

## General Terms & Conditions of Sale (GTCS)

### 1. Scope of application, derogations from the GTCS

1.1 The following General Terms and Conditions of Sale ("GTCS") shall be applicable to all contracts which are accepted by Eurofins Genomics GmbH, Eurofins MWG Synthesis GmbH, Eurofins Medigenomix GmbH and Eurofins Medigenomix Forensik GmbH (collectively referred to hereinafter as "ES"; the company to which individual contracts are awarded shall be referred to hereinafter as the "Contractor"). They shall also apply to contracts concluded by telephone and to those contracts which arise through the provision of samples. A contract subject to these GTCS shall arise as a consequence of the Contractor's acceptance of a contract. A contract notified to the Contractor shall either be accepted pursuant to (a) the Contractor's performance of the contract (in such a case the written confirmation of the Contractor shall not be required) or (b) the Contractor's written acceptance of the contract.

1.2 Apart from Directors or authorized representatives of the Contractor, no employee, representative or sub-contractor of ES shall be entitled to authorize any derogation from the provisions of the GTCS or to waive their application or to bind the Contractor in any manner which would lead to the applicability of any contrary provisions which in terms of their content might conflict with the GTCS or take precedence over them. Such a modification or waiver of the applicability of the GTCS shall only be binding upon the Contractor to the extent that it is given in writing and is signed by directors or authorized representatives.

1.3 These GTCS in their respective version (see section 13.1) shall also apply to future deliveries, services or offers to the Customer, even if they are not agreed again separately.

1.4 The provisions set out in section 1.3, section 3.3 sentence 2 to 4, section 8.2, section 12.2 and section 12.3 shall not apply if the Customer is a consumer within the meaning of section 13 of the German Civil Code [*Bürgerliches Gesetzbuch*]. Consumer is any natural person who concludes a legal transaction for a purpose which can neither be attributed to its commercial nor its independent professional activity.

### 2. Conclusion of contracts; non-applicability of contrary contractual terms and conditions; non-acceptance of logistical services

2.1 To the extent that no contrary provisions are expressly agreed in writing and signed by a director or an authorized representative of the Contractor, the General Terms & Conditions of Business of a Customer shall be without any effect, even if such Customer refers or has referred at some point in time to its General Terms & Conditions of Business. Furthermore, any earlier acceptance of special terms and conditions in the context of a previous contract (including special provisions in relation to price) shall not mean that such special conditions shall be accepted in the future in the context of any subsequent contracts. Each contract which is accepted by the Contractor shall to such an extent be viewed as a separate contract between the Contractor and the Customer unless otherwise agreed in writing in a binding form.

2.2 In the event that the Customer subsequently stipulates additional requirements in connection with an already concluded contract, the Contractor shall be entitled to invoice a management and administration fee in the amount of up to €25.00 in addition to the charges for these requirements. Should the Customer stipulate additional requirements in connection with samples which have already arrived at the laboratory, this shall be deemed to constitute a new contract and may lead to a corresponding postponement of the previously estimated delivery dates.

2.3 Any logistical service which is to be provided outside of the laboratory (in particular collections and sampling) and of which the Customer does not avail itself in spite of the agreement reached by the parties, must be paid for in full. Only those costs which should have been saved by the Contractor in accordance with section 649 of the German Civil Code [*Bürgerliches Gesetzbuch*] (please refer in this connection to these provisions) may be deducted from the full price. The above provisions shall not apply if the Customer is contractually or legally entitled to withdraw from the contract or if the commissioned logistical service is cancelled or modified at the latest, if the service consists of a collection, 48 hours prior to the provision of the service, or if the service consists of sampling, 96 hours prior to the provision of the service.

### 3. Prices and payment terms

3.1 Prices shall be stipulated "ex works" (Incoterms 2000). All additional costs or expenditure (e.g. such costs and expenditure as may be incurred by the Contractor in connection with the contract; in particular costs of shipping) shall be borne by the Customer unless otherwise agreed. For contracts in the field of gene synthesis, the Contractor delivers "DDP" (Delivered Duty Paid; Incoterms 2000) to the domicile of the Customer. Even in such a case, the Customer bears the costs of shipping pursuant to the price list of the Contractor unless otherwise agreed.

3.2 Prices shall be stipulated net of any taxes payable (including value-added tax) and shall be based upon the tariffs applicable on the date of the conclusion of the contract. Taxes shall be calculated on the basis of the rates applicable on the date of the issue of the invoice.

