

# PURCHASE ORDER TERMS AND CONDITIONS

**General.** This Purchase Order is an offer by Astellas US LLC or an affiliated entity of Astellas US LLC ("Buyer") to the seller listed on the accompanying Purchase Order ("Seller") and acceptance is limited to its provisions without additions, deletions, or other modifications. Buyer will not be responsible for goods or services delivered without issuance of its standard Purchase Order.

**1. Acceptance.** This Purchase Order may be accepted by delivering the goods or services by the specified delivery date. This Purchase Order is limited to the terms and conditions: (i) specified herein; (ii) specified on the face of the accompanying Purchase Order; and (iii) if applicable, specified in Buyer's written agreement with Seller.

Acceptance of all or part of the goods or services shall not (i) waive Buyer's right to cancel or return all or any portion of the goods or services that do not conform to the Purchase Order; (ii) bind Buyer to accept future shipments of goods or services; or (iii) preclude Buyer from making any claim for damages or breach of warranty. All purchases are subject to inspection and rejection by Buyer notwithstanding prior payment. Rejected goods will be returned at Seller's expense for transportation both ways and all related labor and packing costs. No goods returned as defective by Buyer shall be replaced by Seller without written permission of an authorized agent of Buyer.

Buyer may at any time, by written order, make changes within the general scope of this Purchase Order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Purchase Order, Seller may request an adjustment in the price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly upon agreement by the parties.

**2. Compliance with Laws.** Seller warrants to Buyer that the goods and services shall be provided, manufactured, shipped, stored, and otherwise handled in strict compliance with all applicable laws, codes, ordinances, regulations, executive orders, and industry standards. Seller makes all warranties contained in the Uniform Commercial Code.

**3. Title.** Title conveyed to Buyer by Seller shall be good and merchantable and its transfer rightful. The goods and services shall be delivered free and clear of any lien, security interest, claim or encumbrance whatsoever.

**4. Hold Harmless.** Seller agrees to defend, indemnify and hold harmless Buyer, officers, directors, shareholders, affiliated entity, employees, agents, representatives, successors and assigns ("Indemnitees") from all losses, liabilities, damages, and/or expenses which may be sustained or claimed against an Indemnitee: (i) arising out of defective goods or negligent services hereby ordered; (ii) arising from injury to Seller employees while in the course of providing goods or services to Buyer or affiliated entity;

## PURCHASE ORDER TERMS AND CONDITIONS

(iii) arising from Seller's use of automobiles, trucks, or heavy equipment; or (iv) based on a claim that the goods or services supplied by Seller infringe a patent, copyright, or trademark or misappropriate a trade secret of a third party. Seller shall, at the request of Buyer or affiliated entity, defend any such claim, action or lawsuit. If the goods or services become, or in Seller's opinion, are likely to become the subject of any infringement claim, Seller shall do one of the following at Seller's option and expense: (i) procure for Buyer the right to continue using the goods or services; (ii) replace or modify the goods or services so that they become noninfringing without losing functionality; or (iii) terminate Buyer's right to use the goods and/or services, whereupon Seller will refund to Buyer all amounts paid for such goods or services. The indemnity under this Paragraph 5 shall survive delivery and acceptance of goods and services and termination or expiration of this Purchase Order and/or Buyer's written agreement with Seller, if applicable.

**5. Price.** The price for goods and services ordered hereby shall be the lower of: (i) the price stated on the accompanying Purchase Order or (ii) the same price charged by Seller to its most favored customers at the time of shipment of goods or provision of services of the same kind and quality taking into account quantity discounts. Price is inclusive of applicable taxes, freight, all packaging and handling, transportation, and insurance unless explicitly indicated on the face of this Purchase Order or agreed to in writing by Buyer.

**6. Taxes.** Any tax, tariff or duty which is imposed upon Seller by any governmental authority and included by the Seller in the price shall be separately stated on Seller's invoice(s).

**7. Delivery.** Unless designated otherwise: (i) For Domestic Orders: all deliveries are F.O.B. Destination to the location designated on this Purchase Order and (ii) For International Orders: all deliveries are Delivered Duty Paid as defined by Incoterms from time to time. For both domestic and international orders, all risk of loss shall remain with Seller until goods and services have actually been received and accepted by Buyer at the applicable destination according to the terms and conditions of this Purchase Order. The goods or services ordered must be received no later than the delivery date specified.

