

General Terms and Conditions of the GENOSENSE Diagnostics GmbH for the Realization of Genetic Analyses (Last update 01.07.2006)

1. General Information

1.1. The GENOSENSE Diagnostics GmbH, Donau-City-Strasse 1, A-1220 Vienna („GENOSENSE“), is an institution admitted by Austrian authorities for the realization of genetic analyses in humans for medical purposes, in terms of § 68 of the Austrian Act of Genetic Engineering („österreichisches Gentechnik-Gesetz = GTG“).

1.2. The scope of services solely includes the realization of genetic analyses, if necessary, in connection with medico-clinical diagnostic findings. Furthermore, GENOSENSE will only act at the instance of a medical specialist skilled in human genetics / medical genetics, or an attending or diagnosing physician responsible for the area of indication, who is also in charge of consulting the patient.

1.3. These General Terms and Conditions („GTC“) apply for all performances, including future performances, of GENOSENSE. Regulations to the contrary in the client's General Terms And Conditions are, in case they conflict with the regulations of these GTC's and/or are stipulated, ineffective for GENOSENSE.

1.4. **Consumers** are consumers in terms of the Austrian Consumer Protection Act („Konsumentenschutzgesetz = KSchG“) and thus include natural persons and legal persons that are no contractors.

1.5. These GTC's equally apply for **contractors** and **consumers**, unless otherwise expressly agreed in the relevant regulation. In these GTC's, the term „client“ refers to contracting parties, regardless of whether they are physicians (**contractors**) or patients (**consumers**).

1.6. Concepts stated in these GTC's always refer to both female and male persons.

2. Information according to § 5c ff KSchG for clients that are consumers

- Contractor's company: GENOSENSE Diagnostics GmbH, www.genosense.com;
- Registered under: FN 211888a at the Registry of Firms with the Vienna Commercial Court (Handelsgericht);
- Member of the „Chemical Industries“ chamber;
- Value Added Tax Registration Number („UID-Nummer“): ATU52590003;
- Contractor's address for summoning and contact details: Donau-City-Strasse 1, A-1220 Vienna, phone: +43/1/253 0 253 190, Fax: +43/1/253 0 253 191; Email: info@genosense.com;
- Essential characteristics of services rendered: (solely) the realization of genetic analyses in cells provided and, if necessary, medico-clinical diagnostic findings;

- Conclusion of the contract: please refer to Chapter 3.
- Price of service rendered including any taxes: to be quoted by the assigning physician. Notice and acceptance of the price are confirmed by the patient by signing the Order Form (cf. Chapter 4.);
- Costs of delivery and forwarding expenses: there are no specific costs of delivery or forwarding expenses for the conveyance of genetic engineering analyses and of any diagnostic findings;
- Payment details and execution: please refer to Chapters 5. and 9.;
- Consumer's right of withdrawal: cf. Chapters 6. as well as 9.3. to 9.5. Regarding the omission of the right of withdrawal according to 5e KSchG (Distance selling contract) in the present case, see Chapter 7.;
- The client agrees that GENOSENSE shall commence with the rendering of service within 7 weekdays. Thus it is explicitly understood that the right of withdrawal according to § 5e KSchG is no longer due to the client. For further details, cf. Chapter 7.
- Offer's validity period: the client's offer remains binding for the duration of 2 weeks after reception of offer by GENOSENSE;
- Validity period of prices: prices are valid for the respective contract concluded;
- Geographical address of the contractor's branch office, at which the consumer may make any complaints: Donau-City-Strasse 1, A-1220 Vienna;
- Customer service: since there is no delivery of goods, no customer service is provided. However, GENOSENSE is available for inquiries and information under the contact details stated above;
- Conditions of warranty: conditions of warranty are stated in Chapter 10.

3. Conclusion of the Contract

3.1. The contract shall be concluded after the client has presented an offer to GENOSENSE. Website, brochures, or other similar documents by GENOSENSE do not represent any offer to the client, but solely an invitation to place an offer. GENOSENSE reserves the right to conclude the contract thereafter at its own discretion.

