

GENERAL TERMS AND CONDITIONS OF PURCHASE

1 DEFINITIONS

- 1.1 The following words and expressions used in these Terms and Conditions shall have the following meanings unless the context requires otherwise:
- 1.2 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.3 **"Confidential Information"** means, without limitation, the existence of these Terms and Conditions, any technical, non-technical, commercial, scientific information, documentation, record, report, know-how, trade secrets, strategies, services, clients, customers, suppliers, processes, procedures, methodologies, ideas, specifications, data or personal information of or relating to the Purchaser whether in oral, written or electronic form which is disclosed to the Supplier or which comes into the possession of the Supplier or under its control in any manner whatsoever;
- 1.4 **"Delivery Address"** means the place for delivery of the Goods and/or Services as stated in the Purchase Order;
- 1.5 **"Event of Force Majeure"** means, without limitation, war, riots, political or civil disorder, sabotage, terrorism, sanctions, any act of state or government (including the declaration of a national disaster, national lockdown or state of emergency), earthquake, fire, explosion, storm, flood or other unpredictable adverse weather conditions, strikes, lockouts or other industrial action (except strikes or labour disputes originated by or involving only the relevant Party's workforce or any part of it), shortage of labour and/or raw materials, any epidemic, pandemic or other medical or health crisis or emergency, or any other factor beyond the reasonable control of either Party;
- 1.6 **"FME"** means the Purchaser and affiliate entities of the Purchaser;
- 1.7 **"Goods and/or Services"** means the goods and/or services as specified on the Purchase Order;
- 1.8 **"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, inventions, logos, copyrights, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether capable of registration, registered or unregistered and including all applications for and renewals, reversions or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.9 **"Purchase Order"** means a written purchase order from the Purchaser to the Supplier for the supply of the Goods and/or Services;
- 1.10 **"Party"** means the Purchaser or the Supplier, and **"Parties"** means the Purchaser and the Supplier, as the context requires;
- 1.11 **"Purchaser"** means Fresenius Medical Care South Africa Proprietary Limited, a private company incorporated in the Republic of South Africa with registration number 1969/014163/07;
- 1.12 **"Supplier"** means the natural or juristic person who will supply the Goods and/or Services to the Purchaser in accordance with these Terms and Conditions
- 1.13 **"Terms and Conditions"** means the Purchaser's terms and conditions, as set out in this document and as amended, updated or replaced from time to time; and
- 1.14 **"VAT"** means value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended.

2 INTERPRETATION

- 2.1 Unless the context clearly indicates otherwise, a reference to: (i) any one gender includes the other genders; (ii) a natural person includes a juristic person and *vice versa*; and (iii) the singular includes the plural and *vice versa*.
- 2.2 The clause headings are for reference only and shall not be used in the interpretation of these Terms and Conditions or any of the clauses.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of these Terms and Conditions.
- 2.4 Where any number of days is prescribed, it shall be reckoned exclusively of the first day and inclusively of the last day. If the day on which or by which any act must be performed is not a Business Day, such act shall be performed on or by the next succeeding Business Day.
- 2.5 The rule of construction that a contract shall be interpreted against the party responsible for the drafting it shall not apply.

3 APPLICABILITY

- 3.1 These Terms and Conditions will apply to and be incorporated in any Purchase Order submitted by the Purchaser to the Supplier for any Goods and/or Services. No amendments to or variations of these Terms and Conditions will be valid unless expressly agreed in writing and signed by an authorised signatory of the Purchaser.
- 3.2 The Supplier's acceptance of a Purchase Order will constitute acceptance of these Terms and Conditions and the Supplier undertakes to deliver the Goods and/or Services to the Purchaser in accordance with the Purchase Order and these Terms and Conditions.
- 3.3 These Terms and Conditions will also apply to all future transactions between the Purchaser and the Supplier in respect of any Goods and/or Services,

even if their applicability has not again been expressly agreed.

- 3.4 Under no circumstances will the Supplier's standard terms and conditions and/or any terms and conditions attached to, contained in, endorsed upon, referred to or delivered with any of the Supplier's quotations, acknowledgment or acceptance of a Purchase Order, invoice or other communication, document or transaction between the Parties amend or modify these Terms and Conditions or bind the Purchaser in any way whatsoever.
- 3.5 The Purchaser shall be entitled in its sole discretion to vary or amend these Terms and Conditions from time to time and to any such amended or varied terms and conditions shall be binding on the Supplier from the time that the Supplier is notified thereof. The Purchaser may give notice of such changes on its website, via email, on Purchase Order or in any other reasonable manner.

