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## GENERAL TERMS AND CONDITIONS

### - Service Analyses -

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#### 1. SCOPE

- 1.1 The services and delivery of all contracts between AYOXXA Biosystems GmbH (“AYOXXA”), a corporation organized under the laws of Germany and having a place of business located at BioCampus Cologne, Nattermannallee 1, 50829 Cologne, Germany and the commercial business customer in the meaning of Section 14 German Civil Code (*Bürgerliches Gesetzbuch -BGB*) (“Customer”) identified on AYOXXA’s Offer (as defined in clause 2) concerning
- the Services as defined in clause 3.1
- shall solely be governed by these General Terms and Conditions (“Terms”). AYOXXA and the Customer are hereinafter also separately referred to as “Party” and jointly referred to as “Parties”.
- 1.2 These Terms take precedence over other terms and conditions which may be included in a Customer’s service order (“Order”), or otherwise, which shall be of no binding force or effect and to which notice of objection is hereby given.
- 1.3 In the absence of any separate, written agreement between the Parties or any written notice by AYOXXA to the contrary, these Terms shall also apply in respect of any future Customer’s Orders with AYOXXA in relation to any service analyses.
- 1.4 AYOXXA reserves the right at any time to amend these Terms as deemed necessary due to an extension of services or legal system changes. AYOXXA shall notify the Customer in writing of any amendments to these Terms and of the fact that the Customer shall have two (2) months from the date of notice to object to the amendments. Failure to object within such two (2) months shall be deemed a consent to the amendment of these Terms by the Customer.
- 1.5 For the avoidance of doubt, AYOXXA’s salespersons or other employees or agents do not hold any actual or deemed power of attorney to act for and on behalf of AYOXXA, and do not have any authorization to enter into verbal or side contracts, including any authority to amend, supplement or waive any provision of these Terms, the Offer, the Confirmation or the Contract (as defined in clause 2). Any agreements, amendments, supplements or waivers by any such person shall only be valid and enforceable if these have been approved by AYOXXA’s management in writing prior to or at the conclusion of the Contract. This also applies to subsequent changes and supplements of the Contract, as well as any type of side notes. This clause 1.5 shall not apply to legal representatives of AYOXXA.

#### 2. CONCLUSION OF CONTRACT

AYOXXA shall make an offer (“Offer”) to the Customer concerning the service analyses, which shall be accepted by the Customer in form of an Order. The contract concerning the ordered services (“Contract”) shall only be formed and become effective upon the issuance of AYOXXA’s written confirmation (“Confirmation”) or provision of the Service (as defined in clause 3.1) to the Customer.

### 3. SERVICE DESCRIPTION AND PURPOSE

- 3.1 The services consist in the processing of samples of biological origin and provision of analyses (“Analyses”) based thereupon („Services“).
- 3.2 The Analyses shall be used solely for the purpose of biomedical research. (“Purpose”) and shall explicitly not be used for diagnostic purposes.

### 4. WARRANTY

AYOXXA will not guarantee or be held liable for suitability of the Analyses for the Customer’s individual intended use. AYOXXA’s warranty shall be limited to the specifications, if any, contained in the Order and Confirmation, describing the condition and intended purpose of the Analyses. Any warranty must be provided in writing. It is the Customer’s sole responsibility to ensure that its intended use of the Analyses complies with any applicable legal regulations.

### 5. PRICES AND PAYMENT

- 5.1 The prices for the Services are as stipulated in the Offer and Confirmation.
- 5.2 All prices exclude value added tax (VAT; *Umsatzsteuer*) for each provision of the Services at the legally applicable rate on the invoice date, if applicable. Unless otherwise agreed in writing, insurance costs or any other costs and expenses related with the delivery of the Services are not included in the price. These costs, if any, shall be charged separately.
- 5.3 All payments to be made by the Customer to AYOXXA under these Terms shall be in the currency of the Offer and shall be made by way of wire transfer to an account at a commercial bank designated by AYOXXA in its invoice.
- 5.4 Unless otherwise agreed in writing, the invoiced price shall be payable, without any set-off or deduction, not later than thirty (30) calendar days following the receipt of the invoice for the Services or of the delivery of the Services, whichever is the later point in time. This means, that the date of receipt of the payment into AYOXXA’s bank account shall be, at the latest, the thirty-first (31<sup>st</sup>) calendar day after the receipt of the invoice or Service, whichever is the later point in time.
- 5.5 Default interest shall be charged on a daily basis at a rate of nine (9) percent per annum over and above the prevailing base interest rate of the European Central Bank. AYOXXA reserves the right to claim higher damages against the Customer, provided that the Customer shall be entitled to prove that AYOXXA has suffered no damage or only a minor loss as a result of the delay in payment. Default interest shall not be charged on a disputed invoice.
- 5.6 If the Customer is in default with any payment, without prejudice and in addition to any rights or remedies available to AYOXXA (including but not limited to the right to charge default interest and claim damages), AYOXXA shall be free to withhold any additional deliveries of Services or products or to require an advance payment prior to such additional deliveries.

