

## Business Terms for Deliveries (BTD) of Emtrion GmbH

All deliveries and services of Emtrion GmbH (hereinafter "**Emtrion**") rendered to another businessperson ("Unternehmer" in the sense of § 14 BGB German Civil Code), including but not limited to any body corporate or special fund under public law, (hereinafter: "**Customer**") are subject to the following General Business Terms (hereinafter: "**BTD**"), unless agreed on otherwise in an order that has been accepted by the Party receiving such order (hereinafter the accepted order referred to: Individual Agreement):

### **1. Scope of BTD, Conclusion of Individual Agreements**

- a. No conflicting or other conditions, notably Customer's general terms and conditions do apply, even where Emtrion has performed a contract without expressly rejecting any such conditions.
- b. Depictions or descriptions of goods in catalogues, websites or other advertising material shall not be construed as legally binding offers.
- c. Offers made by Emtrion shall not be binding and may be subject to modifications up to acceptance of the order. Emtrion is entitled to accept offers issued by Customer (hereinafter: "**Order**") within two weeks upon their receipt, unless Customer specifies a longer time period.
- d. An individual Agreement (hereinafter "**Individual Agreement**") between the parties is concluded upon written acceptance of such. Acceptance may be declared in writing (by letter, e-Mail, Fax) or the shipment of the relevant goods.
- e. Side letters, supplementary agreements, specifications, warranties, guarantees, representation and other agreements between the Parties shall be valid only, if made in writing.

### **2. Deliverables**

- a. The subject matter of products to be delivered by Emtrion or services to be provided by Emtrion (hereinafter: "**Deliverables**") will exclusively be described arise in the respective Individual Agreement between the Parties. Reasonable technical modifications, alterations and enhancements to the Deliverables are reserved by Emtrion even after the conclusion of an Individual Agreement, insofar as the relevant Deliverable does not suffer a substantial limitation in the Deliverable's usability and provided that upon completion of the delivery the specifications of the Deliverables agreed upon in the Individual Agreement are met.
- b. In case that Customer receives Deliverables from Emtrion that are (temporarily) exceeding the agreed quality, this does not imply a change to the Individual Agreement and not imply any right of Customer to continuously receive such quality. In case of any cut-back of Deliverables to the quality, Customer, therefore, has neither a right to the abatement of prices, reimbursement of payments, compensation nor a right to terminate or withdraw from the respective Individual Agreement.
- c. In the case that Deliverables contain in whole or in parts software, Emtrion is obliged to deliver the machine- readable object code, but not the source code or other codes, if not expressly agreed upon otherwise in the Individual Agreement. Insofar as not colliding with the license terms referred to in the Individual Agreement, Emtrion is entitled to take adequate technical measures for the prevention of any use of software contrary to agreement (Hardware Lock, Dongles, Codes, Digital Rights Management System etc.). The use of software with any succeeding or displacing hardware configuration of Customer shall not be unreasonably affected or impeded by such technical measures.
- d. In case the Deliverables contains in whole or in parts of software, Emtrion may deliver at Emtrion' option (i) on a data carrier storing the object-code or (ii) by dispatching such code via E-Mail or (iii) by referring the Customer to the download option via internet, provided that the option chosen by Emtrion is reasonably acceptable for Customer.
- e. In case pursuant to c) above a license key, hardware lock, dongle or authorisation code is necessary for the installation and the use of software, Emtrion shall deliver such license key, hardware lock, dongle or code as necessary for the operation and application of the software agreed upon in the Individual Agreement. For the delivery of such license key etc. the rule set forth in item d. of this Section shall apply.
- f. Emtrion shall deliver material accompanying the software like manuals, data sheets etc (hereinafter: "**Documentation**") at Emtrion' option (i) in printed format, or (ii) as set forth in item d. of this Section. In the last case the Documentation shall be delivered in a printable format.
- g. All deliveries shall be made „ex works" (EXW) pursuant the Incoterms 2020, if Emtrion does not choose a delivery pursuant to the rules set forth in item d. or is stated otherwise in these BTD or the Individual Agreement.
- h. Emtrion may make partial deliveries, provided that such delivery is reasonably acceptable for Customer.
- i. In case Deliverables are delivered for testing and/or demonstration purposes, such Deliverables shall remain Emtrion' property. Customer shall store any such Deliverables in a safe way and keep them protected from the access of third parties. Customer may use such Deliverables for any purpose other than testing or presentation purpose only with Emtrion' prior written consent.
- j. Emtrion retains title and copyright to all quotations, drawings, records and other documentation (hereinafter "**Records**") which were disposed of to the Customer during contract negotiations. Such Records shall not be disclosed to third parties and shall be returned to Emtrion without delay upon failure of contract negotiations.

