

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 manufacturing and/or supply of finished pharmaceutical dosages, Medical supplies and Diagnostic Products (Laboratory Supplies)
- 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 of the Purchase order by Supplier 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. However, for requirements under funded programmes, IDA shall not confirm any orders with Supplier until it receives the necessary funds for the order or notification of approval of the Global Fund wherever as applicable.
- 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) mentioned in each Purchase order that IDA may place from time to time.
- 2.2** Notwithstanding any INCOTERM used in the PO, Supplier shall obtain a necessary export permission/license as required and wherever applicable, before shipments of the said products and/or services. Costs of obtaining those licenses shall be to the Supplier's account.
- 2.3** Supplier shall pack, mark, and ship the products as per standard shipping instructions of IDA as to prevent damage during transit and storage.
- 2.4** Supplier shall deliver the products and/or services as per the time, place and Incoterm specified in the Purchase Order.

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 (mentioning the country of origin), a copy of the packing list, a copy of the Manufacturer's Certificate of Quality and shipping documents such as the Bill of Lading / AWB, Certificate of origin.

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 should immediately inform IDA in writing about the delay with valid reasons. And both the supplier and IDA should arrive an agreement on the revised delivery time and the obligations of the Supplier shall remain unchanged. However, IDA reserves the rights to insist the supplier to air lift the shipments at supplier's cost to ensure IDA will be able to honor the delivery time committed to its customers or pay penalty charged by the customer due to delay in delivery.
- 2.6** In case the supplier fails to perform under the terms and conditions of the PO or the Long-Term Agreement, including but not limited to obtaining necessary export licenses or delivery of all the goods by the date or dates of delivery, IDA shall without prejudice to any other rights or remedies, exercise the following rights:
- a)** The supplier may be required to airlift the cargo at their costs to save on sailing time to Rotterdam and to avoid a 'stock-out' situation.
 - b)** In case the late delivery of goods by a supplier has resulted in extra costs/penalties being imposed by IDA's customer, the same shall be passed on to the supplier responsible for such penalties.
- 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** Purchase orders can be short closed subject to production loss. However, Supplier is not entitled to deliver more or less than the agreed numbers for each product in the PO at stake. In case of a deviation in (to be) delivered quantities, 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.

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 by IDA.
- 3.2** 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.
- 3.3** Products to be supplied through GF (-funded) programmes meet the quality requirements laid in accordance with the Global Fund's Policies on the procurement and supply management of health products (see www.theglobalfund.org/documents/psm/PSM_ProcurementSupplyManagement_Guidelines_en/) For all IDA supplies (through GF and other orders) the product should comply with EU Medical Devices directive (93/42/EEC) or EU directive for In Vitro Diagnostics IVD (98/79/EC) and/or FDA premarket notification (FDA 510 (k)). Manufacturer quality management should comply with ISO134845:2008.

If product is not a medical device neither a vitro diagnostic (for examples bags for disposal, some cleaning agents) the manufacturer should comply with ISO9001:2008 and product allowed on stringent regulated market (EU, US etc.)

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.