## 6. DELIVERY AND DELAY IN DELIVERY

- 6.1 AYOXXA shall deliver the Analyses as electronic document(s) in English.
- 6.2 Delivery dates, whether specified by AYOXXA or the Customer are, in principle, non-binding until confirmed in writing by AYOXXA as "binding". If a binding delivery date has been agreed, the delivery shall be deemed timely, if the Services are provided by AYOXXA on the agreed date.
- 6.3 AYOXXA's compliance with any agreed delivery date shall be subject to the timely and proper fulfillment by the Customer of its obligations, including, the provision by the Customer of any necessary data, documents, technical details or internal approvals, and, if an advance payment is agreed in writing, the making of such payment in AYOXXA's bank account as designated by AYOXXA in the relevant invoice.
- 6.4 If AYOXXA fails to meet the communicated delivery date, other than due to a Customer failure to fulfil its obligations or otherwise as a result of events covered by Clauses 6.3 or 6.5 hereof, the Customer shall provide AYOXXA with a reasonable cure period during which AYOXXA can deliver the Services, unless extraordinary circumstances affecting AYOXXA (such as impossibility of fulfilling its obligations) make such cure period dispensable or inapplicable. If AYOXXA delivers the Services prior to the end of such cure period, no damages shall be due.
- 6.5 If AYOXXA is unable to deliver the Services by the communicated delivery date due to the occurrence of any event that is unforeseeable by and beyond the reasonable control of AYOXXA (including but not limited to any act of God, civil commotion, riot, war, actions or missions of governmental authorities, embargos, shortage of labor or materials, operational disruption, epidemics, storms, floods, fires, earthquakes or nuclear disasters, strikes, or lockouts or other labor disputes) ("Force Majeure Event"), the delivery period shall be extended by the duration of such Force Majeure Event. The Customer shall have no rights or claims against AYOXXA for the delay in delivery. This also applies to the occurrence of such obstacles of completion or delivery at a sub-supplier of AYOXXA. If there already exists a delay in delivery at the time of the occurrence of any Force Majeure Event, AYOXXA's responsibility for delay, if any, does not continue to have effect during the occurrence of any Force Majeure Event. Where the Customer is not responsible for the delay in delivery, and if such delay in delivery is for more than three (3) weeks, the Customer shall be entitled to terminate ("*zurücktreten*") the Contract.
- 6.6 If AYOXXA is responsible for any delay in delivery, any claims for damages by the Customer shall be subject to the limitations set forth under Clause 11.

## 7. OBLIGATION TO CO-OPERATE

The Customer shall co-operate with AYOXXA in the provision of the Services in the limits of what can reasonably be expected. The obligation of co-operation includes, but is not limited to, the provision of all samples and data, which are necessary to perform the Analyses.

## 8. OFFSETTING, RETENTION RIGHTS AND ASSIGNMENT

- 8.1 The Customer shall only be entitled to offset counterclaims that have been legally ascertained, are uncontested or have been accepted by AYOXXA, against amounts, which are owed by the Customer to AYOXXA.
- 8.2 The Customer shall exercise its rights of retention only to the extent that its counterclaim is based on the same contractual relationship (i.e. the Contract). The Customer may exercise its right of retention in an appropriate extent due to a notice.

- 8.3 AYOXXA shall be entitled to apply monies which it receives from the Customer to satisfy debts owed by the Customer in the order which such debts are accrued, beginning with the earliest debt owed by the Customer. If AYOXXA has incurred any costs in relation to the assertion of its legal rights to recover debts (e.g. issuing demands or reminders to the Customer), AYOXXA shall be entitled to apply the monies which it receives from the Customer towards, firstly, the payment for such costs, secondly the payment of interest accrued on the principal debt, and finally, the payment of the principal debt.
- 8.4 The Services are delivered solely to the Customer placing the Order. The Customer is not permitted to engage Services on behalf of a third party without AYOXXA's express written consent. No third party shall be granted any rights under the Contract, except if such has been agreed between the Parties in writing or if required by mandatory statutory provisions. Hence, the interpretation of the Contract in a way that it would give rise to third party claims on the basis of a contract with protective effect for a third party ("*Vertrag mit Schutzwirkung zugunsten Dritter*") is excluded. The Customer is not entitled to assign any of its contractual rights to any third party without AYOXXA's express written consent. Section 354a German Commercial Code (*Handelsgesetzbuch – HGB*) shall remain unaffected.

