

# Hycult<sup>®</sup> Biotech General Terms and Conditions

## Agreements about sale and delivery

### 1. Applicability of the conditions, titles and language

1.1 These conditions apply to all offers, legal relationships and agreements whereby Hycult<sup>®</sup> Biotech\* delivers products and/or services of whatever nature to the Other Party. Other Party is defined as each natural person, partnership, legal body or other entity that enters into or has entered into an agreement with Hycult Biotech, or to whom an offer or proposal is or has been made by or on behalf of Hycult Biotech, or to whom or by whose order a delivery is or has been made by or on behalf of Hycult Biotech. Departures from these conditions will only be effective if expressly agreed in writing, whereas writing or written is defined as correspondence by E-mail, fax or by regular post between the parties.

1.2 If one or more provisions in the conditions is or becomes at any time fully or partly void or invalid, this shall not affect the remaining provisions in the conditions.

1.3 Hycult Biotech may during the existence of the legal relationship make requirements for communications between the parties or for legal transactions to take place via digital media.

### 2. The offer and realisation of the agreement

2.1 The agreement is realised by a Written offer and a Written acceptance of this offer.

2.2 Any sources supplied by or on behalf of Hycult Biotech such as price lists, brochures, catalogues, folders, websites and other data shall only be binding on Hycult Biotech insofar as explicit reference is made in the proposal to data from these sources.

2.3 Hycult Biotech is authorised to engage third parties for the implementation of the agreement and to charge the Other Party for the costs of this in accordance with the rates given.

### 3. Secrecy

3.1 The Other Party is forbidden to copy any Hycult Biotech information either wholly or partially and/or to make it known to third parties in whatever way and/ or to allow it to be used by third parties and/or to sell it or place it at anybody's disposal.

3.2 The Other Party is only permitted to use the data and information insofar necessary for the fulfilment of the agreement. At the first request of Hycult Biotech, and if the agreement is not realised or is cancelled, the Other Party must return all the materials, designs, calculations, information, data, etc., indicated here to Hycult Biotech immediately.

### 4. Amendments to the agreement

4.1 Any entire or partial amendment or cancellation of the agreement may only be made with prior Written agreement from Hycult Biotech.

4.2 If Hycult Biotech consents to such amendment or cancellation, the Other Party is obliged in each case to pay Hycult Biotech for the costs of work already undertaken by Hycult Biotech.

4.3 In the event of such amendment or cancellation Hycult Biotech is permitted to invoice the Other Party for the related costs and to reestablish the delivery and lead times in relation to his commitments under the agreement.

### 5. Prices

5.1 If an offer is without obligation, the price details and rates contained therein shall also be without obligation.

5.2 Prices are in euros and:

- based on delivery ex Producer's works (in accordance with Incoterms);
- exclusive of VAT, import duties and other taxes, levies and duties;
- exclusive of transport and insurance costs;

### 6. Limited license

6.1 Subject to these Terms and Conditions, and to the terms and conditions of any license provided by Hycult Biotech that is specific to a particular product (which shall govern with respect to such Product in the event of conflict with these Terms and Conditions), Hycult Biotech hereby grants to the Other Party and the end-user a non-exclusive, non-transferable, non-sublicensable license to use the product(s) provided to the Other Party and the end-user by Hycult Biotech only in accordance with the manuals and written instructions provided by Hycult Biotech and with Hycult Biotech product label. The Other Party understands and agrees that except as expressly set forth in these Terms and Conditions (or in the Hycult Biotech-provided license specific to a particular product), no right or license to any patent or other intellectual property owned or licensable by Hycult Biotech is conveyed or implied by these Terms and Conditions for any product or service. In particular, no right or license is conveyed or implied to use any product provided hereunder in combination with a product not provided, licensed or specifically recommended by Hycult Biotech for such use.

### 7. Delivery and delivery time

7.1 Title and risk of loss or damage will pass to the Other Party upon delivery of the products to the carrier. Irrespective of the moment at which the risk transfers to the Other Party, the moment of delivery shall be deemed to be the same as the moment on which the products are offloaded or landed at the agreed place (actual transfer).

7.2 The Other Party must report any shortages, defects and damage in writing directly to Hycult Biotech within 8 days of the delivery and if nothing is reported then the products will be regarded as having reached the Other Party in good condition, complete and without damage.

*\*Hycult<sup>®</sup> is a registered trade mark and Hycult Biotech is a registered trade name of Hycult Biotechnology B.V., Uden, The Netherlands.*

7.3 Hycult Biotech is entitled to deliver in instalments (part-deliveries) and to invoice these instalments separately.

7.4 Lead times and delivery dates given in the quotes/offers/proposal for commitments of Hycult Biotech are not absolute deadlines. Delay shall therefore not arise until Hycult Biotech has declared the Other Party in default and granted him a grace period to fulfil his commitments under the agreement.

7.5 Hycult Biotech is obliged to observe the specified delivery time or delivery period as much as possible, yet shall never be liable if they are exceeded. When they are exceeded Hycult Biotech is not obliged to provide any compensation for damages of whatsoever nature. Exceeding a delivery time or delivery period does not give the Other Party the right to terminate or to dissolve the agreement or to refuse to purchase products. In cases where a delivery time or period is exceeded excessively the parties must consult with each other.

