

CONTROL UNION PEST MANAGEMENT GMBH

GENERAL TERMS AND CONDITIONS FOR TREATMENT, PEST CONTROL & DESINFECTION SERVICES



These Terms and Conditions (hereinafter: T&Cs) apply to the Services performed by Control Union Pest Management GmbH, having its statutory seat in Hamburg, Germany and registered in the company register of the local court of Hamburg under number HRB 149551, and any of its affiliated companies or any of its agents (hereinafter each: a Company) perform for you (hereinafter: Client).

1. Definitions

1.1 In these T&Cs, the following words and phrases shall have the following meaning:

- a) Engagement: any agreement, in whatever form (i) setting out the Services to be provided by the Company to the Client and (ii) listing any documentation to be provided by the Client to the Company such that the Company may perform the Services, pursuant to which the Company agrees to render Services to the Client in exchange for a fee plus costs;
- b) Equipment: the machinery and tools that the Company uses in the performance of or in connection with the Services;
- c) Method: the manner (including all Equipment and Products) in which the Company performs the Services;
- d) Personnel: any and all technical or other personnel designated or used by the Company (and, as applicable, the employees of any subcontractor engaged in accordance with paragraph 3.8) to perform or supervise the Services rendered;
- e) Product: the products that the Company uses in performance of or in connections with the Services;
- f) Report(s) shall mean any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by the Company in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any Services performed;

g) Services means the services set out in any relevant Engagement, relating to:

- i. services in relation with treatment and pest control, and/or
- ii. fumigation of agricultural products loaded on any means of transport or stored in open-air warehouses or industrial plants, and/or
- iii. sale and delivery of fumigants and pest control related products, and/or
- iv. services in relation with disinfection, and/or
- v. consultancy services relating to one of the above,

and may comprise or include the provision by the Company of a Report;

h) Worksite: the premises, locations or other places where the Services will be performed, however excluding the premises, locations or any other place of business of the Company.

1.2. In these T&Cs reference to a paragraph shall mean a reference to a paragraph of these T&Cs.

2. General

2.1. These T&Cs shall apply to all Engagements, except where they are in conflict with regulations governing services performed on behalf of governments, government bodies or any other public entities.

2.2. Except when the Company receives prior written instructions to the contrary from the Client, no other party is entitled to give any instructions in respect of the Engagement or the Services or any Report.

- 2.3. The Company shall treat all information received in connection with the Services as confidential to the extent such information is not published, available to third parties or otherwise in the public domain.
- 2.4. These T&Cs shall take precedence over any terms and conditions which the Client has provided or may in the future provide to Company whether in a purchase order or any other document.

3. Performance of the Services

- 3.1. The Company shall perform the Services for the Client with reasonable care in accordance with relevant industry practice respectively the provisions of the Engagement.
- 3.2. The Method will be mutually agreed upon between the Parties, be it however that in the absence of such agreement the Company shall apply the Method that the Company, in its sole discretion, determines to be in accordance with relevant industry practice and considers appropriate on technical, operational or any other grounds.
- 3.3. The Company shall, in the performance of the Services, apply Personnel that are competent, skilled, suitably qualified, technically sufficiently experienced (whether by way of education or experience) and trained.
- 3.4. The Company will ensure that all Equipment used in connection with the Services is at all times inspected, calibrated and maintained in accordance with applicable laws and industry recommended standard practices.
- 3.5. The Company will ensure that whilst on the Worksite its Personnel will comply with any applicable health and safety rules and regulations and other security requirements made known to it in accordance with these T&Cs.
- 3.6. Under no circumstances shall the Client oblige the Personnel to sign any indemnity, waiver or other Site-specific undertakings or agreements of any kind) and if such agreement is nevertheless signed such agreement shall be considered null and void. In the event the Worksite is not the Client's or outside its control and the Company or its Personnel is held to sign an indemnity, waiver or other premises-specific undertakings or agreements (of any kind) before allowed to perform the Services, the Client shall bear all liability and exposure thereunder and warrants to indemnify the Company and its Personnel for the same.
- 3.7. The Company shall, where required, cooperate with third parties appointed by the Client in relation to the Services, provided that the Company shall owe no duty to such third parties in terms of the Engagement with the Client.
- 3.8. The Company shall not subcontract any part of the Services without prior written approval of the Client, such approval not to be unreasonably withheld or delayed. The Company may however subcontract any part of the Services, without the prior approval of the Client, to any of its affiliates or subsidiaries. The Company is responsible for all work, and acts, omissions and defaults of any subcontractor and the subcontractor's Personnel as if they were the work, acts, omissions or defaults of the Company.
- 3.9. The Company may, following completion of the Services, provide the Client with a statement or certificate acknowledging or confirming the completion of the Services or any other facts or circumstances relative to the Services. Such statement or certificate shall at all times be governed by and subject to these T&Cs. For the avoidance of doubt, such statement or certificate shall not be interpreted to extend the warranties provided by the Company under the Engagement.
- 3.10. The Services provided under this Engagement and any Report shall be only for the Client's use and benefit.

