

## General Terms and Conditions

### 1. Scope/General Information

1.1 These General Terms and Conditions ('GTC') apply to all legal relationships of GBA Gesellschaft für Bioanalytik mbH, GBA Pharma GmbH, Analytikum Umweltlabor GmbH, GBA Analytical Services GmbH, Thüringer Umweltinstitut Henterich GmbH, and GEOTAIX Umwelttechnologie GmbH, GBA Medical Device Services GmbH, Gesellschaft für Lebensmittel- und Umweltconsulting mbH and their respective branches ('we', 'us/our' or 'GBA'). They apply to all transactions within the entire business relationship as well as to follow-up orders in ongoing business relationships.

1.2 Conflicting or deviating terms and conditions of business of the customer or terms and conditions of business of the customer supplementing these GTCs shall not be recognized by GBA unless GBA expressly agrees to their validity in writing. This requirement of consent and these GTCs also apply to orders placed verbally, even if GBA executes an order without reservation in the knowledge of conflicting or deviating terms and conditions of the customer (e.g., in the case of orders that come about through the transmission of samples).

1.3 Individual agreements with the customer take precedence over these GTCs. All agreements made between us and the customer for the purpose of executing a transaction shall be set down in writing. The same shall apply to legally relevant declarations and notifications (e.g. setting of deadlines, declarations of withdrawal, notices of termination, notifications of defects) made by the customer after conclusion of the contract.

1.4 These GTCs shall only apply if the customer is an entrepreneur (Section 14 of the BGB German Civil Code), a legal entity under public law or a special fund under public law.

### 2. Conclusion and execution of the contract

2.1 Unless otherwise stated in the specific offer, our offers are always subject to change and non-binding. Orders placed by the customer shall be deemed to be a binding contractual offer and may be accepted within a period of two weeks, unless a binding period deviating from this has been agreed in writing. However, orders shall also be deemed to have been accepted when we commence execution.

2.2 Orders are performed by GBA impartially, diligently and professionally in accordance with customary industry standards, applicable laws, professional standards and our quality management system. Our accreditations and certificates can be viewed [here](#). We shall provide information about the respective official authorisations when concluding the contract at the customer's request. Please refer to the information communicated on our website for the corresponding current authorisations.

2.3 The method and/or manner of service provision shall be tested on the basis of statutory regulations and codes of practice or in accordance with a test procedure agreed between the customer and GBA. If GBA has to change the test procedure in a particular case, GBA shall inform the customer of this only in the event of significant changes.

2.4 Unless otherwise agreed in writing, we reserve the right to perform the services also by engaging professionally qualified third parties – in particular experts working for us – or to engage subcontractors.

2.5 Changes in performance requested by the customer after the order has been placed may not affect the validity of the results. Changes in performance shall be regulated in a written supplementary agreement prior to the start of the performance; the additional remuneration and any changes in the time schedule shall be recorded therein. If it becomes apparent during an analysis that the analysis will not produce a usable result due to the nature of the sample or the nature of a test specimen according to the prescribed or agreed test procedures, GBA will make suggestions for further testing. In this case, the customer shall bear the costs of the resulting additional expenditure, unless otherwise agreed.

2.6 The results are reported as standard in a simplified manner in accordance with DIN EN ISO/IEC 17025, Chap. 7.8.1.3, i.e. without the specification of a measurement uncertainty if there are no legal requirements to the contrary. The measurement uncertainties are available in the laboratory and can be requested by the customer. If reporting in a simplified manner is not desired or if a conformity assessment is to be carried out, this must be communicated by the customer in writing in good time before the start of the work. The standard decision-making rules used for conformity assessment can be found here for [GBA Gesellschaft für Bioanalytik mbH \(MV 510-06\)](#), here for Analytikum Umweltlabor GmbH, here for [GBA Analytical Services GmbH \(MV 510 06\)](#), here for Thüringer Umweltinstitut Henterich GmbH, here for [GEOTAIX Umwelttechnologie GmbH](#) and here for Gesellschaft für Lebensmittel- und Umweltconsulting mbH (QMA-V 708-4). If a different decision-making rule is desired, this must be communicated by the customer in writing in good time before the start of the work.

2.7 The test results refer exclusively to the test items specified in the respective test report. No responsibility is assumed for the correctness of sampling if the samples were not taken by or on behalf of GBA. In this case, the results shall refer to the sample as obtained.

### **3. Samples, test specimens, materials: Obligations and ownership**

3.1 Samples, materials and test specimens must be in a condition that allows the contracted services to be performed without problems.

