

General Terms and Conditions of EVERCYTE GmbH

Cell Lines and Culture Media

Last updated: June, 25th 2020

Definitions

- **“Biological Material(s)”** means materials acquired from Evercyte as documented in the Evercyte Quote and as detailed in the PDS.
- **“Evercyte”** means Evercyte GmbH, the user of these General Terms and Conditions, with registered office in Leberstraße 20, 1110 Vienna, Austria.
- **“Quote”** means an order submitted for Biological Materials in a form and format as defined by Evercyte.
- **“Licensee”** means the natural or legal person with whom Evercyte has entered into, or intends to enter into a Quote.
- **“Party”** Evercyte and the Licensee, together the **“Parties”**.
- **“PDS”** means Product Data Sheet.
- **“Principal Investigator”** means the Licensee’s principal scientist or researcher using the Biological Material(s).
- **“Product(s)”** shall mean any Biological Material, including but not limited to cell lines and culture media.
- **“Third Party”** means any person or entity other than Evercyte and Licensee and their affiliates.

1. Scope

- 1.1. These General Terms and Conditions apply to the entire business relationship between the Parties with regard to all offered Products. These General Terms and Conditions shall also apply to any future contractual relationships even if these General Terms and Conditions are not expressly referred to in collateral contracts.
- 1.2. These General Terms and Conditions may be subject to modifications by Evercyte.
- 1.3. Any conflicting general terms and conditions on the part of the Licensee shall be invalid unless they have been explicitly accepted in writing (including signature) by Evercyte.
- 1.4. Evercyte shall not be required to object to any terms and conditions of the Licensee.
- 1.5. By entering into an agreement on the basis of these General Terms and Conditions, Licensee agrees to the applicability thereof in respect of future agreements, even if this is not expressly stated.

1.6. By submitting a signed Quote, Licensee agrees on these General Terms and Conditions.

2. Conclusion of an Agreement

- 2.1. To conclude an agreement with Evercyte a person has to be at least eighteen (18) years of age, shall not be limited in its legal capacity and/or shall be authorized to conclude legal transactions on behalf of the Licensee.
- 2.2. The Quote and the Material Transfer Agreement (“MTA”) represent an offer without any binding commitment for Evercyte to provide the Products to the Licensee. By placing an order of Products (by signing the Quote) the Licensee makes a binding offer to Evercyte to conclude an agreement. Evercyte may accept the Licensee’s binding order within five (5) working days by sending a written confirmation of the order via e-mail (under no circumstance Evercyte accepts Licensee’s general terms and conditions). In case of an unanswered expiration of the period of five (5) calendar days an offer is considered as refused; an explicit refusal by Evercyte by e-mail or in any other form is not required.

3. Delivery Date

- 3.1. Evercyte shall make reasonable commercial efforts to deliver all Products at the earliest opportunity provided there is stock available. If Products are not available after signature of the Quote, the Licensee shall be informed by email without undue delay.
- 3.2. The Products are dispatched as follows:
 - 3.2.1. Dispatch within Austria: Monday, Tuesday and Wednesday (before noon).
 - 3.2.2. Dispatch outside of Austria: Monday and Tuesday (before noon).
- 3.3. The delivery of Products usually takes place after the signature of the Quote, unless applicable import or export regulations, sanctions etc. conflict with it.
- 3.4. If the delivery of Products is delayed and/or impossible due to a fault of pre-suppliers, Evercyte shall not be liable for any inconveniences and/or damages of the Licensee.

4. Packaging and Forwarding

- 4.1. The Incoterms according to the Quote shall apply, except in case Licensee engages its own carrier/logistics company in which case the Incoterm shall be EXW.
- 4.2. Cost of shipment and packaging charges as well as applicable import or customs fees and duties shall be borne by Licensee.
- 4.3. A transport insurance at the expense of the Licensee is optional. Any damages due to transport have to be notified to the carrier/logistics company immediately.

5. Prices and Payment

- 5.1. All prices are indicated in Euro (EUR) and do not contain Austrian value-added tax (VAT) of 20% at present, if applicable.

