

§ 1 Scope, general

- (1) These Terms and Conditions shall be an integral part of the agreement regarding the delivery of goods and/or performance of services entered into between the European Molecular Biology Laboratory ("EMBL") and the contractor, if the contractor is an entrepreneur, a legal entity under public law or a special fund under public law.
- (2) EMBL is an intergovernmental institution under public international law. These General Terms and Conditions are intended to regulate civil law agreements with contractors as defined in § 1(1).
- (3) The contractor's general terms and conditions shall not apply. These General Terms and Conditions shall apply even if EMBL – being aware of opposing or deviating terms and conditions of the contractor – accepts the goods or services without reservation.
- (4) These General Terms and Conditions shall also apply to future agreements pursuant to § 1(1) between EMBL and the contractor.
- (5) The agreement referred to in § 1(1) above shall be deemed to come into existence on EMBL issuing written acceptance of the contractor's quotation (the **Purchase Order**), or, where a Purchase Order does not exist, on acceptance of offer, at which point the agreement shall come into existence (the **Commencement Date**).

§ 2 Compensation, invoicing and payment terms

- (1) Unless agreed otherwise, the agreed compensation shall be due upon delivery or performance (in the case of the performance of services: acceptance), or, if the compensation relates to recurring performances, at the end of the month. EMBL shall pay the compensation due within 30 days after receiving a proper invoice. If EMBL pays within 14 days after receiving a proper invoice, the contractor shall grant a 2% discount. Receipt of the remittance order by the bank shall suffice to determine the timeliness of the payments owed.
- (2) Invoices must contain the name of the agreement, the order number, a description of the rendered delivery or performance in note form, the amount to be paid, the tax number, the sales tax rate, the sales tax amount to be paid, if any, and the IBAN and BIC codes and, without prejudice to sub-paragraph 3 below, such supporting documentation as EMBL may require to verify the accuracy of the invoice. If the order was placed by EMBL Heidelberg, the invoices must be addressed to EMBL, Meyerhofstraße 1, 69117 Heidelberg, or if the order was placed by EMBL Hamburg, to EMBL c/o DESY, Notkestraße 85, 22603 Hamburg.
- (3) If the compensation is based on the time required to render the performance, it must be documented by way of qualified hourly time-sheets precisely describing the performance.
- (4) If the delivery or the performance is defective, EMBL shall be entitled to refuse payment, in whole or in part, until such defect has been rectified.

§ 3 Terms of delivery and performance

- (1) Delivery or performance shall be effected at the place indicated in the order. The respective destination shall also be the place of performance.
- (2) In the case of delivery of goods, the contractor must package the goods securely for transportation. The contractor shall bear the costs of packaging, transport, unloading, complete installation and all ancillary costs such as insurance fees. The price for any services shall be set out in the Purchase Order or in offer and acceptance and shall be the full and inclusive remuneration of the contractor in respect of

the services, unless otherwise agreed in writing by EMBL. Insofar as EMBL assumes the transport costs, the contractor shall advance the costs free of charge until the goods have been received by EMBL and select the most economic and appropriate means of transport.

- (3) Agreed delivery and performance times shall be binding. If no arrangement was made, the contractor shall begin to render the agreed performance immediately after concluding the agreement and shall complete the performance within the agreed time period. Goods must be delivered during normal business hours (Mon-Thu 8 AM – 4 PM, Fri 8 AM – 3PM) to the delivery address indicated on the Purchase Order.
- (4) The contractor must inform EMBL immediately if it is unable to meet the agreed delivery or performance deadline. Rights from default remain unaffected.
- (5) Each delivery of goods must be accompanied by a delivery note which shows the date of the Purchase Order or acceptance of offer, the Purchase Order number and the type and quantity of goods. Upon handover, the contractor must have an employee of EMBL (mailroom, stores), who is authorized to take delivery, confirm receipt of the goods by signing the delivery slip. EMBL shall receive a copy of the delivery slip.
- (6) The delivery of goods to EMBL is generally exempt from all customs duties and other charges, unless they represent payments for specific services rendered, as well as exempt from all import and export prohibitions and restrictions. The contractor shall contact EMBL in good time with regard to handling customs and import matters.
- (7) EMBL is generally entitled that any taxes or duties included in the price for goods or services it purchases are remitted or reimbursed by competent authorities. Contractor shall reasonably cooperate with EMBL, as requested from time to time, to facilitate such remittance or reimbursement.

§ 4 Transfer of risk and ownership, acceptance

- (1) No extended or expanded retention of title will be accepted.
- (2) Insofar as the agreement regards performance of services, such performance shall be deemed rendered only upon formal acceptance.
- (3) Title and risk in the goods shall pass to EMBL on completion of delivery. Delivery of the goods shall be completed on the completion of the unloading of the goods by the contractor (or its agent) at the location specified in § 3(1), unless otherwise agreed in writing, or, if applicable, after successful installation and written acceptance by EMBL.

§ 5 Warranty and liability

- (1) The warranty for defects and the liability of either party shall be governed by statutory provisions. §§ 2 to 4 shall take precedence for agreements involving the purchase and the delivery of goods.
- (2) The contractor shall bear the costs it incurred for the testing and rectifying defects (including any assembly and disassembly costs) even if it turns out that in fact there were no defects. EMBL's liability for damages shall remain unaffected if the request to rectify the defect was unjustified; however, EMBL shall be liable only to the extent that it had found – or had failed to find due to gross negligence – that no defect was present.
- (3) Deviating from § 442 para. 1 sentence 2 BGB [*Bürgerliches Gesetzbuch*/German Civil Code], EMBL shall be entitled to warranty claims without limitation, even if EMBL remained unaware of the defect at the time of concluding the agreement due to gross negligence.

