

## **General Terms and Conditions of Business (GTC) of the RMS Foundation, Dr. h. c. Robert Mathys Stiftung**

### **1. Scope of the General Terms and Conditions of Business of the RMS Foundation**

The following GTC shall apply to the materials testing and consultancy services of Dr. h.c. Robert Mathys Foundation (hereafter "RMS Foundation". Unless otherwise agreed in writing (including e-mail) the RMS Foundation shall render its services (materials testing and consultancy services) only on condition that the customer unreservedly accepts the respective current version of these General Terms and Conditions of Business.

### **2. Requests and quotations**

The basis for smooth execution shall be formed by a clearly formulated request for materials testing or consulting (see form under [www.rms-foundation.ch](http://www.rms-foundation.ch)) in writing (including e-mail), stating the nature and scope of the desired services. The scope of performance and prices for the services shall be determined and a quotation sent on the basis of this information. If this information is incomplete or incorrect before quotation, the RMS Foundation shall be entitled to adjust the service and/or prices accordingly. The quotation accepted by the customer shall form the basis for placement of an order. Orders without quotation shall be charged at cost.

The RMS Foundation quotes for its services as a guide price (actual costs may deviate by a maximum of  $\pm 15\%$  from the quoted amount), as a cap on expenses (maximum costs), whereby costs actually incurred shall be charged, or as a fixed price (fixed costs specified).

In the absence of information to the contrary, the test/study results will be compiled in a report or a test certificate, in German.

### **3. Placement of order**

The binding contract between the RMS Foundation and the customer with regard to a specific order for services shall come into being upon confirmation of the order by the RMS Foundation.

In particular the order to the RMS Foundation must also include indications of potential risks and hazards to which RMS Foundation employees might be exposed by the test body or test material in the performance of the agreed activities.

The customer shall be responsible for the quality of the samples supplied.

### **4. Order cancellation**

In the event of the customer cancelling an order after receipt of order confirmation, the work already completed up to the time of the cancellation being received shall be charged at the applicable price (see clause 9).

### **5. Services and quality management**

Services within the scope of the accreditation are executed according to the requirements of ISO/IEC 17025. The test procedures in the accredited field are listed in the STS register (STS 0125), in the service catalogue and on the RMS Foundation's website. Non-accredited test procedures will be shown as such in the service catalogue. Insofar as possible the tests will be carried out according to international standards or other officially recognised standard methods. Where such do not exist, the RMS Foundation uses test procedures it has developed itself that correspond to the current state of science and the art. Activities the RMS Foundation conducts in premises or using facilities that are not under its constant supervision are generally not accredited. However, if the requirements of the international standard ISO/IEC 17025 are met with regard to the premises, environmental conditions and facilities, accreditation is possible with additional effort.

If the customer has its own requirements or if it wishes specific standards to be considered, the RMS Foundation is to be informed of this as part of order negotiations. Customer-specific validations of test procedures are associated with additional expenses and will be invoiced.

### **6. Cooperation/Subcontracts**

The RMS Foundation shall reserve the right to involve external specialists or other laboratories to render some or all of the services, if necessary (interdisciplinary scope, lack of or defective infrastructure). In so doing confidentiality shall be assured by neutral sample designations. Subcontracts shall be awarded or outsourcing shall take place only with the customer's documented agreement.

## **7. Check of analysis results/notification of defects**

The customer shall be obliged to check the analysis results on receipt and to provide the RMS Foundation with substantiated notification of apparent faults or defects within 20 days, and of concealed defects immediately after they are discovered (including by e-mail). After these periods have expired the analysis results shall be deemed to have been approved as free of defects. If a defect is present, the RMS Foundation shall have the right to rectify the defect by (a) either remedying the defect (rectification), (b) delivering a new analysis result (substitute delivery), or (c) reducing appropriately the price to be paid by the customer. The customer's other or further legal remedies shall be expressly excluded.

## **8. Delivery periods**

The time for processing the orders shall be governed by their nature and scope. The fastest possible execution shall be assured. The delivery period shall be agreed with the customer. The delivery period shall commence on placement of order or, if the customer's sample material is used to fulfil the order, on receipt thereof by the RMS Foundation, whereby these must be present in full and with the necessary documents. In the event of late delivery of sample material, the RMS Foundation shall reserve the right to put the test equipment to better use and, if necessary, to occupy it with other test objects. Original delivery periods shall no longer be valid and must be renegotiated. If test equipment (e.g. dynamic testing, wear testing) is blocked unused following reservation, up to 100% of the equipment costs incurred shall be invoiced from the second day during which the reserved period is unused.

