

General Terms and Conditions, including software license provisions

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§ 1 General Information

1. The following General Terms and Conditions shall apply exclusively for the delivery, sale and use of our products.

2. Any terms set by the customer contrary to or differing from our General Terms and Conditions shall not be accepted by us unless expressly agreed to by us in writing. Our General Terms and Conditions shall also apply exclusively if we, duly aware of terms contrary to or differing from our General Terms and Conditions, deliver our products to the customer or provide any services for the customer without reservation.

3. All agreements made between us and the customer in connection with the execution and performances of a contract are set out on the basis of this General Terms and Conditions.

4. Our General Terms and Conditions shall also be applicable to any further transactions with the customer.

5. Our General Terms and Conditions shall only apply to businessmen and legal persons under public law as defined by section 310 paragraph 1 of the German Civil Code (BGB).

§ 2 Quotations and Orders

1. Our quotation is without obligation, unless specified otherwise in the confirmation of order.

2. The contract shall take effect only if it is confirmed by us in writing or on execution of the order.

3. We shall reserve the property and copyrights to all information, data, materials, illustrations, calculations, designs and other documents made available to the customer until the contract has been executed. These documents must not be made available to third parties or duplicated or used for any purpose other than agreed upon without our express written consent. We shall be entitled to demand the surrender of the aforementioned documents including any duplicates if the customer is no longer in need of these documents or if we have been informed that these documents have been misused for other purposes. A retention right shall be ruled out. This applies also to documents which are classified as „confidential“.

§ 3 Right of Amendment

Deviations in quantity, measurements, weight and quality of the purchased item which are customary in trade and are deemed acceptable for the client shall be reserved. Deviations from our information about the provision of services which are customary in trade and are deemed acceptable for the client shall also be reserved.

§ 4 Prices and Terms of Payment

1. All prices are quoted in EUR, including packaging costs, but exclusive of VAT which will be shown separately in the invoice on the day of invoicing. Delivery costs shall be borne by the customer.
2. For calculation purposes the prices and conditions laid out in the price list and valid on the day of delivery shall apply.
3. If after conclusion of the contract a change in wages or material costs takes place, we shall reserve the right to make adequate adjustments which will be made available to the customer upon request.
4. Orders exceeding a contract value of Euro 5,000.00 net shall be executed only after receipt of payment.
5. Unless stated otherwise in the confirmation of order, payment shall be made net (without deduction) within 14 days of the date of the invoice. In case of delayed payment and the consequences thereof, statutory regulations shall apply. This shall not only apply to main invoices but also to partial and subsequent invoices.
6. If payment is effected by bank transfer or by cheque, the date on which the credit advice is received by us shall be deemed to be the date of receipt of payment.
7. If the customer's financial circumstances deteriorate considerably or if the customer falls behind payment, we shall be entitled to demand immediate payment of all open invoices, even of those not yet due for payment. We shall also be entitled not to execute any current orders of the customer.
8. The deduction of a discount is subject to special written agreement.
9. The customer shall be entitled to make set-off claims only if his counterclaims have legal validity, are uncontested or recognized by us. The customer shall be entitled to exercise a retaining lien only insofar as his counterclaim is based on the same contractual relationship.

§ 5 Delivery

1. The customer shall be informed immediately in writing if there is a delay in the delivery of our products or in the provision of our services. The start of the delivery period shall be subject to clarification of all technical issues.
2. Fulfillment of our delivery obligations shall imply the timely and correct fulfillment of the customer's obligations. We shall reserve the right to plea non-fulfillment of the contract.
3. Transport route and transport method including delivery charges shall be determined by us. We shall reserve the right to respect the customer's request with regard to the transport route and the transport method. Any additional costs thus incurred shall be borne by the customer.

4. If the customer delays acceptance or culpably violates any other obligations to cooperate, we shall be entitled to claim compensation for damages, including any additional expenses incurred. We shall reserve the right to make additional claims.

5. If the purchased item gets lost or damaged during transport due to incorrect or erroneous information given by the customer with regard to the delivery address, acceptance time and contact person, the customer shall bear the ensuing costs.

6. If the requirements of section 5 No. 4 are met, the risk of incidental demise and incidental deterioration of the purchased item shall be passed on to the customer at that moment he defaults acceptance or payment.

