

# **General Terms and Conditions of greenovation Biotech GmbH (as of October 1, 2014)**

## **1. Application, General**

**1.1.** These terms of sale apply exclusively. Deviating or conflicting terms will not be accepted by us if we have not expressly consented to such in writing.

**1.2.** These terms of sale also apply for all future transactions between the parties, even if we perform delivery of the goods and services with knowledge of deviating or conflicting terms.

**1.3.** These general terms of sale apply only to business persons, legal persons of public law or public law special assets within the meaning of § 310 para. 1 German Civil Code (BGB).

**1.4.** Our general sale, delivery, and payment terms (in the following: General terms and conditions, abbreviated Ts and Cs) apply for all of our deliveries and services, even for future business transactions, unless separate agreements must be made such as in the case of technical application consulting which goes beyond pure product information. Deviating terms of the customer only apply if they are expressly accepted by us in writing. The invalidity of individual terms does not affect the validity of the remainder of our Ts and Cs. In the event that individual terms of these Ts and Cs are invalid, it is agreed that regulations will become effective which come closest to the legal and commercial intent of the invalid term.

**1.5** All earlier Ts and Cs are hereby overridden.

**1.6** As far as the item of purchase is mentioned in the following, this encompasses the entire product and service program alike.

**1.7** From the point of their validity, changes to the Ts and Cs become a component of contracts, even of those which are ongoing, if the customer, despite special notice of his right of objection, does not object within a time period of one month after notification of the change.

## **2. Conclusion of the Contract**

**2.1** Our offers are subject to change and nonbinding, if the seller has not expressly rendered a written binding declaration. If the offers of a supplier change during the period of commitment, then the period of commitment shall be deemed as not agreed. The information contained in brochures and advertisements are nonbinding and do not represent any warranty of the characteristics of the products and services. Contracts based on offers are concluded upon receipt of our written order confirmation, or at the latest with the handover of the purchased item. The order confirmation and our Ts and Cs are decisive for the content of contracts. Side agreements, changes and additions are only valid if they are confirmed in writing by the seller.

**2.2** Contracts are also concluded by acceptance of orders by customers. Such orders are binding offers which we accept by sending an order

confirmation or by delivery of the item of purchase.

**2.3** The removal of the packaging of the delivered item of purchase by the customer is always deemed an acceptance.

## **3. Delivery Time and Delivery**

**3.1** Delivery dates or delivery periods are only binding if they are confirmed in writing by the seller. If a delivery period is agreed, it begins with the dispatch of the order confirmation, or for analysis services, with the entry of the sample or test material in the laboratory, however not before receipt of an agreed deposit.

**3.2** The delivery period is adhered to if prior to its expiration, the item of purchase has left the supplier, our warehouse, or our business premises, or readiness for shipment has been communicated.

**3.3** If the delivery or service owed by the seller is delayed by unforeseeable circumstances and through no fault of the seller (e.g. by labor disputes, operational interruptions, transportation barriers, regulatory measures / also for our sub/suppliers respectively / as well as non/timely delivery), then the seller is entitled to rescind the contract entirely or partially, or at our option, to postpone delivery for the duration of the hindrance. Damage compensation claims of the customer are excluded.

**3.4** Compliance with our delivery obligation requires the timely and proper fulfillment of the obligations of the customer to provide the technical requirements for any necessary implementation.

**3.5** Partial deliveries as well as deliveries before the specified delivery time are permitted. The seller determines the type of shipment unless a special agreement exists.

**3.6** Should damages arise to the customer due to a delay which is the fault of the seller, then he is entitled to claim compensation for delay only if the delay is based on at least gross negligence. The right to assert further requires that the seller has not complied with a reasonable grace period set by the customer.

**3.7** Construction and shape changes as well as changes to the metabolomic and genetic marker set used remain reserved during the delivery time insofar as the item of purchase is not thereby materially changed in its shape and function, and a change is reasonable for the customer.

## **4. Acceptance and Assumption of Risk**

**4.1** The delivery will be made by shipping ex works or ex warehouse.

**4.2** If the delivery item is received by the customer then the risk of loss, of damage, and of deterioration of the item of purchase passes over to him with the assumption. In the event of shipment, the risk of loss, of damage, and of deterioration of the item of purchase passes to the customer in the

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moment in which the seller transfers the goods to a forwarding agent or freight carrier, however at the latest upon the leaving the factory or the warehouse, even if partial deliveries occur or the seller has assumed other services, e.g. the shipment costs, delivery and setup, or the installation and configuration.

