
**GENERAL TERMS AND CONDITIONS OF SALE OF
EVOLOGICS GMBH**

§ 1

General Provisions

- 1.1 Any delivery of goods and services by EvoLogics GmbH, Berlin, registered with the commercial register of the local court Charlottenburg under HRB 77787 B (hereinafter the "**Seller**"), to the customer (hereinafter the "**Customer**") shall be subject to the following terms and conditions (hereinafter the "**Terms and Conditions**") to the extent no other agreements have been explicitly made. The Customer's general terms and conditions that are inconsistent with the Terms and Conditions shall only be applicable to the extent the Seller has explicitly approved to them in writing.
- 1.2 If not agreed otherwise, the Terms and Conditions in the version valid at the time of an order of the Customer or the conclusion of the respective contract between the Seller and the Customer shall apply. The Terms and Conditions also apply for future orders/contracts even if the Seller did not expressly refer to them.

§ 2

Conclusion of the Contract

- 2.1 The order made by a Customer shall be qualified as a binding offer. If not otherwise stated in the offer, the Seller may accept Customer's offer within 2 weeks after receipt of the offer.
- 2.2 The Seller may accept the offer either in written form (e.g. by a confirmation of the offer) or by delivery of the goods.
- 2.3 Changes of Customer's orders and follow-up orders require Seller's consent.

§ 3

Prices

- 3.1 The prices quoted in Seller's order confirmation shall solely apply. Additional services will be invoiced separately.
- 3.2 All prices are net prices and do not include value added tax, which shall be paid additionally by the Customer.
- 3.3 Unless otherwise expressly agreed, the prices are quoted ex works of the Seller. The Customer shall bear all additional costs, in particular freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

§ 4

Delivery

- 4.1 Unless otherwise expressly agreed, the Seller shall deliver ex works (EXW INCOTERMS 2010).
- 4.2 Delivery periods shall only be binding if expressly agreed in writing. Delivery periods shall begin on the date of the order confirmation by the Seller, however, in no case prior to (i) the clarification of all details relating to an order including the furnishing of any required official certificates; and (ii) the prepayment made by the Customer in case that Seller and Customer agreed on a prepayment. Delivery periods shall be deemed to be met on timely notification of readiness to ship if the goods cannot be dispatched in time through no fault of the Seller.
- 4.3 A default in delivery by the Seller is subject to the statutory law. However, a reminder of the Customer is necessary in order to trigger the default of delivery. If the Seller does not comply with its obligations, the Seller shall only be liable for all types of damages in accordance with § 10 of the Terms and Conditions.
- 4.4 Without prejudicing Sellers' rights from Customer's default, delivery periods and dates shall be deemed to

be extended by the period of time during which the Customer fails to comply with its obligations towards the Seller.

- 4.5 The Seller may perform partial deliveries and render partial services if such action would not unreasonably affect the Customer.

§ 5

Shipment, Passing of Risk

- 5.1 Unless otherwise expressly agreed, the shipment of goods shall be carried out at the Customer's risk. The risk shall pass to the Customer as soon as the goods have been handed over to the person carrying out the shipment if not otherwise agreed.
- 5.2 If a shipment is delayed for reasons to be attributed to the Customer, the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of Seller's readiness to ship. Required storage costs after passing of risk shall be borne by the Customer. This shall not affect any other claims.
- 5.3 If the Customer is in default of acceptance, the Seller shall be entitled to claim refund of any expenditure associated therewith and the risk of accidental deterioration, loss and destruction shall pass to the Customer. Further statutory rights in connection with the default of acceptance remain unaffected.

§ 6

Payment

- 6.1 Usually, the Seller delivers its goods only against prepayment which has to be agreed between the Customer and the Seller. In absence of such an agreement, payments shall be made in full within 15 days from the date of the invoice.
- 6.2 Payment shall be considered to have been made on the day the payable amount is received by the Seller. Bills of exchange and cheques shall not be deemed as payment prior to final payment and will be accepted without any obligation to make timely presentation and timely protest.
- 6.3 In the event of default of payment, the Customer shall pay default interest according to the statutory law, i.e. 9 (5 in case the Customer is a consumer) percentage points above the base lending. Further claims for damage compensation remain unaffected.
- 6.4 The Customer may only withhold or offset due payments against its own counter-claims if these are uncontested or have been found to be legally binding.
- 6.5 If the Customer is in default with a payment, the Seller is entitled to perform the remaining deliveries only against advance payment or the provision of a security, and, if no such advance payment is made or security provided within a two-week time period, to cancel the contract without fixing another extension term. Further claims remain unaffected.

