General Terms and Conditions for Sales (GTC) of Greiner Bio-One (Thailand) Ltd. (GBO)

Valid with effect from December 21, 2020

1. General

1.1 With regard to all business relations of GBO pertaining to the supply of goods or services (both hereinafter referred to as “Deliverables”) by GBO, the present GTC shall exclusively apply unless different, conflicting or additional GTC have been agreed upon in writing by GBO and the Client. In any event, the Client shall be bound to observe the GTC which are in writing. Deviations from these GTC intended by the Client shall only be valid if accepted in writing by GBO.

1.2 All general sale offers (including price lists) by GBO are deemed an invitation to the Client to place a Purchase Order and shall be subject to confirmation by GBO in order to be binding and shall not obligate GBO to make delivery. Client’s Purchase Orders and any contracts with Client subject to these GTC shall become effective upon written confirmation or upon delivery of the Deliverables by GBO.

1.3 GBO shall be entitled to assign the sale or lend the Deliverables as collateral. If the Deliverables to which title is held by GBO is mixed, combined or integrated with other items, the Client shall assign its claim of ownership or co-ownership to GBO and shall hold the item in safekeeping on behalf of GBO.

2. Terms of delivery

2.1 Generally, the Incoterm FCA + contractually agreed destination (Incoterms 2020) shall apply to deliveries. In case of transactions involving more than two parties, a written agreement on the applicable Incoterms clause has to be concluded.

2.2 Duration of force majeure events (e.g. COVID 19 pandemic), statements of GBO in connection with transport costs (especially the amount of transport costs) are not binding. The Client is, shall be responsible for the cost of customs clearance and import duties as well as any formalities and the costs thereof (such as product registration, operating licenses) and/or related costs. GBO shall be responsible for the costs of export customs clearance.

2.3 GBO may, in individual cases, set a maximum duration of up to 2% (two per cent) more or less of the quantity ordered without being in breach of contract. In such event, the quantity actually delivered shall be deemed delivered.

2.4 In case of delays in delivery, the Client must set a reasonable cure period for the delivery in writing. In case GBO has defaulted on the extended cure period, the Client may cancel the contract subject to these GTC. During the duration of force majeure events (e.g. COVID 19 pandemic), a) in case of FCA delivery date as well as dates in general, forecasts and lead times are not binding, GBO is only liable for default based on gross negligence or willful misconduct. If the Client refuses acceptance on the due date, in particular in case of FOB delivery, the FCA applies. If the date of delivery is not confirmed in writing at the request of the Client if the delivery is delayed, GBO shall not be obliged to notify the Client’s end customer in the event of the occurrence of a delay.

2.5 In the event that GBO shall for a temporary period or over the long term find it impossible to fulfill its duty of performance for reasons outside GBO’s control, in particular due to strikes, lock-out or industrial disputes, epidemics, pandemics, natural catastrophes, interruption of production in GBO’s factories or at the facilities of GBO’s suppliers or subcontractors, or in case of default of GBO’s suppliers or subcontractors, government import or export restrictions, or other sovereign measures not attributable to GBO (force majeure) and beyond the control of GBO, the delivery period shall be automatically extended for the duration of such impediments. Delays in delivery of GBO resulting from the COVID 19 pandemic shall be qualified as acts of force majeure. If such disruption shall last for longer than 14 (fourteen) days, both parties shall be entitled to cancel the contract subject to these GTC. In this event, the Client shall not be entitled to claim damages and GBO is discharged from its duty to perform.

2.6 GBO shall be entitled to make partial deliveries and render partial services as far as GBO may reasonably expect acceptance by the Client.

2.7 In case of imminent consequences under civil or criminal law due to the delivery of the Deliverables at the agreed time or in case of a threat of insolvency of GBO, GBO shall be entitled to suspend further deliveries to the Client, (i) after the Client has passed to the Client the risk of loss associated with the Deliverables, (ii) if the Client has not released the Client from its obligation to pay the purchase price. If dispatch or shipment is delayed for reasons for which the Client is responsible, the risk of loss shall pass to the Client from the date of readiness for dispatch. Risk of loss shall also pass to the Client if the Deliverables are made available to the Client and the Client unjustifiably refuses acceptance. Any storage expenses incurred after the risk of loss has passed shall be payable to the Client.

