

## **General Terms and Conditions of Sale of InSphero AG, Schlieren, Switzerland**

### **1. Scope**

These general terms and conditions of sale ("**GTCS**") shall apply to all agreements concluded between InSphero AG, Switzerland, or InSphero Europe GmbH in Waldshut, Germany, and the buyer ("**Buyer**"; together the "**Parties**"). Any general terms and conditions of the Buyer shall not be binding on InSphero. InSphero shall be entitled to modify its GTCS any time with immediate effect.

### **2. Offer, order, acceptance**

2.1 Information in brochures or on InSphero's website, quotations, estimates or offers of InSphero in relation to its products ("**Products**") are not binding. An order of the Buyer is binding for five business days. InSphero is free to accept or deny any order and a binding sales contract materializes only by written (incl. e-mail) confirmation by InSphero.

2.2 InSphero may adapt the ordered Products – in its sole discretion – provided such adaptation is required by new scientific findings or applicable laws and regulations.

### **3. Shipment**

3.1 The delivery dates indicated by InSphero are not binding and are of an indicative nature. The Buyer acknowledges that delivery delays, especially due to production shortages, may occur. InSphero is entitled to make partial shipments.

3.2 Shipment shall be EXW InSphero's business address (ex works; Incoterms 2010), unless agreed otherwise in writing. The benefit and the risk of the Products shall pass to the Buyer at the time of their leaving the works of InSphero.

3.3 The Products sold shall remain InSphero's property, until the entire purchase price and possible additional costs under the contract have been paid. Upon InSphero's request, the retention of title has to be recorded in the respective public registry and the Buyer is obliged to participate in such registration.

### **4. Prices / Payment**

4.1 Unless otherwise agreed, prices are in Swiss Francs, exclusive transportation costs, VAT and any duties.

4.2 List prices are subject to changes by InSphero. The price mutually agreed or without an explicit mutual agreement the list prices on the date of the confirmation of InSphero shall apply.

4.3 Unless otherwise agreed in writing, the terms of payment shall be net cash within 30 days after receipt of the shipment of the invoice. All payments to InSphero shall be effected in Swiss Francs without any deduction for cash discount, expenses, taxes, levies, fees, duties and the like, unless explicitly agreed otherwise.

4.4 If payment is not made when due, InSphero shall be entitled to charge interest on the amount outstanding at any time from the invoice date at a rate that corresponds to 10% per year. In addition, Buyer shall pay InSphero collection expenses in the amount of CHF 40.- each for the first and any subsequent payment reminder. The right to claim further damages is reserved.

4.5 The Buyer is not entitled to withhold due payments or to set them off against counter claims, except such counter claims were acknowledged in writing by InSphero or awarded by a legally binding and enforceable judgment.

### **5. Warranty**

5.1 Precondition for any warranty claim of the Buyer is the Buyer's full compliance with current scientific standards and applicable laws and regulations.

5.2 InSphero warrants that the Products are of customary quality with respect to all material aspects. Any warranties of InSphero are limited to explicit specifications in the order confirmation by InSphero for four weeks after shipment.

5.3 In case of a breach of warranty, InSphero shall exclusively be obliged to replace the Products. The replacement shall be shipped at no extra charge. If such replacement is not possible, the Buyer may cancel the sales contract.

5.4 InSphero shall under no circumstances be liable for direct or indirect damage or loss of any kind, including any contract penalties which the Buyer may have to pay to a third party, nor for the Buyer's operating loss, time loss, lost supplies or similar losses.

5.5 InSphero shall be liable for any damage caused by gross negligence or wilful intent by InSphero.

### **6. Intellectual Property**

6.1 All intangible rights pertaining to any materials and Products provided by InSphero such as but not limited to drawings, drafts, technical specifications, shall remain InSphero's property and may not be in whole or in part copied or passed on to a third party without the prior written acceptance of InSphero. Likewise, the Products supplied may not be manufactured, imitated or passed on to a third party with such purpose in mind.

6.2 The Buyer shall handle and store the Products in accordance with the current state of scientific knowledge, applicable laws and regulations. The Buyer shall not use the Products for any clinical application. In particular, these GTCS do not provide for any explicit or implicit licence to commercially use the Products apart from research purposes, unless agreed otherwise in writing.

6.3 The Buyer shall not analyse or reverse engineer the Products for any purpose. In addition, the Buyer shall not reproduce biological and chemical entities, including but not limited to, cell-based models, media, assays reagents, cell-based assays and chemical or biological compounds, which are based on the Products or any corresponding information provided by InSphero for any purpose.

### **7. Indemnity**

The Buyer shall indemnify and hold harmless InSphero from and against any and all third party losses, claims, damages, or liabilities, to the extent caused by, arising from or in connection with (i) any use, including but not limited to clinical trials, or sale or transfer by the Buyer to any third party or any product or information provided by InSphero to the Buyer under these GTCS, or (ii) any use or storage by InSphero of any materials supplied by the Buyer to InSphero under these GTCS.

### **8. Force majeure**

InSphero shall not be liable for failing or delayed fulfilment of supplies if the cause is force majeure, such as fire, government intervention or intervention by other public authorities, strike, lockout, export and/or import bans, vandalism, currency restrictions, delayed and/or defective supplies from subcontractors or any other cause beyond the control of InSphero.

### **9. Miscellaneous**

9.1 Unless otherwise specified in these GTCS the Buyer shall not be entitled to assign or transfer any of the rights or obligations hereunder to a third party except with the prior written consent of InSphero.

9.2 If at any time any provision of these GTCS or any part thereof is or becomes invalid or unenforceable, then neither the validity nor the enforceability of the remaining provisions or the remaining part of the provision shall in any way be affected or impaired thereby. The Parties agree to replace the invalid or unenforceable provision or part thereof by a valid or enforceable provision which shall best reflect the Parties' original intention and shall to the extent possible achieve the same economic result. The same applies mutatis mutandis in case of any gaps.

9.3 No waiver by a Party of a failure of any other Party to perform any provision of this Agreement shall operate or be construed as a waiver in respect of any other or further failure whether of a similar or different character.

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9.5 This GTCS shall in all respects be governed by and construed in accordance with **substantive Swiss law**, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any disputes arising out of or in relation with these GTCS including disputes about the validity of the constitution of this Agreement, its legal effects, its modification or dissolution, shall be judged by the **ordinary courts of Zurich, Switzerland**, the venue being Zurich 1.