- 5.2. If Products shall be invoiced in a currency other than EUR, Evercyte shall have the right to convert the foreign currency to EUR based on currency rates, which are calculated by Evercyte in line with the current expense rates at the invoice date. The Licensee gets informed accordingly before the invoice is issued.
- 5.3. Invoices shall be paid by wire transfer. Bank charges shall be borne by Licensee. For check payments an additional charge of EUR 50 excl. VAT will be charged.
- 5.4. The prices do not include costs for shipment or packaging as well as optional insurances if not actively requested by the Licensee. In case the shipment costs for whatever reason for the delivery are higher than stated, Evercyte reserves the right to adjust these shipment costs; Evercyte will in addition inform the Licensee in advance.
- 5.5. In case of an actualization of prices any information with regard to the price given by Evercyte at an earlier point of time shall be no longer binding. Evercyte shall not be liable for errors and misprints. The prices stated by Evercyte at the time the Licensee is submitting an offer shall be relevant.
- 5.6. **Late Payment.** If Licensee does not pay within the time stipulated, Evercyte is entitled to charge interests on overdue payments at a rate of eight percent (8%) above the applicable prime interest rate on the due date. The payment of such interest shall not foreclose Evercyte from exercising any other rights it may have as a consequence of the lateness of any payment.
- 5.7. **Reservation of Proprietary Rights.** In case of default in payment Evercyte is entitled to reclaim the Biological Material from Licensee. In this case Licensee has to bear the shipment costs. The reclaim of the Biological Material does not constitute a rescission of the Quote, the MTA and these General Terms and Conditions, unless this is expressly stated by Evercyte. In case of a rescission of the agreement Evercyte may at its sole option claim a contractual penalty in the amount of 20% of the order value without waiving any other available legal or contractual remedies.

6. Material Transfer Agreement

The delivery of certain Products (e.g. cell lines) requires the conclusion of a Material Transfer Agreement between Evercyte and the Licensee.

7. Warranty

- 7.1. Evercyte warrants that
 - 7.1.1. Cell lines included in the Biological Material shall be viable upon initiation of culture for a period of thirty (30) days (“**Warranty Period**”), if Licensee strictly adheres to the specifications on the PDS;
 - 7.1.2. Cell line specific culture media supports the proper cellular growth of that particular cell lines; and
 - 7.1.3. any Biological Material shall meet the specifications on the PDS.

- 7.2. Licensee's exclusive remedy, and Evercyte's sole liability, for breach of the warranties set forth in this Section is for Evercyte to, at Evercyte's sole option, either
 - 7.2.1. grant a fair and reasonable price reduction for such Biological Material (exclusive of shipment and handling charges), or
 - 7.2.2. replace the Biological Material.
- 7.3. The warranties set forth in this Section apply only if Licensee handles and stores the Biological Material as described in the applicable PDS.
- 7.4. To obtain the exclusive remedy, Licensee shall report the lack of viability or non-conformation to specifications to Evercyte GmbH, Leberstraße 20, 1110 Vienna, Austria (email: office@evercyte.com) in writing within the applicable Warranty Period.
- 7.5. Any expiration date specified on the Biological Material shipment documentation states the expected remaining useful life, but does not constitute a warranty or extend any applicable Warranty Period. Except as expressly provided above, the Biological Material and any technical information and assistance provided by Evercyte are provided as-is, without warranties of any kind, express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, typicality, safety, accuracy and/or non-infringement.
- 7.6. Evercyte makes no representation or warranty that the use of the Biological Material will not infringe any patent or other proprietary right and regarding the existence or the validity of such rights. Licensee shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Biological Materials.

8. Limitation of Liability

- 8.1. In no event will Evercyte be liable for any use of the Biological Material by Principal Investigator, or laboratory personnel under Principal Investigator's control, or by Licensee, or for any loss, claim, damage or liability of any kind or nature, that may arise from or in connection with the MTA and/or these General Terms and Conditions or with the use, handling, storage or disposition of the Biological Material. In addition, in no event shall Evercyte be liable for any indirect, special, incidental or consequential damages of any kind in connection with or arising out of the MTA and/or these General Terms and Conditions or Biological Materials (whether in contract, tort, negligence, strict liability, statute or otherwise) even if Evercyte has been advised of the possibility of such damages.
- 8.2. Damage claims of the Licensee prescribe six (6) months after the damages were or could have been known to the Licensee.
- 8.3. Evercyte's aggregate liability for any claims of Licensee in connection with the MTA and/or these General Terms and Conditions shall not exceed 50% of the aggregate amount paid during a twelve (12) months period by Licensee to Evercyte under the Quote, provided, however that this limitation of liability shall not apply
 - 8.3.1. where the applicable law is compulsory and excludes any limitation;

