

# PCI Pharma Services

## Terms and Conditions for the Purchase of Goods and Services

### 1 Definitions

- 1.1 "Bribery Laws" means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery and corruption and any similar or equivalent legislation in any other relevant jurisdiction.
- 1.2 "Contract" means the contract between PCI and the Seller for the sale and purchase of the Goods and/or the supply and Acquisition of the Services in accordance with these conditions and incorporating the Purchase Order and any Specification.
- 1.3 "Data Protection Laws" means the General Data Protection Regulation 2016 (679) "GDPR" or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom from the European Union and all applicable laws and regulations which may be in force from time to time relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other Supervisory authority.
- 1.4 "Goods" means the goods (if any), or any instalment or part of them, described in the Purchase Order to be supplied by the Seller pursuant to the Contract;
- 1.5 "Intellectual Property Rights" means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in design, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including know how and trade secrets) and all other intellectual property rights in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of and rights to claim priority from such rights and all similar or equivalent right or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.6 "PCI" means either Biotec International Ltd or AndersonBrecon (UK) Ltd or Penn Pharmaceutical Services Ltd as identified in the relevant Purchase Order, in each case trading as PCI Pharma Services and registered in England and Wales with its registered office at Capital Building, Tyndall Street, Cardiff, Wales CF10 4AZ United Kingdom.
- 1.7 "Purchase Order" means the order placed by PCI on its standard form incorporating these conditions.
- 1.8 "Seller" means the person, firm or company to whom the Purchase Order is addressed;
- 1.9 "Services" means the services (if any) described in the Purchase Order to be undertaken by the Seller pursuant to the Contract;
- 1.10 "Specifications" means the technical or other requirements (if any) for the Goods or the Services contained or referred to in the Purchase Order;

### 2 General

- 2.1 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in any acknowledgement of order, form of contract, letter or other communication sent by the Seller to PCI (whether written or oral), or whether implied by trade, custom or course of dealing and together with any Specifications and the provisions of the Purchase Order contain the entire understanding between PCI and the Seller and the Contract supersedes all previous agreements in respect of its subject matter. In the event of any conflict between the Specifications, the Purchase Order and these conditions, the latter shall prevail.
- 2.2 Any concession made or latitude allowed by PCI to the Seller shall not affect the strict rights of PCI under the Contract.
- 2.3 If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Contract the other Conditions shall continue in full force and effect.
- 2.4 No variation to the Purchase Order or these conditions shall be binding unless expressly agreed in writing by PCI and signed on its behalf.
- 2.5 The headings in these Conditions are intended for reference only and do not affect their construction.

### 3 Acknowledgement

- 3.1 PCI shall be bound by the Purchase Order only if:
- (a) it is placed on its official Purchase Order form; and
- (b) the Seller accepts it in writing by signing and returning by email, facsimile or post PCI's Purchase Order within 7 days of the date of the Purchase Order or within such other period as may be specified in the Purchase Order.

### 4 Quality and description

- 4.1 Without prejudice to any other rights PCI may have the Seller warrants to PCI that:
- (a)
- (i) conform as to quantity, quality and description with the particulars stated in the Contract;
- (ii) (without prejudice to clause 4.1(a)(i) above) be of satisfactory quality and fit for the purpose held out by the Seller or made known to it either expressly or by implication by PCI;
- (iii) be equal in all respects to any samples provided by either party and accepted by the other and to the Specifications;
- (iv) be capable of any standard of performance specified in the Contract;
- (v) comply with all statutory requirements and regulations relating to the manufacture and sale of the Goods at the time when the same are supplied;
- (b) The Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to the highest standard of quality prevailing in the industry at the time of performance.

### 5 Inspection testing and samples

- 5.1 If so required by PCI the Seller shall submit samples of the Goods for PCI's approval before the Goods are delivered or before the Services are performed (as the case may be). Such samples of Goods should be marked by the Seller clearly and appropriately for identification.
- 5.2 PCI shall be entitled to inspect and test the Goods during manufacture, processing and storage and the Seller shall at its own cost provide or shall procure the provision of all such facilities as may be reasonably be required by PCI therefor.
- 5.3 If as a result of any inspection or test under clause 5.2 of this clause 5 PCI's representative is of the reasonable opinion that the Goods or the Services do not comply with the Specifications or any other aspect of the Contract or are unlikely on completion of manufacture or processing so to comply he may inform the Seller accordingly and the Seller shall promptly take such reasonable steps as may be necessary to ensure such compliance.

