

## Material Transfer Agreement (non-profit entities)

This non-exclusive, non-transferable material transfer agreement (**MTA**) is the agreement between the non-profit-entity

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[name and address of your institution, and if applicable, university, hereinafter **RECIPIENT**] in the interest of

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[name of **RESEARCHER**]

and ChromoTek GmbH (address: Am Klopferspitz 19, D-82152 Planegg-Martinsried) a German corporation registered with the lower court of Munich in the commercial register under HRB 175 782] <https://www.chromotek.com/imprint-impressum/> (hereinafter also referred to as "**CTK**"), regulating the use of the Chromobody® products displayed in the web shop on CTK website <https://www.chromotek.com> ("**CTK's Website**") under Actin-Chromobody, Cell Cycle-Chromobody, Dnmt1-Chromobody, Histone-Chromobody, Lamin-Chromobody, PARP1-Chromobody, and Vimentin-Chromobody, displayed on CTK's website <https://www.chromotek.com/products/detail/product-detail/chromobodies/> (the "**PRODUCT(S)**") and any progenies and/or derivatives thereof.

The following terms and conditions of the MTA shall apply to all licenses and deliveries of PRODUCTS by CTK to RECIPIENT which is a non-profit entity and wishes to order PRODUCTS online, by e-mail or facsimile, unless otherwise agreed between CTK and RECIPIENT in writing.

General terms and conditions of RECIPIENT that conflict with the present terms and conditions of CTK shall not be binding upon CTK, even if the license request is based on RECIPIENT's general terms and conditions and CTK has not expressly rejected them.

### 1 Definitions.

DERIVATIVE shall mean any DNA or RNA construct, modification, cell (line), plasmid, vector, virus, protein, tissue, pharmaceutical or other product or agent which incorporates a variable domain of a heavy chain antibody (VHH/ Nanobody®) or any portions thereof of the PRODUCT.

MATERIAL shall mean, as the context requires, PROGENY and / or DERIVATIVE.

PRODUCT shall mean a mammalian expression plasmid which incorporates the sequence of a variable domain of a heavy chain antibody (VHH/ Nanobody®) fused in frame with a fluorescent protein encoding sequence and comprises Actin-Chromobody-TagRFP (**product code acr**).

PROGENY shall mean any unaltered copies of PRODUCT.

THIRD PARTY shall mean any person or entity which is not CTK, RECIPIENT or RESEARCHER.

## 2 Conclusion of MTA.

2.1 CTK's description and depiction of PRODUCT on CTK's Website are not a legally binding offer to RECIPIENT but are an invitation to RECIPIENT to make a request to license the rights to use the PRODUCT.

2.2 Requests to CTK may be made

- online in CTK web shop <https://shop.chromotek.com/>; or

- by email to [order@chromotek.com](mailto:order@chromotek.com); [USAorders@chromotek.com](mailto:USAorders@chromotek.com); or

- by facsimile to +49 89 124148811 attn. "License Request".

In case of making an online request: By finishing the order process on CTK's Website, RECIPIENT makes a binding offer to license the use of CTK's Product(s). The same shall apply, in case RECIPIENT sends CTK an email or facsimile with an offer to license the use of the PRODUCT or confirms by email or facsimile a request made by telephone.

2.3 By sending a request to CTK, RECIPIENT confirms that it takes the license to use the PRODUCT in its own name and for its own account.

2.4 By sending a request to CTK, RECIPIENT further confirms that it will use the requested PRODUCTS solely within the limitation of scope of use described under section 4. CTK retains the right to request prior to the conclusion of an MTA with RECIPIENT written evidence that the use of the PRODUCT will be limited to scientific research purposes in accordance with section 3 and 4.

2.5 This MTA is only concluded with RECIPIENT by CTK's written confirmation or by delivery. The acceptance of RECIPIENT's request is made by e-mail sent by CTK. A message sent by CTK that RECIPIENT's request has been received is not and may not be interpreted as acceptance of RECIPIENT's request.

2.6 RECIPIENT has no claim that CTK accepts RECIPIENT's request or the registration as user of CTK's Website. CTK retains the right to refuse the conclusion of an MTA based on a request from RECIPIENT. In particular, CTK reserves the right to refuse any request of RECIPIENT where CTK reasonably believes that the PRODUCTS will be used for unauthorized purposes.

## 3 License.

PRODUCT is provided to RECIPIENT under a non-exclusive, non-transferable, not sublicensable license<sup>1</sup> limited to the sole use and purpose of academic, internal non-profit research in the laboratory of RESEARCHER, subject to the restrictions set forth in Section 4.