**4.3** If the item of purchase is ready for shipment and the shipping or acceptance is delayed for reasons beyond our control, then the risk passes to the customer upon receipt of the notification of readiness for shipment.

**4.4** Delivered goods, even if they display immaterial defects, are to be taken and accepted by the customer without prejudice to the rights under Clause 5.

**4.5** A return or exchange of products individually manufactured, labeled, or ready/made for the customer is not possible.

### **5. Notification of Defects and Warranty**

**5.1** greenovation Biotech executes the contracted services in accordance with customary market standards. Increased quality requirements require written agreements.

**5.2** In commercial transactions, warranty claims require that the inspection and notification obligations of §§377, 378 German Commercial Code (HGB) are observed.

**5.3** If the customer is not a merchant, then the warranty claims for obvious defects require a prompt notification, and for defects which are not obvious, a notification is required within the limitation period for the statutory warranty claim.

**5.4** If the seller is not ready or not in a position for a defect removal / replacement delivery, or if such is delayed beyond a reasonable period for reasons for which he is responsible, or if the one/time or multiple defect removal / replacement delivery fails in any other way, then the customer is entitled at his option to withdraw from the contract or to demand a corresponding amendment to the purchase price. Further claims are excluded, insofar as this is not in conflict with mandatory statutory provisions.

**5.5** The warranty period for the defect removal and the replacement delivery respectively, is six months from delivery. Independently of this, the seller completely passes on to the customer possible further guaranties and warranties of the manufacturer without the seller being responsible for such.

**5.6** Unless otherwise stated below, further claims of the customer, regardless of the legal basis, are excluded. The seller is therefore not liable for damage which do not incur to the purchased item itself. In particular, the seller is not liable for loss of profits or other economic damages to the

customer. Further, the warranty obligation does not apply

a) for change or repair of the purchased item by the customer or third party without our written consent,

b) for the faulty, incorrect or negligent use or handling of the purchased item by the customer,

c) for the culpable non/observance of operating manuals, work instructions, data sheets and maintenance instructions,

d) for natural wear and tear or other circumstances which are not our responsibility,

e) if the customer does not grant the seller in a reasonable manner, time and opportunity for his performance of the defect removal and replacement delivery respectively,

f) for use of unsuitable operation resources and application of unsuitable additional equipment or devices,

g) for the use of replacement parts or accessories, which were not expressly cleared by us and

h) for incorrect diagnoses, assessments, or attestations, whose inaccuracy at the point in time of the finding was not recognizable due to the state of research, and was not due to intent or gross negligence if the analysis was carried out according to prevailing standards.

**5.7** For the loss of data and programs and their recovery, the seller is likewise only liable in the aforementioned scope and also only insofar as this loss would not have been avoidable by reasonable precautionary measures of the customer. In particular, the customer is obligated to perform a full data backup before the beginning of the maintenance or defects warranty service.

**5.8** The foregoing liability exemption does not apply insofar as the cause of damage is based on intent or gross negligence. It further does not apply if the customer, due to failure of a warranted property indemnification, asserts claims due to non-performance.

**5.9** The liability exemption applies toward merchants nonetheless if the damages were caused by intent or gross negligence of an assistant or vicarious agent, unless the damage is based on the violation of a contractual primary duty. In addition, the compensation duty is restricted to the foreseeable, typical damage.

**5.10** The adherence to the security provisions of all types (VDE, TÜV, trade association, and so on) is exclusively up to the seller.

### **6. Overall Liability**

**6.1** Insofar as the liability of the seller for damage compensation is excluded or restricted according to Clause 5, such also applies for all claims due to fault for contract negotiations, violation of collateral duties, in particular for claims to manufacturer's

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liability according to §823 German Civil Code (BGB).

**6.2** The regulations according to Clause 6.1 do not apply for claims according to §§1.4 of the Product Liability Act. The same applies to initial inability or justifiable impossibility.

**6.3** Insofar as the liability of the seller is excluded or restricted, such also applies for the personal liability of our employees, representatives, and vicarious agents.

### **7. Price and Payments**

**7.1** The price named by us is net prices. Only in non-merchant dealings is the statutory value added tax contained in the price. Unless otherwise is expressly agreed in individual agreements, our prices are ex warehouse or business premises, excluding postage, freight costs, packaging costs, customs and collection fees.

