



## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

**Merck Sharp & Dohme B.V. (MSD B.V.)**

**Merck Sharp & Dohme International Services B.V.  
(MSDIS B.V.)**

**MSD Biotech B.V.**

Registered on 1 February 2024  
Chamber of Commerce  
numbers 34028461 (MSD B.V.)  
34086169 (MSDIS B.V.)  
75977885 (MSD Biotech B.V.)

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. GENERAL**

- 1.1 These General Terms and Conditions of Purchase are a part of and are applicable to every order and/or contract ("Order") in which MSD B.V., MSD Biotech B.V., and/or MSDIS B.V. (collectively or individually: "the Buyer") is buyer/client for the delivery of goods or the provision of services (collectively: "Goods"). Where appropriate, third parties may act on behalf of the Buyer.
- 1.2 Applicability of general terms and conditions used by the Supplier is explicitly rejected. Terms and conditions other than those stated in the Order or in these General Terms and Conditions of Purchase are only part of the Order in question if and in so far as both parties agree as such in writing.
- 1.3 Changes in the provisions of the Order are only binding if agreed by the parties in writing. Nothing obliges the Buyer to purchase Goods exclusively from the Supplier or to purchase a minimum volume of Goods from the Supplier.
- 1.4 In the event of conflict between provisions of these General Terms and Conditions of Purchase and provisions in the Order, the provisions in the Order prevail.

### **2. ACCEPTANCE**

- 2.1 An Order is deemed to have been accepted by the supplier to which such Order is given in writing, by fax or by e-mail ("the Supplier"), unless the Supplier notifies the Buyer in writing, by fax or by e-mail within 8 business days after the date on which the Order was issued or within another time period set in the Order that it does not accept the Order.
- 2.2 For on-call contracts, in each instance the Order is concluded at the moment that the order for a delivery or partial delivery under the on-call contract is sent by the Buyer.
- 2.3 If the performance of the Order involves the use of designs, drawings, models, specifications, instructions, inspection procedures, etc. provided by or approved by the Buyer, these shall constitute a part of the Order.

### **3. DELIVERY PERIOD, DELIVERY AND OUTSOURCING TO THIRD PARTIES**

- 3.1 The Order will stipulate the delivery period or delivery deadline for the Goods. The delivery period commences on the day the Buyer issues the Order in writing, by fax or by e-mail. The delivery period is a strict deadline; upon exceeding the delivery period, the Supplier is in default without further notice. In the event of an impending risk of the delivery period or delivery date not being met, the Supplier must notify the Buyer in writing immediately. Any such notification does not otherwise affect the Buyer's rights if the delivery period is exceeded. In the event that due to extraordinary circumstances the Buyer is unable to receive the Goods at the agreed time, then at the Buyer's request the Supplier will postpone the delivery for a reasonable period to be stipulated by the Buyer.
- 3.2 Except where otherwise stated in the Order, delivery of the Goods is DAP (Delivered At Place) to the Buyer's address in accordance with the applicable provisions of the most recent version of Incoterms published by the International Chamber of Commerce as valid

on the date of the Order ("the Incoterms"). The Supplier must mark the Goods as destined for the Buyer, and store the Goods safely and insure them until the moment of delivery to the Buyer. The Supplier will neither provide or exhibit the Goods to third parties, nor grant third parties access to the Goods, except with the Buyer's prior written permission.

- 3.3 The Supplier will provide all agreed documentation to the Buyer prior to or upon delivery. The Buyer is free in its use of this documentation. This free use includes the copying of the documentation for the Buyer's own use.
- 3.4 The Buyer is entitled to return non-agreed deliveries or partial deliveries of Goods at the Supplier's expense and risk. In the event of delivery of quantities that differ from the quantities as agreed and the difference is greater than customary in the industry in question, the Buyer may reject the excess (and in the event that less was delivered than agreed, reject the entire delivery) and return it at the Supplier's expense and risk.
- 3.5 The Supplier may not outsource work to a third party without the prior written permission of the Buyer. The Supplier remains fully responsible and liable for work performed by third parties on the instructions of the Supplier (including work by independent contractors and agents), and will indemnify the Buyer for all claims of third parties ensuing from or relating to work performed or goods used or supplied by third parties on the instructions of the Supplier (including ultimate liability for payment of taxes and social insurance premiums under the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act.

