



Final version (May 2007)

General Purchase Conditions
of the STICHTING INTERNATIONAL DISPENSARY ASSOCIATION, doing
business as IDA FOUNDATION (IDA)
Non Profit Procurement of Medicines and Medical Supplies

ARTICLE 1 **Conditions and Agreement**

- 1.1. These general purchase conditions shall govern and form an integral part of all agreements entered into, all purchase orders placed by IDA and all offers, quotations and tenders, in the widest sense of these terms, drawn up by Supplier. Additional or different terms and conditions proposed by Supplier shall be void and of no effect unless accepted in writing by IDA.
- 1.2. In these general purchase conditions, the Supplier is understood to be: any private or public (legal) entity as well as their legal successors with whom IDA has concluded, or intends to conclude, an agreement for the manufacturing of high quality pharmaceuticals, medical supplies and/or any other products or services. Upon first request of IDA Supplier shall provide IDA with its GMP certificate and manufacturing licence.
- 1.3. A purchase order, hereafter referred to as “PO”, placed by IDA becomes an exclusive agreement between IDA and Supplier for the products and services to be provided, subject to these general purchase conditions contained herein. The PO is assumed to represent the agreement between parties fully and correctly. Acceptance by Supplier of a PO may be evidenced by (i) Supplier’s written or verbal assent or the written or verbal assent of any representative of Supplier, (ii) Supplier’s delivery of the products or the services, or (iii) other conduct by Supplier or any representative of Supplier consistent with acceptance of the PO.
- 1.4. In the event of a conflict between the Supplier’s terms of acceptance and the PO terms and conditions, the PO terms and conditions shall govern unless IDA agrees in writing to the Supplier’s proposed terms.
- 1.5. In the event of a conflict between these general purchase conditions and the PO terms and conditions, the PO terms and conditions shall govern.
- 1.6. The PO number must appear on all invoices, bills of lading, packing lists, cartons, correspondence and other relevant documents.

ARTICLE 2 **Delivery**

- 2.1 Transport and delivery shall be subject to the Incoterms (latest version of Incoterms as issued by ICC, Paris, France). In case the manner of transport and delivery are

not indicated by IDA, the products and/or services shall be delivered by Supplier Delivery Duty Paid (DDP) at the address indicated at the PO and risk and title to the products (free and clear of any encumbrances) shall pass to IDA on that delivery, unless expressly otherwise agreed in writing by IDA.

- 2.2** Notwithstanding any Incoterm used in the PO, Supplier shall obtain any export licences required for the products and/or services. Costs of obtaining those licences shall be borne by Supplier.
- 2.3** Supplier shall pack, mark and ship the products in such manner as to prevent damage during transport and which facilitates unloading, handling and storage. Where the PO provides for installation, commissioning or any other work to be carried out by Supplier such work shall be executed with good workmanship and using proper materials. As a minimum requirement, such products shall comply with all applicable legally required quality and certification standards.
- 2.4** Supplier shall deliver the products and/or services ultimately at the time specified in the PO. Time is of essence.
Seven (7) working days before the shipping date Supplier shall inform IDA, by electronic way (fax or e-mail) that a shipment will be dispatched. Supplier shall submit to IDA ultimately at the date of delivery of the Products various documents, amongst which a copy of the invoice, a copy of the packing list, a copy of the certificate of analyses signed by a qualified pharmacist of Supplier (showing the results of all relevant tests of the medicine as well as the pharmacological quality met by the products) per batch and shipping documents.
Original documents shall be made available to IDA upon first request of IDA.
- 2.5** As soon as Supplier notices that the agreed delivery time will be exceeded, Supplier shall contact IDA immediately. The obligations of the Supplier shall however remain unchanged.
- 2.6** In case of late delivery Supplier will be in default and Supplier's obligation to deliver shall convert into an obligation to pay damages, except when IDA insists on delivery within a time to be specified by IDA. IDA shall nevertheless remain entitled, at its convenience, to receive damages and/or a penalty on account of late delivery. The penalty shall be considered as complementary and amounts to one percent (1%) of the total invoice value (including any VAT) of the PO at stake for each week or a part thereof that the delivery is late, such with a maximum of Euro 10.000,-- (in words: ten thousand Euro). IDA has the right to hold Supplier, besides the complementary penalty, to the obligation to pay damages.
- 2.7** Partial deliveries are not authorized, unless IDA has agreed to this in writing by listing the partial delivery dates in the PO.
- 2.8** Supplier is not entitled to deliver less than the agreed numbers for each product in the PO at stake. A surplus of maximal three percent (3%) is however acceptable. In case of a shortfall or a surplus of more than three percent (3%) IDA has the right to delivery or return of the differences between what has been delivered and what was agreed. Furthermore IDA has the right to claim compensation or to cancel the

agreement as a result of this.

