

GENERAL TERMS AND CONDITIONS OF PURCHASE ("GCP")

ZETA BIOPHARMA GMBH – LAST UPDATED ON 01/08/2017

- 1. Scope**
- 1.1. These General Terms and Conditions of Purchase of ZETA Biopharma GmbH (hereinafter referred to as "ZETA") govern all procurement processes of ZETA in its relationships with suppliers and contractors (hereinafter referred to as the "Supplier"). "Procurement processes" within the meaning of these General Terms shall include in particular the delivery of goods/products (including supplies under contracts for work as specified by ZETA) and the provision of services (including treatment and processing of materials, substances, works and similar provided by ZETA and the creation of plans, technical drawings and the like), and the leasing/permitting the use of objects, with the exception of personnel leasing, by the Supplier to ZETA.
- 1.2. Unless explicitly otherwise agreed in writing in the procurement process, all orders shall be placed on the basis of these General Terms that shall thus be made integral part of the contract. Oral orders that are not subsequently confirmed by ZETA in writing shall be invalid and the Supplier accepts the risk of performance (acceptance, refusal) without any legal title.
- 1.3. All other and/or deviating contractual terms or terms and conditions of sale of the Supplier, in particular any conflicting general terms of business of the Supplier, are herewith expressly excluded. The unconditional acceptance of deliveries and services or any unconditional payment by ZETA does not constitute an acceptance of other and/or deviating terms of contract or terms of delivery of the Supplier, and shall in particular not constitute acceptance of any conflicting general terms of business of the Supplier.
- 2. Orders and scope of contract**
- 2.1. Any call for bids addressed by ZETA to the Supplier, and offers, bids, quotations and cost estimates of the Supplier submitted to ZETA shall be binding, free of charge for ZETA and shall exclusively be made on the basis of these General Terms even in cases where no explicit reference is made to them. If the Supplier submitted an offer for delivery and/or service to ZETA that is followed by an order placed by ZETA, this order constitutes the acceptance of the offer and these General Terms become part of the contract.
- 2.2. Failure to confirm and/or accept the order within three days upon receipt of the order at the latest, entitles ZETA to revoke the order.
- 2.3. These General Terms also apply to all future procurement processes of ZETA (including supplementary, additional or follow-up orders) even if no specific reference is made to these General Terms.
- 2.4. Any change of the agreed scope of delivery made after the conclusion of the contract, is subject to written confirmation by ZETA.
- 2.5. The Supplier shall check the requirements of ZETA in a professional manner and notify ZETA of contradictions, ambiguities, deficiencies and obstacles or problems with regard to contract fulfilment without delay (duty of due warning).
- 3. Prices and payment**
- 3.1. Unless explicitly otherwise agreed in writing, the agreed prices are fixed prices. The agreed prices cover all and any supplies/services that are due under the contract, including all ancillary services, required for flawless performance of the delivery/service according to contract.
- 3.2. Unless otherwise agreed in writing, invoices shall be in Euros, shall be compiled in either German or English language and comply with all legal requirements (in particular Sec. 11 Austrian Value Added Tax Act):
The following must be included in each invoice in addition:
- ZETA order number
 - Number of the delivery note
 - Item number
 - Weight (gross/net)
 - Customs tariff numbers
 - Country of origin.
- All documents required for verification and/or specified in the contract must be enclosed with the invoices; in the event of any work performed and/or assembly work, time records bearing number and date and confirmed by ZETA must be enclosed in particular. Invoices failing to meet the specifications of this item 3.2 will be deemed not submitted. ZETA reserves the right to return these invoices without processing.
- 3.3. Each invoice shall always only refer to one order. If an order is performed by several partial deliveries in one month, these partial deliveries shall be aggregated in one collective invoice.
- 3.4. All prices include suitable packaging for transportation but do not include VAT. All and any other taxes, custom duties or other levies and charges shall be borne by the Supplier. ZETA shall be entitled to withhold any source tax from the price.
- 3.5. All original invoices shall be addressed to:
ZETA Biopharma GmbH
z.Hd./attn. Finanzbuchhaltung
Zetaplatz 1
A – 8501 Lieboch
- 3.6. Electronic invoices shall be submitted to the e-mail address invoice@zeta.com only.
- 3.7. Unless otherwise agreed in writing, ZETA shall pay invoices within 21 days from receipt less 3% cash discount for early payment, or within 60 days from receipt of invoice net without deduction.
- 3.8. If deliveries are made early, before the agreed delivery time, the payment term (item 3.7) shall nevertheless be based on the agreed date of delivery.
- 3.9. The payment term starts on the day the deliveries or services have been performed properly and in full by the Supplier (including all pertaining and agreed documents, such as certificates, statements, etc.) and the invoice has been received by ZETA.
- 4. Supplies and services**
- 4.1. Agreed dates, deadlines and periods are binding for the Supplier. Partial supplies and/or partial performance shall only be permitted if agreed in writing.
- 4.2. A delivery and/or service shall only be deemed provided in good time, if it is properly handed over at the place of fulfilment on the agreed date or by the end of an agreed delivery period at the latest; "properly" meaning in the agreed quantity and quality, with the stipulated or promised and usually expected properties, including all documentation and other necessary documents, certificates, etc., and in line with the state of the art.

