

These General Terms and Conditions of Services (the "Terms") shall govern the relationship between CARBOGEN AMCIS AG or - as the case may be - any of its Affiliates ("CARBOGEN AMCIS") on the one hand and its customer (the "Customer") on the other hand (Customer and CARBOGEN AMCIS also each a "Party" or collectively the "Parties"), especially for the provision of any development, synthesis, analytical purification, (pre-) formulation, lyophilisation, fill & finish, packaging, storage, stability or release testing, quality control or other related services (the "Services") as well as the delivery of any products, chemicals, intermediates, substances or compounds derived from the performance of the Services (the "Goods") by CARBOGEN AMCIS 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, 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 CARBOGEN AMCIS, even if they have not been expressly rejected by CARBOGEN AMCIS. CARBOGEN AMCIS acknowledges receipt of Customer's order to render Services solely on these Terms which take precedence over Customer's different or additional terms and conditions. Neither CARBOGEN AMCIS' commencement of performance nor delivery shall constitute acceptance of Customer's different or additional terms and conditions. CARBOGEN AMCIS' 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 Performance of the Agreement

- 1.1 Upon receipt of Customer's request to perform of certain Services, CARBOGEN AMCIS will as soon as practicable and at its sole discretion prepare a proposal, describing the understanding of the Services asked for by Customer - including an estimated Service Fee, an estimated timeline, etc. - for such Services (the "Proposal"; of which these Terms form an integral part of). If Customer intends to entrust CARBOGEN AMCIS with the Services described in the Proposal it shall issue an order to CARBOGEN AMCIS. The order shall become a binding agreement between both Parties upon acknowledgment thereof by CARBOGEN AMCIS in writing (the "Agreement"; of which these Terms form an integral part of). For the avoidance of any doubt, CARBOGEN AMCIS shall not be obliged to perform any Services if it has - in its sole discretion - not accepted an order in writing.
- 1.2 Both Parties shall always cooperate, communicate and act diligently and in good faith in order to ensure the proper performance of the Agreement. CARBOGEN AMCIS undertakes to make commercially reasonable effort to implement requested amendments to the Agreement but reserves the right to adjust the Service Fee and estimated term accordingly. CARBOGEN AMCIS shall promptly notify Customer of any unanticipated adverse effect or any adverse event that becomes known to it occurring during the performance of the Agreement.

- 1.3 Customer has the obligation to always render all necessary support reasonably requested by CARBOGEN AMCIS to enable a proper performance of the Agreement, such as, but not limited to, taking and notifying decisions, accepting or declining requests, giving or refusing consents, submitting necessary technical information known to it, etc.
- 1.4 The day-to-day management of the Agreement shall be the responsibility of Customer's project leader and CARBOGEN AMCIS's project leader. The Customer's project leader shall be the ultimate authority with respect to all Agreement related issues and decisions on behalf of the Customer and hence shall be assumed to have all necessary authority and power to take any and all actions on behalf of Customer with respect to such issues and decisions. The project leaders shall be responsible for planning, managing, directing and overseeing specific activities regarding the Agreement.
- 1.5 Any goods, materials, substances, information, processes, instructions, technology, etc. that Customer provides to CARBOGEN AMCIS for the performance of the Agreement (the "Customer Materials") shall be free of any third party rights, of appropriate quality and, as required by normal practice, shall be certified or approved in accordance with the applicable standards as well as in full compliance with the specifications registered and with all necessary documentation. Further Customer is responsible for ensuring that Customer Materials are provided in time for the Services to commence or be continued as planned.
- 1.6 Customer also has a responsibility to provide CARBOGEN AMCIS with any documentation or knowledge in his possession pertaining to risks associated with the Customer Materials and the performance of the Agreement. This includes material safety data sheets for raw materials, intermediates and final product, chemical and operational hazard assessments and materials compatibilities. Failure to comply with this obligation may result in Customer's liability for any damage or personal injury caused by such Customer Materials.
- 1.7 Subject to Section 14.5 and the last sentence of this paragraph, in case of any discrepancies between the provisions of the 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. The Quality Agreement or Technical Agreement (if any) shall take precedence in all matters regarding the GMP responsibilities of the Parties and the standard of quality of the Services (cf. Section 5.2).

