

Virusure GmbH: General Terms and Conditions

1 Scope

These conditions apply to the provision of all services ("the Services") offered by ViruSure Forschung und Entwicklung GmbH (hereinafter known as "ViruSure") to their clients (hereinafter known as "Client"). Deviations from these terms and conditions (hereinafter known as "Terms and Conditions") will only be considered legally binding when agreed in writing. The Project Contract shall be on these Terms and Conditions to the exclusion of any other terms and conditions which the Client purports to apply under any written purchase order, order confirmation or other document, unless otherwise agreed in writing.

2 Definitions

In these Terms and Conditions the following words or phrases shall have the following meanings:-

- 2.1 Good Manufacturing Practice (GMP) means that part of Quality Assurance, which ensures that Products are consistently produced and controlled to the quality standards appropriate for their intended use as required by the Marketing Authorisation or product specification, the principles and guidelines of which are set out in Directive 2003/94/EC for medicinal products for human use.
- 2.2 Product means the medicinal material produced by or on behalf of the Client.
- 2.3 Project Contract means any project contract between ViruSure and the Client for the provision of Services to which these Terms and Conditions are attached.
- 2.4 Price means the price for the Services identified in the Project Contract, which may be broken down into different Studies, including the cost of any materials or equipment of a custom nature required for the Services, and which shall be exclusive of value added tax thereon, which shall be charged separately where applicable to the Services.
- 2.5 Services means the GMP contract services to be provided by ViruSure as more particularly described in the Project Contract and any other services provided by ViruSure.
- 2.6 Study means a test to be performed by ViruSure as more particularly described in the Project Contract.
- 2.7 Tests means the individual assays (otherwise known as tests) which are more particularly described in the Project Contract each one of which will form a Study where testing services are the Services to be provided under the Project Contract.
- 2.8 Test Materials means the samples of the Product provided by the Client to be tested in a Study.
- 2.9 Long Term Storage means the storage of material provided by the Client for the purpose of storing the material over a long period. The conditions of the Long Term Storage are stipulated either in the Project Contract or another GMP contract.
- 2.10 Short Term Storage means the storage of Test Material for testing purposes during the tests performed by ViruSure. The conditions of the Short Term Storage are stipulated in the Project Contract.

3 Offer

An offer by ViruSure is non-binding.

4 Changes and Additions

Changes and additions to the Project Contract and/or the Terms and Conditions require written approval by ViruSure management prior to acceptance. This also applies to amendments of the written form requirement itself.

5 Terms of Services

- 5.1 The terms of services are considered accepted with the acknowledgement of the receipt of the signed Project Contract. If a time line is not specified in the Project Contract, performance of Services shall commence at the latest of the following dates:
 - Date of receipt of the signed Project Contract by ViruSure;
 - Date of receipt from the Client of all legal and technical information required under the Project Contract;
 - Date of obtainment of all necessary approvals according to Section 5.3.;

- Date of receipt of any prepayment specified in the Project Contract.
- 5.2 Any defined timelines for performance of the Services must be agreed in advance in writing, and confirmed as accepted by ViruSure.
 - 5.3 For and during the performance of the Project Contract, the Client is responsible for obtaining and keeping ViruSure informed of all necessary approvals from third parties or authorities.
 - 5.4 In the event of Force Majeure (see §12), ViruSure reserves the right to extend timelines for performance of the Services without a change in the price.
 - 5.5 In the event of any delay to agreed timelines caused by ViruSure, the Client shall set a reasonable grace period for completion of the Services for ViruSure in writing. Upon expiration of the aforementioned grace period, the Client may demand compensation for the delayed performance as a contractual penalty as follows: In the event of proven delay caused culpably by ViruSure, the Client is entitled to remuneration to the extent of one half of a percent of the value of the incomplete part of the Project Contract per week, with a maximal remuneration of 5%, as long as the Client is able to provide documented evidence of damages to this extent. Client compensation in excess of 5% is excluded.
 - 5.6 After completion of the delayed Services the outstanding schedule of the agreed timelines will be adopted accordingly. The scheduled time for the remaining parts of the Project Contract will then start to count from the date of the completion of the delayed Services.

