Swift Biosciences Terms and Conditions of Sales

1. General

1.1. In these Terms and Conditions (TERMS AND CONDITIONS): BUYER means the person, firm, company or other organization who or which has ordered PRODUCTS from SWIFT; SWIFT is the company making the sale; CONTRACT means the contract for the sale and purchase of PRODUCTS between SWIFT and the BUYER as may be further evidenced by SWIFT’s final written offer, quotation or order acknowledgement and no prior proposals, statements, representations or conditions will be binding on either party; PRODUCTS means any items agreed to be supplied by SWIFT; and

1.2. These TERMS AND CONDITIONS shall be incorporated into the CONTRACT and shall apply to the exclusion of any conditions of the BUYER. These TERMS AND CONDITIONS may not be varied or waived except with the express written agreement of SWIFT. The failure of SWIFT to enforce its rights under the CONTRACT at any time, for any period of time, shall not be construed as a waiver of any such rights.

2. Prices and Quotations

2.1. The price of the PRODUCTS shall be SWIFT’s quoted price or, if SWIFT has not issued a quotation, SWIFT’s list price of the PRODUCT at the time SWIFT receives BUYER’S purchase order. SWIFT’s quotations are valid for 60 days from the quotation date unless otherwise stated in SWIFT’s quotation. If SWIFT’s price is stated by reference to a price list, then the price shall be SWIFT’s list price in the jurisdiction in which the PRODUCT is to be delivered or performed in effect at the time SWIFT receives BUYER’S purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties, levies or other governmental assessments and, unless otherwise agreed in writing, shipping and handling charges, freight and insurance. All taxes, duties and other charges related to PRODUCT shall be paid by BUYER, or in lieu thereof, BUYER shall provide SWIFT with a tax exemption certificate acceptable to the relevant taxing authorities. Taxes, duties and other charges payable by BUYER may be billed as separate items on SWIFT’s invoice.

3. Acceptance of Orders

3.1. SWIFT may accept or reject any BUYER purchase order for PRODUCT in whole or in part.

4. Payment

4.1. Unless otherwise agreed in writing, payment in full shall be made to SWIFT in the currency invoiced, no later than thirty (30) days from the date of invoice.

4.2. In the event of late payment, SWIFT reserves the right: (i) to suspend deliveries and/or cancel any of its outstanding obligations; and (ii) to charge interest at the lower of (a) an annual rate equal to twelve (12) % or (b) any applicable maximum statutory rate on all unpaid amounts calculated on a day to day basis until the actual date of payment.

4.3. If SWIFT retains a collection agency or attorney to collect unpaid amounts, SWIFT may invoice BUYER for, and BUYER will pay, all reasonable costs of collection, including without limitation reasonable attorney's fees.

5. Changes and Returns

5.1. SWIFT reserves the right to make any change in the specification of the PRODUCTS which does not materially affect the performance, use, or price thereof.

5.2. PRODUCTS may only be returned with prior authorization from SWIFT.

6. Delivery and Acceptance

6.1. SWIFT will select the method of shipment and the carrier to be used. Shipment will be F.O.B. (UCC) SWIFT’s shipping point.

6.2. Partial deliveries shall be permitted. If the BUYER fails to accept delivery of the PRODUCTS within a reasonable period after receiving notice from SWIFT that they are ready for delivery, SWIFT may dispose of or store the PRODUCTS at the BUYER's expense.

6.3. SWIFT will use all reasonable endeavours to avoid delay in delivery on the notified delivery dates. Failure to deliver by the specified date will not be a sufficient cause for cancellation, nor will SWIFT be liable for any loss or damage due to delay in delivery.

6.4. The BUYER shall notify SWIFT in writing within five (5) working days of delivery of any short delivery or defects reasonably discoverable on careful examination. SWIFT’s sole obligation shall be, at its option, to replace any defective PRODUCTS or refund the purchase price of any undelivered PRODUCTS.

6.5. Where delivery of any PRODUCT requires an export license or other authorization before shipment, SWIFT shall not be responsible for any delay in delivery due to delay in, or refusal of, such license or authorization.

7. Risk and Title

7.1. All the risks of loss of and damage to the PRODUCTS and full legal and equitable title to the PRODUCTS shall pass to the BUYER upon delivery to the common carrier.

8. Restricted Use

8.1. With respect to certain PRODUCTS, use restrictions are a condition of the purchase which BUYER must satisfy by strictly abiding by the restriction as set forth in SWIFT’s PRODUCT and/or accompanying documentation. BUYER is solely liable to ensure compliance with any regulatory requirements related to the BUYER's use of the PRODUCTS, including any clinical, medical or diagnostic use. Any warranty granted by SWIFT to the BUYER shall be deemed void if any PRODUCTS covered by such warranty are used for any purpose not permitted hereunder. In addition, the BUYER shall indemnify SWIFT and hold SWIFT harmless from and against any and all claims, damages, losses,
costs, expenses and other liability of whatever nature that SWIFT suffers or incurs by reason of any such unintended use.

