

Terms & Conditions Service FoodChain ID Testing GmbH · Augsburg (D)

1. Scope of application

1.1

All testing and inspection services (hereinafter referred to as "services") or service offers (hereinafter: "offers")* and all contractual relations resulting therefrom between FoodChain ID Testing GmbH and the customer; (hereinafter referred to as "FoodChain ID") and the natural/legal person from whom it has received the order (hereinafter referred to as "Customer") are subject to these General Terms and Conditions (hereinafter referred to as "GTC").

1.2

Deviating agreements and verbal collateral agreements shall only become binding with the prior written consent of FoodChain ID.

2. Order placement and execution

2.1

FoodChain ID shall perform its services with due diligence in accordance with the test procedures defined in the offer and confirmed by the customer by placing an order or in accordance with the specific requirements of the customer, insofar as these are deemed appropriate and confirmed by FoodChain ID. In the absence of an offer and other specific customer instructions, the order can be carried out or rejected at the discretion of FoodChain ID.

2.2

The order can be placed by the client in writing, by telephone or by sending the sample(s). The order shall be deemed to have been accepted if FoodChain ID accepts it in writing or verbally. Any change or adjustment requests made after the order has been placed can influence the processing time and costs. The contract shall be deemed accepted with the order confirmation.

2.3

FoodChain ID is entitled to assign the ordered services to a subcontractor in whole or in part after prior consultation with the customer. The customer authorises FoodChain ID by its consent to disclose to the subcontractor all information necessary for the performance of the services transferred.

2.4

FoodChain ID is authorised by the customer to obtain from participants, authorities and third parties the information necessary for the preparation of the expert opinion confidentially and neutrally and to carry out surveys. If necessary, the customer shall grant FoodChain ID a special power of attorney for this purpose.

2.5

The customer authorises FoodChain ID to pass on test or inspection reports to third parties if this has been commissioned by the customer or if, at the discretion of FoodChain ID, this results tacitly from the circumstances or from traffic or commercial practice.

3. Processing times

3.1.

"Standard analysis times" stated in offers apply from the time of receipt of the sample in the laboratory but are for guidance only and do not constitute binding commitments.

3.2.

Binding date commitments can be agreed in writing in individual cases. In the event that a period (time span) for delivery of the service is agreed, this period shall commence upon receipt of the sample(s) in the laboratory or, in the event of a service not to be performed on a sample, upon order placement. Compliance with the deadline or a defined date presupposes the timely fulfilment of the customer's obligations to cooperate in accordance with 4.1.

4. Duties of the customer

4.1.

The customer must ensure that the samples, information, instructions and documents required for the performance of the services are provided to FoodChain ID in good time so that FoodChain ID can perform the required services in accordance with the contract.

4.2.

The costs and risks of sample delivery shall be borne by the customer, unless FoodChain ID has agreed to collect the samples. If the customer dispatches the samples, their packaging must be appropriate and in accordance with any instructions given by FoodChain ID.

4.3.

The customer must comply with the provisions on information, labelling, packaging, transport and disposal of hazardous waste and materials. FoodChain ID must be informed in advance of any known dangers or risks that may arise from the order. These include radioactive, toxic, explosive or otherwise harmful or environmentally harmful components; in this respect the customer shall be liable for any damage caused by dangerous properties of the sample material. Should costs arise for FoodChain for the proper disposal of hazardous materials and special waste of the samples provided by the customer, they are to be borne by the customer, regardless of whether the necessity for this was already known before the order was placed or not.

5. Work results and copyright protection

5.1.

All information provided in test reports shall be derived from the results of the test or inspection procedures applied in accordance with the requirements, methods or instructions referred to in point 2.1 and/or from the assessment of such results based on technical standards, commercial practices or other circumstances which FoodChain ID considers to be relevant.

5.2.

Test reports and expert opinions refer exclusively to the specified samples and do not make any statements about the rest of the lot or delivery from which the samples were taken, unless a representative sample was taken explicitly in accordance with an EU regulation or national regulation applicable to the respective test purpose. Test reports exclusively reflect the results or assessments determined at the time of the test in accordance with the scope of services

commissioned. FoodChain ID is not obliged to refer to facts or aspects or to prepare reports about them which are not included in the scope of the commissioned services, investigations or procedures.

5.3.

FoodChain ID makes test reports available electronically, unless the customer explicitly wishes them to be transmitted in printed and signed form. The FoodChain ID's responsibility for the content ends with the start of the transmission process. A falsification of these results by third parties outside the FoodChain ID access areas justify no liability of FoodChain ID. The regulation in point 10 remains unaffected. Electronically provided test reports are also valid without signature.

5.4

FoodChain ID retains the copyright to the services provided - insofar as they are suitable for this purpose. The customer may only use the test or inspection reports or assessments with all calculations, tables, pictures and other details prepared in accordance with the contract for the purpose specified in the agreement. The customer is not entitled to change, edit, publish or use them only in extracts without the consent of FoodChain ID. This also applies to offers, brochures, catalogues, trademarks or other company documents or trademarks. The passing on of test or inspection reports or assessments to offices or other public institutions are permissible if and to the extent required by the purpose of the contract.

5.5

FoodChain ID reserves its rights to all test methods, devices and/or equipment which it develops itself, unless these have been developed exclusively for the customer within the framework of a service provision agreed upon in writing.

6. Secrecy

The customer and FoodChain ID undertake to keep the mutually disclosed trade and business secrets secret, not to pass them on to third parties without the written consent of the other party and not to use them for their own purposes without authorisation. FoodChain ID will treat as confidential any information received or obtained under the contractual relationship, unless it is in the public domain or they were already known to FoodChain ID or they have been disclosed to FoodChain ID by a third party without breach of confidentiality.