**7.2** A delivery of purchased items, a setup of equipment and installation of programs (software) by us, and the instruction and training of operation personnel will be billed separately, unless otherwise agreed.

**7.3** Provided that they are not to be made in full immediately upon handover, payments by customers are to be made /

a) for products and logistic services, within 30 days of the invoice date, without deduction

b) for analysis services, immediately and without deduction; to an account specified by the seller. In the event of payment delay, the statutory provisions apply.

**7.4** A payment is regarded as made only when the seller ultimately has the amount at his disposal. If bills of exchange or checks are accepted, this shall be on account of performance and not in lieu of performance. By accepting bills of exchange or checks, the seller does not thereby take on any obligation in reference to protest and timely presentation.

**7.5** All corresponding expenses for the collection of bills of exchange or checks, as well as for non/ cash payments, or other costs, are borne by the customer.

**7.6** If despite warning, the customer does not meet its payment obligations, or if a significant deterioration in financial position of the customer is present, the buyer is entitled to declare the entire balance due, even if he has already accepted bills of exchange or checks. In this case, the seller is also entitled to demand advance payments or security deposits, and to refuse to meet its obligations until the advance payment or security deposit is made. If the demand of the seller is not satisfied within a reasonable period set by us, he is entitled to rescind the contract and/or to demand damage compensation for nonperformance. In the

case of non/payment or over/indebtedness of the customer, the setting of an extension is inapplicable.

**7.7** Upon default, the customer pays default interest in the amount of 5% above the applicable discount rate of the German Federal Bank in each case. If the seller proves higher damages, he can demand its compensation. If the customer proves lesser damages he must only compensate these.

**7.8** The customer has the right to challenge only if his counterclaims have been legally determined, are undisputed, or accepted by the seller. He is furthermore authorized to exercise a right of retention insofar as the counterclaim is based on the same contractual relationship.

### **8. Reservation of Proprietary Rights**

**8.1** The seller retains the ownership to the purchased items until the complete payment of all claims arising out of the business relationship with the customer.

**8.2** The customer is obligated to handle the items of purchase with care. If maintenance or inspection work is required, the customer must timely perform such at his own expense.

**8.3** In the event of seizer or other access by third parties to the reserved goods, the customer shall immediately notify the seller in writing.

**8.4** If despite due date and warning, the customer does not satisfy his performance obligation, then the seller is authorized to reclaim and utilize the items of purchase. A rescission is only available if the Consumer Credit Act (VerbrKrG) applies to the contract, unless the seller agrees with the client to compensate him for the usual sales price of the purchased item at the time of removal.

### **9. Reproduction, Modification, Dissemination and Program Protection**

**9.1** It is forbidden that the customer reproduce and modify the software sold and/or transferred to him for use, or temporarily cede such or issue sublicenses for such to third parties.

**9.2** The removal of program safeguards is forbidden.

### **10. Protection of Work Results / Disclosures**

**10.1** greenovation Biotech GmbH retains the copyright to the services performed / insofar as these are applicable here. The customer may use expert reports produced in the scope of the order, along with all tables, graphics, calculations and other details, only for the purpose for which it is determined by the agreement.

**10.2** The disclosure and duplication of expert reports, attestations and service marks of greenovation Biotech GmbH for advertising and other business purposes, including the use of excerpts, require the prior written consent of

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greenovation Biotech GmbH. The same applies for the resulting promotional use of the company name of greenovation Biotech GmbH in public and/or to third parties, in connection with preparation of an expert report or of attestations.

**10.3** The modification of expert reports and attestations by the customer is forbidden.

### **11. Sample Delivery and Sample Preservation**

**11.1** The customer bears the costs and the risk of the delivery of samples. The samples remain property of the customer. For shipment by the customer, the test material must be packed properly and according to any instructions issued by greenovation Biotech GmbH.

**11.2** The customer is obligated to inform greenovation Biotech GmbH of all hazards and handling procedures known to him, if he should deliver samples or specimen with dangerous content. He warrants that all samples or specimen are in a stable condition and that they pose no danger. The customer is liable for all damages, injuries, and illnesses, which arise to greenovation Biotech GmbH or its employees as a consequence of a violation of the above duties.

