

General Terms and Conditions for Field Services – Ellab AG (Schweiz)

1. Applicability and definitions

- 1.1.1** "Ellab" means Ellab AG (registered in Basel-Landschaft, Switzerland, under the commercial register number CHE-276.230.898).
- 1.1.2** These General Terms and Conditions for Ellab Field Services ("**General Terms and Conditions**") are an integral part of the "**Order Form**", the purchase order between Ellab and the "**Customer**". The Customer is the Party that designates and commissions Ellab to perform the agreed "**Order**", i.e. the agreed Ellab Field Services project defined in the "**Offer**". The Offer refers to a quotation document that specifies the services that are to be provided to the Customer (and includes a description of the recommended Ellab Field Services at a defined price). The Order, the Order Form and the General Terms and Conditions are collectively referred to as the "**Agreement**".
- 1.1.3** The Customer and Ellab are each a "**Party**" and together the "**Parties**".
- 1.1.4** Ellab forwards these General Terms and Conditions to the Customer as part of the Offer. As soon as Ellab receives the Order Form from the Customer, the Agreement is deemed accepted. This is necessary so that Ellab can efficiently incorporate the work commissioned in its scheduling.
- 1.1.5** If the terms and conditions set forth in the Offer conflict with these General Terms and Conditions, the Offer shall prevail. In the event of any conflict between these General Terms and Conditions and any terms and conditions or other documents of the Customer, these General Terms and Conditions shall prevail. Ellab's acceptance of the Order is expressly made subject to the Customer's acceptance of these General Terms and Conditions.
- 1.1.6** "**Ellab Field Services**" mean services provided by Ellab, such as, but not limited to, qualification, validation and calibration services.
- 1.1.7** Ellab Field Services are of the nature of a service contract (*German: Auftrag*) within the meaning of Section 394 ff. of the Swiss Code of Obligations (*Obligationenrecht, OR*). Consequently, the clauses in this Agreement shall in no case be interpreted as meaning that Ellab owes the Customer a specific work result (other than the mere effort) or a guarantee of success for the performance of the Ellab Field Services, unless (divergent from the above) the Parties have expressly stipulated in writing in the SOW (*Scope of Work*) that Ellab shall perform any Ellab Field Service on the basis of a contract for work and labour (*German: Werkvertrag*) within the meaning of Section 363 ff. of the Swiss Code of Obligations.
- 1.1.8** "**Ellab's Standard Protocols**" mean protocols developed by Ellab that describe the steps and procedures in performing the Ellab Field Services specified in the Offer.
- 1.1.9** "**Scope of Work**" or "**SOW**" means the agreed scope for the Ellab Field Services described in the Offer.
- 1.1.10** "**Insolvency Event**" means the occurrence of one or more of the following events in relation to the affected Party: (a) such Party is permanently unable to pay its liabilities or announces its inability to pay its liabilities (in particular through suspension of payments); (b) a petition for bankruptcy is filed, or an order is made or a resolution passed for bankruptcy, inability to pay, dissolution debt restructuring moratorium or liquidation of such Party (other than for the purposes of a solvent amalgamation or reconstruction); (c) an insolvency administrator or other receiver, manager, trustee, liquidator or similar person or officer is appointed for such Party and/or over all or any part of such Party's assets; (d) such Party proposes or refuses a settlement or agreement with respect to its liabilities with its creditors (or a group of creditors); or (e) any equivalent event or circumstance that corresponds to an event or circumstance listed in clauses (a) through (d) above occurs in any applicable jurisdiction.

2. Payment terms

2.1 Fixed-Price Order

A "**Fixed-Price Order**" means an Order with a fixed service price to complete the whole Order. In such a case, the following shall apply:

- 2.1.1** An initial 25% of the estimated total investment will be invoiced to the Customer upon receipt of the Order Form. The invoice is due within 14 days after receipt of the invoice by the Customer.
- 2.1.2** The remaining balance will be invoiced every month as work is carried out until the Order has been completed.
- 2.1.3** The net payment term is 14 days from the receipt of the respective invoice(s) by the Customer.
- 2.1.4** The final invoice will include any costs or price adjustments required by Ellab that have been communicated to the Customer in advance and agreed to by the Customer.
- 2.1.5** All changes to the scope will be invoiced at the agreed rate.
- 2.1.6** Customers are responsible for paying the applicable taxes.
- 2.1.7** Reasonable shipping, handling, parking and customs charges will be invoiced in addition to the rates quoted in the Offer.
- 2.1.8** The Offer is valid for one month.