## **8. Transport and packing**

8.1 Hycult Biotech shall based on his experience determine the method of packaging, transport, shipment, etc., of products.

8.2 If the Other Party has specific wishes and insofar as Hycult Biotech agrees to these wishes in relation to packaging and/or transport, also including relocation within the business or company site, the Other Party is obliged to settle the costs invoiced for this by Hycult Biotech.

## **9. Force majeure (non-liable failing)**

9.1 None of the parties is obliged to fulfil any obligations, including any guarantee undertakings agreed between the parties, if he is prevented from doing so as a result of force majeure. Force majeure shall also be deemed to denote: (i) force majeure of subcontractors of Hycult Biotech, (ii) failure to properly fulfil obligations by subcontractors that are stipulated by the Other Party, (iii) deficiency of items, or materials from third parties whereby said use is stipulated by the Other Party, (iv) governmental actions, (v) electricity failure, (vi) failure of the Internet, service providers, computer network or telecommunication facilities, (vii) war, (viii) occupation, (ix) strike, (x) general transport problems and (xi) the unavailability of one or more members of staff, (xii) terrorist attacks or hostage taking, (xiii), epidemics and pandemics, (xiv) financial crisis, (xv) the non-functioning of the payment network of the banks concerned.

9.2 If a situation of force majeure endures for longer than ninety days, each of the parties shall have the right to dissolve the agreement in writing. Any work already carried out on the basis of the agreement shall in that case be settled pro rata, without the parties owing anything further to one another. The parties shall immediately make payment in connection with this settlement.

9.3 If Hycult Biotech wishes to plead force majeure, he shall inform the Other Party of this as soon as practically possible. The consequences of force majeure shall come into effect from the moment that the eventuating circumstance, cause or incident has occurred.

9.4 If Hycult Biotech is prevented by force majeure from fulfilling any commitments, on whatsoever legal basis, towards the Other Party and the force majeure is in the opinion of Hycult Biotech temporary or provisional in nature, Hycult Biotech is entitled to postpone implementation of the agreement until the circumstance that causes or caused the force majeure no longer applies.

9.5 If Hycult Biotech, as a result of force majeure, is prevented from fulfilling his obligations with regard to one or more of his customers or buyers but not his obligations with respect to all his customers or buyers then Hycult Biotech is entitled to decide himself which of the obligations will be fulfilled and for which customers or buyers as well as the order in which they will be fulfilled.

## **10. Guarantee/Service**

10.1 With due observance to the provisions specified elsewhere in these conditions Hycult Biotech guarantees the quality of the materials used and their promised characteristics as well as the correct working of the products provided by Hycult Biotech in accordance with the accompanying product specifications.

10.2 Faults in any products supplied which fall under the guarantee will, exclusively at the discretion of Hycult Biotech, be rectified or the products will be replaced if the faults, in the opinion of Hycult Biotech and/or producer, are attributable to construction faults or faults/failings of the materials used as a result of which the products are unusable by the Other Party for the purpose for which they can reasonably be thought of as intended.

10.3 If it appears that the products offered to Hycult Biotech for rectification or repair exhibit no faults then the Other Party is obliged to settle all costs incurred by Hycult Biotech.

10.4 If the Other Party fails to fulfil one or more of his obligations then Hycult Biotech is released from his guarantee obligations.

10.5 Satisfying the guarantee obligation shall be deemed to be the only and complete compensation.

## **11. Ownership reservation**

11.1 Without prejudice to the provisions in Article 8 of these conditions regarding the risk and the transfer thereof, all the products supplied by or on behalf of Hycult Biotech remain the property of Hycult Biotech until the moment that the debt owed by the Other Party to Hycult Biotech has been settled in full, this debt likewise including the amount that the Other Party has owed Hycult Biotech since the realisation of the agreement inclusive of all interest and costs. For so long as the ownership of the products supplied by or on behalf of Hycult Biotech remains with Hycult Biotech according to the provisions in this Article, the Other Party is obliged to hold these products separately from other products in such a way that they can easily and clearly be identified as the products of Hycult Biotech.

11.2 In the case of non-payment by the Other Party of any amount due to Hycult Biotech and furthermore when the agreement is ended, Hycult Biotech will be entitled to demand the return of any products for which ownership reservation applies and to take the measures associated with this, taking into account any payments already made for the products, without prejudice to the right of Hycult Biotech to demand compensation for possible loss or damage. In the case of non-payment or termination of an agreement each claim which Hycult Biotech has against the Other Party becomes immediately due.

11.3 At the first request from Hycult Biotech the Other Party must authorise the immediate return of the products which have not yet been fully paid for, wherever these may be.