### **3. Date of Delivery and Delay in Delivery**

- a. Delivery dates shall only be binding if they are expressly agreed upon as binding in writing. This shall not apply for a period allotted by Customers based on breach of contract by Emtrion. In the case the parties agreed on binding delivery dates, Emtrion shall only be considered to be in delay of delivery under the following conditions: (i) delivery is due and (ii) Emtrion fails to deliver within a reasonable extension period as granted by Customer; and (iii) such delay has been caused by Emtrion' fault.
- b. Compliance with binding delivery dates by Emtrion requires that Customer timely and fully fulfils Customer's own obligations to cooperate, to fully comply with the terms of payment and all other obligations of Customer. Should these obligations not be met on time by Customer for any reason, the agreed delivery date shall be extended accordingly. All further rights and legal objections of Emtrion are reserved.
- c. Should the non-compliance with any agreed delivery date be attributable to force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike or lock out, the agreed delivery date shall be extended by a period equal to the delay caused by such force majeure event.
- d. In the case of a delay of delivery, the Customer shall upon Emtrion's request within reasonable term, declare a request for further performance or declare recession from the Individual Agreement.
- e. In the case the delivery or shipment of Deliverables is postponed upon Customer's request for more than one month after the conclusion of the Individual Agreement and Emtrion's announcement of delivery (hereinafter "**AoD**"), Emtrion may claim storage charge of 0,5 % of the Deliverable's value, but in total not exceeding 5 % of the value.
- f. In the case that slight negligence of Emtrion or Emtrion's performing agents is causing the delay in delivery, Emtrion's liability shall be excluded.

- g. **All Services are offered by Emtrion under the explicit reservation of full any timely performance and delivery by all sub-Suppliers that have been engaged by Emtrion** provided that the Parties did not agree otherwise in the Individual Agreement in writing. Therefore, apart from the abovementioned exception, Emtrion shall not be liable for any delay which is due to wrong or late supply of goods needed for Emtrion' own performance. Emtrion is entitled to withdraw from the Individual Agreement in these cases.

#### 4. Passing of Risk

- a. The risk passes to the Customer, even where delivery has been agreed freight free, as follows:
  - i) in the case of Deliverables where no erection or assembly by Emtrion is agreed upon in the Individual Agreement, at the time the shipment of the Deliverables. Emtrion shall insure Deliverables against the usual risks of transportation upon Customer's written request and at the Customer's expense.
  - ii) in the case of Deliverables where an erection or assembling by Emtrion is agreed upon in the Individual Agreement, with the day of taking over into the Customer's own work (Commissioning Date) or, if agreed upon in writing, after a faultless trial run.
  - iii) in the case of Deliverables to be collected by the Customer at Emtrion's premises or any other place agreed upon, upon the selection of the Deliverables for the collection by the Customer.
- b. In the case of any default of acceptance, especially in the case the shipment, the delivery, the collection, the start or the performance of the erection or assembly, the commissioning or testing of the Deliverables is delayed, and such delay or default of acceptance was caused by the Customer, the risk passes to the Customer.

#### 5. Erection and Assembling

Unless otherwise agreed upon in writing, assembly and erection of Deliverables shall be subject to the following:

- a. The Customer shall provide at its own expense and in due time i) all ancillary work outside Emtrion's scope, including but not limited to the necessary skilled and unskilled labour, construction materials and tools, ii) the equipment and materials necessary for assembly and commissioning, and furthermore, the Customer shall iii) take all measures it would take for the protection of its own possessions to protect the possessions of Emtrion and of the erection personnel at the site and iv) provide protective clothing and protective devices needed due to particular conditions prevailing on the specific site. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption.
- b. Before the erection work starts, the Customer shall unsolicitedly make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- c. If assembly, erection or commissioning is delayed due to circumstances for which Emtrion is not responsible, the Customer shall bear the reasonable costs incurred for idle times and any additional travelling expenditure of Emtrion or the erection personnel.
- d. The Customer shall attest to the hours worked by the erection personnel towards Emtrion at weekly intervals and the Customer shall immediately confirm in written form if assembly, erection or commissioning has been completed.
- e. If, after completion, Emtrion demands acceptance of the Deliverables, the Customer shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Deliverables are put to use, after completion of an agreed test phase, if any.

