

## GENERAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

(Revised 1 February 2024)

### MSD Czech Republic s.r.o.

Id. No.: 02822849

Registered seat: Svornosti 3321/2, Smíchov, 150 00 Prague 5, Czech Republic

Registered in the commercial register maintained by the Municipal Court in Prague, file no. C 224056

### 1. DEFINITIONS

- 1.1 **“Additional Contractual Documents”** shall mean all documents other than the Purchase Order, the Purchase Order Acceptance or these General Terms agreed between the Parties in line with these General Terms that include terms and conditions of an Agreement – including statements of work, task orders, rate cards, budgets, price lists and similar documents, in each case signed or approved in writing by Authorized Signatories of both Parties.
- 1.2 **“Affiliate”** shall mean another company in the MSD/MERCK group of companies;
- 1.3 **“Agreement”** shall mean a contract concluded between MSD and the Supplier regarding the purchase of Goods and/or Services, consisting of a Purchase Order, Purchase Order Acceptance, Additional Contractual Documents and these General Terms and Conditions.
- 1.4 **“Authorized Signatory”** shall mean a natural person authorized by virtue of applicable law to act on behalf of a Party and conclude binding legal transactions in its name.
- 1.5 **“Civil Code”** shall mean Czech Act No. 89/2012, Civil Code, as amended.
- 1.6 **“General Terms”** shall mean these general terms and conditions for purchase of goods and services, always in their current and updated version.
- 1.7 **“Goods”** shall mean any tangible goods specified in the applicable Agreement. Where any of the aforementioned is provided as a part of provision of Services, provisions concerning supply of Goods shall apply analogously to such part(s) of supply of Services.
- 1.8 **“MSD”** shall mean MSD Czech Republic s.r.o., a company with corporate identification number 02822849, registered seat at Svornosti 3321/2, Smíchov, 150 00 Prague 5, Czech Republic, registered in the commercial register maintained by the Municipal Court in Prague, file no. C 224056.
- 1.9 **“Party”** or **“Parties”** shall mean the parties to the Agreement, i.e. MSD and the Supplier.
- 1.10 **“Price”** shall mean the price to be paid by MSD for the Goods and/or Services supplied as agreed between the Parties in the Agreement.
- 1.11 **“Purchase Order”** shall mean an offer to conclude an Agreement to purchase Goods and/or Services sent by MSD to the Supplier in line with the provisions of these General Terms.

- 1.12 **“Purchase Order Acceptance”** shall mean the acceptance/confirmation of a Purchase Order by the Supplier without any modifications or reservations, in line with these General Terms.
- 1.13 **“Services”** shall mean all the activities, services, obligations, duties, requirements and responsibilities specified in the Agreement.
- 1.14 **“Supplier”** shall mean a legal entity or natural person supplying Goods and/or Services to MSD based upon an Agreement.

## **2. OPENING PROVISIONS**

- 2.1. These General Terms are an integral part of every Purchase Order and any Agreement between MSD and the Supplier.
- 2.2. No general terms and conditions or other standard contractual terms of the Supplier shall be applied to the contractual relation deriving from any Agreement. References by the Supplier to any general terms of the Supplier in any documents, standard forms or communication from the Supplier shall be disregarded (including in the Purchase Order Acceptance), except for any provisions explicitly agreed and approved by MSD in writing in a Purchase Order or Additional Contractual Document.
- 2.3. An Agreement shall be the only binding contract between the Parties in relation to a purchase of Goods or Services. The Agreement incorporates the entire contract between the Parties and supersedes any previous arrangements, agreements, whether oral or written, established customs or practice, or terms discussed by the Parties during contractual negotiations.
- 2.4. In case of a conflict or discrepancy between these General Terms and a Purchase Order or Additional Contractual Documents, any provisions explicitly agreed by Authorized Signatories of the Parties in the Purchase Order (Acceptance) or Additional Contractual Documents shall prevail over the provisions of these General Terms.

## **3. FORMATION OF AN AGREEMENT**

- 3.1. No Agreement shall be concluded without a Purchase Order. A Purchase Order shall specify essential terms of the purchase of Goods or Services, always together with a reference to these General Terms and, where applicable, by reference to Additional Contractual Documents. A Purchase Order shall be specific enough for the Supplier to merely accept the Purchase Order by Purchase Order Acceptance.
- 3.2. Purchase Orders must be done in writing. They may be sent by letter, fax, e-mail or using an electronic ordering system agreed between the Parties based upon a separate agreement. Oral or telephone Purchase Orders shall not be binding upon MSD.
- 3.3. A Purchase Order shall be binding upon MSD for a period specified in the Purchase Order or, if no such period is specified, for 5 days. Failure by the Supplier to deliver Purchase Order Acceptance to MSD shall result in the expiration of the Purchase Order and failure to conclude the Agreement.

