

These General Terms and Conditions of Sale (the "Terms") shall govern the relationship between CARBOGEN AMCIS AG or - as the case may be - any of its Affiliates, as defined hereinafter ("CGAM") on the one hand and its customer (the "Customer") on the other hand (Customer and CGAM each also a "Party" or collectively the "Parties"), for offers and orders for the sale and delivery of any product(s), chemical(s), intermediate(s), substance(s) or compound(s) (the "Product") by CGAM to the Customer. For the purpose of the Terms an "Affiliate" shall mean any company that directly or indirectly controls, is controlled by or under common control with either Party (as the case may be), where "control" shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such entity, whether by contract, through the ownership of a significant percentage of the shares, or through the by-laws or otherwise. No terms and conditions contained in any document issued by the Customer shall be binding on CGAM, even if they have not been expressly rejected by CGAM. CGAM accepts Customer's purchase orders solely on these Terms which take precedence over Customer's different or additional terms and conditions. CGAM's delivery shall not constitute acceptance of Customer's different or additional terms and conditions. CGAM's failure to object to provisions contained in any document from Customer shall not be construed as waiver of the Terms or an acceptance of any such provision.

## 1 Principles of Sale; General Obligations

- 1.1 Upon receipt of Customer's order request, CGAM will as soon as practicable and in its sole discretion prepare a quotation - offering the Product Customer intends to buy, including the price, quantity and estimated delivery times - for such Product (the "Quotation"; of which these Terms form an integral part of). If Customer intends to place an order as described in the Quotation it shall issue an order to CGAM. The order shall become a binding purchase order (the "Purchase Order") upon the issuance of the order confirmation by CGAM. The Purchase Order and the Terms, as integral part thereof, constitute the binding agreement between the Parties regarding the sale of the Product and the delivery thereof (the "Agreement"). For the avoidance of any doubt, CGAM shall not be obliged to deliver any Products if it has - in its sole discretion - not issued the order confirmation.
- 1.2 In case of any discrepancies between the provisions of these Terms with any other documents, the Terms shall take precedence over all and any such documents; provided, however, that such documents do not expressly modify, amend or supersede a specific section of the Terms with the express reference to such section being modified, amended or superseded.

## 2 Price

- 2.1 The price for Product shall be specified in the Purchase Order.
- 2.2 Unless otherwise defined in the Purchase Order, all prices are in EURO.
- 2.3 Prices do not include VAT, sales or use tax, or any other similar applicable federal, state or foreign taxes, levies or charges due in any jurisdiction in connection with the sale or delivery of the Products ("Taxes"), customs duty, shipping or insurance costs which may be invoiced separately, if applicable.
- 2.4 Taxes shall be payable by the Customer and, if CGAM is responsible for the collection thereof, such Taxes shall either be added to the price invoiced or be separately invoiced by CGAM to the Customer.
- 2.5 A reasonable handling and insurance fee will be added to the price.

## 3 Payment

- 3.1 Unless otherwise specified in the Purchase Order, invoices are payable net, within thirty (30) calendar days of the invoice date.
- 3.2 Unless otherwise specified in the Purchase Order, all payments shall be made by SWIFT bank transfer directly to CGAM's account specified in the Purchase Order.
- 3.3 CGAM reserves the right to require an advance payment up to 100% of the price. If such an advance payment is not paid by Customer within thirty (30) calendar days of the invoice date, CGAM shall have the right to cancel the Purchase Order.
- 3.4 Customer shall not be entitled to withhold a payment even in case of disputing the invoice. All late payments will, without further notice, be charged with an annual interest for late payment calculated on a daily basis from the due date until full payment at the rate of €STR one (1) month (as published by ECB) plus ten per cent (10%) per year.

## 4 Delivery and Shipping

- 4.1 The applicable Incoterm (as defined in Incoterms 2020) and the place of destination are specified in the Purchase Order whereas transfer of risk shall be pursuant to section 6.1 of the Terms. In case no Incoterm is specified in the Purchase Order, the Product is supplied DAP.
- 4.2 Unless expressly excluded in the Purchase Order, CGAM shall be entitled to make partial deliveries.
- 4.3 Delivery dates specified in the Purchase Order shall not be regarded as binding and deviations thereto shall not entitle Customer to claim damages.
- 4.4 In case Customer requests or causes a postponement of delivery, CGAM is entitled to charge all related costs, including costs for storage and insurance. If Customer rejects to pay such additional costs for a postponed delivery, CGAM shall have the right to cancel the Agreement and to charge full price to Customer.

