

EUROFINS GENERAL TERMS AND CONDITIONS OF SALE**1. DEFINITIONS**

- 1.1 **“Affiliated Company”**: Any company of which the ultimate parent company of one of the Parties (a) directly or indirectly holds at least 50% of the nominal value of the issued share capital, or (b) holds at least 50% of the voting rights in its general meetings, or (c) has the right to appoint the majority of its directors, or any other company that qualifies as a ‘subsidiary’ or is part of a ‘group’ within the meaning of Sections 2:24a and 2:24b of the Dutch Civil Code.
- 1.2 **“Agreement”**: All (framework) agreements, Orders, general terms and conditions and/or other documents or agreements that (jointly) govern the legal relationship between Eurofins and the Client.
- 1.3 **“Client”**: Any party that places Orders or instructions at Eurofins to provide Services.
- 1.4 **“Confidential Information”**: Any tangible and/or non-tangible information provided or made available by a Party to the other Party, which (including but not exclusively) is contained in (digital) data, documents, reports, agreements, summaries, (work) materials, studies, analyses, Reports, test results, notes, know-how, examples, e-mail messages, documents, drawings, designs, (digital) data carriers and other information (including copies thereof) that (in the broadest sense of the word) provide insight into the organisation, working methods or knowledge of the providing Party (and/or its Affiliates) as a result of which the receiving Party may expect it to be regarded as confidential, or any other information relating to Eurofins and/or its Services that qualifies as a ‘trade secret’ within the meaning of Article 1 of the Dutch Trade Secrets Protection Act.
- 1.5 **“DCC”**: The Dutch Civil Code as in force at the time of the conclusion of the Agreement.
- 1.6 **“Eurofins”**: The Netherlands-based Affiliated Companies of Eurofins Scientific S.E.
- 1.7 **“Force Majeure”**: Any (temporary) situation as a result of which Eurofins cannot reasonably fulfil its obligations vis-à-vis the Client and which has arisen due to circumstances beyond Eurofins’ reasonable control. The following situations shall in any case, but not exclusively, be considered Force Majeure: strikes, accidents, government-imposed obligations that have consequences for the provision of the Services, war, terrorism, social unrest, epidemics, pandemics, problems at Eurofins’ suppliers, society-wide interruptions of daily life, nuclear or natural disasters, damage or breakdowns of communication and/or computer systems.
- 1.8 **“GDPR”**: Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016, better known as the “General Data Protection Regulation” or “GDPR”.
- 1.9 **“Intellectual Property Rights”**: All intellectual property rights in respect of all texts, drawings, analyses, reports, methods, models, materials, technologies, inventions, computer software, (digital) source codes, databases and documentation, whether or not provided with a patent, created pursuant to and/or within the framework of the Agreement.
- 1.10 **“Locations”**: Locations designated by the Client, whether or not pertaining to third parties, where Eurofins is to perform (part of) the Services.
- 1.11 **“Order”**: The order confirmation or order from a Client, which contains a request from the Client for the provision of certain Services by Eurofins and which order confirmation or order has been accepted by Eurofins in writing. If and insofar as the Order has not been accepted by Eurofins in writing but it has actually proceeded to execute the Order, the Order in question shall be deemed to be ‘accepted’ on the understanding that the date on which Eurofins commenced the execution of this Order shall be deemed to be the date of acceptance.
- 1.12 **“Party” or “Parties”**: Eurofins and/or the Client, such depending on the context in which this definition is used.
- 1.13 **“Reports”**: Analyses, inspection reports, results, interpretations, assessments, advice and conclusions drawn up by Eurofins as part of the performance of the Services.
- 1.14 **“Services”**: All services provided by Eurofins to the Client, including but not limited to consultancy, advice, inspections, taking of Test Material, analytical testing and/or transportation, at a Location designated by the Client or otherwise.
- 1.15 **“Terms and Conditions of Sale”**: Eurofins’ General Terms and Conditions of Sale contained in this document.
- 1.16 **“Test material”**: Any material, substance, product, method, platform or good to be examined by Eurofins in the context of Services to be provided under the Agreement.

