

# General Terms and Conditions of Purchase of Glycotope GmbH

## Part 1: General Terms and Conditions

### Section 1 General Provisions, Scope of Application

- (1) These General Terms and Conditions of Purchase ("**TCP**") exclusively apply to all business transactions between Glycotope GmbH or Glycotope Biotechnology GmbH ("**Glycotope**") on the one side and its business partners and suppliers ("**Suppliers**") on the other side if the Supplier is an entrepreneur as defined by Section 14 of the German Civil Code ("**BGB**"), a legal entity under public law or a special fund under public law.
- (2) These TCP specifically apply in case of contracts on the purchase and/or supply of raw materials, materials and other products ("**Products**") needed by Glycotope within the scope of its activities in the pharmaceutical development and manufacturing of recombinant active biopharmaceutical ingredients (bio-APIs) as well as the setting up of GMP-compliant cell banks and the filling of aseptic clinical samples. These TCP correspondingly apply to the manufacturing and supply of Products to Glycotope's specifications.
- (3) These TCP shall also apply in particular to contracts of services. Services of the Supplier are services of all kinds, in particular services within the area of biotechnology and pharmaceutical services as well as personnel services of all kinds, cleaning services of all kinds, transport, maintenance and repair services as well as assembly and repair work ("**Services**").
- (4) These TCP comprise of two parts. Part 1 governs the general terms and conditions, Part 2 the additional terms and conditions regarding such Services and Products if Supplier uses material from Glycotope. In the event the Supplier uses material from Glycotope and if not expressly provided otherwise, the provisions of the general part 1 shall apply secondarily to the provisions listed in part 2.
- (5) These TCP further apply also to all future business transactions with the same Supplier without Glycotope having to refer to them again in each individual case; Glycotope will promptly notify the Supplier in this case of any amendment hereof. Contracts with the same Supplier are particularly concluded only if the provisions set forth in section 2 have been fulfilled.
- (6) These TCP apply exclusively. Any differing, conflicting or supplementary terms and conditions of the Supplier or third parties do not become part of the contract even if Glycotope has been notified thereof and not objected to them separately in the individual case, except if such terms and conditions have been expressly approved by Glycotope in writing. Even if Glycotope refers to a letter containing or referring to terms and conditions of the Supplier or a third party, no approval of their applicability can be derived therefrom. These TCP shall also apply if we have knowledge of deviating conditions and accept the performance by the supplier without restriction.
- (7) Individual agreements entered into by the Supplier and Glycotope in the individual case always take precedence over these TCP. The contents of such agreement require a written agreement or Glycotope's written acknowledgement.
- (8) Legally relevant declarations and notices to be made by the Supplier to Glycotope after the conclusion of the contract (e.g. fixing of a period, reminders, notices of rescission) have to be made in writing in order to be effective.
- (9) Any reference to the applicability of statutory provisions is made only for purpose of clarification. Such statutory provisions shall thus be applicable even without such clarification unless they have directly been amended or expressly excluded by these TCP.

- (10) If, due to the nature of the Supplier's performance or corresponding agreement, the result of the performance is subject to inspection and acceptance, these TCP shall replace the delivery by the inspection and acceptance.

