



General Terms and Conditions (GTC)

for all deliveries and services of the IFA Proficiency Testing Scheme (IPS)

1. Applicability

1.1. These General Terms and Conditions (GTC) shall apply to all deliveries and services which the University of Natural Resources and Life Sciences (BOKU), Department of Agrobiotechnology (IFA-Tulln), Institute of Bioanalytics and Agro-Metabolomics carries out in connection with the commercial operation "IFA Proficiency Testing Scheme (IPS)" for participants in interlaboratory comparisons.

1.2. Any differing terms and conditions or derogations from these GTC shall be valid only if differing conditions have been agreed between the participant and BOKU-IPS in writing in a specific case/expressly acknowledged in writing by him/her in a specific case.

2. Offer, Placing of Orders

2.1. Offers from BOKU-IPS shall be subject to change unless the offer states a commitment period. A contract shall come into existence by written acknowledgement of order from BOKU-IPS.

2.2. If the offer states a commitment period, the contract comes into existence within this period upon BOKU-IPS's receipt of the signed declaration of acceptance (or the completed registration form). Any declaration of acceptance (or registration form) received after expiry of the period shall require a separate written acknowledgment of order from BOKU-IPS.

2.3. Only written agreements shall be binding on the parties. Verbal statements, details contained in catalogues, brochures, event programmes and the like shall only be subject matter of the contract if confirmed in writing.

2.4. Silence on the part of BOKU-IPS to any documents whatsoever sent by the participant shall constitute no approval of any general terms and conditions differing from these GTC. Rather the participants' acceptance of the offer shall be considered acceptance of these GTC.

3. Execution of interlaboratory comparisons

3.1. An interlaboratory comparison shall only take place if the minimum number of participants fixed by BOKU-IPS in each case is reached.

3.2. If the minimum number of participants is not reached, participants who have already registered shall not be entitled to performance of the interlaboratory comparison. Registered participants shall be informed of the fact that it will

not take place and shall be given a new non-binding proposed date, if technically feasible.

3.3. BOKU-IPS shall treat as confidential all results developed by the participants in connection with the interlaboratory comparison as well as the encoded analysis of these results.

4. Changes in service / Delays

If in the course of performance of the contract circumstances are noticed that may put at risk or delay performance or fulfilment of the purpose of the contract, BOKU-IPS shall immediately inform the participant and present to him/her any measures and/or proposals for changes including the related consequences in terms of technical contents, time and money. The contracting parties shall mutually agree on the further steps to be taken.

5. Submission deadlines

5.1. Submission deadlines (dates for dispatch of the samples / delivery by BOKU-IPS, deadline for submission of the results by the participants, among others) shall be agreed in writing.

5.2. If deadlines are not met (delay in delivery) for reasons for which BOKU-IPS is not responsible, the provisions of Clause 5.4. of these GTC shall be applied *mutatis mutandis*.

5.3. If deadlines are not met (delay in delivery) by BOKU-IPS for reasons for which BOKU-IPS is responsible, the participant shall grant BOKU-IPS a reasonable grace period of at least 30 days. Any claims for damages of the participant resulting from a delay in delivery for reasons for which BOKU-IPS is responsible shall be excluded to the extent permitted by law.

5.4. In the case of delays caused directly or indirectly by force majeure, BOKU-IPS shall be entitled to suspend performance of the contract for the duration of the impediment and a reasonable start-up period or

5.4.2. terminate the contract in whole or in part.

5.5. If performance of the contract is delayed due to force majeure for more than three months, also the participant shall be entitled to rescind the affected part of the contract.

5.6. The deadline for submission of the results agreed in writing in accordance with Clause 5.1. of these GTC shall be binding on the participants. No results received after the submission deadline will be taken into consideration for the analysis.

5.7. The ordered services and deliveries shall be deemed rendered upon provision of the analysis (encoded analysis of the results/interlaboratory comparison samples) by BOKU-IPS.

