



# General Terms and Conditions of EVERCYTE GmbH

## Cell Lines, Culture Media and EVs

Last updated: August 5<sup>th</sup> 2020

### Definitions

- **“Biological Material(s)”** means cell lines acquired from Evercyte and as detailed in the PDS.
- **“Evercyte”** means Evercyte GmbH, the user of these General Terms and Conditions, with registered office in Leberstraße 20, 1110 Vienna, Austria.
- **“EVs”** means extracellular vesicles, which are membranous vesicles released by cells carrying proteins, lipids and nucleic.
- **“Licensee”** means the natural or legal person with whom Evercyte has entered into, or intends to enter into a Quote.
- **“Party”** Evercyte and Licensee, together the **“Parties”**.
- **“PDS”** means Product Data Sheet.
- **“Principal Investigator”** means Licensee’s principal scientist or researcher using the Biological Material(s).
- **“Product”** shall mean any Biological Material and Biological Material derived products, including but not limited to cell lines, as well as culture media and EVs (as detailed in the Quote).
- **“Quote”** means an order submitted for Biological Materials in a form and format as defined by Evercyte.
- **“Third Party”** means any person or entity other than Evercyte and Licensee 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 Licensee 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 Licensee.
- 1.5. By entering into an agreement on the basis of these General Terms and Conditions, Licensee agrees to the applicability thereof in respect of future agreements, even if this is not expressly stated.

1.6. By submitting a signed Quote, Licensee agrees on these General Terms and Conditions.

## **2. Conclusion of an Agreement**

- 2.1. To conclude an agreement with Evercyte a person has to be at least eighteen (18) years of age, shall not be limited in its legal capacity and/or shall be authorized to conclude legal transactions on behalf of Licensee.
- 2.2. The Quote and the Material Transfer Agreement (“**MTA**”) represent an offer without any binding commitment for Evercyte to provide the Product to Licensee. By placing an order of Product (by signing the Quote) Licensee makes a binding offer to Evercyte to conclude an agreement. Evercyte may accept Licensee’s binding order within five (5) working days by sending a written confirmation of the order via e-mail (under no circumstance Evercyte accepts Licensee’s general terms and conditions). In case of an unanswered expiration of the period of five (5) working 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, Licensee 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 Licensee.

## **4. Packaging and Forwarding**

- 4.1. The Incoterms according to the Quote shall apply, except in case Licensee 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 Licensee.
- 4.3. A transport insurance at the expense of Licensee 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. Licensee gets informed accordingly before the invoice is issued.
- 5.3. Invoices shall be paid by wire transfer. Bank charges shall be borne by Licensee. For check payments an additional charge of EUR 50 excl. VAT will be charged.
- 5.4. The prices do not include costs for shipment or packaging as well as optional insurances if not actively requested by Licensee. 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 Licensee 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 Licensee is submitting an offer shall be relevant.
- 5.6. **Late Payment.** If Licensee 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. Material Transfer Agreement

The delivery of certain Products (especially Biological Material) requires the conclusion of a MTA between Evercyte and Licensee.

## 7. Warranty

- 7.1. **Biological Material:** Evercyte warrants that
  - 7.1.1. cell lines included in the Biological Material shall be viable upon initiation of culture for a period of thirty (30) days, if Licensee strictly adheres to the specifications on the PDS;
  - 7.1.2. Biological Material shall meet the specifications on the PDS.
- 7.2. **Culture Media:** Evercyte warrants that cell line specific culture media supports the proper cellular growth of that particular cell lines.
- 7.3. **EVs:** Evercyte warrants EVs for thirty (30) days from the date of shipment, if the EVs are stored and handled according to the PDS.
- 7.4. Licensee'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
  - 7.4.1. grant a fair and reasonable price reduction for such Product (exclusive of shipment and handling charges), or
  - 7.4.2. replace the Product.

