



CLS – Cell Lines Service

Justus-von-Liebig-Strasse 14
69214 Eppelheim
Germany

Managing Director: Dr. rer.nat. Rosemarie Steubing

General Terms and Conditions

- A. Terms and Conditions of CLS – Scope of Application
- B. Conditions of Purchase and Order
- C. General Terms and Conditions for Services

A. Terms and Conditions of CLS – Scope of Application

These General Terms and Conditions apply always and exclusively to the contractual relationship between **CLS** and its business partners.

They apply equally to any subsequent transactions, even without specific reference thereto.

Terms and conditions of business partners of **CLS** shall not apply, irrespective of whether these involve conflicting provisions in relation to a specific case.

The place of jurisdiction and place of performance is Eppelheim. German law applies exclusively; the UN Convention on Contracts for the International Sale of Goods and other uniform laws shall not apply.

B. Conditions of Purchase and Order

B.1.

The payment terms outlined below apply in addition to the statutory provisions.

B.2.

For goods delivered early by the contractual partner, the invoice date will be the original delivery date contractually agreed with **CLS**. The value date shall be the date of receipt of invoice.

B.3.

Invoices for defective goods or services or non-contractual partial deliveries by the contractual partner shall be valued on the date they become defect-free or on date of full delivery respectively. The value date shall be the date of receipt of invoice.

B.4.

Our contractual partner shall provide warranty and be liable for damages in the scope and for the duration required by law.

B.5.

The place of jurisdiction and place of performance is Eppelheim. German law applies exclusively; the UN Convention on Contracts for the International Sale of Goods shall not apply.

C. General Terms and Conditions for Services

C.0. Subject matter of the contract

The business area of **CLS** comprises a wide range of cell lines for use in medical, natural scientific and pharmaceutical research. **CLS** is thus exclusively intended to address private and public research institutes, rendering all services exclusively on the basis of these General Terms and Conditions.

The products offered by **CLS** are categorically not intended for *in vivo* use. The customer is thus obligated to refrain from such usage.

C.1. Order confirmation / Specifications

C.1.01

The written order confirmation by **CLS** shall be decisive for the content of the respective contract, if applicable, together with the specifications prepared by **CLS**. Verbal agreements made in connection with contract conclusions with **CLS** employees who do not have a representation authorization must likewise be confirmed in writing by **CLS** to be effective.

C.1.02

Specifications pertaining to products and services of **CLS** shall only be binding for **CLS** if this information

- is made by **CLS** or expressly on behalf of **CLS**, or
 - is expressly authorized by **CLS**, or
 - constitutes public statements of which **CLS** has been aware or must have been aware of for four weeks, and from which the company has not distanced itself.
- Customers of **CLS** acting as resellers shall not be regarded as assistants of **CLS** as defined by Section 434 para. 1 BGB (German Civil Code). Adequate corrections of specifications as defined by Section 434 para. 1 BGB can in any event be found on the **CLS** website at www.cell-lines-service.de.

C.1.03

Specifications attributable to **CLS** which contain measurable values shall be understood as having a tolerance of $\pm 5\%$.

If this tolerance $\pm 5\%$ is exceeded, this shall not automatically lead to the assumption of a defect.

C.2. Intended usage / Prohibition of forwarding and/or resale

C.2.01

CLS products are exclusively intended for use in research laboratories. The customer is obligated to observe applicable laws and any official regulations when using the supplied products.

The customer is furthermore obligated to independently review the suitability of the products for any purpose other than that stated by **CLS** prior to use.

C.2.02

The customer is obligated to only use products supplied by **CLS** for the customer's own purposes. Any sale or forwarding to third parties is prohibited without prior consent from **CLS**.

For each violation of this forwarding prohibition the customer shall pay a contractual penalty to **CLS**, the amount of which **CLS** will determine and the customer may contest before the court of jurisdiction.

C.3. Dispatch / Bearing of risk

C.3.01

CLS reserves the right to determine the mode of dispatch unless a specific mode of dispatch has been expressly prescribed. The customer shall bear the cost of dispatch, handling and cooling for the delivery.

C.3.02

Once the goods leave the premises or the warehouse of **CLS** the ordering party shall assume any and all risk. The goods shall be insured only upon request by the customer and at its cost.

C.3.03

Risk shall pass to the ordering party upon handover to the carrier, upon notification of readiness for dispatch, or upon delivery on the agreed delivery date.

C.4. Delivery deadlines / Periods

C.4.01

Any agreed delivery periods shall apply *ex works* unless expressly agreed to otherwise.

Such delivery periods shall commence on the date provided for in the order confirmation, though not before the documentation, import/export papers, permits, and shipping addresses stated on the order confirmation are available, all order details have been clarified and the

customer has made any agreed advance payments or provided collateral.

