

## **General terms and conditions of Gielisch Institut für Analyse GmbH**

### **Preamble**

Gielisch Institut für Analyse GmbH, a subsidiary of C. Gielisch GmbH, is a firm of independent surveyors and loss adjusters servicing national and international insurance markets, national and international cargo and shipping industries, and all associated businesses. Gielisch Institut für Analyse GmbH specialises in the investigation and assessment of mould growth, wood-decay fungus, and contaminants. The general terms and conditions of Gielisch Institut für Analyse GmbH shall apply to the aforementioned scope of activities as well all other services and ancillary activities performed beyond the aforementioned scope of activities.

### **§ 1 General Provisions and Scope**

1. The following terms and conditions govern all legal relationships and services, including consultancy services, the provision of information, as well as ancillary services rendered and other ancillary obligations of Gielisch Institut für Analyse GmbH towards its Principals in carrying out instructions. Any deviating or contradicting conditions of the Principal shall become part of the contract only if they are expressly confirmed and accepted by Gielisch Institut für Analyse GmbH in writing. By issuing follow-up instructions and pursuing an ongoing relationship, the Principal declares their consent to the general terms and conditions of Gielisch Institut für Analyse GmbH.

2. Upon request, the general terms and conditions shall be provided by Gielisch Institut für Analyse GmbH. They can be consulted at the company's offices or on its website: [www.gia.gielisch.de](http://www.gia.gielisch.de).

### **§ 2 Conclusion of Contract and Receiving Instructions**

1. Instructions issued to Gielisch Institut für Analyse GmbH shall only be accepted and considered binding and effective when they are confirmed by Gielisch Institut für Analyse GmbH. The content and scope of the written confirmation of the instruction is decisive for the contract. Any amendments, supplementary agreements, additional verbal agreements, warranties, quality stipulations or guarantees of any kind must also be confirmed in writing to be effective. This also includes information and assurances given by employees of Gielisch Institut für Analyse GmbH or experts engaged by Gielisch Institut für Analyse GmbH.

2. The requirement for written form also applies to any amendment or revocation of this written-form clause.

### **§ 3 Obligations of the Principal**

1. Unless otherwise agreed upon in writing, the Principal must provide Gielisch Institut für Analyse GmbH, at no charge, as well as in a timely manner at its own cost, with all information and documents required for the execution of the instructions, such as invoices, drawings, site maps, calculations, correspondence, details of pre-existing damage and/or hidden defects, and operating hours. If site visits are required, the Principal shall have to ensure that Gielisch Institut für Analyse GmbH has access to the site. The Principal must give prior notice of inadequate lighting or inadequate power supply at the inspection site. The Principal must inform Gielisch Institut für Analyse GmbH without delay of any risks, hazardous substances or microbial contamination present at the site, so that the latter can prepare for site visits accordingly. Furthermore, the Principal must obtain information and documents from the parties involved as well as third parties, and either inform Gielisch Institut für Analyse GmbH of the same or give Gielisch Institut für Analyse GmbH the authority to obtain the necessary information and documents, provided that this is necessary for properly executing the instructions to completion.

2. Gielisch Institut für Analyse GmbH must be informed in a timely manner, and without express request, of all events and circumstances that could be of significance for the performance of services by Gielisch Institut für Analyse GmbH.

3. If the Principal fails to meet the requirements stated in Paragraph 1 or 2, the execution of the instructions will be at the sole risk of the Principal, unless in the event of contributory negligence on the part of Gielisch Institut für Analyse GmbH. Any resulting additional costs shall be borne by the Principal, and Gielisch Institut für Analyse GmbH shall reserve the right to assert further legal claims in this event.

#### **§ 4 Obligations of the Agent**

1. Gielisch Institut für Analyse GmbH shall undertake to perform its services impartially, neutrally, and to its best knowledge and belief with the diligence of a professional expert.

2. Gielisch Institut für Analyse GmbH can ensure a specific outcome, in particular the outcome desired by the Principal, only within the scope of objective and impartial application of its expertise.

3. In risk assessments, the suggestions, advice and statements given by Gielisch Institut für Analyse GmbH will always be construed as recommendations made to the Principal or the person authorised to receive directions, and the execution of any or all such recommendations cannot and should not guarantee an increased or otherwise defined level of safety, unless otherwise agreed in writing.

