



# General Terms and Conditions of EVERCYTE GmbH

## Cell Lines and Culture Media

Last updated: September, 23<sup>rd</sup> 2019

### Definitions

- **“Evercyte”** means Evercyte GmbH, the user of these General Terms and Conditions, with registered office in Leberstraße 20, 1110 Vienna, Austria.
- **“Evercyte Material(s)”** means materials acquired from Evercyte as documented in the Evercyte Quote and as detailed in the PDS.
- **“Quote”** means an order submitted for Evercyte Materials in a form and format as defined by Evercyte.
- **“Party”** Evercyte and the Purchaser, together the **“Parties”**.
- **“PDS”** means Product Data Sheet.
- **“Principal Investigator”** means the Purchaser’s principal scientist or researcher using the Evercyte Material(s).
- **“Purchaser”** means the natural or legal person with whom Evercyte has entered into, or intends to enter into a Quote.
- **“Product(s)”** shall mean any Evercyte Material, including but not limited to Cell Lines and Culture Media.
- **“Third Party”** means any person or entity other than Evercyte and Purchaser and their affiliates.

### 1. Scope

- 1.1. These General Terms and Conditions apply to the entire business relationship between the Parties with regard to all offered Products. These General Terms and Conditions shall also apply to any future contractual relationships even if these General Terms and Conditions are not expressly referred to in collateral contracts.
- 1.2. These General Terms and Conditions may be subject to modifications by Evercyte.
- 1.3. Any conflicting general terms and conditions on the part of the Purchaser shall be invalid unless they have been explicitly accepted in writing (including signature) by Evercyte.
- 1.4. Evercyte shall not be required to object to any terms and conditions of the Purchaser.

- 1.5. By entering into an agreement on the basis of these General Terms and Conditions, the Customer agrees to the applicability thereof in respect of future agreements, even if this is not expressly stated.
- 1.6. By submitting a signed Quote, Purchaser agrees on these General Terms and Conditions.

## **2. Conclusion of the Agreement**

- 2.1. To conclude an agreement with Evercyte a person has to be at least 18 years of age, shall not be limited in its legal capacity and/or shall be authorized to conclude legal transactions on behalf of the Purchaser.
- 2.2. The Products represent an offer without any binding commitment for Evercyte to provide the Products to the Purchaser. By placing an order of Products (by signing the Quote) the Purchaser makes a binding offer to Evercyte to conclude an agreement. Evercyte may accept the Purchaser's binding order within five (5) working days by sending a written confirmation of the order via E-mail (under no circumstance Evercyte accepts Purchaser's general terms and conditions). In case of an unanswered expiration of the period of five (5) calendar days an offer is considered as refused; an explicit refusal by Evercyte by E-mail or in any other form is not required.

## **3. Delivery Date**

- 3.1. Evercyte shall make reasonable commercial efforts to deliver all Products at the earliest opportunity provided there is stock available. If Products are not available after signature of the Quote, the Purchaser shall be informed by email without undue delay.
- 3.2. The Products are dispatched as follows:
  - 3.2.1. Dispatch within Austria: Monday, Tuesday and Wednesday (before noon).
  - 3.2.2. Dispatch outside of Austria: Monday and Tuesday (before noon).
- 3.3. The delivery of Products usually takes place after the signature of the Quote, unless applicable import or export regulations, sanctions etc. conflict with it.
- 3.4. If the delivery of Products is delayed and/or impossible due to a fault of pre-suppliers, Evercyte shall not be liable for any inconveniences and/or damages of the Purchaser.

## **4. Packaging and Forwarding**

- 4.1. The Incoterms according to the Quote shall apply, except in case Purchaser engages its own carrier/logistics company in which case the Incoterm shall be EXW.
- 4.2. Cost of shipment and packaging charges as well as applicable import or customs fees and duties shall be borne by Purchaser.
- 4.3. A transport insurance at the expense of the Purchaser is optional. Any damages due to transport have to be notified to the carrier/logistics company immediately.

