

## **General Terms and Conditions, Pepscan, October 2019**

### **1. Applicability.**

- 1.1 These terms and conditions apply to all services rendered (“Services”) and all materials and other goods (“Goods”) supplied by Pepscan Presto B.V. and Pepscan Therapeutics B.V, Lelystad, The Netherlands (“Pepscan”) to Customer. Pepscan is only bound towards Customer if both Pepscan and Customer have signed a quotation or if Customer has send a Purchase Order confirmation of the quotation within the time that Pepscan’s offer is valid.
- 1.2 By placing an order, Customer accepts these terms and conditions. Any definitions used in these terms and conditions have the same meaning as assigned to in the Quotation.
- 1.3 These General Terms and Conditions, together with the Quotation, are hereinafter referred to as the “Agreement”. In case of a discrepancy between the Quotation and these General Terms and Conditions, the Quotation shall prevail.

### **2. Services / Goods / Delivery.**

- 2.1 The Services to be rendered and / or Goods to be delivered by Pepscan to Customer are described in the Quotation.
- 2.2 Pepscan may subcontract the Services in whole or in part to one or more third parties (“Subcontractors”), provided that such subcontracting does not violate the rights of Customer under the Agreement and, furthermore provided, that Pepscan remains fully responsible towards Customer for the part of the Services thus subcontracted.
- 2.3 Deliverables shall mean: all information, results, peptide sequences, peptides, or other materials or Goods to be generated or delivered by Pepscan under a Quotation.
- 2.4 “Delivery” as referred to in the Quotation takes place as follows: a. in the event the Deliverables of Pepscan under a Quotation consist of sequences or other information, such Deliverables shall be sent or mailed to Customer as agreed with Customer in the Quotation; and b. in the event the Deliverables of Pepscan under a Quotation consist of Goods (i.e. (synthetic) peptides or other goods) delivery takes place ex Works (Incoterms 2010) premises Pepscan in Lelystad, The Netherlands. Customer will be responsible for transport and import and export clearance of the Deliverables.
- 2.5 Any Deliverables delivered to the Customer as referred to in clause 5.2 will remain Pepscan’s property until Customer has paid to Pepscan any and all amounts owed by Customer under the Agreement. Any Deliverables as referred to in clause 5.3 will remain the joint property of Pepscan and Customer, subject to any assignment agreement in accordance with clause 5.3. Risk of the Deliverables passes to Customer upon Delivery. Customer shall use the Deliverables only encumbered with Pepscan’s right to retention of title if applicable, in the context of its ordinary course of business and shall not encumber the Deliverables with any other rights.
- 2.6 Pepscan will use reasonable efforts to meet the scheduled dates for the Services and the supply of Goods. However, in view of amongst others the experimental nature of the Services, such dates are only estimates.

### **3. Responsibilities of Customer.**

- 3.1 In order to enable Pepscan to render the Services to Customer, Customer shall, within 2 weeks after the signature of the Quotation by the last of Pepscan or Customer, provide Pepscan with the information (“Customer Information”) and materials (“Customer Materials”)

as described in the Quotation and required by Pepscan to perform the Services and/or deliver the Goods.

- 3.2 Customer represents and warrants that it is entitled to disclose to Pepscan the Customer Information and to provide Pepscan with the Customer Materials and that the Customer Information and Customers Materials are not proprietary information of any third party.
- 3.3 Customer shall at all times keep a back-up of the Customer Information and a log of the Customer Materials provided by Customer to Pepscan.

#### **4. Prices, invoicing and Payment.**

- 4.1 The Prices for the Services and or Goods are determined in the Quotation.
- 4.2. Prices in the Quotation are excluding value added taxes, other taxes, fees, duties, licenses or levies now or in the future imposed upon the Services or the Goods or actual, reasonable travel and out-of-pocket expenses. Any of such taxes imposed on the Services or the Goods shall be paid by Customer.
- 4.3 Invoices shall be sent by Pepscan to Customer in the amounts and in accordance with the agreed schedule in the Quotation. Customer shall pay invoices within 30 days from the date of invoice.
- 4.4 If payment is not or not in full received by Pepscan at the due date, interest will accrue on all unpaid amounts at the rate of 1.5 % per month (whereby a part of a month shall be calculated as a full month) notwithstanding the right of Pepscan to claim extrajudicial and judicial collection charges.
- 4.4 Customer shall grant to Pepscan payment security, in any form whatsoever, upon Pepscan's first written request if Pepscan has reasonable doubt (in its sole discretion) whether Customer is able to fulfil its financial obligations towards Pepscan.