- 8.3.2. to claims in cases of gross negligence, where the aggregate liability for any claims shall be capped at 75% of the foresaid aggregate amount; and
- 8.3.3. to claims arising from intentional or willful misconduct or intentional breach by Evercyte.
- 8.4. Evercyte shall not be liable for damage based on whatever legal ground if such damage was caused by slight negligence.
- 8.5. These provisions shall not affect the provisions of the Product Liability Act.

9. Indemnification

Licensee shall, at all times, indemnify, defend and hold harmless Evercyte and Evercyte's trustees, directors, officers, employees, agents, investigators and affiliates from and against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees (collectively "**Claim**"), resulting from Licensee's use, handling, storage or disposition of the Biological Material and other activities relating to Biological Material, provided that Licensee's liability shall be limited to the extent that any such Claim arises out of Evercyte's gross negligence or willful misconduct.

10. Data Privacy and Data Protection

- 10.1. The EU General Data Protection Regulation, the Data Protection Act 2000 and the Data Protection Amendment Act 2018 stipulate the rights to protection of personal data. Evercyte processes Licensee's data exclusively on the basis of legal regulations (GDPR, DSG 2018, TKG 2003).
- 10.2. **Purpose, Legal Basis, Duration of Storage and Data Receiver.** Licensee expressly agrees that its personal information (IP-address, name, function, address, credit card details, phone number, email-address, sex) will be electronically collected, stored and processed. Evercyte needs the collected personal data for the fulfillment of the agreement, set-off, assertion of agreement claims, for the purpose of customer service and for advertising purposes. The data is collected, stored, processed and used for these purposes.

The legal basis for the processing of Licensee's personal data is the fulfillment of the agreement, legitimate interests, the fulfillment of Evercyte's legal or contractual obligations as well as Licensee's consent.

Evercyte processes Licensee's personal data, as far as necessary, for the duration of the entire business relationship (from initiation, execution to termination of the agreement) as well as in accordance with the statutory storage and documentation obligations arising, inter alia, from the Austrian Commercial Code (UGB), the Federal Tax Code (BAO) and the termination of any legal dispute, ongoing warranty and guarantee periods, etc. In addition, the statutory limitation periods (Verjährungsfristen) are considered.

Licensee's personal information may be shared with legal entities, which also are required to protect the information. Occasionally, Evercyte may benefit from providing certain personal

information about Licensee to other companies with whom Evercyte has entered into a strategic partnership or who operate for Evercyte. These service providers can help Evercyte to process information, provide loans, execute Licensee orders, deliver products, manage and maintain Licensee data and provide customer service. These companies are also committed to keep Licensee's personal information in line with Evercyte's [Privacy Note](#) to protect Licensee's privacy.

- 10.3. **Newsletter.** The Licensee hereby agrees to receive occasional emails about products and services of Evercyte. The subscription can be cancelled at any time in text form. Evercyte collects, stores and processes the data for their own marketing purposes. The utilization of the data for these purposes can be objected to at any time, whether all-in-all or as regards individual measures. For further information and/or adjustments to the data and/or for un-subscription please address: office@evercyte.com

For sending and managing newsletters Evercyte uses service providers. These have committed themselves to comply with the applicable data protection regulations. A processing contract was concluded in accordance with Art 28 GDPR.

The data processing takes place on the basis of the legal regulations of the § 96 para 3 TKG as well as of Art 6 para 1 lit a GDPR (consent).

- 10.4. **Data Security.** Evercyte uses technical and organizational security measures to protect the stored personal data against accidental or intentional manipulation, loss or destruction and against access by unauthorized persons.
- 10.5. **Licensee's Rights.** Licensee always has the right to get information about the relevant personal data stored at Evercyte or Evercyte's service providers. In case there is no statutory storage obligation, Licensee has the right to request the deletion of this data and object to the processing. Licensee also has the right to correct the data as well as to restrict processing, to transfer data and to file a complaint with the Austrian Data Protection Authority (Barichgasse 40-42, 1030 Wien, e-mail: dsb@dsb.gv.at).

