

Last revised: January 1, 2023

General Terms and Conditions of Purchase of Merck KGaA, Darmstadt, Germany and of other affiliated companies of Merck KGaA, Darmstadt, Germany having its registered seat in Germany

Section 1 Scope of Applicability

1.1 These general terms and conditions of purchase ("**Terms and Conditions**"), which are the only Terms and Conditions of purchase that apply, are an integral element of the agreement ("**Contract**") entered into between Merck KGaA, Darmstadt, Germany ("**MDA**") and the supplier or contractor (both hereinafter referred to as the "**Contractor**") in the order of precedence described below:

- (1) The purchase order from MDA;
- (2) These Terms and Conditions;
- (3) The Confirmation of Order (as defined in Section 2(2)) from the Contractor.

1.2 Terms and Conditions that conflict with or differ from these Terms and Conditions or other reservations of the Contractor are effective only if they have been expressly accepted in writing by MDA in the individual case. Neither the absence of an explicit objection nor MDA's acceptance of or payment for Deliverables (as defined in Section 3(1)) constitute acknowledgment of the Terms and Conditions of the Contractor.

1.3 These Terms and Conditions shall apply only in the relationship with entrepreneurs.

1.4 These Terms and Conditions apply for all contracts that are entered into with the Contractor in the future until a subsequent version is published.

Section 2 Formation of Contract

2.1 Contracts and amendments to contracts are legally binding only if they are entered into in writing by the purchasing department of MDA or by an appropriately mandated function of a German company affiliated with MDA. Contracts that are entered into verbally or by telephone are legally binding only if they are subsequently confirmed in writing.

2.2 The Contractor confirms each purchase order ("**Confirmation of Order**") and states a binding price and a binding delivery date, unless MDA expressly waives a Confirmation of Order from the Contractor in the purchase order. If the Confirmation of Order is not received by MDA within ten (10) working days from the receipt of the purchase order, MDA is entitled to cancel the order.



Section 3 Performance of Services

3.1 Unless otherwise stated in the purchase order, the place of performance for the goods to be delivered or the service outcomes to be provided by the Contractor (each "**Deliverable**" or the "**Deliverables**") is the place of business of the MDA company placing the order. Section 5(2) is not affected by this.

3.2 The provision of partial Deliverables requires the prior written consent of MDA.

3.3 If the Contractor has reason to assume that it will not be able to fulfill its obligations or a part of its obligations arising from the Contract or to fulfill these on schedule, it has to inform MDA of this immediately and state the reasons for this.

3.4 Should the Contractor not perform the Deliverable at the agreed delivery date, it shall be liable in accordance with the statutory regulations applicable at the time in question. Any contractually agreed penalty for default in the performance of the Deliverable that can be rectified shall represent the minimum amount of damages. If a penalty has been agreed, this can be claimed at any time until the final payment is due, without it being necessary to reserve the right to enforce the penalty.

Section 4 Regulations Governing the Delivery of Goods

4.1 The Contractor has to pack the goods at its own expense in such a way that damage is avoided during transport. The Contractor is required to pack, label, and dispatch dangerous goods in accordance with the requirements of the statutory regulations applicable at the time of delivery. Packaging material is to be used only to the extent that is deemed necessary for this purpose. Only environmentally friendly packaging materials may be used.

4.2 Should a method of delivery be agreed in the Contract in which the transport company is not engaged by MDA, the Contractor is required to select the transportation option that is the most cost-effective for MDA.

Section 5 Regulations Governing the Performance of Services

5.1 The Contractor shall perform the services independently and on its own authority. In particular, it shall bear the responsibility for the outcome, unless otherwise agreed. The use of third parties as subcontractors requires the prior written consent of MDA. If consent is issued, the Contractor nevertheless continues to bear the responsibility for the proper performance of the services.

5.2 The Contractor is free to decide how to organize the performance of the services, in particular to schedule the time required to perform the services and to select the place where it performs the services. MDA and the Contractor can make different agreements in this individual case, for example, if this is necessary by way of exception within the framework of a project. For example, the Contractor shall coordinate the time schedule and comply with agreed deadlines if this is required by the cooperation with other parties involved in the project. If a project requires some services to be performed at the premises of MDA, it shall meet an appropriate request in this regard if it is able to arrange this.