## 2 CARBOGEN AMCIS' specific obligations

- 2.1 As the Parties consider the Services as of an experimental and development nature, CARBOGEN AMCIS cannot and does not guarantee the achievement of any specific or particular result or outcome nor guarantee completing thereof to or within a defined time or deadline.
- 2.2 CARBOGEN AMCIS' main obligation under this Agreement shall be to use its best endeavours and to work diligently and in good faith in providing the Services within the agreed time slots, always using the agreed quality standards (cf. Section 5) and all standards reasonably to be expected from a first-class provider of similar services in similar circumstances and in compliance with the Agreement, the Quality Agreement or Technical Agreement (if any) and all applicable laws at the place of performance thereof.
- 2.3 CARBOGEN AMCIS shall reserve time slots, infrastructure and qualified personnel to perform the Services as agreed in the Agreement.

- 2.4 The personnel that CARBOGEN AMCIS causes to be applied in the performance of the Agreement shall be appropriately qualified and experienced for the tasks that they are to perform.
- 2.5 Any machinery and equipment that CARBOGEN AMCIS provides or causes to be applied in the performance of the Agreement shall be of an appropriate quality and, as required by normal practice, be certified and approved by the relevant body or organisation.
- 2.6 CARBOGEN AMCIS shall have and maintain, at its own cost, any and all licenses, permits and other authorisations, which are required for its performance of the Agreement. However, at its cost, Customer shall provide to CARBOGEN AMCIS such cooperation and assistance as is reasonably required by CARBOGEN AMCIS to comply with this provision.
- 2.7 CARBOGEN AMCIS shall not be liable for any raw material supply issues beyond its direct control. The impact of any quality or delivery issues shall be discussed in good faith between Customer and CARBOGEN AMCIS and the Agreement revised accordingly.

## 3 Subcontracting

- 3.1 CARBOGEN AMCIS reserves the right to perform any or all Services or parts thereof at any of its Affiliates.
- 3.2 CARBOGEN AMCIS routinely uses the following external suppliers for specialist work, which it is not able to provide by itself, and Customer hereby agrees their use under this Agreement: Solvias AG (Römerpark 2, CH-4303 Kaiseraugst, Switzerland) ; Jetpharma SA (via Sottobisio 42 A, CH-6828 Balerna, Switzerland) ; and Confarma AG (Römerpark 2, CH-4303 Kaiseraugst, Switzerland).
- 3.3 Subcontracting in all the other cases shall require prior written consent of Customer, which consent shall not be withheld or delayed unreasonably.

## 4 Service Fee; payment

- 4.1 For the payment of the agreed upon consideration payable to CARBOGEN AMCIS by Customer for the provision of the Services (the "Service Fee") the following payment schedule shall apply:
  - (a) initial payment of forty (40) percent of the total Service Fee upon acknowledgment of the order by CARBOGEN AMCIS and prior to commencement of the performance of the Services;
  - (b) an additional fifty (50) percent of the total Service Fee upon completion of the Services (except for the issuance of the (draft) Report); and
  - (c) the remaining ten (10) percent of the total Service Fee on delivery of the draft of the written description of the performed Services (the "Report").
- 4.2 All Goods are supplied CPT (Carriage Paid To) as defined in Incoterms 2010 with the exception for the CARBOGEN AMCIS site in Riom, France, where Goods are supplied EXW (Ex Works) as defined in Incoterms 2010.
- 4.3 Any amount, weight, quantity, etc. of Goods will be measured or weighted at the departure point.

