

GENERAL TERMS AND CONDITIONS OF PURCHASE OF MATERIAL

These General Terms and Conditions of Purchase (the "Terms") shall exclusively govern and apply to the purchase of materials, such as products, chemicals, intermediates, substances, articles, items, machinery or equipment, etc. (the "Goods") by CARBOGEN AMCIS AG or - as the case may be - any of its Affiliates (the "Buyer") from any seller (the "Seller"; Buyer and Seller also each a "Party" or collectively the "Parties"). 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 the Buyer, 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 Seller shall be binding on Buyer, even if they have not been expressly rejected by Buyer. Seller acknowledges selling Goods solely on these Terms which take precedence over Seller's different or additional terms and conditions. Neither Buyer's receipt nor acceptance of delivery shall constitute acceptance of Seller's different or additional terms and conditions. Buyer's failure to object to provisions contained in any document from Seller shall not be construed as waiver of the Terms or an acceptance of any such provision.

In case of any discrepancies between the provisions of the Terms with any other documents (including the Order acknowledgement), the Terms shall take precedence over all and any such documents; provided, however, that Agreement (as defined below) does 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or supersede a specific Section of the Terms with the express reference to such Section being modified, amended or superseded.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 or technical agreement (if any) shall take precedence in all matters regarding the standard of quality of the Goods.

1. Purchase Orders

1.1. Buyer's purchase order (the "Order") shall become a binding agreement between the Parties (the "Agreement"; of which these Terms form an integral part of) upon Seller's acknowledging acceptance thereof in writing. Failure to return the written Order acknowledgement within ten (10) days from the issuance of the Order shall entitle Buyer to immediately cancel the Order without any liability whatsoever. Any provision on Seller's Order acknowledgement that modifies or contradicts the Terms shall be deemed null and void.

1.2. Any (additional) agreements, obligations or commitments not being made in writing shall be deemed null and void until confirmed in writing by Buyer.

2. Purchase Price; Taxes; Payment

2.1. The purchase price for the Goods (the "Price") stated in the Order, is binding and not subject to any revision or adjustment and shall be inclusive of packaging and crating and shall be the sole compensation to which Seller shall be entitled to for the performance of the Agreement.

2.2. Except for VAT (if any), the Price shall include all taxes and duties of every kind.

2.3. Invoices shall be issued immediately after dispatch of the Goods to the address stated in the Order and indicate the number of the Order. Statutory VAT (if any) shall be separately shown on the invoice.

2.4. Payment terms are thirty (30) days from receipt of a correct and undisputed invoice.

2.5. Buyer shall have the right to withhold payment in case of delivery of Non-Compliant Goods (as defined below) until such Goods are replaced with conforming Goods. Furthermore, Buyer shall have the right to offset any claim against Seller against payments due to it.

3. Subcontracting; Assignment

3.1. Seller shall be fully responsible and liable for its own suppliers and sub-contractors.

3.2. Seller shall not assign this Agreement, in whole or in part, to any third party without the prior written consent of the Buyer.

4. Delivery Dates

4.1. Delivery dates and delivery location stated in the Order are binding and time is of the essence. Seller undertakes to immediately inform Buyer if it appears that it will not be able to adhere to the delivery dates and set out the earliest possible delivery date, both in writing. Delivery to another location than stated in the Order is deemed to be a non-delivery.

4.2. Upon the express request of Buyer, Seller shall enable partial deliveries.

4.3. If the delivery dates or delivery locations are not adhered to by Seller, then Buyer shall be entitled to immediately and without setting a grace period (i) terminate the Agreement or cancel the delivery and purchase of any outstanding Goods; (ii) return for full credit and at Seller's expense any such delayed or wrongly delivered Goods; (iii) procure replacement Goods from a third party, in which case Seller shall compensate any reasonable additional costs and price differences for the Goods; or (iv) claim all damages, losses, costs, expenses, etc. arising from the delay or wrong delivery. The remedies in this Section 4.3 are cumulative and in addition to any remedies, which Buyer may have at law, in equity or otherwise.

