



Eidgenössische Technische Hochschule Zürich  
Swiss Federal Institute of Technology Zurich

ETH Zurich, Institute of Molecular Systems Biology, Prof. Zamboni, Lab for Advanced Metabolomics

## General Terms and Conditions

(as of May 2020)

### 1. Scope and application

1.1 The ETH Zurich, **Lab for Advanced Metabolomics, Prof. Zamboni** (hereinafter “LAM”) is an ETH Zurich laboratory at the Institute of Molecular Systems Biology. These LAM General Terms and Conditions (“LAM GTC”) apply to and govern all services that LAM provides.

The nature and the scope of the services are described in the individual quotes for the services to be provided by LAM (hereinafter each referred to as “Offer”, the services contained therein as the “Services” and the client addressed in the Offer “Customer”). The Offer submitted by the LAM to the Customer is valid for thirty (30) days after the issuance of the Offer, if not stipulated otherwise in the Offer. Subject to the approval, if required, of the appropriate ethics committee(s) or other necessary approvals, the contract will enter into force once the Offer is signed in full by the parties.

1.2 In the event of inconsistencies, the LAM GTC shall take precedence over the Offer, unless expressly stated and agreed otherwise in the Offer.

1.3 Any changes and amendments to an Offer in particular but not limited to the scope of the Services and the prices must be agreed upon in writing between the parties.

### 2. Services Provision by LAM

2.1 LAM shall perform the Services to the best of its scientific knowledge exercising due care and according to the applicable laws. Any delivery dates contained in an Offer are estimates only and shall not give rise to any claim.

2.2 LAM will provide the Services and Service Results (as defined in Section 5) to the Customer as described in the Offer. Upon the provision of the Service Results to the Customer, LAM only guarantees the storage of data contained in Service Results, if any, for a time period of three (3) months.

2.3 Risk of loss and damage of the Service Results shall pass to the Customer at the place of performance at LCM’s premises.

### 3. Supply of Material by the customer & Quality Control by LAM

3.1 The Customer shall provide LAM promptly with i) all data, materials, samples or test articles etc. (“Material”) in the quantities and qualities as agreed in the Offer or as required by LAM and ii) all information needed by LAM for the proper and safe performance of the Services such as but not limited to any potential hazards, specific handling or storing requests with regard to the Material, if any. Where applicable, the Material must comply with biosafety level 1 or level 2 regulations. The Customer is not permitted to send biosafety level 3 or higher Material.

3.2 The Material will be run through a formal quality and quantity testing and acceptance process (“Quality Control”) by LAM. If the Material is deemed not to be of sufficient quality or contains other deficiencies likely to adversely affect the performance of the Services, LAM will inform the Customer in writing. Upon receipt of such notice the Customer will have to decide whether i) LAM shall proceed with the performance of the Services with said Material at the Customer’s own risk, ii) to send additional or another Material for Quality Control to be charged at the then current LAM rates or iii) to terminate the contract. If the Customer does not reply within the time period set by LAM, the contract is automatically terminated. In such event, the Customer shall bear all costs reasonably incurred by LAM in relation to the Services up to the date of termination.

3.3 The Customer represents and warrants: i) compliance with all applicable laws and regulations with regard to the collection, processing, anonymization, pseudonymization, labeling, handling, storing, packaging and shipment of the Material and information ii) that all consents and authorization required by law have been secured iii) that no applicable laws, regulations or third party rights will be violated by the provision of the Material and information to LAM and their use by LAM for the performance of the Services.

3.4 At the time of the provision of the Materials and information to LAM, the Customer shall expressly instruct LAM whether any Material remaining after the completion of the Services, if any, shall be deleted, destroyed and/ or used by LAM. Failing such instructions, LAM shall be entitled to delete, destroy or use the Material as it sees fit and if applicable, in accordance with informed consent, ethical approvals and applicable laws after the performance of the Services.

#### **4. Confidentiality**

4.1 “Confidential Information” means all information that one party discloses to the other party for the performance of Services and that is clearly identified and marked as “confidential” prior to or at the time of disclosure. Confidential Information does not include information that the recipient can demonstrate (i) he already knew (ii) became public through no fault of the recipient (iii) he developed independently of the Confidential Information (iv) was lawfully given to the recipient by a third party (v) is required to be disclosed by law. If Confidential Information is communicated in a non-written form, such Confidential Information must be reduced to writing by the disclosing party within ten (10) days.

4.2 The parties shall undertake all economically reasonable measures to ensure the protection of the Confidential Information to unauthorized parties and shall bind engaged third parties with respective agreements.

4.3 The confidentiality obligation ends five (5) years after termination or expiry of the Services.

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

5.1 The customer owns the rights in and to the results as ordered in the respective Offer and obtained by LAM while performing the Services and using the Materials and information provided by the Customer to carry out the Services, such as results of the tests, measurements, data sets, reports, including any intellectual property rights pertaining thereto (“Service Results”).

5.2 LAM owns and retains the rights in and to all other results including any intellectual property rights pertaining thereto such as but not limited to methods, tools, know-how, software, hardware, models used, developed or improved in the course of the performance of the Services (“LAM IPR”).

5.3 Nothing in an Offer shall restrict LAM in its use of its LAM IPR or its expertise, know-how and skill at any time.

5.4 The rights of the parties to any intellectual property that has been generated previously, after or outside of the Services ("Background IP") shall not be affected by this contract.