4 RELATIONSHIP OF THE PARTIES

- 4.1 In delivering the Goods and/or Services under the Purchase Order and in terms of these Terms and Conditions, the Supplier shall be acting as independent contractor and nothing in these Terms and Conditions shall be construed as creating any relationship of agency, partnership, joint venture or employment between the Purchaser and the Supplier.
- 4.2 Neither Party is entitled to bind the other Party to any obligation of any nature whatsoever or to incur any liability on behalf of the other Party, whether in contract or otherwise.

5 PURCHASE ORDERS

- 5.1 Unless explicitly agreed otherwise between the Parties, the Supplier's confirmations, offers and cost estimates shall be free of cost for the Purchaser.
- 5.2 The Purchaser will issue a Purchase Order to the Supplier for the procurement of the Goods and/or Service. Orders placed orally or by telephone and any ancillary agreements or subsequent amendments to a Purchase Order will only be binding if and to the extent they are confirmed by the Purchaser.
- 5.3 If there is any conflict between these Terms and Conditions and the Purchase Order or any terms and conditions relating to any other document of the Purchaser, these Terms and Conditions will take precedence.
- 5.4 The Supplier must review the Purchase Order on receipt thereof and notify the Purchaser of any noticeable errors, ambiguities, incompleteness and unsuitability of the contents of the Purchase Order and shall inform the Purchaser without undue delay of any necessary modifications or clarifications of the Purchase Order.
- 5.5 The Supplier shall confirm acceptance of the Purchase Order from the Purchaser within 3 (three) Business Days from after the receipt of the Purchase Order.
- 5.6 Notwithstanding clause 5.4, the Supplier will be deemed to have accepted the Purchase Order if the Supplier:

- 5.6.1 responds to, acknowledges or accepts a Purchase Order in any manner;
- 5.6.2 performs in any way under the Purchase Order, including (without limitation) by delivering the Goods and/or Services set out in the Purchase Order;
- 5.6.3 issues a proforma invoice (if applicable) or a tax invoice to the Purchaser for the Goods and/or Services;
- 5.6.4 accepts any payment from the Purchaser in respect of any Goods and/or Services provided to the Purchaser.
- 5.7 The Purchaser will not be bound by any deviations and/or additions contained in the Supplier's acceptance of a Purchase Order or any deviations and/or additions made by the Supplier after its acceptance of a Purchase Order.
- 5.8 The Supplier must include the Purchase Order number in all written communication and documentation with the Purchaser, including (without limitation) delivery notes and invoices.

6 PRICES

- 6.1 Unless expressly stated otherwise in the Purchase Order, all prices specified in the Purchase Order shall be:
- 6.1.1 in South African Rand and exclusive of VAT, which shall be charged at the statutory rate; and
- 6.1.2 fixed and include DDP Delivery Address Incoterms® 2020.
- 6.2 Any additional costs, charges and/or claims of the Supplier are excluded.
- 6.3 If the Purchaser accepts to bear the costs of carriage and delivery, unless otherwise agreed in writing, the Supplier shall provide for the most cost-effective shipping and this shall not affect the place of performance. Any collection charges shall be borne by the Supplier.
- 6.4 The Supplier shall take back the packaging at its own cost and expense and shall dispose of it in a lawful, orderly manner.

7 DELIVERY

- 7.1 Delivery dates set out in the Purchase Order are binding on the Supplier. The delivery periods commence as of the date of the Purchase Order. The Supplier's reservation of a timely self-supply is excluded. The receipt of the delivery items at the Delivery Address indicated by the Purchaser shall be decisive for the Supplier meeting delivery deadlines.
- 7.2 Conditions by which the Supplier reserves unreasonably long or insufficiently specified periods for performance under the Purchase Order are invalid. This also applies to setting of additional grace periods for performance.
- 7.3 Dispatch notes must be sent to the Purchaser in triplicate on the day of dispatch at the latest, stating the Purchase Order number and Purchase Order date. Shipment is to be evidenced by a duplicate consignment note. If applicable, amounts to be credited for packaging material shall be stated in the dispatch note or the delivery note.
- 7.4 The Supplier shall immediately inform the Purchaser in writing of any events occurring or coming to its attention which could lead to a delay in delivery of

