

General Terms and Conditions of Sale

Section 1 Scope

- (1) These General Terms and Conditions of Sale apply to the sale of hardware and/or software belonging to Intrexon Bioinformatics Germany GmbH (hereinafter: "IBG") to the Purchaser, who is a business person.
- (2) The General Terms and Conditions of Sale also apply, as amended, (most recent version available at www.genomatix.de) to pre-contractual obligations and future contracts of a similar type governing the sale of hardware and/or software to the same Purchaser, without the need for IBG to refer to them again in each individual case.
- (3) Solely these General Terms and Conditions of Sale apply. Deviating, contrary or supplementary general terms and conditions of trade on the part of the Purchaser will only become an integral part of the contract if and to the extent that IBG has expressly agreed to their validity in writing. This approval requirement applies in all cases – for example even if IBG makes the delivery to the Purchaser without reservation, in full knowledge of the latter's terms and conditions of trade.

Section 2 Conclusion of a contract

- (1) Offers made by IBG are non-binding and subject to confirmation. This applies even if IBG has provided the Purchaser with product descriptions.
- (2) By ordering the goods, the Purchaser is making a binding offer to enter into a contract. Unless stated otherwise in the order, IBG is entitled to accept this offer to enter into a contract within four weeks of its receipt.
- (3) The order is accepted by means of a written confirmation of the order, or by rendering the service or delivery to the Purchaser.

Section 3 Object of purchase

- (1) The scope, type and quality of the deliveries and services are determined by the contents of the order confirmation or invoice, where such deliveries/services were rendered without prior confirmation. Any other specifications or requirements will only become an integral part of the contract if the parties agree this in writing or if IBG has confirmed this in writing.
- (2) The Purchaser will receive the hardware with pre-installed software, consisting of the specific algorithms and data content, or the software as a download to be used on the Purchaser's own hardware. Prior to the expiration of the license term, the Purchaser can purchase an extension to the software license, which only relates to the software components expressly mentioned in each case. Extending the software license after the license term has expired can result in initial set-up and support costs, which will be communicated to the Purchaser before the extension is implemented. The Purchaser is not entitled to be provided with the source codes.
- (3) When hardware is purchased with pre-installed software, the license term begins when the hardware is transferred to the Purchaser. Otherwise, the license term commences from the moment that the software is made available for download by IBG.
- (4) IBG expressly gives notice that certain new software functions will not be available on older hardware. The Purchaser can be provided with an offer for a hardware upgrade (subject to a charge), if desired.

- (5) The software is not tested or approved for use in the diagnostic and/or clinical field and under no circumstances should be used for such purposes where FDA or similar regulatory approval is required.

Section 4 Rights of the Purchaser to the software

- (1) The software (specific algorithms and data content) is protected by law. The copyright, patent rights, trademark rights and all other ancillary rights to the software, and to any other objects that IBG gives or makes available to the Purchaser as part of the contract's initiation and execution, belong exclusively to IBG, provided that IBG is the holder of these rights.
- (2) The Purchaser is only entitled to use the software to process the Purchaser's own data in his/her own institution for his/her own purposes. 'Own institution' means the establishment of the Purchaser and his/her employees specified by name in the order. Any extension of the group of users to include other institutions of the Purchaser must be expressly consented to in writing by IBG. IBG will grant the Purchaser the necessary authority for this use in the form of a non-exclusive right of use. No additional use by third parties is permissible unless IBG has given its express, written consent. The Purchaser must ensure that appropriate safeguards are in place and may not allow the software to be accessed outside his/her establishment.
- (3) If software is updated via an exchange of data carriers, the Purchaser must return the unused data carrier to IBG immediately after the exchange and at his/her own expense, unless otherwise agreed. If IBG has not received a data carrier from the Purchaser by the date of the next update, the Purchaser will bear the costs of the new data carrier.

Section 5 Delivery time

- (1) The delivery time is individually agreed or specified by IBG when the order is accepted.
- (2) If IBG is unable to comply with binding delivery times for reasons, for which IBG is not responsible (unavailability of the goods or services), IBG will inform the Purchaser of this without delay and will at the same time inform the latter of the anticipated new delivery time. If the goods or services are still unavailable within the new delivery time, IBG is entitled to rescind the contract in part or in full. Any consideration already rendered by the Purchaser will be reimbursed by IBG without delay.