## **Section 2 Conclusion of Contract**

- (1) Orders of products and services by Glycotope are deemed to be binding by no earlier than upon the Supplier's receipt of Glycotope's written order (fax is sufficient). The Supplier has to notify Glycotope of any obvious errors (e.g. typing and calculation errors) and gaps in the order including the order documents so that Glycotope is able to correct or complete them before the order is accepted; otherwise the contract shall be deemed to have not been concluded.
- (2) The contract on the supply of the ordered Products only becomes effective upon Glycotope's receipt of the Supplier's written notice of acceptance (fax is sufficient). The provision of Section 151 *BGB* does not apply.
- (3) The Supplier has to accept the order within five (5) calendar days after receipt of the written order ("**Acceptance Period**"). Decisive for the timely acceptance is the receipt of the written declaration of acceptance at our premises. We are no longer bound to our order once the acceptance period has expired. By accepting the order, the supplier confirms that he has taken note of our conditions.
- (4) Any acceptance of the order after the Acceptance Period or amendment of the order or conditional acceptance of the order by the Supplier constitutes a new binding offer from the Supplier. The order shall be deemed to have been amended within the meaning of sentence 1 particularly if the Supplier arbitrarily supplemented or amended the order form countersigned by him without notice pursuant to para. 1 and Glycotope's approval.
- (5) If Glycotope has received a new offer from the Supplier in accordance with para. 4, a contract including the amended provisions will only be concluded upon Glycotope's written acceptance (fax is sufficient).
- (6) Glycotope hereby expressly declares that silence, particularly the failure to object to an offer from the Supplier in accordance with para. 4, shall not be deemed to be an approval. The uncontradicted acceptance of the supplied Products or services shall likewise not be deemed to be a tacit agreement.

## **Section 3 Date of Delivery and Late Delivery**

- (1) When ordering the Products, Glycotope defines a date of delivery, or in the case of services, a performance date (hereinafter only "performance date"). The performance date is definitive. The Supplier has to deliver the Products or services by no later than upon expiration of the performance date. If Glycotope has not defined a performance date when ordering the Products or services or if no performance date has been agreed upon otherwise, the term of delivery or service shall be seven (7) calendar days after the posting of the notice of acceptance of the order by the Supplier.
- (2) If the Supplier identifies any circumstance due to which he fails to meet the performance date, he will promptly notify Glycotope thereof by stating the circumstances and the expected duration of the delay in writing (fax is sufficient). Para. 3 and para. 4 shall not be affected thereby.
- (3) If the Supplier does not make the agreed performance by no later than on the performance date, Glycotope's rights shall be subject to statutory provisions. The provisions in para. 4 shall not be affected thereby.
- (4) If the Supplier defaults in delivery or service, Glycotope may - in addition to further legal claims - request lump-sum compensation of the damage caused by default in the amount of 1% of the

net price for each full calendar week, but no more than 5% of the net price of the Products delivered late or delayed performance of the service. Glycotope reserves the right to prove higher damage. The Supplier reserves the right to prove that Glycotope incurred no or materially less damage.

- (5) The unconditional acceptance of late deliveries or services does not constitute a waiver of any claims Glycotope is entitled to on the basis of the late delivery or delayed service.

#### **Section 4      Delivery, Execution, Passing of Risk, Default of Acceptance**

- (1) Delivery is made at the Supplier's expense to the place within Germany specified in the order. If no specific place of delivery has been agreed upon, delivery shall be made to Glycotope's place of business in 13125 Berlin, Robert-Rößle-Straße 10.
- (2) The place of delivery specified in para. 1 is also the place of performance. The Supplier and Glycotope agree that the Supplier's delivery is deemed to be an obligation to be performed at the creditor's place of business (*Bringschuld*).
- (3) All equipment, tools, auxiliary and operating materials, consumables as well as work clothing including any necessary protective equipment required for the execution of orders shall be provided by the supplier without charge, unless expressly agreed otherwise.

The supplier shall bear full responsibility and risk in respect of all items brought onto our operating facilities for the performance of the service with regard to all risks.