## 5. Prices and Payment

- 5.1. All prices are indicated in Euro (EUR) and do not contain Austrian value-added tax (VAT) of 20 % at present, if applicable.
- 5.2. If Products shall be invoiced in a currency other than EUR, Evercyte shall have the right to convert the foreign currency to EUR based on currency rates, which are calculated by Evercyte in line with the current expense rates at the invoice date. The Purchaser gets informed accordingly before the invoice is issued.
- 5.3. For check payments an additional charge of EUR 50 excl. VAT will be charged. Foreign currencies shall be calculated according to Section 5.2.
- 5.4. The prices do not include costs for shipment or packaging as well as optional insurances if not actively requested by the Purchaser. In case the shipment costs for whatever reason for the delivery are higher than stated, Evercyte reserves the right to adjust these shipment costs; Evercyte will in addition inform the Purchaser in advance.
- 5.5. In case of an actualization of prices any information with regard to the price given by Evercyte at an earlier point of time shall be no longer binding. Evercyte shall not be liable for errors and misprints. The prices stated by Evercyte at the time the Purchaser is submitting an offer shall be relevant.
- 5.6. **Late Payment.** If Purchaser does not pay within the time stipulated, Evercyte is entitled to charge interests on overdue payments at a rate of eight percent (8%) above the applicable prime interest rate on the due date. The payment of such interest shall not foreclose Evercyte from exercising any other rights it may have as a consequence of the lateness of any payment.

## 6. Reservation of Proprietary Rights

Until full payment the ordered Products remain the property of Evercyte. In case of default in payment Evercyte is entitled to reclaim the Products from Purchaser. In this case the Purchaser has to bear the shipment costs. The reclaim of the product does not constitute a rescission of the Quote, unless this is expressly stated by Evercyte. In case of a rescission of the agreement Evercyte may at its sole option claim a contractual penalty in the amount of 20 % of the order value without waiving any other available legal or contractual remedies.

## 7. Material Transfer Agreement

The delivery of certain Products (e.g. Cell Lines) requires the conclusion of a Material Transfer Agreement between Evercyte and the Purchaser.

## 8. Warranty

- 8.1. Evercyte warrants that
  - 8.1.1. Cell Lines included in the Evercyte Material shall be viable upon initiation of culture for a period of thirty (30) days ("**Warranty Period**"), if Purchaser strictly adheres to the specifications on the PDS;

- 8.1.2. Cell Line specific Culture Media supports the proper cellular growth of that particular Cell Lines; and
- 8.1.3. any Evercyte Material shall meet the specifications on the PDS.
- 8.2. Purchaser's exclusive remedy, and Evercyte's sole liability, for breach of the warranties set forth in this Section is for Evercyte to, at Evercyte's sole option, either
  - 8.2.1. grant a fair and reasonable price reduction for such Evercyte Material (exclusive of shipment and handling charges), or
  - 8.2.2. replace the Evercyte Material.
- 8.3. The warranties set forth in this Section apply only if Purchaser handles and stores the Evercyte Material as described in the applicable PDS.
- 8.4. To obtain the exclusive remedy, Purchaser shall report the lack of viability or non-conformation to specifications to Evercyte GmbH, Leberstraße 20, 1110 Vienna, Austria (email: office@evercyte.com) in writing within the applicable Warranty Period.
- 8.5. Any expiration date specified on the Evercyte Material shipment documentation states the expected remaining useful life, but does not constitute a warranty or extend any applicable Warranty Period. Except as expressly provided above, the Evercyte Material and any technical information and assistance provided by Evercyte are provided as-is, without warranties of any kind, express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, typicality, safety, accuracy and/or non-infringement.
- 8.6. Evercyte makes no representation or warranty that the use of the Evercyte Material will not infringe any patent or other proprietary right and regarding the existence or the validity of such rights. Purchaser shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Evercyte Materials.

