



STANDARD PURCHASE ORDER TERMS & CONDITIONS (THAILAND)

1. DEFINITIONS AND INTERPRETATION

- 1.1. If the Purchaser and the Seller (or their respective Affiliates) have executed alternative contractual terms or a master agreement governing the purchase of the Products and Services set out in the Purchase Order, then those alternative terms shall apply to the Products and Services instead of these Terms and Conditions.
- 1.2. In these Terms and Conditions, the following definitions apply:
- "**Affiliates**" means any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with either Party including a subsidiary, parent, holding company, or joint venture alliance partner.
- "**Confidential Information**" means any business, technical, operational, product, customer or personnel information of the party or its Affiliates, which is disclosed or obtained by the other party in connection with this Contract.
- "**Contract**" means the contract between the Supplier and the Purchaser consisting of and in the following descending priority order for any inconsistency: the Purchase Order; these Terms and Conditions; and the Specification; and any other document incorporated by reference;
- "**Documentation**" means the documentation to be provided by the Supplier under clause 6.1;
- "**Delivery**" means delivery of the Products and/or the Services, to the address specified for delivery in this Contract and/or the performance of the Services, both in accordance with this Contract.
- "**Losses**" means all losses, claims, liabilities, costs, expenses and damages of any nature;
- "**Price**" means the amount in the relevant currency specified in the Purchase Order as the price for the Products and/or the Services;
- "**Products**" means any item, goods, deliverable, materials or listed in the Purchase Order and/or the Specifications, to be provided by the Supplier under this Contract;
- "**Purchase Order**" means the purchase order to which these Terms and Conditions are attached to or referenced in;
- "**Purchaser**" means the Bristol-Myers Squibb group company specified in the Purchase Order, which may include without limitation, Bristol-Myers Squibb Thai Co., Ltd or Bristol-Myers Squibb Pharma (Thailand) Co., Ltd;
- "**Services**" means the services to be provided by the Supplier under this Contract, including Services to install or maintain the Products;
- "**Specifications**" means the scope and performance specifications which the Products and Services shall comply with including without limitation and in descending priority order: (i) all applicable laws, any governmental or industry regulations or standards applicable to the Products, (ii) the Purchaser's statement of requirements; (iii) the Supplier's proposal for the Products, and (iv) the Supplier's published technical, functional or operational specifications;
- "**Terms and Conditions**" means the terms and conditions set out below, as amended from time to time by the Purchaser. Any amendments shall apply to new Purchase Order only;
- "**Warranty Period**" means the period of 12 months commencing on Delivery of the Products, unless an alternative warranty period is agreed and specified in writing in this Contract.

2. SCOPE

- 2.1. In exchange for the Purchaser paying the Price, the Supplier agrees to provide the Products and/or the Services in accordance with this Contract. These Terms and Conditions are deemed accepted by the Supplier by virtue of the Supplier supplying the Products and/or the Services, despite any failure by the Supplier to sign and return these terms.
- 2.2. Unless otherwise agreed in writing by the Purchaser or set out in the Purchase Order, these Terms and Conditions shall prevail over any other Supplier terms and conditions, business terms, purchase conditions or order acknowledgment.
- 2.3. The Supplier acknowledges that it provides the Products and/or the Services to the Purchaser on a non-exclusive basis. Nothing in this Contract restricts the Purchaser's ability to obtain products and/or services the same as or similar to the Products from any third party.
- 2.4. Except as expressly specified, nothing in this Contract commits or guarantees any future volume for the Products and/or the Services.
- 2.5. The Products and/or the Services are purchased for the benefit of the Purchaser and its Affiliates.

3. DELIVERY

- 3.1. The Supplier shall Deliver the Products and/or the Services to the Purchaser within the timeframe specified in this Contract or if no timeframes are specified, then no later than 30 days after the date of the Purchase Order. Time is of the essence in effecting Deliver, unless otherwise agreed in writing by the Purchaser.

4. PRICE AND PAYMENT

- 4.1. Unless otherwise agreed in writing with the Purchaser, the Price:
- (a) is fixed and is not subject to any liability for increased cost as a result of currency fluctuations;
- (b) is inclusive of all requirements of Contract including without limitation all packing, labelling, customs, freight and transportation charges and subject to clause 4.1(c), all taxes applicable to the Products and/or Services;
- (c) to the extent that it does not already contain VAT, is exclusive of VAT and any applicable VAT shall be paid by the Purchaser at the prevailing rate prescribed by law;
- (d) to the extent that it requires the reimbursement of the "Out-of-Pocket Expenses", will be agreed in advance with Purchaser and invoiced at cost without additional mark-up or margin; and
- (e) constitutes fair market value for the Products and/or the Services and does not constitute bribery or any other form of inappropriate inducement according to applicable law.
- 4.2. Unless an alternative or instalment invoicing, schedule is specified in this Contract and where applicable, subject to the satisfactory completion of any milestones, the Supplier shall invoice the Price following Delivery and send to the Purchaser's usual invoicing address. The Purchaser will pay all undisputed amounts within 90 days of receipt of the Supplier's correct invoice
- 4.3. The Purchaser may reasonably dispute the accuracy or correctness of the invoice and may withhold payment in the disputed portion, until the dispute is resolved. The Supplier will provide the Purchaser with such information as the Purchaser may reasonably require to substantiate the Price.

