General terms and conditions for supplies and services of Reaction Biology Europe GmbH

1. Scope

1.1. These general terms and conditions for supplies and services shall apply for all, including future, business relations of Reaction Biology Europe GmbH, a wholly-owned subsidiary of Reaction Biology Corporation, ("Supplier") and entrepreneurs and companies (Unternehmer), legal persons under public law and special funds under public law ("Purchaser"). The Supplier and the Purchaser hereinafter individually referred to as a "Party" and collectively referred to as "Parties".

1.2. Deviating or supplementary general terms and conditions of the Purchaser are only applicable if and insofar as the Supplier has expressly agreed to them.

2. Conclusion of the Contract/Offers

2.1. All offers of the Supplier are non-binding and subject to change. Only an order by a Purchaser applies as a binding contract offer. The Supplier may accept this contract offer within 2 weeks after receiving it. Acceptance may be declared either in writing (e.g. by order confirmation) or via delivery of the goods to the Purchaser.

2.2. If offers of the Supplier include the implementation of projects with an explorative character, e.g. the production of recombinant proteins according to the Purchaser's specifications or the establishment of biochemical, cellular or animal-testing test models, the results or findings specified in the offer of the Supplier shall only refer to possible findings or results, which may also fail to appear or be negative.

2.3. For in-vivo studies a study protocol is created, which becomes an integral part of the contract with the signing by both Parties and may only be changed by mutual agreement.

3. Prices and Delivery Terms and Conditions

3.1. Unless otherwise agreed, the prices and conditions of the price list of the Supplier applicable at the time of contract conclusion apply along with any additional VAT.

3.2. The delivery takes place ex works warehouse of the Supplier (EXW, Incoterms 2010), where the place of performance is also located. At the request and cost of the Purchaser, the goods may be dispatched to another destination (dispatch purchase).

3.3. The Supplier does not have to take back any transportation packaging or other packaging pursuant to the German Packaging Ordinance ("Verpackungsverordnung"), as it becomes the property of the Purchaser.

3.4. Part deliveries are permissible without an agreement, if the part delivery is suitable for the Purchaser within the scope of the contractual intended purpose, the delivery of the rest of the ordered goods or provision of the performance is ensured and the Purchaser thereby incurs neither significant additional work nor additional costs.

3.5. As long as the Purchaser does not fulfil a due obligation to perform from the business relationship with the Supplier, pursuant to statutory regulations the Supplier has the right to deny the fulfilment of its supply and service obligations.

3.6. If creation of electronic or paper documents is in the Supplier's scope of service, these are carried out in the Supplier's standard format, unless otherwise agreed expressly and for an additional charge.

4. Payment Conditions

4.1. Unless otherwise agreed or specified in the invoice, payment has to be made within 30 days of the invoice date without deductions. The receipt of payment by the Supplier is decisive for the punctuality of a payment.

4.2. The Purchaser may offset against receivables of the Supplier exclusively with undisputed or legally determined counter-claims. A right of retention from previous or other businesses of the ongoing business relationship only exists on account of undisputed or legally determined claims.

4.3. If the Purchaser ceases his/her payments, is in default of payment with a more than significant amount, unless due to circumstances that were not caused by the Purchaser, or other circumstances arise, which imply a substantial deterioration of the Purchaser's ability to pay after conclusion of the contract and which pose a risk to the payment claim, the Supplier is entitled to make all claims from the current business relationship with the Purchaser immediately become payable and demand payment in advance for outstanding deliveries or services from the business relationship, unless the Purchaser provides adequate security.

4.4. For deliveries that are carried out according to agreements or otherwise in a permissible manner in part deliveries, the Supplier is entitled to demand an instalment payment in proportion to the total volume of the order for each part delivery.

5. Delivery Periods and Deadlines

5.1. Insofar as not expressly described as binding, the information on delivery periods is not binding.

5.2. Delivery periods begin with the date of order confirmation and are binding under the condition of timely clarification of all details of the order and timely fulfilment of all obligations of the Purchaser, such as but not limited to provision of test substances, forwarding of solution regulations, authorisation of in-vivo study protocols by countersignature or payment of instalments. Otherwise the delivery period is extended accordingly. This shall not apply if the Supplier is at fault for the delay.

