

General terms and conditions for Custom Made Products & Services

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1. Governing Provisions

These terms and conditions (“Terms and Conditions”) apply to custom made products and/or services (both hereinafter referred to as “Services”) provided by Lophius Biosciences GmbH (“LB”) according to the detailed description in the applicable quotation or other written statement of work (“SOW”), as submitted by LB and accepted by Client. These Terms and Conditions, together with the SOW, form the entire contract between Client and LB (“Custom Agreement”), and supersede all prior communications between the parties, whether written or oral, relating to the Services, except for a written contract signed by both parties. All other terms and conditions are explicitly excluded regardless if provided in form of a purchase order or other similar document (“PO”) indicating acceptance of such SOW under altered terms.

2. Performance of Services

LB shall perform the Services as an independent contractor, using methods, materials, equipment, and/or related intellectual property owned or controlled by LB (“LB Technology”) to provide Client with data and/or materials produced by LB as a direct result of the Services, as specified in the SOW (collectively “Deliverables”), which Deliverables may include data or materials that result from the use of materials supplied by Client (“Client Materials”).

LB will make a good faith effort to start and complete all Services on time, and will notify Client if substantial delays are likely.

LB will comply with all laws and regulations generally applicable to Services, and with any specific regulatory framework agreed in the SOW.

Unless otherwise expressly agreed in the SOW, the Deliverables are not produced in accordance with United States Food and Drug Administration, good manufacturing practices or good laboratory practices or in accordance with any other similar laws or regulations in other jurisdictions.

LB may delegate performance of the Services, or portion thereof, to an authorized subcontractor, provided that all Services will be performed in accordance with the Custom Agreement.

Performance of Services hereunder is conditioned on Client’s acceptance of the Terms and Conditions and the SOW by written statement, facsimile, email, or a PO that references the SOW. In the event of a conflict of terms, the SOW takes precedence over these Terms and Conditions, and any written contract signed by both parties takes precedence over either; inconsistent terms of a PO shall not apply unless LB has agreed to them in writing.

3. Client Materials and Data

Client will provide LB with Client Materials specified in the SOW, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of Client Materials needed by LB to perform the Services, including without limitation any certification or documentation of Client Materials reasonably requested by LB. The Client Materials, and all information about Client Materials, whether provided by Client or generated by LB in the performance of Services (such information collectively referred to as “Data”), shall be subject to the confidentiality and non-use requirements of Section 8. Upon completion of the Services, LB will maintain records of the Data for a period of no less than one (1) year. LB will use Client Materials and Data only in accordance with the SOW, and will not modify nor reverse engineer Client Materials except as agreed therein. Unless otherwise specified in the SOW or agreed in writing, any Client Materials not consumed in the Services or required for additional Services will be destroyed after six months. LB will not transfer Client Materials, in whole or in part, to any third party, other than a subcontractor, without Client’s prior written approval.

4. Intended Use

Deliverables generated by the performance of Services are intended for research and development purposes only and not for use in humans or diagnostics procedures (“Intended use”) if not stated otherwise in the Custom Agreement. If Client wants to use the Deliverables for other purposes than the Intended Use then it is in the sole responsibility of Client to obtain any approvals from responsible authorities or other rights that may be required.

5. Payments

Client shall pay LB for the Services within 15 days after the date of the respective invoice(s), which shall be sent to Client upon completion of the Services (or portion thereof), according to the payment schedule and currency specified in the SOW. If Client defaults on any payment when due, LB, at its option and without prejudice to its other lawful remedies, may delay performance, defer delivery, charge interest on undisputed amounts owed, and/or terminate the Custom Agreement.

6. Ownership, Intellectual Property

As between the parties, except as otherwise expressly agreed in the SOW, Client shall be the exclusive owner of (i) the Data, (ii) Client Materials, (iii) any derivatives or modifications of Client Materials that are generated by LB as a direct result of the Services, and (iv) any inventions and/or discoveries that directly result from the performance of the Services and that directly relate to Client Materials, whether or not copyrightable or patentable (collectively, the “Client Inventions”). At Client’s request and expense, LB shall do all things reasonably necessary to assist Client in obtaining patents or copyrights on any Client Inventions, provided however that Client Inventions

shall not include LB Technology or any improvements or modifications thereof, whether developed before or during the performance of the Services. Client shall not, by virtue of the Services performed hereunder, obtain any license or other rights in any LB Technology to (a) use Deliverables other than as set forth in Section 4, (b) re-sell Deliverables; unless expressly stated in the SOW or agreed in a separate written contract between the parties.

LB's laboratory notebooks or other records maintained with respect to the Services shall be owned by LB, provided however that if such notebooks or records contain any Data or other confidential information of Client, such Data and confidential information will continue to be the property of Client, and the parts of the notebooks and records that contain Client confidential information will be subject to LB's obligations of nonuse and confidentiality as set forth in Section 8.

