

Werkstatt f. **potenzielle** Genetik

Terms & Conditions for IT services

IMPORTANT NOTICE

This document is a translation from German of the “Allgemeine Geschäftsbedingungen für IT Dienstleistungen” and is provided for information only. Only the provision of the original document in German are legally binding.

Applicable from January 1st, 2021

1. Scope

1.1 Deliveries and services as well as other legal acts in the entire business transactions of WePoGe - Werkstatt für potenzielle Genetik UG (limited liability) - hereinafter simplified referred to as "WePoGe" - are exclusively subject to the following General Terms and Conditions in the respective valid version and shall be deemed an integral part of the contract, unless otherwise agreed in writing in an individual agreement between WePoGe and the contractual partner or customer.

1.2 These terms and conditions shall be deemed accepted at the latest upon receipt of the goods or services. They shall also apply if they are no longer mentioned in subsequent contracts or services.

1.3 Changes and additions to a contract must be made in writing.

1.4 Offers of WePoGe are subject to change and non-binding and are subject to self-delivery by suppliers.

1.5 WePoGe is entitled to withdraw from contracts if facts occur which show that the other contracting party is not creditworthy.

2. Delivery and performance

2.1 Drawings, illustrations, dimensions, weights or other performance data shall only be binding if expressly agreed in writing. Reasonable technical and design deviations from information in brochures, catalogs and written documents as well as model, design and material changes in the course of technical progress and further development shall remain reserved without any rights against WePoGe being derived therefrom.

2.2 WePoGe expressly reserves the right to make reasonable partial deliveries/performances and to invoice them.

2.3 Agreed delivery dates shall be deemed to have been met if the contractual product has been handed over to the carrier on the agreed delivery date. If the shipment of goods ready for dispatch is delayed for reasons for which WePoGe is not responsible, the contractual products may be stored at the expense and risk of the contracting party.

2.4 The delivery or service date or the delivery or service period - hereinafter simplified always referred to as "delivery date" - shall be agreed upon by WePoGe. The delivery or performance date or period - hereinafter simplified referred to as "delivery date" - shall be agreed on the basis of WePoGe's expected performance capacity and shall be non-binding and subject to timely delivery to WePoGe and unforeseen circumstances and obstacles, irrespective of whether these occur at WePoGe or at the manufacturer, in particular force majeure, government measures, non-granting of official permits, labor disputes of any kind, sabotage, shortage of raw materials, delayed deliveries of materials through no fault of WePoGe. Such events extend the delivery date accordingly, even if they occur during a delay that has already occurred. In this case, any grace period set by the contractual partner shall also be extended by the duration of the unforeseen event. If such events lead to a delay in performance of more than two months, the contracting party may - irrespective of other rights of withdrawal - withdraw from the contract.

2.5 Six weeks after exceeding a non-binding delivery date, the contracting partner may request WePoGe in writing to deliver or perform. Upon receipt of the request, WePoGe shall be in default. In the event that the contractual partner is entitled to claim damages for delay, such damages shall be limited to a maximum of 5% of the agreed remuneration in the event of slight negligence on the part of WePoGe. If the contractual partner withdraws from the contract in addition to the assertion of claims for damages caused by delay, or if he claims damages instead of performance, he must set WePoGe a reasonable deadline for delivery/performance after the expiration of the aforementioned period of six weeks. However, WePoGe shall not be liable if the damage would have occurred even if the delivery date had been observed. In case of exceeding a binding agreed delivery date, a request by the contracting party is not required to put WePoGe in default. The above provisions shall apply to the rights of the contracting party.

2.6 WePoGe reserves the right to withdraw from the contract if the delay in delivery/service caused by one of the above events lasts longer than six weeks and this is not the responsibility of WePoGe.

2.7 The agreement on the postponement of delivery or service dates must be in writing.

2.8 In the event of delayed acceptance, WePoGe shall have the right, in addition to the claim for payment, either to determine a new delivery or performance date or to withdraw from the contract. In the event of non-

acceptance, WePoGe shall claim damages in the amount of 15% of the contractual remuneration.

3. Term and termination

If there is no explicit written contractual regulation about the use of services of WePoGe otherwise, a use of service is concluded for an indefinite period of time. The contract can be terminated by both parties with a notice period of 6 months to the end of the year. The termination must be in writing.