#### 6. Prices, Terms of Payment

- a. The agreed prices are ex works (EXW) pursuant to Incoterms 2020 **in Euro** excluding the packaging, delivery expenses and **excluding** the applicable VAT.
- b. In the case Emtrion agreed to an erection or assembly of Deliverables, the Customer bears, not included in the remuneration agreed upon for the Deliverables, all reasonable and necessary side costs including, without being limited to, the costs of travel and transportation.
- c. At Emtrion's request Customer will support Emtrion in obtaining an insurance covering all payment claims Emtrion may have against Customer under this business relation. Emtrion may select the credit insurance company. Deliverables not insured shall be delivered at Customer's option against advance payment (credit card), cash on delivery or against the provision of another adequate security. In case the financial situation of the Customer significantly aggravates in the opinion of the insurance company, Emtrion is entitled to provide all further deliveries only upon advanced payment, to declare all unpaid balances as due and to demand payment in cash or the provision of securities against return of all cheques or bills accepted on account of payment.
- d. Insofar as Emtrion did not deliver against payment in advance or cash on delivery pursuant to item c., a term of payment of 30 days from the date of the invoice shall apply. The invoice will be issued simultaneous with the delivery of Deliverables or the first day of their provision, whatever date occurs first. If a delivery is made in parts (hereinafter „**Partial Delivery**“), such Partial Deliveries may be invoiced separately by Emtrion. Emtrion may invoice the Deliverables, in the case the shipment of Deliverables is delayed for more than four (4) weeks after the conclusion of an Individual Agreement and a respective AoD, with this date.
- e. Subject to the provisions in the following item f. all payments shall be made without deduction to the banking account identified by Emtrion. Emtrion accepts bills or cheques only if beforehand agreed hereupon and only on account of payment. Any discount or banking charges are for Customer's account.
- f. Against Emtrion's outstanding claims, Customer can set off only such claims that are undisputed or recognized by final judgement; Customer may claim rights of retention only based on such claims. Customer may claim rights of retention only regarding such claims which are based on the same Individual Agreement.
- g. The day of receipt of payment on Emtrion's Bank account shall be decisive for punctual payment.
- h. As long as Customer is in delay of payment, Emtrion is entitled to withhold its own contractual duties, even if these duties are not based on the same individual agreement and do not stand in any connexion with the delayed payment. Emtrion's right to further claims remains unaffected. If agreed upon in the individual agreement Emtrion will notify Customer about any retention of Deliverables in advance.
- i. Interest due to payment delay shall amount to 10 % p.a. above the actual base interest rate of the ECB (European Central Bank), but shall account at least for 12 % p.a.. Customer may prove that Emtrion's damage is less, Emtrion may prove a higher damage caused by interest due to delay.

#### 7. Retention of Title

- a. Emtrion shall retain title to the Deliverables until the fulfilment of all claims out of the business relationship, including future claims arising from the business relationship between the Parties. In the case of a payment by cheque or bill of exchange, Emtrion retains title until the receipt of the payment amount on Emtrion's bank account.

