

TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES BY MSD AH

1. DEFINITIONS

1. **'MSD AH'** shall mean MSD Animal Health UK Limited, trading as MSD Animal Health, a company registered in England and Wales (Company No 946942) whose registered office is at Walton Manor, Walton, Milton Keynes MK7 7AJ.
2. The **'Supplier'** shall mean the company, partnership, person or other legal entity supplying the Works to MSD AH.
3. MSD AH and the Supplier shall together be referred to as the **'Parties'** and each individually as a **'Party'**.
4. The **'Agreement'** shall mean the contract between MSD AH and the Supplier, incorporating these terms and conditions and, where appropriate, MSD AH's purchase order and any other document referred to in MSD AH's purchase order.
5. The **'Works'** shall mean all the work, goods, services, materials, parts, components, plant, equipment, insurance, transport and all other things which the Supplier is required to provide in order to fulfil its obligations under the Agreement and Works shall be construed as any one or more of the above as appropriate.
6. The **'Contract Price'** shall mean the price to be paid for the Works by MSD AH.
7. An **'Authorised Signatory'** is an employee or representative of a Party who has authority by virtue of that Party's internal procedure to commit that Party to a legally binding contract.
8. **'Good Practice'** shall mean exercising the same skill, expertise and judgment and using facilities and resources of a similar or superior quality as might be expected from a person who:
 - a. is skilled and experienced in providing the Works; and
 - b. takes all proper and reasonable care and is diligent in performing their obligations.

2. INTRODUCTION

1. This Agreement applies to and supersedes any terms and conditions oral or written referred to, offered or relied on by the Supplier, whether in negotiation or at any other time in the dealing between MSD AH and the Supplier, with reference to the Works.
2. Without prejudice to the matters above, MSD AH will not be bound by any standard, oral, or printed terms or any other terms whatsoever provided by the Supplier in any of its documents or otherwise unless the Supplier specifically states in writing, separately and distinct from such terms that it intends such terms to apply and MSD AH by an Authorised Signatory confirms its acceptance in writing to the Supplier.

3. ENTIRE AGREEMENT

1. This Agreement cannot be varied except in writing and as agreed and by an Authorised Signatory of both Parties. This Agreement encompasses the whole accord reached between the Parties.
2. Each Party agrees that it has not relied on and shall have no remedies in respect of any representations or warranties (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that its only liability in respect of those representations and warranties that are set out in the Agreement (whether made innocently or negligently) shall be for breach of contract.
3. Nothing in this Clause 3 is intended to exclude liability for fraud.

4. WAIVER

1. No single nor repeated waiver for any period of time by either MSD AH or the Supplier of any of its rights hereunder shall prejudice its ability to enforce any other rights accrued or accruing under this Agreement.

5. SPECIFICATION, DESCRIPTION AND SAMPLE

1. The Works shall be in conformity with the specifications, drawings, samples or any other description or descriptions of the Works agreed between the Parties.

2. It shall be a condition of sale that the Supplier has the right to sell the goods, that the goods are free from any third party encumbrance, that MSD AH shall enjoy quiet possession of the goods and, without affecting the generality of the foregoing, that MSD AH shall have the right to use the goods for any purpose of which the Supplier is, or should be reasonably aware without interference from any third party on the grounds of infringement of any rights in industrial property.

6. PROVISION AND QUALITY OF THE WORKS

1. To the extent that the Works comprise goods, they shall be of merchantable quality and free from defects in material or workmanship.

2. The Supplier will provide the Works to MSD AH in accordance with Good Practice and in accordance with all applicable laws, regulations, orders, governmental requirements and industry guidelines. Without prejudice to the generality of the foregoing, the Supplier will carry out the Works in accordance with, and will ensure that the completed Works comply with, the NOAH Code of Practice for the Promotion of Animal Medicines (where applicable).

3. The Supplier warrants to MSD AH that it has sufficient resources, staff, experience and expertise to carry out the Works to the required standard and that it will take all proper and reasonable care and will be diligent in performing its obligations under this Agreement.