- the Goods and/or Services and shall state the reasons for and the expected duration of the delay.
- 7.5 Without prejudice to any other remedies available under these Terms and Conditions or in law, the Purchaser shall be entitled, in its own discretion, to either: (i) cancel the Purchase Order for the relevant Goods and/or Services on a free of charge basis; or (ii) withhold or defer any payment in respect of a Purchase Order; or (iii) charge the Supplier a penalty for late delivery of the Goods and/or Services relating to the specific Purchase Order or to claim damages instead of charging such penalty. The unconditional acceptance of the delivery of any Goods and/or Services shall not be deemed to constitute a waiver of these rights by the Purchaser.
- 7.6 Without limitation to clause 7.5, in case the Purchaser elects to charge a penalty for late delivery of the Goods and/or Services, such penalty shall be calculated at a rate of 0.5% (zero point five per cent) of the net price of the Purchase Order for every full week of delay. The penalty shall be limited to 10% (ten per cent) of the net price of the Purchase Order. Such penalty shall be due by the Purchaser until the actual delivery of the Goods and/or Services takes place. The Supplier may submit explanations (if any) for such delay and whether the penalty is unreasonable. The Supplier shall be liable for the penalty in cases where the delay or non-delivery or non-performance is either partial or total.
- 7.7 Early deliveries, late deliveries or partial deliveries of Goods and/or Services are only permissible with the prior written consent of the Purchaser. Any acceptance of early, late or partial deliveries to which the Purchaser has not consented, shall not affect the Purchaser's rights in respect of the total delivery, even if the Purchaser has not expressly reserved these rights on acceptance of delivery of the relevant Goods and/or Services.
- 7.8 The Supplier shall always mark, pack and ship its Goods according to nationally and internationally applicable provisions. The accompanying documents shall show the risk category as well as any further particulars required by the appropriate transport regulations.
- 7.9 The Supplier shall not be entitled to subcontract its rights or obligations under the Purchase Order or these Terms and Conditions without the prior written consent of the Purchaser. If the Purchaser gives its approval for subcontracting, the Supplier will be liable for the acts and omissions of its subcontractors as it is liable for its own acts and omissions.

8 INVOICES

- 8.1 Invoices shall not be enclosed with the delivery of the Goods and/or Services. Invoices shall correspond with the Purchase Order and each Purchase Order must reflect the PO number and invoiced separately.
- 8.2 Each invoice shall reflect VAT separately, and must include invoice number, each individual Purchase Order number, quantity, price, delivery date (service date), other classification features and a copy of the delivery note.

- 8.3 If Services are invoiced based on measurement or effort, the Supplier shall provide, together with the invoice, all documentation (measurement lists or time sheets confirmed by the Purchaser) necessary for proper auditing. Invoices for partial deliveries shall be marked correspondingly.

- 8.4 Invoices which do not meet the above listed requirements cannot be processed by the Purchaser, and the Purchaser will not be in default with payment in case of non-payment of invoices that do not comply with the above requirements.

9 PAYMENT TERMS

- 9.1 All amounts payable by the Purchaser to the Supplier shall be paid directly to the Supplier by electronic funds transfer into the bank account nominated by the Supplier for this purpose. No cash payments will be made.
- 9.2 Unless otherwise agreed in writing, the Purchaser shall make payment to the Supplier within 60 (sixty) days following receipt of the invoice from the Supplier accompanied by all documentation to be provided by the Supplier as mentioned in the Purchase Order, these Terms and Conditions or reasonably requested by the Purchaser.
- 9.3 If the Parties agree advance payments by the Purchaser, in order to secure the Purchaser's claims against the Supplier the Purchaser shall be entitled to receive upon request an unconditional, irrevocable and absolute bank guarantee by a credit insurer or financial institution registered in the Republic of South Africa, waiving the defence of contestability, set-off and the guarantor's defences of advance claim, as well as the right to deposit, with a term until complete fulfilment of the delivery and performance obligations by the Supplier.
- 9.4 Payments made by the Purchaser shall be in respect of a specific invoice from the Supplier and the Supplier shall not be entitled to set-off payments received from the Purchaser against older debts or costs and interest.
- 9.5 The Purchaser shall be entitled to the rights of retention and set-off in accordance with statutory law.
- 9.6 Payment shall not be deemed to constitute acceptance by the Purchaser of the delivery of the Goods and/or Services as being in accordance with the Purchase Order and these Terms and Conditions.
- 9.7 The Supplier may only set-off amounts owing by the Purchaser to the Supplier which are uncontested or have been determined in a legally binding manner, and may only assert a right of retention for such amounts which are uncontested or have been determined in a legally binding manner and which are based on the same contractual relationship between the Parties.