Please contact Evercyte regarding Licensee's rights under office@evercyte.com or write to Evercyte: Evercyte GmbH, Leberstraße 20, 1110 Vienna.

11. Copyright

All photos represented on Evercyte's website, all logos, texts, reports, scripts and program routines which are developments of Evercyte or have been processed by Evercyte must not be copied or used without the prior written consent of Evercyte. All further rights are reserved.

12. Dispute Resolution

Any dispute arising under the MTA and/or these General Terms and Conditions shall be resolved as follows,

- 12.1. Licensee and Evercyte, through appropriately senior persons, shall first meet and attempt to resolve the dispute in face-to-face or telephonic negotiations. This meeting shall occur within thirty (30) days of the time that one Party notifies the other in writing of the existence of such dispute.
- 12.2. If no resolution is reached, all disputes, claims or controversies arising out of or in connection with the MTA and/or these General Terms and Conditions including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber in Vienna by one arbitrator appointed in accordance with the said Rules. The neutral arbitrator shall have experience in the field of biotechnology or pharmaceutical product or patent licensing.
- 12.3. The provisions on expedited proceedings are applicable.
- 12.4. The substantive Law of Austria shall be applicable without regard to the conflicts-of-laws provisions of such law and without United Nations Convention on Contracts for the International Sale of Goods, 1980.
- 12.5. The language to be used in the arbitral proceedings shall be German or English. Documents shall either be submitted in German or English language.

13. Applicable Law

The MTA and/or these General Terms and Conditions shall be governed by and construed in accordance with Austrian Law without regard to the conflict-of-law provisions thereof. The Parties expressly exclude the applicability of the Convention on the International Sale of Goods (CISG).

14. Assignment

The Parties shall not assign or otherwise transfer the MTA and/or these General Terms and Conditions or any rights or obligations under the MTA and/or these General Terms and Conditions to a Third Party except:

- a. with the prior written consent of the other Party; or
- b. in connection with the merger, acquisition, consolidation, or sale of all or substantially all of its assets or that part of its business interest to which the MTA and/or these General Terms and Conditions apply, provided that the assignee assumes in writing all of the obligations governing the assignor herein. The assigning Party shall notify the other Party no later than thirty (30) days after an assignment of the MTA and/or these General Terms and Conditions.

15. Miscellaneous

- 15.1. **Notices.** Notices from one Party to the other Party shall be sent to the address as mentioned in the Preamble or other individuals or addresses as shall hereafter be furnished by written notice to other Party.



- 15.2. **Exclusion of Set-Off.** The Licensee is not entitled to set off any claims against payment obligations to Evercyte.
- 15.3. **Waiver.** The terms and conditions of the MTA and/or these General Terms and Conditions may be waived only by a written instrument executed by the Party waiving compliance. The failure of either Party at any time or times to require performance of any provision hereof shall in no manner affect its rights at a later time to enforce the same. No waiver by either Party of any condition or term shall be deemed as a continuing waiver of such condition or terms or of another condition or term.
- 15.4. **Severability.** In the event that any provision of the MTA and/or these General Terms and Conditions shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of the MTA and/or these General Terms and Conditions, and the Parties shall negotiate in good faith to modify the MTA and/or these General Terms and Conditions to preserve (to the extent possible) their original intent.
- 15.5. **Force Majeure.** Neither Party will be responsible for delays resulting from causes beyond the reasonable control of such Party, including without limitation, pandemic, epidemic, fire, explosion, flood, war, strike, or riot, provided that the nonperforming Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under the MTA and/or these General Terms and Conditions with reasonable dispatch whenever such causes are removed.
- 15.6. **Local Law Requirements.** Except as otherwise specifically provided herein, each Party shall at their own expense in their respective countries, take such steps as may be required to satisfy any laws or requirements with respect to declaring, filing, recording or otherwise rendering the MTA and/or these General Terms and Conditions valid.
- 15.7. **Expenses.** Unless otherwise specified in the MTA and/or these General Terms and Conditions and Conditions, each Party shall bear its own expenses and costs incurred in the negotiations leading up to and in preparation of the MTA and/or these General Terms and Conditions and of matters incidental to the MTA and/or these General Terms and Conditions.