

## General Terms and Conditions for the Service Laboratory of BIOTECON Diagnostics GmbH

### 1. Scope

Sales, deliveries and services of the Service Laboratory of BIOTECON Diagnostics GmbH (hereinafter referred to as "**BIOTECON Diagnostics**") shall be made exclusively - except for the services listed in Sec. 11 - in accordance with the following General Terms and Conditions (hereinafter referred to as "**GTC**"). By placing the order, shipping the samples to be tested or accepting the delivery, the buyer (hereinafter referred to as "**Customer**") acknowledges the validity of the GTC of BIOTECON Diagnostics. The GTC shall also apply to all future business transactions with the Customer. Any deviating or supplementary terms and conditions of the Customer shall be excluded, even if BIOTECON Diagnostics does not expressly object to them. Subsequent amendments to BIOTECON Diagnostics' terms of delivery shall become part of the contract if the Customer does not object within four weeks of receipt of the amended terms of contract.

### 2. Conclusion of the Contract

- 2.1. The offers of BIOTECON Diagnostics are subject to change without notice ("*freibleibend*"). An individual order (e.g. by sending in samples or test samples) shall only come into existence upon written confirmation of the order by BIOTECON Diagnostics and shall be governed exclusively by the contents of the order confirmation and the present GTC. If BIOTECON Diagnostics indicates, without prior written order agreement - by performance of services or in any other way - that the Customer's individual order has been accepted, the content of the individual order shall be governed by the Customer's order and by the present GTC.
- 2.2. BIOTECON Diagnostics reserves all rights, including property rights and copyrights, with regard to the advertising material (in particular explanatory notes and descriptions). They shall not be made accessible to third parties and shall be returned to BIOTECON Diagnostics immediately upon request. Such documents shall only be passed on to third parties with the prior written consent of BIOTECON Diagnostics.
- 2.3. The performance due by BIOTECON Diagnostics shall be deemed to be the performance agreed upon specifically with the Customer (e.g. analysis of test samples sent in and preparation of a test report in accordance with the standards customary at BIOTECON Diagnostics), in accordance with BIOTECON Diagnostics' corresponding offer and the present GTC. BIOTECON Diagnostics shall not be obliged to produce a certain outcome or a certain event, but only to examine the samples submitted by the Customer and to produce as well as submit a test report in accordance with the aforementioned standards.
- 2.4. BIOTECON Diagnostics shall not be obliged to inform or report to the Customer any figures or data which are beyond the specific instructions given by the Customer or generally accepted customary methods or the relevant legal and official regulations. BIOTECON Diagnostics is only obliged to inform the Customer, insofar as the specific purpose of the contract or the possibility of performing the contract as a whole, individualised by the Customer's individual order, is affected or jeopardised for any reason whatsoever.
- 2.5. Deviations from the Customer's individual order on the part of BIOTECON Diagnostics are permitted, if they are technically or scientifically necessary. BIOTECON Diagnostics shall inform the Customer about such deviations.
- 2.6. Customer-specific methods of examination shall always be subject to prior confirmation in writing.
- 2.7. Results received in a subcontract or other external contracting are correspondingly labeled as such in the test reports issued by BIOTECON Diagnostics. The Customer acknowledges that BIOTECON Diagnostics shall not be responsible for the condition and calibration of the apparatus, instruments or measuring instruments used by third parties.

- 2.8. Customers' requests for changes or adaptations of the order expressed to BIOTECON Diagnostics after the conclusion of the specific individual order shall be sent in writing and shall always be subject to following confirmation in writing.

### **3. Scope of Performance, Delivery Periods and Delivery Dates**

- 3.1. The scope of performance shall only include the services described by BIOTECON Diagnostics in the Customers' service offer in writing. This shall also apply to follow-up contractual agreements with the same Customer. If BIOTECON Diagnostics' services shall be used for special purposes of the Customer, the requirements with which the services must comply must always be completely designated by the Customer in the individual order and shall always be subject to prior confirmation in writing by BIOTECON Diagnostics.
- 3.2. BIOTECON Diagnostics' services are rendered within the usual market periods. Schedule agreements and delivery periods shall only be binding, if they have been explicitly agreed upon in writing and shall be understood as periods by which BIOTECON Diagnostics' performance must be completed at the latest. Periods agreed upon shall commence on the date of receipt of the respective samples. In case of additional orders or extensions of an existing order issued upon a later date, the deadlines agreed upon beforehand shall be extended accordingly.
- 3.3. Unforeseeable, unavoidable as well as such events beyond BIOTECON Diagnostics' control and for which BIOTECON Diagnostics is not responsible, such as force majeure, war, natural disasters, shall release BIOTECON Diagnostics from the obligation to deliver or perform in time for their duration. Periods agreed upon shall be extended by the duration of the respective disturbance commencing upon occurrence of the disturbance and the customer shall be informed in an appropriate manner. If the end of the disturbance is not foreseeable or if it lasts longer than two months, each party is entitled to withdraw from the contract.
- 3.4. If BIOTECON Diagnostics is in default with a delivery or service date, the client shall solely be entitled to rescind the contract after a reasonable grace period set by the client, which shall be at least three weeks, has expired.
- 3.5. BIOTECON Diagnostics may provide services partially.

