

§ 1 Scope of Applicability

1. These conditions shall be an integral part of the purchase contract and shall apply exclusively. Conflicting or deviating conditions stipulated by the supplier or other reservations made by the supplier shall not be deemed accepted unless MERCK has expressly accepted them in writing for a specific order. Neither the fact that MERCK does not expressly object nor acceptance or payment of goods or services shall be construed as an acknowledgment of supplier's terms and conditions of delivery.
2. These conditions shall only apply to traders within the meaning of Sec.310 Subsec. 1 of the German Civil Code (BGB).
3. These conditions shall apply for all future orders with the supplier until the issuance of a follow up version.

§ 2 Orders / Delivery

1. Orders and alterations to orders must be in writing to be valid. Orders placed orally or by telephone shall thus require the subsequent written confirmation of the purchase department of MERCK to be legally valid.
2. Supplier shall confirm each order, stating a binding price and delivery period. If MERCK does not have the confirmation within 10 working days after receipt, MERCK shall have the right to withdraw the order.
3. Partial deliveries or partial performance shall require MERCK's prior written consent.
4. If the supplier has reasons to assume that he will not be able to meet, or meet in time, all or part of its obligations (particularly with regard to the obligations set forth in § 6), he shall inform MERCK thereof immediately.
5. Should the supplier fail to effect delivery or performance within the agreed time period, he shall be held liable under the existing legal provisions. Any possible contractual penalty agreed for delayed delivery shall remain unaffected in accordance with Sec. 340 Subsec. 2 BGB. If a penalty has been agreed, this can be invoked at any time until the final payment becomes due, without requiring a reservation of the right to enforce the penalty in accordance with Sec. 341 Subsec. 3 BGB.

§ 3 Prices / Terms of payment

1. The price quoted in the order is binding and considered fixed.
2. Prices are exclusive of the statutory value added tax (VAT). The VAT shall be listed

separately in all cases.

3. Unless otherwise agreed in writing, payment shall be made net within 30 days of delivery and receipt of invoice. If the invoice arrives later than the ordered goods, the calculation of the due date shall be based on the date of receipt of the invoice.
4. The term "delivery" shall be replaced by "acceptance", if the ordered product or service is subject to any acceptance testing or procedure.

§ 4 Passing of risk, shipment, packaging

1. The transfer of risk shall depend on the agreed terms of delivery in accordance with the Incoterms (as at 2000). If no agreement has been made, the risk shall transfer to MERCK upon proper handover of the goods at the agreed place of delivery. In the case of machines and technical installations, the transfer of risk shall not take place until the acceptance is confirmed.
2. If, in accordance with these terms and conditions, a type of delivery is agreed in which MERCK does not engage the carrier, supplier must choose the transportation option that is most cost-effective and suitable for MERCK.
3. The goods are to be packaged so that damages in transit are avoided. Supplier shall package, mark and dispatch hazardous goods in accordance with the requirements of the legal provisions applicable on the date of delivery. Packaging materials are only to be used in the extent as deemed necessary for archiving this purpose. Only environmentally friendly packaging materials may be used.

§ 5 Examination for defects / Commercial business

1. MERCK shall inspect the goods within a reasonable period of time for any obvious deviations in quality and/or quantity and shall notify the supplier of any such deviations at latest within 10 business days after the receipt of the goods. If MERCK fails to notify the supplier within this period, the goods in question shall be regarded as accepted unless there is a discrepancy that could not be identified upon the initial inspection. MERCK shall notify the supplier of all other deviations, which could not be identified during the initial inspection, as soon as they are discovered in the regular course of business. Under Sec. 377 Subsec 3 of the German Commercial Code (HGB), the notification of a defect that is detected later is deemed made in time, if it is made 10 working days from date of detection. Payments do not signify a waiving of the right to make a complaint.
2. The date of dispatch of the notice shall be decisive for the timelines of the notice of defects.

