

TERMS & CONDITIONS OF SUPPLY AND PROVISIONS OF PRODUCTS & SERVICES

ARTICLE 1. DEFINITIONS

1.1 “Molecular Product(s)” means any molecular products and/or (other) deliverables of the Services (such as for example tailor made vectors and other DNA molecules) provided by e-Zyvec.

1.2 “Client” means the party that purchases/orders Molecular Product(s) and Services from e-Zyvec.

1.3 “Client Materials” has the meaning given to it in Clause 5.1

1.4 “Client Specifications” has the meaning given to it in Clause 3.1. (i)

1.5 “Services” means the genetic engineering services provided by e-Zyvec to a Client

1.6 “e-Zyvec” means the French company e-Zyvec SAS, 70 Rue du Dr Yersin, 59120 LOOS France, RCS Lille Métropole 823064340, SIRET 823064340 00016, TVA FR 26 823064340.

1.7 “Predictive Sequence & Features” has the meaning given to it in Clause 3.1. (iv)

1.8 “DNA Bricks” has the meaning given to it in Clause 3.1. (v)

1.9 “Intellectual Property Rights” means any patent, registered design, copyright, database right, design right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, rights in know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world;

1.10 “Purpose” has the meaning given to it in Clause 5.1

1.11 “Order Confirmation” has the meaning given to it in Clause 3.1. (iii)

ARTICLE 2. APPLICABILITY & ACCEPTANCE

2.1 These Terms & Conditions of supply and provision of products and services (this “**Contract**”) shall govern all orders, for the purchase by a Client from e-Zyvec and supply and provision by e-Zyvec, of Molecular Product(s) and Services (“**Order**”), and shall apply and apply to any and all aspect thereof such as but not limited to: (i) any quotations of e-Zyvec; (ii) all acceptances, acknowledgements or confirmations of a quotation by Client; and (iii) the validation and confirmation of acceptance by the Client of the predictive sequences and features and maps of Molecular Product(s) to be produced and delivered; and (c) Order Confirmation.

2.2. Client will be deemed to have assented to this Contract by ordering Molecular Product(s) or Services. No variation of these terms and conditions will be binding upon e-Zyvec unless made in accordance with Clause 17.2.

2.3 The applicability of any general terms and conditions used by the Client is expressly excluded.

ARTICLE 3. ORDER PROCEDURE

3.1 The order procedure for the provision of Molecular Product(s) and/or Services by e-Zyvec consists of the following steps which must be followed at all times, and e-Zyvec is only bound by the Client’s order after e-Zyvec has confirmed the acceptance of the order in writing].

(i) Client will provide e-Zyvec with a specification of its requirements (hereafter “**Client Specification**”), on the basis of

said Client Specification, and after consultation with the Client, e-Zyvec will define the genetic functions and components of the Molecular Product(s) to be supplied, and Client acknowledges that e-Zyvec and rely on this;

(ii) Based on these defined functions and components, e-Zyvec will provide Client with a quotation for the provision of the Services and Molecular Product(s);

(iii) The Client will have to confirm its acceptance of the quotation. Only after e-Zyvec having received the written confirmation by Client that the Client accepts the quotation for the order (“**Order Confirmation**”), e-Zyvec will proceed to perform next step of the order procedure;

(iv) e-Zyvec will start the internal design process making use proprietary technologies, to generate and provides Client with the predictive DNA sequence and features of the Molecular Product(s) to be assembled and supplied by e-Zyvec (hereafter “**Predictive Sequence & Features**”);

(v) The Client will have to validate the Predictive Sequence & Features. Only after e-Zyvec having received the written confirmation by Client that Client has validated, and Client agrees with the Predictive Sequence & Features for the Molecular Product(s) in question, e-Zyvec will proceed to perform next step of order procedure;

(vi) Once e-Zyvec has received the written confirmation of Client’s agreement with the Predictive Sequence & Features, e-Zyvec will purchase all physical materials and elements required for the assemblage of the Molecular Product(s) in question, such as but not limited to, oligonucleotides, synthetic genes, ORF clones, DNA templates (each and all hereafter the “**DNA Bricks**”) required for the assemblage said Molecular Product(s); and

(vii) Once all required DNA Bricks have been generated or received by e-Zyvec the Molecular Product will be assembled, purified and validated by e-Zyvec, and supplied to Client in accordance with these terms and conditions.