Events caused by force majeure, and unforeseeable staff absences or equipment breakdowns may cause the RMS Foundation to be unable to abide by the stated delivery periods. Accordingly, the customer's right of rescission (Art. 366 Swiss Code of Obligations) and all claims to compensation for failure to meet a delivery deadline shall be excluded. In the event of the delivery date being delayed, the customer shall be informed immediately it becomes known.

## **9. Prices**

The RMS Foundation charges its costs at the applicable hourly rates, unit prices and/or equipment costs. Travelling times shall be charged at up to 75% of the applicable hourly rate, plus travel expenses.

The prices in the service catalogue apply to individual analyses. Reductions in prices for large test runs or standing orders can be agreed on a project-by-project basis with the customer.

Any additional expenditure dictated by samples (e.g. special sample preparation, adaptation of methodology or additional quality controls) shall be charged additionally at cost.

The right to amend prices, occasioned in particular by third-party costs being incurred or unforeseeable extraordinary circumstances, shall be reserved. All prices are understood to be in Swiss francs and excluding value added tax.

An express surcharge of 50% shall be applied to urgent work that has to be completed outside of the customary hours of business or that causes other tests to be interrupted.

The RMS Foundation may request an advance payment for larger orders or issue an interim invoice according to the work already performed.

## **10. Payment terms**

The RMS Foundation's invoices shall be due for payment within 30 days from the date of invoice, without deductions. Unauthorised deductions shall be billed subsequently. In the event of the customer defaulting on payment, before rendering further services the RMS Foundation shall reserve the right, in addition to payment in full of all outstanding amounts, to demand an advance payment for further services.

## **11. Impartiality**

The RMS Foundation undertakes to be impartial. The RMS Foundation's activities are structured and managed such that impartiality is assured. The RMS Foundation does not permit any commercial, financial or other pressure to endanger impartiality.

## **12. Secrecy and confidentiality**

The RMS Foundation undertakes to treat in strict confidence the data supplied by or transmitted by the customer and to keep it secret from third parties. The forwarding of information to third parties shall be permitted only if proper execution of the order in accordance with instructions so requires. The RMS Foundation shall be discharged from secrecy if it is invited

to disclose by statutory requirements or official inspections in a legally regulated setting (e.g. audits). In this case the RMS Foundation shall inform the customer of this fact immediately.

The test results shall remain secret indefinitely and only the customer or a partner designated on the customer's behalf shall be notified thereof. The RMS Foundation shall be released from the duty of secrecy if the customer publishes the results itself, these become public in another way without wrongdoing on the part of the RMS Foundation, or the customer authorises the RMS Foundation in writing to use them. The RMS Foundation shall be permitted to use results and findings from orders for services in an anonymised form for teaching and research. Any further use will always be agreed with the customer.

Experts or laboratories consulted must also be obligated to maintain secrecy.

The customer shall undertake to treat as strictly confidential all data and information concerning the RMS Foundation and its analysis procedures that becomes known within the scope of processing the order, and to keep it secret from third parties. Transmission on the orders of a government authority or on a regulatory basis shall be excluded. Without the RMS Foundation's prior written consent (including e-mail), the customer shall not be permitted to use information or data from the RMS Foundation, in particular concerning analysis procedures, for its own purposes, or to make it available to third parties.

Further secrecy/confidentiality obligations may be agreed in writing with the RMS Foundation. The associated additional work shall be chargeable and shall be charged at 10% of the order costs to a maximum of CHF 1,000 per order.

### **13. Data privacy**

The RMS Foundation shall respect data privacy, especially with regard to personal data. Data sent to the RMS Foundation shall be stored as part of fulfilment of the order and to fulfil the archiving obligation and statutory specifications. The RMS Foundation's data privacy policy is available on the website ([www.rms-foundation.ch](http://www.rms-foundation.ch)).

