

GENERAL PURCHASE CONDITIONS

Effective date: 1st December 2021

**Médecins Sans Frontières
European Supply Centers**

Article 1. Agreement

1.1 These General Purchase Conditions ("GPC") set forth the terms under which MSF offers to purchase goods ("Goods") from the Supplier.

1.2 The Supplier Guideline, which can be found at https://www.msfsupply.be/?page_id=24 (the "Supplier Guideline"), is incorporated into those GPC by reference.

1.3 These GPC are the only conditions under which MSF European supply centers ("MSF") are willing to deal with Supplier. Supplier's general terms and conditions of sale and any other conditions, whether express or implied, are expressly excluded. In accepting a Purchase Order, Supplier agrees to be bound fully and without reservation by these GPC and a binding agreement (the "Agreement") is formed. No specific condition may prevail over these GPC without the express acceptance by MSF.

Article 2. Purchase Orders

2.1 In these GPC the term "Purchase Order" shall mean a written order issued by MSF to purchase Goods from the Supplier.

2.2 The Supplier shall confirm its acceptance of a Purchase Order with a written confirmation no later than three (3) business days from receipt of the Purchase Order. The Supplier's confirmation shall contain all information included on the Purchase Order and also the Supplier's order reference and (where applicable) the expiry date of the Goods. In the event that the Supplier's confirmation includes different terms to those contained in the Purchase Order, such terms must be clearly stated in the confirmation and expressly accepted by MSF in writing.

2.3 MSF shall be entitled to cancel a Purchase Order immediately, without financial penalty, and without prejudice to any other rights available to it, by written notice to the Supplier in the event that: (a) the Supplier is in material breach of any obligation under the Agreement and, fails to remedy it within seven (7) days of receipt of notice in writing specifying the breach; or (b) an inspection carried out pursuant to Article 6 (Quality) reveals major flaws or reasons to suspect problems in the quality of the Goods; or (c) the Supplier becomes insolvent or makes an assignment for the benefit of its creditors, commences proceedings in bankruptcy, files or has filed against it a petition in bankruptcy, has a receiver appointed over a substantial part of its assets, or any similar proceedings are commenced by or against it in any relevant jurisdiction or (d) no production costs have been incurred by the Supplier.

Article 3. Price Payment Terms and Invoice

3.1 Prices shall be in Euros and shall include all costs and expenses incurred by the Supplier in fulfilment of its obligations unless explicitly agreed otherwise in writing. Prices shall be exclusive of Value Added Tax.

3.2 Following acceptance of the Goods and receipt of the Supplier's invoice, payment shall be made by bank transfer to the Supplier's bank account according to the payment terms included in the Purchase Order. In the event that the Purchase Order does not mention the applicable payment terms, payment shall be made no later than sixty (60) days date of invoice.

3.3 The Supplier shall ensure that each Purchase Order and each delivery of Goods shall be the subject of a separate invoice. The Supplier's invoice shall include the details listed in the Supplier Guidelines. The Supplier shall send an original copy of each invoice to MSF at the address included in the

Supplier Guidelines. The Supplier shall also send an electronic version of the invoice if requested by MSF.

Article 4. Transfer of Risk and Title

Transfer of risk of the Goods, shall pass from Supplier to MSF, in accordance with the Incoterm specified in the Purchase Order. Transfer of title shall take place following payment for the Goods by MSF.

Article 5. Delivery

5.1 The Supplier shall be responsible for delivery of the Goods to MSF or its agent at the delivery address specified in the Purchase Order. MSF shall be entitled to choose the mode of transport, in consultation with the Supplier. Where the Goods are Thermosensitive Goods, the Supplier shall provide MSF with any information necessary for MSF to evaluate the safety and effectiveness of the transportation procedure. MSF reserves the right to request additional measures, including the use of temperature indicators during the transportation. The Supplier shall strictly comply with i) the temperature control requirements set forth in the labelling or patient information leaflet, ii) any agreed transportation procedure by the Supplier and MSF and iii) the instructions with respect to delivery of Thermosensitive Goods included in the Supplier Guideline. For the purposes of those GPC, "Thermosensitive Goods" mean any products which i) require a temperature control according to the requirements set forth in their labelling or patient information leaflet and/or ii) when not stored or transported within predefined environmental conditions and/or within predefined time limits, may be degraded to the extent that they no longer perform as originally intended.

5.2 Signature by MSF or its agent of, the transport document and Delivery Documents shall not indicate acceptance of the Goods. Notwithstanding signature, MSF may still reject Defective Goods in accordance with Article 6.2 hereinafter.

