

**Miltenyi Biomedicine GmbH – General Terms and Conditions of Purchase**  
(as of 05/2022)

**1 General Provisions, Scope of Application**

- 1.1 These General Terms and Conditions of Purchase shall apply to all contracts which we – Miltenyi Biomedicine GmbH – conclude with our suppliers, contractors and business partners (hereinafter collectively: supplier) for deliveries and/or services offered or to be provided by them. These General Terms and Conditions of Purchase shall apply exclusively; any terms and conditions of the supplier (e.g. General Terms and Conditions of Sale or General Terms and Conditions of Business) that are contrary or supplementary to or deviate from these General Terms and Conditions of Purchase shall only apply, if and to the extent that we have expressly agreed to them. These General Terms and Conditions of Purchase shall also apply even if we, being aware of conflicting, supplementary or deviating conditions of the supplier, accept deliveries of products and/or services of the supplier (hereinafter: contractual deliverable) without reservation or pay for them.
- 1.2 These General Conditions of Purchase shall also apply to all future deliveries of goods and/or services by the supplier, even if they are not expressly agreed again with the supplier in the context of future deliveries and/or services.

**2 Conclusion of Contract and Amendments**

- 2.1 Any orders, acquisitions and delivery call-offs as well as any amendments and/or addenda thereto must be in writing. Orders and call-offs for specific deliveries can also be placed by telecommunication or facsimile.
- 2.2 Oral arrangements made before or during conclusion of the contract require written confirmation from our purchasing department to be effective. Sentence 2 of Clause 2.1 shall remain unaffected thereby.
- 2.3 Oral arrangements after conclusion of the contract, in particular retroactive changes and supplements to our General Terms and Conditions of Purchase, including to the present clause requiring the written form, as well as side agreements of any kind require written confirmation from our purchasing department to be effective. The confirmation shall be validly served if sent by email or facsimile.
- 2.4 Cost estimates and quotes shall be binding and provided free of charge unless explicitly agreed otherwise.
- 2.5 In the event that the supplier should not have accepted an order within two weeks from its receipt we shall be entitled to withdraw it. Delivery call-offs become binding unless the supplier objects within five working days from receipt thereof.

**3 Delivery, Safety Requirements and Environmental Protection**

- 3.1 Deviations from our orders and acquisitions are permissible only subject to our prior written consent.
- 3.2 Dates and deadlines agreed upon are binding. Compliance with a delivery date or deadline is determined by the time of receipt of the goods at our facilities. Deliveries shall be made according to Incoterms® 2010
 

within the EU	DAP "delivered at place"
for deliveries from outside the EU	DDP "delivered duty paid"

at the delivery address specified by us except as specially agreed otherwise. However, we reserve the right to instruct the supplier to make the goods available in good time, taking into account the time for loading and dispatch to be agreed with the forwarder.
- 3.3 If the supplier has taken responsibility for erection or assembly and no other arrangements have been made, the supplier shall, subject to any regulations to the contrary, bear all additional costs such as e.g. travel costs, provision of tooling and disconnection/removals.
- 3.4 In case the supplier fails to meet agreed deadlines the relevant statutory provisions shall. In the event that the supplier should foresee difficulties in regard to manufacture, raw materials supply, compliance with deadlines or similar circumstances that might prevent it from delivering in time or in the agreed upon quality, it shall so notify our purchasing department without delay.
- 3.5 Unconditional acceptance of a late delivery of goods or services shall not constitute waiver of any claims to compensation to which we may be entitled as a result of such late delivery; this shall apply up to full payment of the consideration due by us for the pertinent delivery of goods or services.
- 3.6 Partial deliveries are not permissible, unless they are reasonable or we have explicitly consented thereto.
- 3.7 As concerns unit numbers, weights and measures, the values determined by ourselves in the verification carried out upon reception of the goods shall prevail, subject to other evidence.
- 3.8 As concerns software belonging to the scope of product delivery, including the pertinent documentation, in addition to the right of use within the statutorily permissible scope (§§ 69a et seq. German Copyright Act (UrhG)) we also enjoy the right of use with the agreed upon performance characteristics and within the scope required for the contractually agreed upon use of the product. We may also create backup copies without an explicit agreement to this effect.
- 3.9 All deliveries of the supplier (e.g. in particular deliveries of working materials, machines, electrical equipment (or related components or materials), articles and/or (hazardous) substances) must – without prejudice to the applicable statutory requirements to be complied with by the supplier – also comply with the terms of our "Material Safety Purchasing

Conditions", as applicable. The provision of these conditions should be requested separately by the supplier if they are not yet available to the supplier. The supplier is also obliged, in particular, to comply with the information and notification obligations towards us as set out in these "Material Safety Purchasing Conditions".