- 3.4. An Agreement is concluded when the Supplier delivers a Purchase Order Acceptance to MSD. A Purchase Order Acceptance must be done in the same form as the original Purchase Order. Intended acceptance by the Supplier with any deviations from the Purchase Order shall not create an Agreement and shall be considered mere continuation of pre-contractual negotiations. Section 1740 subsection 3 of the Civil Code shall not apply.
- 3.5. An Agreement, once formed, can only be changed by explicit agreement between the Parties done in the form specified in the preceding paragraphs.

#### **4. REPRESENTATIONS OF THE SUPPLIER**

- 4.1. The Supplier represents that it is an independent professional business entity and that it supplies the Goods and Services under the Agreement in the course of its normal business activity. The Supplier is an independent contractor, an expert in the field, and under no circumstances is to be considered a consumer, employee, agent or servant of MSD. In relation to MSD, the Supplier is not to be considered the weaker party and shall not claim protection granted by applicable law to weaker parties to contractual relations. Sections 1799 and 1800 of the Civil Code shall not apply.
- 4.2. The Supplier represents that it concludes the Agreement having duly considered all its terms and conditions, including these General Terms, and that it considers the terms of the Agreement fair and balanced given the Supplier's professional expertise, the price agreed and all other related contractual terms. Sections 1765 or 1766 of the Civil Code shall not apply.
- 4.3. The Supplier represents that it possesses the necessary knowledge, skills, resources, experience and qualification to provide the Goods and/or Services pursuant to the Agreement. The Supplier represents to hold the necessary certificates, permits and approvals of public agencies and represents to have complied, and undertakes to comply in the future, with all legal requirements prescribed for the Supplier to legally conclude the Agreement and render performance thereunder.
- 4.4. The Supplier represents that it only provides the Services through duly qualified and certified personnel meeting all statutory and/or professional requirements for due and legal provision of the Services. The Supplier further represents that it obtains any Goods supplied under the Agreement from legal sources allowing MSD to acquire full and perfect title to any Goods supplied, free of any legal, regulatory or other defects in title.
- 4.5. The Supplier represents that it conducts its business in line with all applicable laws and regulations, that it possesses all required trade licenses or other permits and that it complies with all its statutory or regulatory duties, including duties in the field of labor law, trade licensing law, accounting and reporting regulations, as well as duties deriving from regulations against bribery, corruption and financing of terrorism as applicable in the Czech Republic, including applicable international rules and standards.

#### **5. WARRANTIES**

- 5.1. The Supplier Warrants that the Goods:

- a) are new and fully functional, free of any defects in design, function, material, workmanship or finish;
- b) are compliant with any provided samples and/or advertising materials, whether public or provided to MSD beforehand;
- c) are suitable for its intended purpose or generally merchantable and suitable for the purpose that such goods they normally serve;
- d) are compliant with any instructions, requirements, specifications, conditions, drawings, operational requirements and/or other information or materials provided by MSD.

5.2. The Supplier further warrants that the Goods:

- a) are free of any legal defects, especially of any third-party rights or claims concerning any intellectual property, industrial property, copyrights, or any other similar rights, which might give rise to claims being raised against MSD by any third party;
- b) are compliant with any requirements, specifications, standards, codes, statutes, regulations or other legislation or standards, whether domestic, European, international or other, binding for due and the intended use of the Goods by MSD;
- c) shall be supplied based upon any and all permits, licenses, certificates and/or approvals by any public agencies or authorities and that MSD shall be authorized to duly and legally use the Goods for their intended and/or usual purpose without the need to procure any additional permits or approvals;
- d) shall be compliant with any applicable industry standards and other standards issued by private associations or bodies generally recognized in the applicable field of business;
- e) shall be accompanied by any documents, operating instructions, user's guides, safety instructions, warnings and other documents necessary or appropriate for due and legal use of the Goods by MSD.

