

General Terms and Conditions (GTC) of m2p-labs GmbH (m2p)

As of October 2017

1. Conclusion and Terms of the Contract

1.1 These General Terms and Conditions apply to the business relations between m2p and the business partner. In the case of ongoing business relationships, these Terms and Conditions will also apply to future transactions which do not expressly refer to them provided that only the Terms and Conditions were incorporated into the previous contract. Unless m2p has previously consented to them in writing, it will not recognize any of the Purchaser's standard business conditions which are contrary to or vary from its own.

1.2 Offers are made by m2p without engagement and are subject to confirmation. A binding contract is not concluded before the written acknowledgment of the order by m2p towards the Customer. The Customer is bound to his declaration of intent to enter into a contract for three weeks.

1.3 The subject matter of the contract is exclusively the sold product and/or the agreed service as described in the acknowledgment of the order. No other or additional properties, features and/or characteristics and no additional purpose of application are deemed to be agreed, unless confirmed in writing by m2p. Any and all technical deviations from data indicated in advertising media or written documents, which occur in the course of the technical progress and can reasonably be expected of the Customer, are reserved. In case of services offered in the field of production and process development, the Customer undertakes to provide m2p with information on the cells, such as growth media to be applied, cultivation, storage, thawing and freezing conditions, cell densities and viabilities and with a written declaration regarding the safety level of GMOs according to the "Gentechnikgesetz" (German Act on Genetic Engineering).

2. Prices

Unless otherwise provided, the prices of m2p are quoted ex works of m2p at 52499 Baesweiler, Germany, packing, transport, insurance and legal rate of value added tax applicable on the delivery day not included.

3. Delivery Dates

Delivery dates are agreed on the basis of the expected capacity of m2p without engagement and subject to in-time receipt of supplies by m2p. Delivery can be made before the agreed delivery date, if m2p informs the Customer and such premature delivery can reasonably be expected of the Customer. Delays in delivery for which m2p is not responsible shall result in a prolongation of the agreed delivery time. In addition, reference is made to no. 10 of these GTC.

4. Payment, Acceptance, Default of Payment, Obligation to Check and Complain

4.1 Any invoice amounts are immediately payable, unless contrary terms of payment are expressly agreed in writing. No bills of exchange are accepted. A debtor is in default at the latest 30 days after maturity and receipt of the invoice (section 286(3) BGB – German Civil Code).

4.2 The Customer will only have a right of set-off, if its counterclaim against m2p is undisputed or non-appealable or if m2p has recognized the counterclaim. The Customer will only be entitled to exercise a right of retention if its counterclaim arises from the same contractual relationship. m2p will be entitled to the full range of set-off and retention rights stipulated by law.

4.3 m2p is entitled to assign its claims from deliveries and services for purposes of financing.

4.4 If the Customer is in default with one payment, all other claims shall fall due immediately without the need for any default notice.

4.5 If the Customer fails to accept the goods for more than 7 days upon notification of the readiness for delivery, m2p is entitled, after having granted a period of grace of 7 days, to bring an action for acceptance, to claim damages or to withdraw from the contract.

4.6 The Customer undertakes to check the products supplied for contractual conformity immediately upon receipt to the extent that this is feasible in the ordinary course of business and to immediately lodge a complaint regarding any visible defects. Otherwise, the products supplied shall be deemed approved. As far as m2p consents to a return of products, the latter must be returned in their original condition and in their original packing, together with the proof of purchase. The Customer shall bear any and all expenses for returning the goods.

5. Software License and Restrictions

5.1 Subject to the condition precedent that the agreed price is paid by the Customer, a non-exclusive right of use is granted to the latter by m2p with regard to the software of m2p specified in the offer, as well as the whole appurtenant documentation provided by m2p (hereinafter called "Documentation" and together with the software referred to by the term "Software Products") exclusively for the purpose explained in the Documentation. The Customer shall not and shall not allow any third party to: (a) reverse assemble, decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or decode any source code, or underlying ideas or algorithms of the Software; (b) otherwise use or allow others to use the Software Products for the benefit of any third party; or (c) copy, modify, incorporate into or combine with other software or create a derivative work of any part of the Software Products. The Customer may only make one (1) copy of the Software Products for backup purposes, provided that copyright notes and other explanations with regard to the property right are reproduced by it also on such a copy.

