



# GENERAL TERMS AND CONDITIONS OF SALE

Updated July 21, 2023

## I- GENERALITIES

**1.1. LABOGENA DNA.** LABOGENA DNA is a simplified joint-stock company with a single shareholder, with share capital of €2,506,500.00, incorporated and governed under French law, registered with the French Trade and Companies Register of RENNES (Ille-et-Vilaine, France) and with intra-Community VAT number FR37798033817, with its registered office is located at Rue Éric Tabarly - 35538 NOYAL-SUR-VILAINE CEDEX (SIRET : 798 033 817 00031) and having its principal place of business at 12 avenue du 1er mai, 92120 PALAISEAU (hereinafter referred to as "**LABOGENA**"). LABOGENA's general sector of activity is animal production support (principal activity code: 0162Z), particularly in the field of genotyping. More specifically, LABOGENA provides multi-species genetic analysis services from laboratories located at 12 avenue du 1<sup>er</sup> mai, 91120 PALAISEAU. LABOGENA is COFRAC 17025 accredited.

**1.2.** LABOGENA's services consist of (i) an analysis of the genome of the animal concerned and (ii) the delivery of analysis results to the person requesting the service (hereinafter "the Applicant") (authorized principal, i.e. the person who signed the Order Form or on whose behalf the Order Form was signed) in accordance with the request expressed by the latter on the analysis request form returned with the sample (hereinafter "the Form"). They may not extend beyond the request expressed by the Applicant on the Form.

**1.3.** These general terms and conditions of service are general terms and conditions of sale (hereinafter "**GTCS**") within the meaning of Article L.441-1 of the French Commercial Code and form the basis of the commercial/contractual relationship between LABOGENA and the Applicant (hereinafter "**the PARTIES**") (hereinafter "**the Contract**"). Where necessary, the outcome of the contractual negotiations between the Parties shall give rise to the conclusion of special conditions.

**1.4.** The Applicant declares that it expressly and unreservedly accepts the General Terms and Conditions of Sale, of which it acknowledges having full knowledge, and thereby waives the right to rely on any contradictory document and, in particular, its general terms and conditions of purchase, which shall then be unenforceable against LABOGENA even if it had knowledge thereof, and unless expressly waived in writing by LABOGENA's legal representative.

## II- COLLECTION AND TRANSFER OF SAMPLES FOR ANALYSIS

### a) Collection

**2.1.** As the collection of samples of biological material is the responsibility of the Applicants, they must provide samples of good quality to enable complete and accurate information to be obtained on the animals concerned. In particular, samples must be taken in accordance with LABOGENA's specifications using the equipment provided. This equipment remains the property of LABOGENA. Any equipment not returned within two (2) months will be invoiced.

### b) Transfer

**2.2.** The Applicant must send the samples in compliance with current legislation on the transport of biological material.

**2.3** All samples must be accompanied by a sample slip, duly completed and signed by the Applicant. The name of the organization or person who will receive the results and the invoice must be clearly indicated.

**2.4.** LABOGENA may refuse to accept a request and/or analyze samples which it deems to be non-compliant in terms of quality, quantity or packaging. LABOGENA will then inform the Applicant of this impossibility, by any written means at its convenience. Re-collection will be at the Applicant's expense, but only one service will be invoiced.

**2.5.** If a service is normally carried out by LABOGENA, but the results are unusable, then the service will normally be invoiced unless LABOGENA is proven to be at fault.

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## III- SPECIFIC REQUESTS

In the event of a request for a specific analysis requiring unusual research and development (R&D) work, the service requested by the Applicant will be overcharged.

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## IV- LEAD TIMES

**4.1.** Unless a deadline is expressly agreed or imposed in writing, LABOGENA is only obliged to carry out instructions to the best of its ability, within the most reasonable deadlines.

**4.2.** These deadlines are given as an indication and any exceeding of them may not be considered, in itself, as a reason for breach or dispute of the price.

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## V- OWNERSHIP OF THE PROCESSES USED

**5.1. UNDER NO CIRCUMSTANCES WILL THE ANALYSIS PROCESS BE TRANSMITTED TO THE APPLICANT, EVEN IF THE APPLICANT HAS PREVIOUSLY REQUESTED IT. LABOGENA RETAINS OWNERSHIP OF THE ANALYSIS PROCESS AND KNOW-HOW ACQUIRED DURING R&D WORK.**

**5.2.** Nothing in the GTCS, e-mails, letters, exchanges, vouchers, etc., may be interpreted as transferring any right, and in particular intellectual property rights, to the Applicants, unless expressly agreed in writing between the Applicant and LABOGENA, signed by LABOGENA's legal representative.