3.2. e-Zyvec may withdraw from the Contract and any step in the Order Procedure at any time (also after receipt of Client’s Order Confirmation) without any liability to Client, upon confirmation in writing to the Client.

ARTICLE 4. PRICES & PAYMENT

4.1 Unless stated otherwise, all prices are in Euros, exclusive of V A T and any other statutory levies.

4.2 e-Zyvec is entitled to require payment from the Client of the entire amount of the Order in advance or upon delivery. Otherwise payment shall occur within ten (30) days after the invoice date, or as otherwise agreed in writing, without any discount, reduction, suspension or set off.

4.3 The Client shall be in default merely by the expiry of a deadline for payment without the need for any demand, notice of default or judicial intervention. In that event, the purchaser shall be liable to pay e-Zyvec default interest equivalent to 2% of the invoiced amount, subject to e-Zyvec’s rights to demand any outstanding amount in full, with immediate effect and subject to any other rights that e-Zyvec may have. The purchaser shall be required to compensate e-Zyvec for all the expenses required to incur for the purposes of collecting the amount which is due, including judicial and extrajudicial



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expenses, which shall at any rate include the actual costs incurred for legal assistance and advice

ARTICLE 5. CUSTOMER OBLIGATIONS

5.1 In case any materials, DNA templates or parts thereof of the Client (hereafter '**Client Materials**') are required by e-Zyvec for the assemblage of Molecular Product(s) or otherwise for the provision of the Services (all hereafter the '**Purpose**'), Client shall promptly deliver or arrange for the prompt delivery to e-Zyvec of all the required Client Materials free of charge, unless otherwise agreed in writing between Client and e-Zyvec.

5.2 Client warrants that: (i) it is entitled to deliver the Client Materials to e-Zyvec for the Purpose; (ii) the Client Materials and any parts thereof may and can be used by e-Zyvec for the Purpose; (iii) that the use of the Client Materials or any parts thereof for the Purpose, either alone or in combination with any other product or (biological) materials, does not infringe upon any Intellectual Property Rights of a third party, and (iv) that the Client Materials are of good quality and fit for the Purpose.

5.3 Client acknowledges and agrees that e-Zyvec relies and will rely the Client Specification and the Client Materials as received by e-Zyvec, and Client shall compensate e-Zyvec in full for all costs made and extra work to be performed by e-Zyvec as a result of Client Specifications and/or Client Materials not being correct, complete, of a good quality or fit for Purpose.

ARTICLE 6. DELIVERY AND TRANSFER OF RISK & TITLE

6.1 Delivery of Molecular Product(s) takes place at e-Zyvec, at either (i) Bât. C9 Cité Scientifique, Avenue Mendeleiev, 59655 Villeneuve d'Ascq Cédex France; or (ii) 70, rue du Docteur Yersin, 59120 Loos France, unless agreed otherwise in writing ('Ex Works' according to Incoterms 2010).

6.2 The delivery date stated in the quotation or as otherwise agreed in writing is approximate and may never be regarded by the Client as a binding deadline.

6.3. e-Zyvec is entitled to make partial deliveries of the required amounts of Molecular Product(s), and to invoice any partial delivery separately.

6.4 Client assumes all responsibility for the importation of the Molecular Product(s), including the obtaining of all required permits, licenses or certificates. E-Zyvec shall in no event be liable for the failure of any government to issue such permits, licenses or certificates.

6.5. Risk of loss or damage to the Molecular Product(s), as well as the obligation to bear any costs relating thereto, shall pass to the Client upon e-Zyvec's making delivery to a carrier at e-Zyvec's facility in good condition.

6.6. Title to the Molecular Product(s) shall pass from e-Zyvec to Client when e-Zyvec has been paid the agreed service fees in full.

ARTICLE 7. AUTHORISED USE

7.1 Molecular Product(s) are provided and sold for laboratory research use only, and not for any diagnostic or therapeutic use or any other use not being laboratory research. Molecular Product(s) are not allowed to be and Client warrants that they will not be administered to humans.

