

TERMS AND CONDITIONS OF PURCHASE

1. **Interpretation**
In these Terms and in a Purchase Order, the following definitions apply:
- 1.1 **"Applicable Laws"** means laws and regulations applicable to the supply of Goods or provision of Services pursuant to these Terms, including, without limitation, laws and regulations relating to health, safety and the environment, fair labour practices and unlawful discrimination, privacy, anti-bribery, and the New Zealand Regulatory Guidelines for Medicines regulations.
- 1.2 **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in New Zealand.
- 1.3 **"Change of Control"** means a change in the identity of the person or persons who is or are able to control an entity (including a corporation).
- 1.4 **"Delivery Note"** means the document provided to us by you accompanying the delivery of the Goods and/or Services.
- 1.5 **"Goods"** means the goods (or any part of them) sold by you to us under these Terms and pursuant to a Purchase Order.
- 1.6 **"GST"** has the meaning given in (the Goods and Services Tax Act 1985 (NZ) as amended from time to time ("GST Act") or any replacement or other relevant legislation or regulations.
- 1.7 **"Insolvency Event"** means any of the following in respect of you: (a) insolvency; (b) bankruptcy; (c) an application for winding up is made and not stayed within 14 days, or a resolution for winding up is passed; (d) a winding up order is made; (e) a controller, administrator, receiver and/or manager, statutory manager, provisional liquidator or liquidator is appointed; (f) notice is given of a meeting of creditors for the purposes of a deed or scheme of arrangement; or (g) any actions of a similar effect to those set out above occur to which the law of another jurisdiction applies and the event would have had a similar effect had the law of New Zealand applied.
- 1.8 **"Intellectual Property Rights"** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries.
- 1.9 **"Novartis Third Party Code"** means the document with this title available at <https://www.novartis.com/esg/reporting/codes-policies-and-guidelines>
- 1.10 **"Price"** means the price for the Goods and/or Services as specified in the Purchase Order.
- 1.11 **"Purchase Order"** means a written order submitted by us to you in any form requesting that you supply Goods or Services in accordance with these Terms.
- 1.12 **"Services"** means the services to be performed by you for us under these Terms pursuant to a Purchase Order.
- 1.13 **"Tax Invoice"** has the meaning given to it in the GST Act and includes but is not limited to an invoice or adjustment credit or debit note in the form required by the GST Act identifying the amount and calculation of the GST payable in respect of the relevant supply of Goods and/or Services.
- 1.14 **"we", "us" or "our"** means Novartis New Zealand Limited NZCN 52118, NZBN 942900005081 and its successors or assigns.
- 1.15 **"you" or "your"** means the person supplying the Goods and/or Services to us (as set out in the Purchase Order) and includes any person acting on behalf of and with the authority of that person.
- Application**
2. These terms and conditions ("**Terms**"), **apply to any Purchase Order we place with you, unless otherwise agreed in writing.**
- 2.1 Notwithstanding any other provision in these Terms, to the extent that there are any inconsistencies between these Terms and a Purchase Order, the Purchase Order shall take precedence.
- 2.2 These terms will not apply where we have a written supply agreement in place with you relating to the supply of the relevant Goods and/or Services by you.
- 2.3 Our acceptance of, or payment for, Goods or Services provided by you shall not constitute acknowledgement or acceptance of your conditions, which are rejected.
- 2.4 **Purchase Orders**
3. We will issue you with a Purchase Order. The Purchase Order constitutes an offer by us to purchase the Goods and/or Services detailed in the Purchase Order. The Purchase Order shall be deemed to be accepted by you on the earlier of: (a) you issuing a written acceptance of the Purchase Order; and (b) you doing any act consistent with fulfilling the Purchase Order.
- 3.1 We may cancel or vary any Purchase Order within 3 Business Days of issuing the Purchase Order provided that you have not fulfilled or commenced the process of fulfilling the Purchase Order at the time you receive our notice of cancellation or variation.
- 3.2 Nothing in these Terms shall require us to place Purchase Orders for the supply of Goods and/or Services. You acknowledge that you have not relied upon any statements, representations, forecasts, projections or predictions we have made to you or to any third party regarding volume of Goods or any other matter relating to the Terms. We have no liability (in negligence or otherwise) with respect to projections or other information we may give you concerning our requirements for the Goods or Services.
