

GENERAL TERMS AND CONDITIONS

of Eurofins Lebensmittelanalytik Österreich GmbH (hereinafter referred to as ELA)

1 General; scope

1-1 Unless otherwise agreed in writing, all deliveries and services of ELA shall be made on the basis of these General Terms and Conditions, which shall always form part of the contract; the same shall apply to orders placed by telephone and not confirmed in writing and such orders that come about through the provision of samples. A contract subject to these General Terms and Conditions shall be concluded upon acceptance of an order by ELA. An order placed with ELA shall be accepted either by ELA (a) carrying out the order without the need for written confirmation by ELA or (b) by ELA confirming the order in writing.

1-2 These General Terms and Conditions replace all previous versions. No employee of ELA, other than a managing director or authorised signatory, has the authority to deviate from the provisions of these General Terms and Conditions or to waive their validity or to oblige ELA in a manner that leads to the application of deviating rules that conflict with or take precedence over those of these General Terms and Conditions. Any such amendment or waiver of the Terms and Conditions shall be binding on ELA only if made in writing and signed by a director or authorised signatory of ELA. Our sales representatives are not entitled to conclude a contract. Amendments and additions to the agreements made must be confirmed in writing by a managing director or authorised signatory in order to be effective.

2 Purchase order and order

2-1 The scope of ELA's work must be determined in writing when the order is placed. Any change or addition to the scope of the contract must also be made in writing in order to be legally binding. Effective order placement by the customer always presupposes that this is carried out by post, by fax or by electronic message or by the use of an order form or electronic order document accepted by ELA, using the customer's letterhead. Furthermore, it is necessary that all essential aspects that are not regulated in these General Terms and Conditions (including price, estimated implementation time and delivery date) are agreed upon at the time of placing the order. Without prejudice to this, ELA shall be entitled to treat all samples delivered by the customer as an order, provided that the customer is already registered as a customer in the Eurofins database. Registration takes place if an order has already been placed or processed between the customer and Eurofins. The General Terms and Conditions of ELA also apply to such orders. ELA is not obliged to start the analysis until the scope of the contract has been clarified and all the necessary information has been provided.

2-2 Changes to the scope of work that impact the test results and their evaluation can no longer be considered after the analysis has commenced. Any changes made after the formal release of the audit report will be documented in a new report version that expressly refers to the previous report.

2-3 Unless expressly agreed otherwise in writing and signed by a managing director or authorised signatory, the customer's terms and conditions shall not have any effect, even if the customer refers or has referred to them at any time. Also, a possible earlier acceptance of special conditions for a previous order (including special price regulations) does not mean that these will also be accepted in the future for subsequent orders. Each order that ELA accepts is considered to be a separate contract between ELA and the customer.

2-4 ELA may charge an administration fee of Euro 26.00 if the customer subsequently requests additional services for an already existing order. If the customer wishes to receive additional services for samples that have already been received in the laboratory, this will be regarded as a new order and estimated delivery dates will be postponed accordingly.

2-5 Any logistical service that has to be performed outside the laboratory (in particular collection, sampling, auditing), and which the customer does not make use of despite the agreement, is to be paid in full. The above provisions do not apply if the customer is contractually or legally entitled to withdraw from the contract or if the commissioned logistics service has been cancelled or modified by the customer at the latest (a) 48 hours before the service is provided if the service consists of collection, (b) 96 hours before the service is provided if the service consists of sampling, or (c) one week before the service is provided if the service consists of auditing.

2-6 If, in the course of order processing, certain activities of ELA cannot be carried out for whatever reason, ELA reserves the right to pass them on to selected and professionally qualified institutions. In the event of subcontracting within the scope of ELA's activities as an inspection body, ELA will inform the client when allocating part of the contract as a subcontract. In the event of subcontracting within the scope of ELA's activities as a testing centre, ELA will inform the client in writing of the agreement on the subcontracting and, if necessary, obtain its consent, preferably in writing.

