

# **General Terms and Conditions of PiCA Prüfinstitut Chemische Analytik GmbH**

## **§ 1 General**

- 1.1 These General Terms and Conditions of PiCA Prüfinstitut Chemische Analytik GmbH (hereinafter referred to as "PiCA GmbH") apply exclusively to all contracts between PiCA GmbH and customers, in particular concerning organic chemical laboratory services with the focus on product, indoor, food and environmental analysis as well as concerning the preparation of expert opinions.
- 1.2 Contradictory conditions or conditions deviating from these General Terms and Conditions will not be accepted, unless PiCA GmbH explicitly agrees to their validity. These general terms and conditions are also valid if PiCA GmbH executes the contractually owed service without reservation in knowledge of conflicting conditions or conditions of the customer that deviate from these general terms and conditions.
- 1.3 No verbal collateral agreements have been made. Agreements deviating from or supplementing these General Terms and Conditions of Business must be set down in writing.

## **§ 2 Conclusion of contract**

- 2.1 Offers of PiCA GmbH are subject to change.
- 2.2 An effective placing of order by the customer takes place in writing, either by post, by fax or by electronic message. Also the transmission of samples by the customer to PiCA GmbH is to be regarded as placing of order. PiCA GmbH is not obligated to begin with the investigation, before clarity about the order exists and all necessary documents were transmitted. This also includes investigation costs and delivery dates. Each order that PiCA GmbH accepts is considered as a separate contract between PiCA GmbH and the customer.

- 2.3 Orders become binding in case of doubt only by the order confirmation of PiCA GmbH. This is decisive for the type and scope of the contractual performance obligations.
- 2.4 Unless otherwise agreed in writing, the contractual relationship exists exclusively between the customers and PiCA GmbH.
- 2.5 Subject to deviating agreements in individual cases, the activity of PiCA GmbH is limited to the performance of analyses and the preparation of a test report. A consultation, further expert activities or the recording or presentation of the analysis results in addition to the test report or comparable services are not owed, unless otherwise expressly agreed in writing in individual cases.
- 2.6 PiCA GmbH reserves all property rights and copyrights to offer documents, especially drawings, models, samples, cost estimates and other documents that the customer receives from PiCA GmbH. These documents and the information embodied in them are to be kept secret and may not be made accessible to third parties without the express written consent of PiCA GmbH. They have to be returned to PiCA GmbH immediately without withholding copies if a contract is not concluded.

### **§ 3 Prices**

- 3.1 Unless otherwise stated in the order confirmation of PiCA GmbH, the prices of PiCA GmbH are net plus the statutory value added tax. If a change in VAT occurs between the conclusion of the contract and delivery, the VAT valid on the day of delivery will be calculated and the customer will be charged or refunded any resulting difference.
- 3.2 The deduction of a discount is only permissible in the case of a separate written agreement.
- 3.3 The costs for packaging, transport and disposal shall be invoiced separately, unless otherwise agreed. For deliveries abroad and from abroad, the customer shall bear any customs duties and import taxes.

#### **§ 4 Terms of payment and retention of title**

- 4.1 The terms of payment in detail result from the offers or the order confirmation of PiCA GmbH.
- 4.2 In case of not timely payment, PiCA GmbH is entitled to claim interest on arrears according to the legal regulations. The assertion of further damages remains expressly reserved by PiCA GmbH.
- 4.3 If it becomes apparent after the conclusion of the contract that the claim for payment is endangered by lack of ability to pay, in particular lack of creditworthiness of the customer, PiCA GmbH is entitled to demand immediate security or cash payment without any deduction for all services rendered and not yet paid for and to demand advance payment for all services still to be rendered as well as to withhold services still to be rendered. If the customer does not fulfill the above obligations in time, PiCA GmbH has the right to refuse the service and to withdraw from the contract as well as to claim damages.
- 4.4 The customer may only set off counterclaims that are undisputed or have become res judicata. The customer shall not be entitled to a right of retention due to claims that do not originate from the same contractual relationship.
- 4.5 Payment is made by bank transfer. Other methods of payment require prior agreement with PiCA GmbH.
- 4.6 Ownership, rights of use and other rights to analysis results and similar services provided by PiCA GmbH to the customer remain with PiCA GmbH until full payment of all related invoices by the customer.

#### **§ 5 Sample transmission and storage**

- 5.1 Unless otherwise agreed in individual cases, the delivery of samples is at the customer's own risk and expense. In case of shipment of test samples, the customer has to ensure that the type of packaging is appropriate and the labeling and documentation is complete and complies with the legal provisions and other previously agreed specifications

of PiCA GmbH. If the customer – namely in the delivery of dangerous goods – culpably violates his above obligations, he is liable for any damage caused by this.