## **9. NOTIFICATIONS OF LACK IN QUALITY, LIABILITY ON LACK IN QUALITY**

- 9.1 The Customer shall control the Analyses immediately after delivery by AYOXXA. The Customer must notify AYOXXA of any complaint within ten (10) calendar days from receipt of the Analyses. All notifications shall be made in writing.
- 9.2 The notice shall include a description of the quality standard, which has not been met.
- 9.3 The Analyses shall be substantially in accordance with the Contract. Subject to applicable laws, AYOXXA shall not be liable for any lack in quality, which does not significantly reduce or limit the value or usability of the Analyses (being minor or immaterial deviations from the agreed or assumed characteristics, or slight impairment of use), unless separately agreed in writing.
- 9.4 AYOXXA may refuse to remedy a lack in quality, until the Customer has paid the price of the Services to AYOXXA.
- 9.5 If AYOXXA fails or unjustifiably refuses to remedy the lack in quality of the Services, the Customer may terminate ("*zurücktreten*") the Contract and will not be required to pay the remaining price of the Services to AYOXXA. The right to claim damages shall remain unaffected.
- 9.6 Claims for lacks in quality shall become barred one (1) year after the date of delivery of the Services. This shall not affect claims for lacks in quality, which are fraudulently concealed.
- 9.7 In the event that the Customer terminates the Contract pursuant to section 9.5, it shall permanently delete and/or destroy any copies of the Analyses. Upon AYOXXA's request, the Customer shall confirm in writing such permanent deletion and/or destruction and that no copies thereof were retained.
- 9.8 Any claims for damages of the Customer are subject to the limitations set forth under clause 11.

## **10. THIRD PARTY CLAIMS**

- 10.1 In event of any third party claim in respect of the Services, the Customer shall inform AYOXXA in writing without undue delay of the claiming of such rights by third parties and shall give AYOXXA all powers of attorney and authorizations, which are necessary in order to defend the Services against the rights claimed by the third party.

- 10.2 In the event of a third party claim, AYOXXA is:
- (a) entitled at its option to either (i) take legitimate measures to remove, dispute or challenge the third party rights, which impair the contractual use of the Analyses, or (ii) remedy the enforcement of such claims, or (iii) change or replace the Analyses in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the intended use of the Analyses as set forth in the Contract; and
  - (b) under an obligation to reimburse the Customer for any costs incurred by the Customer in disputing or challenging the third party rights.
- 10.3 If AYOXXA fails to perform its obligations under Clause 10.2 within a reasonable time limit set by the Customer, then the Customer may by subject to the statutory prerequisites at its option terminate (“zurücktreten”) the Contract without penalty or reduce the price as confirmed in the Confirmation and claim damages against AYOXXA.
- 10.4 In all other respects Clauses 9.4 to 9.8 shall apply accordingly.

## 11. LIABILITY

- 11.1 AYOXXA shall only be liable, in accordance with the statutory provisions, for damages that AYOXXA or its performing and vicarious agent caused by gross negligence and/or willful misconduct.
- 11.2 In the case of violation of essential contractual obligations (cardinal obligations), AYOXXA shall also be liable for slight negligence, whereby this liability is limited to the foreseeable, contractual damages, which would have been reasonably foreseeable on the date the Contract is concluded or on the date when the breach of duty was committed. Cardinal obligations are such basic duties, which form the essence of the contract, were decisive for the conclusion of the contract and on the performance of which the Customer may rely.
- 11.3 AYOXXA shall be liable for losses arising from the lack of any characteristics of the Analyses which are explicitly warranted (i.e. assured) up to the amount which is covered by the purpose of the warranty and which was foreseeable for AYOXXA at the time the warranty was given. AYOXXA warrants to the Customer that the Analyses will meet the warranty as specified in writing in the Offer and Confirmation.
- 11.4 If any Analyses does not meet the written warranty specifications, the Customer’s exclusive remedy is as described herein.
- 11.5 Claims for damages under the German Product Liability Act (*Produkthaftungsgesetz – ProdHaftG*), and the injury and damage to life, body and health shall remain unaffected by any limitation of liability, as far as applicable.
- 11.6 Notwithstanding Clause 11.5, AYOXXA shall not be liable for damages resulting from improper use of the delivered Analyses.