5.3 The Contractor shall appoint a contact person (a project manager, for example) for the period in which the services are performed. MDA shall communicate specifications concerning the service to be performed exclusively to this contact. The Contractor has the sole authority to issue instructions to the staff it deploys, irrespective of whether these are its



own employees or employees of subcontractors. Should the employment relationship with the contact end during the term of this Contract or the contact suffers a long-term illness or is not available as a contact for a lengthy period for other good cause, the Contractor is entitled to appoint a new contact, who is informed of the status of the services when they commence their work.

5.4 If the elements of the service undertaken to be performed are not fully or not clearly described in the purchase order but are necessary for the performance of the services (success of the project), these service elements nevertheless have to be performed by the Contractor following consultation with MDA.

5.5 When performing the service, the Contractor shall deploy its own qualified and experienced employees who are able to carry out the services undertaken by Contract to be performed without needing a long time to familiarize themselves with the service. If possible, a permanent workforce shall be deployed during projects. The Contractor shall coordinate the employees in line with the requirements of the project so that the services can be performed in accordance with the Contract and shall ensure that any downtime on the part of the staff it deploys does not lead to the interruption of the project.

5.6 MDA is entitled to demand that an employee of a Contractor be replaced for good cause. This applies in particular if there are doubts about the experience or qualifications required. The Contractor shall arrange for a qualified replacement to be provided in this event. The Contractor can replace an employee without requiring the consent of MDA should the employment relationship with the employee be terminated during the term of the Contract or the employee suffers a long-term illness or is not available for a lengthy period for other good cause. The replacement of a Contractor's employee requires the approval of MDA in all other cases. All additional costs connected with the replacement of a Contractor's employee, especially for the handover of the work, are borne by the Contractor. Agreed deadlines are not affected by this.

5.7 The staff deployed by the Contractor shall remain available after the project has ended in order to clarify any technical questions that have arisen in connection with the performance of the service.

Section 6 Remuneration / Terms of Payment

6.1 The remuneration price specified in the Contract is binding and considered fixed. All Deliverables are to be invoiced at the price ruling at the date of the purchase order unless specific agreement is made in writing defining the extent of admissible price fluctuations or the method of assessing the price.

6.2 The Contractor has to render a verifiable account for its Deliverables. Invoice items must in particular be consistent with the order items. The division of the company placing the order, the purchase order number, and the recipient of the Deliverables must be recorded in the invoice.

6.3 The remuneration must be stated exclusive of the statutory value added tax. The value added tax has to be listed separately in all case. Furthermore, Section 7 shall apply.

6.4 Unless otherwise agreed in writing, payments fall due at MDA's discretion either after fourteen (14) days less a three percent (3%) discount or 60 days net. The 14-day and 60-day time limits start to run on the first day after the goods have been delivered or the service has been performed and the properly issued invoice has been received (date of receipt of invoice). The term "acceptance" shall apply instead of "delivery" if the goods



ordered or the service commissioned are subject to an acceptance test or an acceptance process. Payments to the Contractor are made in a weekly, automated payment run.

6.5 MDA is in default only when MDA does not make a payment following a reminder from the Contractor.

6.6 Claims of the Contractor against MDA can be assigned only with the explicit written consent of MDA. Section 354a of the German Commercial Code (HGB) remains unaffected. MDA is entitled to transfer all or individual rights and duties arising from the Contract to an affiliated company. The consent of the Contractor is not required for this.

6.7 The Contractor is not entitled to any rights of retention insofar as they are derived from counterclaims arising from other legal transactions with MDA.

6.8 The Contractor may offset only claims of this kind that are uncontested or have been established by final and binding judgment.

Section 7 Taxes

7.1 The Parties' respective responsibilities for taxes arising under or in connection with this Contract shall be as follows: Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income. The Contractor shall be responsible for any (i) indirect taxes (VAT, GST, sales tax and similar, collectively referred to as "**VAT**") and other taxes and duties payable by the Contractor on any goods or services used or consumed by the Contractor in providing services or the Deliverables where the tax is imposed on the Contractor's acquisition or use of such goods or services, (ii) cross border personnel related taxes of its personnel.

