

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. Definitions

- 1.1 Affiliated Company: any company of which the ultimate parent company of one of the Parties (i) holds, directly or indirectly, at least 50% of the nominal value of the issued share capital, or (ii) holds at least 50% of the voting rights in its general meetings, or (iii) has the right to appoint the majority of its directors, or any other company which qualifies as a 'subsidiary' or is part of a 'group' within the meaning of Sections 2:24a and 2:24b of the Dutch Civil Code;
- 1.2 Agreement: all (master) agreements, Orders, general terms and conditions and/or other documents or arrangements that (jointly) govern the legal relationship between Eurofins and the Customer;
- 1.3 Civil Code: the (Dutch) Civil Code as in force at the time of the conclusion of the Agreement;
- 1.4 Confidential information: Any tangible and/or non-tangible information provided or made available to the Customer by Eurofins, which is included in (but not limited to) (digital) data, documents, reports, agreements, summaries, (work) materials, investigations, analyses, test results, notes, know-how, examples, e-mail messages, documents, reports, drawings, designs, (digital) data carriers and other information (including copies thereof) which (in the broadest sense of the word) provide an insight into the organisation, working methods or knowledge of Eurofins (and/or its Affiliates) as a result of which the Customer can expect these to be regarded as confidential, or any other information relating to Eurofins and/or its Services which qualifies as 'business secret' within the meaning of Article 1 of the Trade Secrets (Protection) Act;
- 1.5 Controller: a natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of such processing are laid down in Union or Member State law, it may specify the Controller or the criteria for designating the Controller.
- 1.6 Customer: the other party under the Agreement with Eurofins being the company to which the Services are provided by Eurofins;
- 1.7 Eurofins: Eurofins Agro Testing B.V., with its registered office at Binnenhaven 5, and its principal place of business Wageningen, registered in the Trade Register of the Chamber of Commerce under number 09100098, (if applicable to the present Agreement) together with Eurofins Agro Testing B.V. Affiliates;
- 1.8 Force Majeure situation: a (temporary) situation which has the effect that Eurofins cannot reasonably fulfil its obligations towards the Customer, and which situation has arisen as a result of circumstances beyond Eurofins' reasonable control. The following situations are in any case, but not exclusively, Force Majeure situations: strikes, accidents, government-imposed obligations that have consequences for the provision of the Services, war, terrorism, social unrest, epidemics, pandemics, problems with Eurofins suppliers, society-wide disruptions of daily life, nuclear or natural disasters, damage or failures to communication and/or computer systems);
- 1.9 GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, better known as the 'General Data Protection Regulation' or 'GDPR'.
- 1.10 Intellectual Property Rights: All intellectual property rights in respect of all texts, drawings, analyses, reports, methods, models, materials, technologies, inventions, computer software, (digital) source codes, databases and documentation created under and/or within the framework of the Agreement, whether or not with patents.
- 1.11 Order: the order confirmation or order from a Customer, which contains a request from the Customer for the provision of certain Services by Eurofins and which order confirmation or order has

been accepted by Eurofins in writing. If and to the extent that an Order has not been accepted in writing by Eurofins but it has proceeded to execute the Order, the Order concerned shall be deemed to have been 'accepted' on the understanding that the date on which Eurofins commences execution of the Order concerned shall be deemed to be the date of acceptance;

1.12 Party (Parties): Eurofins and/or the Customer, depending on the context in which this definition is used;

1.13 Personal data: any information relating to an identified or identifiable natural person. An identifiable natural person is anyone who can be identified, directly or indirectly, in particular by means of an identifier such as a name, an identification number, location data, an online identifier or one or more elements characterising the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

1.14 Processor: a natural or legal person, a public authority, a service or other body that processes personal data on behalf of the data controller;

1.15 Sample: any material, substance, product, method, platform or good to be examined by Eurofins in the context of Services to be provided under the Agreement;

1.16 Services: all services in the field of consultancy and/or advice and/or sampling and/or analytical testing provided by Eurofins to the Customer as described in the Agreement, whether or not at a location designated by the Customer;

1.17 TAT: the estimated turn-around time or processing time of a Sample, calculated from the moment the Sample to be analysed is delivered to the Eurofins location until the moment Eurofins has drawn up the report or analysis results of this Sample;

1.18 Terms and Conditions of Sale: the general terms and conditions of sale of Eurofins contained in this document;

## **2. Scope of application**

2.1 These Terms and Conditions of Sale apply to and form an integral part of the Agreement.

2.2 By applying these Terms and Conditions of Sale, the Parties explicitly reject any other general (purchase) conditions (of the Customer).

