

General Terms and Conditions of enGenes Biotech GmbH

Article 1 - Scope of application and Definitions

(1) These general terms and conditions apply to all deliveries and services of enGenes Biotech GmbH ("enGenes") rendered to customers ("Company"), which are not consumers in the sense of any applicable consumer laws. enGenes refuses any orders of customers which it deems consumers in the sense of the applicable consumer laws.

(2) Divergent or additional terms and conditions of Company are expressly rejected and do not apply unless otherwise agreed in writing with enGenes.

Article 2 - Services and Products of enGenes, Place of Performance

(1) enGenes offers services such as feasibility studies and offers products for sale, e.g. antigens both based on its technologies and intellectual property.

(2) enGenes may also grant commercial licenses for its technologies and intellectual property in order to enable Company to produce products based on separately concluded license agreements for its offered services and products. These general terms and conditions shall form an integral part of such license agreements, unless explicitly agreed otherwise in writing.

(3) Place of performance for each service or sale of products is Vienna, Austria.

Article 3 - Offers and Acceptance

(1) Offers by enGenes are binding and subject to confirmation by Company. enGenes shall be bound to its offer for a three months' period, unless enGenes explicitly states otherwise in writing.

(2) The contract between enGenes and Company shall be binding (1) as soon as Company expressly accepts the offer of enGenes in writing within the period referred to in the preceding paragraph or (2) upon fulfillment of orders of Company.

(3) Subsequent additions and/or amendments of the contract between enGenes and Company must be made in writing to become valid. Oral additions and/or amendments are not considered binding.

Article 4 - Price, Payment

(1) Unless explicitly agreed otherwise in writing, the offered prices are ex works, not including packaging, shipment, customs, taxes and insurance. The costs of packaging, shipment, customs, taxes and insurance are to be borne by Company and shall be payable in addition to the offered prices.

(2) The price to be paid in EURO is based on the individually offered price at the date of the offer submitted by enGenes, unless a different currency was explicitly agreed in writing. The offered price does not include the applicable statutory sales tax and/or value-added tax.

(3) The payment of Company is due and payable with the performance of the delivery of products or service by enGenes and upon receipt of the invoice. Company is not entitled to deduct a discount, unless explicitly agreed otherwise in writing. EnGenes is always entitled to claim pre-payment of the agreed price.

(4) In case of delay in payment enGenes is entitled to claim interest in the amount of 9 percentage points above the base rate per year.

(5) If payments are made using a different currency than EURO, the payments are subject to the exchange rates that apply on the date of the invoice. Payments are deemed as made on the day on which enGenes has the invoiced amount at its disposal without any loss.

(6) If Company's ability to pay deteriorates in the period between the signing of the contract and delivery or if enGenes becomes aware of the fact that there are justified reservations regarding Company's ability to pay, enGenes is entitled to

a) demand payment prior to the agreed upon due date, or

b) hold back outstanding deliveries and services until receipt of full payment, or

c) demand payment prior to expiration of the contractual term in case of accepted bills of exchange.

(7) Company is not entitled to offset any counter-claims against claims of enGenes, unless its counter-claims are subject to a finally binding judgment or explicitly recognized and undisputed by enGenes.

Article 5 - Delivery Period

(1) enGenes fulfills its services or delivers products within the agreed upon period of time. In case no agreement on delivery of services was made provision of services is made within an adequate period of time typical for the kind of service agreed with Company.

(2) If the delivery of enGenes is delayed for reasons that are beyond the control of enGenes such as violence, illness, strike, pandemic and similar, the delivery period is extended accordingly. This also applies if the subcontractors of enGenes experience such circumstances. Company waives any damage claims due to such circumstances.

(3) enGenes is entitled to deliver products as partial deliveries, unless otherwise agreed in writing.

Article 6 - Shipment, Passage of Risk, Insurance and Samples

(1) The products are shipped and transported at the expense and risk of Company.

(2) The risk passes over at the latest with the handing over of the products to the transporting agency, forwarding agency or any third party engaged with the transport of products. At the express request and at the expense of Company, enGenes will insure the shipment against theft, breakage, transport damage, fire and water damage as well as other insurable risks.

(3) If the shipment is delayed due to circumstances that are within the control of Company, the risk passes over to Company on the day of readiness for shipment. Company further shall reimburse enGenes for any cost reasonably incurred by such delay.