4. MSD AH may at all reasonable times during manufacture, inspect on the Supplier's premises, the manufacture and workmanship of all goods to be supplied by the Supplier, and, if any item is being manufactured on other premises, the Supplier shall obtain for MSD AH permission to inspect and shall give to MSD AH reasonable notice of the dates on and the place which the goods will be ready for testing and shall, at the Supplier's own cost give MSD AH all assistance (by supply of labour, materials and power or otherwise) as may be reasonably necessary to carry out the inspection and/or testing effectively. Such inspection or testing shall not relieve the Supplier from his obligations under the Agreement.

5. No change shall be made to the method of manufacture or ingredients used, compared with agreed material without giving prior written notice to MSD AH, and without obtaining MSD AH's prior written approval.

7. FITNESS FOR PURPOSE

1. The Works shall be fit and sufficient for the purpose(s) for which they were intended as were expressly made known to the Supplier or could reasonably have been inferred by it.

8. QUALITY ASSURANCE AND GOOD MANUFACTURING PRACTICE

1. The Supplier shall, where applicable, comply with the principles and guidelines of Good Manufacturing Practice (GMP) set out in Commission Directive 2003/94/EC (implemented by The Medicines (Standard Provisions for Licences and Certificates) Regulations 1971 and as may be amended from time to time).

2. The Supplier shall ensure that all personnel employed by it to perform the Works shall have received and shall continue to receive appropriate training by qualified persons in the theory and application of the concept of quality assurance and GMP (if applicable) and in the provision of calibration and maintenance services and shall have the necessary qualifications and practical experience in the provision of such services. Upon request, the Supplier shall provide MSD AH with appropriate evidence of the Supplier's compliance with this sub-clause.

3. The Supplier shall immediately notify MSD AH if at any time its UKAS/other accreditation (where applicable) is withdrawn or suspended and any such withdrawal or suspension shall entitle MSD AH to terminate this Agreement forthwith.

9. CHANGE OF PERSONNEL

1. The Supplier is responsible for maintaining reasonable continuity in personnel providing the Works on its behalf, but reserves the right to make changes from time to time. Where substitution of personnel occurs:

- a. no additional charge will be made for any handover period, and the Supplier remains responsible for Works performed by any individual on its behalf;
- b. where the Supplier's charges are on a time and materials basis, it is the Supplier's responsibility to ensure that the relevant skills and experience of any replacement personnel remain commensurate with the fee rates charged;

- c. the terms of this Agreement and in particular (but not limited to) the Contract Price and timetable of the project, will remain unchanged, unless otherwise agreed by the Parties in writing;
 - d. the Supplier shall ensure that any substitute personnel shall have the necessary qualifications and experience to fulfil the obligations pursuant to this Agreement; and
 - e. the Supplier acknowledges that MSD AH has the right to refuse to accept the substitute personnel in the event of non-compliance with this clause.
2. In the event that the Supplier cannot provide either the original personnel or acceptable substitute personnel, MSD AH is entitled to terminate this Agreement immediately.

10. PRICE

1. The Contract Price shall be a fixed price unless otherwise agreed in writing as between the Parties.
2. The Contract Price shall not be increased by the Supplier (whether following an increase in the cost of labour or materials or otherwise) unless MSD AH, at its absolute discretion, expressly agrees in writing in advance to such increase.
3. In addition to the Contract price, the Supplier may charge MSD for agreed expenses providing such expenses are:
- a. reasonably and properly incurred by or on behalf of the Supplier;
 - b. invoiced by the Supplier at cost; and
 - c. the Supplier obtains MSD's written approval before incurring any such costs or expenses.

Invoices issued by the Supplier to MSD covering reimbursement of expenses must be accompanied by relevant receipts.

11. PAYMENT

1. Subject to clause 11.5, payment for the Works and agreed expenses shall be made in arrears against an agreed invoice submitted by the Supplier. Payment will be made by MSD AH within ninety (90) days of invoice receipt.
2. All invoices must contain the following information:
- a. the amount due, net of Value Added Tax (VAT);
 - b. the amount of VAT payable;
 - c. the rate of VAT chargeable;
 - d. any further information required to ensure the invoice is a valid VAT invoice;
 - e. a valid purchase order number issued by MSD AH; and
 - f. the name of the Supplier's contact at MSD AH.
3. MSD will be entitled to return any invoice and withhold payment of the Contract Price and/or any other amounts charged by the Supplier to MSD AH until an invoice complying with the requirements of this clause is presented to it.
4. The Supplier may charge interest on unpaid amounts from the due date of payment of a valid invoice (provided that such invoice complies with the requirements of this clause) at the rate of 4% per annum above Barclays Bank's base lending rate from time to time.
5. MSD AH may elect to pay for the Works using its corporate payment card (e.g. American Express). Such payment may be made at the point of ordering with the Supplier. The Supplier will supply valid VAT receipts in respect of any such payments.