- 2.9** IDA reserves the right to delay delivery for a period of thirty (30) days after the agreed delivery time without Supplier being entitled to claim penalties or compensation for damages from IDA.

ARTICLE 3 Fitness and quality of products/packaging

- 3.1** Supplier expressly warrants and represents that all products, including the packaging and labelling, and services to be supplied shall be new, of good quality, design, materials, construction and workmanship, free from any defects, and that all products conform strictly to the specifications, approved samples, industry standards and all other requirements. Shelf life for products at the time of delivery shall be a minimum of ninety percent (90%) of the total shelf life. Supplier also warrants that said products and services are fit for the purposes for which such products are ordinarily used and for purposes expressly made known to Supplier by IDA, and that the products are contained or packaged adequately to protect the products.
- 3.2** Products to be supplied shall meet the quality requirements laid down by IDA. Those quality requirements (inter alia product, packaging and labelling specifications) are also available at the website of IDA (www.idafoundation.org). These requirements and specifications are binding. For analytical methods and criteria the standards of the specified edition of the British, European or United States pharmacopoeia, if applicable, shall be binding. Also all directives and guidelines laid down by the World Health Organization are applicable.
- 3.3** In case products are or will be supplied under label of the Supplier the following applies. If the product, including the packaging and labelling, supplied by Supplier does not meet the requirements of the relevant authorities based on its registration in the destination country as indicated by IDA Supplier will accept return shipment and will reimburse IDA for the costs incurred by IDA for returning the products as well as for the price paid for the product supplied. Supplier will also indemnify and hold harmless IDA from any claims (including claims of the relevant authorities) and liabilities resulting from this non-conformity with the requirements. In all other cases IDA is responsible for meeting the requirements in the destination country.
- 3.4** IDA has, at all times and places, the right to (have) visit and inspect the actual production, testing, labelling, packing and shipping facilities. Supplier shall permit IDA or its representatives and/or any other appropriate regulatory authority of the territory in which the products are sold by IDA to visit and inspect all facilities without charging any costs. During the visit and inspection IDA has the right - at its own costs - to draw samples of the products in production or already produced and to take along the samples for further investigation.
IDA has the right to refuse acceptance of (partly) produced products. Non-acceptance will result in an immediate request for replacement or will lead to a financial claim.

- 3.5** IDA shall have a reasonable time, i.e. at least one (1) month, after delivery of the products and/or services to inspect them, at all times and places, and to reject and refuse acceptance of the products and/or services not conforming to the PO and/or any agreement.
- 3.6** Payment, inspection, testing or acceptance of any products by IDA shall not relieve Supplier of any of its obligations under the PO and/or any agreement, nor shall it constitute acceptance or approval of any products and/or services or constitute or operate as a waiver of any defect, non conformity or any rights or remedies available under the PO, any agreement or at law.
- 3.7** In case of a dispute concerning the quality of the products, Supplier and IDA agree to consult with each other in order to explain and resolve the discrepancy between each other's determinations. If such consultation does not resolve the discrepancy, Supplier and IDA agree to nominate an independent, reputable laboratory, acceptable to both parties, which shall carry out determinations on representative samples taken from such shipment. The resulting determinations shall be binding on Supplier and IDA for the purposes hereof. The charges for analysis will be paid by the party determined to be at fault.
- 3.8** Before and after the conclusion of the agreement, Supplier shall be bound to provide IDA with all information concerning the applications of the products and/or services and the risks attached to the use thereof.

ARTICLE 4 Compliance with law and Code of Conduct

- 4.1** Supplier represents and warrants to IDA that the products will and have been designed, manufactured and delivered and/or the services will have been performed in compliance with all applicable laws and regulations (including, without limitation, environmental, health and safety laws and regulations, laws, regulations and approvals governing the manufacture of the products and any IDA policies for guidelines on the environment and banned substances from time to time informed to Supplier).
- 4.2** Supplier acknowledges and agrees that it has received a copy of the Code of Conduct (including the ETI Base Code) drawn up by IDA and that both Codes are applicable and form an integral part of these general purchase conditions. The Code of Conduct (including the ETI Base Code) is also available at the website of IDA (www.idafoundation.org).

ARTICLE 5 Prices, Invoicing and Payment

- 5.1** Any offers, quotations and/or tenders drawn up by Supplier are irrevocable.
- 5.2** All prices and rates quoted are fixed. Supplier shall under no conditions have any right to increase an agreed price.

