

# Dualsystems Biotech AG, General Terms of Business

## A General provisions

### 1. Scope of application

These general terms of business (these “Terms”) apply to all services (the “Services”) and products (the “Products”) supplied by Dualsystems Biotech AG (“Dualsystems Biotech”) to clients (the “Client(s)"). Different or additional provisions, including a Client’s general terms of business, shall apply only if agreed in writing by Dualsystems Biotech and the Client. The Services include chemical, physical and biological laboratory analyses, the development and implementation of biological analysis methods and of special methods of synthesis. Products include kits, reagents, biologicals, chemicals, equipment and parts manufactured by or on behalf of Dualsystems Biotech and sold to Clients. The performance of Services shall be governed by sections A and B of these Terms. The manufacture and supply of Products shall be governed by sections A and C of these Terms. No amendments or changes to these Terms shall be effective unless made in writing. If, for any reason, a provision of these Terms becomes invalid, the validity of the remaining provisions will not be affected.

### 2. Orders

The quotations of Dualsystems Biotech for the performance of Services or the supply of Products are binding for 30 days unless otherwise specified in the respective quotation. Accepted quotations and/or orders by any Client to Dualsystems Biotech for Services or Products (the “Order(s)”) must be issued in writing, unless otherwise agreed, and shall be confirmed by Dualsystems Biotech in writing to be binding on Dualsystems Biotech. However, in the event of standard Services or standard manufacture of Products the written confirmation may be replaced by the due performance of the Order and/or supply of Products. Amendments to Orders by the Client shall be notified to Dualsystems Biotech in writing. Dualsystems Biotech will make reasonable efforts to implement any such amendment, but reserves the right to adjust the price and terms of delivery.

### 3. Prices and terms of payment

The prices for Services or Products shall be specified in the Orders. In the absence of such specifications, Dualsystems Biotech’s then prevailing price list shall apply. Unless otherwise agreed in writing, all prices are in Swiss francs, net of value added tax and additional costs such as packaging, transport, insurance, duties and levies. An additional charge shall be made for urgent or express Orders. Special prices shall apply for Orders requiring special safety precautions. The payment terms shall be specified in the Orders. Unless otherwise specified in the Order, invoices are payable net, within thirty (30) days of the invoice date. Unless otherwise agreed in the Order, Services which are charged on a time-spent basis shall be invoiced monthly as the Order progresses. Unless otherwise agreed in the Order, Services performed shall be subject to the following terms of payment:

- 30% of project total within 30 days of confirmation of the Order;
- 40% of project total 30 days before Services supplied;
- 30% of project total 30 days after Services supplied.

Unless otherwise agreed in the Order, Products delivered shall be subject to the following terms of payment:

- 100% of invoice total 30 days after Products delivered.

Accounts payable to the Client by Dualsystems Biotech may be offset only with the prior written consent of Dualsystems Biotech. Interest of 1.5% per month, payable in arrears, shall be charged on late payments. In the event of late payment or if Dualsystems Biotech has reason to doubt the Client’s solvency or creditworthiness,

Dualsystems Biotech may require a deposit before supplying further Services or Products and Dualsystems Biotech shall not be required to provide further Services or Products.

#### **4. Deadlines**

The Services or Products shall be provided by the date agreed in writing or, if no such date has been agreed, within a reasonable time period. Dualsystems Biotech shall notify the Client without delay in the event of a serious delay in the Services or Products in order to obtain an extension to the extent necessary. If Dualsystems Biotech thereafter is unable to keep to the agreed deadline, the Client shall be entitled to cancel the Order, but not to claim any damages. The delivery lead time shall begin when all technical and business issues have been resolved between the Client and Dualsystems Biotech i.e. on receipt of the binding documentation (specifications, etc.). The delivery lead time shall be extended by an appropriate time period if the Client's subsequent changes of the information and documentation required to process the Order cause a delay.

#### **5. Handling, Storage and Archiving**

(a) Handling of samples or materials provided by Client The Client shall package and label vessels containing hazardous materials (including without limitation, materials which are explosive, toxic, carcinogenic or radioactive, or which create an HIV risk or other health risk or constitute a biological hazard of any kind) in full compliance with applicable laws, rules, regulations and industry standards. The Client shall be liable for any damage to property, personal injury or death to Dualsystems Biotech or any third party caused by any samples or other materials provided by the Client pursuant to this article 5, unless the Client has provided Dualsystems Biotech with the documentation concerning all known risks associated with any samples or other materials provided by the Client (e.g. material safety data sheets, etc.).