- 4.3. Unless otherwise agreed, a technical description, the agreed quality documents (production logs, factory test certificates, acceptance test reports, etc.) and – if required – an instruction manual are to be sent to zertifikate@zeta.com free of charge three days before arrival of the delivery and/or service at ZETA. If other documents stipulated by law are required for the supply and/or service, they shall also be provided by the Supplier free of charge. If customs clearance by ZETA has been agreed, the Supplier shall also submit all documents that are required for proper customs clearance in good time. The documents referred to in this Section are a material element of the delivery. Delayed submission of these documents or any delay of any agreed introductory training shall have the same legal consequences as a default of delivery and/or performance, specifically with regard to due date of payment, default consequences and penalties.
- 4.4. If the Supplier fails to meet agreed dates and deadlines, the Supplier shall be in default.
- 4.5. ZETA is not obligated to accept deliveries and/or services prior to the agreed date. If ZETA still accepts the deliveries and/or services, the Supplier shall reimburse the related costs.
- 4.6. ZETA shall furthermore not be obligated to accept defective deliveries and/or services or partial supplies/services without a respective agreement. If ZETA accepts a defective delivery and/or service, such acceptance does not constitute forfeiture of any warranty claims or any claims beyond the warranty claims. If ZETA rejects such supplies and/or services when they are due, it puts the Supplier into default.
- 4.7. The unconditional acceptance of a delayed delivery does not constitute a waiver of any claims due to the delay.
- 4.8. As soon as the Supplier realises that it is unable to provide a supply/service at the agreed date, or that it is able to only provide it in parts and/or not without defects, it shall notify ZETA thereof in writing without delay, stating the reasons and the presumable extent of the delay. In addition the Supplier shall take all and any reasonable acceleration measures at its own expense.
- 4.9. In the event of default, ZETA shall be entitled to withdraw from the contract in full or in part by granting a reasonable extension. No extension needs to be granted in the case of fixed date transactions where time is of the essence (Sec. 919 Austrian Civil Code), if the Supplier refuses performance or if performance seems impossible during such period. In the event of withdrawal from the contract, ZETA shall be entitled to have a substitute performance made and/or place a substitute order, with the Supplier indemnifying and holding ZETA harmless from any additional expenses and damage resulting from the withdrawal, the substitute performance or substitute order and the delay (compared to the originally agreed date of delivery). If ZETA continues to insist on performance also in the event of default, the Supplier shall be liable for all and any damage resulting from the default.
- 4.10. ZETA is entitled to charge a penalty of 1% of the gross order value per calendar day in the event of default; the penalty shall be limited, however, to 10% of the gross order value. The penalty shall not exclude any other claims ZETA may be entitled to under applicable law.
- 4.11. A confirmation of receipt, confirmation on a delivery note or similar must not be deemed an acknowledgement of proper delivery and/or performance; nor does payment. The delivery and/or service is therefore in any case accepted under reservation only. Any duty of ZETA to examine and object to defects pursuant to Sections 377 et seq. Austrian Commercial Code is expressly excluded. Failure to submit a notice of defect within the meaning of Sec. 377 Commercial Code will therefore not entail the loss of contractual or statutory rights and claims of ZETA.
- 4.12. The place of fulfilment shall be the registered office of ZETA or any place of delivery specified by ZETA in the order, where the title to and – unless otherwise agreed – the risk of the delivery and/or service passes to ZETA. The transfer of risk of goods/products the Supplier sends to ZETA from outside Austria is subject to the respective Incoterms 2010 term that has been agreed in writing. Unless ZETA and the Supplier agree on another Incoterm, the supply of goods to ZETA from within the European Union shall be subject to Incoterm DAP A-8501 Lieboch, Zetaplatz 1 (or any other agreed place of delivery) according to Incoterms 2010; for deliveries from a state outside the European Union, term DDP A-8501 Lieboch, Zetaplatz 1 (or any other agreed place of delivery) according to Incoterms 2010 applies. In case, the material procurement and related manufacturing are executed by the Supplier, the ownership of the material shall be already transferred to ZETA upon receipt of material at the workshop of the Supplier.
- 4.13. ZETA declines forwarder and cartage insurance and therefore is SVS/RVS prohibition customer.
- 4.14. Every delivery must contain a note of delivery stating the following:
- ZETA order number
 - Item number
 - ZETA item number / designation
 - ZETA TAG number
 - Batch + serial number
 - Quantity (batch-specific) and unit
 - Number of packages, weight (gross/net)
- Otherwise ZETA will be entitled to refuse acceptance or put the supplies on stock until the allocation of the respective delivery as shown above has been made at the Supplier's expense. The delivery shall only be considered transferred to ZETA when the delivery has actually been allocated to the order.
- 4.15. The Supplier warrants smooth supply of spare parts. The availability of original spare parts shall be ensured by the Supplier for a minimum of 10 years from delivery of the item of delivery/performance object. Otherwise the Supplier shall inform ZETA in writing in good time of any compatible substitute products. ZETA shall be entitled to claim compensation irrespective of the damage suffered if the Supplier fails to comply with this duty to inform.

