

# GENERAL TERMS AND CONDITIONS

## OF NOVOGENIA GMBH CONCERNING THE ORDER OF CHARGEABLE SARS-CoV-2 ANALYSES

### 1. General Information

- 1.1. These General Terms and Conditions ("GTC") shall apply - subject to the provision in Section 1.2 - to the paid order of SARS-COV-2 PCR or antibody analyses from Novogenia GmbH, Strasse 19, 5301 Eugendorf, Austria ("Novogenia," "we," "us") by customers ("Customer(s)," "you," "your").
- 1.2. Section 2 of these GTC contains special provisions for contracts for the performance of a SARS-COV-2 analysis.
- 1.3. General Terms and Conditions of the Customer (or of third parties) shall not become part of the contract without Novogenia's express consent; this shall also apply even if Novogenia does not expressly object to such General Terms and Conditions.
- 1.4. These General Terms and Conditions can be viewed in their current version at <https://novogenia.com/documents/gtc-sars-cov-2-analyses>, printed out there and/or saved locally as a PDF document on a suitable data carrier.

### 2. Contracts for the Performance of a SARS-COV-2 Analysis for which a Fee is Charged

#### 2.1. General points

- 2.1.1. The provisions in this Section 2 apply exclusively to contracts for the performance of SARS-COV-2 analyses (see the definition of SARS-COV-2 analysis in Section 2.2.1 below) and all directly related services, such as the transmission of the analysis report based on the SARS-COV-2 analysis (corresponding contracts are also referred to hereinafter as "contract for the performance of a SARS-COV-2 analysis").
- 2.1.2. The provisions in this clause 2 do not apply to the separate purchase of products from Novogenia (such as the purchase of cosmetics, food supplements, recipe books), even if these products are prepared for the Customer on the basis of any results of an analysis report. The provisions of this clause 2 do not apply to any additional orders of an analysis report (for example, if the Customer purchases a second copy of his analysis report).
- 2.1.3. SARS-COV-2 analyses are only offered to persons who have reached the age of 14.

#### 2.2. The subject of the contract

- 2.2.1. Customers have the option to have Novogenia perform a chargeable SARS-COV-2 analysis of their blood and/or a swab sample (such analysis is hereinafter also referred to as "SARS-COV-2 analysis"). SARS-COV-2 analysis is a test for either the presence of virus particles in the swab or the presence of SARS-COV-2 specific antibodies in the blood. More detailed information on the SARS-COV-2 analyses we offer can be found at <https://novogenia.com/>.
- 2.2.2. SARS-COV-2 analyses are blood or tap analyses that test for the presence of virus particles in the swab or the presence of antibodies to the SARS-COV-2 virus. This home analysis serves as a pre-screening as to whether further analysis should be performed by public authorities. This means that SARS-COV-2 analyses should indicate the presence of disease or immunity but should not lead to a medical decision without the involvement of a physician. Since the wrong sample could give an incorrect result, this analysis, as a pre-screening but without the involvement of a medical professional, should not be considered as a definitive diagnosis.
- 2.2.3. As part of the evaluation of the SARS-COV-2 analyses, Novogenia will provide the Customer with a personal report of the analysis results (the "Analysis Report") in electronic and/or printed form.
- 2.2.4. Novogenia will not provide third parties with the blood or swab sample for SARS-COV-2 analysis or the results of SARS-COV-2 analysis. Only notifiable diseases are forwarded to the relevant authorities. In particular, the blood or smear sample and the results of the SARS-COV-2 analysis are not available for use by third parties (e.g. insurance companies or employers) in any way, especially not in order to be able to make a decision on tariffs, risk classifications and the like.