2. SCOPE

- 2.1 These Terms and Conditions of Sale form an integral part of the Agreement and apply to all Services performed by Eurofins on behalf of the Client.
- 2.2 By applying these Terms and Conditions of Sale, the Parties explicitly reject any other general (purchase) conditions (of the Client).
- 2.3 These Terms and Conditions of Sale terminate and supersede all previous general terms and conditions applied by the Parties.
- 2.4 The Client warrants that it has the authority to enter into the Agreement with Eurofins. The Client shall indemnify Eurofins against any damage arising from a breach of the aforementioned warranty.

3. FORMATION OF ORDERS

- 3.1 Eurofins has a (delivery) obligation vis-à-vis the Client only once an Order has been accepted. Any turnaround times or completion dates issued by Eurofins or agreed between the Parties are indicative and shall therefore never be deemed to be a 'strict deadline'.
- 3.2 If the Client (or a Company Affiliated with it) sends Test Material to Eurofins stating the Client Reference (number), Eurofins may assume that, in doing so, the Client intends to conclude an Order, and is therefore making an offer within the meaning of Section 6:217 of the Dutch Civil Code. If and insofar as Eurofins agrees to the relevant Order, Eurofins will send a written confirmation thereof to the Client.
- 3.3 Eurofins shall never be obliged to perform its Services if it believes that it has not received all required information or if Eurofins believes at any time that (i) a conflict of interest arises or may arise, (ii) its integrity is compromised and/or (iii) the quality of the Services is compromised. In any such case, Eurofins may, at its sole discretion and without creating any liability or obligation vis-à-vis the Client, immediately suspend and/or cancel an Order by means of a written notice to that effect to the Client.
- 3.4 Eurofins has the discretion whether or not to commence execution of an Order if the Parties have not yet agreed on specific commercial aspects of such Order (including price, estimated turnaround time and delivery date). If the Parties have not agreed on the price to be paid, the Client shall owe the price usually stipulated by Eurofins at the time of conclusion of the Agreement. The Client may be asked for an advance payment in the event of such early execution.
- 3.5 Eurofins is entitled to charge management and administration fees if the Client requests an addition and/or modification of Services to an already agreed Order.
- 3.6 Any communications or actions by Eurofins that qualify as an offer (within the meaning of Section 6:217 of the Dutch Civil Code) are without obligation. Eurofins is entitled to revoke or amend an offer, even after acceptance of this offer by the Client, provided that Eurofins has not yet executed or confirmed the (accepted) offer in writing. In the event Eurofins changes the price stipulated in an offer, the Client may still withdraw the acceptance free of charge.
- 3.7 If Eurofins has not been expressly instructed and paid for preparing a Test Material Collection Plan (which is a document showing which Test Materials are to be analysed from which raw materials and finished products and in what frequency this is to be done), the Client can in no way claim that Eurofins' Test Material Collection Plan and/or the analysis range is insufficient or inadequate.
- 3.8 The application of special or different terms and conditions (including but not limited to special price agreements) to certain Orders does not give the Client any right to demand such special or different terms and conditions for other Orders.

4. PRICES AND PAYMENTS

- 4.1 Unless the Parties expressly agree otherwise in the Agreement, all obligations of the Parties and the corresponding prices (apart from packaging) are "ex works" (EXW) Incoterms 2020.
- 4.2 Unless the Parties expressly agree otherwise in writing, Eurofins shall charge the costs it incurs in the context of the performance of the Agreement with the Client, including but not limited to overhead costs, energy costs, consumables, costs of third parties (e.g. suppliers), travel time, travel and accommodation costs, additional charges for the performance of Services outside normal working hours, additional work resulting from incorrect and/or incomplete information provided by the Client, performance of Services that are deemed 'urgent' by the Client. Invoices are subject to a minimum invoice

amount of EUR 100 (in words: one hundred Euros). Eurofins is entitled to charge an administrative fee of up to EUR 15,- (in words: fifteen euros) for re-issuing an invoice.

