General terms and conditions of ANALYTICON Biotechnologies AG, 35104 Lichtenfels (As of: 15.06.2003)

§ 1 Sphere of application

1. Our deliveries and services are carried out exclusively according to the following conditions. These conditions are exclusively valid. We do not recognise conflicting stipulations on the part of the customer or those diverging from our own stipulations unless we have explicitly agreed to their validity in writing. Our general terms and conditions are also valid should we carry out delivery unreservedly, having been advised of stipulations on the part of the customer which conflict or diverge from our own conditions.
2. Our general terms and conditions are only valid for companies in the sense of § 310 Par. 1 BGB (German Civil Code).
3. Our general terms and conditions are also valid for all future business with the customer.

§ 2 General conditions

1. All agreements reached between our party and our customer for the purpose of execution of this contract are set down in writing in this contract. All business and transactions are only valid once they have been confirmed in writing or, alternatively, through delivery of goods or the remittance of the bill.
2. Specifications and illustrations in brochures and catalogues are only approximations unless they have been explicitly stipulated as being binding.
3. The invalidity of individual contract regulations does not alter the validity of the contract. The parties are bound to substitute a valid condition for an invalid one which comes closest to this condition in terms of economic results and which corresponds best to the purpose of the contract.

§ 3 Quotations, tender documents, product development

1. Our quotations are subject to change without notice, provided that the confirmation of the order does not stipulate otherwise. If the customer order can be qualified as an offer, we can accept it within a period of 4 weeks, e.g. through dispatch of goods or remittance of an order confirmation.
2. We retain the right of ownership and proprietary rights for illustrations, drawings, samples and other documents. This is also valid for such documents that are designated as "confidential". The customer requires our specific permission in writing before passing these documents on to third parties.
3. We reserve the right to develop our products and to deliver the most recent product in all cases without having specifically informed the customer unless otherwise stipulated by conclusive legal regulations (e.g. medicinal products laws).

§ 4 Prices, conditions of payment, default in payment

1. The following is applicable to all deliveries:
   a) Our prices ex works are valid plus VAT at the current level applicable on the day of the submission of the account plus costs for packing and packaging, freight, postal charges and insurance, provided that the confirmation of order does not state otherwise.
   b) In the case of new customers or those whose economic situation we consider to appear insufficient for allowing time of credit for payment, we reserve the right to demand cash in advance or cash on delivery for orders.
   c) Should a fixed date of delivery have been stipulated, the non-compliance with the date of payment on the part of the customer is regarded as default of payment, in other cases following receipt of our letter of reminder, at the latest 30 days following the date of payment and receipt of the invoice. The time limit for payment is considered to have been adhered to if we are in possession of the amount within the allotted time.
   d) Notwithstanding contrary regulations on the part of the customer, payments must be primarily offset against costs and debts already incurred.
   e) The discounting of bills of exchange and checks is left to our discretion and is only effected in payment pending full discharge of the debt. Notwithstanding the acceptance of a bill of exchange, we reserve the right to demand payment of the original account received in exchange for exemption from commitments arising from bills of exchange.
   f) In the case of default of payment on the part of the customer, all outstanding unsettled accounts are to be paid immediately in full, also from other deliveries or services, including those which are not yet due or have previously been deferred. Payment of all accounts received is also due if, following conclusion of the contract, the economic situation of the customer appears to us to be insufficient for allowing time of credit for payment. In this case, we also reserve the right to demand cash in advance for further deliveries and services; should the customer not be willing to pay cash in advance, we reserve the right to bring action for breach of contract or to cancel the contract, in so far as the contract has not yet been fulfilled.
   g) Complaints which have not been specifically recognised by us in writing do not release the customer from the obligation to pay. The customer only reserves the right to withhold payment or set off payment against counterclaims should his counterclaims have been recognised by us, are undisputed or have been legally proven.
   h) Should the customer fall into partial or complete arrears with his financial obligations, he is obliged to pay interest on arrears of an annual rate of 8% over and above the basic interest rate according to the BGB irrespective of all further rights pertaining to our party from this moment onwards, should we not bring evidence of a greater loss. In addition, legal regulations are valid for debtor's delay.
2. The following is additionally valid for delivery <u>within the Federal Republic of Germany</u>:
   a) Our prices are determined by the current valid price list at the time of conclusion of the contract. We deliver free of charge above a net order value of 300 €. Should the customer wish the dispatch to be delivered as rush, express or air cargo delivery, the resulting costs will be charged additionally.
   b) Bills are to be paid up to 14 days after delivery including a 2% cash discount or within 30 days after delivery net cash to our payments office.
3. For deliveries <u>outside the Federal Republic of Germany</u> the following applies additionally to § 4 No. 1:
   a) The price for deliveries outside the Federal Republic of Germany will be regularly agreed in each individual case. Customs duty, consular fees, and further taxes, charges, fees and any other costs ensuing from regulations in force outside the Federal Republic of Germany will be charged to the customer. Any ensuing extra charges for a higher rate of VAT will be charged additionally.
   b) We are only obliged to adhere to foreign regulations regarding packing and packaging, weighing and customs, should the customer have informed us of these regulations in advance. Additional charges resulting from these regulations will be charged to the customer.