5. TITLE AND RISK IN PRODUCTS

- 5.1. Risk in the Products and/or the Services passes to the Purchaser on Delivery. Full title to the Products and/or Services, free of prior rights or interests passes to the Purchaser on payment of the Price (or portion of the price) that corresponds to the Delivered Products and/or Services.

6. DOCUMENTATION

- 6.1. The Supplier will provide the Purchaser with all documentation specified in this Contract and all documentation sufficient to enable the Purchaser to receive the full benefit of the Products and/or the Services, including without limitation documentation sufficient to operate, to make full use of and/or to maintain the Products without further reference to the Supplier.

7. CANCELLATION, REJECTION AND OTHER PERFORMANCE FAILURES

- 7.1. If the Products and/or Services fail to materially comply with the Specifications upon Delivery or Delivery is delayed by more than 7 calendar days after the due date for delivery, the Purchaser may with immediate effect by notifying the Supplier:
- (a) terminate all or the relevant part of this Contract immediately by notifying the Supplier in writing;
- (b) reject the affected Products and/or Services or if the delay or failure is so severe as to impact the entire Contract, all of the Products and/or Services already supplied;
- 7.2. If the Purchaser rejects Products, Services or terminate this Contract, the Supplier will immediately credit or refund to the Purchaser the total of all amounts paid and any costs incurred by the Purchaser in returning the Products and/or Services to the Supplier, and the Supplier will accept return of any Products and/or Services that have already been Delivered to the Purchaser.

8. WARRANTIES AND INDEMNITIES

- 8.1. Without limitation to any statutory warranties according to applicable law, the Supplier warrants that:
- (a) the Products and/or Services materially comply with the Specifications upon Delivery and will continue to materially comply with the Specifications during the Warranty Period;
- (b) the Products conform to their description and are materially free from defects in design, materials, workmanship and installation;
- (c) the Products are of satisfactory and merchantable quality and reasonably fit for their purpose and use;
- (d) the Products are new and have not been used by any person, unless otherwise agreed in writing by the Purchaser;
- (e) it will comply with all applicable laws in performing its obligations under this Contract;

- (f) the Products and/or Services will comply with all applicable laws, regulations and industry standards;
- (g) all Services will be carried out by competent, suitably qualified and trained personnel;
- (h) the Products (and/or the Purchaser's and its Affiliates normal use of the Products) do not and will not at any time infringe the intellectual property rights of any third party;
- (i) it is not aware of any conflicts of interest which could materially adversely affect the Supplier's ability to perform its obligations under this Contract; and
- (j) it has the full and unrestricted right to Deliver the Products and/or the Services in accordance with this Contracts and all applicable laws.
- 8.2. The Supplier shall indemnify the Purchaser from any Losses arising out of a breach by the Supplier of clause 8.1. In addition, if at any time during the Warranty Period, the Supplier becomes aware or the Purchaser notifies the Supplier of any failure of the Products and/or the Services to comply with clause 8.1(a) - (f), the Supplier will promptly rectify that failure at no cost to the Purchaser.

9. LIABILITY

- 9.1. Subject to clauses 9.2, 9.3, a Party's maximum liability to the other Party for any Losses arising out of or in connection with this Contract is limited to the total Price paid for the Products and/or the Services under this Contract.
- 9.2. Either Party shall not be liable to the other Party in connection with this Contract for any lost profits, lost customers, loss of anticipated savings, loss of software or data or any other consequential or indirect loss falling within the same category.
- 9.3. Nothing in this Contract excludes or limits either Party's Losses for death or personal injury caused by that party's negligence or for fraudulent misrepresentation.

10. TERM AND TERMINATION

- 10.1. This Contract commences upon receipt of the Purchase Order by the Supplier and shall continue until Delivery of the Products and/or Services in accordance with the Contract. Clauses 8, 9, 11, 12, 14.2 shall survive the termination or expiry of this Contract.
- 10.2. The Supplier may terminate this Contract immediately by notice in writing if the Purchaser has failed to pay an undisputed invoice for the Price by the due date and the Purchaser within 14 days of having receiving notice from the Supplier of the failure and the requirement that it be remedied.
- 10.3. The Purchaser may terminate this Contract immediately by notice in writing to the Supplier:
- (a) in the circumstances of clause 7;
- (b) if the Supplier is bankrupt or enters into any sort of insolvency proceedings; and
- (c) if the Supplier commits a material breach of this Contract and fails to remedy that breach within 14 days of having received notice from the Purchaser of the requirement that the breach be remedied.