#### 4. **TRANSFER OF OWNERSHIP AND RISK**

- 4.1 The ownership of the Goods shall transfer unencumbered and unconditionally to the Buyer at the time of transfer of the risk for the Goods as stipulated in the Incoterms. Immediately after the aforementioned time, the Supplier will provide the Buyer with a complete set of original shipping documents (bill of lading, master's receipt or other applicable documents), or, if agreed, the equivalent data file.
- 4.2 If for the purposes of the Order the Buyer makes partial payments for Goods or components of Goods prior to delivery of the Goods, the ownership of the Goods/components of goods passes to the Buyer upon delivery of the Goods/components to the Supplier or, in cases of manufacturing, at the time that the Supplier commences the manufacturing; the risk for these Goods passes to the Buyer at the time stipulated in the Incoterms.

#### 5. **PACKAGING AND TRANSPORT**

- 5.1 The Supplier will ensure that the Goods are properly packaged and secured and (where Supplier arranges for shipment) shipped in such a manner that when transported they reach the place of delivery in good condition and can be unloaded there safely. The Supplier is responsible for its own compliance and the compliance of carriers contracted by or on behalf of the Supplier with national, international and/or supranational provisions relating to packaging, safety and shipment.
- 5.2 Unless agreed otherwise in writing, all packaging (excepting returnable packaging) becomes property of the Buyer upon delivery. Returnable packaging must be clearly identified as such by the Supplier. Said packaging will be returned at the Supplier's expense and risk to a destination to be specified by the Supplier.

**6. CHANGES**

- 6.1 The Buyer is entitled to require that the scope and/or qualities of the Goods to be delivered be changed. The Buyer is also entitled to make changes in the designs, drawings, models, instructions, specifications and the like relating to the Goods to be delivered.
- 6.2 If, in the opinion of the Supplier, such changes have consequences for the fixed price and/or delivery period agreed, then prior to implementing the changes it will inform the Buyer of these consequences in writing as quickly as possible, but no later than 8 days after the notification of the desired change. If these consequences for the price and/or delivery period are, in the opinion of the Buyer, unreasonable in view of the nature and scope of the change, the Buyer is entitled to cancel the Order or to terminate it in part or in full, without judicial intervention, by notifying the Supplier in writing. Cancellation or termination pursuant to this article does not entitle either of the parties to compensation of any damages.

**7. PRICES AND PAYMENT**

- 7.1 The prices stated in the Buyer's Order are in euro and include all taxes and levies and other costs required for the fulfilment of Supplier's obligations, and qualify as fixed prices unless agreed otherwise in the Order. Additional costs not covered in advance by the Buyer's written Order are not eligible for reimbursement.
- 7.2 Unless agreed otherwise in writing, payment for the Goods delivered will be made for "large" companies within 90 days after the date of receipt of the invoice in question; for "small" or "midsize" companies (as defined in art. 2:396 and 397 BW) within 60 days after the date of receipt of the invoice in question. Payment does not entail acceptance of the Goods in question. If the Buyer detects a fault in the Goods, the Buyer is authorised to suspend payment and may deduct amounts that the Supplier owes to the Buyer from the amount to be paid.

**8. WARRANTIES, LIABILITY AND INDEMNIFICATION**

- 8.1 The Supplier warrants that:
- (a) the Goods (i) are new, of good quality and are free of defects, (ii) are entirely in accordance with the Buyer's requirements, specifications, conditions, drawings, samples, operational requirements and/or other information provided by the Buyer, (iii) are free of design flaws, (iv) are complete and suitable for the business purpose and use indicated in the information provided by the Buyer, and (v) do not infringe any intellectual property right of third parties, this also in regard to the aforesaid business purpose and use, and that the Supplier is the owner of the intellectual property rights or holds sufficient rights to transfer the goods free of obligations towards third parties.
  - (b) in reference to the Goods, the provisions of law and governmental provisions of the destination country have been met and that all approval documents required by governmental institutions have been obtained and will be provided to the Buyer, that the Goods meet the requirements of the safety and quality standards generally maintained within the sector in question, and that the Goods will be provided with the approvals and certificates for use and that they will be accompanied, in so far as necessary for the health and safety of persons or property, with the necessary and clear operating instructions, safety instructions and warnings.

- 8.2 The Supplier is liable for and indemnifies the Buyer against all claims of third parties (including Buyer's employees) in relation to acts or omissions of the Supplier and/or the third parties contracted by the Supplier in the performance of the Order or failure to fulfil obligations towards the Buyer (including the warranties given above under (a) and (b)), and in regard to any infringement or alleged infringement of third-party intellectual property rights in relation to the Goods or their use.
- 8.3 The Supplier will adequately insure the liability as referred to in this article and will allow the Buyer to review the policy upon request.

