

## General Terms and Conditions of nagene GmbH

Version: August 2024

### **1 Scope of application**

- 1.1 These General Terms and Conditions (hereinafter: GTC) govern the business relations and legal relationships between nagene GmbH (hereinafter: 'Contractor') and its customers (hereinafter: 'Customer').
- 1.2 These GTC supersede all previous verbal or written price quotations and agreements between the parties and, unless expressly stated otherwise therein, shall take precedence over any conflicting or contradictory provisions of subsequent written agreements between the parties.
- 1.3 These GTC apply to the exclusion of any other terms and conditions (including but not limited to any terms or conditions in the Customer's order, instructions or other documents) which the Customer seeks to impose or introduce or which are implied by custom, usage or practice, unless expressly agreed to in writing by the Supplier. Special agreements and special conditions from previous orders, including special prices, shall not automatically apply to subsequent orders. Each order accepted by the Contractor shall be treated as a separate contract between the Contractor and the Customer, unless otherwise expressly agreed separately.
- 1.4 These GTC shall also apply in their respective version to future deliveries, services or offers to the Customer, even if they are not separately agreed again.
- 1.5 The GTC apply exclusively to legal relationships with entrepreneurs, i.e. B2B.
- 1.6 The customer shall be notified of amendments to the GTC and these shall be deemed to have been agreed if the customer does not object to the amended GTC in writing within 14 days; the customer shall be expressly informed of the significance of silence in the notification.

### **2 Conclusion of contract**

- 2.1 The scope of services for the purchase and delivery of the products in accordance with these GTC is set out in the Contractor's offer to the Customer. In order for an offer to be prepared by the Contractor, the Customer must first send the sequence of the genetically modified organisms (GMOs) to the Contractor. The GMOs must comply with the safety requirements set out in Annex 1. The offer will only be issued after verification and confirmation that the submitted sequence fulfils the requirements of the S1 classification.
- 2.2 The contract is concluded when the Customer accepts the Contractor's offer in due time.

- 2.3 The Customer shall be responsible for the correct classification of the GMOs transmitted to the Contractor. Should it transpire after conclusion of the contract that the sequence of the GMOs does not meet the requirements of the S1 classification, the Contractor reserves the right to demand that the Customer submit a sequence of the GMOs that meets the requirements or to withdraw from the contract. If the sequence of the GMO does not meet the requirements of the S1 classification, the Contractor shall be entitled to charge the Customer for any (additional) costs and expenses incurred and/or to claim damages.
- 2.4 The Contractor is authorised to charge additional management and administration fees in connection with the request for additional services for an existing order. The request for additional services for samples that have arrived at the laboratory shall be treated as a new order and may postpone the expected delivery date accordingly.

### **3 Products and prices**

- 3.1 The scope of services is set out in the Contractor's offer.
- 3.2 The prices quoted are ex works from the Contractor's location. The costs of despatch shall be charged to the customer.
- 3.3 All duties, fees and taxes (in particular VAT) shall be charged on the basis of the applicable legal situation. Subsequently prescribed taxes or duties shall be borne by the Customer.
- 3.4 The Contractor shall be entitled to demand an advance payment of up to 100% of the order price as a condition of acceptance.

### **4 Obligations of the customer during order processing**

- 4.1 The Customer is obliged to provide the Contractor with all information, samples or materials required for order processing. The samples and materials (hereinafter collectively referred to as 'samples') must be in a condition that enables the preparation of reports/analyses or the manufacture of the products ordered. All samples to be provided by the Customer to the Contractor for the fulfilment of the order must meet the safety requirements set out in Annex 1.
- 4.2 The samples submitted by the Customer shall be tested by the Contractor to determine their condition prior to processing the sample or preparing a report or using them in the production process. The Customer is obliged to bear the costs of such testing if it is found that the sample or the materials do not meet the safety requirements set out in this Section 4.1. If the result of this test shows that an analysis or production is not possible or only possible under more difficult conditions than originally intended - for example because the sample has been mixed with foreign materials or substances that were not provided by the Customer or because they have decomposed - the Contractor shall be

entitled to withdraw from the contract or to suspend fulfilment of the contract. In such a case, the Customer shall bear the costs incurred by the Contractor up to this point in time.