3. Transfer of risk

3.1 The risk of loss passes to the Client according to the Incoterms individually agreed upon. The risk of damage to the Deliverables transferred to the Client passes to the Client after the Client has released the Client from its obligation to pay the purchase price. If dispatch or shipment is delayed for reasons for which the Client is responsible, the risk of loss shall pass to the Client.

4. Retention of title

4.1 GBO shall retain title to the Deliverables until full payment of invoice amounts (retention of title).

4.2 Until transfer of title, the Client shall hold the Deliverables in safekeeping on behalf of GBO. If it is not possible for the Deliverables to be delivered in due and proper manner at its own expense, the Client shall store and insure the Deliverables against destruction and deterioration. In the event of payment default, GBO shall be entitled without setting a further extension of time to withdraw from any contract subject to these GTC and to claim return of the Deliverables as collateral. If the Client fails to comply, to attend at the Client's places of storage or those of third parties in order to repossess the Deliverables.

4.3 In case of payment default, the Deliverables may not be used or sold by the Client, until full payment of the invoice amount and disposal of the Deliverables may be made only with the consent of GBO.

4.4 If the Deliverables to which title is held by GBO is mixed, combined or integrated with other items, the Client shall assign its claim of ownership or co-ownership to GBO and shall hold the item in safekeeping on behalf of GBO with due commercial care.

5. Prices, payment terms and invoicing

5.1 Unless otherwise agreed in individual cases, all prices and charges are net prices exclusive of any statutory value added tax or other taxes or duties, as well as exclusive of packaging, surcharges, transport costs and any processing fees that may be incurred. The Client will have the right to withdraw the payment payable to GBO in accordance with the applicable laws for submission to the competent Revenue Office, provided that the Client shall immediately issue and provide a withholding certificate to GBO at the time of payment.

5.2 The purchase price is set by GBO and may be subject to adjustment. The purchase price is shall be stated in the current price list of GBO, as valid at the time of the Purchase Order.

5.3 Tax exemption can only be granted if the legal requirements in accordance with applicable law are fulfilled at the time of delivery.

5.4 The Client shall, unsolicited and without delay, provide GBO with all (transport)proofs, documents and deeds in a suitable form, which are necessary and required by laws to obtain tax deduction and not to be subsequently questioned.

5.5 If the Client does not comply with this obligation, GBO reserves the right to immediately invoice the legal value added tax which the Client tax-free takes over the invoice amount. The Client shall indemnify and hold GBO harmless against any resulting disadvantages and damages; in particular, in the event of an audit by the tax authorities and submission of a claim for refund of the tax, the Client shall immediately pay the value added tax separately and subsequently invoiced by GBO.

5.6 The Client shall inform GBO immediately, if withholding tax is due in the Client’s country of residence or business purposes. Unless otherwise agreed in individual cases, GBO operates with the assumption that the Client is entitled to submit the purchase invoice to the tax authorities for the payment of the respective withholding tax, if required by law. In the event of a (partial) withholding tax, the purchase price is valid at the time of payment.

5.7 The Client acknowledges and agrees that GBO is entitled to charge and damages incurred by GBO resulting from incorrect information provided by the Client.

5.8 GBO shall not be liable for future tax/legal changes; taxes and duties resulting from such tax/legal changes shall be borne by the Client. The Client must ensure that these taxes are duly reported and paid. GBO shall be entitled to change its prices accordingly and/or cancel Purchase Orders in case such future tax/legal changes have to be borne by GBO without Client being entitled to claim damages.