7.2. Customer is free to share the Molecular Product(s) and all other results of the Services with any third party, and reproduce the same as the Client deems fit.

ARTICLE 8. WARRANTIES & DISCLAIMER

8.1 Client represents and warrants that the Client Specifications and any and all Client Materials are correct and without any error, complete, of a good quality and fit for Purpose.

8.2 Because of e-Zyvec being entitled to rely on the Client Specifications and the Client Materials and furthermore due to Client having validated and agreed with the Predictive Sequence & Features of Molecular Product(s) to be supplied, e-Zyvec is relieved from any responsibility or liability with regard to the quality of the Molecular Product(s) supplied, or any defects in the design or other defect in the Molecular Product(s) or the Services as provided.

8.3 All Molecular Product(s) are provided and sold "as is", without representation, warranty or condition of any kind, express or implied statutory or otherwise, however arising (whether by contract, tort, negligence, principles of manufacturer's liability, operation of law, conduct, statement or otherwise), including, without restriction, any implied warranty or condition of quality, merchantability, merchantable quality, durability, title, non-infringement or fitness for a particular purpose.

8.4 Neither e-Zyvec nor Client, under or in connection with the Contract, shall be liable towards each other for any loss of actual or anticipated profits, losses caused by business interruption, loss of goodwill or reputation, or any indirect, incidental, punitive, special or consequential loss or damages ("Indirect Loss") whether such Indirect Loss are based on tort, (including negligence) warranty, contract or any other legal theory. Nothing in this Clause 8.4 shall limit the obligation of Client to indemnify and hold harmless e-Zyvec under Clause 10.1.

ARTICLE 9. INDEMNIFICATION

9.1 Client shall, at your own expense, indemnify, defend and hold e-Zyvec, its directors, officers, employees, agents, sub-contractors, successors and assignees (any such directors, officers, employees, agents, successors and assignees, hereafter '**Indemnitees**') harmless from and against any and all losses, costs, damages and expenses (including, reasonable attorneys' fees and other costs of defending any action, that e-Zyvec or any Indemnitees incur in any way arising out of or relating to:

(a) any breach by Client of Client's obligations under this Contract; (b) any use of the Molecular Product(s); (c) any failure of Client to comply with good laboratory practice, laws, regulations, guidelines or decisions in the handling or use of the Molecular Product(s); (d) any violation or infringement by Client of any Intellectual Property Rights of a third party, in the handling or use of the Molecular Product(s); (e) any claim relating to the quality of the products or an alleged defect or deficiency in the products; or (f) any claim (from a third party) that the use by e-Zyvec of any Client Materials or parts thereof violates or infringes any third party Intellectual Property Rights.

ARTICLE 10. INSURANCE

10.1 The Client shall maintain adequate insurance to cover its liability under this Contract. The insurance policy shall contain a waiver of subrogation against e-Zyvec and its directors, officers, employees, agents, sub-contractor, successors and assignees.

ARTICLE 11. CONFIDENTIALITY

11.1 e-Zyvec and the Client undertake to refrain from publishing or disclosing, in any manner whatsoever, scientific or technical belonging to the other party, of which it may become aware during performance of this Contract, provided this information is not freely available to the general public. In particular, e-Zyvec shall not disclose any information linked to the Client



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Materials or to the information related to the Order, unless otherwise agreed with prior consent. This undertaking shall remain effective for ten (10) years as from the signature date of the Order, notwithstanding the latter's termination or expiry.

11.2 Provided, however, that either party may disclose such terms, conditions or pricing to legal, accounting and professional advisors bound by formal ethical or fiduciary duties requiring such advisors to treat, hold and maintain such information in accordance with the terms and conditions of this Order.

11.3 Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other.

ARTICLE 12. FTO & INTELLECTUAL PROPERTY RIGHTS

12.1 e-Zyvec has not verified the possible existence of third party Intellectual Property Rights which might be infringed as a consequence of the manufacture, use, sale, offering to sale or import of the Molecular Product(s), and e-Zyvec shall not be held liable for any loss or damages in that respect. The provision and sale of Molecular Product(s) or Services under the Contract shall not, by implication or otherwise, convey any license under any intellectual Property Rights and Client expressly assumes all risks of any Intellectual Property infringement.