§ 6 REACH Clause

1. Supplier assures not to deliver any goods to MERCK, which contain or release any substances, that, pursuant to the Council Regulation EC No. 1907/2006 dated 18 December 2006 (REACH Regulation), including any future supplements and amendments, are subject to a registration or authorisation at the time of delivery to MERCK, but which are not registered or authorised. If substances within the meaning of sentence 1 above, on their own, in preparations or in articles are not subject to registration at the time of delivery of the goods to MERCK solely on the basis of the transitional provisions for phase-in substances as stipulated in the REACH Regulation, supplier assures to have such substances either pre-registered in due form and time or to have satisfied himself on the fact that they were pre-registered by the corresponding party subject to registration in due form and time. Furthermore, supplier assures to inform MERCK immediately if it becomes apparent to him that a substance pre-registered in accordance with sentence 2 above will not be registered during the interim period relevant for the corresponding substance, and in such case he shall no longer deliver any goods containing such substances to MERCK as of the expiry of the relevant registration period at the latest.
2. Moreover, supplier assures to maintain a pre-registration, registration or authorisation as required by the REACH Regulation and carried out by himself for any substances contained in the goods delivered to MERCK or released by such goods, beyond the term of the supply relationship with MERCK. If supplier has not pre-registered, registered or authorised the corresponding substance himself, he assures to have ensured that he will be informed immediately on any abolition of the pre-registration, registration or authorisation. Furthermore, supplier assures to inform MERCK immediately on the date of abolition of a required pre-registration, registration or authorisation of any substance delivered to MERCK upon having obtained knowledge hereof and assures, as from this abolition date, to refrain from delivering any goods to MERCK, which contain or release such substances.
3. Supplier assures to transmit a current and complete safety data sheet in compliance with the requirements of the REACH Regulation to MERCK upon each delivery – irrespective of whether the transmittal of such a safety data sheet is mandatory pursuant to the REACH Regulation or the data sheet merely needs to be provided upon request. If supplier has to undertake chemical safety assessments of substances, he further assures to have checked the safety data sheet for conformity with the chemical safety assessment of substances and, if

required, to have adjusted it accordingly. If the transmittal of a safety data sheet is neither mandatory according to the requirements of the REACH Regulation nor to be effected upon request, supplier assures to provide information on the registration number (if available) and a possible authorisation obligation and to provide information on any authorisations granted or refused, information on any restrictions or any other available and relevant information required for the determination and implementation of appropriate risk management measures (safety information) in writing or electronically. Changes to safety data sheets or safety information must be immediately communicated to MERCK and need to be marked in the updated safety data sheet/safety information attached to the first consignment.

4. If supplier is obliged to undertake a chemical safety assessment of any substance contained in or released by any article delivered to MERCK and to prepare a chemical safety report, particularly due to a use of a particular substance notified by MERCK, supplier assures to have undertaken the assessment and to have included the conclusions made in this respect into the safety data sheet or the safety information.
5. In case of a delivery of any articles to MERCK, which contain one or several substances meeting the criteria in Article 57 of the REACH Regulation (i.e. which can be included in the list of substances subject to authorisation) and identified in accordance with Article 59(1) of the REACH Regulation (i.e. which has been included in the "list of candidates") in a concentration above 0.1 % weight by weight (w/w), supplier assures to provide sufficient information to allow safe use of the article.
6. The fulfilment of the aforementioned obligations as set forth in Subsec. 1 to 5 are primary obligations of supplier.
7. If supplier has acted in breach of any of his contractual duties as set forth in Subsec. 1 or 2 above, MERCK shall be entitled to rescind the contract insofar as the goods delivered by supplier do no longer comply with the requirements set forth in the REACH Regulation. Upon a violation of the obligations set forth in Subsec. 3, 4 and 5, MERCK shall be entitled to rescind the contract if supplier fails to cure such infringement within a reasonable period of time set by MERCK. Further claims for damages shall remain unaffected.
8. If MERCK is held liable by any third party, who has bought goods delivered by MERCK, due to a non-compliance of the goods supplied with the requirements of the REACH Regulation, supplier, upon first written request, shall be obliged to indemnify MERCK against any claims brought against MERCK to the extent the

recourse to MERCK is based upon an infringement of supplier's obligations as stipulated in Subsec. 1 to 5 above. MERCK shall not be entitled to make any arrangements with the third party without supplier's approval and to effect a compromise with the third party in particular. The indemnity required of supplier refers to all expenses necessarily incurred by MERCK out of or in connection with any claims made against MERCK by the third party, particularly also to costs associated with MERCK's legal defence and administrative costs as well as to all costs arisen due to a necessary replacement.

§ 7 Warranty

1. Supplier shall be responsible for his goods and services being free of defects in material / workmanship or any other material defect and free of defects of title. Supplier warrants further, that his goods and services are free of defects (in material, workmanship, any other material defects or defects of title), which nullify or diminish its value or suitability for the normal or contractual required use.
2. In addition, supplier shall be liable for the goods / services being in compliance with the current laws, regulations and technical standards applicable at the date of delivery / provision of services.
3. Should the delivered goods fail to meet any or all of the requirements as set out above, MERCK shall be entitled to demand, at its option, that the defect be remedied or the supply of defect-free goods. The costs of remedying goods or supplying replacements, including all incidental costs shall be borne by supplier. If the subsequent performance has not taken place within a reasonable period of time, as determined by MERCK, MERCK shall be entitled to a reduction of the purchase price or in case of a material defect, to cancel the contract under the applicable legal provisions. The legal right of compensation for damages, especially for compensation for damages instead of the service or the demand of reimbursement for needless expenditure, are reserved.
4. In addition to the rights set out in Subsection 3 above and provided that the goods or services supplied or provided by supplier are subject to any acceptance tests or acceptance procedures and further provided that the subsequent performance has not taken place within a reasonable period of time, determined by MERCK, or if supplier fails to remedy a defect, MERCK may remedy the defects himself or have them remedied by third parties at the supplier's cost and risk. MERCK shall be entitled to demand an advance payment from supplier in respect of the expenditure necessary for remedying the defect.
5. Unless expressly agreed otherwise in writing supplier is liable for defects that arise

within 24 months from the date of receipt of supplier's delivery or from the date of acceptance, as the case may be. The warranty period for work on premises and buildings is 5 years from the date of acceptance.