12. DELIVERY

1. As appropriate, the Works must be delivered carriage paid to such destination as MSD AH may direct in MSD AH's order. Where applicable, delivery shall be subject to any special conditions or requirements agreed between the Parties. If the Works are incorrectly completed the Supplier shall be liable for any additional expense incurred in delivering them to their correct destination.
2. MSD may postpone delivery by informing the Supplier at any time before delivery.

13. PROPERTY AND RISK

1. Subject to the express provisions of clause 13.2 below, the property and risk in the Works shall remain with the Supplier until they are completed and accepted by MSD AH.

2. If the Agreement provides for payment by MSD AH of part of the agreed Contract Price at any time before any work hereunder is commenced by the Supplier and/or if MSD AH pays for the Works or materials being prepared, procured, manufactured, assembled or produced by any means whatsoever whether at the premises of MSD AH, Supplier or any subSupplier or elsewhere and/or if MSD AH pays part of the agreed Contract Price at various times or stages during the Agreement (whether such payments are made in advance or arrears of given stages in the fulfilment of the Agreement) then such payments are to be regarded as part payments and not deposits of the agreed Contract Price and the property in these Works and materials shall pass to MSD AH upon making the first agreed payment.

3. Insofar as the property in the Works and materials as set out in clause 13.2 pass to MSD AH upon making the agreed payment, the risk in these goods and materials shall remain with the Supplier until the Works are completed and accepted as specified in the Agreement.

14. TIME

1. The date of completion of the Works shall be agreed in writing between MSD AH and the Supplier or where appropriate, specified in MSD AH's purchase order. The Supplier shall furnish such programmes of manufacture, delivery and completion as MSD AH may reasonably require and the Supplier shall give notice in writing to MSD AH as soon as is practicable if such programmes are, or are likely to be, delayed.

15. INTELLECTUAL PROPERTY RIGHTS

1. Subject to clause 15.2 below the Supplier warrants and represents that the Supplier has the right to use the relevant intellectual property rights in the Works for this Agreement and that the Works will not infringe intellectual property rights of third parties.

2. Title to and ownership of the Works and any related trademark, copyright or any other intellectual property rights arising out of the Works shall remain the exclusive property of MSD AH. The Supplier hereby agrees to assign all such intellectual property rights to MSD AH absolutely and to execute all documents required to give effect to this intention. For the avoidance of doubt, any such intellectual property rights which belonged to either Party or any third party hereto prior to the commencement of this Agreement shall remain the property of that party. The Supplier hereby irrevocably grants to MSD AH for the duration of this Agreement, all licences and permissions, express or implied, necessary for the operation of this Agreement.

16. PUBLICITY

1. The Supplier agrees not to use or reference in any advertising, press release, interview, presentation to prospective clients, article, promotional material, or other communication, MSD AH's company or representative name, endorsement, direct or indirect quote, code, drawing, logo, trademark, specification, picture, or deliverables arising out of the Works without the prior written consent of MSD AH, which consent may be withheld at its absolute discretion.

17. INSURANCE

1. During the term of this Agreement and for a period of not less than five years thereafter the Supplier shall have in place insurance cover for such risks and for such amounts as a reasonable insurance broker advising a business providing the Works to MSD AH would consider prudent. Unless otherwise agreed in writing by MSD AH, this insurance cover shall include, but not be limited to, Public and Product Liability cover of not less than £5 million, Employers Liability cover of not less than £10 million, and Professional Liability of not less than £1 million.

2. The Supplier shall deliver to MSD AH, within seven days of the commencement of this Agreement and on request during the Agreement, Certificates of Insurance as evidence that policies providing such coverage and limits of insurance are in full force and effect and with insurers with an AM Best rating of A- or better. The Supplier shall provide not less than thirty (30) calendar days advance notice in writing to MSD AH of any cancellation, termination, or material alteration of said insurance policies.