- 4.4 The Service Fee does not include any state or local taxes, duties, governmental or similar charges, VAT, customs duties or any additional costs (such as but not limited to insurance costs, etc.). Any such costs will additionally be charged to Customer.
- 4.5 Costs for disposal of any Goods, Customer Materials or unused raw materials are not included in the Service Fee. Such costs will therefore additionally be charged to Customer.
- 4.6 Third party costs for specialist work by external suppliers are not included in the Service Fee and will therefore additionally be charged to Customer. Any such costs listed in the Proposal are non-binding best estimates only.
- 4.7 CARBOGEN AMCIS will store and insure the Goods to be delivered to Customer free of charge for a period of thirty (30) days following the date of release. For any storage and insurance exceeding this period of time a separate storage agreement shall be concluded. The same shall be applicable for the storage and insurance of Goods, Customer Materials or raw materials in case of postponement of the delivery date or the project at Customer's request. CARBOGEN AMCIS shall not dispose of any Goods, Customer Materials or raw materials without the Customer's written approval, which shall not unreasonably be withheld or delayed.
- 4.8 Prices for raw materials are not included in the Service Fee and will therefore be charged to Customer at cost plus a reasonable handling and insurance fee; based on the specifications, quality standard and origin defined in the Agreement. Any such costs listed in the Proposal are non-binding estimates only.
- 4.9 Invoices are payable within (30) thirty days of the invoice date. All late payments will, without further notification, be charged with interest for late payment calculated on a daily basis from the due date until full payment at the rate of LIBOR plus ten (10) per cent per year. Customer shall not be entitled to withhold payments even in case of a dispute with CARBOGEN AMCIS.

## 5 Quality

- 5.1 The appropriate level of quality for the specific Services (GMP, non GMP, etc.) will be defined in the Agreement.
- 5.2 If not defined in the Agreement, the responsibilities related to quality systems, quality requirements, quality control, testing and manufacturing records, audits, complaints, inspections and release of Goods shall be governed by a separate Quality Agreement or Technical Agreement.

## 6 Customer's audit rights

- 6.1 Unless otherwise agreed in a Quality Agreement or Technical Agreement, Customer shall have the right, every second calendar year, during normal business hours and upon a reasonable prior notice of at least ninety (90) days, to have two employees or representatives conduct an audit of CARBOGEN AMCIS, to ensure proper performance by CARBOGEN AMCIS of its obligations; provided, however, that such audits shall not unreasonably interfere with the operations of CARBOGEN AMCIS. In addition to the above, Customer shall have the right to conduct such audits at any time during normal business hours if - upon Customer's reasonable belief - CARBOGEN AMCIS has breached or is presently going to breach any of its obligations under this Agreement. For the avoidance of any doubt, Customer shall have no right to audit CARBOGEN AMCIS' financial books or records.

- 6.2 In the event the audit under Section 6.1 exceeds two Business Days, CARBOGEN AMCIS will charge Customer a per diem rate of up to CHF 10,000 (ten thousands Swiss francs), which shall include reasonable access to CARBOGEN AMCIS' qualified and experienced employees. Such per diem rate is being waived if such audit was caused by CARBOGEN AMCIS' breach of the Agreement.
- 6.3 CARBOGEN AMCIS shall without delay - if legally possible - inform Customer of any inspection conducted by any governmental body, if such inspection includes, directly or indirectly, the Services, Goods or Customer Materials.