2.2 Hour-Based Order

An "**Hour-Based Order**" means a job commission that is invoiced on the basis of time and material. In such a case, the following shall apply:

- 2.2.1** 25 % of the estimated total investment will be invoiced to the Customer upon receipt of the Order Form. The invoice is due within 14 days after receipt of the invoice by the Customer.
- 2.2.2** Invoices are issued every month.
- 2.2.3** The net payment term is 14 days from the receipt of the respective invoice(s) by the Customer.

- 2.2.4** Invoices must include statements or time sheets showing the hours worked by each employee who is to be the subject of an invoice on each workday along with the hourly labour rate. Any additional costs not included in the hourly labour rate are to be listed separately.
- 2.2.5** Invoice copies are to be submitted for all materials procured for the purposes of completing the Order and for any services provided by subcontractors.
- 2.2.6** Customers are responsible for paying their own applicable taxes.
- 2.2.7** Reasonable shipping, handling, parking and customs charges will be invoiced in addition to the rates quoted in the Offer.
- 2.2.8** The Offer is valid for one month.

3. Requirements before the start of the job ordered

3.1 Documents and SOPs

- 3.1.1** Unless otherwise specified in the Offer, Ellab shall execute the Ellab Field Services on the basis of Ellab's Standard Protocols.
- 3.1.2** If the Customer has special protocols or Standard Operating Protocols ("**SOPs**") that Ellab needs to follow, this must be agreed upon before the job that has been ordered (the Order) commences.
- 3.1.3** If the Customer's SOPs are not part of the Offer, this may result in changes to the SOW, which will be invoiced to the Customer accordingly.
- 3.1.4** The Customer is obliged to provide all necessary information and documents, including SOPs, to perform the agreed services prior to starting the final preparation of the job ordered (incl. information on protection requirements and accident prevention).
- 3.1.5** These documents are to be provided at least 25 working days before the agreed start date for the job ordered.

3.2 Preparations

- 3.2.1** The Customer undertakes to carry out any agreed necessary preparations specified in the Offer or the SOW before the start of the job ordered.

4. Business hours

4.1 Standard business hours

- 4.1.1** Ellab's standard business hours are Monday through Friday between 8 a.m. and 5 p.m., which amounts to 8 working hours per day.

4.2 Time worked outside of business hours

- 4.2.1** Time worked outside of business hours, including weekends and holidays, will be invoiced with the following additional rates (does not apply to Fixed-Price Orders):
- 4.2.2** Time worked outside of Ellab's standard business hours will be invoiced with an additional 25 % of the stated rates.
- 4.2.3** Hours worked on weekends will be invoiced with a 50 % surcharge on the stated rates.
- 4.2.4** If work hours are required on public holidays, these will be invoiced with a 50 % surcharge on the stated rates.

4.3 Hour-Based Orders

- 4.3.1** Hour-Based Orders are based on 8 hours per employee per day for on-site work. For invoicing at least 6 working hours per started working day will be considered. The foregoing shall not affect the obligation to comply with the applicable labour laws, in particular with respect to break times.
- 4.3.2** The Customer acknowledges that nothing in this Agreement shall be construed or interpreted as limiting, impairing or modifying (i) Ellab's sole discretion as to the allocation of the respective working time of Ellab's employees and (ii) Ellab's sole authority as employer to issue instructions to Ellab employees in connection with the performance of the Ellab Field Services.

