

BioAnalyt GmbH | General Terms and Conditions of Business

Version July 2019

1 General | Scope

- 1.1 These General Terms and Conditions of Business (these "GTCB") set out the arrangements for all sales and/or services contracts between BioAnalyt GmbH, Rheinstraße 17, 14513 Teltow, Germany (Local Court of Potsdam, HRB 12621) ("BioAnalyt") and its contract partners ("Customers").
- 1.2 These GTCB shall apply to contracts between BioAnalyt and Customers who are entrepreneurs (*Unternehmer*) within the meaning of § 14 German Civil Code. They shall form an integral part of every contract entered into between BioAnalyt and Customer, except as otherwise agreed on a case-by-case basis.
- 1.3 These GTCB in the version currently applicable from time to time shall also apply to future contracts between BioAnalyt and such Customer without BioAnalyt needing to draw attention to these GTCB in each single case. They shall be deemed to be confirmed by Customer at the latest when BioAnalyt performs its contractual obligations.
- 1.4 These GTCB shall apply to the exclusion of all others. Any terms and conditions of Customer which deviate from, conflict with or supplement these GTCB shall only become part of the contract if BioAnalyt agrees to their applicability in writing (text form / simple e-mail not sufficient).
- 1.5 Except as otherwise expressly provided for in these GTCB, legally relevant declarations and notifications by Customer and/or BioAnalyt subsequent to the conclusion of a contract, including but not limited to the setting of deadlines, warnings and reminders and declarations of rescission, shall be made at least in text form to be valid; a simple e-mail shall suffice if not provided otherwise in these GTCB.

2 Products | Services | Conclusion of a Contract

- 2.1 BioAnalyt offers portable nutrition measuring devices, technical accessories, extraction vials, software and other products as presented inter alia on BioAnalyt's website from time to time (the "Product(s)").
- 2.2 In addition, BioAnalyt may provide services (e.g. consultancy, installation, maintenance, software support or training services) if expressly agreed with Customer (the "Services"). Any Services shall be services within the meaning of §§ 611 et seqq. German Civil Code (*Dienstleistungen*). Works within the meaning of §§ 631 et seqq. German Civil Code (*Werkleistungen*) shall be provided by BioAnalyt only if expressly agreed in writing (text form / simple e-mail not sufficient).
- 2.3 BioAnalyt's offers (including any quotes) are not binding. By placing an order with BioAnalyt (an "Order"), Customer makes a binding offer to enter into a contract for the purchase of Products and/or Services as specified in such Order. Any order shall be placed by Customer in writing (text form / simple e-mail not sufficient) in order to be valid.
- 2.4 Only upon BioAnalyt expressly confirming Customer's Order (the "Order Confirmation"), a binding contract between BioAnalyt and Customer comes into effect for the purchase of Products and/or Services as specified in such Order Confirmation.

3 Delivery of Products | Retention of Title

- 3.1 BioAnalyt shall provide the Products in accordance with the relevant INCOTERMS as agreed in an Order Confirmation (the "Delivery"). BioAnalyt shall be allowed to make partial Deliveries (*Teillieferung*). Any Delivery times shall be non-binding, unless expressly agreed otherwise in writing (simple e-mail not sufficient).
- 3.2 BioAnalyt shall not be responsible for impossibility or delays of Delivery caused by force majeure or other acts beyond the reasonable control of BioAnalyt such as natural disasters, war, civil unrest, strikes or other labor disputes and revocation of export/import licenses. BioAnalyt shall also not be responsible

for delays caused by Customer, in particular, if Customer does not take such actions that would otherwise be necessary for the proper customs clearance and other import facilitating activities.

- 3.3 Customer shall bear all import taxes, license fees, permit fees, customs fees, handling fees or registration fees and any other costs and charges related to the Delivery. Customer shall comply with all statutory and/or official regulations, laws, instructions or decisions which affect Delivery.
- 3.4 Customer shall be responsible for any and all governmental approvals necessary and/or required, in Customer's country or in any other country where Customer intends to ship or use the Products, for the import, marketing, distribution, and sale of the Products as labelled, packaged and presented for sale.
- 3.5 BioAnalyt retains title in the Products (*Eigentumsvorbehalt*) until full payment of the prices (including VAT, if any) for the respective Products. Customer shall not be entitled to resell any Products which are under retention of title, except with BioAnalyt's prior written consent (text form / simple e-mail not sufficient).