7.2 For VAT purposes aforesaid fees and expenses shall be understood as net amounts, i.e. statutory VAT is to be added, if applicable, either additionally invoiced or self-accounted by recipient of supply according to applicable VAT law. The Contractor is obliged to issue an invoice for all payable amounts under this Contract in accordance with applicable VAT law and irrespective of whether the sums may be netted for settlement purposes. The Contractor shall comply with any additional reasonable requests of MDA in relation to such invoices. The Parties shall cooperate in any way reasonably requested, to obtain available reductions, credits or refunds of any VAT amount attributable to the supply under this Contract, if applicable. The Parties shall cooperate in any way reasonably requested to enable VAT compliant behaviour including providing evidence for VAT purposes in accordance with applicable VAT law. The Parties shall use commercially reasonable efforts, where required, to avoid MDA or its affiliates being subject to any VAT obligations outside its residence. MDA will not reimburse any refunded, refundable or culpably unrefunded (foreign) VAT amounts of Contractor.

7.3 The amounts payable by MDA to Contractor pursuant to this Contract ("**Payments**") shall not be reduced on account of any taxes unless required by applicable law for MDA. Contractor alone shall be responsible for paying any and all taxes levied on account of or measured in whole or in part by reference to, any Payments it receives. MDA shall deduct or withhold from the Payments any taxes that it is required by applicable laws to deduct or withhold. Notwithstanding the foregoing, if Contractor is entitled under any applicable tax treaty to a reduction of rate of, or the elimination of, or recovery of, applicable withholding tax, it shall promptly deliver to MDA or the appropriate governmental body the prescribed forms necessary to reduce the applicable rate of withholding or to relieve MDA



of its obligation to withhold tax, and MDA shall apply the reduced rate of withholding, or dispense with the withholding, as the case may be. If, in accordance with the foregoing, MDA withholds any amount, it shall make timely payment to the proper taxing authority of the withheld amount and send to Contractor reasonable proof of such payment within one hundred (100) days following that payment. For the avoidance of doubt, Contractor shall upon request of MDA refund to MDA any amounts received from MDA or its affiliates under this Contract, which should have been deducted or withheld under applicable law, but which were not deducted or withheld in full or at all; and MDA shall – following receipt of such refund – carry out, unless already completed, the payment of the taxes to the proper governmental body.

Section 8 Examination for Defects, Approval, Passing of Risk

8.1 MDA shall inspect the goods delivered or the services performed within a reasonable period of time following delivery/performance for obvious defects in quality and/or quantity (receiving inspection) and notify the Contractor of defects of this kind within 10 working days after they have been discovered. If no such notice is given within this period, the Deliverables in question are regarded as approved, unless defects are discovered at a later date that were not possible to identify during the receiving inspection. MDA shall notify the Contractor of defects that it was not possible to identify during the receiving inspection as soon as they were discovered in the normal course of business. The notification of a defect that is detected at a later date shall be deemed to have been made in time if it is submitted within ten (10) working days from the date of detection. Payments shall not be construed as a waiver of warranty claims.

8.2 The date that the notification is sent (postmark) determines whether notices of defects have been sent on time.

8.3 If the parties have agreed in the Contract that the goods or services are subject to acceptance, the Contractor has to provide them to MDA for acceptance as soon as it has performed its Deliverables. Acceptance is documented in writing. MDA may not refuse to accept the goods on account of defects that MDA has not reported within the meaning of Sections 8.1 and 8.2.

8.4 The time that the risk is passed is determined by the contractual agreements or by the agreed clause from Incoterms 2020. If no agreement of this kind has been made, the risk is transferred to MDA upon the acceptance of the goods or of the service outcomes when they are handed over at the agreed place of performance if the parties have agreed in the Contract that the goods or the service outcomes are subject to acceptance.

Section 9 Warranty

9.1 The Contractor warrants that the Deliverables are free of defects in quality and title. In the case of goods, the Contractor warrants in particular that they are free of defective materials and workmanship that diminish their value or their suitability for contractual required or normal use.