## 7 Transfer of ownership and risk; Delivery; Acceptance

- 7.1 CARBOGEN AMCIS retains ownership of all Goods supplied and all Inventions until it has been paid for in full. If the supplied Goods which are not paid for in full are converted into a new products or combined with other products, then CARBOGEN AMCIS' proprietary rights shall be regarded as continuing to exist in the combined product. Consequently, CARBOGEN AMCIS shall be entitled to that proportion of the proceeds of sale of such combined products as equates to the amount then owing by Customer to CARBOGEN AMCIS.
- 7.2 Delivery times of CARBOGEN AMCIS shall not be regarded as binding, and delays of anticipated delivery shall not entitle Customer to claim damages resulting from any such delay.
- 7.3 Immediately upon Customer's receipt of any Goods or Services, Customer shall diligently examine any such Goods or Services within a reasonable period after delivery thereof. Notice of all claims arising out of non compliance with the agreed specifications or deliverables or any shortages or defects of delivered Goods or Services (any of the before a "Non-Compliance" or "Non-Compliant Good"), shall be given in writing to CARBOGEN AMCIS 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 (i) within sixty (60) business days after the date of delivery, or (ii) the expiry of the shelf life of the Goods; whatever is shorter. Any claim not being made in the above timelines shall be deemed waived and CARBOGEN AMCIS shall have no liability whatsoever.
- 7.4 If CARBOGEN AMCIS disputes the claim of Non-Compliance from Customer, the Parties shall investigate all reports of Non-Compliance with the intent of overcoming such Non-Compliance. The Parties shall act promptly and shall cooperate fully in such investigations. If the Parties do not reach an agreement, then CARBOGEN AMCIS 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 Goods or Services are Non-Compliant Goods and make a determination regarding the cause of the Non-Compliance. Such results shall be binding upon both Parties. The cost of the testing and evaluation by the expert shall be borne by the Party being wrong.

## 8 Warranties of CARBOGEN AMCIS

- 8.1 CARBOGEN AMCIS warrants that the Services and delivered Goods shall conform to the specifications agreed between CARBOGEN AMCIS and Customer at the time they leave CARBOGEN AMCIS.

- 8.2** CARBOGEN AMCIS certifies that the Services are provided in compliance with the Agreement, the applicable laws at the place of performance and with the agreed upon quality standards. CARBOGEN AMCIS assumes no responsibility or liability for compliance with any other laws.
- 8.3** In providing Services pursuant to this Agreement, CARBOGEN AMCIS shall not knowingly utilise technology or incorporate into any Goods or Services any technology which it knows to infringe any valid and enforceable Intellectual Property Right of a third party. Except as provided in the preceding sentence, CARBOGEN AMCIS makes no warranty or representation that the use of Services or the delivered Goods will not infringe the rights of third parties.
- 8.4** The express warranties provided above in this Section 8 are the only warranties applicable to the Goods and Services whether used alone or in combination with any other material or services. CARBOGEN AMCIS expressly excludes all other express oral or written warranties and all warranties implied by law with respect to the Goods or Services, including any warranties of merchantability or fitness for a particular purpose.
- 8.5** For the purpose of the Terms “Intellectual Property Right” shall mean any and all intellectual property rights if registered or not (including patents, trade secrets, trade marks, general know-how, processes, etc.).

## 9 Customer’s use of Goods and representations

- 9.1** Customer acknowledges that the Goods have not been tested by CARBOGEN AMCIS for safety and efficacy in food, drug, device, cosmetic, commercial or any other use. Customer expressly represents and warrants to CARBOGEN AMCIS that it will properly test, use, manufacture and market any Goods delivered by CARBOGEN AMCIS and any final articles made from them in accordance with the practices of a reasonable person who is an expert in the field and in strict compliance with all applicable laws and regulations now and hereinafter enacted.
- 9.2** Customer has the responsibility to verify the hazards and to conduct any further research necessary to assess the hazards involved in using Goods or Services delivered by CARBOGEN AMCIS. Customer also has the duty to warn Customer’s customers and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the Goods. Customer shall comply with instructions, if any, furnished by CARBOGEN AMCIS relating to the use of the Goods or Services and not misuse the Goods or Services in any manner.
- 9.3** Customer hereby represents and warrants that the use of the Customer Materials by CARBOGEN AMCIS will not infringe or violate any Intellectual Property Right or any other proprietary rights of any third party. Customer agrees to be fully liable towards CARBOGEN AMCIS for any damages resulting from any such infringement and to fully indemnify and hold harmless CARBOGEN AMCIS in this regard.