6 Fulfilment and Responsibilities

- 6.1 The Client is responsible for all Test Material shipment charges. ViruSure's confirmation of receipt does not confirm the correctness of the type of material or volume.
- 6.2 Test Material stored by ViruSure for testing purposes (Short Term Storage) is stored at the Client's own risk. The Client is responsible for arrangement of any insurance against damage whilst the Test Material is stored at ViruSure. The Client shall indemnify and hold ViruSure harmless against all actions, proceedings, demands, claims, losses, damages, costs, charges, expenses and all liability whatsoever resulting from the storage of Test Material at ViruSure.
- 6.3 Test Material, which is stored as Long-Term Storage by ViruSure, is insured by ViruSure against physical damage up to a value defined in the Contract Service Agreement. The Client is responsible for any additional insurance in excess of the insurance coverage provided by ViruSure.

7 Price

- 7.1 The price has been calculated based on information provided at the time by the Client. The prices included in the Project Contract are valid only if the precise scope and extent of the work are accurately captured
- 7.2 In the event that the scope and/or nature of the work changes, ViruSure reserves the right to amend the price accordingly and charge any additional services and/or material costs etc.
- 7.3 ViruSure reserves the right to charge the Client for any expenses incurred resulting from, but not limited to Client delays, additional overtime requested (e.g. weekend work, night shifts). Any overtime work required for completion of the Project Contract must be agreed upon in writing in advance.

8 Payment

- 8.1 So far as no other payment conditions have been agreed in writing, all Project Contract invoices (Price including all applicable taxes) are to be paid in Euros (€) and in full within 14 days of the date of the invoice. This applies also for invoices arising from other agreements made in addition to the original Project Contract, irrespective of the conditions of payment agreed for any other previous agreement.
- 8.2 The Client is responsible for meeting all bank charges required for payment in Euros (€). As date of payment, the date of the instruction of the money transfer is considered sufficient.
- 8.3 The Client is not entitled to withhold payments due, in order to offset any warranty claims or any other type of claim, or counterclaim.
- 8.4 If the Client delays payment of any amounts due, ViruSure retains the right to (either jointly or separately):

- a) Cease performance of its contractual obligations under any Project Contract (related or not to the delayed payment) until all due payments have been made,
- b) To claim an extension for supplying its Services (Section 5.),
- c) Apply interest to the outstanding sum at the rate of 4 percent above the current base lending rate,
- d) Charge any additional services and/or materials etc caused by such delay, and
- e) Following a reasonable period of grace to rescind from the Project Contract.

9 Warranty & Liability

- 9.1 ViruSure is obligated in accordance with the statutory warranty and the following conditions, to rectify any deficiency of service on its part. Claims of whatsoever nature due to alleged deficiency of ViruSure's service shall expire two years after delivery of the Final Report or Certificate of Analysis (C of A).
- 9.2 Any claims under this warranty will only be observed if the Client communicates promptly in writing and proves in detail the nature of the deficiency. The statutory reversal of the burden of proof shall not apply. Where claims are considered just, ViruSure reserves the right to choose the manner of warranty performance (repeat, replacement, price reduction or conversion). If necessary, the Client is obliged to provide for additional material free of charge in order to put ViruSure in a position to comply with its obligations.
- 9.3 If the Client has not provided sufficient information to allow a correct performance of the service, then the Client shall indemnify and hold ViruSure harmless against any claim.
- 9.4 Any claims arising through the use of inappropriate materials provided by the Client or any third party connected to the Client, or caused from faulty information from the Client or any third party connected to the Client are excluded from the warranty.
- 9.5 If additional services are provided by ViruSure, which are not warranty performances, ViruSure has the right to an equitable remuneration.
- 9.6 ViruSure is exempt from any duty to warn of any incapability of provided Test Material or instructions.

10 Compensation

- 10.1 In as far as no other terms or conditions have been agreed, ViruSure's liability in the event of any claim is limited to the performance of its services. ViruSure is exempt from honouring compensation, in particular for any damages beyond the performance of its services, unless gross negligence or wilful conduct can be proven. In case of slight negligence ViruSure shall only be liable for personal injury. Any claims for compensation shall expire six months from the knowledge of the damage and the originator of the damage, and in any case ten years after providing of the service or material.
- 10.2 ViruSure under no circumstances is liable for pecuniary damages indirect damages, lost profits, interest losses, omitted savings, consequential damage, damage from claims of third parties as well as for the loss of data and programs and their restoration.
- 10.3 The Client shall be obliged to indemnify and hold ViruSure harmless against all actions from any third part, regardless of the nature of the claim.