2.3 These Terms and Conditions of Sale terminate and replace all previous general terms and conditions applied by the Parties. The Terms and Conditions of Sale take precedence over all conflicting or inconsistent provisions of subsequent written agreements between the Parties except when the Parties have explicitly agreed otherwise.

2.4 The Customer guarantees that it has the authority to enter into the Agreement with Eurofins. The Customer shall indemnify Eurofins against any damage resulting from a breach of the aforementioned guarantee.

## **3. Creation of Order/Agreement**

3.1 Any Order accepted by Eurofins shall be deemed to be part of the Agreement. The application of special or deviating terms and conditions (including but not limited to special price agreements) to certain Orders does not, however, give the Customer any right to demand such special or deviating terms and conditions for other Orders.

3.2 If the Customer (or an Affiliated Company) sends a Sample to Eurofins stating its customer reference (number), Eurofins may assume that the Customer intends to conclude an Order with it and will therefore make an offer within the meaning of Section 6:217 of the Dutch Civil Code. If and insofar as Eurofins agrees with an intended Order (as referred to in the previous sentence), Eurofins shall provide the Customer with a written confirmation to this effect. Any orally agreed Orders or orally agreed adjustments to existing Orders must be confirmed by the Parties in writing, taking into

particular account the provisions of the previous sentence.

- 3.3 Eurofins shall never be obliged to perform (any part of) its Services if the content, purpose and/or other information required for an Order is not clear and/or if it has not received all the information required (for the Order in question). Eurofins may also, entirely at its own discretion and without creating any liability or obligation towards the Customer, refuse an Order (or an adjustment or deviation thereof) if this may (i) create a conflict of interest, (ii) jeopardise its integrity or (iii) impair the quality of the Services.
- 3.4 Eurofins has the discretionary power to whether or not to commence the execution of an Order when the Parties have not yet agreed on specific commercial aspects of this Order (including price, estimated lead time and delivery date). If the Parties have not agreed on the price due, the Customer shall owe the price usually stipulated by Eurofins at the time of the Agreement. The Customer may be asked for a prepayment in the event of such early execution.
- 3.5 Eurofins is entitled to charge management and administration costs for applications concerning additional and/or changed Services in the case of an agreed Order.
- 3.6 Eurofins is entitled to charge in full for the logistics Services that it (or any of its Affiliates) is required to perform under the Agreement. The logistics Services will not be charged if they are cancelled on time, meaning:
- a. no later than forty-eight (48) hours prior to pick-up Services;
  - b. no later than ninety-six (96) hours prior to the start of sampling Services;
  - c. no later than 1 (one) calendar week prior to the start of audit Services.
- 3.7 The applicability of Articles 6:227b and 6:227c Information, announcements, statements and prices given in (but not limited to) catalogues, leaflets, price

lists, websites are only provided for information purposes of Eurofins and its Services and are provided subject to programming and typing errors.

- 3.8 Any announcements or acts by Eurofins that qualify as an offer (within the meaning of Section 6:217 of the Dutch Civil Code) are without obligation. Eurofins shall be entitled to revoke or amend an offer, even after acceptance of that offer, as long as Eurofins has not yet carried out the (accepted) offer or confirmed it in writing. In the event that Eurofins changes the price in an offer, the Customer may withdraw its acceptance at no cost.
- 3.9 Eurofins shall only have any a (delivery) obligation towards the Customer if there is an Order or Agreement confirmed (in writing) by Eurofins.