The RMS Foundation uses personal data collected within the scope of its business activities solely for information about its own activities and services. Regarding personal data it guarantees a right of information, a right to rectification, to completion, to erasure, to data portability to other responsible bodies, to restriction of processing and a right to object or the right to revoke the consent under data protection law at any time.

A different type of, or additional processing of data will be carried out on request.

### **14. Retention of samples and data**

*Sample material (test specimens, test bodies, objects for testing, test material)*

If sample material still exists physically after analysis it will be stored for 30 days after conclusion of the testing and then destroyed. The RMS Foundation shall be entitled, but not obliged, to retain sample material to an appropriate extent. Archiving of sample material for the customer as an exception is to be agreed and is chargeable. Return to the customer of sample material is possible at its request and is also chargeable.

The RMS Foundation undertakes to properly protect all property provided by the customer throughout the entire processing process and to safeguard it against loss, damage, or improper use.

#### *Data*

Raw data, analysis data, personal data, interim and final results (reports or test certificates) shall be retained by the RMS Foundation for five years from the reporting date. After this period has expired, the RMS Foundation shall be entitled to destroy all results (and other data/documentation concerning the order/customer).

### **15. Intellectual property**

Unless otherwise agreed with the customer in writing (including by e-mail), (a) all intellectual property that exists with regard to the RMS Foundation's activity or which occurs when rendering the service for the customer, and (b) all intangible rights to the performance results (regardless of their legal protectability), shall be exclusively due the RMS Foundation, in particular all analyses and analysis procedures, methods, raw data, reports, etc. Subject to regulatory provisions to the contrary of a mandatory nature, in particular the customer shall not have a claim to delivery of internal work results that are not apparent from the analysis result. The 4<sup>th</sup> paragraph of clause 12 (confidentiality of data and information concerning the RMS Foundation and its analysis procedures) shall in any case apply additionally. Delivery of an analysis result shall not allow the customer to use a company designation or an RMS Foundation mark for commercial purposes without the RMS Foundation's prior consent in writing.

Test reports may only be published and passed on in their entirety.

## **16. Exclusion of liability/limitation of liability**

The RMS Foundation shall be responsible solely for the data contained in its reports or test certificates. The results in reports or test certificates shall relate exclusively to the test objects examined.

Insofar as not expressly stated otherwise in these GTC and insofar as legally permitted, the RMS Foundation shall preclude any liability for loss caused by the RMS Foundation or its agents through slight or moderate negligence. In particular, the RMS Foundation shall not be liable for the results of third parties (external laboratories), indirect damage (such as damage arising from use of the analysis results or purely financial loss (such as production stoppages, cost of converting production lines, incorrect investments, unused projects or lost profits). The RMS Foundation's liability vis-à-vis the customer shall be excluded if and insofar as non-fulfilment or inadequate fulfilment of the contract is due to circumstances that lie beyond the RMS Foundation's control, in particular to events of force majeure, such as war or riot, terrorism, civil unrest, loss of power, power shortages, transmission errors, technical faults or interruptions, misuse/disruption of (a) the Internet, (b) websites, (c) linked websites, (d) the network, (e) the IT infrastructure, (f) the telecommunications network, (g) misuse of data by third parties or loss of data, destruction of essential plant or materials by earthquakes, fires, floods or storms, official orders, labour disputes, epidemics / pandemics or other comparable events.

## **17. Severability clause**

Should one of the provisions of these General Terms and Conditions of Business be or become invalid for any reason, this shall not affect the validity of the remaining provisions.

## **18. Jurisdiction and applicable law**

For both parties the place of jurisdiction shall be 2544 Bettlach, Switzerland, which shall correspond to the place of performance. The legal relationship shall be subject solely to substantive Swiss law. The RMS Foundation shall have the right, however, to sue the customer at its domicile.

## **19. Concluding provisions**

In order to take effect, amendments or provisions formulated differently than in these GTC shall require a written agreement signed by both parties. Should individual aspects/provisions of these GTC be wholly or partly unclear, ineffective or infeasible, that which most closely approaches the meaning of these aspects/provisions shall apply. The validity of other aspects/provisions shall not be prejudiced either.

In the event of failure to observe the stipulations contained in these GTC, the RMS Foundation shall draw this to the customer's attention and shall endeavour to find a consensual solution. The RMS Foundation reserves the right to take legal action.