4. Client's Obligations

- 4.1. The Client shall provide the Company with all such information, documents and materials as may be necessary for the Company to perform the Services. The Client warrants that any information, documents and materials provided by or on behalf of the Client to the Company or the Personnel is true, accurate, representative, complete and is not misleading in any way.
- 4.2. The Client shall take all necessary steps to eliminate or remedy any obstruction, issues or circumstances in its responsibility that (could) interrupt the performance of the Services.
- 4.3. The Client shall provide the Personnel with full, unconditional and unhindered access to its Worksites. The Client shall, at all times, be responsible for the complete care and control

of its Worksites and provide a safe and secure environment for the Personnel. In the event the Worksite is not the Client's or outside its control, the Client shall take measures to ensure that the proprietor of such Worksite provides the Personnel with full, unconditional and unhindered access to the Worksite and provides a safe and secure environment for the Personnel.

- 4.4. The Client shall, prior to the Personnel attending any Worksite, inform the Company of all applicable health and safety rules and regulations and other reasonable security requirements that apply to such Worksite. The Client shall inform the Company in advance of all known hazards and dangers, actual and potential, relative to the Worksites.
- 4.5. The Client shall review the Method and satisfy itself, before commencement of the Services, of the correctness and sufficiency of the application of the Method in the relevant circumstances, including all risks (including health and safety) and exposure resulting from the application of such Method. The Client shall be deemed to have accepted the Method should it not have rejected such Method before commencement of the Services.
- 4.6. In the event that the performance of Services requires the Company to access Client's information technology resources or resources of Client's customers or other contractors, the Company will comply with the standard terms and conditions of access communicated to the Company beforehand.
- 4.7. The Client shall cooperate with the Company in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorised to provide instructions to the Company on behalf of the Client and to bind the Client contractually as required.
- 4.8. The Client is responsible for closing down areas for access by any other person than the Personnel of the Company, if such areas are to be treated and in which case such treatment may cause a threat and or danger to persons.
- 4.9. In case there are any changes in or on the premises of the Client that could potentially affect the (performance of the) Services by the Company in any manner, the Client shall immediately inform the Company of the same.
- 4.10. All obligations under this paragraph 4 will be performed promptly and at the sole costs and expenses of the Client.
- 4.11. The Company shall not be in Default (as defined below in paragraph 11.1) if such Default is caused by any delay by the Client in the performance of its obligations under this paragraph 4. The Client shall reimburse the Company for any and all costs incurred in connection with such delay. The Company may, by written notice to the Client, terminate the Engagement if the delay by the Client in the performance of its obligations continues for fourteen (14) business days.
- 4.12. As far as required for the performance of the Services, the Client shall make sure that the Personnel shall be allowed to access all grounds, premises and / or projects of the Client, and that all required formalities in this regard shall have been fulfilled.
- 4.13. The Client will not distribute or publish the contents of any Reports or any extracts, excerpts or parts of any Reports without the prior consent of the Company.