4. Inspection and transfer of risk

4.1 Upon delivery, the contracting party shall inspect the goods immediately upon receipt for completeness and conformity according to the invoice. In the absence of a written complaint, received by WePoGe within six calendar days of receipt, the goods shall be deemed to have been properly and completely delivered, unless there is a hidden defect. Returns of delivered goods without prior written consent of WePoGe will not be accepted even if the goods are defective. Transport costs and risk shall be borne by the contractual partner.

4.2 Insignificant defects that do not impair the functionality of the delivery item or service do not entitle the contractual partner to refuse acceptance.

4.3 The risk shall pass to the contracting party upon handover of the contractual product to the carrier, its agent or other persons named by WePoGe. If shipment is delayed or becomes impossible through no fault of WePoGe, the risk shall pass to the contracting party upon notification of readiness for shipment.

5. Prices and terms of payment

5.1 The prices resulting from the respective prices or the individual offer shall be understood as fixed prices ex Berlin, Germany. Value added tax and other legal charges in the country of delivery as well as packaging, transport costs, transport insurance, environmental and handling charges shall be invoiced separately.

5.2 WePoGe reserves the right to increase the price appropriately if cost increases - in particular due to price increases on the part of suppliers or

exchange rate fluctuations - occur at WePoGe after conclusion of the contract. These shall be proven upon request.

5.3 Unless otherwise agreed in writing, all invoices shall be payable immediately upon receipt without deduction. Invoicing shall take place with delivery/service.

5.4 The contracting party may only offset claims of WePoGe against counterclaims if these are undisputed or legally enforceable; a right of retention may only be asserted if it is based on claims arising from the contract to which WePoGe is entitled.

5.5 If the other party to the contract fails to comply with the above terms of payment, WePoGe shall be entitled at any time to demand delivery/service concurrently against cash payment, advance payment or provision of security. All outstanding claims, including those for which WePoGe has accepted bills of exchange or for which payment by installments has been agreed, shall become due immediately.

6. Retention of property

6.1 The contractual product shall remain the property of WePoGe until all claims arising from the contract have been fulfilled, and in the event that the contracting party is a legal entity under public law, a special fund under public law or an entrepreneur in the exercise of his commercial or independent professional activity, also beyond this from the current business relationship until the claims to which WePoGe is entitled in connection with the contract have been settled.

6.2 In case of default of payment of the contracting party, also from other and future deliveries/services of WePoGe, or in case of the contracting party's financial collapse, WePoGe shall be entitled to withdraw from the contract and, in case of claiming damages instead of performance, WePoGe shall be entitled to enter the business premises of the contracting party and to take possession of the goods subject to retention of title. In case of compensation after taking back the goods, WePoGe and the contracting partner agree that this compensation shall be made at the usual market value of the subject matter of the contract at the time of taking back. The contracting party shall bear all costs of taking back and utilization; utilization costs shall be agreed

without proof at 5 % of the usual sales value, whereby an increase or reduction is possible upon proof by WePoGe or the contracting party.

6.3 The assertion of the retention of title or the seizure of the delivery item by WePoGe shall not be deemed to be a withdrawal from the contract, provided that the contracting party is a merchant.

6.4 Items delivered for test and demonstration purposes shall remain the property of WePoGe. They may only be used by the contractual partner beyond the test and demonstration purpose on the basis of a separate written agreement with WePoGe.

7. Warranty

7.1. The parties are aware and agree that it is not possible according to the state of the art to exclude defects of the software and hardware under all conditions of use.

7.2 Under this condition the claims of the contracting party shall become time-barred in accordance with the statutory provisions two years after the passing of risk in the case of a new object of purchase or one year after the passing of risk in the case of a used object of purchase in accordance with the following conditions.

7.2.1 WePoGe warrants that the contractual products are described in product information in a generally accurate manner and are basically usable within this scope. However, the warranty claim shall only extend to the extent that the manufacturer of the goods acknowledges it. A warranty of characteristics shall only be given if the respective specifications have been confirmed in writing by WePoGe.

7.2.2 WePoGe cannot guarantee that the program functions meet the requirements of the contracting party or cooperate in the selection made by the contracting party.