## 12. CONFIDENTIALITY

- 12.1 “Confidential Information” shall mean any and all confidential and proprietary information, either of business or technical nature, data or know-how, whether provided in written, oral, visual or other form, disclosed by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) pursuant to the Terms and which is clearly marked as “confidential” and/or information which is reasonably regarded as confidential due to its nature.
- 12.2 The Parties each agree:

- (a) to maintain in confidence the Confidential Information received hereunder from the other Party, so as not to disclose the same directly or indirectly to any third party, using the same degree of care as the Receiving Party uses to maintain its own confidential information; and
  - (b) not to use, without the Disclosing Party's prior written consent, the Confidential Information except for the contemplated activities within the scope of these Terms.
- 12.3 The Parties agree to limit access to Confidential Information received hereunder to those of their employees who have a need to know the Confidential Information in furtherance of these Terms. In addition, the Parties may disclose such Confidential Information to their respective directors and professional advisors for use solely in accordance with the scope of the Purpose. All such further recipients of Confidential Information shall be bound by confidentiality and non-use obligations in such manner that will enable the Receiving Party to comply with its obligations under these Terms.
- 12.4 The obligations set out in this Clause 12 shall not apply to:
- (a) information which at the time of disclosure is in the public domain, or which after disclosure becomes part of the public domain through no fault of the Receiving Party; or
  - (b) information for which the Receiving Party can prove by written or other tangible evidence that it was already in its possession at the time of disclosure hereunder; or
  - (c) information for which the Receiving Party can prove by written or other tangible evidence that it has received it in good faith from a third party, which to the Receiving Party's knowledge the third party without breach of any confidentiality obligation is free to disclose to others; or
  - (d) information for which the Receiving Party can prove by written or other tangible evidence that it is independently developed by the Receiving Party without reference to the Confidential Information disclosed to it pursuant to these Terms.
- 12.5 Notwithstanding the obligations set forth in Clause 12.3 here above, each Party may disclose Confidential Information to the extent necessary to comply with the requirements of a government agency or any other applicable law or regulation, so long as the Receiving Party first provides the Disclosing Party (where permitted) with notice of such requirements and its intent to make the disclosure in order to give the Disclosing Party a reasonable opportunity to obtain a suitable protective order.
- 12.6 The Parties agree that, upon written request of the Disclosing Party, the Receiving Party shall destroy or return to the Disclosing Party all Confidential Information received from the Disclosing Party under these Terms in written or other tangible form, including all copies thereof, provided, however, that one (1) copy may be retained solely for determining the Receiving Party's obligations hereunder.
- 12.7 The obligations under this Clause 12 shall survive for a period of five (5) years following the effective date of the Contract, even in the event of termination ("*Rücktritt*") or expiration of the Terms.
- 12.8 Any existing confidentiality agreement shall take precedence over this Clause 12.

### 13. GOVERNING LAW, DISPUTE RESOLUTION AND VENUE

- 13.1 These terms shall be governed and construed in accordance with the laws of the Federal Republic of Germany under exclusion of its rules of conflict of laws. These Terms shall not be governed by the United Nations Conventions for the International Sale of Goods, the application of which is expressly excluded.
- 13.2 The regional court (*Landgericht*) of Cologne, Germany shall have exclusive jurisdiction and venue over all disputes arising out of or in connection with the Contract, provided that the Customer is a merchant within the meaning of the HGB, a legal entity under public law or if upon the commencement of legal proceedings, the Customer has no place of business or ordinary residence in Germany.

### 14. MISCELLANEOUS

- 14.1 Personal data (such as contact details) of the Customer which is received by AYOXXA shall be collected, used and processed by AYOXXA, solely for the purposes of performing the Contract, in accordance with the applicable data protection laws.
- 14.2 Contact details of AYOXXA's customer service can be found at [www.ayoxxa.com](http://www.ayoxxa.com).
- 14.3 Either Party may only advertise the business relationship with the other Party, in particular by mentioning or using the company name and/or company logo of the other Party, with the prior written consent of such other Party.
- 14.4 These Terms and the Contract are the entire and only agreement between the Parties with respect to the subject matter (i.e. Purpose) and may not be amended, superseded or altered except by an instrument in writing duly executed and delivered on behalf of each of the Parties hereto; this also applies to this clause 14.4.
- 14.5 Any headings used in these Terms are for convenience purposes only and shall not have any effect on the interpretation of the Terms.
- 14.6 If any provisions or part of this contract is invalid or unenforceable, it shall not affect the remainder of the contract, but the remainder shall be binding and effective. In such case the invalid provisions or unenforceable provision shall be replaced by a valid and enforceable provision which comes as close as possible to the commercial scope of the invalid or unenforceable provision.