7. According to statutory provisions we are liable if the delay in delivery is due to an intentional or grossly negligent breach of contract on our part. Any negligence on the part of our agents and vicarious agents shall be attributable to us. If the delay in delivery is not due to an intentional violation of contract on our part, our liability shall be limited to the damage that is foreseeable and which typically arises.

8. Under statutory provisions we are also liable insofar as the delay in delivery for which we are responsible is due to culpable infringement of a fundamental contractual obligation. In this case however liability shall be limited to the damage that is foreseeable and which typically arises.

9. As for the rest, in case of delay in delivery we shall be liable for a maximum of 5% of the contract value.

10. Additional statutory claims and rights of the customer shall be reserved.

11. Packaging, transport route and transport method shall be determined by us. Any additional expenses arising from special dispatch requests by the customer shall be borne by the customer. Transport damages shall be reported immediately to Lophius Biosciences GmbH. In case of delayed acceptance by the customer we shall be entitled to withdraw from the contract after setting an appropriate grace period.

§ 6 Passing of Risk

1. Unless stated otherwise in the confirmation of order, delivery is "ex works".

2. If requested by the customer, the delivery shall be covered by transport insurance. The costs hereby incurred shall be borne by the customer.

§ 7 Use of Software, Grant of Rights

1. If customer purchases software (including but not limited to the T-Track® CMV calculator) we herewith grant to customer a non-transferable, non-sublicensable and non-exclusive right to use the software together with the respective product in accordance with the applicable user documentation. Thereby the right to use the software is limited to the purpose of the software as described in the corresponding user documentation.

2. The software, the underlying software code, software processes and algorithms shall be proprietary and confidential Lophius information. Customer shall not decompile, disassemble, reverse engineer or modify the software, make the software or the software source code available to third parties or disclose the source code or parts thereof in the public domain. The right to copy the software is limited to the installation of the software on a computer system which is in the customer's immediate possession and to fulfill the purpose of use. Sections 69 d and 69 e German Copyright Act shall remain unaffected.

§ 8 Notice of Defect, Warranty and Liability

1. The rights of the customer arising from product defects shall be subject to the customer having duly met his obligation to examine and give notice of the defect as per section 377 of the German Commercial Code (HGB). Rights in case of defects shall be excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics nor in the case of just slight impairment of use.

2. Software provided shall be substantially in accordance with the applicable user documentation. Yet, such documentation shall not be deemed guaranteed unless expressly stated in writing. In respect of updates and the delivery of new versions, customer's rights in case of defects shall be limited to the new features of the update or the new version compared to the previous version release.

3. Warranty rights of the customer expire after twelve months from the day of the passing of the risk.

4. Insofar as the purchased item or service provided has a defect, we shall, at our discretion, be entitled to subsequent performance either by rectifying the defect or by supplying a new item free of defects or by providing the service again. We shall bear all necessary expenses incurred in remedying such defects, in particular transport, delivery, labour and material costs, insofar as they shall not increase because the purchased item has been brought to a location other than the place of performance, and such costs shall not exceed the contract value.

5. If subsequent performance fails, the customer shall have the choice of withdrawing from the contract, demanding a price reduction or rescinding the contract and/or is entitled to terminate the contract for the performance of the service.

6. We shall be liable, in accordance with statutory provisions, if the customer claims for damages arising from intent or gross negligence, including intent or gross negligence on the part of our agents or vicarious agents. Provided that we are not accused of willful breach of contract, our liability shall be restricted to damage that is foreseeable and which typically arises.

7. We shall be liable, in accordance with statutory provisions, if we culpably violate a fundamental contractual obligation. In this case, however, our liability shall be restricted to damage that is foreseeable and which typically arises.

8. Liability for culpable injury to life, body or health shall remain unaffected. This shall also apply to compulsory liability according to the German Product Liability Act.

9. Insofar as storage temperatures are indicated on the packages, they must be strictly adhered to. Notifications of defect shall only be considered if made immediately and in writing, at the latest within 8 days after receipt of the purchased item, and upon presentation of our delivery note. Returns shall only be accepted by us upon prior written consent.

