§ 1 General terms, scope

(1) These General Terms and Conditions of Purchase (hereinafter collectively referred to as the PTC) apply to all contracts concluded by IDT Biologika GmbH (hereinafter referred to as IDT) for the purchase of products and services (hereinafter referred to as Deliveries) insofar as these PTC are included in the respective contract. Deliveries or processes (hereinafter referred to as Services) undertaken by IDT (hereinafter referred to as the Supplier) that contradict or deviate from the PTC shall not be included in the contract unless IDT provides explicit written consent.

(2) These General Terms and Conditions of Purchase (hereinafter collectively referred to as the PTC) apply to all contracts concluded by IDT Biologika GmbH (hereinafter referred to as IDT) for the purchase of products and services (hereinafter referred to as Deliveries) insofar as these PTC are included in the respective contract. Deliveries or processes (hereinafter referred to as Services) undertaken by IDT (hereinafter referred to as the Supplier) that contradict or deviate from the PTC shall not be included in the contract unless IDT provides explicit written consent. This shall also apply where IDT has accepted the Deliveries without reservation while in knowledge of deviating terms and conditions of the Supplier.

§ 2 Contract conclusion

(1) Orders, delivery schedules and order changes from IDT (hereinafter collectively referred to as the Order) shall only be binding once issued in written or text form at the agreed date. Verbal orders or oral agreements or amendments shall only become binding upon confirmation in written or text form by IDT. This shall also apply to additionally agreed deliveries or services. Silence on suggestions, proposals or offers from the Supplier shall not be considered as consent. All offers and cost proposals from the Supplier shall be issued free of charge unless otherwise agreed.

(2) The Supplier shall immediately confirm each Order in writing or text form (hereinafter referred to as Order Confirmation). IDT shall not longer be bound by the Order after an appropriate period of time, if an Order Confirmation from the Supplier is not longer to be expected under regular circumstances. IDT may revoke the Order until the receipt of the respective Order Confirmation.

(3) IDT may demand changes to delivery items, services, or date of delivery or service from the Supplier even after a contract has been concluded if this may reasonably be expected from the Supplier under due regard to the interests of both Parties. Contract changes shall give due consideration to the effects for both Parties, especially with respect to increased or reduced costs and delivery or service dates or deadlines.

§ 3 Delivery time, delays

(1) Delivery and service periods as well as delivery and service dates (hereinafter referred to as Delivery Dates) as specified by IDT in the Order shall be binding on Order Confirmation from the Supplier. The Supplier shall immediately inform IDT in writing or text form if delay or default is foreseeable in the Order due to unpreventable circumstances or with delay or default of any circumstances that have occurred or according to which it is recognizable that the Supplier will not be able to comply with the Delivery Date. Such information is to be transmitted reasonably and expected during the destruction of the corresponding order. Furthermore, the Supplier shall inform IDT of each delivery after execution by the Supplier. The Supplier shall immediately inform IDT of any delivery. If Supplier should fail to provide a service or deliver products at all or within the agreed period, IDT may revoke the Order until the receipt of the respective Order Confirmation.

(2) The Supplier may only send partial deliveries or perform partial services after approval from IDT in written or text form.

(3) The Supplier shall send all documentation (in particular: delivery notes, certificates of analysis, manufacturing documents, plant and equipment documentation) as necessary for further use of the products even if the supply of such documentation has not been expressly agreed. Delivery shall only be deemed complete on receipt of all required documentation.

(4) If Supplier should fail to provide a service or deliver products at all or within the agreed period, IDT reserves all rights according to statutory provisions, especially the right to cancel the order and compensation for direct and indirect damages as well as reimbursement for expenses. The provisions in para. 5 shall remain unaffected. The acceptance of a delayed delivery shall not constitute a waiver of any compensation claims.

(5) IDT may demand compensation for damages caused by delayed delivery or service at a lump sum of 0.2 % of the net price per calendar day up to a total of 5 % of the net price of the delayed delivery or service from the Supplier in addition to specific performance. IDT may in this case exercise this claim for compensation up to the due date of the final invoice for the delayed delivery or service. IDT reserves the right to assert additional claims for damages. The Supplier reserves the right to prove that IDT has sustained minor or no damages, or that Supplier is not responsible for the delay.