5. Delays and changes to the Order

5.1 Delays

- 5.1.1** The Offer is calculated based on the efficient use of time at the Customer's site on the basis of the SOW. The calculations in the Offer may be based on specific assumptions that include the length of the processes, the simultaneous testing of multiple Units Under Test ("**UUT**"), the availability and access to the UUTs and facilities, and the approval and forwarding of the documentation by the Customer. However, delays may be unavoidable and cannot be calculated in advance.
- 5.1.2** Delays for which Ellab is not responsible and which take up additional time will be invoiced in addition to the rates quoted in the Offer. The additional invoicing will be based on time and material, provided that the relevant Ellab personnel have not been rescheduled to other job assignments.
- 5.1.3** If the actual processing time of one or more of the planned Ellab Field Services is more than 30 % greater than the time specified in the Offer and the delays are not the fault of the Customer, Ellab will notify the Customer prior to completion of the Order. The Customer shall then have the option:
- to terminate the Order and leave the outstanding portion unfinished, in which case Ellab is entitled to invoice for the services it has provided but not yet invoiced; or
 - to continue the Order and additionally pay for the exceeded hours of work.

5.2 Changes to the SOW or UUT unavailability

- 5.2.1** Hours accrued due to circumstances such as UUT unavailability, UUT failures, Customer documentation revisions, schedule changes and SOW changes will be charged and invoiced according to the level and number of personnel assigned to the Customer's Order, the validation equipment, and any reasonable travel expenses where necessary.

5.3 Changes to the schedule

5.3.1 If the Customer wishes to change the agreed schedule, the Customer must submit this in writing to Ellab immediately so that Ellab can adjust the time plan accordingly. If changes are made within 20 days before agreed start date of time schedule, Ellab reserves the right to invoice 100% of agreed order value plus traveling expenses. If changes are made 21 to 120 days before agreed start of time schedule, Ellab reserves the right to invoice 50% of agreed order value plus traveling expenses. Any additional and reasonable costs incurred for adjusting the schedule may be invoiced in addition to the rates quoted in the Offer.

5.3.2 In cases where Ellab personnel are unable to enter the Customer's premises to carry out the Order due to restrictions such as COVID-19 restrictions, Ellab will need to make changes to the Order schedule. In such circumstances, the Order will be carried out with a modified schedule, which can result in additional reasonable costs being invoiced for the schedule adjustments in addition to the rates quoted in the Offer.

5.4 Errors and omissions

5.4.1 (a) To the best of the Customer's knowledge, the information provided by the Customer to Ellab to perform the services is accurate, and (b) to the best of Ellab's knowledge, the Offer accurately reflects the information provided by the Customer. Both Ellab and the Customer agree to tolerate minor mistakes and oversights and agree to cooperate during the project defined in the Order with respect to scope and pricing adjustments in order to ensure a successful completion of the Ellab Field Services.

To avoid any possible doubt, the Parties agree that the Customer shall have no warranty claims pursuant to the contract or to general law unless the Parties have expressly agreed in the SOW that Ellab shall provide an Ellab Field Service that has been explicitly defined in writing as a contract for work and labour (*German: Werkvertrag*) within the meaning of Section 363 ff. of the Swiss Code of Obligations.

5.5 Additional or supplementary work

5.5.1 If the Customer wishes to engage Ellab for additional work, the Customer must submit a written request to Ellab. Ellab will attempt to perform this work if possible, which will be invoiced accordingly.

5.6 Incompletion of services

5.6.1 In the event that Ellab is unable to fully perform the agreed SOW for reasons that lie within the Customer's liability, responsibility or powers of procurement, Ellab shall still be entitled to invoice the agreed services.

6. Personal protection

6.1 Personal protective equipment

6.1.1 The Customer is required to provide the necessary Personal Protective Equipment ("PPE") so that the tasks at the Customer's premises can be performed safely and/or to meet specific on-site requirements. If Ellab is required to purchase PPE specifically tailored to the Customer's requirements, this will be invoiced in addition to rates quoted in the Offer.

7. Personnel and equipment

7.1 Ellab personnel

7.1.1 Ellab's personnel shall be appropriately experienced to perform the Ellab Field Services or shall be supervised by an appropriately experienced Ellab employee. Unless otherwise agreed in writing with the Customer, Ellab shall be permitted to use subcontractors to perform the Ellab Field Services, provided these meet the same qualification standards as Ellab personnel.

