

**Final**

Version: 1 February 2024

**ARTICLE 1: TERM**

**1.1** These terms and conditions shall become effective upon receipt by VENDOR and shall continue in full force and effect until modified or terminated by MSD.

**ARTICLE 2: TERMS AND CONDITIONS**

**2.1 ACCEPTANCE:** Any Purchase Order issued by MSD ("MSD Purchase Order") under these terms and conditions shall become a binding contract when accepted by acknowledgment or commencement of performance within the acceptance time frame set forth in said MSD Purchase Order.

Any different or additional terms or conditions in any VENDOR quotation, acknowledgment, or invoice shall constitute a counteroffer and no contract shall exist unless accepted in writing by MSD. These terms and conditions (while in effect) shall be incorporated into and made part of all MSD Purchase Orders and the VENDOR's performance of its obligations and each party's rights created by such MSD Purchase Orders shall be governed in accordance with these terms and conditions.

The provisions of any existing written contract between MSD and VENDOR for the same goods or services shall take precedence over any inconsistent terms or conditions contained in any MSD Purchase Order. Any inconsistent term or condition in a particular MSD Purchase Order will prevail over these terms and conditions. MSD may, from time to time, change, remove or supplement any of these terms and conditions.

**2.2 INSPECTION:** MSD shall have the right to inspect and/or test the goods and/or services of the VENDOR at all times and places. Any inspection and/or testing by MSD shall not constitute acceptance or approval of any goods or services or constitute or operate as a waiver of any defect or any rights or remedies available under the MSD Purchase Order or at law.

**2.3 QUALITY:** All purchases 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 VENDOR at VENDOR's expense for transportation both ways. VENDOR warrants that the goods sold pursuant to any MSD Purchase Order conform to all VENDOR drawings, specifications, samples and other written descriptions furnished to MSD and are new, unused and under all applicable manufacturers' warranties and unless otherwise expressly specified in the MSD Purchase Order, are fit for the purpose(s) represented by VENDOR, and are merchantable, of highest quality and workmanship and free from defects. VENDOR 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. If the VENDOR fails to replace or repair the goods, MSD shall be entitled to terminate the MSD Purchase Order and/or replace or repair such goods in which event, the VENDOR shall wholly indemnify MSD for any costs or damages incurred.

The VENDOR warrants that the services provided conform to all VENDOR specifications and descriptions furnished to MSD and are of the highest quality. The VENDOR shall allocate sufficient resources, equipment and labour so as to duly perform the services under the MSD Purchase Order to the reasonable satisfaction of MSD. If any of the services provided are not in accordance with the specifications and descriptions or not to the reasonable satisfaction of MSD, MSD may require the VENDOR by written notice to re-perform such services at no cost to MSD.

In addition to the foregoing warranties, VENDOR shall pass to MSD, any and all manufactures' warranties.

Data Integrity: Any documentation or data relevant to activities performed, including without limitation any GMP 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.

**2.4 QUANTITY:** Any goods shipped by VENDOR in excess of the quantity designated in any MSD Purchase Order or tolerance from quantity previously agreed to in writing may be returned by MSD at VENDOR's sole expense.

**2.5 PRICE:** The price of the goods and/or services shall be that stated in the MSD Purchase Order. The prices set forth in any MSD Purchase Order shall not be increased without MSD's prior written consent. If a price is not stated for any item in any MSD Purchase Order, the VENDOR shall invoice such items at their then current list price less any applicable price discounts. If at any time during the life of any MSD Purchase Order, VENDOR shall quote or sell, at lower net prices, similar goods or services under similar conditions and in similar quantities, such lower prices shall be substituted for the prices identified in said MSD Purchase Order.

Vendor will supply notice to MSD's Procurement Group when 80% of the maximum PO amount has been reached.

**2.6 PAYMENT:** If VENDOR is enabled to transact business with MSD electronically, VENDOR agrees to submit invoices in electronic form to MSD's Accounts Payable organization through the MSD approved electronic method. If VENDOR is not so enabled, it agrees to submit invoices to MSD's Accounts Payable organization at: Accounts Payable, MSD, #36 Gateway West, Singapore 189720

MSD shall make payment for invoices received pursuant hereto (or the undisputed portions of such invoices) within ninety (90) days from posting of a properly prepared invoice. In the event that any goods and/or services provided to MSD are not in accordance with the terms and conditions of the MSD Purchase Order, MSD shall be entitled to withhold payment of all or part of the VENDOR's invoice.

**2.7 PAYMENT DISCOUNTS:** If any VENDOR 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.

**2.8 SHIPMENT:** Shipment of all products purchased under any MSD Purchase Order shall be made in accordance with the terms and conditions appearing in said MSD Purchase Order.

**2.9 DELIVERY:** Delivery shall be made on the date as specified in the MSD Purchase Order. The VENDOR shall notify MSD immediately in writing of any situation which may delay or threaten to delay the timely performance of any MSD Purchase Order. All or any portion of any MSD Purchase Order may, at MSD's option, be cancelled without liability by MSD if delivery is not made as or when specified in said MSD Purchase Order and these terms and conditions. In such an event, MSD shall be entitled to purchase the goods and/or services from another vendor, in which event VENDOR shall be liable for any loss or damage incurred by MSD, including but not limited to the cost of obtaining such goods and/or services.