3.2. The contract shall be concluded if GENOSENSE does not object to the client's offer. For any objections, GENOSENSE is granted a two-week-period. Silence on the part of GENOSENSE shall be thus explicitly considered acceptance of a contract. The contract may be accepted explicitly, in written form as well. During this period, the client is bound to his/her offer.

3.3. The assigning physician confirms that in case the patient is not explicitly stated in the Order Form as contractor to GENOSENSE, and in case the patient has not made all necessary declarations at the corresponding passages in the Order Form, the assigning physician is considered GENOSENSE's contractor and thus

GENOSENSE's contracting party. This also applies in the event that the physician appears as invoice addressee.

4. Prices

4.1. For clients that are **contractors**, the latest price list valid on the day of conclusion of the contract shall apply. The client confirms notice of this price list. All prices quoted are gross prices.

4.2. Clients that are **consumers**, shall be communicated the price for the service rendered, including all taxes, by the assigning physician. Clients shall explicitly accept these prices. The acceptance shall be confirmed by signing the Order Form. The client shall not be charged for the use of telecommunication means.

5. Payment, Default in Payment and Prohibition of Charging

5.1. GENOSENSE shall effect invoicing bindingly to the address stated in the Order Form.

5.2. The amount invoiced shall be due within 14 days after accounting, in the currency and method of payment stated in the invoice. After this term, the client is in default of payment.

5.3. GENOSENSE explicitly reserves the right to render services only upon receipt of advance payment by the client. The client shall be informed accordingly about this modus operandi.

5.4. Especially with payments from outside of Austria, the client shall ensure that the total amount invoiced be transferred to GENOSENSE, without commission and in full, so that especially with foreign bank transfers, the client shall bear all expenses.

5.5. In the event that the client is a **consumer**, even in case of default of payment through no fault of the client's own, GENOSENSE shall be entitled to charge default interest of 5% p.a. above the basic interest rate, without providing proof of loss or any other damage.

5.6. In the event that the client is a **contractor**, even in case of default of payment through no fault of the client's own, GENOSENSE shall be entitled to charge default interest of 12% p.a. above the basic interest rate, without providing proof of loss or any other damage.

5.7. In the event of default of payment, all clients (**including consumers**) shall bear all expenses related to the surveillance and the prosecution of a claim, such as e.g. reminder charges, expenses of collection, costs of consulting an attorney also for extrajudicial activities, or any other expenses required for an adequate prosecution. Even in this case, the client shall be charged all default expenses.

5.8. In the event that the client is a **contractor**, he/she shall have the right of charging only if his/her counterclaims have been legally determined or accepted by

GENOSENSE. The contractor shall not be entitled to retain payments.

5.9. In the event that the client is a **consumer**, he/she shall only be entitled to any charging if GENOSENSE is insolvent, or with counterclaims that are in legal connection with GENOSENSE's claim, and have been legally determined or accepted by GENOSENSE.

6. Termination of Contract and Effects of the Law of Genetic Engineering

6.1. In general, the client shall be entitled to withdraw from his/her offer or the contract within the term of 3 workdays from sampling and date of signature on the Order Form.

6.2. The patient's option, according to § 69 para. 5 GTG to communicate his reluctance to learn the results of the analysis and the resulting consequences shall not affect the contract concluded; neither if the patient is a contracting party nor in the case of a contract concluded between a physician and GENOSENSE.

6.3. In the event that the patient withdraws his consent to genetic analysis of Type 2, 3 and 4 (§ 65 para. 1 GTG) given according to § 69 para. 1 GTG, GENOSENSE shall immediately discontinue all action and will be further exempt from rendering services. In the event that conditions mentioned in Chapter 6.1. apply, the client may withdraw from the contract. In the event that it is no longer possible, GENOSENSE shall charge fees agreed upon. The charging shall be effected by crediting appropriate savings by the incomplete realization, in case GENOSENSE is notified of the withdrawn consent before complete rendering of service.

6.4. On the possibility of withdrawal according to KSchG and in case of default, please refer to Chapters 5., 7. and 9.

7. Omission of Right of Withdrawal according to § 5e KSchG also for consumers

7.1. The client explicitly agrees that GENOSENSE shall commence with the rendering of service within seven workdays after concluding the contract. The client shall give his/her consent also explicitly to the effect that his/her right of withdrawal according to § 5e KSchG will be omitted. Further, the service shall be rendered in a client-specific manner and thus be adapted to the client's personal needs.