3. The Supplier's obligations under clause 17.1 shall survive the termination of this Agreement.

18. CONTINGENCY PLANNING

1. Throughout the term of this Agreement the Supplier must have in place reasonable contingency and disaster planning arrangements designed to minimise any interruption or disruption to the provision of the Works including interruptions and disruptions caused by the loss, damage or destruction of any premises, equipment, infrastructure or records.

2. The contingency and disaster planning arrangements referred to in clause 18.1 must be reasonably satisfactory to MSD AH and MSD AH and its representatives may inspect and take copies of the information referred to in clause 18.1 upon giving 5 (five) days notice.

19. RECORDS

1. The Supplier must keep clear, accurate, complete and up to date records and information relating to:

- a. all matters relating to the Works and their performance for which records must be kept under the applicable laws; and
- b. the performance of its obligations under this Agreement including appropriately detailed information regarding all enquiries, claims, settlements, payments, compensation, and systems processes.

2. The Supplier shall keep and retain the records and information referred to in this clause to the same standards as would be required of a reasonable person providing the Works.

3. The Supplier must on reasonable notice from MSD AH, make available to MSD AH and its representatives any records and information belonging to the Supplier and/or any third party involved in the provision of the Works which may be relevant in confirming:

- a. the Supplier's compliance with its obligations under this Agreement; or
- b. the calculation of any sums payable by the Supplier under this Agreement.

4. The Supplier must on request give MSD AH, its representatives and any applicable regulatory agency access to the Supplier's premises and records (and/or those of any third parties involved in the provision of the Works) for the purpose of any inspection or investigation requested or required by the regulatory agency relating to the Works.

5. The Supplier must ensure that its staff and the staff of any third party involved in the provision of the Works are (in so far as it is reasonable) made available to assist MSD AH in the exercise of its rights under Clauses 19.3 and 19.4.

20. FORCE MAJEURE

1. Neither Party shall be liable to the other Party for any failure to fulfil its obligations under the Agreement if such a failure is caused by circumstances beyond its reasonable control in which event the obligations of the failing Party shall be suspended for the period during which such force majeure operates, provided that reasonable efforts have nonetheless been made by them to fulfil their obligations under the Agreement, and provided further that the suspended obligations are fulfilled as soon as possible after the force majeure ceases to so operate.

21. REJECTION

1. If any of the Works do not comply with any term of this Agreement in the reasonable opinion of MSD AH, including quantity, quality or description, or as appropriate with the purchase order, MSD AH shall be entitled to reject those Works at any time after delivery or completion irrespective of whether MSD AH has accepted them or made payment for them.

2. Any acceptance of such Works by MSD AH shall be without prejudice to any rights that MSD AH may have against the Supplier, including but not limited to those set out in clause 21.3.

3. In the event of rejection of Works under clause 21.1, MSD AH may at its absolute discretion;

- a. seek recovery of sums paid to the Supplier in respect of the rejected Works as a debt; or
- b. seek alternative Works from the Supplier which alternative shall in all respects comply with the terms of clauses 5, 6 and 7 hereof, or
- c. replace the rejected Works with works carried out by another in accordance with the Agreement as near as practicable to the same specifications as circumstances shall permit. As appropriate, MSD AH shall be entitled to return any rejected Works, carriage forward, to the Supplier at the risk of the Supplier.

4. Without prejudice to any other remedy which MSD AH has against the Supplier, any defective parts, materials or workmanship which shall appear within a period of twelve months following acceptance of the Works shall be replaced or made good by the Supplier at his own expense within a reasonable time of written requirement of such by MSD AH.

5. Nothing in clauses 21, 22 and 23 shall prejudice the right of MSD AH to enforce any remedy at law which it may have against the Supplier for breach of the Agreement.

6. MSD AH reserves the right to cancel the Works on account of late delivery.

22. NON-DELIVERY

1. If the Supplier does not complete the Works or any part thereof within the time specified in MSD AH's purchase order, MSD AH shall be entitled to terminate the Agreement forthwith, complete the Works to the same or similar description to make good such default and recover from the Supplier the amount by which the cost of obtaining such replacement Works exceeds the price which would have been payable to the Supplier in respect of the Works so replaced without prejudice to any other remedy at law.