9.2 The Contractor is responsible for ensuring that all Deliverables that it performs comply with (a) the agreed requirements, and (b) all laws, legal regulations, DIN, EN and ISO standards and generally recognized rules of technology that apply both for MDA and for the Contractor.



9.3 Should the Deliverables that are performed not meet one or all of the requirements as set out above, MDA is entitled to demand that the defect be remedied. The costs for remedying the defect, including any incidental costs, shall be borne by the Contractor. If the subsequent performance is not carried out within a reasonable period of time set by MDA or if the Contractor refuses to provide subsequent performance, MDA is entitled to reduce the remuneration or, in the event of a material defect, to rescind the Contract in accordance with the applicable statutory regulations. The statutory rights to compensation of damages, in particular to compensation of damages in lieu of performance, and to the reimbursement of expenses remain unaffected.

9.4 If the Deliverables performed by the Contractor are subject to acceptance and if the subsequent performance is not carried out within a reasonable period of time set by MDA or if the Contractor refuses to provide subsequent performance, MDA is entitled – in addition to the rights specified in Section 9.3 above – to remedy the defect itself or to arrange for it to be remedied by a third party at the expense and risk of the Contractor. MDA is entitled to demand an advance payment from the Contractor in relation to the expenses that are necessary to remedy the defect.

9.5 Unless otherwise agreed in writing, the Contractor is liable for defects that arise within twenty four (24) months from the date of the receipt of the goods at MDA or from the date of acceptance. The warranty period for building services is five (5) years from the date of acceptance.

9.6 If the Contractor has provided a guarantee for the quality or the durability of the goods supplied, MDA can additionally assert claims and rights in accordance with the Terms and Conditions of such guaranty.

9.7 The Contractor indemnifies MDA against any product liability claims or claims under the German Product Liability Act that can be attributed to a fault in the goods supplied by the Contractor. The Contractor is required to maintain product liability insurance with reasonable minimum cover during the term of the Contract.

9.8 Without prejudice to these provisions, the Contractor is liable in accordance with the statutory regulations.

Section 10 Liability, Insurance

10.1 The Contractor is liable for willful intent and negligence as well as for any fault attached to its performing and vicarious agents and also of any subcontractors as it is for any fault attached to the Contractor itself.

10.2 The Contractor warrants that it has taken out liability insurance for personal injury, material damage and financial loss, which also includes damage that may arise from the performance of the Deliverables. The sum insured amounts to a minimum of EUR 1 million per insured event. The Contractor shall maintain this insurance cover at least until the end of all relationships arising from this Contract.

Section 11 REACH Clause for the Delivery of Goods

11.1 The Contractor warrants that it will not deliver any goods to MDA that contain or release any substances that require registration or authorization in accordance with Regulation EC No 1907/2006 of December 18, 2006 (REACH Regulation), including any future supplements and amendments, at the time they are delivered to MDA, but which are not registered or authorized. If substances within the meaning of Sentence 1 do not require



registration on their own, in preparations or in articles at the time they are delivered to MDA only on the basis of the transitional regulations stipulated in the REACH Regulation for phase-in substances, the Contractor warrants that it has either pre-registered these substances in the due form and within the due time or satisfied itself that they have been pre-registered by the relevant party subject to the registration requirements in the due form and within the due time. Furthermore, the Contractor warrants that it will inform MDA immediately if it becomes apparent to it that a substance pre-registered in accordance with Sentence 2 will not be registered within the transitional period relevant for the corresponding substance and that in this event it will no longer deliver any goods containing such substances to MDA from the expiry of the relevant registration period at the latest.

11.2 The Contractor furthermore warrants to maintain any pre-registration, registration or authorization that is required by the REACH Regulation and that it has carried out for substances contained in or released by the goods delivered to MDA throughout the term of the supply relationship with MDA. If the Contractor has not pre-registered, registered or authorized the relevant substance itself, it warrants that it has ensured that it will be informed immediately of any discontinuation of the pre-registration, registration or authorization. The Contractor furthermore warrants that it will inform MDA of the date of any discontinuation of any necessary pre-registration, registration or authorization of any substance delivered to MDA immediately after it has become aware of this and that it will no longer deliver any goods containing or releasing such substances to MDA from the date of discontinuation.

