

# **General Terms and Conditions of the European Molecular Biology Laboratory ("EMBL")**

## **Goods & Services**

### **1. SCOPE, GENERAL**

- 1.1 The following documents, listed in order of precedence in case of conflict, shall constitute the entire agreement between the supplier and EMBL: (a) the relevant purchase order issued by EMBL, including the documents referred to therein; (b) these General Terms and Conditions; (c) the supplier's offer.
- 1.2 These General Terms and Conditions apply to the agreement to the exclusion of any other general terms that the supplier may seek to impose or incorporate, unless explicitly stated otherwise in the purchase order. Specifically, it is agreed that the supplier's terms and conditions, regardless of whether referenced or included in the offer or other document, shall not be applicable, even if EMBL accepts the goods or services without reservation while being aware of the opposing or deviating terms and conditions of the supplier.
- 1.3 The agreement enters into force upon any of the following occurrences: (a) supplier's signature or written confirmation of the purchase order; (b) delivery of goods or commencement of services by the supplier; (c) supplier's acceptance of EMBL's payment, either full or partial, for the goods or services; or (d) any other act of the supplier consistent with fulfilling the purchase order.

### **2. PAYMENT, INVOICING**

- 2.1 Unless otherwise specified in the purchase order, the supplier shall invoice EMBL for the amount due under the agreement within thirty (30) days of the receipt and acceptance of the goods or services by EMBL in accordance with Article 5 of these General Terms and Conditions.
- 2.2 EMBL shall make payment within 30 days of the receipt of the properly issued invoice.
- 2.3 EMBL shall not be obliged to pay the invoice that it disputes in good faith. EMBL shall, however, pay the undisputed portion of the invoice and may withhold the disputed portion pending resolution of the matter.
- 2.4 In the event of defects or nonconformity of the goods or services, EMBL shall have the right to withhold payment until the said defects or nonconformity have been rectified.
- 2.5 EMBL may request that the invoice is accompanied by relevant supporting documents.
- 2.6 Payment for goods or services does not constitute acceptance.
- 2.7 EMBL shall be entitled to deduct from the amounts due to the supplier any sums that the supplier may owe to EMBL at any time. Any exercise by EMBL of its rights under this clause shall not limit or affect any other rights or remedies available to it under the agreement or otherwise.

- 2.8 EMBL shall specify in writing whether any payment will be made with funds provided to EMBL by third parties (most notably, grant funders). In such instances, the supplier understands and accepts that these third parties may require EMBL to flow down certain conditions to its suppliers. Such conditions will be specified to the supplier in writing. At a minimum, the supplier hereby agrees that EMBL's funders, their auditors, agencies, or other appointees can enforce, as third-party beneficiaries, their rights, including (i) checks, reviews, and audits; (ii) inspections and investigations; and (iii) evaluation of the impact of their research funding, all in accordance with their terms.

### **3. TAXES & DUTIES**

- 3.1 In accordance with its status as an international organization and within the scope of its official activities, EMBL may be (a) exempt from direct and indirect taxes (in particular, VAT), customs duties and other similar charges; (b) entitled that any such taxes or customs duties included in the price for goods or services it purchases are remitted or reimbursed by competent authorities.
- 3.2 The supplier shall be responsible for determining the applicable VAT on the goods or services in accordance with all relevant rules.
- 3.3 The supplier shall contact EMBL in good time and cooperate with EMBL, as requested from time to time, to facilitate EMBL's exemption from taxes and custom duties, especially with regard to: (a) remittance or reimbursement of such taxes and customs duties; (b) handling customs and import matters.

### **4. DELIVERY**

- 4.1 The supplier shall deliver goods or perform services at the time and place specified in the purchase order. Unless stated otherwise in the purchase order, agreed delivery and performance times are binding.
- 4.2 In the case of delivery of goods, the supplier must package them securely for transportation. Unless otherwise agreed in the purchase order, the costs of sustainable packaging, transport, unloading, installation, as well as all ancillary costs such as insurance shall be deemed included in the price.
- 4.3 The supplier must inform EMBL immediately if it is unable to meet the delivery or performance deadlines.
- 4.4 Delivery of goods must be accompanied by a delivery slip that indicates the purchase order number, date, the type and quantity of goods. EMBL employees authorized to accept deliveries must sign the delivery slip to confirm receipt of the goods. EMBL shall receive a copy of the delivery slip.
- 4.5 All shipments shall be delivered DAP to the final destination specified in the purchase order, unless otherwise stated therein, in accordance with the INCOTERMS version in effect on the date of the purchase order.
- 4.6 In the event of any conflict between the provisions of INCOTERMS and the agreement, the latter shall prevail.

