

Terms of Use

The following terms and conditions shall apply to all products and services provided by SMOC.

Limited Warranty

SMOC warrants that the products and services comply with the provisions specified in the applicable laws. SMOC neither warrants or represents that the service results will be judged as acceptable when presented to any regulatory body or government agency, nor warrants that the service results can support the customer in further development, marketing or otherwise utilizing the test samples or any other products or services.

The customer warrants that it has all the rights, copyrights and interests in and to the test samples submitted to SMOC and relevant intellectual property rights therein, and any use of such test samples by SMOC will not infringe on the rights of any third party.

The warranties made by SMOC here replace all other representations or warranties, whether express, implied or statutory, including any implied warranty for merchantability, fitness for any particular purpose, fitness of products and services for any customer purpose, impact of products and services on customer operation, or non-infringement on patents, trademarks or other intellectual property rights.

Any claim for breach of this warranty must be submitted to SMOC in writing within thirty (30) days of delivery of the products or completion of the services, and thereafter, the acceptance of the products or services is deemed to be final.

Once the products are shipped from the SMOC facility or delivered to a common carrier, as applicable, the risks of loss of and ownerships in the products are transferred to the customer.

Limitation of Liability

SMOC will not be responsible for the penalties or liquidated damages or any and all special, indirect or consequential penalties, punitive damages or accidental losses of any kind, including but not limited to loss of profits, whether such losses or damages are based on breach of contract, breach of warranty, tort, negligence, strict liability or otherwise, even if SMOC has been advised of the possibility of such losses or damages and such losses or damages are foreseeable.

Regardless of the form of litigation, the liability of SMOC is limited to the actual and foreseeable losses and shall not exceed the total price paid for the products or services arising from such obligations. SMOC will not be responsible for any losses arising from or in connection with the decision of the customer or any third party to further research, develop or market the test

samples or any related derivatives, products or services or to use such products, services and derivatives or relevant services of the test samples.

According to the restrictions described in this section, if SMOC breaches the aforesaid warranties, the sole responsibility of SMOC and the sole compensation to which the customer is entitled is that SMOC replaces the products or provides corresponding payments, or corrects the affected work or services in compliance with the corresponding specifications.

Indemnification

The customer will defend, indemnify, protect and hold harmless the directors, officers, employees and agents of SMOC from and against any and all claims, demands, actions, prosecutions, causes of action, losses, damages, penalties and obligations, including reasonable professional expenses ("Claims") arising from, in connection with or attributable to: (a) research, development, manufacturing, distribution, use, selling or other disposal carried out by the customer; or its performance of the services or use of any test samples and/or other materials of the products; or (b) any infringement on any patent or other intellectual property right of any third party, or unauthorized use or misuse of any of its know-how or trade secrets; or (c) gross negligence or willful misconduct or breach of this Agreement by the customer; or (d) any relevant bodily injuries sustained through contact with the products during a visit to the SMOC biological facility or upon delivery of the products to the customer; the customer shall pay any expense and loss which is payable by it in accordance with the final judgment after putting forward all the reasonable appeals, provided that the customer receives the notice of action and obtains the information, reasonable assistance and exclusive authorization for defense and/or settlement of such action within five days upon receipt of the notice of action in writing by SMOC.

Force Majeure

Except for the obligations to make payment of any charges pursuant to these terms and conditions, any party's failure to perform or delay in performance of any obligation set out herein due to fire, flood, earthquake, hurricane, explosion, disease, pollution, strikes, acts of terrorism, war, riot, embargo, demands of government, civil or military authority, animal protection campaigns, acts of God, or any other incident, situation or condition which is not attributable to or involved in by and goes beyond the reasonable control of such party shall not be deemed a breach of obligations.