23. LIABILITY AND INDEMNITY

1. To the fullest extent permissible by law, MSD AH shall not be liable for loss of revenue, business contract, anticipated savings, profits, data or information, damage to property, or any indirect or consequential loss howsoever arising whether from negligence, breach of contract or otherwise, except that the limitation set out in this clause 23.1 shall not apply to the profit element in the Contract Price.

2. Nothing in this Agreement shall limit or exclude the liability of MSD AH for:

- a. death or personal injury resulting from negligence; or
- b. fraud or fraudulent misrepresentation; or
- c. any matter which it would be illegal for MSD AH to exclude or attempt to exclude its liability.

3. The Supplier shall indemnify MSD AH against all liabilities, costs, expenses, damages and losses (including legal fees and expenses) incurred by MSD AH arising out of or in connection with:

- a. any claim made against MSD AH for actual or alleged infringement of a third party's intellectual property rights or other rights arising out of, or in connection with, the supply or use of the Works; and
- b. any claim made against MSD AH by a third party arising out of, or in connection with, the supply of the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its agents or subcontractors.

24. TERMINATION

1. MSD AH may terminate this Agreement at any time on giving thirty (30) days written notice to the Supplier.

2. If the Supplier ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of its creditors, suffers or permits the appointment of a receiver for its business or assets or becomes subject to any proceedings in bankruptcy or for the protection of the rights of its creditors MSD AH may terminate this Agreement with immediate effect and shall be entitled to the immediate return of any monies advanced as part payment under clause 13.2 above. Such monies shall be returned to MSD AH unencumbered and without any charge or other lien attaching to it.

3. Should the Supplier cease to conduct business in the normal course and/or in any of the circumstances as set out in Clause 24.2 the ownership and copyright and any other proprietary rights including but not limited to of any computer program(s) and the relevant source code and any other ancillary code pertinent to the usual use of the program(s) and any other propriety right associated with the program(s) in which MSD AH has an interest arising out of this Agreement shall vest absolutely in MSD AH forthwith. The Supplier undertakes to execute all necessary documents to give effect to the intention of this sub-clause.

25. CONSEQUENCES OF TERMINATION

1. Termination of this Agreement does not affect the accrued rights and liabilities of the Parties or the enforceability of clauses 15, 16, 17, 19, 20, 23, 24, 25, 28 and any other provisions of this Agreement that are intended to remain in force after its termination.
2. Any licences that the Supplier has under this Agreement to use any intellectual property rights belonging to MSD AH or any of its group companies will immediately end when this Agreement is terminated and this shall include the Supplier's right to supply any products that use or are marked with that intellectual property.
3. Following the termination of this Agreement the Supplier must immediately return to MSD AH or destroy at MSD AH's request:
 - a. all the property in its possession or under its control that belongs to MSD AH and its group companies; and
 - b. all copies of any materials and records of any kind that are in its possession or under its control (and in any medium) that contain any part of MSD AH's confidential information except that the Supplier may retain a copy of any confidential information that it reasonably requires for its accounting purposes or to comply with any applicable laws.
4. On termination of this Agreement for any reason MSD AH shall owe to the Supplier no further obligation other than to pay for such Works as have been properly completed or provided in accordance herewith. Partial payment for incomplete Works shall be at the absolute discretion of MSD AH.

26. PARTIAL INVALIDITY

1. If any provision or portion of this Agreement is held to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted from the Agreement and shall not affect the validity of the remaining terms and conditions of the Agreement which shall be interpreted as though the invalid clauses did not appear.

27. HEADINGS

1. The headings used in this Agreement are for convenience only and are not in any way intended to affect the construction of any clause, right or obligation contained in this Agreement.

