



GENERAL TERMS AND CONDITIONS

of

LVA GmbH
Magdeburggasse 10, 3400 Klosterneuburg, Austria
FN 236286 f

§ 1

Scope

- 1.1 These General Terms and Conditions ("**GTC**") apply to all offers and contract conclusions (§ 2) and all current and future contractual relationships between LVA GmbH and the Client in connection with services and the sale of reference materials and other products (§ 3) of LVA GmbH.
- 1.2 Other services of LVA GmbH not falling within the scope of services pursuant to § 3 shall only be governed by these GTC, if agreed between the parties. In such cases the GTC shall be applied correspondingly to such other services of LVA GmbH.
- 1.3 Any contract entered into by LVA GmbH and a Client being a consumer within the scope of § 1 of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*) is excluded from the scope of these GTC.
- 1.4 General terms and conditions of the Client shall only apply in addition to these GTC of LVA GmbH, if LVA GmbH agrees thereto in writing. The same applies to all oral agreements between the parties that shall only be binding upon the parties, if LVA GmbH confirms their applicability in writing.

§ 2

Conclusion of Contracts

- 2.1 A contract on the provision of services (§ 3) between LVA GmbH and the Client is concluded, if LVA GmbH delivers to the Client a written confirmation of its order acceptance. The delivery of a sample by the Client to LVA GmbH and its receipt by LVA GmbH constitute only a conclusion of a contract, if LVA GmbH does not reject a contract in writing to the Client within three working days after the receipt of such sample.
- 2.2 Provided LVA GmbH cannot fully carry out – for whatever reason – all Services as requested by the Client in his/her offer, LVA GmbH shall send the Client a new offer. Such new offer constitutes an acceptance by the Client, if the Client does not reject in writing to such new offer sent by LVA GmbH within three working days after its receipt.

§ 3

Provision of Services and other benefits

- 3.1 LVA GmbH provides its services in connection with the inspection and the testing of foods, articles of daily need, additives, cosmetics, animal feeds, seeds, fertilizers and all other similar goods, products or materials as well as with the provision of audits and manufacturing controls, the reporting and the issuing of certificates and confirmations and the holding of training sessions (together the "**Services**") to the respective natural or legal person from whom LVA GmbH has received the respective order for the provision of its Services (the "**Client**").
- 3.2 In addition to the services in accordance with § 3.1, LVA GmbH also offers its customers products. In this context, "Products" means reference materials and other goods provided by LVA GmbH.
- 3.3 The Client or a third party named by the Client may instruct LVA GmbH on the scope of work or on the transmission of audit reports, test reports, inspection reports, certifications, expert opinions, statements and/or training material (together the "**Reports**"). LVA GmbH shall be entitled to reject any instruction by the Client, if required by law or if LVA GmbH considers such rejection necessary due to other reasons. In such case, LVA GmbH shall immediately inform the Client of such rejection. LVA GmbH is authorised to submit its Reports to third parties, if the Client requests to do so in writing.
- 3.4 The nature and the scope of the Services to be provided by LVA GmbH shall be determined by the confirmation of its order acceptance or the respective agreement concluded with the Client. If there is neither a confirmation of the order acceptance nor an agreement with the Client, the nature and scope of the Services to be provided by LVA GmbH shall be determined by the general catalogue of services of LVA GmbH in its applicable version.
- 3.5 The Client shall bear all costs and risks of the delivery of samples, unless the parties have agreed on a collection of the samples by LVA GmbH. The Client shall be responsible for the accurate packing of any sample to be delivered to LVA GmbH and will comply with any instruction given by LVA GmbH in this respect.
- 3.6 LVA GmbH shall perform its Services pursuant to the Client's specific instructions that the parties have agreed on. In the absence of such instructions by the Client LVA GmbH shall perform its Services (i) by respecting the relevant trade customs and trade practices and (ii) by applying those procedures that LVA GmbH deems to be the most appropriate procedures in terms of expert, technical, operational or economical criteria.
- 3.7 The work product of the Services shall form the basis for the statements in the Reports; LVA GmbH may also consider other circumstances in its Reports.
- 3.8 If LVA GmbH provides its Services only in relation to a certain part of a sample provided by the Client, LVA GmbH does not provide any (binding) opinion on the rest of the lot from which the sample was drawn. Nevertheless, LVA GmbH may also refer in its Reports to the rest of the lot from which the respective sample has been drawn.