## **12. Liability of Hycult Biotech**

12.1 Except to the extent caused by Hycult Biotech's gross negligence or willful misconduct, or required by applicable law, Hycult Biotech shall have no liability for any loss of use or profits, procurement of substitute products or any indirect, consequential, incidental, or special damages of any kind, however caused and regardless of form of action whether in contract, tort (including negligence), strict product liability or otherwise, even if Hycult Biotech has been advised of the possibility of such damages; as to any Hycult Biotech's liability not legally subject to the foregoing, Hycult Biotech's liability shall not exceed the amount paid by buyer to Hycult Biotech in the prior twelve (12) months. Buyer understands that the risks of loss hereunder are reflected in the price of the products and that these terms would have been different if there had been a different allocation of risk.

## **13. Claims**

13.1 Notwithstanding the provisions in Article 8.2 Hycult Biotech shall only accept claims for processing if it receives them from the Other Party in Written form within eight (8) days of delivery. For hidden faults, claims are only possible within the guarantee period.

13.2 Claims can only be handled when the nature and grounds for the complaints are stated precisely.

13.3 Claims regarding invoices must be lodged in writing with Hycult Biotech within eight (8) days of the date of the invoice.

13.4 Lodging a claim never discharges the Other Party from his payment obligations towards Hycult Biotech.

13.5 Return of the delivery or any part thereof to Hycult Biotech, for whatever reason, may only take place with express prior Written consent and shipment instructions from Hycult Biotech to the Other Party.

## **14. Intellectual or industrial property rights**

14.1 All right of intellectual and industrial ownership to the products, analyses, designs, documentation, reports, proposals, and preparatory materials for the same developed or made available by Hycult Biotech for the Other Party, remains exclusively with Hycult Biotech, his licensors or his subcontractors. The Other Party only receives the usage rights that are expressly assigned in Article 6, the conditions and the law. These usage rights are non-exclusive and non-transferable to third parties. Any other or further right of the Other Party is excluded.

14.2 If, contrary to expectation, a good sold by Hycult Biotech to the Other Party infringes an industrial or intellectual ownership right of a third party and the Other Party is held liable, then the Other Party is obliged at once to inform Hycult Biotech in writing of the situation. In this case Hycult Biotech has at his discretion either to supply the right to use that good to the Other Party, or to modify the good in such a way that there is no further infringement, or to deliver a replacement good that does not infringe the right, or once he receives the good back to repay to the Other Party the purchase price less a reasonable payment for the period that the Other Party had the good at his disposal.

## **15. Payment and default**

15.1 The Other Party shall pay invoices in accordance with the terms of payment given in the invoice. If no specific conditions are stated in the invoice, the Other Party shall pay within thirty days of the given date of invoice. The Other Party is not entitled to offset or delay payment. The date on Hycult Biotech's bank or giro statement when the payment is recorded as received applies as date on which the payment has occurred.

15.2 Any payment by the Other Party shall – if applicable – go in the first place towards settlement of any interest he owes and towards any costs of collection and administrative costs owed to Hycult Biotech, and then towards settlement of the outstanding claims in order of age, therefore commencing with the oldest outstanding claim.

15.3 If the Other Party does not settle sums owed to Hycult Biotech punctually, the Other Party shall without a warning or declaration of default being necessary also owe the outstanding amount of 1.5% interest per month. If following reminder to pay, warning or declaration of default the Other Party still fails to fulfil his payment obligations within a reasonable period he shall by rights be in default. From that moment Hycult Biotech may pass the claim on for collection. Once the claim is passed on the Other Party is obliged besides the rightfully established costs to reimburse Hycult Biotech for the actual legal costs of Hycult Biotech and the actual extra-judicial costs including the costs charged by external experts.

## **16. Cancellation by Other Party**

16.1 If the Other Party wishes to cancel an order he has issued and Hycult Biotech consents to this, the Other Party shall owe Hycult Biotech for the costs of cancellation. The costs of cancellation are expressed as a percentage of the amount connected with the agreement and depend on work meanwhile undertaken by Hycult Biotech to implement the agreement, the nature or type of services and products to which the order relates, and the costs that he has incurred up to the moment of cancellation.

## **17. Field of use**

17.1 Field of use of products is limited to the use as indicated on the label and/or documentation of the products and the territory where mentioned.

## **18. Applicable law and disputes**

18.1 This Agreement shall be governed by and construed in accordance with the laws of The Netherlands.

## **19. Miscellaneous**

19.1 These Terms and Conditions constitute the entire agreement between the Other Party and Hycult Biotech with respect to the subject matter hereof and is the final, complete, and exclusive statement of the terms of the agreement, superseding all prior written and oral agreements, understandings and undertakings with respect to the subject matter hereof. The waiver of any provision or any breach thereof shall not affect any other provision of these Terms and Conditions. To the extent permitted by applicable law, these Terms and Conditions shall be governed by and construed according to the laws of the Netherlands with regard to conflict of law provisions. The U.N. Convention on Contracts for the International Sale of Products shall not apply to these Terms and Conditions. In the event that any provision of this Agreement or portion thereof is found to be illegal or unenforceable, the Agreement shall be construed without the unenforceable provision or portion thereof.

19.2 Provisions stated in a valid and signed Hycult Biotech distribution or supply agreement supersedes these Terms and Conditions.