5.3. The Supplier warrants that the Services:

- a) shall be provided by duly qualified personnel possessing all the required expertise, certificates or other qualifications;
- b) shall be provided duly and timely, while exercising the highest professional care, always in order to fulfill the purpose of the Agreement and safeguard MSD's rights and rightful interests;
- c) shall be performed under the exclusive supervision and direction of the Supplier and at the sole responsibility of the Supplier. Under no circumstances shall any persons employed by the Supplier to render the services be deemed employees, servants or agents of MSD;

- d) if provided on any premises of MSD, shall be provided in full compliance with any rules or regulations of MSD concerning workplace health and safety, fire safety and any instructions or regulations communicated by MSD to the Supplier.

## 6. DELIVERY TERMS

- 6.1. Delivery terms specified in an Agreement shall be binding. If no delivery date is specified, Goods or Services shall be supplied within 15 days of concluding the applicable Agreement.
- 6.2. If the Supplier becomes aware that it cannot meet the agreed delivery date or the delivery date determined under paragraph 6.1 above, the Supplier shall notify MSD thereof immediately. Failure to do so shall result in the Supplier's duty to compensate MSD for any resulting damage.
- 6.3. Having been notified by the Supplier that the delivery date cannot be met, MSD shall grant a reasonable additional period not longer than 15 days for the Supplier to deliver the Goods or Services. If the Supplier fails to fully comply with its duties of delivery of the Goods or Services within the additional reasonable period not longer than 15 days, MSD shall be entitled to cancel the Purchase Order and withdraw from the Agreement.
- 6.4. If, however, the Supplier was instructed by MSD that the delivery date is absolutely binding due to circumstances explained to the Supplier (e.g. Goods to be delivered for an event with a fixed date), MSD shall be entitled to cancel the Purchase Order and withdraw from the Agreement immediately after being notified by the Supplier that it will not comply with the agreed delivery date. No additional period needs to be granted in such case. Where an additional reasonable period is granted, failure by the Supplier to meet such deadline shall authorize MSD to cancel the Purchase Order and withdraw from the Agreement.
- 6.5. If the Supplier fails to deliver Goods and/or Services on the agreed delivery date, MSD shall be entitled, in addition to the rights specified above, to demand the payment of a contractual penalty of 0.2 % of the agreed price for the Goods and/or Services, whose delivery is delayed, up to a total amount of 6 % of the price agreed. Payment of this contractual penalty shall in no way prejudice the right of MSD to claim compensation for any damage caused by the delay/default exceeding the contractual penalty paid.
- 6.6. Goods and/or Services shall be provided at a place specified in the applicable Agreement. Goods must be physically delivered to the agreed place of delivery by the Supplier or forwarding agent, always at the expense and at the risk of the Supplier.
- 6.7. Goods shall be delivered duly packed and labeled in line with applicable laws, regulations and instructions from MSD. The Supplier shall make sure that Goods are safely stored and secured while in transit and that they reach the place of delivery in perfect condition. The Supplier shall be liable for all transport formalities, fees, cost and paperwork in line with applicable national, European or international rules governing packaging, safety and shipment.
- 6.8. Signing of a delivery note or a similar document by MSD shall only confirm the delivery of the number of packages specified in the delivery note. It shall not constitute an acceptance of the

Goods and/or Services and shall not release the Supplier from any liability for any defective performance.

- 6.9. MSD may postpone delivery by informing the Supplier at any time before delivery.
- 6.10. When Goods and/or Services are duly delivered, MSD shall confirm acceptance thereof to the Supplier. Such acceptance shall not release the Supplier from liability for any hidden or concealed defects of the Goods or Services. The Supplier shall be entitled to issue an invoice to MSD only after receiving a written acceptance of the Goods or Services in question, unless agreed otherwise in an Agreement.

## **7. RISK**

- 7.1. Unless specified otherwise in an Agreement, the Supplier shall bear the risk of accidental damage or destruction of Goods and/or Services until due and unconditional acceptance by MSD.

## **8. PRICE AND PAYMENT TERMS**

- 8.1. MSD shall pay the Supplier the price for the Goods or Services agreed in the Agreement. The Price shall be final and shall be deemed to include any and all costs on the part of the Supplier. The Supplier shall not be entitled to charge MSD any costs in addition to the Price, unless approved by MSD beforehand in writing.
- 8.2. In case of repeated or periodic payments (e.g. monthly fees), the Price shall be paid according to an agreement between the Parties in the form of the Agreement. If the Price is to be paid on the basis of a budget, rate card etc., the Price shall always include only items agreed in the Agreement calculated in line with the formula agreed before the Parties in the Agreement.
- 8.3. The Supplier shall be entitled to issue an invoice for any Goods and/or Services rendered in line with conditions specified in the individual Agreement, otherwise not sooner than after receiving a written acceptance of the Goods and/or Services from MSD.
- 8.4. All invoices shall specify the number of the applicable Purchase Order and all information prescribed by applicable legislation, i.e. especially:
  - a) invoice number,
  - b) identification of the Parties (especially registered name, registered address, identification number, VAT identification number);
  - c) date of invoice issuance;
  - d) date of taxable performance;
  - e) performance rendered (Goods or Services);
  - f) (unit) price without VAT,
  - g) number of units invoiced;
  - h) VAT rate;
  - i) total price without VAT;
  - j) total VAT;
  - k) total price including VAT;

as well as other information prescribed by applicable domestic or international legislation.