4 Prices and Fees | Expenses | Payment Terms | Limitation of Right of Set-off and Retention

- 4.1 Customer shall pay to BioAnalyt the prices for Products and/or fees for Services as stated in the Order Confirmation. Any prices shall be net, i.e. exclusive of VAT.
- 4.2 BioAnalyt reserves the right to request advance payment for ordered Products and/or Services, in particular, if Customer has not paid previous invoices of BioAnalyt within the agreed payment terms for at least two (2) times or in other cases of justified doubts with respect to Customer's solvency or creditworthiness.
- 4.3 BioAnalyt shall invoice the amounts payable by Customer either in advance (in case of advance payment) or upon Delivery of the Products and/or receipt of the Services, as the case may be.
- 4.4 BioAnalyt may change the prices for Products and/or Services with effect for the future at BioAnalyt's own discretion and shall notify Customer of such change. Such change of prices shall not affect the prices and fees contained in an Order Confirmation.
- 4.5 Expenses of BioAnalyt's personnel providing training and other Services such as accommodation and travel expenses and material provided by BioAnalyt shall be charged separately at cost and in addition to the fees for such Services.
- 4.6 Customer shall pay invoices within thirty (30) days after receipt of an invoice to the account designated by BioAnalyt therein. If Customer fails to pay invoices within such period, Customer shall be automatically in default and shall pay interest and/or a lump sum in accordance with § 288 German Civil Code.
- 4.7 Customer may only invoke set-off and assert a right of retention (in particular with regard to the Products including Rental Products) to the extent that its claims have been finally established by a court of law, are uncontested or have been acknowledged by BioAnalyt.

5 Inspection of Products | Warranty | Disposal of Products

- 5.1 The warranty obligations of BioAnalyt (*Gewährleistung*) shall be as set forth under German statutory law.
- 5.2 Promptly upon Delivery, Customer shall inspect the Products for defects. Customer shall notify BioAnalyt of Product defects within (a) seven (7) working days from the date of Delivery of the Products with regard to recognizable defects of a Product or (b) seven (7) working days from the discovery of any hidden defect. If no such notice is received by BioAnalyt, the Product shall be considered free from defects and approved by Customer.
- 5.3 Product and/or Services descriptions, illustrations, marketing material contained e.g. in BioAnalyt's website or catalogues given to Customer as well as details given to Customer regarding measurements, content of Products and/or Services or other characteristics do not constitute guarantees (*Garantien*) or

agreements on certain specifications (*Beschaffenheitsvereinbarungen*). In order to be valid, an agreement on a guarantee requires the written confirmation of a director of BioAnalyt (text form / simple e-mail not sufficient).

- 5.4 BioAnalyt shall rectify defects in the Products (*Mängelbeseitigung*) by remedying the defect (*Nachbesserung*) or by replacing the defective Product (*Nachlieferung*) at BioAnalyt's choice. Defective Product may no longer be used by Customer or any other third party without the consent of BioAnalyt and shall be returned to BioAnalyt upon BioAnalyt's request. In any case, BioAnalyt shall not be obliged to replace Products which (a) are not returned by Customer in their original packaging and/or (b) have exceeded their shelf-life.
- 5.5 The limitation period for claims for defects by the Customer is six (6) months from Delivery of the Products. This limitation period shall also apply to claims arising from tortious acts based on a defect in the Products.
- 5.6 Claims of the Customer other than claims based on defects of the Products, in particular claims based on breaches of ancillary obligations, pre-contractual liability or tort, shall become time-barred two (2) years after the commencement of the statutory limitation period.
- 5.7 Notwithstanding BioAnalyt's obligations under Clauses 5.1 to 5.4, BioAnalyt and Customer may agree on additional maintenance of Products to be provided by BioAnalyt against the payment of fees as agreed in the Order Confirmation.
- 5.8 Customer shall be solely responsible for the proper disposal of Products (including but not limited to the disposal of any extraction vials) after their use in full compliance with the applicable local laws and regulations (e.g. the German Recycling Act – *Kreislaufwirtschaftsgesetz, KrWG*).