- 4.3 The Customer guarantees that the samples do not pose a risk to the Contractor's employees, property or other legal interests or those of other authorised parties.
- 4.4 The Contractor must be informed of any health and safety concerns in connection with the samples. Such concerns shall include those relating to known or suspected toxic substances or other contamination of a sample and the suspected level of contamination, as well as risks to the property and other legal interests of the Contractor and its employees and other agents due to such contamination. In the event of a breach of these obligations, the Customer shall be liable for all costs, damages and other disadvantages incurred by the Contractor or its employees or other agents as a result.

## **5 Commissioning of third parties**

- 5.1 The Contractor is authorised to use competent and qualified third parties as vicarious agents in the execution of the order. The Contractor shall select these third parties carefully and ensure that they have the necessary professional qualifications.

## **6 Retention of title and terms of payment**

- 6.1 Unless otherwise agreed in writing, the Contractor shall be entitled to invoice the Customer for the products at the time of delivery or at any time thereafter.
- 6.2 Unless otherwise agreed, invoices issued by the Contractor, including VAT, shall be payable within 14 days of the invoice date at the latest, without any deductions and free of charges. The Contractor shall issue invoices in paper or electronic form at its own discretion. The customer expressly agrees to the transmission of electronic invoices, provided no written objection has been received.
- 6.3 In the case of orders comprising several partial steps, the Contractor shall be entitled to issue partial invoices after completion of a partial step.
- 6.4 If the Customer is in default of payment, statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default in payment, the Customer undertakes to reimburse the Contractor for any reminder and collection charges incurred, insofar as they are necessary for appropriate legal action.
- 6.5 Compliance with the agreed payment dates is an essential condition for the fulfilment of the contract by the Contractor. Failure to comply with the agreed payment deadlines shall entitle the Contractor to suspend the work in progress and/or to withdraw from the contract by setting a grace period. All associated costs and loss of profit shall be borne by the Customer.

- 6.6 The Customer shall not be entitled to withhold payments due to incomplete overall delivery, liability or warranty claims or other claims against the Contractor or to offset them against claims against the Contractor arising from disputed or not legally established counterclaims.
- 6.7 Delivered products shall remain the property of the Contractor until the agreed price has been paid in full. The Customer shall bear the risk during this period and shall ensure proper storage. The Customer's claims arising from the resale of the goods subject to retention of title shall be assigned to the Contractor as soon as the order is placed in order to secure all of the Contractor's claims. The customer may neither pledge goods subject to retention of title nor assign them as security. The Customer must inform the Contractor immediately in the event of seizure of reserved goods by third parties.

## **7 Dispatch of the products, place of fulfilment, transfer of risk**

- 7.1 Unless otherwise agreed, delivery shall be made 'CPT' Incoterms 2020 to the Customer's registered office, unless another place of delivery is specified in the Contractor's offer. The Customer shall bear the transport costs and handling charges (if applicable), so the price quoted for the Products is always exclusive of such costs or charges, unless expressly agreed otherwise.
- 7.2 The estimated delivery dates stated in the offer are only approximate dispatch dates, i.e. the estimated time of handover of the Products to the carrier. The time of delivery shall not be deemed essential for the fulfilment of the contract, unless otherwise agreed in writing.
- 7.3 The Contractor shall not be liable for a delay in delivery if this is caused by an event of force majeure within the meaning of Section 9.5 of these GTC or the Customer's failure to provide adequate delivery instructions or other instructions relevant to the delivery of the Products.
- 7.4 In the event of force majeure affecting the fulfilment of the contract, the Contractor shall be entitled to postpone the delivery for the duration of the hindrance and, in the event of longer-term delays, to withdraw from the contract in whole or in part, without any claims against the Contractor being able to be derived from this. Force majeure shall be deemed to be all events that are unforeseeable for the Contractor or events that - even if they were foreseeable - are beyond the Contractor's control and whose effect on the fulfilment of the contract cannot be prevented by reasonable efforts on the part of the Contractor. For the definition of force majeure, the provision in Section 9.5 of these GTC shall apply. A case of force majeure does not entitle the Customer - to the extent permitted by law - to withdraw from the contract due to delayed delivery or to claim damages from the Contractor. Nor shall the Contractor be liable for any delay in delivery if such delay is caused by the Customer's failure to provide adequate delivery instructions or other instructions relevant to the delivery of the Products.