5. Fees and Payment

- 5.1. In consideration of the Company performing the Services, the Client shall pay the amounts specified or to be calculated in accordance with Engagement. These amounts do not, unless expressly otherwise provided in the Engagement, include the Company's costs and expenses for travel, accommodation, travel insurance, visa, any additional in-country insurances or travelling man hours, which shall be charged to the Client in addition to such amounts.
- 5.2. Unless otherwise provided in the Engagement, the amounts specified therein are exclusive of VAT, which shall be included in the invoices and payable (if applicable), in addition to such amounts.
- 5.3. The Client shall pay the Company's invoice issued to it in accordance with the Engagement within thirty (30) business days of the date of receiving the invoice.
- 5.4. If the Client fails to make a payment due under the Engagement by the due date, then, without limiting the Company's rights and remedies the Client shall pay interest on the overdue sum from the due date until payment of the overdue

sum, whether before or after judgment, at ten percent (10%) a year.

- 5.5. All amounts due under the Engagement shall be paid in full without any (i) set-off, unless the claim is uncontested or has been recognized by judgement, (ii) counterclaim, (iii) deduction, unless the Company fraudulently concealed the underlying defect or gave a guarantee of the quality, or (iv) withholding, unless the claim is uncontested or has been recognized by or is ready for judgement. All payments to be made under the Engagement shall be made without any deduction of any (local or withholding) taxes, levies, licenses, duties, charges, fees and withholdings of any nature by any governmental authority save as required by law. If the Client is compelled to make any such deduction, it will pay to the Company such additional amounts as are necessary to ensure receipt by the Company of the full amount which the Company would have received but for the deduction.
- 5.6. In the event that Client disputes the validity of an invoice, it shall notify the Company within fourteen (14) business days after its receipt thereof, denoting substantiated reasons following which the parties shall endeavour to resolve such dispute within ten (10) business days thereafter. If no such notice is given by the Client, the invoice shall be deemed correct and accepted by the Client.

6. Warranties

Warranties are excluded subject to (i) the right to cure, and in case the cure did not succeed in time, a right to free oneself from the contract, (ii) liability for other damage arising from an intentional or grossly negligent breach of duty by the Company or from an intentional or grossly negligent breach of duty by a legal representative of the Company or a person used to perform an obligation of the Company, (iii) unless the defect leads to a liability for damage from injury to life, body or health, (iv) unless the Company additionally offered services pursuant to paragraph 8.1. and (v) and unless the Company fraudulently concealed the defect or gave a guarantee for the quality of the work. Performance, information or advice provided by the Company (including its Personnel) will not create a guarantee unless expressly called a guarantee and will not otherwise increase the scope of any guarantee provided.

7. Liability and Indemnity

- 7.1. The Company shall be liable solely for any damages resulting from intentional or grossly negligent breaches of duty in accordance with the statutory and contractual provisions.
- 7.2. In case of a breach of an essential contractual obligation ("vertragswesentliche Pflicht"), the Company's liability shall be limited to the damage that is foreseeable and typical for the Engagement. Essential contractual obligations are those granting the rights which the Engagement must specifically grant to the contracting party according to its content and purpose, as well as obligations the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contracting party regularly relies and may rely.
- 7.3. In all other cases:
- a) the Company's overall liability shall in no event exceed (i) an amount equal to ten (10) times the fees paid by the Client (not inclusive of applicable taxes and expenses) in respect of the Services that gave rise to such claims or (ii) a cumulative maximum amount of one hundred thousand euro (EUR 100,000), whichever of (i) and (ii) is less; and
 - b) the Client shall be prohibited from bringing legal action following the expiry of three (3) months from the day upon which the Client became aware of the claim; and
 - c) claims shall be time-barred by the expiration of six (6) months after the event causing the damage.
- 7.4. The Company's liability in respect of injury to life, body or health remains unaffected by the limitations of liability set forth in aforesaid paragraphs.
- 7.5. The above limitations on liability shall apply mutatis mutandis in favour of the Company's vicarious agents ("Erfüllungsgehilfen").
- 7.6. Each party shall use all reasonable endeavours to mitigate any damage arising out, relating to or in connection with the Engagement.

