

## PURCHASE ORDER TERMS & CONDITIONS

For Philippine Purchase Orders

1. **ACCEPTANCE:** Any PURCHASE ORDER issued by Merck Sharp & Dohme IA LLC – Philippine Branch (“MSD”) under these terms and conditions shall (together with such terms and conditions) become a binding contract when accepted by acknowledgment of SUPPLIER or commencement of performance by SUPPLIER within the time frame therefore set forth in said PURCHASE ORDER. Any different or additional terms or conditions in any SUPPLIER quotation, acknowledgment, commencement, or invoice shall constitute a counteroffer and no contract shall exist unless accepted in writing by MSD. Notwithstanding the foregoing, if SUPPLIER has commenced performance prior to MSD’s written acceptance aforesaid, then said different or additional terms shall be deemed null and void and these terms and conditions shall prevail. MSD may, from time to time, change or supplement these terms and conditions. For avoidance of doubt, nothing in these terms and conditions is intended to supersede the terms of any agreements between MSD and SUPPLIER that pre-date these terms and conditions.
2. **CHANGES:** MSD may, at any time, direct in writing additions, deletions, or changes to all or any part of the scope of the PURCHASE ORDER, and SUPPLIER agrees to perform such work as changed. If any such change causes an increase or decrease in the cost of or in the time required to perform such work, SUPPLIER shall submit detailed information substantiating such claims. If required, an equitable adjustment shall be made to the price or time of performance, or both, and the PURCHASE ORDER shall be modified in writing accordingly.
3. **QUALITY:** All goods are subject to MSD’s approval notwithstanding prior inspection or payment and, if not satisfactory or in accordance with specifications, may, at MSD’s sole option, be returned to SUPPLIER at SUPPLIER’s expense for transaction both ways or the amounts paid therefore by MSD promptly refundable to MSD>

All services are subject to MSD’s approval notwithstanding prior inspection or payment and, if not satisfactory or in accordance with specifications, may, at MSD’s sole option, be performed at SUPPLIER’s expense of the amounts paid therefore by MSD promptly refunded to MSD.

SUPPLIER warrants that the goods sold pursuant to any PURCHASE ORDER (including without limitation any goods provided in connection with services) conform to all SUPPLIER drawings, specifications, samples and other written descriptions furnished to MSD, are new, unused and under all applicable manufacturers’ warranties unless otherwise specified in the PURCHASE ORDER, are fit to the purpose(s) represented by SUPPLIER, and are merchantable, of highest quality and workmanship and free from defects. SUPPLIER shall promptly repair or replace, at no cost to MSD, any part of the goods MSD finds to be defective at any time within one (1) year of acceptance. In addition to the foregoing warranties, SUPPLIER shall pass to MSD any and all manufacturers’ warranties.

SUPPLIER warrants that the service pursuant to any PURCHASE ORDER shall be performed in a professional workmanlike manner, in conformity with standard practices and all applicable laws, rules

and regulations, and shall be fit for the purpose(s) represented by SUPPLIER and of highest quality and workmanship.

If MSD chooses to accept defective or nonconforming goods and/or services, MSD may do so. In such event, the price set forth in the relevant PURCHASE ORDER shall be reduced by the difference between (1) the value as set forth in the relevant PURCHASE ORDER and (2) the value of the goods and/or services (as appropriate) as accepted, as reasonably determined by MSD.

The following shall apply to any SUPPLIER of 1) cGMP materials or products that will be used by MSD in manufacturing; 2) wood pallets; and/or 3) noncGMP materials or products whereby MSD has previously notified SUPPLIER to comply; SUPPLIER expressly agrees and represents, warrants and covenants that any shipment to a MSD site or location using wood pallets shall only be done if the wood pallets meet the following criteria:

- (i) 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.
- (ii) No additional chemical treatments have been used on such wood pallets, including, but not limited to Methyl Bromide.
- (iii) 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 to visually inspect the wood pallet, upon receipt.

Any materials derived from humans ("Human Material") must be properly collected with all necessary approvals, consents and/or authorizations for the collection use and/or transfer of such Human Material as contemplated by this PURCHASE ORDER without any obligation on MSD to those who contributed the Human Material. SUPPLIER shall provide documentation of such approvals, consents, and authorizations upon MSD's request.

