

**These General Terms and Conditions of Sales were last amended on 1 March 2019**

### **1. Area of Application**

1.1 All Orders accepted by “Eurofins Survey Netherlands B.V., established in Rotterdam, the Netherlands and registered with the Chamber of Commerce under file number 69091684 or any of its subsidiaries or affiliates” (collectively, “ES”) will be governed by these General Terms and Conditions of Sales (the “Terms and Conditions”), including orders placed by telephone which have not been confirmed in writing. A contract with these Terms and Conditions comes into being when an order that has been placed with ES and is accepted by ES. An order placed with ES is considered as accepted by ES when (a) ES proceeds to fulfil that order, without need for any written confirmation from ES or (b) ES accepts the order in writing.

1.2 These Terms and Conditions supersede and replace all prior verbal or written price quotations and agreements between the parties. No officer (other than the Business Unit Manager of ES), employee, agent or subcontractor of ES has the authority to alter or waive any of these Terms and Conditions or to make any representation which conflicts with or purports to override any of these Terms and Conditions; and no such alteration, waiver or representation shall be binding upon ES, unless it is in writing and signed by the Business Unit Manager of ES.

1.3 Information and announcements in catalogues, leaflets, price lists, web documents or any other ES documentation intended solely for purposes of information are not binding and subject to programming and typing errors. ES shall at all times be entitled to change this documentation without notice being required. In the event of any inconsistency between such documentation and a contract, the contract shall prevail.

### **2. Placement of Order**

2.1 A customer's order will be valid only if sent by mail or other electronic message on official letterhead of the customer or by using ES-approved sampling/inspection request sheets or electronic order forms. The commercial aspects of the order which are not specifically set out in these Terms and Conditions (including price, estimated turnaround times and delivery date) must be agreed at the time of the order. The customer must confirm in writing orders given by telephone or in person immediately after they are made and will be deemed to have placed an order if the sampling or inspection is planned and confirmed to customer in writing.

2.2 Unless specifically accepted in writing and signed by the Business Unit Manager of ES, any terms proposed or submitted by a customer at any time (including, but not limited to, terms or provisions in the customer's purchase order, instructions or other document) which differ from these Terms and Conditions are rejected and shall be of no force or effect. Furthermore, special terms or conditions of prior orders, including special pricing, will not automatically apply to subsequent orders. Each order accepted by ES will be treated as a separate contract between ES and the customer.

2.3 ES is entitled to charge management and administrative fees of up to twenty five Euros (€25) in connection with the request for additional services to an existing order. A request for additional services for sampling or inspection which has already been conducted will be treated as a new order and may postpone turnaround time accordingly.

2.4 Any logistic service off-site must be paid in full, unless it has been cancelled or modified by the customer at least ninety six (96) hours in advance for sampling services and one (1) week in advance for auditing services.

### **3. Price and Terms of Payment**

3.1 If the acknowledgment of an order does not state otherwise, ES' prices apply "ex works" within the meaning of the INCOTERMS 2000. Any additional cost or disbursement (e.g. incurred by ES in connection with the order) must be paid by the customer.

3.2. Prices are exclusive of Dutch VAT (BTW) and other governmental duties and are based on tariffs in force at the day of the remittance of the offer to the customer. Applicable taxes are those in force at the date of invoicing.

3.3 Unless specifically agreed otherwise by ES in its acceptance of an order, payment of all invoices is due strictly within thirty (30) days of the invoice date. Any dispute about invoices must be raised within 30 days of the invoice date. Challenging results will not entitle a customer to defer payment. Without notice being required, the customer shall by law be in default immediately after the payment term has expired. Any invoice which remains outstanding after due date, may be additionally charged with an interest of one per cent (1%) per month, compounded monthly. In the case of overdue payment, the customer shall be obliged to pay, in addition to the outstanding amount and the interest amount charged on it, full compensation for both the extrajudicial and judicial collection costs, including the costs for lawyers, bailiffs and debt-collection agencies.

3.4 The payment method is bank transfer. Any other method of payment must receive prior agreement from ES. The customer undertakes to provide bank account details such as IBAN numbers as indicated by ES.

