

General Terms and Conditions of RMS Foundation, 2544 Bettlach

1. Validity

These General Terms and Conditions shall apply to all business activities of RMS Foundation / Dr. h. c. Robert Mathys Foundation (RMS).

2. Placement of orders

Orders with RMS must be placed in documented form (in writing, electronically) and any placement of an order with RMS must include acceptance of these General Terms and Conditions (RMS 516001).

Testing and other services to be provided by RMS shall be subject to the offer based on which the order was placed. Orders that were not preceded by an offer will be executed on a time and material basis. Unless otherwise informed, the results of the examinations / studies will be written in German in a report or in a test certificate.

Orders placed with RMS must contain information on possible risks and dangers the employees of RMS might be exposed to during the agreed work.

3. Test procedure / quality standards

RMS shall execute the orders in accordance with the applicable standards ISO 9001 and/or ISO/IEC 17025. Tests beyond the scope of this field of application shall be state of the art and based on other national or international standards as well as on our own methods (SOP). RMS's employees are obliged to carry out commissioned work with due care and efficiency.

During the negotiation process, the customer shall inform RMS of the customer's own requirements or of any specific standards to be taken into consideration. Validations of test methods specified by the customer are subject to additional costs and will be charged accordingly.

The customer shall be solely responsible for the quality of the delivered samples.

4. Cooperation / sub-contractors / outsourcing

RMS reserves the right to call in third-party experts or institutions in case of interdisciplinary tasks and lack of infrastructure. The samples will be marked with neutral designations in order to guarantee confidentiality. Third-party institutions will only be employed upon the customer's documented consent.

5. Delivery periods and deadlines

Compliance with deadlines is one of the essential parts of RMS's quality philosophy. The delivery date will be agreed upon with the customer. The delivery period shall commence upon placement of the order or in case test materials are subject to investigation upon receipt of the test materials at RMS's premises, provided such materials are complete and accompanied by the required documentation. In case of delayed delivery of test materials, RMS reserves the right to use the testing equipment for other test subjects, if required, in order to make optimised use of such equipment. Initially agreed delivery dates shall cease to be valid and must be re-negotiated. For testing equipment such as dynamic or wear testing that is reserved and can then not be used, up to 100% of the equipment costs will be charged as of the second day of the reservation period.

In case of force majeure such as accident, illness, fire, unavailability of personnel, severe defects of the testing equipment etc., RMS shall not be obliged to comply with the agreed upon delivery period. In such case, RMS shall inform the customer and the parties will agree on a new delivery period.

6. Remuneration / terms of payment

RMS offers its testing and other services net of statutory VAT, at an estimated price (max. + 15% costs), as maximum costs (cost ceiling), in which case only the actually incurred costs will be charged, or at a fixed price (a fixed amount is stipulated for costs).

RMS charges its expenses based on the applicable hourly rates, unit prices and/or equipment costs. Travel times shall be charged at 75% of the applicable hourly rate plus travel expenses. Urgent work that must be effected outside the usual business hours or due to which other tests must be interrupted shall be subject to a surcharge of 50%.

For larger orders, RMS may demand prepayment or issue intermediate invoices for the work completed.

RMS's invoices shall become due 30 days after the date of invoice, without deductions. Offers and invoices shall be issued in the Swiss currency (CHF). Default interest for delays in payment shall be 5% p.a.

7. Archiving

Test material (test specimens, test pieces, test objects)

The customer shall be obliged to take back and archive the test material to the extent such material still exists after RMS performed the analysis or test. RMS shall be entitled but not obliged to keep reasonable quantities of test material. Exceptionally, RMS may archive test material for the customer upon separate agreement and against additional remuneration.

Documents

RMS shall preserve raw data, analysis data, interim and final results (reports or test certificates) for a period of 15 years.

8. Secrecy / confidentiality

RMS undertakes to keep secret all data provided or transferred by the customer.

RMS shall keep secret and treat confidentially for an unlimited period of time the results of a test or other service provided by RMS (report, test certificate). RMS' confidentiality obligation shall cease to exist if and to the extent the customer publishes the results, such results become part of the public domain without any fault attributable to RMS or the customer authorises RMS in writing to use such results.

RMS shall be entitled to use results and findings from testing and other services in anonymised form for research and teaching purposes. Any other use is always agreed upon with the customer.

Additional confidentiality / secrecy obligations may be agreed upon with RMS in writing. The additional expenses related thereto shall be charged at 10% of the order costs, however, not more than CHF 1'000.— per order.

RMS shall be released from the confidentiality / secrecy obligations if and to the extent it is subject to an obligation to disclose such information based on statutory requirements or on inspections by authorities that are based on legal requirements, such as audits. In such case, RMS will inform the customer of such disclosure requirement without delay.

9. Ownership

The rights to the results of tests and examinations with or without the customer's test materials belong to the customer for the intended purpose. For copyright purposes, based on these General Terms and Conditions or on a separate agreement negotiated upon placement of the order, RMS shall retain title to all files and diagrams that were prepared in connection with the order. The testing methods developed by RMS shall be RMS' intellectual property.

10. Data privacy

RMS complies with data privacy obligations, including without limitation with regard to personal data. Any data provided to RMS will be stored for the purpose of executing the order and of fulfilling archiving and other statutory obligations.

(See privacy notice: <https://www.rms-foundation.ch/en/service/data-protection.html>)

RMS uses personal data collected in connection with its business activities solely to provide information on its own activities and services. RMS grants the right of access, right to rectification, to completion, to erasure, to portability to other controllers, to restriction of processing and the right to object or the right to withdraw any consent given with regard to personal data.

Upon request, the scope or method of data processing may be changed.

11. Entrance right

Third parties may not enter the laboratories and offices unless accompanied by an RMS employee. They must register and de-register in the «RMS guest list». During their stay within RMS' premises, guests must wear the «Visitors» badge provided by RMS and follow the instructions of the RMS employees.

12. Liability

RMS' liability shall be restricted to the data contained in its reports or test certificates. The results contained in reports or test certificates exclusively relate to the tested test objects.

The contents of the printed and signed original documents provided to the customer in any case shall be exclusively authoritative. Reports and test certificates in electronic form (PDF files) are for information purposes only.

RMS shall not be liable for third-party results (independent laboratories), misinterpretation of results and its consequences. RMS' liability shall be limited to unlawful intent or gross negligence. Any other liability, irrespective of the reason, e.g. without limitation for slight negligence, shall be excluded to the extent legally possible. In particular, any liability for consequential damage shall be excluded.

Complaints must be directed to RMS within 2 weeks upon delivery of the report or of the test certificate.

To the extent liability is excluded, such exclusion of liability shall include RMS' employees, representatives and temporary personnel.

13. Applicable law / place of jurisdiction / place of performance

Place of jurisdiction for both parties shall be CH-2544 Bettlach. The legal relationship shall be exclusively subject to Swiss substantive law. RMS shall be entitled to bring an action against the customer at the latter's place of residence. Place of performance shall be CH-2544 Bettlach.

14. Final provisions

Changes to these General Terms and Conditions or their wording are subject to a written agreement signed by both parties to be effective. Should individual aspects / provisions of these General Terms and Condition be unclear, ineffective or unenforceable in whole or in part, the aspect / provision that comes as close as possible to such unclear, ineffective or unenforceable aspect / provision shall apply. In addition, this shall not affect the validity of other aspects / provisions.

RMS shall inform the customer of any non-compliance with these General Terms and Conditions and shall endeavour to find a mutually agreed upon solution. RMS reserves the right to take legal steps.