## 9. **ATTRIBUTABLE FAILURE AND TERMINATION**

- 9.1 If the Supplier fails to fulfil to the letter any obligation resting on it under the Order, or if the Buyer can reasonably conclude that the Supplier will fail to fulfil any such obligation, then without notice of default the Buyer may, by notice in writing, suspend all its obligations towards the Supplier, cancel the Order and/or terminate the Order in whole or in part, without judicial intervention, retaining all other rights accruing to it.
- 9.2 In the event of full termination, in exchange for restitution of amounts already paid and costs of transport, the Buyer will return Goods already delivered to the Supplier, at the Supplier's expense and risk. In the event of partial termination, the Buyer will pay a reasonable portion of the price agreed for the Goods already delivered and accepted by the Buyer.
- 9.3 In so far as the Buyer elects performance of the Order, the Supplier is obliged to perform the Order promptly and in its entirety, and to replace or repair any rejected Goods at its own expense and risk. If the Supplier does not replace or repair said Goods within a reasonable time period to be stipulated by the Buyer, or if in consideration of the safety and continuity of the Buyer's business operations there is no sufficient opportunity for replacement or repair by the Supplier, and likewise in the event that continuing delays arise in the performance of the Order or part thereof, the Buyer is authorised to effect replacement, repair, delivery or performance in another manner at the Supplier's expense and risk without this affecting the warranties stipulated by the Supplier.
- 9.4 The Buyer is also authorised to cancel the Order or dissolve it in whole or in part with immediate effect, without notice of default and without judicial intervention by means of a written statement, if the Supplier applies for suspension of payments, provisional suspension of payments or bankruptcy, is declared bankrupt in a judgment that has become irrevocable, or if the Supplier's business has been liquidated or terminated other than for the purposes of a merger or business split. If the Buyer terminates the Order for any such reason, the Buyer will never be obliged to pay any damages, without prejudice to the other rights accruing to the Buyer, including the right to full compensation of damages and refunding of the purchase price.

## 10. **NON-ATTRIBUTABLE FAILURE**

If one of the two parties fails to meet its obligations (including warranty obligations) and this failure is neither attributable to any fault on the part of that party nor lies within that party's realm of risk pursuant to the law, juristic act or generally accepted practice, that party is absolved from the fulfilment of those obligations and must so notify the other party immediately. The other party will then be authorised to terminate the Order in whole or in part or to suspend the performance of its obligations.

**11. CONFIDENTIALITY AND PUBLICITY**

- 11.1 The Supplier may not disclose the Order or any know-how or other information that becomes known to the Supplier in the performance of the Order to third parties or use this know-how and information on its own behalf or that of third parties without the Buyer's prior written permission. Wherever any such know-how and information is not required, or no longer required, for the performance of the Order, the Supplier will immediately return it and all copies thereof to the Buyer, or where return is not reasonably possible, destroy it and all copies thereof.
- 11.2 The Supplier will not refer to the partnership with the Buyer or to any Order in publications or advertisements in newspapers, magazines, reports, goods letters, brochures or other publications without the Buyer's prior written permission.

**12. INTELLECTUAL PROPERTY RIGHTS**

New intellectual property rights for Goods manufactured by the Supplier for the Buyer as part of an Order, as well as any improvements and additions thereto, shall accrue to the Buyer or be transferred to the Buyer. In so far as the transfer of such rights requires any further action, the Supplier will cooperate with the transfer of these intellectual property rights upon the Buyer's first request. The Supplier waives its personality rights to intellectual property created by the Supplier as part of the Order.

**13. TRANSFER OF RIGHTS AND OBLIGATIONS**

Transfer of rights and obligations by a party to a third party requires the prior written permission of the counter-party; in such an event, the transferring party will ensure that the Order is fulfilled by the third party in question. The Buyer is nonetheless authorised to instruct the Supplier to deliver the Goods to another MSD company, and to transfer all its related rights and obligations to that other company. The Supplier herewith grants its permission for such transfer in advance.

**14. RESOURCES**

- 14.1 Materials, designs, drawings, models, instructions, specifications and other resources either provided by the Buyer or acquired or manufactured by the Supplier at the Buyer's expense shall remain the property of the Buyer or become the property of the Buyer upon acquisition or manufacture.
- 14.2 The Supplier is obliged to designate the resources referred to in the preceding paragraph as the identifiable property of the Buyer, to maintain these resources in good condition and to insure them, at its own expense, against all risks as long as they are in the Supplier's possession.
- 14.3 Changes to, or departures from the resources referred to in paragraph 1 of this article, as well as using these resources for or in relation to any purpose other than delivery to the Buyer, is only permitted with the Buyer's prior written permission. Approval is without prejudice to any warranty obligation of the Supplier.