10 PERFORMANCE OF SERVICES

- 10.1 The Supplier shall at all times:
- 10.1.1 perform the Services diligently, professionally and efficiently with the degree of skill and care reasonably expected of a competent body experienced in performing services of a similar nature to the Services and under similar circumstances;

- 10.1.2 perform the Services in accordance with the provisions of these Terms and Conditions and all applicable laws, rules, regulations and professional standards;
- 10.1.3 follow technical practices and utilise appropriate and safe equipment to carry out the Services;
- 10.1.4 provide all employees, materials and equipment required for the execution, completion and maintenance of the Services;
- 10.1.5 remain responsible for the manner and details of the provision of the Services
- 10.1.6 comply with environmental, health and safety, and hazardous waste laws, regulations and standards, any of the Purchaser's security, health and safety standards and regulations and clinical protocols, which shall be communicated to the Supplier and all reasonable instructions given by the Purchaser from time to time in relation to the Services.
- 10.2 The Supplier shall notify the Purchaser without undue delay and report to the Purchaser forthwith upon the occurrence of any event or circumstance which may, immediately or in the future, affect the proper and timely execution of the Services by the Supplier so that remedial action, as is appropriate under the circumstances, can be taken and relevant decisions made by the Purchaser.
- 10.3 The Supplier shall obtain all permits, licences, registrations, certificates or other administrative authorisations as may be required by any governmental authority from time to time or as may be necessary or incidental to the Supplier's business and the Services.
- 10.4 The Supplier shall be and remain responsible for all liabilities in respect of its employees including, without limitation, payment of salaries and wages, benefits, taxation, leave, workmen's compensation, health and safety and shall ensure that such payments and benefits comply with the applicable laws.
- 11 TRANSFER OF RISK AND OWNERSHIP**
- 11.1 Delivery of the Goods shall be made at the Supplier's risk. The risk in the Goods shall pass to the Purchaser on proper delivery of the Goods at the Delivery Address.
- 11.2 The risk includes, without limitation, damage, deterioration, loss or theft of the Products from any cause whatsoever.
- 11.3 Ownership of the Goods shall remain vested in the Supplier until the Purchaser has paid the price for the Goods in full.
- 12 SUPPLIER'S WARRANTIES**
- 12.1 Without prejudice to any other rights of the Purchaser under these Terms and Conditions, the Supplier warrants that:
 - 12.1.1 the Goods will be new, unused, of merchantable and satisfactory quality, fit for purpose and free from any defects, whether in design material or workmanship;
 - 12.1.2 the Goods and/or Services will conform with the specifications or descriptions in the Purchase Order;
 - 12.1.3 the Goods and/or Services will comply with any health and safety standards as under any applicable laws or regulations;
 - 12.1.4 the Goods will be free from defects in title;
 - 12.1.5 the Goods will comply with the state of the art of science and technology and the applicable standards, legal provisions and the rules and regulations and guidelines of public authorities and professional associations.
- 12.2 Any deviation from the warranties in clause 12.1 requires the Purchaser's prior written approval. Such approval shall not limit Suppliers' liability for defects.
- 12.3 If the Goods and/or Services do not comply with the Purchase Order or the warranties in clause 12.1, the Purchaser shall notify the Supplier of obvious defects of the delivered Goods and/or Services without delay, as soon as such defects are detected in the course of the ordinary business processes, however no later than 10 (ten) Business Days from the receipt of the delivery of the Goods and/or Services. In case of hidden defects, the Purchaser will notify the Supplier in writing at the latest 10 (ten) Business Days from the date of detection of such hidden defects.
- 12.4 In case of defects in the Goods and/or Services, the following remedies shall be available to the Purchaser, in its sole discretion:
 - 12.4.1 rejecting the Goods and returning them to the Supplier at the Supplier's cost, expense and risk;
 - 12.4.2 requesting (if applicable) the Supplier to eliminate defects or non-compliance in the Goods and/or Services within a reasonable period determined by the Purchaser, at the Supplier's cost;
 - 12.4.3 requesting the Supplier to replace the defective or non-compliant Goods within a reasonable period determined by the Purchaser, at the Supplier's cost;
 - 12.4.4 obtaining a price reduction from the Supplier for the portion of the Goods and/or Services affected by such defects or non-compliance;
 - 12.4.5 eliminating the defects itself or having them eliminated by a third party or arranging for the delivery of similar Goods and/or Services by the Supplier or a third party, in each case at the cost of the Supplier;
 - 12.4.6 cancelling the Purchase Order, in whole or in part, and obtaining appropriate compensation from the Supplier for any damages sustained.
- 12.5 The period of limitation for claims based on defects is 3 (three) years from the date of delivery. If the Supplier eliminates the defect by replacing the delivered Goods with Goods free from defects, the period of limitation starts anew with the delivery of the defect-free Goods.
- 12.6 The period of limitation for claims in connection with defects shall not expire prior to the expiration of the limitation period for claims by the Purchaser's customers against the Purchaser in connection with defects for Goods and/or Services, which the Purchaser obtained from the Supplier on behalf of such Purchaser's customers for the intended resale.
- 12.7 These warranties shall survive any inspection, delivery, acceptance or payment of the Goods and/or Services by the Purchaser and are without prejudice to the Purchaser's other rights or remedies, including