- 4. **DATA INTEGRITY:** Any documentation or data relevant to activities performed, including without limitation any GMP documentation, must be attribute, original, accurate, legible, complete, controlled, retrievable, and safe from unintentional manipulation or loss. These items are required throughout the retention period of such data / documentation.
- 5. **PRICE:** The prices set forth in any PURCHASE ORDER shall not be increased without MSD's prior written consent. If a price is not stated for any goods and/or services in any PURCHASE ORDER, SUPPLIER shall invoice such goods and/or services at their then current list prices less any

applicable price discounts. If, at any time during the performance of any PURCHASE ORDER, SUPPLIER shall quote or sell, at lower net prices, similar goods and/or services under similar conditions and (as to goods) in similar quantities, such lower prices shall be substituted for the prices identified in said PURCHASE ORDER.

Unless otherwise stated in the PURCHASE ORDER the prices set forth in the PURCHASE ORDER shall be deemed inclusive of value-added tax (VAT) if VAT is applicable to or imposed on the goods or service subject of such PURCHASE ORDER.

6. **PAYMENT AND PAUMENT DISCOUNTS:** If SUPPLIER is enabled to transact business with MSD electronically, SUPPLIER agrees to submit invoices in electronics form to MSD's Accounts Payable organization through the MSD approved electronic method. If SUPPLIER is not so enabled it agrees to submit invoices to MSD's Account Payable organization at:

MSD PHILIPPINES  
26<sup>th</sup> Floor, AIA Tower  
Building, Paseo De Roxas,  
Makati City  
PHILIPPINES

MSD shall make payment for invoices received pursuant hereto (or the undisputed portions of such invoices) within ninety (90) days from receipt of a properly prepared invoice. Where, however, other payment terms appear on the front of any PURCHASE ORDER, payment shall be made in accordance with those terms and conditions. If any SUPPLIER invoice is subject to any payment discount, the discount period shall be calculated from the date the invoice is received by MSD's Invoice Processing Department.

All payment to the SUPPLIER shall be subject to such withholding of taxes as may be required under applicable laws.

7. **SHIPMENT AND DELIVERY:** Shipment of all goods purchased pursuant hereto shall be affected as set forth in the PURCHASE ORDER. Unless otherwise expressly set forth in the relevant PURCHASE ORDER SUPPLIER shall be not charge MSD for insurance on shipments of goods, or for packing, crating, or drayage of goods. SUPPLIER shall notify MSD immediately of any situation that may delay or threaten to delay the timely delivery and/or performance of any PURCHASE ORDER. All or any portion of any PURCHASE ORDER may, at MSD's option, be canceled without liability by MSD, if delivery is not made as or when specified in said PURCHASE ORDER and these terms and conditions.
8. **"HASSLE-FREE" RETURN/REPLACEMENT POLICY:** Any goods shipped by SUPPLIER in excess of the quantity designated in any PURCHASE ORDER or tolerance from quantity previously agreed to in writing may be returned by MSD at SUPPIER's sole expense.

For goods and/or services purchased pursuant hereto with a price (as to services) or unit price (as to goods) under \$1,000, MSD shall be entitled to a "hassle free" return/replacement policy as follows: If an end user has not received the goods and/or services ordered or has deemed the goods and/or services delivered by the SUPPLIER to be unacceptable for any reason, the SUPPLIER shall immediately provide the correct goods and/or services upon notification, or 9as to goods) at MSD's sole discretion accept a return of the original goods shipped to MSD without question.

In such latter event, restocking fees, freight charges, or any other new or additional charges will not be imposed upon MSD. If replacement goods are available, they will be provided at the price set forth in the PURCHASE ORDER.

The cost of any returned goods will be credited to MSD, and any costs associated with the return of goods to the SUPPLIER will be borne by the SUPPLIER.

