

# General Terms and Conditions of FyoniBio GmbH

## Part 1: General Terms and Conditions

### Section 1 General Provisions, Scope of Application

- (1) These General Terms and Conditions ("**GTC**") exclusively apply to all business transactions between FyoniBio GmbH ("**FyoniBio**") on the one side and its customers ("**Customers**") on the other side if the Customer is an entrepreneur as defined by Section 14 of the German Civil Code ("**BGB**"), a legal entity under public law or a special fund under public law.
- (2) These GTC specifically, but not exclusively, apply to business transactions where the Customer commissions
  - a. research and development works, any and all chemical biotechnological pharmaceutical and/or physical-technological, development/modification works, such as the setting up of cell banks, performance of analyses, studies and/or assays, formulation and/or (pre-)clinical services, where FyoniBio does not owe the actual achievement of the project and/or research and development objective on account of performance but only the application of greatest care ("**Services**") as well as the supply of the results of such Services, including reports containing such results ("**Results**"); and/or
  - b. development objectives to be achieved in terms of success within the scope of research and development works ("**Works**") if and to the extent the achievement of such objective has been expressly agreed upon between the parties in writing notwithstanding lit. a.; and/or
  - c. the sale and/or delivery of products ("**Products**"); and/or
  - d. services other than those described in lit. a through c. and/or or a combination thereof with regard to which no specific contractual agreement is entered into in accordance with para. 6.

In these GTC, "**Services**" mean any kind of FyoniBio's activities unless the term is expressly described otherwise.

- (3) These GTC comprise four parts. Part 1 governs the general terms and conditions, Part 2 the additional terms and conditions for the sale and delivery of Products, Part 3 the additional terms and conditions for service contracts and Part 4 the additional terms and conditions for contracts of work. Unless expressly provided otherwise, the provisions of the general part 1 shall apply additionally to the provision of the separately listed services in parts 2 to 4.
- (4) These GTC further apply as amended as master agreement also to all future contracts on Services, Works and Products with the same Customer without FyoniBio having to refer to them again in each individual case; FyoniBio will promptly notify the Customer in this case of any amendment hereof.
- (5) These GTC apply exclusively. Any differing, conflicting or supplementary terms and conditions of the Customer do not become part of the contract even if FyoniBio has been notified thereof and not objected to them separately in the individual case, except if such terms and conditions have been expressly approved by FyoniBio in writing. Even if FyoniBio refers to a letter containing or referring to terms and conditions of the Customer or a third party, no approval of their applicability can be derived therefrom.

- (6) Individual agreements entered into by the Customer and FyoniBio in the individual case always take precedence over these GTC. The contents of such agreement require a written agreement or FyoniBio's written acknowledgement.
- (7) Legally relevant declarations and notices to be made by the Customer to FyoniBio after the conclusion of the contract (e.g. fixing of a period, notices of defects, notices of rescission or reduction) have to be made in writing in order to be effective.
- (8) Any reference to the applicability of statutory provisions is made only for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these GTC.

## **Section 2 Offer and Conclusion of Contract**

- (1) Offers and price lists by FyoniBio are non-binding and without obligation unless they have been expressly marked as being binding.
- (2) By placing the order, the Customer declares to intend to purchase the ordered Products and/or to commission the requested Works, Services or other performance. FyoniBio is entitled to accept the underlying offer to enter into a contract of the order and/or request within a period of two (2) weeks after receipt of such order and/or request. Acceptance of the order and/or request may be declared vis-à-vis the Customer in writing, in text form, in electronic form or by delivery in case of Products.
- (3) The scope of the contractually owed delivery and/or performance is subject to the confirmation of the order by FyoniBio, if made, including these GTC. Oral undertakings or agreements made prior to the confirmation of the order are not binding and are superseded by the confirmation of the order unless they are expressly marked as being binding. Section 1(6) hereof shall remain unaffected.
- (4) Additional agreements, promises of characteristics and order changes require our confirmation in text form. Public statements, promotions or advertising do not constitute a contractual statement of characteristics and quality. The documents belonging to the offer, such as illustrations, drawings, weight and dimensional data, are only approximate unless we have expressly designated them as binding.
- (5) FyoniBio reserves any and all rights (including but not limited to property rights and copyrights) in the documentation provided to the Customer in connection with the order, such as service descriptions and work schedules ("**Documentation**"). This Documentation must not be made available to third parties without FyoniBio's prior approval and has to be returned to FyoniBio upon its request without undue delay.

