

Eurofins

General Terms & Conditions of Sale



1.0 Area of Application

1.1 All Orders accepted by "[Eurofins Miljø A/S CVR no 28848196, Eurofins Pharma A/S CVR no 29428689, Eurofins Steins Laboratorium A/S CVR no 62225319 and Eurofins Product Testing CVR no 26511437] (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 and orders made by delivery of samples. A contract with these Terms and Conditions comes into being when an order that has been placed with ES 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 are valid for all agreements between the parties any deviations must be agreed in writing and specifically between the parties, other provisions of these Terms and Conditions will in that case remain in force between the parties. No officer (other than the Chief Executive Officer 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 Chief Executive Officer of ES.

2.0 Placement of Order

2.1 A customer's order will be valid only if it is sent by mail or fax or other electronic message on letterhead of the customer or by using ES-approved sample dispatch sheets or electronic order forms and 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 immediately after they are made and will be deemed to have placed an order if the customer sends samples to ES quoting the customer reference. ES is not obligated to start any analytical work unless the order is clear and it has been provided all required information.

2.2 Unless specifically accepted in writing and signed by the Chief Executive Officer 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 as a material alteration of these Terms and Conditions 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. Unless a separate contract is made between the parties 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 in connection with the request for additional services to an existing order. A request for additional services on samples that have entered the laboratory may postpone estimated delivery date accordingly.

2.4 Any logistic service off-site of the laboratory must be paid in full, unless it has been cancelled or modified by the customer at least forty eight hours (48) in advance for collection services, ninety six (96) hours in advance for sampling services and one (1) week in advance for auditing services. For customers where off-site logistic service is included in the by ES offered price the cancellation policy is still valid.

3.0 Price and Terms of Payment

3.1 If the acknowledgment of an order does not state otherwise ES' prices apply "ex works"(meaning excluding packaging, logistic etc.). 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 all applicable taxes (including sales, use and VAT) 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 15 days of the invoice date. Any dispute about invoices must be raised within 30 days of the invoice date. The challenge of an analytical result will not entitle a customer to defer payment. Any invoice which remains outstanding after due date, may be additionally charged with an administrative penalty of 100 DKK and may carry interest at the rate of one percent (1%) per started month.

3.4 Invoices can be subject to a minimum invoice charge of 500 DKK. ES has the right to charge an invoice fee and charge an administrative fee of up to 50 DKK when re-issuing an invoice.

3.5 The invoice settlement method is bank transfer, checks or direct debit. Any other method of payment must receive prior agreement from ES. The customer undertakes to provide bank account details.

3.6 ES is entitled to require prepayment as a condition of acceptance.

3.7 Environmental technical measurements and analyses are added an environmental control charge per sample.

4.0 Duties of Customer in Delivering Samples or Materials

4.1 The samples or materials must be in a condition that makes the preparation of reports/analyses or the production of ordered products possible without difficulty. ES is entitled to conduct an initial examination of the samples condition before processing the samples, drawing up a report or using them in production. The customer shall bear the costs of this initial examination, if the samples or materials do not comply with the requirements described in this clause 4.1. If the result of the initial examination is that an analysis or production is impossible or is possible only under more difficult conditions than originally anticipated – for example, because the samples or materials have been interspersed with foreign materials or substances that were not reported by the customer or are degraded – ES shall be entitled to terminate or interrupt the order and the customer shall bear costs incurred by ES to that point.

4.2 The customer must ensure, and hereby warrants, that no sample poses any danger, including on its site, during transportation, in the laboratory or otherwise to ES premises, instruments, personnel or representatives. It is the customer's responsibility to insure compliance with hazardous waste regulations, including regarding information, transportation and disposal and to inform ES personnel or representatives about sample health and safety concerns, including any known or suspected toxic or other contaminant that may be present in the sample and its likely level of contamination as well as the risks to ES premises, instruments, personnel and representatives related to the contamination. The customer shall be responsible for, and indemnifies ES against, all costs, damages, liabilities and injuries that may be caused to or incurred by ES or its personnel or representatives including on the sampling site, during the transportation or in the laboratory by the customer's sample or by sampling site conditions. The customer shall bear all extraordinary costs for adequate disposal of hazardous waste resulting from the sample, whether or not described as hazardous waste.

5.0 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. Unless the customer pays for storage or otherwise required by accreditations body, ES shall have no obligation or liability for samples sent to ES for storage, including samples requiring refrigeration. If the customer pays for storage, ES will take commercially reasonable steps to store the samples, according to professional practice.

5.2 ES can dispose of or destroy samples immediately after the analysis has been performed, unless ES and the customer have agreed in writing on the terms of ES' retention of the sample. ES also can dispose of or destroy the samples after the agreed upon retention period, without further notice. If the customer requests the return of unneeded sample material, ES will return them to the customer, at the customer's cost and risk.

6.0 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 Results are generally sent by mail, email, or via other electronic means, to the attention of the persons indicated by the customer in the order, promptly after the analysis is completed.

7.0 Transfer of Property

7.1 The property right of any analysis results, 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. 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 analysis results in an anonymous form under the conditions that it does not identify the customer and that the rights of the customer is at all times respected. Paragraph 7.2 does not apply for Eurofins Pharma A/S' customers.