28. CONFIDENTIALITY

1. In the course of work done by the Supplier for MSD AH (i) arising out of (including negotiations of), and (ii) under the terms of this Agreement MSD AH may disclose to the Supplier certain confidential information which both Parties hereto acknowledge constitutes a valuable trade asset of MSD AH.
2. The Supplier, its employees, agents or subcontractors will treat all such information as confidential, will not disclose any information to any third party without the prior written consent of MSD AH and will take all reasonable steps to prevent any such disclosure. The Supplier undertakes not to use any information for the benefit of any third party.
3. The obligation of confidentiality set out here shall not apply to information which the Supplier is able to prove was already known to it and was not held subject to any duty of confidentiality, or to information which subsequent to disclosure by MSD AH comes into the public domain other than through breach of any duty of confidentiality or to information which is required to be disclosed pursuant to a legally enforceable order, direction or other regulation.
4. This duty of confidentiality shall survive any termination of this Agreement for a period of ten (10) years from the date of termination.
5. If in the performance of duties under this Agreement the Supplier utilises any confidential information of MSD AH then the Supplier or any corporate body or person who becomes responsible for the obligations of the Supplier shall not sell, transfer or otherwise deal in any right which he may have in the Works without MSD AH's written consent (such consent not to be unreasonably withheld by MSD AH).
6. For the avoidance of doubt, MSD AH shall be entitled to disclose any information obtained from the Supplier to a regulatory agency to the extent required or requested by such agency in connection with any regulatory filing, inspection or otherwise.

29. ASSIGNMENT AND SUB-CONTRACTING

1. The Supplier shall not assign or sub-contract the whole or any part of the Agreement without the prior written consent of MSD AH. Notwithstanding any written agreed assignment or sub-contract the Supplier shall be responsible for all work done and for all materials, goods and equipment supplied by him and by all sub-contractors and assignees appointed by him.

2. The terms and conditions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

30. NOTICES

1. Any notice required to be served by either Party on the other shall be served at the addresses set out on MSD AH's purchase order or as otherwise notified by one Party to the other.

2. Notice shall be effective (i), in the case of service by post, at the expiration of two business days after the day of un-retained posting or (ii) in the case of fax at the normal close of business of the recipient on the day on which it is sent or (if received on a nonworking day) on the close of business on the next following working day, or (iii) in the case of personal service, when it is delivered. No other form of notice (including e-mail) shall be effective as between the Parties.

31. THIRD PARTIES

1. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

32. PROPER LAW AND FORUM

1. Both MSD AH and the Supplier agree that any dispute or question of interpretation arising out of this Agreement shall be decided in accordance with English law and shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

33. ETHICS/CONFLICT OF INTEREST

1. In its performance of this Agreement the Supplier shall adhere to business practices that are in accordance with the letter and spirit of applicable laws (including, but not limited to, the US Foreign Corrupt Practices Act 1977 and UK bribery legislation) and ethical principles as follows:

a. All transactions in connection with this Agreement shall be accurately reflected in the Supplier's records, and no funds or other assets shall be paid directly or indirectly to government officials or persons acting on their behalf or to representatives of the other businesses for the purpose of influencing government decisions or actions with respect to MSD AH's business.

b. The Supplier shall conduct its activities hereunder so as to avoid loss or embarrassment to MSD AH due to any real or apparent conflict of interest, and to require that all sub-contractors comply with such policy in connection with this Agreement.

c. MSD AH shall have the right to terminate this Agreement, without any penalty or obligation to pay damages, upon violation of the business practices mentioned in this clause by the Supplier, its employees, agents, representatives, sub-contractors or consultants.

34. RELATIONSHIP BETWEEN THE PARTIES

1. The Supplier is engaged as and shall be at all times an independent contractor and the Supplier shall in no sense be considered an employee or an agent of MSD, and shall not therefore be able to bind MSD AH in any way nor be entitled or eligible to participate in any benefits, privileges or plans given or extracted by MSD AH to its employees.

2. The Supplier will not in any way bring into disrepute the business or reputation of MSD AH.

35. TUPE

1. "Liabilities" means all losses, costs (including without limitation legal costs), charges and expenses arising out of actions, proceedings, claims and demands, and "Liability" is construed accordingly; and "Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or replaced from time to time).

2. The Parties agree that the transaction contemplated by this Agreement does not constitute the transfer of an undertaking to which the Regulations apply and that accordingly no staff will transfer between the Parties or any respective sub-contractors or assignees on either the commencement or termination of this Agreement.

3. In the event that MSD AH or any of its affiliates, sub-contractors or assignees incur a Liability in respect of claims brought by the employees or former employees of the Supplier which are alleged to have transferred to MSD AH or its affiliates, sub-contractors or assignees by virtue of the Regulations, then the Supplier will indemnify and keep indemnified MSD AH, its affiliates, sub-contractors or assignees in respect of all such Liabilities.