5.2 The Software including all appurtenant updates, modifications and extensions, as well as the whole Documentation provided by m2p shall at any time remain the exclusive and sole property of m2p. The Customer undertakes to treat the Software Products as confidential and, except for its right to make one (1) copy of the Software Products, the Customer is neither entitled to directly or indirectly publish, release, duplicate or reproduce the Software Products in whole or in part.

6. Passing of Risk

6.1 The risk passes to the Customer as soon as the shipment has been handed over to the person entrusted with transport or has left m2p's warehouse for dispatch. In case dispatch should be delayed upon the Customer's initiative, the risk passes to the latter upon notification of the readiness for delivery. In case of direct delivery by a supplier of m2p to the Customer, the risk passes upon handing over of the goods by the supplier to the haulers entrusted with the transport of the goods to the Customer. Upon request and at the expense of the Customer, m2p insures the shipment against breakage, damage in transit and fire.

6.2 On receipt of consignments, any damages to the external packing have to be laid down in writing towards the hauler or courier delivering the goods and immediately be notified to m2p so as to enable the latter to assert claims for compensation against the haulers.

7. Warranty

7.1 m2p does not assume any warranty for a) defects resulting from faulty installation by the Customer or a third party entrusted by it, operating mistakes, interventions into or modification to the products by the Customer or a third party not entitled to this, as well as external influence on the products; b) the fitness of the products for a purpose beyond the contractually agreed purpose; c) performances achieved according to its specifications.

7.2 In case of defects in the services/products or in case of lack of the guaranteed properties, m2p is at first entitled at its own option to rework or to effect substitute delivery within an adequate period of time. To such end, m2p is entitled, at its own option, to examine and check the products either in the Customer's offices or in m2p's own offices. In case of failure of rework or substitute delivery, the Customer is entitled to a reduction of the purchase price (reduction) or to withdraw from the contract. In case of rework/substitute delivery, m2p gains ownership of the components or devices disassembled/ replaced.

7.3 m2p guarantees that its products are free from defects for a one-year period from the delivery date.

8. Reservation of Title

8.1 The delivered goods remain the property of m2p until it has received all payments under the delivery contract. Furthermore, m2p will remain the owner of the goods until all of its claims against the Customer have been satisfied; this also applies where the purchase price for specific deliveries has been paid.

8.2 The Customer is entitled to process, transform and sell the goods supplied under reservation of title in due course of business, provided that the Customer is not in arrears. The Customer completely assigns to m2p already now any and all claims resulting from the resale or any other legal reason (insurance, tortious act) with respect to the goods supplied under reservation of title. m2p hereby accepts the assignment. This will apply regardless of whether or not the goods are processed before they are resold. The Customer remains authorized to enforce the above-mentioned claims even after they have been assigned. m2p's authority to enforce the claims itself will remain unaffected hereby. m2p undertakes, however, not to enforce the claims provided that the Customer meets its payment obligations from the sale proceeds that it receives, does not default in payment and, in particular, that no composition or insolvency proceedings are instituted against it and it does not cease payment. If, however, the foregoing occurs, m2p may request the Customer to inform it regarding the details of the assigned claims and the identity of its debtors, to provide it with all details necessary for enforcing the claims, to hand over all related documents and to inform the debtors (third parties) of the assignment.

8.3 Where the Customer alters or processes the goods, it will not acquire title to the goods pursuant to section 950 of the German Civil Code and it will instead be deemed to be acting on behalf of m2p. m2p will become a co-owner of the new product created through the alteration or processing of the goods subject to a retention of title claim in the ratio of the net invoice value of the goods subject to a retention of title claim to the net invoice value of the altered or processed goods; the latter will be subject to a retention of title claim and serve as security for m2p's claims pursuant to subsection 1.

8.4 Where the Customer combines or mixes goods subject to a retention of title claim with other goods that do not belong to m2p, the provisions in section 947 and section 948 of the German Civil Code will apply so that m2p's co-ownership share in the new product will be deemed a product subject to a retention of title claim within the meaning of these provisions. If the goods are mixed in such a way that the Customer's product must be seen as the main product, the Parties hereby agree that the Customer will transfer a proportionate co-ownership share of the product to m2p. The Customer will protect m2p's sole ownership or co-ownership thus created.