If a **delivery period** is agreed to, this shall be appropriately extended if the customer is in arrears with the provision of documentation, permits, dispatch address notifications, advance payments or collateral that it is to provide.

Agreed **delivery dates** shall be extended appropriately if the customer is in arrears with the provision of documentation, permits, dispatch address notifications, advance payments or collateral that it is to provide.

A corresponding re-scheduling of delivery dates or extension of delivery times shall also take place if the preconditions for the services to be provided by **CLS**, which the customer itself or a third party has to provide, are not available in time.

C.4.02

If any changes are desired to be made by the customer after order confirmation, the delivery period shall commence on confirmation of the change by **CLS**. Any agreed delivery date shall be re-scheduled accordingly.

C.4.03

The delivery period shall be extended appropriately in the event of unexpected impediments occurring which **CLS** is unable to mitigate with reasonable due diligence despite the circumstances of the case, e.g. total or partial non-performance by sub-contractors for which **CLS** is not responsible.

C.4.04

In cases in which standard **CLS** components are unavailable within the scope of warranty work, subsequent deliveries and similar cases, due to the fact that pursuant to the agreement the respective good is a custom order or because special components are used, the delivery deadline for **CLS** shall be extended by the period required to order and procure the corresponding components.

C.4.05

In the event of clause **C.4.03**, there shall be no entitlement to compensation for damages in lieu of performance or to compensation for damages for default if **CLS** has promptly notified the customer of the impediments to performance.

C.4.06

The same shall apply to fixed-date transactions.

C.4.07

Any compensation for damages payable by **CLS** is limited to damages caused at least by gross negligence and damages expected for this type of contract.

C.5. Partial deliveries

C.5.01

CLS may make partial deliveries to an extent reasonably acceptable for the customer.

C.5.02

If **CLS** makes use of its right to make partial deliveries, the customer may not withhold payment for this reason.

C.6. Prices

C.6.01

The prices shall apply ex works from the **CLS** registered office excluding packaging unless otherwise agreed.

C.6.02

To the extent packaging is required, **CLS** shall ensure packaging in accordance with existing regulations and proceed in accordance with Section 4 VerpackV (German Packaging Regulations).

C.6.03

The prices as well as costs exclude the respectively applicable value added tax.

C.6.04

Should the cost factors change after order confirmation, in particular the prices for raw materials and consumables as well as wage and transport costs, **CLS** shall adjust the prices appropriately if the period between the order confirmation and delivery is more than 4 months.

C.7. Payment terms

C.7.01

The provisions of the German Value Added Tax Act shall apply for payments made in advance.

C.7.02

Unless otherwise agreed to, payments are due immediately.

C.7.03

Payments made to **CLS** shall be payable 14 days from the date of invoice. If this date is not adhered to, the debtor enters into payment default.

C.7.04

In the event of payment default, **CLS** may demand default interest of 10% above the base rate. This shall not affect the proof and enforcement of damages beyond this.

C.7.05

The place of performance for payments shall be the registered offices of **CLS**.

C.7.06

The customer may only offset payments against uncontested or legally established claims.

C.7.07

The customer has no right of retention except in the cases outlined under **C.7.06**. The rights pursuant to Section 320 BGB shall furthermore be retained as long as and to the extent that **CLS** has not fulfilled its warranty obligations.

C.7.08

If **CLS** accepts checks as a means of payment this shall only be accepted on account of performance.

C.7.09

Payment by bills of exchange shall be excluded; bills of exchange shall not be accepted as payment by **CLS**. Should **CLS** accept bills of exchange on account of a separate, opposing agreement, they shall only be accepted on account of performance.

C.7.10

If a substantial deterioration in the customer's financial position should occur after contract conclusion (should a declaration of intent by the customer still be required according to the last declaration of intent aimed at the conclusion of the contract by **CLS**) or if there are, for instance, bill and/or check protests, **CLS** can demand payment in advance or collateral for any not yet provided services or goods from contracts from the same contractual relationship (Section 273 BGB) at the option of **CLS**. If the customer does not comply with this demand, **CLS** may withdraw from these said contracts or, after setting a grace period, demand compensation for damages in lieu of performance, without special proof, equal to 25% of the not yet executed contract amount if the customer does not prove lesser damages.

Only if, as an exception, unusually higher damages occur in individual cases will **CLS** be able to demand replacement beyond the flat rate damages replaced.

C.8. Inspection and defect notification obligation

C.8.01

The customer must immediately inspect goods supplied by **CLS** upon delivery to ensure that they are useable and in proper working order.

C.8.02

Obvious defects must be reported to **CLS** promptly in writing, however no later than 6 days after arrival at the delivery destination, specifically outlining the defects/problems.

