

General Terms and Conditions of testXchange GmbH

1. General, Scope

- 1.1 These General Terms and Conditions shall apply to the use of the online marketplace platform (hereinafter called 'Marketplace') for industrial tests (hereinafter altogether called 'Test Products') operated by the testXchange GmbH, Wilhelm-Kabus-Str 42-44, 10829 Berlin, Germany (hereinafter called 'testXchange') under the domains testxchange.com and testxchange.de by a user (hereinafter 'User') and for the brokering by testXchange of contracts about Test Products between the Users.
- 1.2 The Marketplace is meant to be used exclusively by Users who are business clients. A business client means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.
- 1.3 These General Terms and Conditions shall apply exclusively. Conflicting or deviating or supplemental terms and conditions of the User shall not be part of the contract and will not be acknowledged, unless testXchange expressly agrees to the applicability of such. This shall apply even if testXchange performs its services without any reservations despite being aware of the conflicting or deviating terms and conditions of the User.
- 1.4 These General Terms and Conditions do not apply to contracts about Test Products which Users conclude with each other.

2. testXchange Role and Services and Conclusion of Contracts about Test Products

- 2.1 The testXchange Marketplace is a brokering platform for contracts about Test Products between business clients. Users who offer Test Products, in particular test labs, are hereinafter called 'Contractor', and Users who are interested in purchasing such products, 'Customer'.
- 2.2 testXchange provides a comprehensive database of Contractors offering Test Products on the Marketplace. This database enables Customers to find a Contractor offering Test Products tailored to their needs through a structured search function.
- 2.3 When a Customer wants to contact a Contractor he can send a test request via the contact form provided on the Marketplace which will then be forwarded by testXchange to the Contractor or Contractors designated by the Customer. The communication of the test request to a particular Contractor depends upon this Contractor already being registered on the Marketplace, or registering upon the Customer's request. If a Customer's test request cannot be communicated to the respective Contractor because

of this Contractor not being registered, testXchange will inform the Customer without delay.

- 2.4 The further negotiation of terms and eventual awarding of a contract shall take place directly between Customer and Contractor. testXchange will not be a contractual party to any agreement between the Customer and Contractor about Test Products.

3. Access, Availability and Operation

- 3.1 Using the Marketplace requires the User to have Internet access. Calling up and using the Marketplace may entail costs and expenses regarding the internet connection and data transfer charged by the User's telecom provider which shall be solely borne by the User.
- 3.2 testXchange may modify and adapt the content of its services, in particular of the Marketplace provided and especially in the case of progress of technology, user interface or content
- 3.3 testXchange may cease to provide the service at any time, subject to the terms regarding the notice of termination set forth in section 5.1.
- 3.4 testXchange strives to provide access to the service for all Users 24 hours a day, 7 days a week. Temporary operational interruptions due to standard maintenance and inherent disruptions of the internet due to third party providers or third party network operators as well as instances of force majeure are possible. Therefore, Users do not have a claim to have uninterrupted access at all times. No particular availability is warranted to the User.

4. Registration and User Account

- 4.1 Contractors can register on the Marketplace. In case a profile for the Contractor has not already been set up by testXchange, it is necessary for the Contractor to register himself or herself for testXchange to forward requests by Customers to him or her.
- 4.2 For the purpose of registration, the Contractor needs to fill in the online form provided completely and truthfully. testXchange reserves the right to reject registrations without giving reasons.
- 4.3 After successful registration the Contractor will receive an email from testXchange with information about accessing his or her User account. The Contractor must keep his or her access data confidential and protect it against misuse by third parties. As a matter of principle, Contractors are responsible for all activities that take place through their User account. The Contractor shall inform testXchange without delay when they become aware of a misuse of their User account by a third party.

- 4.4 Registered Contractors shall update their User account with all relevant information about their company (in particular their form of organization), their person and address and changes to their product portfolio without delay.
- 4.5 Users may use the services, including all data and information, provided by testXchange for their own immediate purposes only. Users are prohibited from forwarding or trading to any third party the data received on products, offers, companies and persons, without testXchange's consent.

5. Commission for Brokered Contracts

- 5.1 In principle, Contractors and Customers may use the Marketplace without charge, unless they have purchased an additional product for which a fee is charged. This may include, for example, a registration package for laboratories with additional services for which a fee is charged.
- 5.2 testXchange may claim a commission from the Contractor for all contracts about Test Products between the Contractor and a Customer brokered through the Marketplace. The terms and conditions are set forth in a separate commission agreement between Contractor and testXchange

6. Customer's Obligation to Provide Information and Confidentiality

- 6.1 If a Customer concludes a contract about Test Products with a Contractor which has been brokered through the Marketplace, the Customer shall inform testXchange about this, including the name of the Contractor, without delay, at the latest within 14 days after it has been concluded, by email to info@testxchange.com.
- 6.2 Customers agree that the Contractor shall disclose the invoice amount and the test project ID to testXchange. The customer waives the suppliers's obligation to keep the invoiced amount and the test project ID confidential.
- 6.3 testXchange considers itself to be an independent broker between Contractors and Customers. Insofar as the relation between Contractors and Customers is not concerned, testXchange is the test labs' partner and will safeguard their interests. In particular, testXchange will not forward information about contracts brokered, in particular prices offered or information about customers, to third parties (e.g. competitors or other customers).

