

General Terms and Conditions amofor GmbH (Status of 16/08/19)



I. Scope

(1) These General Terms and Conditions govern the contractual relationship between amofor GmbH, Otto-Hahn-Str. 15, 44227 Dortmund (hereinafter referred to as "amofor" or the "Contractor") and its Clients.

(2) amofor's offers apply exclusively to entrepreneurs in the sense of Section 14 of the German Civil Code [BGB]. An entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

(3) The general terms of conditions of the Client or any third party shall not apply even if amofor does not separately contest their validity on an individual case basis. Any event where amofor makes reference to any written document, e-mail or other text containing or making reference to the Client's or any third party's general terms and conditions shall not be construed to constitute any agreement to the applicability of these other terms and conditions.

(4) The language of Contract shall be German.

(5) The interpretation of these General Terms and Conditions shall be based on their German version, even if translations of these General Terms and Conditions are made available to the Client or signed by the Parties.

II. Scope of work and services

(1) amofor provides work and services. amofor provides the type of contractual service defined in the offer. When executing the order, amofor shall apply recognized rules of technology and its own knowledge and experience, taking into account the applicable standards and the care customary in the industry. The Contractor shall prepare a report on the results or services rendered.

(2) Should it become apparent during the processing of the order that the contractual service cannot be performed or can only be performed with significantly altered technical/logistical and/or personnel expenditure, amofor shall inform the Client immediately. The contracting parties shall decide whether, to what extent and at what cost the order will continue to be carried out. If no agreement can be reached, each contracting party has the right to terminate the contract by written declaration. In such case, amofor shall be entitled to reimbursement of all expenses incurred up to that point and to the payment of such remuneration as corresponds to the actual performance expenditure.

III. Conclusion of contract

(1) All offers made by amofor are subject to change and non-binding unless they have been expressly specified as binding or entail a definitive time limit for acceptance. Technical details (e.g. number and type of analyses) and deadlines for the order's execution are always only approximate unless they are expressly marked as binding.

(2) Orders and commissions must be made in writing (including by telefax or e-mail) stating all contact and required business data of the Client to be effective. amofor shall not be obliged to begin with the analysis until there is clarity about the order and all necessary information has been communicated. Changes of or additions to an order which have been communicated by telephone or verbally, or any collateral agreement must also be confirmed in writing by amofor in order to be effective.

(3) By submitting his written order enquiry, the Client submits a binding offer to conclude a contract to amofor.

(4) An order placed with amofor is accepted either by (a) amofor executing the order (in which case written confirmation by the Contractor is not required) or (b) amofor accepting the order in writing.

IV. Data security, privacy

(1) The Parties shall comply with any data protection regulation (including but not limited to DSGVO [GDPR]), particularly those applicable in Germany, as applicable at the time.

(2) If the Client collects, processes or uses personal data, he shall be responsible for ensuring that he is entitled to do so in accordance with the applicable regulations including but not limited to data protection regulations, and in the event of breach shall indemnify and hold harmless amofor from and against any third-party claim.

(3) amofor will collect and use client-related data only to the extent that is required for the execution of this Contract. The Client agrees to the collection and use of such data to that extent. With regard to his rights pursuant to Art. 13 DSGVO [GDPR], the Client has been informed by a corresponding information sheet ([Link](#)).

(4) The obligations of clauses 1 through 3 shall continue to apply beyond the end of the Contract as long as amofor has control over application data.

(5) If within the scope of the contractual relationship processing within the meaning of Art. 28 DSGVO [GDPR] is carried out for the Client, the contracting parties shall conclude a separate agreement stipulating the details of such data processing.

V. Confidentiality

(1) The Parties shall keep confidential any information that they have become aware of in relation to the Contract and that should be treated as confidential, and shall not disclose any such information to any third party for any purpose whatsoever unless having obtained prior written consent by the other Party. Confidential information includes any information that has been expressly denoted as confidential by that party who provided such information and any information whose confidential nature can be clearly inferred from the way such information was given. amofor shall particularly keep confidential any analyses and instructions exclusively prepared for the Client.