- 5.2 The customer shall ensure that the sampling and sample transport with regard to the test order are carried out in such a way that reliable and meaningful analysis results can be obtained.
- 5.3 All incoming samples of the customer are professionally stored by PiCA GmbH for a maximum period of three months after receipt of the sample. The specific duration of storage depends on the stability of the analytes / sample to be guaranteed or whether the sample was consumed in the course of the investigation. Due to legal requirements or deviating agreements, a longer storage period may be decisive in individual cases. For samples stored for longer than six months, the customer shall bear the storage costs to be agreed separately.
- 5.4 At the end of the storage period, the samples will be disposed of professionally or – if a corresponding agreement exists – returned to the customer at the customer's expense and risk. The customer will be invoiced separately for special disposals that are subject to a charge. This applies regardless of whether or not the sample has been labeled as special waste or hazardous material.

## **§ 6 Order execution**

- 6.1 Unless otherwise agreed, PiCA GmbH provides its services in compliance with the applicable regulations at the time of the conclusion of the contract. The PiCA GmbH is entitled to determine the method or the kind of the investigation or examination after appropriate discretion itself, as far as no contrary arrangements were agreed upon in text form or as far as compelling regulations do not require a certain procedure.
- 6.2 Test reports of PiCA GmbH exclusively reflect the facts ascertained at the time of the test. The electronically or in special cases manually signed test report is provided to the customer, depending on the agreement, in digital form and/or in paper form. The transmission of the digital test report takes place via internet by unencrypted e-mail or by using other digital transmission possibilities.

- 6.3 Analysis results as well as the investigation documents and raw data on which they are based are archived according to the respective valid quality management manual of PiCA GmbH as well as according to the requirements of DIN EN ISO/IEC 17025. Longer archiving periods are carried out against a fee to be agreed separately.
- 6.4 PiCA is entitled to use subcontractors for the execution of the order. The use of a subcontractor shall be indicated in the test report.
- 6.5 The scope of services of PiCA GmbH is defined by the order confirmation of PiCA GmbH. If a need for extension or other changes of the originally agreed order arises during the proper execution of the order, these are to be agreed upon additionally and in writing. If namely a feasibility check carried out after the sample is available shows that a contractual processing of the samples by PiCA GmbH is either not possible or only possible under more difficult conditions than originally assumed, PiCA GmbH is entitled to charge the additional costs after consultation with the customer or to withdraw from the contract. PiCA GmbH reserves the right to claim the costs, which have arisen until the withdrawal, under the aspect of compensation.
- 6.6 PiCA GmbH is entitled to partial deliveries to a reasonable extent.

## **§ 7 Delivery time**

- 7.1 Delivery dates or delivery periods are generally non-binding, unless they are expressly designated as "binding" within the framework of the order confirmation of PiCA GmbH.
- 7.2 A delivery time of less than 72 hours is only bindingly agreed if the analysis is explicitly confirmed as "express analysis" within the order confirmation of PiCA GmbH.
- 7.3 A delivery deadline is met with the dispatch of the test report or expert opinion (by letter, fax, telephone, e-mail, etc.) or with the completion of the service.
- 7.4 In cases of force majeure PiCA GmbH is released from its obligation to perform for the duration and to the extent of the impact. "Force majeure" means any event beyond the control of PiCA GmbH, by which PiCA GmbH is wholly or partially prevented from fulfilling its obligations, in particular pandemics, natural disasters, fire damage, strikes and lawful lockouts, as well as operational disruptions or official orders not caused by

PiCA GmbH. Supply difficulties and other performance disturbances on the part of a pre-supplier of PiCA GmbH are only considered as force majeure, if the pre-supplier on his part is prevented by an event according to § 7.4 p. 1 above from providing the service incumbent upon him and a substitute supplier for the pre-supplier cannot be found at reasonable conditions.

- 7.4.1 PiCA GmbH will immediately notify the customer of the occurrence as well as the suspension of the obligation to perform and will use its best efforts to remedy the force majeure and to limit its effects as far as possible.
- 7.4.2 If the suspension of the obligation to perform is not reasonable for the customer, he shall be entitled to withdraw from the contract after expiry of a reasonable period to be set by him. Setting a deadline is not required in the cases specified by law (e.g. §§ 323 para. 2 and para. 4, 326 para. 5 BGB and § 376 HGB).
- 7.4.3 PiCA GmbH is not responsible for the non-performance or delayed performance for the reasons mentioned in § 7.4. A claim for damages or reimbursement of expenses of the customer does not exist in this respect. If a partial performance was effected, the customer can only withdraw from the whole contract if he is no longer interested in the partial performance.