- b. Customer is entitled, subject to Emtrion's revocation, to resell, but not to pledge or to assign by way of security, any object which is owned or co-owned by Emtrion, provided any such sale is within the scope of Customer's ordinary business. Further restrictions pursuant to Article 10 remain unaffected.
- c. If Customer resells Deliverables or objects which contain Deliverables without receiving from Customer's customer the full purchase price in advance or concurrent with the delivery of any such object of sale, Customer shall be obliged to conclude with his customer an agreement on the reservation of title in accordance with the terms and conditions of this Section.
- d. **Customer hereby assigns to Emtrion all claims or rights Customer may have within the scope of any such resale as well as any rights accrued to Customer as the result of the agreement between him and his customer on the reservation of title.** Customer is authorised to assert any such assigned claims or rights on behalf of Emtrion. Besides, Emtrion has the right to assert any such assigned claims and rights, to inform such customers about the assignment and to give instructions, but enrolls itself not to perform in such way until the event of delayed payment, other material breaches of this Agreement by Customer or a substantial deterioration of the Customer's financial status occurs or insolvency proceedings have been filed against the assets of Customer.
- e. The Customer shall not assign or pledge rights out of any such resale to third parties.
- f. If the value of the securities arising out of the above agreement on the reservation of title exceeds Emtrion's claims from its business relationship with Customer by a total of more than 20%, Emtrion shall, at the request of Customer, declare the release of such securities as determined by Emtrion.
- g. Emtrion is entitled to retrieve Deliverables for a realisation and for the repayment of the remaining debt. In the event of delayed payment, other material breaches of contract, substantial deterioration of the Customer's financial status or in the event insolvency proceedings have been filed against the assets of Customer, Customer is obliged, at Emtrion's request, to surrender to Emtrion, immediately and without any obligation for additional respite, all objects owned or co-owned by Emtrion. The Customer is therefore obliged to assign property to the relevant Deliverables to Emtrion and to enable Emtrion and/or Emtrion's acting agent to enter Customer's premises during regular business hours and to identify the place where the relevant Deliverables are stored.
- h. The Customer shall, upon Emtrion's written request, identify any customer who received Deliverables and inform Emtrion about the outstanding debts of such debtor in writing and enable Emtrion to review such information through an independent accountant designated by Emtrion.
- i. The Customer shall inform Emtrion without undue delay about all third party's attempts to procure the possession of Deliverables, especially about measure regarding the execution of a judgement or other execution title, and shall, on Emtrion's behalf, reject any such execution, seizure or sequestration or confiscation of Deliverables as well towards the acting authorities as to the relevant creditor and shall, if necessary, take adequate legal measures.
- j. Any processing, modification or alteration of the Deliverables, the compound or connecting of the Deliverables with other objects and the fitting in or assembly of the Deliverables into or to other objects is considered to be carried out on behalf of Emtrion without hereby creating any obligation of Emtrion. The reservation of title as per sentence 1 relates to the object created by Customer as a result of any such processing. If Customer acquires sole ownership of the new object pursuant to mandatory law, including but not limited pursuant to Article 950 German Civil Code, Customer hereby grants Emtrion a co-ownership share of the said object proportionate to the ratio of the invoice value of the Product to the value of the new object and shall hold custody thereof for Emtrion free of charge.
- k. The claim of rights out the retention of title, especially to surrender the Deliverables, the pledge, the occupation or the seizure of Deliverables by Emtrion shall not be construed as a recession from the Individual Agreement.

## **8. Defects as to Quality**

Emtrion shall be liable for defects as to quality (hereinafter "Defects",) as follows:

- a. Defective parts or defective services shall be, at Emtrion's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed subject to Article 4 above.
- b. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply in the case of rescission from the Individual Agreement and a reduction. The aforesaid term shall not apply where longer periods are prescribed by law, especially in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed itemistics (Beschaffenheitsgarantie). The legal provisions regarding suspension of the statute of limitations and recommencement of limitation periods shall be unaffected.
- c. Notifications of Defect by the Customer shall be given in written form without undue delay.
- d. In the case of notification of a Defect, the Customer may withhold payments to an amount that is in a reasonable proportion to the Defect. The Customer, however, may withhold payments only if the subject-matter of the notification of the Defect involved is justified and incontestable. The Customer has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle Emtrion to demand reimbursement of its expenses by the Customer.
- e. Emtrion shall be given the opportunity to repair or to replace the defective good within a reasonable period of time.
- f. If repair or replacement is unsuccessful, the Customer is entitled to rescind the contract or reduce the remuneration; any claims for damages the Customer may have according to item j. shall be unaffected.
- g. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof are likewise excluded.
- h. The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Deliverables has subsequently been brought to another location than the Customer's branch office, unless doing so complies with the normal use of the Deliverables.
- i. The Customer shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed itemistics are not complied with, in the case of loss of life, bodily injury or damage to health, restrictions to liberty and/or intentionally or grossly negligent breach of contract on the part of the Emtrion. The above provisions do not imply a change in the burden of proof to the detriment of the Customer. Any other or additional claims of the Customer exceeding the claims provided for in this Article VIII, based on a Defect, are excluded.
- j. emtrion products or parts thereof must not be used in life-support, medical or military systems without the consent of emtrion GmbH. In the event of non-compliance, emtrion shall not be liable for any damage incurred.