- 4.3 Eurofins is entitled to unilaterally amend the prices agreed with the Client annually from 1 January onwards on the basis of the change in the price index figure for the month in which the price change is implemented compared to the same month of the previous year according to the consumer price index (CPI) published by Statistics Netherlands (2015=100). There will be no price reductions due to negative indexation.
- 4.4 Without prejudice to the provisions of Article 4.3, Eurofins is entitled to unilaterally change prices in the interim without notice if special circumstances apply. Special circumstances shall in any case include any (special) change affecting Eurofins' price, including cost prices, exchange rates and levies or taxes.
- 4.5 All prices are exclusive of sales tax (VAT) and other levies imposed by the government and are based on the applicable taxes and levies in force on the date of invoicing.
- 4.6 Unless the Parties expressly agree otherwise in the Agreement, Eurofins' invoices are due and payable immediately from the invoice date. If the Client fails to pay the entire invoice amount within fourteen (14) calendar days of the invoice date (unless the Parties have expressly agreed on a different term in writing), the Client shall be in default vis-à-vis Eurofins as well as in default by operation of law, and Eurofins will, without prejudice to its other rights, be entitled to dissolve or terminate the Agreement with the Client or to suspend its obligations, and Eurofins shall furthermore be entitled to the statutory commercial interest of 12.5% (twelve and a half per cent) per year on the corresponding invoice amount, from the day of default until the day of payment in full.
- 4.7 If the Parties have agreed that Eurofins (or a Company Affiliated with it) will provide logistics Services on behalf of the Client. Eurofins will charge these logistics Services in full, unless they are cancelled in writing by the Client 'in a timely manner'. IN this context, 'in a timely manner' shall be understood to mean:
- a. 'Pick-up'/collection Services for Test Materials: No later than 48 hours prior to the date of execution.
 - b. 'Sampling' Services: No later than 96 hours prior to the date of execution.
 - c. 'Audit' and 'inspection' Services: No later than 1 calendar week prior to the date of execution.
- 4.8 In the event of non-timely (full) payment of a due and payable invoice amount, the Client shall be obliged to indemnify Eurofins regarding the collection of this due and payable invoice amount, which shall in any case (but not exclusively) include the full compensation of extrajudicial and judicial collection costs, including the costs of engaging legal assistance (e.g. lawyers, bailiffs and collection agencies).
- 4.9 Eurofins shall be entitled to set off all claims of the Client against Eurofins that can be valued in money against claims of Eurofins against the Client. If the Client is in any way part of a group of companies, 'the Client' shall, for this purpose, be understood to mean all companies in any way forming part of this group.
- 4.10 Eurofins shall be entitled to request the Client to establish a security right over all present and future movable and immovable property and rights of action belonging to the Client if the Client fails to pay a due and payable invoice amount in time or in full, plus any additional costs.
- 4.11 If and insofar as the Client has an objection to an invoice (amount), the Client must notify Eurofins thereof in writing within thirty (30) calendar days, on penalty of forfeiture of all rights of the Client related to the objection to an invoice (amount). The Client should provide a clear and proper explanation with such an objection. The Client must in any case indicate the following:
- a. which part of the invoice it disputes;
 - b. what it proposes to remedy the objection.
- 4.12 Any complaint or dispute regarding an invoice or Service provided or an analytical result arising from such shall not entitle the Client to suspend an obligation to pay. The Client shall also under no circumstances be entitled to set off amounts due to Eurofins against any claims the Client has or believes it has against Eurofins. The Client waives any rights of suspension or set-off to which it is entitled.
- 4.13 Invoices are paid by (electronic) bank transfer or direct debit. Any other method of payment requires the prior written approval of Eurofins. The Client undertakes to provide details of its bank account (such as IBAN numbers) on the instructions of Eurofins.
- 4.14 Eurofins is entitled to require payment of the entire invoiced amount as a condition for acceptance of an Order.