- 8.5. MSD shall be entitled to reject any invoice not compatible with the statutory requirements. In such case, the Supplier shall issue a corrected invoice compatible with all contractual and statutory requirements.
- 8.6. All invoices issued by the Supplier to MSD shall be paid within 90 (in words: ninety) days from the reception of an invoice compliant with all statutory and contractual requirements. The maturity period of 90 days does not start until MSD receives a perfect invoice for the Goods or Services invoiced.
- 8.7. Advance payments or payments in installments shall only be possible if so explicitly agreed between the Parties in an Agreement.
- 8.8. The Supplier shall be entitled to claim statutory default interest if MSD defaults on the payment of an invoice issued for duly delivered Goods or Services in line with the provisions of the Agreement.
- 8.9. MSD shall be entitled to unilaterally offset any of its mature claims against the Supplier against any sums owed to the Supplier. The Supplier shall be entitled to offset its claims against MSD only based upon a previous written agreement with MSD.

## **9. DEFECTIVE PERFORMANCE**

- 9.1. Goods or Services supplied by the Supplier in violation of any of the warranties specified in Article 5 above shall constitute defective performance and a breach of the Agreement.
- 9.2. If defective performance constitutes a material breach of the applicable Agreement, MSD shall be entitled to, at its own and absolute discretion:
  - a) cancel of the Purchase Order and withdrawal from the Agreement; or
  - b) demand that perfect Goods or Services should be delivered instead of the defective ones by the Supplier by a reasonable deadline set by MSD exclusively at the Supplier's expense and risk; or
  - c) demand that the Goods or Services should be repaired/rectified/corrected by the Supplier by a reasonable deadline set by MSD exclusively at the Supplier's expense and risk; or
  - d) keep the defective performance and apply an appropriate discount on the Price to be paid in consideration of such defective Goods and/or Services.

MSD shall notify the Supplier about the option selected without undue delay after discovering the defects of the performance rendered.

- 9.3. If defective performance does not constitute a material breach of the applicable Agreement, MSD shall be entitled to, at its own and absolute discretion:

- a) demand that perfect Goods or Services should be delivered instead of the defective ones by the Supplier by a reasonable deadline set by MSD exclusively at the Supplier's expense and risk; or
- b) demand that the Goods or Services should be repaired/rectified/corrected by the Supplier by a reasonable deadline set by MSD exclusively at the Supplier's expense and risk; or
- c) keep the defective performance and apply an appropriate discount on the price to be paid in consideration of such defective Goods and/or Services.

MSD shall notify the Supplier about the option selected without undue delay after discovering the defects of the performance rendered. Failure on the part of the Supplier to meet the reasonable deadline as per clauses a) and b) of this paragraph shall constitute a material breach of contract authorizing MSD to cancel the applicable Purchase Contract and withdraw from the Agreement.

- 9.4. In addition to the above-specified rights, MSD shall be entitled to claim full compensation for any damage or harm suffered as a result of defective performance on the part of the Supplier pursuant to applicable law.
- 9.5. The Supplier shall be liable for any defects of Goods and/or Services occurring or discovered within 12 months from their acceptance by MSD.

## **10. LIABILITY AND INDEMNITY**

- 10.1. The Supplier shall compensate MSD for any damage and profits lost suffered by MSD as a result of breach of any of the warranties specified in Article 5 above or as a result of any breach of any contractual duty of the Supplier deriving from these General Terms or an Agreement. This shall include compensation of any costs reasonably incurred by MSD in relation to the collection of the compensation from the Supplier, especially reasonable attorney's fees and other costs related to any court or similar official procedure or collection procedure. The scope of damage and compensation shall be determined in line with applicable laws.
- 10.2. Additionally, the Supplier shall compensate MSD for any damage and profits lost suffered by MSD as a result of:
  - a) any negligent or willful act or omission of the Supplier or any of its employees, agents or subcontractors;
  - b) any violation by the Supplier or any of its employees, agents or subcontractors of any law (including without limitation labor, social security, tax laws and laws against unfair competition);
  - c) any failure of the Supplier to obtain required consents, authorizations, permits or releases for use of the promotional materials or any infringement by any promotional material of any law (including without limitation labor, social security, tax laws and



laws against unfair competition, patent right, copyright, trade secret right or other proprietary rights of any third party);