(but not limited to) statutory warranties or latent defects provided under any applicable law.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights made available by the Purchaser to Supplier shall remain the property of the Purchaser. The Supplier shall ensure that such Intellectual Property Rights are always identified as the Intellectual Property Rights of the Purchaser and must be returned to the Purchaser immediately on demand.

13.2 The Supplier guarantees that no Intellectual Property Rights of any third party are or will be infringed in connection with its delivery of the Goods and/or Services. If the Purchaser becomes subject to claims by a third party on account of any (alleged) infringement of such third party's Intellectual Property Rights, the Supplier shall immediately upon request indemnify the Purchaser against such claims. The Supplier's duty to indemnify shall cover all expenses of the Purchaser arising of or in connection with the claims asserted by a third party.

14 RIGHTS TO AND USE OF RESULTS OF SERVICES

14.1 The Purchaser shall acquire the exclusive ownership of all results of the Services arising in connection with the Services performed by the Supplier, including any draft materials, at the moment of their creation in their respective processing status.

14.2 Furthermore, the Purchaser acquires exclusively all Intellectual Property Rights of use and exploitation and any other permission to publish, copy, exploit in such results of the Services, including any legal position regarding ideas, drafts and creations at the moment of their creation.

14.3 The aforementioned Intellectual Property Rights entitle the Purchaser irrevocably to exclusively use and exploit the results of the Services for all known and yet unknown types of use, unlimited in time, scope and space, for all commercial and non-commercial purposes. The Purchaser is entitled to use, distribute, copy, disseminate and make available to the public the original and copies of the results of the Services in any form without any restriction. The Purchaser shall furthermore be entitled to edit and modify the results of the Services and to use, copy and distribute the results thereof. The use rights in software include the object and the source code of such software. The Purchaser is entitled to sublicense or transfer the aforementioned use rights partially or in total, limited or unlimited in time, either for consideration or gratuitously to third parties, without any compensation for the Supplier.

14.4 The Supplier shall refer whenever suitable on the results of the Services to the Purchaser's exclusive, irrevocable and unlimited in time, scope and space use and exploitation right by including "© xxxx the Purchaser", where xxxx stands for the year of creation of the results of the Services.

14.5 If the Supplier appoints a subcontractor, agent, or other third party to perform any part of the Services, the Supplier shall ensure the Purchaser

has consented in writing to such third party subcontract and that subcontract terms are consistent with these Terms and Conditions. Notwithstanding the Purchaser's consent to allow a third party to subcontract, the Supplier shall all times remain fully liable for delivery and performance of Terms and Conditions between the Parties. The Purchaser shall be entitled to review the relevant sections of the contracts in place with the third party, and the Supplier shall make them available to the Purchaser upon the Purchaser's request.

14.6 Regarding other Goods and/or Services, the Supplier will grant to the Purchaser at a minimum the use and rights required by the Purchaser for the unimpaired use of the delivered item for the purposes agreed in the Purchase Order. This shall include the right to copy, modify, distribute and make publicly available.