**11.3** If otherwise is not agreed in the order, delivery, or service contract, in accordance with the statutory regulation, samples are stored for long as their nature permits storage according to the state of the art technology; for a maximum however of three months or if a longer retention is required by law. After this time the samples will be destroyed at the expense of the customer; this particularly applies to a need for special disposal due to legal requirements.

### **12. Processing of Customer Data**

**12.1** Subject to compliance with the Data Protection Act, greenovation Biotech is authorized to save and process personal or commercial data of the customer, regardless of whether such originates from him or from third parties.

### **13. Revocation Right**

**13.1** Information on the existence of a right of revocation according to §3 of the Distance Selling Act with appendix §361a of the German Civil Code. Distance Selling Act §3: Revocation right (1) The consumer is entitled to a right of revocation according to §361a of the Civil Code. The revocation right begins, in deviation from §361a para. 1 sentence 3 of the Civil Code, not before satisfaction of the information duty according to §2 para. 3 and 4, for the delivery of goods, not before the day of receipt of the first partial delivery, and for services, not before the day of contract conclusion; the revocation instruction does not require a signature by the consumer, and can be provided on a durable carrier. For the delivery of

goods, the revocation right expires at the latest four months after its receipt by the recipient, and for services, at the latest four months after contract conclusion, or if the contractor has started the execution of the service with consent of the consumer before the end of the revocation period, or if the consumer himself has arranged for such. Absent of other agreements, and without prejudice to other statutory provisions, the revocation right does not exist for distance selling contracts for the delivery of goods which were produced according to customer specification or are clearly tailored to personal requirements, or which are not suitable for return due to their nature, or which could quickly spoil, or whose expiration date was exceeded; or for the delivery of audio or video recordings, or for software, if the delivered data carriers have been unsealed by the user; or for the delivery of newspapers, magazines, or pictorial; or for the provision of betting and lottery services, or which are concluded in the form of auction services (§156 Civil Code). Civil Code (BGB); §361a Revocation Right of Consumer Contracts. If a consumer is granted a revocation right according to this rule, then he is no longer bound to his declaration of intent to conclude a contract with the contractor if he timely revoked. The revocation need not contain any justification, and must occur in writing on a durable data carrier or by return of the item within two weeks; Timely dispatch suffices for compliance with the deadline. The period begins at the point in time when the consumer is provided with a clearly designed instruction of his revocation right which, clearly states his rights according to the requirements of the communication means used, on a durable data medium which also contains the name and address of the revocation recipient and a notice of the period start and the regulation of sentence 2. Other than for notarially certified contracts, it is to be signed separately by the consumer, or to be provided with a qualified electronic signature. If the contract is to be concluded in writing, then the consumer must be given a contractual document or request. If the beginning of the period is disputed, then the contractor has the burden of proof. Insofar as otherwise is not agreed, the provisions of this portion are correspondingly applicable to the revocation right. The period determined in §284 para. 3 sentence 1, begins with the declaration of the consumer according to §349. The consumer is obligated to make the return, at the expense and risk of the contractor. If the consumer is responsible for the deterioration, the loss, or other impossibility, then he shall compensate the contractor for the decrease in value, or the value; §§351 to 353 are not applicable. In the event of sentence 4, the consumer is liable only for intent

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and gross negligence, if he was not duly advised of his revocation right, and also did not acquire any other knowledge of such. For the transfer of use or the use of an item and other services until the point at which the revocation is exercised, the value of putting such item to its specified use or claiming a service is to be compensated; decrease of value is not considered. Further claims do not exist. Information or explanations are provided to the consumer on a durable data carrier if such was provided to him in a document in another readable form, which permits the consumer corresponding time for the requirements of the transaction for the content/wise unmodified receipt of the information. The contractor bears the burden of proof for the information or explanation content. This applies correspondingly for explanations of the consumer to the contractor. The declaration of intent for the conclusion of a contract will be effective only if it is not revoked by the consumer within a revocation period of two weeks.

### **14. Applicable Law, Place of Performance**

**14.1** The law of the Federal Republic of Germany is exclusively applicable for the business relationship and the entire legal relationship between the customer and the seller. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

**14.2** The sole place of performance for delivery and service is the registered office of the seller.

### **15. Jurisdiction**

**15.1** If the customer is a merchant, the exclusive jurisdiction agreed for all disputes which arise out of the business transactions, also for cross/border deliveries and services, is the registered office of the seller.

**15.2** The seller also has the right to sue the customer at his general court of jurisdiction.

As of: October 1, 2014  
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