### **4. Duties of customer in accessibility of materials to be sampled.**

4.1 The customer will (i) ensure that instructions to ES and sufficient information is given in due time to enable the required services to be performed effectively; (ii) procure all necessary access for the ES representatives to enable the required services to be performed effectively; (iii) supply, if required, any special equipment and personnel necessary for the performance of the required services; (iv) ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services and will not rely, in this respect, on ES's advice whether requested or not; (v) take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required services; (vi) inform ES in advance of any known hazards or dangers, actual or potential, associated with any order or samples or testing including, for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons; (vii) fully exercise all its rights and discharge all its liabilities under any related contract whether or not a report or certificate has been issued by ES failing which ES shall be under no obligation to the customer. The customer shall bear the extra costs of the extra man hours required and/or a re-visit if sampling or inspection is impossible and/or can only be performed under more difficult conditions than originally anticipated and/or as a consequence of non-compliance or with the requirements described in this clause 4.1

### **5. Property Rights on Sample Material and Sample Storage**

5.1 All samples become the property of ES to the extent necessary for the performance of the order. If the retention period for samples according to GAFTA, FOSFA and/or ISO has expired, ES will not store or preserve the samples unless specifically and explicitly requested by the customer and agreed on forehand between ES and the customer, also in relation to the tariffs applicable to that. If

the customer pays for storage, ES will take commercially reasonable steps to store the samples, according to professional practice.

5.2 If the customer timely requests the return of unneeded sample material, ES will return them – if still available - to the customer, at the customer's cost and risk. In such a case ES shall transfer title to the returned samples back to the customer, and deliver them to the customer in a manner and to a location specified by the customer. The costs for this delivery shall be for the account of the customer, which will have to be paid in advance.

## **6. Delivery Dates, Turnaround Time**

6.1 Delivery dates and turnaround times are estimates and do not constitute a commitment by ES. Nevertheless, ES shall make commercially reasonable efforts to meet its estimated deadlines.

6.2 Reports are generally sent by email and/or by postal mail, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the report is completed.

## **7. Transfer of Property**

7.1 Title in any report, products, equipment, software or similar supplied by ES to the customer will remain with ES until all invoices in respect thereof have been paid by the customer in full, and until such full payment, the customer shall have no property rights or other rights to use them. In addition, even if ES has accepted and begun to fulfil an order, ES has the right at any time stop processing that order and to stop doing any work for a customer if that customer is late in paying any amount due to ES, whether for that or any other order.

7.2 Even after payment in full by the customer, ES shall retain the right to store, use and publish all sampling and inspection data in an anonymous form which does not identify the customer.

## **8. Limited Warranties and Responsibilities**

8.1 Orders are handled in the conditions available to ES in accordance with the then-current state of technology and methods developed and generally applied by ES and the results may not always be 100% exact and/ or relevant. Reports, interpretations, assessments, consulting work and conclusions are prepared with a commercially reasonable degree of care but ES cannot guarantee that these will always be correct or absolute. Any warranty offered by ES expires six months after sample taking, if the acknowledgement of the order does not specifically state otherwise. In all cases, the customer must independently verify the validity of any report, interpretations, assessments and conclusions supplied by ES, if it wishes to rely on the same in respect of matters of importance and shall do so at its own risk.

8.2 ES will use commercially reasonable care in handling and storing samples, but ES is not and shall not be held responsible for any loss or destruction of samples even after arrival at the laboratory.

8.3 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the customer and ES. The customer shall indemnify and hold ES harmless from and against any and all third party claims in any way relating to the customer or to the order by the customer.

## **9. Limitation of Liability**

9.1 Except to the extent that such limitations are not permitted or void under applicable law: (a) ES (together with its workers, office clerks, employees, representatives, managers, officers, directors, agents and consultants and all ES partners and affiliates including external sub-contractors, the "ES

Indemnifying Parties”) shall be liable only for the proven direct and immediate damage caused by the ES Indemnifying Party’s willful misconduct and/or gross negligence in connection with the performance of an order and then, only if ES has received written notice thereof not later than six (6) months after the date of the customer’s knowledge of the relevant claim (unless any longer period is prescribed under applicable law and cannot be contractually limited), and (b) in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise), the ES Indemnifying Parties’ liability per claim or series of related claims, and the customer’s exclusive remedy, with respect to ES’ services which fall under these Terms and Conditions, shall be limited to the lesser of: (i) the direct and immediate loss or damage caused by the ES Indemnifying Party’s willful misconduct and/or gross negligence in connection with the performance of the order and (ii) ten times the amount ES actually received from the customer in relation to the order and maximized at all times to fifteen thousand Euros (€15,000).

