General Terms and Conditions for Sales (GTC) of Greiner Bio-One GmbH (GBO)

Valid with effect from April 01, 2022

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 in all cases to the offers and to the performance of GBO. In the case of a discrepancy between these GTC and any purchase orders placed by the Client based on these GTC (“Purchase Orders”), contracts with the Client, and all transactions between the Client and GBO entered into in the future, even if these GTC are not expressly mentioned in single-case-by-case basis. If such instructions are not in writing, they are deemed to be invalid upon GBO once they have been concluded in writing. E-mails shall also be deemed to fulfill the written-form requirement.

1.2 Instructions in brochures, instructions for use, user manuals, and other product information provided by GBO (“Instructions”) must be strictly followed. The instructions for use define a field of application for the Deliverables (“Intended Use”). Without prior written consent of GBO, the Deliverables shall not be used and/or handled beyond the Intended Use and/or other Instructions. Furthermore, the Deliverables must not be combined with other products and/or substances. GBO hereby expressly warns against the use and/or the handling of the Deliverables and/or other products and/or substances without prior written consent of GBO. The Client is obliged to strictly adhere to the content of the documents made available to it and may not amend them. Insofar as a contractual territory is agreed, the Deliverables may only be used within such territory. The Client shall inform all further buyers (customers) or users accordingly. GBO shall not be responsible and does not assume any liability in respect of any incorrect and/or insufficient information contained in instructions, brochures, user manuals, or any other documents prepared by the Client, which are in any manner provided or made available to other customers. The same shall also apply if GBO shall have authorized or given its consent to such documents, because such authorization or consent shall be limited merely to the layout and compatibility with corporate identity and shall not pertain to content. If a translated Instructions for Use (IFU) is required for Product registration, the translation of the IFU shall be provided by GBO.

1.3 The Client unilaterally and irrevocably agrees to future amendments of these GTC.

2. Terms of delivery

2.1 Generally, the Incoterms FCA Kremmünster (Incoterms 2020) shall apply to deliveries. In case of transactions involving more than two parties, a written agreement on the applicable Incoterms shall be maintained.

2.2 During the 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 shall be responsible for the costs of customs clearance for imports as well as any formalities and the costs thereof (such as product registration, operating licenses) and/or other formalities and costs involved. The same shall also apply if GBO shall have authorized or given its consent to such documents, because such authorization or consent shall be limited merely to the layout and compliance with corporate identity and shall not pertain to content.

2.3 GBO may deliver, for reasons of packaging, 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 considered as the quantity ordered.

2.4 In case GBO does not deliver in time, 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 in writing (GTC). During the duration of force majeure events (e.g. COVID 19 pandemic), statements of GBO about delivery dates as well as dates in general, forecasts and lead times are not binding. If the Client does not agree with the statements of GBO, in particular if the Incoterm clause FCA applies to the delivery in question and no carrier appears from the contractual partner at the agreed delivery time, it shall nevertheless make full payment of the purchase price. In such instances, GBO stores the Deliverables at the risk and expense of the Client; at Client’s request, GBO shall insure the Deliverables at Client’s expense. Upon Client’s failure to accept the Deliverables within 14 (fourteen) days of GBO’s offering, GBO is entitled to rescind the contract or claims damages for non-performance.

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 the control of GBO, 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, governmental import or export restrictions, or other sovereign measures not attributable to GBO (force majeure) beyond the control of GBO, the delivery period shall be automatically extended for the duration of such disruption. Delays in the performance 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. GBO shall be responsible for the costs of export customs clearance.

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. In the event of transactions under civil law, criminal law due to the delivery of the Deliverables, GBO is entitled at any time to suspend deliveries or cancel them completely. In such cases, the Client shall not be entitled to claim damages.

2.8 GBO’s delay in delivering the obligation due to the one-time or continuous delivery of Deliverables to the Client.

3. Transfer of risk

The risk of loss of the Client concerning the Incoterm individually agreed upon.

The loss or damage to the Deliverables after the risk has passed to the Client shall not release 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 by 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. It shall store the Deliverables in a due and proper manner at its own expense and protest 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 well as, if the Client fails to comply, to attend at the Client’s places of storage or those of third parties in order to make the Deliverables subject to the retention of title.