5. DURATION AND TERMINATION

- 5.1 Unless Eurofins and the Client have agreed otherwise in the Agreement, an Agreement entered into for an indefinite period of time may be terminated by means of a written notice (being a registered letter, a bailiff's writ or an e-mail) addressed to the legally valid representative or representatives of the other Party and observing a notice period of 6 months. A termination shall not affect the Client's payment obligation for Services already (partially) provided. An Agreement entered into for a definite period cannot be terminated prematurely or otherwise by (one of) the Parties, except insofar as the Parties have agreed otherwise or insofar as these Terms and Conditions of Sale provide otherwise.
- 5.2 Eurofins may, without being obliged to pay any compensation to the Client, immediately terminate, dissolve or suspend (in whole or in part) the Agreement (and related (legal) acts) extra-judicially (in whole or in part) (which Eurofins considers desirable at its own discretion), without being required to be in default but after providing the Client with a written notice to this effect, if:
- a. the Client fails to fulfil one or more of its obligations vis-à-vis Eurofins;
 - b. a bankruptcy petition has been filed against the Client, the Client itself has filed for bankruptcy or the Client is declared bankrupt;
 - c. the Client has applied for suspension of payments or is granted suspension of payments;
 - d. the Client ceases all or part of its business or makes a decision to wind it up;
 - e. the Client offers a composition to its creditors or becomes insolvent in any way or becomes the subject of insolvency proceedings;
 - f. there is misconduct (by an employee) of the Client vis-à-vis (an employee of) Eurofins, or if a member of the Client's staff who is involved in the performance of the Agreement proves to be unfit for this purpose and the Client, after a notification to this effect by Eurofins, has not arranged for a replacement of this member of staff within 7 calendar days after the aforementioned notification by Eurofins;
 - g. the control over or within the Client changes, similarly or otherwise, as (but not exclusively) referred to in Article 1(1)(e) of the SER Merger Code 2015 or because the Client takes a decision to (i) dispose of (any part of) the shares in its issued capital or (ii) its assets that results in a transfer of undertaking as referred to in Section 7:662 of the Dutch Civil Code;
 - h. the Client no longer has, or is in danger of losing, the permits required for the performance of the Agreement;
 - i. a prejudgment attachment is levied on any part of the Client's business and such attachment is not lifted within 30 calendar days of the attachment;
 - j. execution is levied on any (asset) part of the Client's company;
 - k. Eurofins becomes aware that new laws or regulations, decisions, policies or directions have been or are being introduced that make the performance of the Agreement illegal, unlawful or undesirable, that the provisions of art. 9.10 of the Agreement are breached or create a conflict with accepted professional or conduct rules;
 - l. Eurofins is of the opinion that its independence (or that of an Affiliated Company) as a testing institute is compromised or at risk of being compromised if the Agreement were (further) performed.
- 5.3 Subject to the provisions of the Agreement and these Terms and Conditions of Sale, the Client waives its rights, which waiver Eurofins accepts, to terminate, dissolve, destroy or modify (or cause to be destroyed or modified) the Agreement – judicially or extrajudicially and in its entirety or in part – all this insofar as it is not contrary to mandatory law.

6. REPEAT ANALYSES

- 6.1 Eurofins may conduct a repeat analysis on Test Material or of a Location, either at the request of the Client or if Eurofins is required to do so. The costs associated with conducting a repeat analysis (which may or may not result from a Client's objection) shall be borne by the Client, unless:

- a. the results of the repeat analysis do not match those of the first analysis due to an error which is solely attributable to Eurofins; or
 - b. Eurofins has stated in writing that the Client's objection is well-founded and a repeat analysis is therefore required.
- 6.2 Conducting a repeat analysis is subject to the proviso that it is actually still possible for Eurofins to conduct it without compromising the quality of the analysis, the Services and/or the Report.