3.3 To the extent that no express agreement to the contrary is reached, payments must be made at the latest within a period of 30 days from the date of the invoice. Any complaint in relation to an invoice must be submitted within the payment period unless the complaint concerns defects or other circumstances which were not apparent in the ordinary course of business within this period. Should the Customer default on any payment, all sums owed by the Customer – including any sums owed pursuant to other contracts – shall become immediately due and payable. The Contractor shall be entitled in the event of default to apply default interest of 8 percentage points above the base rate. The right of the Contractor to assert its claims in respect of any demonstrable losses suffered as a result of such default which may exceed such rate shall not be affected hereby.

3.4 If at the request of the Customer a new invoice must be issued, the Contractor may invoice an administration fee in an amount of up to €15.00. This shall not apply to corrections due to errors of invoicing.

3.5 Payments shall be made by way of a bank transfer or by direct debit. Other means of payment shall require the prior consent of the Contractor. The Customer shall be obliged to provide the required bank account details to the Contractor.

### 4. Obligations of the Customer in connection with the delivery of samples or materials

4.1 Samples or materials must be in a condition which permits the production of reports / analyses or the production of the products commissioned without any problems arising. The Contractor shall be entitled to carry out an examination of any sample or materials on their delivery in order to establish their condition prior to the processing of the sample or the production of a report or their use in the production process. The Customer shall be obliged to bear the costs of such an inspection on delivery, should it emerge that the sample or materials do not comply with the requirements set out in this section 4.1. In the event that the result of the inspection on delivery reveals that analysis or production will be impossible or only possible in more onerous circumstances than originally anticipated – for example because the sample or materials have been mixed with foreign materials or substances which were not provided by the Customer or if they have degraded – the Contractor shall be entitled to withdraw from the contract or to suspend the performance of the contract. In such a case the Customer shall bear the costs which the Contractor has incurred until such point in time.

4.2 The Customer must ensure and hereby warrants that the samples shall constitute no danger to the property and any other legal interests of the Contractor or ES and to their employees and other agents – either on the factory premises of the Customer or during shipment, in the laboratory or on any other premises belonging to the Contractor or ES. It shall be the responsibility of the Customer to comply with the statutory provisions relating to special waste and hazardous materials. Such obligations shall relate to the provision of information, shipment and removal. In particular the employees or other agents of the Contractor must be informed of any health or safety concerns in connection with the samples. Such concerns shall include in particular those in connection with known or presumed toxic substances or any other contamination of a sample and the presumed level of the contamination, as well as any risks to the property and other legal interests of the Contractor or ES and to their employees and other agents pursuant to such contamination. In the event of any wrongful breach of these obligations the Customer shall be liable for any costs, damage and any other prejudice which are incurred or suffered by the Contractor or ES or their personnel or other agents as a result thereof; this shall be the case irrespective of whether such damage is suffered on the premises of the Customer (for instance in the context of the taking of a sample), during shipment, in the laboratory or on any other premises belonging to the Contractor or ES. Such liability shall also include a corresponding obligation to indemnify the Contractor and ES in the event of any proceedings being instigated against them by third parties. The Customer shall bear the costs of the reasonable removal of special waste and hazardous materials which are incurred as a result of the nature of the samples provided by the Customer. This shall be the case irrespective of whether or not the sample has been designated as special waste or a hazardous material. At the request of the Contractor the Customer shall be obliged to notify to the Contractor the precise composition of any sample.

### 5. Rights of title in the samples; storage of samples

5.1 All samples shall be the property of the Contractor to the extent that that this is necessary in order to perform the contract. To the extent that storage has not been agreed, the Contractor shall not be obliged to ensure the storage and/or refrigeration of any sample. If storage has been agreed, the Contractor shall take commercially reasonable measures in accordance with standard industrial practices to store the samples.

5.2 The Contractor shall be entitled to dispose of or destroy samples immediately upon the completion of analyses, unless storage has been agreed in writing. If a specific retention period has been agreed, the Contractor shall be entitled to dispose of or destroy the sample without prior notice on the expiry of such period. Should such disposal or destruction be subject to specific statutory provisions (e.g. in the case of special waste or hazardous materials), the Customer shall bear any costs which are incurred in connection therewith. In the event that the Customer requests the return of unused sample materials, the Customer shall return such sample materials at the expense and risk of the Customer.

### 6. Delivery dates, completion periods

6.1 Delivery dates and completion periods shall be estimates and shall not be binding upon the Contractor. The Contractor shall nonetheless be required to use its commercially reasonable endeavours to comply with the estimated completion periods. We reserve the right to make slight deviations from information provided regarding measurements, weight, condition and quality.

6.2 Results shall as a rule be sent on the completion of the analysis by e-mail and/or post or by any other electronic means to those persons designated by the Customer on the conclusion of the contract.