5.9 GBO shall be at free to transmit invoices either by post or electronically (e.g. via email).

5.10 Within the framework of an ongoing business relationship, GBO reserves the right to announce or adjust the price of the Deliverables as is necessary based on general price changes beyond GBO’s control (such as exchange-rate fluctuations, currency regulations, customs changes, a significant rise in costs of materials and manufacture).

5.11 Invoice amounts shall be paid within 14 (fourteen) days from date of invoice by way of transfer to GBO’s account, free of any charges and fees, unless otherwise agreed in writing. GBO and the Client may agree that the Client shall open a letter of credit via a bank acceptable to GBO.

5.12 If the Client wishes to make cheque payment, this shall be agreed in advance with GBO.

5.13 If the Client fails to make payment and/or deterioration in the Client’s credit rating notwithstanding any further rights of GBO, GBO shall be entitled, at its discretion, to: (i) cancel any contract subject to these GTC or suspend further deliveries to the Client; (ii) shorten the Client’s payment period; (iii) demand payment in advance; (iv) request security in the value of the delivery; or (v) charge default interests in the sum of 9% per annum on any overdue amounts. In any event of failure to pay, the Client shall bear all expenses related to the collection and recovery of the outstanding invoice amounts.

6. Intellectual property

6.1 The Client acknowledges that the Deliverables are the intellectual property of GBO. GBO reserves all rights, in particular rights of ownership, in respect of (i) the Deliverables; (ii)
manufacturing processes; (iii) filing and utilization processes; (iv) know how, inventions and innovations; and (v) any and all intellectual property rights in the above-givenin and all other applicable property rights. Unless separately agreed in writing for a clearly defined use, GBO does not grant any rights or licenses to the intellectual property of GBO to the Client. The Client shall not use the Deliverables for any purpose other than the Intended Use and/or the Other Instructions, to modify them, apply for or to include trademarks of GBO into its (registered) corporate name without the explicit written permission of GBO.

7. Warranty

7.1 Unless otherwise agreed in writing, the Deliverables shall conform with a contract subject to the following: (i) it is suitable for a particular purpose of which GBO is expressly notified upon conclusion of contract and GBO has confirmed the same in writing; (ii) it possesses the features of an article which GBO or the Client have presented by way of sample or specimen; or (iii) it is suitable for the purposes for which a Deliverable of the same type is usually used.

7.2 GBO shall not be liable for the Deliverables if, upon formation of the contract the Client knew or should have known that the Deliverables were defective or defective.

7.3 GBO shall not be liable for any use of the Deliverables outside of the Intended Use and/or other instructions.

7.4 Whether a warranty period shall be the shelf life of the Deliverables, but no longer than 2 (two) years upon delivery (transfer of risk to the Client in accordance with the agreed Incoterm clause).

7.5 The Client must immediately, upon receipt of delivery as per Section 7.4 inspect the Deliverables or have it inspected. The Client has no claim for damages for non-conforming Deliverables if it fails to notify GBO immediately after it has discovered the non-conformity or a defect, specifying the nature of the contractual breach. The Client shall notify GBO within 3 (three) months upon delivery as per Section 7.4 about a non-conformity or defect or otherwise forfeit its rights.

7.6 In case of delivery of non-conforming Deliverables, the Client shall provide GBO a reasonable cure period to fulfill its duties.

7.7 In the event that GBO is not willing or able to fulfill its duties, the Client may: (i) reduce the price in the same proportion as that by which the value of the Deliverables at the time of delivery compares with the value which the contractual Deliverables would have had at the same time; (ii) withdraw from the contract subject to these GTC. If, however, GBO remedies a defect in fulfillment of its duties, or if the Client refuses to accept fulfillment by GBO, the Client may neither reduce the price nor withdraw from the contract which is subject to these GTC. Moreover, the Client shall lose the right to declare rescission of the contract or subject to these GTC or to claim substitute delivery from GBO if it is unable to receive the Deliverables in the same condition as that in which it was received by the Client.

