

General Business Terms and Conditions for TOPLAB GmbH



Valid from 01.06.2010

Scope

The following general business terms and conditions shall apply exclusively for all deliveries and services of TOPLAB GmbH (hereinafter referred to as GBTs). These GBTs shall be deemed as having been accepted when the order is placed with TOPLAB GmbH. They shall also apply for all future business relations, even if no reference is expressly made again to their validity. Any deviating or additional agreements, in particular business terms and conditions of the customer shall only become a part of the contract, if TOPLAB GmbH has confirmed and acknowledged this in writing. The silence of TOPLAB GmbH shall not be deemed as an agreement. Counter confirmations of the customer with deviating conditions are hereby and now expressly objected to by TOPLAB GmbH. Any changes to the GBTs will from their validity also become a part of current contracts, if the customer despite special reference to his right of objection does not file an objection within a deadline of one month after notification of the change.

1. Scope and execution of the services / sending risk in the case of goods deliveries

1.1 The agreed services of TOPLAB GmbH may be derived from the written order confirmation from TOPLAB GmbH. TOPLAB GmbH reserves the right to an oral order confirmation or that which is declared by conclusive action. The written form shall apply for all agreements, including supplements, modifications and collateral agreements. Supplements and changes and collateral agreements to an order entered into in writing may be agreed upon without observing the written form, if this is expressly agreed to by TOPLAB GmbH.

1.2 The observance of the service obligations of TOPLAB GmbH assumes the timely and proper in particular timely fulfillment of the obligations of the customer.

1.3 Dates and deadlines for deliveries and services shall only be binding if they are confirmed in writing by TOPLAB GmbH.

1.4 Analysis reports refer exclusively to the samples or specimens, that TOPLAB GmbH has received from the customer and whose references appear on our receipt confirmation for the sample. TOPLAB GmbH shall only then be responsible for the fact that the sample is representative if they were given the express order for sampling and the order for sampling was accepted.

1.5 Any objections to the contents of an analysis/of an assessment are to be asserted in writing and specified immediately, however, no later than within two weeks after receipt of the assessment. Should within this deadline no objections be filed, assessments or invoices will be deemed as having been approved. In the case of a reciprocal commercial transaction the obligations of the Customer under § 377 HGB to inspect and complain shall also apply for work performance and services of TOPLAB GmbH.

1.6 Occurrences of force majeure, strike, lock-out, official directives, general difficulties with energy and other supply, disturbances at transport companies and breakdowns at TOPLAB GmbH as well as the consequences of such occurrences, shall release TOPLAB GmbH from the duration of the disturbance to the extent of its implications from the duty to perform, insofar as TOPLAB GmbH shall not be responsible for such occurrences and their consequences. Such occurrences and their consequences shall further entitle TOPLAB GmbH under the exclusion of a duty for compensation, not to provide services agreed as per contract. In these cases TOPLAB GmbH shall inform the customer immediately about the circumstances and immediately refund any monies which have already been paid.

1.7. In the case of deliveries of goods all risks of the loss or damage to the goods shall pass to the customer, as soon as the consignment is handed over to the carrier. In case the consignment shall be impossible without the fault of TOPLAB GmbH, the risk shall pass to the customer when he is notified in writing that the goods are ready for dispatch.

2. Prices/Terms of Payment/Reservation of Title

2.1 The current prices of the current applicable price lists of TOPLAB GmbH shall apply accordingly upon conclusion of the contract. The prices shall apply ex laboratory Martinsried town. The costs for dispatch (packaging and transport) can be charged separately. Price information in a quotation is based on an estimate of the required scope of performance and is therefore not binding. Excepted from these are fixed-price agreements.

2.2 Invoices shall be due and payable within a deadline of 8 days after receipt without deduction. The statutory provisions shall apply in the event of default of payment.

2.3 The customer shall only be entitled to set off and retention with counterclaims if these are either undisputed or have been determined by law.