7.2. The client shall explicitly note that due to the fact that the rendering of service subject to this contract will be commenced within 7 workdays, and that the service is rendered in a client-specific manner, he/she does not have the right of withdrawal according to § 5e KSchG, even if he/she is a **consumer**. This right, to which the **consumer** is generally entitled with contracts concluded for distance selling, would allow for withdrawal from the contract, or the client's declaration of contract, respectively, within 7 workdays (Saturdays not being considered workdays), or in case of incom-

plete/inadequate information by the contractor (here: GENOSENSE) until up to 3 months from the day of contract conclusion. The withdrawal does not necessarily have to contain any justification and should be declared in writing. In order to guarantee observance of terms, timely posting would suffice. However, § 5f para 1 KSchG excludes this right of withdrawal if (as in the present case) the realization of a service for the **consumer** is initiated according to the agreement, within 7 workdays.

8. Loss/Destruction/Damage/Change/Defectiveness of the Sample

8.1. In the event that the sample sent by the client to GENOSENSE is destroyed, damaged, or changed during transportation, or in case it gets lost, the client shall be liable.

8.2. In the event that a damage or change of the sample occurred during transportation induces incorrect or erroneous results, GENOSENSE shall not be liable, and no specific liabilities shall be concluded.

8.3. In the event that no DNA can be isolated from the samples, the patient agrees to provide another sample, without requesting reimbursement or compensation. Physicians shall not be able to settle own expenses or external expenses resulting from the new sampling with GENOSENSE.

9. Services Rendered, Default and Non-performance (including restrictions of liability) on the part of GENOSENSE

9.1. GENOSENSE renders its services by transmitting the results of analysis and if necessary, the diagnostic findings to the assigning physician. Service is thus completed.

9.2. Unless otherwise stipulated, GENOSENSE shall commence rendering the service as soon as possible and in any case within 7 workdays from contract conclusion. The client shall be informed that genetic analysis usually requires 4 to 8 weeks.

9.3. The client shall be entitled to cancel the contract in the event that GENOSENSE breaches service term. In the case of breach of term, the client shall grant GENOSENSE an adequate period of grace of at least two weeks, in written form, unless an explicit delivery date has been stipulated.

9.4. Upon incidence of any circumstance that induces significant default or prevent GENOSENSE from rendering the service, GENOSENSE shall be entitled to withdraw from the contract. In the event that there is fault on the part of GENOSENSE in this delay, or if GENOSENSE is to represent it otherwise, GENOSENSE shall be liable for any damage caused, however, only if GENOSENSE has induced this circumstance deliberately or through gross negligence. GENOSENSE shall not be liable for slight negligence, compensation for consequential damage and financial loss, not realized savings,

loss of interest and damage from third party claims against the client. These limitations of liability shall not be applied with personal injury attributable to GENOSENSE and – in case of a **consumer** – to damages in items transferred to GENOSENSE for further processing.

9.5. The client shall be entitled to claim compensation for delayed- or non-fulfillment to the amount of the loss incurred and only if there is intent or gross negligence on the part of GENOSENSE. GENOSENSE shall not be liable for slight negligence, compensation for consequential damage and financial loss, not realized savings, loss of interest and damage from third party claims against the client. These limitations of liability shall not be applied with personal injury attributable to GENOSENSE and – in case of a **consumer** – to damages in items transferred to GENOSENSE for further processing.

10. Restriction of liability

10.1. GENOSENSE shall only be liable for damage caused by gross negligence, or intent of GENOSENSE or its employees.

10.2. GENOSENSE shall not be liable for slight negligence, compensation for consequential damage and financial loss, not realized savings, loss of interest and damage from third party claims against the client.

10.3. These limitations of liability shall not be applied with personal injury attributable to GENOSENSE and – in case of a **consumer** – to damages in items transferred to GENOSENSE for further processing.

