General Terms and Conditions

1 General - Scope of Application

1.1 These General Terms and Conditions (hereinafter referred to as "GTC ") apply to
(im Folgenden „Geschäftsbedingungen“ genannt) gelten für die Quality Services International GmbH, a company of the Tentamus Group GmbH (hereinafter referred to as QSI).

1.2 Our GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Client only become part of the contract if and to the extent that we have expressly consented to their applicability. This requirement of consent applies in any case, for example even if we perform the Services without reservation in the knowledge of the Client's general terms and conditions.

1.3 Individual agreements made with the Client in individual cases (including ancillary agreements, supplements and amendments) always take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation is authoritative for the content of such agreements.

1.4 Legally relevant declarations and notifications by the Client with regard to the contract (e.g. setting of deadlines, notification of defects, revocation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal formal requirements and further proof, in particular in case of doubts about the legitimacy of the person making the declaration, remain unaffected.

1.5 Our GTC only apply to an entrepreneur within the meaning of Sec. 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

1.6 Within the framework of ongoing business relations, these GTC also apply to subsequent and follow-up orders.

2. Scope of Services - Performance of Services - Subcontractors

2.1 We analyse and/or assess companies, products or other services of trading companies, manufacturers and/or other service providers (hereinafter collectively referred to as "Client") on the basis of national or international rules and methods.

2.2 The agreed Services are to be provided in accordance with the contractual provisions, in accordance with the generally recognised rules of technology at the time of conclusion of the contract and in compliance with the relevant regulations in force at the time of conclusion of the contract.

2.3 We are entitled to determine the method and/or manner of performance ourselves at our reasonable discretion (a) unless otherwise agreed in writing, and (b) to the extent that mandatory regulations do not prescribe a particular method and/or manner of performance.

2.4 Each order relates exclusively to the sample(s) or other service(s) (hereinafter referred to as "Service") handed over to us by the Client or taken by us in each case and is completed with the dispatch of the written examination report on the test results for this Service as determined by us to the Client, unless otherwise agreed in writing. The written test reports reflect our specific opinion on the samples handed over or taken, comment exclusively on these samples and do not make any statements about the rest of the delivery / lot from which the samples were taken.

2.5 We are entitled to have the orders placed with us executed in whole or in part by suitable subcontractors / external contractors carefully selected by us, within or outside the Tentamus Group. If the Client wishes to object to this, this must be done in writing at the time of placing the order. Applicable requirements of the accreditation standard ISO/IEC 17025 must be observed.

2.6 The sample material is partially or completely used up for the analysis. By sending the sample material, the Client offers to transfer ownership of the sample material to us in full. Through our acceptance, the sample goods become our property.

3. Offers - Conclusion of Contracts

3.1 Our offers are always subject to change unless we have agreed otherwise.

3.2 Orders addressed to us are binding offers. Unless otherwise stated in the order, we are entitled to accept this contract offer within 14 calendar days of its receipt by us.

3.3 Acceptance can be declared either in writing (e.g. by order confirmation) or by sending the written test report to the Client.

4. Client's Obligations to Assist and Cooperate

4.1 The Client is obliged to provide all assistance and cooperation required for the provision of the agreed Services without delay, free of charge, completely and correctly; in particular, the Client is obliged in each case in accordance with the specifications described above:

- to provide us with the necessary information, records, documents and data,
- to grant our employees, auditors and vicarious agents bound to secrecy access to the necessary information, records, documents and data and, after prior notification during normal business hours, to grant them or arrange for access to the relevant goods, business premises and buildings, installations, means of transport or other organisational units of the Client,
- to provide special instruments required for the execution of the order,
- to ensure safe working conditions for our employees, auditors and vicarious agents, to the extent they are staying within the Client's sphere of influence, as well as
- to ensure that any obstructions and interruptions to our Services are avoided or removed.

4.2 The Client shall appoint one or more agents to support our employees, auditors and vicarious agents in the provision of the contractually agreed Services and to serve as a contact person for the Client.

4.3 The Client is obliged to notify us in writing of any defects in our Services immediately after the Service has been provided. The Client shall notify us in writing of hidden defects immediately after their discovery.

5. Deadlines - Dates - Force Majeure

5.1 The contractually agreed deadlines and dates for our Services are based on estimates of the scope of work.

5.2 To the extent deadlines and dates have been agreed as binding, they will only begin to run if the Client has duly fulfilled in good time all obligations of assistance and cooperation to be provided in advance. The defence of non-performance of the contract remains reserved.

