

# General Terms and Conditions for Services with Annex «Round test»

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## 1. General terms

### 1.1 Scope

These General Terms and Conditions («GTC») shall apply to all present and future services provided by TESTEX AG, Zurich, or any of its subsidiaries (hereinafter referred to as TESTEX or «Supplier»). The General Terms of Use of OEKO-TEX Service GmbH, Zurich ([www.oeko-tex.com/fileadmin/user\\_upload/ELO-Downloads/OT\\_Allgemeine\\_Nutzungsbedingungen\\_EN\\_0602191.pdf](http://www.oeko-tex.com/fileadmin/user_upload/ELO-Downloads/OT_Allgemeine_Nutzungsbedingungen_EN_0602191.pdf)) shall apply additionally to these GTC for the services of Supplier. Other General Terms and Conditions, in particular General Terms and Conditions of Purchase of customer as well as any amendments or supplements to these GTC shall only be binding if expressly accepted in writing by Supplier beforehand. The General Terms and Conditions of customer shall not be accepted even if Supplier does not expressly reject them after receipt.

### 1.2 Order placement

Orders placed by customer become binding by means of a written order confirmation from Supplier. Customer inquiries confirmed by Supplier shall only be deemed a binding order confirmation if such inquiry clearly specifies the type, scope and price of the service (e.g. test report, certification, training, inspection, expertise, consulting, etc.). If Supplier sends customer an offer instead of a confirmation, such offer shall be valid for 30 days. An order placement shall, in this case, be binding if customer accepts such offer explicitly or implicitly by means of consenting behavior.

### 1.3 Contractual basis and hierarchy

In addition to these General Terms and Conditions, the contractual relations between Supplier and customer are subject to the order confirmation and – in case Supplier's services include the certification of personal protective equipment – the appendix «Product certification» or – in case Supplier's services include a round test – the appendix «Round test». In the event of contradictions between different contractual bases, the following order of precedence shall prevail:

1. Order confirmation or offer acceptance;
2. Annex «Product certification» or «Round test», if applicable;
3. These General Terms and Conditions.

## 2. Scope of services

### 2.1 Testing method

Supplier shall carry out tests in accordance with officially recognized standard methods. In the absence of such methods, Supplier develops and applies new methods. The parties may develop new methods jointly on a case-by-case basis.

### 2.2 Quality

Supplier works independently, consistently and scientifically. Supplier is officially accredited for certain services in Switzerland, Austria, China and Hong Kong. Supplier also maintains a quality management system based on the ISO17025, ISO17043 and/or ISO17065 standards.

### 2.3 Involvement of subcontractors

Supplier shall be entitled to engage third parties as subcontractors. Supplier shall only be liable for the careful selection, instruction and supervision of subcontractors.

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**2.4 Reports and further information**

If so requested, Supplier shall make available to customer all information that is required for existing accreditations or standards or as agreed upon with customer, unless such information is already contained in the reports that were supplied. Statutory information obligations are mentioned and disclosed in the report.

**2.5 Report delivery**

Processing time for reports depends on the type and scope of the inspection to be performed. Supplier shall endeavor to process the reports as quickly as possible. If the inspection is carried out against advance payment, Supplier will not commence until payment has been received. Any agreed delivery periods are non-binding; especially in the event of shortage of personnel or failure of equipment, Supplier will not be able to meet delivery periods. Irrespective of the reason for the delay, Supplier shall not be liable in any kind for late delivery of reports.

**2.6 Warranty**

Supplier warrants the performance of its services in accordance with the recognized rules of technology. Supplier does not warrant for any further guarantees.

**2.7 Storage of samples and test results**

Supplier may dispose of samples and test results after six months. Supplier shall deliver these to customer if customer has requested their return in writing when placing the order.

**3. Costs and invoicing**

**3.1 Remuneration**

The remuneration stated in the order confirmation of the accepted offer shall be paid without deductions, set-offs or retention. If the remuneration has been agreed on a time and material basis, it shall be calculated in installments of quarter-hours.

**3.2 Taxes**

Unless otherwise stated, all prices are net prices (excluding VAT, sales or other taxes or levies, all of which shall be borne by customer).

**3.3 Expenses and taxes**

All expenses and charges, e.g. for dispatch, import, export, authorizations, certifications, etc., shall be borne by customer. Unless otherwise agreed, travel and driving times are subject to compensation.

**3.4 Invoicing**

Customer shall provide Supplier with all information required for correct invoicing, in particular VAT and company identification numbers, if available. Claims shall be invoiced in such currency as stated in the order confirmation or the accepted offer.

**3.5 Terms of payment**

Invoices are to be paid within the payment period stated therein. After expiration of the payment term, customer shall be in default without further reminder and shall owe interest on arrears at the rate customary between merchants at the place of delivery. Payments in currencies other than those specified in the order confirmation or accepted offer shall only be permitted with the prior written consent of Supplier and at the exchange rate determined by Supplier.

**4. Modification and termination of an order**

Adjustments, additions or other changes to an order shall only be valid if they have been accepted in writing by Supplier and customer. Without prejudice to the foregoing, Supplier shall be entitled to modify these General Terms and Conditions in accordance with Section 9 paragraph 2. Customer shall have the right to terminate an order at any time as long as the termination is not at an inopportune time. In the event of termination, customer shall be obliged to reimburse the expenses and costs incurred by Supplier up until the reception of the termination notice in accordance with the agreed rates. In the absence of an agreement, expenses and costs shall be reimbursed in accordance with the usual rates of Supplier.