9. **FORCE MAJEURE:** Neither party shall be liable to the other for failure to perform when and as specified in these terms and conditions or in any PURCHASE ORDER if such failure to perform is caused by war, fire (outside of the reasonable control of the party claiming the force majeure), flood, strike, labor dispute, accident (outside of the reasonable control of the party claiming the force majeure), riot, act of God, act of governmental authority, or other contingencies beyond the control of the non-performing party interfering with said party's ability to perform its obligations hereunder.

10. **ASSIGNMENT:** SUPPLIER shall not assign, in whole or in part, to any person, firm, corporation or governmental agency, its rights, interests or obligations under any PURCHASE ORDER placed pursuant to these terms and conditions without MSD's prior written consent.

11. **RECORDS AND RIGHT TO AUDIT:** MSD shall have the right to examine and audit the books and records of SUPPLIER at any reasonable time.

Such books and records will be maintained for four (4) years in accordance with generally accepted accounting principles and will be adequate to enable determination and substantiation of: (1) the accuracy of any payments required to be made under the relevant PURCHASE ORDER; and (2) compliance with the provisions of the relevant PURCHASE ORDER SUPPLIER shall ensure that all requirements in this SECTION are incorporated into all subcontracts at any tier.

12. **RIGHTS TO DATA:** All drawings, plans, specifications, and data developed or produced under the relevant PURCHASE ORDER shall become the property of MSD.

13. **PROPRIETARY INFORMATION:** In the course of providing goods and/or while performing services pursuant hereto and at any time subsequent, SUPPLIER will not, without prior written approval of MSD, use for itself or for others, or disclose to any third, any confidential

information, knowledge or data of or regarding MSD, concerning any product, apparatus, process, formula, manufacturing method, or manner of doing business that may be used, developed, or investigated by SUPPLIER or may come to SUPPLIER's attention in the course of providing the goods and/or performing the services (hereinafter individually and collectively referred to as "INFORMATION"). The obligations in this paragraph shall not apply to any information, knowledge or data already known to SUPPLIER or that, prior to the time of disclosure, are properly in the public domain.

SUPPLIER shall promptly notify MSD of any order or request by a governmental authority for INFORMATION and shall provide reasonable assistance requested by MSD in preparing and filing any request for confidentiality with such governmental authority.

If so requested by MSD, SUPPLIER further agrees to require its employees to execute a nondisclosure agreement prior to providing goods/or performing any services pursuant hereto SUPPLIER understands and agrees that any use or disclosure of INFORMATION in violation of these terms and conditions will cause MSD irreparable harm without an adequate legal remedy and shall therefore entitle MSD to injunctive relief from any court having jurisdiction.

14. **DATA PRIVACY AND SECURITY:** In the course of providing goods and/or while performing services pursuant hereto, SUPPLIER agrees that when collecting, accessing or using any personal information that can identify an individual, SUPPLIER will only collect, access, use and disclose the minimum information necessary to enable SUPPLIER to perform its obligations and that will do so only in accordance with MSD's instructions and applicable laws or where disclosure is required by law; which required disclosure shall be reported to MSD by SUPPLIER in sufficient time prior to any such disclosure as to follow MSD to take any protective action if it deems necessary. SUPPLIER agrees to protect such information from loss, misuse, unauthorized access, disclosure, alteration or destruction and promptly notify MSD of any loss, misuse unauthorized access, disclosure, alteration or destruction to such information of which SUPPLIER becomes aware.
15. **INDEMNITY:** SUPPLIER hereby releases and shall indemnify, defend and hold harmless MSD, and its subsidiaries and affiliates, and representatives of all the foregoing from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, reasonable attorney's fees, costs and expenses of whatsoever kind or nature, including those arising out of injury to or death of SUPPLIER's employees, whether arising before or after delivery of the goods or completion of the services pursuant hereto and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of SUPPLIER, its subcontractors or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of any PURCHASE ORDER.

## **16. INSURANCE:**

When SUPPLIER is performing services at a MSD site, SUPPLIER shall indemnify and protect MSD and its directors, officers and employees against all liability for injury or damages to persons or property, settlements and costs, including attorney's fees, and shall furnish a certificate from its insurance carrier showing that it carries Public Liability and Property Damage Insurance coverage in forms and amounts which MSD may require and/or, at a minimum, insurance in forms and amounts that is adequate to cover potential liabilities resulting from the performance of the services under the PURCHASE ORDER.