15 CONFIDENTIALITY

15.1 The Supplier undertakes to keep the Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party (either during these Terms and Conditions or after its termination for any reason whatsoever) without the prior written consent of the Purchaser.

15.2 The Supplier shall refrain from commercially using or exploiting or having a third party exploit any of the Confidential Information.

15.3 The Supplier shall ensure that its employees, subcontractors, agents, and any third party comply with the provisions of this clause 15, regardless of the relationship between the Supplier and the third party. The Supplier shall impose on the relevant persons confidentiality obligations similar to the obligations set out in this clause 15 and shall assume full responsibility for any breach of the confidentiality obligations by such persons.

15.4 The obligation of confidentiality and the prohibition of use shall not apply to Confidential Information that the Supplier can prove was publicly available before the conclusion of the Purchase Order with the Purchaser through no default of the Supplier. The obligation to confidentiality shall end when and to the extent Confidential Information becomes public domain during or after the performance of the Purchase Order.

15.5 If the Supplier is required to disclose any Confidential Information under applicable laws or by a government order, decree or regulation, any binding judgment, order or requirement of any court or other competent authority, it shall make all reasonable efforts to give prompt written notice to the Purchaser to such disclosure.

15.6 Upon request by the Purchaser at any time for the duration of these Terms and Conditions or on expiry or termination of these Terms and Conditions for any reason, the Supplier shall without undue delay return or destroy the Confidential Information, any copies and reproductions thereof (both written and electronic) and any documents and materials containing Confidential Information in its possession or under its control. There shall be no right to retention.

15.7 The Supplier shall not refer to the business relationship with the Purchaser without the Purchaser's express written permission.

15.8 The provisions of this clause 15 shall remain valid for a period of 5 (five) years from the date of completion of a Purchase Order.

16 LIMITATION OF LIABILITY

16.1 The Supplier's liability for damages shall be unlimited.

16.2 If the Purchaser is held liable by the Supplier or any third party for any claim, damage, injury or loss to any person or property of any nature whatsoever arising out of the use of, or inability to use, the Goods and/or Services, the Supplier shall indemnify the Purchaser from such claims, to the extent that the damage resulted from defective Goods and/or Services delivered by the Supplier under a Purchase Order and in terms of these Terms and Conditions.

16.3 The Supplier is obliged to take out adequate insurance coverage against all product liability risks, and to make the insurance policy available to the Purchaser for review upon request. If the Purchaser is entitled to further damages, these remain unaffected.

16.4 This clause 16 shall survive termination of a Purchase Order and/or these Terms and Conditions for any reason whatsoever.

17 FORCE MAJEURE

17.1 Neither Party shall have any claim against the other Party for any failure of either Party to carry out its obligations under these Terms and Conditions, timeously or at all, as a result of any Event of Force Majeure.

17.2 A Party affected by an Event of Force Majeure shall immediately provide written notification the other Party of the occurrence of such Event of Force Majeure, which notice shall include the nature and cause thereof. The Party affected by the Event of Force Majeure shall similarly give notice to the other Party immediately upon restoration of normal conditions.

17.3 Should an Event of Force Majeure continue for a period of 30 (thirty) days or more, either Party shall be entitled to terminate these Terms and Conditions by giving written notice to the other Party.

18 PROTECTION AND PROCESSING OF PERSONAL INFORMATION

18.1 Each Party will be responsible for complying with their respective obligations under all applicable laws relating to privacy and the collection, Processing, further processing, transfer and retention of personal information and data, including (without limitation), requirements of the Protection of Personal Information Act 4 of 2013, as amended ("**Data Protection Laws**").

18.2 A Party must comply with the Data Protection Laws in respect of the transfer of Personal Information outside the Republic of South Africa.

18.3 Any breach by a Party of its obligations in clause 18 will be deemed to be a material breach of these Terms and Conditions and will entitle, but not oblige, the other Party to terminate these Terms and Conditions on written notice to the other Party with immediate effect.

18.4 The Parties shall bind all their employees to comply with their obligations under any Data Protection Laws relating to privacy and data protection, including all personal information pertaining to any person or entity provided or transmitted between the Parties.

