

## A. Applicability

1. The following General Terms and Conditions apply for the procurement of works and services as well as for the purchase of products and goods for all contracts concluded by Daiichi Sankyo (Switzerland) Ltd. (hereinafter "DSCH") with its Contract Partners (hereinafter "Contract Partner") unless specified otherwise in the contracts themselves or in the orders of DSCH.

2. These terms and conditions shall apply exclusively. Contrary or deviating general terms and conditions of the Contract Partner shall not apply insofar as DSCH does not expressly agree to their applicability in the individual case. This also applies if DSCH accepts services or goods without reservation.

3. In the event of overlaps and/or contradictions, the individual contractual arrangements have precedence over these General Terms and Conditions; within these General Terms and Conditions the Special Terms and Conditions have precedence over the General Conditions.

## B. Conditions of Business

### I. General Conditions

#### 1. Orders/awarding of contract

1.1 If the order/request from DSCH is not preceded by an offer from the Contract Partner then the Contract Partner must confirm the order/request within five (5) working days, giving details in writing (in accordance with these General Terms and Conditions, including by fax or email) of the binding delivery time and the price; otherwise the order/request will no longer be binding for DSCH. If there is an existing permanent business relationship and the Contract Partner wishes to refuse the order it must declare this without delay, otherwise the order/request shall be deemed to have been accepted. DSCH will draw the Contract Partner's attention to this accordingly on transmission of the order/request. Any additional verbal agreements must be drawn up in writing.

1.2 DSCH is only bound by offers submitted to DSCH on request on acceptance of same by DSCH, normally in writing. The Contract Partner is bound by its offer for the period of four (4) weeks following receipt at DSCH, unless agreed otherwise. DSCH will only reimburse costs for offers and samples that it requests if this has been agreed in writing in advance.

1.3 Orders/requests from DSCH are issued in writing. The specification of service type, quantity or scope, delivery date, destination and any other conditions in the order are binding for the Contract Partner.

#### 2. Service Provision

2.1 The date referred to in the order/request for the service provision is binding and must be strictly adhered to. The duration of agreed time limits for the service provision commences with the receipt of the order/request by the Contract Partner. The contractually agreed service must have been rendered or supplied by the date specified in the order/request and – providing these are available based on the nature of the due service – results achieved must be made available to DSCH in full and without any restriction.

2.2 Identifiable delays in connection with the service provision must be reported to DSCH in writing immediately when they are discovered, stating the reasons for and anticipated duration of the delay. Changes to agreed time limits for the service provision are effective only if confirmed by DSCH. In the event of delay DSCH shall be entitled to the statutory rights. In particular, DSCH is entitled, at its choice, either to demand fulfilment or damages for delay in performance or – on expiry of a reasonable period of grace without a successful conclusion - to withdraw from the contract or to demand compensation instead of performance. If the delay only affects part of the service provision this will apply in respect of the whole service provision if DSCH has no interest in partial service provision. The Contract Partner must reimburse DSCH for the losses arising from culpable delay.

2.3 If DSCH is unable to accept service provision on the agreed date it will inform the Contract Partner of this immediately on recognising the situation. In this case the date of service provision is postponed for the duration of the delay in acceptance by DSCH. In addition, DSCH is entitled to reasonably postpone agreed dates for service provision at any time in the event of unforeseen business interruptions arising after conclusion of the contract as a result of force majeure (e.g. natural disasters, epidemic, war, riots, or the consequences thereof), strike, or

shortage of raw materials. If the abovementioned business interruptions are more than just temporary, or more than two (2) months have elapsed since the original date for the service provision, DSCH and the Contract Partner shall each be entitled to withdraw from the contract.

2.4 The Contract Partner can only invoke the absence of necessary documents to be supplied by DSCH if the Contract Partner has submitted a reminder in writing for the documents and not received these within a reasonable period of time. The same applies for other obligations of DSCH to cooperate.

### 3. Prices/Payment Terms

3.1 Unless specified otherwise in individual contracts, payment is due, without deduction, within 60 days after receipt of invoice. The DSCH stamp showing date received is definitive for this purpose. A binding price specified by the Contract Partner is a fixed price and cannot be subsequently increased unilaterally. If in exceptional cases advance payments are agreed upon, such payments will be made against presentation of bills of quantities; if applicable, the progress of completion at the Contract Partner will be logged using proprietary technology of DSCH. DSCH reserves the right to only make advance payments on presentation of a corresponding bank guarantee or similar security by the Contract Partner.