7. OBLIGATIONS OF THE CLIENT

- 7.1 The Client is obliged to provide Eurofins with all relevant information, communications and user rights that are (reasonably) necessary for the performance of the Services prior to the performance of those Services. The Client guarantees the accuracy and completeness of all information, communications and user rights provided.
- 7.2 If and insofar as any necessary information and/or right of use is not, not fully and/or not correctly provided by the Client and the performance of the Services is thereby delayed or made impossible, the inability to provide the Services (optimally) shall never constitute a breach of the Agreement by Eurofins.
- 7.3 The Client is obliged to inform Eurofins in writing prior to the performance of the Services of all known, actual and/or potential dangers in relation to the performance of the Agreement and/or the Test Materials to be analysed, including but not limited to risks of (exposure to) toxic and poisonous materials, radiation, explosion hazard and/or environmental pollution. The Client is also obliged to provide the Test Materials, packaging and boxes with appropriate markings as well as to take any other (additional) safety measure that, with a view to (public) safety and health, may reasonably be considered desirable. If the Client fails to comply with the obligations contained in this Article 7.3, it shall forfeit an immediately due and payable penalty to Eurofins of EUR 10,000 (in words: ten thousand euros) for each separate infringement as well as an amount of EUR 2,000 (in words: two thousand euros) for each day that the non-compliance continues and up to a maximum amount of EUR 50,000 (in words: fifty thousand euros), without prejudice to Eurofins' right to claim damages (in addition to the forfeited penalty) and/or to apply other legal remedies to which Eurofins may be entitled.
- 7.4 Eurofins is entitled to conduct a preliminary investigation into the condition of the Test Materials before proceeding to process the Test Materials or starting to perform the Services if and insofar as this is deemed necessary. Eurofins may charge the costs of the preliminary investigation to the Client if the Client has failed to inform Eurofins in writing in advance of dangers as described in Article 7.3 of the Terms and Conditions of Sale or if the preliminary investigation reveals that the Test Materials are not suitable for analysis or can be analysed only under less favourable conditions than originally foreseen. In such case, Eurofins shall also be entitled to terminate or suspend the Order/Agreement concerned at its own discretion, without prejudice to Eurofins' other rights.
- 7.5 By providing Eurofins with the Test Materials for the purpose of performing Services (or having them performed), the Client grants Eurofins and/or any Affiliated Company engaged for this purpose the right to dispose of the Test Materials in such a way that they are able to fully and optimally perform the Services as well as comply with the applicable laws and regulations. This may imply that the Test Materials are (obliged to be) destroyed when they are no longer needed for the Services. At the request of the Client, Eurofins may return the Test Materials on the understanding that the return of the Test Materials shall be at the expense and risk of the Client.
- 7.6 Transport of the Test Materials shall be entirely at the Client's expense and risk, unless the Parties have agreed in writing that Eurofins will handle the transport. The Client is at all times required to ensure the safety, packaging and insurance of the Test Materials, even if transport is provided by Eurofins. The Client undertakes to indemnify Eurofins for all damages, injuries, claims and costs incurred by Eurofins, its Affiliated Companies or its employees as a result of a Test Equipment not being in a safe and/or stable condition. Any information about the condition of a Test Material or safety instruction given by the Client, does not exonerate the Client from the aforementioned indemnity.
- 7.7 If the Services are provided (partly) on Location, the Client must ensure that the Location is safe for the employees and/or third parties engaged by Eurofins and that it is fully and correctly instructed regarding the applicable dangers and the safety regulations to be observed. The Client undertakes to indemnify Eurofins and/or its employees and/or engaged third parties against all damages, injuries, claims and costs suffered by them.
- 7.8 The Client must ensure that Eurofins has all necessary authorisations, permits or exemptions necessary for the performance of the Agreement, and, if necessary, to enter the Location. This includes (but is not limited to) licenses and permits that must be applied for to import and export Test Materials. The licences and accreditations reasonably required to be held by Eurofins by virtue of the operation of its business are excluded from the foregoing.

8. OBLIGATIONS OF EUROFINS

- 8.1 Eurofins is responsible for managing all information generated in the performance of the Services and the associated Reports. Eurofins cannot guarantee the quality, accuracy and integrity of the information (contained in the Report) after it has been provided to the Client. If the Client is entitled to do so, the publication of data, Reports and/or other information shall take place entirely at its own expense and risk.
- 8.2 Eurofins shall (to the extent possible) perform its Services in accordance with applicable statutory regulations, accreditation requirements and reasonable (written) wishes of the Client.