7.2.3 Excluded from the warranty are in particular defects or damages which are due to operational wear and tear and normal wear and tear, improper use, operating errors and negligent behavior of the customer, operation with the wrong type of current or voltage as well as connection to unsuitable power sources, fire, lightning, explosion or mains-related overvoltage, moisture of

any kind, incorrect or faulty programs, software and/or processing data as well as any consumable parts, unless the contractual partner proves that these circumstances are not the cause of the defect complained about. The warranty shall also be void if the serial number, type designation or similar markings are removed or made illegible, as well as in the event of interventions in the goods during the warranty period by third parties other than WePoGe or third parties authorized by WePoGe for this purpose.

7.2.4 Warranty claims are not transferable.

7.2.5 Irrespective of the foregoing, WePoGe shall pass on to the contracting party in full any further guarantee and warranty promises made by the manufacturer, without being liable for them itself.

7.2.6 The delivered goods or the result of the service rendered shall be inspected immediately upon receipt. Complaints must be made in writing to WePoGe within six calendar days of receipt.

7.2.7 In the event of a warranty claim, WePoGe shall choose between rectification of defects or replacement delivery. The contracting party shall be obliged to accept a replacement delivery against return of the defective goods. Replaced parts shall become the property of WePoGe. If WePoGe fails to remedy defects within a reasonable grace period set in writing, the contracting partner shall be entitled to demand either rescission of the contract or a reasonable reduction. Further claims are excluded. In particular, WePoGe shall not be liable for damages that have not occurred to the delivery item itself, for loss of profit or other financial losses of the contracting party.

7.2.8 In case of rectification of defects, WePoGe shall bear the labor costs. All other costs of rectification as well as incidental costs associated with a delivery, in particular the transport costs for the replacement item, shall be borne by the contractual partner, unless these other costs are disproportionate to the value.

7.2.9 If the examination of a notice of defect shows that a warranty case does not exist, WePoGe shall be entitled to demand and invoice reimbursement of all expenses.

8. Limitation of liability

If WePoGe is obligated to pay damages according to the legal provisions of these terms and conditions, the liability for damages caused by slight negligence shall be limited as follows: WePoGe shall only be liable in case of breach of essential contractual obligations and shall be limited to the typical damage foreseeable at the time of conclusion of the contract. The above limitation does not apply in the case of damage to life, body or health. If the damage is covered by an insurance taken out by the contracting party, WePoGe shall only be liable for the disadvantages incurred by the contracting party in connection with the settlement of the damage, such as higher insurance premiums or interest disadvantages. WePoGe shall not be liable for damage caused by slight negligence due to a defect in the subject matter of the contract. WePoGe's liability shall remain unaffected, regardless of whether fault is involved, in the event of fraudulent concealment of a defect, the assumption of a guarantee or in accordance with the Product Liability Act. Consequences of a delay in delivery are conclusively regulated in § 2 of these conditions. The personal liability of the managing directors of WePoGe, of vicarious agents and employees of WePoGe for damages caused by them due to slight negligence is excluded.

9. Industrial property rights and copyrights of third parties

9.1 Software programs shall be provided in accordance with the license terms of the respective licensor. The scope of services shall be determined by the licensors' license terms and conditions as well as the service descriptions and other user instructions printed in the relevant user manuals or available as a file. This shall also apply in particular to restrictions on use.

10. Solicitation of personnel

The Customer undertakes not to entice away any personnel from WePoGe during the execution of the order and for the subsequent period of one year, irrespective of whether this is done at the instigation of the employee or the Customer.

11. General provisions

11.1 The contracting party shall not be entitled to assign its claims under the contract without the prior written consent of WePoGe.

11.2 The place of performance and exclusive place of jurisdiction - to the extent permitted by law - for all legal disputes arising directly or indirectly from the contractual relationship shall be Berlin.

11.3 The law of the Federal Republic of Germany shall apply.

11.4 Order processing shall be carried out within WePoGe with the aid of automatic data processing. The contracting party hereby gives its express consent to WePoGe to store and process the data disclosed within the scope of contractual relations and necessary for order processing in accordance with the statutory provisions on data protection.

11.5 Should one or more provisions of these General Terms and Conditions be or become invalid or should this contract text contain a loophole, the contracting parties shall replace or supplement the invalid or incomplete provisions with appropriate valid provisions which correspond to the economic purpose of the intended provision. The validity of the remaining provisions shall remain unaffected thereby.