3.2 Invoices are to be submitted no earlier than with the service provision or delivery, stating the order number. Partial invoices issued by the Contract Partner are not permitted unless specified otherwise in the individual contract.

3.3 All prices are understood as carriage-free, including packaging and insurance. Prices also include the payment for assembly and installation work, instructions, manual and circuit diagrams as well as licence fees for software and property rights. The statutory value added tax is to be shown separately. Maturity interest is excluded.

3.4 The conditions specified in the order/request apply for payment. If the invoice is received late at DSCH the duration of the payment period commences from the date of receipt of the invoice, subject to the receipt of goods or service provision respectively. The payment itself and the timing have no adverse effect on the warranty rights for DSCH.

3.5 The payment does not constitute recognition of contract terms and conditions suggested to DSCH unilaterally after and in deviation from the order/request.

3.6 The payment constitutes settlement in full of the services rendered by the Contract Partner. Other costs (travel expenses, incidental expenses, expenses) will only be reimbursed after prior written approval by DSCH and only upon presentation of appropriate original documents.

### 4. Change Request/Order Change

DSCH can request changes in the scope of service, in particular in the agreed services, methods and dates even after conclusion of the contract. In this case the Contracting Party will report within 10 business days on whether the requested change is possible and what effects this will have on the contract, in particular taking into account the timing, remuneration, as well as any cooperation obligations. In the absence of a reply within this period the requested changes will be deemed as feasible without affecting prices and delivery dates. DSCH will accordingly draw the Contract Partner's attention to this when submitting the change request.

Consequences of the changes will be mutually agreed upon by the parties. Otherwise the service provision already agreed will be continued in accordance with the previous conditions.

### 5. Secrecy

5.1 All documents, data and information passed by DSCH to the Contract Partner, as well as all knowledge which the Contract Partner has received pertaining to products, customers and business activities of DSCH, shall remain the property of DSCH, must be treated as confidential and may neither be used by the Contract Partner for purposes other than those contractually agreed, nor made accessible to third parties. The Contract Partner shall store the contract items, technical documentation etc. carefully in order to prevent misuse. After execution of orders, or also if no order is issued, such documents, including any duplicates and copies must be returned automatically

and free of charge to DSCH; the Contract Partner has no right of retention. Statutory retention obligations are reserved.

5.2 The Contract Partner shall be liable for all damages which DSCH incurs as a result of the breach of one of these obligations by the Contract Partner, its subcontractors or its employees.

## 6. Data Protection

Insofar as the order/request involves the processing of personal data of natural persons or data on third-party companies, an additional agreement regarding data protection will be concluded. The parties will apply due diligence in working to ensure that all persons entrusted by them with the processing or fulfilment of orders in connection with this agreement comply with the statutory provisions on data protection and do not disclose to third parties or otherwise exploit the information obtained from the area of the contract partner.

## 7. Warranty

7.1 The Contract Partner guarantees that on transfer of risk/acceptance, the service provision is free of material and legal defects. The legal definition of defect shall apply.

7.2 The rights of DSCH in the event of defect also extend to those parts of the service provision which the Contract Partner has procured from a subcontractor or has commissioned a subcontractor to deliver.

7.3 The Contract Partner warrants the absence of defects of the service during 36 months commencing from delivery/service provision. This period does not apply if the Contract Partner grants a longer period of warranty. This period specified by the Contract Partner will then be adopted as the warranty period.

7.4 In the event of a defect, DSCH can choose to demand immediate remedy in the form of rectification or replacement, without prejudice to its other rights. DSCH can set the Contract Partner a reasonable period of grace for the subsequent performance and has the choice of withdrawing from the contract after expiry of the period or reducing payment and demanding compensation for damages or reimbursement of its expenses. In the event of defect in part performance, DSCH has the right to withdraw from the entire contract; this shall not apply in the case of minor breaches of obligations. These rights can also be exercised without granting a period of grace insofar as such a period is unnecessary according to law.

7.5 Following the expiry, without success, of a reasonable period of grace for repair or defect-free replacement, DSCH is entitled to remedy the defects itself or have this work carried out by a third party at the expense of the Contract Partner, or obtain replacement elsewhere. The setting of a period of grace is not necessary if the subsequent performance has failed or if it is unreasonable to expect DSCH to grant the Contract Partner opportunity to remedy because of the particular urgency of the situation and the imminent threat of higher losses.