5.3 Time is of the essence in delivery and the Supplier shall ensure that the Goods are delivered on the delivery date specified in the Purchase Order ("Delivery Date"). In the event that the Supplier is unable to deliver the Goods on the Delivery Date, MSF shall, in its sole discretion, be entitled to cancel the Purchase Order without financial penalty or accept late delivery, in which case the Supplier shall be liable for any damages or expenses incurred by MSF as a result of such delay or late delivery.

5.4 The Supplier warrants that it is authorized to supply and deliver the Goods to MSF without obtaining first any additional information related to the identity of the countries where the Goods will be used by MSF.

Article 6. Quality and Inspection of Goods

6.1 The Supplier shall ensure that the Goods: (a) are fit for the purpose for which they are supplied, of good and merchantable quality and free from defects in workmanship and material; (b) conform to the specifications included in the Purchase Order, or as agreed between MSF and the Supplier in writing (c) have been designed, manufactured and delivered in compliance with all applicable national and international laws (including labour laws), regulations, and accepted industry practices.

The Supplier shall provide MSF for free with any documents or information reasonably necessary for MSF to verify the quality of the Goods or obtain any import or export authorisations necessary to export the Goods to their country of destination:

(i) prior to delivery: a list of Goods to be delivered containing the information detailed in the Supplier Guideline ("Packing List") together with all documents as listed in the Supplier Guidelines ("Pre-Delivery Documents") shall be sent to MSF,

(ii) on delivery : (a) copy of the Packing List; (b) copies of all other documents listed in the Supplier Guidelines ("Delivery Documents") (c) all necessary parts, accessories, aids, tools, spare parts, technical documents and instruction manuals (in English and French) required for use of the Goods, shall go along with the delivered Goods, The Supplier shall also ensure that it complies with the instructions with respect to packaging and labelling of Goods,

including dangerous Goods, as mentioned in the Supplier Guideline. Notwithstanding the provisions of the applicable Incoterm, the Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package or handle the Goods. MSF shall not be required to assert any claims for such loss or damage against any third party carrier involved.

6.2 In these GPC the term “Defective Good(s)” shall mean any Good which fails to conform to the Agreement.

MSF will make reasonable efforts to inspect the Goods within fifteen (15) business days of delivery and the Supplier will be notified :

- immediately of any defects discovered on inspection.
- as soon as reasonably possible following discovery of any defects which are not apparent on inspection.

Without prejudice to any other remedy MSF may have, the Supplier shall, as soon as reasonably possible, at MSF’s option: (a) replace the Defective Good with a Good conforming to the terms and conditions of the Agreement or (b) refund the price paid by MSF for such Defective Good.

Following the notification of any Defective Good, the Supplier shall investigate (or where it is not the manufacturer of the Defective Good, make reasonable efforts to ensure that the manufacturer investigates) the defect and shall provide MSF with a copy of the investigation report no later than thirty (30) days from the date of notification of the defect by MSF.

In the event that the Supplier becomes aware that any Defective Good has been supplied to MSF, the Supplier shall inform MSF no later than twenty-four (24) hours after such discovery. When a certificate of destruction is requested by the Supplier for the Defective Goods, a certificate issued by MSF shall be considered valid.

6.3 Without prejudice to any other remedy MSF may have, the Supplier agrees to: (a) assign to MSF all warranties for all Goods it receives from the suppliers and manufacturers of such Goods; and (b) provide all assistance reasonably requested by MSF in order to enforce the warranties. When a certificate of destruction is requested by the Supplier for the Defective Goods, a certificate issued by MSF shall be considered valid.

6.4 The supplier shall indemnify and hold harmless MSF from any and all direct damages, losses, costs, expenses and all liabilities arising out of claims, demands or causes of action brought by or on behalf of any third parties or entity (including any governmental or administrative authority) due to its breach of any provision of this Article 6.

6.5 Inspections, verifications and/or tests by MSF or persons appointed by MSF may be carried out during production. The Supplier at his expense shall: (a) grant access or ensure that access is granted to the locations where the Goods are produced, handled or stored; (b) cooperate and provide all reasonable assistance in the completion of such inspections, verifications and tests, (c) submit all documents and information requested during the conduct of such inspections, verifications and tests. Such inspections shall not release the Supplier from any of its obligations, representations or warranties under the Agreement.