#### **4. Prices and payments**

- 4.1 Unless the Parties explicitly agree otherwise in the Agreement, all obligations of the Parties and the corresponding prices (with the exception of packaging) are "ex works" (EXW) Incoterms 2020.
- 4.2 Unless the Parties expressly agree otherwise in writing, Eurofins may charge the Customer for overheads, travel time, travel and accommodation expenses and any other costs incurred in connection with an Order.
- 4.3 All cost statements and delivery times issued by Eurofins or agreed between Parties are indicative. In the event that Eurofins exceeds a delivery time agreed between the Parties, the Customer shall give Eurofins written notice of default and grant Eurofins a period of at least fourteen days to deliver.
- 4.4 All prices are exclusive of sales tax (VAT) and other government levies and are based on the applicable taxes and duties in force on the date of invoicing.
- 4.5 Unless the Parties explicitly agree otherwise in the Agreement, Eurofins' invoices shall be immediately due and payable as of the invoice date. If the Customer fails to pay the full invoice amount within

fourteen (14) calendar days of the invoice date (unless the Parties have expressly agreed another term in writing), the Customer shall be in default vis-à-vis Eurofins and the Customer shall be in default by operation of law, and Eurofins shall be entitled, without prejudice to its other rights, to an interest rate of 1% (in words: one per cent) per month on the relevant invoice amount from the date of default until the date of payment in full.

- 4.6 In the event of late (full) payment of a due and payable invoice amount, the Customer shall compensate Eurofins for the collection of this due and payable invoice amount, which shall in any event include (but not limited to) full compensation of extrajudicial and judicial collection costs, including the costs of engaging legal assistance (e.g. lawyers, bailiffs and collection firms).
- 4.7 Eurofins shall be entitled to set off all claims of the Customer on Eurofins that can be valued in money against claims of Eurofins on the Customer. If the Customer is in any way part of a group of companies, 'Customer' in this context shall mean all companies belonging in any way to that group.
- 4.8 If and insofar as the Customer objects to an invoice (amount), the Customer shall notify Eurofins in writing within thirty (30) calendar days, on pain of forfeiture of all rights of the Customer relating to the objection to an invoice (amount). The Customer must provide such an objection with a clear and proper explanation. In that case, the Customer must state:
- a. Which part of the invoice is disputed;
  - b. its proposal to remedy the objection.
- 4.9 Any complaint or dispute regarding an invoice or Service provided and/or the analytical result thereof does not entitle the Customer to suspend a payment obligation. In addition, the Customer shall under no circumstances be entitled to set off amounts owed to Eurofins against claims that the Customer has or believes it has against Eurofins. The Customer waives

any rights of suspension or set-off to which it is entitled.

- 4.10 Invoices are paid by (electronic) bank transfer or by direct debit. Any other method of payment requires the prior written consent of Eurofins. The Customer undertakes to provide details of his bank account (such as IBAN numbers) when requested by Eurofins.

Eurofins is entitled to demand payment of the full invoiced amount quoted as a condition for acceptance of an Order.

## 5. Duration and Termination

- 5.1 Unless Eurofins and the Customer have agreed otherwise in the Agreement, an Agreement entered into for an *indefinite* period of time may be terminated by means of a written notice (i.e. a registered letter, a bailiff's writ or an e-mail) sent to the legal representative(s) of the other Party with a notice period of three (3) months. Termination shall not affect the Customer's obligation to pay for Services already (partly) performed. An Agreement entered into for a *definite* period of time may not be prematurely terminated or otherwise terminated by (one of the) Parties, except insofar as the Parties have agreed otherwise or insofar as these Terms and Conditions of Sale provide otherwise.
- 5.2 Eurofins may, at its own discretion, without being obliged to pay any compensation to the Customer, immediately terminate, dissolve or suspend (in whole or in part) the Agreement (and related (legal) acts) out of court (such as Eurofins deems desirable at its own discretion), without any default being required but after providing the Customer with a written notice to this effect, in the following cases:
- a. The Customer fails to fulfil one (1) or more of its obligation(s) towards Eurofins;
  - b. a petition for bankruptcy has been filed against the Customer, the Customer itself has filed a petition for its bankruptcy, or the Customer is declared bankrupt;