36. EXCLUDED ENTITIES

1. The Supplier represents and warrants that, as of the date of this Agreement, neither it, nor any of its officers, directors, Key Employees, or Key Sub-contractors has been in Violation. The Supplier shall notify MSD AH in writing immediately if any such Violation occurs or comes to its attention. If a Violation exists with respect to any of the Supplier's officers, directors, Key Employees, or Key Sub-contractors, the Supplier shall promptly remove such individual(s) or entities from performing any service, function or capacity related to the Works. MSD AH shall also have the right, in its sole discretion, to terminate this Agreement immediately in the event of any such Violation.

2. For the purposes of this clause:

a. A '**Key Employee**' shall mean any employee of the Supplier who performs any work in connection with the Works.

b. A '**Key Sub-contractor**' shall mean any individual or other entity which, as a subcontractor or agent of the Supplier, performs any work in connection with the Works.

c. '**Violation**' shall mean that either the Supplier, or any of its officers, directors, Key Employees or Key Sub-contractors has been:

i. convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services, Office of Inspector General website, including 42 U.S.C. 1320a-7(a) (<https://oig.hhs.gov/exclusions/authorities.asp>);

ii. identified in the List of Excluded Individuals/Entities (LEIE) database (<http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>) on said website or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (<http://www.epls.gov>); or

iii. listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs.

37. DATA PRIVACY AND SECURITY

1. "Personal Information" shall mean any information or set of information that identifies, or is used by, or on behalf of, MSD AH to identify an individual, including without limitation, MSD AH employees.

2. Each Party shall comply with Data Protection Law in connection with its obligations under this Agreement. For the purposes of this Clause, "Data Protection Law" means any applicable data protection or privacy laws to which either Party, as applicable, is subject in connection with this Agreement.

3. The Supplier represents and warrants that in the event that the Supplier provides Personal Information to MSD AH, including, without limitation, any individually identifiable health information, that it has obtained all necessary consents, approvals and authorisations to provide the Personal Information to MSD AH, and it is not violating any laws, rules or regulations, or the rights of any individual or entity, by providing such Personal Information to MSD AH. Upon request by MSD AH, the Supplier shall provide documentation of any applicable consents, approvals and authorizations. No Personal Information, other than the Personal Information necessary for the Supplier to carry out the Works hereunder, shall be provided by the Supplier to MSD AH under this Agreement.

38. USE OF WOOD PALLETS IN SHIPMENTS

1. This clause shall apply only to the supply of
 - a. GMP materials or products that will be used by MSD AH in manufacturing;
 - b. wood pallets; and/or
 - c. non-GMP materials or products where MSD AH has notified the Supplier in advance that compliance with this clause is required.
2. The Supplier expressly agrees and represents, warrants and covenants that any shipment to a MSD AH site or location using wood pallets shall only be done if the wood pallets meet the following criteria:
 - a. Certified heat treated wood pallets, in accordance with the International Standards for Phytosanitary Measures (ISPM) 15 "Regulation of Wood Packaging Materials in International Trade", developed by the International Plant Protection Convention (IPPC), as amended; provided, however, that nothing herein or therein shall permit the use of any chemical on wood pallets to be supplied to MSD AH.
 - b. No additional chemical treatments have been used on such wood pallets, including, but not limited to Methyl Bromide.
 - c. Contain the heat-treatment certification (stamped "HT"), the country of origin two-letter designator, the regional identifier and a registration number in accordance with ISPM, and such stamp, designator and number will be located on the wood pallet to allow MSD AH to visually inspect the wood pallet, upon receipt.
3. MSD AH reserves the right to reject any shipment that does not meet the aforementioned criteria and any costs associated with the rejection of such shipment due to a failure to meet these criteria shall be for the sole cost and expense of the Supplier.

39. MSD AH'S SUPPLIER EXPECTATIONS

1. Without limiting any of the Supplier's other obligations hereunder, MSD AH expects that the Supplier will abide by the letter and spirit of MSD AH's Supplier Performance Expectations and Business Partner Code of Conduct (the "Code"), copies of which are available at <https://www.msd.com/company-overview/culture-and-values/code-of-conduct/business-partner-code-of-conduct/>
- 2.