5. Package; Shipment

5.1. If not expressly agreed otherwise in the Agreement, all Goods shall be delivered DDP (*Delivered Duty Paid*) as defined by Incoterms 2010 to the delivery location stated in the Agreement.

5.2. All Goods to be supplied hereunder shall be packed, marked, labelled and otherwise fit for shipment and accompanied by all paperwork and documentation (e.g. Certificate of Analysis) in a manner which is in compliance with good commercial practice and with all laws applicable for the transportation, handling and import of such Goods. All packaging material used for the transportation of the Goods shall be non-returnable. Delivery not accompanied by all necessary paperwork and documentation shall be deemed to be a non-delivery of the Goods.

5.3. Seller shall comply with Buyer's standard routing and shipping instructions (including import guidelines).

6. Transfer of Title, Risk and Ownership

Transfer of ownership of the Goods and full title to it as well as the risk of loss, liability or damage to Buyer occurs upon full delivery of the Goods at the delivery location stated in the Agreement.

7. Specifications; Quality; Safety

7.1. Goods shall meet the specifications and quality standards as agreed in the Agreement and be fit for intended use and free from defects in workmanship and materials. If no specifications or no certain standard of quality are determined in the Agreement, the Goods shall be of appropriate quality to be expected from a first-class provider of such Goods under the circumstances.

7.2. Seller shall observe all relevant legal requirements in relation to health, safety and environment, and in particular marking of hazardous Goods. Seller shall provide to Buyer, prior to the first delivery, Seller's current material safety data sheet and other literature pertaining to hazards associated to the Goods and the precautions, which should be observed. Seller shall promptly provide to Buyer any revisions thereto.

7.3. 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 or technical agreement.

7.4. If Seller, its employees or subcontractors, are present at Buyer's premises, they shall always observe Buyer's safety instructions and comply with all safety and security policies and other arrangements applicable at such premises.

8. Non-Compliant Goods; Rejection of Goods

8.1. Any Goods delivered to Buyer shall be subject to Buyer's inspection. Such inspection or failure to inspect shall not relieve Seller of any of its representations, warranties or liability hereunder.

8.2. Any complaints by Buyer to Seller regarding any quantitative or qualitative deviations of the Goods from the Agreement, any non-conformance to the representations and warranties of Seller or any defects (any of the before a "Non-Compliance" or "Non-Compliant Goods") shall be made in writing not later than ten (10) business days from the time Buyer discovers the relevant Non-Compliance, however in no event later than (i) within two (2) years after the date of delivery, or (ii) the expiry of the shelf life of the Goods (if any); whatever is shorter. Buyer may return to the Seller for full credit and at Seller's expense any Non-Compliant Goods.

8.3. At Buyer's sole discretion Seller shall within thirty (30) days after receipt of the notice of complaint at its cost either (i) rework or reprocess the Non-Compliant Goods into conforming Goods, (ii) replace the Non-Compliant Goods with conforming Goods, or (iii) promptly refund to Buyer (or at Buyer's sole discretion to credit) any payment received with respect to such Non-Compliant Goods. Sub-Section (iii) shall also be applicable if Seller is unable to rework, reprocess or replace Non-Compliant Goods into/with conforming Goods within the timeline.

8.4. If Seller disputes the claim of Non-Compliance from Buyer, 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 they shall (each acting reasonably and in good faith) mutually elect an independent third party being an expert in the field of dispute, e.g. a laboratory (acting as an expert and not an arbitrator) to determine if the Goods 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.

8.5. For any reworked, reprocessed or replaced Goods the provisions of this Section 8 shall be applicable.

8.6. Payment or use of the Goods shall not constitute acceptance thereof and shall not prejudice any and all rights and claims that Buyer may have against Seller. Any signature of a representative of Buyer on any shipping or receiving document shall not constitute acceptance of the Goods or any different terms or conditions, or acknowledge condition of the Goods, but shall merely acknowledge receipt thereof.