5. Production and quality inspections

- 5.1. ZETA shall be entitled to carry out production and/or quality inspections (including inspection of planning and production in terms of quality and scheduling, proper storage) at the Supplier's premises following reasonable advance notice; these inspections may be carried out by ZETA staff, final customer's staff or third parties commissioned for this task. ZETA shall as far as possible take account of the operational requirements of the Supplier and coordinate the date with the Supplier – to the extent this is feasible under the given circumstances. However, if the Supplier is already in default or if there are any other justified reasons, ZETA may carry out inspections any time during Supplier's normal business hours following reasonable advance notice.
- 5.2. The Supplier shall grant access to the working areas, production and storage areas, to documents, tools, etc. for the purpose of this production and/or quality inspections.

6. Packaging

- 6.1. The packaging shall be appropriate, flawless and suitable for the mode of transportation agreed. The Supplier shall ensure proper packaging suitable for the delivery item at its own expense. The Supplier shall take packaging back if requested by ZETA, unless the Supplier notifies ZETA of an ARA license number without delay. ZETA shall be entitled to dispose of the packaging at the expense of the Supplier, if the latter refuses to take back the packaging and fails to give an ARA license number.
- 6.2. Damage caused by improper packaging or by the non-observance of instructions regarding the required packaging shall be borne by the Supplier.

7. Inventions, industrial property rights

- 7.1. The Supplier shall grant ZETA a royalty-free, transferable and unlimited licence to use, inventions made in the course of the legal relationship that are eligible for copyright protection, specifically with regard to development work of the Supplier.
- 7.2. The Supplier notes that ZETA is globally active and that goods may be used worldwide. The Supplier warrants that its supplies do not violate any property rights (including but not limited to patent, brand, registered design or copy rights) of third parties and it shall indemnify and hold harmless ZETA from any claims under this title and any resulting detrimental effects.