6. If supplier has undertaken to guarantee the properties or durability of the product supplied, MERCK can in addition lodge a claim under the terms of the guarantee.
7. Supplier shall hold MERCK harmless from any product liability claims or claims raised under the German Product Liability Law which are attributable to a fault in the product supplied by supplier.
8. Notwithstanding these provisions supplier shall be liable under the existing legal provisions.

§ 8 Compliance Clause

1. Supplier is fully aware of MERCK' s Social Charter which includes principles on Child and Forced Labor ("MERCK Principles") and is available on MERCK'S website. Supplier hereby certifies that he does not and will not employ any person to manufacture or provide goods or services who is under fifteen (15) years of age, or eighteen (18) years of age in the case of hazardous work (hereinafter "Child Labor"). Supplier has used reasonable efforts to determine whether his suppliers use Child Labor in manufacturing or providing goods or services, and he certifies, that he, after reasonable inquiry, is not aware of any of his suppliers of goods and services that use Child Labor.

Supplier hereby certifies that the workers he uses, and will use, to produce and supply the goods or provide the services are present voluntarily. Supplier certifies that he and his suppliers of goods and services do not and will not knowingly use forced labor as it is defined in the MERCK Principles.

Supplier understands that these certifications and undertakings are essential to this contract. Supplier shall indemnify MERCK and hold MERCK harmless with respect to any liability arising from the contravention of this provision by supplier or any of his suppliers with respect to the goods or services used in the supply chain. Supplier also agrees that, in the event that MERCK determines that a violation of this provision has occurred, MERCK shall notify supplier and supplier shall immediately remedy the violation. In the event that MERCK determines that supplier has not remedied the violation, then MERCK may terminate this agreement immediately, and such termination shall be with cause.

2. Supplier is aware of the MERCK'S Social Charter and his Code of Conduct, which are available on MERCK'S website, and which both include principles against Bribery and Corruption ("MERCK'S Principles against Corruption").

Supplier hereby certifies that he does not and will not use illegal practices such as giving money or gifts to MERCK employees or members of their families in exchange for business from MERCK. Supplier also agrees that, in the event that MERCK determines that a violation of MERCK'S Principles against Corruption have occurred, MERCK shall notify supplier, and MERCK may terminate this agreement immediately, and such termination shall be with cause.

Supplier shall indemnify MERCK and hold MERCK harmless with respect to any liability arising from the contravention of this provision by supplier.

3. Supplier is aware that MERCK applies a high standard of care in connection with the protection of the environment.

Supplier hereby certifies that he complies at least with the Environmental laws of the country where he operates and where the goods are manufactured or handled. MERCK may at his sole discretion, during regular business hours and after reasonable notice conduct audits to verify whether the legal requirements of such country are met.

Supplier also agrees that, in the event that MERCK determines that a violation of such laws have occurred, MERCK shall notify supplier, and MERCK may terminate this agreement immediately, and such termination shall be with cause.

Supplier shall indemnify MERCK and hold MERCK harmless with respect to any liability arising from the contravention of this provision by supplier.

§ 9 Confidentiality

1. Supplier undertakes to treat all commercial or technical information made accessible by the MERCK towards third parties as business secrets, as long as and to the extent they are not public knowledge and may only be made available to persons who need to make use of the information for the purpose of supplying to the buyer; the information remains the exclusive property of MERCK.
2. Supplier shall not refer to his business connection with the buyer in any informational or advertising material except with the MERCK's prior written consent.

§ 10 Place of Performance

Unless otherwise stipulated in the order, the place of performance shall be the place of business of MERCK KGaA in Darmstadt.

§11 Severability

If at any time any provisions under these terms and conditions of purchase is or becomes invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions hereof shall not be in any way affected or impaired thereby. In such event, the invalid or unenforceable provision shall be replaced by the parties by a valid or enforceable provision which reflects as closely as possible the economic intend of the invalid or unenforceable provision.

§ 12 Applicable law / Place of jurisdiction

This agreement is governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.

The venue for all disputes arising out of, or in connection with contractual relationships based on these terms and conditions of purchase shall be Darmstadt. In the case of proceedings instituted by MERCK, it shall also be the general place of jurisdiction of supplier.