### 2.3. Order; Conclusion of Contract

- 2.3.1. As a rule, the conclusion of the contract between Novogenia and the Customer is preceded either by the Customer being informed about Novogenia's offer by an advisor (e.g. nutritionist) and subsequently contacting Novogenia, or by the Customer learning about the offer without prior contact with an advisor and in turn contacting Novogenia. The further ordering process then takes place either in an online process via a web shop on the Novogenia website (hereinafter also referred to as the "online process") or offline (by mail). In both cases, it is usually necessary to provide a so-called "Caregiver ID" for an order. The Customer receives the account Caregiver ID either from his Caregiver, through whom he also received the link to the Web Shop, or from Novogenia itself (especially if he has no Caregiver).
- 2.3.2. In the offline process, Novogenia will send the Customer a set for performing the blood or swab test (the "Sample Set") after the Customer has contacted Novogenia. The Customer carries out the test on himself using the Sample Set, following the description and instructions provided, and thereby generates a blood or swab sample (such samples also being the "Samples"). The Customer shall send the sample back to Novogenia by mail together with the correspondingly signed contractual documentation and the required declaration of consent under data protection law (if necessary, Novogenia shall also offer the Customer the option of sending the contractual documentation to Novogenia online). By sending the sample (together with the relevant contractual documentation and the required declaration of consent under data protection law), the Customer submits an offer to conclude a contract for the performance of a SARS-COV-2 analysis. Novogenia will confirm receipt of the sample to the Customer in a suitable form (e.g., by e-mail). This confirmation by Novogenia constitutes acceptance of the Customer's offer. If necessary, a contract may also be concluded offline in another form (e.g., at trade fairs).
- 2.3.3. In the online process, the Customer can place the SARS-COV-2 analysis desired by him in a "shopping basket" in Novogenia's web shop. The order of the corresponding SARS-COV-2 analysis is completed by clicking on the button "ORDER FEE". By this click, the Customer submits a binding offer regarding the conclusion of a contract for the performance of a SARS-COV-2 analysis with regard to the services selected by him. Novogenia is under no obligation to accept the offer. The Customer's offer is accepted by Novogenia by sending the Customer confirmation of his order by e-mail.

### 2.4. Performance, Delivery, Transfer of Risk

- 2.4.1. Novogenia's service obligation includes the performance and evaluation of the SARS-COV-2 analysis and the transmission of the analysis report based on the SARS-COV-2 analysis to the Customer. With regard to the aforementioned online process, the sending of the sample set is also part of Novogenia's service obligation. The proper preparation of the sample and the sending of the sample to Novogenia is the sole responsibility of the Customer.
- 2.4.2. Novogenia shall commence the SARS-COV-2 analysis after receipt of the sample, generally within two (2) working days.
- 2.4.3. Upon receipt of the analysis report by the Customer, Novogenia's performance obligation is fulfilled and concluded. Irrespective of any recommendations in the analysis reports, Novogenia does not owe the Customer any specific success, in particular with regard to a concrete change in the physical constitution of the Customer.
- 2.4.4. The performance of the SARS-COV-2 analysis and the transmission of the analysis reports are subject to the condition that the Customer has signed and submitted to Novogenia the declaration of consent under data protection law, and that the sample is in the condition necessary for the proper performance of the SARS-COV-2 analysis. This means that Novogenia is released from the obligation to perform the SARS-COV-2 analysis if the aforementioned conditions are not met. Should the sample received by Novogenia not be usable, Novogenia will send the Customer a new set of samples to generate a new sample. The Customer will not incur any additional costs other than the postage costs for sending the sample to Novogenia (Novogenia will do this a maximum of 10 times).
- 2.4.5. Should the Customer have revoked his consent under data protection law to the performance of the genetic analysis and the preparation of the analysis reports, Novogenia shall immediately upon receipt of the declaration of revocation discontinue the analysis work and destroy the sample.
- 2.4.6. The SARS-COV-2 analyses and the preparation of the analytical reports shall be carried out in accordance with the general state of the art in science and technology. The following applies in particular to smear analyses: The analysis depends on the quality of the sample, transport conditions, and possible changes in the virus. State of the art in science and technology for analyses is that, due to technical limitations, 100% accuracy of such analyses cannot be guaranteed.
- 2.4.7. The respective SARS-COV-2 analysis is limited to the purpose of the SARS-COV-2 analysis agreed between Novogenia and the Customer, other genetic trends or traits are not tested and evaluated.