8. Special Services and relating warranty

- 8.1. This paragraph 8.1 applies when the Services provided relate to consultancy services (and when the Services relate to multiple services to the consultancy services only):

The Services (including any deliverables generated in the performance of those Services) shall be only for the Client's use and benefit and the Client understands that reliance on any deliverables is limited to the facts and representations set out herein which represent the review and/or analysis of facts, information, documents and/or other materials in existence at the time of the performance of the Services only.

- 8.2. This paragraph 8.2 applies when the Services provided relate to treatment and pest control services, not being disinfection services (and when the Services relate to multiple services to the treatment and pest control services only):

- a) The Client shall, unless otherwise agreed in writing, examine in whole the Services within ten (10) business days following the completion of the Services. This examination will determine whether the Services performed meet the requirements under the Engagement, excluding the actual results of the treatment services. After the examination, if the requirements pursuant to the Engagement are not met, the Client will give the Company ten (10) business days to revise the Services. After the examination the Client will inform the Company via written notice of the results of the examination.
- b) Unless expressly agreed otherwise in writing, the Company does not make any representation, guaranty or warranty that the goods or premises treated will be free from live insects or infestation after the provision of the Services. The Client acknowledges and agrees that insects sometimes become resistant and are not affected by the Services performed.

- 8.3. This paragraph 8.3 applies in case the Services provided relate to disinfection:

The Services provided are on an "AS IS" and "AS AVAILABLE" basis. The Services are provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance, provided however

that the Report may contain a warranty that the location in which the disinfection services are performed is free of viruses as per such disinfection. The Company can not in any whatsoever way control infection by viruses appearing after the Services performed and therefor the Company does not warrant that Services will function uninterrupted, are secure or will be available at any particular time or location in the future.

9. Insurances

- 9.1. The Company and the Client are responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer's liability, motor insurance and property insurance.
- 9.2. The Company expressly disclaims any liability to the Client as an insurer or guarantor.
- 9.3. The Client acknowledges that although the Company maintains employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, the Company's liability insurance does not provide cover for employees of the Client or other parties.

10. Force Majeure

- 10.1. Neither the Company nor the Client will be liable for failure or delay to perform obligations under the Engagement, which have become practicably impossible because of circumstances beyond the reasonable control of the applicable party (Force Majeure Event). Such circumstances include without limitation natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond the party's reasonable control. Written notice of a party's failure or delay in performance due to a Force Majeure Event must be given to the other party no later than five (5) business days following the Force Majeure Event commencing, which notice shall describe the

Force Majeure Event and the actions taken to minimize the impact thereof. All delivery dates in these T&Cs affected by a Force Majeure Event shall be tolled for the duration of such Force Majeure Event. When feasible, the Engagement shall not be cancelled but rescheduled and deliverables for mutually agreed dates to be set as soon as practicable after the Force Majeure Event condition ceases to exist.

- 10.2. If circumstances causing the Force Majeure Event cannot be permanently removed, or result in a delay extending beyond thirty (30) business days, the Engagement shall be terminated, and the parties shall be relieved from their further contractual obligations, except for their accrued rights, if any, and the final accounting arising from or relating to the Engagement.

11. Default and termination

- 11.1. Should the Client or the Company be in breach under the Engagement (the Breaching Party), the non-breaching party may serve a written notice to the Breaching Party stating the specific breach and requiring rectification of such breach within thirty (30) business days from the date of such notice. For payment obligations under the Engagement which are not disputed in accordance with these T&Cs, the non-breaching party may serve a written notice to the Breaching Party stating the specific breach and requiring rectification of such breach within five (5) business days from receipt of such notice. If the default referred to in this article is not remedied within the period set in the respective notice, the Breaching Party shall be in default (the Default).