## **Section 3 Performance Periods and Dates, Default**

- (1) Performance periods and dates are individually agreed upon and specified upon the acceptance of the order or assignment. If no performance period and date has been specified, the period shall depend on the respective average time customary in the sector for the service to be rendered by FyoniBio and is, if the average time customary in the sector is not shorter, at least eight (8) weeks as from the conclusion of the contract, otherwise the average time customary in the sector applies. If and to the extent the shipping of the Products has been agreed upon, the performance periods and dates refer to the time the Products are delivered to the carrier, forwarding agent or other third party entrusted with the transport.
- (2) Performance periods and dates are only binding if they have been agreed upon in the contract as binding and if the Customer has provided FyoniBio with all information and Documentation required for the performance of such Service in due time. In the event of additional or

supplementary agreements entered into at a later point in time, the performance periods and dates respectively shall be extended or rescheduled accordingly. As long as the Customer defaults in performing an obligation vis-à-vis FyoniBio, FyoniBio's obligation to perform shall be suspended. In case of the Customer's culpable breach of duties to cooperate, FyoniBio shall be entitled to claim compensation of the incurred damage including extra expenses, if applicable. Any further claims shall be reserved.

- (3) Changes or extensions to the original order scope agreed after conclusion of the contract extend or postpone the original delivery periods or dates to a reasonable extent, even without the need for a separate notification.
- (4) Unless otherwise agreed upon, the Customer has to call off the ordered Products by no later than three months after the order. If the Products are not called off in due time, FyoniBio may rescind the contract and claim damages after an additional period set by it has expired without any results.
- (5) If and to the extent FyoniBio is not able to meet binding performance periods and dates for reasons for which it is not responsible (unavailability of the Service), it will notify the Customer thereof without undue delay and inform him of the expected new performance period. The performance periods and dates respectively shall be extended or rescheduled by the length of the unavailability of the Service. A Service shall be deemed to be unavailable within this meaning particularly in case of unforeseeable, unavoidable circumstances and events which are outside FyoniBio's sphere of influence, such as acts of God, war, natural disasters or labour disputes, which release FyoniBio from its obligation to make timely performance for the duration of such event. Performance periods and dates respectively shall be extended or rescheduled by the length of the disturbance and the Customer will be notified of the occurrence of such disturbance in a reasonable manner. If the end of a disturbance is not foreseeable or if a disturbance continues for more than two months, each party shall be entitled to rescind or terminate the contract. Claims for damages shall be excluded unless FyoniBio acted intentionally or grossly negligently.
- (6) The occurrence of default on the part of FyoniBio is subject to statutory provisions.

#### **Section 4 Prices and Terms of Payment**

- (1) Unless otherwise expressly agreed upon, the current prices according to FyoniBio's price list applicable at the date of the conclusion of the contract apply to any and all Services specified therein.
- (2) If the parties have not expressly agreed upon a remuneration and if the price list applicable at the date of the conclusion of the contract does not contain a price for the agreed Service, the customary remuneration shall be deemed to be agreed upon; if Services are based on FTEs ("full-time equivalent"), FyoniBio's standard FTE rate applies which is based on a full-time equivalent worker performing 1,750 hours of scientific or technical work per year. Travel and accommodation costs, costs for specific tools or materials and costs for third-party services as well as all other indirect expenses will be reimbursed separately and in advance unless otherwise agreed upon in writing.
- (3) All prices for deliveries are in euro ex works exclusive of the respective statutory value-added or sales tax or other local taxes. Actually incurred packaging, shipping and transport costs of the delivery shall be invoiced separately to and be payable by the Customer. The packaging will not be taken back. If we are legally obliged to take back packaging, the customer shall bear the costs of this.

Customs duties, fees, taxes and other public charges, if any, shall be borne by the Customer.

- (4) Invoiced amounts are due and payable within thirty (30) days after issuance of the invoice and delivery and/or performance without deductions unless otherwise agreed upon in writing or a different practice exists in the sector; payment shall be deemed to have been made in due time

upon FyoniBio's receipt of the payment. Upon expiration of the abovementioned payment term, the Customer shall be in default.

- (5) FyoniBio may request a prepayment from the Customer directly after the conclusion of the contract which will be outlined in the proposal.

The failure to make prepayment constitutes a right of retention (*Zurückbehaltungsrecht*)/right to refuse performance (*Leistungsverweigerungsrecht*) on the part of FyoniBio. In case of late prepayment, the binding performance period extends in accordance with the delay.