## **6. Data Protection & Export Control**

6.1 The parties agree to comply with all applicable data protection laws and regulations. Only pseudonymized or anonymized data and biological material will be exchanged between the parties for the conduct of the Services and the Customer ensures and is responsible that only pseudonymized or anonymized data and biological material will be sent to the LAM. To the extent the personal data is collected by LAM based on data protection regulations for Federal Bodies, the Customer shall (i) use such data only for research purposes not related to specific persons; (ii) protect such data by suitable technical and organizational measures, in particular against unauthorized processing; (iii) render such data anonymous as soon as the purpose of the processing permits; (iv) only disclose such data to a third party with the prior written consent of LAM (Email sufficient) and in compliance with any requirements imposed by LAM; and (v) publish such data only in a manner that the data subjects may not be identified.

6.2 Any export-controlled items such as goods, technology or software shall be provided solely to LAM's Project manager and only i) after the Customer informed LAM's Project manager in writing of any export-relevant restrictions pursuant to the applicable laws (including but not limited to U.S. export laws for items with U.S. origin) and of the respective export control classification, and ii) after the receipt of LAM's written consent, which may be provided at LAM's sole discretion.

## **7. Publication and Publicity**

Any reference or use of LAM's or ETH Zurich's name, logo, trademark, or respective institutes', laboratories' or researchers' name in the context of publications, publicity and advertisement is subject to the prior written consent by LAM or ETH Zurich and may be subject to a fee. LAM shall only publish Service Results after prior agreement with the Customer.

## **8. Compensation**

8.1 The price contained in the Offer covers all work necessary for the performance of the Services, is payable in Swiss Francs (CHF) and is exclusive of any Swiss VAT, if applicable. Swiss VAT, if applicable, shall be paid additionally by the Customer to the price contained in the Offer. Any additional costs and expenses (e.g. out-of-pocket, packaging, shipping or insurance expenses, levies, and customs) necessarily incurred by LAM in the performance of the Services shall be borne by the Customer and are not included in the price. If the fundamentals or preconditions provided by Customer and based upon which LAM offered its Services change, LAM is entitled to adjust the agreed price to cover the additional work and expenses, if any, or to rescind the Offer at its option.

8.2 The remuneration is due according to the payment schedule in the Offer or in the absence of a payment schedule after the provision of the Services. The Customer shall pay the invoices within thirty (30) days upon receipt. If the Customer did not raise any justified objections regarding the invoice within ten (10) days from its receipt, the invoice shall be deemed accepted by the Customer. Upon expiry of the payment period, Customer is immediately considered to be in default as of the date of the receipt of a respective reminder from LAM. In this case, LAM is entitled to, and may additionally charge a default interest rate of up to three (3) percent above the statutory default

interest rate on the amount due plus a delayed payment handling fee of CHF 30.—. In addition, LAM may suspend the performance of the Services or terminate individual or all Offers of the Customer at its option. Any offsetting by Customer is not permitted.

## **9. Warranty and Liability**

9.1 All Service Results provided by LAM to the Customer are provided AS IS. LAM makes no warranties or representations regarding the Service Results, neither express nor implied, including but not limited to warranties of originality, accuracy, correctness, merchantability, completeness, fitness for a particular purpose or non-infringement of third party rights.

9.2 LAM, along with its auxiliary persons including but not limited to consultants, students, agents, subcontractors (hereinafter "Auxiliary Personnel") shall not assume liability for any force majeure events or any damages, including but not limited to any indirect or consequential loss or similar damage (e.g. loss of profit, revenue, data, reputation or loss of contracts, other costs and expenses) suffered in connection with an Offer or the Service Results. Notwithstanding the foregoing, the limitations and exclusions of LAM's liability do not apply in cases of willful intent or of gross negligence of LAM or its Auxiliary Personnel and are subject to mandatory provisions of law.

9.3 The Customer shall bear sole responsibility for the use and the commercialization of products or services based on the Services and the Service Results and shall, to the fullest extent permitted by the applicable law, defend, indemnify and hold LAM along with its Auxiliary Personnel harmless against any third party claims which are based thereon.

## **10. Termination**

10.1 An Offer may be revoked or terminated in writing by either party at any time. The work performed until termination of the Offer shall be compensated by the Customer. Claims for damages due to untimely termination of an Offer remain reserved, but are excluded for loss of profit.

10.2 Following termination or expiry of an Offer any Confidential Information shall be deleted or destroyed, as the case may be, unless expressly instructed otherwise by the providing party. The provisions which, by their nature, are intended to survive the expiry or termination of the Offer shall continue to apply.

## **11. Applicable Law and Jurisdiction**

Each Offer shall be construed and governed by the laws of Switzerland, without reference to its conflict of laws principles, and shall not be governed by the United Nations Convention on Contracts for International Sale of Goods (the Vienna Convention). The sole place of jurisdiction for any dispute arising from, or in connection with, the Offer shall be exclusively the court of the city of Zurich.

## **12. Miscellaneous**

12.1 The contract governs the contractual relationship of the parties in relation to the Services solely and exclusively. Any earlier agreements between the parties governing the same subject matter, including previously signed confidentiality agreements referring thereto, are hereby terminated and replaced by this contract. Any changes to the contract shall be agreed upon in writing. Any general terms and conditions of the Customer are excluded. Nullity of individual provisions shall not affect the validity of the contract.

12.2 The parties do not, through this contractual relationship, acquire any rights from the other party apart from those which are explicitly conferred by the contract. Rights and obligations arising from

the contract may not be transferred to third parties without the written permission of the other party.

12.3 Deviations and amendments to the LAM GTC become valid and integral part of the contract if stipulated in the Section 10. of the respective Offer and entitled as “Special Provisions to the LAM GTC”.