GBTs - General Business Terms about Molecular Biodesigns

General remarks: A biodesign is a man made, mostly computer aided molecular construction plan which is determining structural or functional molecular information like genetic or genomic control elements or the coding sequence of informative molecules e.g. the coding sequence of genes. It includes predetermined specific sequences of formal-functional verified DNA - templates and also the experimentally verified phenotypic function of verified genotypes as well as arrangements and combinations thereof.

The GBTs are regulating the contractual relation and agreements between the biodesigners, syntheses providers and customers. In a subcontracting situation the biodesigner(s) is/are organizer and customer in one person. In collaborative biodesign activities biodesigners can act as a group of mostly equal members. In this case the GBTs are applied for the whole group of mostly equal members relative to a given customer. Collaborative biodesigns need an extra collaboration agreement which reflect the provisions made in these GBTs.

The GBTs are valid in particular also if the customer uses „general terms" of business being conflicting and which contains divergent conditions compared to the regulations of the GBTs here.

1.1 In the case the biodesigns of given sequence constructions are performed exclusively by the customer ATG delivers the DNA/ gene sequence/ molecular construction like ordered - provided that the molecular construction as a whole or in part is **NOT** toxic to *E. coli*. A gene construction is comprising one or clustered genes. In the case the construction demonstratively - after three rounds of final assembly - shows to be toxic to ***E. coli*** during the assembly process ATG does **NOT** take the responsibility for the biodesign of the customer which was performed completely without the expertise of ATG.

A gene construction is regarded as toxic for ***E. coli*** if **(1)** on the basis of the proven gene syntheses processes the final two fragments of the assembly process do not go together either by ligation or by recombination - finally by use of low or single copy vector systems and with the regulatory elements the customer used for his individual biodesigns **(2)** the full length construct can repeatedly only isolated from ***E. coli*** and not be completely sequence verified because of sequence defects. Sequence defects can be identified as silent or non-silent point mutations or micro-deletions as well as sequence rearrangements either in coding sequences of a gene or in regulatory sequence regions in the final sequencing QC of the whole construct.

These rules are to be applied provided that the last two fragments of the assembly process are sequence verified and show 100% sequence identity.

The molecular constructions are to be **fully paid** by the customer if the final assembly of the last two fragments showing 100% sequence identity was repeated three times but finally failed under the proved standard assembly process conditions and in addition the outcome of the final sequences are like described like in **(1)** and/ or in **(2)**.

1.2 The GBTs listed here are also applied if the biodesigner ATG in knowledge of conflicting or divergent conditions of the customer realizes the contract **according to the customers' instructions** without reservation.

1.3 Diverging conditions to these listed here are valid only if the biodesigner agrees to them expressly in writing.

2. Subject matter of the contract; copyright and rights of use

2.1 Contracts with the biodesigner deal with achievements of an originator. These are subjected to the granting of rights for the use of the work's achievements. The contracts do not cover monitoring of conflicting protection rights which are infringing with the admissibility of the biodesigner's work to the object. It also does not include the monitoring of relevant features or registration of industrial or

other protection rights or usability of the work of the biodesigner. The customer himself is responsible for research on these topics in-depth.

2.2 All drafts and molecular construction plans including formal-functionally verified DNA - templates and all amendments thereof in order to improve constructive features or biological function or for molecular prototyping in terms of achieving technical requirement specifications for the realization by syntheses are covered by the copyright protection law and all laws protecting accomplishments in design. The regulations covered by this law are valid between the parties even if a threshold for originality should not be given in particular cases e.g. like basic protection conditions needed for patenting. With this in particular the rules for originator protection §§31 are applied in such a case following UrhG (German law); in addition, in particular the copyright claims from §§97 are entitled to the parties in such a case following UrhG.

2.3 The conceptual designs and construction plans for sequence compositions especially in formal-functional verified forms which are intended for its realization by syntheses and left to the customer are not allowed to be amended without explicit compliance with the biodesigner (ATG) neither in the original form nor during its reproduction or via transmission to third parties.

2.4 Every imitation – also from parts – is inadmissible. Any offence against this paragraph 2.3 and 2.4 entitles the biodesigner for a contract punishment of compensation and pricing at an adequate rate compared to the economical damage or an adequate participation on revenues achieved e.g. in form of royalties. The economical damage caused is to be assessed by arbitration of an independent panel of referees nominated in equal parts by the disputing parties.

2.5 The biodesigner (ATG) grants the necessary right of use for the individual contractual purpose to the customer. In case nothing else is agreed, only the simple right of use is granted case by case. Any transfer of exploitation rights to third parties needs the written consent.

2.6 The rights for exploitation of the achievements of the biodesigner are only transferred to the customer after completion of contractual payments.