11. Data Protection

GENOSENSE shall keep data retrieved from genetical analysis according to § 71 GTG secret and thereby respect the following regulations:

1. The client as an examined person shall be granted insight into all data concerning him/her.
2. The persons examined shall be informed about any unexpected event of direct clinical relevance or events they have explicitly required information about. In the event that the person examined has not requested this notification, it shall be formulated in a way that it is not disquieting for the person examined. In marginal cases, this notification can be fully omitted as well (these commitments first of all apply for the physician having authorized genetic analysis, and the attending or diagnosing physician),
3. Non-anonymous data may only be used for purposes other than what they have been collected for with the explicit written consent of the person examined.
4. Data may only be transferred

- a) to persons concerned with the investigation, processing, or evaluation of the data in the institution at which they have been collected,
- b) to the persons examined,
- c) to persons stated in § 65 para. 3 and 4 GTG,
- d) to the physician having initiated genetic analysis, as well as to the attending physician and the diagnosing physician,
- e) to other persons only with the explicit written consent of the person examined, whereby a written withdrawal from this consent shall be possible at any time.

5. Data must be protected accordingly against access by unauthorized persons.

6. Data that have not been made anonymous shall only be processed automatically in the institution where they have been collected, and only with the physician having initiated genetic analysis. These data shall be saved separately from other data types and shall be retrievable only by authorized persons in terms of Federal Law, by means of a separate access.

7. Liabilities according to above L 3 to 6 also apply to persons concerned with the realization of genetic analyses or with the saving or managing of data thereby collected.

12. Miscellaneous

12.1. These GTC's shall represent – under consideration of the Order Form, including the client's declarations and any cooperation agreements – the complete agreement between GENOSENSE and the client. The GTC's shall replace any previous agreements between the two parties on the object of agreement. There are no additional oral agreements.

12.2. Binding warranties, commitments and consents shall not be assigned to, or considered as accepted by GENOSENSE unless explicitly effected by GENOSENSE. Towards the client as a **consumer**, neither the physician having initiated genetic analyses, nor the attending physician is to be assigned to GENOSENSE, so that he/she can not bind GENOSENSE.

12.3. Modifications or amendments to these GTC's shall only be effectual if stipulated.

12.4. In the event that GENOSENSE or the client does not execute any right from these GTC's or if they do not enforce any right, it shall not be considered an abandonment of this right. The execution or the enforcement of this right is not excluded at a later date.

12.5. In the event that a regulation, part of a regulation of these GTC's, or any other agreement becomes partly or completely ineffective, void, or unenforceable, the effectivity, validity, or enforcability of any other regulations shall not be affected. Under these circumstances, the regulation considered as ineffective, void, or unenforceable, is replaced by a regulation that is

closest to the one considered as ineffective, void, or unenforceable, in its economic significance. In the event that the client is a **consumer**, the regulation considered as ineffective, void, or unenforceable, shall be replaced by a regulation that is closest to the one considered as ineffective, void, or unenforceable, in its economic significance.

12.6. GENOSENSE is entitled to subrogate, modify, confer, or sub-allocate a contract or the resulting rights and commitments, taking the GTG into consideration.

13. Applicable Law, Court of Jurisdiction, Place of Execution

13.1. These General Terms And Conditions and all contracts are subject to Austrian law with the exception of the relevant provisions on Conflict of Laws and the UN Sales Convention.

13.2. In the event that the client is a **consumer**, this legal option shall only apply if protection granted by compulsory regulations of the country's legal system, in which the **consumer** resides, is not withdrawn.

13.3. For any direct or indirect subsequent dispute arising from this contract, the relevant court in the first district of Vienna (Austria), responsible for trade affairs, shall be appointed.

13.4. In the event that the client is a **consumer**, this place of jurisdiction shall only be considered to be agreed if the client resides in, has his usual domicile or place of employment in this court district, or if he resides abroad. In the event of **consumers** living abroad, the regulations of the EuGVVO (Bruxelles I-Directive EG/44/2001) shall be equally respected.

13.5. GENOSENSE is entitled to take legal action against the client (**contractor** and **consumer**) at its own court of jurisdiction.

13.6. The client and GENOSENSE commit to keeping the existence, the contents and the results of any legal procedure secret, unless otherwise stipulated by law.

13.7. The place of execution is Donau-City-Strasse 1, A-1220 Vienna.