8. Vigilance Reporting System for Distributors of Medical Devices (applicable only if the Client is also a GBO Dealer)

8.1 The Vigilance Reporting System for Distributors of Medical Devices aims at ensuring the protection of health and safety of patients and users.

8.2 In case of an incident, the Client shall be under a duty to inform GBO immediately thereof. The Client shall be responsible for informing its customers of relevant recall procedures as provided by GBO.

8.3 The Client shall be under a duty to report the incident to the competent authorities in accordance with applicable regulations.

8.4 The Client shall comply with the instructions of GBO.

8.5 In case of a notifiable incident concerning GBO’s products, the Client may only communicate with the competent authorities with GBO’s prior written consent. The Client shall keep GBO regularly informed of any direct contact with authorities.

9. Vigilance Recall System for Medical Devices (applicable only if the Client is also a GBO Dealer)

9.1 The Client is aware that GBO is under a duty to be able to trace individual Deliverables including those sold to the Client’s customers (users). The Client shall be under a duty to keep and maintain the data enabling GBO to do this. The Client shall be under a duty to retain such records for a period of 12 (twelve) years, commencing from the date of delivery to the Client’s customer. The Client must ensure a corresponding system for its own customers (users). The Client shall upon request support GBO to identify at all times the location of individual Deliverables or the customers of such Deliverable. Such obligation is not affected by the termination of the contract subject to these GTC or the termination of the contract with the Client.

9.2 GBO shall initiate a product recall if there is a risk that the use of the Deliverables could result in death, serious bodily injury or impairment of health of a user.

9.3 The Client shall be under a duty to notify GBO promptly of any recall procedures as provided by GBO.

9.4 The Client’s customer shall confirm the receipt and acknowledge the information provided via fax or e-mail to the Client within a period of 10 (ten) days. Otherwise, the customer must be informed again by the Client.

9.5 The Client shall collect such confirmations and deliver the same to GBO.

10. Liability

10.1 GBO shall be liable for its own fault and for the fault of its vicarious agents. Liability based on fault shall be limited to the damages actually included unless the related claims are mandatory claims arising from causation, death, physical injury and/or damage to health.

10.2 GBO’s liability in relation to the Client in respect of all claims under any contract subject to these GTC, whatever the legal grounds therefor and taking into account the regulation in Section 10.1, shall be limited to the purchase price of the Deliverables or – in so far as this shall not be possible on the basis of statutory provisions – a maximum of the simple total of GBO’s business liability insurance, whereby this shall not exceed EUR 2,000,000.00.

10.3 Under no circumstances shall GBO be liable (whether on the basis of contractual liability, liability in tort or other liability): (i) loss of profit; and/or (ii) indirect losses or consequential losses; (iii) damage to the Deliverable or to items concerning the Deliverables (e.g. Instructions), which deviate from the Intended Use and/or the Other Instructions, of whatever nature, from other parties, or from other parties, or from instructions created for the Client subject to these GTC, considered such losses, and the same were incurred by the Client in connection with the said contract and/or fulfillment thereof. The Client shall indemnify and hold harmless GBO and its representatives of claims and actions of third parties in full, which result from a use of the Deliverables outside the Intended Use and/or other Instructions.

10.4 If GBO produces the Deliverables in accordance with specifications, drawings, specimens or other documents provided by the Client which infringe rights, in particular intellectual property rights, the Client shall indemnify GBO and its representatives in full. The Client shall also indemnify and hold harmless GBO and its representatives – especially in case of an infringement of intellectual property rights of third parties in full – if the Client’s use of the Deliverables (e.g. Instructions), which deviate from the Intended Use and/or other Instructions and/or in case of an infringement of intellectual property rights on the part of GBO causing actions of third parties to its injury. If GBO requests, the Client shall make advance payments for anticipated reasonable attorney’s fees and legal costs of preparation, defense, investigation and proceedings. The liability of the Client shall also include the costs of out-of-court dispute settlement attempts and in any case reasonable costs of legal representation.