Section 6 Delivery/performance & transfer of risk

- (1) The delivery/performance is effected from IBG's registered office, which is also the place of fulfillment. The goods will be sent to another destination at the request and expense of the Purchaser (mail order purchase). Unless otherwise agreed, IBG is entitled to determine the form that the shipment will take itself (in particular the carrier, route and packaging).
- (2) The risk of the goods' accidental loss/destruction or accidental impairment passes to the Purchaser when the goods are handed over at the latest. In the case of mail order purchases however, the risk of the goods' accidental loss/destruction or accidental impairment as well as of the risk of delay is transferred as soon as the goods are delivered to the carrier, freight forwarder or other person or institution designated to execute the shipment. The hand-over is deemed to have taken place even if the Purchaser delays in accepting the goods.

Section 7 Prices and terms of payment

- (1) Unless otherwise agreed in individual cases, IBG's current prices at the time of the contract's conclusion apply, plus the applicable statutory value added tax.
- (2) In the case of mail order purchases (Section 6, sub-section 1), the Purchaser will bear the transport costs ex-warehouse. Any customs duties, charges, taxes or other public dues will be borne by the Purchaser. Each party will bear their own banking charges.
- (3) The purchase price is due and payable net without deductions within 30 days of the goods' delivery and receipt of the invoice by the Purchaser. Instead of issuing an invoice, IBG can also prepare an electronic bill that can be sent by email.
- (4) Upon the expiration of the above-mentioned payment period, the Purchaser will be in default. For the duration of the default, interest will be charged on the purchase price at a rate of eight percentage points over the prevailing base rate.
- (5) The Purchaser is only entitled to offset claims or exercise rights of retention to the extent that his/her claim is undisputed or has been finally adjudicated upon by the courts.

Section 8 Reservation of ownership

- (1) IBG will retain ownership of the goods sold until all present and future receivables arising out of the purchase contract and ongoing business relationship (secured claims) have been paid in full.
- (2) The goods subject to reservation of ownership may neither be pledged to third parties nor assigned by way of security until the secured claims have been paid in full. The Purchaser must inform IBG in writing without delay if and when the goods belonging to IBG are seized or subject to attachment by third parties.
- (3) The Purchaser may not modify the goods subject to reservation of ownership in any way whatsoever.

Section 9 Defect claims on the part of the Purchaser

- (1) The statutory provisions apply with regard to the rights of the Purchaser in the event of material defects and defects in title, unless otherwise specified below.
- (2) The software has the agreed properties and is suitable for the use provided for in the contract, or – in the absence of an agreement – is fit for normal use. It fulfills the criterion of practical suitability and is of standard quality for software of this type. A functional impairment of the program resulting from defects in the Purchaser's hardware, environmental conditions, operating errors or similar causes is not a software defect. Negligible reductions in quality will not be taken into account.
- (3) Defect claims on the part of the Purchaser presume that he/she has fulfilled his/her statutory obligations of inspection and complaint. If a defect is discovered during or after the inspection, IBG must be notified of this in writing immediately. The notification is deemed to be immediate if it is given within a week of the goods' receipt. The timely dispatch of the notification is sufficient for the purposes of complying with the deadline. Irrespective of this obligation to inspect the goods and give notice of defects, the Purchaser must report any obvious defects (including wrong and short delivery) in writing within one week of delivery. Here too, the timely dispatch of the notification is sufficient for the purposes of complying with the deadline. If the Purchaser fails to carry out a proper inspection and/or give notification of any defects, IBG will not be liable for the defects that were not reported.
- (4) If the item delivered is defective, IBG can initially remedy the defect (subsequent improvement) or provide a defect-free item (replacement), at its discretion.
- (5) The Purchaser must give IBG sufficient time and opportunity to carry out the subsequent performance that is due. The Purchaser will help IBG to analyze and remedy the defect by giving a precise description of any problems that occur and providing IBG with

comprehensive information. IBG can, at its discretion, remedy the defect on-site or at its own business premises. In the event of faulty software, IBG can also carry out remote maintenance. To this end, the Purchaser will allow IBG to access the hardware. In the event that a replacement is provided, the Purchaser must return the defective item to IBG in accordance with the statutory provisions.

