

# **General Terms and Conditions of Purchase of DFE Pharma GmbH & Co. KG ("DFE")**

## **GENERAL**

### **1. Scope**

- 1.1 The present general terms and conditions of purchase (the "**Purchase Conditions**") shall apply to purchases of goods and services by DFE Pharma GmbH & Co. KG ("**DFE**") from suppliers and/or service providers (jointly the "**Supplier**" or "**Suppliers**").
- 1.2 Any terms and conditions deviating from the present Purchase Conditions shall not become binding upon DFE except when expressly accepted by DFE in writing. Any standard terms and conditions of Supplier are excluded as part of the agreement with Supplier.

### **2. Formation of the contract**

- 2.1 No contract shall be deemed to have been formed between DFE and the Supplier until and in so far as DFE accepts an offer by placing a written order.
- 2.2 All costs incurred by Supplier in relation to an offer are for Supplier's account.

### **3. Price, payment and security for advance payment**

- 3.1 In the absence of an agreement to the contrary, the agreed price for the supply of goods is all inclusive and therefore includes all costs and rights, adequate packaging, inspections, tests, certificates, import duties, levies, transport, but does not include VAT; for the rendering of services, the price includes travelling and accommodation expenses, travelling hours, transport, office, meal, administrative costs and other overheads, and in all cases the costs of any third-parties engaged by the Supplier, if any.
- 3.2 Invoices of Supplier shall exclusively be deemed eligible for payment provided they are correctly specified, that they bear the relevant and correct reference or purchase order number and the date of the order of DFE and that they are sent to the correct accounts payable department. Incorrectly specified invoices will be

returned to the Supplier and may lead to payment delay.

- 3.3 Payment by DFE does not in any respect whatsoever imply a waiver of any right under the contract and the present Purchase Conditions or law. Payment cannot be regarded as constituting any acknowledgement by DFE of the soundness of the delivered goods and/or the services rendered and does not release the Supplier from any liability in that regard.
- 3.4 Payment releases DFE from all obligations arising from the relevant contract and cannot be regarded by the Supplier as payment of any other alleged claim of the Supplier on DFE.
- 3.5 In the absence of an agreement to the contrary, the Supplier shall not be entitled to raise the agreed prices during the term of the contract. In the event the Supplier is obliged or entitled to increase the prices by virtue of a mandatory law provision, then DFE shall have the right to terminate the contract with immediate effect.

## **GOODS PROCUREMENT**

### **4 General**

Articles 5 up to and including 10 apply, alongside the general provisions above and below, insofar as the contract between DFE and the Supplier relates to goods purchased or to be purchased by DFE from or via the Supplier. In cases of conflict between articles 5 to 10 and other articles of these Purchase Conditions, the articles 5 to 10 take precedence.

### **5. Delivery, packaging**

- 5.1 In the absence of written agreement to the contrary, deliveries shall take place 'Delivered at Place' (in accordance with the relevant provisions of the most recent version of Incoterms) at the place indicated by DFE, with an accompanying waybill. The delivery time commences as soon as the contract is formed and is a firm deadline on penalty of forfeiture of rights. Exceeding the delivery term places the Supplier in default without notice of default being required. The Supplier is obliged to give DFE timely and adequate advance

notice of delivery and the possibility of late delivery.

- 5.2 The goods and/or materials must be packaged and preserved in such a way that protection against external forces is ensured. The Supplier is obliged to follow any reasonable instructions given by DFE in that regard.

## **6. Transfer of risk and ownership**

- 6.1 The Supplier guarantees that the full and unencumbered ownership of the goods is supplied.
- 6.2 The goods and/or materials will remain at the expense and risk of the Supplier until they are delivered, in accordance with the agreed terms of delivery.
- 6.3 Ownership of the goods shall pass from the Supplier to DFE no later than at the time of delivery, unless (i) otherwise agreed upon between the Parties, or (ii) if the goods are rejected by DFE in accordance with the provisions of article 8.