- c. the Customer has applied for suspension of payments or is granted suspension of payments;
- d. the Customer discontinues (part of) its business or makes a decision to liquidate it;
- e. the Customer offers a composition to its creditors or appears to be insolvent in any way or becomes the subject of insolvency proceedings;
- f. there is misconduct (of an employee) of the Customer towards (an employee of) Eurofins, or any staff member of the Customer involved in the execution of the Agreement turns out to be unsuitable for this purpose and the Customer has not arranged for a replacement of the staff member in question within 7 calendar days of the aforementioned communication from Eurofins;
- g. control of or within the Customer changes whether or not (but not limited to) as referred to in Article 1 paragraph 1 (e) of the Merger SER Rules 2015 or because the Customer makes a decision (i) to dispose of (any part of) the shares in its issued capital or (ii) its assets that results in a transfer of undertaking as referred to in Section 7:662 of the Dutch Civil Code;
- h. the Customer no longer has the permits required for the performance of the Agreement or there is a risk that it will lose them;
- i. there is attachment of a part of the Customer's business and this attachment is not lifted within thirty (30) calendar days of the attachment;
- j. part of the Customer's business is subject to attachment by execution;
- k. Eurofins observes that new legislation or regulations, decisions, policy or instructions have been introduced as a result of which the performance of the Agreement will be unlawful, illegal or undesirable, or result in a conflict with common rules of professional conduct;
- l. Eurofins is of the opinion that its independence (either of an Affiliated Company) as a testing institute would be at risk if the Agreement were to be (further) performed.

5.3 Subject to the provisions of the Agreement and these Terms and Conditions of Sale, the Customer shall waive its rights, which waiver shall be accepted by Eurofins, to terminate or dissolve the Agreement or cause the Agreement to be dissolved, or destroy it or cause it to be destroyed or to be changed, judicially or extra-judicially and in full or in part, insofar as this is not contrary to mandatory law.

## **6. Obligations of the Customer**

6.1 The Samples to be analysed by Eurofins must be in such a condition that the preparation of reports/analyses is possible without further ado and does not result in any additional (unexpected) work for Eurofins in the performance of its Services.

6.2 Prior to the performance of the Services in question, the Customer shall provide Eurofins with all relevant information and rights of use that are (reasonably) necessary or desirable for the optimal performance of the Services. If and insofar as any necessary information and/or right of use has not been provided by the Customer and the performance of the Services is delayed or made impossible, the inability to perform the Services (in the best manner) shall never constitute a shortcoming and/or breach of the Agreement on the part of/by Eurofins.

6.3 Eurofins is entitled to carry out a preliminary investigation into the condition of the Samples before processing the Samples or commencing the performance of the Services if and insofar as it deems this necessary.

6.4 The costs of a preliminary examination shall be borne by the Customer if the preliminary examination shows that the Samples are not suitable for analysis or can only be analysed under less favourable conditions than originally foreseen. Such cases shall include (but not limited to):

- a. The Samples have been mixed with foreign materials or substances (not specified by the Customer);
- b. the quality of the Samples has been degraded.

Eurofins shall then be entitled, at its discretion, to terminate or suspend the relevant Order/Agreement, without prejudice to the other rights that Eurofins has.

6.5 By providing the Samples to Eurofins for the purpose of carrying out Services or having Services carried out, the Customer grants Eurofins and/or an Affiliated Company engaged for this purpose the right to dispose of the Samples in such a way that it/they is/are able to carry out the Services fully and optimally and to comply with applicable laws and regulations. This may imply that the Samples will (have to) be destroyed if they are no longer needed for the Services.

## **7. Obligations of Eurofins**

7.1 If and to the extent that the Parties have not agreed a specific period with respect to the TAT, Eurofins shall endeavour to provide the Customer with the test results within a regular timeframe for comparable services. Any given TAT is an estimate and will not be regarded as a strict deadline.

7.2 Eurofins may perform a repeated analysis (i.e. a re-analysis on a Sample already delivered or taking a new Sample) either at the request of the Customer or if Eurofins is obliged to do so. The costs associated with carrying out a repeated analysis (which may or may not be the result of an objection by a Customer) are for the account of the Customer unless:

- a. The results of the repeated analysis do not match those of the first analysis; or
- b. Eurofins has stated in writing that the Customer's objection is well-founded and therefore requires a repeated analysis.

7.3 Performing a re-analysis is subject to the proviso that it is actually still possible to perform it (without significantly affecting the quality of the results of the re-analysis) and Eurofins (still) has sufficient original sample material available. If and in so far as the costs for a repeated analysis are not to be borne by the Customer but it is no longer possible to carry out a repeated analysis in accordance with the provisions of

this Article 7 the Parties shall consult with each other in order to resolve the objection.