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## **5. Intellectual Property Rights**

Supplier shall retain in its entirety all rights to its know-how, its methods, work results and documents supplied or made available to customer, in particular any patent, design, copyright, trademark or company name rights. With the exception of an express contractual provision, customer is not entitled to use or transfer any of Supplier's rights. All rights to know-how and methods jointly developed with customer shall be the exclusive property of Supplier. To the extent necessary for this purpose, these rights shall be deemed to have been transferred from customer to Supplier on the date of origin.

## **6. Confidentiality**

Supplier and customer shall be obliged to treat as confidential any non-public information, data and test results received or obtained by the other party within the scope of an order and will use such information exclusively for the purposes of the order. Customer acknowledges and agrees that Supplier may disclose such information to the extent necessary for the performance of the services and subject to confidentiality (i) to its subcontractors and (ii) to private or public organizations responsible for issuing or with drawing certificates.

## **7. Data protection**

The parties undertake to comply with the applicable data protection provisions and to treat the personal data received from the other party as confidential. Supplier shall not act as a data processor for customer unless this has been explicitly agreed in writing in advance.

## **8. Liability**

These GTC regulate the claims of customer from breaches of contract conclusively. Supplier shall only be liable for direct damages caused by it as a result of intent or grossly negligent. Liability for auxiliary persons and subcontractors is excluded subject to Section 2.3 of these GTC. If the claims of customer are based on a contract, the total amount of such claims shall be limited to the remuneration paid by customer to Supplier. Under no circumstances shall customer be entitled to compensation for indirect damages, such as loss of production, loss of use, loss of orders, loss of profit due to recall costs or other direct or indirect damages. The liability of Supplier for the compensation of claims of third parties asserted against customer due to intellectual property rights infringements is excluded.

## **9. Miscellaneous**

Should any provision of these GTC prove to be invalid or unenforceable in whole or in part, the validity of the remaining provisions of these GTC shall not be affected thereby. Supplier reserves the right to modify these GTC at any time. Any relations between the parties are subject to the substantive laws of Switzerland to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the conflict of laws rules. The exclusive place of jurisdiction for customer shall be the domicile of Supplier. However, Supplier shall be entitled to sue customer at its domicile.

## **Annex «Round test»**

### **1. Scope of the annex**

To round tests shall apply – in addition to the General Terms and Conditions of TESTEX AG, Zurich («TESTEX») – (1) the provisions of this annex, (2) the conditions, norms and standards for round tests listed on the TESTEX website ([www.testex.com](http://www.testex.com)) and (3) the instructions («Guidelines») enclosed with the respective sample delivery.

### **2. Round tests**

TESTEX offers round tests for the quality assurance of its certification system and to enable the accredited testing institutes to identify systematic internal error sources and to support their internal quality assurance. Round tests enable the reproducibility and comparability of test results. At least 15 participants must take part in a round test.

### **3. Registration and confirmation of participation**

TESTEX gives interested institutes the opportunity to register for round tests on an annual basis. Registrations must reach TESTEX by the end of December of the previous year. A registration for a round test shall be considered as the participant's agreement to TESTEX's general terms and conditions including this annex, which will be confirmed by TESTEX. At the end of each calendar year, participants will receive written confirmation of their participation in the round tests.

### **4. Execution**

TESTEX shall make an offer to participate in a specific round test towards everyone who has registered to participate in a round tests in accordance with Clause 3. Upon receipt of a duly signed confirmation by the participant, TESTEX will provide the participant with a round test sample. If no duly signed offer by the participant is received by TESTEX by the date of dispatch of the round test samples published on the TESTEX website, TESTEX shall be entitled to retain the round test sample or to exclude the participant from participation in the relevant round test. TESTEX shall inform the participant of the retention or exclusion.

### **5. Participation fees**

The participation fees for a round test cover the following services: Treatment fee, mailing of samples by post and electronic dispatch of evaluations and results. The results will be sent by regular mail or «International Priority Mail Service». Any further services will be charged separately by TESTEX. The current amount of the participation will be indicated on the website of TESTEX. Special agreements between TESTEX and a participant remain reserved. The fees are exclusive of VAT. Invoices will be issued after dispatch of the evaluation report.

### **6. Information to government authorities**

TESTEX reserves the right to grant government authorities (e.g. accreditation bodies) access to documents and results of round tests and to master data of the participants upon request and without the prior consent of the participants. Participants will be informed if TESTEX provides information to the government authorities.

### **7. Evaluation and interpretation of the results**

The results of the participants must be sent to TESTEX for evaluation within the time limit specified by TESTEX. If the results are not sent in by the specified deadline, TESTEX reserves the right to exclude the participant from the evaluation without reimbursement of the fees. The evaluation shall be neutral and anonymous and takes into account the collected facts and data of all participants. There won't be any individual assessment or more differentiated commentary of the measurement results of individual participants.

### **8. Analysis reports and correction of submitted results**

The released analysis reports are only made available to the participant in electronic form. Objections and corrections concerning an evaluation report shall be sent to TESTEX within four weeks of receipt of the evaluation report. In this case, TESTEX shall be free to prepare a revised evaluation report.