8.7. The remedies in this Section 8 are cumulative and in addition to any remedies, which Buyer may have at law, in equity or otherwise.

9. Seller's Representations and Warranties

9.1. Seller represents and warrants to Buyer

(a) that the Goods are of good quality, in conformance in every respect with the Agreement (including the agreed specifications), fit for intended use and purpose and free from any defects;

(b) that it has manufactured, labelled, marked, registered, sold, shipped, exported, imported, delivered and invoiced the Goods in compliance with all applicable laws, statutes, ordinances, regulations, rules and orders of any governmental authority;

(c) that neither it nor any of its employees or subcontractors engaged in the performance of the Agreement has been debarred or is subject to debarment or to any restrictions or sanctions by the FDA or any other governmental or regulatory authority or professional body with respect to the performance of the Agreement;

(d) full title to all delivered Goods, which shall be free and clear of any and all liens, restrictions, securing interests, encumbrances and third party interests;

(e) that the Goods and its possession or intended use by the Buyer or its customers shall not infringe any valid intellectual property rights of any third party; and

(f) that the Seller has all rights (including intellectual property rights) licence, permits, approvals and authorisations required to manufacture, use, sell, export and deliver the Goods and to preform its obligations under the Agreement.

9.2. The representations and warranties in this Section 9.1 are continuing and in addition to any warranties implied by law with respect to the Goods.

10. Indemnity and insurance

10.1. Seller shall indemnify and hold harmless Buyer (including their respective employees, directors and authorised representatives) arising or resulting from any and all claims, suits, actions, demands, damages, settlements, losses, liabilities and costs (including reasonable attorneys' and legal fees) whatsoever made against, suffered or incurred by the Buyer arising from or relating to or in connection with Buyer's (its officers', agents', employees', successors', subcontractors' or assigns') purchase, possession, use, sale or transfer of the Goods, or by reason of Seller's (its officers', agents', employees', successors', subcontractors', assigns' or Affiliates') breach of warranty, representation or Agreement however caused.

10.2. Seller shall take adequate insurance policies to cover any liability under this Agreement.

11. Confidentiality; Publication

11.1. Subject to Section 11.2, neither Party shall disclose to any third party (a) any information (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 described in (a) above; and (c) 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 11.

11.2. Confidential Information falling within one of the following exceptions shall not be subject to the restrictions of Section 11.1: (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.

11.3. In addition to the foregoing, Buyer shall have the right to disclose such parts of Seller's Confidential Information as far as needed to register its or its customers' products containing Goods with any regulatory agency having authority in the field of drug supervision, regulation and enforcement (e.g. FDA).

11.4. 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.

11.5. 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.

11.6. Neither Party shall publish or permit to be published either alone or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind relating to this Agreement, or the other Party's business generally, or make any use of the other Party's trade marks or logos, without prior approval in writing from such Party. Such approval shall apply to each specific application and relate only to that application.

12. Force majeure

12.1. 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 beyond its control, including but not limited to fire, flood, explosion, war, embargo, 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.

12.2. If as a result of force majeure events, performance of the Agreement, in whole or material parts thereof, is suspended for more than thirty (30) days in any single twelve (12) month period, either Party shall have the right to terminate the Agreement by giving written notice to that effect to the other Party.

13. Notices

13.1. Any official notice required shall be in writing signed by duly authorised representative of the respective Party 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 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 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 an original 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. General provisions

14.1. 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.

14.2. 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.

14.3. This Agreement (together with the quality agreement; if any) 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.

14.4. 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 authorised representative of both Parties.

14.5. 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.

14.6. The 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.

15. Termination

15.1. 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.

15.2. Buyer shall be entitled at any time and from time to time to terminate the Agreement or to cancel the delivery and purchase of any outstanding Goods for no cause by giving written notice to Seller.

15.3. Termination or expiry of the Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination or expiry, nor shall it affect the coming into force or the continuance of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination or expiry.

16. Applicable law, Jurisdiction

16.1. 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.

16.2. 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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