## 10 Liability; Limitation of liability

- 10.1** CARBOGEN AMCIS’ sole and exclusive liability and Customer’s exclusive remedy with respect to Non-Compliant Goods shall either be replacement of such Non-Compliant Goods without charge or a reduction or refund of the Service Fee determined by having due regard to the nature of the defect (all exclusive of the costs for any raw materials or Customer Materials), at CARBOGEN AMCIS’ sole discretion. Any further claims of whatever nature (e.g. damages, compensations, etc.) are herewith expressly excluded.

- 10.2** CARBOGEN AMCIS shall have a right to remedy any Non-Compliance within a reasonable period of time, failing which Customer shall be entitled to the remedies of Section 10.1.
- 10.3** UNLESS IN CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT CARBOGEN AMCIS' OVERALL LIABILITY (INCLUDING INDEMNIFICATION OBLIGATION PURSUANT TO SECTION 11) UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE SERVICE FEE PAID BY THE CUSTOMER TO CARBOGEN AMCIS (EXCLUDING ANY THIRD PARTY COSTS, COSTS FOR RAW MATERIALS OR CUSTOMER MATERIALS) UNDER THE AGREEMENT IN THE YEAR THE CLAIM WAS BROUGHT AGAINST CARBOGEN AMCIS.
- 10.4** NEITHER PARTY SHALL BE LIABLE FOR ANY 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.

## 11 Indemnification

- 11.1** Each Party shall indemnify (the "Indemnitor") the other Party (the "Indemnitee") from and against any and all losses and claims (including reasonable legal fees and other costs of defending any action) arising or resulting from any claim, action, suit, proceeding or charge brought by a third party (each a "Third Party Claim") made against the Indemnitee with respect to death or personal injury in connection, directly or indirectly, with this Agreement; provided, however such Third Party Claim arises as a result of the gross negligence or intentional misconduct of the Indemnitor.
- 11.2** Customer shall indemnify and hold CARBOGEN AMCIS harmless from and against any and all losses and claims (including reasonable legal fees and other costs of defending any action) that CARBOGEN AMCIS incurs as a result of any Third Party Claim against CARBOGEN AMCIS or its Affiliates relating to or in connection with Customer's (its officers', agents', employees', successors', subcontractors', assigns' or Affiliates'), use, commercialisation, sale or transfer of the Services or Goods delivered by CARBOGEN AMCIS, or by reason of Customer's breach of the Agreement. The indemnification obligations under this Section 11.2 shall not apply to the extent that any such Third Party Claim is the result of the gross negligence or intentional misconduct by CARBOGEN AMCIS.
- 11.3** CARBOGEN AMCIS shall indemnify and hold Customer harmless from and against any and all losses and claims (including reasonable legal fees and other costs of defending any action) that Customer incurs as a result of any Third Party Claim against Customer or its Affiliates relating to or in connection with CARBOGEN AMCIS' (its officers', agents', employees', successors', subcontractors', assigns' or Affiliates') breach of the Agreement. The indemnification obligations under this Section 11.3 shall not apply to the extent that any such Third Party Claim is the result of the gross negligence or intentional misconduct by Customer.
- 11.4** The Indemnitee hereunder agrees to give prompt written notice to the Indemnitor after the receipt of any written notice of any Third Party Claim, investigation or threat thereof, for which Indemnitee will claim indemnification pursuant to this Agreement and cooperate fully with the Indemnitor in conducting such defence. Unless, in the reasonable judgment of the Indemnitee, a conflict of interest may exist between the Indemnitee and the Indemnitor with respect to a Third Party Claim, the Indemnitor may assume the defence of such claim. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, to the extent prejudicial to its ability to defend such action, shall relieve the Indemnitor of any obligation to the Indemnitee under this Section.

- 11.5 No compromise or settlement of any Third Party Claim may be effected by the Indemnitee without the Indemnitor's written consent (which consent shall not be unreasonably withheld or delayed).