## 9. Limitation of Liability

- 9.1. In no event will Evercyte be liable for any use of the Evercyte Material by Principal Investigator, or laboratory personnel under Principal Investigator's control, or by Purchaser, or for any loss, claim, damage or liability of any kind or nature, that may arise from or in connection with the MTA (if the MTA is applicable) or with the use, handling, storage or disposition of the Evercyte Material. In addition, in no event shall Evercyte be liable for any indirect, special, incidental or consequential damages of any kind in connection with or arising out of the MTA (if the MTA is applicable) or Evercyte Materials (whether in contract, tort, negligence, strict liability, statute or otherwise) even if Evercyte has been advised of the possibility of such damages.
- 9.2. Damage claims of the Purchaser prescribe six (6) months after the damages were or could have been known to the Purchaser.
- 9.3. Evercyte's aggregate liability for any claims of Purchaser in connection with the Quote shall not exceed 50% of the aggregate amount paid during a twelve months period by Purchaser to Evercyte under the Quote, provided, however that this limitation of liability shall not apply
  - 9.3.1. where the applicable Law is compulsory and excludes any limitation;

- 9.3.2. to claims in cases of gross negligence, where the aggregate liability for any claims shall be capped at 75% of the foresaid aggregate amount; and
- 9.3.3. to claims arising from intentional or willful misconduct or intentional breach by Evercyte.
- 9.4. Evercyte shall not be liable for damage based on whatever legal ground if such damage was caused by slight negligence.
- 9.5. These provisions shall not affect the provisions of the Product Liability Act.

## 10. Indemnification

Purchaser shall, at all times, indemnify, defend and hold harmless Evercyte and Evercyte's trustees, directors, officers, employees, agents, investigators and affiliates from and against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees (collectively "Claim"), resulting from Purchaser's use, handling, storage or disposition of the Evercyte Material and other activities relating to Evercyte Material, provided that Purchaser's liability shall be limited to the extent that any such Claim arises out of Evercyte's gross negligence or willful misconduct.

## 11. Data Privacy and Data Protection

The EU General Data Protection Regulation, the Data Protection Act 2000 and the Data Protection Amendment Act 2018 stipulate the rights to protection of personal data. Evercyte processes Purchaser's data exclusively on the basis of legal regulations (DSGVO, DSG 2018, TKG 2003).

### Purpose, Legal Basis, Duration of Storage and Data Receiver

Purchaser expressly agrees that its personal information (IP-address, name, function, address, credit card details, phone number, email-address, sex) will be electronically collected, stored and processed. Evercyte needs the collected personal data for the fulfillment of the agreement, set-off, assertion of agreement claims, for the purpose of customer service and for advertising purposes. The data is collected, stored, processed and used for these purposes.

The legal basis for the processing of Purchaser's personal data is the fulfillment of the agreement, legitimate interests, the fulfillment of Evercyte's legal or contractual obligations as well as Purchaser's consent.

Evercyte processes Purchaser's personal data, as far as necessary, for the duration of the entire business relationship (from initiation, execution to termination of the agreement) as well as in accordance with the statutory storage and documentation obligations arising, inter alia, from the Austrian Commercial Code (UGB), the Federal Tax Code (BAO) and the termination of any legal dispute, ongoing warranty and guarantee periods, etc. In addition, the statutory limitation periods (Verjährungsfristen) are considered.

Purchaser's personal information may be shared with legal entities, which also are required to protect the information. Occasionally, Evercyte may benefit from providing certain personal information about Purchaser to other companies with whom Evercyte has entered into a strategic partnership or who



operate for Evercyte. These Service Providers can help Evercyte to process information, provide loans, execute Purchaser orders, deliver products, manage and maintain Purchaser data and provide customer service. These companies are also committed to keep Purchaser's personal information in line with Evercyte's [Privacy Note](#) to protect Purchaser's privacy.

