

General Terms & Conditions

1. Scope/General

1.1 These “General Terms & Conditions” (subsequently also referred to as “T&C”) are valid for all of the services offered and carried out by Hygienicum GmbH. All other contracts regarding services provided by Hygienicum GmbH must be based upon these T&C. The T&C are also valid for all future contractual relationships with the customers, even if those further contracts do not explicitly refer to the T&C.

1.2 For business conducted directly with consumers as defined by § 1 of the Austrian Consumer Protection Act, these T&C are also valid, except for certain explicitly defined deviations for business with consumers.

1.3 The client’s Terms & Conditions will not be recognized by Hygienicum GmbH unless Hygienicum GmbH expressly agrees to their validity (for businesses: in writing). The requirement to gain consent and our T&C are also valid for orders that are placed verbally, even when Hygienicum GmbH fulfills an order without reservations despite the knowledge of conflicting or deviating conditions provided by the customer (e.g. for orders that are the result of transferring samples). By placing an order, the customer expressly accepts these T&C.

1.4 Individual agreements with the customer take precedence over these T&C.

1.5 For transactions with other businesses, all agreements made between us and the customer are only binding if they are put in writing. The same applies to legally relevant declarations and statements after entering the contract (e.g. setting deadlines, withdrawing orders, cancelations, reporting defects).

2. Formation and Execution of the Contract

2.1 Insofar as nothing to the contrary results from the specific offer, our offers are always non-binding and without obligation. Orders placed by the customer are valid as a binding contractual offer and can be accepted within a period of two weeks unless a commitment period deviating from this is agreed upon in writing. However, orders are also considered accepted when we begin executing them. For business with consumers, if the order acceptance does not occur within this period, the customer is no longer bound to his or her order and/or offer.

2.2 Orders will be fulfilled in an unbiased manner, diligently and professionally in accordance with the industry standards, the applicable laws, technical standards, and our quality management system. Upon request we will inform the customer of the respective regulatory authorizations at the point in time when the contract is formed, and we will refer to the information provided on our website regarding the current corresponding authorizations.

2.3 Insofar as no other agreement has been put in writing, we reserve the right to perform the services by activating technically qualified third parties – in particular expert appraisers who work for us — or by involving subcontractors.

2.4 Changes requested by the customer regarding the desired service may not have any effect on the validity of the results. Changes to the service are to be managed in the form of an additional agreement (for businesses: in writing) prior to the beginning of the execution of services. In this additional agreement, the additional remuneration and any changes to the timeframe must be documented. Insofar as it is determined during an analysis that the result of that analysis, after the prescribed or agreed upon test procedures, would not be usable due to the condition of the test sample or reference sample, Hygienicum GmbH shall make suggestions for further action. If further actions are agreed upon, an additional agreement (for businesses: in writing) concerning those actions is to be formed. In such cases, the customer shall bear the costs of the additional effort arising from this, unless otherwise agreed upon.

2.5 For the final evaluation of the test reports and to provide clarity regarding offers, the following decision-making rules have been defined:

- a. The application of legal provisions (e.g. maximum levels): Depending on the order and the analysis, the decisions/evaluations are a result of the legal requirements. The applicable regulations are noted on the test report.
- b. Considering measurement uncertainty in assessments: When considering the conformity of given specification limits, the measurement uncertainties shall be taken into account in the assessment.
- c. cSummation: Values that are smaller than the limit of quantification shall not be considered in summation. Any exceptions shall be indicated in the test report.
- d. Rounding measured values: Rounding is conducted in accordance with the regulations provided in the standards, which are stored in our LIMS.

3. Test Samples, Reference Samples, Materials: Obligations and Ownership

3.1 Test samples, materials, and reference samples must be provided in a condition that enables the services that have been ordered to be performed without problems.

3.2 The customer is required to inform Hygienicum GmbH of all known hazard warnings and handling instructions applicable to the test samples, materials, and reference samples provided. Health or safety concerns arising from the test samples, materials, and reference samples must be indicated in writing on them. This includes, in particular, concerns regarding any known or suspected toxins or other contamination, as well as the suspected level of contamination, and furthermore, any potential risks posed to the property and other legal aspects of Hygienicum GmbH, its employees, or other representatives. If, based on the inspection of incoming goods, it is determined that it is not possible for Hygienicum GmbH to perform the services agreed upon, or not under the conditions that were agreed upon, due to the contamination, Hygienicum GmbH is entitled to withdraw from the contract (potentially adjusting the conditions when setting a reasonable grace period) or can stop executing the order. In this case, the customer of Hygienicum GmbH bears the costs that have been incurred up to this point in time.