- (4) The Supplier is not entitled to have the owed Service performed by a subcontractor without Glycotope's prior written approval. The Supplier and Glycotope agree that approval thereto may be given at Glycotope's sole discretion.
- (5) The Supplier is also not entitled to make delivery by instalments or partial services without Glycotope's prior approval.
- (6) The Supplier has to notify Glycotope of any storage or transport risk and/or specific storage or transport conditions prior to delivery in writing in order to avoid any damage.
- (7) Delivery is to be accompanied by a bill of delivery including date (issue and shipping), content of delivery (item number and quantity) as well as order identification (date and number). If the delivery is not accompanied by a bill of delivery or if the bill of delivery is incomplete, Glycotope shall not be responsible for any delay in the processing and payment resulting therefrom. In addition to the bill of delivery, the Supplier has also to send Glycotope a separate dispatch note with the same contents.
- (8) The risk of accidental loss and accidental deterioration of the Products passes to Glycotope upon the hand-over of the Products at the place of performance. If acceptance of the Products is agreed upon, the passing of risk occurs upon such acceptance. In other respects, the statutory provisions under the law on contracts for work and services also apply to the acceptance of Products. Hand-over and/or acceptance shall be deemed to have been effected even in case of Glycotope's default of acceptance.
- (9) Glycotope's default of acceptance is subject to statutory provisions. The Supplier has to expressly offer Glycotope his performance if a certain or definable calendar period has been agreed upon for an act or cooperation by Glycotope (e.g. provision of material). In case of Glycotope's default of acceptance, the Supplier may request compensation for his extra expenses pursuant to statutory provisions (Section 304 *BGB*). If the contract refers to the manufacture of a specific item (custom-made item), the Supplier shall be entitled to further rights

only if Glycotope has undertaken to cooperate and if Glycotope is responsible for the failure to cooperate.

## **Section 5**

### **Quality Specifications/Quality Assurance Agreement / Packaging**

- (1) The Supplier has to permanently monitor the quality of his deliveries and services. The Products have always to comply with the agreed specifications.
- (2) Delivered goods must be packed by the supplier in such a way that damage during transport is not avoided. The Supplier is obliged to use only such material as packaging material directly getting into contact with the Product (primary packaging material) for which the Supplier has a clearance certificate issued by the manufacturer.
- (3) The ownership of the packaging shall pass to us. At our request, the Supplier shall take back the packaging or we shall dispose of the packaging at the Supplier's expense.
- (4) If particular quality specifications beyond the customary quality shall apply to individual Products and/or packaging material, Glycotope will notify the Supplier thereof within the scope of the order.
- (5) The Supplier has to promptly notify Glycotope if he is not able to meet these required quality specifications.

## **Section 6 Prices and Terms of Payment; Reservation of ownership**

- (1) The price stated in the order is - unless otherwise agreed - in EURO and binding. Unless separately stated, all prices are exclusive of statutory VAT.
- (2) Unless otherwise expressly agreed upon, the price includes all ancillary expenses (e.g. proper packaging, transport costs including potential costs for transport and liability insurance, tariffs and taxes as well as other expenses (pass-through costs)).
- (3) If it has been agreed that services are to be invoiced on an hourly basis, the supplier shall be paid for the effective working hours performed and confirmed by us after deductions for breaks and set-up times; however, the obligation to make payment shall be limited to the objectively required number of hours of experienced and qualified workers. Travel time and expenses shall only be remunerated if this has been expressly agreed. The smallest billing unit is the started quarter of an hour.  
  
Time sheets are to be provided to us and presented for countersignature. The time sheets shall show the order number, the services performed and the periods of activity as well as the first name, surname and function of the employees engaged.
- (4) The agreed price is due and payable within fourteen (14) calendar days less 2% cash discount on the net invoiced amount or by no later than 30 calendar days after full delivery and performance (including agreed acceptance, if applicable) as well as Glycotope's receipt of a proper invoice.
- (5) Payment shall be deemed to have been made in due time if Glycotope has caused anything necessary to transfer the money.
- (6) Glycotope does not owe interest for due payments. Section 353 of the German Commercial Code ("**HGB**") shall not apply. Default interest shall amount to 5 percentage points above the respective basic rate of interest per annum. Statutory provisions shall apply if Glycotope is in default, whereat a written reminder by the Supplier is required in each case Glycotope fails to pay on the due date.

