

Gene Synthesis Conditions of Sale

1. These conditions will apply in addition to the terms and conditions of sale (which can be found at www.thermofisher.com) (**general terms**) if you are purchasing either of (i) gene synthesis services (gene synthesis and/or sequence modification or optimization, subcloning into defined vectors, gene mutagenesis, plasmid preparations and protein production (whereby such protein production expressly exclude antibody or antibody fragment production)), performed by us according to your specifications to obtain **work products** (as defined below) for you as specified in the respective quotation (collectively **gene synthesis services**); and/or (ii) cell line development, transcription activator-like effector design and construction services and antibody or antibody fragment production services as part of protein production services (collectively **additional services**) or any **work products** derived from performance of such **additional services**. Defined terms in bold not otherwise defined in these conditions will have the meaning ascribed to them in the **general terms**. For the purposes of these conditions **work products** shall mean products derived from our performance of either **gene synthesis services** or **additional services** pursuant to the applicable order confirmation and delivered by us to you. In case of inconsistency between **general terms** and the terms set forth herein, the terms set forth herein shall take precedence.

2. We may cancel the **contract** and/or your purchase order if we determine that we need to for biosecurity, biosafety, patent infringement and/or feasibility reasons. If we are not able to complete the gene assembly we can at our sole discretion cancel the respective part of the **contract** and/or your respective purchase order and/or deliver and invoice sub-fragments to you. No **work product**, **gene synthesis services** and/or **additional services** description on the website will be binding on us. We can provide **work products**, **gene synthesis services** and/or **additional services** via sub-contractors. Exception to clause 11.1 second sentence of the **general terms**: in certain cases, upon prior mutual agreement between you and us, you have to bear the costs and expenses that have arisen in connection with your request for the **gene synthesis services**, **additional services** and/or **work products**.

3. You shall not be able to make a claim for breach of warranty where the **work products**, **gene synthesis services** and/or **additional services** contain variations from the data that are reasonable in relation to measures, weights, nature and quality of the **work products**, **gene synthesis services** and/or **additional services**.

4. We guarantee that the *de novo* synthesized gene sequences will be fully sequence verified, with the exception of Strings™ DNA Fragments, which are bulk sequence verified. In rare cases, we will not be able to verify sequences with a high degree of internal repetition or strong secondary structures. If this is the case, we will deliver the final construct length verified if intermediate products have previously been sequence verified. If you are purchasing **work products**, **gene synthesis services** and/or **additional services** we may deliver the sequences in any appropriate cloning vector. We do not accept responsibility for the correctness of the vector backbone sequence, the presence or absence of restriction sites, antibiotic markers, promoters or other sequence elements in the vector backbone.

5. For **gene synthesis services**, **additional services** and **work products** you are responsible for determining if there are any restrictions of use as a result of any third party patents and other proprietary rights and we take no responsibility for this. For the avoidance of doubt and for clarity, no rights are granted under technology owned, developed or licensed by us that we use for **gene synthesis services** and/or **additional services** including but not limited to know how, copyrights, patent applications, patents, trademark applications, trademarks, and any improvements, modifications, design, adaptations, reexaminations, reissues, divisions, continuation, continuation in part or up-upgrades thereof (**gene synthesis technology**) that are not used in the generation of the **work products** or that are not incorporated in the **work products**. We are not obliged to maintain any patent applications or patents on the **gene synthesis technology** and may abandon these patents and patent applications at any time without any reason at our sole discretion.

We agree to assign and do herewith assign all of our rights, titles and interests in and to all **inventions** to you (whereby **inventions** means any composition of matter, device, product, use of product, process, treatment, invention or improvement thereof discovered, first created, made, conceived, or reduced to practice by us, whether patentable or not, in the performance of **gene synthesis services** and/or **additional services** for you under the **contract** and based on your confidential information provided to us and/or incorporated in the **work products** and/or in any derivatives of the **work products**, other than **gene synthesis technology**). We will – at your costs and expense – (i) disclose to you all information in our possession regarding any **inventions**, (ii) sign and execute all documents necessary for enabling you to protect the **inventions** and required by the respective authorities and, (iii) provide you with evidence in our possession needed in any legal proceedings regarding the **invention**. Notwithstanding the foregoing and for the avoidance of doubt, you shall have no rights regarding the **gene synthesis technology**, which rights shall remain exclusively with us.

6. **Work products** generated by us in the performance of **gene synthesis services** and/or **additional services** are intended for research use only and not for use in human and/or animal diagnostic procedures and you must follow any applicable use restrictions (e.g. limited use label licenses), including but not limited to those outlined in section 7 below, (hereinafter collectively **intended use**). **Work products** are not qualified by us for any other purpose. Should you use such **work products** for any purpose other than research use, you are responsible for qualifying such **work products** for such use and obtaining any intellectual property rights that might be required.

Our standard cloning plasmids (out of the pMX-series) serve as carriers for the *de novo* synthesized DNA only and not for expression purposes. We make no representation or warranty that the combination of these plasmids with specific *de novo* synthesized DNA will not infringe any third party patents or rights. The plasmids should be used only for the **intended use**. If you order cloning of the *de novo* synthesized DNA into a certain plasmid offered by us, such plasmids should only be used for their **intended use** and we take no responsibility if you use the **work products** for something else.