8.5 Pledging and transfer of property by way of security are not permitted. The Customer undertakes to notify m2p immediately in writing of any access to the goods being subject to reservation of title, by third parties and to inform third parties of m2p's rights.

8.6 If the Customer is in whole or in part in arrears with one or several payments or ceases its payments or files a petition to open insolvency proceedings against his assets, he is no longer entitled to dispose of the goods supplied under reservation of title. In such a case, m2p is entitled to withdraw from the Contract or to take back the goods subject to reservation of title.

8.7 In the event that the Customer breaches the contract, and in particular if it defaults in payment, m2p will be entitled to recover the goods subject to its retention of title claim. If m2p reclaims the goods, this will be tantamount to its rescission of the contract. After recovery of the goods delivered, m2p will be entitled to sell them; it will credit the proceeds of the sale against any amounts owed to it by the Purchaser after it has deducted its reasonable expenses for the sale.

8.8 If the value of the securities assigned to m2p exceeds its aggregate claims by more than 10%, the Customer may request m2p to release some of the securities. In such cases, m2p may choose which securities it wishes to release.

9. Limitation of Liability

9.1 Where m2p is contractually or legally obliged to pay damages or reimburse expenses, it will only be liable to the extent of any intentional wrongdoing, gross negligence or injury to life, body or health by it, its executive employees or agents. This will not affect m2p's strict liability pursuant to the German Product Liability Act (Produkthaftungsgesetz). Nor will this affect m2p's liability for an intentional or negligent breach of a material contractual obligation (= a duty whose fulfillment is of the very essence for the proper implementation of the contract and upon whose fulfillment the Customer may regularly rely). m2p's liability for damages for breach of a material contractual obligation will, however, be limited to the usual foreseeable damage except in the cases mentioned in sentences 1 and 2. The aforementioned provision does not reverse the balance of proof in a way which would be detrimental to the Customer's interests.

9.2 To the extent to which m2p's liability for damages is excluded or limited, this also applies in respect of the personal liability for damages of its employees, workers, staff, representatives and agents.

9.3 Furthermore, any liability of m2p for loss of data shall be excluded, unless it is the result of willful intent or gross negligence on the part of m2p.

10. Right of Cancellation and Right of Termination, Delays

10.1 m2p is entitled to withdraw from contracts, if it turns out after conclusion of the contract that the Customer does not enjoy a good credit standing, for example because a summary court notice to pay was issued despite uncontested claim or because of proceedings for enforcement based on valid titles by a sheriff, as well as petition to open insolvency proceedings. In such a case, m2p is at liberty, at its own option, to execute the order and to claim payment in advance or provision of securities for pending shipments and to demand immediate payment of all claims resulting from the business relations.

10.2 In case of unexpected obstacles or obstacles occurring through no fault of the parties, such as Force Majeure, import and export bans, labor disputes, strike, lockout, delay in or cease of supply of essential raw materials, materials or parts, the obligations of the parties shall be suspended during the period of disturbance to the extent of its impact. Such clause shall particularly apply to the time of delivery. If the delays resulting from such circumstances exceed a period of 6 weeks, the two contracting parties are entitled to withdraw from the contract in view of the affected scope of services. No other claims shall be accepted.

10.3 Any interruptions or suspensions of or modifications to the scheduled course of work desired by the Customer constitute a contract amendment by the Customer. Any expenditure resulting from such amendment shall be invoiced to the Customer. This also applies to delays caused by the project partner commissioned by the Customer. Unless explicitly provided for to the contrary, any and all periods regarding the completion of work specified in the offer shall commence from the start of the project.

11. Place of Performance, Venue and Choice of the Applicable Law

Aachen shall be the place of performance and of jurisdiction for any and all disputes arising between the Parties in connection with the contractual relationship, provided that the Customer is a merchant, legal entity under public law or special fund under public law. m2p will nonetheless be entitled to sue the Customer at the place where it is domiciled.

The legal relations of the contracting parties are exclusively subject to German law by excluding the UN Convention on Contracts for the International Sale of Goods.

12. Final Provisions

In case one or several provisions of these GTC or any of the provisions in the scope of other agreements made between the contracting parties should be or become invalid, such invalidity shall not affect the validity of the remaining clauses. The invalid clause shall be replaced by a valid provision suitable for realizing the economic purpose pursued by the original clause to the largest extent possible.