- 10.3. In the maximum scope permitted by applicable law, MSD shall not be liable for any damage or loss regardless of whether arising from negligence, breach of contract, warranty, strict liability or otherwise, except the liability for gross negligence or willful breach of contract including fraud.
- 10.4. The Supplier shall indemnify MSD or any Affiliate against any and all liabilities, costs, expenses damages or losses (including legal fees and expenses) incurred by MSD or any Affiliate arising out of or in connection with any claim made by any third party for actual or alleged infringement of such third party's intellectual property rights or any other rights in connection with the supply or use of the Goods or Services if such claim is caused by the Supplier acting in in any manner in bad faith or in breach of any contractual or statutory duty owed to MSD, any Affiliate or any third party or by violation of any regulatory rules or legislation.

## **11. TERMINATION**

- 11.1. Any Agreement may be terminated by written agreement of the Parties.
- 11.2. Agreements may be terminated or withdrawn from, and Purchase Orders may be cancelled only in cases specified in these General Terms and in line with other terms of a specific Agreement.
- 11.3. Unless agreed otherwise in an applicable Agreement, an Agreement may be terminated by MSD by notice with immediate effect in the following cases:
  - a) the Supplier is held to be bankrupt by a competent court, or insolvency procedure is initiated by the Supplier (including asking a court for portion from creditors and similar motions initiating or preceding court proceedings regarding the Supplier's imminent bankruptcy);
  - b) defective performance, as specified in paragraphs 9.2 and 9.3 of these General Terms;
  - c) failure on the part of the Supplier to maintain, at all times, appropriate insurance as per Article 16;
  - d) breach by the Supplier of duty of confidentiality as specified in Article 17 of these General Terms;
  - e) breach by the Supplier of duty to comply with legal and ethical standard as per Article 14 of these General Terms;
  - f) breach of duty by the Supplier to allow an audit under Article 13 of these General Terms;
  - g) failure to deliver or delayed delivery as per paragraphs 6.3 and 6.4 of these General Terms;

h) any other material breach of contract on the part of the Supplier as understood by valid Czech laws and case law.

11.4. Termination of an Agreement or withdrawal from an Agreement shall not prejudice any other rights the Parties may have under an Agreement or under applicable law (especially the right to claim damages).

## **12. INTELLECTUAL PROPERTY**

12.1. By concluding an Agreement and rendering performance thereunder, the Supplier transfers the rights to own, use, transfer or exercise any other transferrable right pertaining to any such performance to MSD within the maximum scope permitted by law. Such transfer is not effected free of charge but rather the fee due to the Supplier for such intellectual property or other rights is already included in the agreed Price.

12.2. In cases, where specific intellectual property rights cannot be fully transferred to MSD by the Supplier due to statutory limitations, such intellectual property rights shall be transferred by Agreement to the maximum legally permissible scope and the Supplier shall grant MSD a license to exercise the remainder of such intellectual property rights in the maximum legal scope, without any limitations, in order to grant MSD maximum scope of rights to the Goods and/or Services rendered. Whenever necessary, the Supplier shall sign related documents, deeds, grants, licenses or similar documents at the request of MSD. Such licenses shall not be granted free of charge, rather, the royalties paid thereon are already included in the Price for the applicable Goods or Services as per the Agreement.

12.3. The provisions of paragraphs 12.1 and 12.2 above shall apply analogously to any derived or subsequent works or items of intellectual property based upon the intellectual property transferred or licensed to MSD as a part of provision of Goods and/or Services so that MSD may, in each case, enjoy the widest scope of rights and privileges in respect of the Goods and/or Services it purchased.

12.4. It is not the purpose of the Agreement to grant the Supplier any license in respect of any intellectual property of MSD. Therefore, nothing in the Agreement shall be construed or interpreted as a grant of any rights, licenses or other interest in any intellectual property of MSD provided or disclosed to the Supplier as a part of concluding the individual Agreements, rendering performance thereunder or otherwise. All trademarks, patents, copyrights, utility models, logos, know-how, trade secrets or other items of intellectual property belonging to MSD or any of its Affiliates, whether registered or not, shall remain the property of MSD or the applicable Affiliate and no right in relation thereto may be exercised by the Supplier without a previous written approval from MSD. This includes also the use the name or logo of MSD or any Affiliate for promotional purposes of the Supplier, references etc.