## **§ 8 Duties of the customer**

- 8.1 The customer ensures that PiCA GmbH is provided with all information, sample materials and documents required for a timely execution of the order in due time. If the customer culpably violates his aforementioned obligations from § 8.1 p. 1, delays and additional costs caused thereby are at his expense.
- 8.2 The customer has to inform PiCA GmbH in advance about all risks and dangers known to him – whether present or potential – which are connected with the order, a sample or examination. This applies, for example, to the presence or possibility of radiation, toxic, harmful or explosive components or materials, as well as environmental pollution or poison. The customer is liable for all damages resulting from a culpable failure to inform the customer about the hazardous nature of the sample material.

## **§ 9 Warranty**

- 9.1 The warranty of PiCA GmbH only covers the services expressly commissioned to it according to §§ 2.3, 6.5 and results from the legal regulations.
- 9.2 If analysis results of PiCA GmbH are incorrect from the customer's point of view, the customer is obliged to contact PiCA GmbH immediately and to inform it in this regard in order to give PiCA GmbH the opportunity to verify or explain the analysis result.
- 9.3 If the order content – as in the case of the commissioned preparation of an expert opinion – is to be qualified as a contract for work and services in the sense of § 631 BGB, the warranty obligation of PiCA GmbH is initially limited to the supplementary performance within a reasonable period. If the supplementary performance fails, i.e. if it becomes impossible or unreasonable for the customer or if PiCA GmbH unjustifiably refuses or unduly delays it, the customer is entitled to demand the reduction of the remuneration or the cancellation of the contract; the right of self-execution according to §§ 634 No. 2, 637 BGB is excluded.
- 9.4 Liability for damages shall be limited in accordance with § 10. The same shall apply to claims for reimbursement of expenses

## **§ 10 Liability**

- 10.1 PiCA GmbH is liable for damages, regardless of the legal reason, only in case of intent or gross negligence of its organs or assistants. The above exclusion of liability for simple negligence does not apply to the violation of essential contractual obligations. In the event of a breach of material contractual obligations, liability shall be limited to typical, foreseeable damage.
- 10.2 A liability for damages due to a guarantee assumed by PiCA GmbH as well as due to a liability under the Product Liability Act or other mandatory standards remains unaffected by the above provisions. The same applies to the causation of damage from injury to life, limb or health.

## **§ 11 Confidentiality, copyright, data protection**

- 11.1 PiCA GmbH is allowed to take copies of written documents, which are handed over to PiCA GmbH for inspection and which are important for the execution of the order, for the files.
- 11.2 As far as in the course of the execution of the order expert opinions, test results, calculations and other documents or work results – including those in electronic form and including drafts – are created, which are subject to copyright protection (hereinafter referred to as "works"), PiCA GmbH grants the customer – subject to the provision in § 4.6 – a simple, non-sublicensable right of use, as far as this is necessary according to the purpose of the contract. Further rights are not granted or transferred. The customer may only use works in their entirety and also otherwise in unchanged form and only for the purpose of the contract. In particular, the publication or reproduction for advertising purposes requires in each case the prior written consent of PiCA GmbH.
- 11.3 PiCA GmbH will not disclose and use company and business secrets of the customer, which come to the knowledge of PiCA GmbH during the execution of the order, without authorization outside the execution of the order.
- 11.4 PiCA GmbH processes personal data of the customer for the proper fulfillment of the order and also otherwise only for permitted purposes. For this purpose PiCA GmbH also uses automatic data processing systems. During the data processing PiCA GmbH fulfills all applicable data protection legal requirements.

## **§ 12 Place of jurisdiction, applicable law, other agreements**

- 12.1 For all present and future claims arising from the business relationship, the exclusive place of jurisdiction is the headquarters of PiCA GmbH in 12489 Berlin. This jurisdiction also applies to disputes about the origin and effectiveness of the contractual relationship. PiCA GmbH is at liberty to take legal action at the customer's place of business.
- 12.2 The contractual relationship shall be governed by the law of the Federal Republic of Germany.

- 12.3 Subsidiary agreements, amendments and additions to the order must be made in writing. This shall also apply to any amendment of this written form requirement.
- 12.4 If parts of the above terms and conditions are invalid or waived, the validity of the remaining provisions shall remain unaffected. The contracting parties shall be obliged to replace invalid provisions by such provisions that are legally effective and correspond as far as possible to the invalid provisions in terms of meaning and purpose as well as economic result.