(6) IDT may refuse receipt of delivery, service, or acceptance, if acceptance is part of the contract, at the cost and risk of the Supplier for delivery before the agreed Delivery Date. The Supplier shall reimburse IDT for any additional costs such as warehousing or insurance if IDT does accept the delivery or service, and signs acceptance if acceptance is part of the Order. The agreed payment period for a premature delivery or service begins on the date of the agreed Delivery Date at the earliest regardless of the actual date of delivery of the goods or services.

§ 4 Service, delivery, transfer of risk, property

(1) The Supplier shall not have services owed to IDT performed by a third party such as a subcontractor without prior written approval from IDT unless otherwise agreed in an individual case. The Supplier shall bear the procurement risk for its services unless otherwise agreed in an individual case. Notwithstanding the above provision, the Supplier shall bear the responsibility for actions or omissions of third parties engaged by the Supplier, the conduct of which is attributable to the Supplier, and shall remain responsible for specific performance according to the contract.

(2) Deliveries shall be made DDP (Incoterms 2010) to the destination specified in the Order. The destination for delivery shall be the registered office of IDT in Dessau-Roßlau, Germany, if no destination has been specified and no other agreement has been reached. The respective destination shall also be the place of performance for the purposes of specific performance. This Supplier shall hereby notify IDT after execution by sending shipment notice. IDT shall not be held responsible for any delays in acceptance due to the Supplier’s failure to send shipment notice. The Supplier shall include a delivery note stating the date (issue and shipment), delivery contracts (article numbers and quantities), and the seller IDT (hereinafter referred to as the Supplier) with the delivery. IDT shall not be held responsible for delays in processing and payment arising from a missing or incomplete delivery note.

(4) The risk of loss of or damage to the goods to be transferred to IDT upon delivery at the place of performance. Acceptance shall constitute transfer of risk if acceptance has been agreed in the Order.

(5) The transfer of title to the goods delivered to IDT shall take place with delivery of the goods. Transfer of title to all known and unknown types of use. In particular, IDT shall be granted the right to exploit, copy, distribute, modify or further develop these work results in whole or in part, or have these activities

§ 5 Prices, terms of payment

(1) All prices shall be quoted net plus statutory value-added tax at the time of the offer quoted separately.

(2) Unless otherwise agreed in a particular case, the agreed price shall include all main and ancillary services from the Supplier (such as assembly and installation) including any required materials (such as packaging, shipping costs including any shipping and liability insurance) and all other costs, fees and charges (such as taxes and duties) in connection with the Deliverables. This shall also apply to any samples to be delivered where agreed. The Supplier shall at its own cost take back packaging materials including packaging for whole trading units at the request of IDT.

(3) The agreed price shall be due for payment within 30 calendar days after complete delivery and performance or acceptance if acceptance has been agreed, and receipt of a proper invoice. The Supplier shall offer a discount of 2 % if IDT should pay the net invoice amount within 14 calendar days. Payment shall also be credited against previously paid amounts if the order has been received by IDT’s regular bank before the due date. IDT shall not be held responsible for delays in payment by other banks involved.

(4) IDT shall not owe interest payable after the due date. The default interest shall amount to five percentage points above the base rate. The statutory provisions shall apply in determining default.

(5) IDT is entitled to offset and retention rights as well as defense of non-performance of the contract to the extent permitted by law. IDT may in particular withhold due payment where IDT still has claims against the Supplier due to incomplete or defective delivery or contract performance. The Supplier may only be entitled to offset or claim retention rights insofar as the counterclaims are acknowledged, undisputed or assessed in a legally binding judgement or for counterclaims based on the same transaction.