## **7. Documentation, parts and tools**

All drawings, manuals, computer programs, parts, tools and user rights needed for the maintenance, repair, usage and/or onward delivery of the goods shall be jointly delivered to DFE and, if made specifically in connection with the order placed by DFE, transferred in ownership to DFE in accordance with the provisions of article 13 of these Purchase Conditions.

## **8. Inspection and quality control**

- 8.1 Without prejudice to any further rights, including rejection of goods, DFE reserves the right to inspect, to check and/or to test the goods delivered or to be delivered, as well as the facilities of the Supplier, either acting for itself or through another, irrespective of where the goods, or the facilities in question are located subject to providing reasonable notice. The Supplier shall cooperate with the above. DFE can further require a production or confirmation sample, free of charge. The inspection costs shall be borne by the Supplier if the inspected goods and/or materials fail to meet the specifications or general requirements as provided for in article 9.
- 8.2 Supplier acknowledges and agrees that DFE shall not be under a duty to carry out full entrance controls or inspections of the goods

upon delivery, and that any delivery inspections by DFE may be limited to visual inspection as to whether or not the goods supplied reveal any apparent deviations in quantity or defects due to transportation.

- 8.3 If any (part of a shipment or a production batch of the) goods do not conform to the representations and warranties as set forth in article 9, DFE may reject, at its discretion, the entire shipment or production batch without any payment becoming due by DFE for any part of such shipment or production batch of the goods and without any liability towards the Supplier. DFE shall store the rejected goods or cause them to be stored at the Supplier's expense and risk.

## **9. Defects Liability**

- 9.1 The Supplier guarantees to DFE that the goods being delivered and the accompanying documentation meet the agreed specifications, properties and requirements or, if no agreements have been made in that regard, the specifications, properties and requirements that are customary for the trading of these goods. The Supplier further guarantees that the goods and the accompanying documentation meet all of the governmental regulations in the country of production.
- 9.2 The Supplier further guarantees that the goods supplied are fit for purpose and can be used and processed for that purpose and that the goods possess the agreed level of quality and that they meet the requirements laid down by or pursuant to law, and/or applicable self-regulatory rules, inter alia in regard to quality, health, safety, the environment and advertising.
- 9.3 DFE reserves the right to return rejected goods and/or documentation to the Supplier at the Supplier's expense or to retain them at the expense and risk of the Supplier. If the goods and/or documentation are stored by DFE, the Supplier is obliged to collect them from DFE within two days of receiving a request from DFE to do so.
- 9.4 If goods supplied by Supplier do not conform to the guarantees pursuant to Articles 9.1 and 9.2 above, DFE – at its sole discretion – shall have the right to request the Supplier to remedy such defect by either
- a) Replacing or repairing the defective goods or

- b) reducing the purchase price for the defective goods or
- c) issuing a credit to DFE equal to the purchase value of the defective goods.

If the Supplier fails to remedy the defect in accordance with the above mentioned terms or refuses to remedy such defect within reasonable time after having received notice by DFE requesting such remedy, DFE shall be entitled to rescind the individual purchase contract with respect to the defective goods or to demand a reduction of the purchase price for such defective goods.

9.5 The terms in this Article 9 shall be in addition to any warranty claims and claims for damages provided by the law applicable to the agreement with the Supplier.

## **RENDERING OF SERVICES**

### **10. General**

Articles 11 up to and including 12 apply alongside the general provisions above and below, insofar as the contract between DFE and the Supplier relates to services to be received by DFE from or via the Supplier. In cases of conflict between articles 11 to 12 and other articles of these Purchase Conditions, the articles 11 to 12 take precedence.

### **11. Execution**

11.1 The Supplier shall complete the order within the agreed period of time in accordance with a programme approved by DFE. Exceeding this term places the Supplier in default without notice of default being required.

The Supplier shall give DFE timely advance notice of the progress of and the possibility of the term being exceeded. That advance notice does not release the Supplier from its liability in the event of the term actually being exceeded. The Supplier will inform DFE in writing when it judges that it has completed the agreed work. DFE will inform the Supplier whether it accepts the completed work within fourteen days of receiving that notification. The fact that DFE has put the work into operation cannot be deemed to constitute its acceptance. The acceptance of the completed work does not cancel the rights of DFE with regard to defects, irrespective of whether DFE has discovered or could reasonably be expected to have discovered them during the acceptance period and not reported them to the Supplier.