**2.10 INDEMNITY:** The VENDOR hereby releases and shall indemnify and hold harmless MSD and its directors, officers and employers against all loss, costs, damages and expenses (including legal fees and expenses) incurred by MSD whether direct or indirect, in respect of damages to or loss of property by reason of any default, negligence or breach by the VENDOR or its officers, employees, agents, representatives, sub-contractors and/or sub-vendors.

**2.11 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 MSD Purchase Order if such failure to perform is caused by war, fire, flood, strike, labour dispute, accident, riot, act of God, act of government authority, or other contingencies beyond the control of the non-performing party interfering with said party's ability to perform its obligation hereunder.

**2.12 ASSIGNMENT:** VENDOR shall not assign, in whole or in part, to any person, firm, corporation or government agency, its rights, interest or obligations under any MSD Purchase Order placed pursuant to these terms and conditions without MSD's prior written consent.

**2.13 RECORDS AND RIGHTS TO AUDIT:** MSD shall have the right to examine and audit the books and records of VENDOR 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 MSD Purchase Order; and (2) compliance with the provisions of the relevant MSD Purchase Order. VENDOR shall ensure that all requirements in this Clause are incorporated into all subcontracts at any tier.

**2.14 WORK ON MSD'S PREMISES:** If any MSD Purchase Order requires VENDOR's performance of labour on MSD's premises, VENDOR 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 attorneys' fees, and shall furnish a certificate from its insurance carrier showing that it carries Workmen's Compensation, Public Liability and Property Damage Insurance coverage in forms and amounts which MSD may require.

**2.15 EXTRAS:** VENDOR shall not charge MSD for insurance on shipments, or for packing, crating or drayage unless MSD expressly agrees, in writing, to such charges.

**2.16 NON-EXCLUSIVITY:** The parties understand and agree that neither these terms and conditions nor any MSD Purchase Order shall create rights or obligations of exclusivity inuring to the benefit of VENDOR. Nothing in these terms and conditions or in any MSD Purchase Order shall limit MSD's right to, at all times, purchase goods and/or services from other vendors.

**2.17 INDEPENDENT CONTRACTOR:** In the performance of any MSD Purchase Order placed hereunder, VENDOR shall at all times act as and be deemed an independent contractor. Nothing in these terms and conditions or in any MSD Purchase Order placed hereunder shall be construed to render VENDOR or any of its employees, agents or officers, an employee, joint venturer, agent or partner of MSD. VENDOR is not authorized to assume or create any obligations or responsibilities, express or implied, on behalf of or in the name of MSD. It is understood that the employees, agents, methods, facilities and equipment of VENDOR shall at all times be under its exclusive direction and control.

**2.18 GOVERNING LAW:** These terms and conditions and any contract created by any MSD Purchase Order placed hereunder shall be governed by the laws of Singapore, without regard to conflict of laws principles.

**2.19 DISPUTE SETTLEMENT:** Notwithstanding anything to the contrary in the MSD Purchase Order, any dispute shall be referred to and finally resolved by arbitration in Singapore in accordance with Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed incorporated herein by reference. The arbitration shall be conducted by three arbitrators appointed by the parties within seven (7) days of written notice to the SIAC regarding the Dispute, and, in default, by the Chairman of the SIAC on the written request of any party. The language of the arbitration shall be in English. The proceedings including all documents and statements shall remain confidential. All reasonable costs, fees and expenses (including legal fees and expenses) of the arbitration, shall be borne by the unsuccessful party.

**2.20 SEVERABILITY:** In the event that any provision of these terms and conditions or any MSD 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 MSD 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 substantially affect the rights or obligations granted to or undertaken by either MSD or VENDOR.

**2.21 ENTIRE AGREEMENT:** Except as provided in Article 2.1, the terms and conditions herein represent the entire agreement between MSD and VENDOR and supersede any prior undertakings, agreements, representations, warranties or inconsistent or additional provisions heretofore made by VENDOR. Neither these terms and conditions nor any MSD Purchase Order hereunder may be altered except in a subsequent writing signed by MSD.

**2.22 HEADINGS:** The headings of the provisions of these terms and conditions are inserted for convenience only and shall not constitute a part hereof.

**2.23 INTELLECTUAL PROPERTY:** The VENDOR warrants that the use or sale of goods and/or services delivered hereunder will not infringe the claims of any patent or any other intellectual property

rights. The VENDOR agrees to defend at its sole expenses all suits based upon any alleged patent or intellectual property infringement and to hold MSD harmless from damages resulting therefrom. The VENDOR will not apply for any Letters Patent or Registered Design for Goods supplied against MSD's specifications, drawings, samples or descriptions of the goods and/or services provided hereunder.

**2.24 RIGHTS TO DATA:** All drawing, plans, specifications, and data developed or produced under the relevant MSD Purchase Order shall become the property of MSD.