§ 6 Materials, documentation, confidentiality

(1) IDT shall reserve all ownership rights including copyright to any illustrations, diagrams, drawings, calculations, implementation instructions, process descriptions, product specifications, manufacturing instructions or other documentation (hereinafter referred to as Documentation) provided by IDT. The Supplier shall keep the Documentation safe and return the Documentation to IDT after completing the contract or destroy the Documentation if requested to do so by IDT. The Documentation shall only be used for the contractual purpose. The Supplier shall maintain confidentiality on the Documentation towards third parties for a period of 5 years after termination of the contract except where the Documentation is to be passed on to affiliated companies according to the German Companies Act (AktG) §15 et seq. The Supplier shall impose similar confidentiality obligations on its own employees involved in the performance of the contract. This confidentiality obligation shall not apply where the knowledge contained in the Documentation is generally known to the public. The Supplier will bear the corresponding burden of proof.

(2) The above provisions shall apply to all other confidential information disclosed by one party to the other where such information is not publicly known, in particular financial, technical or other business or operational information.

(3) The above provisions shall also apply to all further developments or improved versions or modifications of the above materials as well as tools, templates, samples, and other items that IDT provides to the Supplier for the manufacturing process. The Supplier shall store these items separately and insure them at a risk of its own. IDT shall have the right to claim all ownership rights including copyright to the above items unless legal provisions demand transfer of title due to combining, mixing or processing.

(4) The Supplier shall grant IDT the unrestricted, irrevocable, and transferable rights of use and exploitation of all products and work results relating to the delivery or performance service for all known and unknown types of use. In particular, IDT shall be granted the right to exploit, copy, distribute, modify or further develop these work results in whole or in part, or have these activities
§ 7 Defective Deliverables, liability

(1) Unless otherwise agreed, the statutory provisions shall apply to material and legal defects in delivered goods (including wrong and short deliveries, improper assembly or commissioning, defects in the assembly, installation or operation manual, and other breaches of obligation). The Supplier shall only engage sufficiently qualified staff to provide services in accordance with the applicable laws and regulations, especially in the ten principles of the UN Global Compact. The Supplier shall cooperate with the business headquarters of IDT in science and technology and in compliance with the applicable laws and regulations. The Supplier shall react immediately to any notices on defects and respond at least within 2 working days.

(2) The Supplier shall also bear the costs of inspection and remedy including any administrative costs (such as inspection or testing costs, transportation, inspection and shipping costs) incurred by the Supplier even if no defect is found. IDT may only be considered liable for compensation for damages due to an unjustified claim for remedy if IDT has detected or, through gross negligence, failed to detect that there was no defect, but the cause of the defect lay within the sphere of responsibility of IDT.

(3) Remedies shall be deemed unsuccessful if the Supplier should fail to meet its obligation for subsequent performance by removing the defect (repair) or delivering a defect-free replacement. The Supplier shall notify IDT of a defect remedied by a third party, and demand compensation for or corresponding advance payment on the expenses incurred. This shall also apply to the dispensability of a deadline for remedy in accordance with the statutory provisions. In addition, a deadline shall be deemed dispensable if unreasonable for IDT, such as in endangerment to operational safety. IDT shall inform the Supplier immediately of any such circumstances.

(4) IDT may otherwise reduce the purchase price or withdraw from the contract due to material or legal defect according to statutory provisions. IDT shall also be entitled to claim for damages and reimbursement of expenses according to statutory provisions. IDT may also assert claims under a guarantee in addition to statutory claims if the Supplier has assumed a guarantee for the quality or durability of the delivery.

(5) The Supplier warrants that the goods delivered by the Supplier are free from defects. The Supplier shall bear the costs of inspection and remedy, and that their delivery or contractual use, also in combination or interaction with other items, and any services provided will not infringe patents or other third-party rights. The above provisions shall apply to the commercial obligation of IDT regarding inspection and objection and the art in science and technology and in compliance with the applicable laws and regulations. The Supplier shall be limited to defects that can be detected on external inspection on incoming goods including shipping documents and quality control by IDT in the sampling procedure (such as damage during shipping or wrong or short delivery) (obvious defects). The obligation of inspection shall not affect acceptance has been agreed. The obligation of IDT to report defects discovered at a later time (concealed defects) shall remain unaffected. The obligation to inspect the goods and object defects shall only apply once the delivery has been fully completed. The Supplier shall react immediately to any notices on defects and respond at least within 2 working days.