**8. Quantities.** Quantities of goods or services ordered may not be changed without the prior written approval of Buyer. If the total or any portion of the goods received either exceeds or falls below the quantities ordered, Buyer shall have the right to reject and return any such shipments or portions thereof at Seller's expense for transportation both ways and all related labor and packing costs.

**9. Packaging and Shipping.** All shipping containers shall be packed and packaged to: (i) ensure safe arrival to final destination; (ii) secure the lowest transportation costs; (iii) comply with requirements of common carriers; (iv) meet Buyer's written instructions; and (v) meet the requirements of all applicable laws, ordinances, rules and regulations.

# PURCHASE ORDER TERMS AND CONDITIONS

Each package or container shall be marked clearly to show this Purchase Order number, ship date, and name of consignee and consigner. An itemized packing list shall be included in each container.

**10. Invoices.** Seller shall issue a separate invoice for each separate shipment. Each invoice shall include: (i) the Purchase Order number; (ii) Buyer's part numbers; and (iii) quantities shipped. Undisputed amounts shall be paid within 60 days of receipt and acceptance of goods or services and a correct invoice. Delays in receipt of goods or services, acceptance of goods or services, or a correct invoice will be just cause for Buyer to withhold payment without losing discount privileges. Cash discounts, if any, shall be computed as commencing with receipt of the invoice or goods or services, whichever is later.

**11. Warranties.** Seller warrants that the goods or services delivered, the packaging, labeling and sorting thereof, any installation, repair, and maintenance of goods, and any other performance pursuant to this Purchase Order, will: (i) be free of infringement of property rights of third parties, including without limitation, any patent, trademark, trade name, copyright or right of publicity, or misappropriate any trade secret or violate any license or any other rights; (ii) be free from defects in material and workmanship, be of even kind and quality and run without variation; (iii) be of merchantable quality; (iv) be fit for the intended use of the Buyer, Buyer's customers and any other intended uses of such goods and shall be new and not refurbished; and (v) be of grade and performance in conformity with all specifications, blueprints, designs, drawings, samples, models, descriptions, instructions, and other items referred to in this Purchase Order. Seller also warrants that the goods or services to be delivered hereunder were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 as amended, including specifically Sections 206, 207, 212 and 215, and all regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Seller shall maintain, solely at Seller's cost and expense, all licenses, permits, approvals, and the like necessary to conduct its business and perform its obligations under this Purchase Order.

**12. Inspection.** Buyer shall have the right to inspect and test the goods or services ordered at any time, including during the manufacture and construction, or preparation, notwithstanding any prior payment or inspection. Defective goods or services not in compliance with Buyer's drawings, specifications or standards may at any time be rejected even though such goods or services may have previously been inspected and accepted. Without limiting any rights it may have, Buyer at its sole option may require Seller, at Seller's expense to: (i) promptly repair or replace any or all rejected goods and/or services or (ii) refund the fees paid for any or all rejected goods and/or services. All such rejected goods will be held for Seller's prompt instruction and at Seller's risk. Rejected goods will be transported for return to Seller or destroyed at Seller's cost. Nothing contained herein shall relieve in any way Seller from the obligation of testing, inspection, and quality control. Payment for goods or services prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims Buyer may have against Seller or any other party.

## PURCHASE ORDER TERMS AND CONDITIONS

**13. Right to Cover.** If Seller repudiates this Purchase Order or fails to make delivery within the time specified herein, time being of the essence in connection with this Purchase Order (or, if no time of delivery has been specified, within a reasonable time after acceptance by Seller) or if Buyer rightfully rejects the goods or services or justifiably revokes acceptance thereof, then with respect to any and all goods or services involved, Buyer may pursue any remedy available including, without limitation, cancellation of this Purchase Order in whole or in part. In addition to recovering so much of the price as has been paid and irrespective of whether Buyer has cancelled this Purchase Order, Buyer may "cover" and have damages as to all goods and services affected whether or not they have been identified to this Purchase Order. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods or services in substitution for those due from Seller. Buyer shall recover from Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

**14. Limitation of Liability.** Buyer's liability to pay any amount to Seller for any reason shall not exceed the amount Buyer has agreed to pay Seller for the goods or services. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSSES ARISING FROM THE PURCHASE OF GOODS AND/OR SERVICES REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF THE CLAIM FOR DAMAGES, AND EVEN IF BUYER IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**15. Miscellaneous.** Seller shall not assign this Purchase Order or any rights, nor delegate any duties to any third party. Any attempt to do so will be void. This Purchase Order shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Each party is an independent contractor of the other party.