(4) Company is obligated to accept contractually agreed products. If Company is in default with regard to the acceptance of the products, enGenes is entitled, after setting a fourteen (14) day grace period, to withdraw from the contract and/or request damage compensation or to deliver comparable products at the agreed upon conditions within a reasonable delivery period. Possible additional costs will be borne by Company.

Article 7 - Retention of Ownership

enGenes retains the ownership of the delivered products until receipt of payment.

Article 8 - Conclusion of license agreements

(1) In case Company wants to use / exploit the intellectual property, know-how and technology of enGenes' services or products commercially in order to produce products on its own, Company is obliged to conclude a license agreement with enGenes. Unless otherwise explicitly agreed in writing in the license agreement, the following provisions shall apply to the granting of licenses by enGenes in any case.

(a) The license is granted against payment. This means that Company has to pay a license fee appropriate for the service or product of enGenes.

(b) The license is not granted exclusively. Company can therefore not derive any claims from the fact that enGenes also grants other persons a factually, geographically and/or temporally identical license.

(c) Company is not entitled to transfer the license, whether for payment or free of charge, to third parties.

(2) Feasibility studies of enGenes do not grant Company any license in enGenes intellectual property, know how or technology.

Article 9 - Warranty

(1) The products of enGenes are of experimental nature and perishable.

(2) enGenes does not give any warranties or guarantees, in particular with respect to the marketability or fitness for a specific purpose nor regarding any non-violation of patents, copyrights, trademark rights or other intellectual property rights potentially caused by the use of a product. enGenes further does not give any warranties or guarantees that the products do not represent a safety or health risk nor regarding any storage life. This does not apply if and to the extent that enGenes has warranted a specific characteristic of the products.

(3) The warranty period for the products of enGenes is three months due to its perishable character.

(4) If enGenes' obligation to remedy a deficiency is not excluded contractually, enGenes may remedy the deficiency at its discretion by free-of-charge reperformance or replacement delivery. In case of replacement delivery, the deficient products are to be returned to enGenes. If the deficiency cannot be remedied or if the reperformance or replacement delivery may be regarded as failed, Company may demand at its discretion a reduction of payment or may withdraw from the contract. The reperformance may be deemed as failed only if the reperformance or replacement delivery is not possible, if it is delayed unreasonably by enGenes, if there is justified doubt about the chances of success or if it is deemed unacceptable for other reasons.

(5) For the performance of reperformance and replacement deliveries that are deemed necessary by enGenes at its discretion, Company must provide the necessary time and opportunity after consulting with enGenes. Only in urgent cases such as risk to operational safety and to prevent disproportionately large damage or if enGenes is in default with the remediation of the deficiency, Company is entitled to eliminate the deficiency on its own or to have a third party eliminate the deficiency and to demand that enGenes replaces the necessary costs.

(6) Company is obligated to examine the delivered products and report any deficiencies according to Paragraph 377 UGB (Austrian Commercial Code). Reports must include all information which Company is aware of and which is useful for identifying the deficiency. Company must take measures that facilitate an identification of the deficiencies and its causes within reasonable bounds.

Article 10 - Liability

(1) enGenes' liability for compensation of damages is limited to EUR 100,000 per damage event, however, no more than EUR 300,000 per calendar year per Company.

(2) The liability limitations according to the aforementioned paragraph (1) do not apply (a) in case of damages that are based on intentional or gross negligent violation of obligations of enGenes or (b) in case life-endangering injuries, bodily harm or health damage have occurred or (c) in case of product liability.

(3) enGenes liability is excluded in case of any improper or illegal use or handling of products delivered by enGenes.

Article 11 - Data Privacy

(1) If – within the ambit of this General Terms and Conditions – a party (disclosing party) discloses to the other Party (receiving party) personal data pursuant to Article 4 Sec 1 of the General Data Protection Regulation (GDPR) or the receiving party got otherwise knowledge of personal data of the disclosing party and – provided the personal data are not processed by the receiving party as a data processor – these personal data may exclusively processed in performance of these General Terms and Conditions and any underlying agreement and not processed for any other purposes, except as provided by the law. Specifically, these personal data may not be disclosed to third parties nor analyzed for own purposes or used for profiling purposes.

(2) The receiving party ensures that personal data of the disclosing party are only provided to those of his employees who have a need to know them in the performance of the contractual relationship.