7.4 Eurofins is responsible for the management of all information generated in the analysis of the Samples on the understanding that any data, test results or other information published by the Customer (in accordance with the provisions of Article 10.4 of these Terms and Conditions of Sale) are entirely at the expense and risk of the Customer.

7.5 Eurofins shall (as far as possible) perform its Services in accordance with the applicable statutory regulations, accreditation regulations and reasonable written requirements of the Customer.

## **8. Warranties and liability**

8.1 Services are performed according to the technology and methods developed and applicable by Eurofins at the time of execution. Analyses, results, interpretations, assessments, advice and conclusions drawn up during the performance of the Services are drawn up in accordance with the standards of due care applicable in business transactions. However, Eurofins cannot guarantee that these analyses, results, interpretations, assessments, advice and conclusions are always fully correct, mainly because they depend on the then applicable facts and circumstances, such as the quality of the Samples supplied and/or the follow-up by the Customer of the instructions given. Except where Eurofins has made it explicit in writing (for instance by means of a declaration of conformity or other written expression to the accuracy of the test results) the use of and reliance on Eurofins' analyses, results, interpretations, assessments, advice and conclusions shall be entirely at the expense and risk of the Customer.

8.2 Each analytical report shall relate exclusively to the Sample analysed by Eurofins on which it is based. If Eurofins has not been expressly instructed and paid to draw up a sampling plan (which lays down which Samples must be analysed from which raw materials and end products and in which frequency this must be

done), the Customer shall not in any way claim against Eurofins that the sampling plan and/or the analysis range proves to be insufficient or inadequate.

- 8.3 The customer is responsible for the correct delivery of the Samples sent to Eurofins. The transport of the Samples, from the time of dispatch to the time of delivery at the offices of or at the laboratories of Eurofins, shall be entirely at the expense and risk of the Customer. The Customer is at all times obliged to ensure the safety, packaging and insurance of the Samples. Eurofins will handle and store the samples in accordance with the standards of due diligence applicable in business transactions, but cannot be held liable for the loss or destruction of Samples, even after their receipt in its laboratories.
- 8.4 The Customer warrants that all Samples are in a stable and safe condition and undertakes to indemnify Eurofins against all damage, injury, claims and costs incurred by Eurofins, its Affiliates or its employees as a result of an unsafe and/or stable condition of a Sample. Any communication made by the Customer (whether or not stated on a Sample or any order form) concerning an identified problem with a Sample does not in any way affect the obligation given in the sentence of this article 8.4.
- 8.5 If the Samples are taken by an employee of Eurofins and/or by a third party engaged by Eurofins, the Customer guarantees that this employee or third party will be fully and correctly instructed on the applicable risks and the safety regulations to be observed. With regard to the sampling, the Customer undertakes to indemnify Eurofins and/or its employee and/or the third person for all damage, injury, claims and costs suffered by the aforementioned as a result of an accident at the sampling location and/or damage caused by the absence of adequate instructions.
- 8.6 If the Samples contain dangerous substances or otherwise pose a risk, the Customer shall at all times inform Eurofins thereof in writing prior to dispatch and shall provide the Samples, packaging and boxes with

appropriate markings as well as any other (additional) safety measures that may reasonably be deemed desirable from the point of view of (public) safety and health. If the Customer breaches the aforementioned obligation, it shall forfeit to Eurofins an immediately payable penalty of EUR 10,000 (in words: ten thousand euros) for each separate breach as well as an amount of EUR 2,000 (in words: two thousand euros) for each day that a breach continues, without prejudice to Eurofins' right to claim damages - in addition to the forfeited penalty - and/or to use any other legal remedies to which Eurofins may be entitled.