**16. Confidential Information.** Buyer's confidential and proprietary information includes, without limitation, its business plans; business strategies; marketing plans; industry and competitive information; technology, product and proposed product information; pricing and cost arrangements and agreements with Buyer, distributors, customers, suppliers, licensors and licensees; information relating to its customer base; information concerning employees and financial information. All such confidential and proprietary information shall (a) remain the property of Buyer, (b) be carefully preserved and maintained by Seller at its expense, and (c) be promptly returned to Buyer or satisfactorily accounted for upon completion of this Purchase Order or upon Buyer's written demand.

**17. Force Majeure.** Failure of Buyer to take shipments of goods or receive services hereunder, if occasioned by fire, explosion, flood, war, accident, interruption of or delay in transportation, labor trouble, governmental regulation, or any other circumstances of like or different character beyond Buyer's reasonable control, or if occasioned by partial or complete suspension of operations at any of Buyer's offices or other business locations, shall not subject Buyer to any liability to Seller by reason thereof, but, at Buyer's option, the total quantity covered by this Purchase Order may be reduced by the extent of omitted shipments or services, or the specified delivery period may be extended by a time equal

# PURCHASE ORDER TERMS AND CONDITIONS

to that during which shipments or services shall be so omitted and such shipments shall then be made or services performed during the period of extension.

**18. Affirmative Action.** Seller shall comply with applicable federal regulations on affirmative action implementing Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. Buyer and Seller hereby incorporate the requirements of 41 C.F.R. §§60-1.4(a)(7), 60-250.5(a) and 60-741.5(a), if applicable.

**19. Federal Acquisition Regulation Clauses Incorporated by Reference.** The following clauses from the Federal Acquisition Regulation ("FAR"), 48 C.F.R. Chapter 1, as applicable and as in effect on the date of this order, are incorporated by reference into this order. The full text of the below clauses is available at <http://www.acquisition.gov/far>. Unless the context requires otherwise, in the text of the below clauses the term "Contractor" means "Seller" and the terms "Contracting Officer" and "Government" mean "Buyer": (a) Contractor Code of Business Ethics and Conduct (FAR 52.203-13); (b) Utilization of Small Business Concerns (FAR 52.219-8); (c) Equal Opportunity (FAR 52.222-26); (d) Equal Opportunity for Veterans (FAR 52.222-35); (e) Affirmative Action for Workers with Disabilities (FAR 52.222-36); (f) Notification of Employee Rights Under the National Labor Relations Act (FAR 52.222-40) (applies only if value of order exceeds \$10,000 and will be performed wholly or partially in the United States); and (g) Combating Trafficking in Persons (FAR 52.222-50).

**20. Compliance with Buyer Policies.** Seller acknowledges that Seller has read and agrees to comply with, and shall cause its employees, consultants, agents and representatives who assist in the provision of goods and/or services by Seller in connection with this Purchase Order to read and comply with, the following Buyer policies, each of which is available at [www.astellas.com](http://www.astellas.com) : [Policy on Global Anti-Bribery and anticorruption](#) and [Astellas Business Partner Code of Conduct](#).

**21. Waiver.** A waiver of any term, condition or default of this Purchase Order shall not be construed as a waiver of any other term, condition, or default.

**22. Entire Agreement.** The Purchase Order represents the entire understanding between Buyer and Seller, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may be amended only by written mutual agreement of the parties. In the event of a conflict between the terms and conditions of this Purchase Order and any amendment thereto, the Purchase Order shall govern and control. Notwithstanding the foregoing, the provisions of this Purchase Order will not supersede any provisions of any other previously written agreement(s) that are currently in effect between the parties that govern the provision of the goods or services that are the subject of this Purchase Order.

**23. Governing Law.** This Purchase Order shall be governed by and interpreted in accordance with the laws of the State of Illinois, excluding Illinois conflict of law rules. All terms used in this Purchase Order, which are defined in the Uniform Commercial Code as adopted in the State of Illinois, shall have the same meaning herein as such code.