5.3. In events of force majeure and other unforeseeable, extraordinary circumstances such as stoppages, strike, lockout, lack of means of transport, regulatory interventions, energy supply difficulties, missing or delayed delivery, the agreed delivery periods are extended accordingly, provided that the Supplier is not at fault for the occurrence of these circumstances. If the service is rendered impossible or unreasonable by the said circumstances, the Supplier shall be released from his/her delivery obligation.

6. Premature Termination of the Contract

6.1. A free right of termination of the Purchaser for service contracts ("Werkverträge") is excluded, provided that the services of the Supplier are to be rendered within an agreed time period of 100 days maximum.

6.2. If an order for services of the Supplier, e.g. biochemical, cellular or animal-testing studies, is prematurely terminated for reasons not at the fault of the Supplier, the Purchaser shall pay the full amount of remuneration. The Supplier shall only deduct what he/she has saved due to the premature termination.

7. Retention of Title

7.1. Until the satisfaction of all claims that the Supplier is entitled to as part of the business relationship, the goods remain the property of the Supplier (hereinafter: "Reserved Goods").

7.2. The Purchaser shall carefully store the Reserved Goods at his/her own cost as well as insure them appropriately against fire, water damage, burglary and theft. Claims arising from an insured event or unauthorised action regarding the Reserved Goods are assigned by the Purchaser by way of security in the full amount to the Supplier. The Supplier hereby accepts the assignment.

7.3. Any transformation or processing of the Reserved Goods is carried out for the Supplier as the manufacturer as defined in § 950 of the German Civil Code[1], without any obligation on his/her part. The goods which have been transformed and/or processed shall be Reserved Goods as defined in Para. 7.1. In the event of any processing, combination and amalgamation of Reserved Goods with other goods by the Purchaser, the Supplier is entitled to proportionate joint ownership of the new item in the proportion of the invoice value of the Reserved Goods to the invoice value of the other goods used. If the ownership expires due to combination or amalgamation, the Purchaser shall transfer to the Supplier the rights of ownership to which he/she is entitled to the new stock or item to the extent of the invoice value of the Reserved Goods and stores them free of charge for the Supplier. These co-ownership rights shall be regarded as Reserved Goods as described in Para. 7.1.

7.4. The Purchaser is only allowed to sell the Reserved Goods in the normal course of business conforming to his normal terms of business and as long as he/she is not in default, provided that the claims of resale transfer to the Supplier as described in Para. 7.5 to 7.6. He/she is not entitled to other disposals of the Reserved Goods. For the sale of goods, in which the Supplier has co-ownership shares according to Para. 7.3, the part of the claim corresponding to his/her co-ownership share is assigned to him/her.

7.5. The Purchaser is entitled to collect claims arising from resale. This right to collect expires in the event of withdrawal by the Supplier. The Supplier shall only make use of the right of withdrawal if he/she becomes aware of circumstances, from which a substantial deterioration of the Purchaser's ability to pay arises which puts the payment claim in jeopardy. If the Purchaser acts contrary to the agreement (particularly if he/she is in default with the payment of a claim), the Supplier may demand that he/she discloses the assignment and transfers him/her the information and documents required for the collection of the claim.

7.6. The Purchaser shall immediately inform the Supplier of an attachment or other impairments of the Reserved Goods by third parties. The Purchaser shall bear all the costs which must be paid for the annulment of attachment or for return transportation of the Reserved Goods, insofar as they are not reimbursed by third parties.

8. Liability for Material Defects

8.1. If deliveries or services of the Supplier turn out to be defective, the Supplier shall remedy the defect at his/her discretion by eliminating the defect or replacement delivery. The expenses necessary for subsequent fulfilment ("Nacherfüllung"), particularly transport, operational and material costs, are borne by the Supplier; this does not apply if the costs increase because the delivery item is located at a location different to the location of the intended use.

8.2. If the services of the Supplier involve biochemical, cellular or animal-testing studies and the setting of a deadline for subsequent fulfilment for defects is not exceptionally dispensable, the Purchaser must set the Supplier a deadline for subsequent fulfilment of at least a month for biochemical studies, at least two months for cellular studies and at least three months for in-vivo studies.

8.3. If the Purchaser does not immediately give the Supplier the opportunity to verify the material defect, he/she does not provide the rejected goods or samples at request and upon expiry of an appropriate grace period, the Supplier shall not be in default for subsequent fulfilment.

8.4. The Supplier is entitled to make the due subsequent fulfilment dependent on the Purchaser paying the due remuneration. However, the Purchaser is entitled to retain a share of the remuneration that is reasonable in proportion to the defect.