4.3 The Client shall not be entitled to use or lend the Deliverables as collateral.

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 rights of ownership or co-ownership in the new item to GBO and shall hold the item in safekeeping on behalf of GBO with due commercial care.

4.5 The Client may sell the Deliverables to which title is held by GBO to the extent necessary for the fulfillment of regular business transactions, and provided it is not in payment arrears. The Client hereby assigns to GBO its purchase-price claims against its customers arising from resale and shall enter the requisite endorsement of validity in its accounts or on its invoices and take all requisite steps to ensure that such assignment is legally valid.

4.6 Furthermore, in the event of assignment, GBO shall be entitled to notify the Client’s end customer at any time. Consent to resale, processing or combining shall automatically lapse as soon as any insolvency proceedings are instituted in respect of the Client. GBO undertakes to release any collateral or any part thereof at the request of the Client if the realization value of the situation of the Collateral is the value of the claims to which GBO is entitled.

4.7 GBO shall select the collateral to be released.

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 and other taxes or duties, as well as exclusive of packaging, transport costs, and any other formalities and costs involved in connection with transport costs (especially the amount of transport costs) are not binding. If the Client does not comply with this obligation, GBO reserves the right to immediately cancel the contract subject to these GTC.

5.2 The purchase price is in principle the price set by GBO, or if the price has not been set, the list price of the current price lists of GBO, as valid at the time of the Purchase Order.

5.3 The VAT identification number of GBO is ATU 45835208. In the case of deliveries to other EU member states, the Client is obliged to inform GBO immediately of its VAT identification number.

5.4 In the case of intra-Community deliveries and exports, tax exemption only can be granted if the legal requirements are fulfilled at the time the service is rendered.

5.5 The Client shall, unilaterally and without delay, provide GBO with all (transport) proofs, documents and deeds in a suitable form, which are necessary to obtain a VAT exemption for intra-Community deliveries or exports.

5.6 If the Client does not comply with this obligation, GBO reserves the right to immediately invoice the legal value added tax which the Client has to pay together with the invoice amount. In the case of an invoice amount of more than 50% of the costs of export customs clearance, GBO shall be entitled to instruct third parties to release the Disadvantages and damages; in particular, in the event of an audit by the tax authorities and subsequent refusal of tax exemption, the Client shall immediately pay the value added tax (including interest) and other costs and fees incurred. GBO shall reserve the right to cancel the contract.

5.7 The Client shall inform GBO immediately, if withholding tax is due in the Client’s country of residence for the goods or services supplied. Upon receipt of this information, GBO shall immediately provide the Client with all necessary documents and any other formalities and costs involved in connection with the tax authorities. The Client shall provide GBO with all documents and any other formalities and costs involved in connection with the tax authorities. In the case of goods intended for export, the Client is responsible for the timely provision of all export clearance documents and any other formalities and costs involved in connection with the export authorities.

5.8 The Client is entitled to make payment irrecoverably against destruction and deterioration. In the event of payment default, all rights to which GBO is entitled against the Client are extinguished.

5.9 The Client shall be liable for all additional tax payments resulting from incorrect information provided by the Client.

5.10 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.

5.11 If the Client does not comply with this obligation, GBO reserves the right to immediately invoice the legal value added tax which the Client has to pay together with the invoice amount. In the case of an invoice amount of more than 50% of the costs of export customs clearance, GBO shall be entitled to instruct third parties to release the Disadvantages and damages; in particular, in the event of an audit by the tax authorities and subsequent refusal of tax exemption, the Client shall immediately pay the value added tax (including interest) and other costs and fees incurred. GBO shall reserve the right to cancel the contract.

5.12 The Client may sell the Deliverable to any third party subject to these GTC and to claim return of the Deliverables as well as, if the Client fails to comply, to attend at the Client’s places of storage or those of third parties in order to make the Deliverables subject to the retention of title.

6. Intellectual property

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) filling and utilization processes; (iv) know how, inventions and innovations, and/or (v) features of an article which GBO or the Client have presented by way of sample or specimen. (ii) it is suitable for the purposes of which GBO is expressly notified or applicable and valid laws and regulations, in particular the US Foreign Sanctions Regulations and US economic sanctions and embargoes. In case of delivery of non-conforming Deliverables, the Client shall provide GBO with a reasonable cure period for its fulfilment.