11. CONFIDENTIALITY

- 11.1. A party (the "Receiving Party") shall maintain in confidence the other party's (the "Disclosing Party") Confidential Information in accordance with this Contract and shall not use the Confidential Information for any other purpose without the Disclosing Party's prior written consent.
- 11.2. The Receiving Party may use, disclose and/or store the Disclosing Party's Confidential Information:
- (a) for the purpose of performing its obligations under this Contract;
- (b) for any other purposes required by applicable law;
- (c) within its organisation and to its Affiliates or subcontractors on a "need to know" basis, provided all such recipients have executed a broad confidentiality undertaking with the Receiving Party sufficient to protect the Disclosing Party's Confidential Information in accordance with this Contract.
- 11.3. For the avoidance of doubt, the obligations of confidentiality in this clause 11 do not apply to information that :
- (a) is in the public domain other than through of the Agreement by the Receiving Party; or
- (b) is required to be disclosed by law, regulation or by any applicable stock exchange listing rules.

12. DATA PRIVACY

- 12.1. In providing the Products and Services, the Supplier shall comply with all applicable laws and regulations relating to data privacy and confidentiality in order to protect the data, information and trade secrets of the Purchaser or its Affiliates customers, personnel or consultants obtained by the Supplier in connection with this Contract (the "Purchaser's Personal Data").
- 12.2. Without limitation to clause 12.1, the Supplier shall:
- (a) process the Purchaser's Personal Data only on the instructions of the Purchaser and ensure that it is used only as necessary to carry out the Supplier's obligations under this Contract;
- (b) ensure that the Purchaser Personal Data is kept secure and is not subject to any unauthorised or unlawful processing, accidental loss, destruction or damage; and
- (c) ensure that no Purchaser Personal Data is transferred to any third parties without the prior written consent of the Purchaser.

13. INTELLECTUAL PROPERTY

- 13.1. Nothing in this Contract affects the pre-existing Intellectual Property Rights of a party, which shall continue to be owned by or licensed to the party introducing such rights.
- 13.2. All intellectual property rights in the Products and/or the Services created specifically for and paid for by the Purchaser under this Contract as part of the Price, shall be assigned to the Purchaser immediately upon creation.
- 13.3. Except where alternative licence terms are agreed and specified in this Contract, the Supplier shall grant to the pre-existing Intellectual Property Rights or third party rights, forming part of the Products and/or the Services.
- 13.4. The Supplier shall, at the Purchaser's request, do all acts and execute all documents reasonably be required to enable the Purchaser to obtain the full intended benefit of this clause 13.
- 13.5. Any use of the Purchaser's or its Affiliates' business or product names, logos and trademarks requires the prior written consent of the Purchaser. All such names, logos and trademarks shall remain the exclusive property of the Purchaser, its Affiliates and licensors.

14. MISCELLANEOUS

- 14.1. The Contract constitutes the entire agreement between the parties and supersedes any prior understanding, discussions or agreements relating to the same subject matter.
- 14.2. These Terms and Conditions are governed by the laws of the Thailand and are subject to the exclusive jurisdiction of Thailand.
- 14.3. All disputes, controversies, or differences, which may arise between the parties hereto, with respect to, arising out of or in connection with this Contract, which cannot be resolved amicably by the parties hereto, shall be finally settled by arbitration in English language in Bangkok, Thailand in accordance with the Arbitration Rules of the Thai Arbitration Institute, the office of the Judiciary applicable at the time of submission of the dispute to arbitration and the conduct of arbitration thereof shall be under the auspices of the Thai Arbitration Institute. The number of Arbitration shall be 3. Purchaser shall appoint one arbitrator and Supplier shall appoint one arbitrator. The two arbitrators so appointed shall choose the third arbitrator. The arbitral award rendered by the arbitration panel shall be final and conclusive on the parties, and may be entered in any court of competent jurisdiction and may be enforced by due proceedings in such court.
- 14.4. No variation or alteration of these Terms and Conditions shall be valid unless approved in writing by an authorised representative or agent of the Purchaser.
- 14.5. A party may not assign, transfer or novate this Contract without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 14.6. If any part of this Contract is illegal or unenforceable, the offending portion will be served and the rest may be enforced to the extent possible.
- 14.7. The parties are independent contractors and nothing in this Contract constitutes a partnership, joint venture, employment or agency relationship between the parties or their respective personnel.
- 14.8. Neither party shall use the other party's name, make any public statement about the other party or this Contract, without the prior written consent of the other party.
- 14.9. This Contract has been negotiated in English and the English language shall prevail to the extent of any inconsistency. A Thai language translation of these terms is available on request.

I am authorised by and agree these terms on behalf of, the Supplier

Full Supplier Name: _____ Date: _____

Signature: _____ Title: _____