## **13. RECORDS AND AUDIT**

13.1. The Supplier undertakes to keep clear, accurate, complete and up-to-date information and documents related to:

- a) all matters regarding the provision, production, acquisition, and title to any Goods and/or Services provided to MSD, as well as any collateral or related performances, as prescribed by applicable laws and regulatory standards, in order to be, at any moment, able to demonstrate at a request from MSD that all the Goods and/or Services were supplied to MSD in compliance with applicable laws and standards or for any other appropriate reason requested by MSD;
  - b) the performance of any and all duties deriving for the Supplier from any Agreement, including information and documents proving the Supplier's compliance with any and all its warranties hereunder;
  - c) the compliance on the part of the Supplier with any and all legal, statutory, regulatory and contractual duties including, *inter alia*, duties owed to tax, customs or regulatory agencies, as well as the Supplier's duties in the field of ethical business practices as specified in Article 14 of these General Terms; and
  - d) the calculation of any price or sums invoiced to MSD in relation to the provision of Goods or Services pursuant to an Agreement.
- 13.2. The Supplier shall keep the records as per paragraph 13.1 at least for periods prescribed by applicable legal standards and in any case as long as any claims may be raised against the Supplier, MSD or any Affiliates in relation to any alleged breach or violation of statutory or contractual duty for MSD to be able to raise any claim or to defend against any such claims or allegations using the records, information or documents maintained by the Supplier.
- 13.3. On reasonable notice from MSD, the Supplier shall make available the records, information and/or documents specified in this Article to MSD or any of its Affiliates, agents, advisors or representatives, in order for MSD to verify the Supplier's compliance with its obligations deriving from any Agreement, the calculation of any sums invoiced or to be paid by MSD to the Supplier or the Supplier's compliance with any of its warranties specified in any Agreement, as well as its duties owed to public agencies and regulatory bodies and the rules of ethical business practice and compliance as herein specified.
- 13.4. The rights of MSD under the preceding paragraph shall include the right of MSD, its Affiliates, agents, advisors or representatives to perform an audit of the records, information and documents specified in this Article on the premises of the Supplier for the above-specified purpose. This shall also include the right to inspect the business premises of the Supplier in order to check compliance with the Seller's duties, representations and warranties as herein specified.
- 13.5. Any information disclosed to MSD according to the preceding paragraphs shall be treated in accordance with the provisions of Article 17 hereof and used exclusively for the purpose of verifying the calculation of any sums invoiced or to be paid by MSD to the Supplier, or compliance on the part of the Supplier with its duties deriving from any Agreement, its statutory or regulatory duties, ethical business practice, or to be used by MSD or any Affiliate to prove their compliance with their duties, to prove the title to the Goods and/or Services, to defend against any third-party claim or to comply with their statutory, contractual or regulatory duties.

- 13.6. Data Integrity. Any documentation or data relevant to activities performed, including without limitation any Good Manufacturing Practice 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.

#### **14. ETHICAL BUSINESS PRACTICE**

- 14.1. The Supplier endeavors to hold itself and its suppliers 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 system and conduct of business in an ethical manner. Without limiting any of Supplier's other obligations hereunder, and without conflicting with or limiting any of the warranties, obligations or other provisions expressly set forth elsewhere in the Agreement, the Supplier agrees that it will abide by letter and spirit of Business Partner Code of Conduct as in effect from time to time, a copy of which is available at [https://www.msd.com/wp-content/uploads/sites/9/2020/04/BPCC\\_v2\\_en-EX-US\\_CA.pdf](https://www.msd.com/wp-content/uploads/sites/9/2020/04/BPCC_v2_en-EX-US_CA.pdf).
- 14.2. Without limiting any of the Supplier other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in the Agreement, including without limitation its obligations 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 the Agreement, on the other hand, such other provision of the Agreement shall control (but only to the extent of the conflict).

#### **15. GOOD MANUFACTURING PRACTICE**

- 15.1. 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 Act No 378/2007 Coll., on Pharmaceuticals and on Amendments to Some Related Acts (Act on Pharmaceuticals), as amended).
- 15.2. 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 with appropriate evidence of the Supplier's compliance with this sub clause.
- 15.3. The Supplier shall immediately notify MSD if at any time its ČIA (Český institut pro akreditaci, o.p.s.)/other accreditation (where applicable) is withdrawn or suspended, and any such withdrawal or suspension shall entitle MSD to terminate the Agreement forthwith.

