

EVOTEC INTERNATIONAL GMBH

TERMS AND CONDITIONS OF SALE

1. Definitions

- 1.1 "Accepted Order" means an order from the Purchaser for which an Order Acceptance has been issued;
- 1.2 "Affiliate" means any person or entity which is, now or hereafter, part of the Evotec Group. "Evotec Group" means Evotec AG and all entities directly or indirectly controlled by, or under common control with Evotec AG; whereby "control" means the legal power to direct or cause the direction of the general management and policies of such entity whether through the ownership of more than fifty percent (50%) of the voting interest, by contract or otherwise;
- 1.3 "Contract" means the contract for the supply of the Goods by Evotec to the Purchaser;
- 1.4 "Evotec" means Evotec International GmbH, a company registered in Germany whose registered office is at Manfred Eigen Campus, Essener Bogen 7, 22419 Hamburg, Germany or its Affiliates;
- 1.5 "Goods" means those goods specified in an Order Acceptance;
- 1.6 "Order Acceptance" means
- (a) Evotec's written acceptance of a Purchaser's order sent by Evotec to the Purchaser; or
 - (b) a Quotation that has been signed by the Purchaser without any amendments by the Purchaser and returned to Evotec;
- 1.7 "Purchaser" means the party specified on an Order Acceptance as the Purchaser;
- 1.8 "Quotation" means Evotec's written quotation for goods sent by Evotec to the Purchaser; and
- 1.9 "Terms" means these terms and conditions of sale, together with any terms and conditions set out in the Order Acceptance.

2. Acceptance of orders

- 2.1 A binding contract for the supply of the Goods shall only arise between Evotec and the Purchaser as and when an Order Acceptance has been issued.
- 2.2 The only terms and conditions applicable to an Accepted Order shall be those set out herein and any additional provisions contained on the Order Acceptance and/or in any confidentiality agreement between the parties. No other terms and conditions shall apply including, without limitation, the Purchaser's own terms and conditions.
- 2.3 If the Purchaser accepts a Quotation without any amendments by e-mail, acceptance shall be deemed to take place and a valid contract will be formed when the Purchaser's e-mail is received by Evotec's email system.

2.4 If Evotec accepts a Purchaser's order by e-mail, acceptance shall be deemed to take place and a valid contract formed when Evotec's e-mail is received by the Purchaser's e-mail system.

2.5 For the avoidance of doubt, the absence of signatures on behalf of the Purchaser and Evotec on the Quotation or any Order Acceptance issued by Evotec shall not affect the validity of a Contract formed by e-mail in accordance with Clauses 2.3 or 2.4 above.

3. Delivery

3.1 Evotec shall supply the Goods to the Purchaser Ex Works (EXW, Incoterms 2010).

3.2 Delivery of the Goods shall take place at Evotec's premises upon Evotec sending notification to the Purchaser that the Goods are available for despatch. Notification shall be by letter, fax or e-mail to the main Purchaser contact specified on the Order Acceptance. The time of delivery shall be the time at which the letter, fax or e-mail is despatched by Evotec.

3.3 All risk and rewards in the Goods, including but not limited to all risk of loss or damage in storage or in transit, shall pass to the Purchaser at the time of delivery as specified in Clauses 3.1 and 3.2.

3.4 Unless the parties agree otherwise, Evotec shall, as agent for the Purchaser, arrange for the carriage of the Goods, and for insurance of the Goods against loss or damage during transit, to the delivery address specified in the Order Acceptance relating to the Goods, or if no address is specified, to any premises of the Purchaser.

3.5 Evotec reserves the right to make delivery of the Goods in instalments.

4. Storage

4.1 At the Purchaser's request, Evotec may at its absolute discretion agree to store the Goods on behalf of the Purchaser after the time of delivery.

4.2 For the avoidance of doubt, all risks and rewards in the Goods shall remain with the Purchaser notwithstanding the storage of the Goods by Evotec.

4.3 If Evotec agrees to store any of the Goods, unless requested otherwise by the Purchaser, Evotec shall on behalf of the Purchaser arrange to insure such Goods during their storage to the value of the Goods as stated on the Order Acceptance (reduced pro-rata if only some of the Goods are stored).

4.4 In consideration for the storage and insurance of the goods, the Purchaser shall pay to Evotec a storage fee.

4.5 The storage is limited to twelve (12) months from the time of delivery, renewable at the Purchaser's request by mutual consent.