§ 7

Retention of Title

- 7.1 Delivered goods shall fully remain the property of the Seller (goods sold subject to retention of title) until all receivables (i) in connection with the respective contract (in case that the Customer is a consumer) or (ii) in connection with the business relationship between the Customer and the Seller (extended retention of title) (in case that the Customer is an entrepreneur) have been fully paid.
- 7.2 In case of processing, combining or mixing of goods subject to retention of title with goods, Seller's retention of title shall also apply to goods created by that processing, combining or mixing whereby the Seller shall be deemed as producer.
- 7.3 If the titles of goods delivered by third parties are unaffected by the processing, combining or mixing of goods, the Seller shall be entitled to co-ownership of the new property in as much as the invoiced value of goods sold by the Seller with retention of title relates to the value of the other involved goods. Where the Seller's co-ownership becomes null and void due to processing, combining or mixing with other goods, the Customer hereby assigns to the Seller those of its rights of ownership in the new property or compound matter which correspond to the amount of the value of goods subject to retention of title by the Seller. Customer shall also be responsible for holding such rights in safe custody on the behalf of the Seller and at Customer's own expense. Any rights to co-ownership created as a result of such processing, combining

or mixing shall be subject to § 7.1 of the Terms and Conditions.

- 7.4 The Customer may resell, process, combine or mix with other property, or otherwise integrate goods under retention of title in ordinary business operations and as long as the Customer is not in default with payments. The Customer shall be prohibited from taking any other disposition regarding goods for which the Seller retains title. The Seller shall be promptly notified about any pledge, hypothecation or other seizure of goods under retention of title by a third party. If the Customer delivers the good to its buyer prior to buyer's payment or if the Customer grants its buyer additional time for payment, the Customer shall reserve title in goods resold with retention of Seller's title under the same terms which applies for the Seller when delivering such goods with retention of title. The Customer shall be prohibited from any other kind of resale.
- 7.5 The Customer hereby assigns to the Seller any receivables resulting from a resale of goods sold with retention of Seller's title. The Seller accepts the assignment. The receivables will be used to substitute the goods under retention of title as collateral of the equivalent amount. If the Customer resells goods under retention of Seller's title together with goods from other suppliers at a certain total price, Customer shall assign to the Seller its receivables from such resale in the same amount as stated in the invoice for goods initially sold with retention of title by the Seller. If an assigned receivable is included into a current account, the Customer hereby assigns to the Seller that part of the balance which is equivalent to the amount of such receivable, including the final balance from current account operations.
- 7.6 Until the Seller gives notice of revocation, the Customer shall be authorized to collect receivables assigned to the Seller. The Seller shall be entitled to such revocation if the Customer fails to meet its payment obligations under the business relationship with the Seller in due course. If the Seller has exercised its revocation right, the Customer shall promptly notify the Seller of any assigned receivables against its respective debtors, furnish all data required for collection of such receivables, hand over all related documentation and advise the debtors of such assignment. The Seller reserves the right to personally advise the debtors of such assignment.
- 7.7 If the value of the collateral deposited for the benefit of the Seller exceeds the amount of secured claims by a total of more than 10 per cent, the Customer shall be entitled to demand that the Seller insofar release securities of the choice of the Seller.

§ 8

Software Rights

- 8.1 Any software (e.g. programs) in connection with the sold goods shall fully remain the property of the Seller. No program, documentation or subsequent upgrade thereof may be disclosed to any third party without Seller's prior written consent, nor may they be copied or otherwise duplicated, even for the Customer's internal needs apart from a single back-up copy for safety purposes.
- 8.2 Any needed license for programs and documentation in connection with the sold goods is subject to an agreement between the Customer and the Seller under the respective contract.

§ 9

Warranty Claims

- 9.1 The statutory rights apply with respect to Customer's warranty claims unless provided otherwise in the following paragraphs.
- 9.2 If applicable, all special legal provisions regarding the final supply to a customer (sections 478, 479 German Civil Code (BGB)) remain unaffected.
- 9.3 If the purchase is a trade transaction for the Customer and the Seller, the Customer may only claim warranty rights if it has observed the examination and notification duties pursuant to sections 377, 381 German Commercial Code (HGB). The duty to notify the Seller immediately as set out in section 377 HGB shall mean that the Customer has to notify the Seller within 2 weeks (sending of the notice is sufficient).
- 9.4 Provided, the requirements for a warranty claim are given, the Seller shall remedy the defects. It is at Seller's discretion whether it remedies the defect by repair or replacement.
- 9.5 The Customer shall be entitled to rescind the contract or reduce the contract price in accordance with its statutory rights, however, the Customer shall not be entitled to rescind the contract or to reduce the contract price unless the Customer has previously given the Seller twice a reasonable period to remedy the defect

which Seller has failed to observe, unless setting of such a period to remedy defects is dispensable.