CTK and its licensors reserve all their rights not expressly granted herein, and no implied or other licenses are granted.

## 4 Restricted Use.

4.1 RECIPIENT shall use the PRODUCT and the MATERIAL in compliance with all laws and regulations applicable in RECIPIENT's place/country. PRODUCT and MATERIAL may only be used for internal academic non-profit research. PRODUCT and MATERIAL may not be used (i)

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<sup>1</sup> Licensed/Sublicensed are the following IP Rights: Evrogen IP JSC under US 7,417,131, US 7,605,230, US 7,638,615, United States Patent Application 12/179,000, European Patent Application No. 06809023.2, European Patent Application No. 07705420.3. Under license from LMU under EP 1945673, EP 2451841 and equivalent patents and patent applications in other countries.

in or for clinical trials; (ii) for diagnostic or therapeutic purposes involving human subjects or animals; (iii) prophylactic use; or (iv) production. Modifications of the PRODUCTS made by RECIPIENT are subject to RECIPIENT's sole responsibility, also regarding potential third party rights which may be infringed by such modifications made by RECIPIENT. RECIPIENT shall indemnify and hold CTK harmless from and against any claims of third parties based on such infringements.

- 4.2 RECIPIENT warrants that the research work is carried out under the direction of the RESEARCHER and employees of RECIPIENT. RECIPIENT shall not involve any person in the research work with the PRODUCT that is not employed by RECIPIENT without the prior written consent of CTK.
- 4.3 RECIPIENT shall be free to propagate or modify the original PRODUCT to create new plasmids, vectors, cells, except that (i) the coding region of the inherent Nanobody® may not be altered/modified; and/or (ii) Evrogen fluorescent protein may not be isolated or separately transferred into a new context.
- 4.4 RECIPIENT shall not offer the PRODUCT or the MATERIAL for sale or distribution and shall not offer services to a Third Party using the PRODUCT or the MATERIAL. The use of the PRODUCT or MATERIAL in research for or on behalf of profit organizations, which receive access to data and results stemming from the research of the RESEARCHER requires a commercial license from CTK.

## **5 License Fee.**

CTK charges a one-time license fee set forth in the price list displayed on CTK's Website at the time of entering the MTA or, in individual cases, the fees as offered by CTK to the RECIPIENT. License fees are in Euros or US Dollars and are charged plus applicable VAT or sales tax. The license fees communicated on the CTK Website for the use of the PRODUCTS may be changed by CTK prior to an announcement on the CTK Website and shall apply to future contracts with RECIPIENT.

## **6 Payment Terms, Default of Payment.**

- 6.1 CTK invoices are payable without any discounts within 30 (thirty) days from the date of the respective invoice.
- 6.2 Payment by cheque, credit card or bill of exchange shall be effective only after these instruments have been cleared and the payment is received by CTK. Charges on bills of exchange and any collection and other bank charges shall be borne by RECIPIENT.
- 6.3 CTK may demand payment of the purchase price in advance or request grant of an adequate security for the purchase price.
- 6.4 In the event of delayed payment, CTK shall be entitled to demand interest on the defaulted amounts for the period of default at a rate of 9% above three-month EURIBOR.

## **7 Setting-Off, Withholding of Payments.**

RECIPIENT may only withhold payments or set off a claim with undisputed claims, with a claim which has become final and binding by court decision. In particular, RECIPIENT shall not have the right to withhold or to reduce the payment of due bills, in case of objection of the PRODUCTS.

## **8 Delivery.**

Unless expressly agreed otherwise between CTK and RECIPIENT, CTK delivers the PRODUCTS EXW Planegg-Martinsried (Incoterms 2020).

## **9 Limited Warranty for PRODUCT.**

RECIPIENT acknowledges that PRODUCT is experimental in nature and may have hazardous properties. CTK and its licensors<sup>1</sup> make no warranties, express or implied of any kind. CTK hereby disclaims any warranties, representations or guarantees of any kind as to the PRODUCT and/or any rights in the patents related thereto. In particular, CTK makes no representation that the use, of the PRODUCT will not infringe any Third-Party intellectual property right. CTK warranty in case of default of the PRODUCT is expressly limited to the replacement of the PRODUCT or a refund limited to the actual license fee.

## **10 Liability.**

10.1 CTK shall be liable for damages in case of willful misconduct or gross negligence by CTK or its agents. In case of CTK's violation of substantial contractual provisions that are vital for the realization of the purpose of the contract concerned, CTK shall also be liable for ordinary negligence. However, in case of ordinary negligence, any claims for damages are limited to foreseeable damages caused by the defect or misconduct complained of.