## **5. INSPECTION**

- 5.1 EMBL shall have a reasonable time, but not more than thirty (30) days from the receipt of goods or services, to inspect them for any defects and conformity with the purchase order. If installation of goods is required, the 30 days period shall commence from the date of installation. EMBL has the right to reject goods or services that are nonconforming or defective.
- 5.2 If EMBL rejects goods or services, it shall have the right to require, at its sole discretion and the supplier's risk and expense, redelivery, repair or, if applicable, refund from the supplier. Failure by EMBL to reject the goods or services within thirty (30) days will be deemed as acceptance. Acceptance does not absolve the supplier of its warranty obligations or liability for latent defects. Regarding defective or nonconforming goods, the removal of such items from EMBL shall be at the supplier's risk and expense.

## **6. TRANSFER OF RISK AND TITLE**

- 6.1 Title to the goods shall pass to EMBL upon their delivery to the final destination.
- 6.2 Unless otherwise agreed in the purchase order, the risk of loss or damage to the goods shall pass to EMBL upon their acceptance in accordance with Article 5.1 of these General Terms and Conditions. For the avoidance of doubt, where installation is required, risk shall pass only upon successful completion of the installation. The place of installation shall be as specified in the relevant purchase order.

## **7. INTELLECTUAL PROPERTY**

- 7.1 "Intellectual Property Rights" means all registered and unregistered intellectual property rights, including, but not limited to, patents, rights to inventions, utility models, copyright and related rights, trademarks, rights in computer software, know-how and trade secrets.
- 7.2 "Background Intellectual Property Rights" means all Intellectual Property Rights, belonging to or controlled by either party, which has been created or acquired independently from the agreement, either prior to or during execution of the agreement.
- 7.3 EMBL does not claim any ownership interests to the supplier's Background Intellectual Property Rights.
- 7.4 The supplier hereby grants a non-exclusive, perpetual, worldwide and fully paid-up licence to EMBL to use its Background Intellectual Property Rights for the purpose of using the goods and services subject to the agreement.
- 7.5 The ownership of all Intellectual Property Rights arising out from the performance of the agreement by the supplier shall be vested in EMBL ("Foreground Intellectual Property Rights"). The supplier hereby assigns all such Foreground Intellectual Property Rights with full title guarantee to EMBL.

## **8. LICENCES**

- 8.1 The supplier shall obtain in time all licenses (including export licenses) necessary for the performance of the agreement.
- 8.2 As an international organization, EMBL is generally exempt from all prohibitions and restrictions on import and export in respect of goods imported or exported by EMBL for its official use.
- 8.3 Without prejudice to EMBL's privileges and immunities, EMBL will provide reasonable assistance to the supplier in obtaining export licenses.

## **9. WARRANTIES**

- 9.1 In addition to and without limiting any other warranties, remedies, or rights of EMBL, the supplier warrants and represents that all goods and services will (a) be free and clear of all encumbrances and liens of any kind (goods only); (b) not infringe intellectual property rights of any third party; (c) conform to any applicable specifications; (d) be free from defects in materials and workmanship; (e) be provided by qualified personnel; (f) comply with applicable law.
- 9.2 Without prejudice to any other rights or remedies available to EMBL, should the goods or services fail to meet the requirements outlined in the agreement or constitute a breach of the warranties, EMBL retains the right, at its sole discretion and at the supplier's risk and expense, to require redelivery or repair of the defective or nonconforming goods or services. If redelivery or repair cannot be executed within a reasonable timeframe, EMBL also reserves the right to request a refund for the defective or nonconforming goods or services. Regarding defective or nonconforming goods, the removal of such items from EMBL shall be at the supplier's risk and expense.