4. The scope of the services to be performed by Gielisch Institut für Analyse GmbH shall be established in writing at the time the instruction is given. The performance of part of the services is permissible. Any changes and/or additions to the established scope of the instructions that may arise while the instructions are being duly executed must additionally be agreed in writing in advance by the contracting parties. If, in view of the changes or additions, the Principal cannot be expected to comply with the contract, the Principal shall have the right to withdraw from the contract. However, in this event, the Principal shall pay the agreed remuneration or, in the absence of an agreement, a reasonable remuneration.

5. Gielisch Institut für Analyse GmbH is not obligated to check the completeness and accuracy of data, information or other services provided by the Principal, in so far as there are no grounds for doing so in consideration of the individual circumstances, or this is not explicitly included in the instructions.

6. In order to execute its instructions or to perform its services, Gielisch Institut für Analyse GmbH is entitled to undertake the necessary and usual investigations and tests in the proper exercise of its discretion, to collect information, to make inquiries, to undertake trips and conduct on-site inspections, and to produce or have produced photographs, drawings, images or other documentation, without requiring the specific consent of the Principal. Any costs incurred in this regard shall be borne by the Principal. However, should investigations become necessary that are unforeseen or time-consuming or costly in relation to the purpose of the experts' report, then the prior consent of the Principal will be required.

7. Gielisch Institut für Analyse GmbH has the right to use the services of experts to carry out the instructions.

8. If the life or health of the employees of Gielisch Institut für Analyse GmbH is at risk while carrying out the instructions, the company has the right to refuse to act on the instructions. The costs incurred thus far shall be refunded by the Principal.

9. Gielisch Institut für Analyse GmbH will provide a digital copy of its expert's report by email. Additional copies will be billed separately. Gielisch Institut für Analyse GmbH shall not be liable for statements or information provided verbally.

## **§ 5 Confidentiality**

1. Gielisch Institut für Analyse GmbH shall observe its duty to maintain confidentiality. Gielisch Institut für Analyse GmbH shall ensure that none of the expert's reports or other facts or documents relating to the Principal or the instructions that become known to it while rendering its services are disclosed, used or transmitted without authorisation. The duty to maintain confidentiality includes all non-public facts, and shall continue to apply even after the contractual relationship has ended. The duty to maintain confidentiality applies to all persons working for Gielisch Institut für Analyse GmbH. Gielisch Institut für Analyse GmbH shall undertake to ensure that the duty to maintain confidentiality is observed by all its employees.

2. Gielisch Institut für Analyse GmbH is authorised to disclose, pass on, or use for its own purposes the knowledge acquired in the process of preparing reports if legally obligated to do so, or if the Principal expressly releases Gielisch Institut für Analyse GmbH from its duty of confidentiality in writing.

3. Gielisch Institut für Analyse GmbH may make copies of written documents submitted to it for review or for carrying out instructions.

## **§ 6 Copyright Protection and Exploitation of Services**

1. Gielisch Institut für Analyse GmbH shall retain the intellectual property rights on the services rendered if they are protected under copyright law.

2. When the instructions are issued, the scope of services shall be determined by Gielisch Institut für Analyse GmbH in writing. The report prepared by Gielisch Institut für Analyse GmbH within the scope of its instructions, and/or the services rendered by Gielisch Institut für Analyse GmbH including all associated cost statements, calculations, and other particulars may be used by the Principal only for the purpose agreed upon at the time the instructions were issued.

3. The transmittal and use of the services rendered by Gielisch Institut für Analyse GmbH for purposes beyond those contractually specified shall require prior written consent from Gielisch Institut für Analyse GmbH, unless permission for transmittal to a specific third party is clear beyond doubt from the instruction.

4. The publishing of any report shall require the consent of Gielisch Institut für Analyse GmbH, and if consent is granted, the source of the report must be stated. The analysis report may only be reproduced for the purposes of its intended use.

## **§ 7 Remuneration and Terms of Payment**

1. Gielisch Institut für Analyse GmbH is entitled to remuneration for the services rendered by it. Where there is more than one Principal, they shall be jointly and severally liable.

2. Following the execution of instructions, or upon presentation of the fee note, the remuneration shall be payable in full immediately, or by the date specified on the invoice.

3. For the invoicing of services, the value-added tax applicable at the time of completed execution of the instructions will be shown separately and levied in addition to the remuneration for carrying out the instructions.

4. The basis for the calculation of fees shall be the applicable scale of fees defined by Gielisch Institut für Analyse GmbH, which is known to the Principal. This will not apply if a fixed price or other basis of assessment has been explicitly agreed in writing.