### 6 Delivery/performance

- 6.1 Where the Seller is required to perform the Services or part thereof at PCI's premises or such other premises as are detailed in the Purchase Order, the Seller undertakes to ensure that its employees, officers, agents and sub-contractors shall comply with all health and safety, security, environmental and any other standards or requirements detailed in any statute, order, industry Code of Practice or similar regulation or as required by the owner or occupant of the premises.
- 6.1 The Goods shall be DDP (Delivered Duty Paid Incoterm 2010) to the point at the agreed destination specified in the Purchase Order.
- 6.2 The Goods shall be properly packed and secured in such a manner as to reach their destination in good condition having regard to the nature of the Goods and the other circumstances of the case.
- 6.3 The Goods shall be delivered and the Services performed by the Seller at the time or within the period specified in the Purchase Order. Delivery shall take place during PCI's normal business hours. The Seller shall supply PCI in good time with any instructions or other information required to enable PCI to accept delivery of the Goods and performance of the Services. PCI shall have no obligation to pay for or return packaging cases, skids, drums or other articles used for packing the Goods whether or not re-usable.
- 6.5 The time of delivery of the Goods and of performance of the Services and the provision as applicable of any Certificate of Analysis shall be of the essence of the Contract.
- 6.6 All Goods, shall be accompanied by a detailed advice note stating the Purchase Order number and giving full particulars of the Goods supplied and where required pursuant to the Contract, accompanied by a Certificate of Analysis. Where pursuant to the Contract Goods are delivered to premises other than PCI's premises a copy of the advice note and the Certificate of Analysis must be sent to PCI on the day upon which the Goods are delivered.
- 6.7 Following delivery of the Goods or performance of the Services, an invoice stating the Purchase Order number must be promptly delivered to PCI.
- 6.8 If the Goods are to be delivered or the Services are to be performed by instalments the Contract shall be treated as a single Contract and not severable.
- 6.9 Where required by PCI, the Seller shall provide regular statements of Goods delivered, Services performed and invoices raised during the period of time since the last statement.

### 7 Storage

- 7.1 If for any reason PCI is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller shall if his storage facilities permit store the Goods, safeguard them and take all reasonable steps to prevent their deterioration until their actual delivery and may with PCI's prior approval invoice PCI for the reasonable cost (including insurance) of his so doing.

### 8 PCI's material and equipment

- 8.1 The Seller shall not, without PCI's prior written consent, disclose any details or information in relation to any Contract, or use PCI's name in any public statement.
- 8.2 All drawings, specifications (including the Specifications) and information and any substances or samples which may be the property of PCI or a third party ("the Material") supplied by PCI to the Seller in connection with the Contract are confidential and the Seller and its officials, employees and agents shall not at any time disclose the Material to any third party without PCI's prior written consent.
- 8.3 All jigs, tools, moulds, patterns and other equipment ("the Equipment") supplied to the Seller for the execution of the Contract and the Material shall be maintained in good condition by the Seller and the Seller shall fully indemnify PCI against all loss thereof or damage thereto whilst the same are in the Seller's possession or control.
- 8.4 The Material and the Equipment shall only be used for the purpose of manufacturing and supplying the Goods to or performing the Services for PCI and shall remain PCI's property at all times.

- 8.5 Where the Goods are designed, created or otherwise developed by the Seller for PCI pursuant to the Contract, then all Intellectual Property Rights therein or relating thereto shall belong to PCI or a third party nominated by PCI absolutely. The Seller hereby assigns the Intellectual Property Rights to PCI or PCI's third party nominee as requested by PCI with the intent that upon the making or creation thereof the Intellectual Property Rights shall automatically vest in PCI or PCI's third party nominee.
- 8.6 The Seller shall at PCI's request (and notwithstanding the termination of the Contract) sign and execute and procure the signature and execution of all such documents and do all such acts as PCI may reasonably require:
- (a) to vest the legal title in, apply for, obtain and maintain in force in PCI's sole name (unless it otherwise directs) the Intellectual Property Rights;
- (b) to resist any objection or opposition to obtaining, and any petitions or applications for revocation of, any of the Intellectual Property Rights;
- 8.7 To bring any proceedings for infringement of any of the Intellectual Property Rights.
- 8.8 Unless otherwise set out in the Purchase Order, all Intellectual Property Rights in any drawings, specifications, reports or other information or documentation produced by The Seller will execute any and all documents required to assign all such Intellectual Property Rights to PCI.
- 8.9 All containers, pallets and other packing materials supplied by PCI to the Seller shall be maintained in good condition and shall remain PCI's property at all times.
- 8.10 At PCI's request, the Seller shall promptly return the Material and the Equipment and the said containers, pallets and packing materials to PCI.
- 8.11 Without prejudice to the Seller's liability under the foregoing clauses of this clause 8, the Seller shall maintain such insurance as PCI may stipulate in respect of the material and the Equipment and as shall be necessary to cover the said liability of the Seller and the Seller shall produce to PCI on demand either:
- (a) the policies of such insurances and the receipts for all premiums paid thereunder; or
- (b) a current certification of insurance from the insurers under such policies.