## 12 Insurance

Each Party shall have and maintain the insurance coverage that is required by applicable law. Each Party may self-insure its liabilities under this Agreement and shall otherwise maintain such insurance as it, in its sole discretion, deems appropriate and necessary.

## 13 Intellectual Property

- 13.1 All information and all right or access to Customer's Intellectual Property Rights, which Customer provides to CARBOGEN AMCIS in connection with this Agreement and all information related to Customer, its business or its products or developmental products shall be and remain the property of, or under the control of, Customer and shall be treated as confidential pursuant to Section 14. CARBOGEN AMCIS shall have a non-exclusive, non-transferable, non-assignable, royalty-free license to use any and all Customer's Confidential Information and Customer's Intellectual Property Rights provided hereunder, solely for the purpose of performing its obligations under this Agreement.
- 13.2 Any and all Intellectual Property Rights owned or controlled by CARBOGEN AMCIS at the commencement of the Agreement or acquired or created thereafter, provided, however, they are not Inventions, including any improvements thereof (the "Background IP") shall be and remain CARBOGEN AMCIS' property.
- 13.3 Any and all results of the Services, research, analysis, Reports, data, laboratory records, samples, Goods, formulas, processes, techniques, compounds, compositions, data, improvements to Customer's Intellectual Property Rights, inventions of Intellectual Property Rights and the like generated in the performance of the Agreement (the "Inventions") shall become Customer's property and title of such Inventions will transfer to Customer upon full payment of the Service Fee.
- 13.4 Contingent to the full payment of the Service Fee, CARBOGEN AMCIS hereby assigns all rights, title and interests in Inventions to Customer, which shall, at its expense, have sole control of patent application filing and prosecution and CARBOGEN AMCIS shall assist Customer in every reasonable way (including filing of patent applications and execution of assignments and other documents) to obtain, maintain and enforce patents for Inventions. Customer will compensate CARBOGEN AMCIS at reasonable rates for the assistance CARBOGEN AMCIS provides.
- 13.5 CARBOGEN AMCIS shall not without a license agreement being in place with the Customer incorporate its Background-IP into the Goods or Services. In case any Background-IP is incorporated into the Goods or Services without such license agreement being in place, then CARBOGEN AMCIS hereby grants to Customer a non-exclusive, worldwide, irrevocable, transferable, royalty-free and perpetual license (with the right to grant sublicenses) to use such Background-IP to the extent that Customer requires to make use of the Goods and Services and to use and exploit the Inventions (including any Intellectual Property Rights therein or relating thereto).
- 13.6 Customer shall grant to CARBOGEN AMCIS a non-exclusive, transferrable, royalty-free and perpetual license to use any improvements of its Background IP generated during the performance of the Agreement.



## 14 Confidentiality

- 14.1** Subject to Section 14.2, neither Party shall disclose to any third party (a) any information 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”), 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 and thereafter condensed in writing within twenty (20) days, electronically, or in writing; (b) all copies of the information and materials described in (a) above; (c) any Inventions; (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, 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 14.
- 14.2** Confidential Information falling within one of the following exceptions shall not be subject to the restrictions of Section 14.1: (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 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.
- 14.3** 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.
- 14.4** At Disclosing Party’s request, Receiving Party shall return or destroy all Confidential Information of Disclosing Party. However, Receiving Party may retain one 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.
- 14.5** In case of any discrepancies between these provisions and those contained in a separate confidential disclosure agreement concluded between Customer and CARBOGEN AMCIS, the provision of such confidential disclosure agreement shall prevail.

## 15 Force majeure

- 15.1 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 but not limited to fire, flood, explosion, war, strike, embargo, shortages, acts of God, terrorism, riots 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.
- 15.2 If as a result of force majeure events, performance of the Agreement, in whole or material parts thereof, is suspended for more than 120 (hundred twenty) consecutive days or 180 (hundred eighty) days in any single 12 (twelve) month period, either Party shall have the right to terminate the Agreement by giving written notice to that effect to the other Party.