11. Confidentiality

11.1 All information disclosed by GBO within the framework of a contract subject to these GTC shall be deemed confidential unless, at the time of disclosure, it is expressly identified as non-confidential or, or is no longer confidential in nature.

11.2 Nothing in these GTC or in a contract between GBO and the Client shall be interpreted as granting the transferring any rights to confidential information by transferring ownership rights in the Deliverables.

11.3 No confidential information may be disclosed to third parties without GBO’s prior written consent.

11.4 Publications of the Client in respect of or in connection with Deliverables require GBO’s prior written consent.

11.5 The duty of confidentiality will survive the termination or expiry of a contract subject to these GTC.

12. Compliance (applicable only if the Client is also a GBO Dealer)

12.1 The Client undertakes at all times during the contractual relationship with GBO to comply with the Greiner Code of Conduct for Suppliers and Business Partners, https://www.greiner.com/fileadmin/content/General/Corporate/Code_of_Conduct_for_Suppliers_and_Business_Partners_EN.pdf, as amended, plus all applicable laws and provisions, in particular the US Foreign Corrupt Practices Act of 1977 (as amended), as well as all applicable anti-corruption and anti-bribery laws. Neither the Client, nor those persons acting in its name, in particular executives, employees or representatives, shall provide or offer improper payments or gifts in form of either direct or indirect payments, or offer or pay, to any officials, government agency or authority or those of a political party or a candidate of the latter. The Client undertakes that its own vicarious agents/partners shall comply with comparable principles to those of the Greiner Code of Conduct. GBO reserves the right to audit the Client at any time during business hours further to prior written notice to verify compliance to the terms of the said Code of Conduct and all applicable laws and rules.

12.2 In the event of non-compliance, GBO reserves the right to terminate the contract subject to these GTC at any time and with immediate effect through written notice to the Client.

13. Miscellaneous

13.1 The Client grants GBO, as well as all affiliated companies of GBO, the right to name the Client as a reference customer by using first/last name or company name, address and company logo. This right is granted free of charge and is unlimited in time, space and content. The Client can revoke this consent at any time in writing to GBO (e.g. via email). The legal status of the naming as reference customer up to the revocation is not affected by the revocation of the consent. GBO will remove, under consideration of their legitimate interests, all such data from their customer database as far as economically reasonable and/or technically possible, publications already arranged before receipt of the revocation declaration of the Client.

13.2 The Client is not entitled to assign any claims to third parties arising out of or in connection with any contract with GBO without GBO’s prior written consent and any assignment in respect of which the Client has not obtained the prior written consent of GBO is void.

13.3 GBO, as well as all companies with which GBO is directly or indirectly associated by way of a holding constituting at least 50% including sister companies, shall be entitled to use all information about the Client as well as the reputation of the respective other party for any purpose whatsoever and/or to commit the respective other party or to give undertakings on behalf of the other party. In the event of termination of the contract, the Client shall not be entitled to any consideration, indemnification, or remuneration of costs of market development or amortized or non-amortized investments.

13.4 If a provision of these GTC of or any contract subject to these GTC is or becomes ineffective, invalid or unenforceable, that shall not affect the validity or enforceability of these GTC, nor the validity or enforceability of any other provision of these GTC. The invalid provision shall be replaced in good faith with a valid, legal and enforceable provision the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

13.5 These GTC and all contracts subsequently concluded between GBO and the Client shall be subject to the laws of Thailand. The application of conflict-of-law rules, UN law on the international sale of goods and comparable international agreements is excluded.

13.6 Exclusive place of jurisdiction for GBO and the Client is agreed as the competent court in Thailand of the subject matter of the contract. The Client shall also have the right to institute judicial proceedings before a court having competence with regard to the Client.

13.7 The Client shall not pass on to customers or third parties its access data relating to GBO’s portals. In the event that any such data is passed onto third parties, GBO shall be immediately notified, and the said employee’s access data must be immediately amended.

13.8 The Client shall change its passwords at regular intervals.