- 3.9 LVA GmbH shall provide its Reports in electronic form and executed by electronic signature ("**Electronic Report**"), unless the Client requests a transmission via mail. Any transmission fees (including the applicable VAT) shall be borne by the Client. The Client acknowledges that an Electronic Report is considered to be duly delivered to the Client if the log files of the server of LVA GmbH do not display an error message with regard to the respective transmission of the Electronic Report and the server of LVA GmbH receives a copy of the Electronic Report which has been sent to the Client at the same time.
- 3.10 Save for any statutory obligations, LVA GmbH shall not assume any liability for damages of the Client that are caused either by the transmission of the Reports or by unauthorised access to the Reports by third parties. Furthermore, LVA GmbH shall not be liable for any oral information provided to the Client while the Services by LVA GmbH are still not completed.
- 3.11 If LVA GmbH delegates all or part of its Services to a subcontractor, the Client agrees that LVA GmbH may provide and disclose all information that is considered necessary for the Services to be provided by the subcontractor.
- 3.12 LVA GmbH shall store carefully and accurately all samples sent by the Client during its Services. Four weeks after finishing its Services LVA GmbH shall be entitled to dispose of, to destroy or disable any sample of the Client, unless agreed otherwise between the parties. The Client shall bear all costs in relation to the disposal, destruction or disabling of a toxic sample. There shall only be a return of samples by LVA GmbH to the Client, if agreed between the parties. In this case, the Client shall bear all costs in connection with such return of samples, including but not limited to transportation and packing costs.
- 3.13 The place of performance for the Services of LVA GmbH is Klosterneuburg, Austria, unless LVA GmbH and the Client have agreed on a different place of performance.

§ 4 Processing Time

- 4.1 LVA GmbH shall provide its Services in accordance with § 3.1 within such period customary on the market. Any deadline or time limit with regard to the provision of the Services shall only be binding on LVA GmbH, if and to the extent such deadline or time limit is confirmed in writing by LVA GmbH and is included or explicitly referred to in the contract between LVA GmbH and the Client. The (expected) date of completion (*Fertigstellungstermin*) as printed on LVA's service confirmation is not to be considered binding between the parties.
- 4.2 The Client shall provide any documents, information and samples and fulfil his/her obligations to cooperate pursuant to § 5 in due time in order to enable LVA GmbH to comply with possible binding deadlines and time limits pursuant to § 4.1. If the Client does not comply with his/her obligation as set forth in the previous sentence, the binding deadlines and time limits are automatically prolonged by the respective period.

- 4.3 Unless otherwise specified in the confirmed order, all delivery times and dates for reference materials or other products in accordance with § 3.2 are merely estimates and have no contractually binding effect. LVA GmbH reserves the right to dispatch the products listed in the order in instalments and to invoice them separately. A delay in delivery shall not release the Customer from its obligation to accept the delivery, unless acceptance of the delayed delivery would be unreasonable. The customer is obliged to accept the delivered products and to pay the agreed price in accordance with the confirmed order.

§ 5 Obligations of the Client

The Client shall

- 5.1 provide all information, instructions, documents and sufficient quantity of samples to LVA GmbH in due time in order that LVA GmbH can perform its Services as agreed;
- 5.2 provide employees and representatives of LVA GmbH access to the premises where LVA GmbH shall perform its Services;
- 5.3 take all necessary actions to eliminate or to remedy any obstacles to or interruptions in the performance of the agreed Services;
- 5.4 supply any equipment or personal at its own expense, which/who are agreed to assist LVA GmbH in the performance of its Services;
- 5.5 inform LVA GmbH prior to the commencement of the agreed Services about all known risks or actual or potential dangers which are related to an order, a sample or its testing. In particular, the Client shall inform LVA GmbH about any radiation, toxic, noxious or explosive elements or materials or pollutions or poisons;
- 5.6 transfer the ownership in the samples to LVA GmbH;
- 5.7 instruct LVA GmbH in written form at the time of placing an order whether the samples are to be returned to the Client. The Client shall pay all costs incurred by such return, including but not limited to costs for transportation and packing and agrees, that LVA GmbH can invoice these costs to the Client (§ 6).
- 5.8 pay all costs in connection with a special disposal, destruction or disabling of samples in any way; and
- 5.9 provide LVA GmbH at the Client's request with detailed information about the origin, the production, the composition or any other property of the samples.
- 5.10 upon receipt of the delivery of reference materials and other products in accordance with § 3.2 and during their handling, use, mixing, modification, integration, processing, transport and storage (hereinafter referred to as "use"), the customer shall be obliged to inspect the products and ensure that they comply with the agreed specifications in accordance with the confirmed order.