- 8.7 The Customer shall indemnify and hold Eurofins harmless against all claims of third parties relating in any way whatsoever to the Customer, its Order(s) and/or its Sample(s), whether or not as a result of any shortcoming on the part of the Customer under the Agreement, or the publication of data by the Customer as referred to in article 10.4 of these Terms and Conditions of Sale.
- 8.8 Unless explicitly stated otherwise in the Agreement, any guarantee offered by Eurofins shall lapse after six (6) months from the date of delivery of the Services by Eurofins to the Customer.
- 8.9 Eurofins shall only be liable vis-à-vis the Customer for damage if and insofar as stipulated in these Terms and Conditions of Sale. In the event that Eurofins is liable towards the Customer and is to compensate the damage suffered by the Customer, the liability limitation contained in this article 8 shall apply, irrespective of the basis for the liability. The limitation of liability contained in this article shall not apply if the damage is the result of wilful intent or gross negligence on the part of Eurofins or persons in its management.
- 8.10 Eurofins has taken out (product) liability insurance to cover its liability risks. In the event that the Customer has suffered damage for which Eurofins is liable, Eurofins shall, at the first written request of the Customer, submit the claim for payment of compensation to the insurer of Eurofins with the

request to compensate the damage suffered by the Customer. If Eurofins' insurer accepts the claim under the insurance and reimburses the damage suffered by the Customer, the Customer shall reimburse Eurofins for the excess applicable to Eurofins. In the event that Eurofins' (product) liability insurance does not provide cover or does not pay out, Eurofins' liability shall be capped at the price (excluding VAT) actually received by Eurofins for the Service (or the product sold) that resulted in the damage, but with the understanding that the liability of Eurofins shall in all cases (insofar legally possible) be limited to an amount of EUR 1,000,000.— (in words: one million Euros).

8.11 The Customer hereby waives its right to claim damages other than those consisting of the loss suffered, which are related to the event on which the liability is based in such a way that the loss suffered can be attributed to this event. Loss of profit, lost sales or other damage based on lost future cash inflows or lost benefits/savings do not qualify for compensation by Eurofins.

8.12 The Customer must complain to Eurofins within a reasonable time, but at the latest within six months after delivery of the Services, about any defect in the Services delivered, on pain of forfeiture of all rights or claims of the Customer relating to this defect. Legal actions and defences based on facts that would justify the assertion that the Customer has suffered damage for which Eurofins is liable shall lapse after one (1) year from the day on which the damage arose.

8.13 The Customer warrants for the term of the Agreement, in relation to any economic trade sanctions imposed by the United Nations and/or the European Union, that:

- a. it is not the target of any economic sanctions;
- b. to the best of its knowledge, it is not controlled or beneficially owned by any person subject to economic sanctions;
- c. it shall comply with all economic sanctions laws. Without limiting the generality of the foregoing, the Customer shall not (i) directly or indirectly export, re-export, tranship, or otherwise deliver (a part of)

the Services in violation of any economic sanctions laws, or (ii) broker, finance or otherwise facilitate any transaction in violation of any economic sanctions laws;

- d. it is not engaged in any proceedings or subject to any investigations from any authorities for an (alleged) breach of economic sanctions law.

8.14 The Customer shall indemnify Eurofins against any losses, liabilities, damages, fines, costs (including but not limited to legal fees) and expenses incurred by, or awarded against the Customer as a result of a breach of article 8.13 by the Customer.

## **9. Force majeure**

9.1 Eurofins cannot be held liable for any shortcoming if this shortcoming is related to a Force Majeure situation.

9.2 Eurofins may suspend the obligations under the Agreement during the period that the Force Majeure situation continues. If the Force Majeure situation lasts longer than three (3) months, either Party is entitled to terminate the Agreement, without any obligation to pay damages to the other Party.

9.3 To the extent that Eurofins has partially fulfilled its obligations under the Agreement at the time when a Force Majeure situation occurs, Eurofins shall be entitled to separately invoice the part already performed or to be performed.

## **10. Confidentiality**

10.1 With respect to (the content of) any Confidential Information made available by Eurofins to the Customer or vice versa, both Parties:

- a. will not use or acquire this Confidential Information for any purpose other than those specified in the Agreement;
- b. will uphold the confidentiality of the Confidential Information;
- c. will not store the Confidential Information for archiving purposes (except in fulfilment of its legal obligations or in automatic back-up system where



deletion of the records would create unreasonable efforts or cost);

- d. will not use the Confidential Information in any way that has an adverse effect on Eurofins or will result in (additional) competition with Eurofins.

10.2 The confidentiality obligation contained in Article 10.1 does not apply if the receiving Party:

- a. will be required to disclose Confidential Information on the basis of the law, a court order or an order from a law enforcement agency;
- b. has obtained written permission from the disclosing Party to share specific Confidential Information.