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## VI- RESULTS

**6.1.** The results are confidential and LABOGENA undertakes not to transmit them to third parties without the prior written authorization of the Applicant.

**6.2.** Results will not be communicated by telephone.

**6.3.** Depending on the service requested, the results will either be sent to the Applicant or to another organization designated by the Applicant on the Order Form.

**6.4.** Unless otherwise specified by LABOGENA, only the results officially communicated by post or e-mail are considered as reference documents and may be used for any transaction or justification to third parties.

**6.5.** Duplicates can be sent to the Applicant on written request.

**6.6. As an exception to the first paragraph of the present article, any Applicant entrusting LABOGENA with an analysis accepts that information or results may be communicated to institutions for the sole purpose of filling in national files as part of livestock population management programs. Any Applicant who objects to this must specify this clearly and legibly in the "comments" section of the Form.**

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## VII- CONFIDENTIALITY – COMMERCIAL REFERENCE

**7.1.** The PARTIES expressly consider as "**Confidential Information**" any information :

- of any nature whatsoever, in particular technical, commercial, economic, financial, scientific and/or strategic;
- in any form whatsoever, in particular visual, oral or written, including but not limited to explanations, documents, drawings, diagrams or sketches, recordings, photographs, specifications, tables, figures;
- on any medium whatsoever, including paper, film, computer or magnetic media,

- relating directly and/or indirectly, in whole or in part, to :
  - the Contract ;
  - the Service ;
  - know-how shared spontaneously or otherwise between the PARTIES;
  - the PARTIES.

**7.2.** The following information is excluded from the definition of Confidential Information:

- the disclosure of which has been authorized in writing and in advance by the PARTIES, in particular by the PARTY which has exclusive and legitimate title to it;
- which has in the meantime fallen into the public domain without any participation by the PARTIES;
- already known to the receiving PARTY at the time of communication;
- transmitted without any obligation of confidentiality by a third party to the Contract who legitimately holds it.

**7.3.** The PARTIES undertake throughout the term of the Contract, as well as after its termination for any reason whatsoever, for a minimum of five (5) years and beyond for the time necessary to safeguard any legitimate interest in non-disclosure of such Confidential Information:

- not to disclose, transmit, show or make available to third parties, in any way whatsoever, in whole or in part, directly or indirectly, by any person or entity, the Confidential Information without the specific, express and written authorization of the other PARTY;
- not to duplicate or reproduce the Confidential Information by photocopying or any other means, whatever their nature, form or medium;
- to return to the other PARTY, at the latter's first request, all Confidential Information media that may have been made available to it;
- to inform the other PARTY of any breach of these obligations.

**7.4.** In any event, the PARTIES undertake to limit the distribution and use of Confidential Information to their own personnel and/or agents, corporate officers, any partners, suppliers, service providers and any subcontractors whose intervention is necessary for the performance of the service and the execution of the Contract, or whose duties justify that the person so authorized has knowledge thereof.

**7.5.** The Applicant grants LABOGENA the right to refer to the existence of their contractual relationship to third parties for the sole purpose of commercial reference and authorizes, exclusively for this purpose, the use of its name, brand and logo, as well as the summary description of its activity previously validated by the Applicant. This clause may in no way be interpreted as conferring on LABOGENA any right whatsoever, in particular ownership or

co-ownership of these elements. The Applicant may withdraw its authorization upon request by e-mail or by registered letter.

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## VIII- INCOMPLETE APPLICATION

LABOGENA reserves the right, after a written reminder has remained unanswered for three (3) months, to invoice any incomplete request at the rate corresponding to the work carried out.

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## IX - INVOICING AND PAYMENT TERMS

**9.1. Method of dispatch.** The invoice is sent by LABOGENA to the Applicant at the address(es) indicated on the Order Form.

**9.2. Payment terms.** The invoice must be paid within thirty (30) days of receipt, without discount, by cheque or bank transfer. Any invoice not paid by the due date shall automatically give rise to the payment of a fixed recovery indemnity of €40 (fourty of euros) and the application of late payment penalties, until full payment has been received. The late payment interest rate is three (3) times the legal interest rate.

**9.3. Suspension of Service.** Failure to pay an invoice authorizes LABOGENA, with all rights and actions reserved, to suspend any delivery of products and/or performance of any service, whatever the terms of the order, until full payment, and to charge penalties for late payment.