- 2.4.8. Unless otherwise agreed with the Customer, the analysis reports shall be sent to the Customer as soon as possible but within one (1) week after receipt of the sample and the signed data protection declaration of consent by Novogenia. The Customer is informed that the period of time until the transmission of the analysis report may vary in individual cases. Should the transmission of the analysis report be significantly delayed, Novogenia will inform the Customer in good time.
- 2.4.9. If, after the sample has been sent to Novogenia, a circumstance occurs which would significantly delay the performance of the SARS-COV-2 analysis and/or the preparation of the analysis reports, Novogenia is entitled to withdraw from the contract.
- 2.4.10. If the sample sent by the Customer to Novogenia is destroyed, damaged, altered or lost during transport to Novogenia, this falls within the sole sphere and responsibility of the Customer, provided that the Customer has commissioned the person or company designated to carry out the shipment and Novogenia has not previously designated this person or company to the Customer.
- 2.4.11. The costs for the shipment of samples from the Customer to Novogenia shall be borne by the Customer in the event that the sample set is not yet accompanied by return shipping documents pre-franked by Novogenia.
- 2.4.12. Samples shall be destroyed at the latest 30 days after completion of the SARS-COV-2 analysis and transmission of the analysis report to the Customer.

## 2.5. Right of Withdrawal for Consumers

- 2.5.1. Insofar as and to the extent that the Customer concludes the contract for the performance of a SARS-CoV-2 analysis as a consumer (a consumer is a natural person who concludes a legal transaction for purposes that can predominantly be attributed neither to his commercial nor his self-employed professional activity), he is entitled to a right of withdrawal with regard to this in accordance with the statutory provisions, about which we provide the information below:

### Withdrawal policy

#### Right of Withdrawal

You have the right to withdraw from this contract within fourteen days without giving reasons.

The withdrawal period is fourteen days from the date of conclusion of the contract.

In order to exercise your right of withdrawal, you must inform us (Novogenia GmbH, Strass 19, 5301 Eugendorf, Austria, telephone: +43 662 42 50 99 11, fax: +43 662 42 50 99 44, e-mail: [service@novogenia.com](mailto:service@novogenia.com)) by means of a clear statement (e.g., a letter by mail, fax or e-mail) of your decision to withdraw from this contract. You may use the attached model withdrawal form, which is not mandatory.

In order to comply with the withdrawal period, it is sufficient to send the notification of the exercise of the right of withdrawal before the end of the withdrawal period.

#### Consequences of Withdrawal

If you withdraw from this contract, we shall reimburse you for all payments we have received from you, including delivery charges (except for additional charges resulting from your choosing a different method of delivery from the cheapest standard delivery offered by us), immediately and no later than fourteen days from the date we receive notification of your withdrawal from this contract. For this refund, we will use the same means of payment that you used for the original transaction unless expressly agreed otherwise with you; in no case will you be charged for this refund.

If you have requested that the services should commence during the withdrawal period, you shall pay us a reasonable amount corresponding to the proportion of the services already provided by the time you inform us of the exercise of the right of withdrawal in respect of this contract compared to the total amount of services provided for in the contract.

#### Sample Withdrawal Form

(If you want to cancel the contract, please fill out this form and send it back).

- To Novogenia GmbH, Strass 19, 5301 Eugendorf, Austria, Fax: +43 662 42 50 99 44, E-Mail: [service@novogenia.com](mailto:service@novogenia.com)
- I/we (\*) hereby withdraw from the contract concluded by me/us (\*) for the purchase of the following goods (\*) / the provision of the following service (\*)
- Ordered on (\*) / Received on (\*)
- Name of the consumer(s)
- Address of the consumer(s)
- Signature of the consumer(s) (only in case of a communication on paper)
- Date

(\*) Delete as applicable.