7.2 Required training of Ellab personnel

7.2.1 Should Ellab's personnel require site-specific training to perform the work at the Customer's premises, and if such training is not included in the Offer, it will be invoiced in accordance with the number and status of the personnel required, along with any reasonable material costs and travel expenses where necessary.

7.3 Badge access

7.3.1 Ellab's personnel require an identity badge to access the Customer's premises in order to perform their work efficiently. If Ellab's personnel are required to undergo any training to obtain the access badge, the time will be invoiced in addition to the rates quoted in the Offer.

7.4 Office and Internet access

7.4.1 Ellab's personnel require access to office facilities and the Internet in order to perform their work efficiently. Ellab shall be entitled to use either the Customer's internal network or a guest network.

7.5 Customer's equipment

If the customer provides the validation equipment, the following conditions apply:

7.5.1 Equipment must be continuously available and provided to Ellab so that Ellab can operate at the speed specified in the plan agreed upon between Ellab and the Customer.

7.5.2 Equipment replacements may be required, and Ellab can either purchase or rent the equipment from the customer.

7.5.3 Repairs to the Customer's validation equipment will not be carried out unless this has been manufactured by Ellab.

7.5.4 If additional validation or monitoring equipment is required, this is available from Ellab. This additional equipment may be included as part of the Offer or provided at purchase/rental prices, as required, on separate terms and conditions.

7.6 Auxiliary equipment

7.6.1 In the case of warehouses and large rooms, the Customer is required to provide a personal lift and an employee to assist with the placement and retrieval of sensors. The lift and the operation of the lift must comply with all applicable health and safety laws and regulations at the Customer's risk.

7.7 Ellab's equipment

7.7.1 If agreed in the Offer, Ellab will use its own validation equipment and computers and will use validated software. If documentation of the specific validation of the computers used for the Order is required, an additional fee will be charged for this.

7.7.2 Any damage to Ellab's equipment caused by the fault of the Customer will be invoiced accordingly. Possible damage can occur, for example, due to unforeseen changes in the operating environment of measurement equipment that is out of specification.

7.7.3 If the equipment is damaged by a technical defect in Ellab's equipment, Ellab is obliged, at its absolute discretion, to either repair or replace the defective equipment.

7.7.4 Ellab will make reasonable efforts to ensure that 90 % of the sensors are operational and in compliance with the specification at the time of testing. A potential dropout or defect of a sensor can be caused by the failure of a sensor's battery or damage received while in use in the field.

7.7.5 If the Customer has a more stringent requirement, Ellab can comply with the Customer's guideline, but this may result in delays, which will then be invoiced in addition to the rates quoted in the Offer.

7.8 Employment of personnel

7.8.1 The Customer undertakes to refrain from directly soliciting Ellab's personnel who have performed the work at the Customer's premises for the purpose of offering them employment both during the term of the Agreement and for an additional 3 months thereafter, unless Ellab has expressly consented to such action in writing.

7.8.2 The foregoing shall not affect the right of the Parties to advertise job openings directed at the public or in general and/or as found in general publications – including, without limitation, through adverts, newspapers, trade journals, website postings or the Internet, recruitment forms, or otherwise – to the extent that these are not specifically directed to employees of the other Party; nor does it affect the right of the Parties to respond to unsolicited communications received from such employee of the other Party.

8. UUTs

8.1 Preconditions

8.1.1 All UUTs must have digital controllers. If the UUT does not have a digital controller, additional charges may apply.

8.1.2 It is a requirement that all UUTs are available, functional, and ready for the work to be performed. The IQ/OQ/PQ/CQ/RQ (as applicable) will be able to be performed in succession without delay. Additional work may be required due to failed studies and/or changes in the scope.

8.2 Loaded studies

8.2.1 If loaded studies are to be performed, the load must be provided by the Customer.

8.2.2 For studies with controlled temperature loading, the load must be preconditioned to the temperature under test.

8.2.3 For walk-ins and warehouses, the Customer is responsible for providing workers to place the load items.

8.2.4 Autoclaves and ovens require a sufficient amount of load to run studies in succession of their efficiency.

8.3 UUT calibration

8.3.1 All UUTs must either be in current calibration or Ellab must perform the calibration before proceeding with the testing. In the event that the UUTs are not calibrated, Ellab can calibrate them for an additional fee.