- (6) If the Customer fails to pay on the due date, FyoniBio shall be entitled to charge default interest at the applicable rate. FyoniBio expressly reserves the right to prove and assert higher damage caused by default. In the relationship with businessmen, FyoniBio's claim for commercial interest for due payments (Section 353 of the German Commercial Code ("**HGB**") shall remain unaffected. If the customer is in delay, we are free to withhold further services or deliveries or to deliver or execute them only in the case of advance payment.
- (7) The Customer is only entitled to offset counter-claims found to be undisputed or final and absolute.
- (8) The Customer has a right of retention if his counter-claim is based on the same contract and if it is found to be final and absolute.
- (9) If FyoniBio becomes aware of the risk of the Customer's impossibility to perform (*mangelnde Leistungsfähigkeit*) after the conclusion of the contract, it shall be entitled to make outstanding performance only against prepayment or the provision of security. If the prepayment has not been made or the security not provided even after expiry of a reasonable additional period, FyoniBio shall be entitled to totally or partially rescind individual or all affected contracts. FyoniBio shall be free to exercise further rights.
- (10) Payment instructions, checks and bills of exchange will only be accepted if expressly agreed in writing in advance and only on account of performance. Collection charges and other costs shall be borne by the customer.
- (11) If the customer is domiciled in Germany, the following applies: For set-off in the event of insolvency, the customer and we enter into the following agreement in accordance with § 94 InsO: In the event of the customer's insolvency, all our claims against the customer shall become due for payment upon the opening of insolvency proceedings, even if they would otherwise not be due for payment at that time. In the event of a court order for provisional insolvency proceedings, the due date shall be deemed to be the date of the court order. In the reverse case, this also applies to claims of the customer against us.

## **Section 5**

### **Customer's Duty to Cooperate**

- (1) The Customer will support FyoniBio in the performance of the contractually owed Services; such support shall include the provision of information, Documentation, data and materials which are available to the Customer and which may be necessary or useful to perform the contractually owed Services. The Customer has to ensure that FyoniBio is provided in due time and without specific request with any and all information, Documentation, data and materials which are necessary to perform the contractually owed Services and that it is notified of any and all circumstances and events which may affect the performance of the contractually owed Services.

The Customer has to particularly notify FyoniBio of potential risks in connection with the materials to be examined or manufactured and explain applicable public or operational safety

regulations and related confidential operational issues which have to be taken into consideration when performing the contractually owed Services.

- (2) The Customer has to notify FyoniBio without undue delay if he obtains knowledge that Services, Products or Results possibly infringe intellectual property rights of third parties or that third parties possibly infringe FyoniBio's intellectual property rights. Any claim for indemnification pursuant to section 8 shall not be affected thereby.

## **Section 6 Storage of Samples from the Customer, Taking and Storage of Samples from Deliveries**

- (1) Unless otherwise agreed upon by the parties in writing, samples provided by the Customer for examination or further processing in connection with the contract will be stored by FyoniBio for a maximum period of three (3) months after termination of the contract insofar as the nature or quality of the sample permits or, if a longer storage period is provided for by law, in accordance with statutory provisions. After this period, samples
  - a. will be destroyed at the Customer's expense; this particularly applies if specific disposal is required due to statutory provisions; or
  - b. will be returned to the Customer for disposal at his expense.
- (2) FyoniBio will take samples of Product shipments in case of Product shipments ordered by the Customer to the extent legally or contractually provided for, before sending them to the Customer and will store such samples for a minimum period of two (2) years unless mandatory statutory provisions provide for a longer storage period.

## **Section 7 Limitation of Liability, Damages**

- (1) Unless otherwise provided for by these GTC including the following provisions, particularly Parts 2 through 4, FyoniBio shall be liable for a breach of contractual and non-contractual obligations pursuant to applicable statutory provisions.
- (2) FyoniBio and its vicarious agents shall be liable to pay damages - irrespective of the legal ground - in case of intent or gross negligence. FyoniBio's liability in case of slight negligence is limited to
  - a. damages resulting from the injury to life, body or health,
  - b. damages resulting from a breach of a material contractual duty (a duty the compliance of which makes the proper execution of the contract possible in the first place and on which the contracting partner regularly relies and may rely (Cardinal obligations)); in this case, FyoniBio's liability, however, is limited to the compensation of the foreseeable, typically caused damage.
- (3) The limitation of liability as set out above shall not apply if FyoniBio or its vicarious agent fraudulently concealed a defect or assumed a warrant for the quality of the Product, the Work and the Service respectively. This shall apply *mutatis mutandis* to the Customer's claims under the German Product Liability Act ("**ProdHaftG**") or the German Drug Law ("**AMG**").
- (4) If FyoniBio is liable for slight negligence, the duty to pay damages for material damage and further pecuniary losses resulting therefrom shall be limited to the lesser of the order value (in case of master agreements containing a call-off clause, the value of the quantity called off) or the sum insured under the respective liability insurance even if material contractual duties have been breached.