C.8.03

For direct deliveries of goods to third parties, the notification period shall be extended to 14 days.

C.8.04

The customer must also notify **CLS** promptly in writing of any hidden defects upon their discovery, however no later than 30 days after arrival of the goods.

C.8.05

If the customer does not comply with the obligations mentioned in clauses C.8.01 to C.8.04, any possible warranty claims shall be excluded. This does not apply to cases where damages arise from injury to life, body or health or which are caused by intent or negligent violation of the obligation by **CLS** or a statutory representative or vicarious agent of **CLS**. They shall also not apply if other damages are caused by intent or gross negligence.

C.9. Warranty

The warranty restrictions outlined below do not apply to cases where damages arise from injury to life, body or health or which are caused by intent or negligent violation of the obligation by **CLS** or a statutory representative or vicarious agent of **CLS**. They shall also not apply if other damages are caused by intent or gross negligence on the part of **CLS** or a vicarious agent.

C.9.01

The warranty period is **12 months**. Any liability and warranty for immaterial breaches of duty and minor defects is excluded. In the event that the customer has a right to subsequent performance, **CLS** shall decide whether subsequent performance is to be carried out by remedying defects or delivering a defect-free item.

C.9.02

Any work done to the items delivered by **CLS** or other services provided by **CLS** shall only be regarded as work done to remedy defects or for subsequent performance

- if the defect is expressly acknowledged by **CLS**
- or if notifications of defects can be proven
- and if these proven defect notification are justified.

Without these preconditions, such work shall be regarded as special performance.

C.9.03

Subsequent performance or replacement deliveries shall also be made by **CLS** as special performance if they do not result expressly from an acknowledgement of a legal obligation.

C.9.04

If the warranty period is obstructed or disrupted by the work carried out or replacement deliveries made by **CLS**, such an obstruction or disruption shall only extend to the functional unit affected by the replacement delivery or subsequent performance.

C.9.05

The ordering party shall give **CLS** the necessary time and opportunity to undertake the subsequent performance and replacement deliveries owed under the warranty. Only in urgent cases where operational safety is at risk and to prevent further disproportionately greater damages, of which **CLS** must be immediately informed, or if **CLS** is in default with the remedy of a defect, shall the ordering party have the

right to remedy the defect itself or by means of a third party and to demand reimbursement of necessary costs from **CLS**.

C.9.06

If a selected subsequent performance to be undertaken, according to a reasonable number of attempts to be determined in each case, does not result in a remedy of the defect, the customer shall be entitled to withdraw from the contract. At least three attempts at subsequent performance shall be deemed as reasonable. The number of attempts at subsequent fulfillment, after which the customer has a right of withdrawal, relates to the specific functional unit of the subject matter of the contract. Irrespective of whether the same functional unit of the subject matter of the contract is affected, the customer has a right of withdrawal if the number of individual defects makes it unreasonable for the customer to adhere to the contract.

C.9.07

If **CLS** has rejected subsequent performance despite the customer's corresponding right thereto, the customer shall be immediately entitled to a right of withdrawal.

C.9.08

The same shall apply if **CLS** has not undertaken a subsequent performance, to which **CLS** is entitled, within an appropriate grace period to be set by the customer.

C.9.09

The customer shall only be entitled to a decrease in price (reduction) if **CLS** agrees to such.

C.9.10

All further claims by the customer are excluded.

C.9.11

No warranty is assumed for damages for which **CLS** is not responsible. This includes, for example, damages occurring due to the following reasons: inappropriate or improper use, incorrect installation or commissioning by the ordering party or by third parties, natural wear and tear, incorrect or negligent handling, unsuitable machinery materials or replacement materials, defective construction work, unsuitable subsoil, chemical, electromagnetic, electrochemical or electrical influences insofar as they are not caused by fault on the part of **CLS**.

C.9.12

CLS shall not assume any warranty for components provided by the customer.

The customer is solely responsible for the suitability and quality of such components unless expressly agreed to otherwise.

C.9.13

CLS shall be released from any liability and warranty for damages resulting from the customer's non-observance of operating and maintenance instructions.

C.9.14

Should the customer fail to observe the operating and maintenance instructions, it will be assumed that any damages arising shall be the result of such non-observance. The customer shall in this case bear the burden of presentation and the burden of proof for the converse.

C.9.15

In the event that equipment delivered by **CLS** is installed or operated outside the location of the customer's main establishment, although the contract is concluded with a branch or main office of the customer situated in Germany, the customer shall bear the additional costs incurred by **CLS** on account of warranty measures, transport costs, travel costs and other expenses if the equipment is delivered beyond the borders of Germany.