## 5 CGAM's Warranties

- 5.1 CGAM warrants that the Products delivered to the Customer shall at the time of delivery conform to the specifications agreed between the Parties in the Agreement. However, it remains the responsibility of the Customer to determine the suitability of the delivered Products for any intended or specific purpose of use prior to use. CGAM makes no warranty of merchantability or fitness for a particular purpose.
- 5.2 The description of Products in catalogues and other documents do not constitute warranties under any applicable law. Any additional warranty may only be contained in the Purchase Order between the Parties.
- 5.3 Except for the warranties specifically set forth in this Article 5, CGAM makes no other warranties, either express or implied with respect to the delivered Products.

## 6 Transfer of Ownership (Title) and Risk; Acceptance

- 6.1 Ownership (title) and the risk of loss of all Products as well as associated risks thereto shall transfer from CGAM to Customer upon delivery.
- 6.2 Immediately upon Customer's receipt of any Products, Customer shall diligently examine any such Products. Notice of all claims arising out of non-compliance with the agreed specifications, any defects of delivered Products or any shortage of ordered Product (any of the before a "Non-Compliance" or "Non-Compliant"), shall be given in writing to CGAM within ten (10) Business Days after delivery. With respect to any Non-Compliance, which would not be apparent from a reasonable visual inspection on delivery, and, in case of any hidden or latent Non-Compliance, notice of such claim shall be made not later than ten (10) Business Days from the time Customer discovers or should have discovered the relevant Non-Compliance, however in no event later than within sixty (60) Business Days after delivery. Any claim not being made in the above timelines shall be deemed waived and CGAM shall have no liability whatsoever.
- 6.3 If CGAM disputes the claim of Non-Compliance from Customer, the Parties shall investigate all reports of Non-Compliance with the intent of overcoming such dispute. The Parties shall act promptly and shall cooperate fully in such investigations. If the Parties do not reach an agreement, then CGAM and Customer shall (each acting reasonably and in good faith) mutually elect an independent third party laboratory (acting as an expert and not an arbitrator) to determine if the Products are Non-Compliant and make a determination regarding the cause of the Non-Compliance. Such results shall be binding upon both Parties (except for manifest errors). The cost of the testing and evaluation by the expert shall be borne by the Party being wrong.

## 7 Remedies and Liability; Limitation of Liability

- 7.1 In case of any Non-Compliance, which is attributable to CGAM, CGAM shall have the right to rectify any such Non-Compliance within a reasonable period of time taking into account CGAM's available manufacturing capacities. Should CGAM not be able or fail to rectify such Non-Compliance in a reasonable time, then Customer shall be entitled to the remedies set forth in section 7.2 of the Terms.
- 7.2 CGAM's sole and exclusive liability and Customer's exclusive remedy with respect to Non-Compliant Products, not rectified by CGAM, shall either be replacement of such Non-Compliant Product(s) without charge or a reduction or refund of the price determined by having due regard to the nature of the defect, at CGAM's sole discretion. Any further claims of whatever nature (e.g. damages, compensations, etc.) are herewith expressly excluded.
- 7.3 UNLESS IN CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CGAM'S OVERALL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED (i) THE AGGREGATE PRICE PAID BY THE CUSTOMER TO CGAM (EXCLUDING ANY THIRD PARTY COSTS, COSTS FOR RAW MATERIALS OR CUSTOMER MATERIALS) UNDER THE RELEVANT PURCHASE ORDER IN THE YEAR THE CLAIM WAS BROUGHT AGAINST CGAM OR (ii) THE AMOUNT CONFIRMED TO BE PAID BY THE LIABLE PARTY'S INSURANCE COMPANY, WHATEVER IS LOWER.
- 7.4 NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL LOSSES AND DAMAGES, PUNITIVE DAMAGES, ANTICIPATED OR LOST PROFITS, BUSINESS INTERRUPTION, INCIDENTAL DAMAGES, LOSS OF TIME, OR OTHER SIMILAR LOSSES IN CONNECTION WITH THIS AGREEMENT.

## 8 Indemnification

CGAM shall not be liable for, and the Customer assumes responsibility and shall indemnify and hold CGAM harmless for any and all claims, including without limitation, claims for personal injury or property damages, resulting from the improper use, Intended Uses (as defined hereafter), unauthorized alteration or modification of the Products, or the Customer's failure to properly communicate CGAMS' instructions and warning to users of the Products.