§ 5 Delivery, period of delivery, default of delivery

1. In the absence of a specific agreement, we are permitted to make part deliveries.
2. Details concerning the period of delivery are valid from the date of conclusion of the contract. These details are made to the best of our judgement but – unless anything to the contrary has been agreed in writing – without liability. The commencement of our stipulated period of delivery requires the prior clarification of all technical matters and details of implementation.
3. The adherence to our delivery commitments also requires that all necessary permits have been issued and that the customer has fulfilled his obligations punctually and in accordance with regulations. We reserve the right of defence of non-performance of contract. The period of delivery will be extended accordingly should the above-mentioned conditions not have been fulfilled punctually.
4. The decisive factor for compliance with the date of delivery/delivery deadline is the handing over of the delivery to the transport carrier or our notification concerning shipping or collection. Should we be hindered in the punctual delivery of goods through mobilisation, war, revolt, strike, lockout, breakdown, fire, natural disasters, hold-ups in transport, alterations in legal regulations, official measures or regulations or the occurrence of any other unforeseen events which are beyond our control, the period of delivery will be extended accordingly. The same is also applicable if the delay in delivery originates from an action or omission on the part of the customer.
5. Should we be able to foresee that the goods cannot be delivered within the given date, we shall inform the customer immediately, including information on the reasons for delay and, if possible, will state the revised planned date of delivery.
6. Should we be unable to carry out complete or partial delivery through no fault of our own, we reserve the right of rescind or partial rescind.
7. Should the customer delay the delivery, warehouse charges of 1% of the order total can be charged to the customer for each month or part thereof commencing one month following notification of readiness for delivery, unless higher costs can be established. The customer reserves the right to establish that the costs were lower.
8. We assume responsibility according to statutory regulations, in so far as a fixed-date delivery has been agreed upon in the sense of § 286 Par. 2 No. 4 BGB or § 376 HGB (German Commercial Code), or provided that, following a delay in delivery on our part, the customer can prove that he has no further interest in the further fulfilment of the contract. Provided that the delay in delivery does not originate in a deliberate violation of the contract on our part, our liability for the compensation for damages is limited to foreseeable, typically occurring damages. Furthermore we are liable in all cases for a delay in delivery according to current legislation, but exclusively according to the conditions stipulated in § 7 No. 13-17, § 8.

§ 6 Passage of risk, default in acceptance

1. Provided that in the acknowledgement of the order no statement to the contrary has been made, delivery will ensue ex works.
2. The risk of destruction or deterioration of goods is transferred to the customer as soon as the shipment has been handed over to the transport carrier or has left our warehouse to be shipped, also in the case of part deliveries. Should the shipment be delayed according to the customer's wishes or be collected by the customer or on his behalf, the risk is transferred to the customer at point of notification of the shipment or collection. Should there be a default in acceptance or culpable delay by obligor on the part of the customer, the risk is transferred to him at this point at the latest.
3. Shipping and transport are effected at the customer's risk and expense, also when our own vehicles are employed for this purpose. We will undertake the choice of the type of packaging, form of transport and shipping route – under exclusion of all liability – with the thoroughness of a responsible businessman within the framework of the appropriate valid regulations for each form of transport.
4. At the customer's wish, we will provide cover for the delivery in the form of transport insurance. Expenses hereby incurred will be charged to the customer.
5. The customer is not permitted to refuse to accept the delivery in the case of insignificant faults.
6. Should the customer default in the acceptance of delivery or culpably infringe other duties of co-operation, we have the right to demand compensation for damages incurred, including possible costs. We reserve the rights for further claims.