### **4. Obligations of the Customer**

- 4.1. In order for BIOTECON Diagnostics to be able to perform the agreed services in accordance with the agreement, the Customer shall provide the necessary sample material (observe cooling if necessary), information, instructions and documents and shall pay BIOTECON Diagnostics any down payments agreed in the specific individual order in accordance with the agreement.
- 4.2. The costs and risks for the sample delivery shall be borne by the Customer. The Customer undertakes to comply with the provisions on transport, packaging, labelling and disposal.
- 4.3. If the Customer wishes the test samples or specimens to be returned, he shall also bear the shipping costs incurred in this respect.
- 4.4. In addition, the Customer shall bear the disposal costs incurred by BIOTECON Diagnostics in processing the specific individual order.

## **5. Transmission of Test Results, Copyright, Intellectual Property Rights**

- 5.1.** Test reports shall be sent in writing to the Customer. Upon request, the Customer shall be informed about the results in advance by telephone or e-mail.
- 5.2.** The test results refer exclusively to the tested sample. The transfer of the test results to other samples which have not been tested, is hence not permitted.
- 5.3.** BIOTECON Diagnostics' responsibility for the content ends upon the complete transmission of the test report to the Customer.
- 5.4.** Test reports exclusively reflect the results of the commissioned test parameters. BIOTECON Diagnostics accepts no liability for changes to test reports caused by third parties. Changes to test reports require a re-testing of the tested sample.
- 5.5.** BIOTECON Diagnostics has no obligation to refer to matters which have not been explicitly requested and which have thus become the subject of a concrete individual commission. Furthermore, there is no general obligation for BIOTECON Diagnostics to evaluate results from an individual contract. The evaluation in case of ambiguous test results is with the Customer. If the results are definite, the evaluation is carried out exclusively as agreed upon in the respective individual order and only on this basis.
- 5.6.** BIOTECON Diagnostics reserves the rights to all self-developed methods, unless these have been developed exclusively for the customer in accordance with a written agreement. BIOTECON Diagnostics also retains all rights to the expert opinions, test re-ports and analyses prepared. These may not be published, passed on or changed without BIOTECON Diagnostics' prior consent.
- 5.7.** If the Customer prescribes by means of specific instructions, information, documents, drafts or specifications how BIOTECON Diagnostics shall perform the services, the Customer shall guarantee that the rights of third parties such as patents, utility models and other industrial property rights and copyrights are not infringed by BIOTECON Diagnostics. BIOTECON Diagnostics shall not be liable for the infringement of third-party industrial property rights for a tested item, which has been tested in accordance with specifications, developments or other information provided by the Customer or for an application which the Customer could not have foreseen. In this case, the Customer shall exempt BIOTECON Diagnostics from third party claims. The Customer shall exempt BIOTECON Diagnostics from all claims of third parties which they may assert against BIOTECON Diagnostics due to one of the abovementioned infringements.

## **6. Storage of Samples**

- 6.1.** BIOTECON Diagnostics shall confirm the receipt of the test sample to the Customer by appropriate manner (e.g. telephone, e-mail, fax).
- 6.2.** All test samples provided by the Customer shall be stored by BIOTECON Diagnostics for a period of four weeks.
- 6.3.** BIOTECON Diagnostics generally stores test samples in a sample cabinet, which allows dry storage at room temperature (storage will not be in the dark; refrigerated storage only when required).
- 6.4.** Methods applied by BIOTECON Diagnostics as well as legal regulations may result in test samples being destroyed or consumed.

