1. Scope and application
1.1 The Functional Genomics Center is a joint research and technology platform of ETH Zurich and the University of Zurich (hereinafter "FGCZ"). These General Terms and Conditions ("GTC") apply to all services that FGCZ provides. The nature and the scope of the services and the contractual performance are also governed by separate terms as further described on the FGCZ’s homepage at www.fgcz.ch for standard services as well as in individual quotations for services (hereinafter referred to as "Offer" and the services contained therein as the "Services"). In such instances, and where references are made to an Offer ("Work Order") either by electronic means via FGCZ’s database system at www.fgcz.ch ("FGCZ Database") or as otherwise requested by FGCZ, the customer accepts the terms and conditions of the Offer and the GTC. In the event of inconsistencies, the GTC shall take precedence over the Work Order, unless expressly stated and agreed otherwise in the Work Order.

1.2 FGCZ will provide the Services agreed to in the Work Order in particular but not limited to the scope of the Services and the prices must be agreed upon via the FGCZ Database ordering process or other written means as requested by FGCZ.

2. Service Provision by FGCZ
2.1 FGCZ will deliver the Services to the best of its scientific knowledge exercising due care and according to the applicable laws. Any delivery dates or respective deadlines are estimates only and shall not give rise to any claim.

2.2 FGCZ will provide the Service Results (as defined in Section 5) to the customer either via the FGCZ Database or as otherwise agreed with the customer. Upon the provision of the Service Results, FGCZ retains no rights to 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 FGCZ’s premises. FGCZ may engage third parties for the rendering of the Services. FGCZ will inform the customer accordingly.

3. Supply of Material by the customer & Quality Control by FGCZ
3.1 The customer shall provide FGCZ promptly with all required samples or test articles etc. ("Material") in the quantities and qualities as agreed in the Work Order or as required by FGCZ and shall be responsible for the quality of the Material. FGCZ shall accept and use the proper and safe performance of the Services such as not limited to any potential hazards, specific handling or storing requirements with regard to the nature of the Material.

3.2 The Material will be run through a formal quality and quantity testing and acceptance process ("Quality Control") by FGCZ. If the Material is deemed not to be of sufficient quality or contains other deficiencies likely to adversely affect the performance of the Services, FGCZ will inform the customer in writing. Upon receipt of such notice the customer will have to decide within thirty (30) days whether FGCZ wishes to continue with the performance of the Services with said Material at the customer’s own risk, ii) to send additional or alternative Material to FGCZ for Quality Control to be charged at the then-current FGCZ rates or iii) to cancel the Work Order. If the customer does not reply within the time period set by FGCZ, the Work Order will be terminated. In such event, the customer shall bear all costs reasonably incurred by FGCZ 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 respect to the provision of the Services, ii) no breach of any existing confidentiality, labeling, handling, storing, packaging and shipment of the Material ii) that all consents and approvals that may have been required under applicable law have been obtained by the customer, iii) that no applicable laws, regulations or third party rights will be violated by the provision of the Material to FGCZ.

3.4 At the time of the provision of the Material to FGCZ, the customer shall expressly instruct FGCZ whether any Material remaining after the completion of the Service shall be deleted, destroyed or returned to the customer. Failing such instructions FGCZ shall be entitled to destroy the Material if it sees fit 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 a Work Order and that is clearly marked as "confidential" prior to or at the time of disclosure. Confidential Information does not include information that is known to the recipient (i) which was already known to the recipient (ii) which has become public through no fault of the recipient (iii) he developed independently of the Confidential Information and was lawfully given to the recipient by a third party (iv) 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 protect the Confidential Information from unauthorized access, distribution, copying, use or disclosure to third parties or shall bind engaged third parties with respective agreements.

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

5. Intellectual Property Rights
5.1 The customer owns the rights in and to the results as ordered in the respective Work Order and obtained by FGCZ while using the Materials 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 FGCZ owns and retains the rights in and to all other results, including 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 ("FGCZ IPR").

5.3 Nothing in a Work Order shall restrict FGCZ in its use of its IPR or its expertise, know-how and skill at any time. If, however, the use of the Service Results is dependent on FGCZ IPR, FGCZ agrees to grant the customer a non-exclusive, royalty-free, non-sublicensable license to the FGCZ IPR, for the sole purpose of implementing the Service Results at its field of use, if FGCZ is entitled to grant such license.

6. Use of FGCZ’s Infrastructure
6.1 If the nature and the scope of the Services require the customer’s access to the FGCZ infrastructure, the customer must comply with all applicable laws, regulations and policies (e.g. user and security guidelines, data policy and confidentiality provisions) contained or referenced in FGCZ’s Offer.

7. Publication and Publicity
7.1 Any use of FGCZ’s, the University of Zurich’s or ETH Zurich’s name, logo, trademark, or respective institutes’ databases, laboratories or research areas in the context of publications, publicity and advertisement is subject to the prior written consent by FGCZ and may be subject to prior notice by FGCZ and shall only publish Service Results after prior agreement with customer.

8. Compensation
8.1 The price contained in the Work Order covers all work necessary for the performance of the Services, is payable in Swiss Francs (CHF) and is exclusive of all applicable taxes. Any additional costs and expenses (e.g. out-of-pocket, packaging, shipping or insurance expenses) incurred by FGCZ in the performance of the Services shall be borne by the customer and are not included in the prices of the services, unless otherwise stated or preconditions provided by customer and based upon which FGCZ offered its Services change, FGCZ is entitled to adjust the agreed price to cover the additional work and expenses, if any, or to rescind the Work Order at its option.

8.2 The remuneration is due according to the payment schedule indicated on the invoice and in absence of a payment schedule after the provision of the Services. The customer shall pay the invoices within thirty (30) days from receipt, unless otherwise agreed 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 FGCZ. In this case, FGCZ is entitled to, and may additionally charge a default interest rate of up to three (3) percent above the respective statutory interest rate on the amount due plus a delayed payment handling fee of CHF 30. — In addition, FGCZ may suspend the performance of the Services, or terminate individual or all Work Orders of the customer at its option. Any offsetting by customer is not permitted.

9. Warranty and Liability
9.1 All Service Results provided by FGCZ to the customer are AS IS. FGCZ 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 FGCZ, along with its auxiliary persons including but not limited to consultants, students, agents, subcontractors, and employees ("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 a Work Order or the Service Results. Notwithstanding the foregoing, the limitations and exclusions of FGCZ’s liability do not apply in cases of willful intent or of gross negligence 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 FGCZ along with its Auxiliary Personnel harmless against any third party claims which are based thereon.

10. Term and Termination
10.1 A Work Order enters into force (i) upon the customer’s submission of a Work Order via the FGCZ Database and the subsequent confirmation by FGCZ, (ii) when the FGCZ Database or (iii) if required by FGCZ, upon FGCZ’s receipt of a duly signed Work Order by the customer. The Work Order shall have effect either on the date stated in the Work Order or the date FGCZ started the performance the Work Order, whichever occurs first ("Effective Date").

10.2 A Work Order may be revoked or terminated in writing by either party at any time. The work performed until termination of the Work Order shall be compensated. Claims for damages due to untimely termination of a Work Order remain reserved, but are excluded for loss of profit.

10.3 Following termination or expiry of a Work Order or any Conference, all results 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 termination or expiry of the Work Order shall continue to apply.

11. Applicable Law and Jurisdiction
Each Work Order 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") or any other jurisdiction for any dispute arising from, or in connection with, the Work Order shall be exclusively the court of the city of Zurich.