7. Warranty

7.1 Unless otherwise agreed in writing, the Deliverables shall conform with a contract subject to these GTC if (i) it is suitable for the purposes of which GBO is expressly notified or applicable and valid laws and regulations, in particular the US Foreign Sanctions Regulations and US economic sanctions and embargoes. 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 of a defect or material breach.

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

7.4 The 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 GBO does not warrant that the Deliverables are free of third parties intellectual property rights and/or do not infringe third party rights. GBO shall not be liable for any costs, damages, expenses, fines, liabilities, losses, penalties, including any litigation expenses and attorney’s fees related to an infringement (alleged or in fact) of third parties intellectual property rights through any use of the Deliverables.

7.6 The Client is aware that the Client is under a duty to be able to trace individual Deliverables or to items concerning the Deliverables (e.g. Instructions or documents) at all times during this Agreement to comply with the Greiner Code of Conduct. This right is granted free of charge and in accordance with specifications, drawings, specimens or other documents provided by the Client which infringe rights, in particular intellectual property rights, of third parties.

7.7 In case of delivery of non-conforming Deliverables, the Client shall provide GBO with a reasonable cure period for its fulfilment.

7.8 In the event that GBO is not willing or able to fulfil 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 fulfilment of its duties, or if the Client refuses to accept fulfilment 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 subject to these GTC or to claim substitute delivery from GBO if it is unable to return 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 other persons.

8.2 In case of an incident, the Client shall be under a duty to inform GBO immediately thereof. GBO shall be responsible for taking further action and, in the course thereof, is also under a duty to report the incident to the competent authorities in accordance with applicable regulations.

8.3 The Client shall comply with the instructions of GBO.

8.4 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 records enabling GBO to trace individual Deliverables sold to the Client. The Client shall undertake to have 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 with its own customers. The Client shall take all necessary steps to 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 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 responsible for informing its customers of relevant recall procedures as provided by GBO.

9.4 Customer’s client shall confirm the receipt and acknowledge the information provided via fax or phone to the Client immediately in 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 minor negligence shall be precluded unless the related claims are mandatory claims arising from the infringement of essential provisions of the Treaty.

10.2 GBO’s liability in relation to the Client in respect of all claims arising from any contract subject to these GTC, whatever the legal grounds thereto and taking into account the regulation in Section 10.1 shall be limited to the amount of 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 gross liability insurance, whereby this sum shall not exceed EUR 2.000.000,00 (two million euros).

10.3 Under no circumstances shall GBO be liable (whether on the basis of contractual liability, liability in tort or other liability) for losses of profit; and/or (ii) indirect losses or consequential losses; and/or (iii) costs, damages, expenses, fines, liabilities, losses, penalties, including any litigation expenses and attorney’s fees resulting from an infringement (alleged or in fact) of third parties intellectual property rights or rights in connection with the use of the Deliverables; and/or (iv) damages resulting from changes the Client made to the Deliverables or to items concerning the Deliverables (e.g. Instructions), which deviate from the Intended Use and/or other Instructions, irrespective of whether or not the parties, upon conclusion of a contract subject to these GTC, considered such losses, and the same were incurred by the Client in connection with the said contract and/or fulfilment thereof.

10.4 The Client shall fully indemnify and hold GBO harmless for any claims on the basis of or in connection with the use of the Deliverables or to items concerning the Deliverables (e.g. Instructions), which deviate from the Intended Use and/or other Instructions, including any claims on the basis of or in connection with the use of the Deliverables.

10.5 In any event, the Client agree and shall be held harmless in connection with any infringement of intellectual property rights of third parties and/or in case of an indirect infringement of property rights caused by actions of or the use by the Client as well as consented in Section 10.4 (a “Client Claim”).

10.6 (i) any and all actions, allegations, claims, causes of actions and/or demands by a third party against any GBO Indemnitee resulting from any changes made to the Deliverables or to items concerning the Deliverables (e.g. Instructions), which deviate from the Intended Use and/or other Instructions, and/or

(ii) any and all actions, allegations, claims, causes of actions and/or demands by a third party against any GBO Indemnitee arising 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, of third parties.