11.3 The Contractor warrants that it will transmit to MDA an up-to-date and complete safety data sheet that is in compliance with the requirements of the REACH Regulation with each delivery – irrespective of whether the transmission is stipulated as mandatory pursuant to the REACH Regulation or has to be carried out only upon request. If the Contractor has to undertake a chemical safety assessment, it furthermore warrants that it has checked the safety data sheet and, if necessary, adapted it to ensure it is in conformity with the chemical safety assessment. If the transmission of a safety data sheet is neither stipulated as mandatory pursuant to the requirements of the REACH Regulation nor has to be delivered upon request, the Contractor warrants that it will provide information on the registration number (if available) and on any authorization obligation and information on any authorizations issued or refused, information on any restrictions, and any other available and relevant information that is required to identify and implement appropriate risk management measures (safety information) in writing or electronically. Changes to safety data sheets or safety information must be immediately notified to MDA and have to be marked in the updated safety data sheet/safety information attached to the first consignment.

11.4 If the Contractor is required to conduct a chemical safety assessment for a substance contained in or released by any goods delivered to MDA and to prepare a chemical safety report, in particular on account of a use of a substance notified by MDA, the Contractor warrants that it has conducted this assessment and has recorded the resulting conclusions in the safety data sheet or the safety information.

11.5 The Contractor warrants that, in the event that articles are delivered to MDA containing one or more substances meeting the criteria of Article 57 of the REACH Regulation (i.e. which can be included in the list of substances subject to authorization) and identified in accordance with Article 59(1) of the REACH Regulation (i.e. which have been included in the list of candidates) in a concentration above 0.1% weight by weight (w/w), it will provide sufficient information to allow safe use of the article.

11.6 The performance of the above obligations in Sections 11.1 to 11.5 are primary obligations of the Contractor.



11.7 If the Contractor breaches its obligations arising from Sections 11.1 or 11.2, MDA is entitled to rescind the Contract insofar as the goods delivered by the Contractor do not or no longer comply with the requirements of the REACH Regulation. In the event of a breach of the obligations arising from Sections 11.3, 11.4 and 11.5, MDA is entitled to rescind the Contract if the Contractor does not remedy the breach within a reasonable period of time set by MDA. Further claims for damages remain unaffected.

11.8 If a claim is asserted against MDA by a third party that has bought goods delivered by MDA because the goods supplied do not comply with the requirements of the REACH Regulation, the Contractor is required to indemnify MDA upon first written request against these claims insofar as this claim against MDA is based on a breach of the Contractor's obligations arising from Sections 11.1 to 11.5. MDA is not entitled to make any agreements with the third party, and in particular to conclude a settlement with the third party without the Contractor's approval. The obligation of the Contractor to provide indemnification refers to all expenses that are necessarily incurred by MDA arising from or in connection with the claim asserted by the third party, specifically also to legal defense and administrative costs as well as all costs associated with procuring necessary replacement.

Section 12 Rights of Use and Intellectual Property Rights / Other Copyrights in the Performance of Services

12.1 MDA is entitled to the exclusive, indefinite, global, unlimited, irrevocable and transferable right to use the service outcomes. The service outcomes include in particular all documents, presentations, reports, and logs that the Contractor produces in connection with the performance of the services. The right of use extends to all known types of use and, in addition to the right of use, also includes the right to edit and modify, including to use and reproduce, the relevant outcomes arising here as well as to process them accordingly.

12.2 The granting of the comprehensive right of use is fully settled by the remuneration paid under this Contract.

12.3 MDA acknowledges that the Contractor is entitled to the rights of ownership and disposal in all templates, methods, aids, and tools in which the Contractor already had rights of ownership and disposal before the project commenced ("Starting Material"). If the Starting Material has been incorporated in the service outcomes, the Contractor grants to MDA a right to use this Starting Material that is non-exclusive, but consistent in all other respects with the right to use the service outcomes (pursuant to Section 12.1).

12.4 The Contractor is required to perform its Deliverables free of any third-party rights (especially patents, licenses, or other intellectual property rights of third parties). The Contractor shall indemnify MDA upon first request against all related demands and claims. If third-party rights are nevertheless infringed by the Deliverables as such or by their use, the Contractor shall – if this is permitted by law – modify the Deliverables in question at its own expense without undue delay such that the Deliverables in question preclude proprietary rights or obtain for MDA the right to use the Deliverables without encumbrance. Further claims and rights are reserved for MDA.