10.3 Information which (i) can be obtained from a generally accessible source, (ii) has been developed by the Customer without use of the Confidential Information or (iii) has been lawfully obtained by the receiving Party from a third party, shall not be regarded as Confidential Information.

10.4 The Customer shall not share with third parties any advice, test results, order letters, reports and/or other written documents that have not been drawn up or made with the intention of providing third parties with the information laid down therein, unless Eurofins has given its explicit written consent to do so or when this is required by law and/or by the accreditation bodies (imposed rules) and/or a regulation of a supervisory body.

10.5 Each Party shall store the Confidential Information with care and ensure that third parties do not gain knowledge of it. This obligation is also understood to mean that the Parties will ensure adequate (digital) security measures.

10.6 At Eurofins' first request the Customer shall return all Confidential Information to Eurofins (including all copies thereof) or (if so requested by Eurofins) the Customer shall destroy the Confidential Information and all copies in its possession. The Customer shall, if so requested by Eurofins, send a written statement to Eurofins in which the Customer declares that it no

longer has Confidential Information at its disposal, except for the information it is required to keep at its disposal on the basis of legal administration requirements.

10.7 The Customer shall not use the name or any form of written expression of Eurofins (in particular, not limited to, the Eurofins logo) for promotional or other purposes, unless Eurofins has given its prior written consent to the Customer.

10.8 The Customer guarantees to Eurofins compliance with the confidentiality provisions contained in this Article 10 by its employees, (sub)contractors, consultants or any other third party to whom it has made Confidential Information available, and the Customer shall bind these persons to secrecy of the Confidential Information under conditions (at least) as strict as stipulated in this Article 10.

10.9 If and to the extent that the Customer has obtained written permission from Eurofins to share Confidential Information or that the Customer is obliged to do so to share Confidential Information (in accordance with Article 10.2), this will leave unaffected the fact that the Customer shall indemnify Eurofins and its Affiliates against all claims and consequences that the sharing of Confidential Information (possibly) entails.

## **11. (Intellectual) property rights**

11.1 All background Intellectual Property Rights (meaning Intellectual Property Rights developed before or independent of this Agreement and any information embodying proprietary data such as technical data and computer software) of a Party introduced or disclosed to the other Party for the purposes of the fulfilment of the Agreement, shall remain the property of the Party introducing and/or disclosing the same. The Parties agree that the use of such background Intellectual Property shall be limited to performing each Party's obligations under this Agreement.

11.2 All Intellectual Property Rights that have been created by or during the fulfilment of the Agreement (for

instance by the improvement and/or amendment of background Intellectual Property Rights by Eurofins) belong exclusively to Eurofins. The Customer is entitled to use the (test) results, conclusions, advice or findings arising from the Services performed for its own use and within the intended purpose of the Agreement. Any (other) (background) Intellectual Property Rights of Eurofins are only transferred to the Customer if and when the Customer and Eurofins have agreed upon the sale and transfer thereof.

11.3 With regard to other Intellectual Property Rights (contained in documentation, reports and other carriers of Intellectual Property Rights), no transfer shall be effected except (if necessary for the performance of the Services and/or the Agreement) in connection with Eurofins taking cognisance thereof. The Customer is obliged to obtain prior written permission from Eurofins if the Customer wishes to reproduce, publish or otherwise incorporate such documents in other information carriers including (but not limited to) books, publications, websites, advertisements, software and film material.

11.4 Insofar as Eurofins is required to make use of (intellectual) (property) rights that it does not own for the performance of the Services requested, the Customer guarantees that the performance of the Services does not lead to any infringement of these rights, and the Customer indemnifies Eurofins against claims from third parties who see to it that Eurofins does not infringe these rights.

11.5 Nothing in these Terms and Conditions of Sale shall be construed as a transfer or waiver by Eurofins of the personality rights set out in Art. 25 of the Dutch Copyright Act.

11.6 The Customer explicitly agrees that Eurofins may use, publish and process (static) data resulting from the Sample (analysis) to generate models, reports, dashboards and/or other forms of conclusions that can be drawn from the Sample (analysis). Usage of the aforementioned aggregated data by Eurofins may

include (but is not limited to): publication in (scientific) journals, books, databases, development of services, research and/or quality control purposes. Eurofins retains exclusive ownership of the aforementioned generated items.