- 7.5. The warranties set forth in this Section apply only if Licensee handles and stores the purchased/licensed Product as described in the applicable PDS.
- 7.6. To obtain the exclusive remedy, Licensee shall report the lack of viability or non-conformation to specifications to Evercyte GmbH, Leberstraße 20, 1110 Vienna, Austria (email: [office@evercyte.com](mailto:office@evercyte.com)) in writing within the applicable period mentioned above.
- 7.7. Any expiration date, specified on the Biological Material shipment documentation, states the expected remaining useful life, but does not constitute a warranty or extend any applicable warranty period.
- 7.8. Except as expressly provided above, the Product 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.
- 7.9. Evercyte makes no representation or warranty that the use of the Product will not infringe any patent or other proprietary right and regarding the existence or the validity of such rights. Licensee shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Product.

## **8. Limitation of Liability**

- 8.1. In no event will Evercyte be liable for any use of the Product by Principal Investigator, or laboratory personnel under Principal Investigator's control, or by Licensee, or for any loss, claim, damage or liability of any kind or nature, that may arise from or in connection with the MTA and/or these General Terms and Conditions or with the use, handling, storage or disposition of the Product. 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 and/or these General Terms and Conditions or Product (whether in contract, tort, negligence, strict liability, statute or otherwise) even if Evercyte has been advised of the possibility of such damages.
- 8.2. Damage claims of Licensee prescribe six (6) months after the damages were or could have been known to Licensee.
- 8.3. Evercyte's aggregate liability for any claims of Licensee in connection with the MTA and/or these General Terms and Conditions shall not exceed 50% of the aggregate amount paid during a twelve (12) months period by Licensee to Evercyte under the Quote, provided, however that this limitation of liability shall not apply
  - 8.3.1. where the applicable law is compulsory and excludes any limitation;
  - 8.3.2. 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
  - 8.3.3. to claims arising from intentional or willful misconduct or intentional breach by Evercyte.

8.4. Evercyte shall not be liable for damage based on whatever legal ground if such damage was caused by slight negligence.

8.5. These provisions shall not affect the provisions of the Product Liability Act.

## 9. Indemnification

Licensee 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 Licensee's use, handling, storage or disposition of the Product and other activities relating to Product, provided that Licensee's liability shall be limited to the extent that any such Claim arises out of Evercyte's gross negligence or willful misconduct.

## 10. Reservation of Proprietary Rights (of Culture Media and EVs)

Until full payment Culture Media and EVs remain the property of Evercyte. In case of default in payment Evercyte is entitled to reclaim the Product (except for Biological Material) from Licensee. In this case Licensee has to bear the transport costs. The reclaim of the Product (except for Biological Material) does not stand for a rescission of the agreement, 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.

## 11. Data Privacy and Data Protection

11.1. 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 Licensee's data exclusively on the basis of legal regulations (GDPR, DSG 2018, TKG 2003).

11.2. **Purpose, Legal Basis, Duration of Storage and Data Receiver.** Licensee expressly agrees that its personal information (e.g. name, function, address, credit card details, phone number, email-address) 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 Licensee's personal data is the fulfillment of the agreement, legitimate interests, the fulfillment of Evercyte's legal or contractual obligations as well as Licensee's consent.

Evercyte processes Licensee'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.

Licensee'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 Licensee 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 Licensee orders, deliver products, manage and maintain Licensee data and provide customer service. These companies are also committed to keep Licensee's personal information in line with Evercyte's [Privacy Note](#) to protect Licensee's privacy.

- 11.3. **Newsletter.** Licensee 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 GDPR.

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 GDPR (consent).

- 11.4. **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.
- 11.5. **Licensee's Rights.** Licensee 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, Licensee has the right to request the deletion of this data and object to the processing. Licensee 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 Licensee'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. Dispute Resolution

Any dispute arising under the MTA and/or these General Terms and Conditions shall be resolved as follows,

- 13.1. Licensee and Evercyte, through appropriately senior persons, shall first meet and attempt to resolve the dispute in face-to-face or telephonic negotiations. This meeting shall occur within thirty (30) days of the time that one Party notifies the other in writing of the existence of such dispute.
- 13.2. If no resolution is reached, all disputes, claims or controversies arising out of or in connection with the MTA and/or these General Terms and Conditions including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber in Vienna by one arbitrator appointed in accordance with the said Rules. The neutral arbitrator shall have experience in the field of biotechnology or pharmaceutical product or patent licensing.
- 13.3. The provisions on expedited proceedings are applicable.
- 13.4. The substantive Law of Austria shall be applicable without regard to the conflicts-of-laws provisions of such law and without United Nations Convention on Contracts for the International Sale of Goods, 1980.
- 13.5. The language to be used in the arbitral proceedings shall be German or English. Documents shall either be submitted in German or English language.

