

As in: January 2021

Standard Terms of Business

The following document is a translation of the German standard terms of business (STB) and has, accordingly, an informal character. The legally binding STB are the German "AGB".

1. Scope of application

1.1 The following General Terms and Conditions (GTC) form an integral part of all specific or master agreements concluded between Institut Kirchhoff Berlin GmbH (hereinafter referred to as IKB GmbH) and companies (hereinafter referred to as the client) or subcontractors (hereinafter referred to as the contractor) for investigations and expert opinions. The client /contractor have taken note of the standard terms and conditions, available i.a. at www.institut-kirchhoff.de, and the client / contractor herewith accepts these terms also for repeat orders.

1.2 To be effective, any differing arrangements or oral side agreements must be confirmed in writing by IKB GmbH.

1.3 Any agreements between the parties shall be concluded exclusively in accordance with the standard terms and conditions of IKB GmbH. Other agreements and contracts that conflict with the standard terms and conditions of IKB GmbH do not apply, even if our standard terms and conditions do not contain the individual provisions.

2. Scope and subject of the contract/agreement

2.1 The agreement/contract is only binding if the contract is confirmed in writing by the customer, i.e. the client as the customer of IKB GmbH or IKB GmbH as the customer of the contractor.

2.2 The subject matter of the contract is the provision of the contractually agreed services as part of the services currently offered by IKB GmbH, rather than any particular outcome expected or required by the client. By placing the order, the client accepts the methods used by IKB GmbH and listed in the range of services. These are typically accredited procedures.

2.3 The test methods can be modified depending on the matrix. The type of modification will be in line with the latest scientific and technology standards. Upon request, the customer will receive written updates.

2.4 Special forms of examination must be agreed separately in writing.

2.5 IKB GmbH reserves the right, in agreement with the client, to subcontract other laboratories, including the affiliated companies of the Mérieux NutriSciences Group. Third-party contracts are usually awarded to accredited laboratories in coordination with the client. The results will be marked accordingly in the test reports, expert opinions and other performance reports.

2.6 The client is not entitled to delegate, assign or transfer the contract in whole or in part without the prior written consent of IKB GmbH.

2.7 Nothing in these standard terms and conditions prevents IKB GmbH from providing similar services to other customers, including potential competitors of the client.

3. Compliance with legal requirements

3.1 As part of the performance of the agreement, IKB GmbH and the contractor undertake to comply with all applicable laws and regulations, in particular, the German Minimum Wage Act of 11 August 2014 (MiLoG) as amended.

3.2 The contractor shall indemnify IKB GmbH against any claims arising from Article 13 MiLoG under the terms of the agreement. This also applies to any necessary costs incurred by the client as a result of claims raised by employees or third parties. This also includes legal costs in accordance with the German Lawyers' Fees Act

3.3 The contractor shall regularly confirm compliance with the MiLoG in writing at the beginning and end of the contract – and at any time at favourable terms the client's request.

3.4 The contractor undertakes to ensure that subcontractors and temporary workers engaged by them are contractually obliged to comply with the MiLoG and to pay the minimum wage regularly and on time in accordance with Article 1 II MiLoG, and to impose a contractual obligation on any additional subcontractors or temporary workers.

3.5 The contractor shall assist IKB GmbH in the defence against any civil lawsuits relating to the payment of the minimum wage and to provide IKB GmbH with all the necessary information in a timely manner. Any procedural rights to announce the dispute remain unaffected.

3.6 If the contractor breaches MiLoG and/or the obligations set out in Section 3.4 of this agreement, IKB GmbH will be entitled to retain all or part of the agreed remuneration. Under the same conditions, IKB GmbH will also be entitled to terminate the agreement for cause with immediate effect.

3.7 In the event of a breach of an obligation set out in Section 3.4 of this agreement, the contractor shall pay IKB GmbH liquidated damages amounting to 5% of the agreed remuneration. In the event of multiple breaches, liquidated damages will be imposed for every individual breach. This is without prejudice to the right to seek further damages. The payment of liquidated damages does not prejudice the right to claim compensation for any other loss/damage incurred.

3.8 The client hereby confirms that the conclusion and implementation of the agreement, in particular, the use of test reports, expert opinions, statements and other performance reports, does not violate export laws, in particular, export laws in Germany, the EU or the US. Without prejudice to other provisions in these standard terms and conditions, IKB GmbH will be entitled to terminate the business relationship with the client with immediate effect in the event of breaches of export laws or regulations or in the event of significant risk to the business or reputation of IKB GmbH.

4. Shipping and archiving of sample material

4.1 Save in cases of agreed sample collection, the client shall bear the risk and the costs for the proper shipment of sample material to IKB GmbH. The client is responsible for ensuring that the sample material does not contain any substances that make the agreed service impossible or considerably more difficult. The client is also responsible for ensuring that the outside of the sample containers is clean and free from contamination by sample material.