5.3 If the Client is in default or culpably violates other obligations to assist and cooperate, we will be entitled to demand compensation for related damage incurred by us, including any additional expenses. We reserve the right to assert further claims.

5.4 If the failure to meet a deadline or a set date is due to an event of force majeure, i.e. an unforeseen event over which the affected party has no control and which it cannot avert (e.g. official measures and orders (whether valid or invalid), fire, floods, storms, explosions or other natural disasters, mobilisations, wars, riots, industrial disputes, including strikes and lock-outs, epidemics and pandemics), the party successfully invoking this clause will be relieved of its contractual obligations and of any liability for damages or any other contractual remedy for breach of contract from the time when the impediment causes the impossibility of performance, provided that notice thereof has promptly been given. If the notice is not given promptly, the relief will take effect from the time the notice is received by the other party. If the effect of the alleged impediment or event is temporary, the foregoing consequences will apply only for as long as the alleged impediment impedes the performance of the party concerned. If the duration of the asserted impediment has the effect of substantially depriving the parties of what they could reasonably expect under the contract, either party has the right to terminate the contract by giving notice to the other party within a reasonable period. Unless otherwise agreed, the contract may be terminated by either party if the duration of the impediment exceeds 90 days.

6. Invoicing - Remuneration - Due Date - Set-off - Deterioration of Assets

6.1 If the type of remuneration (e.g. time spent, daily rates, lump sum, etc.) is not stipulated in writing at the time the contract is concluded, invoicing will be carried out in accordance with the type of remuneration stipulated for the respective Service in our price list valid at the time the Services are provided. If no remuneration has been agreed in writing at the time of conclusion of the contract, invoicing will be carried out in accordance with the prices set out in our price list valid at the time of performance of the Services.

6.2 All invoice amounts are due for payment without deduction from receipt of the invoice and sending of the test report, unless otherwise agreed in writing. However, we are entitled at any time, also in the context of an ongoing business relationship, to perform a Service in whole or in part only against advance payment. We shall stipulate a corresponding reservation with the order confirmation at the latest.

6.3 Statutory value added tax is not included in our prices; it will be shown separately on the invoice at the statutory rate on the date of invoicing.

6.4 The Client is only entitled to rights of set-off and retention insofar as his claim has been legally established, is undisputed or has been allowed by us. In the event of defects in our performance, the Client's counter rights remain unaffected.

6.5 In the event that after conclusion of the contract actual indications of a deterioration in the Client's assets exist or other facts justifying the assumption that our claim to consideration is jeopardised by the Client's lack of ability to pay, we will be entitled to demand surety and/or to revoke any payment terms granted. In the event that the Client is not able to provide the required surety within a reasonable period of time, we will be entitled to revoke the contract. Existing claims for Services rendered or for default will remain unaffected.

7. Examination Reports

7.1 We retain all copyrights to the expert opinions, test results, calculations, presentations, etc. (hereinafter collectively referred to as "Result Reports") prepared by us within the scope of the Services rendered to the Client.

7.2 To the extent the Client has a claim to the release of Result Reports, the Client may only use these test materials for the agreed intended purpose and is on no account permitted to modify them. The complete or partial publication of the Result Reports requires our prior written consent.

7.3 If a contract contains a respective obligation, we shall retain test materials to the extent and for the periods stipulated in the respective contract.

7.4 We shall keep retained samples (cf. section 2.4) for a maximum of 2 months after completion of our Services, provided they are storable for such a long period and unless otherwise agreed in writing or required by law. After this period we are entitled to destroy or dispose of the retained samples.

7.5 If a statement of conformity is made, it is based on the following decision-making rule, unless the contracting entity notifies a contrary rule or there are other legal or standard requirements. The assessment of conformity is carried out in borderline areas without consideration of the measurement uncertainty. The expanded measurement uncertainty is either stated in the test report with an indication of the confidence interval and the coverage factor, or will be available upon request.

8. Statute of Limitation

Provided that the statutory requirements for claims based on material defects and defects of title are fulfilled and these GTC do not preclude any claims for defects, claims for defects become statute-barred one year after commencement of the statutory limitation period. The above limitation period also applies to contractual and non-contractual claims for damages based on a defect. Claims for damages by the Client pursuant to section 9.1 sentence 1 and 9.1.1, in case of claims under the Product Liability Act and claims based on the fraudulent concealment of a defect become statute-barred in accordance with the statutory provisions.