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8.0 Limited Warranties and Responsibilities

- 8.1 Orders are handled in the conditions available to ES in accordance with the current state of technology and methods developed and generally applied by ES and ES can't be held liable for damages, which at the time of delivery of the service or finishing of the product by means of available knowledge or techniques could not be foreseen.
- 8.2 Each analytical report relates exclusively to the sample analyzed by ES. If ES has not expressly been mandated and paid for the definition of the sampling plan (including which samples of which raw materials and finished products and at which frequency should be analysed) and the definition of the precise range of analysis to be performed or if the customer has not followed ES recommendations, ES shall not bear any responsibility if the sampling plan and/or the range of analysis to be performed prove to be insufficient or inappropriate.
- 8.3 The customer is responsible for the proper delivery of samples sent to ES for examination/analyses or materials sent for production. The customer will at all times be liable for the security, packaging and insurance of the sample from its dispatch until it is delivered to the offices or the laboratories of ES. ES will use commercially reasonable care in handling and storing samples. In case ES is paid for the logistic service from the customer to the offices or laboratories of ES, ES liability is limited to the in section 9.9 mentioned liabilities.
- 8.4 The customer must if the samples are dangerous or otherwise harmful in writing notify ES prior to dispatch of the sample and ensure appropriate labelling on packaging, samples and/or containers. The customer undertakes to indemnify ES for any losses, injuries, claims and costs which ES, or its personnel, may suffer as a result of any sample not being in a safe or stable condition, notwithstanding that the customer may have given an indication on the sample or any order form of any perceived problem with the sample.
- 8.5 Unless explicitly agreed in writing by all parties, the contractual relationship shall be exclusively between the customer and ES. There shall be no third party beneficiary or collateral warranty relating to any order and 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.

9.0 Limitation of Liability

- 9.1 In accordance with the Danish law ES shall be liable for errors or negligence on the part of ES in connection with production or performance of a task, however, with the limitations specified in clauses 9.2-9.11.
- 9.2 ES shall only be liable for the clients' direct and immediate loss with the limitations specified under clause 9.5 and shall thus not be liable for any loss of production, loss of profit, or other consequential damages.
- 9.3 ES shall not be liable for delays in connection with performance of assignments for a client.
- 9.4 If ES' work is not concluded with a report or delivery of a service, or if the service consists of a statement, about which it is written that the statement is based on an evaluation or assessment, ES shall not be liable for any loss or damage, regardless of it being substantiated that the loss or damage is due to errors or negligence on the part of ES. ES shall not be liable for any form of damages and losses by the client or third party if actions have been based upon a preliminary result given by ES.
- 9.5 ES 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 in all cases (whether arising under contract, tort, negligence, strict liability, through indemnification or otherwise) be limited to the lesser of:
- (i) the direct and immediate loss or damage caused by the ES in connection with the performance of the order and
 - (ii) 2 500 000 DKK.
- For services where the sample has been taken by the client and sent to ES without further information regarding the context in which the results shall be applied, damages shall not exceed the invoiced amount by more than 20 times.
- 9.6 ES is only liable if ES has received written notice as soon as possible and no later than 30 days after the date of the customer's knowledge of a possible compensation claim towards ES. ES shall not be held liable for damages or losses that have not been claimed in writing within 3 years after the handing over of a service or a product, on which the liability is based. Regardless of the 3 years time limit ES shall not be held liable for damages, which at the time of delivery of the service or finishing of the product by means of available knowledge or techniques could not be foreseen.
- 9.7 ES shall not be liable for any indirect, direct or consequential loss or damage (including, but not limited to, loss of business, profits, goodwill, and business opportunities or similar) incurred by any third party.
- 9.8 ES shall not be held liable for damages due to application of ES' consultant services, testing or control reports, if the application is beyond the scope of the assignment given to ES or if not comprised by the purpose defined.

- 9.9 In connection with the returning of received samples or material the liability of ES shall not exceed the value of the received samples or material, and limited to 10000 DKK.
- 9.10 If a third party during lawsuit claims compensation from ES, the client shall be under the obligation to take over the conducting of the case, if ES puts forward this demand.
- 9.11 ES shall not be held liable if the expected results are not obtained, if the assignment given to ES by the client comprises development work.

10.0 Repeated Analysis

- 10.1 Objections to test results can be made within thirty (30) days after the customer receives the results. However, unless it would appear that the results of the repeated analysis do not match those of the first one, the customer shall bear the costs of the repeat testing or review. Furthermore, a repeated analysis will be possible only if ES has a sufficient amount of the original sample on hand when it receives the customer's objection and if the sample is suitable for reanalysis. Otherwise the customer will be required to pay all costs, including sampling, transportation, analytical and disposal costs for the repeat analysis.

11.0 Force Majeure

- 11.1 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.

12.0 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, in compliance with applicable law.
- 12.2 ES shall use commercially reasonable efforts to keep all analysis 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.

13.0 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 testing 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 exhaustive.
- 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.
- 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.

14.0 Governing Law/ Jurisdiction

- 14.1 Disputes shall be settled in accordance with Danish Law, excluding Danish conflict of law rules (no renvoi).