(6) The Supplier shall ensure the regulatory approvals, licenses, and registrations necessary to provide the Deliveries and services.

§ 8 Product and manufacturer’s liability

(1) The Supplier shall indemnify IDT from any third party claims arising from defective products according to Product Liability Act or manufacturer’s liability where the cause of the defect lies within the sphere of influence or organization of the Supplier and the Supplier or a supplier to the Supplier have caused the defect in the product. IDT may also demand compensation from the Supplier for any resulting damages to IDT from the above, including reasonable legal costs. This shall include all costs and expenses of recalling a defective product.

(2) The Supplier shall conclude a product liability insurance policy at a minimum coverage of € 10 million per claim resulting from damage to property or injury to persons, and to provide proof of insurance to IDT on request.

§ 9 Limitations

(1) Claims between the Parties shall expire according to statutory provisions unless otherwise agreed.

(2) In variance to the German Civil Code (BGB) § 438 (1) no. 3, the general limitations for defects shall amount to three years from transfer of risk or acceptance. The three-year limitation period shall also apply mutatis mutandis to claims arising from legal defects without affecting the statutory limitation period for claims for restitution of third parties according to German Civil Code (BGB) § 438 (1) no. 1. The original warranty period for the replaced or newly delivered goods or newly manufactured works shall recommence for subsequent performance unless the Supplier is recognizably not acting in fulfillment of its obligation to remedy the defect.

(3) Limitation periods in commercial law including foregoing extension shall apply to all contractual claims arising from the elimination of forced and child labor, or sovereign interventions unforeseeable at contract conclusion, which the party affected cannot or cannot reasonably assert or circumvent.

(4) The affected party shall take every reasonable effort to eliminate, remedy or overcome such cases, and subsequently attempt to fulfill its contractual obligations as quickly as possible.

§ 10 Force majeure

(1) Incidents of Force majeure that prevent either party in whole or in part from fulfilling its obligations shall release both parties of the scope of performance affected from the fulfillment until the force majeure subsides. The party affected by force majeure shall notify the other party immediately, including information as of the effects for the fulfillment of the contract. Force majeure includes strikes and lockouts, floods, fires, war, insurrection, riots, civil unrest, embargoes, or sovereign interventions unforeseeable at contract conclusion, which the party affected cannot or cannot reasonably assert or circumvent.

(2) The affected party shall take every reasonable effort to eliminate, remedy or overcome such cases, and subsequently attempt to fulfill its contractual obligations as quickly as possible.

§ 11 Compliance, data protection, permits

(1) IDT is committed to the fundamental principles of corporate responsibility and integrity, human rights, and labor and anti-corruption standards as set out especially in the ten principles of the UN Global Compact. The Supplier shall comply with all applicable laws and regulations, especially the protection of human rights, rights to freedom of association, the elimination of forced and child labor, corruption and unfair competition, and compliance with environmental standards.

(2) The Parties undertake to comply with the current valid data protection regulations according to the General Data Protection Regulation (GDPR) and the Bundesdatenschutzgesetz (BDSG) [Federal Data Protection Act]. This also includes technical security measures adapted to the current state of art and technology (Art. 32 GDPR) and the obligation of employees to maintain data secrecy. The Parties agree that order data processing with the meaning of §62 BDSG is not part of this Contract.

(3) The Supplier shall ensure the regulatory approvals, licenses, and registrations necessary to provide the Deliveries and services.

§ 12 Applicable law, jurisdiction and miscellaneous terms

(1) The law of the Federal Republic of Germany to the exclusion of international law, in particular the United Nations Convention on Contracts for the International Sale of Goods (UN CISG), shall apply to the PTC and all legal relationships between IDT and the Supplier.

(2) The place of jurisdiction for all disputes, domestic or international, arising from this contractual relationship shall be at the business headquarters of IDT in Dessau. However, IDT may also litigate at the place of performance.

(3) Should any provisions in the PTC be or become wholly or partially invalid or for legal reasons not be executable in the intended manner the validity of the remaining provisions shall not be affected thereby. The Parties shall replace the invalid or unenforceable provision by a provision that comes as close as possible to the intent and purpose of the invalid provision from a commercial and legal perspective.