§ 7 Warranty, liability

1. Warranties and warranted qualities only exist in that they are specifically indicated as such. Customary tolerance concerning size, quantity, weight, quality, colour etc. does not constitute an entitlement for complaint. A reference to DIN-Normen (standards laid down by the German Standards Institute), references or other standards do not constitute a guarantee commitment in the absence of specifically arranged agreements for each individual case in writing.
2. Complaints arising from defects cannot be made for natural wear and tear, for damages following the passing of the risk which have occurred through the consequences of faulty or careless treatment, non-observance of the instructions for use, excessive use, improper storage, unsuitable production facilities or specific external influences not provided for in the contract or in the case of the employment of the goods in a method diverging from normal use or employment for a purpose not specifically stated in the contractual agreement.
3. No claims for damage can be made for damages resulting from improper alterations or repair work undertaken by the customer or third parties or from the consequences thereof.
4. A warranty is excluded for used articles with the exception of the case of a guarantee, the intention to deceive or other agreements.
5. Claims arising from defects on the part of the customer can only be made once he has properly fulfilled the requirements of his investigation duty and has given notice of defects according to § 377 HGB. The right to make a claim for defects or missing quantities is recognised as having been made in due time when it has been received in writing within 5 working days following delivery; a complaint regarding concealed faults must be made within 5 working days following discovery of the fault. The transport carrier is obliged to certify an obvious external fault.

For transport by train, post or other parcel or courier services, a certificate is required from the appropriate transport carrier for a claim settlement. The simple return of the goods does not constitute a notification of defects.

6. In the case of faulty goods for which we are liable, we are free to choose the subsequent fulfilment of the contract, either through the repair or correction of faults or the delivery of new goods which are free of defects.
7. Multiple repairs or adjustments are permitted. Should the subsequent fulfilment of the contract be unsuccessful within a reasonable period (§ 440 p. 2 BGB) or should we have refused subsequent fulfilment, the customer is free to demand either cancellation of the contract or reduction of the purchase price.
8. Should the customer bring claims for damages, he must make the goods available to us for the purpose of inspection. The return of goods for inspection can only ensue at our request. The costs for the uninvited return of goods will not be refunded. Should the customer have entrusted us with the apparently faulty goods for the purpose of inspection or the undertaking of repair and/or alteration work and it becomes clear during the course of inspection that there is no fault, the customer is obliged to carry the costs for the inspection of the goods, including the ensuing shipping and packing and packaging costs. Furthermore, in the case of the elimination of faults we are bound to carry all expenditure pertaining to the repair of faults, particularly costs for transport, travelling, labour and materials, providing that these costs are not increased through the transfer of the purchased article to another place than the place of fulfilment.
9. In as far as we have provided a guarantee for the nature and/or durability of the goods or parts thereof for the subject of the contract, we undertake liability within the framework of this guarantee. We are only liable for faults based on the lack of the guaranteed nature or durability of the goods not directly occurring on the object of the contract itself, should the risk of this type of fault be evident through assessment of the nature and durability of the goods.
10. The statutory period of limitation for claims for damages is 12 months following the point of transfer of risks for the delivery of new, non-perishable goods. In the case of the delivery of perishable goods, the statuary period of limitation for claims corresponds to the individually indicated best-before or sell-by date.
11. The statuary period of limitation for compensation concerning delivery according to §§ 478, 479 BGB is not affected; this period is 5 years calculated from the point of delivery of the faulty goods. The right of recourse on the part of the customer against us according to §§ 478, 479 BGB is only valid in as far as the customer has not made an agreement concerning claims for damages over and above the statuary legal levels with his own customers. The extent of the right of recourse on the part of the customer against us according to § 478 Par. 2 BGB corresponds to § 7 No. 8 p. 3.
12. A transfer of compensation claims is only possible following our prior permission in writing.
13. We are liable according to the statutory regulations should the customer assert a claim for damages based on wrongful intent or gross negligence, including wrongful intent or gross negligence on the part of our representatives or servants. In as far as we are not accused of intentional breach of contract, the liability for compensation for damage is limited to foreseeable, typically occurring faults.
14. We are liable according to statutory regulations should we violate a contractual obligation whose adherence is particularly important for the achievement of the purpose of contract (cardinal obligation) through ordinary negligence. In this case however, the liability for compensation for damage is limited to foreseeable, typically occurring faults. Furthermore, we do not undertake liability for simple negligent violations of obligations not of essential importance to the purpose of the contract.
15. In so far as the customer has a right to claim for compensation in place of the service, our liability for compensation for damage is, as also within the scope of § 7 No. 7, limited to foreseeable, typically occurring faults.
16. This excludes the negligent violation of life, body or health; this is also applicable to the obligatory liability according to product liability legislation.
17. Should nothing contrary to the above have been agreed upon, liability is excluded. Exclusions and limitations of liability are also valid in as far as the liability for our legal representatives, senior and other employees is concerned. This has however no connection with a change in the burden of proof to the disadvantage of the customer.