## **9. Defects in Title**

- a. Unless otherwise agreed, Emtrion shall provide the Deliverables free from third parties' industrial property rights and copyrights (hereinafter "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Customer based on an infringement of an IPR by the Deliverables made by Emtrion and used in conformity with the contract, Emtrion shall be liable to the Customer within the time period stipulated in Article 8 b. as follows:
  - i) Emtrion shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Deliverables concerned or whether to modify the Deliverables such that they no longer infringe the IPR or replace them. If this would be impossible for the Emtrion under reasonable conditions, the Customer may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.
  - ii) The above obligations of Emtrion shall apply only if the Customer immediately notifies Emtrion of any such claim asserted by the third party in written form, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to Emtrion's discretion. If the Customer stops using the Deliverables in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- b. Claims of the Customer shall be excluded if the Customer culpably caused the infringement of an IPR.
- c. Claims of the Customer are also excluded if the infringement of the IPR is caused by specifications made by the Customer, by a type of use not foreseeable by Emtrion or by the Deliverables being modified by the Customer or being used together with products not provided by Emtrion.
- e. Where other defects in title occur, Article 8 shall apply mutatis mutandis.

## **10. License and use rights concerning Software and Documentation**

- a. Subject to the payment of the agreed fee(s) and the following conditions Emtrion grants to Customer in regard of software delivered by Emtrion and Documentation only the rights granted in the Individual Agreement. All names, labels or trademarks used to mark and sell Deliverables as well as all copyright and related rights concerning the software or the Documentation remain with Emtrion sole or/and with Emtrion' Emtrion or licensor.
- b. A reasonable number of copies of any software licensed hereunder, the Documentation and the license key may be made for backup purposes only. Copies that permit any load balancing are only allowed when explicitly set forth in the Individual Agreement. For the licensing term Customer shall safely store software, the Documentation and the license key and reasonably protect the Deliverables from any access by third parties.
- c. Software, hardware locks, dongles, authorization codes and Documentation shall not be modified, adapted, disassembled, decompiled, reconstructed or transformed, unless and to the extent permitted by mandatory law. This shall not apply for software and authorization codes delivered, if such actions are exceptional allowed regarding the applicable legal regulations concerning copyrights and Emtrion and its licensor denied cost-free support- or exchange- services in relation to the concerned software or authorization code.
- d. Customer shall not be entitled to transfer the software and the Documentation to third parties, whether against consideration or free of charge, unless Emtrion approves hereto in writing. Emtrion will not unreasonably deny such approval. Emtrion may make such approval conditional to the fact that (i) Customer has completely transferred the software and the Documentation to such third party, and (ii) Customer has concluded with such third party a license agreement, which license terms and confidentiality obligations shall be for the third party at least as restrictive as the respective terms of these general terms and conditions, and (iii) such third party has agreed to procure from Emtrion a new license key after compensating Emtrion for all costs incurred by Emtrion for generating such license key. In case the above requirements are met, Customer shall (i) completely transfer the Software and the Documentation by delivering all original data carriers to such third party and (ii) completely deliver any copy made thereof to such third party or, at its option, destroy any not transferred copies thereof. With the completion of transfer of the software Customer's right to use the software and the Documentation shall lapse immediately.
- e. In case and to the extent that Customer has acquired from Emtrion licenses to any third party software, Customer understands that **this license may be subject to limitation of use or transferability exceeding the limitation set forth in item d., which may lead to Emtrion' refusal to allow the transfer of such license pursuant to item d..** Emtrion will inform Customer about such limitations on Customer's request.
- f. The retention of title pursuant to Article 7 includes all delivered copies of software and/or Documentation. During the term of the reservation of title all rights to use such Deliverables are considered preliminary and revocable by Emtrion at any time. The same applies for software which is delivered for testing and/or demonstration reasons.
- g. Emtrion may withdraw Customer from his right to use software and/or Documentation even after Emtrion' reservation of title expired, if and as long as Customer significantly infringes limitations of utilization or other regulations concerning the protection against unauthorized access or use of such Deliverables. Before taking such actions Emtrion shall appoint to Customer an adequate deadline to comply with the regulations infringed by Customer. In the case of recurrence of such infringement or under other special conditions, which under reasonable consideration of both side's interests do justify the immediate withdrawal of such rights, Emtrion is obliged to withdraw all rights to use such Deliverables with immediate effect and without the appointment of such deadline to comply. Customer shall notify Emtrion about the termination of any utilization of the respective Deliverables in writing upon receipt of notification of withdrawal. Emtrion' statutory rights to cancel or terminate contractual obligations remain unaffected.