(b) Storage of samples or materials provided by Client If Dualsystems Biotech receives more than the quantity of samples or other materials required to perform the Services or to manufacture the Products, Dualsystems Biotech shall store the unused surplus for an additional two (2) months after the end of the Services performed or Products manufactured, unless otherwise agreed in writing, and use it for any further Services or Products. Thereafter, samples or other materials provided by the Client no longer required shall be disposed of or, if requested in the Order, be returned to the Client.

(c) Document storage The Client shall be responsible for storing and archiving results and reports on completion of the agreed testing or processing. Unless otherwise agreed in writing, Dualsystems Biotech shall archive the working documents and raw data used to carry out the project for a period of one (1) year from the completion of a particular Order.

#### **6. Client's access and inspection rights**

Upon reasonable advance written notice, Dualsystems Biotech shall grant the Client access to the laboratories in which a pending Order is processed. Dualsystems Biotech shall co-operate with the Client on quality control issues and inspections by health authorities.

#### **7. Cooperation with third parties**

Unless otherwise specified in the Order, Dualsystems Biotech reserves the right to transfer, assign or sub-contract the performance of Services or the manufacturing of Products to third parties. Dualsystems Biotech shall only use sub-contractors with comparable standards of quality and confidentiality requirements. All rights of the Client and Dualsystems Biotech shall inure to the benefit of, and be enforceable by the respective successors and assigns of each of the parties hereto.

#### **8. Intellectual property**

Unless otherwise agreed in any Order, all results and underlying measurements, drawings, documents, studies, reports, analyses, data, laboratory and process records which are specifically developed by Dualsystems Biotech for the Client in connection with the Services or the Products (the "Results") shall

become the exclusive property of the Client at no additional cost to the Client upon full payment of all fees and expenses due under any Order. The Client will be responsible for all vindication of patents, copyrights or similar claims, unless otherwise agreed in writing. Unless otherwise agreed in any Order, all of Dualsystems Biotech' patents, trade secrets, copyrights, trade names, trademarks, service marks, proprietary materials, methods, processes, know-how, technical documents and production specifications or other intellectual property and all improvements, or inventions, discoveries, formulae, writings, procedures, techniques, engineering information, devices, manufacturing information and other technology, whether or not patentable, or rights or licenses relating to any of the foregoing (collectively "Dualsystems Biotech Property") used in connection with the Products or Services shall remain the sole and exclusive property of Dualsystems Biotech.

### **9. Confidentiality**

Unless otherwise agreed in writing, Dualsystems Biotech and the Client both undertake not to disclose information which is received from the other party in connection with the Services to be performed or Products to be manufactured and/or delivered by Dualsystems Biotech, unless (i) otherwise required by law or judicial order, or (ii) the receiving party can prove that such information has been known to it prior to receipt. Without limitation, each of the parties undertakes:

- to use the information by authorized persons and for its intended purpose only;
- not to divulge it or make it accessible to any third party without the other party's prior written consent;
- to return or destroy - subject to compliance with applicable laws and regulations
- all files or documents or copies of information stored in electronic or computerized systems containing confidential information or samples, if any, provided by the respective party at the other party's request. However, one archival copy may be retained to determine the respective party's obligations under these Terms. Neither party may issue press releases or scientific publications containing confidential information without the other party's prior written permission.

### **10. Work on site**

If the employees or sub-contractors of Dualsystems Biotech are required to carry out work on site, (such as pilot testing and process implementation), the following conditions shall apply:

- The site manager shall grant access and ensure that the installation is in a suitable condition and all agreed support staff and required material is available for the work to be carried out by Dualsystems Biotech or its subcontractors in accordance with the agreed schedule. Delays or additional costs incurred by Dualsystems Biotech because the installation is unavailable or because the agreed support staff has not been provided shall be invoiced and Dualsystems Biotech shall not be responsible for any delay caused thereby.
- If the work has to be carried out outside normal working hours, or Dualsystems Biotech staff has to work overtime, the Client shall be invoiced separately for the statutory surcharges.