## **12. Anti-recruitment clause**

12.1 During the term of the Agreement as well as for a period of two (2) years after termination thereof, the Customer is prohibited from carrying out any activities in order to attempt, either directly or indirectly, to induce Eurofins personnel to terminate the (employment) relationship with Eurofins in any way.

## **13. Breach**

13.1 If and insofar as the Customer breaches an obligation pursuant to Article 10 and/or 11 and/or 12, it shall forfeit to Eurofins an immediately payable penalty, without any notice of default being required, of EUR 100,000 (in words: one hundred thousand euros) as well as an amount of EUR 10,000 (in words: ten thousand euros) for each day that the breach continues, without prejudice to Eurofins' right to claim damages and without prejudice to its other rights.

13.2 The Customer shall indemnify Eurofins against claims by third parties arising from any breach by the Customer of the provisions of this Article 10, 11 and 12, and the Customer shall indemnify Eurofins in the event of any such third party claims.

## **14. Protection of personal data**

14.1 In the implementation of the Agreement, the Parties shall observe all relevant legislation and regulations in the field of the protection of Personal Data, including the GDPR. The Customer is the Controller (as referred to in art. 4 paragraph 7 GDPR) when processing Personal Data in the context of the performance of the Agreement, as the Customer determines the purpose and means of processing Personal Data.

14.2 Eurofins processes Personal Data obtained from the Customer in the context of the performance of the Agreement and only in order to comply with its legal

obligations. Eurofins does not process data on behalf of the Customer, unless this is necessary for the performance of the Agreement and/or the Services and/or an obligation as referred to in these Terms and Conditions of Sale.

14.3 Eurofins processes Personal Data for the duration of the Agreement and (if and to the extent applicable) for as long as it is obliged to do so in order to comply with contractual or statutory obligations, including (but not limited to) its administration obligation.

14.4 With a view to optimum performance of the Agreement, Eurofins may process and store the Personal Data of the Customer and its personnel (if necessary) and distribute these data to anyone within the organisation of Eurofins. All employees of Eurofins are subject to adequate confidentiality obligations (also with respect to Personal Data).

14.5 Eurofins will only further process the Personal Data insofar as this is not incompatible with the purpose for which the Personal Data are obtained.

14.6 Eurofins will keep the Personal Data it obtains in the implementation of the Agreement confidential and will take appropriate technical and organisational measures to protect the Personal Data against loss, processing and unauthorised access.

14.7 If and when required for GDPR compliance purposes, the Customer may be obligated to enter into a data processing or data transfer agreement with Eurofins.

## **15. Miscellaneous**

15.1 If this Agreement is found to be partially invalid or non-binding, Parties will remain bound by the remaining provisions of the Agreement. In that case Parties will consult with each other to replace the invalid or non-binding part of the Agreement by provisions that are

valid and binding and that (in view of the content and purport of the Agreement) correspond as much as possible to that of the invalid or non-binding part.

15.2 The effect and provisions of the Agreement shall remain in full force and effect after termination of the Agreement until the Customer has fulfilled all its payment obligations towards Eurofins in full. The provisions contained in Article 1, 4, 5, 8, 10, 11, 12, 13, 15 and 16 and of these Terms and Conditions of Sale shall, by their nature, remain in full force and effect after termination of the Agreement.

15.3 Parties are not entitled to transfer their rights and/or obligations arising from the Agreement to (a) third party (parties). Eurofins may nevertheless make use of Affiliates and/or third parties for the execution of orders if this is necessary for the optimal execution of the Services.

15.4 The failure of Eurofins to (directly) enforce or invoke any right or authority arising from the Agreement shall in no way constitute a restriction on or waiver of such rights or authority.

## **16. Choice of law and forum**

16.1 These Terms and Conditions of Sale, the Agreement and the (further) agreements and (legal) acts arising therefrom (including the existence and validity of all such agreements and legal acts) shall be governed by Dutch law. The application of the Vienna Convention on Contracts for the International Sale of Goods is explicitly excluded.

16.2 Any dispute arising between the Parties as a result of a legal relationship between Parties that is at their discretion shall, in the first instance, be submitted on an exclusive basis to the competent Dutch court in the district where Eurofins has its registered office.