5. Money orders, cheques or bills of exchange will only be accepted by special written agreement, with the addition of all collection fees and discount charges, and only on account of performance. They will be recognised as payment once they have been redeemed.

6. A set-off or withholding of payment by assertion of a counterclaim is excluded, unless the counterclaim is uncontested and has been legally established.

7. If there are several outstanding bills, Gielisch Institut für Analyse GmbH shall be entitled to determine which debt the payment will clear.

8. If the Principal fails to settle a fee note on time, Gielisch Institut für Analyse GmbH may withdraw from the contract or claim damages in lieu of performance. In the event of delayed payment, Gielisch Institut für Analyse GmbH will be entitled to a default interest of 5% above the base rate of interest, subject to the assertion of any further loss. However, the Principal shall be permitted to demonstrate that Gielisch Institut für Analyse GmbH has not suffered any loss or that the loss is substantially lower. The interest on arrears will be higher if Gielisch Institut für Analyse GmbH demonstrates a debit at a higher interest rate. Gielisch Institut für Analyse GmbH shall also be due a flat fee of EUR 5.00 for each reminder sent.

9. Should Gielisch Institut für Analyse GmbH become aware of facts that indicate that the Principal is no longer creditworthy, Gielisch Institut für Analyse GmbH shall be entitled to demand advance payment or securities before carrying out instructions. In such cases, Gielisch Institut für Analyse GmbH may also withdraw from the contract after a reasonable grace period, or claim damages for breach of contract. Subject to the assertion of a claim for a higher loss, these damages will amount to 15% of the remuneration, unless the Principal demonstrates that no loss or a lower loss was incurred. This will also apply if the payment conditions are not met, if cheques or bills of exchange fail to be honoured, if payment is suspended, if insolvency proceedings are instituted with respect to the Principal's assets, or if the institution of such proceedings is refused for lack of assets on the part of the Principal.

10. Advance payments to cover costs may be demanded. Gielisch Institut für Analyse GmbH may issue interim invoices for services already rendered. If the Principal does not settle an interim invoice on time despite being granted a grace period, Gielisch Institut für Analyse GmbH shall have the right to refuse the further execution of instructions, withdraw from the contract, or demand damages for breach of contract.

11. Until the remuneration is paid in full, the expertise and knowledge obtained in the course of the investigations shall remain the property of Gielisch Institut für Analyse GmbH.

### **§ 8 Delay, Delivery Period, Default**

1. The deadlines for execution of instructions by Gielisch Institut für Analyse GmbH are not binding unless compliance with a deadline is explicitly agreed upon in writing.

2. Binding delivery periods for the provision of experts' reports and/or services will commence on conclusion of the contract. Should Gielisch Institut für Analyse GmbH require documentation from the Principal, or if a prepayment has been agreed, the period will not commence until the prepayment or documentation has been received. The later time of receipt will be decisive.

3. If a delivery period or deadline is exceeded, irrespective of whether it is a binding or non-binding period or deadline, Gielisch Institut für Analyse GmbH will enter into default if the Principal has set a reasonable time limit for delivering the service, and Gielisch Institut für Analyse GmbH is responsible for the delay in performance and/or delay in delivery. A default in delivery will not arise in the event of force majeure or other unforeseeable obstacles for which Gielisch Institut für Analyse GmbH is not responsible.

4. In addition to the fine for the delay in delivery, the Principal may also demand compensation for the damages caused by the default if the Principal can demonstrate that Gielisch Institut für Analyse GmbH acted with intent or gross negligence.

5. If the Principal enters into default of acceptance or fails to meet their duties to cooperate, Gielisch Institut für Analyse GmbH will be entitled to claim damages.

### **§ 9 Termination**

1. The contract may be terminated in writing at any time for good cause by either the Principal or Gielisch Institut für Analyse GmbH. Notice of termination must be given in writing. Unless otherwise stipulated in the contract, termination without cause is excluded.

2. The Principal shall have good cause to terminate the contract if Gielisch Institut für Analyse GmbH flagrantly violates its obligations as an expert even after receiving prior warning to no avail from the Principal, in particular its obligation to provide the service objectively, independently and impartially.

3. Gielisch Institut für Analyse GmbH shall have good cause to terminate the contract if the Principal refuses to cooperate as required, if the Principal attempts to falsify the findings of the expert's report / the service rendered by Gielisch Institut für Analyse GmbH, if the Principal suffers financial collapse or debtor's default, or if Gielisch Institut für Analyse GmbH establishes that it does not have the necessary expertise to provide the service.