- (6) The Purchaser must bear all the additional costs associated with the subsequent performance if he/she has modified the software, used it outside the prescribed environment or incorrectly operated it. IBG can demand compensation from the Purchaser for its expenses if no defect is found in the software or if the Purchaser does not provide IBG with detailed information about all modifications before the latter commences debugging, or if IBG has to reverse modifications carried out by the Purchaser in order to restore the software's functionality. Where software is probably malfunctioning, support can generally only be provided if the Purchaser has already implemented all the updates provided by IBG.
- (7) If IBG's "warranty seal" on the hardware is no longer intact, all of the Purchaser's warranty rights vis-à-vis IBG regarding the hardware will lapse.
- (8) Where a piece of hardware has been modified by the Purchaser, IBG can stop the debugging of any malfunctioning software at any time if it suspects that the fault is due to the modification of the hardware. In this event, the Purchaser must undo the modification and then send the hardware to IBG at the former's own expense for a new seal (seal subject to a charge). The Purchaser will bear the costs of returning the hardware.
- (9) If the subsequent performance is unsuccessful, or if a reasonable timeframe for the subsequent performance, as set by the Purchaser, expires without the issue having been resolved or is dispensable in accordance with the statutory provisions, the Purchaser can rescind the purchase contract or reduce the purchase price. However no right of rescission exists for insignificant defects.
- (10) The Purchaser is entitled to claim compensation for damages or for the reimbursement of expenses incurred in vain only in accordance with Section 10; all other claims are excluded.

Section 10 Liability

- (1) IBG will be liable to pay compensation – regardless of the legal basis – in cases of intent or gross negligence. In cases of ordinary negligence, IBG will be liable only
 - a) for damages due to loss of life, bodily injury or damage to health or, where claims are brought under the German Product Liability Act (Produkthaftungsgesetz),
 - b) for damages due to the violation of a material contractual obligation (obligations, whose fulfillment is a prerequisite for the proper fulfillment of the contract and on whose observance the other party to the contract can reasonably expect to be able to rely); in this event, IBG's liability will be limited to compensation for any foreseeable, typically occurring damages however. Compensation for consequential damage – i.e. damage that is not rectified by the flawless subsequent performance and is sustained by assets other than the goods in question, e.g. an operational failure caused by the defect – is excluded.
- (2) The limitations of liability under sub-section 1 do not apply if IBG has fraudulently concealed a defect.
- (3) IBG assumes no liability for data losses on the part of the Purchaser.

Section 11 Statute of limitations

In derogation from the statutory provisions, the period of limitation for contractual and non-contractual claims arising from material defects and defects in title amounts to one year from the delivery of the hardware and/or software. This shortening of the period of limitation does not apply in the event of liability for intent or gross negligence, or in instances of loss of life, bodily injury or damage to health.

Section 12 Non-disclosure

- (1) The parties to this contract mutually undertake to treat as confidential – even after this contract has come to an end – all information made available to them prior to or during the execution of the contract (whether in writing, orally or in any other manner and whether directly or indirectly) – particularly information of a technical, commercial or financial type and including all documents and know-how. They also undertake to refrain from passing on such information to third parties and from making it accessible in any other form, to take all necessary precautions to prevent third parties accessing this information and to make it accessible only to those employees and/or representatives or contractors who have likewise undertaken to adhere to the above-mentioned confidentiality requirement, even after leaving their employment, provided that the information is flagged as "*confidential*" or described as "*confidential*" when conveyed orally, and unless the information in question was common knowledge before its disclosure or becomes common knowledge after its disclosure through no fault of the receiving party, or the information was already in the possession of the receiving party before its disclosure, or was or is lawfully obtained from a third party without restriction, or if the disclosing party has waived this non-disclosure obligation in writing.
- (2) IBG will process the personal data required for executing the business transaction in compliance with the data protection regulations. After the successful delivery of the service/product, IBG may cite the Purchaser as a reference customer.

Section 13 Choice of law and jurisdiction

- (1) These General Terms and Conditions of Sale and all legal relations between IBG and the Purchaser are subject to the laws of the Federal Republic of Germany, to the exclusion of all international and supranational (contractual) legislation, particularly the United Nations Convention on the International Sale of Goods (CISG).
- (2) If the Purchaser is a merchant, the sole – and international – place of jurisdiction for all disputes arising directly or indirectly out of this contractual relationship is IBG's registered place of business in Munich, Germany.

Section 14 Final provisions

Should one of the provisions of these General Terms and Conditions of Sale prove to be invalid, this will not affect the validity of the remaining conditions or agreements. Instead of the invalid provision, whichever provision most closely approximates the economic spirit and purpose of the invalid provision will be deemed to be agreed.

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