8.5. If the subsequent fulfilment fails, the Purchaser may reduce the remuneration or withdraw from the contract. In the case of an insignificant defect, however, there shall be no right to withdraw. In addition, the Purchaser may claim damages or refund of futile expenses pursuant to Para. 9. Further defect claims are excluded.

8.6. If the defect results from a defective third-party product, the Supplier is entitled to assign his/her claims for defects against his/her suppliers to the Purchaser. In this case claims may only made on the Supplier on the basis of defects if the Purchaser has legally asserted the assigned claims against the sub supplier.

8.7. The limitation period for claims for defects amounts to 12 months (except on malice and subject to Para. 9.5), calculated from the delivery or, if acceptance is required, the acceptance.

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[1] § 950 BGB (German Civil Code): "Processing:
(1) A person who, by processing or transformation of one or more substances, creates a new movable thing acquires the ownership of the new thing, except where the value of the processing or the transformation is substantially less than the value of the substance. Processing also includes writing, drawing, painting, printing, engraving or a similar processing of the surface.
(2) On the acquisition of ownership of the new thing, the existing rights in the substance are extinguished."

9. General Limitation of Liability

9.1. The Supplier shall be liable for infringements of contractual and non-contractual obligations towards the Purchaser (also for his managing employees and other vicarious agents) in cases of wilful intent or gross negligence.

9.2. The Supplier shall be liable for damages due to the infringement of significant contractual obligations, that is, contractual obligations the fulfilment of which defines the agreement and enables its proper fulfilment in the first place, and in the fulfilment of which the contractual partner generally trusts and may trust, even if the Supplier is only guilty of simple negligence.

9.3. If in the cases of Para. 9.1 and 9.2 no intentional misconduct of the Supplier exists, he/she is only liable for typically occurring damages, which the Supplier anticipated as a possible consequence of a contractual infringement upon conclusion of the contract or which he/she should have foreseen in the application of due business care.

9.4. Otherwise liability of the Supplier is excluded.

9.5. The aforementioned limitations of liability do not apply in culpably caused harm to life, body and health, if and insofar as the Supplier has assumed a guarantee, and in cases of mandatory liability according to the Act on Product Liability ("Produkthaftungsgesetz").

9.6. Insofar as the Supplier's liability is excluded or limited, this shall also apply to the personal liability of his employees, legal representatives and vicarious agents.

9.7. Claims for damages according to the above Para. 9.1 to 9.6 become statute-barred within the legal deadlines.

10. Information and Advice

10.1. Information and recommendations of the Supplier are given without obligation and under exclusion of all liability, unless the Supplier has expressly committed himself to giving information and recommendations.

10.2. The Purchaser shall determine whether a delivery or service is also suitable for his/her special requirements before conclusion of the contract under his/her own responsibility.

11. Assignment of Test Substances

If the Purchaser provides the Supplier with test substances for the implementation of an order, both sides shall assume that the Supplier regularly fully consumes the same in the context of the order. If remainders are unconsumed upon completion of the order, the Supplier shall return these at the request and cost of the Purchaser. If a corresponding re-quest does not take place within six months of completion of the order, the Supplier may destroy the remainders.

12. Ownership; access to samples and new materials

12.1. Without limiting the provisions in Para. 11, the delivery of samples and / or materials by the Purchaser to the Supplier shall be a transfer of possession only and shall not constitute a transfer of, or an obligation to transfer, title or ownership in and to any of the delivered samples and / or materials.

12.2. The Supplier agrees to maintain such delivered samples/materials, received from the Purchaser, in its possession under adequate safeguards against release to unauthorised third parties or for any unauthorised use. The Supplier shall not use such delivered samples/materials for commercial or any other purposes not agreed with the Purchaser and, without limiting the foregoing, in particular neither use these samples/materials in any experiments on human subjects, nor investigate the chemical or biological structure and / or composition of these samples/materials, nor conduct investigations concerning the biological and / or physicochemical properties or activities of these samples/materials, in each case if and to the extent that these measures / investigations lie outside the scope of services agreed with the Purchaser.

12.3. Unless otherwise agreed herein, the Supplier will, after fulfilment of an order, return any such samples/materials still in the Suppliers possession to the Purchaser or, at the Purchaser request, destroy these samples/materials. Any costs related to such return/destruction shall be borne by the Purchaser.