- 3.3 **Price and terms of payment**
4. Unless otherwise specified, the Price will be in New Zealand dollars and includes all delivery and packaging costs including, but not limited to, import/export clearances, shipping, carriage and insurance costs. No extra charges will be payable unless agreed in writing and signed by us before such expenses were incurred.
- 4.1 Invoicing shall not take place before delivery of the Goods or Services. You may invoice us for Goods and/or Services on or at any time after delivery of the Goods and/or Services.
- 4.2 A separate invoice is to be submitted for each delivery. Each invoice must contain the Purchase Order number.
- 4.3 Subject to condition 4.5, we will pay all invoices in accordance with the payment terms set out in a Purchase Order (which unless otherwise agreed will be a period from receipt of invoice by our Accounts Payable Team) provided that: (a) the relevant Delivery Note has been received in accordance with the requirements in condition 6.2; and (b) the invoice is a valid Tax Invoice.
- 4.5 If at any time we dispute the amount of an invoice ("**Disputed Amount**") we do not have to pay the Disputed Amount until the dispute is resolved but we will pay any undisputed amounts. If we have resolved but we will pay any undisputed amounts. If we have already paid the Disputed Amount, we can deduct such Disputed Amount from any other money due to you. You may not, wholly or partially, suspend, cancel or withdraw the provision of the Goods or Services or terminate the Terms or a Purchase Order, if an invoice is disputed.
5. **Title and risk**
- 5.1 Title in the Goods shall pass to us on the earlier of payment or delivery. Risk in the Goods shall pass to us on delivery.
- 5.2 Any retention of title by you is excluded. You may not claim or register any interest (including any security interest) in the Goods.
6. **Delivery**
- 6.1 All Goods must be delivered: (a) at the site(s) specified in the Purchase Order or as otherwise instructed by us; (b) on the date specified in the Purchase Order, or, if no date is specified, within 28 calendar days of the date of the Purchase Order; and (c) during our normal business hours, or as we otherwise instruct.
- 6.2 All deliveries must be accompanied by a Delivery Note. The Delivery Note must be left in the possession of our authorised representative. Each Delivery Note must show the: (a) delivery address; (b) full name and signature of our staff member who received the delivery and the date they received it; (c) description of the Goods and/or Services in accordance with the requirements in the Purchase Order; (d) Purchase Order number; (e) any necessary export licenses, certificates of origin or permits; and (f) any other information we require.
- 6.3 Delivery will be deemed to have taken place once a Delivery Note has been signed by our authorised representative at the point of receipt onto our premises (or such other place for delivery that we may specify) and provided to you.
- 6.4 All Services must be supplied in accordance with the timeframes specified in our Purchase Order.
- 6.5 You must notify us immediately if you cannot supply the Goods and/or Services within the time stated in the Purchase Order, and must take every possible step to supply the Goods and/or Services on the date specified on the Purchase Order, or earlier, or on a later date that we may agree.
- 6.6 If you deliver more or less than the quantity of Goods ordered, and we accept the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
7. **Warranties**
- 7.1 You warrant that: (a) you have the power and authority to enter into these Terms; (b) if you enter into these Terms as an agent for another party, you are authorised to act for your principal in the manner contemplated by these Terms and your authority has not been withdrawn or revoked; (c) you have all the permits, licences, certificates and accreditation necessary to deliver and supply the Goods and/or Services in accordance with these Terms; (d) you will perform your obligations under these Terms and the Purchase Order in compliance with all Applicable Laws.
- 7.2 On each occasion you fulfil, or purport to fulfil, a Purchase Order, you warrant to us that: (a) the Goods and/or Services comply with the specifications contained in the Purchase Order and with all other specifications supplied by us in connection with the Goods and/or Services; (b) you and the Goods and/or Services comply with all relevant standards and Applicable Laws in the place of delivery and any other territory which we have stipulated, including any of our safety standards; (c) all representations that you make in relation to the Goods and/or Services, whether to us or to any other person, including in advertising, promotion, on packaging and otherwise, are accurate; (d) the Goods are of acceptable quality, fit for the particular purpose, match the particular standard, quality, value, grade, composition, style, specification or model that you have previously represented by sample or conduct; (e) the Goods are free from all material defects, foreign bodies and contamination; (f) the Goods are safe and are properly packed and labelled; (g) you have the title and right to sell the Goods to us, free from all encumbrances, and we will enjoy quiet possession to the Goods; (h) you are qualified to provide the Services; and (i) the Services will be performed using an acceptable level of due care and skill.