### 9 Passing of property

- 9.1 Notwithstanding any contrary provision in Incoterm DDP, risk of damage to or loss of the Goods shall pass to PCI on delivery to PCI in accordance with the Contract.
- 9.2 Notwithstanding any contrary provision in Incoterm DDP title in the Goods shall pass to PCI at the latest on the date of notification by the Seller that the Goods are due and ready for delivery but without prejudice to:
- (a) the passing of property at an earlier time under any statute or rule of law;
- (b) any right of rejection which may accrue to PCI whether under these conditions or otherwise.

### 10 Rejection

- 10.1 Without prejudice to any other of its rights PCI may by notice in writing to the Seller reject any or all of the Goods if the Seller fails to comply with any of his obligations under the Contract.
- 10.2 PCI shall not be deemed to have accepted any Goods until PCI has had a reasonable time to inspect them following delivery, or if later, within a reasonable time after any latest defect in the Goods has become apparent.
- 10.3 PCI shall when giving notice of rejection specify the reason therefor and the Seller shall remove such Goods at its risk and expense. In such case the Seller shall:
- (a) at PCI's option:
- (i) replace such rejected Goods with Goods which are in all respects in accordance with the Contract; or
- (ii) credit PCI with the invoice price thereof.
- (b) reimburse PCI all (if any) freight and handling costs reasonably incurred by PCI and/or for which it may be liable in respect of such Goods; and
- (c) reimburse PCI all freight and handling costs reasonably incurred by PCI in the implementation of a stock recovery, recall or market withdrawal of the Goods or similar goods previously supplied by the Seller in any part of the world.

### 11 Payment

- 11.1 Payment shall be made within the period after delivery of the Goods or performance of the Services specified in the Purchase Order or if delivery is postponed at PCI's request as provided in clause 7 within the same period after the date of such postponement.
- 11.2 Where no period for payment is specified in the Purchase Order, PCI shall make payment for the Goods or Services within 60 days of date a valid invoice for the Goods or Services is received by PCI.
- 11.3 The price payable by PCI for delivery of the Goods or performance of the Services shall be fixed at the price agreed between the parties in the Contract and PCI shall not be liable to pay any increase in price or any additional sums.

### 12 Assignment and sub-contracting

- 12.1 The Seller shall not without PCI's prior written consent assign or transfer the Contract or any of its rights or obligations thereunder to any other person, firm or company.

### 13 Bankruptcy and liquidation

- 13.1 If the Seller, being an individual, (or when the Seller is a firm, any partner in that firm) shall at any time become apparently insolvent, or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or if the Seller, being a company, shall pass a resolution or the court shall make an order that the company shall be wound up (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver, administrative receiver or administrator shall be appointed of the whole or any part of its assets then PCI shall be at liberty to cancel the Contract summarily by notice in writing without compensation to the Seller.
- 13.2 In the event of the Contract being terminated pursuant to clause 13.1 hereof, PCI shall have the right to enter the Seller's premises for the sole purpose of removing any Goods, Materials, Equipment or other items which are PCI's property or which are the property of a third party on whose behalf PCI is acting.
- 13.3 The exercise of any rights granted to PCI under clause 13.1 hereof shall not prejudice or affect any right of action or remedy which may have already accrued or may accrue thereafter to PCI.