3.3 Hygienicum GmbH has the right to dispose of or destroy the samples in order to prepare for or conduct the analysis as well as the right to dispose of or destroy the test samples, materials, or reference samples immediately after the analysis has been conducted or the work has been completed, unless further storage is required by law or has been agreed upon in advance (and, for businesses, put in writing). If a specific storage period has been agreed upon, Hygienicum GmbH has the right to dispose of or destroy the samples after this period has expired, without providing notice in advance. If the customer requests that samples are returned or sent back, Hygienicum GmbH will only arrange this at the expense and risk of the customer.

3.4 Apart from that, any shipment of test samples, materials, reference samples or any other logistical arrangements shall be carried out by the customers on their own and at their own risk and expense. Insofar as Hygienicum GmbH provides any assistance, Hygienicum GmbH it does so as commissioned by the customer.

4. Turnaround Times, Target Dates, and Duty to Cooperate

4.1 Turnaround times and target dates are merely estimates and do not constitute any obligation; Hygienicum GmbH will however make economically reasonable efforts to meet target dates and turnaround times. Target dates and turnaround times are only binding in individual cases where this is explicitly agreed upon (for businesses, in written form).

4.2 The customer shall be responsible for ensuring that any and all information and/or documents that are necessary in order to perform the services will be made available to Hygienicum GmbH on time and free of charge. The turnaround time for performing the services begins at the earliest on the day that we accept the order, yet not before all of the individual details regarding the execution of the order are completely clarified, insofar as these are necessary in order to carry out the order (e.g. test methods, specifications, reference substances, materials to be provided, etc.), and all possible test samples, materials, and/or reference samples are received.

4.3 The agreed upon turnaround times for executing the order shall be extended – without affecting our rights arising from customer delays nor any statutory right to withdrawal – by the length of time of the delay caused by the customer’s failure to perform the contractual obligation to cooperate or pay, or by a longer period of time that can be proven to have been caused by this delay. The same shall apply if a target date for completing the order has been agreed upon.

5. Prices and Payment Conditions

5.1 For the performance of our services, the prices agreed upon in the orders shall be valid. All prices do not include shipping unless otherwise agreed upon (for businesses, in writing). Any costs for express orders as well as for special packaging must be paid for separately and in addition to the shipping costs. Orders may be subject to the statutory value added tax, which is not included in the quoted prices.

5.2 Insofar as no other agreement has been made, the payment must be made in its entirety within 10 calendar days of receiving the invoice and the delivery of the results of the work. If the payment is delayed, Hygienicum GmbH has the right to:

- Charge businesses default interest at a rate of 9.2% above the interest base rate as well as any potential damages in excess thereof, irrespective of culpability.
- Charge consumers the statutory default interest at a rate of 4% p.a. or, alternatively, compensation for the actual damage incurred.

5.3 All outstanding claims shall become due immediately if the terms of payment are not adhered to or if we become aware of circumstances that warrant reducing the creditworthiness of the customer. Hygienicum GmbH is then also entitled to withhold services from other orders to a reasonable extent and scope. We are also entitled to withhold the performance of any outstanding services until the invoice is paid in advance, or to demand reasonable securities, and, if the customer ultimately refuses to fulfill the contract or provide security or, after setting a deadline, still has not provided the reimbursement and/or security, Hygienicum GmbH is entitled to withdraw from the contract. The legal regulations regarding the superfluity of setting a deadline and asserting damage claims remain unaffected.

5.4 The customer is only entitled to offset rights if the counterclaims have been legally established or expressly acknowledged by Hygienicum GmbH in written form. Any potential liens or rights of retention by the customer are excluded unless they are based on the same contractual relationship or a legally binding title. Mandatory legal rights of the customer remain unaffected by this. The prohibition of offsets and exclusion of the right to retention/liens stipulated in this paragraph shall not apply to business conducted with consumers.