### **11. Local requirements**

When ordering Services or Products from Dualsystems Biotech, the Client must notify Dualsystems Biotech of any local laws, rules, regulations and requirements of authorities governing the design, assembly, operation, handling, labeling, packaging, dispatch and health and safety of the items supplied.

### **12. Force majeure**

Dualsystems Biotech shall not be liable to the Client, or lose any rights because of any delay or failure in the performance of its obligations or any Order, if and to the extent that such failure or delay is due to circumstances beyond its control, including but not limited to, act of God, war or insurrection; terrorism; civil commotion; destruction of essential facilities or materials by earthquake, fire, flood or storm; act of

government, labor disputes; epidemic; or other similar event; provided however, that Dualsystems Biotech shall notify the Client as promptly as reasonably possible should it become aware of such circumstances.

### **13. Applicable law**

These Terms, any Orders or agreements between Dualsystems Biotech and the Client shall be construed and enforced in accordance with and governed by the laws of Switzerland, without giving effect to the principles of conflict of laws thereof. The United Nations Convention for the International Sale of Goods (1980) shall not apply.

### **14. Jurisdiction**

The place of jurisdiction shall be the ordinary courts of Zürich, Switzerland.

## **B. Specific provisions for Services**

### **15. Cancellation**

The Client may cancel an Order at any time. If an Order for Services is cancelled by the Client, the Client shall reimburse Dualsystems Biotech for its reasonable fees and expenses incurred or committed in connection with the preparation of the Services to be performed under such Order through the date of cancellation. If an Order for Services is cancelled by the Client (i) less than ten (10) days before the agreed start date for the performance of any Services or (ii) after such date, for reasons outside of Dualsystems Biotech' control and unless otherwise specified in any Order, in addition to the payment of reasonable fees and expenses incurred or committed Dualsystems Biotech shall be entitled to compensation for any losses including the loss of earnings or for 80% of the value of the Order, whichever is the greater. Amendments to Orders for Services which Dualsystems Biotech cannot implement without incurring unreasonable expenses or last minute requests for postponement shall be deemed cancellations.

### **16. Certain obligations of Dualsystems Biotech**

Dualsystems Biotech shall perform the Services in a professional and workmanlike manner in accordance with standard industry practices and applicable professional standards. Except as otherwise expressly agreed in writing, Dualsystems Biotech shall be entitled to use processes, methods or procedures as it deems appropriate at its sole discretion and to modify, change or abandon any such processes, methods or procedures at any time.

### **17. Warranty and liability**

Dualsystems Biotech warrants that all Services will be performed in the manner set forth in article 16. The Client shall examine the performance of the Services on receipt thereof, and report any apparent defects or deficiencies to Dualsystems Biotech in writing within ten (10) days and any latent deficiencies as soon as they are discovered. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN THIS ARTICLE 17, DUALSYSTEMS BIOTECH MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES PERFORMED BY DUALSYSTEMS BIOTECH OR ANY OF ITS AGENTS OR SUBCONTRACTORS. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DECLINED. NO CLAIM, SUIT OR OTHER PROCEEDING MAY BE BROUGHT FOR AN ALLEGED BREACH OF WARRANTY OF DUALSYSTEMS BIOTECH SET FORTH HEREIN MORE THAN TWELVE MONTHS AFTER COMPLETION OF THE SERVICES CONCERNED. Dualsystems Biotech shall have the right to remedy any defect or deficiency in the Services which have been duly reported by the Client within a reasonable period of time of receiving such report. If Dualsystems Biotech fails to remedy such defect or deficiency on time or to an acceptable standard, the Client's exclusive remedy and Dualsystems Biotech' sole liability on any claim, whether in tort, contract or warranty, shall be a reduction of the fees payable by the Client. IN NO EVENT SHALL DUALSYSTEMS BIOTECH BE LIABLE TO ANY PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, OR ADDITIONAL EXPENSES

INCURRED), WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE. The liability of Dualsystems Biotech for losses which are caused by Dualsystems Biotech' willful misconduct or gross negligence shall not be limited.