6 Special Provisions for Rental Use

- 6.1 BioAnalyt may, in BioAnalyt's sole discretion, offer Customer the option to rent the Products (excluding any extraction vials) by way of an Order Confirmation (such Order Confirmation a "Rental Confirmation").
- 6.2 Customer may use the Products granted for rental use (the "Rental Products") during the period of time set forth in the respective Rental Confirmation (the "Rental Period"). Customer shall pay a monthly fee for the rental use during the Rental Period as agreed in the Rental Confirmation. BioAnalyt shall invoice the amounts payable by Customer on a monthly basis or as a total in accordance with Clause 4.
- 6.3 Delivery of Rental Products shall be as set out in Clause 3. Rental Products shall remain the sole property of BioAnalyt at any time, unless purchased by Customer in accordance with the following provisions.
- 6.4 During the Rental Period, Customer may request the purchase of the Rental Products by placing a respective Order. Customer shall issue such Order at least ten (10) working days prior to the end of the Rental Period.
- 6.5 If Customer does not intend to purchase the Rental Products or if BioAnalyt decides not to confirm Customer's Order for such purchase, Customer shall return all Rental Products to BioAnalyt immediately after the end of the Rental Period. Customer is solely responsible for and shall bear all risk and costs of such return including any shipping costs, taxes, fees or charges.
- 6.6 With regard to Rental Products, any no-fault liability of BioAnalyt for the existence of initial defects under § 536a (1) German Civil Code shall be excluded (*Ausschluss verschuldensunabhängiger Haftung für anfängliche Mängel*).

7 Intellectual Property Rights | Software License

- 7.1 All intellectual property rights to and in the Products and/or Services such as copyright, patent rights, know-how or design rights or other intellectual property rights shall remain with BioAnalyt or the respective owners.

- 7.2 If and to the extent the Products and/or Services consist of software (the "Software"), Customer shall, upon full payment of the prices for the Products, have the non-exclusive, non-transferable and non-sublicensable right to use any Software and any updates and upgrades thereto (if any) within the scope and in accordance with the relevant contract and these GTCB, including the right to use, access, display and run the Software on compatible devices. If the Software is provided with internet-based functionalities, BioAnalyt reserves the right to discontinue any such functionalities at any time. Under no circumstances shall Customer be entitled to obtain the source code of the Software.
- 7.3 Customer shall not cause the decompiling, disassembly, or reverse engineering of any part of the Products and/or Services (including any software components), or attempt to discover operational mechanisms of the Products and/or Services or modify, adapt, translate, reproduce, duplicate, copy, or create derivative works based on all or any part of the Products and/or Services (including any software components).
- 7.4 Customer may not obtain protection for or register (a) trademarks, trade names or other designations of BioAnalyt, (b) such trademarks, trade names or other designations which are identical or similar to those of BioAnalyt, or (c) intellectual property rights in the Products and/or Services. Accordingly, Customer is likewise not entitled to adopt and register the aforesaid designations and/or intellectual property rights as part of its business name or domain name in any register or certification center. In particular, Customer is prohibited from using indications, symbols, advertising slogans or other designations belonging thereto or from using trade or business secrets of BioAnalyt or know-how of BioAnalyt for any products other than Products or for other sales systems.
- 7.5 In the event that third parties make a claim for alleged infringement of intellectual property rights in the Products and/or Services which is the responsibility of BioAnalyt, BioAnalyt may at its option and expense (a) change or exchange the Products and/or Services so that intellectual property rights of third parties are no longer infringed; or (b) obtain the relevant use right which corresponds to the objectives of the relevant contract or is otherwise adequate.
- 7.6 Customer is obliged to inform BioAnalyt at the earliest possible time if a third party alleges or claims in or out of court an intellectual property right with regard to the Products and/or Services. Prior to the acknowledgement of any such claim of an alleged infringement of intellectual property rights, BioAnalyt shall be given the opportunity to state its position. On request, BioAnalyt is to be given authority to conduct negotiations or the legal dispute with the third party for its own account and in its own responsibility.
- 7.7 If Customer is in culpable breach of its obligations under this Clause 7, it is liable to BioAnalyt for the damage thereby caused.
- 7.8 Customer acknowledges and agrees that BioAnalyt may collect and use anonymized technical information of the Products and/or Services for debugging, troubleshooting and product improvement purposes.

8 [Confidentiality | Use of Company Details | Data Protection](#)

- 8.1 Customer undertakes to always maintain confidentiality regarding all information of which Customer becomes aware in connection with the relevant contract which is either clearly identified as constituting commercial or business secrets of BioAnalyt or is to be regarded confidential due to its content, including the terms of any contract between BioAnalyt and Customer and these GTCB and information contained in the Products and/or Services, (collectively "Confidential Information") and Customer shall not record, pass on or otherwise utilize any Confidential Information except as required to achieve the purpose of the respective contract. Customer shall ensure by means of appropriate agreements with its employees and agents that these persons shall also be subject to the foregoing confidentiality undertaking.