13. Confidentiality obligations

13.1. For the duration of their collaboration and a period of 5 years thereafter, the Parties shall treat all documents and information received in writing, electronically, verbally or in another form from the other Party or on behalf of the other Party from third parties on products, materials, methods, technology, pricing, projects, clients, suppliers as well as all other information on operational processes or regarding the business of the other Party, its affiliates within the meaning of Sec. 15 et seqq. of the German Stock Corporation Act (AktG) ("Affiliates") and its clients or suppliers as well as all know-how of a Party and its Affiliates (together "Information") as strictly confidential, keep in confidence from third parties and only use for the purpose of the collaboration with the other Party. The Information may only be used for the purpose for which it was forwarded and may not be used for commercial or any other purposes unless otherwise agreed between the Parties. In particular, all materials transferred by the Purchaser to the Supplier shall be treated as Information of the Purchaser.

13.2. The Parties are not granted any rights or licenses to Information, industrial property rights or expertise of the other Party and its Affiliates through the transmission of Information.

13.3. The Parties shall be entitled to disclose, on a strict need-to-know basis, Information to their responsible employees and their suppliers to whom it is necessary to disclose for the performance of the collaboration between the Parties and provided that the respective employee/supplier is bound by the obligations in this section 13 or any comparable statutory, professional or contractual confidentiality obligation. The imposition of such obligations shall, however, not relieve the Parties of their obligations under this section 13. The Parties shall be equally liable for conduct of their employees / suppliers.

13.4. If Information is disclosed by or on behalf of a Party other than in written or electronic form, then the other Party's obligations of confidentiality and non-use shall only apply if (i) the Information is indicated upon disclosure as being confidential and is then summarized electronically or in writing and provided to the other Party within 30 days after initial disclosure, or (ii) the confidential nature is apparent from context and subject matter.

13.5. The disclosing Party is entitled to demand the return of transmitted Information including all copies thereof at any time without specifying reason. All written records, reports, analyses or similar documents prepared by the receiving Party using such Information shall then be destroyed or deleted. This return/destruction obligation shall not apply if the receiving Party is obliged to retain a copy due to statutory or administrative requirements. Information contained in electronic data backup files also do not have to be deleted if this would only be possible with disproportionate effort or internal compliance requirements prohibit such deletion. Any Information contained in any retained information carriers shall be treated confidentially as long as it is retained. The Parties shall be entitled to voluntarily return any information carriers received at any time.

13.6. The obligations both to keep secret and not to use the Information shall not apply in the event that the respective Information:

a) has been known to the Party prior to disclosure by or on behalf of the other Party, or

b) is or comes into the public domain by publication or otherwise through no breach of a confidentiality obligation by the respective Party; Information shall not be deemed to be in the public domain merely because it may be derived from one or more items which are publicly known, or

c) has been made known to the other Party from a third party free from any obligation of confidentiality and that third party (as far as the receiving Party could reasonably be aware) was not bound by any confidentiality obligation with respect to the Information disclosed, or

d) has been independently developed or created by the other Party without use of the Information received from or on behalf of the other Party.

The burden of proof that any of the above-mentioned exceptions is applicable lies with the Party that claims that the respective exception applies.

In the event that the other Party is required by law, regulation, rule, act or order of any governmental authority or agency to disclose Information received from or on behalf of the other Party, it shall be entitled to do so provided that the Party shall – as far as legally permitted - first notify the other Party of any such required disclosure and limit such disclosure as far as is possible under applicable law. Such disclosure shall, however, not relieve the respective Party of its other obligations contained herein.

14. Existence of Agreement

Neither the Purchaser nor the Supplier shall disclose the existence or nature of this agreement to any third party, and neither the Purchaser nor the Supplier shall use the name of the other in any publicity or advertising in connection with this agreement without the other Party's prior written approval.

15. Place of performance, place of jurisdiction and applicable law

15.1. Unless otherwise agreed, the place of performance for all obligations of both contractual parties is the registered seat of the Supplier.

15.2. The place of jurisdiction is Freiburg im Breisgau. The Supplier shall be entitled to bring an action against the Purchaser even in the registered seat of the Purchaser. The Supplier also has the choice to have any disputes arising out of the business relationship with the Purchaser finally decided according to the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these rules. At the request of the Purchaser, the Supplier shall exercise this right of choice regarding a certain dispute within a time period of a week after receipt of the request by notification to the Purchaser, if the Purchaser wishes to initiate legal action against the Supplier.

15.3. In addition, German law applies to the exclusion of the UN Sales Law (CISG).

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