- 7.3 You acknowledge that we have entered into these Terms in reliance on the warranties you have made.
8. **Indemnities and Liability**
- 8.1 You indemnify us against: (a) all losses we incur; (b) all liabilities we incur; (c) all costs actually payable by us to our legal representatives and other expenses incurred in connection with a demand, action or other proceedings; arising out of or in connection with: (i) a breach by you of these Terms; (ii) any death or injury to a person, and any loss or damage to our real or personal property or that of a third party, caused by your act or omission; and (iii) any infringement of our or a third party's, Intellectual Property Rights.
- 8.2 If a withdrawal or recall of the Goods occurs (where the Goods are recalled voluntarily or as a result of any governmental direction), you indemnify us against: (a) all losses we incur; (b) all liabilities we incur; (c) all costs actually payable by us to our legal representatives and other expenses incurred in connection with a demand, action or other proceedings; arising out of or in connection with: (i) the cost of us acquiring and holding (including storage and freight) the Goods; and (ii) the costs and losses of any withdrawal from sale (including loss of profits) and the return of the Goods to you or the destruction of the Goods.
- 8.3 Each amount payable by you under conditions 8.1 or 8.2: (a) is a debt due and payable to us on our demand. You agree to pay or credit the amount to us, at our option, immediately after the issue of the demand by us; and (b) will be proportionately reduced to the extent that any loss suffered by us can be established to have been caused by our own negligence.
9. **Remedies**
- 9.1 If: (a) you do not deliver the Goods or provide the Services when due (in accordance with condition 6); or (b) we find that the Goods and/or Services do not meet the standards and requirements set out in these Terms or the relevant Purchase Order; whether after delivery or payment for the Goods and/or Services and notwithstanding our acceptance of the Goods and/or Services, then, without limiting any of our other rights or remedies, we shall have the right to any one or more of the following remedies: (i) terminate the Terms or Purchase Order immediately by giving you notice in writing; (ii) reject the Goods or Services (in whole or in part) and, in respect of the Goods, return them to you at your own

- risk and expense; (iii) require you to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods; (iv) require you to re-perform the rejected Services, or to provide a full refund of the Price of the rejected Services; (v) refuse to accept any subsequent delivery of the Goods, or performance of the Services, which you attempt to make or do; (vi) recover from you costs we incur in obtaining substitute Goods or Services from a third party; and (vii) claim damages for any other costs, loss or expenses we incur which are in any way attributable to your failure to comply with these Terms or the relevant Purchase Order.
- 9.2 We may terminate these Terms or any Purchase Order immediately after giving you notice in writing if: (a) you have breached or are in breach of any of the warranties in condition 7; (b) the Goods or Services are not supplied in accordance with the delivery date specified in the Purchase Order; (c) the supply of Goods or Services by you is, in our reasonable opinion, irregular or not available for a period of not less than 6 weeks; (d) you have breached, or we reasonably believe that you will breach, any of the provisions in these Terms; (e) an Insolvency Event occurs in relation to you; (f) you sell, or agree to sell, your business; or (g) you are a body corporate and a Change of Control occurs that we reasonably believe could materially affect our interests.
10. **Consequences of termination**
- 10.1 After these Terms are terminated, we may: (a) refuse to accept any delivery and not pay for any of the Goods and/or Services under a Purchase Order that is not fulfilled or is in the process of being fulfilled at the time of termination; (b) return (at your cost) any of the Goods delivered to us and not pay for those Goods; (c) be indemnified by you for any money we spent in purchasing goods and/or services to replace those not delivered due to the termination of these Terms or the non-fulfilment of any Purchase Order; or (d) without affecting any additional rights under condition 9, arrange for goods and/or services that are the same as or similar to the Goods and/or Services supplied by you pursuant to these Terms to be supplied by another person.
