

TERMS OF PURCHASE FOR SERVICES

VERSION AS OF: MAY 2018

1. GENERAL PROVISIONS

- 1.1. These Terms of Purchase for Services form the legal basis of any transaction concerning the provision of services to Sandoz GmbH / Novartis Pharma GmbH / EBEWE Pharma Ges.m.b.H. Nfg KG / Alcon Ophthalmika GmbH (SANDOZ / NOVARTIS / EBEWE / ALCON). Any alterations or amendments to these Terms of Purchase apply only if they have been explicitly accepted by SANDOZ / NOVARTIS / EBEWE / ALCON in writing and for such specific business case, only. In particular, contractual performance actions by SANDOZ / NOVARTIS / EBEWE / ALCON shall not be qualified as consent to any conditions deviating from these Terms of Purchase.
- 1.2. General Terms and Conditions of the service provider (PROVIDER) attached to its offer or its offer confirmation or to which otherwise reference is made are in no event accepted by SANDOZ / NOVARTIS / EBEWE / ALCON and are therefore not valid.
- 1.3. In case of several, temporally disparate contract conclusions, the version of these Terms of Purchase at the time of contract conclusion and published on <https://www.sandoz.at/allgemeine-geschaeftsbedingungen> and www.novartis.at/geschaeftsbereiche/novartis_pharma/lieferanten will apply. Several conclusions of contracts with a specific PROVIDER shall not constitute a continuing obligation or any other claim to renewed conclusion of an agreement.
- 1.4. Should individual provisions of these Terms of Purchase 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 which 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 PROVIDER may not claim compensation for any costs resulting incurring from
- 2.2. SANDOZ / NOVARTIS / EBEWE / ALCON is only 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 (including agreements made in the course of telephone calls) require a written confirmation (including such written confirmations transmitted via email or telefax).
- 2.3. SANDOZ / NOVARTIS / EBEWE / ALCON is only legally bound by written orders and offers (including orders transmitted via email or telefax) if PROVIDER confirms/accepts such order in writing (including such written confirmations transmitted via email or telefax) within 10 working days.

3. GENERAL OBLIGATIONS OF THE PROVIDER

- 3.1. PROVIDER will:
 - (a) not promise, offer, pay, cause to pay, accept payment or induce payment or take any action that could be considered a bribe;
 - (b) comply with all applicable laws and regulations, including those related to bribery and corruption (such as, but not limited to, the US Foreign Corrupt Practices Act, UK Bribery Act);
 - (c) comply with industry standards;
 - (d) Perform its obligations under this Agreement with high ethical and moral business and personal integrity standards.
- 3.2. SANDOZ / NOVARTIS / EBEWE / ALCON promotes the societal and environmental values of the United Nations Global Compact to its external suppliers and uses its influence where possible to encourage their adoption. PROVIDER shall:
 - (a) comply with the Novartis Supplier Code (and any published updates) which can be viewed and downloaded from <https://www.novartis.com/about-us/corporate-responsibility/resources-news/codes-policies-guidelines> (you may request a copy free of charge from SANDOZ / NOVARTIS / EBEWE / ALCON);
 - (b) having regard to Section 9.6 of the Novartis Supplier Code, provide information/documentation on reasonable request to SANDOZ / NOVARTIS / EBEWE / ALCON and its affiliated companies to allow us to verify compliance with the Novartis Supplier Code in the form requested;
 - (c) to rectify identified non-compliances with the Novartis Supplier Code (where capable of remedy) and report remediation progress to SANDOZ / NOVARTIS / EBEWE / ALCON on request;
 - (d) ensure that where the PROVIDER and/or subcontractors/agents of the PROVIDER have been pre-approved by SANDOZ / NOVARTIS / EBEWE / ALCON (in accordance with these Terms of Purchase for Services) to provide the services, that such third parties also comply with the above requirements relating to the Novartis Supplier Code.

The PROVIDER acknowledges and agrees that the Novartis Supplier Code forms an integral part of these Terms of Purchase for Services.

SANDOZ / NOVARTIS / EBEWE / ALCON may terminate the contract/ purchase order of which these Terms of Purchase for Services form an integral part at any time, with immediate effect, by written notice to the PROVIDER, in the event that the PROVIDER breaches Sections 3.1, 3.2 and 3.3 of these Terms of Purchase for Services, or the PROVIDER makes any material omission or misrepresentation of information in responding to the "Questionnaire for Third Parties".