7.6 In the case of replacement performance, the abovementioned warranty period begins anew with delivery of the replacement item. In the case of repairs or rectifications, the expiry of the warranty period is suspended during the period of repair or rectification. In the case of replacement of parts of the performance, the abovementioned warranty periods for the relevant parts commence when the replacement part performances are performed; in the case of repairs or rectifications relating to part performances the expiry of the warranty period for the part performance is suspended for the period of the repair or rectification.

7.7 Insofar as the Contract Partner is responsible for a product defect it is obligated to indemnify DSCH from claims for compensation from third parties insofar as the cause of the defect lies within its area of control and organisation and it is personally liable in the external relationship. This does not affect any further statutory or contractual rights of DSCH.

7.8 In this context, the Contract Partner is also obligated to reimburse any expenses arising out of or in connection with a recall action performed by DSCH. DSCH will inform the Contract Partner - as far as is possible and reasonable - about the content and scope of the recall measures and give it the opportunity to comment.

## 8. Liability

8.1 The Contract Partner shall be liable for all damages caused intentionally or through negligence. At the request of DSCH, the Contract Partner must present proof of existing liability insurance, with an ap-

propriate sum insured, for personal injury, damage to property and financial loss.

8.2 The Contract Partner warrants that the performance/order/item of work complies with all statutory provisions and does not infringe rights of third parties.

8.3 If a third party makes a successful claim against DSCH in relation to a material or legal defect in the performance/order/item of work of the Contract Partner, the Contract Partner is obligated to indemnify and hold harmless DSCH against such a claim. DSCH is not entitled - without the consent of the Contract Partner - to conclude any agreements whatsoever with the third party, including in particular a settlement arrangement. The obligation of the Contract Partner to provide indemnification also relates to all expenses necessarily incurred arising from or in connection with the claim by a third party.

## 9. Liability for Breaches of Property Right Infringements

9.1 The Contract Partner warrants that the contractual services are free of third-party intellectual and industrial property rights, copyright and other rights that prevent or restrict their use.

9.2 The Contract Partner indemnifies and holds harmless DSCH from all third party claims of infringement of property rights. DSCH will coordinate the defence against such claims of third parties with the Contract Partner.

9.3 The Contract Partner is obligated to inform DSCH without delay in writing if claims for the infringement of property rights are asserted against it in relation to contractual services.

## 10. Assignment/Offsetting/Subcontractors

The assignment of claims to third parties as well as the involvement of subcontractors requires the prior consent of DSCH. The Contract Partner must ensure that the assignee/subcontractor is familiar with these General Terms and Conditions and agrees to be bound by them.

DSCH is entitled to offset its own claims against payment claims of the Contract Partner, or to exercise a right of retention as a result of same.

## 11. Termination/Withdrawal

DSCH can withdraw from contracts at any time. DSCH can terminate framework agreements and other continuing obligations, giving the Contract Partner one (1) months' notice in writing. Payment for services rendered up to the date of termination will be made in accordance with the contractually agreed terms in return for corresponding documentary evidence.

## 12. Withdrawal from the Contract in the Event of Insolvency

DSCH must be notified immediately if bankruptcy or administration proceedings are initiated against the assets of the Contract Partner, or if an application is issued for commencement of bankruptcy proceedings or debt restructuring moratorium proceedings. In these cases DSCH shall be entitled to withdraw from the contract or terminate it with immediate effect without a notice period.

## II. Special Terms and Conditions for the Purchase of Merchandise and Goods

The supplementary regulations in the Special Terms and Conditions apply in addition to the General Terms and Conditions.

### 1. Transfer of Risk and Ancillary Obligations

1.1 Risk is only transferred to DSCH on acceptance of the delivery at the place of destination, even if, in the individual case, shipment at DSCH's costs is agreed upon, or if DSCH concludes the transport insurance itself.

The trade term "DDP" [Delivery Duty Paid (...specified place of destination)] applies in accordance with INCOTERMS 2010.

1.2 The Contract Partner is obligated to hand over all necessary product information, safety information, assembly instructions, safety measures, operational and instructions for use, to DSCH on delivery.