8.3.2 If the UUT is in current calibration, the Customer must provide a copy of the calibration certificate(s) for the controller and/or the monitoring system.

8.4 UUT operation

8.4.1 If the Ellab personnel are not authorised by the Customer to operate the UUT, the Customer shall provide personnel to operate it throughout the time Ellab is at the site.

8.5 Interruption of production processes

8.5.1 Please note that the Ellab Field Services may result in an interruption of the Customer's production process due to interference with the UUT.

9. Order management

9.1 Management of the Order

9.1.1 Unless included in the Offer, Ellab will not perform an Order management or provide updates on the progress of the Order schedule.

9.2 Status report

9.2.1 If so requested by the Customer, however, a status report of the project hours and the completion of the Order will be prepared at regular intervals to ensure that the Order is being performed as planned.

9.2.2 If not already included in the Offer, the hours required for status reports relating to the Order can be invoiced in addition to the rates quoted in the Offer.

10. Legal conditions

10.1 Limitation of liability

10.1.1 Ellab's statutory liability for damages shall be limited as follows:

- i. Ellab shall be liable only up to the amount of the damages typically foreseeable at the time of entering into the Agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. a contractual obligation the fulfilment of which is essential for the proper execution of the Agreement, the breach of which jeopardises the purpose of the Agreement, and on the observance of which the Customer may regularly rely);
- ii. Ellab shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

10.1.2 The above limitation of liability shall not apply to mandatory statutory liability (in particular liability under the Swiss Product Liability Act (*Produktehaftpflichtgesetz, PrHG*)), to liability for the assumption of a specific guarantee or liability for damages caused deliberately or through gross negligence, or to liability for any kind of wilfully or negligently caused personal injuries.

10.1.3 The Customer shall take all reasonable measures to mitigate and/or prevent loss or damage, including in particular the Customer's obligation to make backup copies of the data on a regular basis and to perform security checks (in particular to defend against or detect viruses, malware and other disruptive programmes within the Customer's IT system).

10.1.4 Regardless of the legal ground giving rise to liability, Ellab shall not be liable to the Customer or any third party for any loss of production, loss of profits, loss of goodwill, loss of data, withdrawal of products, or any other indirect and/or consequential damage, losses, costs, expenses or other claims, unless such a claim has been caused by Ellab's wilful misconduct or gross negligence.

10.1.5 Ellab shall maintain an appropriate level of liability insurance coverage. The Customer, however, shall be responsible for taking out its own insurance, including liability insurance, and for ensuring safe working conditions on its premises.

10.1.6 Ellab's liability under this Agreement shall not exceed EUR 1,000,000.

10.1.7 To the extent that Ellab's liability is limited or excluded, the same shall apply to the personal liability of Ellab's legal representatives, employees and vicarious agents.

10.1.8 Mandatory statutory provisions remain reserved.

10.2 Commencement of the Agreement

10.2.1 The Agreement shall commence on the date Ellab receives the Order Form from the Customer and runs until the date specified in the Offer, unless the Agreement is terminated earlier in accordance with its terms.

10.3 Termination of the Agreement

10.3.1 Either Party may terminate the Agreement with immediate effect by giving written notice to the other Party ("**Breaching Party**") if

- i. the Breaching Party commits a material breach of the Agreement that cannot be remedied;
- ii. if Breaching Party commits a material breach which is remediable, and the Breaching Party fails to remedy the breach within 30 days after receipt of the other Party's written notice to do so;
- iii. an insolvency event occurs in relation to the Breaching Party.

10.3.2 If the Customer wishes to terminate a Fixed-Price Order or an Hour-Based Order, such request for termination must be submitted in writing to Ellab at least 30 days prior to the agreed Order start date as specified in the Offer.

10.3.3 A termination by the customer (also before the Commencement of the Agreement) shall not affect Ellab's right to invoice, and the Customer's obligation to pay, the costs of such Order, provided that Ellab shall seek to minimise the costs of such Order to the Customer by reallocating resources to other Orders where possible. All remaining costs and in particular activities already incurred will be invoiced to the Customer.