9. WARRANTIES AND LIABILITY

- 9.1 Services are performed according to the techniques and methods as available to Eurofins at the time of performance. Reports are drawn up in accordance with due diligence standards applicable in business. However, Eurofins cannot guarantee that the Reports are complete and free of errors at all times, this in connection with applicable facts and circumstances such as the quality of the Test Materials supplied or the Client's compliance with the instructions given. Unless Eurofins has explicitly stated otherwise in writing (e.g. in a declaration of conformity or other written expression to the accuracy of the test results), the use of and reliance on Eurofins' Reports is entirely at the expense and risk of the Client.
- 9.2 Each Report relates exclusively to the Test Material analysed by Eurofins or the Location of Inspection, in the condition as it was at the time the Services were performed.
- 9.3 Eurofins will handle and store Test Materials in its possession in accordance with the standards of care that apply in business practice, but cannot be held liable for loss or destruction of Test Materials, even after their receipt in its laboratories.
- 9.4 The Client shall indemnify and hold Eurofins harmless from any third party claims against Eurofins as a result of any act or omission of the Client. This includes third party claims based on the fact that Eurofins would have violated intellectual rights of that third party by using the information or Testing Materials provided by the Client. The Client shall indemnify Eurofins against third party claims vis-à-vis Eurofins in connection with Reports addressed to the Client.
- 9.5 Unless expressly stated otherwise in the Agreement, any warranty offered by Eurofins shall lapse after 1 month from the date on which the relevant Services have been completed by Eurofins.
- 9.6 Eurofins shall be liable vis-à-vis the Client for damage only if and insofar as provided for in these Terms and Conditions of Sale. In the event that Eurofins is liable vis-à-vis the Client and has to compensate the Client's damage on that account, the limitation of liability contained in Articles 9.7 and 9.8 of these Terms and Conditions of Sale shall apply, regardless of the basis for the liability. This limitation of liability does not apply only if the damage results from intent or gross negligence on the part of Eurofins.
- 9.7 Eurofins has taken out (product) liability insurance to cover its liability risks in the event that the Client has suffered damage for which Eurofins is liable. At the Client's first written request, Eurofins shall submit the claim for payment of compensation to Eurofins' insurer with a request to compensate the damage suffered by the Client. In the event Eurofins' ((product) liability) insurance does not provide cover or does not pay out, Eurofins' liability shall be limited to the price (excluding VAT) actually received by Eurofins for the Service provided (or the product sold) that resulted in the damage, on the understanding that Eurofins' liability shall at all times (as far as legally possible) be limited to an amount of EUR 25,000 (in words: twenty-five thousand euros).
- 9.8 The Client hereby waives its right to claim damages other than the damage consisting of the loss suffered by it, which is in such connection with the event on which the liability is based that the loss suffered can be attributed to this event. Lost profits, lost sales or other damage based on future cash flows or lost benefits/savings are not eligible for compensation by Eurofins.
- 9.9 Any complaint to Eurofins regarding a defect in the Services provided shall be made by the Client within a reasonable time, but no later than 1 month after provision of the Services, on pain of forfeiture of any rights or claims of the Client relating to such defect. Legal claims and defences, based on facts that would justify the assertion that the Client has suffered damage for which Eurofins is liable, shall lapse after 1 year, counting from the day on which the damage arose.
- 9.10 For the duration of the Agreement, the Client guarantees that, in respect of any economic trade sanctions imposed by the United States and/or the United Nations and/or the European Union:
- a. no economic sanctions have been imposed on it;
 - b. to its knowledge, the Client is not controlled or owned by a person subject to economic sanctions;

- c. it complies with all economic sanctions laws. Without limiting the generality of the foregoing, the Client shall not (i) directly or indirectly export, re-export, tranship or otherwise provide (any part of) the Services in violation of any economic sanctions laws, or (ii) finance a merchant or a transaction, or otherwise facilitate others in violation of economic sanctions laws;
- d. it is not involved in any proceedings regarding any (alleged) violation of economic sanctions legislation or under an ongoing investigation in this regard.

9.11 The Client shall indemnify Eurofins against any loss, liability, damage, penalty or other costs (including but not limited to legal costs) suffered by Eurofins as a result of a breach of Article 9.10 by the Client.

10. FORCE MAJEURE

10.1 Eurofins cannot be held liable for any failure if this failure can be attributed to Force Majeure. Eurofins may suspend its obligations under the Agreement during the period of Force Majeure. If the period of Force Majeure continues for longer than 3 months, either of the Parties are entitled to dissolve the Agreement without any obligation to pay compensation for any loss suffered by the other Party.

10.2 Insofar as Eurofins has partially fulfilled its obligations under the Agreement at the time the Force Majeure event occurred, Eurofins shall be entitled to separately invoice the part already fulfilled or to be fulfilled.