12.2 e-Zyvec will own and expressly retains the ownership of all tools and technologies, including any Intellectual Property Rights in relation thereto, that have been or will be used or applied by e-Zyvec for the design and production of the Molecular Product(s) and/or the provision of the Services (hereafter "e-Zyvec Background IP"), and the Client shall not have any license or rights with regards to any e-Zyvec Background IP.

12.3 Client will own and remains the owner of the Client Materials including any Intellectual Property Rights in relation thereto, and Client hereby grants e-Zyvec a non-exclusive perpetual, royalty free right and license under any Intellectual Property Rights of Client to use and have used any such Client Materials for the Purpose.

ARTICLE 13 NON SOLICITATION

13.1 For the purpose of this Clause 13.1, "Participating Staff" are employees of e-Zyvec, which are directly or indirectly involved in the preparation, negotiation, execution or performance of the Contract, the provision of the Molecular Product(s) and/or the Services. Customer will not directly or indirectly solicit or endeavor to entice away any Participating Staff of e-Zyvec. This prohibition (i) will not apply to circumstances where the employ in question is responding to a recruitment advertisement, which is publicly available; and (ii) continues until six months after cessation of the delivery of the Molecular products or the Services.

ARTICLE 14 ENTIRE AGREEMENT

14.1 This Contract and any quotation, statement of work, or the like (if any) issued by e-Zyvec to which this Contract is attached, and/or which includes this Contract constitutes the complete and entire statement of all terms, conditions and representations of the agreement between e-Zyvec and Client with respect to its subject matter, and Client acknowledges that it has not relied on any statement, oral or written, made prior to this Contract.

14.2 This Contract shall not be amended unless in writing and signed by the authorized representatives of e-Zyvec and Client.

ARTICLE 15 INVALIDITY OF A PROVISION

15.1 If any provision of this Contract or any part of any provision (in this section called the "Offending Provision") is declared or becomes unenforceable, invalid or illegal for any reason whatsoever including, without limiting the generality of the foregoing, a decision by any competent courts, legislation, statutes, by laws or regulations or any other requirements having the force of law, then the remainder of this Contract will remain in full force and effect as if this Contract had been executed without the Offending Provision.

ARTICLE 16. FORCE MAJEURE

16.1 Any full or partial non-fulfilment will not be an attributable failure by e-Zyvec if the non-fulfilment is the result of a circumstance beyond e-Zyvec's control, foreseeable or not, including but not limited to: war or similar situations, riots, sabotage, boycotts, strikes, occupation, blockades, shortages in raw materials, machine damage, sickness of e-Zyvec staff, failures by suppliers and/or carriers, measures by the government (including foreign governments) such as bans on transport, import, export or manufacturing, natural disaster, adverse weather conditions, lightning strikes, fire, explosion and/or discharges of dangerous substances and gasses.

ARTICLE 17. COMPLIANCE WITH LAWS

17.1 Client represents that it is duly authorized to enter into the Agreement and represents that with respect to its performance hereunder, it will comply with all applicable laws and regulations

ARTICLE 18. APPLICABLE LAW & DISPUTES

18.1 This Contract shall be governed by and be construed in accordance with the laws of France without regard to conflicts of law that would apply a different body of law. The United Nations Convention on Contracts for the International Sale of Goods will not apply in any way to this Contract.

18.2. Save as provided in Clause 18.3, all disputes arising out of or in connection with this Contract, whether in tort, contract, statute or otherwise, including any questions regarding its validity, interpretation, breach or termination shall be finally and exclusively resolved by arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL) in force at the date of this Contract ("Rules"), which Rules are deemed to be incorporated in this Contract by reference. The tribunal shall consist of three (3) arbiters, to be appointed in accordance with the Rules. The seat of arbitration shall be Paris, the language of the arbitration shall be English.

18.3 The provision of Clause 18.2 will not apply to any action or proceeding by e-Zyvec to collect any payment from a Client due to it under this Contract. Further, either party to the Contract will have the right to apply to a court of competent jurisdiction for a preliminary or interim injunction or other equitable relief to preserve the status quo or prevent irreparable harm pending resolution of the matter by arbitration.