

STANDARD TERMS & CONDITIONS OF PURCHASE – GOODS AND SERVICES

March 2018



1 Scope of Application

- 1.1 All our purchases of goods and services shall be effected exclusively on the basis of these Terms & Conditions of Purchase. These Terms of Purchase shall be binding if declared to be applicable in our quotation or confirmation of order. Supplier's terms of business in conflict with the present Terms shall not apply; nor shall they become binding even if we do not expressly object to such upon receipt thereof.
- 1.2 Our Terms & Conditions of Purchase shall also apply to all future transaction with the supplier as long as no Master Service Agreement is in place.

2 Conclusion and Basis of Contract

- 2.1 Orders and amendments thereof shall only be legally binding if they have been issued by us through our SAP Purchase Order System.
- 2.2 The supplier shall confirm the order/amendment immediately in writing. If we do not receive a due confirmation within 14 days after receipt of the order/amendment we shall be entitled to revoke the order without the Supplier deriving any rights whatsoever from such cancellation.
- 2.3 We reserve express title, copyright and user rights to all objects made available by us to the Supplier (such as illustrations, descriptions, promotional materials, information and resources.) Such shall not be communicated to third parties without our express prior written consent. The supplier shall return such objects to us without demand once it no longer requires such for the due processing of the contract. Infringement of rights shall entitle us to a claim for damages, and we reserve all other legal claims.

3 Organization of events

- 3.1 The event shall be held in locations appropriate for the meeting purpose and number of participants. The trusted agency shall comply with all indications and timeframes specified by MSD.
- 3.2 Furthermore, if required, the agency shall, for the benefit of MSD, enter into agreements in its own name and for its own account with third parties for the organization of the event and shall use best efforts to negotiate reasonable commercial terms with such third parties.
- 3.3 The MSD Purchase Order shall specify the detailed budget for the services to be provided including costs related to the services of any third party contracted by the supplier for the organization of the event.
- 3.4 The agency shall at any time act in accordance with MSD's requirements and policies communicated to the agency.

4 Marketing Promotion and Public Relation Services

- 4.1 All promotional material orders for MSD shall be subject of approval by MSD Medical department prior to any commencement. All promotional products must comply with the applicable laws and regulations on the promotion of medicinal products.
- 4.2 Any public relations services to be provided to MSD by the supplier shall be carried out by the supplier subject to prior written approval by MSD Medical and/or Legal department. Public relations materials to be provided or distributed by the supplier on behalf of MSD need to be pre-approved by MSD.

5 Standard of Services

- 5.1 The supplier shall devote its best efforts to efficiently perform the services with care, skill and diligence as requested by MSD, these Terms & Conditions of Purchase and standards currently recognized by the supplier's profession or industry.
- 5.2 At its sole discretion and at any time MSD shall be entitled to revise the services requested.
- 5.3 The supplier shall staff each service with professional, well-trained and knowledgeable staff whose background and experience best suit the requirements of services. The supplier,

at the exclusion of MSD, shall have the sole responsibility for the supervision and monitoring of any of its staff.

6 Payment and Invoice

- 6.1 All prices shall be fixed prices. Unless agreed otherwise. Invoices shall state our Purchase Order number for efficient payment
- 6.2 According to MSD standard payment terms invoices are being paid within 90 days net from receipt of invoice.
- 6.3 Our payments shall not be construed as an acceptance of any defects in or delays to the delivery.

7 Confidentiality and Data Integrity

- 7.1 The supplier may not disclose the Purchase Order or any know-how or other information that becomes known to the supplier in the performance of the order to third parties or use this know-how and information on its own behalf or that of third parties without MSD's written permission. Wherever any such know-how and information is not required, or no longer required, for the performance of the order, the supplier will immediately return it and all copies thereof to MSD, or where return is not reasonably possible, destroy it and all copies thereof.
- 7.2 The supplier will not refer to the partnership with MSD or to any order in publications or advertisements in newspapers, magazines, reports, goods letters, brochures or other publications without MSD's written permission.
- 7.3 Any documentation or data relevant to activities performed, including without limitation any GMP documentation, must be attributable, original, accurate, legible, complete, controlled, retrievable, and safe from intentional or unintentional manipulation or loss. These items are required throughout the retention period of such data / documentation.