- (5) The Customer is obliged to take appropriate measures to ward off or mitigate damages.
- (6) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

### **Section 8 Indemnification**

- (1) The Customer undertakes to indemnify, hold harmless and defend FyoniBio and its affiliates, employees and agents against any and all claims based on an infringement of third-party rights arising from the information, Documentation, data and material provided by the Customer in connection with the contract, unless FyoniBio, its affiliates, employees, officers or directors acted intentionally or grossly negligently. FyoniBio is not obliged to carry out an inquiry or review of third-party rights unless such inquiry or review has been expressly agreed upon by the parties.
- (2) FyoniBio will notify the Customer in due time in writing of any third-party claims and the Customer is entitled to defend himself against such claims at its own expense, to take control of the proceedings and to settle claims by conciliation.

### **Section 9 Intellectual Property, Restrictions on Use**

- (1) Unless otherwise agreed upon by the parties in writing, each party is and shall remain the exclusive owner of any patent rights, know-how and other intellectual property rights controlled by such party and having already existed before or created outside the respective contract ("**Background Technology**"). If and to the extent FyoniBio's Background Technology is inseparably connected to the Foreground Technology pursuant to para. 2 and mandatorily required for the Customer to use the Results, the Customer shall be entitled to demand the conclusion of a licence agreement on the non-exclusive use of such Background Technology on reasonable and customary terms and conditions.
- (2) To the extent FyoniBio requires the Customer's Background Technology to perform its services, the Customer will grant FyoniBio for the term and exclusively for purposes of the contract a licence in such Background Technology which is free of charge, not exclusive, not assignable and not sublicensable.
- (3) Unless otherwise agreed upon by the parties in writing, FyoniBio shall retain title to any and all Results, intermediate and final results as well as any and all processes created by FyoniBio within the scope of the execution and during the term of the contract as well as any and all rights therein (including copyrights, if any) ("**Foreground Technology**") - to the extent legally permissible - and that are deemed to be confidential information of FyoniBio. If glyco-optimised and humanised biological material and other inventions, discoveries or improvements are made by a contracting party which are not covered by the existing patents, the statutory provisions shall apply. Upon FyoniBio's request, the Customer, however, undertakes to transfer the invention and/or his share in the invention against payment of a reasonable remuneration. If the Customer and FyoniBio are co-author of a work as defined by the German Copyright Act ("**UrhG**"), the Customer shall waive its share in the exploitation rights (Section 8(4) *UrhG*).
- (4) FyoniBio's Services may contain products the use of which by the Customer may be subject to restrictions under patent or licence law. For details for such restrictions, please see FyoniBio's respective product specifications, the respective package insert or FyoniBio's website, as the case may be. The Customer may also request such details prior or after the conclusion of the contract.

## **Section 10 Confidentiality**

- (1) Each party will use its reasonable and required efforts to protect the other party's confidential information applying at least the same standard of care that applies to its own confidential information but in no event less than the usual and customary care than applied to the protection of similar confidential information. Each party will ensure that its employees, agents and contractors observe this confidentiality provision. Subject to section 10(2), confidential information of the Customer shall particularly include the Results provided by FyoniBio to him. Confidential information of FyoniBio shall include the Documentation.
- (2) The restrictions on use and disclosure set forth above do not apply to confidential information of the disclosing party that
  - a. has already been known to the receiving party prior to the disclosure of the information by the disclosing party as evidenced by written documents pre-dating the receiving party's receipt of such confidential information; or
  - b. is public knowledge at the time of its disclosure to the receiving party or became public knowledge after its disclosure to the receiving party through no act or omission by or on behalf of the receiving party; or
  - c. is disclosed or made available to the receiving party by a third party which, to the receiving party's knowledge, was under no direct or indirect obligation vis-à-vis the disclosing party to keep secret such confidential information at the time of such disclosure to the receiving party; or
  - d. is independently developed by the receiving party without using or benefiting from the confidential information disclosed to the receiving party; or
  - e. is required to be disclosed to comply with applicable laws or regulations or court or administrative orders, provided that the receiving party promptly notifies the disclosing party thereof and uses its best efforts to limit the disclosure to the necessary minimum.
- (3) Each party's obligation to protect the other party's confidential information expires ten (10) years after the date of the conclusion of the respective contract.
- (4) Upon request of the other party, the party receiving the confidential information has to return or destroy any and all documents and Documentation containing confidential information as defined above as well as any and all copies thereof within a reasonable period of time and at the other party's expense, unless otherwise provided for by statutory preservation regulations. In case of documents that cannot be handed over and that contain confidential information, such as hard disks or the like, the receiving party has to delete or otherwise destroy the respective documents. Upon request of the other party, the receiving party will promptly notify the other party of the return, deletion and/or destruction of any and all documents and papers in accordance with the above obligation.
- (5) The provisions of this section shall not apply to the extent the parties have otherwise agreed upon in writing.