## 16 General provisions

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 No modification, alteration or amendment to the Agreement shall be of any force or effect unless done in writing with the express reference to the Sections of this Agreement being modified, altered or amended and signed by duly authorized representative of both Parties.
- 16.5 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 or withheld.
- 16.6 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.
- 16.7 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.

## 17 Notices

- 17.1** Any official notice required shall be in writing and shall specifically refer to this 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 by recipient on a business day at his domicile between 00.00 and 17.00 in his time zone; (ii) the next business day following receipt, if the email was received by recipient outside a business day at his domicile or between 17.00 and 24.00 in his 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.
- 17.2** The provisions of this Section 17 shall not be applicable for the day-to-day communication between the Parties.

## 18 Termination

- 18.1** The Agreement may be immediately terminated by either Party if (i) the other Party is in material breach of this Agreement and such material breach is not capable of remedy or not remedied within 30 (thirty) business days after it has occurred; (ii) insolvency or liquidation proceedings are commenced by or against the other Party; or (iii) the other Party becomes bankrupt or otherwise incapable of paying its bills as they fall due or if a receiver or administrator in bankruptcy has been appointed to run such Party's affairs.
- 18.2** Customer shall be entitled to terminate the Agreement for no cause by giving written notice to CARBOGEN AMCIS.
- 18.3** In case of termination, Customer shall pay to CARBOGEN AMCIS: (a) 100% of any and all non-cancellable and accumulated or accrued third party costs (e.g. for raw materials, subcontracted services, etc.); (b) 100% of any work performed up to termination; (c) 100% of all costs necessary to conclude and terminate the Agreement and closing down the project; and (d) a termination fee of (as the case may be): (i) 15% of the difference between the aggregate agreed upon Service Fee minus the claims pursuant to this Section (a) to (c) (the "Unused Service Fee") in case of giving notice more than ninety (90) days before the commencement of the provision of the Services pursuant to the terminated Agreement; (ii) 25% of the Unused Service Fee in case of giving notice between ninety (90) and sixty (60) days before the commencement of the provision of the Services pursuant to the terminated Agreement; (iii) 35% of the Unused Service Fee in case of giving notice between sixty (60) and thirty (30) days before the commencement of the provision of the Services pursuant to the terminated Agreement; (iv) 50% of the Unused Service Fee in case of giving notice less than thirty (30) days before the commencement of the provision of the Services pursuant to the terminated Agreement; or (v) 100% of the Unused Service Fee in case of giving notice after the commencement of the provision of the Services pursuant to the terminated Agreement.
- 18.4** Notwithstanding the foregoing, in case of drug product Services (i.e. lyophilisation development, formulation development or fill & finish at CARBOGEN AMCIS' site in Riom, France) Customer

shall pay to CARBOGEN AMCIS in addition to the payments of Section 18.3 (a) to (c) the following termination fee of (as the case may be): (i) 20% of the Unused Service Fee in case of giving notice more than ninety (90) days before the commencement of the provision of the Services pursuant to the terminated Agreement, or (ii) 100% of the Unused Service Fee in case of giving notice less than ninety (90) days before or after the commencement of the provision of the Services pursuant to the terminated Agreement.

- 18.5 CARBOGEN AMCIS shall always use its best commercial efforts to reduce the termination fee pursuant to Sections 18.3(d) and 18.4 by re-allocating resources freed up by the termination to other projects.
- 18.6 Customer shall not be obliged to pay any termination fee pursuant to Sections 18.3(d) and 18.4 in case of termination due to CARBOGEN AMCIS' material breach of the Agreement (Section 18.1 (i)).
- 18.7 The following Sections shall survive termination of this Agreement: 1.6; 4; 5; 7 to 17 (included); 18.3 to 18.7 (included) and 19.

## 19 Applicable law and jurisdiction

- 19.1 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.
- 19.2 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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