5. Changes and Delay

- 5.1 The Purchaser shall not be entitled to vary or cancel an Accepted Order unless otherwise agreed in writing by Evotec.
- 5.2 Any dates quoted for delivery of the Goods are approximate only and Evotec shall not be liable for any delay in delivery of the Goods. Subject to Clause 5.3 below, any delay in delivery of any instalment shall not relieve the Purchaser of its obligation to accept remaining deliveries.
- 5.3 If Evotec has not delivered all or any part of the Goods within ninety (90) days of the estimated delivery date for those Goods as set out in the Order Acceptance then the Purchaser's sole right and remedy shall, subject to any extension beyond the ninety (90) day period agreed between the parties, be to cancel the order for the undelivered part of the Goods by sending notice in writing to Evotec.
- 5.4 The Purchaser acknowledges that the synthesis of the Goods involves research and it is not possible to guarantee that it will be possible to synthesise the Goods by the estimated delivery date (as set out on the Order Acceptance) or at all. Accordingly Evotec shall not be liable for any failure to synthesise the goods within the estimated time scale or at all provided that it has used reasonable endeavours to synthesise the Goods.

6. Returns

- 6.1 The Purchaser shall inspect the Goods, or any instalment of the Goods, immediately upon receipt. If the Goods are damaged or do not comply with the warranty in Clause 11.1, the Purchaser shall:-
- (a) provide Evotec with written notice detailing the problem with the Goods; and
 - (b) store the Goods until it receives Evotec's written instructions in relation to the Goods.
- 6.2 If Evotec does not receive written notice from the Purchaser in accordance with clause 6.1 within ten (10) days of receipt of the Goods by the Purchaser, such Goods shall be deemed to comply in all respects with the Terms.
- 6.3 Evotec's only liability and the Purchaser's sole right and remedy in respect of Goods which at the time of delivery are damaged or do not meet the warranty in Clause 11.1 shall be at Evotec's option either the supply of replacement Goods or a refund of the price paid to Evotec in respect of such Goods. For the avoidance of doubt, Evotec shall not be liable to the Purchaser for any damage to the Goods, which occurs after the time of delivery, however the Purchaser may make a claim in respect of any such damage under the appropriate insurance policy.
- 6.4 Goods may not be returned to Evotec for credit except with the written permission of Evotec and then only in strict compliance with Evotec's return shipment instructions.

7. Price and Payment

- 7.1 The price of the Goods shall be the price specified on the Order Acceptance.
- 7.2 The price specified on the Order Acceptance does not include:-
- (a) the costs of packaging, storage, carriage and insurance of the Goods to the Purchaser's premises; or
 - (b) any Value Added Tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority on the transaction between Evotec and the Purchaser;
- which shall be payable by the Purchaser in addition to the price of the Goods.
- 7.3 Evotec shall be entitled to invoice the Purchaser for:-
- (a) the price of the Goods or any instalment of the Goods on delivery of the Goods or the instalment; and
 - (b) any costs, tax, fees or charges referred to in Clause 7.2 that Evotec is obliged to pay.

- 7.4 The Purchaser shall pay all sums due to Evotec under the Contract within thirty (30) days of the date of Evotec's invoice relating to such sums.

- 7.5 Interest may be charged by Evotec on any late payments due under this contract at the rate specified by §§ 247, 288 Absatz 2 BGB at the date of the invoice relating to the Goods.

8. Retention of Title

Notwithstanding that risk and possession of the Goods may have passed to the Purchaser, all title in and to the Goods shall remain with Evotec, and shall not pass to the Purchaser, until such time as full payment for the Goods, together with any interest due on such payments, has been received by Evotec.

9. Technical Information

- 9.1 At the time of delivery of the Goods to the Purchaser, Evotec shall provide to the Purchaser:-
- (a) any technical information in the possession of Evotec relating to the handling, storage and safety of the Goods; and
 - (b) any technical information relating to the Goods which Evotec is required by law to provide to the Purchaser.
- 9.2 At the request of the Purchaser Evotec may, at Evotec's absolute discretion, in addition to the technical information provided to the Purchaser pursuant to Clause 9.1, provide further technical information to the Purchaser relating to the Goods.

