



## PATHEON BIOLOGICS B.V. GENERAL PURCHASE CONDITIONS

These General Purchase Conditions apply to and form an integral part of all requests for proposal, quotations and Purchase Orders. Customer expressly rejects the applicability of any other general terms and conditions or stipulations of Supplier.

### 1. Definitions

In these General Purchase Conditions the following terms shall have the meanings set out below:

- (a) **Affiliate:** with respect to either Customer or Supplier, any individual, corporation, company, partnership or other legal entity that directly or indirectly, at present or in the future, through one or more Affiliates, controls, is controlled by, or is under common control with Customer or Supplier. For the purpose of this definition, “control” means (i) ownership of more than fifty percent (50%) of equity or voting interests of the entity, (ii) status as a general partner in any partnership or (iii) any other arrangement whereby an entity controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity.
- (b) **Agreement:** the binding contract formed as described in Article 2.
- (c) **Customer:** the legal entity which issues the Purchase Order or request for proposal;
- (d) **Goods:** the products, materials, liquids, equipment, design, software, rental properties, stored goods, and all related documentation to be supplied as specified in the Purchase Order.
- (e) **Parties:** Customer and Supplier jointly.
- (f) **Party:** either Customer or Supplier.
- (g) **Purchase Order:** the order issued by Customer including all related documentation;
- (h) **Services:** the services and/or all pertaining deliverables to be provided as specified in the Purchase Order.
- (i) **Supplier:** each person or entity that enters into an Agreement with Customer.

### 2. Acceptance

These General Purchase Conditions, together with the relevant Purchase Order, set forth the terms and conditions for the supply of Services and/or the delivery of Goods by Supplier to Customer and will be binding to the Parties at Supplier’s acceptance (the binding Agreement). Any changes by Supplier are binding only if accepted by Customer in writing. Performance of any part of a Purchase Order by Supplier will operate as Supplier’s unconditional acceptance thereof and of these General Purchase Conditions.

### 3. Commercial conditions

- 3.1 Supplier shall deliver the Goods and/or perform the Services against the price(s) mentioned in the Agreement. Unless expressly stated to the contrary, prices are (i) fixed and firm (ii) exclusive of any Value Added Tax but (iii) inclusive of all other taxes, duties, levies, fees (including license fees) and charges and (iv) inclusive of all costs.
- 3.2 Customer may authorize any of its Affiliate to effect the payment due by Customer. Such payment shall discharge Customer from its respective payment obligation towards Supplier. In case an invoice is under dispute, Supplier has no right to postpone its obligations. Customer has the right to set off amounts it owes to Supplier or any of its Affiliates, against amounts which Supplier or any of its Affiliates owes to Customer.
- 3.3 To the extent Services are supplied at a reimbursable basis, Supplier shall keep records of all costs, expenditures and hours worked and shall provide Customer access thereto.

### 4. Compliance

- 4.1 Supplier shall comply with all applicable (inter)national laws, rules and regulations, standards and orders in connection with the performance of the Agreement, including all applicable laws, rules and regulations on international trade, such as embargos, import and export control and sanctioned party lists.
- 4.2 Supplier expressly warrants that it has good and marketable title to the Goods and deliverables of the Services supplied, including right to grant Customer intellectual property right(s). Supplier holds any and all licenses, permits, end-user statements and any other documents, which are required in the country of origin, of transit and of destination to perform its obligation and will immediately notify Customer of any legal restrictions.

### 5. Time

Supplier guarantees that it will supply without delay and interruption the Goods and/or Services. Supplier shall immediately notify Customer of any foreseeable delay.

### 6. Delivery, warranty and acceptance of Goods

- 6.1 Unless explicitly agreed otherwise, the Goods shall be delivered according to Incoterm DDP site Customer.
- 6.2 Delivery shall be effected in adequate packaging. Costly and re-usable packaging shall be taken back by Supplier. Supplier shall timely provide Customer with (copies of) all applicable licenses, documents, information, specifications and instructions necessary for safe and proper transport, use, treatment, process and storage of the Goods and with all certificates of analysis/conformity as customarily supplied. If applicable, stored Customer’s Goods will be redelivered in the original quantity, state and condition.
- 6.3 Supplier warrants the proper functioning of the Goods and warrants that the Goods will be in conformity with the agreed upon specifications and requirements, be unused, of good materials and workmanship, free from any and all defects and from any and all