- 5.3** The costs of quotations, samples, trial shipments and specimen materials shall be borne by Supplier unless otherwise agreed upon in writing.
- 5.4** If it comes to IDA's attention at any time during the duration of an agreement between IDA and Supplier that a lower price is being charged by Supplier to any (public) organisation or offered in a tender for an identical or comparable product or service under identical or comparable circumstances, the lower price shall thenceforth also apply to IDA.
- 5.5** Invoices in single copy shall be sent by Supplier to the invoice address notified by IDA, stating both IDA's and Supplier's VAT registration number and the PO number.
- 5.6** Invoices shall be paid within sixty (60) days after the date of invoice. Supplier acknowledges and agrees that IDA's general payment terms and conditions can be reflected in specific PO's upon IDA's written request.
- 5.7** With regard to any payment obligation from IDA to Supplier under the PO and/or any agreement or for whatever reason, IDA is entitled to set off with any payment obligation from Supplier to IDA under the PO, any agreement or for whatever reason.
- 5.8** If Supplier fails to meet any of its obligations or is late in doing so, IDA is entitled to suspend its payment obligation.

ARTICLE 6 Intellectual Property

- 6.1** The products and/or services delivered may not infringe any patent or patent application, licence, copyright, registered drawing, or design, trademark or trade name. Supplier shall pursuant to this warranty, indemnify, defend and hold IDA harmless from any actions or claims brought against IDA pertaining to the alleged infringements of the above mentioned rights.

ARTICLE 7 Force Majeure

- 7.1** The failure of a party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, the PO and/or any agreement insofar as such liability arises from an event of force majeure, provided however that (i) as soon as possible after being affected by a force majeure (but in no event more than three (3) days thereafter) the party so affected shall furnish to the other party all particulars of the force majeure and the manner in which its performance is thereby prevented or delayed and (ii) the party affected by such an event takes all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the conditions of the PO and/or any agreement. For the purposes of these general purchase conditions "Force Majeure" shall mean an event beyond the reasonable control of a party which makes that party's performance impossible or so impractical as reasonably to be considered impossible and includes, but is not limited to: war, riot, civil disorder, earthquake, fire,

explosion, flood or other adverse weather conditions, strikes or confiscation or any other action by governments.

- 7.2** In the event that any force majeure cannot be removed or overcome within sixty (60) days from the date the party affected first became affected, then either party may at the expiration of such period by notice to the other party terminate a PO and/or any agreement, without either party being liable to the other party for terminating the PO and/or any agreement.
In the event that it is evident that a force majeure cannot be removed or overcome at all, then either party may terminate a PO and/or any agreement immediately, without either party being liable to the other party for terminating the PO and/or any agreement.
- 7.3** During any delay or failure to perform by Supplier due to force majeure, IDA may purchase products from other available sources, in which case the quantities under a PO and/or any agreement will be reduced by the quantities of such substitute products.

ARTICLE 8 Indemnification and Liability

- 8.1** Without prejudice to any other right or remedy available to IDA under the PO, any agreement or at law, Supplier shall indemnify and hold harmless IDA, its officers, employees and agents against all liabilities claims (including claims by third parties), suits, losses, damages, costs and expenses (including reasonable attorney's fees) whether direct or indirect, that are due to personal injury (including death) or any damage whatsoever to the extent caused, or alleged by a claimant to have been caused, in connection with the providing of products or performance of services under the PO or any agreement, by: (i) improper or defective products, machinery, materials, supplies, implements, equipment or appliances provided, installed or used by Supplier; (ii) improper or defective work performed by Supplier and/or (iii) negligent or wrongful acts or omissions of Supplier.
- 8.2** In no way shall IDA be liable for damage or loss whatsoever suffered by Supplier under a PO and/or any agreement, save in the event of negligence or wilful misconduct of IDA or its officers, employees or agents in relation to the PO and/or any agreement. In no event shall Supplier be entitled to loss of profits, revenue, goodwill or production downtime or indirect, special, incidental or consequential damages.

ARTICLE 9 Modification and Termination of the PO

- 9.1** IDA may terminate all or any part of its obligations under any PO and/or agreement to purchase or accept products and/or services at any time for its convenience upon written notice to Supplier.
- 9.2** If IDA provides the written notice mentioned sub 9.1 to Supplier at least thirty (30) days prior to the specified shipping date of the relevant products and/or services, IDA shall have no liability for the termination. If IDA terminates the PO and/or any

agreement on less than thirty (30) days notice, IDA and Supplier will negotiate a reasonable termination charge, if any, based on all appropriate factors, including, without limitation, the percentage of work performed by Supplier prior to termination, Supplier's ability to resell or reuse the products or services, and market conditions prevailing at the time of termination.