- 10.2 We will not be liable to you for any loss or damage you suffer because we exercised our rights under conditions 9.1, 9.2 or 10.1.
- 10.3 Conditions 8,9,13,14,15,18.1 and 19 of these Terms survive termination.
11. **Insurance**
- You must maintain appropriate product liability insurance cover for personal injury and property damage caused by the Goods and/or Services (and such other insurance cover reasonably required by us) in an amount not less than NZ\$10,000,000 for any one claim with a reputable insurer and such other insurance cover reasonably requested by us. If you fail to do so, we may arrange for appropriate insurance and charge you with the cost. On request, you must provide us with evidence of your compliance with this condition.
12. **GST**
- 12.1 Save for defined terms in these Terms, capitalised expressions in this condition bear the same meaning as those expressions in the GST Act.
- 12.2 Except where express provision is made to the contrary, and subject to this condition, any amount that may be payable under or in connection with these Terms is exclusive of any GST. If a party makes a Taxable Supply under or in connection with these Terms, then the Recipient of the Taxable Supply must also pay, in addition to, at the same time and in the same manner as the amount is otherwise payable, for the Taxable Supply, an amount equal to the GST charged in respect of the Taxable Supply.
- 12.3 The obligation to increase the amount payable for a Taxable Supply in accordance with condition 12.2 is subject to a valid Tax Invoice being issued by the party making the Taxable Supply.
- 12.4 To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount of GST in respect for which the party is entitled to claim as a deduction of Input Tax.
13. **Confidentiality**
- All terms and conditions in respect of our business relationship, including these Terms, and any other information we provide to you is confidential information, except where such information is in the public domain. You must treat as confidential and not directly or indirectly make any disclosure to any third party or use the confidential information in any way (other than as necessary for you to carry out your obligations under these Terms and the Purchase Order). Upon request you must return to us any of our confidential information in your possession in whatever medium, or confirm in writing that such materials have been destroyed.
14. **Data privacy**
- 14.1 To the extent that a party receives Personal Information, the party agrees to comply with all applicable laws, rules and regulations relating to privacy and data security including, without limitation, the Information Privacy Principles contained in the Privacy Act 1993 (NZ). For the purposes of this clause, 'Personal Information' has the meaning in the Privacy Act 1993 (NZ).
- 14.2 Without limiting any obligations that the parties may have under applicable privacy laws, they further agree: (a) to carry out the processing of Personal Information only as permitted or required by these Terms and/or as required by law; (b) to procure and retain all consents it collects from individuals, relating to the processing of the individual's Personal Information under these Terms and for permitted use or disclosure to Novartis as may be contemplated in the provision of Services; and (c) to establish commercially reasonable controls and safeguards to protect the confidentiality, integrity, and security of, and to prevent unauthorised access, use or disclosure of, any Personal Information.
- 14.3 We may transfer Personal Information to third parties for the purposes of this agreement. We will take reasonable steps to ensure recipients comply with applicable privacy laws in relation to Personal Information, including entering into contracts with third parties requiring protection and security of Personal Information. Personal Information may be processed, accessed or stored in a country outside of the country where we are located, including Switzerland, India, USA and the EEA.
15. **Intellectual Property Rights**
- 15.1 Neither of us transfers any right, title or interest in any Intellectual Property Rights of the respective party to the other.
- 15.2 You must not use any of our Intellectual Property Rights unless authorised by us in writing.
- 15.3 Neither party will cause or permit anything that may amount to misuse, interference with, damage or endangerment to the Intellectual Property Rights of the other party or their suppliers, or assist or allow others to do so.
- 15.4 Each party undertakes to advise the other party immediately if it becomes aware of any unauthorised use, or attempted use, by any person of the the other party's Intellectual Property Rights.
- 15.5 If you supply Goods or Services in accordance with specifications developed by us ("**Our Specification**"), or if you provide any design or development Services to us ("**the Commissioned Works**"), the Intellectual Property Rights in relation to Our Specifications and the Commissioned Works (together "**the Developments**") shall, subject to condition 15.1, be our exclusive property. "**Developments**" include, but are not limited to any information, formula, recipe, plan, knowledge, idea, design, material, or invention and any expression of any idea created by you (or your agents or employees) in connection with any Purchase Order.