6.3 The Contractor shall be entitled to deliver in instalments. Each instalment may be separately invoiced.

6.4 Where products are required to be shipped the choice of transport company and means of transport shall be up to the Contractor. The risk shall be transferred to the Customer with shipment. Where shipment or delivery is delayed for reasons which are the Customer's responsibility, risk shall be transferred by notice of shipment or readiness for transfer respectively. The costs arising from the same (in particular storage costs) shall be for the account of the Customer. The Contractor shall not be obliged to insure or have anyone else insure the shipment against damage during transport unless it has undertaken such obligation towards the Customer in writing. Excluded from this provision are contracts for which delivery "DDP" is agreed (cf. section 3.1). In such cases the risk shall be transferred with delivery to the Customer.

6.5 Where the Contractor's goods are subject to export control provisions (in particular licences, permits and approvals), the Contractor shall ensure these are complied with. The Customer shall observe the provisions regarding the import of the goods into the Customer's country or a third country. The Contractor cannot guarantee they will be granted.

### 7. Transfer of title and other rights; residual rights in the results of the analyses

7.1 The rights of title and any other rights in the results of the analyses, products, equipment, software or like items held by the Contractor in the context of the services provided to the Customer shall be retained by the Contractor until such time as all invoices relating to such services have been paid in full by the Customer. Until such invoices have been paid in full the Customer shall have no rights of title in or any other rights to exploit the services provided. Should the Customer be in arrears with the settlement of any sums which are payable to the Contractor or ES, the Contractor shall be entitled to suspend the performance of the contract and any other work being carried out on behalf of the Customer. This shall also apply if the payment which is late is payable pursuant to another contract.

7.2 Even after a payment has been made in full by the Customer, the Contractor shall have the right to retain the results of any analyses carried out and to make use of such results in an anonymised form which does not permit the identification of the Customer, and to publish such results to the extent that this does not cause a prejudice to any legitimate interests of the Customer which are known to the Contractor.

7.3 The goods delivered or the results of the analyses shall remain the property of the Contractor until all its claims against the Customer arising from the business connection are met. The Customer shall be entitled to sell the goods subject to the title retention provided it complies with its obligations under the contract and in particular that it is not in arrears. No pledges or assignments by way of security shall be permitted. The Customer shall be obliged to dispose of the goods subject to the retention of title. Where the goods subject to the title retention are sold they shall be replaced by the purchase price paid. The Customer hereby assigns to the Contractor all claims arising from any sale. It shall be entitled at any time prior to a revocation by the Contractor to call in the claims assigned to the Contractor from the further sale. Where the claims of the Contractor are due it shall be obliged immediately to pass on to the Contractor any amounts collected. The assignment of the claims to third parties shall not be justified in any circumstances.

Where the amount of the claims assigned to the Contractor exceeds the Contractor's secured claims by more than 10%, the Contractor shall be obliged at the request of the Customer to release the security selected by the former.

## **8. Limited warranties and liability; liability and indemnity obligations of the Customer; safety warnings**

8.1 Contracts shall be performed under the supervision of the Contractor in the best possible conditions in accordance with the state of the art. Results cannot be 100% accurate and/or relevant in all cases. Analyses, interpretations, estimates, consultancy services and inferences shall be completed, arrived at, compiled, provided and drawn with a commercially reasonable degree of care. However, the Contractor cannot warrant that such analyses, interpretations, estimates, consultancy services and inferences shall in all cases be accurate or wholly relevant. The Contractor shall not be liable for ensuring that its products are suitable and applicable for the Customer's desired purpose. The warranty period for such limited warranty shall be twelve months from the date of acceptance. The parties agree that services, goods etc. shall be deemed to have been accepted in the event that the Customer notifies nothing to the contrary within the period of one week from the date of receipt. In each case the Customer shall be obliged to verify the cogency of the results, interpretations, estimates and inferences provided by the Contractor with a reasonable degree of care and at its own risk, in the event that the Customer wishes to rely on such results, interpretations, estimates and inferences in any material connection. Should it be apparent that the results are inaccurate, the Customer shall be obliged to contact the Contractor immediately and to inform it of such fact. In the event that the Customer is a merchant within the meaning of the German Commercial Code [*Handelsgesetzbuch*] and does not comply with this obligation, the performance given by the Contractor shall be deemed to have been given in accordance with the contract. Section 377 of the German Commercial Code [*Handelsgesetzbuch*] shall be analogously applied *mutatis mutandis*.

