

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### Article 1 – Definitions

**Agreement:** Any Agreement or understanding between Purchaser and Vendor concerning the sale and/or delivery of Goods and/or the execution of Work, including any Purchase Order.

**Confidential Information:** Any information including but not limited to, Materials, data, inventions, methods, know-how, trade secrets or materials concerning the research and development, products, finances, strategy, business or other affairs of Purchaser or any of its affiliates, or of any client, customer or collaborator thereof which have come to Purchaser's knowledge or into its possession or to which it otherwise has access, in connection with the Agreement.

**Equipment:** All vehicles, accessories, tools, expendables and such other equipment, which are used by Vendor to manufacture or to commission the Goods, or to execute Work, but are not (to be) incorporated into the Goods and are not part of any delivery obligation to Purchaser.

**Goods:** All chattel such as equipment, apparatus, components, materials, means, supplies, the manufacture and delivery of which constitute the subject of an Agreement.

**GTCP:** These General Terms and Conditions of Purchase.

**Intellectual Property:** All data, methods, reports, design and model right, results, materials, inventions, discoveries, trade secrets, Works of authorship, new data or other know-how or intellectual property, whether or not patentable, that are discovered or developed by Vendor or any of its subcontractors in connection with the performance of the Work.

**Materials:** All raw materials, ancillary materials and other materials that are processed into the Goods.

**Purchase Order:** A statement of Purchaser to Vendor concerning the purchase or delivery of Goods and/or the execution of Work.

**Purchaser:** Applikon Biotechnology B.V., with its principal place of business at Heertjeslaan 2, 2629 JG Delft, The Netherlands.

**Vendor:** Manufacturer or seller of goods or service provider who enters into one or more Agreements with Purchaser.

**Work:** Activities or services (including management and supervision) required to design, manufacture, test, validate and/or deliver Goods to the destination agreed upon, or in any other way to realize the object of the Agreement, as well as any separate activity or service to be undertaken by Vendor under the terms of the Agreement or ensuing therefrom.

### Article 2- Applicability

These GTCP shall govern all Agreements and any amendments thereto, including the supply of Goods and execution of Work, between Purchaser and Vendor. These GTCP shall take precedence over any terms and conditions of Vendor notwithstanding any provision to the contrary in such terms and conditions. Agreements must always be entered in writing. Any derogation from these GTCP or the Agreement shall be solely agreed to in writing.

### Article 3 – Delivery

Where applicable, the Vendor shall submit, within two weeks of receipt of a signed Agreement, a detailed production and supply schedule. This schedule shall be updated and re-submitted on a bi-weekly basis showing the progress of the Work. Vendor shall inform Purchaser in writing as soon as Vendor anticipates that it will not be able to complete the Work or deliver the Goods by any agreed upon date. This information shall include the nature of the delay and the new date by which the Vendor anticipates to be able to complete the Work or deliver the Goods, as the case may be. All Goods shall be delivered strictly in accordance with the specifications, drawing, data sheets and other conditions as agreed upon. Delivery shall take place at the agreed place and time (or if no place has been agreed at Purchaser's registered office in Delft, The Netherlands) and according to the delivery status "Delivered Duty Paid" (DDP) according to Incoterms 2010. Delivery includes supplying full documentation such as operational manuals and maintenance schedules, test and safety certificates and/or conformity declarations in the English language and installation and commissioning at site, where applicable. At the request of Purchaser, Vendor shall supply the Goods with an appropriate certificate of origin.

### Article 4 – Risk and Title

Vendor shall be liable for any loss of or damage to the Goods however caused until the Goods are delivered and if applicable assembled or installed, at which time the risk and title shall pass to Purchaser.

In the event Purchaser furnishes Vendor with documents, Materials, Equipment, drawings, specifications, data, software and any other information for the performance of its obligations, said items will remain the property of Purchaser. Vendor will store said items separately from items which belong to Vendor or third parties. Vendor will mark said items as property of Purchaser.