### 14 Cancellation

- 14.1 Without prejudice to clause 13, PCI may without prejudice to its other rights or remedies hereunder forthwith terminate the Contract by notice in writing to the Seller if the Seller commits a breach of any of its obligations hereunder and where such breach is remediable does not remedy such breach within 10 working days of the date of written notice from PCI of a breach requiring remedy.
- 14.2 PCI may, without prejudice to its other rights or remedies hereunder forthwith cancel the whole or part of any Purchase Order in the event of a failure by the Seller to ensure delivery of the Goods or performance of the Services within the period of time agreed in the Contract.
- 14.3 PCI may, without prejudice to its other rights and remedies hereunder, cancel the whole or part of any Purchase Order on giving the Seller not less than 1 calendar month notice in writing and shall, subject to the receipt of a valid invoice, pay the Seller for all Goods delivered or Services performed in accordance with the Contract up to the date of cancellation.

### 15 Warranty

- 15.1 Without prejudice to any other remedies of PCI, the Seller shall forthwith upon a request by PCI so to do:
- (a) replace or (at PCI's option) repair all Goods which are or become defective during the period of 12 months from the date of delivery where such defect occurs under proper usage and is due to faulty design, or inadequate or faulty materials or workmanship, the Seller's erroneous instructions as to use, erroneous data or any breach by the Seller of any provision of the Contract. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement;
- (b) re-form any Services found to have been performed defectively within 12 months of the date of their performance.

### 16 Indemnity

- 16.1 The Seller shall indemnify PCI against all actions, suits, claims, demands, costs, charges, damages, losses and expenses suffered or incurred by PCI and/or for which it may be liable to any third party due to, arising from or in connection with:
- (a) the negligent or willful acts or omissions of the Seller, its servants, agents or contractors in supplying, delivering or installing the Goods or performing the Services;
- (b) the breach of any provision of the Contract by the Seller;
- (c) any defect in the workmanship, materials or design of the Goods or their packaging or in the performance of the Services; and
- (d) any infringement or alleged infringement of any Intellectual Property Rights for or relating to the Goods or the Services unless such infringement has occurred directly as a result of any Specifications supplied by PCI.
- 16.2 Without prejudice to clause 16.1, PCI may without prejudice to its other rights and remedies hereunder claim from the Seller and the Seller shall be liable to pay any loss of revenue, profit or other sum arising out of any delay in delivery of Goods or performance of the Services.

### 17 Anti-Bribery

- 17.1 For the purpose of this clause 17 the expressions adequate procedures shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it. Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that all of that party's personnel involved in performing the Services so comply. Without limitation to this clause, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf. Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in the Clause 17. Any breach of this clause 17 shall be deemed a material breach of the Contract that is not remediable.

### 18 Anti-Slavery

- 18.1 Each party warrants that (a) neither it nor any of its officers or employees has (1) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); (ii) been notified that is subjected to an investigation relating to an alleged MSA Offence

or prosecution under the Modern Slavery Act 2015; (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015, (b) it shall comply with the Modern Slavery Act 2015 (c) it shall notify the other party immediately in writing if it becomes aware or has reason to believe that it, or any of its officers or employees have breached any of its obligations under this.

## **19** Data Protection

19.1 Each party agrees that, in the performance of its respective obligations under this Agreement it will comply and procure that any employee, agent and/or sub-processors (as applicable) of it shall comply with all applicable Data Protection Laws and it shall not by any act or omission cause the other party to be in breach of any requirements of the Data Protection Laws.

## **20** Force Majeure

20.1 PCI shall not be liable to the Seller or deemed to be in breach of the Contract by reason of any delay in performance or any failure to perform any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond its reasonable control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power or breakdown of plant or machinery. If the cause of such suspension shall continue for more than 6 months either party shall have the right to terminate the Contract upon giving not less than 7 days' prior written notice to the other and the only liability of PCI shall be to pay the Seller for Goods received and Services performed in accordance with the Contract prior to the date of such suspension.

## **21** Notices

2.1 Any notice to be served by either party hereunder shall be sent by pre-recorded delivery or registered post or by email with delivery receipt or by facsimile transmission to the other at the address stated in the Contract and shall be deemed to have been received by the other, if sent by pre-paid recorded delivery or registered post, one week after posting, or if sent by facsimile transmission, on the date sent provided that a printed report confirming transmission is received and a confirmatory copy of the notice is sent by pre-paid recorded delivery or registered post on the date of transmission.

## **3** Law of the Contract

3.1 The Contract shall in all respects be governed by and construed in accordance with the Laws of England and Wales and shall be deemed to have been made in England and Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of England and Wales.