## **10. INDEMNIFICATION & LIABILITY**

- 10.1 To the fullest extent permitted by law, the supplier shall indemnify and hold harmless EMBL from and against all claims, liabilities, damages, and losses (whether direct or indirect), including legal fees and expenses and settlement amounts, arising out of the supplier's (or the supplier's employees, officers, agents or subcontractors) acts or omissions in the performance of the agreement, specifically: (a) the supplier's negligence and wilful misconduct; (b) the supplier's breach of the terms of the agreement; (c) actual or alleged infringement of third party's intellectual property rights whether arising out of, or in connection with, the manufacture, supply or use of the goods, or receipt, use or supply of the services; or (d) any claim made by the supplier's employees, officers, agents or subcontractors related to the performance of the agreement.
- 10.2 Neither party shall be liable under this agreement for indirect, incidental, special, punitive, or consequential damages, provided that this limitation will not apply to liability arising out of (a) gross negligence or wilful misconduct or (b) supplier's indemnification obligations.

## **11. INSURANCE**

During the term of the agreement and for a period of 3 years thereafter, the supplier shall, at its own expense, obtain and maintain appropriate insurance coverage, including any insurance required under the applicable statutory requirements, for the supply of goods or provision of services under the agreement. Upon request, the supplier shall provide to EMBL insurance certificates evidencing the required coverage.

## **12. SUBCONTRACTORS**

12.1 Use of subcontractors, other than those specified in the purchase order, shall require the prior written approval of EMBL.

12.2 In any case, the supplier shall be responsible and liable for the acts and omissions of its subcontractors, as if they were its own.

## **13. CONFIDENTIALITY**

13.1 The following information shall be considered confidential (a) information related to the purchase order which either party transmits or makes available to the other party, in any form and irrespective of whether it is marked as "confidential"; (b) all EMBL's information of which the supplier gains knowledge due to or in connection with this agreement, especially due to its presence on EMBL premises or access to EMBL's IT systems, which should be regarded as confidential from the perspective of an objective recipient.

13.2 Neither party to the agreement will disclose confidential information of the other party to any third party without the other party's express written consent. The internal disclosure of Confidential Information is permitted only on a need-to-know basis, ensuring that such information will be disclosed solely to officers, directors, employees, consultants, and advisors who are bound by terms of confidentiality consistent with those set forth in this agreement.

13.3 This Article shall not apply to confidential information that: (a) is generally available to the public or otherwise part of the public domain; (b) was disclosed to either party on a non-confidential basis by a third party who had a legal right to make such disclosure; (c) was already in the lawful possession of either party.

13.4 If any EMBL's confidential information is sought from the supplier by any governmental body, public agency, or court, and/or required to be disclosed by law, the supplier shall immediately inform EMBL and use its best efforts to limit the disclosure and redirect the relevant request for disclosure directly to EMBL.

13.5 The supplier may not refer to the business relationship with EMBL or its name, trademark or logo in advertising material, brochures, etc. without prior written consent of EMBL.

13.6 The supplier shall ensure that its subcontractors comply with the obligations set out in this clause.

## **14. MANDATORY POLICIES**

If goods and/or services will be delivered or performed on EMBL's premises, the supplier will comply with EMBL's on-site policies, including EMBL's Health & Safety Policy.

## **15. PERSONAL DATA**

15.1 To the extent that the supplier is required to process personal data on behalf of EMBL under or in connection with the agreement, the supplier will comply with the EMBL Personal Data Annex, which, if applicable, shall be attached to the purchase order.

15.2 In any other case, each party shall independently comply with any obligations arising out of the data protection laws that are applicable for each party.

## **16. TERMINATION**

16.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; (b) there is a change of control of the other party; (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors; (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; (e) there is a substantial deterioration in the other party's financial status that jeopardises the discharge of its obligations towards the terminating party.

16.2 For the avoidance of doubt, EMBL shall not be liable to pay for any goods or services not accepted as of the termination date.

16.3 Termination or expiry of the agreement shall not affect the parties' rights and remedies that have accrued as of the termination or expiry.

## **17. OBLIGATIONS UPON TERMINATION**

Upon termination of the agreement the supplier shall: (a) return all EMBL materials; and, if so requested: (b) immediately deliver to EMBL all deliverables whether or not then complete; as well as (c) provide all assistance reasonably required by EMBL to facilitate the smooth transition of the services to EMBL or any replacement supplier appointed by it.