The SUPPLIER shall deliver to MSD, prior to the commencement of work pursuant to this PURCHASE ORDER, Certificates of Insurance, as evidence that policies providing such coverage and limits of insurance are in full force and effect with insurers acceptable to MSD. These Certificates shall provide that not less than thirty (30) calendar days advance notice will be given in writing to MSD of any cancellation, nonrenewal, or material alteration of said insurance policies. All policies, with the exception of worker's compensation and professional liability, shall name MSD, its officers, directors and employees, as an additional insured and shall waive all rights of subrogation against MSD. Also, the SUPPLIER's insurance shall be primary with no contributions by MSD's insurers.

MSD shall not maintain any insurance on behalf of SUPPLIER covering loss or damage to the work or to any other property of SUPPLIER unless otherwise specifically set forth in the PURCHASE ORDER.

Notices, in original and one copy of cancellation, non-renewal and alteration of such policies shall be delivered to MSD's Purchasing Representative. When SUPPLIER is not entering a MSD site to perform the services, SUPPLIER shall upon MSD's request, furnish a certificate from its insurance carrier showing that it carries, Public Liability and Property Damage insurance coverage in forms and amounts which MSD may require.

**17. LAWS, REGULATIONS, AND PERMITS:** SUPPLIER and all subcontractors of SUPPLIER shall abide by the requirements of applicable laws which prohibit discrimination against qualified individuals based on their disabilities, race, color, religion, sex, sexual orientation, gender identity or national origin. They shall also obtain and maintain at all times all permits, approvals and licenses required by applicable laws for the conduct of their business and performance of their obligations under the PURCHASE ORDER.

**18. RELEASE AGAINST LIENS OR CLAIMS:** SUPPLIER shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used in connection with the goods and/or the services pursuant to these terms and conditions. MSD may require SUPPLIER to submit satisfactory evidence of payment and of all such claims. If there is any evidence of any such unpaid claim, MSD may withhold any payment until SUPPLIER has furnished such evidence of payment and

release, and SUPPLIER shall indemnify and defend MSD against any liability or loss arising from any such claim. SUPPLIER agrees that no mechanic's lien shall be filed by it or by any subcontractor against any MSD property or improvements and in any event, shall provide for the release thereof. The SUPPLIER shall do all things necessary to permit MSD to file and index, as and to the extent provided and permitted by law, an appropriate waiver of liens in the form required by MSD, in the proper venue before SUPPLIER commences any work under this PURCHASE ORDER. Where applicable law prohibits or fails to recognize waivers of liens, SUPPLIER shall provide and execute a partial release of liens, and an affidavit of payment for debts and claims, and all other properly executed waivers or releases as typically provided in the place where the goods are delivered and/or the services are performed.

19. **NON-EXCLUSIVITY:** The parties understand and agree that neither these terms and conditions nor any PURCHASE ORDER shall create rights or obligations of exclusivity inuring to the benefit of SUPPLIER. Nothing in these terms and conditions or in any PURCHASE ORDER shall limit MSD's right to, at all times, purchase goods and services from other suppliers.
20. **INDEPENDENT CONTRACTOR:** SUPPLIER is an independent contractor, and all persons employed by SUPPLIER in connection herewith shall be its employees and not employees of MSD in any respect.
21. **HEADINGS:** The headings of the provisions of these terms and conditions are inserted for convenience only and shall not constitute a part hereof.
22. **GOVERNING LAW:** These terms and conditions and any contract created by any PURCHASE ORDER placed hereunder shall be construed and governed under and in accordance with the laws of the Philippines, and parties agree to submit to the exclusive jurisdiction of Philippines courts. The parties agree that the United Nations Convention on the International Sale of Goods shall not apply to these terms and conditions and shall not apply to any PURCHASE ORDER issued in connection herewith.
23. **SEVERABILITY:** In the event that any provision of these terms and conditions or any PURCHASE ORDER shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of these terms and conditions or any PURCHASE ORDER either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either MSD or SUPPLIER.
24. **SUBSIDIARIES/AFFILIATES:** If a subsidiary or affiliate of MSD is identified in the "Ship to" address in the relevant PURCHASE ORDER, then: (1) said PURCHASE ORDER shall be and be deemed to have been placed by such subsidiary or affiliate; and (2) the references to MSD in the NOTE TO SUPPLIERS REGARDING TERMS AND CONDITIONS SECTION of said PURCHASE ORDER shall be and be deemed to be references to such subsidiary or affiliate; and © the references to