- 7.5 In the event of non-delivery by the Contractor, the Contractor's liability shall be limited to the costs incurred by the Customer in obtaining replacement products with the same properties and characteristics, but not exceeding the value of the order.
- 7.6 The risk shall pass to the Customer as soon as the goods have been handed over to the person carrying out the transport or have left the Contractor's premises for the purpose of despatch. The Contractor shall not be liable for transport damage.
- 7.7 If dispatch is delayed at the Customer's request, the risk shall pass to the Customer upon notification of readiness for dispatch. The Contractor shall be entitled to charge the Customer for the costs associated with interim storage.

## **8 Warranty**

- 8.1 The customer is obliged to inspect the product. The customer is obliged to inspect the delivered product immediately and to note on the transport document any visible and obvious defects or damage, such as broken transport boxes, broken samples, etc., which may have damaged the delivered product. These defects or damage attributable to the delivery must be reported to the Contractor in writing by e-mail immediately, at the latest by the day following acceptance of the delivery. Failure to comply with this notification obligation shall result in the warranty for unreported defects being cancelled.
- 8.2 The delivered product shall be deemed approved if no notification of defects is made within 7 days. The existence of a defect must be proven by the customer. Defects attributable to errors in the information provided by the customer, in particular sequences, GMOs and samples, shall not be deemed to be defects. The Customer is obliged to inspect the Contractor's products with reasonable care.
- 8.3 In the following cases, the Contractor shall not be liable for the warranty provided under this point:
- a) The defect occurs because the Customer has not followed the Contractor's instructions for storage, use of the Products or (where no instructions exist) standard industry practice in this regard.
  - b) The defect occurs because the Contractor has followed faulty samples or specifications supplied by the Customer.
  - c) The customer makes changes to the products without the written consent of the contractor.
  - d) The defect arises as a result of normal wear and tear, wilful damage, negligence or improper storage or improper operating conditions.
- 8.4 The warranty period is 2 months from the date of delivery.

- 8.5 In the event of rectifiable defects, the Contractor shall be obliged, at its discretion, only to rectify the defect or to deliver a replacement, returning the defective goods delivered. If a defect is not rectified within a reasonable period of time or if rectification would involve disproportionately high costs, the customer shall be entitled to a price reduction and - if the defect is not minor - also to cancellation of the contract. If the defect relates to a divisible service, cancellation can only be demanded with regard to the defective partial service. Any further claims by the customer are excluded.
- 8.6 If the Contractor establishes that the deliveries for which the Customer has asserted warranty claims are not covered by the warranty under these GTC, the Customer shall assume or reimburse all costs incurred by the Contractor as a result. This includes costs for laboratory, labour, materials and other expenses incurred as a result of the investigation.

## **9 Liability**

- 9.1 The Contractor's liability for slight negligence is excluded. In the event of gross negligence, the Contractor's liability shall be limited to the respective order value, insofar as this is legally permissible. The Customer must prove the existence of gross negligence.
- 9.2 The Contractor shall not be liable for loss of profit, punitive damages, consequential damages, loss of earnings, frustrated expenses, immaterial damages, consequential damages, damages from third-party claims and loss of data.
- 9.3 The Contractor shall not be liable for ensuring that its services are suitable and applicable for the purpose requested by the Customer. To the extent permitted by law, the Contractor shall not be liable for any damage caused to people by the Customer's use of the products supplied by it.
- 9.4 Any liability of the Contractor in the event of non-careful or improper processing, use, treatment or transport of the goods (the product) by the Customer or by third parties is excluded.
- 9.5 Force majeure: The Contractor shall not be liable for the non-fulfilment of one of its contractual obligations if this is due to an impediment beyond its control and is based in particular on one of the following reasons: Fire, war, natural disasters, pandemics, epidemics, shortage of raw materials, measures taken by public authorities, official and legal restrictions, operational disruptions, traffic difficulties, strikes, lockouts and other business interruptions, delays in the delivery of essential raw and material parts.

## **10 Cancellation**

10.1 The Contractor may terminate the contract with immediate effect and without obligation to observe a notice period by registered letter with acknowledgement of receipt if even one of the following cases occurs:

- a) non-payment, partial payment or late payment of any sums payable in connection with the Customer's contractual obligations to the Contractor.
- b) non-fulfilment by the Customer of even one of the obligations contained in clauses 4.1, 12.4.
- c) insolvency proceedings are opened against the Customer.