(2) The obligations of (1) shall not be applicable to any information or parts thereof for which the receiving Party proves that such information

- has been known to them prior to the date of receipt or has been generally known;
- has been in the public domain or has been generally known before the date of receipt;
- has entered the public domain or has generally become known after the date of receipt without the receiving Party being responsible for such disclosure.

(3) Public statements of the Parties on their cooperation shall only be made by prior mutual agreement.

(4) The obligations of (1) shall survive termination of Contract for an unlimited period, namely as long as exemption in the sense of (2) has not been proven.

VI. Warranties

(1) amofor shall carry out the commissioned services in accordance with the principles of proper professional practice on the basis of scientifically recognised procedures and methods. amofor does not warrant that the results transmitted within the scope of the offer are suitable for a specific purpose or for achieving the objective pursued by the Client when placing the order.

(2) If one of the services provided by amofor is defective and does not only cause an insignificant reduction in the value or suitability of the service, amofor shall be entitled at its discretion to supplementary performance by either new performance of the service or by subsequent rectification.

(3) Obvious defects must be notified to amofor in writing not later than within three weeks of delivery or receipt of the service provided, otherwise performance shall be deemed free of defects and the Client's warranty claim shall lapse.

(4) In any other respect, acceptance of performance while being aware of a defect shall lead to the loss of warranty rights, unless the Client reserves his warranty rights in writing.

(5) If the Client is a businessman, he must notify amofor in writing also of hidden defects within three weeks of discovery in order to prevent the expiration of his warranty claims.

(6) In all other respects, the Client's statutory obligations to examine the goods and to give notice of defects shall remain unaffected. The right to new performance or rectification at amofor's discretion initially replaces the right of the Client to rescind the Contract or reduce remuneration. The Client shall grant amofor the time and opportunity necessary for subsequent performance at its reasonable discretion. The Client's refusal to do so releases amofor from their obligation to render subsequent performance. If amofor refuses new performance of the promised service or the rectification thereof or fails to render subsequent performance even after the Client has granted a reasonable period of at least six weeks in writing or if such period is unreasonable for the Client or new performance or rectification has failed twice, the Client, at his discretion, shall be entitled to a reduction of remuneration or - in case of considerable defects - to rescission of the Contract.

(7) Each analysis or test report shall refer exclusively to the samples and records analysed by amofor.

(8) If the Client objects to the results amofor has ascertained and if a corresponding inspection does not find these results to be inaccurate, the Client shall bear the costs of a repeated test or a repeated inspection.

VII. Liability, limits of liability

(1) Unless stipulated otherwise in the individual contract, amofor shall be liable without limitation for any damage caused by intentional act or gross negligence by amofor or its representatives or agents.

(2) In the event of simple negligence, amofor shall be liable without limitation for personal injury or death.

(3) amofor's liability for damages regardless of fault (§ 536a of the German Civil Code [BGB]) pertaining to any defects existent at conclusion of contract shall be excluded; (1) and (2) shall remain unaffected.

(4) Other than that, amofor shall only be liable if and insofar it has violated a major contractual obligation ("cardinal obligation"). Cardinal obligations are obligations whose performance is material to the proper performance of the Contract and whose performance the other party can and does reasonably expect - i.e. they are the major contractual obligations. In such cases, liability is limited to remedy for the foreseeable damage that typically occurs.

(5) amofor shall only be liable for any data loss or data destruction if it has caused such destruction intentionally, by gross negligence or by breach of any major contractual obligation. amofor's liability shall be limited to the amount of that damage that would also have occurred in the event of proper data backup by the Client.

(6) Liability subject to the Product Liability Act [Produkthaftungsgesetz] shall remain unaffected.

(7) All claims under this Clause VII shall become statute-barred within 1 year; § 199 (1) BGB shall apply with regard to the commencement of the limitation period. This shall not apply in cases of liability due to intent, gross negligence, personal injury or in cases of mandatory liability, e.g. under the Product Liability Act.

VIII. Deadlines and dates

(1) Deadlines and dates shall be binding only if explicitly agreed on a case to case basis. The time period for performance of service commences on the day the order is accepted but not before all details of performance have been fully specified (test methods, specifications, reference substances, materials to be provided etc.).