4.2 The client shall grant the employees and representatives of IKB GmbH access to their facilities to the extent this is necessary for the provision of the services, and the client is responsible for the provision of a safe workplace and safe working conditions. Any hazardous or toxic substances to which the employees or representatives of IKB GmbH may be exposed to during the performance of the contract shall be properly stored and labelled by the client in accordance with the applicable laws and regulations. The client hereby represents and warrants to IKB GmbH that the materials and data they supply are free of any risk and do not infringe any third-party intellectual property rights or applicable laws, and that they have all the necessary permits, approvals and statutory rights to make them available to be used by IKB GmbH and stored in the relevant software system.

4.3 Upon receipt of the samples, the material becomes the property of IKB GmbH. The sample material will be archived on the terms and conditions specified by IKB GmbH. There is no obligation to continue archiving the sample material beyond ten working days after the test result has been issued. Any deviating provisions relating to the archiving duration of samples must be agreed in writing.

4.4 The destruction of sample material, specimens or other materials provided may be charged to the client.

5. Processing times

5.1 The processing times stated in IKB GmbH's range of services refer to samples received in proper condition during normal business hours. They will only constitute a part of this agreement if confirmed by IKB GmbH on a case-by-case basis. In any case, IKB GmbH is entitled to partial performance.

5.2 As far as possible, processing shall start immediately. The parties can agree fixed processing dates.

5.3 IKB GmbH shall not be liable for delays that are unavoidable in the course of diligent business management, in particular, unforeseen delays due to force majeure, including but not limited to floods, droughts, earthquakes or other natural disasters, epidemics or pandemics, terrorist attacks, imposition of sanctions, embargo or severance of diplomatic relations, atomic, nuclear, chemical or biological contamination or sonic boom, laws or governmental actions, including but not limited to export or import restrictions, quotas or prohibitions and interruption or failure of power supply and technical failures, such as equipment failure through no fault of its own, or loss of personnel.

5.4 At the request of the client, who is in a crisis management situation, IKB GmbH will set up a team of experts to provide priority access to the services offered by IKB GmbH. IKB GmbH will be entitled to charge an increased fee for this express service, which shall be communicated to the client in advance. Any service provided at the request of the client in a significantly shorter time will be charged on the basis of this current rate for absolute priority and fast performance.

6. Payment terms

6.1 All orders placed with IKB GmbH are irrevocable, unless IKB GmbH has agreed otherwise in writing. IKB GmbH reserves the right to invoice all analyses and services ordered by the client depending on the status of the service provided. This provision also applies to orders containing a preliminary sampling plan and/or an analysis concept unilaterally terminated by the client before the end of the time limit laid down in the contract.

6.2 Unless otherwise agreed in writing, the prices stated in the service specification of IKB GmbH on the day the order is placed shall apply to the performance of contracts. All prices are stated as net prices plus VAT at the rate applicable when the service was provided. Prices are set annually and may be adjusted on 1 January each year.

6.3 The parties may agree on discounts and special terms separately. If changes or additional work are carried out at the request of the client after the order has been placed, the additional work will be charged separately.

6.4 Unless otherwise agreed in writing, the invoice amount is payable in full 14 days of the invoice date (e.g. fees, taxes, duties). Unless a reminder has been issued, the client is in default no later than 30 days after receipt of the invoice, Article 286 II 2 of the German Civil Code (BGB). During the period of default, the client will be obliged to pay the statutory default interest in accordance with Article 288 II BGB.

6.5 This does not prejudice any further claims for damages caused by the delay.

6.6 Invoices shall be issued in EUR.

7. Guarantees

7.1 IKB GmbH shall carry out the orders placed in accordance with the science and technology standards recognised at the time of the engagement, in compliance with the statutory provisions and with the care customary in the industry.

7.2 The warranty obligation of IKB GmbH shall be initially limited to rectification within a reasonable period of time. As a rule, this consists of a renewed performance of the defective service or partial service.

7.3 If the client's cooperation is required to rectify the defects, in particular, the delivery of further samples, the period shall not begin to run until this cooperation has taken place. IKB GmbH shall bear the necessary expenses related to the rectification. If IKB GmbH fails to rectify a defect within a reasonable period for reasons attributable to IKB GmbH, the client will be entitled to withdraw from the contract or demand a reduction in remuneration. The same applies if the rectification by IKB GmbH fails.

7.4 By way of derogation from Section 7.3, the client shall bear the costs of the rectification, where the client is responsible for the circumstances that lead to the need for rectification, in particular, in the case of incorrect information about the test material or samples that have not been properly delivered.

7.5 Claims for defects unrelated to damage to life, body or health shall expire within one year.

7.6 Any delay attributable to the client, in particular, caused by the lack of cooperation on part of the client, shall release IKB GmbH from any obligation with regard to delivery times.

