

## **General Terms and Conditions of Sale of ELLA Biotech Gesellschaft für angewandte Biotechnologie mbH, München**

---

### **§ 1 Scope of these Terms and Conditions**

- (1) The following General Terms and Conditions as well as the ELLA Biotech Gesellschaft für angewandte Biotechnologie mbH 's current price lists are valid for all contractual relationships between ELLA Biotech Gesellschaft für angewandte Biotechnologie mbH (subsequently named "ELLA Biotech") and other enterprises, public law entities or other public special funds (subsequently named "customer").
- (2) All products of ELLA Biotech are determined for research and the use in laboratories. The customer is obliged to inform ELLA Biotech before every order, if he is not acting on behalf of an enterprise, a public law entity or a public special fund. Products of ELLA Biotech must not be left with private individuals.
- (3) Any other terms and conditions - especially those of customers - will not become applicable, even though ELLA Biotech may carry out an order without explicitly protesting against such terms and conditions.

### **§ 2 Initiation, Conclusion and Substance of Contract**

- (1) All offers of ELLA Biotech are subject to confirmation.
- (2) Orders by the customer are binding for three weeks, if they have not been explicitly marked unbinding or if a shorter period of engagement has been stated in the order.
- (3) A contract is not concluded unless ELLA Biotech accepts an order. Delivery of the ordered products shall be considered acceptance of the order. For online-orders the acceptance of an order will be communicated by e-mail; the confirmation of the receipt of an order does not mean the acceptance of such order.
- (4) It is the customer's sole responsibility to ensure the proper selection of the ordered products and their fitness for his particular purposes. If the customer needs counsel regarding these matters, he may explicitly order such counsel from ELLA Biotech or seek counsel with third parties.
- (5) Assurances of any kind that extend the liability of ELLA Biotech above the limits set forth in these Terms and Conditions must be explicitly confirmed in writing by ELLA Biotech. Guarantees need to be explicitly confirmed in writing by the management of ELLA Biotech. The written form is not observed by means of telecommunicate transmission of the respective declaration.
- (6) ELLA Biotech does not have any obligation to inform the customer of any legal provisions regarding shipment, storage, use, trade or disposal of the contract items. Compliance with any of such regulations is the sole responsibility of the customer.
- (7) ELLA Biotech does not have any obligation to inform the customer regarding the compatibility of the envisaged use of the contract item by the customer with any third parties rights (especially intellectual property rights). Compliance with such rights is the sole responsibility of the customer.



### **§ 3 Time of performance**

- (1) Delivery dates and dates of performance stated by ELLA Biotech are not binding unless explicitly declared binding by ELLA Biotech in writing.
- (2) In case a (non-binding) delivery date is exceeded by more than one month, the customer may give an additional time period for delivery. This additional time period must be at least two weeks.
- (3) The termination of the contract (rescission, termination for important reason, damage claims or price reduction instead of performance) must always be threatened by written notice, giving a time period for performance. The contract may only be terminated within a period of two weeks starting at the expiry of the time period given.

### **§ 4 Payment, time of payment and setoff**

- (1) Payments are due after receipt of an invoice and must be paid within 10 days without reduction. After this period the customer will be in default.
- (2) While in default the customer will be liable for interest. The respective legal interest rates apply.
- (3) The customer may only set off against claims of ELLA Biotech that are either undisputed or that have become res judicata. The customer may only assign his claims with the written consent of ELLA Biotech. Up to this extend, § 354a HGB is excluded.

### **§ 5 Retention of title**

- (1) ELLA Biotech retains the title in all contract items until all due payments resulting from the current business relations have been completely paid.
- (2) The customer is obliged to treat all items subject to retention of title with the necessary care. ELLA Biotech must be informed of any encroachments on these contract items by third parties, especially any seizure. The customer must inform the interfering third party of the ownership of ELLA Biotech.

### **§ 6 Warranty**

- (1) ELLA Biotech warrants that all products will conform with the specifications agreed between the parties or, where no specification is agreed, qualify for the use intended by the parties or for the usual use and conform with specifications that are common for products or services of that nature and that the customer may reasonably expect from products or services of that nature.
- (2) Immediately after receipt the customer must examine the product to determine if the specifications stated on the product conform with his order or if the product shows other defects. The customer is required to make an immediate complaint in respect of any discernible defect of the product; any failure to do so results in the exclusion of all warranty claims. The same applies if a defect appears at a later point in time.
- (3) ELLA Biotech does not warrant for any products that have been mixed with other products by the customer. Warranty is also excluded, if the contract item has been handled or stored improperly. Expiry dates are to be observed. ELLA Biotech does not accept any warranty or liability for the use of the contract item after the expiry date.



- (4) The customer bears full burden of proof for all requirements of a warranty claim, especially for the defect itself, the time of the detection of the defect and the timeliness of the complaint.
- (5) Upon any defect ELLA Biotech will, at its own discretion, remedy the defect or provide a replacement for the defective contract item.
- (6) Should the replacement of the contract item or the remedy of the defect fail to be effective for the second time, the customer may - under the conditions set out by the law - reduce the price or terminate the contract. Minor defaults or defects do not give the customer the right to terminate the contract.
- (7) In case the customer terminates the contract he must ship back the contract item free of charges to the seat of ELLA Biotech.
- (8) Prescription of the customer's claims based on defects of the contract item is one year from the delivery of the contract item.
- (9) Recourse claims for damages against ELLA Biotech based on eventual resale of the contract item to consumers is excluded. This does not affect the right of the reseller to an adequate compensation for the defective product itself.