(2) Deadlines and dates shall be deemed to have been met upon readiness for dispatch and timely notification thereof, if dispatch by amofor is impossible through no fault of amofor.

(3) The period agreed for the performance of the service shall be extended - without prejudice to amofor's rights from any default on the part of the Client or to withdrawal in accordance with statutory provisions - by the period by which the Client is in default with its obligations under this or another contract. This shall apply mutatis mutandis in the event that a date has been agreed for performance of service.

(4) If amofor is in default with the performance of a service, the Client shall grant amofor a reasonable period of grace and may withdraw from the Contract after such period has expired; no period of grace shall be required if amofor definitively and seriously refuses to render service or in the event of serious circumstances that make the granting of a period of grace unreasonable for the Client.

(5) Any claim for damages caused by non-compliance with binding deadlines or dates or by other delays shall be excluded, unless such damage was caused intentionally or

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out of gross negligence by amofor; in the event of delay caused by simple negligence, we shall only be liable for such damage as is typically foreseeable for such contracts. amofor shall be liable without limitation for personal injury or death in the event of simple negligence.

IX. Force majeure

(1) No Party shall be obliged to perform their contractual obligations in the event of force majeure and the duration thereof. Force majeure within this meaning shall include:

- any fire/explosion/flood not within the Party's responsibility;
- any war, riot, blockade, or embargo;
- any labor dispute of 6 weeks or more provided such has not been intentionally brought about by the Party.

(2) Each Party shall immediately notify the other Party in writing or by e-mail of any such event of force majeure.

(3) As long as amofor (a) is waiting for the cooperation of or information by the Client or (b) is hindered in the performance of its services through no fault of his own by strike or lockout in third party companies or in the supplier's company (in the latter case, however, only if such industrial action is lawful), official intervention, legal prohibition or other circumstance ("force majeure"), performance periods shall be deemed extended by the duration and by a reasonable ramp-up time after the end of such hindrance ("downtime") and there shall be no breach of obligation for the duration of the downtime. amofor shall immediately inform the Client of any such hindrance and their expected duration. If the event of force majeure lasts without interruption longer than 3 months, both Parties shall be released from their performance obligations.

X. Employment of third parties/subcontractors

(1) amofor may - even without the consent of the Client - use third parties or subcontractors to perform the services contractually agreed. amofor shall ensure that the persons it employs for the provision of its services are sufficiently qualified.

(2) If the conduct or qualification of the persons employed by amofor do not comply with the contractually agreed requirements, the Client shall inform amofor thereof immediately. amofor will take suitable measures without delay, which may also consist in the replacement of the person concerned.

XI. Cooperation of the contracting parties, acts of cooperation

(1) The performance of the services requires close cooperation between the contracting parties. The contracting parties will therefore inform each other about all circumstances within their sphere which may have an effect on the provision of services by amofor.

(2) The Client shall ensure that amofor receives all information, instructions, documents and samples necessary for the execution of the order free of charge and in sufficient time to enable amofor to perform the required services in accordance with the contract. The client is in particular obliged to inform amofor immediately and on his own accord of all processes and circumstances that may be of significance for the order's execution. In the event of culpable breach of these obligations, the Client shall fully reimburse the costs of delayed commencement or delayed execution of the order.

(3) amofor will regard the facts named by the Client and the information received as true. The Client shall be liable to amofor for the correctness and completeness of his statements. In the event that amofor is held liable by third parties for culpably incorrect or incomplete information provided by the Client, the Client shall be obliged to indemnify amofor against any such claim.

(4) The Contracting Parties shall each designate a responsible person who shall be available as contact person for the other Contracting Party in connection with the performance of the services and who shall be authorised to make binding declarations on behalf of the respective Contracting Party and to receive declarations of the other Contracting Party.

XII. Intellectual property

(1) Unless agreed otherwise, materials which are or may be protected by industrial property or similar rights of any kind (e.g. patent, trademark, utility or design rights, copyrights) and regardless of whether they have been registered ("Intellectual Property Rights") or are or can be protected or not ("Materials") and to which it is entitled at the time of the conclusion of this Contract or which it (or third parties on its behalf) develops after conclusion of this Contract, shall remain the property of amofor. This protection includes but is not limited to any method of analysis developed or validated by amofor.