- 11.2. The Client and the Company may terminate the Engagement with immediate effect by giving written notice to the other party:

- a) if the other party has failed to remedy its Default in accordance with paragraph 11.1; or
- b) if the other party breaches an obligation under the Engagement that is irremediable; or
- c) if the other party stops or suspends, or threatens to stop or suspend payment of all or a material part of its debts or is unable to pay its debts as they fall due unless the other party withholds payment in the lawful exercise of its rights under any warranty or right of retention; or

- d) if the other party ceases or threatens to cease to carry on all or a substantial part of its business; or
- e) If the other Party begins negotiations for, takes any proceedings concerning, proposes or makes any agreement for the deferral, rescheduling or other readjustment, reorganization, compromise, general assignment of or an arrangement or composition with or for the benefit of some or all of its creditors of all or substantially all of its debts, or for a moratorium in respect of or affecting all or substantially all of its debts/if the other Party becomes involved in negotiations with any one or more of its creditors or takes any other step with a view to the readjustment or rescheduling of all or substantial part of its debts or any similar event occurs with respect to such Party; or
- f) if any step is taken with a view to the administration, winding up or bankruptcy of the other party; or
- g) any step is taken to enforce security over or a distress, execution or other similar process is levied or served against all or substantially all of the assets or undertaking of the other Party including the appointment of a receiver, administrative receiver, trustee in bankruptcy, manager or similar officer; or
- h) in accordance with paragraph 4.11.

- 11.3. Termination of the Engagement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Engagement which existed at or before the date of termination.

- 11.4. Termination of the Engagement shall not have retroactive effect.

- 11.5. On termination of the Engagement by the Company in accordance with paragraph 11.2:

- a) all amounts payable under the Engagement by the Client shall be due and payable forthwith, regardless whether the Services have been performed by the Company, and the Client will pay such amounts within five (5) business days; and
- b) the Client shall pay to the Company all documented costs (including the cancellation or transfer of supplier contracts) incurred by the Company as a result of early termination.

- 11.6. On termination of the Engagement by the Client in accordance with paragraph 11.2:
- a) the Client shall pay all amounts due and payable to the Company under the engagement for the Services performed in accordance with this Engagement prior to the date of termination of this Agreement;
 - b) the Company shall pay to the Client all documented direct costs incurred by the Client in having the Services completed by a third party, provided that the Client shall have the obligation to mitigate all costs necessary for the completion of the Services and at all times subject to the limitations of Company's liability set forth in these T&Cs.
- 11.7. The rights of the Client pursuant to the provisions of this paragraph 11 shall be the Client's exclusive rights and remedy with regard to any claims regarding the Company's Default (i) subject to the exercise of its rights and interest for in the event of claims for payment and (ii) unless the Default was caused by an intentional act or act constituting gross negligence. Under no circumstances and on no ground shall the Company have any further liability or responsibility whatsoever or howsoever arising from or in connection with the Company's Default.
- 11.8. The Client shall reimburse the Company for any and all costs incurred in connection with a delay in the performance of its obligations under paragraph 4.

12. Applicable law & dispute

- 12.1. The Engagement and these T&Cs shall be exclusively governed by and construed in accordance with German law. Any matter, claim or dispute arising out of or in connection with the Engagement, whether contractual or non-contractual, is to be governed by and determined in accordance with German law. The applicability of the Provisions of international private law and the UN Convention on Contracts for the International Sale of Goods are expressly excluded .
- 12.2. Any matter, dispute or claim arising out of or in connection with the Agreement, whether contractual or non-contractual, shall be exclusively submitted to the jurisdiction of the competent court of Hamburg, Germany.