If the Purchaser makes any payment to the Vendor before delivery of the Goods, title to any Materials acquired by the Vendor in respect of the manufacture of the Goods shall pass to the Purchaser upon such payment. The title to any items so acquired by Purchaser shall not exceed in value the amounts paid before delivery of Goods. The transfer of title in any Materials or Work in progress shall not transfer the risk thereof.

### Article 5 – Packaging

All Goods shall be carefully and properly prepared, secured and packed in a manner suitable to provide adequate protection against damage whilst in transit to or in storage at the delivery destination. Any damage attributable to improper or inadequate packing shall be corrected at the Vendor's expense and the Vendor shall be held responsible for costs incurred in making good such damage. All packages shall have a packing list detailing the contents of the package. All packages and loose pieces must be clearly marked with the Agreement number, part number, quantity, weight, lot number, manufacturing date, expiration date, country of origin and special storage conditions, where applicable. Purchaser has the right to return packing materials free of charge.

### Article 6 – Changes

Purchaser may at any time instruct Vendor to perform any changes to the Goods and/or Work. Changes may include a variation, alternation, modification, deletion, revision, extension or an increase or decrease of the Goods or Work or acceleration, reprogramming or rescheduling of the production and supply program. In the event Purchaser instructs Vendor to perform a change, Vendor shall within 48 hours prepare and submit to Purchaser an estimate of the adjustment to be made to the quality, quantity and the price of Goods or Work and the impact on the Vendor's production and supply schedule, where applicable. After this period the Purchaser shall be entitled to reject any subsequent financial consequences. In the event Purchaser and Vendor are unable to agree on the cost of the change, Purchaser may nevertheless direct the Vendor in writing to proceed with the change, and immediately upon such direction the Vendor shall proceed with such change with all due diligence while Purchaser and Vendor endeavor to resolve the issue by negotiation whereby Purchaser reserves the right to cancel the Agreement in part or in whole. For those parts of the Agreement which subsequently remain in force, Purchaser shall be obliged to pay a reasonable pro rata compensation.

### Article 7 – Prices, invoices and payment

Unless expressly stated otherwise, the prices agreed upon are set prices in Euro and exclusive of VAT. Agreed upon prices are based on the delivery status "Delivered Duty Paid" at the agreed place of delivery and are inclusive of all costs required for the Vendor to perform its obligations under the Agreement.

Unless agreed otherwise in writing by Purchaser, Vendor must submit an invoice according to the specifications indicated by Purchaser and as set out herein, pertaining to each (partial) delivery. Payment will be made against an invoice in compliance herewith, within 60 days after receipt of the invoice, provided the Goods and the Work performed are delivered and comply with all the requirements of the Agreements and these GTCP and all documentation specified therein has been received by Purchaser.

Vendor's invoice shall at least contain the Agreement number and comply with all other requirements stated in the Agreement and

these GTCP and with all requirements pursuant to applicable law and regulations.

The invoice shall be sent, separately from the shipment of the goods, to the following address:

Applikon Biotechnology B.V.  
att. Accounts Payable Department  
Heertjeslaan 2  
2629 JG Delft  
The Netherlands

In the event of advance payments, Purchaser may demand a bank guarantee or other surety prior to making the advance payments. If the delivery has not occurred at the time and place and as otherwise agreed upon, Vendor shall owe Purchaser interest at the statutory interest rate on any amounts paid in advance over the period of the failure to deliver as such.

Any payment by Purchaser shall in no manner imply a waiver of any right of Purchaser.

Purchaser is entitled to suspend payment if Purchaser finds that Vendor is failing or has failed to perform any of its respective obligations. Purchaser is entitled to set-off any amounts Vendor owes Purchaser against any amounts invoiced by Vendor to Purchaser.

#### **Article 8 – Vendor's guarantees and responsibilities**

Purchaser's approval or comments on drawings, designs, calculations and specifications shall not absolve the Vendor from responsibility for any design, dimensional or constructional errors within the Vendor's control.