(3) The receiving party establishes its internal organization in a way that it can ensure compliance with the applicable data protection laws, including but not limited to technical and organizational measures taken to prevent personal data from misuse or loss. Employees that have access to personal data must be made subject to a confidentiality obligation that continues to apply after termination of the employment.

Article 12 - Intellectual Property Rights, Trade Secrets

(1) All cost estimates, drawings and other documents, including but not limited to feasibility studies handed over by enGenes are subject to the copyrights of enGenes and may contain trade secrets and Company is only permitted to use it for its own internal purposes or any express agreed contractual purposes without a right to publish it to a third party or to the public.

(2) Products delivered by enGenes, especially proteins and their production processes, are subject to intellectual property rights of enGenes and may include trade secrets.

(3) Any reverse engineering or reproduction of product is only permitted after prior express authorization of enGenes.

Article 13 - Confidentiality

(1) The Company undertakes to keep confidential all information related to any trade secrets or confidential information received for a period of 5 (five) years upon receipt, with the exception of such pieces of information that verifiably

- (a) already were in the public domain before they were made available to the Company, or that entered the public domain afterwards other than through a fault by the Company;
- (b) were known to the Company prior to their provision to Company;
- (c) were received by the Company from a third party which itself obtained the relevant piece(s) of information in a lawful manner without any breach of any agreement;
- (d) were independently developed by the Company's staff without access to the Information.

(2) Any reference to the business relations existing with enGenes in publications or for advertising purposes is only permissible with the express prior written approval of enGenes.

Article 14 - Purpose, Safety Instructions, Obligation to Proper Use, Samples

(1) All products are intended exclusively for laboratory, research and industrial applications and not for use on human subjects and animals, unless explicitly agreed otherwise in writing. For this reason enGenes delivers its products only to industrial companies, technical business operations or public research, testing and educational establishments.

(2) The Company shall use the products exclusively through lab-personnel under its supervision. The Company shall not make available the products, or grant access thereto, to persons other than lab-personnel under its supervision, and the Company shall ensure that the products are not made available or accessible to unauthorized third parties or persons.

(3) The products of enGenes are perishable products and shall be used immediately after purchase or up to the best-before date if indicated on the respective product.

(4) Company is obligated to properly handle the products delivered by enGenes and to store them especially in accordance with the manufacturer's instructions and not to use these products in households.

(5) Company must observe any relevant national or international laws or directives that apply to circulation, including delivery, storage, processing or trade with products and hold all relevant permits regarding the products.

(6) Company is obligated to indemnify enGenes from any third party claims caused by Company, and which are based on the illegal or improper use of the products of enGenes or non-compliance with the clauses under this Article or are the result of any other improper usage. The indemnification obligation also includes the costs of legal defense (e.g. court and lawyer fees).

(7) The liability of enGenes is excluded if damage is incurred due to non-compliance with the clauses under this Article.

(8) The Company shall forward all enquiries concerning the products to enGenes via e-mail.

(9) In case of provision of free samples of products on part of enGenes, Company is obligated to use the samples exclusively for internal evaluation purposes or test purposes. A commercial utilization or use is expressly excluded. In particular, Company is not authorized to sell or pass on the samples to third parties or to reproduce them.

Article 15 - Applicable Law and Competent Court

(1) These General Terms and Conditions are governed by Austrian law excluding its conflict-of-law rules with exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Any dispute arising between enGenes and Company from or in connection with these General Terms and Conditions and/or any underlying agreement will be subject to the exclusive competent court of Vienna, Austria.

Article 16 - Miscellaneous

(1) Any changes or amendments of these General Terms and Conditions must be made in writing (writing or written is defined as correspondence by e-mail, fax or by regular post between enGenes and Company) in order to take effect. This shall also apply to any waiver of this requirement of written form.

(2) If one or more provisions of these General Terms and Conditions is or becomes fully or partly void or invalid, illegal or unenforceable, this shall not affect the remaining provisions in these General Terms and Conditions. The invalid, void, illegal or unenforceable provision(s) shall be replaced by (an) alternative provision(s) which most closely correspond(s) to the original intent of the enGenes and Company to the extent that this is legally possible and whose economic effect best correspond(s) to the effect intended by the invalid, void, illegal or unenforceable provision(s).

(3) The contractual language is English. If a contract is concluded in German, this English version of the General Terms and Conditions will prevail in interpretation.

(4) Any and all rights and obligations arising from these General Terms and Conditions and any underlying agreement must not be transferred to any third party without enGenes's prior written consent.