8.2 Where the Customer challenges the accuracy of the result of an analysis or the quality of a product, this shall not entitle it to withhold payment unless the defectiveness of the analysis result or the deficient quality of the product and the Customer's counterclaims resulting from the same are undisputed, have been accepted by the Contractor or are the subject of a final, non-appealable court judgment. In the case of failure of supplementary performance the Customer retains the right to reduce the purchase price or to elect to rescind the contract.

8.3 Each report on an analysis shall relate exclusively to the samples analysed by the Contractor. To the extent that the Contractor is not expressly commissioned to produce a sample schedule (including a determination of which samples of which raw materials and which finished products are to be analysed with which frequency), subject to the specification of the precise scope of the analyses to be carried out, or if and to the extent that the Customer fails to comply with the relevant recommendations of the Contractor, the Contractor shall have no liability should it emerge that the sample schedule and/or the specification of the scope of the analysis is insufficient or inappropriate.

8.4 The Customer shall be responsible for the due and proper delivery of samples and the materials to be examined or analysed and which are being provided for the purposes of production. If and to the extent that nothing is agreed to the contrary in writing, the Contractor shall have no liability in the event that a sample is lost or damaged during shipment. The Customer shall be exclusively and at all times liable for the security, packaging and insurance of the sample from the time of its dispatch to the time of its delivery to the offices or laboratories of the Contractor. In the event of a collection by the Contractor the Customer shall be responsible for the proper preparation of the sample.

8.5 The Customer warrants and undertakes to the Contractor to ensure that all samples which are sent to the Contractor for the purposes of carrying out any analysis shall be in a secure and non-volatile form. The Customer furthermore undertakes to indemnify the Contractor and ES and their personnel or other agents in respect of any loss, costs and other damage suffered or incurred by them due to the fact that a sample is hazardous or volatile, unless such fact is not attributable to the Customer. In the event that a sample is dangerous or is constituted by special waste/a hazardous medium, the Customer must so inform the Contractor in writing prior to its dispatch. The Customer shall be furthermore obliged to appropriately label any packaging, samples and/or containers.

8.6 To the extent that the Parties do not agree anything to the contrary, the contractual relationship shall exist only as between the Customer and the Contractor. No contract shall be concluded on behalf of third parties or with a protective effect for third parties pursuant to which the Contractor or ES may be bound by any obligations owed to such third parties, if and to the extent that such an arrangement does not arise pursuant to the contract and/or these GTCS. The Customer shall be obliged to indemnify the Contractor and ES in respect of all third party claims which may be brought against the Contractor or ES in connection with the

Customer or the contract with the Customer, if and to the extent any wrongful conduct has been engaged in by the Customer.

8.7 In the event that the Contractor delivers any software to the Customer, the Customer must use such software in accordance with any applicable licence conditions, instructions and manuals.

8.8 It shall be expressly made clear that all products are intended exclusively for laboratory and research purposes. The Contractor shall therefore only deliver such products to public research, analytical and teaching institutions, technical commercial operations or relevant industry. The Contractor refutes all liability for damage which could arise from improper handling or in case of domestic use or use on people or animals. The Contractor expressly prohibits the passing on of poisonous (hazardous) materials to private individuals. Furthermore, reference is expressly made to the fact that the absence of a hazard warning shall not mean that the relevant product is harmless. Similarly, any liability on the part of the Contractor for damage and injury to persons or things arising as a result of improper handling or storage of the products at the Customer's premises shall be excluded. To the extent that relevant national or international statutes or regulations apply to dealings, including delivery, storage, processing or trade in certain products, these shall also be observed by the Customer.

## **9. Limitation on liability**

9.1 The Contractor shall be liable for losses which are due to an intentional or grossly negligent breach of obligations by one of its legal representatives or vicarious agents.

9.2 Furthermore, the Contractor shall be liable for losses from injury to life, body or health which are due to an intentional or negligent breach of obligations by a legal representative or vicarious agent of the Contractor.

9.3 For the rest, the liability for losses which are due to a simply or slightly negligent breach of obligations or a simply or slightly negligent tort by a legal representative or vicarious agent of the Contractor shall be excluded unless material obligations with which compliance is necessary to achieve the purpose of the agreement or which arise from a legitimate laying claim to particular trust (cardinal obligations) are neglected. In these exceptional cases, the liability shall be limited to the compensation of losses which are foreseeable.

9.4 The liability according to the German Product Liability Act [*Produkthaftungsgesetz*] and for granting a warranty for the condition of an item or for the adoption of a procurement risk shall remain unaffected.

9.5 The above provisions shall also apply in favour of the legal representatives or employees of the Contractor in regard to claims directly directed against them.