19 BREACH AND TERMINATION

19.1 If the Supplier:

19.1.1 is in breach of any of the provisions of these Terms and Conditions or a Purchase Order, in whole or in part, and fails to remedy such breach within 10 (ten) Business Days after the Purchaser has given it written notice to remedy such breach;

19.1.2 become insolvent or bankrupt or enter any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or liquidation or business rescue proceedings are commenced by or against it;

19.1.3 experiences a deterioration in its financial situation and/or ceases to carry on its business and/or materially changes the nature of its business that threatens the timely fulfilment of or its ability to perform its obligations under this Agreement;

19.1.4 compromises or attempts to compromise or concludes any agreements with its creditors for relief of debt to defer payment of any debts owed by it to its creditors;

19.1.5 fails or refuses to complete the business partner due diligence for compliance purposes conducted by the Purchaser, or if such business partner due diligence reveals, in the reasonable view of the Purchaser, any concerns regarding the commencement or continuation of a business relationship between the Purchaser and the Supplier in any way,

the Purchaser shall be entitled, without prejudice to any of its alternative or other rights under these Terms and Conditions or in law, to claim specific performance or to immediately cancel these Terms and Conditions and any Purchase Order, in either event without prejudice to its rights to claim damages.

19.2 Notwithstanding anything to the contrary in these Terms and Conditions, the Purchaser may terminate these Terms and Conditions at any time without liability to the Supplier by giving at least 30 (thirty) days' prior written notice to that effect.

19.3 On termination of these Terms and Conditions for any reason whatsoever the Purchaser shall pay to the Supplier all the Supplier's outstanding unpaid invoices for Goods and/or Services duly delivered in terms of the Purchase Order and these Terms and Conditions.

19.4 The termination of these Terms and Conditions or a Purchase Order for any reason shall not affect any rights or obligations of either Party which may have arisen or are in existence as at the date such termination and such rights or obligations shall survive such termination.

20 GLOBAL SUPPLIER CODE OF CONDUCT / COMPLIANCE WITH LEGAL PROVISIONS / SUPPLIER DECLARATION

- 20.1 FME upholds the values of integrity and lawful conduct in all jurisdictions FME conducts business, especially with regard to anti-bribery, anti-corruption, anti-money laundering, human rights, social standards and environmental protection. FME upholds these values in its own operations, as well as in its relationships with suppliers. FME's continued success and reputation depends on a common commitment to act accordingly. Together with FME, the supplier commits to uphold these fundamental values by adherence to applicable laws and regulations.
- 20.2 The Supplier warrants towards FME that he and his affiliates shall comply with the Fresenius Medical Care Global Code of Conduct for Business Partners (published on: <https://www.freseniusmedicalcare.com/en/global-code-of-conduct-for-business-partners>) ("FME CoC BP"), and shall establish adequate processes to ensure that all of its Business Partners and subcontractors comply with the FME CoC BP or comparable standards.
- 20.3 The Supplier shall provide a valid supplier declaration for the current calendar year including customs tariff and country of origin for Good delivered at the request of the Purchaser. The Supplier undertakes to immediately inform the Purchaser if the provided supplier declarations are no longer valid.

21 ANTI-BRIBERY AND ANTI-CORRUPTION

- 21.1 FME upholds the values of integrity and lawful conduct in all jurisdictions FME conducts business, especially with regard to anti-bribery, anti-corruption, anti-money laundering, human rights, social standards and environmental protection. FME upholds these values in its own operations, as well as in its relationships with business partners. FME's continued success and reputation depends on a common commitment to act accordingly. Together with FME, the Supplier, under the Terms and Conditions commits to uphold these fundamental values by adherence to applicable laws and regulations.
- 21.2 The Supplier and its affiliates shall comply with the Fresenius Medical Care Global Code of Conduct for Business Partners published on: <https://www.freseniusmedicalcare.com/en/global-code-of-conduct-for-business-partners> ("FME CoC BP"), and the Supplier shall establish adequate processes to ensure that all of its suppliers and subcontractors comply with the FME CoC BP or comparable standards.
- 21.3 In addition to the foregoing commitment the

Supplier confirms that it will inform FME immediately of any circumstances of which it becomes aware or should reasonably be aware which could amount to a conflict of interest between the Supplier and FME and/or their respective employees by virtue of its actions or those of its employees.