8. Material to be provided by ZETA

- 8.1. Material, substances, works and similar provided by ZETA for the performance of the contract remain ZETA's property, are to be marked as such by the Supplier and stored separately. If such material, substances, works and similar are treated and processed, the resulting new and reworked products are deemed assigned to ZETA forthwith – also in semi-finished condition.
- 8.2. The Supplier shall ensure proper handling, storage, protection and safeguarding of the material, substances, works and the like provided by ZETA. From the time they are handed over, the Supplier shall bear the risk of their accidental loss (including theft) and shall be liable for all damage caused by it through improper or negligent handling.

9. Warranty, liability, damages and indemnification

- 9.1. Pursuant to Sec. 922 Austrian Civil Code, the Supplier warrants that all supplies and/or services will be properly made and performed (i.e. in compliance with the contract and the law). This includes in particular the warranty that (i) goods/products, services and leased objects/objects permitted to be used are complete and free from defects (material defects and defects in title), comply with statutory and technical standards and have the requested and usually expected properties, (ii) services are provided diligently, professionally, in line with applicable laws and standards and conforming to the state of the art by reliable and qualified staff, and (iii) leased objects and objects the use of which has been permitted are in flawless condition and fit for the agreed and/or usually expected purpose. The Supplier furthermore warrants the requested functionality, fulfilment of safety-relevant requirements and the requested fitness of the supplied goods, even if for the manufacturing of the goods products, material, substances, works etc. provided by ZETA have been used whose treatment and/or processing has been undertaken by Supplier. .
- 9.2. If ZETA notifies the Supplier of a place of use of the goods/products that is different from the place of delivery or if such other place is otherwise known to the Supplier (and/or should have been known to it), the Supplier warrants in addition that the goods/products supplied by it (and/or material, substances, works and the like provided by ZETA, the treatment and/or processing of which was undertaken by the Supplier) meet all legal, technical and other applicable provisions and regulations at this place of use.
- 9.3. Unless otherwise agreed on a case-by-case basis in writing, the warranty period shall be 36 (thirty-six) months from full acceptance of goods/products (including work performance) or the full provision of services. If partial delivery/partial acceptance is agreed, the warranty period for all parts begins on the date of the final partial delivery. In the event of defects in title and hidden defects, the warranty period shall not begin before the time when the respective defect has become actually known to ZETA. If formal acceptance has been agreed, the warranty period shall not begin before the formal acceptance. In the event of formal acceptance a written acceptance report is to be drawn up in any case that shall be signed by both ZETA and the

Supplier. If formal acceptance is agreed, implied acceptance, for example by early use of the object of performance by ZETA shall be excluded.