### **C. Specific provisions for Products**

#### **18. Cancellation**

The Client may not cancel an Order for Products before the Products have been delivered, unless it pays for the work carried out by or on behalf of Dualsystems Biotech up to the date of cancellation and compensates for any losses including loss of earnings. Dualsystems Biotech may cancel an Order if its own suppliers fail to supply the correct items by the specified dates, and Dualsystems Biotech is therefore unable to supply the Products to the Client despite having made every reasonable effort to find substitutes. The Client shall not be entitled to any damages if Dualsystems Biotech cancels an Order for any of the above reasons.

#### **19. Technical documents and specifications**

All drawings, illustrations, descriptions and purity requirements shall be based on the written specifications in the applicable Order.

#### **20. Warranty and liability**

Dualsystems Biotech warrants that the Products are manufactured in accordance with the specifications contained in the Order accepted by Dualsystems Biotech in accordance with normal practices. Dualsystems Biotech shall carry out quality and operating checks at its premises in accordance with its internal guidelines before notifying the Client that the Products are ready for dispatch. If the Client requires additional testing to be carried out, this must be agreed in writing, and paid for by the Client. If the Products do not comply with the specifications contained in the Order, the Client shall notify Dualsystems Biotech immediately. If such non-compliance turns out to be a defect or deficiency caused by Dualsystems Biotech, Dualsystems Biotech shall have the right to remedy such defect or deficiency in the Products which have been duly reported by the Client within a reasonable period of time of receiving such report. If Dualsystems Biotech fails to remedy such defect or deficiency on time or to an acceptable standard, the Client's exclusive remedy and Dualsystems Biotech' sole liability on any claim, whether in tort, contract or warranty, shall be a reduction of the fees payable by the Client. IN NO EVENT SHALL DUALSYSTEMS BIOTECH BE LIABLE TO ANY PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, OR ADDITIONAL EXPENSES INCURRED), WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE. The liability of Dualsystems Biotech for losses which are caused by Dualsystems Biotech' willful misconduct or gross negligence shall not be limited.

#### **21. Limitation of warranty**

The descriptions of Products in catalogues, analysis reports and other documents issued by Dualsystems Biotech are for identification purposes only, and do not constitute warranties as defined in Article 197 of the Swiss Code of Obligations or any other applicable law. Any additional warranty may only be contained in an Order and must expressly state that the Product concerned has a particular property and must bear a legally valid signature. Products manufactured by Dualsystems Biotech are for the intended purposes only and may not be used otherwise unless specifically agreed to in writing by the parties. Without limiting the generality of the foregoing, the Products may not be used as active pharmaceutical ingredients, for in vivo diagnostic purposes, as food or feed additives, human or veterinary medicines, or cosmetics. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH WITHIN ARTICLE 20, DUALSYSTEMS BIOTECH MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY SAMPLES, SUBSTANCES OR OTHER PRODUCTS MANUFACTURED BY DUALSYSTEMS BIOTECH OR ANY OF ITS AGENTS OR SUBCONTRACTORS. ANY AND ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DECLINED. NO CLAIM, SUIT OR OTHER PROCEEDING MAY BE BROUGHT FOR AN ALLEGED BREACH OF WARRANTY OF DUALSYSTEMS BIOTECH SET FORTH HEREIN MORE THAN TWELVE MONTHS AFTER DELIVERY OF THE SAMPLES, SUBSTANCES OR OTHER PRODUCTS CONCERNED.

## **22. Packaging**

Dualsystems Biotech shall provide suitable packaging for the Products. Packaging shall be charged for separately.

## **23. Carriage and insurance**

Products are supplied "CPT" as defined in Incoterms 2000 to the destination named in the Order unless otherwise agreed in writing by the parties. Dualsystems Biotech can arrange carriage and insurance for an additional charge.

## **24. Transfer of possession and risk**

Possession and risk shall pass to the Client on delivery of the Products to any common carrier. If dispatch is delayed at the Client's request, or for other reasons beyond the control of Dualsystems Biotech, risks shall pass to the Client on the date originally scheduled for delivery to a common carrier.

## **25. Retention of ownership**

All Products shall remain the sole and exclusive property of Dualsystems Biotech as long as any payments are still outstanding and due to Dualsystems Biotech.

Zürich, Switzerland, January 1, 2011