4. Should the contract be terminated for a good cause for which Gielisch Institut für Analyse GmbH is responsible, Gielisch Institut für Analyse GmbH will only be able to claim remuneration for the part of the service that has been rendered up to the time of termination, if an objective use for the partial service exists for the Principal. In other cases, Gielisch Institut für Analyse GmbH reserves the right to claim remuneration in the same way as for services performed within the scope of the contract. Taking account of any expenses saved, the remuneration will be 15% of the remuneration for the services not yet rendered by Gielisch Institut für Analyse GmbH, unless the Principal demonstrates that the contractual workload is lower or the expenses saved are greater.

## **§ 10 Warranty**

1. Insofar as Gielisch Institut für Analyse GmbH renders services, the parties hereby agree that Gielisch Institut für Analyse GmbH shall only owe a service and not a specific outcome, and it is solely the remit and risk of the Principal to make decisions based on the services rendered.

2. In the event of defects within the warranty period, Gielisch Institut für Analyse GmbH may exercise its right to remedy the defects. Gielisch Institut für Analyse GmbH may opt to remedy the defects by eliminating the defects (rectification) or by replacing the deficient services (resupply).

3. The remedy will be undertaken within 21 days. If the remedy also proves to be defective, Gielisch Institut für Analyse GmbH shall further have the right to remedy the defect within a period of 21 days from written notification of the defect.

4. If and only after the remedy is absolutely and seriously rejected, not performed on time, or fails again after the second provision of a remedy, the Principal will have the right to demand, at their election, either a reduction in the remuneration or a rescission of the contract within the provisions of the law. Further warranty rights are excluded.

5. In the event of a minor breach of contract, in particular in the event of minor defects, the Principal shall not be entitled to withdraw from the contract. The Principal shall also not be entitled to withdraw from the contract if Gielisch Institut für Analyse GmbH is not responsible for a breach of duty associated with a defect.

6. The Principal must provide written notification of any obvious defects immediately after detection, and any hidden defects as soon as they are discovered and within the legal warranty period, giving a precise description of the defect, provided the Principal is a merchant or legal entity under public law; natural persons must provide notification no later than one year after delivery.

7. A claim for damages remains unaffected if warranted features are absent.

8. All warranty rights become statute-barred within one year of the transfer of risk (generally on delivery).

## **§ 11 Liability**

1. Gielisch Institut für Analyse GmbH shall be liable for losses, regardless of their legal basis, only if Gielisch Institut für Analyse GmbH, its legal representative or vicarious agent caused these losses with intent or gross negligence, or if Gielisch Institut für Analyse GmbH, its legal representative or vicarious agent negligently breached an essential contractual obligation. In the event of a breach of essential contractual obligations, Gielisch Institut für Analyse GmbH's duty to pay damages will be limited to foreseeable losses typical of the contract.
2. Gielisch Institut für Analyse GmbH shall not be liable for natural spoilage, shrinkage or deterioration due to the nature of the goods, if the onset or cause of such spoilage, shrinkage or deterioration can be directly or indirectly linked to a loss incident that has already occurred, or it had already started prior to the loss incident. If damage occurs as a result of delays, incorrect storage or handling of salvaged goods during or after their salvage, and especially also as a result of the influence of third parties, Gielisch Institut für Analyse GmbH shall only be liable if it has caused any of these things.
3. Liability for indirect consequential losses, including consequential losses typical for the contract, is excluded.
4. In all other cases, the liability of Gielisch Institut für Analyse GmbH will be limited to a maximum of EUR 250,000.00 per instruction, regardless of the number of claimants.
5. The Principal must immediately notify Gielisch Institut für Analyse GmbH in writing of any damages to be paid by the latter.
6. The above liability provisions will not affect the liability for damages in the event of injury to life, limb or health.
7. Where claims for damages against Gielisch Institut für Analyse GmbH are excluded, this exclusion shall also apply with respect to the personal liability of employees of Gielisch Institut für Analyse GmbH.
8. The Principal shall be liable for damages sustained by Gielisch Institut für Analyse GmbH as a result of intentional or grossly negligent breach of the Principal's contractual obligations.
9. The Principal shall release Gielisch Institut für Analyse GmbH from the claims of third parties resulting from contractual activities undertaken by Gielisch Institut für Analyse GmbH, unless Gielisch Institut für Analyse GmbH has acted with intent or gross negligence.
10. Claims for damages that are not subject to the short limitation period pursuant to Section 634a of the German Civil Code will become statute-barred three years after the Principal has received the experts' report / service.