6. Payment

6.1. Unless otherwise agreed payments shall be made by the participants within 30 days of receipt of the invoice.

6.2. If the participant is late in making an agreed payment, BOKU-IPS may

6.2.1. charge late payment interest at a rate of 6 percentage points above the base interest rate of the Austrian Central Bank [OeNB] (the base rate applicable on the last day of a half year being relevant to the next half year);

6.2.2. invoice all costs resulting from such delay, including but not limited to dunning charges and lawyer's fees.

6.3. The participant shall not be entitled to withhold payments or offset those claims against counterclaims (e.g. based on warranty claims).

7. Early termination of the contract

7.1. Both parties shall be entitled to rescind the contract in whole or in part only for cause. In addition to the grounds stated elsewhere in these GTC and notwithstanding other (including statutory) grounds, causes shall include but not be limited to situations where the other party persistently and repeatedly fails to fulfil its contractual obligations.

7.2. In the case of early termination of the contract BOKU-IPS shall be entitled to payment for services already rendered. The right to claim additional damages shall be reserved.

7.3. Any statement in the course of termination of a contract shall be made in writing by registered letter.

8. Secrecy and data protection

8.1. The contracting parties shall maintain secrecy about information of any kind which they have disclosed to each other and described as confidential, unless provided otherwise in these GTC or the contract.

8.2. This shall not apply to information which

8.2.1. is already in the public domain or which becomes publicly known later with no fault of the parties, or

8.2.2. is known or becomes known to third parties who are not bound by a promise to maintain secrecy, or

8.2.3. has been known to the party who is under the obligation to maintain secrecy even before this obligation to maintain secrecy, or

8.2.4. is disclosed to the party who is under the obligation to maintain secrecy by third parties after conclusion of the contract with no direct connection to the contractual relationship, or

8.2.5. becomes known to the contracting party who is under the obligation to maintain secrecy or his/her/its staff through their own development or research work or through other activities without use of any trade or business secrets of the other party.

9. Warranty and liability

9.1. If the service rendered by BOKU-IPS does not objectively comply with the contract in terms of type, contents or scope, BOKU-IPS shall conduct a free repeat interlaboratory comparison if technically feasible. In the case of samples the participant shall only be entitled to demand improvement or delivery of missing parts; any other warranty claims shall be excluded.

9.2. The warranty period shall be three months from delivery/rendering of the service. BOKU-IPS shall repair proved defects without any additional entitlement to remuneration within a reasonable period of time.

9.3. Warranty claims may only be asserted in court within three months of expiry of the period fixed for repair of defects; otherwise they shall be excluded. If no period was fixed, the warranty period shall end one year after dispatch of the request to repair the defect(s).

10. Damages

10.1. BOKU-IPS shall not be liable for damage caused to the participant or third parties in connection with use of the services rendered and/or results delivered, provided that the contract was performed in accordance with the state of the art.

10.2. Apart from that, BOKU-IPS shall only be liable for damage caused by wilful intent or gross negligence. Liability for indirect damage shall be excluded.

10.3. Irrespective of the legal ground, BOKU-IPS's total liability shall be limited to the amount of the agreed net contract value.

10.4. Claims for damages by the participant vis-à-vis BOKU-IPS shall become statute-barred six months after knowledge of the damage and the party who caused the damage and in any case three years after provision of the analysis (cf. Clause 5.7. of these GTC).

11. Severability clause

If any provision of these GTC is or becomes legally ineffective, the effectiveness of the remaining provisions of these GTC shall not be

affected. To the extent permitted by law, the ineffective provision shall be replaced by an effective provision which is permitted by law and comes as close as possible to the purpose of the ineffective one. The same shall apply in the case of gaps.

The German version of the wording of this GTC shall be decisive for interpretation of the same.

12. Place of jurisdiction and applicable law

12.1. All disputes arising out of or in connection with contracts to which these GTC apply, including the issue of valid conclusion, nullity and its pre-contractual and post-contractual effects, shall be governed by Austrian law; the conflict of laws rules of private international law shall be excluded.

12.2. The court in Vienna having local jurisdiction and jurisdiction over commercial matters shall be the legal venue.

Last revised: 3 September 2019