- 3.3. If PROVIDER has received such questionnaire:

The PROVIDER warrants and represents that the information provided in the "Questionnaire for Third Parties" completed before entering this agreement is accurate and complete (and such information shall be treated as being part of these Terms of Purchase for Services). The PROVIDER will inform SANDOZ / NOVARTIS / EBEWE / ALCON in writing of: (i) any material change to the information provided with the Questionnaire for Third Parties; and (ii) of any Material Change in the Structure of the PROVIDER, in both cases as soon as reasonably practicable after the relevant change occurs. For the purpose of this Section 3.3, a Material Change to the Structure of the PROVIDER means:

- (a) Change in ownership/control: the PROVIDER or any person who Controls the PROVIDER has a change of Control. "Control" in this context means the direct or indirect ownership of more than 50% of the equity interest or voting rights in a corporation or business entity, or the ability in fact to control the management decisions of such corporation or business entity (e.g., by the appointment of a majority of the directors or management or otherwise); or
- (b) Change to membership of the executive body of the PROVIDER: there is a change to the membership of the executive body of the PROVIDER. For example, a change to the executive management of the PROVIDER (e.g., CEO, N-1 to CEO).

- 3.4. All documents and information submitted by SANDOZ / NOVARTIS / EBEWE / ALCON to the PROVIDER shall be used exclusively for the purpose of the respective transaction and by the personnel of the PROVIDER necessary therefore on a need-to-know basis, shall in any event be treated by PROVIDER as confidential information and shall be returned upon completion of the transaction as well as immediately upon demand of SANDOZ / NOVARTIS / EBEWE / ALCON. Copies, if any, shall be deleted immediately and irretrievably. In the event that the PROVIDER engages a third party for the performance of its contractual obligations, it shall make sure that such third party contractually commits itself to at least the same degree of confidentiality.
- 3.5. The PROVIDER shall provide its services in the agreed or – in the absence of an agreement – in the usual and customary quality and availability.
- 3.6. The PROVIDER shall supply SANDOZ / NOVARTIS / EBEWE / ALCON and any third party provider with all necessary information and also assist third party providers to the extent necessary for the service provision of the third party providers in case their services also depend on the services of the PROVIDER.
- 3.7. Unless otherwise agreed, the PROVIDER grants SANDOZ / NOVARTIS / EBEWE / ALCON the right to use the provided services for the duration of the respective contract and to the extent necessary for the business operation of SANDOZ / NOVARTIS / EBEWE / ALCON. In case the PROVIDER renders individualised services to SANDOZ / NOVARTIS / EBEWE / ALCON, the PROVIDER grants SANDOZ / NOVARTIS / EBEWE / ALCON the exclusive right to use, exploit in business, edit and sublicense the rendered services without limitation as regards time and place.