- 15.6 You must fully disclose all Developments to us and you must not without our prior written consent: (a) use the Developments for your own purposes; (b) disclose the Developments to any other party; or (c) use the Developments for any third party.
- 15.7 You must assist us in establishing and protecting the Intellectual Property Rights in the Developments including doing all acts and executing all documents we require to vest the Intellectual Property Rights in the Developments in us.
16. **Third Party Risk Management**
- 16.1 We have put in place a Third Party Risk Management framework which is aimed at promoting the societal and environmental values of the United Nations Global Compact with specific third parties that we deal with.
- 16.2 In connection with the above, you must: (a) comply with the Novartis Third Party Code (and any published updates); (b) having regard to Section 10.7 of the Novartis Third Party Code, provide information/ documentation on reasonable request to us, or our affiliated companies and respective representatives to allow us to verify your compliance with the Novartis Third Party Code in the form requested; (c) to rectify identified non-compliances with the Novartis Third Party Code (where capable of remedy) and report remediation progress to us, our affiliated companies and respective representatives on request; and (d) ensure that, where pre-approved by us, you have engaged any subcontractors to provide the Goods or Services, that such third parties also comply with the above requirements relating to the Novartis Third Party Code.
- 16.3 You acknowledge and agree that the Novartis Third Party Code forms an integral part of these Terms. Obstructing or refusing our audit rights as stated in the Novartis Third Party Code shall constitute a material breach of these Terms and entitle us to immediately terminate these Terms or a Purchase Order.
17. **Our relationship**
- You are an independent contractor to us for the supply of Goods and/or Services. You are not our employee or agent. You must not make any representations on our behalf, or enter into any commitments, agreement, contract, arrangement, or understanding on our behalf. You are liable for any persons employed by you or contracted by you to perform any of your obligations under these Terms and any Purchase Order.
18. **Notices**
- 18.1 Any notice given under these Terms will be in writing and signed by the party giving the notice and delivered to the address as set out in these Terms or which has subsequently been notified to the other party in writing.
- 18.2 Any notice or document will be deemed to be duly given or made: (a) if delivered by hand, when so delivered; (b) if sent by facsimile, on the day of transmission, and proof of receipt by the sender of a successful transmission report shall be proof of receipt of the subject facsimile by the party to whom the same was transmitted; (c) if sent by post, on the second Business Day following posting, or if sent by airmail to or from an overseas destination, on the 5th Business Day following posting; or (d) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt. An email is not taken to be received if the sender's computer reports that the message has not been delivered.
19. **General**
- 19.1 You must keep and produce on our request, records in relation to Purchase Orders and the Goods or Services provided to us (including any documents necessary for tracing purposes) for any period required by Applicable Laws and in any event for a minimum period of 5 years from the date of the delivery of the Goods or the performance of the Services.
- 19.2 If any provision of these Terms is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.3 These Terms are governed by the laws of New Zealand.
- 19.4 We may deduct any money you owe us on any account whatsoever from any money which we may be liable to pay you.
- 19.5 You must not assign, license or sub-contract all or any part of your rights and obligations under these Terms without our prior written consent.
- 19.6 Neither party will be liable for any default or breach due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, provided that the party unable to perform its obligations under these Terms or a Purchase Order: (a) informs the other party in writing as soon as reasonably practicable after the event or circumstance arises; and (b) uses all reasonable endeavours to cure any such events or circumstances and resume the performance of their obligations under these Terms and the relevant Purchase Order.
- 19.7 Any variation to these Terms or any Purchase Order must be in writing and signed by both parties.
- 19.8 These Terms constitute the entire agreement between the parties and supersede any prior agreement or understanding on anything connected with that subject matter. These Terms prevail to the extent of any inconsistent terms and conditions in your invoice or other forms issued by you in relation to a Purchase Order or the supply of the Goods or Services ("**Supplier Form**"). Unless specifically agreed by Novartis specified in a Purchase Order, any additional terms and conditions in any Supplier Forms are excluded.
- 19.9 The failure of a party to exercise or enforce, or delay by a party in exercising or enforcing, a right, power or remedy does not operate as a waiver of the exercise or enforcement by that party of that or any other right, power or remedy.