2-7 ELA is entitled to withdraw from the contract if (a) timely performance of the contract is impossible due to circumstances for which the client is responsible, (b) the client does not comply with its obligations to cooperate, in particular in accordance with clause 4 and any obligation to pay in advance despite setting a grace period, (c) bankruptcy is opened over the assets of the client or the opening of bankruptcy is rejected for lack of cost-covering assets. If ELA declares its withdrawal from the contract pursuant to 2-6, it is entitled to reimbursement of all costs incurred up to that point.

2-8 Decision rule according to ÖVE/ÖNORM EN ISO/IEC 17025:2018: our conformity assessment does not take an expanded measurement uncertainty of analysis results into account. Exceptions: (a) for pesticide methods an expanded measurement uncertainty of 50% is applied according to SANTE/11312/2021 (the limit value is deemed to have been complied with if the measured value is less or equal to the sum of the limit value and the expanded measurement uncertainty of 50% of the measured value), or (b) for customer-specific specifications and decision rules, which must be communicated in writing to the laboratory in good time before work commences. The specifications will be documented in the analytical report.

3 Prices and terms of payment

3-1 All prices apply "ex works" (as defined by ICC Incoterms 2000) excluding packaging, which is invoiced separately, unless otherwise agreed. All additional costs and expenses shall be borne by the customer, for example those incurred by ELA in connection with the order.

3-2 All prices are exclusive of taxes and are determined on the basis of the price list valid at the time of preparation of the offer. All applicable taxes shall be borne by the customer and shall be payable in accordance with the amount applicable on the day of invoicing.

3-3 Invoices are due without deductions immediately after receipt of the invoice. Any notice of defects and other complaints relating to an invoice must be asserted within 14 days of receipt of the invoice, stating the reasons on which it is based. If ELA does not receive a written complaint from the client within this period, the invoice shall be deemed to have been approved by the client. If the customer doubts the accuracy of an analysis result or other services, this does not entitle them to withhold payment, unless the incorrectness of the analysis result or other services and the resulting counterclaims of the customer have been undisputed, accepted by ELA or legally established. If the customer is in arrears with a payment, all further claims, including those arising from other orders insofar as they are not yet due, shall be immediately due and payable. In the event of default of payment, the client undertakes to reimburse the operating costs of the Kredit-schutzverband [credit protection association] of 1870 in accordance with the Ordinance of the Federal Ministry for Economic Affairs on the fees of collection institutions, BGBl [Federal Law Gazette] No. 141/1996. In the event of non-payment within 14 days, default interest of 9.2% above the base interest rate of the Austrian National Bank will be charged. The client undertakes to pay all costs, expenses and cash expenditure incurred by ELA in pursuing its claims, regardless of the title from which they result, in addition to the dunning expenses. The right to claim further damages remains reserved.

3-4 If an invoice is reissued by ELA at the customer's request, ELA may additionally invoice an administration fee of Euro 15.00.

3-5 Payment is made by bank transfer or direct debit. Other forms of payment require prior agreement with ELA. The customer is obliged to provide ELA with the required account details.

3-6 ELA is entitled to make the conclusion of a contract conditional on the provision of 100% of the estimated remuneration to be paid as an advance.

4 Client Obligations

4-1 The client must provide ELA with the information and items (test material, documents, etc.) required to fulfil the contract free of charge and in good time. If this is not possible or impractical, they must ensure that the items to be investigated are freely accessible to ELA. Samples or materials must be in a condition that permits the preparation of reports/analyses or the production of commissioned products without difficulty. ELA shall be entitled to carry out an initial inspection of the sample or materials in order to determine their condition before processing the sample, producing a report or using them in production. The customer is obliged to bear the costs of this initial inspection if it turns out that the sample or materials do not meet the requirements of this Section 4-1. If the incoming inspection reveals that an analysis or production is impossible or only possible under more difficult conditions than was originally assumed — for example, because the sample or materials are interspersed with foreign materials or substances that were not communicated by the customer, or have decomposed, ELA is entitled to withdraw from the contract or to suspend the execution of the order. In this case, the customer shall bear the costs incurred by ELA up to this point in time.