2.7 On any publications of results the biodesigner needs to be referred to as the originator. An offence against this regulation entitles the biodesigner for demanding a fine at the rate of 100% according to the invoice amount as the regular and agreed compensation.

2.8 Molecular design proposals and cooperative influence of the customer and/or his employees do not have any impact on the value of the price agreed and do not establish co-copyright or originator rights.

2.9 For use of its biodesigns ATG raises no claims on the ideas of individual applications formulated by customers and the applicability to be achieved as well as the right for its exclusive utilization. But the biodesigner (ATG) claims originator rights on the improvement of molecular biological function in terms of improvements for construction or functional purposes like high yield expression or other technical requirement specifications aimed on as well as economical desired features of functional improvements e.g. traits in production strains). Every application beyond the extent of utilization for gaining experimental knowledge (temporal, spatially and with regards to contents) like in particular any not expressly agreed commercial use of functionally improved biological design results is permitted.

3. Compensation

3.1 Conceptual sequence designs or molecular construction plans and/or formal-functional verified sequence features for the realization by syntheses together with granting of rights for its use form a uniform achievement. The calculations for the value of an individual offer is performed on the basis of the an agreement determining the quality and scope of molecular biological design achievements expressed in a quote provided that no other arrangements were met. The prices are net amounts which are to be paid plus the legal value added tax.

3.2 If no rights for use in applications are granted for molecular construction plans and functional sequence designs no compensation is due for the final outcome of the functional realization of the design or for experimental – scientific progress in knowledge.

3.3 The manufacture of conceptual designs and all other activities which the biodesigner (ATG) produces for the customer are liable to pay costs, provided that there is not expressly agreed something else.

4. Achievements in offers maturity of the price, decrease of compensation, delay of delivery

4.1 For setting up complex offers e.g. where an orientation towards the specific features of the customer s' project is necessary, collaborative work is necessary to figure out the scope of an offer and or it is necessary to perform research in publications, data mining in data bases etc. complex offers a milestone payment for the planning phase of a project can be individually negotiated and separated from the realization phase for independent invoicing.

4.2 Alternatively for setting up an appropriate offer 10% of the final amount of the contractual value can be charged if the offer is not finished yet. In case the customer received the offer in its final stage 20% of the final value of the quote are charged even if the quote is not accepted. The setup fee is calculated as part of the final value and is to be credited and not charged extra.

4.3 The price is due by delivery of the work. It is payable without deduction. If the ordered sequence designs are taken in parts, a suitable price in part is due in each case for each part provided that there is no other agreement. If an order takes longer time or requires high financial payments of the biodesigner in advance, adequate payments in advance, for progress and final payments are to be performed. Upfront in advance payments are basically 30% to the whole price with placing of order, 40% after completion of 80% of the works, 30% after delivery. Exceptions can be agreed.
The acceptance of the work by the customer may not be refused for irrational or specialized ignorant reasons, especially not against features of the biodesign which were agreed before. Within the scope of the order freedom of creation exists.

4.4 With default of payment the biodesigner can require interests on arrears at the rate of 8% about the respective base interest rate sentence of the European central bank p.a. The assertion of a proved higher damage is left.

5. Special achievements, additional costs and travel expenses

5.1 Special achievements like the re-writing or change of molecular constructional designs and formal- functional verified sequences for the realization by syntheses, study of scientific literature manuscripts, data mining, supervision of processes are calculated after the time involved and required to gain biology design achievements separately.

5.2 The biodesigner (ATG) is entitled after previous consultation with the customer to order subcontractor achievements necessary for the fulfilment of the order in the name of and on account of the customer. The customer undertakes the commitment to give suitable authority to the molecular biodesigner. Third party or subcontractor achievements by purchase on own account for the fulfilment of orders are not needed to be disclosed to the customer.

5.3 As far as in particular cases contracts about foreign achievements are concluded in the name of and on account of the biodesigner, the customer undertakes to release the biodesigner in the inside relation from all obligations which arise from the completion of the contract.

5.4 Expenses for additional technical costs, in particular for special materials, chemicals, kits and fees for the manufacture of prototypes and functional variations, reproductions, agreed realizations are to be refunded by the customer.

5.5 Travel expenses and expenses for travelling, to undertake in connection with the order and are arranged with the customer, are to be refunded by the customer according to the previous arrangement.

6. Property in conceptual designs and data

6.1 In conceptual designs and molecular construction plans or designs only rights of use are transferred but no property rights.

6.2 The biodesigner remains its ownership to the plans, texts, images, sequences and already realized molecules in sequence and structure. If there is no other agreement in writing all relevant materials are to be returned after an adequate time back to the biodesigner. By damage or loss the customer has to substitute for the costs which are necessary to the restoration of the originals. The assertion of further damage remains untouched.