9. Liability

9.1 Within the scope of fault-based liability, we are liable - irrespective of the legal grounds - without limitation in case of intent and gross negligence. In the event of simple negligence, we are liable, subject to statutory limitations of liability (e.g. diligence in own affairs; insignificant breach of duty), only in the following cases:

9.1.1 damages resulting from injury to life, body or health (unlimited liability),

9.1.2 damages arising from the breach of a material contractual obligation (an obligation whose fulfilment is essential for the proper performance of the contract and on whose fulfilment the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the typically foreseeable damage.

9.2 The typically foreseeable damage for the type of contract within the meaning of 9.1.2 above amounts to 1.000.000 EUR.

9.3 In all other respects, liability is excluded.

9.4 The limitations and exclusions of liability also apply in favour of our vicarious agents and legal representatives. They do not apply if a defect has been fraudulently concealed or a guarantee for the quality of an item has been given or in the case of liability under the Product Liability Act.

9.5 With respect to a breach of duty that is not a defect, the Client may only revoke or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Client (in particular according to Sec. 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences apply.

10. Confidentiality

10.1 The parties undertake to regard all mutually received information as "confidential information" and treat it as strictly confidential, to use it exclusively on the basis of and in accordance with the order and to secure it against unauthorised access by third parties.

10.2 We do not use the Client's confidential information for any purpose other than the provision of the Services owed by us, unless the Client has consented in writing to such other use. Section 10.7 remains unaffected.

10.3 The parties will only disclose confidential information of the other party to such employees and agents for whom the disclosure of or access to the confidential information is necessary for the performance of their services and who are, to the extent permitted by labour law, bound to secrecy in this respect.

10.4 The confidentiality obligation applies beyond the duration of the assignment.

10.5 The confidentiality obligation pursuant to this section 10 does not apply to knowledge and information a) which at the time of their communication to the party obliged to maintain confidentiality have already been in the public or general domain or state of the art or which have already been known to this party without any breach of a confidentiality obligation; b) which were obtained by this party itself without using or referring to confidential information of the other party; c) which subsequently become public or generally known or state of the art without the party obliged to maintain confidentiality being at fault; d) which is disclosed or made accessible to the party obliged to maintain confidentiality by a third party authorised to do so; e) where the party from which the confidential information originates has consented to its disclosure, communication or making available to third parties.

10.6 An obligation to maintain confidentiality pursuant to this section 10 does also not exist in the following cases: a) the party obliged to maintain confidentiality is ordered by a court or official authority to disclose confidential information or is legally obliged to do so. In the event of a court or official order, it shall (as far as legally possible and practicable) inform the other party in advance so that it is given the opportunity to take legal action against the court or official order; b) if there is a reasonable suspicion that personal injury or damage to property could be caused by a product for which we have provided Services commissioned by the Client; c) vis-à-vis inspection authorities, to the extent there is a legal obligation to do so; d) if it is regulated in these GTC or otherwise agreed that there is no obligation of confidentiality.

10.7 We are entitled to use, publish and subject to an independent scientific evaluation the results of analyses, which have been obtained by us within the scope of Services performed, in anonymous form for scientific or statistical purposes, in compliance with data protection, provided that no legitimate interests of the Client known to us are opposed to this.

11. Data Protection

11.1 To the extent that the parties process personal data in connection with the execution of the order, they shall comply with the respective applicable data protection provisions, in particular the provisions of the General Data Protection Regulation (GDPR).

11.2 The parties shall each determine the purposes and means of the processing of personal data described in section 11.1. In this respect, they are independent data controllers within the meaning of Article 4 No. 7 GDPR.

11.3 The Client is obliged to inform its employees of the data processing performed by us.

12 Place of Performance - Place of Jurisdiction - Applicable Law

12.1 The registered office of our company is the place of performance for all rights and obligations arising from our Services.

12.2 If the Client is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Bremen. The same applies if the Client is an entrepreneur as defined by Sec. 14 BGB. However, in all cases we are also entitled to bring an action in accordance with an overriding individual agreement or at the general place of jurisdiction of the Client. Overriding statutory provisions, in particular on exclusive jurisdiction, remain unaffected.

12.3 The contractual relationship is governed by the laws of the Federal Republic of Germany to the exclusion of the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

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Translations of these GTC from German into other languages are purely a service. In the event of any differences or contradictions between the language versions or in the event of questions of interpretation, the German wording takes precedence.