8.2. The BUYER understands and agrees that all PRODUCTS labeled “For Research Use Only” have not received any governmental approval, clearance, or similar designation, do not satisfy the requirements of any governmental body or other organization, and have not been validated for clinical or diagnostic use, for safety and effectiveness, or for any other specific use or application. The BUYER is solely responsible for compliance with any and all applicable laws, and regulations, and governmental policies that pertain to its use of the PRODUCT including, but not limited to, obtaining any necessary PRODUCT approvals.

8.3. PRODUCTS should be used by qualified professionals in strict accordance with applicable instructions, warnings and other information in user manuals and other PRODUCT documentation. The burden of proof for safe use and handling of PRODUCTS sold by SWIFT to the BUYER is entirely the responsibility of the BUYER.

8.4. The BUYER is not licensed to, and agrees not to: (a) distribute any PRODUCT, directly or indirectly, to any third party for any purpose or use, except with prior written consent obtained from SWIFT; (b) use or allow anyone to use a SWIFT supplied PRODUCT contrary to applicable instructions; (c) decomple, deconstruct, disassemble or make other attempts to reverse engineer any PRODUCT.

8.5. SWIFT has optimized its PRODUCTS for use with certain SWIFT PRODUCTS and authorized third party PRODUCTS. Accordingly, SWIFT recommends that BUYER not use any PRODUCT provided hereunder in combination with any PRODUCTS which are not either: (i) provided by SWIFT or (ii) from a source recommended by SWIFT. The BUYER acknowledges that failure to comply with any restriction of use set forth herein (including without limitation the preceding sentence) will (i) constitute a breach of these TERMS AND CONDITIONS, (ii) invalidate any warranty provided herein and any applicable service agreement, and (iii) may constitute a violation or infringement of SWIFT’s and/or a third party’s intellectual property rights.

9. General Warranty

9.1. SWIFT warrants that its PRODUCTS meet SWIFT’s specifications at the time of delivery. Any sample or model used in connection with SWIFT’s product literature is for illustrative purposes only and does not constitute a warranty that PRODUCT will conform to the sample or model.

9.2. To the maximum extent permitted by applicable law, SWIFT hereby expressly disclaims, and BUYER hereby expressly waives, any warranty regarding results obtained through the use of the PRODUCTS including, without limitation, any claim of inaccurate, invalid, or incomplete results. All other warranties, representations, TERMS AND CONDITIONS (statutory, express, implied or otherwise) as to quality, condition, description, merchantability, fitness for purpose or non-infringement (except for the implied warranty of title) are hereby expressly excluded.

9.3. All warranty claims on PRODUCTS must be made in writing within ninety (90) days of receipt of the PRODUCTS. SWIFT’s sole liability and BUYER’s exclusive remedy for a breach of this warranty is limited to replacement or refund at the sole option of SWIFT.

9.4. THE WARRANTIES IDENTIFIED IN THIS PARAGRAPH ARE SWIFT’S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OF INACCURATE, INVALID OR INCOMPLETE RESULTS), WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF PERFORMANCE, DEALING OR USAGE OF TRADE.

10. Limitation of Liability

10.1. SWIFT shall have no liability under the warranties contained in Section 9 with respect to any defect in the PRODUCTS arising from: (i) specifications or materials supplied by the BUYER; (ii) willful damage or negligence of the BUYER or its employees or agents; (iii) abnormal working conditions at the BUYER’s premises; (iv) failure to follow SWIFT’s use restrictions or instructions (whether oral or in writing); (v) misuse or alteration of the PRODUCTS without SWIFT’s approval; or (vi) if the BUYER is in breach of its payment obligations under this CONTRACT.

10.2. TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SWIFT BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR CAUSED BY PRODUCT, SWIFT’S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, SWIFT’S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY SWIFT OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SWIFT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

10.3. The total liability of SWIFT arising under or in connection with the CONTRACT, including for any breach of contractual obligations and/or any misrepresentation, misstatement or tortious act or omission (including without limitation, negligence and liability for infringement of any third party intellectual property rights) shall be limited to damages in an amount equal to the amount paid to SWIFT under the CONTRACT.

10.4. The exclusion of liability in these TERMS AND CONDITIONS shall apply only to the extent not prohibited by applicable law.