#### **5. Intellectual Property.**

- 5.1 Inventions, know how, data and other information generated by Pepscan and/or its Subcontractor(s) in rendering the Services and related to Customer's Information (including proprietary targets of Customer) or Customer Materials, and any and all intellectual property rights related thereto, save for any Improvements, shall be the sole property of Customer subject to clause 2.5, unless agreed otherwise in the Quotation ("Customer IP"). Customer may not use, publish or patent such Customer IP until it has fulfilled its financial obligations towards Pepscan under the Agreement and any previous agreements in full. Improvements are defined as improvements, enhancements, new uses and/or modifications to Pepscan's Technology (as defined in clause 5.4) and shall at all times remain the property of Pepscan.
- 5.2 Customer shall become the owner of the Deliverables that concern (synthetic) peptides and other materials not synthesized or generated using Pepscan Technology.
- 5.3 Any Deliverables that concern (synthetic) peptides or other materials that are generated and/or synthesized using Pepscan Technology, including any results and inventions obtained with these (synthetic) peptides and other materials but excluding the Pepscan Technology and any Improvements, will be jointly owned by Pepscan and Customer ("Joint IP"). Pepscan herewith grants to Customer a royalty-free, non- exclusive, non-transferrable and non-sublicensable license to use such Joint IP for Research Purposes only. Research

Purposes is defined as any experimental, non- commercial, internal research by the Customer, but excluding any (pre)clinical research of any stage.

Pepscan grants Customer the option to obtain an (exclusive) license under the Joint IP other than for Research Purposes (including for commercial purposes) and/or the option to purchase the Joint IP. Upon request of the Customer, parties will in good faith negotiate (i) the terms of the license under the Pepscan Technology and the Joint IP to be set forth in a separate commercial license agreement and/or (ii) the terms for the assignment of the Joint IP to the Customer in a separate assignment agreement, after which the Joint IP will be transferred to the Customer free of charge.

5.4 Pepscan Technology shall at all times remain the sole property of Pepscan. Pepscan Technology is defined as: inventions, know how, data, trade secrets and other information and rights of intellectual property related thereto which are developed, generated or reduced to practice by Pepscan employees, agents or consultants before the start of the Services under a Quotation or outside the scope of the Services under a Quotation, including but not limited to Pepscan's proprietary CLIPS technology and Improvements.

## **6. Indemnification / Liability.**

6.1 Customer shall indemnify and hold harmless Pepscan, its Subcontractor(s), their directors and employees from and against any liability, expenses or costs arising out of any claim, complaint, suit, proceedings or cause of action pertaining to an infringement of a third party's intellectual property rights against any of them resulting from (i) Pepscan's or Subcontractor's use of the Customer Information or Customer Materials as long as such use is in accordance with the Quotation or (ii) the use by Customer of any Deliverables. Customer shall pay all settlements entered into, and all final judgments and costs (including reasonable attorney's fees) awarded against Customer (and Pepscan and Subcontractor, as the case may be) in connection therewith.

## **7. Limited Liability.**

7.1 All Goods and Deliverables are provided by Pepscan "as is" without warranty of any kind. Pepscan shall use reasonable efforts in performing the Services but does not make any warranties, express or implied, by operation of law or otherwise, with respect to the Goods or Deliverables. Without limiting the foregoing, Pepscan specifically disclaims all implied warranties of title, non-infringement, merchantability and fitness for a particular purpose.

7.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE

DAMAGES INCURRED BY CUSTOMER ARISING UNDER OR AS A RESULT OF THIS AGREEMENT (OR THE TERMINATION HEREOF) INCLUDING, BUT NOT LIMITED TO, THE LOSS OF PROSPECTIVE PROFITS OR ANTICIPATED SALES OR ON ACCOUNT OF EXPENSES, INVESTMENTS, OR COMMITMENTS IN CONNECTION WITH THE BUSINESS OR GOODWILL OR OTHERWISE.

7.3 Pepscan's liability arising out of the terms of, or related to, this Agreement, its interpretation, and Services performed and Goods supplied hereunder, shall be limited to and capped at the total amount actually paid by Customer to Pepscan paid under the respective Quotation. Pepscan's aggregate liability towards Customer, for breach, tort or in any other form, shall, furthermore, never exceed an amount of € 50,000 or, if lower, the amount for which Pepscan is insured, save for wilful misconduct by Pepscan.