§ 6 Fees and Payment

- 6.1 Any fees to be paid by the Client shall be determined at the standard rates of LVA GmbH (which may be subject to amendments customary on the market), unless LVA GmbH and the Client have agreed on other fees at the time of placing an order by the Client or at the time of contract negotiations between the parties. At the request of the Client LVA GmbH shall provide the Client with a fee estimate which is deemed to be agreed between the parties, if the Client accepts the offer by LVA GmbH (§ 2). The Client accepts if the actual fees for services according to § 3.1 exceed not more than 10 % of the fees as provided for in the fee estimate. If an exceeding of this threshold of 10 % for services according to § 3.1 is likely, LVA GmbH shall immediately inform the Client of such exceeding and send the Client a new fee estimate. The Client shall bear all fees and costs incurred up to this moment.
- 6.2 All prices are subject to current VAT. If additional charges or costs apply, LVA GmbH will invoice those charges and costs separately. Furthermore, LVA GmbH may charge to the Client all costs for the packing, the disposal and the transportation.
- 6.3 The Client shall pay any invoice issued by LVA GmbH within 14 calendar days after the receipt of such invoice or within any other period as provided for in the respective invoice. In case of late payment, the Client shall pay interest. The rate of interest amounts to the Three-Months-EURIBOR basis rate applicable at this time plus 8%.
- 6.4 The Client shall not assign any claim against LVA GmbH to a third party. Furthermore, the Client shall not set-off any claim against counter-claims of LVA GmbH.
- 6.5 The Client shall pay any fees and costs incurred by the enforcement of claims by LVA GmbH [e.g., enforcement costs pursuant to Sec 458 of the Austrian Commercial Code (*Unternehmensgesetzbuch*), other expenses for collection or reasonable attorney fees].
- 6.6 If LVA GmbH cannot perform all or part of its Services to be provided to the Client for any reason outside the control of LVA GmbH (including but not limited to any non-compliance of the Client with any of his/her obligations as set forth in § 5), LVA GmbH shall be entitled to claim the entire payment by the Client (without any off-setting by the Client).

§ 7 Suspension or Termination of Services

LVA GmbH shall be entitled to either suspend or terminate its Services according to § 3.1 immediately and without liability in the event of:

- 7.1 a non-compliance of obligations by the Client and such non-compliance cannot be eliminated within three working days after a notification of the non-compliance by LVA GmbH to the Client; and/or

- 7.2 a suspension of payment, a refusal of the opening insolvency proceedings due to the lack of assets, an application for the opening of insolvency proceedings, an opening of insolvency proceedings (in each case to the extent permitted by law), a closing of the business or an approval of receivership, each in relation to the Client.
- 7.3 Ownership of the products in accordance with § 3.2 shall not pass to the Client until LVA GmbH has received full payment for the products, including all costs such as interest, fees, expenses, etc. Prior to this, LVA GmbH shall retain full legal and beneficial ownership of the products. Prior to this, full legal and economic ownership of the products shall remain with LVA GmbH.
- 7.4 If the Client does not fulfil its obligations to LVA GmbH and does not provide sufficient security for fulfilment before the agreed delivery date, LVA GmbH may take immediate action under the following conditions:
- LVA GmbH may demand the return of all unpaid products and repossess them. All costs for the return shall be borne by the Client.
 - LVA GmbH may suspend the outstanding delivery of products or cancel the confirmed order for these products unless the Client makes an advance payment or provides sufficient security for the payment of these products to LVA GmbH.
- These measures shall apply if the Client becomes insolvent, is unable to pay its debts, goes into liquidation, insolvency proceedings are initiated, a trustee or administrator is appointed, the Client enters into an out-of-court settlement, makes an assignment in favour of its creditors or violates laws and standards.
- 7.5 In all cases listed in § 7.4, all outstanding claims of LVA GmbH relating to the products delivered to the Customer and not taken back by LVA GmbH shall become due and payable immediately.