#### **16. EXCLUDED PERSONS AND ORGANIZATIONS**

- 16.1. The Supplier confirms that, at the time of concluding the contract and for the duration of the contract, it does not have a business relationship with any person or organization that are (1) included in the U.S. Department of Health and Human Services, Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (<https://exclusions.oig.hhs.gov/>) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (<http://www.sam.gov>); or (3) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs, including under 21 U.S.C. 335a (<https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/compliance-actions-and-activities/fda-debarment-list-drug-product-applications>)

## **17. INSURANCE**

- 17.1. The Supplier declares and warrants that it has an appropriate and effective insurance policy to cover its liabilities deriving from any Agreement as of the day of conclusion of the applicable Agreement.
- 17.2. The Supplier shall notify MSD of any changes of the applicable insurance (e.g. cancellation, non-renewal, changes, new insurance policy etc.) in writing without undue delay.
- 17.3. On MSD's request, the Supplier shall provide MSD with a copy an insurance certificate summarizing the terms of the insurance under paragraph 16.1 above as in effect from time to time.

## **18. CONFIDENTIALITY**

- 18.1. The Parties undertake to keep confidential all facts and circumstances regarding each other's business of which they learn in connection the performance of an Agreement, especially as regards any and all business and trade secrets and know-how, whether handed-over intentionally or learned of accidentally, in written, electronic, oral or other form and shall only use such information exclusively for the purpose of performing the Agreement or complying with their statutory or regulatory duties as specified below.
- 18.2. Confidential information, as described above, may only be disclosed to third parties based upon a previous written consent from the other Party. Parties shall be entitled to disclose confidential information to their employees, officers and professional advisors (especially legal or tax consultants) strictly on a need-to-know basis and only where absolutely necessary for the compliance with their legal duties or for the rightful protection or exercise of their rights (including rights deriving from any Agreement). Any employees, officers or consultants must be bound by applicable duty of confidentiality within the same extent as the Parties.
- 18.3. The general duty of confidentiality shall not apply to any information:
- a) known to the receiving Party prior to being received from the disclosing Party;
  - b) developed independently by either Party without using any information disclosed by the other;

- c) lawfully obtained from a third-party through no breach of any law or regulation or any duty of confidentiality;
- d) that becomes publicly known through no fault of either of the Parties;
- e) that must be disclosed pursuant to any law, statute, regulation or generally binding legal rule or an order from a court, public agency or regulatory authority, provided that in such case, the Party ordered to make such disclosure shall – unless prohibited from doing so by the ordering authority – notify the other Party of such duty and shall collaborate in good faith with the other Party to limit the scope of disclosure to the necessary extent.

18.4. The duty of confidentiality within the above-specified scope shall survive the termination or expiration of the Agreement.

## **19. DATA PROTECTION**

- 19.1. The Parties shall comply and adhere to any and all privacy and data protection laws and regulations related to the performance of their duties under the Agreement, including especially the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and the Czech Act No. 110/2019, on personal data processing, as amended.
- 19.2. MSD shall be entitled to audit the Supplier's records, documents, information and procedures in order to verify the Supplier's compliance with the duty to comply with data protection legislation as per Article 13 hereof.

## **20. CONTINGENCY AND DISASTER RECOVERY PLAN**

- 20.1. The Supplier shall have a sufficient and reasonable contingency and disaster recovery plan in place throughout the duration of any Agreement designed to minimize any interruption or disruption of supply of Goods and/or Services to MSD.
- 20.2. The **contingency** and disaster recovery plan must be, to MSD's satisfaction, appropriate in relation to the nature and importance of the Goods and/or Services supplied. MSD shall be entitled to demand a copy of the current version of the plan at any time.

## **21. SUBCONTRACTING AND ASSIGNMENT**

- 21.1. The Supplier shall be obliged to render any Services and/or Goods hereunder through its own employees and workers. It shall only be authorized to render any performance hereunder through a subcontractor if MSD approves such subcontractor in writing beforehand. In such case, the Supplier shall be liable for the compliance with its duties deriving from any Agreement, as well as for the compliance with any and all representations and warranties towards MSD as if the Supplier had rendered such Goods and/or Services itself.