- 9.6 Any rights of the Customer to receive damage compensation shall be governed by the provisions in § 10 of the Terms and Conditions.
- 9.7 Specifications of Seller's goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.
- 9.8 Unless limits for variations have expressly been agreed in the order confirmation or the respective contract, such variations shall be admissible that are customary within the trade.
- 9.9 The Seller shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear.
- 9.10 Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with the original product specifications by the Seller, unless the Customer can show that the defect in question resulted from another cause.
- 9.11 The limitation period for claims for defects shall be 12 months (24 months in case the Customer is a consumer). This shall not apply to Customer's claims for damages based on damages of body or health caused by a defect for which the Seller is responsible or claims for damages based on intentional or grossly negligent conduct by the Seller.

§ 10

Limitation of Liability

- 10.1 In case of a breach of contractual obligations, defective deliveries or tortious acts, the Seller shall only be obliged to compensate damages or expenses – subject to any other contractual or statutory conditions for liability – if the Seller has acted intentionally or with gross negligence or in cases of minor negligence, if such negligence results in the breach of an essential contractual duty (a duty the breach of which puts the fulfilment of the purpose of the contract at risk). However, in case of minor negligence for essential contractual duties, Seller's liability shall be limited to typical damages which are foreseeable at the time of the conclusion of the contract. To the extent that Seller's liability is excluded or limited, any recourse against its employees, servants, members of staff, representatives of the Seller and those employed by the Seller in the performance of its obligations is also restricted or excluded.
- 10.2 The exclusions and limitations of liability in § 10.1 shall not apply in cases where the Seller has maliciously failed to disclose a defect, in case of damages resulting from death, injury to health or physical injury or where the laws on product liability impose overriding liabilities which cannot be excluded.
- 10.3 The limitation period for claims against the Seller – based on whatever legal ground (including competing tortious claims) – shall be 1 year (2 years in case the Customer is a consumer) from the date of delivery to the Customer, and in case of tortious claims only, 1 year (2 years in case Customer is a consumer) from the date the Customer becomes aware or could have become aware of the grounds giving rise to a claim and the liable person, had the Customer not been grossly negligent. The provisions in this clause shall neither apply in cases of intentional or gross negligent breaches of a duty nor shall they apply in cases referred to in § 10.2 of the Terms and Conditions.
- 10.4 If the Customer is an intermediary seller of the goods obtained from the Seller and the final buyer of the goods is a consumer, the limitation period for any action of recourse against the Seller by the Customer shall be the period specified by the statutory law.
- 10.5 The liability of the Seller for software supplied by the Seller shall be limited to liability for losses or alteration of data caused by the program; however, the supplier shall not be liable for any losses or alteration of data which could have been avoided by the Customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.
- 10.6 Except in case of a defect of the sold good, the Customer may only rescind or terminate the contract if the Seller is liable for the violation of the respective obligation. An ordinary termination right pursuant to sections 651, 649 German Civil Code (BGB) is excluded. For the rest, the statutory provisions apply.

§ 11

Assignment of Claims

Any claims held by the Customer against the Seller may not be assigned to third parties. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

§ 12

Export Control

The sale and resale of Seller's goods including any associated technology or documentation may be governed by German, EU, US export control regulations as well as by the export control regulations of further countries. Any resale of goods to embargoed countries or to denied persons or persons that use or may use the goods for military purposes, ABC weapons or nuclear technology is subject to an official license. The Customer declares with its order the conformity with such statutes and regulations and that the goods will neither directly nor indirectly be delivered into countries that prohibit or restrict the import of such goods. Customer declares to have obtained all licenses required for export and import.

§ 13

Final Provisions

- 13.1 Amendments, supplements and the termination of the contract comprising the Terms and Conditions must be made in writing to be effective, provided that no stricter form is required by mandatory law. This shall also apply to an amendment or a waiver of this written form requirement.
- 13.2 Should individual terms of the contract comprising the Terms and Conditions be or become invalid or unenforceable or if the respective contract contains gaps, this shall not affect the validity of the remaining terms of the contract. In place of the invalid, unenforceable or missing term, such valid term which comes closest to Seller's and Customer's intention or which they would have reasonably agreed in light of the purpose of the respective contract, had they been aware at the conclusion of the contract that the relevant term was invalid, unenforceable or missing, shall be deemed to have been agreed with retroactive effect. Should a term of the contract be or become invalid because of the scope or time of performance for which it provides, then the agreed scope or time of performance shall be amended to correspond with the extent legally permitted.
- 13.3 The Terms and Conditions and the contract comprising them shall be exclusively governed by German law (without its choice of law provisions). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 13.4 With regard to all disputes arising under or in connection with the Terms and Conditions and the contract comprising them, to the extent legally permissible, the district court of Berlin shall be the exclusive court of venue.