10. Unless otherwise agreed, liability shall be excluded.

§ 9 Joint and Several Liability

1. Any further liability to pay damages provided for in § 8 is excluded regardless of the legal nature of the claim made. This applies in particular to claims for damages arising from faults made at the time of concluding the contract, on account of other breaches of duty or on account of tort claims for restitution of damages in accordance with Section 823 of the German Civil Code.

2. We shall not assume any liability for the suitability of the purchased item or suitability of the purchased item for a particular purpose or application, or for its safety or harmlessness with regard to health. In addition we shall not assume any liability that through use of the purchased item patent or other rights of third parties might be violated.

3. Limitation according to § 9 Nos. 1 and 2 shall also apply if the customer claims replacement of futile expenditure instead of claiming compensation.

4. Insofar as liability for damages against us is excluded or restricted, this shall also apply with regard to personal liability of our employees, workers, members of staff, agents and vicarious agents.

§ 10 Retention of Title

1. The purchased item supplied shall remain our property until payment of all existing claims as well as subsequent and future claims arising from the contractual relationship with the customer has been received.

2. The customer shall be obliged to treat the purchased item with due care.

3. In the event of attachment or other acts of possession by third parties, the customer shall be obliged to inform us immediately in writing so that we can take legal action under section 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to refund us the judicial and extrajudicial expenses of an action filed under section 771 of the German Code of Civil Procedure, the customer shall be liable for the losses incurred by us.

4. The customer shall be entitled to resell the purchased item in the ordinary course of business. He shall, however, with immediate effect assign all claims against his buyers or third parties which arise from the resale of the purchased item, regardless of whether the purchased item is resold processed or unprocessed. The customer shall be entitled to collect these claims even

after assignment has taken effect. Our right to collect the claim ourselves shall remain unaffected by this provision. We undertake, however, not to collect the claim as long as the customer fulfills his payment obligation from the proceeds received, does not get into arrears with payment and in particular as long as no application has been made to commence settlement or insolvency proceedings or payment has been stopped. If this is the case we can require the customer to inform us about the assigned claims and the debtors, to supply all the information necessary for collection, to hand over the relevant documents and to notify the third party of the assignment.

5. The customer shall not be entitled to pledge, assign or assign such claims as security to third parties in connection with the purchased item.

6. Processing and alteration of the purchased item by the client shall always be carried out on our behalf. If the purchased item is processed with items other than our own, we shall acquire co-ownership of the new item in proportion to the value of the purchased item (total invoiced amount including VAT) to the other processed items at the time of processing. The same provisions shall apply to the item created by processing and to the item delivered under reservation of title.

9. If the purchased item is inseparably mixed with items other than our own, we shall acquire co-ownership of the new item in proportion to the value of the item (total invoiced amount including VAT) to the other mixed items at the time of mixing. If mixing occurs in such manner that the item of the customer has to be regarded as the principal item, it is understood and agreed that the customer shall assign to us pro-rata co-ownership. The customer shall thus preserve sole or co-ownership for us.

10. We undertake to release the collateral due to us at the request of the customer to the extent that the value of our collateral exceeds the claims to be secured by more than 10%. The choice of the type of collateral to be released shall be at our discretion.

§ 11 Use of the Purchased Item

1. The purchased item shall be used exclusively for scientific purposes.

2. The use of the purchased item as a human or animal drug or for medical diagnostic purposes shall only be permitted in accordance with the applicable laws and regulations of the relevant authorities. In addition, such use shall be subject to our prior written consent.

3. The use of the purchased item for industrial production shall be at the customer's own risk.

§ 12 Hazardous Substances

1. Hazardous substances can only be supplied to customers with the appropriate technical equipment.

2. The purchased item shall be handled by qualified staff only, in accordance with relevant safety regulations.

§ 13 Data Protection

The customer agrees that his data shall be electronically stored and processed for processing and executing the order, only.

§ 14 Place of Performance, Jurisdiction and Applicable Law

1. Unless stated otherwise in the confirmation of order, the place of performance shall be our registered office.

2. Insofar as the client is a merchant, the place of jurisdiction shall be our registered office. We shall, however, be entitled to assert a claim against the customer at the latter's registered office.

3. This contract shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods shall not be applicable.