11. RETENTION OF TITLE

11.1 All goods delivered by Eurofins under the Agreement, which goods are the property of Eurofins, shall remain the property of Eurofins until the Client has fulfilled all obligations under the Agreement concluded with Eurofins.

12. CONFIDENTIALITY

12.1 The Parties shall treat all Confidential Information exchanged in the context of the performance of the Agreement as strictly confidential and shall make every effort to maintain such confidentiality. The aforementioned obligation of confidentiality does not apply with regard to:

- a. information lawfully obtained by a Party from third parties;
- b. lawfully obtained information that was demonstrably already in the possession of a Party prior to the conclusion of the Agreement;
- c. information that the receiving Party has demonstrably developed independently of the providing Party without referencing or being based on Confidential Information;
- d. information that is or has become commonly known for reasons other than a breach of the confidentiality obligations applicable between the Parties.

12.2 The confidentiality obligation referred to in Article 12.1 of the Terms and Conditions of Sale does not apply if the receiving Party:

- a. is required to share Confidential Information based on (i) the law, (ii) a court order or (iii) an order from a law enforcement agency; or
- b. has obtained prior written consent from the providing Party to share specific Confidential Information.

If and insofar as a Party is required to disclose Confidential Information as defined in Article 12.2, such Party shall, prior to disclosure, inform the other Party thereof in writing and indicate which information will be disclosed, unless the law precludes informing the other Party.

12.3 Each Party shall bear full responsibility for compliance with the confidentiality obligations by its employees, consultants, or any other third party to whom it has disclosed Confidential Information.

12.4 Upon Eurofins' first request, the Client shall hand over the Confidential Information to Eurofins (including all copies thereof) or, if requested by Eurofins, destroy it (including all copies thereof). The Client shall hereafter submit a written statement to Eurofins that it no longer has any Confidential Information (including copies) at its disposal.

13. INTELLECTUAL PROPERTY

- 13.1 All Intellectual Property Rights of a Party introduced or disclosed to the other Party for the performance of the Agreement shall remain the property of the Party that introduced and/or disclosed them. The Parties agree that the use of such Intellectual Property Rights is limited to the performance of each respective Party's obligations under this Agreement.
- 13.2 Intellectual Property Rights created at or during the performance of the Agreement (e.g. through the enhancement and/or modification of existing Intellectual Property Rights) shall belong exclusively to the Party that created them. The Client is entitled to use the (test) results conclusions, advice or findings arising from the Services performed for its own use and within the intended purpose of the Agreement and/or Order(s). Any (existing) Intellectual Property Rights of Eurofins and/or its Affiliated Companies shall be transferred to the Client only if the Parties have explicitly agreed on the sale and purchase and delivery thereof.
- 13.3 With regard to other Intellectual Property Rights (contained in documentation, reports and other carriers of Intellectual Property Rights), no transfer shall be effected except (if necessary for the performance of the Services and/or Order(s) and/or the Agreement) in connection with Eurofins taking cognisance thereof. The Client shall be obliged to obtain prior written permission from Eurofins if the Client wishes to reproduce, publish or otherwise store such documents in/on other information carriers including (but not limited to): books, publications, websites, advertisements, software and film material.
- 13.4 If, for the performance of the Services requested, Eurofins must use (intellectual) (property) rights of which it is not the owner, the Client shall guarantee that the performance of the Services will not lead to any infringement of these rights, and the Client shall indemnify Eurofins against claims by third parties alleging that Eurofins infringes these rights.
- 13.5 The Client explicitly agrees that Eurofins may use static and anonymous data resulting from the Services performed for publications in (scientific) articles, books and databases, the (further) development of services, research and/or quality controls and for processing for the purpose of generating models, reports, dashboards and/or other forms of conclusions that can be drawn from them. Eurofins and/or its Affiliated Companies holds/hold exclusive ownership of the aforementioned generated items.
- 13.6 Nothing in the Agreement shall be construed as Eurofins and/or its Affiliated Companies transferring or disposing of the personality rights contained in Section 25 of the Copyright Act.

14. NON-RECRUITMENT CLAUSE

- 14.1 The Client is prohibited from carrying out any activities during the term of the Agreement as well as a period of 2 years after the expiry thereof in order to try, directly or indirectly, to induce Eurofins personnel in any way to terminate their (employment) relationship with Eurofins.