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## X- LIABILITY

**10.1. The collection of samples from the animals concerned is at the risk and expense of the Applicant.**

**10.2. LABOGENA's sole obligation is to analyze the samples and transmit to the Applicant the information resulting from the genotyping (the results) in accordance with the request formulated on the Order Form. Consequently, in fulfilling its mission, LABOGENA is only bound by an obligation of means. Furthermore, LABOGENA cannot be held liable for the loss of samples:**

- **during transportation beyond the compensation provided for in the carrier's contract;**
- **during the service beyond the price paid by the Applicant for the Service.**

**10.3** In any event, the amounts of insurance cover taken out by LABOGENA shall constitute the limit of LABOGENA's liability. Indirect and consequential damages are excluded.

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## XI- STORAGE OF SAMPLES

**11.1. Except for specific services, LABOGENA shall keep the Applicants' samples for a period of one (1) year after receipt.**

**11.2. After this period, the Applicant authorizes LABOGENA in advance to destroy these samples.**

**11.3 Before the expiry of this 1-year retention period, the Applicant may request in writing that LABOGENA return the samples to any location of its choice. Re-shipment will be subject to a specific service, and will be carried out at the Applicant's expense, risk and peril.**

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## XII- CLAIMS BY THE APPLICANT

**12.1. Contact address.** For any complaint, the Applicant may contact LABOGENA's customer service department, specifying the reason for the complaint, either at [clients.labogena@labogena.fr](mailto:clients.labogena@labogena.fr), or by filling in the contact form on LABOGENA's website, specifying "Complaint" in the subject line of the message.

**12.2. Supporting documents.** It is the responsibility of the Applicant to provide proof of the claim.

**12.3 Data management.** The Applicant's data, in particular personal data, will be processed in in the context of and for the purposes of processing the claim. The legal grounds of this data processing, based on the European General Regulation for the Protection of Personal Data (GDPR), is the management/fulfillment of the Contract. Consequently, by sending a complaint to LABOGENA, the Applicant expressly acknowledges and takes note of the need for this processing by LABOGENA, and this, like any request relating to the contracted provision of services. In accordance with current regulations, the Applicant has the following rights with regard to his/her data: access, rectification, portability. In the event of a promotional approach, the Applicant has the right to object by sending an e-mail to the e-mail address stipulated in Article 12.1 or by registered letter to the head office address. In the event of a contractual relationship, the Applicant's data will be kept for a period of three (3) years from the end of the contractual relationship or the last contact. In the event of legal proceedings, the data will be kept by LABOGENA until a decision has become final.

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## XIII- MISCELLANEOUS

**13.1. Non-disparagement.** The Applicant is bound by a general duty of non-denigration to third parties concerning the service and more generally the services provided by LABOGENA.

**13.2 Non-waiver.** It is expressly agreed that should LABOGENA refrain, from time to time or periodically, from availing itself of the benefit of any of the contractual stipulations, such abstention shall not constitute a waiver of the application for the future of the stipulation(s) concerned.

**13.3. Independence of the PARTIES.** Each PARTY, in its capacity as an independent enterprise, shall be personally responsible for all tax, social security and other charges incumbent upon it in respect of its activity and/or the performance of the Contract, and shall assume alone the risks inherent in its activity and status.

**13.4. Independence of clauses.** The nullity, lapse, lack of binding force or unenforceability of any of the clauses of the Contract shall not entail the nullity, lapse, lack of binding force or unenforceability of the other clauses, which shall remain in full force and effect. This provision shall be amended in accordance with the legislation/regulations/courts of law and then, as amended, applied. The other clauses of the Contract will be interpreted in accordance with the modified provision and as if it had been contained as such in the Contract.

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## **XIV- GOVERNING LAW – SETTELEMENT OF DISPUTES**

**14.1.** Only French law is applicable, unless otherwise stipulated by mandatory legal provisions or case law.

**14.2.** Should a dispute arise under the Contract, the PARTIES will endeavor to resolve it amicably.

**14.3.** If no amicable agreement can be reached, or if an emergency situation justifies the absence of a prior amicable resolution, any persistent dispute may be brought before the courts. If the Applicant is a merchant within the meaning of the French Commercial Code, or if the jurisdiction clause is applicable to him, the Commercial Court of the place where the service is performed shall have exclusive jurisdiction, even in the event of a plurality of parties to the proceedings and/or in the event of summary proceedings, fixed-date summons, etc.