9.2 The ES Indemnifying Parties shall at no time be liable for any indirect, direct or consequential loss or damage (including, but not limited to, loss of business, profits, goodwill, business opportunities or similar) incurred by the customer or by any third party.

9.3 It is a condition of ES’ acceptance of an order that the customer indemnifies the ES Indemnifying Parties for any losses, injuries, claims and costs which the ES Indemnifying Parties may suffer as a result of arising from or in any way connected with its role under or services or products or software provided pursuant to these Terms and Conditions, except to the extent that the ES Indemnifying Parties are required to bear them according to these Terms and Conditions, and by placing an order the customer agrees to provide that indemnification.

#### **10. Subcontracting**

ES shall be entitled at its discretion to delegate the performance of the whole or any part of the services contracted for with the customer to any agent or subcontractor.

#### **11. Force Majeure**

ES cannot be held liable for delays, errors, damages or other problems caused by events or circumstances which are unforeseen or beyond ES’ reasonable control, or which result from compliance with governmental requests, laws and regulations entering into force after the date the contract was formed. If a situation of force majeure lasts longer than 90 days, ES shall furthermore be entitled to terminate the contract without any obligation whatsoever to pay compensation to the customer.

#### **12. Confidentiality & Processing of customer Data**

12.1 ES shall be entitled to save and process personal or commercial data received from the customer in any way, no matter whether such data stem from the customer directly or from a third party and shall use commercially reasonable efforts to keep such data confidential and to use such data only for the purposes provided to it by the customer. Insofar as ES can be designated as the responsible party within the meaning of the Personal Data Protection Act (*Wet Bescherming Persoonsgegevens*), ES shall only process the aforementioned personal data to the extent necessary for the performance of the contract or to fulfil a legal obligation. ES shall apply appropriate security measures to protect personal data against unauthorized access.

12.2 ES shall use commercially reasonable efforts to keep all report results and service reports confidential, subject to ES’ rights set forth in clause 7.2 and the right to use them in order to demonstrate its entitlement to payment for services rendered.

12.3 Report results are prepared and supplied exclusively for the use of the customer and should not be divulged to a third party for any purposes without the prior written approval of ES. In addition, the customer is required to maintain secrecy concerning all services provided by ES and their results as well as the composition of products and software delivered by ES. Report results are not to be publicly disclosed or exploited without the prior written consent of ES. Even if such written consent is given by ES, the customer (a) remains responsible for any consequences due to the divulgence of such results to a third party and any reliance of such third party on such results and (b) hereby agrees to indemnify the ES Indemnified Parties against any liability which the ES Indemnified Parties may incur as a result of such divulgence or any such third party reliance.

### **13. Disclaimer and Miscellaneous**

13.1 All terms, conditions and warranties (including any implied warranty as to merchantable quality or fitness for a particular purpose) as to the manner, quality and timing of the service and results, equipment, products or software supplied by ES are excluded to the maximum extent permitted by applicable law. The warranties, obligations and liabilities of ES contained in these terms and conditions are exclusive.

13.2 These Terms and Conditions may be modified in writing from time to time by ES and orders will be governed by the most recent version of these Terms and Conditions that is in effect at the time ES accepts the order.

13.3 Should a court waive, limit or hold to be invalid, illegal or unenforceable any part of these Terms and Conditions, all other parts shall still apply to the greatest extent possible. In such cases, the parties shall by way of replacement adopt a new provision or new provisions that adhere as closely as possible to the purport of the original provision or provisions of the contract or General Terms and Conditions.

13.4 Failure by either ES or the customer to exercise the rights under these Terms and Conditions shall not constitute a waiver or forfeiture of such rights.

### **14. Governing Law/ Jurisdiction**

14.1 The construction, validity, performance and applicability of these Terms and Conditions shall be governed by the laws of the Netherlands. Any disputes arising from this contract shall be submitted to the competent Dutch court of the district in which the registered office of the ES company which accepted the order in question is located (including in cases involving multiple counsels for the defense or third-party respondents), which shall have exclusive jurisdiction.

These General Terms and Conditions of Sales have been filed at the Chamber of Commerce under file number 69091684.