22 TRADE GOVERNANCE

- 22.1 Information on FME's Trade Governance standards is available at: <https://www.freseniusmedicalcare.com/en/trade-governance/> at www.freseniusmedicalcare.com/en/trade-governance/.
- 22.2 The Supplier undertakes to comply with all statutory, regulatory and industry-specific requirements relevant to the delivered Goods and shall take any measures and shall provide the Purchaser with any information required in that regard.
- 22.3 In particular, the Supplier undertakes to comply with applicable trade laws and regulations, such as economic sanctions laws and regulations ("**Sanctions**"), laws and regulations governing the export and re-export of controlled items and services ("**Export Controls**") and customs laws and regulations.
- 22.4 The Supplier confirms that it is not targeted by any applicable Sanctions and, to the best of its knowledge, that it is not represented by or acting on behalf of a person subject to applicable sanctions. If the Supplier is a juristic person, the Supplier also confirms that, to the best of its knowledge, it is not owned or controlled, directly or indirectly, by a person subject to applicable Sanctions.
- 22.5 The Customer will notify the Company immediately if:
- 22.5.1 any Goods are subject to import or export restrictions under any Sanctions, Export Controls or other applicable trade laws, in whole or in part;
- 22.5.2 if any of the declarations set out in this clause **Fehler! Verweisquelle konnte nicht gefunden werden.** are no longer valid.
- 22.6 The Purchaser has the right, in its sole discretion, to:
- 22.6.1 immediately suspend any Purchaser Order, transaction or the performance of any of its obligations under these Terms and Conditions, without incurring any damages, if the performance of the Purchaser's obligations would violate applicable Sanctions and/or Export Controls; and/or
- 22.6.2 immediately terminate or cancel any Purchase Order and these Terms and Conditions if any of the declarations set out in this clause **Fehler! Verweisquelle konnte nicht gefunden werden.** are incorrect.
- 22.6.3 Trade Laws are subject to change. In case the performance of obligations under this Agreement is or becomes prohibited by applicable Trade Laws or prevented by the effects of Trade Laws, FME is entitled to immediately suspend the performance of its obligations under this Agreement without incurring any damages or

penalties. In case required licenses and authorizations for the performance of the Agreement cannot be obtained in reasonable time, FME is entitled to terminate this Agreement without incurring any damages or penalties.

- 22.6.4 Any sale, transfer, export, re-export or use of Goods shall be in compliance with applicable Sanctions and Export Controls. Goods must not be made available to persons targeted by applicable Sanctions or Export Controls unless required licenses and authorizations have been obtained from competent authorities.
- 22.6.5 The Supplier shall indemnify FME against all claims and all direct and indirect damages and costs in connection with a breach of the obligations specified in this clause.

23 DOMICILIA AND NOTICES

- 23.1 The Supplier chooses the physical address stated in the Purchase Order as its *domicilium citandi et executandi* for all purposes relating to these Terms and Conditions.
- 23.2 The Purchaser chooses 9 Galaxy Avenue, Linbro Business Park, Linbro Park, 2090 as its *domicilium citandi et executandi* for all purposes relating to these Terms and Conditions.
- 23.3 A Party may notify the other Party in writing of any changes to its chosen address.
- 23.4 Any notice or other communication given by one Party to the other Party ("**Addressee**") under these Terms and Conditions shall be deemed to have been received (unless the contrary is proved) if delivered by hand during ordinary business hours on a Business Day at the Addressee's chosen physical address, at the time of delivery.

24 GENERAL

- 24.1 These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 24.2 The Supplier shall not be entitled to cede, assign or transfer the Purchase Order and these Terms and Conditions or any part thereof to any third party without the prior written approval of the Purchaser. The Purchaser may cede, assign or transfer a Purchase Order and these Terms and Conditions or part thereof to any of its subsidiaries without the prior written consent of the Supplier.
- 24.3 These Terms and Conditions constitute the entire agreement between the Parties with respect to the subject matter and supersede all previous proposals, negotiations, representations, commitments and agreements between the Parties unless Parties have entered into comprehensive agreement.
- 24.4 No addition to, amendment, variation, consensual cancellation or novation of these Terms and Conditions shall be of any force or effect unless reduced to writing and signed by both Parties.
- 24.5 No failure by a Party to enforce any provision of these Terms and Conditions will constitute a waiver of such provision or in any way affect a Party's right to require the performance of such provision at any time in the future.

- 24.6 If any provision of these Terms and Conditions is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be severed from these Terms and Conditions and deemed not to form part of these Terms and Conditions, and the validity and enforceability of the other provisions of these Terms and Conditions shall not be affected.