### 2. Shipment/Packaging/Insurance/Customs Regulations

2.1 The pertinent regulations on shipments of hazardous goods must be followed and adhered to by the Contract Partner up to the place of destination.

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2.2 The Contract Partner is responsible for the proper packaging of the delivery. The Contract Partner is obligated to take back and dispose of the packaging at its own expense.

2.3 Orders are to be delivered carriage-free to the place of destination on the specified delivery date, accompanied by the delivery note and packing slip. The Contract Partner must provide all the information necessary for proper importing and present the appropriate documents where possible prior to but no later than with the delivery.

2.4 All shipping documents and freight documents such as dispatch note, delivery note etc., must include the order number, order date, subject of the delivery, quantity and, if necessary, the delivery address specified by DSCH. Insofar as the order relates to technical devices or machines, the corresponding device, production or serial number must also be shown. All delivery notes are to be supplied as a single copy.

2.5 Machinery, equipment and other devices supplied must comply with all the regulations applicable in Switzerland.

2.6 In the event of delivery and performance prior to the agreed date, these are deemed to have been rendered on the agreed date for the purpose of the payment date. In this case DSCH reserves the right to charge the Contract Partner for the costs associated with the early acceptance of performance (warehouse rental costs, etc.).

2.7 When shipping goods, the relevant provisions of the railway companies, marine and air cargo carriers must be followed and for shipment by truck, the provisions of the CMR. The Contract Partner is liable for ensuring that the data contained in the movement of goods certificate is correct and complete and for compliance with the customs regulations.

2.8 The Contract Partner gives an undertaking, together with the first order confirmation, to inform the DSCH Customs Department of its AEO certificate number or a corresponding security declaration and to inform DSCH immediately in writing of any changes.

2.9 For deliveries abroad the invoice must be received by DSCH no later than on dispatch of the shipment and must include details of the date, method and place of dispatch, customs tariff number according to the current HS Code, any classification in accordance with the Goods Control Act and, if applicable, the details on the ECCN in accordance with U.S. Export Administration Regulations and the origin of the goods (transport routes through the United States, manufacture in the United States or using US technology). A supplier's declaration must be sent separately once a year to the DSCH Purchasing Department no later than with the first delivery. The movement of goods certificate required for the customs clearance must be enclosed with the invoice. Invoices do not count as delivery notes.

2.10 The Contract Partner is responsible for the compliance with the applicable import and export regulations. Changes to customs-related information must be notified in writing to the DSCH Customs Department by the Contract Partner without delay.

2.11 Unless DSCH has specified a particular method of shipment, the Contract Partner shall choose the most economic shipment method for DSCH. In the event of delay by the Contract Partner, it shall be obligated to render subsequent performance by express mail (express or fast freight, courier, express package, air freight, etc.) at its own expense.

2.12 The cost of the insurance for the shipment is to be borne by the Contracting Party and in case of cross-border deliveries must be disclosed separately, having regard to the national borders.

2.13 Should the Contracting Party or its subcontractors fail to act in accordance with the provisions above, DSCH shall be entitled to refuse acceptance of the performance, without prejudicing other rights.

### 3. Obligation to Inspect Goods and Report Defects

3.1 DSCH is obligated to inspect the goods for obvious, clearly visible defects and to report any such defects to the Contract Partner within two (2) weeks after delivery. DSCH must report defects which only become apparent later (hidden defects), within two (2) weeks after discovery, no later than prior to the expiry of any sell-by dates, to the Contract Partner. In the case of goods which normally remain in their packaging until used, defects that only become visible on removal from the packaging are counted as hidden defects. Article 201 OR [Swiss Code of Obligations] is moreover derogated.

3.2 The acceptance of defective goods may be refused by DSCH. Additional costs and efforts which are incurred as a result of the test-

ing and return of defective goods must be reimbursed by the Contract Partner.

### 4. Over or Short Deliveries

The Contract Partner is not entitled to make over or short deliveries. If deviations in quantity nevertheless arise, payment will not be made for over deliveries. In the event of short delivery, DSCH is entitled to reject the delivery as a part delivery, to call for the difference or make an appropriate deduction from the price. In any case, part deliveries already made are not considered independent transactions.

### 5. Retention of Title

Any retention of title by the Contract Partner is invalid. The Contract Partner will only supply goods which are its sole property and are not encumbered by third-party rights. Should a third party assert rights to such goods the Contract Partner will notify DSCH and DSCH will be released from any claims of the third party.