7. Term, Termination and Storage of the Text of the Agreement

- 7.1 A registered Contractor may terminate his User account and, with this, the Agreement

about using the Marketplace at any time. For terminations by testXchange, a notice period of one month applies. The right to terminate for a compelling reason shall remain unaffected.

- 7.2 The termination shall have no effect on the Contractor's obligation to pay the contractual commission for such contracts which have already been brokered or concluded at the time of the termination. Thus, the provision set forth in section 5 and the relevant terms and conditions for the commission shall continue to apply in this regard even in case of termination, except in case this Agreement has been terminated by the Contractor for a compelling reason for which testXchange is responsible.
- 7.3 Notice of termination must be given in text form (e.g. by letter, email or fax).
- 7.4 The Contractor's registration for the Marketplace with the data entered by the Contractor is stored by testXchange. The Contractor may view the data stored in connection with his profile through his User account. The Contractor may view these General Terms and Conditions on the Marketplace under the menu item 'Terms and Conditions' ("Geschäftsbedingungen") at any time, in the then current version. Outdated versions are not held available, however. The Contractor may download and print this document, and the data visible in his User area, using the appropriate functions of his or her browser. Beyond that, it is not possible for the Contractor to view the agreement about using the Marketplace and the brokering services of testXchange.

8. Content of the Marketplace

- 8.1 The data and information about Contractors on the Marketplace come from either the Contractors themselves or they may have been created by testXchange on the basis of its own research and data collection. In its research, testXchange relies on publicly available information provided by the Contractors or third parties. testXchange does not review the information in regard to whether it is correct or complete.
- 8.2 The Contractor is obliged to review whether the Test Products are suitable for the particular application. testXchange would like to draw attention to the fact that the services owed by the Contractor are determined solely by what is agreed between Contractor and Customer.
- 8.3 The Contractor must, if he or she gives information on the Marketplace in this regard at all, describe his or her offers and products correctly, exactly and completely. The Contractor shall be liable for the correctness and completeness of the information that he or she provides on the Marketplace. The stored information must be kept up to date.

9. Liability

- 9.1 testXchange shall be liable according to statutory law for damages suffered by User that were caused by intentional or grossly negligent behavior on the part of testXchange or its vicarious agents (Erfüllungsgehilfen); and for personal injury; and for damages under the German Product Liability Act (Produkthaftungsgesetz).
- 9.2 In all other cases, testXchange's liability for damages – regardless of the legal grounds on which a claim is based – shall be limited as set out below unless testXchange has accepted a guarantee which states otherwise: testXchange shall only be liable for damages caused by slight negligence to the extent that such damages result from breach of essential contractual obligations (cardinal duties, Kardinalpflichten), i. e. such obligations whose fulfilment is a prerequisite for properly fulfilling the Agreement and in which User may normally trust. Insofar as testXchange is liable for slight negligence, testXchange's liability shall be limited to the typically foreseeable damage.
- 9.3 The above provisions shall apply to a limitation of the obligation to indemnify the User for futile expenses (section 284 German Civil Code).
- 9.4 The above limitations of liability shall also apply in favour of testXchange's vicarious agents as well.

10. Applicable Law and Venue

- 10.1 These General Terms and Conditions and the entire legal relationship between testXchange and the User are subject to the laws of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 If the registered User is a merchant (in terms of the German Commercial Code HGB), a public law legal entity or a special public law fund, the exclusive venue – including the international venue – for all current and future claims directly or indirectly arising out of or in connection with the contractual relationship between the parties shall be at Berlin, Germany. The same venue shall apply if the registered User does not have a domestic general venue in Germany, or if he has moved his residence or usual place of abode to another country after conclusion of the contract, or his residence or general abode is unknown at the time the law suit is filed. testXchange may, however, bring action at the User's general venue.

11. Modifications of these General Terms and Conditions and Salvatorian Clause

- 11.1 testXchange shall notify the User of future modifications to these General Terms and Conditions (hereinafter 'Modifications') in text form, particularly highlighting any

differences in regard to the version previously in force. The User may object to such Modifications. The User must direct his objection to testXchange via email or in writing within one (1) month after reception of testXchange's notification concerning the Modifications. To comply with the time limit, the objection must be received by testXchange within the time limit. If the User does not object in due form and time, the Modifications shall be deemed accepted and the modified General Terms and Conditions shall become an integral part of the contract. The testXchange Modification notice will expressly refer to this effect and to the form and term of the objection. In the event of an objection in due form and time, the contract will remain in force in its unaltered version.

- 11.2 In case that parts of these General Terms and Conditions may turn out to be invalid, the other parts shall remain unaffected.