10.2 Any damage claims based on product liability or other mandatory laws shall remain unaffected by the preceding limitation of liability.

10.3 CTK shall not be liable for damages caused by inappropriate handling, use, or processing of PRODUCT or MATERIAL by RECIPIENT in violation of the restrictions set forth in this MTA.

10.4 To the extent permissible under applicable law, RECIPIENT indemnifies, defends and holds harmless CTK and its officers, employees, licensors<sup>1</sup> and agents (the "Indemnitees") from and against any liability, damage, loss or expense (including without limitation reasonable attorney fees) of any kind incurred by or imposed upon any of the Indemnitees in connection with any claims, suits, actions, demands or judgments arising out of any theory of any damage or loss liability relating to RECIPIENT's use of the PRODUCT or MATERIAL.

## **11 No Assignment.**

No right granted under this MTA may be assigned or otherwise transferred to any Third Party. PRODUCT and/or MATERIAL may only be transferred to Third Parties with the prior written approval of CTK for transferring PRODUCT and/or MATERIAL to academic colleagues provided that the institution of the receiving colleague has submitted itself in writing to the terms of this MTA. The same shall apply when RECIPIENT changes his/her affiliation and wants to move any PRODUCT and/or MATERIAL governed by this MTA.

## **12 Rights in Product and Material; Back-license to CTK; Destruction of PRODUCT and PROGENIES after research is finished.**

12.1 RECIPIENT and RESEARCHER acknowledge that ownership of the PRODUCT shall remain with CTK. Any PROGENY generated by RECIPIENT or RESEARCHER from the PRODUCT shall also be owned by CTK. Title to any Derivative shall be with RECIPIENT, except for the nanobodies

which shall be owned by CTK. Should in specific cases the CTK nanobodies not be separable from the Derivatives, then RECIPIENT and CTK shall be co-owners of such Derivatives.

12.2 Upon termination of the research work of RESEARCHER, the PRODUCT and any Progeny thereof shall be destroyed, and RECIPIENT shall notify CTK in writing of such destruction. After RESEARCHER has accomplished his research with the PRODUCT or for other reasons stops working with the PRODUCT, RECIPIENT shall ensure that the PRODUCT and all PROGENIES will be destroyed, and RECIPIENT shall notify CTK thereof in writing.

12.3 RECIPIENT shall inform CTK in a timely manner of the results that RECIPIENT has achieved with the research on the PRODUCT.

12.4 RECIPIENT shall retain all right, title and interest in and the unrestricted right to use all results generated by use of the PRODUCT and/or MATERIAL as well as the right to publish or otherwise disclose such results provided that CTK is named as the source of the PRODUCT and IP holder of the nanobody sequence in the PRODUCT in these written or oral publications.

12.5 RECIPIENT herewith grants CTK an irrevocable, worldwide non-exclusive, sublicensable royalty-free license to any internal research use of all DERIVATIVES as defined in section 1.

### **13 Force Majeure.**

13.1 CTK shall be excused from CTK obligations to fulfil this MTA in a timely manner by acts of God, strikes, fires, explosion, flood, riot, lockouts, injunction, interruption of transportation, accidents, pandemics, war or apprehension of war, or other disturbances affecting CTK or CTK's suppliers which are beyond CTK's control and responsibility and are not caused by intention or gross negligence on CTK's side, as long as the disturbances and the consequences thereof persist. Should a force majeure event last longer than three months from the date of the conclusion of the MTA, RECIPIENT shall be entitled to rescind the agreement.

13.2 In no event shall CTK be liable to RECIPIENT for any claims, damages or expenses arising out of or related to CTK's inability to fulfil its obligations under the MTA due to a force majeure event.

### **14 Responsibility for Access Data and Passwords.**

14.1 Any data of RECIPIENT, such as username and password shall be kept confidential and shall be stored inaccessibly by unauthorized persons.

14.2 RECIPIENT shall be responsible to ensure that the access and the use of the web shop on CTK's Website in the login-area only occur by RECIPIENT or its entitled users. If facts give reasons that an unauthorized person has obtained knowledge of RECIPIENT's access data and passwords, RECIPIENT shall be obligated to inform CTK without undue delay thereof. CTK will then block or inactivate the access of the login area under the respective username and password.

### **15 Severability clause.**

The partial or total invalidity or unenforceability of present or future individual provisions of this Agreement shall not impair the validity or enforceability of the other provisions hereof. The same shall apply insofar as it should arise that this Agreement is incomplete. The parties shall supplement the Agreement where it is incomplete and shall replace the invalid or unenforceable provision by such valid and enforceable provision which serves best the