- 8.2 At any time upon BioAnalyt's request, Customer shall return to BioAnalyt or demonstrably destroy all Confidential Information provided to it by or on behalf of BioAnalyt, any copies thereof and any documents and files containing such Confidential Information.
- 8.3 BioAnalyt and Customer are obliged to comply with applicable statutory provisions for the protection of personal data when performing a contract.

9 Liability of BioAnalyt

- 9.1 BioAnalyt fulfils its obligations with the due care of an orderly businessperson.
- 9.2 BioAnalyt is liable without limitation for (i) injury to life or health or physical injury caused by BioAnalyt, its legal representatives (*gesetzliche Vertreter*) or vicarious agents (*Erfüllungsgehilfen*); (ii) damage or loss caused intentionally (*vorsätzlich*) or through gross negligence (*grob fahrlässig*) by BioAnalyt, its legal representatives or executives; (iii) damage or loss caused intentionally by vicarious agents of BioAnalyt not mentioned in (ii); (iv) damage or loss due to the lack of a guaranteed characteristic; and (v) claims arising from the German Product Liability Act (*Produkthaftungsgesetz*).
- 9.3 BioAnalyt is liable for damage or loss arising from breach of its cardinal obligations (*Kardinalpflichten*) by BioAnalyt, its legal representatives, executives (*leitende Angestellte*) or vicarious agents. Cardinal obligations are essential obligations which form the basis of the relevant contract, which were decisive for the conclusion of the relevant contract and on the performance of which Customer may rely. To the extent that such cardinal obligations are breached by virtue of (i) slight negligence (*einfach fahrlässig*) by BioAnalyt, its legal representatives or executives or (ii) slight or gross negligence by vicarious agents of BioAnalyt not mentioned in (i), the liability of BioAnalyt shall be limited to the amount which was foreseeable for BioAnalyt at the time of the respective performance.
- 9.4 Subject to the provisions in Clauses 9.2 and 9.3, BioAnalyt shall not be liable for damage or loss arising from obligations which are not cardinal obligations and are caused by (i) slight negligence by BioAnalyt, its legal representatives or executives or (ii) slight or gross negligence by vicarious agents of BioAnalyt not mentioned in (i).
- 9.5 BioAnalyt shall be liable in respect of loss of data or the reacquisition of data only to the extent that Customer has taken all reasonable and necessary data back-up precautions and has ensured that the data from data material held in machine-readable form can be reconstructed with an outlay of effort that can be reasonably justified.
- 9.6 Without prejudice to Clause 9.2, the total liability of BioAnalyt arising from or in connection with any contract including these GTCB, whether in contract or tort, shall in no circumstances exceed one hundred percent (100%) of the purchase prices and/or fees paid and payable by Customer under the respective contract.
- 9.7 Any other liability of BioAnalyt not covered by this Clause 9 is excluded on the merits.

10 Final Provisions

- 10.1 The co-operation between BioAnalyt and Customer shall not be construed to mean the formation of a company, joint venture or partnership or a company of any other kind. No transfer of employees within the meaning of the German Transfer of Employees Act (*Arbeitnehmerüberlassungsgesetz*) will take place.
- 10.2 The relevant contract between Customer and BioAnalyt including the terms and conditions of these GTCB represent the entirety of the covenants between BioAnalyt and Customer with regard to the subject of the relevant contract and shall supersede all preceding covenants be they in writing, verbal or implied. No written, oral or implied collateral agreements have been entered into.
- 10.3 Should any provision of a contract including of these GTCB be or become void, ineffective, impracticable or unenforceable in whole or in part, the effectiveness and enforceability of the remaining provisions

shall not be affected. BioAnalyt and Customer are obliged to replace the defective provision with that provision which comes closest within the scope of what is legally possible to what BioAnalyt and Customer would have agreed according to the sense and purpose of the relevant contract if they had recognized the defectiveness of the provision. The same applies to any omissions in the provisions of the relevant contract including these GTCB. This partial invalidity clause is not intended to result in a mere reversal of the onus of proof, but rather, § 139 German Civil Code is excluded in its entirety.

- 10.4 Any contract between BioAnalyt and Customer including these GTCB and all rights arising from or in connection therewith are subject exclusively to German law to the exclusion of those conflict of laws provisions which lead to the application of the law of a state other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 10.5 The exclusive venue of jurisdiction for all disputes arising from or in connection with any contract between BioAnalyt and Customer including these GTCB is Potsdam, Germany.

BioAnalyt GmbH
Local Court of Potsdam HRB 12621
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