**2.25 TERMINATION:** Without prejudice to any rights that MSD shall have against the VENDOR, MSD shall have the right to terminate any MSD Purchase Order, in whole or in part by giving written or telegraphic notice to the VENDOR. Upon receipt of such notice, the VENDOR shall, unless the notice directs otherwise, immediately discontinue the work and the placing of orders for materials, facilities and suppliers and shall make every reasonable effort to procure cancellation of all such existing orders or contracts upon terms satisfactory to MSD. The VENDOR shall thereafter do only such work as may be necessary to preserve and protect work already in progress and to protect material, plant and equipment on such work or in transit thereof. In case of such termination, it is agreed that the VENDOR shall be entitled to prorated compensation for the unpaid portion of the contract already performed, including material for which firm contracts have been made, to which MSD shall be entitled. The foregoing shall be the sole remedy available to the VENDOR in the event of termination.

**2.26 RISK AND TITLE:** The VENDOR warrants and represents with respect to the goods purchased that it is the sole and absolute beneficial owner of such goods and that the title and property in such goods are free from any claims, liens, charges or encumbrances of any nature. The risk and property in the goods purchased pursuant to an MSD Purchase Order shall remain the responsibility of the VENDOR and be at the VENDOR's risk until the goods have been delivered by the VENDOR to MSD and accepted by MSD.

**2.27 WAIVER:** The failure by MSD to enforce at any time or for any period any one or more of the terms and conditions of the MSD Purchase Order shall not be a waiver of any such right or of the right at any time subsequently to enforce any or all terms and conditions of the MSD Purchase Order.

**2.28 DATA PRIVACY AND SECURITY:** In the course of providing goods and/or while performing services pursuant hereto, VENDOR agrees that when collecting, accessing or using any personal information that can identify an individual, VENDOR will collect, access, use and disclose only the minimum information necessary to enable VENDOR to perform its obligations and that it will do so only in accordance with MSD's instructions and in compliance with the Personal Data Protection Act 2012, its regulations and guidelines, or where disclosure is required by law; such required disclosure shall be reported to MSD by VENDOR in sufficient time prior to any such disclosure as to allow MSD to take any protective action it deems necessary. VENDOR agrees to protect such information from loss, misuse, unauthorized access, disclosure, alteration or destruction and promptly notify MSD of any loss of, misuse of, unauthorized access to, disclosure of, alteration to or destruction of such information of which VENDOR becomes aware.

**2.29 MSD's BUSINESS PARTNER CODE OF CONDUCT:** MSD endeavors to hold itself and its VENDOR 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 VENDOR's other obligations hereunder, and without conflicting with or limiting any of the warranties, obligations or other provisions expressly set forth elsewhere in this MSD Purchase Order, including without limitation its obligations hereof, VENDOR 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>. VENDOR 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 Clause and the Code, on the one hand, and any other provision in this MSD Purchase Order, on the other hand, such other provision of this MSD Purchase Order shall control (but only to the extent of the conflict). MSD reserves the right, in its sole discretion, to audit VENDOR'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. VENDOR shall acknowledge receipt of MSD's notice as promptly as practicable after receipt of such notice and will confirm the date on which the audit will occur within fourteen (14) days after receipt of such notice. MSD or its third-party auditor may interview VENDOR'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 this MSD Purchase Order. In the event an audit identifies a non-conformance by VENDOR with the Code, VENDOR will promptly take corrective action to remedy the non-conformance. MSD reserves the right to approve all corrective actions. Corrective actions shall be implemented by VENDOR at VENDOR's expense. MSD will endeavor, whenever practicable, to work with VENDOR to remedy the issue and put in place a corrective action plan. In the event VENDOR refuses to allow an audit, or fails or refuses to take corrective action, then in addition to any other remedy available to it under this MSD Purchase Order, at law or in equity, MSD reserves the right to terminate this MSD Purchase Order in the event VENDOR fails to cure such refusal or failure within ninety (90) days after written notice from MSD.

**2.30 SUPPLIER EXPECTATIONS:** Without limiting any of VENDOR's other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in this MSD Purchase Order, including without limitation its obligations hereof, MSD expects that VENDOR 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-ofconduct/home.html>. In the event of a conflict between the obligations in this Clause and MSD's Supplier Performance Expectations, on the one hand, and any other provision in this MSD Purchase Order, on the other hand, such other provision of this MSD Purchase Order shall control (but only to the extent of the conflict).

**2.31 CONFIDENTIALITY:** The VENDOR and all its officers, agents, employees and/or representatives undertake to treat as confidential all information acquired in consequence of an MSD Purchase Order ("Information"). The VENDOR shall ensure that any such confidential information is not disclosed by any and all its officers, agents, employees and/or representatives without the prior written consent of MSD. VENDOR 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. VENDOR 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, notwithstanding the provisions of Clause 2.19.

**2.32 RIGHTS OF THIRD PARTY:** This MSD Purchase Order shall not create any right enforceable by any person who is not a party to it under the Contracts (Rights of Third Parties) Act (Cap. 53B) (the "Act") but this clause does not affect any right or remedy of a third party which exists or is available apart from that Act.