15. INFRINGEMENT

- 15.1 If and insofar as the Client breaches an obligation under Articles 12 up to and including 14, it shall forfeit to Eurofins, without any notice of default being required, an immediately payable penalty of EUR 50,000 (in words: fifty thousand euros) as well as an amount of EUR 5,000 (in words: five thousand euros) for each day that the infringement continues, all this limited to an amount of EUR 200,000 (in words: two hundred thousand euros), without prejudice to Eurofins' right to claim damages and without prejudice to its other rights.

16. PERSONAL DATA PROTECTION

- 16.1 During the performance of the Agreement, the Parties shall comply with all relevant laws and regulations regarding the protection of personal data, including the GDPR. The Client is the data controller (as referred to in Article 4(7) of the GDPR) when processing personal data in the context of the performance of the Agreement, as the Client itself determines the purpose and means of processing personal data.
- 16.2 Eurofins processes personal data obtained from the Client in the context of the performance of the Agreement and only to fulfil its legal obligations. Eurofins does not process any data on behalf of the Client, unless this is necessary for the performance of the Agreement and/or the Services and/or an obligation as referred to in these Terms and Conditions of Sale.
- 16.3 Eurofins processes personal data for the duration of the Agreement and (if and to the extent applicable) for as long as it is required to do so in order to comply with contractual or legal obligations including (but not limited to) its duty of administration.

- 16.4 Eurofins may, in connection with the optimal performance of the Agreement, process, store and distribute the personal data of the Client and its personnel (if necessary) to anyone within the organisation of Eurofins. All Eurofins employees are subject to adequate confidentiality obligations, including in respect of personal data.
- 16.5 Eurofins will further process the personal data only to the extent that this is compatible with the purpose for which the personal data was obtained.
- 16.6 Eurofins shall keep the personal data it obtains during the performance of the Agreement confidential and shall take appropriate technical and organisational measures to protect the personal data against loss, processing and unauthorised access.
- 16.7 If and insofar as required by the GDPR, the Client shall be obliged to enter into a data processing agreement (as referred to in Article 28(3) of the GDPR) or a personal data processing arrangement (as referred to in Article 26 of the GDPR) with Eurofins.

17. OTHER PROVISIONS

- 17.1 If this Agreement shall be found to be partially invalid or non-binding, the Parties shall remain bound by the remaining provisions of the Agreement. In such a case, the Parties will consult to replace the invalid or non-binding part of the Agreement with provisions that are valid and binding and that (given the content and scope of the Agreement) correspond as much as possible to those of the invalid or non-binding part.
- 17.2 The operation and provisions of the Agreement shall remain in full force and effect after the termination of the Agreement until the Client has paid all its payment obligations vis-à-vis Eurofins in full. The provisions contained in Articles 9, 12, 14, 15, 17 and 18 of these Terms and Conditions shall, by their nature, remain in full force and effect after the termination of the Agreement.
- 17.3 Any deviation from or addition to the Agreement, including Orders, shall be effective only when agreed in writing by both Parties.
- 17.4 The Parties are not entitled to transfer their rights and/or obligations arising from the Agreement to any third parties. Eurofins may nevertheless use Affiliated Companies and/or third parties for the performance of the order if this is necessary for the best possible performance of the Services.
- 17.5 Information, announcements, statements and prices stated in, inter alia (but not exclusively), catalogues, leaflets, price lists, websites are intended solely for the purpose of providing information about Eurofins and its Services and are provided subject to programming and typing errors.
- 17.6 Eurofins failure to (directly) enforce or invoke any right or power arising under the Agreement shall in no way be construed as a limitation on or waiver of such rights or powers.

18. APPLICABLE LAW AND JURISDICTION

- 18.1 These Terms and Conditions of Sale, the Agreement and any resulting (further) agreements and (legal) acts (including the existence and validity of all such agreements and legal acts) are governed by Dutch law. The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is hereby expressly excluded.
- 18.2 Any dispute that may arise between the Parties as a result of a legal relationship between the Parties that is at their discretion will, in first instance, be submitted on an exclusive basis to the competent Dutch court of the District Court Midden-Nederland, location Utrecht.