- (7) Rights of set-off and retention as well as the defence of the unfulfilled contract shall apply to the statutory extent. The Supplier has a right of set-off and a right of retention only if counterclaims have been found to be final and absolute, ready for decision or undisputed. The plea of non-performance of the contract remains unaffected.
- (8) The Supplier is not entitled to assign to or have collected any claims against Glycotope by third parties. The provision of Section 354a *HGB* shall not be affected thereby.
- (9) Retention of ownership by the supplier is excluded. The delivered goods become our property upon delivery. The agreement of a simple, extended or prolonged retention of ownership is hereby excluded. In any case, we shall be entitled to process the delivered goods or to dispose of them in any other way without further notice, in particular without consent or notification.

### **Section 7 Rights in case of Defects, Duty to Inspect the Products and to Give Notice of Defects**

- (1) Glycotope's rights in case of defects in quality and title of the Products (including wrong or short deliveries), other services as well as any other breach of a duty by the Supplier are subject to statutory provisions unless otherwise provided for hereinafter.
- (2) Supplementary performance (*Nacherfüllung*) will be made at Glycotope's option by delivering a new item free of defects (substitute delivery).
- (3) The place of performance for subsequent performance is the location of the item. Subsequent performance shall include any necessary deinstallation and removal of the goods and the installation of the replacement delivery.
- (4) Pursuant to statutory provisions, the Supplier shall particularly be liable for the Products having the agreed quality upon the passing of risk. This also includes the observance of the quality specifications agreed upon in section 5.
- (5) Statutory provisions (Sections 377, 381 *HGB*) apply to the commercial obligation to inspect the Products and give notice of defects with the following proviso: Glycotope's duty to inspect the Products is limited to defects being obvious within the scope of the incoming goods inspection by Glycotope by external appraisal of the Products, including the shipping documents, e.g. damages in transit or wrong or short deliveries. Glycotope will give notice of such defects without undue delay. Notice of defects shall be deemed to have been made in due time if it is

made within one (1) week after the passing of risk, whereat the due posting of the notice shall be sufficient to observe the time limit.

Otherwise, Glycotope will give notice of all defects as soon as they are identified in consideration of the circumstances in the individual case in the due course of business. In this case, too, a notice of defects shall be deemed to have been made in due time if it is made within one (1) week after the identification of the defect, whereat the due posting of the notice shall be sufficient to observe the time limit.

For services that are subject to inspection, there is no obligation to check incoming goods

- (6) If the Supplier does not meet his duty to make supplementary performance - by delivering an item free of defects (substitute delivery) - within a reasonable period of time set by Glycotope, Glycotope may request the Supplier to compensate any expenses incurred thereby. If the Supplier fails to make supplementary performance or if supplementary performance is unreasonable for Glycotope (for example because of particular urgency, threat to operational safety), Glycotope is not obliged to set a time limit but entitled to directly order the Products from another supplier at the Supplier's expense. The Supplier shall be notified thereof in advance, if possible.

- (7) The limitation period for our claims for defects is 36 months from the transfer of risk, unless a longer period is provided for by law. The limitation period shall be suspended for the period between notification of the defect and correction of the defect.
- (8) Further claims of Glycotope remain unaffected.

### **Section 8 Intellectual Property**

- (1) The Supplier shall be liable for the deliveries not infringing any intellectual property of third parties in the countries of the European Union, North America or other countries where he manufactures or has manufactured the Products, unless he proves that he is not responsible for the infringement.
- (2) The Supplier shall be obliged to indemnify Glycotope against all claims asserted by third parties against it as result of infringements of intellectual property rights as set forth in para. 1 above and to reimburse Glycotope's expenses incurred in connection with the claim, unless he proves that he is not responsible for the infringement.
- (3) The Supplier shall transfer all rights regarding the Products and Services to Glycotope, so that Glycotopes becomes the sole owner of the Products and/or Services.