Section 13 MDA's Right of Termination

13.1 If the Contract involves the performance of service, MDA has the right to terminate the Contract in full or in part at any time by giving five (5) days' notice without stating the reasons for this. Termination is permitted in particular if MDA is of the opinion that the



success of the service cannot be achieved. The Contractor has to document the work result achieved up to termination and hand this over to MDA together with all accompanying documents.

13.2 MDA can terminate a contract for the performance of work results (contract to produce a work) in full or in part at any time up until the work is completed.

13.3 The right to terminate the Contract without notice for good cause and the termination right under Section 16.4 remains unaffected.

Section 14 Confidentiality

14.1 The Contractor undertakes to handle all information that is communicated to it by or in the name of MDA in strict confidence during the term of the Contract and for a period of five (5) years after the Contract has ended. The Contractor may use information of this kind for no other purpose than to fulfill the obligations arising from the Contract; all information of this kind remains the property of MDA. The information may be disclosed to employees of the Contractor and any subcontractors only insofar as this is necessary in order to fulfill the obligations arising from the Contract.

14.2 The above-mentioned non-disclosure obligation does not apply to information for which the Contractor can furnish proof that:

- (1) it was already publicly known at the time of disclosure or subsequently became known through no fault of the Contractor; or
- (2) it was validly made available to the Contractor by an independent third party that was entitled to do so; or
- (3) it was already known to the Contractor and was not subject to any non-disclosure obligation at the time the information was received from MDA; or
- (4) it has been developed independently by the Contractor without using the information; or
- (5) the Contractor has been required to disclose the information on account of a statutory provision, regulation, or official obligation of a government agency or authority if (a) this is notified to MDA in such good time that MDA can apply for a safeguard measure concerning the information and (b) information is subsequently disclosed only insofar as this is necessary to fulfill the obligation, irrespective of whether a safeguard measure is complied with.

Information that consists of several elements are exempted from the non-disclosure obligations only if the information as a whole falls under at least one of the above-mentioned exceptions.

14.3 The Contractor has to hand over to MDA or delete all information it has received and processing or utilization results produced unless there is a statutory obligation to store the information or results.

Section 15 Data Protection

15.1 All information relating to an identified or identifiable natural person ("**Personal Data**") that

- (i) one party has received from the other party and/or



(ii) is processed by the Contractor

shall be processed by this party in the context of the performance of the Deliverables as part of the Contract only in strict compliance with the applicable laws, especially all applicable data protection regulations (in particular the EU General Data Protection Regulation, GDPR). The Contractor shall process Personal Data exclusively in order to perform its obligations under the Contract. It shall handle the Personal Data in strict confidence and store them only as long as this absolutely necessary by law or is required to perform its Deliverables based on the Contract.

15.2 The Contractor shall inform its employees that are involved of the processing of their Personal Data by MDA as part of the Contract, such that MDA fulfills its obligations to provide information in accordance with the applicable data protection regulations; if the Contractor fails to provide details of the complete information in a verifiable manner, MDA will provide this information on request. Without prejudice to the rights of inspection/audit of MDA as part of the Contract and/or of the applicable laws, the Contractor shall promptly, upon request and at no cost to MDA, provide the information that MDA reasonably requires in order to determine whether Personal Data that are subject to the Contract is or has been processed by the Contractor or an authorized subcontractor (if applicable) in compliance with the applicable laws on data protection and this Section 15.

15.3 The Contractor shall inform MDA immediately in writing if it becomes aware of a security breach that leads to the accidental or unlawful destruction, loss, modification, unauthorized disclosure of Personal Data or unauthorized access to Personal Data that are subject to the Contract ("**Data Breach**"). MDA can request other relevant information concerning the Data Breach, including, but not limited to, an appropriately detailed description of the Data Breach and the categories of Personal Data that are affected by the Data Breach.