Vendor guarantees that the Work performed and Goods delivered:

- comply with the specifications of the Agreement and are in accordance with applicable law and regulations;
- are free from rights of third parties;
- include the agreed characteristics and the characteristics Purchaser is entitled to expect, for a period of at least twenty four (24) months, except if applicable, where the expiry date falls within such period and always provided that at the time of delivery at least 70% of shelf life time remains;
- are fit for their intended use;
- are new and without any defects, including faults in the design, production and materials;
- meet, with regard to their assembly and operation, the requirements under law and other government regulations in, among other areas, the fields of quality, health, environment, safety and those on electrical and electromagnetic interferences, such as applicable in the countries of manufacture, shipment, transfer and destination of the products at the moment of supply, in so far these countries are known to Vendor or may reasonably be expected to be known to him.

Vendor will rectify faulty design and replace faulty material and defects of manufacture, during a period of at least 24 months from the date of delivery or 24 months following approved performance tests, whichever is the latest. Repaired or replaced parts shall carry a similar guarantee during a minimal period of 24 months starting from the date of approval by Purchaser of any repairs or replacements carried out.

In the event of malfunctioning of Goods during any such guarantee period, Vendor shall be liable for repair, correction, replacement, removal, procurement, reinstallation, construction and commissioning and shall bear all costs involved. Vendor shall take out sufficient insurance to cover its liability as per this article and shall, at Purchaser's request, provide Purchaser with a copy of the insurance policy.

Vendor furthermore guarantees that all Goods which constitute or contain computer hardware, software, firmware, embedded microchips or any other computer product of any nature are able to identify, process and manipulate date and time data related functions correctly without causing any processing interruptions, abnormal terminations or changes in performance level, characteristics or functionality; and further guarantees, that all such Goods are able to correctly store and use such data, as Purchaser may reasonably expect.

Vendor shall conform to all statutory requirements in the performance of the Agreement. Vendor shall be registered at the applicable commercial register and shall have a VAT number and if necessary, an environmental license.

Vendor is responsible and liable for the equipment and Materials, which are used by it or by its personnel. All Equipment and Materials shall comply with all specific requirements stated in the Agreement and all other relevant requirements relating to the nature of the Work. Purchaser may inspect and test all Equipment and Materials used by Vendor in the execution of the Work.

Vendor shall keep all Equipment and Materials in good working condition. A malfunction or failure to function of any Equipment shall be Vendor's responsibility. Vendor shall remedy the consequences of such malfunction or failure to function.

Vendor is only allowed to store Equipment and Materials on the premises of the Purchaser as necessary for the immediate execution of the Agreement. The costs of storage and the liability for any loss of or damage to, including deterioration to, the Equipment and Materials shall be for the account of the Vendor.

Purchaser shall never be liable for the loss or theft of any chattel which belongs to Vendor. Vendor shall remove or ensure removal of all Equipment, unused Materials, waste and storage materials as soon as possible from the premises of Purchaser, but in all cases immediately after completion of the Work. Vendor shall indemnify Purchaser and its affiliates and hold Purchaser and its affiliates harmless from all costs and other losses incurred that fall under Vendor's responsibility, liability and guarantees stated herein.

#### **Article 9 – Obligations of Vendor in carrying out Work**

Without detracting from other obligations of Vendor in these GTCP or the Agreement, the following shall apply in respect of carrying out and accepting Work:

All Work must be performed in accordance with the Agreement, these GTCP and applicable law and regulations, and in accordance with the highest ethical standards and best industry practices and technical standards, including any voluntary codes of practice applicable in the industry.

Vendor is responsible for having its activities carried out independently and under its own responsibility, in a professional and ethical manner. The working conditions of its employees and those employees of its subcontractors shall be safe and ethical and in compliance with applicable law and regulations.

Vendor shall meet the professional competence requirements expected of it. At the Purchaser's request, Vendor shall provide Purchaser promptly with a copy of its valid registration certificates with relevant associations and its tax and social security numbers, as well as evidence regarding employment conditions.

