

**GENERAL PURCHASE CONDITIONS**  
**Médecins Sans Frontières European Supply Centers:**  
**MSF Logistique, MSF Supply,**  
**Artsen zonder Grenzen (MSF Netherlands)**  
**Effective date: 1 May 2019**

**Article 1. Agreement**

These General Purchase Conditions ("GPC") set forth the terms under which MSF offers to purchase goods ("Goods") from the Supplier. When the Supplier accepts MSF's Purchase Order, these GPC and the Supplier Guidelines, in writing, a binding agreement ("Agreement") is formed. The terms and conditions of the Agreement shall include exclusively and in order of their application: (a) the Purchase Order, (b) the Supplier Guidelines and (c) these GPC. The Supplier's own conditions of sale shall not bind MSF unless expressly agreed to in writing by an authorised person of 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 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, without financial consequences, 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) the Supplier is unable to deliver the Goods on the agreed Delivery Date; or (c) an inspection carried out pursuant to Article 6 (Quality) reveals major flaws or reasons to suspect problems in the quality of the Goods; or (d) 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 (e) 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 details such as Purchase Order Reference (MSF and Supplier), Delivery Address, Name of Manufacturer, Country of Origin, Item code (MSF and Supplier), Item description, Quantity, Unit of Measure, Unit Price, Total Price of Goods and Additional Costs. The Supplier shall send an electronic version of the invoice to MSF. The Supplier shall also send a hard copy of the invoice together with the Goods.

**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 of the Goods by MSF.

**Article 5. Delivery**

**5.1** The Supplier shall send a notification about the expected goods prior to delivery ("Delivery Notification"), together with the pre-delivery documents and all applicable required Quality Documents (e.g. Certificate of Analysis) to the delivery address and MSF (if not the same).

**5.2** The Supplier is obliged to provide the following documents on delivery: a list of the Goods with Item code, Item description, Weight and Volume, Quantities ("Packing List"), Copy of the Invoice, Transport and Customs Documents, a Shippers Declaration, and a clear indication of Thermo sensitive Goods. Where applicable this includes all necessary parts, accessories, aids, tools, spare parts, technical documents and instruction manuals (in English and French) required for use of the Goods.

**5.3** 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 Thermosensitive Goods are to be sent, the Supplier shall ensure that it maintains the condition of the goods during transport, including the use of a temperature controlled container and temperature monitoring devices.

**5.4** 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.

**5.5** 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 consequences 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.

**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 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.

- that it complies with the instructions with respect to packaging and labelling of Goods, including dangerous Goods. 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 support any claims for such loss or damage against any third party carrier involved.

- that it (a) complies with the instructions with respect to handling, packaging and delivery of Thermo sensitive Goods and (b) has an adequate procedure in place. This procedure shall be fully documented and available for inspection by MSF on demand. The Supplier shall provide MSF with any information necessary for MSF to evaluate the safety and effectiveness of Thermo sensitive Goods including, without limitation, information relating to the effectiveness of Thermo sensitive Goods following a breach in the cold chain.

**6.2** In these GPC the term "Defective Good" 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 supply 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.

**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.

**6.4** 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.

#### **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 includes medical material. 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 standards of MSF. 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 (2) years (in the event of a total shelf life of three (3) years or more) or two third (66%) of their shelf life (in the event of a total shelf life shorter than three (3) years). No deviation shall be permitted from this requirement without MSF's written consent. To that extend, for Artsen zonder Grenzen (MSF Netherlands) the remaining shelf life is hereby expressly defined as 75% in the event of a total shelf life shorter than three (3) years.

#### **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 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 seven (7) business days from the Delivery Date, MSF shall be entitled to cancel the relevant Purchase Order without financial consequences.

#### **Article 10. Insurance**

The Supplier will maintain at all times comprehensive general liability insurance (including products 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. 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 by MSF.

#### **Article 13. 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 14. 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 15. Intellectual Property Indemnity**

The Supplier warrants that the use or supply by MSF of Goods delivered pursuant to the Agreement shall not infringe any third party patent, copyright or other proprietary right. The Supplier shall defend, indemnify and hold harmless MSF, its affiliates 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 16. 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 17. 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, occupational health, and protection of the environment. The Supplier shall take positive action to reduce the environmental burden of its Goods, including packaging and production processes, and minimise any adverse impacts on the environment.

**Article 18. 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 19. 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 20. 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 21. Governing Law and Dispute Resolution**

The Agreement shall be governed by the law of the country in which the Supplier is located. All disputes arising out of or in connection with the Agreement which cannot be resolved amicably shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The arbitration shall take place in Paris. The language of the arbitration shall be English.