- (4) Moreover, in the case of the delivery of goods, EMBL shall be entitled to rectify defects itself and request that the contractor reimburses the expenses necessary for this or demand a commensurate advance payment, if the contractor culpably failed to comply with its obligation to render supplementary performance (Nacherfüllung) - at EMBL's option either by removing the defect (rectification) or by providing goods that are free from defects (substitute delivery) - within a specific and reasonable deadline set by EMBL. The contractor shall be notified of this.

§ 6 Indemnity

- (1) (Infringement of third party intellectual property): Without prejudice to any other right or remedy available to EMBL under law or this agreement, the contractor shall ensure that any goods or services delivered to EMBL do not infringe a third party's intellectual property rights within the European Union, the United Kingdom, or any other country where contractor (or its agents or subcontractors) manufacture or procure the goods or services. Contractor shall indemnify EMBL from and against any third party claims made against EMBL as set out in the preceding sentence, as well as from and against all other reasonable professional costs and expenses incurred by EMBL in relation to the third party claim, except to the extent contractor can establish that he is not responsible for the infringement of the third party's intellectual property or reasonably could not have known of the infringement upon delivery of the goods or services.
- (2) (Product liability): The contractor shall keep EMBL indemnified against all liabilities, costs, expenses, damages and losses and all other reasonable professional costs and expenses suffered or incurred by EMBL as a result of or in connection with any claim made against EMBL by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in goods, to the extent that the defects in the goods are attributable to the acts or omissions of the contractor, its employees, agents or subcontractors.

§ 7 Engaging subcontractors

As a matter of principle, the contractor shall render the services due using its own, sufficiently qualified personnel. Use of subcontractors shall require the prior consent of EMBL, which may refuse such consent only if it has a special interest in the contractor providing the service, or if the subcontractor fails to fulfill the requirements of EMBL. The contractor shall remain responsible for the timely and complete fulfillment of the agreement.

§ 8 Third party rights

In case payment for goods or services is made with funds provided to EMBL by third parties (for example, grant funders), contractor understands that these third parties require EMBL to flow down certain conditions to contractor. Contractor hereby agrees that EMBL's funders, their auditors, agencies or other appointees can enforce as third-party beneficiaries their rights of (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.

§ 9 Rights of use

- (1) The contractor shall grant EMBL a worldwide, non-exclusive, irrevocable, perpetual, royalty-free, transferable and sub-licensable right to use the Intellectual Property Rights in the goods and services supplied hereunder for the purposes of receiving and using the goods and services. The right of use shall include all forms of use known at the time of concluding the agreement, especially the rights to process, alter, further develop and dispose of the goods and other services. For the purposes of this paragraph, **Intellectual Property Rights** shall mean the patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential

information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications, renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. The fee for use, which is conditional upon maintaining the intellectual nature of the object of the agreement, shall be included in the agreed compensation.

- (2) The contractor shall ensure that its employees and subcontractors – to the extent that they are entitled to rights to the goods and other services – consent to their transfer to EMBL.
- (3) The right to be named as an originator and, if appropriate, other mandatory moral rights, shall remain unaffected.
- (4) The contractor warrants that it has the right to grant the licence referred to in paragraph 9 (1).

§ 10 Secrecy, confidentiality

- (1) Forwarding the terms and conditions of the order as well as any information and documents made available for this purpose (except for publicly available information) to third parties shall require EMBL's prior written consent. Upon request, the contractor shall promptly return them to EMBL after handling inquiries or after processing orders.
- (2) Neither party to the agreement may exploit or convey to third parties business or company secrets or technical or commercial know-how which is of a confidential nature (the Confidential Information) of the respective other party, of which they became aware during the business relationship, without the respective other party's consent, unless the business and company secrets are publicly available. This shall also apply to the period following the end of the agreement.
- (3) The contractor may not refer to the business relationship with EMBL in advertising material, brochures, etc. without prior written consent of EMBL.
- (4) The contractor shall ensure that its suppliers and subcontractors comply with the obligations set out in this paragraph as though they were a party to the agreement.

§ 11 Individual arrangements

Individual arrangements made with the contractor on a case-by-case basis (including supplementary agreements, additions and amendments) shall take precedence over these Terms and Conditions and need to be made in writing.

In the event of any conflict or inconsistency between these Terms and Conditions and the Purchase Order or offer and acceptance, the Purchase Order or offer and acceptance shall prevail.

§ 12 Applicable law; jurisdiction

- (1) The provisions of the agreement shall be interpreted in accordance with their true meaning and effect. Without prejudice to EMBL's status as an intergovernmental institution, reference shall be made to German substantive law where:
- a matter is not specifically covered by the agreement; or
 - a provision is ambiguous or unclear.

Such reference shall be made exclusively for the matter or provision(s) concerned, and shall in no event apply to the other provisions of the agreement. The rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

Nothing herein shall be interpreted as a waiver of any privileges or immunities accorded to EMBL by its constituent documents or international law.

- (2) All disputes arising out of or in connection with the agreement or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the

ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration is Heidelberg (Germany). The language of the arbitration shall be English. The Parties agree that the arbitration shall be conducted as Expedited Proceedings and that Annex 4 of the DIS Arbitration Rules shall apply.