

TERMS OF PURCHASE FOR SERVICES
Version as of: August 2021

1. GENERAL PROVISIONS

- 1.1. These Terms of Purchase for Services form the legal basis of any transaction concerning the purchase of services concluded with an Austrian affiliate of the Novartis group (Sandoz GmbH/Novartis Pharma GmbH/EBEWE Pharma Ges.m.b.H. NfG.KG) as buyer (BUYER). They are considered approved by and concluded with the provider of the service (SELLER) at the latest when the service is commenced. Any alterations or amendments to these Terms of Purchase for Services apply only if they have been explicitly accepted by the BUYER in writing and for such specific business case, only. In particular, contractual performance actions by the BUYER shall not be qualified as consent to any conditions deviating from these Terms of Purchase for Services.
- 1.2. If a framework agreement exists between the BUYER and the SELLER, the provisions of this framework agreement shall take precedence over any other provisions in the present Terms of Purchase for Services. This precedence of application of the framework agreement concluded between the BUYER and the SELLER shall also apply in particular if the BUYER subsequently refers to the validity of its Terms of Purchase for Services in a specific order or in a negotiation protocol.
- 1.3. General Terms and Conditions of the SELLER attached to its offer or its offer confirmation or to which reference is otherwise made are in no event accepted by the BUYER and are therefore not valid.
- 1.4. Multiple conclusions of contracts with a specific SELLER shall not constitute a continuing obligation or any other claim to renewed conclusion of an agreement.
- 1.5. If one of the following provisions conflicts with an Incoterm provision agreed in an individual contract or stated in an order, the respective Incoterm provision agreed in an individual contract or stated in an order shall prevail.
- 1.6. Should individual provisions of these Terms of Purchase for Services be ineffective in full or in part, this shall not affect the validity of the remaining provisions and the order concluded on the basis thereof. The fully or partially ineffective provision shall be replaced by a provision that reflects as closely as possible to the intended economic meaning and purpose of the ineffective provision.

2. OFFERS AND CONCLUSION OF CONTRACT (ORDER)

- 2.1. The SELLER may not claim compensation for any costs resulting incurring from making offers, concepts, fee estimates or plans. Such offers, concepts, fee estimates or plans will always be made free of charge.
- 2.2. The BUYER shall only be bound by written orders, offers and acceptances (including orders transmitted via email or telefax). This also applies to additional and subsequent orders as well as to the modification of orders. Oral agreements (this includes telephone calls, video conferences, team-meetings) require a written confirmation (this can also be done by email or fax). The SELLER undertakes to provide the BUYER in each case at no cost with a calculation of the expenditure necessary for the implementation of a modification of an order, which takes into account the effects of the modification on service dates, prices and resources used.
- 2.3. The BUYER shall only be legally bound by written orders and offers (including orders transmitted via email or fax) if SELLER confirms/accepts such order in writing (including such written confirmations transmitted via email or fax) within 10 working days from the transmission of a written order by the BUYER.

3. USE OF SUBCONTRACTORS

- 3.1. The SELLER shall not be entitled to sublicense or sub-contract its contractual obligations to others, even in part, without the prior written consent of the BUYER, which the BUYER shall decide on at its sole discretion. Even if the BUYER gives such consent: (i) the SELLER shall nevertheless remain fully liable for the performance of its obligations under this contract/order; and (ii) the SELLER shall be exclusively responsible for all costs incurred in connection with such sublicensing or subcontracting.

4. ASSIGNMENTS

- 4.1. The SELLER may not assign his contractual rights and obligations without prior written consent of the BUYER. Such consent shall be at the sole discretion of the BUYER.

