10.7 Indemnification: Customer shall guarantee, hold harmless and indemnify ac.biomed GmbH and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any services

11. Final provisions, place of jurisdiction

- 11.1 All amendments and supplements must be in writing in order to be effective; this also applies to amendments and supplements to the requirement for the written form.
- 11.2 Should one or several of the provisions under this contract be or become ineffective or unenforceable, the contracting parties shall replace the invalid provision with a legally valid provision that comes closest to the intended content of the invalid provision in legal and commercial terms. The same shall apply to any omissions or any legal lacuna in the agreements.
- 11.3 Unless specifically agreed otherwise, all services and contracts are subject to the laws of the Federal Republic of Germany. The Convention on the International Sale of Goods shall not apply. Place of jurisdiction for all disputes arising in connection with this contract shall be Aachen, Germany.