§ 8 Liability

- 8.1 LVA GmbH executes its Services according to § 3.1 based on the information, the documents and/or the samples provided by the Client or by third parties on the Client's order. Thus, LVA GmbH provides its Reports only for the use of the Client, unless the parties agree otherwise. The Client shall be exclusively responsible for any conclusion drawn based on the Reports. LVA GmbH or its managing directors, employees, representatives or subcontractors (together "**Representatives**") or any affiliate of LVA GmbH shall not be liable for decisions or actions taken or omitted by the Client or a third party based on the Reports to the extent permitted by law. Furthermore, LVA GmbH, its Representatives or its affiliates are not liable for faulty Services, if such faultiness is based on ambiguous, false, incomplete or misleading information provided by the Client or by third parties on the Client's order.
- 8.2 Based on the assumption that the Client provides all samples, documents and information to LVA GmbH in a full, correct and appropriate manner, LVA GmbH warrants and represents the execution of its Services on a best effort basis. The Client shall provide all such information to LVA GmbH.
- 8.3 If and to the extent Services by LVA GmbH do not comply with the requirements agreed between the parties, the Client shall promptly notify LVA GmbH and LVA GmbH will at its own discretion either re-perform any non-conforming Service at no additional charge or refund the Client such portion of remuneration paid for the respective (non-confirming) Service.
- 8.4 If and to the extent a respective damage of the Client cannot be adequately compensated by a re-performance of the Services or by a refund of the applicable fees, the maximum amount of liability of either LVA GmbH or its Representatives or its affiliates vis-à-vis the Client is limited to the aggregate amount of remuneration for the Services paid by the Client and shall not exceed EUR 50,000.00 for a damaging event.
- 8.5 The limitation of liability pursuant to § 8.4 shall apply to any claim of the Client whether in contract, tort (including negligence), breach of statutory duty or otherwise for any losses arising from or in any way connected with the Services provided by LVA GmbH.
- 8.6 LVA GmbH, its Representatives or its affiliates shall not be liable for any damages caused by slight negligence or for incidental, special, punitive, or consequential damages of any kind (including, without limitation, loss of income, loss of profits, loss of good will, loss in connection with the call-back of products due to their faultiness or other pecuniary loss). The same applies for any loss, damage or costs incurred by the Client because of an indemnification to a third party based on claims pursuant to any product liability laws.
- 8.7 If LVA GmbH is jointly liable to the Client with a third party, LVA GmbH, however, shall only be liable – to the extent permitted by law – for such loss that is traced back to the responsibility of LVA GmbH for the loss in question.

- 8.8 The Client shall notify LVA GmbH of any alleged claim in writing within 14 calendar days after the Client's knowledge of such damage. In any case, a Client's right for compensation by LVA GmbH becomes time-barred 12 months after the completion of the Services, if permitted by law.
- 8.9 It is not intended that any provision of the GTC shall exclude or limit the liability of LVA GmbH or its Representatives or affiliates in the case of: (a) death or personal injury resulting from negligence of LVA GmbH or its Representatives or affiliates; (b) wilful misconduct; (c) fraud; or (d) other liability, if and to the extent such liability may not be excluded or limited by statutory law.
- 8.10 For reference materials and other products according to § 3.2, LVA GmbH shall only be liable for direct damages of the Client in connection with the delivered products, but not for indirect, incidental, consequential or punitive damages. This also includes loss of goodwill, loss of sales or profits, delays in delivery, work stoppages, loss of production or damage to other goods. The liability of LVA GmbH is in any case limited to the value of the defective product batch.

§ 9

Third Party

- 9.1 The GTC constitute only rights enforceable by the Client and do not constitute any right enforceable by any other party. Any claim of a third party against LVA GmbH, in particular based on warranty, damages or unlawful enrichment, is excluded.
- 9.2 In particular, LVA GmbH is not liable for any damage of a third party relying on the Service of or the Reports by LVA GmbH. If LVA GmbH agrees explicitly to provide its Service to a third party, the Client is responsible for ensuring that the third party is informed that no claims whatsoever against LVA GmbH can arise from providing the work products.
- 9.3 The Client agrees to reimburse LVA GmbH for all costs (including reasonable attorney's fees) that LVA GmbH incurs in responding to any requests or demands from third parties, pursuant to legal process or otherwise, for data or information related to the Services according to § 3.1 and Products according to § 3.2 provided to the Client.
- 9.4 Complaints regarding the Products pursuant to § 3.2 must be made in writing and must be received by LVA GmbH within 7 days of delivery for defects or shortages that are detectable upon reasonable inspection after delivery. Otherwise, they must be received no later than 7 days after the date on which other complaints (e.g. hidden defects) are or should have been detectable, but in no case later than 6 months after the delivery date of the Products or the expiry of the shelf life of the Products, whichever is earlier. Use of the Products shall constitute unconditional acceptance of the Products at the time of delivery and a waiver of all claims for such Products.