5. THIRD PARTY CODE

- 5.1. Novartis has put in place a Third Party Risk Management framework which is aimed at promoting the societal and environmental values of the United Nations Global Compact with specific third parties that Novartis deals with. In connection with the above, SELLER shall:

- a) comply with the Third Party Code (and any published updates) which can be viewed and downloaded from <https://www.novartis.com/our-company/corporate-responsibility/reporting-disclosure/codes-policies-guidelines> (you may request a copy free of charge from BUYER);
- b) having regard to Section 12.6 of the Third Party Code, provide information/documentation on reasonable request to the BUYER, its affiliated companies and to allow them to verify compliance with the Third Party Code in the form requested;
- c) to rectify identified non-compliances with the Third Party Code (where capable of remedy) and report remediation progress to the BUYER, its affiliated companies and respective representatives on request;
- d) ensure that where SELLER affiliates and/or subcontractors/agents of the SELLER and its affiliates have been pre-approved by the BUYER (in accordance with these Terms of Purchase for Services) to provide the goods/services/deliverables, that such third parties also comply with the above requirements relating to the Third Party Code.

The SELLER acknowledges and agrees that the Third Party Code forms an integral part of these Terms of Purchase for Services and understands that failure to adhere to these standards and/or obstructing/refusing the BUYER's audit rights as stated in the Third Party Code shall constitute a material breach of these Terms of Purchase for Services and entitle the BUYER to immediately terminate the contract/order by written notice without compensation.

- 5.2. The BUYER may terminate the contract/order of which these Terms of Purchase for Services form an integral part at any time, with immediate effect, by written notice to the SELLER, in the event that the SELLER breaches Section 5.1 of these Terms of Purchase for Services.

6. FEES, PAYMENT CONDITIONS

- 6.1. The fees specified in the order are binding and include, unless agreed otherwise, all agreed and usually expected services of the SELLER (such as implementation, documentation, training and ongoing maintenance) as well as all ancillary costs.

- 6.2. Unless agreed otherwise, the fees for the ordered services shall be due and payable within 60 days from acceptance of the services. In instances where this is justified (i.e., in case of notified defects) the BUYER may hold back a respective portion of payments and/or withdraw from the transaction upon the lapse of a 10-working-day remedy period following notification thereof.

- 6.3. Any assignment or set-off with respect to the fee claim by the SELLER requires the BUYER's prior written approval.

- 6.4. Any prepayment made by the BUYER shall be kept separately from the SELLER's other assets and may not be mixed with SELLER's other assets. The BUYER retains the ownership over any such prepaid amount of money (or shall receive, in case that applicable law should prohibit this, a lien (*Pfandrecht*) on such prepaid money until the BUYER has received the complete provision of non-deficient services.

- 6.5. The BUYER may balance without any further agreement or unilaterally set off any claims of SELLER with claims of the BUYER or of its affiliates against the SELLER.

7. SERVICE PROVISION

- 7.1. The services are deemed provided if the respective services are provided at the agreed place and time with the agreed properties and together with any and all agreed and usually expected ancillary services, documentation (including invoices) and any other documents which must be supplied under mandatory law. Any partial service provision requires the BUYER's prior written consent.

- 7.2. Unless otherwise agreed, the BUYER will test the SELLER's services within a reasonable period of at least 14 calendar days. If no errors occur, the service of the SELLER shall be regarded as accepted (acceptance). Any errors, deficiencies or defects in the services occurred in course of the acceptance test shall be notified to the SELLER by the BUYER in writing and shall be rectified by the SELLER within a reasonable period of 10 working days. Subsequently, the BUYER will again carry out an acceptance test.

- 7.3. The service provision times and dates specified in the order are fixed dates and are calculated from the day the order is concluded. If the SELLER cannot provide the ordered services within the agreed periods or on the agreed dates or expects that this is not possible, the SELLER shall notify the BUYER in writing of the reasons and the expected duration of the delay. In case of a (total or partial) delay in service provision, the BUYER is entitled to

- a) withdraw from the contract/order in full or in part without setting a grace period and refuse acceptance of the services;
- b) adhere to the contract/order while setting an appropriate grace period and demand or withhold a contractual penalty in the amount of 1% of the agreed fee per day of the delay;
- c) cover any urgent need for services by entering into a respective contract with third parties (covering purchase), while the SELLER shall bear the additional costs incurred.

- 7.4. During any assembly works at one of the (branch) locations of the BUYER, the SELLER shall at all times comply with the BUYER's safety regulations and the applicable legal provisions and shall ensure that any vicarious agents or other third parties commissioned by the SELLER also comply with all said safety regulations and the applicable legal provisions at all times.