FoodChain ID is authorised to use the results of investigations in anonymous form for scientific purposes, to publish them and to statistically evaluate them for internal company purposes.

7. Ownership and storage of samples

All samples become the property of FoodChain ID upon receipt. Samples are stored for a period of 3 months, unless they are samples requiring refrigeration or samples for microbiological testing, which are stored for only 4 weeks at a time, or unless otherwise agreed between the customer and FoodChain ID. After expiry of this period, the samples will be disposed of - unless the customer wishes them to be returned - whereby the responsibility of FoodChain ID for the samples expires at the same time. If the customer wishes the samples to be returned, he must pay a handling and freight charge and bear the costs of the return.

8. Prices and terms of payment

8.1

If no specific price agreements have been made prior to placing the order, the customer will be charged the currently valid standard rates of FoodChain ID. All prices are exclusive of the applicable statutory value added tax. FoodChain ID reserves the right to separately invoice packaging and transport costs for the shipment of sample containers or other aids.

8.2

The preparation of test reports will be invoiced separately. Subsequent changes or additions to orders already placed as well as changes or new issues of invoices at the customer's request will also be invoiced separately.

8.3

Customs clearance is the responsibility of the client. If the customer insists on processing by FoodChain ID or a broker commissioned by FoodChain ID, the customer shall bear the resulting costs plus an administration fee appropriate to the expenditure.

8.4

For costs for storage and return of samples see point 7, for costs for disposal of hazardous materials and special waste see point 4.3.

8.5

The customer must make payment to FoodChain ID for all duly invoiced charges within 14 days of the invoice date or within any period specified on the invoice. All invoices are payable in full net, free of any and all commission or other costs. In case of transfer of funds from abroad, in-country taxes occurring in the country of the Client and all bank fees caused by the transfer are to be paid by the Client. Any complaint relating to an invoice must be made within 14 days of receipt of the invoice. If the customer doubts the correctness of an investigation result, he is not entitled to withhold payment unless the defectiveness of the examination result and the resulting counterclaims of the customer are undisputed, accepted by FoodChain ID or legally established.

8.6

If the customer is in default of payment, FoodChain ID reserves the right to charge reminder fees. In the event of non-compliance with payment conditions, FoodChain ID is also entitled to demand immediate payment of all payment claims.

8.7

FoodChain ID's claims may only be offset, or a right of retention asserted if the customer's counterclaim is undisputed or legally established.

9. Cessation or termination of benefits

FoodChain ID is entitled, without any liability on its part, to immediately or permanently suspend performance, terminate the contract without notice and reject the order if the customer does not fulfil the obligations arising from the contractual relationship despite a corresponding warning, even after a 14-day period and/or in the event of cessation of payments, agreement to avert insolvency, opening of insolvency proceedings, petition for Opening of insolvency proceedings or forced administration on the part of the Client. Regulation No. 10 shall remain unaffected thereby. FoodChain ID is entitled to remuneration for the partial service provided up to the time of termination.

10. Liability and Warranty

10.1

FoodChain ID is neither an insurer nor a guarantor and refuses to assume the associated responsibility.

10.2

The test or inspection reports prepared by FoodChain ID based on the information, documents and/ or samples provided by the customer or on his behalf serve exclusively the benefit of the customer. The client is responsible for drawing the necessary conclusions from the test or inspection reports. Neither FoodChain ID nor its employees or subcontractors shall be liable to the customer or third parties for any kind of actions that base on conclusions drawn or omitted from test or inspection reports and for erroneous investigations based on false, incomplete, unclear or misleading information provided by the customer.

10.3

Claims of the client for damages are excluded. Excluded from this are claims for damages by the customer arising from injury to life, limb or health or from the breach of essential contractual obligations (cardinal obligations) as well as liability for other damages caused by willful misconduct or gross negligence on the part of FoodChain ID, its legal representatives or vicarious agents. Essential contractual obligations are those whose fulfilment is necessary to achieve the contractual objective.

10.4

In the event of a breach of essential contractual obligations, FoodChain ID shall only be liable for the foreseeable damage typical of the contract if this was caused by simple negligence, unless the customer's claims for damages are based on injury to life, limb or health. These restrictions also apply in favour of the legal representatives and vicarious agents of FoodChain ID if claims are asserted directly against them. The provisions of the Product Liability Act shall remain unaffected.

10.5

In the event of claims for damages, the customer must notify FoodChain ID in writing within 30 days of discovery of the circumstances giving rise to the damage. Claims of the customer are subject to a limitation period of one year from the beginning of the statutory limitation period.

11. Place of jurisdiction

11.1

The law of the Federal Republic of Germany shall apply to contracts between FoodChain ID and the customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The statutory provisions limiting the choice of law and the applicability of mandatory provisions shall remain unaffected.

11.2

The place of jurisdiction is Augsburg.

12. Data protection, secrecy

12.1

The customer agrees that FoodChain ID may store the data of the customer and individual orders in compliance with the Data Protection Basic Regulation (DSGVO) in force since 25.05.2018 for customer administration and acquisition, appointment management, contract processing, service processing, invoicing of payment transactions by means of electronic data processing. The data will only be passed on to third parties after a corresponding written agreement with the

client. The information required under Article 13 of the DSGVO applies.

12.2

FoodChain ID undertakes to make available to the customer all results obtained in connection with the order. Information received or obtained will be treated confidentially unless it is publicly known or accessible or has already been disclosed to FoodChain ID by third parties without breach of the confidentiality obligation. The confidentiality obligation shall not apply if a contracting party or a party is legally or officially obliged to disclose information, provided that such obligation is communicated in writing to the other contracting party prior to disclosure.

Augsburg, March 2019