8. Inspection and reporting obligation

8.1 The client is obliged to examine the received service for obvious defects, including incompleteness and obvious inaccuracies. IKB GmbH must be notified of such defects in writing within 14 days of receipt of the service.

8.2 Defects that only become apparent later must be reported to IKB GmbH in writing within 14 days of being identified by the client.

8.3 If the client fails to comply with their inspection and reporting obligations, the service will be deemed approved.

9. Liability

9.1 IKB GmbH does not accept any liability for negligence other than where the negligence results in breaches of material contractual obligations, injury to life, body or health or is related to guarantees. This applies mutatis mutandis to breaches of duty committed by vicarious agents of IKB GmbH.

9.2 Any liability of IKB GmbH for indirect or consequential damage suffered by the client or a third party is excluded. Such indirect or consequential damages include, in particular, loss of business, turnover, profit, interest, opportunities, image or customers.

9.3 Any liability of IKB GmbH for the application, use and / or interpretation of the results and / or performance reports by the client is excluded.

10. Data protection, confidentiality

10.1 The client hereby consents to IKB GmbH storing the client's data and individual orders in compliance with the General Data Protection Regulation (GDPR), in force since 25 May 2018, for the purposes of customer administration and acquisition, appointment management, contract processing, service processing, invoicing and payment transactions by means of electronic data processing. Data may only be disclosed to third parties with the written consent of the client.

10.2 IKB GmbH undertakes to provide the client with all results that have been determined in connection with the order. Information received or obtained will be treated confidentially, unless it is publicly known or accessible or it has already been disclosed to IKB GmbH by a third party other than by a breach of the confidentiality obligation. The confidentiality obligation does not apply if one of the parties or stakeholders is required by law or an authority to disclose information, provided that such an obligation is communicated in writing to the other party before disclosure.

10.3 IKB GmbH is entitled to store and use the order-related data, including the data provided by the client, for an unlimited period of time exclusively for internal purposes, provided the data has been anonymised. IKB GmbH is entitled to use analytical and statistical information derived from these anonymised data as required for internal purposes.

11. Test results and copyright

11.1 Test results

IKB GmbH shall provide the client with a written report in the form of a test report, expert opinion or other performance report. Upon special request, the client will be notified in advance by telephone, fax or email of the results of the investigation.

With respect to test services, the results in the test report, expert opinion and other performance reports will be solely based on the samples of the client that have been analysed. Accordingly, any liability of IKB GmbH for other samples of the same product and/or a different batch is excluded.

Unless stipulated otherwise by law, IKB GmbH shall only transmit test reports, expert opinions and other performance reports to persons or bodies expressly specified by the client or their authorised representative in writing or electronic form. All test reports, expert opinions and other performance reports and results are intended to be used by trained professionals skilled in the interpretation of such information.

All test reports, expert opinions and other performance reports made available by IKB GmbH are intended exclusively for the client and/or another party designated by the client in advance; as soon as the results have been paid for, they become the property of the client. The test reports, expert opinions and other performance reports may not be reproduced or distributed, whether in whole or in part, without permission.

The client is not entitled to misrepresent test reports, expert opinions and other performance reports or results or to reproduce and disseminate any other information received from IKB GmbH or relating to the relationship between IKB GmbH and the client.

IKB GmbH does not accept any responsibility for errors, inadequacies or omissions in the services provided to the client based on incorrect or incomplete information made available to IKB GmbH. In the event of any third party claims against IKB GmbH, the client shall full indemnify IKB GmbH against any liability in these cases.

The client hereby agrees and acknowledges that all decisions regarding the use of the results made available by IKB GmbH are solely their responsibility.

The client further agrees and acknowledges that the withdrawal or recall of products based on the results, including interim or preliminary results, is the sole responsibility of the client and shall be carried out at the client's own risk.

Unless otherwise agreed with the client, IKB GmbH shall retain all test reports, expert opinions and other performance reports and results for five (5) years from the date of performance.

11.2 Copyright

Any mention of the name "Institut Kirchhoff Berlin GmbH", for whatever purpose, whether publicly or in relation to third parties, requires the prior written consent of IKB GmbH.

12. Place of performance and jurisdiction

The legal relationship between the parties is governed by and shall be construed solely in accordance with the laws of the Federal Republic of Germany. The place of performance and jurisdiction is Berlin, Germany. IKB GmbH reserves the right to bring an action at any place of jurisdiction of the parties.

13. Severability clause

If any provision of these standard terms and conditions is held to be invalid, the validity of the remaining provisions will not be affected or impaired thereby. The invalid or unclear provision shall be replaced by a provision that comes closest to the economic purpose of the invalid provision. This applies mutatis mutandis to any omissions from the agreement.