### 14. Applicable Law

The MTA and/or these General Terms and Conditions shall be governed by and construed in accordance with Austrian Law without regard to the conflict-of-law provisions thereof. The Parties expressly exclude the applicability of the Convention on the International Sale of Goods (CISG).

### 15. Assignment

The Parties shall not assign or otherwise transfer the MTA and/or these General Terms and Conditions or any rights or obligations under the MTA and/or these General Terms and Conditions to a Third Party except:

- 15.1.1. with the prior written consent of the other Party; or
- 15.1.2. in connection with the merger, acquisition, consolidation, or sale of all or substantially all of its assets or that part of its business interest to which the MTA and/or these General Terms and Conditions apply, provided that the assignee assumes in writing all of the obligations governing the assignor herein. The assigning Party shall notify the other Party no later than thirty (30) days after an assignment of the MTA and/or these General Terms and Conditions.

## 16. Miscellaneous

- 16.1. **Notices.** Notices from one Party to the other Party shall be sent to the address as mentioned in the Preamble or other individuals or addresses as shall hereafter be furnished by written notice to other Party.
- 16.2. **Exclusion of Set-Off.** Evercyte is entitled to set off counterclaims of Licensee against its own claims against the latter without further agreement. Licensee is not entitled to set off any claims against payment obligations to Evercyte.
- 16.3. **Interpretation.** Words denoting the singular shall include the plural and vice versa.
- 16.4. **Waiver.** The terms and conditions of the MTA and/or these General Terms and Conditions may be waived only by a written instrument executed by the Party waiving compliance. The failure of either Party at any time or times to require performance of any provision hereof shall in no manner affect its rights at a later time to enforce the same. No waiver by either Party of any condition or term shall be deemed as a continuing waiver of such condition or terms or of another condition or term.
- 16.5. **Severability.** In the event that any provision of the MTA and/or these General Terms and Conditions shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of the MTA and/or these General Terms and Conditions, and the Parties shall negotiate in good faith to modify the MTA and/or these General Terms and Conditions to preserve (to the extent possible) their original intent.
- 16.6. **Force Majeure.** In cases of force majeure of any kind, such as, lack of energy, water, fuel, raw or auxiliary materials, traffic or transport disruptions, shortage of labour, lockouts, strikes, operational disruptions or interruptions, failures or malfunctions of the website, the Internet or public or private telecommunications networks, cyberattacks (including hacker attacks, electronic theft, phishing, pharming or spoofing, etc.), natural disasters, fire, explosion, epidemic or pandemic, riots, sabotage, acts of war, terrorist acts, embargoes, governmental interventions or other disruptions of any kind, beyond Evercyte's control ("**Circumstances**"), which prevent, delay or make unreasonable the procurement from suppliers, the manufacture, dispatch, acceptance or simply the performance in part or in whole, Evercyte will be released from its obligation to deliver or perform for the duration of such Circumstance and to the extent of its effect. The same shall apply if the Circumstances have occurred with one of Evercyte's suppliers.

Such Circumstances, the beginning and end of which Evercyte will inform Licensee without delay, Evercyte shall not be deemed responsible for, even if they occur during an already existing delay.

Notwithstanding any other remedies, both Parties shall be entitled to rescind the Agreement if the hindrance to delivery or performance exceeds a period of four (4) weeks or if delivery or performance is not possible for an unforeseeable period of time.





- 16.7. **Local Law Requirements.** Except as otherwise specifically provided herein, each Party shall at their own expense in their respective countries, take such steps as may be required to satisfy any laws or requirements with respect to declaring, filing, recording or otherwise rendering the MTA and/or these General Terms and Conditions valid.
- 16.8. **Expenses.** Unless otherwise specified in the MTA and/or these General Terms and Conditions and Conditions, each Party shall bear its own expenses and costs incurred in the negotiations leading up to and in preparation of the MTA and/or these General Terms and Conditions and of matters incidental to the MTA and/or these General Terms and Conditions.