#### **Article 10 – Quality assurance**

If a quality control plan is mandatory in accordance with the Agreement, Vendor shall submit such quality control plan for approval within two weeks of receipt of the Agreement. This plan shall cover the full scope of supply, including sub-supplied Material and services.

Vendor shall recommend to Purchaser on how to maintain the quality of the supplied Goods in good order and shall recommend maintenance procedures for the Goods after the completed guarantee period.

As far as reasonable, Vendor shall be aware of future changes in statutory requirements and shall inform Purchaser as the case may be. Deviations or clarifications from regular quality procedures have to be agreed upon between Vendor and Purchaser in writing.

Purchaser or its representative shall have the right to undertake quality audits of Vendor's quality system, the quality system of its sub-Vendors and subcontractors and their sub-Vendors and subcontractors of any tier, as well as audits to assess compliance with such quality systems. Purchaser shall ensure that only qualified and experienced auditors shall be appointed for the performance of such audits. Purchaser shall notify Vendor, in writing, at least seven days prior to the intended execution of the audit. The written notification shall include the terms of reference of the audits and the names of the assessors.

In the event Vendor has been approved or certified by a competent quality authority, Vendor shall furnish Purchaser with adequate proof of such approval or certification.

Purchaser or any person authorized by Purchaser shall be given full and free access at all reasonable times to Vendor's premises and those of its sub-Vendors and subcontractors as and when required for the purposes of quality assurance, source verification or audit, inspection and expediting and at the Vendor's expense shall be afforded such reasonable facilities and all appliances, materials and labor, as may be reasonably required for those purposes.

**Article 11 – Supporting materials and documentation**

Drawings, Materials, components, tools, Equipment, specifications, software, data and any other information which are made available by Purchaser to Vendor and those delivered or created by Vendor in execution of the Agreement, remain or shall become, as the case may be, the property of Purchaser and shall be marked as such. Vendor shall upon receipt of Materials or components to be processed check that these Materials or components are fit for application. Drawings, tools, Equipment, specifications, software, data and any other information shall be returned within 30 days after completion of the Work in good order (except for normal wear and tear) to Purchaser.

**Article 12 – Force majeure**

Neither party shall be liable to the other party for any delay or omission in the performance of any obligation under this Agreement, where the delay or omission is due to any cause or condition beyond the reasonable control of the party obliged to perform, including acts of God, acts of government, fire, flood, earthquake, war, riots or embargoes, but excluding strikes or other labor difficulties affecting Vendor or Vendor's inability to obtain supplies howsoever arising ("Force Majeure"). If Force Majeure prevents or delays the performance by a party of any obligation under this Agreement, then the party claiming Force Majeure shall promptly notify the other party thereof in writing. This Agreement shall be deemed suspended as long as, and to the extent that, any such event prevents its performance. If the Force Majeure situation exceeds one month, Purchaser shall be entitled to cancel the Agreement by giving notice in writing to the Vendor. Parties shall discuss whether they wish to terminate or adapt the Agreement and agree on how to proceed.

As soon as the Force Majeure situation has ended, or is under control, or so much earlier as is feasible, the production and supply schedule, but not the respective prices, shall be adjusted in accordance with the provisions herein concerning changes.

**Article 13 – Confidentiality**

The Vendor undertakes that its employees and the employees of third parties hired in connection with the execution of the Agreement keep confidential with respect to any third party any and all Confidential Information. Confidential Information shall only be used for the purpose of the Agreement and not for any other purpose. After completion of the Work or termination of the Agreement, whichever occurs earlier, Vendor shall have no right to use any Confidential Information and shall promptly destroy all Confidential Information, including all documents, correspondence and records containing or developed using Confidential Information, to the extent these are not to be returned to Purchaser. Without the prior written consent of Purchaser, Vendor shall not use in any way the name of the Purchaser or disclose the destination or the description of the Goods (to be) supplied to the Purchaser. The obligations of this article shall continue notwithstanding the completion or termination of the Agreement.