(2) By handing over these materials, amofor grants the Client a non-exclusive, permanent, non-transferable right to use the materials delivered in accordance with the Contract, insofar as this is

implied by the purpose of the Contract. The Client may use any reports and assessments including all charts, calculations and other details for his own purposes only and shall not disclose them to any third party. This does not include disclosure to public authorities.

XIII. Acceptance of work performed

After completion of the work, amofor will submit the work to the Client for acceptance, as far as such is not excluded by the nature of the work. The Client undertakes to inspect the submitted work within a reasonable period of time to ensure that it conforms to the contract. After successfully completed inspection, the Client shall notify amofor of acceptance immediately and in writing. Inspection shall be deemed to have been carried out successfully if the work performed is not found to deviate significantly from the contractually agreed quality. If, in such inspection, the Client finds deviations from the contractually agreed quality, he shall inform amofor thereof immediately and in writing. Such information has to include a sufficiently concrete description of the deviation in order to enable amofor to identify and eliminate that deviation. Major deviations will be eliminated by amofor as soon as possible and will be subsequently submitted to the Client for acceptance. Renewed inspection is limited to establishing that the deviation has been eliminated. Non-essential deviations do not entitle the Client to refuse acceptance. The Client shall specify them as non-essential deviations in writing in the certificate of acceptance, and amofor will eliminate them within the scope of warranty. If

the Client does not declare acceptance immediately after expiry of a reasonable period set by amofor for inspection of conformity, acceptance shall be deemed to have been given.

XIV. Remuneration

(1) The services shall be priced as agreed in the orders. Unless otherwise agreed in writing, all prices are quoted ex amofor's place of business exclusive of any necessary shipping; costs for expedited or express orders and special packaging must be paid separately. The prices do not include VAT, which is shown separately in the invoice at the statutory rate as applicable on the day of invoicing. The prices are understood to be duty unpaid.

(2) The Client, at the latest when ordering the services, must draw amofor's attention to the relevant laws, regulations, ordinances and official requirements relating to the services' performance, to handling, labelling, packaging, dispatch and prevention of illness and accidents (e.g. by sending relevant safety data sheets). If this results in additional costs as compared to the usual costs for services at amofor's place of business, these must be paid by the Client as specified in the invoice.

(3) Unless otherwise agreed, the Client shall make an advance payment of 30% of the agreed total remuneration within 10 days of receipt of invoice without deductions. If the Client is in default of payment, § 288 of the German Civil Code [BGB] applies; amofor reserves the right to claim further damages.

(4) amofor shall be entitled to issue further interim invoices.

(5) The remaining remuneration shall be usually due after completion and acceptance of the work and shall be payable within 10 days of receipt of invoice.

(6) All receivables of amofor shall immediately fall due if the terms of payment are not complied with or if amofor becomes aware of circumstances that could reduce the Client's creditworthiness. In such case, amofor shall also be entitled to perform outstanding services only against advance payment or to demand appropriate securities and, after a reasonable period of grace, to withdraw from the contract and, if the Client is at fault, to demand damages in lieu of performance.

(7) The Client shall only be entitled to any set-off if its counterclaims have been legally established, are undisputed or have been acknowledged by amofor.

XV. Final provisions, applicable law, venue

(1) The contract shall be governed by German law under exclusion of CISG.

(2) As a matter of principle, no collateral agreements outside the contract or its appendices have been concluded. Any change or amendment of the contract or its appendices shall only be valid if made in writing. This shall also apply to any waiver of such written form requirement.

(3) Should any of the provisions of this contract be invalid, the validity of any other provision shall remain unaffected.

(4) If, in the practical application of these General Terms and Conditions, any gap arises that the contracting parties have not provided for, or if the invalidity of any provision within the meaning of Para. 3 has been unappealably established by law or in agreement by both parties, they undertake to fill in such gap or replace such ineffective provision in an objective, appropriate manner oriented on the economic purpose of the contract.

(5) Exclusive venue shall be in Cologne, unless otherwise required by law or statute.