## **7. Pricing, Payment Methods**

- 7.1.** If the contracting parties have not agreed upon a specific price, the price shall be determined in accordance with BIOTECON Diagnostics' price list valid at the time of conclusion of the contract.
- 7.2.** BIOTECON Diagnostics prices exclude the applicable statutory value-added tax, packaging and shipping costs as well as any customs duties, consular fees and other taxes, duties, fees and other related costs charged on the basis of regulations outside the Federal Republic of Germany, all of which are charged separately and shall be borne by the Customer.
- 7.3.** Each invoice is due for payment without any deduction immediately, i.e. from delivery and due date of the corresponding invoice and must be paid to BIOTECON Diagnostics. The Customer shall not be released from his obligation to pay if he has doubts regarding the examination results transmitted to him. Payments made by the Customer shall not be deemed to have been made until BIOTECON Diagnostics is able to dispose of the amount. Payments may, at BIOTECON Diagnostics' option, be set off against other outstanding claims.
- 7.4.** BIOTECON Diagnostics shall be entitled to demand a reminder from the Customer at any time from the due date of the claim. Insofar as the Customer is not in default by a reminder issued by BIOTECON Diagnostics, he shall be in default no later than 30 days after expiry of the payment period set forth in Section 7.3 and receipt of the invoice.
- 7.5.** If the Customer is in default of payment (see Section 7.4), BIOTECON Diagnostics shall be entitled to charge default interest at a rate of five percentage points above the respective base interest rate of the European Central Bank per year. BIOTECON Diagnostics shall be entitled to claim commercial interest on arrears from merchants at a rate of nine percentage points above the respective base interest rate of the European Central Bank per year. The assertion of further damage caused by default shall remain unaffected.
- 7.6.** Bills of exchange and cheques shall only be accepted on account of performance by special agreements and free of costs and expenses for BIOTECON Diagnostics.
- 7.7.** The Customer shall only be entitled to set-off if his counterclaim is undisputed or has been established as final and absolute.
- 7.8.** The Customer shall only be entitled to assert a right of retention insofar as his counterclaim is based on the same contract and is undisputed or has been legally established. BIOTECON Diagnostics shall be entitled to avert the exercise of the right of retention by providing security - also by way of guarantee.
- 7.9.** If BIOTECON Diagnostics becomes aware of a significant reduction in the financial situation of the Customer after the conclusion of the contract, if the Customer suspends payments or if the Customer is in default with the encashment of due bills of exchange or cheques, all claims of BIOTECON Diagnostics against the Customer shall become due immediately and BIOTECON Diagnostics shall be entitled to make outstanding deliveries or render outstanding services only against advance payment or provision of security; if such deliveries or services are not made even after expiry of a reasonable grace period, BIOTECON Diagnostics shall be entitled to rescind the contract in whole or in part without prejudice to any further rights.

## **8. Warranty, Inspection Obligation**

- 8.1.** The Customer's warranty rights are subject to the Customer inspecting BIOTECON Diagnostics' services immediately upon delivery and immediately notifying BIOTECON Diagnostics in writing in case of any defects no later than two weeks after receipt of the services; hidden defects must be notified to BIOTECON Diagnostics in writing immediately upon their discovery.

- 8.2. Warranty claims shall, at BIOTECON Diagnostics' choice, be limited to remedy of the defect or delivery of a defect-free item (subsequent performance). If the subsequent performance fails, the Customer shall have the right to reduce the purchase price or withdraw from the contract at its discretion.
- 8.3. The Customer shall grant BIOTECON Diagnostics the time and opportunity necessary for subsequent performance.
- 8.4. Reports amended by BIOTECON Diagnostics shall become the sole property of BIOTECON Diagnostics.
- 8.5. BIOTECON Diagnostics shall not be liable for damages caused by unsuitable or improper use by the Customer or by natural wear and tear, unless BIOTECON Diagnostics is responsible for the damages.
- 8.6. BIOTECON Diagnostics shall bear the material, shipping and labour costs incurred for the purpose of subsequent performance if a defect actually exists.
- 8.7. The limitation period for warranty claims for any services shall be one year from the date of transfer of risk. However, Customers' claims for damages pursuant to Section 9.2 Sentence 1 and Section 9.2.1 as well as pursuant to the German Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.
- 8.8. All further claims of the Customer, in particular due to consequential damages, are excluded. This shall not apply in the case of Section 9.2.1 or unless Section 9 provides otherwise.