- 9.4. Defects shall be remedied at Supplier's expense and at ZETA's option either at the place of delivery or – if demanded by ZETA – at the place where the good/product is ultimately installed and/or where the service has been provided. Costs and risk of any transport of defective goods/products for the purpose of improvement, substitute delivery or rescission of the contract shall be borne by the Supplier.
- 9.5. If the Supplier does not meet the demand by full corrective action within a reasonable time extension granted by ZETA, ZETA shall be entitled to (i) remedy the defects itself, (ii) have them remedied by third parties, or (iii) return a defective delivery to the Supplier at the Supplier's expense,. In cases where the remedy of defects is necessary immediately to prevent damage, if the Supplier refuses remedy and if corrective action by the Supplier cannot be expected within a reasonable period of time, no extension of time for the substitute performance shall be required.
- 9.6. The warranty period (item 9.3) is suspended for the time of remedy of defects and will recommence after the defect has been fully remedied.
- 9.7. The Supplier shall bear all costs of the remedy of defects itself and be liable vis-à-vis ZETA for all costs connected with the remedy of defects. This shall also apply to all damage otherwise incurred by ZETA because of the defective supply and/or performance (consequential damage), as well as to the expenditure incurred by ZETA, including but not limited to transport, labour, and material costs, costs of quality inspections and costs to be paid by ZETA to its customers.
- 9.8. The purchase price and/or compensation for work shall not be due until the defects have been remedied, and ZETA may withhold the purchase price and/or compensation for work.
- 9.9. After the defect has been remedied, the Supplier shall submit to ZETA the modified/adjusted quality documents (such as production logs, certificates, factory test certificates, acceptance test reports, etc.).
- 9.10. The Supplier explicitly acknowledges that the duties of protection, due care and diligence resulting from the contract with ZETA also apply vis-à-vis affiliated companies of ZETA.
- 9.11. The Supplier shall be liable towards ZETA and its affiliated companies for all damages caused by the Supplier in accordance with applicable legal regulations. The Supplier shall hold ZETA and its affiliated companies fully harmless and indemnified upon first request , specifically also with regard to all liabilities, costs, damage, losses and expenditure (including legal and prosecution fees) connected to claims of third parties, the Supplier is responsible for. This item 9.11. also applies in particular to any recalls of ZETA and/or affiliated companies, with the decision of such recall action being in the professional discretion of ZETA and/or the affiliated company concerned.
- 9.12. If a third party makes a claim against ZETA and/or an affiliated company of ZETA that could be the subject of liability and/or indemnification or holding harmless as specified in 9.11. above, the Supplier shall immediately notify ZETA thereof in writing and shall support ZETA and/or its affiliated company in line with their instructions in terms of defence of such third party claims at its own expense.
- 9.13. In providing its works and services the Supplier shall in particular be responsible for observing the provisions of trade law, labour law (especially those relating to labour safety and protection of workers), social security law, fiscal law and other legal provisions; and the Supplier shall in particular bear all costs and expenditure related to this compliance (if requested, compliance with these provisions shall be documented vis-à-vis ZETA in writing). This shall specifically also apply to any business establishments during assignments abroad. The Supplier shall hold ZETA fully indemnified and harmless in terms of all and any omissions in this respect upon first demand.

9.14. Other statutory rights remain unaffected.

10. Compliance with statutory provisions

The Supplier commits to perform all supplies and services in accordance with all applicable laws, regulations, guidelines, standards and other applicable provisions as well as in a state-of-the-art condition at the moment of performance.

11. Assignment of claims / Offsetting

The Supplier must not assign its claims vis-à-vis ZETA to third parties, set them off against claims of ZETA or pledge them without obtaining the prior approval of ZETA.

12. CE conformity

The Supplier shall submit a CE conformity declaration including the respective documentation together with the first delivery. To the extent other documents are required by law for supplies or services provided by the Supplier, they shall also be submitted.

13. Force Majeure

- 13.1. If ZETA or the Supplier is fully or partially prevented from fulfilling its contractual duties by force majeure events (such as natural phenomena, war, terrorism, social unrest, strikes or other unavoidable events), it shall be released from these duties as long as the force majeure event persists and to the extent that it is prevented by force majeure from fulfilling its contractual duties. Furthermore, ZETA shall in any case be released from its duties under the contract if force majeure prevents the Supplier from fulfilling its contractual duties.
- 13.2. If force majeure prevents the Supplier or ZETA from fulfilling their contractual duties for more than 14 (fourteen) consecutive calendar days, ZETA shall be entitled to withdraw from the contract in full or in part. ZETA shall also be entitled to withdraw from the contract in full or in part if a force majeure event results in a significant reduction in or complete cessation of the need on the part of ZETA. If ZETA withdraws from the contract for the reasons given herein, the Supplier shall only be entitled to remuneration for the partial services affected by the withdrawal to the extent it has already provided them and handed them over to ZETA and they are useful for ZETA.