- 3.4** Supplier shall ensure that the quality, integrity, and shelf life of the products is maintained during storage and transport under their responsibility. For pharmaceutical products, the quality must be ensured through continuous temperature monitoring during storage and transport. Temperature monitoring during transport may be exempted based on risk assessment taking into account means of transport, transport time and prevailing temperature. The Supplier will be liable in case quality of the goods is not maintained due to unacceptable storage or transport conditions during the period wherein supplier is responsible for the logistics.
- 3.5** If Goods are rejected due to non-compliance observed during the shelf life of the product; the Supplier shall cover any cost related to the rejection and /or return of Goods. , The rejected Goods should be replaced or credited upon agreement with **IDA Foundation**.
- 3.6** Any rejected goods using IDA artworks or name must be destructed. The supplier, within an agreed time frame, shall destruct the goods and provide IDA with evidence of destruction.
- 3.7** 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.
- 3.8** Any dispute on the quality of the products with the Supplier will be resolved by sending samples to an independent lab approved/identified by IDA/ the Global Fund whose findings will be conclusive and the case will be concluded as per the findings of the Lab..
- 3.9** 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.
- 3.10** As per GMP requirements, the manufacturer shall keep enough retention samples for each batch of finished products. In the event of a quality related complaint and a potential product defect, manufacturer shall provide IDA with its co-operation in further investigations and if so required samples for an independent analysis by a mutually selected laboratory.
- 3.11** Supplier shall establish a formal change control system to handle any changes to the product specification, production processes, manufacturing site, testing, release, shipping and distribution of the product. This system should ensure a proper review of such changes for impact on regulatory requirements and product quality. Major and critical changes which may have impact on IDA's products shall be routed and approved by both parties.
- 3.12** Supplier shall ensure that an adequate system for recording, reviewing and investigating complaints, adverse event reports, or suspected falsified medicinal products, has been implemented. The outcome of investigations shall be shared with IDA within a timely manner.
- 3.13** Supplier shall maintain a Standard Operating Procedure for use when it is necessary to recall a defective Product from the market. The supplier shall render its full cooperation, so that the recall can be carried out promptly and effectively. If required, the local competent authority shall be informed by the supplier of any defect that could result in a product recall.

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 that it has received and agrees to sign the Code of Conduct (including the ETI Base Code) drawn up by IDA Foundation 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 (<https://www.idafoundation.org/media/wysiwyg/PDF/CoCThirdPartiesv4.pdf>).

ARTICLE 5: Prices, Invoicing, Payment and Performance

- 5.1** Any offers, quotations and/or tenders drawn up by Supplier are irrevocable.
- 5.2** All prices and rates quoted are fixed for the validity period mentioned in the offer. Supplier shall have the rights to review /renew the prices at least 15 days prior to expiry of the validity period for approval/acceptance by IDA, however a case to case revision will be allowed subject to providing documentary evidences justifying the price increase against the benchmark prices used at the time of making the offer/quote.
- 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** All suppliers are required to submit their invoice for supply of goods/services digitally to invoices@idafoundation.org. Invoices to be submitted within 3 working days from date of invoice. Suppliers should mention their Bank Account number to which the Invoice amount has to be credited, VAT Registration number and the PO number on each invoice that is submitted to IDA.
- 5.5** Unless agreed otherwise, all invoices shall be paid as per the payment term mentioned in the Purchase Order subject to timely receipt of invoices submitted to the above mentioned Email ID of IDA Foundation.

ARTICLE 6: Intellectual Property and IDA brand

- 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.
- 6.2** The selling of products with IDA label (and/or use of IDA artwork) to buyers other than IDA Foundation is not allowed.

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.
- 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.
- 8.3** The supplier is obligated to reimburse IDA/its beneficiaries for any damages which arise due to a product sample being non-compliant.

ARTICLE 9: Modifications and Termination of the PO

- 9.1** In the event that the Global Fund, a Principal Recipient or other IDA customer wishes to cancel partially/fully, or amend a Purchase Order, IDA shall effect such amendment or cancellation of a Purchase Order immediately upon receipt of written notice by the Global Fund, Principal Recipient or other IDA customer. IDA and the Supplier shall use reasonable efforts to seek alternative acceptable means on behalf of the Principal Recipient to accommodate the request to amend or cancel the order, as applicable. In the event that costs have been incurred by the Supplier in connection with such cancellation or amendment, a decision may be arrived at after mutual discussion between the supplier and IDA Foundation to suitably compensate the supplier to the extent of the cost incurred based on the amount of work completed as of the date of such cancellation or amendment. If products have already been produced, the Supplier may refuse such cancellation.

- 9.2** The Supplier however shall make 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.
- 9.3** If the 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 unauthorized 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).
- 9.4** 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.

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 regarding 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 Foundation and the 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 authorized 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 borne 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.

Signatures:

<u>Controlled Document Content Approved:</u>	I hereby state that I have found no errors in the contents of this controlled quality document, and thus the document is ready for release.		
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