## **9. Other Liability, Damages, Limitation of Liability**

- 9.1. BIOTECON Diagnostics shall be liable for any breach of contractual or non-contractual obligations in accordance with the statutory provisions, unless otherwise stipulated in these GTC including the following provisions.
- 9.2. BIOTECON Diagnostics shall be liable for damages - for whatever legal reason - within the scope of liability for culpa in contrahendo in cases of intent and gross negligence. In case of ordinary negligence BIOTECON Diagnostics shall be liable, subject to statutory limitations of liability (e.g. care in its own affairs; insignificant breach of duty), only for
  - 9.2.1. for damages resulting from injury to life, body or health,
  - 9.2.2. for damages resulting from the breach of an essential contractual obligation (an obligation, the fulfilment of which is essential for the proper performance of the contract and the compliance with which the contractual partner regularly relies on and may rely on); in this case, however, the liability of BIOTECON Diagnostics shall be limited to compensation for the foreseeable, typically occurring damage.
- 9.3. The limitations of liability resulting from Section 9.2 shall also apply to breaches of duty by or for the benefit of persons whose fault BIOTECON Diagnostics is responsible for in accordance with statutory provisions. The limitations of liability shall not apply if BIOTECON Diagnostics fraudulently concealed a defect or guaranteed the quality of a product or if BIOTECON Diagnostics claims under the German Product Liability Act.
- 9.4. BIOTECON Diagnostics shall not be liable for damages if none of the categories of cases under Section 9.2 is fulfilled.
- 9.5. The Customer shall be obliged to take appropriate measures to prevent and mitigate any damage.

## **10. Data Protection, Impartiality**

- 10.1.** BIOTECON Diagnostics shall treat all information confidentially and in accordance with the provisions of the European Basic Data Protection Regulation, unless it is generally known information.
- 10.2.** The business and trade secrets obtained through the cooperation between BIOTECON Diagnostics and the Customer shall be kept secret by both contracting parties, shall not be disclosed to third parties without the prior written consent of the other contracting party and shall not be used for own business purposes without the written consent of the other contracting party. This shall also apply beyond the duration of the agreement.
- 10.3.** Information about the Customer which originates from sources other than the Customer's own must be treated confidentially between the Customer and BIOTECON Diagnostics. The source of information must be treated confidentially by BIOTECON Diagnostics. This source of information may not be disclosed to the Customer without the consent of BIOTECON Diagnostics.
- 10.4.** The personnel of BIOTECON Diagnostics, including committee members, contractual partners, personnel from external bodies or persons acting on behalf of BIOTECON Diagnostics, shall treat as confidential all information obtained or created during the performance of the laboratory activities, unless they are legally obliged to do otherwise.
- 10.5.** BIOTECON Diagnostics shall be authorised by the Customer for each concrete individual order to pass on test reports to third parties, provided that this has been specifically commissioned by the Customer. BIOTECON Diagnostics shall also be authorised to obtain in confidence and neutrally the information necessary for the preparation of the expert opinion required for the specific individual order.
- 10.6.** The Customer shall be informed that DAkKS may inspect customer data within the scope of audit activities.
- 10.7.** BIOTECON Diagnostics reserves the right, after consultation with the Customer, to pass on analysis results to third parties within the framework of statutory provisions.
- 10.8.** Laboratory activities shall be conducted impartially and shall be structured to ensure impartiality. The management of the laboratory is committed to impartiality. The laboratory shall continuously identify risks to its impartiality. To this end, risks arising from its activities, from its relationships or from the relationships of its personnel are also included.

## **11. General Provisions**

- 11.1.** These GTC of BIOTECON Diagnostics GmbH shall apply exclusively. Individual agreements made with the Customer (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof of the contrary, the content of such agreements shall be governed by a written contract or written confirmation by BIOTECON Diagnostics.
- 11.2.** The Customer's legally relevant declarations and notifications in accordance with the GTC and in relation to the contract with BIOTECON Diagnostics (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written form or text form (e.g. by letter, e-mail or fax). Legal formal requirements and further evidence, in particular in the event of doubt as to the legitimacy of the declarant, shall remain unaffected.
- 11.3.** References to the validity of statutory provisions are only of clarifying significance. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded by BIOTECON Diagnostics in these GTC.
- 11.4.** If a provision of the contract and/or these GTC is invalid in whole or in part, this shall not affect the validity of the remaining provisions. In this case, the contracting parties undertake to replace the ineffective provision with the effective provision that comes closest to the economic purpose of the ineffective provision.

- 11.5.** Place of performance for all contractual and legal claims is Potsdam. If the Customer is a merchant, legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship - also for cheque and bill proceedings - shall be Potsdam. This shall also apply if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany or has moved his usual place of residence abroad after conclusion of the contract. BIOTECON Diagnostics shall, however, be entitled to sue the Customer at any other legal venue.
- 11.6.** The law of the Federal Republic of Germany shall apply under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).