15.4 If Personal Data are processed by the Contractor on behalf of MDA such that the Contractor acts as a processor, the parties shall agree all necessary processing contracts on the basis of MDA's templates in order to comply with the applicable data protection regulations.

15.5 If the parties jointly define the purposes and means of the processing of the Personal Data as "joint controllers", the parties shall agree in writing the arrangement on the joint responsibility on the basis of MDA's templates, in which their respective responsibilities for compliance with the applicable data protection regulations are defined and which applies in addition to the other provisions in this Section 15.

15.6 If the GDPR applies, the Contractor may not process or transmit the Personal Data subject to the Contract in or to a country outside the EU, the European Economic Area (EEA) or Switzerland without the prior written consent of MDA; this consent is provided by entering into an additional agreement (on the basis of MDA's templates or the EU's standard contractual clauses). If the GDPR is not applicable, the Contractor processes Personal Data without the prior written consent of MDA and without entering into any additional agreement that may be necessary (on the basis of MDA's templates) only within the borders of the country in which the MDA company entering into the Contract has its registered office.

15.7 If MDA consents to the use of subcontractors and the Contractor has access to Personal Data that are subject to the Contract, the Contractor shall engage the subcontractor as a processor within the framework of a Contract (if necessary including the EU standard



contractual clauses) that complies with the applicable data protection regulations and ensures that the subcontractor fulfills the obligations of the Contractor in accordance with this Section 15.

Section 16 Corporate Responsibility Obligations

16.1 Each party shall conduct its business in accordance with this Contract, all applicable international, regional, national, and local laws, directives, regulations, ordinances, competent authorities' decisions and guidelines ("**Applicable Laws**") and adhere to the *Supplier Code of Conduct* available at <https://www.emdgroup.com/en/company/contact-us/SCoC.html>. Each party confirms that it is familiar and warrants to comply with the provisions of the United States Foreign Corrupt Practices Act (FCPA), the UK Bribery Act (UKBA) and other applicable anti-bribery and anti-corruption laws (collectively including the *Supplier Code of Conduct*, ("**Compliance Standards**"). The Contractor shall not take or permit any action that will either constitute a violation of or cause MDA or its respective affiliates to be in violation of these Compliance Standards ("**Improper Conduct**"). The Contractor shall select its subcontractors with the utmost care and use its best efforts to ensure that its subcontractors also comply with these Compliance Standards. The Contractor shall comply with all periodic disclosures and certifications set forth in the *Supplier Code of Conduct*. MDA may, from time to time, at its sole discretion, require that the Contractor signs a certification statement confirming that, in performing the services and/or delivering the products under this Contract, the Contractor has complied with and will continue to comply with these Compliance Standards.

16.2 The Contractor shall notify MDA promptly in writing of any Improper Conduct. In addition to any other rights MDA may have under this Contract, if (i) the Contractor notifies MDA of, or (ii) MDA otherwise has reasonable suspicion of the occurrence of Improper Conduct, or (iii) MDA may, at its sole discretion, conduct audits to confirm Contractor's compliance, then MDA may, in not less than ten (10) business days, upon a written notice, review or have reviewed by an independent auditor the premises, books, and records of Contractor relevant for the audit for the purpose of verifying and identifying the Improper Conduct and assessing its impact on MDA's business relationship with the Contractor. At the sole discretion of MDA, the Contractor shall bear or reimburse any quantifiable damages/losses in relation to the Improper Conduct and all reasonable costs and expenses incurred in connection with an audit or review that identifies Improper Conduct. The Contractor shall also cooperate in good faith if MDA requires Contractor's support for MDA's internal investigations.

16.3 If the Contractor notifies MDA or MDA, through the audit or otherwise, obtains sufficient evidence of Improper Conduct of Contractor or its subcontractors, MDA may request from Contractor in writing to prepare and submit to MDA a draft of the Corrective and Preventive Action Plan ("**CAPA**") in order to address the detected Improper Conduct. The Contractor shall submit an initial draft of CAPA within fifteen (15) business days after receipt of MDA's request. MDA shall review and amend the submitted draft CAPA if necessary. The approved CAPA shall be implemented by the Contractor within a reasonable grace period, whereby it is understood that the timelines provided in the CAPA are deemed to be a reasonable grace period for the purposes of this Section. Upon having requested a CAPA, MDA reserves the right to suspend certain or all activities under this Contract until the Contractor can demonstrate that the CAPA has been successfully implemented.