- 7.5. If a certain part of the order or the order in its entirety is performed by a third party, SELLER shall be liable for defects or default on the part of this third party, its suppliers or other vicarious agents as it would for its own defects or default. Prior to appointing a third party to fulfil the SELLER's obligations, the SELLER must obtain the written consent of the BUYER.

8. OWNERSHIP AND RIGHTS TO WORK PRODUCTS

- 8.1. The SELLER shall transfer the ownership of all work products as well as those open data, print templates, source data etc. created by the SELLER in connection with the performance of the service to the BUYER and shall grant the BUYER all rights, in particular the exclusive and temporally, geographically and materially unlimited usage rights of use for all currently known and future types of use of these work results. This assignment of rights includes the right to edit, including translations, and the right to transfer and sublicense to third parties. In order to guarantee this right, the SELLER is obliged to hand over all necessary data including raw data etc. to the BUYER at the request of the BUYER.

- 8.2. Whenever photographs, software programs or other works are used in the course of providing the services, to which rights of third parties, in particular rights of the photographer and any person(s) depicted, exist, the SELLER shall expressly inform the BUYER in the offer and cost estimate to what extent these photographs, software programs or other works may be used. The SELLER must ensure that the intended use of these photos, software programs or other works by the BUYER is permitted without limitation. With regard to all works, the SELLER must ensure in this context that a written agreement is made between the respective holder of rights and the SELLER. A copy of this agreement between the SELLER and the owner of the rights to the photos, software program or other works must be provided to the BUYER.

- 8.3. In the event that the work products contain any inventions, discoveries, ideas, processes, designs, logos, trademarks or designs that can be protected ("Intellectual Property Rights"), only the BUYER shall be entitled to make trademark or patent applications or other applications or registrations for intellectual property rights. The BUYER becomes the sole owner of all intellectual property rights arising from such applications or registrations. The SELLER shall immediately inform the BUYER of any invention or discovery made in connection with the performance of the services. The SELLER shall provide the BUYER with all assistance in this connection and shall transmit all information, data and documents and make all declarations which the BUYER may require in order to obtain protection.

- 8.4. The SELLER shall provide the BUYER immediately at any time and also after termination of the contractual relationship at the BUYER's request all information, data and documents that are necessary to exercise any rights granted in this contractual relationship, including software programs including source codes in the latest current version as well as any older versions that may still be relevant for the BUYER without separate payment.

- 8.5. The granting and transfer of rights regulated in Section 8 shall be deemed settled by the remuneration to the BUYER. There is no separate remuneration for the granting and transfer of rights.

9. INSURANCE

The SELLER is obliged to obtain an adequate business liability insurance in relation to the volume of the order and the risks associated with the provision of the delivery/service and has to prove its existence to the BUYER on her request before the start of the performance of the contractual deliveries/services.

10. REPRESENTATIONS AND LIABILITY OF THE SELLER

10.1. SELLER represents and warrants (by way of an abstract guarantee pursuant to Section § 880a half sentence 2 of the Austrian Civil Code (ABGB)) that all provided services

- a) are provided in accordance with all applicable provisions (including GMP and/or GDP, GLP, GCP if applicable), statutory regulations and requirements outlined by authorities and professional associations as well as the BUYER's standards;
- b) are state of the art;
- c) are free from defects; and
- d) comply with all specifications and all standards, that have been explicitly laid down in offers, invoices or individual agreements with the BUYER or that – if not agreed – conform with the typical market standards.

10.2. In case the provided services are defective (irrespective of any acceptance) SELLER shall at the sole option of the BUYER, replace the defective services, repair them as soon as technically possible and, at the latest within 10 working days from the defect notice, restore the agreed state free from defects or refund all payments made with respect to the provision of such services immediately and without deduction. The BUYER may also annul the agreement immediately (redhibition). In cases of urgency the BUYER retains the right to have such services provided by itself or by third parties or to have replacement services provided by third parties at the expense of SELLER (substitute performance, Ersatzvornahme).

10.3. Visual defects of the provided services shall be notified by the BUYER within 60 calendar days of acceptance of the services, all other defects within 60 calendar days of their discovery. The payment by the BUYER shall not be qualified as unconditional acceptance of the service.