11 Inventions and Discoveries

- 11.1 All patentable inventions and other discoveries which arise as a result of performance of a Study, and which relate exclusively to the Test Material, shall be the property of the Client and ViruSure shall provide such assistance as shall be reasonably required by the Client to protect such inventions and discoveries, including applying for patents and other protection, subject always to the Client meeting the reasonable costs of ViruSure in doing so.

For any patentable invention or discovery relating to testing methodology, processes or procedures, the Client, at no cost to ViruSure, shall grant to ViruSure and its affiliates a non-exclusive, perpetual, royalty free licence to practice such testing methodology, processes and procedures.

- 11.2 Notwithstanding the foregoing, ViruSure shall retain the rights to its testing methodology, processes and procedures, technology, skills, information, and knowhow that ViruSure uses in providing the Services.

12 Force Majeure

If either party is prevented or delayed from or in performing any of its obligations under the Project Contract by Force Majeure, as hereinafter defined, then it may notify the other party of the circumstances constituting the Force Majeure and of the obligations of performance which are thereby delayed or prevented, and the party giving notice shall thereupon be excused for the performance or punctual performance, as the case may be, of such obligations for so long as the circumstances of prevention or delay may continue, subject to the party giving notice using all reasonable endeavours to bring to an end of such circumstances as soon as reasonably practicable. For the purposes of this condition 'Force Majeure' means any circumstances beyond the reasonable control of the affected party including (without prejudice to the generality of the foregoing) war, industrial dispute, strike, lockout, riot, malicious damage, fire, storm, flood, act of God, accident, non-availability or shortage of material or labour, pandemics or epidemics, failure by any sub-contractor or supplier to perform, failure of equipment, any statute, rule, bylaw, order, regulation, or requisition made or issued by any government department, local or other duly constituted authority. Should such period of prevention or delay continue for a period in excess of 60 days either party may terminate the affected part of the Services.

13 Delay and Withdrawal

- 13.1 In the event of gross negligence, notwithstanding the obligation to grant a period of grace (§ 5.5), the Client is entitled to withdraw from the contract.
- 13.2 Ancillary to the case defined in §8.4 lit d) ViruSure is entitled to withdraw from the contract:
 - a) If the start, performance or continuation of the Services is delayed by the Client or performance of the Services is impossible, even following an extended period of grace
 - b) If due to circumstances set out in §5.4 any extension of the time for delivery of the Services amounts to altogether more than half of the agreed terms of delivery, at least however 6 months.
- 13.3 In the case of § 13.2 a partial withdrawal is also permissible.
- 13.4 In the event that, as a result of financial difficulties, the client becomes insolvent or a petition for bankruptcy is filed, ViruSure is entitled to withdraw from the contract without any period of grace.
- 13.5 Without prejudice to any compensation, in the event of withdrawal ViruSure reserves the right to require payment on any services or achievements or preparatory acts already performed in relation to the Project Contract, even if the contract is only partially fulfilled. Even in the case that no services fully or partially were rendered, ViruSure reserves the right to seek remuneration for any costs incurred in preparation for the said Project Contract

14 Governing Law and Area of Jurisdiction

- 14.1 Austrian law applies in all points, excluding any conflict of laws (EU Directive 593/2008) and the UN Sales Convention.
- 14.2 In the event a dispute arises under the Project Contract or these Terms and Conditions, the parties shall first try to settle such dispute amicably.
- 14.3 All disputes or claims arising out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said Rules. The language to be used in the arbitral proceedings shall be English and the place of arbitration shall be Vienna, Austria

15 Miscellaneous

Should one provision of these Terms and Conditions or the Project Contract be completely or partly ineffective or not enforceable, now or in future, the remaining provisions of these Terms and Conditions are not affected by that. The parties will replace the invalid or unenforceable provision by such a valid or enforceable provision that comes as close as possible in its content and purpose.