MSD herein shall be and be deemed to be references to said subsidiary or affiliate; provided, however, the references to MSD in **SECTIONS 12, 13, 14, AND 16** shall be and be deemed to be references to both such subsidiary or affiliate and all MSD entities.

## **25. MSD's BUSINESS PARTNER CODE OF CONDUCT:**

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 warranties, obligations or other provisions expressly set forth elsewhere in these terms and conditions, including without limitation its obligations hereof, 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>.

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 24 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).

MSD reserves the right, in its sole discretion, to audit SUPPLIER's operations, books and records to ensure compliance with the Code. 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. SUPPLIER shall acknowledge receipt of MSD's notice as promptly as practicable after 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's employees as part of or in connection with the audit. This audit right shall be in addition to any other audit rights granted in these terms and conditions.

In the event an audit identifies a non-conformance by SUPPLIER with the Code, SUPPLIER will promptly take corrective action to remedy the con-conformance. MSD reserves the right to approve all corrective actions. Corrective actions shall be implemented by SUPPLIER at SUPPLIER's expense. MSD will endeavor, whenever practicable, to work with SUPPLIER to remedy the issue and put in place a corrective action plan.

In the event 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 these terms and conditions, at law or in equity, MSD reserves the right to terminate these terms and conditions and its agreement or contract with SUPPLIER in the event SUPPLIER fails to cure such refusal or failure within 90 days after written notice from MSD.

## 26. SUPPLIER EXPECTATIONS:

Without limiting any of SUPPLIER's other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in these terms and conditions, including without limitations its obligations hereof. MSD expects that 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 25 and MSD's Supplier Performance Expectations, on the one hand, and any other provision in these terms and conditions, on the other hand, such other provision of these terms and conditions shall control (but only to the extent of the conflict).

27. **NO CONFLICT MINERALS:** SUPPLIER hereby acknowledges that MSD is a subsidiary of a corporation whose securities are listed with the United States Securities and Exchange Commission ("SEC"). As such, MSD has an obligation to report, under Section 13(p) of the United States Securities Exchange Act of 1934, as amended (15 U.S.C. §§78m, et seq.) on its use of "conflict minerals," as that term is used in such Sections 13(p) and on Securities and Exchange Commission Form SD, in each case as may be amended from time to time ("Conflict Minerals"). SUPPLIER further acknowledges that MSD is endeavoring to avoid, whenever possible, the use or inclusion of Conflict Minerals in its Products, including the packaging and manufacturing processes therefore. Consequently, SUPPLIER hereby agrees to use reasonable commercial efforts to source any of the minerals included in the definition of the term Conflict Minerals and
- (i) used by SUPPLIER to manufacture products for MSD, (ii) incorporated into products manufactured for MSD by SUPPLIER or (iii) sold to MSD hereunder from sources which certify that the minerals provided by them are ultimately sourced from conflict-free smelters and are not and do not include Conflict Minerals. Further, SUPPLIER agrees to provide any and all information reasonably requested by MSD and its Affiliates in connection with MSD's and its affiliates' obligation to identify, assess and report on their use or non-use of Conflict Minerals.
28. **ENTIRE AGREEMENT:** Subject to SECTION 1, the terms and conditions herein, together with the relevant PURCHASE ORDER, represent the entire agreement between MSD and SUPPLIER with respect to the goods and/or services set forth in said PURCHASE ORDER and supersede any inconsistent or additional provisions heretofore made by SUPPLIER. Neither these terms and conditions nor any PURCHASE ORDER placed by MSD hereunder may be altered except in a subsequent writing signed by MSD.