10.2 Upon cancellation of this contract, for whatever reason, the Customer shall pay all outstanding invoices and interest payable to the Contractor.

## **11 Data protection, use of data**

11.1 The Contractor and the Customer undertake to keep confidential information received from the other contractual partner secret and not to make it accessible to third parties or publish it.

11.2 The Customer warrants that it shall comply with all data protection provisions, in particular with regard to special categories of personal data, and shall indemnify and hold the Contractor harmless in the event of claims by third parties in this respect.

## **12 Compliance with public law standards and international sanctions**

12.1 Each party shall comply with the laws applicable to it, including all applicable export and import laws and regulations. The Customer warrants that it will comply with all economic and trade sanctions imposed by the United Nations, the European Union, the United States of America or any other country. The Customer further warrants a) that it is not the target of any economic sanctions; b) that to the best of its knowledge it is not controlled or beneficially owned by any person subject to economic sanctions.

12.2 The Customer shall indemnify the Contractor against all losses, liabilities, damages, penalties, costs and expenses incurred by or against the Contractor as a result of any breach of clause 12.1 by the Customer.

12.3 Without prejudice to any other claims and remedies, the Contractor may terminate the Contract with immediate effect by written notice to the Customer if the Customer breaches the provisions of this clause. The Customer shall not be entitled to damages or other payments.

12.4 Economic sanctions include any economic sanctions, restrictive measures or trade embargoes adopted by the UN Security Council, the European Union, the United States or

any other sovereign government. Legal provisions of economic sanctions include all laws, regulations and provisions in connection with economic sanctions.

### **13 Choice of law, place of jurisdiction**

13.1 Any contract concluded between the contracting parties shall be governed by Austrian law to the exclusion of the conflict of laws rules and the provisions of the UN Convention on Contracts for the International Sale of Goods.

13.2 The place of jurisdiction shall be the competent court for commercial matters in Vienna.

### **14 Final provisions**

14.1 Should any provision of these GTC be invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of these GTC. The invalid or unenforceable provision shall be deemed to be replaced by a valid and enforceable provision that comes closest to the economic purpose pursued by the contracting parties with the invalid or unenforceable provision.

14.2 Changes or additions to a contract must be made in writing. This also applies to the waiver of the written form requirement.

## **Appendix 1: Safety requirements**



## Safety requirements

### Requirements for the classification of GMOs (safety level S1)

#### 1 Safety level 1 classification

##### 1.1 Safety level 1 (S1) classification

We only accept orders that correspond to genetically modified organisms (GMOs) of safety level 1 according to § 5 Z 1 GTG ('S1 classification'). The customer is obliged to clearly declare the safety level of the GMOs submitted ('customer vector sequence') and to confirm that they comply with the S1 classification.

##### 1.2 Submission of sequences

Before an order is accepted, the customer must send us the sequence of the GMO in question. The order will only be accepted after verification and confirmation that the sequence sent to us fulfils the requirements of the S1 classification.

#### 2 Responsibility of the customer

##### 2.1 Correct classification

The customer bears full responsibility for the correct classification of the GMOs sent to us. Should it subsequently transpire that the GMOs do not comply with the S1 classification, we reserve the right to reject or cancel the order.

##### 2.2 Proof of the security level

The customer must provide all necessary documentation and evidence confirming that the GMOs sent fall under the S1 classification. This includes, but is not limited to, certificates, safety data sheets and other relevant documentation.

#### 3 Liability and consequences of non-compliance

##### 3.1 Exclusion of liability

We accept no liability for damage or losses caused by incorrect declaration or classification of the GMOs by the customer.

##### 3.2 Assumption of costs in the event of rejection

If an order is rejected or cancelled due to incorrect or insufficient information, the customer shall bear the costs and expenses incurred.

#### 4 Verification process

##### 4.1 Order receipt of the customer vector sequence

The customer vector sequence is evaluated and checked by nagene GmbH for compliance with the safety requirements. Only gene sequences with S1 classification are released for production. In particular, the following are taken into account Gene sequence database; a comprehensive risk assessment that takes into account the type of modification, the use of the GMO and the environmental orientation; a risk assessment of the final plasmid is also carried out.