7. Rights of Use:

(a) Except for the restrictions set forth below, we will not place any additional obligations, rights, or restrictions on your use of **work products** as a result of the methods employed by us in the performance of the **gene synthesis services**. For the sake of clarity, the foregoing sentence does not grant any affirmative rights or provide any representation or warranty from us relating to any intellectual property that may be infringed by or based upon (i) specifications, instructions, or materials provided by you to us, (ii) an end product created by you or an end user that utilizes the **work product** or any part thereof, or (iii) the use of the **work product** or a subsequent end product by you or an end user subsequent to the performance of **gene synthesis services** by us. This paragraph does not apply to **work products** derived from **additional services**.

(b) Restrictions of use under the **mgh technology**:

(i) Certain work products may include technology owned by General Hospital Corporation, d/b/a the Massachusetts General Hospital (**mgh technology**). **mgh technology** shall mean Mexican Patent No. 259447.

(ii) **work products** incorporating the **mgh technology** are designated and may be used for internal research and development purposes (explicitly excluding clinical trial purposes) only.

(iii) With the purchase of **work products** incorporating the **mgh technology** you are granted by us a worldwide, non-exclusive, non-sublicensable, non-transferrable, perpetual, royalty-free right to use the purchased **work products** under the **mgh technology** for internal research and development purposes (explicitly excluding clinical trial purposes) only (**r&d sublicense**).

(iv) For using **work products** incorporating the **mgh technology** for purposes other than internal research and development, purchase of a commercial sublicense is required (**commercial sublicense**). For clarity, **work products** incorporating the **mgh technology** may not be used for clinical trial purposes without first obtaining a **commercial sublicense**. Such **commercial sublicense** may be obtained from us.

(v) For the avoidance of doubt and for clarity, it is your sole responsibility to verify whether the respective **work products** incorporate the **mgh technology** and to obtain a **commercial sublicense** from us. We expressly disclaim any liability in this regard.

(vi) You herewith agree to the assignment of the **r&d sublicense** according to clause 7 b (iii) to Massachusetts General Hospital in case of termination of the agreement between them and us granting us the right to grant **r&d sublicenses** according to clause 7 b (iii).

(c) Restrictions of use pursuant to applicable limited use label licenses (LULLs):

The use of **work products** comprising plasmids, nucleic acid sequences, cell lines, bacteria and/or other biological material might be subject to applicable LULLs or other restrictions expressly communicated to you.

8. When ordering **gene synthesis services** or **additional services** you represent and warrant to have the right to use and have a third party use the material (including but not limited to plasmid(s), nucleic acid sequence(s), cell line(s), bacteria, virus, reagents) provided by you to us pursuant to the **contract** (collectively **material**) and that such right includes, in particular, to have us perform **gene synthesis services** or **additional services** with the **material** on your behalf. You agree to and shall indemnify and hold harmless us and our affiliates and our officers, agents, and employees, from and against any action, claim, or liability, including attorneys' fees, arising out of any breach of the foregoing representation and warranty and/or your use of the **work product**, including but not limited to any claims of patent infringement or other intellectual property-related claims.

We hereby undertake (i) to use the **material** solely for the purpose to perform **gene synthesis services** or **additional services** as ordered by you (**purpose**); and (ii) not to analyse the **material** or cause the **material** to be further analysed, except to the extent necessary for the **purpose**, without your prior written consent; and (iii) not to use the **material** for any commercial exploitation except to the extent necessary for the **purpose** without your prior written approval.

9. Our proprietary GeneOptimizer™ software tool (**software**) may only be used by you, for your internal purposes only, and not for any commercial purpose. Unless we agree otherwise you will (1) not use the **software** as a second opinion to or for the evaluation of results obtained by using any other optimisation software, (2) use the results, in particular the DNA sequences, generated using the **software** only for the purposes of placing an order with us; and (3) not resell the products. We retain ownership of any results, in particular the DNA sequences, you generate by using the **software** if such results are not used by you for placing an order with us.

10. **Confidentiality**. All **confidential information** (as hereinafter defined) disclosed by disclosing party (**disclosing party**) shall be treated by the receiving party (**receiving party**) as proprietary and confidential to **disclosing party**. As used herein, **confidential information** shall mean any tangible or intangible non-public information and data of a confidential or proprietary nature, including but not limited to technical, commercial, details of third party relationships, existing or contemplated inventions developmental, operating, performance, pricing, know-how, and process information, **materials**, **work products** and all record bearing media (inclusive of samples and electronic media) containing or disclosing such information and techniques. **Receiving party** shall protect the **confidential information of the disclosing party** by using the same degree of care as **receiving party** uses to protect its own materials and information, but in any event no less than a reasonable degree of care. Receiving party agrees not to disclose **confidential information** to any third person except its employees, consultants, and subcontractors (**authorized recipients**) as necessary for purposes of fulfilling its obligations hereunder. All such **authorized recipients** shall be informed of the confidentiality obligations hereunder and shall be bound by employment or written confidentiality obligations at least as strict as those specified herein. Notwithstanding any other provisions herein, however, the **receiving party** shall have no obligation to the **disclosing party** for any information or material that is (a) already known to the **receiving party**; (b) publicly known other than by a wrongful act of the **receiving party**; (c) received from a third party lawfully entitled to disclose it; (d) disclosed pursuant to an enforceable order of a court or administrative agency; and/or (e) independently developed by or for the **receiving party**.

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