General Terms and Conditions for Services

TESTEX®

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1. General Terms

1.1 Basis of Contracts

1. The General Terms and Conditions of TESTEX AG, Zurich (“GTC”) shall apply to the performance of the services:
   a. The GTC of TESTEX AG, Zurich, if TESTEX AG supplies the services, or
   b. If a subsidiary of TESTEX AG supplies the services, the GTC of the supplying subsidiary.
   The GTC can be viewed and downloaded under https://www.testex.com/en/gtc
2. In addition, the General Terms of Use of OEKO-TEX Service GmbH, Zurich (“Terms of Use”) shall apply to the services of TESTEX AG and/or its subsidiaries. The Terms of Use can be found under https://www.oeko-tex.com/en/terms-of-use.
3. Other general terms and conditions including those of the customer shall not apply, 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 behaviour.

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.

In the event of contradictions between different contractual bases, the following order of precedence shall prevail:

1. Order confirmation or offer acceptance;
2. 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, Slovakia, China and Hong Kong. Supplier also maintains a quality management system based on the ISO/IEC 17025 standard.

2.3 Involvement of subcontractors

The selection of a subcontractor for the fulfilment of the order is the sole responsibility of the Supplier. The customer gives its consent to the selection of a subcontractor. Supplier shall only be liable for the careful selection, instruction and supervision of subcontractors.

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.
Conformity statements are based on specifications of the cited standard. The "simple acceptance rule" is applied. This means that the measurement uncertainty is determined, but not taken into account for the conformity statement.

2.5 Report delivery

Processing time for reports depends on the type and scope of the inspection to be performed. Supplier shall endeavour 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 after three (3) months and test results after twelve (12) months. Supplier shall return the samples to customer only 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 instalments 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 other- wise 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.

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 from 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 withdrawing 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

1. 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.
2. Supplier reserves the right to modify these GTC at any time.

3. In case of any discrepancy between these GTC and the German version, the wording of the German version shall prevail.
4. All relations between the parties are subject to the substantive laws of Switzerland, excluding its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.
5. The exclusive place of jurisdiction shall be the domicile of Supplier. However, Supplier shall also be entitled to sue customer at its domicile.