2.4 TOPLAB GmbH reserves the right to the property of all delivered analysis reports and/or goods until all claims for payments already incurred on the date of the delivery against the customer have been satisfied in full.

3. Subsequent performance in case of defects

3.1 TOPLAB GmbH shall perform its work and services in accordance with the generally recognized standards of technology at the time the order is placed and with the customary due care and attention. TOPLAB GmbH shall assume liability in case of a defect – insofar as technically possible – by repeating the work or service free of charge.

3.2 The customer shall only be entitled to the right for reduction or to withdraw from the contract if the subsequent performance according to 3-1 fails or is impossible for other reasons.

3.3 The claim for subsequent performance must be asserted in writing by the customer immediately after the defect has been determined.

4. Liability and compensation

4.1 TOPLAB GmbH shall be liable to an unlimited extent in accordance with the provisions under the Product Liability Act, due to a guarantee, in case of breaches of obligations due to willful intent and gross negligence and in case of claims due to injury to life, body or health. Incidentally, TOPLAB GmbH shall be liable, insofar as the customer is another company,

- in case of breaches of obligations due to slight negligence of his simple vicarious agents only if an essential contractual obligation shall have been breached,
- in case of breaches of obligations due to negligence, which shall not fall under Clause 1, in the amount as limited to the typical and foreseeable damages as per contract

4.2 The regulations under 4.1 shall apply to all claims for damages, no matter upon which legal reason they are based.

4.3 Any personal liability no matter for what legal reasons of the vicarious agents of TOPLAB GmbH towards the customer is limited to acts of willful intent and gross negligence.

4.4 In the event of default TOPLAB GmbH shall be liable for the damages caused due to the delay only to the amount of the agreed remuneration for the service, with which TOPLAB GmbH is in default, unless an absolute fixed transaction was agreed.

5. Statute of limitations

The statute of limitations for claims is oriented towards the statutory regulations. Statute of limitations of one year shall apply for claims for defects from deliveries and services of TOPLAB GmbH to other companies.

6. Delivery of samples and storage of samples

6.1 The customer shall bear the costs and the risk for the delivery of samples. The samples shall remain the property of the customer. In case of dispatch by the customer the material for inspection must be packed properly and in accordance with within the deadline for storage and at the costs of the customer.

6.2 The customer undertakes to inform TOPLAB GmbH of all information of which he is aware with regards to any dangers and handling, should he deliver samples or or specimens containing dangerous substances. He hereby assures that all samples and specimens are in a stable condition and that they shall not pose any risk whatsoever. The customer shall be liable for all damages, injuries and cases of illness, suffered by TOPLAB GmbH or one of his employees as a consequence of a breach of the aforementioned obligations.

6.3 In the event that nothing else is agreed in the order samples shall be stored for three months after project completion or in case a longer storage is stipulated by law, in accordance with the statutory regulations. Performed gels are stored for six months after project completion. After this time samples and gels will be destroyed at the cost of the customer; this shall in particular apply if a special disposal is required on the grounds of statutory regulations.

6.4 The samples will only be returned to the customer at special request

7. Final provisions

7.1 It is not permitted to assign rights and obligations of the customer from the contract with TOPLAB GmbH without the prior consent of TOPLAB GmbH.

7.2 Insofar as nothing else is expressly agreed by the parties the registered seat of TOPLAB GmbH shall be the place of performance for both contractual parties. Martinsried town shall be the exclusive venue if the customer is a full merchant, legal entity under public law or is special assets under public law.

7.3 The legal relations between TOPLAB GmbH and the customer are subject to the law of the Federal Republic of Germany.

7.4 In the event that individual provisions of these General Business Terms are either in whole or in part invalid then this shall have no effect on the validity of the remaining provisions. The invalid provision shall be replaced by another provision that shall reasonably fulfill the commercial purpose of the contract taking due note of the mutual interests of both parties.

8. Processing of customer data

TOPLAB GmbH shall be entitled taking into account the data protection act to save and process personal or commercial data of the customer, no matter whether they stem from him or a third party.