5.5 Any and all legal rights of Hygienicum GmbH extending beyond these terms and conditions (especially regarding late payment by the customer) remain unaffected.

5.6 If the services remain unperformed due to reasons that are in the realm of the customer, or due to the justified termination of the contractual relationship on the part of Hygienicum GmbH, then Hygienicum GmbH remains entitled to the payment of the entire amount of compensation that had been agreed upon, (or for consumers, deducting any savings achieved due to the work that was left unperformed).

6. Impairment of the Performance of Services and Liability

6.1 The services to be performed by Hygienicum GmbH will be executed in accordance with the current state of the art and with the due diligence that is economically appropriate and standard in the field.

6.2 The services performed by Hygienicum GmbH are considered accepted when the customer does not reject them within 10 working days of receiving the assessments, analyses, reports, or other deliverables while also providing an indication of a deficiency that is non-negligible and actually existent – or at least clear from an objective point of view. In every case, the customer is required to verify the validity of the results, interpretations, estimates, and conclusions provided by Hygienicum GmbH with an appropriate level of diligence at their own risk, if the customer wants to rely on these results in matters of importance. The customer is obligated to inform Hygienicum GmbH without delay if the results delivered are recognizably erroneous.

6.3 If there are any deficiencies, we will decide according to our own judgment whether we will rectify them or perform the services again. Any claims for alterations or price reductions shall be excluded. Warranty claims expire no later than 1 year after the services are performed.

6.4 Unless otherwise stipulated expressly in written form, a contractual relationship only exists between Hygienicum GmbH and the customer, and no contract shall be made on behalf of third parties or with the effect of protecting third parties. In each case, the customer must inform Hygienicum GmbH in advance about any third parties that may have an interest in the services to be performed.

6.5 The customer is required to indemnify and hold harmless Hygienicum GmbH with respect to all third-party claims that are based on any breach of duty of the customer or otherwise caused by the customer or attributable to the customer.

6.6 Insofar as permitted by the laws in force and unless stated otherwise in these T&C, Hygienicum GmbH – regardless of the legal grounds – shall only be held liable for acts of willful intent and gross negligence. Hygienicum GmbH is not liable for indirect damages, lost profits, consequential losses, pure financial losses, and/or damages from third-party claims. The liability of Hygienicum GmbH is limited in amount to the net value of the order and only as compensation for foreseeable damages that may typically occur.

6.7 Liability claims from the customer are to be asserted in court within six months of becoming aware of the damage and the liable party, and always within one year of the completion of the services performed by Hygienicum GmbH, otherwise the assertion of liability claims is excluded. The customer must provide proof that the damage is directly attributable to the (gross) culpability of Hygienicum GmbH.

6.8 Hygienicum GmbH is exclusively liable for the customer; the liability of other entities, legal representatives, employees, or other adjuncts of Hygienicum GmbH is excluded insofar as the liability thereof is not mandated by law. In this case, the aforementioned exclusions and limitations of liability shall apply mutatis mutandis to the extent permissible by law. They do not apply to damages resulting from injury to life, body, and/or health, nor to claims made under the Product Liability Act.

6.9 For business conducted with consumers, the statutory warranty provisions shall apply; therefore, the liability limitations and provisions pursuant to Sections 6.5, 6.6, and 6.7, as well as Section 6.8 sentence 2 are not applicable to consumers.

7. Confidentiality and Data Protection

7.1 The parties shall treat as confidential all business and operational matters of the other party that they become aware of in the context of their business relationship that are either indicated as confidential or to be regarded as confidential due to the nature of the information, in particular business secrets.

7.2 Hygienicum GmbH is obligated to make economically reasonable efforts to treat all results of their work as confidential. This shall not apply when payment claims for the services performed must be verified. Furthermore, we are authorized to disclose, pass on, or use for our own purposes the knowledge gained during our business activities if we are required to do so by law or if the customer explicitly frees us from this confidentiality obligation in writing. Apart from that, we are authorized to utilize the test results produced in the context of the services performed, albeit taking into consideration data privacy and in an anonymized form, for scientific or statistical purposes, to publish them and to subject them to an independent scientific assessment, unless the customer has a legitimate interest in opposition to this that is also known to us.