- 9.5 In the event of disagreement between the parties regarding the quality of the products supplied by LVA GmbH, LVA GmbH shall implement its internal action process. This process serves to analyse the Client's complaint about the product. If the complaint is confirmed, LVA GmbH will take the necessary measures to provide the customer with a remedy.
- 9.6 If some products are defective, the Client may only reject the entire delivery if acceptance of the non-defective parts of the delivery is unreasonable. Complaints have no effect on the customer's payment obligation.
- 9.7 LVA GmbH's obligation to replace or issue a credit note is subject to the timely notification of the alleged non-conformity of the Products to LVA GmbH and, if applicable, the return of the Products in accordance with § 9.4.

§ 10 Confidentiality

- 10.1 Each party shall protect all confidential information which the other party provides to it (whether orally, in writing or in any other form) using the same standards as the recipient applies to its own comparable confidential information, but in no event less than reasonable measures.
- 10.2 Each party's obligations pursuant to § 10.2 will not apply to information: (i) already known to it at the time of disclosure; (ii) in the public domain or publicly available; (iii) available from a third party who is under no such obligation of confidentiality; or (iv) independently developed by it. Each party may disclose confidential information to its legal advisers to protect its own legitimate interests and to comply with any legal or regulatory requirements. If any court, regulatory authority, professional body or legal process requires the recipient to disclose information covered by this confidentiality obligation, then the recipient may make any such disclosure; if the recipient will, if permitted by law, advise the other party promptly of any such requirement and cooperate, at such other party's expense, in responding to it.
- 10.3 In the course of the testing of microorganisms subject to a notification requirement pursuant to § 38 of the Austrian Act on Food Security and Consumer Protection (*Lebensmittelsicherheits- und Verbraucherschutzgesetz, LMSVG*) the transfer of the isolates to the competent reference laboratory is - by law - part of the Services to be provided by LVA GmbH. The costs for this Service must be borne by the Client.

§ 11 Data Privacy

The Client acknowledges and agrees that LVA GmbH processes his/her personal data for purposes of the Services and Products according to § 3.

§ 12 Intellectual Property

- 12.1 The Client shall use the work product of the Services according to § 3.1 as well as any other information provided by LVA GmbH only for his/her own purposes. The Client shall only refer to LVA GmbH and its Services, if agreed between the parties. All other IP rights in connection with the Services, including but not limited to any exploitation rights, remain with LVA GmbH.
- 12.2 The Client shall only use or refer to the company name and/or any registered trademark of LVA GmbH, if LVA GmbH agrees in writing.

§ 13 Work Product

The Client shall use all Reports issued by LVA GmbH only after full payment and only for the agreed purposes. The Client shall not amend or modify the Reports, the certificates, the confirmations or the opinions and shall also not use extracts from the Reports. Any disclosure of Reports by the Client to third parties is permitted, if and to the extent, such disclosure is required by contractual or statutory obligations.

§ 14 Miscellaneous

- 14.1 If any of the provision of these GTC is wholly or partially void, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be impaired thereby. In such case, any illegal, void or unenforceable provision is replaced by such a valid, legal and enforceable provision that comes close to the commercial intent of the provision being replaced.
- 14.2 Any amendment to or modification of these GTC or any agreement on the waiver of these GTC require a written agreement between the parties.
- 14.3 In case of any discrepancies between the English version and the German version of the GTC, the German version of the GTC prevails.

§15 Governing Law and Jurisdiction

- 15.1 All disputes arising out of or in connection with the contractual relationship between the parties shall be governed by and construed in accordance with the laws of Austria excluding the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.2 All disputes arising out or in connection with these GTC or the legal relationship between the parties are subject to the exclusive jurisdiction of the competent court for Vienna, Inner City.
- 15.3 LVA GmbH is also entitled to sue the Client at his/her general place of jurisdiction (*allgemeiner Gerichtsstand*) or at the place of performance.