- 2.5.2. The right of withdrawal expires prematurely for such contracts, the subject of which is the provision of a service if the contractor has provided the service in full and has only begun to provide the service after the Customer has given his express consent and at the same time has confirmed his knowledge that he will lose his right of withdrawal upon full performance of the contract (§ 356 a para. 4 BGB); or

## 2.6. Rights of Revocation and Termination

- 2.6.1. Any rights of termination and/or revocation of the parties (in addition to the right of withdrawal under Section 2.5) with regard to a contract for the performance of a SARS-CoV-2 analysis are excluded.
- 2.6.2. Section 2.6.1. does not apply to a termination for good cause. An important reason for termination of the contract exists for one of the parties, e.g., if, taking into account all circumstances of the individual case and weighing up the interests of both parties, this party cannot reasonably be expected to continue the contractual relationship until the conclusion of the contract.
- 2.6.3. For clarification: Any possible existing rights of withdrawal of the Customer according to section 2.5 are not affected by the regulations in this section 2.6.

## 3. Prices, Terms of Payment, Offsetting

- 3.1. All prices are understood to include the statutory value-added tax if applicable at the time.
- 3.2. Except as otherwise provided in these GTC, any shipping costs for the shipment from Novogenia to the Customer will be communicated to the Customer during the ordering process and shall be borne by the Customer (subject to the Customer's right of revocation, if applicable; cf. Section 2.5).
- 3.3. The remuneration agreed between Novogenia, and the Customer is payable within thirty (30) days of receipt of the invoice by the Customer.
- 3.4. The Customer shall only be entitled to offset against claims of Novogenia if its claims have been legally established, Novogenia has acknowledged them, or if the Customer's claims are undisputed. The Customer shall also be entitled to offset against Novogenia's claims if it asserts justified complaints or counterclaims arising from the same contract. The Customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 3.5. These analyses are medical services that serve as a therapy. Medical services for curative treatments are VAT exempt.

## 4. Data Protection

Novogenia will comply with all data protection regulations applicable to Novogenia in the provision of services, in particular the Basic Data Protection Regulation.

## 5. Liability

- 5.1. Novogenia shall be liable in accordance with the statutory provisions in the following cases for expenses and damages (in this Section 5 collectively referred to as "damages"): In the case of liability under the Product Liability Act; in cases of intent or fraudulent misrepresentation; in cases of gross negligence; for injury to life, body or health; in the case of assumption of a guarantee by us; as well as in all other cases of mandatory statutory liability.
- 5.2. Novogenia is also liable for damages in accordance with the statutory provisions in the event of culpable violation of so-called cardinal obligations. Cardinal obligations in this sense are all obligations, the violation of which endangers the achievement of the purpose of the contract as well as all obligations, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which one may regularly rely upon. However, if the breach of a cardinal obligation was only slightly negligent and did not result in injury to life, body or health, the Customer's claims for damages shall be limited to the amount of the typically foreseeable damage.
- 5.3. In all other respects, the Customer's claims against Novogenia for damages - regardless of the legal basis, in particular, due to a material defect, defect of title and/or the breach of other obligations arising from the contractual relationship or from a pre-contractual obligation by us, our legal representatives, employees or vicarious agents - are excluded.
- 5.4. Insofar as Novogenia's liability is limited or excluded under the above provisions, this also applies to the personal liability of Novogenia's legal representatives, employees, and agents.

## 6. Miscellaneous

- 6.1. Except as otherwise provided in these GTC, changes, and amendments to the provisions of the contracts concluded with the Customer must be made in writing (this also applies to this Section 6.1).
- 6.2. The European Commission provides an Online Dispute Resolution (OS) platform, which can be found at <http://ec.europa.eu/consumers/odr/>. We are neither willing nor obliged to participate in a dispute resolution procedure before a consumer arbitration board.
- 6.3. These Terms and Conditions and the contracts concluded on the basis of these Terms and Conditions shall be governed by the laws of Austria, excluding (i) the rules of private international law, and (ii) the United Nations Convention on Contracts for the International Sale of Goods.
- 6.4. If the Customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from contractual relationships between the Customer and Novogenia, to which these General Terms and Conditions apply, is the registered office of Novogenia.
- 6.5. Should individual provisions of these GTC be or become invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision which comes closest to the invalid provision in economic terms. If these General Terms and Conditions contain a loophole, this loophole shall be filled by a provision which the parties would have made if they had been aware of the loophole at the time of the conclusion of the contract.