#### **§ 7 Limitation of liability**

- (1) ELLA Biotech is liable only for damages caused by intent or gross negligence. As far as no intentional violation of a contractual obligation is involved, the liability for damages is limited to the foreseeable, typical amount of damages. Besides, ELLA Biotech is liable according to the legal provisions, in case of a culpable breach of an essential obligation of the contract; in this case liability for damages is also limited to the foreseeable, typical amount of damages.
- (2) This limitation of liability is valid for all kinds of damage claims, independently of their legal grounds, and especially including damage claims based on the violation of an obligation.
- (3) Except for cases of intent or gross negligence, ELLA Biotech's liability is limited to the amount covered by its liability insurance. The amounts covered by liability insurance are:

#### **EUR 2.000.000 for personal injury and EUR 1.000.000 for material damages**

Upon request ELLA Biotech will grant the customer permission to inspect the liability insurance policy. ELLA Biotech will maintain the liability insurance to the extent mentioned above during the whole duration of the contract. As far as the insurance does not cover damages in a particular case, ELLA Biotech will answer directly to those damages.

- (4) Liability for subcontractors, employees or other vicarious agents and suppliers of ELLA Biotech is also limited to the extent described above.
- (5) These limitations of liability do not affect liability according to binding provisions of the Product liability act, liability for guarantees granted or liability for malice or for personal injury, which cannot be excluded by agreement.



- (6) Prescription for contractual or non-contractual liability for damage claims against ELLA Biotech or for claims for reimbursement of frustrated expenses is one year, except for cases of intent or personal injuries. Commencement of the prescription period is stipulated by law. The differing prescription period for warranty claims (~ 6 Nr. 8) remains unaffected.

#### **§ 8 Entire agreement, jurisdiction, applicable law**

- (1) There are no oral supplements to this agreement. Changes or amendments to this agreement must be in writing.
- (2) For all disputes arising directly or indirectly out of this agreement Munich shall be the place of exclusive venue.
- (3) These Terms and Conditions are subject to the law of the Federal Republic of Germany. Application of the United Nations Convention on the International Sale of Goods is excluded.

#### **§ 9 Exclusively binding character of German version**

The German version of these Terms and Conditions shall be binding for the parties. The English version is for information purposes only.

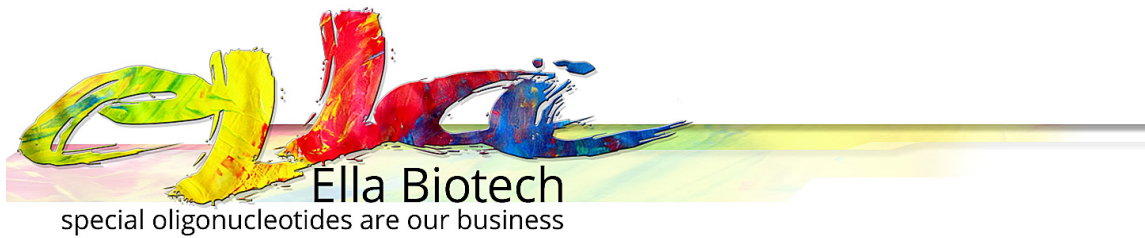
#### **§ 10 Severability**

If any provision of this agreement or any part of a provision is or becomes invalid, this does not affect the validity of the remaining provisions. The same applies in case of an incompleteness of this agreement.

In these cases the parties are obliged to supersede the gap or invalid provision by a valid, enforceable provision that most clearly matches the economic and legal intent of the original provision.

#### **§ 11 Data protection / Consent**

- (1) Dissemination and processing of customer data Customer data is saved, processed and evaluated electronically for Internet purposes of ELLA Biotech, especially for the simplified handling of orders and sales contracts to the extent permitted by data protection legislation. ELLA Biotech is entitled to disclose customer data to German financial institutions for the purpose of the performance of sales contracts, as far as these institutions have entered an obligation towards ELLA Biotech to treat such data confidentially. ELLA Biotech is also entitled to disclose customer data to third parties, that have been engaged by ELLA Biotech, in order to determine the correctness of the data and the identity of the customer and that have entered an obligation to treat such data confidentially.
- (2) Customer's consent  
The customer explicitly declares his consent with the saving, processing and the disclosure of his data by ELLA Biotech to the extent described above.



**ELLA Biotech Gesellschaft für angewandte Biotechnologie mbH**

Am Klopferspitz 19  
82152 Planegg/Martinsried  
Telefon: +49 (0) 89 70939316  
Telefax : +49 (0) 89 70939440  
Email: [info@ellabiotech.com](mailto:info@ellabiotech.com)

---

ELLA Biotech GmbH  
Am Klopferspitz 19  
82152 Planegg/Martinsried  
Telefon: 089/70939316  
Telefax: 089/70939440  
e-mail: [info@ellabiotech.com](mailto:info@ellabiotech.com)

**Bankverbindung:**  
Sparkasse Fürstenfeldbruck  
  
BIC: BYLADEM1FFB  
IBAN-Code: DE 91 7005 3070 0032 1054 96

Sitz der Gesellschaft: 82152 Planegg  
Amtsgericht München HRB 154 396  
Steuernummer: 81026219  
VAT #: DE 814140054

Geschäftsführer Dr. Peter Frischmann