### **Section 9 Reporting Obligations and Product Liability**

- (1) The Supplier and Glycotope will mutually notify each other without undue delay of any recall of loads and complaints in connection with the Products and/or their raw materials and/or packaging material if the other party's area of responsibility is affected thereby.
- (2) The Supplier will be responsible for the technical review and internal follow-up of complaints regarding the Products. The Supplier and Glycotope will assist each other as best as possible to clarify the reason for complaint.
- (3) If the Supplier is liable for a product damage, he will indemnify Glycotope against any thirdparty claims (e.g. because of damages, costs or expenses) as if the reason for this was within his domain and organisational area and if he was personally liable in the external relationship.
- (4) Within the scope of the duty to indemnify, the Supplier has to reimburse Glycotope's expenses pursuant to Sections 683, 670 *BGB* incurring under or in connection with third-party claims including any recalls made by Glycotope. Any further statutory claims shall not be affected thereby.
- (5) The Supplier undertakes to take out a product liability insurance with an internationally recognised insurance company with an adequate insured sum for foreseeable damage in the minimum amount of EUR 5.000.000,00 per claim and to promptly notify Glycotope thereof in writing upon its request.

### **Section 10 Confidentiality**

- (1) The Supplier and Glycotope mutually undertake to keep secret the contents of the business transaction and the respective order as well as any and all information and documents (including but not limited to illustrations, plans, calculations, standing operating procedures and product specifications) submitted to the other party for this purpose. Both parties may use such documents exclusively for purpose of the contractual performance/delivery and the receiving party has to return or destroy them after the termination of the contractual relationship upon the other party's request within a reasonable period of time at the other party's expense. In case of documents that cannot be handed over and that contain confidential information, such as hard

disks or the like, the receiving party has to delete or otherwise destroy the respective documents. Upon request of the other party, the receiving party will promptly notify the other party of the return, deletion and/or destruction of any and all documents and papers in accordance with the above obligation.

- (2) The Supplier and Glycotope further undertake to strictly keep secret the other party's knowhow. This obligation expires seven (7) years after the termination of the contractual relationship to the Supplier. Neither the Supplier nor Glycotope are entitled to use or otherwise exploit the other party's know-how disclosed within the scope of the order and the contractual relationship during or after the termination thereof.
- (3) The obligation to keep the exchanged information secret pursuant to para. 1 does not apply if and to the extent
  - a. the respective party has been released from this obligation by express and written declaration; or
  - b. the information was already known to the other party before the disclosure of the information by Glycotope or the Supplier and the other party was notified thereof without undue delay; or
  - c. the information is or becomes public knowledge by way of publication or otherwise; or
  - d. the information is disclosed to Glycotope or the Supplier other than directly or indirectly by the other party; or
  - e. the information is to be issued on the basis of an administrative or court order or decision.
- (4) The Supplier is not entitled to refer to the contractual relationship with Glycotope in advertising material, brochures, etc., or to display products manufactured for Glycotope without Glycotope's prior written approval.
- (5) The Supplier will advise and oblige his subcontractors in accordance with this section 10.

## **Section 11**

- (1) The supplier guarantees us to comply with the provisions of the German Minimum Wages Act (Mindestlohngesetz) and to monitor compliance with it by his subcontractors. The German Minimum Wages Act applies to all employment of employees within Germany, including, for example, domestic assembly work by foreign companies and employment of foreign employees in Germany. If claims are made against us as co-liable party due to non-compliance with the Minimum Wages Act by the supplier or his subcontractors, we shall be indemnified by the supplier upon first request. We may demand that we be provided with evidence of compliance with the minimum wage regulations and the associated documentation and reporting obligations. We may also demand that subcontractors who appear to be unreliable are no longer employed. Further claims on our part and the right to terminate the contract without notice shall remain unaffected.
- (2) The supplier undertakes in the same way to comply with the law on the posting of employees (Arbeitnehmerentsendegesetz) and the law on work times (Arbeitszeitgesetz).
- (3) In the same way, the Supplier guarantees that the minimum working conditions resulting from the above-mentioned laws and the regulations issued in connection with them, in conjunction with the applicable collective bargaining agreements, will be observed with regard to all employees used to fulfil the order, regardless of whether they are employees of the Supplier, of a subcontractor authorised by the Supplier or of a rental company commissioned by the Supplier or subcontractor.