C.10. Compensation for damages

The limitations of liability mentioned in these Terms and Conditions do not apply to damages arising from injury to life, body or health and not for damages caused by **CLS**, a

statutory representative or a vicarious agent with intent or gross negligence.

C.10.01

Should **CLS** be obligated to compensate for damages in other cases, **CLS** shall only be liable for direct damages to delivered goods as outlined in the provisions below.

C.10.02

Any liability for consequential damages arising from a breach of duties, even in the context of subsequent performance obligation, is excluded.

C.10.03

The same shall apply to damages arising from tortious acts.

C.10.04

In addition to the above provisions, **CLS** shall only be liable for damages other than damage sustained to delivered goods themselves in cases of intent and gross negligence, as proscribed by product liability laws, and given non-fulfillment of specifications expressly warranted for the purpose of safeguarding the ordering party against damages not sustained directly by the delivered goods.

C.10.05

CLS is only liable for reasonable foreseeable damages typically occurring for this type of contract, except in the event of intent or gross negligence.

C.11. Storage / Delay in acceptance

C.11.01

Should a fixed-term storage of finished goods at **CLS** be expressly agreed to in exceptional cases, or if warehousing should become necessary due to a delay in acceptance, **CLS** shall not be liable for damages arising as long as reasonable care was taken.

C.11.02

CLS shall also not be obligated to insure such stored/warehoused goods.

C.11.03

Should the customer not accept the ordered goods, despite setting a period of grace, **CLS** shall be entitled to charge 25% of the agreed price as a flat fee, irrespective of the proof of actual damages, if the customer does not prove damages of a lesser extent.

C.12. Retention of title

C.12.01

All deliveries by **CLS** are made under retention of title.

C.12.02

This proviso, in addition to the addendum below, shall apply until payment of all claims under the business relationship with the customer, and until full release from any contingent liabilities that **CLS** has incurred in the interest of the customer in connection with delivery.

C.12.03

Pledging of the supplied items is not permitted.

C.12.04

CLS is entitled to demand return of its goods under retention of title for good cause, in particular in the event of payment default by offsetting the proceeds of the sale. This demand for return does not represent a withdrawal from the contract.

C.12.05

If and to the extent that the goods taken back by **CLS** are able to be otherwise sold as new goods in the ordinary course of business, the customer shall, without further proof, owe 10% of the invoice amount of the goods for the costs of return shipment. If it is not possible to sell the goods as new goods in the ordinary course of business, the customer shall, without further proof, owe a further

30% of the invoice amount for the goods for loss in value. The customer reserves the right to demonstrate a lower percentage.

C.12.06

CLS reserves the right to assert other, further damages.

C.12.07

The handling and processing of goods supplied by **CLS** shall always be on behalf of **CLS**, so that the goods remain the property of **CLS** irrespective of their degree of processing or completion, even as finished goods, under exclusion of the consequences of Section 950 BGB. If the goods subject to retention of title are processed with other items, also under the exclusion of the legal consequences of Section 950 BGB, **CLS** shall acquire at least co-ownership in the new item produced in proportion to the invoice value of the **CLS** goods to the invoice value of the other processed items.

C.12.08

The customer hereby assigns all its claims from the resale, processing, installation and other use of our goods to **CLS** in advance. If any of the products sold, processed or installed by the ordering party contain items that are not the property of the ordering party under retention of title and for which the other suppliers have also agreed a retention of title with a sales and advance assignment clause, the assignment shall occur in the amount of the co-ownership share of **CLS**, which corresponds to the percentage of the claim, otherwise in the full amount.

C.12.09

The remaining collection authorization vested in the ordering party despite assignment shall expire by means of a revocation permissible at any time.

C.12.10

Should the value of the collateral due to **CLS** exceed the claim of **CLS** against the ordering party by 50% for goods deliveries, or by 20% for other services, **CLS** shall be obligated at the ordering party's request to release collateral in the corresponding amount, to be selected at the discretion of **CLS**.

C.13. Place of performance

C.13.01

The place of performance for the goods and services to be provided by **CLS** shall always be the business establishment of **CLS**.

C.13.02

The place of performance for deliveries shall be the business establishment or warehouse of **CLS**, particularly if **CLS** performs the transport itself.

C.14. Definitions

C.14.01

All the headings in the Terms and Conditions of **CLS** merely serve to facilitate better readability and have no effect on the meaning and interpretation of the individual regulations.

C.14.02

Declarations that are transmitted in text form (e.g. by fax or e-mail) shall also be regarded as written declarations of intent and confirmation of actual notice as defined by the Terms and Conditions of **CLS**.

C.14.03

Delivery dates designate a point in time, whether a specific day or a calendar week or similar, in which delivery must take place.

Delivery periods designate the period of time within which a delivery must take place.

Delivery deadline is the generic term for delivery dates and delivery periods.