- 9.3** Supplier has a duty to use its best efforts to mitigate any damages or losses resulting from a termination by IDA. IDA shall have the right to audit all elements of the termination charge and Supplier shall make available to IDA on request, all books, records and papers relating thereto.
- 9.4** If Supplier fails to comply with any obligations of the PO and/or any agreement, Supplier shall be in default without further notice being required. In the event of default, insolvency or bankruptcy proceedings are instituted against Supplier (including voluntary insolvency or bankruptcy proceedings), Supplier is liquidated or dissolved, any attachment is made over the assets of Supplier or on its behalf, Supplier makes an unauthorised assignment for the benefit of the creditors, or any other person or entity than the person or entity having control over Supplier at the date of the PO acquires control over Supplier, IDA shall be entitled to rescind or terminate the PO in whole or in part, without prejudice to any other rights or remedies available to IDA under the PO, any agreement or at law (including, without limitation, the right to seek damages).
- 9.5** All provisions of the PO and/or any agreement destined to survive the dissolution, termination or expiration thereof shall survive such dissolution, termination or expiration.

ARTICLE 10 Governing law and Disputes

- 10.1** Offers, quotations, tenders, PO's and/or any agreement, and the execution thereof as well as these general purchase conditions themselves shall be governed by the laws of the Netherlands.
- 10.2** Save in the event of disputes mentioned in article 3.7, all disputes arising out of or in connection with offers, quotations, tenders, PO's and/or any agreement, to which these general purchase conditions apply, or the general purchase conditions themselves or their interpretation or execution, shall first be attempted by Supplier and IDA to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes with Suppliers established in the European Union that are not settled in that way within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to the courts of Amsterdam, the Netherlands, unless compulsory regulations regarding relative competence prevent such. All disputes with Suppliers established outside the European Union that cannot be settled in that way within a period of thirty (30) days from the date the relevant dispute first arose shall be finally and exclusively settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three (3) arbitrators designated in accordance to said rules. Place of arbitration shall be Amsterdam, the Netherlands and the proceedings shall be held in the English language.

ARTICLE 11 Secrecy

- 11.1** Each party undertakes towards the other party to maintain the strictest secrecy with regard to confidential information provided by the other party within the framework of a PO and/or any agreement. The receiving party shall, in addition, only make use of the confidential information insofar as this is necessary in connection with the performance of its obligations deriving from the relevant agreement. Confidential information shall also comprise all information that the providing party explicitly indicates as confidential.
- 11.2** Article 11.1 shall not apply in case of information publicly available or acquired by the receiving party in a lawful manner, other than by means of the providing party, or if the receiving party, by virtue of a legal regulation or within the framework of the fulfilment of its obligations under the agreement, is bound to provide confidential information to third parties.

ARTICLE 12 Miscellaneous

- 12.1** IDA and Supplier are independent contracting parties. Nothing in the PO and/or any agreement makes either party the agent or legal representative of the other party for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in name of the other party.
- 12.2** Supplier will not, in any manner, advertise or publish that Supplier is contracted to provide products and/or services to IDA.
- 12.3** Supplier shall not subcontract, transfer or assign any of its rights or obligations under the PO and/or any agreement to any third party or any of its affiliates without the prior written consent of IDA. In case Supplier is permitted to subcontract any of its obligations hereunder, it shall remain fully responsible and liable for the proper performance of its obligations under any PO and/or agreement. IDA may assign any PO and/or agreement to any of its affiliates upon written notice to Supplier.
- 12.4** No waiver by IDA of any breach of any condition, covenant or term of the PO and/or any agreement shall be effective unless it is in writing and no failure or delay by IDA in enforcing any provision of the PO or in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- 12.5** In the event that any provision(s) of the PO, any agreement or these general purchase conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding of action shall not negate the validity or enforceability of any other provisions hereof. Such invalid or unenforceable provision shall be replaced with a provision which accomplishes – to the best possible extent – the original purpose of such provision.
- 12.6** Deviations from the general purchase conditions shall only be binding if and in so far as this has been expressly agreed and only in respect of the offers, quotations,

tenders, PO's and/or any agreement to which they apply. These general purchase conditions shall remain fully in force with regard to the other offers, quotations, tenders, PO's and/or any agreement.

- 12.7** IDA is authorised to make amendments to these general purchase conditions. The amendments shall become effective on the specified effective date, but shall not apply to PO's and/or any agreement agreed before that date. IDA shall send the amended terms and conditions to Supplier in good time. If no effective date is specified, the amendments shall apply to Supplier as soon as it is informed or becomes aware of the amendments, although they shall not apply to PO's and/or any agreement agreed before that date.
- 12.8** For the purposes of these general purchase conditions, "in writing" shall be deemed to mean by letter, fax or electronic means.
- 12.9** IDA shall, at the request of the Supplier, provide Supplier with an (informal) translation of these general purchase conditions in a language understandable by the Supplier. Costs for this translation will be born by Supplier . However, the English version shall prevail if a dispute should arise with respect to the interpretation of the content of these general purchase conditions.