**15. INSPECTION AND VERIFICATION**

- 15.1 The Buyer may inspect the Goods. If inspection does not take place at the Supplier's location, then after delivery the Buyer may inspect the Goods to verify aspects such as (lack of) damage, size, quantity and weight.

- 15.2 If it is agreed that the Buyer will inspect the Goods at the Supplier's location prior to delivery:
- (a) the Supplier will keep the Goods ready for inspection at such time that in observance of the provisions under (b), they can be inspected before the expiry of the delivery deadline. The Supplier will notify the Buyer of this time in writing;
  - (b) the Buyer will start the inspection within two weeks after the receipt of the notification referred to under (a), or within two weeks after the Goods are ready for the Buyer's inspection (whichever is later), and will complete the inspection within two weeks;
  - (c) if required, the Supplier will provide the Buyer with a suitable space and reasonable assistance in terms of personnel and equipment for the purposes of the inspection, at no cost to the Buyer;
  - (d) if required by the Supplier, the inspection will be conducted in the presence of the Supplier or an expert designated by the Supplier;
  - (e) if the Buyer rejects the Goods, then without prejudice to all other rights and claims the Buyer may require that the Supplier immediately present the missing or repaired/replacement Goods for approval.
- 15.3 If the Supplier fails in the performance of an action by which it must cooperate with an inspection or verification, the resulting costs will be borne by the Supplier. If the Goods are inspected on the basis of paragraph 2 under (e), the costs involved will be borne by the Supplier.
- 15.4 If in the course of an inspection the Goods are damaged or consumed, the Supplier has no claims against the Buyer in relation thereto if the Goods are fully or partially rejected and the Buyer has no claims against the Supplier in relation thereto if the items are approved.
- 15.5 If after delivery the Buyer does not accept the Goods upon inspection, then within two weeks after being notified thereof by the Buyer the Supplier will collect the Goods from the Buyer at its own expense. If the Supplier fails in the fulfilment of this obligation, the Buyer is authorised to have the goods removed from its location at the Supplier's expense without prejudice to all other rights and claims.
16. **PERSONNEL, EQUIPMENT AND MATERIALS**
- 16.1 Personnel engaged by the Supplier in the performance of the Order will meet the special requirements set by the Buyer and, if no such requirements are set, the general requirements of professional competence and expertise.
- 16.2 If, in the opinion of the Buyer, any personnel are insufficiently qualified, the Buyer is authorised to order the removal of these personnel and the Supplier is obliged to replace such personnel immediately, with due observance of the provisions of paragraph 1 of this article.
- 16.3 The Buyer is authorised to inspect and approve all materials and equipment to be used by the Supplier in the performance of the Order, and to identify personnel engaged by the Supplier in performance of the Order.
- 16.4 For the application of these Terms and Conditions, "Supplier personnel" is understood to also include third parties engaged by the Supplier in the performance of the Order.

**17. SITE AND BUILDINGS OF THE BUYER**

17.1 Prior to commencing the performance of the Order, the Supplier must familiarise itself with the conditions at the Buyer's site and in the Buyer's buildings where the work is to be performed and which may influence the performance of the Order.

17.2 The Supplier will bear the expense and the risk of costs of delays in the performance of the Order resulting from the conditions as referred to here.

**18. ACTIVITIES AT THE SITE/IN THE BUILDINGS OF THE BUYER**

18.1 The Supplier will ensure that its presence and the presence of its personnel at the site and in the buildings of the Buyer will not impede the continuity of the activities of the Buyer and third parties.

18.2 Prior to commencing the performance of the Order, the Supplier and its personnel must familiarise themselves with the content of the procedures and rules applicable at the site and in the buildings of the Buyer in the areas of safety, health and environment, and must then act accordingly. If requested to do so, the Supplier and its personnel will participate in any electronic or other safety trainings provided by the Buyer.