## **Section 11 Final Provisions**

- (1) These GTC are subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Sales Convention.
- (2) Exclusive place of jurisdiction for any and all disputes arising under or in connection with the parties' contractual relationship, including these GTC, shall, to the extent the Customer is an entrepreneur as defined by the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, be Berlin.

This also applies if the Customer has no general place of jurisdiction within Germany or if his place of business, residence or habitual abode is unknown at the time the action is commenced. FyoniBio shall, however, also be entitled to commence an action at the Customer's general place of jurisdiction or place of performance.

Mandatory, statutory provisions regarding the exclusive place of jurisdiction shall not be affected thereby.

- (3) A German and an English version hereof have been submitted to the Customer. In case of conflicts between the German and the English version, the German version hereof shall prevail.
- (4) We reserve the right to update and adapt these terms and conditions at reasonable intervals at our discretion. The respective current version shall apply.

## **Part 2: Additional Terms and Conditions for Sales and Deliveries**

### **Section 1 Scope of Application**

- (1) These Additional Terms and Conditions for Sales and Deliveries ("**Sales Terms**") apply in addition to the GTC (printed above) to the extent FyoniBio undertakes to deliver Products to the Customer (Sections 433 et seq. of the German Civil Code ("**BGB**"). The Sales Terms also apply to contracts pursuant to which movable things to be manufactured or produced are to be delivered (Section 651 *BGB*).
- (2) In the event of conflicts between the Sales Terms and the GTC in the individual case, the Sales Terms shall prevail to the extent required to resolve such conflicts.

### **Section 2 Conclusion of contract**

Our acceptance period according to § 2 Abs. 2 of the General Terms and Conditions of Business only begins when the customer has provided evidence, in addition to his order, that he is entitled to receive the ordered products. A special request on our part is not required for this.

### **Section 3 Performance by Instalments**

FyoniBio is only authorized to make performance by instalments if

- the delivery by instalments can be used by the Customer within the scope of the intended contractual use;
- the delivery of the rest of the ordered Products is ensured and
- the Customer does not incur considerable extra efforts or expenses thereby (unless FyoniBio agrees in writing to bear such costs).

### **Section 4 Passing of Risk, Default of Acceptance**

- (1) FyoniBio will deliver the Products together with a report. Unless otherwise agreed upon by the parties, all deliveries of the Products are EXW FyoniBio's production site (Incoterms 2020).



- (2) The Customer's default of accepting delivery is subject to statutory provisions. Should the Customer be in default of acceptance of delivery or should he breach his other obligations to cooperate with FyoniBio, FyoniBio shall be entitled, without prejudice to its other rights, to reasonably store the Products at the Customer's risk and expense or to rescind the contract or claim damages in accordance with statutory provisions, particularly after an additional period has expired without any results.
- (3) Should deliveries by FyoniBio be late, the Customer shall only be entitled to rescind the contract if FyoniBio is responsible for the delay and if a reasonable additional period for delivery set by the Customer has expired without any results.

### **Section 5 Quality, Customer's Rights in case of Defects, Duty to Inspect the Products**

- (1) FyoniBio warrants that the quality of its Products is in accordance with the accompanying product information as well as FyoniBio's specifications. These specifications are based on analytical methods and procedures of FyoniBio. Unless otherwise contractually agreed upon, FyoniBio only owes Products being suitable and having the quality for the purpose as is usual and customary for items of the same kind and which the Customer may expect from such kind of item.
- (2) Public statements, recommendations or advertising do not constitute a contractual statement of quality. The documents belonging to the offer, such as illustrations, drawings, weight and dimension specifications are only approximately authoritative, unless we have expressly designated them as binding. No liability is assumed for public statements made by the manufacturer or other third parties. Other documents (e.g. brochures, catalogues, cover letters, price lists, technical data or similar) do not lead to an agreement as to quality, unless expressly agreed in writing.
- (3) FyoniBio does not assume any warranty that its Products do not infringe third-party intellectual property rights to the extent the Product was manufactured, sold and/or delivered in accordance with the specifications and/or the Customer's information, Documentation, data and material and FyoniBio demonstrates that it is not liable with regard to the infringement of the intellectual property right. Section 8 of Part 1 of the GTC (Indemnification) shall apply.
- (4) Any of the Customer's claims based on defects requires his compliance with his statutory duties to inspect the Products and give notice of defects (Section 377, 381 of the German Commercial Code ("**HGB**")). The Customer has to promptly notify FyoniBio in writing of any defects discovered during the inspection or later. Notice of defects shall be deemed to have been made in due time if it is made within one week, whereat the due posting of the notice shall be sufficient to observe the time limit. Regardless of such duties to inspect the goods and give notice of defects, the Customer has to notify FyoniBio in writing of obvious defects (including wrong or short delivery) within one week after delivery, whereat the due posting of the notice shall be sufficient to observe the time limit also in this case. If the Customer fails to properly inspect the Products, FyoniBio shall not be liable for the defect not notified by the Customer.
- (5) In each case of a notice of defects, FyoniBio shall be entitled to inspect and examine the rejected Products.
- (6) Should the Product be defective, FyoniBio shall first assume warranty at its option by way of repair or substitute delivery.
- (7) The Customer has to grant FyoniBio the required period of time and opportunity to make supplementary performance, particularly to return the rejected Product for purposes of inspection. In the event of substitute delivery, the Customer has to return the defective Product in accordance with statutory provisions. Supplementary performance neither includes the disassembly of the defective Product nor the new assembly if FyoniBio had not been obliged to assemble the Product from the beginning.