7.3 The customer may utilize the results of the work (test results, certification results, analytical results) only for the purposes contained within and agreed upon in the context of the individual order, and may only make them available to certain third parties provided there is prior, written mutual content with Hygienicum GmbH. Furthermore, the customer pledges not to reproduce, disseminate, or otherwise publish the work results that have been ascertained by Hygienicum GmbH or other confidential information. This shall not apply in cases where the customer has a legal obligation to disclose this information, either from the regulatory authorities or courts, in which case the customer shall inform Hygienicum GmbH. In no case shall liability to third parties be incurred by Hygienicum GmbH due to the disclosure, reproduction, or distribution of work results.

7.4 Copyrights and all other rights pertaining to the services performed by Hygienicum GmbH and the results the work conducted shall be retained by Hygienicum GmbH.

7.5 In the context of fulfilling the order, Hygienicum GmbH processes personal data to the extent that it is necessary. That includes, in particular, names and business contact information for the contact partners. This data is processed exclusively for the intended purposes, such as processing the order, billing, and transferring analytical results. Detailed information regarding data privacy rights in accordance with GDPR Article 13 ff (Data Privacy Statement) are available at: <https://www.gba-group.com/datenschutz>

8. Place of Performance, Choice of Law and Jurisdiction

8.1 The place of performance is the head office of Hygienicum GmbH: Robert-Viertl-Straße 7, Graz, Austria, postal code A-8055.

8.2 Austrian law shall apply to the exclusion of the conflict of law regulations of international civil law and the Convention on Contracts for the International Sale of Goods (CISG). Regarding consumers, this choice of law shall only apply insofar as it does not restrict any mandatory legal provisions of the state in which he or she lives or resides.

8.3 The place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is the court of Graz that is responsible for the matter at hand. However, Hygienicum GmbH has the right to take legal action at the customer's general place of jurisdiction.

9. Partial Nullity

9.1 If any of the provisions of these general terms and conditions should be deemed legally ineffective, invalid, and/or unenforceable, this shall not affect the legal effectiveness and validity of the remaining provisions. In this case, the contractual partners shall replace the legally ineffective, invalid, and/or voided provisions with a legally effective and valid provision that is as consistent as possible in terms of its economic effect with the provision that it should replace.

10. Supplementary Provisions for Pest-Control Services

10.1 When providing pest-control services, Hygienicum GmbH, in addition to effectiveness, puts a strong emphasis on health and safety for humans and domestic animals. The toxic bait that is utilized in pest-control efforts against mice and rats are either directly placed in specially marked bait pipes or disbursed in areas that are primarily inaccessible to humans and domestic animals. Dogs and cats do not reach the bait. Under special circumstances, and with the requisite persistence, it may however be possible that unsupervised children reach the bait. Therefore, at the beginning of the service, the customer will be provided with an overview of where the bait will be applied. We hereby inform you that, above all, children should not be granted unsupervised access to these areas during the pest-control period.

It is also the responsibility of the customer to inform their personnel as the case may be. If there is a case of poisoning, a doctor should be contacted immediately. The active agent in the bait is bromadiolone and its antidote (remedy) is vitamin K1. This information is provided for the protection of our customers. We request your assistance and your understanding.

10.2 For business-to-business transactions, the following is valid: any claim regarding the rectification of defects must be made by the customer in writing to us in order to be recognized as valid. No later than 3 months after the contractually stipulated services have been performed, any claim that has not been asserted in writing up until that time shall expire. Any liability for indirect or direct consequential damage, such as production stoppage or lost profits, is excluded in all cases. Aside from that, the liability limitations in Section 6 of these T&C shall apply.

11. Limitations to the Applicability of these General Terms and Conditions for Consumers

If the customer is a consumer as defined by § 1 of the Austrian Consumer Protection Act, the following provisions of these General Terms and Conditions do not apply in this case:

- All provisions that require agreements between Hygienicum GmbH and the customer to be made in written form;
- Sections 6.2, 6.3, and 10.2 (limitations to the warranty rights) as well as 6.5, 6.6, 6.7, 6.8 sentence 2, and 10.1 (liability provisions and limitations);
- Section 5.4 (prohibiting offsets and liens);
- Section 8.3 (place of jurisdiction clause);
- Section 9.1 (partial nullity).