6.3 Also in fulfilment of the contract to originating data and files remain in the property of the biodesigner. He is not obliged to provide, generated or researched data and any files to the customer. If the customer wishes their publication, this is to be agreed separately and to compensate.

6.4 If the molecular biodesigner has made available data and files to the customer, these may be changed only with previous approval of the biodesigner. Rights of recourse on unauthorized changes of molecular designs construction plans by the customer or other persons on behalf of the customer are not legal.

6.5 Shipping of all in paragraph 6.1 to 6.4 listed objects occurs on own risk and on the account of the customer.

7. Correction, production control, specimen copies and self-advertising

7.1 Before the sequence realizations are subjected to syntheses the templates used for this are to be provided to the Molecular biodesigner for final control and if applicable final corrections.

7.2 The production control by the biodesigner occurs only on account of special arrangement. In case of the production control by the biodesigner he is entitled to meet necessary decisions at its own discretion and to give suitable instructions.

7.3 In case of project success and results the customer discloses and refers to the biodesigner. If not agreed different in writing the biodesigner is entitled to use the results of the projects as well as the functional descriptions and all information exchanged for the fulfilment of the contract for the purpose of self-advertising in all media and to inform about the contractual relation to and the work for the customer.

8. Liability

8.1 The biodesigner is liable for resulted damages or loss of data and materials like templates, data media left to him but also for issues of confidentiality related to project aims and results only in case of intention and coarse carelessness. For the rest he is liable only for light carelessness, provided that a duty is neglected whose compliance is of particular importance for reaching the contract purpose (cardinal's duty).

For damages from the injury of the life, the body or the health resulting from the instructed work of the biodesigner the customer is liable for such damages also on the basis of light carelessness.

8.2 For any orders which are given in the name of and on count of the customer to third parties the biodesigner takes no liability towards the customer, unless, fault meets solely with the choice of the biodesigner. In these cases the biodesigner appears merely as a mediator.

8.3 With the approval of rationally reasonable and plausible conceptual designs or formal-functionally verified molecular construction plans and designs for the realization by syntheses the customer takes the responsibility for the all over technical correctness according to the specific function of the results especially for its applicability (e.g. instability or toxicity of a construct in a certain environment which is predetermined by the customer). For such conceptual designs created in collaboration and approved by the customer the biodesigner is free of liability for the functional outcome. In case of molecular assemblies which need to be composed from more than one part to an integrated construction of concerted functional action the customer takes the risk for any unforeseeable malfunction. For parts of a molecular construction approved by the customer in case of at least three unsuccessful trials to combine it to the final form deploying standard or agreed methodology he obligates himself to take the individual parts according to the prices agreed.
The biodesigner takes the responsibility for the biological function (natural, synthetic, artificial) of molecular constructions only if it was expressively agreed on and contractually fixed (e.g. in a milestone plan) but not in general.

8.4 Objections of evident defects are to be asserted within 30 days after delivery of the work in writing with the biodesigner. For the protection of the term the timely sending of the rebuke is sufficient.

9. Creation freedom, realization of the order and presentations

9.1 Within the scope of the order creative freedom exists. After approval complaints concerning the creation are excluded. If the customer wishes changes during or after the agreed scope of the design or after start of realization or reproduction, he has to take over any of the add-on costs caused thereby.

9.2 If the realization of the order is delayed for reasons of which the customer has to represent, the biodesigner can require an adequate increase of the price. With intention or coarse carelessness he also can assert compensation claims. The assertion of a further delay damage remains untouched of it.

9.3 The customer assures that he is entitled to the use of all sequences, originals, pattern, templates, models etc. handed over to the biodesigner. In case he is not entitled to the use it against this assurance, the customer releases the biodesigner from all claims for damages of third parties.

10. Termination of contracts

In case of a premature contract termination by the customer the biodesigner retains the right on full compensation. In addition he receives the agreed price. Nevertheless saved expenditures or not carried out or wilful omitted substituting contracts (§649 Civil Code, Germany) need to be accounted.

Nevertheless, if not negotiated different the parties agreed on an approximation of the achievements produced up to the notice and expenditures as follows:
With notice before the start of uptake of design work and its realization:
30% of the agreed price will be paid as upfront payment in advance and 40% upon the delivery of the molecular construction as well as the final 30% upon the delivery of the quality control data (QC). Part working achievements are to be paid by the customer according to the progress of the work realized.

11. Final clauses

11.1 Provided that the customer is a businessman, place of fulfilment and legal venue is the main operation of the biodesigner. For solving conflicts arbitration shall be preferred to the public courts and self-organized arbitration committees shall be intentionally preferred to institutional courts of arbitration.

11.2 The laws of the Federal Republic of Germany are to be applied.

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