4-2 ELA shall be informed in good time by the client of all processes and circumstances that may be relevant to the purpose and execution of the contract, without special request. The customer must ensure and hereby guarantees that the samples do not pose any risks to the property and other legal interests of ELA and its employees and other representatives and third parties, either on the customer's premises or during transport, in the laboratory or in other ELA-owned premises. This also applies to business premises operating under subcontract. It is the customer's responsibility to comply with the provisions on special waste and hazardous substances. These obligations also apply to information, transport and disposal. In particular, employees or other representatives of ELA shall be made aware of health or safety concerns arising from the samples. This includes, in particular, concerns about known or suspected toxins or other contamination of a sample and the likely level of contamination as well as the risks to property and other legal interests of ELA and its employees and other representatives in connection with the contamination. In the event of a culpable breach of these obligations, the customer shall be liable for all costs, damages and other disadvantages caused by this to ELA or its personnel or other representatives and partner organisations, irrespective of whether these disadvantages occur on the customer's premises (for example during sampling), during transport, in the laboratory or in other premises belonging to or connected with ELA. Liability also includes a corresponding obligation to indemnify ELA in the event of claims by third parties. The customer shall bear the costs of the appropriate disposal of special waste and hazardous substances arising from the samples provided by the customer. This is irrespective of whether the sample was described as special waste or hazardous substance or not. At the request of ELA, the customer is obliged to inform them of the exact composition of the sample.

4-3 Insofar as investigations are required outside of ELA, the client must provide access to the corresponding locations. In particular, the client must take all necessary precautions to protect third-party rights.

4-4 The client must obtain, at their own expense, official approvals or consents of third parties required for the scope of the order and the fulfilment of the contract and demonstrate these to ELA.

5 Ownership rights to the samples and storage of the samples

5-1 All samples and specimens shall become the property of ELA insofar as and to the extent necessary to carry out the order. If no storage has been agreed in return for payment, ELA is not obliged to store or cool the sample. If such storage in return for payment has been agreed, ELA will take the necessary steps to properly store the sample.

5-2 ELA is entitled to remove or destroy samples after completion of the analysis, unless it has been agreed in writing between the Parties that ELA shall retain the sample. If a specific retention period has been agreed, ELA shall be entitled to remove or destroy the samples without prior notice after their expiry. If special legal provisions exist for the removal or destruction of samples and specimens (for example in the case of special waste and hazardous substances), the customer shall bear the resulting costs. If the customer requests the return of unnecessary sample material, ELA will return it at the cost and risk of the customer.

5-3 The client is obliged to acquire and transport the test material immediately at the request of ELA; in the event of a delay, ELA is entitled to store or dispose of the test material at the expense of the client.

6 Delivery dates and processing time

6-1 Delivery and analysis dates are estimates and do not constitute an obligation of ELA. However, ELA will make reasonable efforts to meet the estimated deadlines.

6-2 As a rule the results shall be communicated electronically immediately after completion of the analysis to the persons specified by the customer when placing the order. This notwithstanding, the transmission may be sent by post or in accordance with any other agreement, whereby fees may be charged by ELA for these services.

7 Use of analysis results

7-1 ELA reserves the copyright, title and other rights to the analytical results, products, equipment, computer programmes, audit reports or similar services provided by ELA. ELA may take copies for their files of written documents that are made available to ELA for inspection and that are relevant for carrying out the order. Until the time of full payment, the customer is not entitled to any property rights or other rights in relation to the use of the services provided. If the customer is in arrears with the payment of due receivables, ELA is entitled to suspend the execution of the order and any other work for it. This shall also apply if the defaulting claim arises from another order.

7-2 However, ELA reserves the right, after full payment, to keep these results strictly confidential and anonymous for scientific purposes, to use and publish them, provided that this does not foreseeably affect any customer interests (in particular while maintaining anonymity).