## **§ 12 Property and Documents of the Principal; Safekeeping**

1. If Gielisch Institut für Analyse GmbH takes possession of the Principal's property or documents for the purposes of carrying out instructions, they must be taken back by the Principal upon completion of the instructions. If they are not taken back immediately, Gielisch Institut für Analyse GmbH shall only be obligated to retain the property or documents for safekeeping for a period of two months. During this time, Gielisch Institut für Analyse GmbH shall only provide the level of care it affords to its own property.
2. The taking of samples for testing purposes does not constitute a transfer of ownership. The Principal shall remain the owner of the sample material even after the commissioned tests have been completed, and shall be regarded as the waste producer under waste legislation.
3. After a period of two months, Gielisch Institut für Analyse GmbH may freely dispose of the property and documents in its possession. Any and all disposal costs shall be borne by the Principal.

### **§ 13 Special provisions for the commissioning of sample-taking and laboratory analyses**

1. The following shall apply to analyses involving microbial contamination or harmful substances: With the agreement of the Principal, Gielisch Institut für Analyse GmbH will take random samples, as it would be technically and financially unviable to uncover the full area of structural elements for analysis purposes within the requested scope of the commission. The analysis shall be based on the operational history of the site or building known to Gielisch Institut für Analyse GmbH at the time of the work, the findings of the site inspection, available documents and other information made available to Gielisch Institut für Analyse GmbH by the Principal. The analysis results will enable a reliable assessment of the conditions at the sampling points, according to the method associated with the sampling and analysis.

2. The Principal must ensure that the owner has given consent for any structural openings or destruction of structural elements that may be necessary at the time of sample-taking; any claims for compensation shall therefore be excluded. To make the structural openings and to reinstate the structures, the Principal must provide specially trained personnel or a specialist contractor.

3. Samples taken to test for microbial contamination or harmful substances shall be surrendered in their entirety to the contracted laboratory for analysis and further retention. The period for which samples are retained by laboratories is outside the purview of Gielisch Institut für Analyse GmbH.

### **§ 13 Applicable Law, Place of Performance, Jurisdiction**

1. The contract alone is binding for the relationship between the contracting parties. The contractual relationship is subject to German law. The UN Convention on Contracts for the International Sale of Goods is excluded.

2. The place of performance for all services is the registered office of Gielisch Institut für Analyse GmbH.

3. The exclusive place of jurisdiction for all disputes is the registered office of Gielisch Institut für Analyse GmbH if the Principal is a merchant as defined by the German Commercial Code (HGB), or a legal entity under public law or operating with special funds under public law, or if claims are asserted through debt enforcement proceedings. The same place of jurisdiction shall apply if the Principal has no general place of jurisdiction, if it has relocated its place of residence or usual abode abroad following conclusion of the contract, or if its place of residence or usual abode is unknown at the time an action is brought. For all other claims made by Gielisch Institut für Analyse GmbH against the Principal, the place of jurisdiction will be the Principal's place of residence, provided the Principal is not a merchant.

### **§ 14 Data protection**

Gielisch Institut für Analyse GmbH processes the personal data of the Principal for the purpose of proper fulfilment of the order in accordance with Art. 6 par. 1 (b) of the EU General Data Protection Regulation ("GDPR"). The "data controller" within the meaning of the GDPR is Gielisch Institut für Analyse GmbH. The contact details of the external data protection officer are: 2B Advice GmbH, Joseph-Schumpeter-Allee 25, 53227 Bonn, e-mail [gielisch@2b-advice.com](mailto:gielisch@2b-advice.com).

The duration of data storage is regulated by the legal provisions on commercial storage obligations. Depending on the service, data on documentation and results shall be stored according to statutory regulations. The Principal has the right to request the data controller for information, correction and deletion of the data, as well as the right to file a complaint with the State Commissioner for Data Protection of North Rhine-Westphalia.

Detailed information on data protection is available online at <https://www.gielisch.de/footer/nav/datenschutz/>.

### **§ 15 Severability Clause**

Should any present or future provision of this contract be or prove to be legally invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. The same will apply should it become apparent that the contract contains a legal gap. The parties shall undertake to replace an invalid or unenforceable provision or fill any gap with an appropriate provision which, where legally possible, most closely approximates the contracting parties' intentions, or what would have been their intentions according to the spirit and purpose of the contract had they considered the matter on completion of the contract or on subsequent addition of a provision.

Dusseldorf, November 2021