18.3 The Buyer will provide a copy of these procedures and rules to the Supplier immediately upon request.

**19. AUDIT RIGHT**

19.1 Documents of the Supplier, including, but not limited to, financial documents, written policy guidelines and procedures, subcontractor files (including accepted and rejected quotes from bidders), original price lists, work lists, correspondence, change order files (including documentation of settlements resulting from negotiations), and all other supporting evidence necessary for documenting actual or compensable costs in conjunction with the Order (all of the above to be referred to hereinafter as: "Documents"), will be accessible for inspection and may be verified and/or copied, during business hours, by a representative of the Buyer or its authorised agent, in so far as necessary to evaluate and verify all invoices, payments or claims submitted by the Supplier or its payees in the context of the Order. Such Documents include, but are not limited to, the documents required to evaluate and verify direct and indirect costs (including overhead allocations), because these may be related to actual costs in the context of the Order.

19.2 For the purposes of such audits, inspections, investigations and evaluations, the representative or authorised agent of the Buyer will have access to the Documents for the duration of the Order and for three (3) years after the date of the Buyer's last payment to the Supplier in connection with the Order (or longer in respect of a warranty period).

19.3 The representative or authorised agent of the Buyer will have access to the Supplier's facilities and to all Documents in relation to the Goods, and will be provided with an adequate and suitable work space for the performance of the audits in accordance with this article. The representative or authorised agent of the Buyer will notify the Supplier in writing within a reasonable period of time prior to the intended audits.

**20. ETHICAL BUSINESS/ CONFLICT OF INTERESTS/ MSD'S BUSINESS PARTNER CODE OF CONDUCT/ SUPPLIER EXPECTATIONS**

20.1 In the performance of the Order, the Supplier will adhere to commercial practices in accordance with the letter and the spirit of applicable laws and regulations as follows:



- (a) All transactions in relation to the Order will be documented accurately in the books of the Supplier, and no payments will be made, whether financial or non-financial and whether directly or indirectly, to government officials or persons acting for them, or to representatives of other companies, to exert any influence on government decisions or actions in areas in which the Buyer is active.
  - (b) The Supplier will perform the agreed work in such manner that the Buyer does not suffer any loss as a result and does not lose face because of any actual or seeming conflict of interests. The Supplier will also ensure that all subcontractors adhere to this same policy in connection with the Order.
- 20.2 Buyer endeavors to hold itself and 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 Suppliers other obligations hereunder, and without conflicting with or limiting any of the warranties, obligations or other provisions expressly set forth elsewhere in these conditions, Supplier agrees that it will endeavor to 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 Buyer to demonstrate compliance with the Code.
- 20.3 The Buyer may cancel the Order if the Supplier, its employees, authorised agents, representatives, subcontractors, consultants or temporary contract parties do not adhere to the commercial practices referred to here.
- 20.4 Without limiting any of Suppliers other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in these terms, Buyer expects that Supplier will endeavor to 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>.

## 21. DATA PRIVACY

Each Party shall comply with Data Protection Law in connection with its obligations under the Order. 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 the Order. In case personal data is processed in the context of the Order the Parties shall enter into a separate Data Processing Agreement.

## 22. APPLICABLE LAW AND COMPETENT COURT

- 22.1 These General Terms and Conditions and all Orders are governed by the law of the Netherlands.
- 22.2 The application of the United Nations Convention on Contracts for the International Sale of Goods (the "Vienna Sales Convention") is explicitly excluded.
- 22.3 All disputes ensuing from or relating to these General Terms and Conditions and/or any Order will first be adjudicated by the competent judge of the District Court of Haarlem, the Netherlands, with the understanding that the Buyer reserves the right to bring any such dispute before the court competent in the Supplier's domicile.

23. **SURVIVING PROVISIONS, NON-BINDING CLAUSES**

23.1 After the Order ends for any reason, the articles of these General Terms and Conditions and the Order that by their nature are intended to survive its termination remain in force between the parties.

23.2 If these General Terms and Conditions or the conditions in the Order are or become partially invalid or unbinding, then the parties remain bound by the remainder of the General Terms and Conditions. The parties will replace the invalid or non-binding section with clauses that are valid and binding and which have consequences corresponding as closely as possible to those of the invalid or non-binding section in view of the content and purport of these General Terms and Conditions and/or the Order.

24. **AMENDMENTS**

The Buyer may amend these General Terms and Conditions of Purchase. Amendments will become effective 30 days after the amended General Terms and Conditions of Purchase have been registered at the Chamber of Commerce.

*These terms were lastly amended on 26 October 2020 adding MSD Biotech B.V., changing the applicable standard Incoterm and updating the data privacy clause.*

**Registered with the Dutch Chamber of Commerce under numbers 34028461, 34086169 and 75977885.**