10.4. SELLER shall indemnify and hold the BUYER fully harmless for all damages (including all consequential damages as well as lost profits) which are connected to defect services, defect labelling or late delivery (including the accompanying documentation) and shall be fully liable in this respect.

10.5. SELLER represents and warrants (by way of an abstract guarantee pursuant to Section § 880a half sentence 2 of the Austrian Civil Code (ABGB)) that the services do not infringe any third-party rights, particularly industrial property rights such as trademark, design and patent rights and other intellectual property rights, such as in particular copyrights, and that no protected third-party contributions are used. If not, all necessary rights were acquired by the SELLER from the third parties. There are no other circumstances that prevent the use of the services according to or in connection with this contract, especially no rights have been granted to the contrary. The SELLER provides the BUYER with the work products free of any third-party rights that could impair the BUYER's contractual legal position agreed upon. The SELLER shall indemnify and hold the BUYER fully harmless in case third parties raise claims based on the alleged infringement of their rights in connection with the services provided by the SELLER.

11. LIABILITY OF THE BUYER

The BUYER's liability vis-à-vis SELLER shall be excluded to the extent legally permissible.

12. DATA PROTECTION

12.1. The SELLER shall ensure that all employees and contractors engaged for the performance of the contract/order shall comply with the statutory data protection provisions.

12.2. The SELLER shall deploy, for the performance of its services, only such personnel who have been committed in writing to maintain confidentiality of any personal data. SELLER shall provide evidence of this upon the BUYER's request.

12.3. The SELLER shall ensure that the BUYER is informed about all circumstances which the BUYER must be aware of for data protection or confidentiality reasons. In particular, SELLER shall inform the BUYER immediately of any data security and data privacy breach in writing. Further SELLER shall inform the BUYER immediately of any request of a data subject to access, rectify or erase its personal data. In case SELLER is obliged to disclose the personal data by virtue of an order of a competent authority or a court, it shall, where permissible, inform the BUYER in writing as soon as possible about such order to disclose.

12.4. The BUYER shall be entitled to terminate the contract/order for good cause and with immediate effect partially or in its entirety in the event that SELLER shall negligently not fulfil its data protection obligations within a reasonable time period set by the BUYER or in the event of SELLER's grossly negligent or wilful breach of its data protection obligations.

12.5. SELLER shall not disclose any confidential information and documents provided to him by the BUYER. The obligations shall not apply to information and documents that are known to the public or are disclosed without the SELLER breaching his confidentiality obligation to the BUYER.

13. PLACE OF PERFORMANCE, CHOICE OF LAW AND VENUE

13.1. Unless otherwise agreed or stated in a specific order, the place of performance for all deliveries/services provided on the basis of these Terms of Purchase is the registered office of the Austrian Novartis Group company acting as the BUYER (Sandoz GmbH/Novartis Pharma GmbH/EBEWE Pharma Ges.m.b.H. Nfg.KG).

13.2. The substantive laws of the Republic of Austria apply exclusively, except for principles on conflicts of laws of private international law and the United Nations Convention on Contracts for the International Sale of Goods.

13.3. The place of jurisdiction for the entire business transaction and for all disputes or claims arising from or in connection with these Terms of Purchase for Services and any business or legal transaction included therein, including disputes regarding their validity, violation, dissolution or nullity, is the relevant and local competent court for the registered office of the Novartis company acting as the BUYER (Kundl for SANDOZ GmbH, Vienna for NOVARTIS Pharma GmbH and Unterach for EBEWE Pharma Ges.m.b.H. Nfg. KG). Nevertheless, the BUYER is entitled to file a suit with the court responsible for the SELLER's registered office. The BUYER is entitled at its sole discretion to initiate a final dispute settlement in accordance with the arbitration rules of the International Arbitration Court of the Austrian Chamber of Commerce (Vienna Rules) by one or three arbitrators appointed in accordance with these rules. The place of arbitration in this case is Vienna (Austria). The language of arbitration is English. Each party consents to the jurisdiction of such a court or dispute settlement through an arbitral tribunal and waives the objection to this.

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