8 Intellectual Property Rights

- 8.1 New intellectual property rights for goods manufactured or services performed as part of the purchase order, as well as any improvements and additions thereto, shall accrue to or be transferred to MSD. In so far as the transfer of such rights requires any further action, the supplier will cooperate with the transfer of these intellectual property rights upon MSD's first request.
- 8.2 The supplier waives its personality rights to intellectual property created by the supplier as part of the purchase order.

9 Independent Contractor

- 9.1 In the execution of the MSD Purchase Order, the supplier shall at all times act as and be deemed an independent contractor and shall not be taken to be an employee, agent or customer of MSD. The supplier is not authorized to assume or create any obligations or responsibilities, express or implied, on behalf of or in the name of MSD, except as specifically authorized by MSD.

10 Subcontracting and Assignment

- 10.1 The supplier shall not subcontract any order without the prior written consent of MSD. In this case, the supplier shall at all times be responsible for the execution of the MSD purchase Order or part thereof by such subcontractor.
- 10.2 Neither party may assign to any third party, transfer or otherwise dispose of this agreement in whole or in part or any of its rights or obligations thereunder, without prior written consent of the other party. MSD, however, may transfer or assign in whole or in part any of its rights and obligations under this agreement to any company which is directly or indirectly controlled by MSD without the supplier's authorization. Any purported or attempted assignment in violation of this section shall be null and void.

11 Conflict of Interest

- 11.1 The supplier undertakes to disclose to MSD without delay any and all circumstances existing at the time of issue of the MSD Purchase Order or arising at any time during the term of execution thereof and

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involving the supplier or any of its close relatives, which might constitute a conflict of interest for the business relationship between the parties. In the event of a conflict of interest, the supplier shall cease to render services and/or deliver goods to MSD if requested to do so. MSD shall be entitled to cancel the order and terminate this agreement within immediate effect and without indemnity upon written notice to the supplier.

12 Delivery

- 12.1 A delivery order stating the MSD purchase order number shall be attached to the delivery and invoice.
- 12.2 The delivery shall correspond with the applicable domestic and foreign official regulations, the relevant technical regulations and the acknowledged technical standards, as well as with the documents specified in the purchase order.
- 12.3 All additional expenditure resulting from the failure of the supplier to comply with instructions or from faulty performances by the supplier shall be borne by the supplier.
- 12.4 Use and risk shall transfer to us after arrival of the Delivery at the place of performance. Dispatch shall be at the risk of the supplier, which shall also be liable for loss and damage during transport.
- 12.5 The delivery time specified in the order shall be binding. If no delivery time is specified, delivery shall be immediate.
- 12.6 The delivery period shall be complied if the delivery is effected to us within the specified period or on the specified date.
- 12.7 If the Delivery is not effected within the delivery period, the supplier shall be in default. In such event, we shall be entitled to the statutory claims. In particular, we shall be entitled to waive subsequent delivery and either to demand compensation for the loss resulting from non-compliance or to withdraw from the contract.

13 Inspection and Acceptance of Direct Material Delivery, Warranty

- 13.1 We shall examine the delivery as quickly as possible after receipt, as a rule within a maximum of thirty days. If the inspection does not disclose any substantial defects, acceptance shall be effected.
- 13.2 The warranty period (time limit for claim and limitation period) shall be two years from the date of acceptance or of start-up, as the case may be.
- 13.3 During the warranty period, all parts of the Delivery suffering from a design, material, workmanship or assembly fault or otherwise not satisfying the contractual requirements shall immediately be repaired or replaced by new components free of charge at the Supplier's expense, if necessary in a different suitable design.