#### **4 Force Majeure / Acts of God**

Force majeure / Acts of God, industrial action, operating disruptions outside of our control, unrest or disturbances, governmental measures and other unavoidable events shall entitle us, without prejudice to our other rights, to withdraw from the contract in whole or in part insofar as such events should be of significant duration and result in a significant reduction of our requirements.

#### **5 Shipping Advice and Invoice**

The information provided in our orders and delivery call-offs shall apply. Invoices shall be sent, in a single copy, to the address printed in the above documents, stating the order number and other references; invoices must not be enclosed with shipments and deliveries.

#### **6 Pricing and Transfer of Risk**

6.1 Except for specific arrangements to the contrary, prices shall be according to Incoterms® 2010

within the EU            DAP "delivered at place"

for deliveries from    DDP "delivered duty paid"  
outside the EU

and shall include all packaging.

6.2 Sales tax / VAT shall not be included. The supplier shall bear the risk of loss of the goods until the time of acceptance of the goods by us or our representative(s) at the place where the goods are to be delivered in accordance with the order.

#### **7 Payment Terms**

Except for special arrangements to the contrary, invoices shall be paid within ten days with deduction of a discount of 3% or within thirty days without discount, counting from the due date of the consideration payable and receipt of both the invoice and the goods and/or performance of the service. All payments shall be made subject to verification of the invoice.

#### **8 Claims for Defects and Recourse**

8.1 Acceptance takes place subject to inspection for the absence of defects, in particular also in regard to correctness, completeness and suitability for use. We are entitled to inspect the contractual deliverable to the extent that and as soon as such inspection is feasible as part of the regular course of business; we shall report any defects detected immediately upon discovery thereof. To this extent, the supplier waives the objection of late notification of defects.

8.2 The statutory provisions concerning quality, material or legal defects shall apply unless otherwise provided below.

8.3 We shall be entitled to choose the type of supplementary performance. The supplier shall be entitled to refuse the type of supplementary performance chosen by us subject to the prerequisites of § 439 para. 4 German Civil Code (BGB).

8.4 In the event that the supplier should not start curing the defects immediately after our request to do so, in urgent cases and in particular in order to prevent imminent danger or additional damage we shall be entitled to carry out such remedial action ourselves or have it carried out by a third party, always at the expense of the supplier. Claims pertaining to material defects are subject to a two year statute of limitations, unless the good has, in accordance with its usual intended use, been employed in a building structure and has caused such structure to become defective; in this case the statutory statute of limitations shall apply. The statute of limitations for claims pertaining to material defects begins to run with the delivery of the contractual deliverable (transfer of risk).

8.5 In the event of legal defects, the supplier shall additionally hold us harmless from any potentially existing third party claims. The statute of limitations for legal defects is ten years.

8.6 For parts of the delivery that have been refurbished or repaired within the period of the statute of limitations applying to our claims in respect to defects, the statute of limitations shall start to run again at the time when the supplier has fully satisfied our claims to supplementary performance.

8.7 Any costs arising for us as a result of the defective supply of the contractual deliverables, in particular freight, travel, labour or materials costs or costs in respect to incoming goods inspections over and beyond what is customary shall be borne by the supplier.

8.8 In the event that we should be obliged to take back products manufactured and/or sold by ourselves as a result of the defectiveness of a contractual deliverable provided by the supplier, or if our selling price has been reduced or any other claims have been made against us in such respect, we reserve the right to initiate recourse against the supplier, and the deadlines otherwise required for this procedure shall not apply to our rights in respect to such defects.

8.9 We shall be entitled to demand compensation from the supplier for any expenses arising for us in regard to our client in the event that our customer should have a claim against us in respect to compensation for expenses necessary in connection with supplementary performance, in particular as concerns freight, travel, labour and materials costs.

- 8.10 Notwithstanding the stipulation in Clause 8.4, the statute of limitations shall, in the cases referred to in Clauses 8.8 and 8.9, become effective at the earliest two months after the date on which we satisfied the claims addressed against us by our customer, but at the latest five years after delivery by the supplier.
- 8.11 In the event that a material defect should become apparent within six months since the date of the transfer of risk, it shall be assumed that the said defect was already present at the time of the transfer of risk, unless such assumption were incompatible with the nature of the good or of the defect.