## **10. Carrying out of new analyses**

Complaints in relation to test results may only be notified subject to the rules set out in section 8.1. In each case where the inaccuracy of the first results of the analyses is not established, the Customer shall bear the costs of any new tests or the verification of the foregoing tests.

## **11. Force majeure / contractual impediments**

11.1 The Contractor shall not be liable to pay any compensation in respect of any delays, errors, damage or other problems which are caused by events or circumstances which were unforeseeable by the Contractor or which are beyond its control or which result from compliance with official orders, legislation or regulations.

11.2 Where the Contractor is affected by significant disadvantages (availability of materials to be used; amendment of legal framework provisions) as a result of performance interruptions or delay which are not the responsibility of the Contractor, in particular difficulties in meeting deadlines, the Contractor shall be entitled wholly or partially to rescind the contract in respect of the element not yet performed. Where the impediment lasts longer than 6 weeks the Customer shall be entitled, following the unsuccessful expiry of a reasonable additional time limit, to rescind the element of the contract not yet performed. The Contractor undertakes in such case to inform the Customer without delay of the interruption in performance or delay and shall, following the Customer's rescission of the contract, compensate the Customer without delay for the counter-performance already rendered.

## **12. Confidentiality and processing of customer data**

12.1 The Contractor shall be entitled to store and process any personal or commercial data which it receives in any manner whatsoever from the Customer in accordance with the applicable statutory provisions relating to data protection, irrespective of whether or not such data is provided directly by the Customer or by a third party. The Contractor shall be obliged to use its commercially reasonable endeavours to deal with such data confidentially in accordance with the law.

12.2 For the purpose of carrying out the commission the Contractor shall process and use personal data – such as that concerning the Customer's institutions, contacts and/or persons responsible for the project. The Customer is aware that for the purpose of securing the best possible services, including the use of existing expertise and know-how, not only personal data but also data about the commission, such as analysis questions and their results, may be passed on to the Eurofins Group member companies or co-operation partners. The member companies of the group and the co-operation partners shall be bound by a corresponding confidentiality agreement which shall be made available upon request. The Customer may object to this with the Contractor in writing. Furthermore, the Contractor shall process and use the data for the purpose of obtaining a further commission. The Customer may object to this with the Contractor in writing or by email via support-eu@eurofins.com.

12.4 The Contractor shall be obliged to use its commercially reasonable endeavours to keep all results of the analyses and service reports confidential. These obligations shall not apply to the rights of the Contractor pursuant to section 7.2 or to any requirement to adduce proof of an entitlement to receive payment for services rendered.

12.5 The results of any analyses shall be produced and disclosed for the exclusive use of the Customer only and may not be made available to third parties for any purposes whatsoever without the prior written consent of the Contractor. Furthermore, the Customer shall be obliged to ensure confidentiality in connection with all of the services provided by the Contractor. In addition, any results and the composition of products and software which are delivered by the Contractor, as well as the results of any analyses, may not be published or commercially exploited without the prior written consent of the Contractor. Furthermore, in the event that such written consent is given, the Customer shall remain (a) liable for any consequences of the disclosure of such results to a third party and any reliance placed by such third party on such results, and (b) hereby undertakes to indemnify the Contractor, its parent company, subsidiaries and sister companies and their manual workers, employees, representatives, members of the management and advisors in respect of any claims brought by a third party as a result of the disclosure of such results and / or any reliance placed thereon and any – actual or alleged – loss resulting therefrom.

## **13. Miscellaneous provisions**

13.1 These GTCS shall be amended in writing from time to time by the Contractor. In each case the version of these GTCS in force on the date of the acceptance of the offer shall be the version applicable to the resulting contract.

13.2 In the event that a court strikes down any provisions of these GTCS, limits them in their application or finds them to be invalid, unlawful or unenforceable, the remaining provisions shall remain valid to the fullest extent possible.

13.3 In the event that either the Contractor or the Customer refrains from asserting any rights which arise pursuant to these GTCS, this shall neither constitute a waiver of such rights nor shall it result in the forfeiture of such rights.

## **14. Governing law / Place of jurisdiction**

All contracts to which these GTCS apply shall be governed by German law. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The exclusive place of jurisdiction shall be Ebersberg, Germany, to the extent that the Customer is a merchant, a legal person in accordance with public law or special fund constituted in accordance with public law. However, the claimant shall alternatively be entitled to commence proceedings before the Arbitral Tribunal of the German Institution of Arbitration (DIS e.V.), instead of before the courts of record. In such a case the Arbitral Tribunal shall have exclusive jurisdiction. The place of arbitration shall be Munich, Germany.

Effective date / version: 01.04.2014