- (8) If supplementary performance fails, is unreasonable for the Customer or FyoniBio has refused it pursuant to statutory provisions, the Customer's rights are subject to statutory provisions in consideration of section 7 of Part 1 of the GTC (Limitation of Liability, Damages).
- (9) The Customer shall not have any claims based on a Product being free of defects if the defect was caused by the Customer or a third party and if FyoniBio is not responsible for the respective defect. This specifically applies if the Customer or a third party has modified the Product or used reagents not suitable for the Product.
- (10) Guarantees in the legal sense are not given by us.

## Section 6 Reservation of Title

- (1) FyoniBio reserves title to the sold Products until full payment of any and all - including future - receivables resulting from the business transaction between FyoniBio and the Customer. This also applies if payments have been made for specific Products designated by the Customer.
- (2) The customer is obliged to handle the purchased goods with care. In particular, he is obliged to insure it sufficiently at its replacement value against fire, water damage and burglary and to keep it insured at his own expense. If maintenance and inspection work is necessary, the customer must carry it out in good time at his own expense. As long as a debt from us exists, we are entitled to demand information from the customer at any time as to which goods delivered under reservation of title are still in his possession and where they are located. We are also entitled to inspect these goods at any time at the place where they are located. In the event of insolvency proceedings, the customer is obliged to mark the goods as our property for any third party by means of signs or in any other way.
- (3) Any Products subject to a reservation of title ("**Retained Products**") may neither be pledged to a third party nor provided as security nor otherwise encumbered by third-party rights until full payment of the secured receivables.
- (4) The Customer is obliged to promptly notify FyoniBio in writing of any attachment of the Retained Products by a third party, including but not limited to a pledge, as well as of any other third-party detriment to FyoniBio's security interest and damage or destruction of the Products, if any. The Customer has to hand-over to FyoniBio any Documentation required to intervene, to assist FyoniBio in such measure to the extent reasonable and to bear any reasonable intervention costs incurred by FyoniBio.
- (5) The Customer is entitled to resell the Retained Products in the ordinary course of business unless he has already assigned claims from such resale to a third party. He shall be obliged to reserve title vis-à-vis the purchaser until full payment. Furthermore, the Customer hereby assigns any and all claims against the purchaser in connection with the resale of the Retained Products to FyoniBio to secure the secured receivables. FyoniBio hereby accepts the assignment.
- (6) After assignment of the claims, the Customer shall be entitled to collect the receivables from any resale. FyoniBio's collecting power shall not be affected thereby. As long as the Customer properly observes his payment obligation, FyoniBio will not assert any claims by itself. Upon FyoniBio's request, the Customer has to disclose the third-party debtor and notify him of the assignment. Regardless thereof, FyoniBio shall also be entitled to notify the thirdparty debtor of any assignment. The Customer undertakes not to assign any receivables from the resale of the Retained Products to third parties, not to refer to defences under an existing prohibition of assignment, if any, and not to agree upon a prohibition of assignment with the third-party debtor.
- (7) The Customer is entitled to treat or process the Retained Products. The treatment or procession of the Retained Products by the Customer shall always occur on behalf and by order of FyoniBio. If the Retained Products are processed by using items which are not from FyoniBio, FyoniBio shall acquire joint title to the new item in proportion of the value of the goods delivered by

FyoniBio to the value of the other processed items. Para. 1, 4 and 5 shall apply *mutatis mutandis* to the new item created on FyoniBio's behalf and FyoniBio's joint title respectively. This shall also be true if the Retained Products are connected or mixed with other items which are not from FyoniBio. If FyoniBio's title expires due to such connection or mixing, the Customer hereby assigns any title he may have to the extent of the value of the Retained Products. Para. 1, 4 and 5 shall also in this case apply *mutatis mutandis* to any arising joint title.