## 9 Use and Resale

- 9.1 Customer assumes full liability and responsibility for quality control, testing and determination of suitability of any Product for its subsequent intended application or use in any process or as a component of any other product ("Intended Uses").
- 9.2 Unless otherwise agreed in the Purchase Order, Customer accepts that the Products shall not be marketed, resold, distributed or exported without the prior written consent of CGAM.
- 9.3 CGAM makes no warranties that Products comply with applicable laws at Customer's destination or any other jurisdiction.

## 10 Confidentiality and Data Protection

- 10.1 Subject to section 10.2 of the Terms, neither Party shall disclose to any third party (a) any information and/or materials (of whatever kind and in whatever form or medium) disclosed by or on behalf of the owner (the "Disclosing Party") to the other Party or its designee (the "Receiving Party"), in connection with the Agreement, before its effective date or thereafter, identified as confidential or reasonably understood to be so, whether prior to or during the term of the Agreement and whether provided orally or visually, electronically or in writing; (b) all copies of the information and materials described in (a) above; (c) any Results; (d) the Background-IP; and (e) the existence and each provision of the Agreement (together the "Confidential Information") for a period of ten (10) years from the date of disclosure. Each Party agrees to use and utilise Confidential Information solely for the performance of the Agreement and to treat the Disclosing Party's Confidential Information with the same degree of care as it uses for its own confidential information at least using reasonable care. Each Party agrees to limit its internal dissemination of Confidential Information to only those employees, officers, consultants, authorised agents, Affiliates and subcontractors who have a need to know the Confidential Information for the performance of the Agreement and who are contractually bound by restrictions of disclosure and use at least as onerous as those in this section 10. The Parties furthermore undertake to comply with the relevant provisions of data protection law when exchanging and processing personal data. They shall maintain suitable technical and organisational measures appropriate to the imminent risk to ensure data security, in particular to protect personal data from unintentional or unlawful disclosure by third parties.
- 10.2 Confidential Information falling within one of the following exceptions shall not be subject to the restrictions of section 10.1 of the Terms: (a) to the extent permitted by the Disclosing Party's written consent; (b) to the extent Receiving Party can prove that Confidential Information is public knowledge or, after disclosure hereunder, becomes public knowledge through no fault of the Receiving Party; (c) to the extent Confidential Information can be shown by Receiving Party to have been in Receiving Party's possession or control prior to the date of disclosure hereunder; (d) to the extent Receiving Party can establish that Confidential Information was received from any third party, which, by Receiving Party's reasonable judgment, did not breach any restrictions of disclosure; (e) to the extent Receiving Party can establish that the Confidential Information was independently developed or discovered by itself without reference to Disclosing Party's Confidential Information; or (f) to the extent

Receiving Party can establish that it is required by law, regulation, subpoena, judgment, order or other similar form of process to disclose Confidential Information to a government, other public authority or third party, provided however that Receiving Party immediately upon learning of such obligation, and prior to disclosure, if lawfully possible, notifies Disclosing Party of such disclosure obligation and reasonably cooperates with Disclosing Party in limiting the scope of disclosure, if lawfully possible.

- 10.3 If Receiving Party becomes aware of any unauthorised use, disclosure, access, possession or knowledge of Disclosing Party's Confidential Information, it shall immediately notify Disclosing Party and take all reasonable steps requested by Disclosing Party to protect the confidentiality of such Confidential Information.
- 10.4 At Disclosing Party's written request, Receiving Party shall return or destroy all Confidential Information of Disclosing Party. However, Receiving Party may retain one (1) copy of all such Confidential Information in its legal records for the purposes of ensuring compliance with the Agreement and Receiving Party may keep such copies that may have been generated by automatic back-up systems.
- 10.5 In case of any discrepancies between the provisions of confidentiality in this section 10 and those contained in a separate confidential disclosure agreement concluded between the Parties, the provisions herein shall prevail.

## 11 Force Majeure

- 11.1 Except for payment obligations, neither Party shall be held liable for any failure in performance of any part of the Agreement or any breach of contract resulting from force majeure events, including fire, flood, explosion, war, strike, embargo, shortages, acts of God, terrorism, riots, epidemics, pandemics or similar causes. If a Party is affected by an event of force majeure, it will forthwith notify the other Party of the nature and extent of such force majeure event and the Parties will enter into bona fide discussions with a view to alleviating its effects and to agreeing such alternative arrangements as may be fair, reasonable and practicable. The Party affected by a force majeure event is under obligation to give full particulars thereof and to use its best efforts to minimize the effect of occurrence and to take the necessary remedial measures.
- 11.2 If as a result of force majeure events, performance of the Agreement, in whole or material part, is suspended for more than 120 (hundred twenty) consecutive calendar days or 180 (hundred eighty) calendar days in any single 12 (twelve) month period, either Party shall have the right to terminate the Agreement and/or any affected Agreement by giving written notice to that effect to the other Party.