- 7.4 In any event, a claim will be unenforceable and lapse unless Pepscan receives a written notice thereof no later than 6 (six) months after the discovery of an event or circumstance that gives or may give rise to that claim.

## **8. Confidential Information.**

Except as provided herein, both Pepscan and Customer shall maintain in confidence, and shall not disclose to any third party other than any of Subcontractors under conditions no less strict than included herein, and shall not use other than to satisfy its obligations under this Agreement, information disclosed by Pepscan or Customer, respectively, in writing and marked "Confidential" or a similar manner to indicate its confidential nature or that is disclosed orally and confirmed in writing as confidential within thirty (30) days following such disclosure (collectively, "Confidential Information"). Notwithstanding the above, the source and identity of Customer Information and Customer Materials, the details of the methods and technology used by Pepscan to perform the Services and other information and data which by their very nature would reasonably be deemed confidential, shall be considered Confidential Information whether or not so marked. Confidential Information shall not include any information that is (i) already known to the receiving party at the time of disclosure hereunder, or (ii) now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or (iii) is disclosed to the receiving party by a third party under no obligation of confidentiality to the disclosing party or (iv) independently developed by the receiving party without reliance on the Confidential Information of the disclosing party. The obligations under this paragraph shall remain in force during the Agreement and for 10 years thereafter.

## **9. Termination.**

- 9.1 Pepscan is entitled to forthwith terminate the Agreement by given written notice to that effect, in the following events: (i) If Customer has not, not timely or not properly fulfilled its obligations hereunder and such breach can either not be remedied or, if such breach is capable of being remedied, has not been remedied within 14 days after having been notified by Pepscan thereof; or (ii) If Customer files for bankruptcy or suspension of debts (surseance), a petition for bankruptcy has been filed against it, passes a resolution for its liquidation, if a liquidator is appointed in respect of its assets or if Customer makes an assignment for the benefit of its creditors; or (iii) in the event Pepscan faces material technical difficulties in executing the Services which cannot be addressed without significant changes to the budget and/or timelines agreed between Pepscan and Customer (and without being liable towards Customer).
- 9.2 In the event of termination pursuant to 9.1(i) and (ii), the full price agreed between Customer and Pepscan for the Services or Goods will immediately become due and payable, notwithstanding any other right Pepscan may have by law. In the event of termination for any other reason, Customer shall pay to Pepscan a part of the price in proportion to the work executed by Pepscan.
- 9.3 Pepscan will, at request of the Customer, return all information and documentation provided by the Customer upon termination or completion of the Agreement.
- 9.4 The following clauses of these General Terms and Conditions will survive termination or expiration of the Agreement: 4.3, 5.1, 5.4 6, 7, 8, 9.4 and 10.3 -10.6.

## **10. Miscellaneous.**

- 10.1 Customer must notify Pepscan in writing of any complaints relating to the Goods delivered or the Services performed within 30 days of delivery of the Goods or the (partial) Service in

respect of which a complaint is filed. Filing a complaint shall not suspend the Customer's obligation to pay any fee, or additional costs, due.

- 10.2 If Pepscan determines that the Customer has filed a legitimate and timely complaint, Pepscan shall offer Customer the option to have such specific Service rectified or such Goods repaired, or an adjustment of the fee charged or receive a (partial) refund of the fee already paid for such specific Service or Goods.
- 10.3 The invalidity or unenforceability of any provision of the Agreement shall not affect or limit the validity or enforceability of any other provisions hereof. Any such invalid or unenforceable provision shall be replaced or deemed to be replaced by a provision that is considered to be valid and enforceable. The interpretation of the replacing provision shall be as close as possible to the intent of the invalid or unenforceable provision.
- 10.4 Customer may not assign its rights and obligations under the Agreement without Pepscan's prior written consent. Pepscan may assign its rights and obligations under the Agreement in connection with a merger with, or sale of all or substantially all of its assets to which the Agreement relates, to a third party.
- 10.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of The Netherlands.
- 10.6 Any dispute which arises in connection with the Agreement, or further agreements resulting there from which do not stipulate otherwise, shall be exclusively submitted to the competent court in Amsterdam, the Netherlands.
- 10.7 These General Terms and Conditions apply per 1 October 2019. These General Terms and Conditions can also be downloaded from the website of Pepscan, [pepscan.com](http://pepscan.com) and will be provided to the Customer upon request.