6.6 At all time during the term of this Agreement, the Supplier shall provide up-to-date quality and regulatory documentation to MSF for any Medical Devices supplied to MSF, including, but not limited to, Declarations of Conformity (DoC), CE certificates, ISO 13485 certificate and Instructions for Use. Any change in the manufacturing or quality of the Medical Devices which may have an impact on the safety, the performance and/or the use of the Medical Devices shall be prior approved by the MSF in writing before delivery. Without prejudice to any other remedies MSF may have, modified Medical Devices which have not been prior approved may be rejected by MSF and shall be considered as Defective Goods under this Agreement.

6.7 The Supplier shall duly inform MSF by email of any Field Safety Notice, Customer Notification or any kind of quality related issues according to the timelines set in the Directives 93/42/EC and 98/79/EC and the Regulations 2017/745 and 2017/746.

Article 7. Provisions for Medical Goods and Therapeutic Food

In these GPC the term “Medical Good” means any good which is presented as having properties for diagnosing, treating, control monitoring after treatment, or preventing a disease in human beings and any medical material, including any Medical Devices. The term “Medical Devices” means any product covered by the EU Directive 2001/83/CE, EU Directive 93/42/CEE, EU Regulation 2017/745, EU Regulation 98/79/EC or EU Regulation 2017/746. The term “Therapeutic Food” means any Good which is developed to meet the needs of malnourished people in crisis situations, including Goods which are fortified with proteins, minerals and vitamins.

The Supplier shall ensure that all Medical Goods and Therapeutic Foods comply with the quality, packaging and labelling requirements set forth in the Supplier Guidelines. Insofar as possible, the Supplier shall ensure that the Goods come from the same production batch.

Article 8. Shelf Life

The Supplier shall ensure that all Goods with an expiry date have, upon delivery, a remaining shelf life of at least two thirds (2/3) of their shelf life. No deviation shall be permitted from this requirement without MSF’s written consent.

Article 9. Force Majeure Event

9.1 In these GPC the term “Force Majeure Event” means, in respect of any party, any event which is unforeseeable, beyond its control, and which would prevent it from complying or make it impossible or substantially impractical for it to comply with any material provision of the Agreement including without limitation strikes, fire, civil disobedience, war, riots, rebellions, government action, earthquakes, floods, pandemic or similar occurrences in any country (including an MSF project country) but shall not include problems solely associated with the Supplier’s business including transport problems, illness of staff, strikes, stagnation or raw materials shortages.

9.2 Neither party shall be responsible for any delay in performing or any failure to perform any of its obligations hereunder if such delay or failure is due to any Force Majeure Event provided that the affected party: (a) provides immediate written notice to the other party of the existence of such Force Majeure Event and of the likelihood of such delay or failure; and (b) has used all reasonable efforts to perform its obligations hereunder and to minimise the impact of the Force Majeure Event on the other party. In the event that any Force Majeure Event delays delivery of any Goods for more than seventy-two (72) hours from the Delivery Date, MSF shall be entitled to cancel the relevant Purchase Order without financial penalty.

Article 10. Insurance

The Supplier will maintain at all times comprehensive general liability insurance (including Product liability, property damage and personal injury liability) with a minimum limit of five million Euros (€5,000,000.00) for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or acts or omissions of Supplier under the Agreement. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished upon request.

Article 11. Compliance with Applicable Laws

The Supplier shall ensure that, in executing its obligations pursuant to the Agreement, it complies with all applicable national and international laws, guidelines, standards and accepted industry practices.

Article 12. Personal Data

All terms relating to the protection of personal data used in this Article shall be interpreted in accordance with the General Data Protection Regulations 2016/679 of April 27th, 2016 (“GDPR”). If in the course of the performance of the Agreement, the Supplier processes personal data (“Personal

Data”), the Parties agree that MSF will be considered as the controller of the processing (the “Controller”), and the Supplier as the processor (the “Processor”).

The Supplier shall process the Personal Data with the same level of confidentiality as the Confidential Information, and therefore shall not disclose it to a third-party or a subcontractor without MSF’s prior and express consent.

The Supplier shall take all necessary measures to ensure the security, the integrity and confidentiality of the Personal Data.

The Supplier shall assist MSF to fulfil its legal obligations relating to Personal Data protection, in particular to notify in a timely manner, and no later than the GDPR requires, any request from data subjects and any violation of Personal Data breaches and to assist MSF in such cases.

The Supplier shall take all necessary measures to ensure that its partners, subcontractors, agents, affiliates or employees comply with the above-mentioned obligations and ensures that they are bound by an undertaking of confidentiality.

MSF shall be able to audit the Supplier at reasonable intervals in order to make sure that such obligations are complied with. In the event that the performance of the Agreement would entail significant processing of MSF’s Personal Data by the Supplier, the Parties shall conclude an appropriate subcontracting agreement that complies with the applicable data protection regulations in force.