14 Consequences of Non-Compliance with the Warranty, Liability

- 14.1 If the delivery suffers from such substantial defects or otherwise deviates from the contract to such an extent that it is unusable for us or that we cannot reasonably be expected to accept the Delivery, we shall be entitled to refuse the goods, demand replacement delivery or withdraw from the contract, and claim damages.
- 14.2 If the defects or departure from the contract are of less significance, we shall grant the Supplier a reasonable period in which it shall effect the necessary improvements as warranty work. If the defects or departures from the contract are not or are not successfully corrected within this period, we shall at the Supplier's expense be entitled to carry out the warranty work ourselves or have such carried out by a third party. Instead of the aforesaid, we can also waive an improvement and claim a reduced value of the Delivery, and in particular effect a reduction of the price.
- 14.3 The Supplier shall guarantee that no third-party industrial property rights are infringed in connection with its Delivery. If a claim is made against us in this respect by a third party, the Supplier shall be obliged to release us from such claims and to hold us harmless in full for any losses and costs.
- 14.4 For the rest, we shall be entitled to the statutory claims without limit.

15 MSD Business Partner Code of Conduct, Ethical Practices & Audit

- 15.1 The supplier acknowledges that MSD corporate policy requires that MSD's business be conducted within the letter and spirit of the law. By entering into this agreement, the supplier undertakes to conduct this business relation in a manner which is consistent with the law, fair practices and good business ethics.
- 15.2 MSD endeavors to hold itself and its supplier to the highest ethical and compliance standards, including basic human rights, encouraging fair and equal treatment for all persons, the provision of safe and healthy working conditions, respect for the environment, the adoption of appropriate management systems and the conduct of business in an ethical manner. Without limiting any of the supplier's other obligations hereunder, and without conflicting with or limiting any of the warranties, obligations or other provisions expressly set forth elsewhere in this Agreement, including without limitation its obligations under section 11 hereof, the supplier agrees that it will abide by the letter and spirit of MSD's Business Partner Code of Conduct (the "Code"), as in effect from time to time, a copy of which is available at <http://www.msd.com/about/how-we-operate/code-of-conduct/home.html>.
- 15.3 The supplier agrees that it will provide all documentation reasonably requested by MSD to demonstrate compliance with the Code. In the event of a conflict between the obligations in this section and the Code, on the one hand, and any other provision in this purchase order, on the other hand, such other provision of this purchase order shall control (but only to the extent of the conflict).
- 15.4 MSD reserves the right, in its sole discretion, to audit suppliers operations, books and records to ensure compliance with the Code for the period of two (2) years following termination of this agreement. MSD will provide reasonable advance notice of such an audit, and may conduct this audit on its own or using a third-party auditor of its choosing. The supplier shall acknowledge receipt of MSD's notice as promptly as practicable after receipt of such notice and will confirm the date on which the audit will occur within 14 days after receipt of such notice. MSD or its third-party auditor may interview supplier employees as part of or in connection with the audit. This audit right shall be in addition to any other audit rights granted in this purchase order.
- 15.5 In the event an audit identifies a non-conformance by supplier with the Code, the supplier will promptly take corrective action to remedy the non-conformance. MSD reserves the right to approve all corrective actions. Corrective actions shall be implemented by supplier at his expense. MSD will endeavor, whenever practicable, to work with supplier to remedy the issue and put in place a corrective action plan.
- 15.6 In the event the supplier refuses to allow an audit, or fails or refuses to take corrective action, then in addition to any other remedy available to it under this Agreement, at law or in equity, MSD reserves the right to terminate this agreement in the event the supplier fails to cure such refusal or failure within 90 days after written notice from MSD.

16 Supplier Expectations

- 16.1 Without limiting any of supplier's other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in this Agreement, including without limitation its obligations under section 11 hereof, MSD expects that the supplier will abide by the letter and spirit of MSD's Supplier Performance Expectations, as in effect from time to time, a copy of which is available at <http://www.msd.com/about/how-we-operate/code-of-conduct/home.html>. In the event of a conflict between the obligations in this section and MSD's Supplier Performance Expectations, on the one hand, and any other provision in this agreement, on the other hand, such other provision of this agreement shall control (but only to the extent of the conflict).

17 Place of Performance, Legal Venue and Applicable Law

- 17.1 Place of performance shall be Vienna unless agreed otherwise in writing.
- 17.2 Legal venue shall be Vienna. We shall also be entitled to file an action against the supplier at its general legal venue.
- 17.3 All legal relationships between us and the supplier shall be governed by Austrian law to the exclusion of the provisions of the Vienna Law on Sales.