3.2 The customer is obliged to inform GBA of all known hazards and handling instructions in connection with the samples, materials and test specimens. Any health or safety concerns arising from the samples, materials and test specimens shall be indicated in writing. This includes, in particular, concerns regarding known or suspected toxins or other contamination and the suspected level of contamination, as well as risks to property and other legal interests of GBA and its employees and other representatives. If, on the basis of an incoming inspection, it is found that performance of the agreed service by GBA is impossible because of contamination, GBA is entitled to withdraw from the contract or may interrupt performance of the order. In this case, the customer shall bear the costs incurred by GBA up to that point.

3.3 GBA shall be entitled to dispose of or destroy the samples for the preparation and performance of the analysis and to dispose of and destroy the actual samples, materials or test specimens immediately after the performance of the analysis or completion of the work. If the removal or destruction of a sample is subject to special legal requirements (e.g., in the case of hazardous waste or dangerous goods), the customer shall bear all costs incurred in connection therewith. Samples shall not be disposed of or destroyed if their retention is required by law or agreed in writing. If storage is required by law, GBA will store the samples for the prescribed period. At the end of this period, the stored samples will be destroyed unless the customer requests their return at his own expense and risk before expiration. If a specific retention period has been contractually agreed, GBA is entitled to dispose of or destroy the samples without prior notice after its expiration. If the customer requests return or return shipment, GBA will arrange for return at the customer's expense and risk.

3.4 The archiving of all other test-related documents, such as test plan, raw data, test report copy, certificates/calibration proofs of the materials and devices used, documents provided by the customer ('test-related documents') shall be carried out in accordance with the statutory provisions.

3.5 In all other respects, the shipment of samples, materials and test specimens or any other logistical measures by the customer shall be at the customer's risk and expense and shall be carried out by the customer themselves. The customer is required to pack samples, materials and test specimens properly and as instructed by GBA. To the extent that GBA provides assistance in this respect, GBA acts on behalf of the customer.

#### **4. Time limits and deadlines, obligations to cooperate**

4.1 Dates and deadlines are only estimates and do not constitute an obligation; however, GBA will use commercially reasonable efforts to meet dates and deadlines. Dates and deadlines are otherwise binding only if expressly agreed in writing in the individual case.

4.2 The customer shall ensure that all information and documents necessary for the performance of the services are made available to GBA free of charge and in good time. The period for performance shall not commence until the date of our acceptance of the order, but not before complete clarification of all details of performance, insofar as these are necessary for the performance of the order (including test methods, specifications, reference substances, materials to be provided, etc.).

4.3 The agreed deadline for execution of the order shall be extended by the period by which the customer is in default with his contractual (cooperation) obligations or payment obligations, without prejudice to our rights arising from default on the part of the customer and any statutory right of rescission. The same shall apply if a date for execution has been agreed.

#### **5. Prices and terms of payment**

5.1 The prices agreed in the orders shall apply to our services. Unless otherwise agreed in writing, all prices are exclusive of shipping; costs for rush orders and for special packaging are to be paid separately. Our prices are exclusive of statutory value added tax.

5.2 Unless otherwise agreed, payment shall be made without deductions within 10 days of receipt of the invoice and delivery of the work results.

5.3 All our claims shall become due immediately if the terms of payment are not complied with or if we become aware of circumstances which are likely to reduce the creditworthiness of the customer. GBA is also entitled to withhold services from other orders to a reasonable extent and scope. Furthermore, we are entitled to perform outstanding services only against advance payment or to demand appropriate securities and, if the customer finally refuses performance of the contract or the provision of securities or has not performed the service in return or provided securities after a deadline has been set, to withdraw from the contract. The statutory provisions on the dispensability of setting a deadline and the assertion of claims for damages shall remain unaffected.

5.4 The customer is only entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by GBA. Any rights of the customer to set-off or retention are excluded unless they are based on the same contractual relationship. In the event of defects in performance, however, mandatory statutory counter rights of the customer shall remain unaffected.

5.5 Notwithstanding the rights set forth in these GTCs, GBA retains its statutory rights based on the customer's default and due date for payment.

## **6. Performance disruptions and liability**

6.1 The services to be provided by GBA shall be performed in accordance with the current state of the art technology and by applying a commercially reasonable standard of care customary in the industry.

6.2 GBA's services shall be deemed to have been accepted if the customer has not refused acceptance within 10 working days after receipt of transmitted expert opinions, analyses, reports or other delivered services, with reference to a defect that is not merely insignificant and actually exists – or is at least obvious from an objective point of view. In any case, the customer is obliged to verify the validity of the results, interpretations, estimates and conclusions provided by GBA with reasonable care at his own risk if the customer intends to rely on them in matters of significance. He is obliged to inform GBA without delay if the services provided are recognizably incorrect.