- 21.2. The Supplier shall not be entitled to assign any of its rights or obligations under any Agreement or any Agreement as a whole to any third party without a previous written approval from MSD.
- 21.3. MSD shall be entitled to assign any of its rights deriving from an Agreement to any of its Affiliates without the need of approval from the Supplier.

## **22. FORCE MAJEURE**

- 22.1. 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 that cannot have been foreseen and cannot be reasonably averted, 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.
- 22.2. A Party may invoke the force majeure clause above only if it immediately informs the other Party in writing of an occurring force majeure event.
- 22.3. If force majeure prevents either Party from meeting its obligations for more than 1 month, the other Party may terminate the Agreement with immediate effect.

## **23. COMPLIANCE WITH LAWS**

- 23.1. Supplier shall, and shall cause each of its officers, directors, employees, contractors, temporary workers, subcontractors, agents and other representatives to carry out all activities hereunder in compliance with all applicable laws, governmental regulations, rules, requirements, ordinances, directives and other requirements of federal, supranational, national, state, provincial and local authorities. Supplier acknowledges that it is MSD's intent that all activities hereunder shall comply with all applicable guidelines established by applicable pharmaceutical, healthcare, consumer products and veterinary industry associations and organizations, as the case may be, and all laws applicable to the conduct of scientific, educational and other activities applicable to the Services/Goods to be provided hereunder. Supplier is not authorized to, and Supplier agrees it will not knowingly, take any action in the name of or otherwise on behalf of MSD or any Affiliate which would violate any of the foregoing. Supplier shall notify MSD if it becomes aware of any noncompliance with any such laws by Supplier or its representatives, or any of them.
- 23.2. Supplier represents and warrants that it is (and agrees that at all times during the term of the Agreement it shall be) authorized to conduct business in each country, state and locality in which it must be so authorized to provide the Services/Goods hereunder.
- 23.3. Supplier shall pay and provide all salaries, compensation and benefits to which its employees, officers and directors shall be entitled and, in accordance with applicable laws and Supplier's policies and procedures, pay all expenses, federal, supranational, national, state, provincial and local payroll taxes, FICA contributions, FUI, SUI and/or other applicable local amounts relating to Supplier's employees, officers and directors.

## **24. PUBLICITY**

24.1. 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's company or representative name, endorsement, direct or indirect quote, code, drawing, logo, trademark, specification, picture, or Goods/Services delivered without the prior written consent of MSD, which consent may be withheld at MSD's absolute discretion.

## **25. SEVERABILITY**

25.1. If any provision or part, provision, representation or warranty of these General Terms or an Agreement is held by a competent court or authority to be invalid, ineffective or unenforceable, 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.

25.2. In such case, the parties shall negotiate, in good-faith, to develop a structure of new provisions, valid, effective and enforceable, the economic and legal effect of which is as close as possible to the economic and legal effect of the original provisions.

## **26. WAIVER**

26.1. No single or repeated waiver for any period of time by either MSD or the Supplier of any of its rights hereunder shall prejudice its ability to enforce any other rights accrued or accruing under the Agreement or the same right on another occasion.

26.2. No failure on the part of either of the Parties to exercise their rights on a specific occasion shall be deemed to constitute a general waiver of such rights for the future.

## **27. CHANGE OF GENERAL TERMS**

27.1. MSD shall be entitled to modify, amend, update or otherwise change these General Terms unilaterally at any time. In such case, MSD shall notify the Supplier of any such change of General Terms in writing.

27.2. Any changes to General Terms shall be effective for all Purchase Orders placed after the change of General Terms is notified to the Supplier.

27.3. In case of Services or Goods provided on an ongoing, regular or repeated basis, applicable Agreements shall be governed by an updated version of these Terms from the day of the Supplier being notified of such change. If the Seller disapproves of the change of General Terms, the Supplier shall be entitled to terminate the applicable Agreement(s) by 3 months' written notice.

## **28. HEADINGS**



28.1. The headings used in these General Terms and the Agreement as a whole are for convenience only and are not in any way intended to affect the construction of any clause, right or obligation contained in the Agreement.

## **29. GOVERNING LAW AND FORUM**

29.1. These General Terms and the Agreement as a whole shall be governed by the laws and regulations of the Czech Republic, especially Act No. 89/2012, Civil Code, as amended.

29.2. Any disputes between the Parties arising out of or related to any Agreement shall be heard and decided by the District Court of Prague 5 or the Municipal Court in Prague, as applicable. MSD shall, however, be entitled to bring any lawsuit also before a court determined according to generally applicable Czech rules of jurisdiction.