## 12 General Provisions

- 12.1 No course of dealing or failure of either Party to strictly enforce any term, right or condition shall be construed as a waiver of that term, right or condition.
- 12.2 Should one of the provisions of the Agreement or of any additional stipulations agreed upon be or become invalid, the validity of the remaining conditions and stipulations shall not be affected thereby. Parties shall use their best endeavours to replace the invalid provisions with a valid provision with respect to the same subject matter.
- 12.3 This Agreement constitutes the entire agreement and understandings (oral and written) between the Parties relating to the subject matter hereof and supersede all previous oral and written communications between the Parties with respect hereof.
- 12.4 Except as otherwise required by mandatory law, whenever the Agreement demands a notice, communication or exercise of any right to be in the written form or in writing, then such may be made either (a) by a written instrument legally signed by the respective Party (either by handwritten signature(s) or by official, qualified electronic signatures), or (b) in electronic form (an electronic file that is signed by the duly authorised representatives of the respective Party by unqualified electronic signature, such as e.g. DocuSign or AdobeSign, or which contains a scan of the signature of such Party).
- 12.5 Any modification, alteration or amendment to the Agreement shall be in writing with the express reference to the sections of this Agreement being modified, altered or amended and signed by the duly authorised representative(s) of each Party.
- 12.6 Neither Party may assign this Agreement, in whole or in part, to any third party without the prior written consent of the non-assigning Party, such approval shall not to be unreasonably delayed, conditioned or withheld.
- 12.7 The Parties hereto are independent contractors and nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, employment, franchise, agency or fiduciary relationship between the Parties.
- 12.8 The table of contents and headings are for convenience only and are to be of no force or effect in construing or interpreting any of the provisions of this Agreement. Unless the context otherwise clearly requires or otherwise specified, whenever used in this Agreement: (a) the word "including" and words of similar import shall mean "including, without limitation"; (b) the words "hereof," "herein," "hereby" and derivative or similar words refer to this Agreement; (c) whenever the word "or" is used in this Agreement, it shall not be deemed to be exclusive; (d) all references to the word "will" are interchangeable with the word "shall" and shall be understood to be imperative or mandatory in nature; and (e) all words used in this Agreement shall be construed to be of such gender or number, as the circumstances require.

12.9 This Agreement is to be interpreted exclusively in accordance with Swiss usage of terminology.

This Agreement is to be interpreted exclusively in accordance with Swiss usage of terminology. This includes the legal concepts and terms contained in this Agreement, the English translations of which may not be identical with the original Swiss terms in their respective legal understanding; terms to which either in the same provision or elsewhere in this Agreement a German translation has been added shall be interpreted as having the meaning assigned to them by the German translation.

## 13 Notices

13.1 Any notice required shall be in writing and shall specifically refer to the Agreement. Notices shall be sent via one of the following means and will be effective: (a) on the date of delivery, if delivered and handed over in person; (b) if sent by email (with delivery confirmed) (i) on the date of receipt, *provided, however*, the email was received on a Business Day at recipient's domicile between 00.00 and 17.00 of its time zone; (ii) the next Business Day following receipt, if the email was received outside a Business Day at recipient's domicile or between 17.00 and 24.00 of its time zone; or (c) 72 (seventy two) hours after postage, if sent by private express courier or by first class certified mail, return receipt requested. Any notice sent via email shall be followed as soon as reasonably possible by a copy of such notice by private express courier or by first class mail.

13.2 The provisions of this section 13 shall not be applicable for the day-to-day communication between the Parties.

## 14 Applicable Law and Jurisdiction

14.1 This Agreement shall be construed, interpreted, governed and enforced exclusively in accordance with the substantive Swiss law except as for its conflict of law rules, which would refer to another applicable law. The application of the Convention of the United Nations of April 11, 1980 on Contract for the International Sale of Goods is hereby expressly excluded.

14.2 The Parties shall try to resolve any disputes arising out of or in connection with this Agreement amicably through good faith negotiations. In the event that such attempts should fail within thirty (30) Business Days from the first negotiation, the dispute shall be exclusively and finally resolved by the **Civil-Court of Basel-Stadt, Switzerland** ("*Zivilgericht Basel-Stadt*"). This shall not limit the right to appeal in Switzerland.

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