### **Newsletter**

The Purchaser hereby agrees to receive occasional emails about products and services of Evercyte. The subscription can be cancelled at any time in text form. Evercyte collects, stores and processes the data for their own marketing purposes. The utilization of the data for these purposes can be objected to at any time, whether all-in-all or as regards individual measures. For further information and/or adjustments to the data and/or for un-subscription please address: [office@evercyte.com](mailto:office@evercyte.com)

For sending and managing newsletters Evercyte uses Service Providers. These have committed themselves to comply with the applicable data protection regulations. A processing contract was concluded in accordance with Art 28 DSGVO.

The data processing takes place on the basis of the legal regulations of the § 96 para 3 TKG as well as of Art 6 para 1 lit a DSGVO (consent).

### **Data Security**

Evercyte uses technical and organizational security measures to protect the stored personal data against accidental or intentional manipulation, loss or destruction and against access by unauthorized persons.

### **Purchaser's Rights**

Purchaser always has the right to get information about the relevant personal data stored at Evercyte or Evercyte's Service Providers. In case there is no statutory storage obligation, Purchaser has the right to request the deletion of this data and object to the processing. Purchaser also has the right to correct the data as well as to restrict processing, to transfer data and to file a complaint with the Austrian Data Protection Authority (Barichgasse 40-42, 1030 Wien, e-mail: [dsb@dsb.gv.at](mailto:dsb@dsb.gv.at)).

Please contact Evercyte regarding Purchaser's rights under [office@evercyte.com](mailto:office@evercyte.com) or write to Evercyte: Evercyte GmbH, Leberstraße 20, 1110 Vienna.

## **12. Copyright**

All photos represented on Evercyte's website, all logos, texts, reports, scripts and program routines which are developments of Evercyte or have been processed by Evercyte must not be copied or used without the prior written consent of Evercyte. All further rights are reserved.

## **13. Force Majeure**

A Party shall not be held liable to the other for any delay in performance or non-performance of that Party directly or indirectly caused by reason of force majeure including, but not limited to, industrial disputes, strike, lockouts, riots, mobs, fires, floods, or other natural disasters, civil strife, embargo, lack or failure of transport facilities, currency restrictions, or events caused by

reason of laws, regulations or orders by any government, governmental agency or instrumentality or by any other supervening circumstances beyond the control of either Party. Provided, however, that the Party affected shall: give prompt written notice to the other Party of

- the date of commencement of the force majeure,
- the nature thereof,
- expected duration and

shall use its best efforts to avoid or remove the force majeure to the extent it is able to do so; and shall make up, continue on and complete performance when such cause is removed to the extent it is able to do so.

#### **14. Jurisdiction and Governing Law**

The competent commercial court of Vienna shall have jurisdiction over all disputes, claims or controversies arising out of, relating to, or in connection the Quote, the Material Transfer Agreement and these General Terms and Conditions, including any question regarding its formation, existence, validity, enforceability, performance, interpretation, breach or termination. However, Evercyte may at its sole option alternatively select a different place of jurisdiction to assert its claims. The agreements between Evercyte and Purchaser are governed by the laws of Austria except for

- its conflict of law's provisions and
- for the UN Convention on Contracts for the International Sale of Goods.

#### **15. Miscellaneous**

- 15.1. The Purchaser is not entitled to set off any claims against payment obligations to Evercyte.
- 15.2. The Purchaser hereby agrees that Evercyte may wholly or partially transfer the Purchaser's rights and obligations to Third Parties. Within this context, Purchaser states that if Evercyte transfers its company as defined in Art 38 of the Austrian Business Code it will not raise an objection as defined in Art 38 Section 2.
- 15.3. The Purchaser shall immediately notify Evercyte in case of a change of address and/or contact details. Otherwise any communication of Evercyte to the Purchaser shall be deemed to be received by the Purchaser if addressed by Evercyte to the address/contact details originally provided by the Purchaser.
- 15.4. If any provision of these General Terms and Conditions is or becomes invalid, the other provisions and any contracts concluded pursuant to these provisions shall not be affected thereby. The invalid provision shall be replaced by a provision which best corresponds to the intention and economic purpose of the invalid provision.