**Article 14 – Intellectual property**

Vendor shall promptly disclose and deliver to Purchaser all Intellectual Property. Vendor hereby irrevocably assigns to Purchaser, free from all encumbrances, all its interest and rights in Intellectual Property. No royalty or other payment shall be due from Purchaser in respect of such assignment and Vendor shall, at Purchaser's reasonable expense, execute all formalities necessary for such assignment to Purchaser. Vendor shall indemnify Purchaser and hold Purchaser and its affiliates harmless with respect to any liability resulting from any (alleged) infringement of intellectual property rights with respect to the Goods or Work performed.

**Article 15 – Shortcomings and Default**

In the event that (any part of) the Goods delivered or Work performed do not conform to the Agreement or applicable law and regulations, Purchaser may at its discretion require Vendor without delay and at Vendor's cost, to repair or replace the delivered Goods or supply the missing components or to duly remedy the Work performed, within a reasonable period to be determined by Purchaser, without prejudice to any of its other rights and remedies. Should Vendor fail to comply with such request, Vendor shall be liable to pay damages and

Purchaser shall be at liberty to repair or to modify or to take part or all of the Work out of Vendor's hands and execute such Work itself or cause to have executed by others as Purchaser thinks fit. Any balance of the purchase price unpaid or which may be due to the Vendor may be retained by Purchaser and applied to the payment for or cost of repairs or modifications or the execution of the Work by Purchaser or others. If the balance is insufficient to meet the cost of the Work so taken out of Vendor's hands, Vendor shall be liable to pay any such difference on demand. Vendor shall be automatically in default without requiring any further notice from Purchaser in the event of Vendor's late or nonperformance of the Agreement.

**Article 16 – Termination and Cancellation at Purchaser's convenience**

Purchaser is entitled, without being liable to pay to Vendor any cancellation or other charges or costs and without legal proceedings being required, to terminate unilaterally all or part of the Agreement in the following cases:

- if Vendor is in default or should fail, neglect or refuse to execute the Agreement with due diligence and expedition;
- if Vendor is declared bankrupt or applies for suspension of payments or is involved as debtor in a debt restructuring procedure. In the event of a withdrawal or cancellation as aforesaid,
- Vendor shall use all reasonable endeavors to effect the cancellation of suborders and the termination of subcontracts which it may have placed with others; and
- Vendor shall receive payment for all unpaid Work performed by it in accordance with the Agreement and agreed costs incurred therewith, prior to such termination. Such payment shall be agreed in writing between Purchaser and Vendor and shall be paid to Vendor within 60 days from the date of such agreement. Any Goods to which such payment relates, shall become the property of Purchaser and shall be placed in the possession of Purchaser.

**Article 17 – Subcontracting and assignment**

Vendor shall not, without the prior written consent of Purchaser, assign or subcontract the Agreement or any part thereof to any person, firm or company, other than as agreed upon in the Agreement. Vendor shall remain liable for the acts and omissions of its subcontractors as if such acts and omissions have been performed by Vendor.

**Article 18 – Miscellaneous**

If one or more articles of these GTCP or the Agreement shall be held to be invalid or unenforceable, the validity or enforceability of the remaining articles shall not in any way be affected or impaired thereby.

In such event, Vendor and Purchaser shall as much as possible in the spirit of the intention of the invalid or unenforceable articles, negotiate new articles replacing the invalid or unenforceable articles.

**Article 19 – Governing law and arbitration**

These GTCP and any Agreement shall be construed and governed in accordance with the laws of the Netherlands. The United Nations Convention on contracts for the International Sale of Goods does not apply to the Agreement and these GTCP and the transactions contemplated therein. In case of a dispute, both parties will try to resolve the issue amicably before contemplating legal action, unless the urgency of the matter requires otherwise. All unresolved disputes arising in connection with these GTCP or any Agreement, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut), provided that, in deviation hereof, the Purchaser may elect to institute proceedings in a court of law by notifying the Vendor of such election.