## **18. APPLICABLE LAW & DISPUTE RESOLUTION**

18.1 The parties shall endeavour to resolve any dispute amicably.

### **18.2 Agreement to Arbitrate**

Failing an amicable solution, a dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration without

recourse to the ordinary courts of law in accordance with the provisions set forth below. The award of the arbitral tribunal shall be final and binding on the parties.

### 18.3 Governing Arbitration Rules and Seat

Arbitration shall be conducted in accordance with the arbitration rules and seat applicable to the site of EMBL through which this Agreement is concluded, as set out below:

- a. **EMBL Heidelberg or Hamburg:** arbitration shall be conducted in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) and the seat of arbitration shall be Heidelberg, Germany. The parties agree that the arbitration shall be conducted as Expedited Proceedings and that Annex 4 of the DIS Arbitration Rules shall apply.
- b. **EMBL Grenoble:** arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce and the seat of arbitration shall be Grenoble, France.
- c. **EMBL Rome:** arbitration shall be conducted in accordance with the Rules of the Milan Chamber of Arbitration and the seat of arbitration shall be Rome, Italy.
- d. **EMBL Barcelona:** the arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce and the seat of arbitration shall be Barcelona, Spain.
- e. **EMBL Hinxton (EMBL-EBI):** the arbitration shall be conducted in accordance with the LCIA Rules and the seat of arbitration shall be London, United Kingdom.

### 18.4 Number of Arbitrators

Unless otherwise agreed in writing by the parties, the arbitral tribunal shall consist of three arbitrators, one to be nominated by the claimant; one to be nominated by the respondent; and the third and presiding arbitrator to be nominated by the two arbitrators so nominated.

### 18.5 Language

The language of the arbitration shall be English.

### 18.6 Interim Measures

The parties are not entitled to seek injunctive relief, specific performance or other equitable relief (for any threatened or actual breach of the terms of the agreement) from any court, tribunal or other forum, save that the parties are always free to seek such relief from the arbitral tribunal appointed pursuant to this clause and also to seek the expedited formation of the arbitral tribunal and/or the appointment of an emergency arbitrator, if such procedures are provided under the applicable arbitration rules.

### 18.7 Applicable Law

This agreement shall be governed by general principles and rules of international commercial contract law as compiled and developed by the International Institute for the Unification of Private Law (UNIDROIT), i.e. the UNIDROIT Principles of International Commercial Contracts Law

(2016), which shall apply where: (a) a matter is not specifically covered by the agreement; or (b) a provision is ambiguous or unclear. Such reference shall be made exclusively for the matter or provision concerned, and shall in no event apply to the other provisions of the agreement. The relevant rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

18.8 Nothing herein shall be interpreted as a waiver of any privileges or immunities accorded to EMBL by its constituent documents or international law, or as the acceptance by EMBL of the jurisdiction of (i) the courts of any country, including in case of injunctive relief sought, or (ii) any national regulatory authority.

## **19. RECORDS**

The supplier is required to maintain complete and accurate records in respect of the goods or services supplied under the agreement for a minimum of five (5) years from the date of the supply. Upon reasonable prior notice, EMBL shall have the right to review and receive from the supplier copies of such records.

## **20. COMPLIANCE WITH MANDATORY LAWS & ETHICAL CONDUCT**

The supplier will perform the work under the agreement: (a) in compliance with all applicable laws, rules and regulations; (b) in accordance with the highest ethical standards and customs, in the areas including, but not limited to: human rights, labour law, social security, environmental protection, equality, anti-bribery, fraud prevention, anti-money laundering, and countering terrorism financing.

## **21. FINAL CLAUSES**

### 21.1 Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the agreement by giving fourteen (14) days' written notice to the affected party.

### 21.2 Amendments

No amendments to this agreement shall be effective unless they are in writing.

### 21.3 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy, or attempts to resolve problems, shall not: (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right or remedy.

### 21.4 Severance

If any provision of the agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the

minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification to or deletion of a provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

**21.5 Third party rights**

Unless provided otherwise in the agreement, no one other than a party to the agreement shall have any right to enforce any of its terms.

**21.6 No assignment**

Supplier shall not delegate or assign its rights or obligation without EMBL's prior written consent.

**21.7 Survival**

Any provision of the agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.