## III. Special Terms and Conditions for the Purchase of Services and Works

The supplementary regulations in the Special Terms and Conditions apply additionally to the General Terms and Conditions.

### 1. Performance of the Work/Service

The Contractual partner will perform the contractual services in accordance with the principles of proper and diligent professional practice and taking into account the acknowledged latest scientific and technological knowledge at the time of the conclusion of the contract.

### 2. Work Results/Acceptance

2.1 The Contract Partner will immediately notify DSCH of the completion of the work results. A date for acceptance will be agreed in coordination with DSCH and the Contract Partner notified accordingly. Unless agreed otherwise in the order, a formal acceptance will be conducted in every case, with the production of an acceptance report to be jointly signed by DSCH and the Contract Partner.

2.2 Provisos on acceptance as a result of identified defects are made in writing. If acceptance is rejected the acceptance will be repeated within a reasonable period of grace, normally within 30 days. If acceptance cannot be concluded within the reasonable period of grace DSCH has the right to withdraw from the contract or to claim damages for non-performance.

2.3 Use, commissioning, deposit or payment for work performed do not constitute either approval or tacit acceptance insofar as these are carried out in ignorance of the defect or subject to the proviso of warranty rights.

2.4. The risk passes to DSCH on successful acceptance.

### 3. Rights to Results of Work

3.1 If protectable results of work are created in the context of the order/request, the Contract Partner hereby irrevocably grants DSCH the transferrable exclusive rights of use and exploitation, industrial property rights and legal statuses of a similar nature, without any temporal, material or geographic restrictions.

3.2 DSCH is entitled in particular to reproduce, edit and distribute all results of work and to use and exploit same through all other known methods.

In particular, DSCH has the exclusive right, without any temporal, material or geographic restrictions

- a) to reproduce the results of work on all known data carriers and storage media and use in the network;
- b) to adapt and process as well as translate the results of work;
- c) to distribute and issue single or exclusive sub-licenses for the results of work and exercise the entitlement to results of work modified in accordance with clause b) above;
- d) to performance, transmission to third parties, for example via fixed line or wireless, as well as to make these available to third parties, for example online or via the Internet;

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e) to use all new process technologies, development tools, libraries, and software building blocks developed by the contractor under the individual contract.

3.3 The Contract Partner is obligated to procure the granting of rights required for the transfer of the above rights and present these to DSCH on request. The Contract Partner will ensure that any moral rights, in particular those under Articles 9 and 11 URG [Copyright Act], are not asserted.

3.4 The Contract Partner waives the right to be named as author and accordingly gives an undertaking to obtain the same waiver from its employees or other third parties engaged by it.

#### **4. Working on DSCH Business Premises**

Insofar as the service provision takes place temporarily on the business premises of DSCH, the Contract Partner retains sole authority to issue instructions to its employees. The employees of the Contract Partner are not incorporated into the business operation of DSCH. Only the DSCH internal rules and regulations apply to these employees as well as instructions on safety in the workplace issued verbally or in writing by the management on a general basis or in the individual case.

### **C. Final Provisions**

#### **1. Ban on Publication/Headings**

1.1 The Contract Partner is not entitled to use names, trademarks, logos and other identifying features of DSCH in any publication or advertising, nor to disclose the business relationship with DSCH in press releases or otherwise publish same without prior written authorisation by DSCH.

1.2 Headings in these General Terms and Conditions are only for the purpose of providing clarity and do not interpret, limit or restrict the respective terms and conditions.

#### **2. Choice of Law /Place of Performance /Jurisdiction**

2.1 Should one or more provisions of these General Terms and Conditions be invalid, this will not affect the validity of the remaining provisions. Amendments and additions to the contract content confirmed by DSCH shall only be valid if the amendment/addition is confirmed in writing by DSCH.

2.2 In the event of deviations arising between the English, French, Italian or German version of these General Terms and Conditions the German version then in effect shall be decisive.

2.3 Swiss law applies exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and international private law.

2.4 Place of performance is the place specified by DSCH in the order/request; for deliveries this is the place of destination. Art. 74 OR [Swiss Code of Obligations] applies on a subsidiary basis.

2.5 The exclusive place of jurisdiction for all obligations resp. disputes arising from this contract is Zurich.