4. FEES, PAYMENT CONDITIONS

- 4.1. The fees specified in the order are binding and include, unless agreed otherwise, all agreed and usually expected services and ancillary services of the PROVIDER (such as implementation, documentation, training and ongoing maintenance) as well as all ancillary costs.
- 4.2. 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) SANDOZ / NOVARTIS / EBEWE / ALCON may hold back a respective portion of payments or withdraw from the transaction upon the lapse of a 10-working-day remedy period following notification thereof.
- 4.3. Any assignment or set-off with respect to the fee claim by the PROVIDER requires SANDOZ / NOVARTIS / EBEWE / ALCON's prior written approval.
- 4.4. Any prepayment made by SANDOZ / NOVARTIS / EBEWE / ALCON shall be kept separately from the PROVIDER'S other assets and may not be mixed with PROVIDER'S assets. SANDOZ / NOVARTIS / EBEWE / ALCON retains the ownership over any such prepayment (or shall receive, in case that applicable law should prohibit this, a lien (*Pfandrecht*) on such payments) until SANDOZ / NOVARTIS / EBEWE / ALCON has received the complete provision of non-deficient services.
- 4.5. SANDOZ / NOVARTIS / EBEWE / ALCON may balance without any further agreement or unilaterally set off any claims of PROVIDER with claims of SANDOZ / NOVARTIS / EBEWE / ALCON or of its affiliates against the PROVIDER.
- 4.6. The PROVIDER undertakes with respect to its recruiting activities in connection with its service provision obligation which make reference to SANDOZ / NOVARTIS / EBEWE / ALCON to publish job advertisements only after prior consent of SANDOZ / NOVARTIS and to process the applications itself in its own name and on its own account. PROVIDER further undertakes to make clear statements about the actual employer. It is agreed that the company name / logo / trademarks of SANDOZ / NOVARTIS shall be used only in such way that misleading statements about the employment relationship are excluded. It is further agreed that any use of the company name / logo / trademarks of SANDOZ / NOVARTIS / EBEWE / ALCON shall require the prior written approval of SANDOZ / NOVARTIS / EBEWE / ALCON. The PROVIDER may not state that the place of work or employer is SANDOZ / NOVARTIS / EBEWE / ALCON with respect to its recruiting activities.
- 4.7. In case of significant breaches of the contractual obligations by the PROVIDER, which entail disadvantages for SANDOZ / NOVARTIS / EBEWE / ALCON, SANDOZ / NOVARTIS / EBEWE / ALCON shall be entitled to cancel the order without setting any deadline or grace period and demand damages.
- 4.8. In the event third parties raise claims against SANDOZ / NOVARTIS / EBEWE / ALCON that are based on the PROVIDER'S breach of its statutory or contractual obligations, the PROVIDER shall fully indemnify and hold SANDOZ / NOVARTIS / EBEWE / ALCON harmless.

5. SERVICE PROVISION

- 5.1. 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 documentation (including invoices) and any other documents which must be supplied under mandatory law. Any partial service provision requires SANDOZ / NOVARTIS / EBEWE / ALCON's prior written consent.
- 5.2. Unless otherwise agreed, SANDOZ / NOVARTIS / EBEWE / ALCON will test the PROVIDER'S services within a reasonable period of at least 14 calendar days. If no errors occur, the service of the PROVIDER 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 PROVIDER by SANDOZ / NOVARTIS / EBEWE / ALCON in writing and shall be rectified by the PROVIDER within

a reasonable period of 10 working days. Subsequently, SANDOZ / NOVARTIS / EBEWE / ALCON will again carry out an acceptance test.

- 5.3. 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 PROVIDER cannot provide the ordered services within the agreed periods or on the agreed dates or expects that this is not possible, the PROVIDER shall notify SANDOZ / NOVARTIS / EBEWE / ALCON in writing of the reasons and the expected duration of the delay. In case of a (total or partial) delay in service provision, SANDOZ / NOVARTIS / EBEWE / ALCON is entitled to
1. withdraw from the delayed order in full or in part without setting a grace period and refuse acceptance of the services;
 2. adhere to the delayed 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;
 3. cover any urgent need for services by entering into a respective contract with third parties (covering purchase), while the PROVIDER shall bear the additional costs incurred.
- 5.4. During any assembly works on the premises of SANDOZ / NOVARTIS / EBEWE / ALCON PROVIDER shall at all times comply with SANDOZ' / NOVARTIS' / EBEWE's safety rules and all applicable legal provisions.
- 5.5. If a certain part of the order or the order in its entirety is performed by a third party, PROVIDER shall be liable for defects or default on the part of its vicarious agents as it would for its own defects or default. SANDOZ / NOVARTIS / EBEWE / ALCON must grant its written consent prior to the appointment of such third party.