## **Section 12 Statute of Limitations**

- (1) The mutual claims of the contracting parties under or in connection with the business transaction and the individual orders shall become time-barred in accordance with statutory provisions, unless otherwise provided for hereinafter.
- (2) Notwithstanding Section 438(1)(3) *BGB*, Glycotope's claims for defects in quality shall become time-barred three (3) years after the passing of risk. If and to the extent, acceptance has been agreed upon, the statute of limitations commences upon acceptance.
- (3) The limitation period of three (3) years pursuant to para. 2 accordingly applies to claims for defects in title, whereat the statutory limitation period for a real third-party right for return (Section 438(1)(1) *BGB*) shall not be affected thereby.

## **Section 13 Final Provisions**

- (1) These TCP are subject to the laws of the Federal Republic of Germany to the exclusion of the provisions of the UN Sales Convention.
- (2) Exclusive place of jurisdiction for any and all disputes arising under or in connection with the parties' contractual relationship, including these TCP, shall, to the extent the Supplier is an entrepreneur as defined by the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, be Berlin.

This also applies if the Supplier has no general place of jurisdiction within Germany or if his place of business, residence or habitual abode is unknown at the time the action is commenced. Glycotope shall, however, also be entitled to commence an action at the Supplier's general place of jurisdiction or place of performance.

Mandatory, statutory provisions regarding the exclusive place of jurisdiction shall not be affected thereby.

- (3) A German and an English version hereof have been submitted to the Supplier. In case of conflicts between the German and the English version, the German version hereof shall prevail.
- (4) We reserve the right to update and adapt this TCP within a reasonable period of time at our reasonable discretion. The most recent version shall apply to the business relationship with the supplier, unless the supplier objects to the change in text form.

## Part 2: Additional Terms and Conditions for Services and Products using Glycotope Material

### 1. Scope

- (1) These additional Terms and Conditions for Services and Products using Glycotope material apply supplementary to the general Terms and Conditions, if the Supplier uses Glycotope material to perform the Services or manufacture the Products („**Additional Terms**“).
- (2) In the event that there is a discrepancy between a provision of the Additional Terms and the General Terms and Conditions, the provision contained within these Additional Terms shall prevail.

### 2. Usage of the Material

- (1) The Supplier shall use the Glycotope Material (the term “**Material**” shall comprise the Material itself and any derivatives, replicates, progenies and descendants thereof) only to manufacture a Product or to perform a Service as described in an order from Glycotope (“**Order**”).
- (1) The Supplier shall keep the Material (i) in strict confidence and not directly or indirectly disclose it to anyone in any manner except as/if expressly authorized herein, (ii) not reverse-engineer the Material (iii) not use such Material for any purpose other than as described in the Order and (iv) not use the received Material in preparing or prosecuting any patent application, in preparing or designing around or attacking patent claims.
- (2) During the term of the Order, the Supplier shall maintain accurate records of the location and the quantities of the Material and shall promptly inform Glycotope about the location and quantities of Material upon request.
- (3) The Supplier shall not sell nor transfer the Material anyhow.

### 3. Results and Inventions

- (1) Glycotope will solely own any and all rights to results, data, documentation, material and derivatives thereof obtained or generated during the Order (“**Results**”);
- (2) The Supplier is not allowed to publish any Results nor to disclose the Results to any third party.
- (3) The Supplier shall transfer all Results to Glycotope which arise in connection with the Order within 10 working days of the conclusion of the Order.
- (4) The Supplier hereby assigns in advance and agrees to assign all rights, titles and interests in and to the Results to Glycotope. Glycotope hereby accepts this assignment.
- (5) The Supplier agrees that any and all inventions or discoveries and derivatives thereof resulting from the Order whether patentable or not shall become the absolute and exclusive property of Glycotope.

### 4. Ownership

Ownership of the Material remains at all times solely with Glycotope.