## **11. Assignment of Third Parties**

- a. It is agreed that Emtrion in order to perform and fulfil its obligations under the Individual Agreement may assign the performance of its obligations and duties (fully or partially) to its affiliates or any other third party.
- b. If such third parties are assigned by Emtrion, the contractual relation to these assignees shall meet all requirements regarding confidentiality, data protection and data security of these BTD. On written request of Customer Emtrion shall inform Customer about the subject matter of the contract with the third party and the compliance of assignee's standards with the relevant provisions concerning data protection against adequate reimbursement of all costs from this. Customer has the right to access the relevant contracts only if such personal access is necessary.

## **12. Limited Liability of Emtrion, Limitation of Customer Claims**

- a. Emtrion is always liable for Customer's damage (i) caused by Emtrion, its legal representatives or its performing agents by intend or wilful negligence, (ii) due to strict product liability law, (iii) concerning personal injuries caused by Emtrion, its legal representatives or its performing agents.
- b. Emtrion shall not be liable for damages caused by slight negligence, unless caused by any breach of essential contractual obligations. The liability for the breach of essential contractual obligations shall be limited to typical and predictable damages.

- c. In the case of loss of data or information Emtrion is liable for the costs arising out of the recovery of such data or information. In case of slight negligence of Emtrion this shall only apply if Customer took adequate measures to ensure proper data back-up just before the event causing the loss of data occurred.
- d. All claims for damages shall be time-barred after 12 months, beginning to run pursuant to the applicable statutory limitation provisions. Regarding claims for damages based on intent or wilful negligence of Emtrion, Emtrion's breach of essential contractual obligations or concerning personal injuries caused by Emtrion the statutory period of limitation shall apply.
- e. The provisions set forth in item a. to e. above shall apply as well in case of claims regarding reimbursement of expenses and any other liability claim of Customer.
- f. emtrion products or parts thereof must not be used in life-support, medical or military systems without the consent of emtrion GmbH. In the event of non-compliance, emtrion shall not be liable for any damage incurred.

### **13. Confidentiality**

- a. Either Party agrees that it shall (i) keep the subject matter of the Individual Agreement and any other data disclosed or made accessible (no matter in which form), especially access or login data, Software, technical Know-How or other confidential information (hereinafter: "Information") confidential, (ii) only use such Information for the intended purpose and not to use such Information, without the prior written consent of the other party – neither whole nor in parts – for its own purposes and advise its employees and other third parties obtaining access to such Information of their obligations with respect to the other party's Information.
- b. The provisions set forth in item a. above shall not apply in the case and to the extent that such Information (i) is or becomes available without restriction to the general public by acts not attributable to Customer or its employees, (ii) was rightfully in Customer's possession without limitation on disclosure before disclosure hereunder to Customer, (iii) is rightfully disclosed to Customer by a third party without restrictions on disclosure, (iv) was verifiably independently development by Customer, (v) has to be made accessible to public authorities by law or (vi) is allowed in writing to be made accessible by the disclosing party.

### **14. General Provisions**

- a. All legal relations between the parties and their conclusion shall be governed by and construed in accordance with the laws of Germany. The provisions of the United Nation Convention on the sale of Goods (CISG) are not applicable.
- b. In the case a provision of this BTD is or becomes ineffective, the effectiveness of these BTD shall thereby not be affected. The parties shall replace the ineffective provision by such effective provision as comes closest to the parties' intention at the time of the conclusion of the Individual Agreement.
- c. Customer will respect all applicable export or import regulations, especially the laws of the USA. All costs resulting from cross-border deliveries, especially customs duties, tolls or other charges are on Customer's expenses. Customer will organise and handle all administrative procedure concerning cross-border deliveries self-depend, if not expressly agreed upon otherwise in the Individual Agreement.
- d. Alterations or addendums of the Individual Agreement shall only be valid if agreed upon in writing. The same shall apply for any alteration of this item d.
- e. Exclusive legal venue for all disputes arising in connection with or as a result of these general terms and conditions shall be Karlsruhe (Germany), if Customer is a businessperson ("Unternehmer" in the sense of § 14 BGB German Civil Code), including but not limited to any body corporate or special fund under public law. This choice of place for legal venue is binding only for the Customer.