6. REPRESENTATIONS AND LIABILITY

- 6.1. PROVIDER 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
1. are provided in accordance with all applicable provisions (including GMP and/or GDP, if applicable), statutory regulations and requirements outlined by authorities and professional associations as well as SANDOZ' / NOVARTIS' / EBEWE' / ALCON's standards;
 2. are state of the art;
 3. are free from defects; and
 4. comply with all specifications and all standards, that have been explicitly laid down in offers, invoices or individual agreements with SANDOZ / NOVARTIS / EBEWE / ALCON or that – if not agreed – conform with the typical market standards.
- 6.2. In case the provided services are defective (irrespective of any acceptance), PROVIDER shall, at the sole option of SANDOZ / NOVARTIS / EBEWE / ALCON, 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.
- SANDOZ / NOVARTIS / EBEWE / ALCON may also annul the agreement immediately (redhibition). In cases of urgency SANDOZ / NOVARTIS / EBEWE / ALCON 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 PROVIDER (substitute performance, Ersatzvornahme).
- 6.3. Visual defects of the provided services shall be notified by SANDOZ / NOVARTIS / EBEWE / ALCON within 60 calendar days of acceptance of the services, all other defects within 60 calendar days of their discovery. The payment by SANDOZ / NOVARTIS / EBEWE / ALCON shall not be qualified as unconditional acceptance of the service.
- 6.4. PROVIDER shall indemnify and hold SANDOZ / NOVARTIS / EBEWE / ALCON 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.
- 6.5. PROVIDER 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. The PROVIDER shall indemnify and hold SANDOZ / NOVARTIS / EBEWE / ALCON fully harmless in case third parties raise claims based on the alleged infringement of their rights in connection with the services provided by the PROVIDER.
- 6.6. SANDOZ' / NOVARTIS' / EBEWE's / ALCON's liability vis-à-vis PROVIDER shall, as far as legally permissible, be excluded.

7. DATA PROTECTION

- 7.1. PROVIDER shall ensure that all employees and contractors engaged for the performance of the contract shall comply with the statutory data protection provisions.
- 7.2. PROVIDER shall deploy, for the performance of its services, only such personnel who have been committed in writing to maintain confidentiality of any personal data. PROVIDER shall provide evidence of this upon SANDOZ' / NOVARTIS' / EBEWE's / ALCON's request.
- 7.3. PROVIDER shall ensure that SANDOZ / NOVARTIS / EBEWE / ALCON is informed about all circumstances which SANDOZ / NOVARTIS / EBEWE / ALCON must be aware of for data protection or confidentiality reasons. In particular PROVIDER shall inform SANDOZ / NOVARTIS / EBEWE / ALCON immediately of any data security and data privacy breach in writing. Further PROVIDER shall inform SANDOZ / NOVARTIS / EBEWE / ALCON immediately of any request of a data subject to access, rectify or erase its personal data. In case PROVIDER is obliged to disclose the personal data by virtue of an order of a competent authority or a court, it shall, where permissible, inform SANDOZ / NOVARTIS / EBEWE / ALCON in writing as soon as possible about such order to disclose.
- 7.4. SANDOZ / NOVARTIS / EBEWE / ALCON shall be entitled to terminate the Agreement for good cause and with immediate effect partially or in its entirety in the event that PROVIDER shall negligently not fulfil its data protection obligations within a reasonable period of time set by SANDOZ

/ NOVARTIS / EBEWE / ALCON or in the event of PROVIDER's grossly negligent or wilful breach of its data protection obligations.

- 7.5. PROVIDER shall not disclose any confidential information and documents provided to him by SANDOZ / NOVARTIS / EBEWE / ALCON. The obligations shall not apply to information and documents that are known to the public or are disclosed without the PROVIDER breaching his confidentiality obligation to SANDOZ / NOVARTIS / EBEWE / ALCON.

8. PLACE OF PERFORMANCE, CHOICE OF LAW AND VENUE

- 8.1. Place of performance for all services provided on the basis of these Terms of Purchase is the domicile of SANDOZ / NOVARTIS / EBEWE / ALCON in Kundl/Vienna/Unterach, Austria.
- 8.2. The substantive laws of the Republic of Austria apply exclusively, except for principles on conflicts of laws and the United Nations Convention on Contracts for the International Sale of Goods.
- 8.3. If the PROVIDER has its headquarter within the European Economic Area at the time of the dispatch of the writ initiating formal proceedings, the place of jurisdiction for the whole business transaction and all disputes arising based on these Terms of Purchase shall be the competent court at the registered office of the respective entity, which is Kundl for SANDOZ, Wien for NOVARTIS, Unterach for EBEWE and Wien for ALCON. If the PROVIDER has its headquarter outside the European Economic Area at the time of the dispatch of the writ initiating formal proceedings, all disputes or claims arising out of or in connection with these Terms of Purchase and the whole business transaction including disputes concerning the validity, violation, dissolution or nullity of these Terms of Purchase, shall be finally settled according to the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one or three arbitrators appointed in accordance with said Rules. The place of arbitration is Vienna (Austria). The language of arbitration is English.

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