7. Non-Exclusivity

Unless expressly agreed in writing, all Services are provided on a non-exclusive basis, and LB reserves all rights for itself and its affiliates to provide third parties with deliverables that are identical or similar to Deliverables, provided that LB shall not use any Client Materials or information received from Client to perform Services for any third party.

8. Confidentiality

LB shall treat all Data and Client Materials as proprietary and confidential to Client, and will not disclose Data or Client Materials to any person except its employees, consultants, and subcontractors as necessary for purposes of providing the Services, and then only subject to a written confidentiality agreement that includes the requirements specified herein. If LB discloses any information or materials comprising LB Technology to Client, Client shall treat such information and materials as proprietary and confidential to LB.

Each party shall protect the proprietary and confidential information or materials of the other party by using the same degree of care as such party uses to protect its own materials and information, but in any event no less than a reasonable degree of care. Notwithstanding any other provisions herein, however, each recipient party shall have no obligation to the other party for any information or material that is (a) already known to the recipient party; (b) publicly known other than by a wrongful act of the recipient party; (c) received from a third party lawfully entitled to disclose it; (d) disclosed pursuant to an enforceable order of a court or administrative agency; and/or (e) is independently developed by or for the recipient party.

9. Limited Warranty

LB's sole warranty for the performance of Services is that the Services will be performed using due care in accordance with (a) the Custom Agreement, including the

respective SOW and (b) laws, regulations and generally prevailing industry standards applicable to such Services; LB does not warrant or represent that the results of the Services will be acceptable to any regulatory agency to which they are presented or that they will advance the interests of Client. If Client believes that LB, in breach of its limited warranty, has made a material error in the Services that renders the results of such Services invalid, Client must notify LB of such error in writing, within one month after receipt of the final Deliverable for such Services; and as Client's sole remedy for such error, LB shall either (i) repeat the particular Services at LB's own expense or (ii) refund to Client the fees actually paid for the particular Services giving rise to the breach of warranty.

9.1

LB SHALL NOT BE LIABLE HEREUNDER, UNDER ANY LEGAL THEORY, FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR LOSS OF BUSINESS, EVEN IF LB HAD NOTICE OF THE POSSIBILITY THEREOF.

9.2

THE WARRANTY SET FORTH IN THIS SECTION 9 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE WORK, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES OR USE THEREOF WILL NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

9.3

LB'S LIABILITY TO CLIENT FOR BREACH OF ANY PROVISION OF THE CUSTOM AGREEMENT (OTHER THAN BREACH OF THE WARRANTY IN THIS SECTION 9 FOR WHICH LIABILITY IS LIMITED TO RE-PERFORMANCE OR REFUND AS SPECIFIED HEREIN) SHALL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEE TO BE PAID FOR THE WORK.

9.4

NOTHING IN THE CUSTOM AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

10. Indemnification

Except to the extent caused by the willful misconduct of LB, Client shall indemnify and hold harmless LB, its affiliates and their respective officers, directors, employees and agents ("Indemnified Party") from and against any and all expenses (including, but not limited to, reasonable attorney's fees) and losses incurred by any such Indemnified Party in connection with any claim asserted by a third party arising out of or based on (a) Client Materials or use thereof in performance of the Services as specified in the SOW; and/or (b) any product or service of Client based in whole or part on Client's

reliance on Deliverables, or any portion or derivative thereof; and/or (c) other than the Intended Use described in Section 4.

11. Changes, Termination

Changes to the Services must be agreed by both parties in writing, and may require changes in the fees or timelines. LB may terminate the Custom Agreement if (a) Client breaches any material provision of the Custom Agreement and fails to remedy the breach to the satisfaction of LB within 15 days after written notice thereof; (b) LB is unable to obtain third party materials or technology specified in the SOW, for reasons beyond LB's reasonable control; (c) LB determines that biosecurity, biosafety, and/or feasibility reasons prevent or are likely to prevent the performance of the Services, or (d) Client is or is deemed by law to be unable to pay its debts or perform its obligations under the Custom Agreement. Client shall have the right to terminate any SOW upon 30 days prior written notice to LB. Termination of Services in progress will result in a partial charge commensurate with the percentage of Services completed at the time of cancellation, in addition to any other termination or cancellation charges specified in the SOW.

12. Miscellaneous

This Custom Agreement may not be assigned without the consent of the other party, except that each party may assign the Custom Agreement to an affiliate or to any other party to whom it transfers the business and assets related to this Custom Agreement, provided that such assignee assumes all the rights and obligations of its assignor. The Custom Agreement shall be governed by the laws of Germany. The Custom Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

If any part of these Terms and Conditions is found to be legally unenforceable, the remaining clauses of these Terms and Conditions shall be unimpaired, and the parties shall in good faith negotiate an enforceable provision that most closely achieves the objectives of the unenforceable provision.

Except for payment obligations, neither party shall be responsible for failure to perform its obligations due to natural disasters or other force majeure causes beyond its reasonable control.

Either party may use the name of other party in a promotion, on its web page or publication with prior written consent of such other party, which consent may be given by email, facsimile or letter. No waiver by either party of any breach hereof shall constitute a waiver of any other breach thereof.