- (8) FyoniBio hereby undertakes to release the provided security at its option insofar as its value exceeds the value of the claim to be secured by more than 10%.
- (9) In case of an act performed by the Customer contrary to the contract, including but not limited in the event of a default in payment or breach of an obligation pursuant to para. 2 and 3 of this section, FyoniBio shall be entitled to rescind the contract in accordance with statutory provisions and to claim return of the Retained Products on the basis of the reservation of title and rescission of the contract. If the Customer fails to pay the purchase price, FyoniBio may exercise such rights only if it has set a reasonable period for payment which has expired without any results or if the setting of such period is not required under statutory provisions.

### **Section 7 Resale and Delivery**

- (1) The Customer is obliged to comply with applicable laws, including but not limited to the German Act against Unfair Competition ("**UWG**") and provisions under medical product law or pharmaceutical provisions on his own responsibility when he resells or delivers FyoniBio's Products.
- (2) Para. 1 also applies if the Customer has processed or mixed FyoniBio's Products with other items.
- (3) The Customer is not entitled to use FyoniBio's registered trademarks for goods not manufactured by FyoniBio or processed Products without FyoniBio's prior written approval.
- (4) Unless otherwise agreed upon, the Customer is entitled to sell and deliver the Products only if they are complete (including packaging, operating manuals, warning notices, etc.).

### **Section 8 Statute of Limitations**

- (1) The mutual claims of the contracting parties shall become time-barred in accordance with statutory provisions unless hereinafter otherwise provided for.
- (2) Notwithstanding Section 438(1)(3) *BGB*, the general limitation period for claims based on defects of material or title shall be one (1) year after delivery and/or the passing of risk. If and to the extent, acceptance has been agreed upon, the statute of limitations commences upon acceptance.
- (3) The statutory statute of limitations for third-party claims for return in rem (*dingliche Herausgabeansprüche Dritter*) (Section 438(1)(1) *BGB*), in case of FyoniBio's intentional behaviour (Section 438(3) *BGB*), for recourse claims of the Supplier (Section 479 *BGB*), under the German Product Liability Act ("**ProdHaftG**") as well as for claims for damages set forth in section 7(2) and (3) of Part 1 shall remain unaffected. In these cases, the statutory statute of limitations shall exclusively apply.

## **Part 3: Additional Terms and Conditions for Service Contracts**

## Section 1 Scope of Application

- (1) These Additional Terms and Conditions for Services ("**Service Terms**") apply in addition to the GTC (printed above) to the extent FyoniBio undertakes to provide Services (Sections 611 et seq. of the German Civil Code ("**BGB**")) as defined by section 1(2)(a) of the GTC.
- (2) In the event of conflicts between the Service Terms and the GTC in the individual case, the Service Terms shall prevail to the extent required to resolve such conflicts.

## Section 2 Results

- (1) FyoniBio will prepare and transmit to the Customer the compiled Results of the Services to be provided to the Customer. Results will be transmitted to the Customer in the form of a final report. Purified, isolated, modified or synthetic materials will be sent to the Customer together with the final report in accordance with the contract and the objective of the project. The Customer will notify FyoniBio in writing if he does not approve the final report within a period of fourteen (14) days after receipt of the final report, whereat this period shall be deemed to have been observed upon FyoniBio's receipt of the notice. Otherwise, the final report shall be deemed to have been approved. The Customer may not unreasonably withhold his approval of such report.
- (2) Unless otherwise agreed upon by the parties in writing, the publication and any other form of dissemination of the Results by the Customer - including in extracts, such as quotations in advertising material - requires FyoniBio's prior written approval.