11. Confidentiality

11.1 All information disclosed by GBO within the framework of a contract subject to these GTC shall be deemed to be confidential and the Client must keep this information confidential without the explicit written permission of GBO. The Client is obliged to (i) (a) to use only such information for the purposes of the contract between GBO and the Client to be interpreted as granting the transferring any rights to confidential information by transferring ownership rights in the Deliverables,

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

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

11.4 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 agrees at all times during this Agreement to comply with the Greiner Code of Conduct: https://www.greiner.com/fileadmin/user_upload/Downloads_Dokumente/2020_Code_of_Conduct_EN_web.pdf as well as the Greiner Code of Conduct for Suppliers and Business Partners: https://www.greiner.com/fileadmin/user_upload/Downloads_Dokumente/2021_06_Verhaltenskodex_SupplierClaim_EN.pdf as amended from time to time and all applicable and valid laws and regulations, in particular the US Foreign Corrupt Practices Act of 1977 (as amended from time to time). This right is granted free of charge and in accordance with specifications, drawings, specimens or other documents provided by the Client which infringe rights, in particular intellectual property rights, of third parties.

12.2. In case of non-compliance with the Greiner Code of Conduct, the Client agrees to terminate the contract subject to these GTC at any time and with immediate effect.

12.3. The Client is aware that some territories, legal entities and/or natural persons are subject to sanctions and/or embargoes under various jurisdictions (under e.g. US law, EU law, national law). The Client is obliged to (i) conduct sufficient due diligence and closely monitor its customers at all times and (ii) to ensure by means of adequate standards that it does not supply Deliverables to legal entities and/or natural persons and/or territories subject to applicable sanctions and/or embargoes. If the Client fails to comply with these requirements, the Client shall inform GBO and the Client hereby indemnify and hold harmless the Client of any liabilities arising from any infringement of property rights or the use of the Deliverables.

12.4. The Client hereby indemnify and hold harmless the Client of any liabilities arising from any infringement of property rights or the use of the Deliverables.

12.5. 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, of third parties.

12.6. Nothing in this 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.

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

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

Disclaimer

1) Dealer shall be a deemed natural person or legal entity engaged in the resale of products to third parties, in particular and customers, in its own name and for its own account.
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 contracts with GBO without GBO’s prior written consent and any assignment in violation of this provision is null and 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 undertake offsetting in respect of claims which may or may not be due and payable, including future claims, held by GBO against the Client or held by the Client against GBO.

13.4 Nothing in these GTC and contracts subject to these GTC shall establish a partnership, company or joint venture of any type. Neither party shall be entitled to act as representative 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.

13.5 If a provision of these GTC or of any contract subject to these GTC is or becomes illegal, 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.

13.6 These GTC and all contracts subsequently concluded between GBO and the Client (out of or in connection with these GTC and/or in connection with any contractual relationship between GBO and the Client subject to these GTC) shall be exclusively governed by and construed under the laws of Austrian law with the exclusion of any conflict of law provisions (such as the Austrian Act on Private International Law (Internationales Privatrechtsgesetz, IPRG)), the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) and any statute implementing this convention.

13.7 Any dispute arising out of or in connection with these GTC and/or in connection with any contractual relationship between GBO and the Client subject to these GTC, including related to its creation, validity, nullity, interpretation, performance and termination as well as its pre- and post-contractual effects ("Dispute"), shall be settled by the competent court in Steyr, Austria, having jurisdiction over the subject-matter. Particularly with respect, but not limited, to Clients outside the European Union. GBO may, at its sole discretion, alternatively, submit a Dispute for final settlement under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with the said Rules; in case GBO submits a Dispute for final settlement under the Rules of Arbitration of the ICC and in case the amount in dispute accrues to more than EUR 1,000,000,00 (one million euros), either party may opt for a tribunal with three arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall in each case be Vienna, Austria. The language of the arbitration shall be English. To avoid any misunderstandings it is expressly agreed that the governing law of this arbitration agreement shall be exclusively Austrian law without regard of the conflict-of-law rules. The decision and/or award rendered by the arbitrator(s) shall be written, final and non-appealable. The losing party shall bear all the costs of arbitration including the fees and expenses of the arbitrator(s) and, in particular, pay the costs of the successful party (in particular attorneys’ and expert fees).

13.8 The Client shall not pass on to any third parties its access data to GBO web portals. In the event of departure of an employee from the Client, GBO shall be immediately notified, and the said employee’s access data must be immediately amended. The Client may change its passwords at regular intervals.

13.9 GBO applies privacy policy according to its Data Privacy Statement at https://www.gbo.com/en_AT/datenschutz.html.