16.4 Without prejudice to any other termination rights in this Contract and without prejudice to MDA's right to claim damages and indemnification, MDAK may terminate this Contract at no cost by serving written notice to Contractor with immediate effect, if (i) the Contractor fails to comply with its obligations under this Contract and the Contractor fails to rectify this non-compliance or if (ii) the Contractor fails to implement the CAPA within the grace period or if (iii) MDA, taking into account all the circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected to continue the contractual relationship with the Contractor, or considering the severity of the Improper Conduct, MDA may terminate this Contract without requesting a CAPA from the Contractor.

Section 17 Force Majeure, Special rules in times of the COVID 19 pandemic

17.1 The parties shall not be liable for damages or for the partial or complete non-fulfilment of obligations under the Contract if the respective damage or non-fulfilment is based on a circumstance that could not be foreseen at the time of the execution of the Contract and if the parties can neither prevent these consequences nor remedy them by reasonable measures ("**Force Majeure**").

17.2 Force Majeure shall also include – irrespective of its foreseeability – combat (regardless of whether a war has been declared), riots, natural disasters, epidemics, pandemics, as well as actions, omissions or measures of a government, its organs respectively its authorities, or the compliance with general directives, ordinances or laws relating to the aforementioned circumstances ("**Government Order**"), insofar as this leads to the non-fulfilment of the Contract.

17.3 If a Deliverable cannot be provided due to a Governmental Order issued after the execution of the Contract (also in the case of the Covid 19 pandemic), which includes or is expected to include the period of delivery of goods or provision of the service outcomes, the parties will inform each other without undue delay. The parties will agree together whether the Deliverables can be made up after the Force Majeure situation has ended and whether MDA has an interest in doing so. In case it is possible to make up for the delay/if being interested, the parties will mutually agree on a substitute date or agree on a procedure and a period for determining a substitute date.

17.4 Notwithstanding the foregoing, either party shall be entitled to withdraw from the Contract affected by the Force Majeure if the Force Majeure lasts for at least four (4) weeks within a period of three (3) months. The obligation to pay the remuneration, any claims for expenses or damages and any cancellation costs shall not apply. Payments or part performances already made shall be refunded in full by the parties.

17.5 MDA and the Contractor acknowledge and agree that all or part of the order placement and execution will take place during the period of the Covid 19 pandemic. Both parties are aware that the Contract will be executed in full knowledge of the substantial change in economic life. The Contractor expressly confirms that it will be able to carry out the order within the terms and conditions set out in the Contract.

17.6 If the Covid 19 pandemic does not allow the delivery of goods and/or provision of services on the contractually agreed dates, or only at a higher price than contractually agreed, the invocation of Force Majeure due to the Covid 19 pandemic is excluded; Section 17.4 does not apply in this case.



Section 18 Loyalty, Publicity

18.1 The parties undertake to be loyal to each other. They shall in particular refrain from headhunting employees who have been deployed to fulfill the Contract. This does not exclude general job advertisements and appointments resulting from this.

18.2 The Contractor is not permitted to refer to its business relationship with MDA in its information or advertising material or otherwise use the MDA brand name without the prior written consent of MDA.

Section 19 Assignment, Severability

19.1 The Contractor shall not assign or transfer the Contract or any parts of it to any third person, or subcontract any of its obligations under the Contract. MDA may assign or transfer the Contract or any parts of it to any affiliated company.

19.2 If a provision of the Contract, including these Terms and Conditions, is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be in any way be affected or impaired by this. In such event, the invalid or unenforceable provision shall be replaced by the parties by a valid or enforceable provision which reflects as closely as possible the economic intent of the invalid or unenforceable provision.

Section 20 Applicable Law / Place of Jurisdiction

The Contract, including these Terms and Conditions, is subject to German law; conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods shall not apply. The venue for all disputes arising out of or in connection with the contractual relationship is the seat of Merck KGaA, Darmstadt, Germany. This shall also include the general place of jurisdiction of the Contractor for proceedings that are instituted by MDA.