§ 8 Joint and several liability

1. Further liability for compensation for damage than is foreseen according to § 7 is excluded – irrespective of the nature of the claim which is asserted. This is particularly applicable to claims for damage ensuing from indebtedness at the point of conclusion of the contract, other breaches of duty or tortious claims for the compensation of damages to property according to § 823 BGB.
2. The scope of exclusion or limitation of claims for compensation against our party is equally valid for the personal liability for compensation claims concerning our salaried employees, employed persons, colleagues, representatives and other persons employed by us.
3. For the statutory period of limitation for all claims not subject to the statutory period of limitation due to damages to property, a preclusive time limit of 18 months is valid, from the point of knowledge of the damage and identity of the damaging party.

§ 9 Reservation of ownership

1. We retain ownership of the article to be purchased until all payments relating to this business contract have been received from the customer.
2. In the event of violation of the contract on the part of the customer, particularly concerning default of payment, we reserve the right to take back the article to be purchased. The repossession of the article to be purchased does not constitute withdrawal from the contract unless we have declared this specifically in writing. The levy of execution of the article to be purchased through our party automatically constitutes a withdrawal from the contract. The customer carries transport costs, custom duties and other costs ensuing from the repurchase. Following the repurchase of the article, we are authorised to realize this article; the proceeds are to be set off against the obligations on the part of the customer – minus reasonable realization costs.
3. The customer is obliged to handle the article to be purchased carefully; he is particularly obliged to insure this object sufficiently to its original value against damage by fire, water and theft at his own expense. Should servicing and inspection work become necessary, the customer must have this work carried out punctually at his own expense.
4. The customer is obliged to inform us immediately in writing of all seizure through third parties, especially measures of execution and other interference to our property. The customer is obliged to reimburse us for all damage and costs ensuing from an infringement of these obligations and necessary intervention measures following the seizure by third parties.
5. The customer is entitled to resell the article to be purchased according to normal business processes; from this point onwards, he immediately relinquishes to our party all demands ensuing from the resale to his customers or to third parties at the level of the final total of the invoice (incl. VAT), irrespective of whether the article to be purchased was resold without or after conversion. The obligation on the part of the customer for the collection of the debt also remains following transfer of the article. This does not affect the validity of our party's authorisation to collect the debt. We undertake not to collect the debt however as long as the customer fulfils his financial obligations from the received proceeds, does not come into default of payment and particularly as long as no petition for the commencement of proceedings for bankruptcy, settlement or insolvency is lodged against him or in the case of suspension of payments. Should this however be the case, we are entitled to demand that the customer informs us of all relinquished demands and their parties liable, gives a complete statement of all information necessary for collection, makes all appropriate documents available to us and informs the parties liable/third parties of the transfer.
6. We undertake to release our entitled securities should the customer so wish in so far as the recoverable value of our securities exceeds 20% of the demands to be secured; the choice of the demands to be released is incumbent on us.

§ 10 Trademarks

1. It is not permitted to offer or deliver so-called substitute products in place of preparations which come onto the market under our own trademark, or to bring our trademark in association with the word “substitute” and/or bring it into comparison with the names of substitute products in price lists, quotations etc. The use of our trademark in the list of contents on the product itself, the label or for publicity material etc. without written consent for the employment of original preparations (e.g. for manufacturing purposes) is also not permitted.
2. The customer is obliged to impose the obligations as described in § 10 No. 1 on his purchasers and ensure that these are adhered to.
3. Should the customer, his employees or other persons within the influential sphere of the customer violate the obligations described under § 10 No. 1 and 2, the customer is obliged to make a lump-sum compensation payment of 10100 € for each individual violation. It falls to the customer to bring proof that the extent of damage was less than the above-mentioned figure. It falls to our party to bring proof that the extent of damage exceeded the above-mentioned figure.

§ 11 Documentation obligations on the part of the customer

Should the customer resell products delivered by our party, he is obliged to ensure that the batches delivered by our party can be traced in their entire passage up to the consumer. The customer is obliged to impose corresponding obligations on his resellers. The customer is obliged to compensate for damages and expenditure to our party through the negligent violation of these obligations.

§ 12 Place of jurisdiction, relevant laws, official language of contract, place of performance

1. In the case that the customer is a businessman, our registered office is the place of jurisdiction. We can however also bring charges against our customer at the competent court of his commercial domicile.
2. The laws of the Federal Republic of Germany are legally binding; this excludes the validity of the UN purchasing laws, particularly the United Nations treaty on contracts regarding the international sale of moveable property. This is also valid should the customer not be of German nationality or his head office be situated outside Germany.
3. The official language of the contract is German, therefore the German version of the text is legally binding. This is also applicable to the present general terms and conditions and should the customer not be of German nationality or his head office be situated outside Germany and should we have made a translation available in another language for our customer.
4. Provided that the confirmation of order does not stipulate otherwise, our head office constitutes the place of performance for all contractual and legal claims.