11. Intellectual Property Rights

11.1. All intellectual property rights in the PRODUCTS shall at all times remain vested in SWIFT or its licensors.

11.2. Nothing in these TERMS AND CONDITIONS shall be deemed or construed (i) as a license or grant of any intellectual property rights, whether express, implied, by estoppel or otherwise; (ii) to limit SWIFT’s rights to enforce its patent or other intellectual property rights, including, without limitation, as to use of any PRODUCT beyond that granted under
any patent or other intellectual property label license or statement applicable to the PRODUCT; (iii) as granting BUYER any right to be supplied with any PRODUCT or component thereof beyond those ordered by BUYER and supplied by SWIFT in accordance with these TERMS AND CONDITIONS; or (iv) as a license or grant of any right to BUYER to manufacture or to have manufactured any PRODUCT.

12. Health and Safety
12.1. The BUYER shall ensure that: (i) the PRODUCTS (provided such PRODUCTS comply with its specifications) are suitable and safe for the BUYER’s intended use; (ii) the PRODUCTS are handled in a safe manner; and (iii) containers, packaging, labelling, equipment and vehicles, where provided by the BUYER, comply with all relevant national and international safety regulations.

13. Indemnities
13.1. Except where a claim arises as a direct result of the negligence or breach of CONTRACT of SWIFT, the BUYER shall indemnify SWIFT with respect to any claim which may be made against SWIFT: (i) arising in connection with the BUYER’s use of the PRODUCTS; and (ii) alleging that the BUYER’s use of the PRODUCTS infringes the intellectual property rights of any third party.

14. Insolvency
14.1. In the event that the BUYER becomes insolvent or applies for bankruptcy or, being a company, goes into liquidation (other than for the purposes of reconstruction or amalgamation), SWIFT shall be entitled immediately to terminate the CONTRACT without notice and without prejudice to any other rights of SWIFT hereunder.

15. Force Majeure
15.1. SWIFT shall not be liable with respect to the non-performance of any of its obligations herein to the extent such performance is prevented by any circumstances beyond its reasonable control including, but not limited to, strikes, lock outs or labour disputes of any kind (whether relating to its own employees or others), fire, flood, explosion, natural catastrophe, military operations, blockade, sabotage, revolution, riot, civil commotion, war or civil war, acts or threats of terrorism, plant breakdown, computer or other equipment failure and inability to obtain equipment.

15.2. If an event of force majeure exceeds one (1) month SWIFT may cancel the CONTRACT without liability.

16. Export Control
16.1. The BUYER agrees that it will not export or transfer PRODUCT for re-export in violation of any United States laws or the laws of any other jurisdiction, or to any denied or prohibited person, entity, or embargoed country in violation of such laws.

17. Governing Law
17.1. This CONTRACT shall be governed by and construed in accordance with the substantive laws of the State of Delaware and the parties hereby submit to the non-exclusive jurisdiction of the courts of the State of Delaware.

18. Sole TERMS AND CONDITIONS, Inconsistencies, Order Of Precedence and Severability
18.1. These TERMS AND CONDITIONS, together with SWIFT's quotation, any applicable label license or patent statement or other written conditions of use constitute the complete, exclusive and entire agreement between SWIFT and BUYER with respect to purchases of PRODUCT (unless other TERMS AND CONDITIONS are expressly designated to be applicable by SWIFT in writing), and SWIFT's offer to sell PRODUCT is expressly limited to such TERMS AND CONDITIONS. Such TERMS AND CONDITIONS shall take precedence over and supersede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of BUYER's additional or different TERMS AND CONDITIONS, which are hereby rejected and shall be void. BUYER's submission of a purchase order or other instrument for or regarding the purchase of PRODUCT, whether or not in response to a SWIFT quotation, shall be deemed acceptance of and agreement to SWIFT's TERMS AND CONDITIONS to the exclusion of any other TERMS AND CONDITIONS appearing in or referenced in such purchase order (except the name or identity of PRODUCTS purchased, quantity, delivery date, bill to and ship to address and, if accurate, price) or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in BUYER's purchase order or other instrument or elsewhere. Any acceptance by SWIFT of any offer of BUYER is expressly conditioned on BUYER's assent to and acceptance of SWIFT's TERMS AND CONDITIONS to the extent they are additional or different TERMS AND CONDITIONS from those of BUYER's offer. Except as otherwise provided in these TERMS AND CONDITIONS, in the event of an inconsistency between these TERMS AND CONDITIONS and the TERMS AND CONDITIONS appearing on SWIFT's quotation or other agreement signed by an authorized representative of SWIFT, the TERMS AND CONDITIONS appearing on SWIFT's quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these TERMS AND CONDITIONS, and all other provisions of these TERMS AND CONDITIONS shall remain in full force and effect.

18.2. No amendment of SWIFT's quotation or these TERMS AND CONDITIONS or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both SWIFT and BUYER. SWIFT's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these TERMS AND CONDITIONS for any other purpose. If any provision of these TERMS AND CONDITIONS shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.

19. English Language
19.1. The parties hereto accept that these TERMS AND CONDITIONS and conditions of sale and any documents related thereto be drawn up in the English language.