## **9 Product Liability and Recalls**

In the event that a claim should be made against us as a result of product liability, the supplier shall be under the obligation to hold us harmless against such claim to the extent that and insofar as the loss were caused by a fault in the contractual deliverable supplied by the supplier. In cases of fault related liability the above shall however only apply if there has been fault on the part of the supplier. To the extent that the cause for the loss or damage lies within the supplier's scope of responsibility, it shall also bear the burden of proof. In the abovementioned cases the supplier shall assume all costs and expenses including those of potential legal proceedings or recall actions. In all other respects, the pertinent statutory provisions shall apply.

## **10 Performance of Work**

- 10.1 Persons carrying out work on our sites in performance of the contract shall comply with the respective stipulations of the pertinent plant regulations and our addendum "occupational health and safety regulations for third party workers".
- 10.2 Liability, irrespective of the legal basis, for accidents suffered by such persons on our plant facilities shall be excluded unless caused by intentional or grossly negligent breach of duty on the part of our agents or legal representatives, in case of deceit, in case of breach of a guarantee given to supplier, in the case of death, physical injury or damage to health or in the event of liability claims in accordance with the German Product Liability Act (ProdHaftG).
- 10.3 Prior to start working the supplier shall study all applicable stipulations of our respective pertinent plant regulations and our addendum "occupational health and safety regulations for third party workers" which will be provided to the supplier upon separate request. The supplier shall perform trainings to the workers dedicated to conduct work on our site and shall give evidence to us as regard the training prior to the time the work at our respective site commences.
- 10.4 In case the use of subcontractors is approved, the supplier shall contractually oblige these approved subcontractors to abide by the obligations to study and train all applicable stipulations of the respective plant regulations and our addendum "occupational health and safety regulations for third party workers".
- 10.5 Our current addendum occupational health and safety regulations for third party workers shall apply additionally for the use of third party workers.

## **11 Provision of Materials**

Materials, parts, containers and special packaging provided by us shall remain our property. Such items may only be put to their intended use. The processing of materials and assembly of parts take place on our behalf. It is mutually understood that, to the extent of the proportion of the value of the materials provided by us to the value of the overall product we are joint owners of the goods produced using our materials and parts, and that to that extent the supplier holds such items in custody for us.

## **12 Documents and Confidentiality**

- 12.1 Any and all business or technical information rendered accessible by us (including features that could be concluded from e.g. objects, documents or software thus provided, as well as other knowledge and expertise) shall, for as long and insofar as it is not demonstrably in the public domain, be held confidential in regard to third parties and shall, within the supplier's own operation, be made available only to persons with a need to know by virtue of their necessary participation in work leading to the deliveries to be made to us and who shall in turn also be subject to a duty of confidentiality; such information shall remain our exclusive property. Without our prior written consent such information shall not, except in connection with deliveries to ourselves, be reproduced or used commercially. Upon our request, the supplier shall either destroy or return to us all information originating from us (if applicable including any potentially generated copies or notes) as well as any items on loan, without delay and in complete condition. We reserve all rights concerning such information (including copyright and the right to file applications for industrial protection rights such as patents, utility models, semiconductor contactors/protection etc.). To the extent that we were to have gained access to such information from third parties, we reserve the same rights in favour of such third parties.
- 12.2 Products manufactured according to documents generated by ourselves, such as drawings, models and the like, or following our confidential information or using our tools or reproductions thereof may not be used by the supplier either for its own purposes or for the purposes of offering or supplying them to third parties. The same shall apply, mutatis mutandis, to our printing orders.

## **13 Place of Performance**

The place of performance shall be the place to which the goods are to be delivered in accordance with our contractual specifications.

#### **14 General Provisions, Venue, Applicable Laws**

- 14.1 In the event that any provision of these General Terms and Conditions of Purchase or of any further arrangements should be or become invalid (whether in part or in total), such invalidity shall not affect the validity of the remaining provisions thereof. Instead of the invalid provision, the relevant statutory provisions, if any, shall apply. However, insofar as adherence to the contract as a whole would represent an unreasonable hardship for us or the supplier, even taking into account the changes provided for in sentence 2 above, the contract as a whole shall be invalid.
- 14.2 If the supplier is a merchant within the meaning of the German Commercial Code (HGB), a legal person under public law or a public legal special fund, exclusive – also international – jurisdiction for any disputes arising under or out of the contractual relationship underlying these General Terms and Conditions of Purchase shall be Bergisch Gladbach. We shall, however, also be entitled to bring an action against the supplier, at our choice, either at the supplier's general place of jurisdiction or at the court having jurisdiction at the place of performance of the delivery obligation.
- 14.3 These General Conditions of Purchase as well as any contractual relationship between us and the supplier which is based on these General Conditions of Purchase shall exclusively be governed by German laws. The United Nations' Convention on Contracts for the International Sale of Goods (CISG) shall not apply.