7-3 Without prejudice to clause 5, ELA is entitled to withhold the test material and test results until the fee has been paid in full.

8 Warranty and Liability

8-1 Unless explicitly agreed otherwise, orders are fulfilled by ELA in accordance with the conditions available in the current state of the art. ELA assumes no responsibility for the accuracy of the guidelines, regulations or standards on which the tests are based. Results may not always be 100% accurate and/or true. Analyses, interpretations, estimates, advisory services and conclusions are carried out with due diligence. However, ELA cannot guarantee that these are always correct or fully applicable. The warranty periods for the limited warranty are 12 months from acceptance. The parties agree that services, goods, etc. are to be regarded as accepted, unless the customer notifies otherwise within 14 days of receipt by ELA. In any case, the customer is obliged to verify the validity of the results, interpretations, estimates and conclusions transmitted by ELA with reasonable care at own risk if the customer wishes to rely on them in matters of importance. Should the results be discernibly incorrect, the customer is obliged to contact ELA immediately and to inform it accordingly.

8-2 Each analytical report refers exclusively to the sample analysed by ELA and the scope of testing specified therein. The selection of tests for marketability is not comprehensive, but is based in principle on a sample. Audit reports represent a snapshot of the conditions found and always refer to this point in time and cannot be interpreted as generally valid. Unless ELA has been expressly instructed to draw up a "comprehensive test plan" (including specifying which raw materials and finished products are to be analysed and tested at which frequency), specifying a precise range of the analyses to be carried out, or if and insofar as the customer does not follow the relevant recommendations of the contractor, it is not the contractor's responsibility if it should turn out that the sample plan and/or the determination of the analysis range are inadequate or inappropriate.

8-3 The customer is responsible for the proper delivery of the sample to be examined or analysed and the materials that are transmitted for the purpose of production. Unless otherwise agreed in writing, ELA shall not be responsible in the event of any loss or damage to a sample during transport. The customer is solely and at all times responsible for the safety, packaging and insurance of the sample from dispatch to delivery to the offices or laboratories of ELA.

8-4 The customer warrants and undertakes to ELA to ensure that all samples sent to ELA for analysis purposes are safe and in a stable condition. It further undertakes to indemnify and hold harmless the customer and ELA and its personnel or other representatives from and against all damages, costs and other disadvantages arising for them as a result of a sample being dangerous or unstable, unless the customer is not responsible for this. If a sample is dangerous or constitutes special waste/hazardous materials, the customer must inform ELA of this in writing before dispatch. They are also obliged to label the packaging, samples and/or containers accordingly.

8-5 Unless otherwise agreed in writing between the parties, the contractual relationship exists exclusively between the customer and ELA. No contract shall be concluded in favour of third parties by which ELA may be obliged to these third parties, unless and to the extent that otherwise follows from the contract and/or these General Terms and Conditions. The customer undertakes to indemnify ELA against all and any third-party claims brought against ELA in relation to the customer or the customer's order, if and to the extent that the customer is at fault.

8-6 For computer programmes and devices, ELA is only liable within the meaning of the applicable laws. The customer must ensure that their computers and their devices work correctly and are suitable for their applications and conditions of use.

9 Limitations of Liability

9-1 ELA is in any case only liable up to a maximum of the price paid by the customer for the analysis of the sample in question, unless there is intent or gross negligence. Further liability, in particular liability for medium and slight negligence, is excluded. The right to guarantee in accordance with Clause 8 remains reserved.

9-2 ELA shall not be liable for indirect material or immaterial damage incurred directly or indirectly by the customer or a third party as a result of ELA's activities (e.g. loss of prestige, decline in turnover, cancellation of goodwill regulations, etc.), unless ELA has acted with intent or gross negligence.

9-3 In all cases other than those mentioned under 8-1 and 8-2, irrespective of the legal reason, ELA is liable up to a maximum of ten times the price paid by the customer for the analysis.