11.2 If and insofar as the work is performed at DFE's location, that shall be done during the normal work hours at that location, unless the parties have agreed otherwise in writing. The Supplier is obliged to carry out the work outside of those working hours on DFE's first request. Travelling and waiting times do not constitute worked time and can only be charged to DFE if that has been expressly agreed in writing between DFE and the Supplier.

11.3 The Supplier shall arrange at its own expense and in good time all permits, exemptions, approvals and decisions needed for the performance of the work assigned to the Supplier.

### **12. Guarantee**

12.1 The Supplier shall perform, all of its obligations under the contract: (i) in strict accordance with the terms of the contract, including all amendments, work orders and other related documents; (ii) in a professional, commercially diligent basis, in accordance with the generally accepted industry and professional standards, procedures and practices, to the reasonable satisfaction of DFE and (iii) in accordance with the requirements laid down by or pursuant to law, and/or applicable selfregulatory rules, inter alia in regard to quality, health, safety, the environment and advertising.

12.2 Furthermore, the Supplier guarantees that the work will at all times be carried out with due observance of all statutory and other governmental provisions concerning the payment of social insurance contributions and taxes, safety, the environment, hygiene, product designations or other matters as applicable under the relevant law and at the location of the work. All costs of measures, including repair measures, needed to meet these provisions or that may be needed to meet them, and all penalties and or damages resulting from non-compliance with these provisions, shall in all cases be defrayed by the Supplier, even if they are initially borne by DFE.

## **GENERAL**

### **13. Intellectual and industrial property rights**

13.1 Drawings, images, designs, models, calculations, processes, methods, tools, moulds and everything else that can be the subject of any right of intellectual or industrial

property or can be placed on par with such a right (hereinafter referred to as "documentation and materials"), which are issued by DFE or which are made on the instructions of DFE or in that connection by or on behalf of the Supplier for DFE and all intellectual and industrial property rights in their regard accrue exclusively to DFE, which is also deemed to be the maker and/or designer, irrespective of whether DFE pays a separate or compound fee for that purpose. The Supplier undertakes to do everything necessary to provide DFE with the exclusive rights referred to above (including any necessary deeds of transfer).

- 13.2 The Supplier is obliged to return documentation and materials issued by DFE on the first request of DFE and in all cases upon termination of the contract. The risk concerning the aforementioned documentation and materials is borne by the Supplier until such documentation and materials are returned. The Supplier will check the aforementioned documentation and materials for accuracy and consistency prior to commencing execution of the contract and will report deviations and inaccuracies to DFE, in the absence of which the Supplier will be liable for all damages and costs suffered by DFE in that regard.
- 13.3 The Supplier shall clearly mark the documentation and materials issued by DFE as being the property of DFE and inform third-parties of DFE's right of ownership. The Supplier shall immediately inform DFE if the documentation and/or materials are subjected to attachment or no longer freely available to the Supplier for other reasons.
- 13.4 The Supplier shall refrain from using the documentation and materials issued by DFE for purposes other than those for which they were provided and will not reproduce them in full or in part, by any means whatsoever, issue them to third parties or show them to third-parties.
- 13.5 The Supplier guarantees to DFE that the use (including sale or delivery) of the goods delivered to DFE does not infringe any right of intellectual or industrial property belonging to a third-party and will indemnify DFE against claims of third-parties and defray in full all damages and costs suffered and incurred by DFE in connection with those claims. DFE's approval of documentation and materials and other notifications or information issued by or on behalf of the Supplier does not affect or

diminish the obligations of the Supplier under this article and these Purchase Conditions.

#### **14. Confidentiality**

- 14.1 The Supplier is obliged to protect the confidentiality of all information originating from DFE, including all information coming to its notice in the context of a request for an offer, an order and/or the execution of a contract and to stipulate the same in respect of personnel and third-parties engaged in the context of making an offer, assessing an order or executing a contract. The provisions of this article are applicable in particular - but not solely - to recipes, know-how or procedures of production, prices, confidential business and technical information, documentation and other materials provided by DFE to the Supplier. The Supplier is prohibited from using the aforesaid information for its own purposes or for third parties.