14. Non-disclosure

- 14.1. The Supplier undertakes vis-à-vis ZETA to keep all information made accessible to it in the course of the business relationship or that becomes known to it by other means strictly confidential, with no time limitation (including non-disclosure of the fact that a business relation exists). Information (i) that is already in the public domain, and (ii) information that needs to be disclosed to fulfil statutory requirements (such as the legal obligation to provide information, e.g. to financial authorities) shall be exempted from the non-disclosure obligation.
- 14.2. The Supplier may make all and any information accessible only to those of its employees who have made a written confidentiality declaration in advance and who furthermore need this information to fulfil the contract. Information may only be disclosed to third parties – including subcontractors and/or persons used by the Supplier in the performance of their contractual obligations – with the prior consent of ZETA and provided that the third party has made a written confidentiality declaration in advance, which is to be demonstrated to ZETA upon request.
- 14.3. All and any documents that the Supplier received from ZETA, including all copies thereof, shall be returned to

ZETA within two (2) weeks of fulfilment or termination of the contract according to Sec. 15 without being requested to do so, or – subject to a written notification from ZETA in this respect – to be destroyed and/or deleted.

15. Termination / Dissolution

- 15.1. ZETA shall be entitled to terminate the contract for good cause with immediate effect. Good cause shall include, in particular, any violation of a substantial contractual obligation by the Supplier, as well as any default as specified in Sec. 4.9, breach of the non-disclosure obligation (Sec. 14), breaches of the duties and obligations specified in Sec. 9, the imminent or already existing insolvency and other material cause that destroys ZETA's trust in proper fulfilment of the contract.
- 15.2. ZETA shall at any time have the right to terminate the contract for its convenience. In case of such termination of the contract the Supplier has the right to receive the payment for all supplies/services, which have been properly executed until the date of termination in accordance with the contractual obligations, and to receive a reimbursement for all direct costs which are a direct consequence of the termination of the contract and cannot be avoided taking into account all adequate means.

16. Employees

- 16.1. The Supplier must not entice away or recruit any employees of ZETA or of an affiliated company of ZETA. The non-solicitation obligation applies without any limitation in time and place; the non-recruitment obligation applies to Europe in terms of territory and shall remain valid in binding for one year after full performance of the contract. In the event of breach of this obligation, the Supplier shall pay to ZETA a contractual penalty to the amount of one gross annual salary of the respective employee whereby judicial discretion shall be precluded.
- 16.2. The Supplier shall ensure that all provisions of labour law, including in particular provisions on occupational health and safety, will be observed. The Supplier shall further ensure that all employees working on the project are covered by the applicable social security system and that the performance of work at the place of work is permitted by law; proof of which shall be submitted to ZETA upon request.

17. Code of Conduct

The Code of Conduct defines the principles and demands that Suppliers of ZETA are required to fulfil in terms of their responsibility for people and the environment. The Supplier herewith declares:

- compliance with laws as well as good moral standards
- omission and observance of the prohibition of corruption and bribery
- to abide by the principle of fair competition, anti-trust law and intellectual property rights
- to avoid conflicts of interest
- to respect the fundamental rights of employees
- to observe and ensure the prohibition of child labour
- responsibility for health and safety of employees
- to protect nature
- to ensure non-discrimination in the selection of suppliers
- compliance with the Law on Employment of Foreign Nationals

as applicable and amended.

18. Final provisions, applicable law, jurisdiction

- 18.1. All declarations require the written form to be effective, with declarations of the Supplier being considered effective when made by e-mail.

- 18.2. Austrian law applies exclusively under exclusion of its conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods.
- 18.3. The competent court in Graz shall have exclusive jurisdiction for any disputes arising from the contract.
- 18.4. To the extent these General Terms and Conditions of Purchase include no or only a partial provision, the legal provisions applicable at the time the contract is concluded shall remain unaffected.
- 18.5. If a provision of these General Terms and Conditions of Purchase is or becomes ineffective, the effectiveness of the other provisions shall not be affected, and the invalid provision shall be replaced by a provision that comes closest to the original intent of the ineffective provision.
- 18.6. If there is a version of these General Terms and Conditions of Purchase in another language than German, the German version shall prevail in the case of doubts as to interpretation.

SUPPLIER

_____, **Date:** _____
Place Date (dd / mm / yyyy)

Valid signature and company seal