- 9.3 Unless otherwise agreed, all technical information provided pursuant to Clauses 9.1 and 9.2 will be provided free of charge, and the Purchaser assumes sole responsibility for any use of, or reliance placed upon, the technical information.
- 9.4 Except as required by law, Evotec makes no representation or warranty of any kind or nature with respect to the accuracy or completeness of the technical information provided by it under Clauses 9.1 and 9.2.
- 9.5 Any suggestion by Evotec regarding use, application or suitability of the Goods shall not be construed as an express warranty and shall not be relied upon by the Purchaser.
- 10. Use of Goods**
- 10.1 The Goods are intended for research purposes only and are not to be used for any other purpose including, but not limited to, in foods, drugs or cosmetics or for diagnosis. The Goods shall not be considered to be foods, drugs or cosmetics.
- 10.2 The Purchaser acknowledges that the Goods will not be produced using good manufacturing practice and accordingly the Goods must not be tested on, or otherwise used in relation to, humans.
- 10.3 Clause 10.1 and 10.2 apply unless specifically stated otherwise on the Order Acceptance.
- 10.4 The Purchaser shall be responsible for verifying the hazards, and conducting any further research necessary to learn the hazards, involved in using the Goods. The Purchaser shall warn any third parties which may come into contact with the Goods of any risks involved in use or handling of the Goods.
- 10.5 The Purchaser shall comply with any instructions or warnings provided by Evotec relating to the use of the Goods and shall not misuse the Goods in any manner.
- 11. Warranties**
- 11.1 Subject to Clause 6.3, Evotec warrants that at the time of delivery of the Goods:-
- (a) the Goods will conform to the description of such Goods as agreed between the Purchaser and Evotec and as set out on the Order Acceptance, in Evotec's most recent catalogue or in any other current technical literature issued by Evotec to its customers; and
- (b) Evotec shall own the Goods.
- 11.2 The warranty in Clause 11.1 is the only warranty provided by Evotec to the Purchaser in relation to the Goods. All other statements, conditions, representations, warranties, whether express or implied, including any implied warranty of fitness for any particular purpose or satisfactory quality, are expressly excluded.
- 11.3 Without limitation to the generality of Clause 11.2, Evotec makes no representations or warranties that:-
- (a) the Goods will be safe or non toxic; and/or
- (b) the use or sale of the Goods, or the use of the Goods in combination with other products or in the operation of any process, will not infringe the intellectual property rights of any third party.
- 11.4 Evotec shall not be liable for any misuse of the Goods by the Purchaser or any failure to use the Goods in accordance with instructions provided by Evotec or industry standards and practices.
- 11.5 Evotec's total liability under the Contract shall not exceed the sums received by Evotec from the Purchaser under the Contract.
- 11.6 Evotec shall not be liable for any incidental, consequential or contingent loss or damages of any kind (including loss of profit) resulting from any use or failure of the Goods or any failure to deliver the Goods on the estimated delivery date or at all.
- 11.7 In entering into the Contract, the Purchaser acknowledges that it has not relied on any warranties, representations or statements made by Evotec, its employees or agents which are not in writing in the Order Acceptance or in any other current technical literature issued by Evotec to its customers.
- 12. Indemnity**
- 12.1 The Purchaser shall indemnify fully, and keep indemnified fully, Evotec against any and all damages, losses, costs and/or expenses (including without limitation legal expenses and experts' fees) incurred by Evotec in respect of any claim or allegations by any third party arising out of or in connection with any development, exploitation, use or other activities in connection with the Goods except to the extent that such liability is caused by the negligence or wilful misconduct of Evotec.
- 12.2 The Purchaser shall notify Evotec within fifteen (15) days of the Purchaser's receipt of knowledge of any accident involving the Goods resulting in personal injury or damage to property, and the Purchaser shall fully cooperate with Evotec in the investigation and determination of the cause of such accident and shall make available to Evotec all statements, reports and tests made by the Purchaser or made available to the Purchaser by others. The furnishing of such information to Evotec and any investigation by Evotec shall not constitute an assumption of any liability by Evotec.
- 13. Miscellaneous**
- 13.1 Nothing in these Terms shall operate to limit or exclude any liability, right or remedy to a greater extent than is permissible under German Law, including without limitation in relation to (a) death or personal injury caused by the negligence of a party to this Contract or (b) fraudulent misrepresentation or deceit.
- 13.2 Evotec shall not be liable to the Purchaser, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of Evotec's obligations in relation to the Goods, if the delay or failure occurs as a result of any cause beyond the reasonable control of Evotec.

- 13.3 Purchaser hereby acknowledges and agrees that Evotec shall have the right to sub-contract any services to be conducted under a Contract to its Affiliates.
- 13.4 Nothing in this Contract shall confer on any third party the right to enforce any provision of this Contract.
- 13.5 If any terms of the Contract are held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other terms and the remainder of the terms in question shall not be affected.
- 13.6 The Contract shall be governed by the laws of Germany and the Purchaser agrees to submit to the exclusive jurisdiction of the courts of Hamburg, Germany.