6.3 In the event of defects, we shall decide at our own discretion whether we shall provide subsequent performance in the form of rectification of the defect or re-performance of the service. Claims for defects shall become statute-barred within one year from the statutory commencement of the limitation period. For all other claims for damages by the customer, the statutory limitation periods shall apply exclusively.

6.4 Unless otherwise expressly agreed in writing, a contractual relationship exists only between GBA and the customer and no contract is concluded in favor of or with protective effect for third parties.

6.5 The customer undertakes to indemnify GBA against all claims by third parties based on a breach of duty or fault on the part of the customer.

6.6 Unless otherwise provided in these GTCs, GBA shall be liable for breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions. GBA is liable for damages on whatever legal grounds in cases of intent and gross negligence. In the case of ordinary negligence, GBA shall only be liable for damages arising from the breach of a material contractual obligation (an obligation whose proper performance is essential to the proper performance of the contract and on whose performance the contracting party may regularly rely); in this case, however, GBA's liability shall be limited to compensation for the foreseeable, typically occurring damage.

6.7 GBA's liability for damages caused by delay is limited to an amount not exceeding 25% of the net order value, except in the case of intent or gross negligence.

6.8 The foregoing exclusions and limitations of liability shall apply to the same extent in favor of GBA's officers, legal representatives, employees and other agents. They do not apply if GBA has fraudulently concealed a defect or has given an express warranty. The same applies to damages arising from injury to life, limb and health and to claims under the Product Liability Act.

6.9 In the event of exercise of the customer's statutory right of termination pursuant to Section 648 of the BGB (in the case of work performance), in deviation from the statutory presumption, GBA shall be entitled to 10 percent of the agreed remuneration attributable to the part of the work performance not yet performed. The customer reserves the right to prove that the share to which we are entitled pursuant to Section 648 of the BGB is lower than the aforementioned quota.

## **7. Confidentiality and data protection**

7.1 The parties shall treat as confidential all business and operational matters of the other party of which they become aware or which become known to them in connection with the business relationship and which are marked as confidential or where confidentiality results from the nature of the information, in particular business secrets.

7.2 GBA shall use commercially reasonable efforts to keep all work results confidential. This does not apply if claims for payment for work performed have to be proven. We are further authorized to disclose, pass on or make our own use of the findings obtained in the course of our work if we are obliged to do so by law or if the customer expressly releases us in writing from the obligation to maintain confidentiality. In addition, we are authorized to use the results of investigations within the scope of activities performed, in anonymized form and in compliance with data protection regulations, for scientific or statistical purposes, to publish them and to subject them to an independent scientific evaluation, provided that no legitimate interests of the customer known to us are opposed to this.

7.3 All copyrights to the expert opinions, test results, calculations, representations and other test, certification, analysis results ("Work Results") prepared by us within the scope of the services provided to the customer shall remain with GBA. The customer may use the work results only for the agreed purposes, may not modify them, and may make them available only to third parties previously specified in writing. The customer further undertakes not to publish the work results or other confidential information of GBA or to reproduce them (in part). This shall not apply if (i) GBA has given its prior written consent to the publication or (excerpt) reproduction (ii) or if the customer is obliged to disclose such information by law, by the authorities or by a court of law. The customer shall inform GBA of this in advance.

7.4 In the course of fulfilling the order, GBA shall process personal data to the extent necessary. This includes in particular names and business contact details of the customer's contact persons. This data shall be processed exclusively for the intended purpose and used for order fulfillment, invoicing and transmission of analysis results. You can also find more detailed information on this in our information sheet on data collection from customers and in the privacy policy on our website.

## **8. Place of performance, choice of law and place of jurisdiction**

8.1 The place of performance for the obligations arising from this contractual relationship is the registered office of our branch, unless otherwise specified.

8.2 These GTCs as well as the contracts concluded within the scope of these GTCs shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention, CISG) shall not apply.

8.3 The exclusive place of jurisdiction is Hamburg, provided that the customer is a merchant, a legal entity under public law or a special fund under public law. This shall also apply in the event that the customer's place of residence or habitual abode is unknown, is located abroad or is relocated there.

8.4 GBA is also entitled to bring an action at the customer's general place of jurisdiction.

8.5 If the customer is domiciled outside the European Economic Area, the following shall apply in derogation of Sections 8.3 and 8.4: All disputes arising from the contractual relationship between the customer and GBA shall be finally settled by an arbitrator in accordance with the Rules of Arbitration of the German Arbitration Institute (DIS), to the exclusion of the ordinary courts of law. The place of arbitration shall be Hamburg. The language of the proceedings shall be English, unless the parties agree on another language.

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