The Supplier shall be fully liable for any damage resulting from the violation of the provisions of this Article.

Article 13. Notices

Any notice to either party under or in connection with the Agreement shall be served by registered post, hand delivered or emailed. When served by MSF, notice can be served at or to any address used by the Supplier. When served by the Supplier, notice shall be served at or to the addresses indicated in the Supplier Guideline.

Article 14. Confidential Information

The Supplier shall keep all information received or made available by MSF (“Confidential Information”) strictly confidential, and shall use such Confidential Information only for purposes of execution of the Agreement. Confidential Information shall include, without limitation, all information relating to the actions, missions, operations and patients of MSF anywhere in the world, the purchase of the Goods by MSF, and the entry by MSF into the Agreement.

The Supplier agrees not to disclose any Confidential Information to any third party, except to its employees, consultants and advisors who need to know such information for the purpose of execution of the Agreement and have undertaken to be bound by confidentiality obligations no less stringent than those imposed on the Supplier hereunder.

Article 15. Publicity

Neither party shall be entitled to use the other party’s name, logo or trademark or any adaptation or translation thereof, without the prior written consent of the party whose name, logo or trademark is sought to be used.

Article 16. Intellectual Property Indemnity

The Supplier warrants that the use of Goods delivered pursuant to the Agreement by MSF or by any entity within MSF Movement shall not infringe any third-party patent, copyright or other proprietary right. The Supplier shall defend, indemnify and hold harmless MSF and any members of MSF Movement, from and against any and all third-party claims and liabilities (including, without limitation, reasonable attorneys’ fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Goods infringe, violate or misappropriate a third party patent, copyright or other proprietary right.

Article 17. Ethical Behaviour

The Supplier acknowledges and accepts that MSF is an international medical humanitarian organisation which is bound to respect the principles included in its Charter, including universal medical ethics, neutrality, impartiality and

independence. The Supplier shall respect, and shall ensure that each of its employees, sub-contractors and agents respect these principles whilst undertaking activities associated with the Agreement.

The Supplier represents and warrants on its own behalf and on behalf of any agents or sub-contractors: (a) that it is not and has not been involved in illegal activities or in the traffic of arms, material or equipment destined for military use; (b) that it has not participated in any collusive, corrupt or illegal behaviour together with other tenderers, in the event that the Agreement was the subject of a call for tenders; (c) that no person or entity, including any official, civil servant or member of government, has received or shall receive any direct or indirect benefit as a result of the execution of the Agreement; (d) that its employees enjoy satisfactory working conditions in accordance with international labour standards issued by the International Labour Organisation; and (e) that neither it nor any of its affiliates employs children or is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child.

Article 18. Safety and Respect for the Environment

The Supplier shall observe and shall ensure that any third parties engaged by the Supplier in connection with its execution of the Agreement shall observe, applicable laws and regulations on workplace safety and occupational health. Supplier is required to comply with all applicable environmental laws and regulations and is expected to work to reduce consumption of resources, including raw materials, energy, and water, throughout all aspects of the product or service lifecycle. Supplier is also encouraged to reduce or eliminate waste of all types by implementing appropriate conservation measures in your facilities and by recycling, reusing, or substituting materials.

Article 19. Assignment and Sub-Contracting

Neither the rights nor the obligations of either party under the Agreement may be assigned, transferred, sub-contracted or otherwise disposed of, in whole or in part, without the prior written consent of the other party (except that MSF shall be entitled to transfer or assign, either fully or partially, its rights and/or obligations to an affiliated entity or to any member of MSF Movement). The Supplier shall be responsible for the acts or omissions of any subcontractor, his agents or employees, as if they were the acts or omissions of the Supplier.

Article 20. Set Off

MSF may at all times set off the amount of any sums due by the Supplier hereunder against any amounts then held by it or against any amounts that may be owed by it to the Supplier including, without limitation, reimbursement of any amounts due in respect of Defective Goods or pursuant to the indemnity contained Article 15 (*Intellectual Property Indemnity*).

Article 21. Waiver

No failure or delay on the part of MSF in exercising any right hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the parties herein are cumulative and not exclusive of any rights or remedies provided by law.

Article 22. Governing Law and Dispute Resolution

The Agreement shall be governed by the law of the country in which the MSF entity that issued the Purchase Order is registered. All disputes arising out of or in connection with the Agreement which cannot be resolved amicably shall be finally settled by the competent court in the capital town of the country in which the MSF entity that issued the Purchase Order is registered.