9-4 Notwithstanding Sections 9.1 and 9.3, ELA shall be liable for claims for damages in connection with conformity assessments carried out by ELA within the framework of accreditation (whether as a testing body or as an inspection body) in accordance with the accreditation insurance taken out and available, even in the event of slight negligence, but no more than a total of EUR 900,000. This liability is covered by insurance up to an amount of EUR 900,000 and thus above the minimum amount of the lump sum coverage of insurance contracts for personal injury, property damage and financial loss in accordance with the Accreditation Insurance Ordinance in its current version.

10 Repeats of analyses

Complaints with regard to test results can only be made within the scope of clause 8-1. If the customer instructs ELA to repeat an analysis already carried out, this will be invoiced separately, unless the first analysis result turns out to be incorrect.

11 Force majeure

ELA shall not be liable for any delay, error, damage or other problem caused by any event or circumstance which was unforeseeable for ELA or beyond its control or which results from compliance with any governmental order, law or otherwise.

12 Confidentiality and Customer Data Processing

12-1 ELA is entitled to store and process personal or business data that it has received from the customer in any way, regardless of whether such data originates directly from the customer or from a third party, within the framework of the data protection regulations to be complied with.

12-2 For the purpose of carrying out an order, the contractor shall process and use personal data – for example, of bodies, contact persons and/or project managers. The client is aware that in order to ensure the best possible service, including the use of existing capacities and know-how, personal data, but also order-related information such as analysis questions and their results, can be transmitted to cooperation partners who all have accreditation according to ISO 17025. These companies are bound by a corresponding confidentiality agreement, which is made available on request. In addition, the contractor shall process and use the data for the purpose of further order acquisition. The client may object to this with the contractor.

12-3 ELA is obliged to keep all analysis and service reports confidential. This obligation does not apply to the rights to which it is entitled under clause 7-2 and any requirement to prove a claim for payment for services rendered.

12-4 Analysis results are prepared and transmitted exclusively for the use of the customer and should not be transmitted to third parties for any purpose without prior written agreement with ELA. Furthermore, the customer is obliged to maintain confidentiality with regard to all services provided by ELA. Furthermore, their results, as well as the composition of products and computer programmes provided by ELA, as well as analytical results and audit reports or excerpts thereof, shall not be published or used without the prior written consent of ELA. Even in the event that such written consent is given, the customer shall remain (a) responsible for any consequences arising from the disclosure of such results to third parties and the reliance of such third party on such results and (b) hereby undertake to indemnify the employees of ELA against any claim by any third party arising from the disclosure of such results and/or the reliance on the same and resulting – actual or alleged – damages.

12-5 Pursuant to Section 38 LMSVG (Austrian Food Safety and Consumer Protection Act), food companies in Austria are obliged to transmit isolates of regulated pathogenic microorganisms from their samples to the corresponding reference laboratory without delay, but at the latest within two days. The shipping of the isolates is part of the contract when commissioning microbiological examinations for these germs. The expense for this service (transport of dangerous goods and production of insulation) will be charged.

13 Final provisions

13-1 The invalidity or limitation of the content of one or more of the above provisions shall not affect the validity of the remaining provisions. The ineffective conditions shall be replaced by those provisions which come closest to the economic purpose of the contract while adequately safeguarding the mutual interests.

13-2 ELA amends these Terms and Conditions from time to time. For orders, the current version at the time of acceptance of the offer shall apply.

13-3 In the event that a court should reject, limit or deem invalid, illegal or unenforceable parts of these General Terms and Conditions, the remaining parts shall remain valid to the greatest extent possible.

13-4 In the event that ELA or the customer does not exercise any rights arising from these General Terms and Conditions, this shall not constitute a waiver of these rights nor shall it entail forfeiture of these rights.

14 Governing law and Jurisdiction

The place of payment and performance is Wr. Neudorf. For all disputes arising from the contractual relationship, the competent court in Wr. Neustadt is responsible. Austrian law shall apply exclusively.