To the extent that the Supplier must disclose any information originating from DFE in the performance of this contract to third parties, it shall do so after either having obtained written consent of DFE, or having entered into confidentiality undertakings with such third parties.

- 14.2 Without DFE's prior written consent the Supplier shall abstain from any publicity in whatsoever form about any contract and/or cooperation between the parties or of any of the terms and conditions or other facts with respect to any contract between the parties, including the status thereof and will direct its directors, officers, employees and representatives to do the same.

#### **15. On-site instructions and regulations**

- 15.1 The Supplier shall at all times adhere to the applicable rules on the sites and at the facilities of DFE, such as hygiene and safety regulations.
- 15.2 The only persons granted access to the grounds of DFE are those registered by the Supplier with DFE and whose admission has been approved by DFE.
- 15.3 Other than in cases of intentional act or omission or gross negligence on its own part or its executive management staff, DFE cannot be held liable for any damages or any injuries of any nature whatsoever and originating or caused in any manner whatsoever in the execution of the contract to

the Supplier, to third parties engaged or otherwise involved by the Supplier in the execution of the contract, to goods of the Supplier or those third-parties or persons employed by the Supplier or those third parties.

## **16 Prohibition on outsourcing and assignment.**

16.1 The Supplier is forbidden without the prior written permission of DFE to transfer or outsource the contract or its execution in full or in part to third-parties. DFE is authorised at all times to transfer the contract in full or in part to any other group company of DFE.

16.2 Claims of the other party on DFE are not transferable except with the prior written consent of DFE.

## **17 Termination**

17.1 Either party is entitled to suspend the implementation of the contract or to terminate or rescind the contract in full or in part by means of a written statement and without a prior notice of default or judicial intervention with immediate effect, whilst retaining all its rights to compensation for costs, damage, losses, and interest; a) if the other party fails to meet one or more of its obligations under or otherwise related to the contract or to meet them on time or in full, or if it established that full compliance will be impossible; b) if the other party is declared bankrupt or its bankruptcy or (provisional) suspension of payment is applied for or granted, if it liquidates or discontinues its business, offers a composition, if an attachment is imposed on (part of) its assets or if it otherwise proves to be insolvent; c) if material changes are made to direct or indirect ownership or control ratios at the business of the other party.

17.2 DFE reserves the right to terminate this contract at all times for any reason, subject to a reasonable notice period.

17.3 In the event of termination in accordance with the terms of this contract, neither party can be held liable for any form of compensation for damages.

## **18 Incoterms and AEO (Authorized Economic Operator) Certificate**

18.1 The delivery terms used in these conditions or other agreements between the parties shall be

interpreted and construed in conformity with the provisions of the most recent version of the Incoterms.

18.2 The Supplier guarantees that it is either (i) a holder of a combined AEO certificate for Customs Simplifications and Safety or (ii) has submitted an application for such an AEO certificate or (iii) is able to issue a statement signed by the other party's board of management with regard to "safety and security" as referred to in the "Common format of security declarations for AEOS and AEOF" of the European Commission (reference number TAXUD/2007/1729).

## **19 Further provision, applicable law and court of competent jurisdiction**

19.1 In the event of one or more of the provisions of these Purchase Conditions proving to be invalid or being set aside by a court of law, the other provisions will remain fully in force. The parties shall in good faith attempt to replace any unenforceable provision of these Purchase Conditions with a provision that is enforceable and that comes as close as possible to expressing the intention of the original provision.

19.2 All contracts between DFE and the Supplier are subject to the laws of the Federal Republic of Germany. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is however excluded.

19.3 The forum for any disputes between the parties that result from or are otherwise connected with any contract and/or these Purchase Conditions shall be the courts in Düsseldorf, Germany. However, each party hereto in its sole discretion shall be free to commence legal proceedings against the other party at the competent courts of the other party's principal place of business. Except for preliminary injunctions, the choices of forum set forth in this Article 19.3 shall be exclusive.