10.3.4 Ellab shall have no termination rights for convenience for Fixed-Price Orders and Hour-Based Orders.

10.4 Consequences of termination

10.4.1 On expiry or termination of the Agreement for any reason, Ellab shall be entitled to invoice for all work undertaken that has not been subject to an invoice as at the time of expiry or termination.

10.4.2 The further rights and obligations of each Party under the Agreement shall cease immediately upon the expiry or termination of the Agreement, whereby the expiry or termination of the Agreement does not affect the following:

- i. the accrued rights and obligations of the Parties at the time of such expiry or termination; or
- ii. the continued operation of any provisions of the Agreement that are necessary for the interpretation or enforcement of the Agreement; or
- iii. Obligations that are intended to survive the expiration or termination of the Agreement (e.g., 10.6.1).

10.5 Force Majeure

10.5.1 Ellab shall not be liable in any way for any failure or delay in performing its obligations under the Agreement if such failure results from an event that Ellab was unable to foresee, avoid or remedy or is due to any other cause that was unforeseeable or could not have been reasonably prevented or overcome by Ellab at the time it entered into the Agreement.

10.5.2 In cases where Ellab personnel are unable to enter the Customer's premises to perform the Order due to pandemic restrictions, such as COVID-19 restrictions, Ellab shall have the right to make changes to the Order schedule.

10.6 Confidentiality

10.6.1

The Customer shall not, during the term of this Agreement or at any time after its termination, disclose to any third party, directly or indirectly, Ellab's know-how, trade or business secrets and information (collectively, "**Confidential Information**") that is or may be disclosed by Ellab or to which the Customer has access during the performance of this Agreement and shall instruct and oblige its employees and subcontractors accordingly in writing. Such information shall be treated by the Customer as strictly confidential and shall not be used or copied for any purpose other than the performance of this Agreement. Documents containing Confidential Information shall be destroyed by the Customer immediately after completion of the order and without being requested to do so.

10.6.2

Confidential Information includes information that is marked as confidential or where the confidential nature of such information becomes in good faith apparent to a reasonable person in the context of the information. Confidential Information does not include any information that (i) was publicly available at the time it was provided to the Customer or was subsequently placed in the public domain by Ellab, (ii) entered the public domain through no fault of the Customer after the time it was disclosed to the Customer, (iii) was in the Customer's possession and free from any obligation of confidence prior to disclosure under this Agreement, or (iv) was independently developed by the Customer's employees or agents without reference to any Confidential Information.

10.6.3

The Customer shall refrain from obtaining, commercially exploiting or copying Confidential Information incorporated in the Ellab Field Services or Ellab products to which Ellab has granted the Customer lawful possession by testing, observing, examining or dismantling Ellab Field Services or Ellab products, unless Ellab has made such Confidential Information publicly available.

10.7 Governing law and disputes

10.7.1

This Agreement between Ellab and the Customer (and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation) shall be governed by and construed in accordance with the laws of Switzerland (under exclusion of its conflict of law rules).

10.7.2

The United Nations Convention on Contracts for the International Sale of Goods is excluded from application and shall have no force or effect on any transactions arising out of or in connection with this Agreement.

10.7.3

Both the Customer and Ellab irrevocably agree that the courts in Zurich (District 1), Switzerland, shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement (including any question regarding the subject matter, conclusion, existence, validity and termination of this Agreement).

10.7.4

However, Ellab shall also be entitled to take legal action against the Customer before any other court of ordinary jurisdiction that has jurisdiction over the Customer.

10.8 Severability

10.8.1

In the event that any provision of this Agreement is, or is found to be, invalid or if this Agreement is incomplete, the remainder of this Agreement shall remain in full force and effect.

10.8.2

Ellab and the Customer shall replace any invalid provision or any incompleteness of this Agreement with an enforceable provision that most closely reflects the economic intent of this Agreement.

10.9 Amendments to the Agreement

10.9.1

All amendments or additions to this Agreement, including amendments to this Section 10.9, must be in writing.

10.10 General Terms and Conditions of the Customer

10.10.1

Any deviating general terms and conditions of the Customer shall not apply unless Ellab and the Customer have agreed otherwise in writing.