## Section 3 Warranty, Customer's Rights in case of Insufficient Performance, Statute of Limitations

- (1) FyoniBio will perform the ordered Services according to the current state of science and technology by applying its existing own knowledge and experience or own knowledge and experience gained during the term of the contract and its best efforts .
- (2) Within the scope of performance, FyoniBio shall only owe the proper provision of the Services by applying best care. FyoniBio thus only warrants compliance of the Results specified in the respective report(s) with the results obtained within the scope of the Services according to the current state of scientific knowledge. Otherwise, any warranty shall be excluded. FyoniBio particularly does not assume any warranty for the achievement of the specified objective of the project and/or the fitness of the Results for a specific purpose or the further procession or use of the Results by the Customer. Section 7(2) through (5) of Part 1 shall accordingly apply
- (3) Notwithstanding Section 195 *BGB*, the general limitation period shall be one (1) year as from the statutory commencement of the limitation period (Section 199 *BGB*). Claims under the German Product Liability Act ("**ProdHaftG**") as well as the claims for damages set forth in section 7(2) and (3) of Part 1 of the GTC shall remain unaffected. In these cases, the statutory statute of limitations shall exclusively apply.
- (4) Furthermore, FyoniBio does not assume any warranty that the Services or the use of the Results do not infringe third-party intellectual property rights. Section 8 of Part 1 shall accordingly apply.

## Section 4

### Term, Termination

- (1) Unless the service contract does not have a fixed term or provides otherwise, the contract shall run for a period of six (6) months as from the conclusion of the contract. If neither party terminates the contract by giving at least three (3) months' written notice prior to the expiration of the respective term, the contract shall automatically extend for another six (6) months.
- (2) The parties' statutory right to terminate the contract for cause (*wichtiger Grund*) without prior notice shall remain unaffected.

## Part 4: Additional Terms and Conditions for Contracts of Work

### Section 1 Scope of Application

- (1) These Additional Terms and Conditions for Contracts of Work ("**Terms of Work**") apply in addition to the GTC (printed above) if the Customer requests the creation of a Work as specific result (Section 631 et seq. of the German Civil Code ("**BGB**")) and FyoniBio expressly undertakes to effect such Work.
- (2) In the event of conflicts between the Terms of Work and the GTC in the individual case, the Terms of Work shall prevail to the extent required to resolve such conflicts.

### Section 2 Acceptance, Passing of Risk

- (1) The Customer shall bear the risk of accidental loss of or damage to the Work as from the time of its acceptance.
- (2) If the Customer does not accept the Work, even though the Work is in accordance with the contract, FyoniBio shall be entitled to request the Customer to accept the Work within a reasonable additional period set by it. If the Customer does not accept the Work within the additional period, the Work shall be deemed to have been accepted. Otherwise, the statutory provisions regarding acceptance of works and Section 4(2) of Part 2 referring to a default of acceptance shall apply in case of failed acceptance.
- (3) If the creation of the Work by FyoniBio is delayed, the Customer shall only be entitled to rescind the contract if FyoniBio is responsible for the delay and if a reasonable additional period set by the Customer to create the promised Work has expired without any results.

### Section 3 Quality, Customer's Rights in case of Defects, Duty to Inspect the Work

- (1) FyoniBio will use commercially reasonable efforts according to the current state of scientific knowledge to provide the Work to the Customer as agreed upon by the parties. Unless otherwise contractually agreed upon, FyoniBio only owes the Work being suitable and having the quality for the purpose as is usual and customary for works of the same kind and which the Customer may expect from such kind of work. FyoniBio exclusively warrants compliance with accepted standards of technology, application of scientific care and the provision of the agreed Services by qualified personnel but not the Work's fitness for a particular purpose or for further processing or use of the Work by the Customer unless otherwise expressly agreed upon in the contract.

- (2) Public statements, recommendations or advertising do not constitute a contractual statement of quality. The documents belonging to the offer, such as illustrations, drawings, weight and dimension specifications and other properties are only approximate, unless we have expressly designated them as binding. No liability is assumed for public statements of other third parties. Other documents (e.g. brochures, catalogues, cover letters, price lists, technical data or similar) do not lead to an agreement as to quality, unless expressly agreed in writing.
- (3) The unconditional acceptance of the Work excludes all other rights and claims of the Customer for defects already identifiable at the time of acceptance. The assertion of claims for defects not identifiable at the time of acceptance shall be excluded unless the Customer notifies FyoniBio in writing of the defect without undue delay upon its discovery.
- (4) The Customer's rights in case of defects of the Work shall be subject to the respective provisions of section 4(5) through (8) of the Sales Terms (Part 2).

#### **Section 4 Statute of Limitations**

- (1) The mutual claims of the contracting parties shall become time-barred in accordance with statutory provisions unless hereinafter otherwise provided for.
- (2) Notwithstanding Section 634a(1) *BGB*, the general limitation period for claims based on defects of material or title shall be one (1) year after acceptance.
- (3) The statutory statute of limitations in case of FyoniBio's intentional behaviour (Section 634a(3) *BGB*), for claims under the German Product Liability Act ("**ProdHaftG**") as well as for the claims for damages set forth in section 7(2) and (3) of Part 1 of the GTC shall remain unaffected. In these cases, the statutory statute of limitations shall exclusively apply.