- liens, encumbrances, pledges or rights of retention and suitable for the intended purpose. These warranties shall not be deemed to exclude warranties and/or rights that Customer may have or obtain and shall extend to Customer and its customers.
- 6.4 Supplier shall promptly repair or replace any and all Goods within a period of 2 years after the date of acceptance or the date of first operational use, whichever date is later. Repaired or replaced Goods or parts will be warranted for another period of 2 years from the repair or replacement date. If requested, Supplier shall as far as possible leave these Goods in free use with its user until Supplier has delivered Goods in replacement. The warranty period shall be extended by any period(s) during which the Goods have been out of operation.
  - 6.5 Customer is entitled to reject any Goods which are (i) not delivered at the agreed time, (ii) not delivered in the agreed volume and/or quantity, (iii) delivered in inappropriate or damaged packaging or (iv) delivered with other defects for risk and account of Supplier, and without prejudice to Customer's right to compensation for the losses and damages suffered as a result of Supplier's non-compliance.
  - 6.6 Inspection, testing, acceptance or payment does not release Supplier from its obligations and warranties.

#### **7. Performance and acceptance of Services**

- 7.1 Supplier warrants the quality and the results of the Services. Supplier shall perform the Services in accordance with the requirements and specifications of the Agreement, observing due skill and care, using proper and well maintained materials and employing sufficiently qualified staff.
- 7.2 Supplier shall properly and timely instruct Customer of any special use or treatment regarding the Services.
- 7.3 Only written confirmation of acceptance shall constitute acceptance of the Services performed.

#### **8. Transfer of title**

- 8.1 Title to the Goods and deliverables of the Services shall pass to Customer upon delivery at the delivery point as stated in the Agreement. However, if Customer pays for any Goods prior to delivery, title shall pass to Customer upon payment.
- 8.2 Title to and risk of Goods under a rental service agreement shall remain with Supplier.
- 8.3 Title to stored Customer's Goods under a warehousing agreement shall remain with Customer. The risk of such Goods is transferred to Supplier at acceptance of the Goods and ends after delivery of these Goods to Customer.
- 8.4 Supplier shall identifiably store any raw materials and semi-finished goods allocated for the manufacture and/or production of the deliverables and the finished deliverable itself. The risk of such goods remains with Supplier until acceptance thereof.
- 8.5 If Supplier has a registerable security interest under the *Personal Property Securities Act 2009*, such interest, if registered, shall be immediately discharged and notification provided to the registering authority immediately upon payment for the Goods being received by Supplier. Supplier shall indemnify Customer from and against any loss and damage it may sustain as a result of Supplier's breach of this provision.

#### **9. Opportunity to inspect**

- 9.1 Supplier shall ensure that Customer or its nominee has the opportunity to inspect the Goods or the manufacturing process of the Goods and/or any place where the Services or part thereof may be carried out.
- 9.2 Supplier shall diligently and continuously control and test the quality of the Goods and Services as well as the operations during manufacturing, storage and delivery. Supplier shall ensure that Customer, or its nominee, has the opportunity to attend tests and/or inspect the Goods at any time.
- 9.3 Inspection and/or testing shall not relieve Supplier of any obligation or liability under the Agreement.

#### **10. Controlled changes**

The implementation of any and all changes of and/or improvements related to the Goods and/or (performance of) the Services, including (business) processes, (raw) materials (including supply source) and/or any other changes that might affect the specifications of the Goods and/or the Services, require the prior written approval of Customer. Supplier will inform Customer well in advance of such changes and will enable Customer to control and test the Goods.

#### **11. Chemical Control Regulations**

With regard to chemicals supplied under the Purchase Order within or into the Netherlands, Supplier herewith confirms that it is fully aware of all regulations and treaties applicable to the supply of the such Goods in and into the Netherlands, including but in no way limited to the Customs (Prohibited Imports) Regulation 1956, the National Model Regulation for the Control of Workplace Hazardous Substances and the National Standard for the Storage and Handling of Workplace Dangerous Goods. To the extent that any Goods or any of their substances fall within the scope of these or other chemical control regulations, Supplier confirms and represents that the Goods or any of their substances are fully compliant with these regulations and the processes and systems of Supplier are fully compliant with these regulations.

#### **12. SHE and security**

Supplier shall comply and act in accordance with all applicable safety, health and environmental instructions, avoid pollution of the soil and the groundwater, limit air and noise pollution on the Customer site, comply with site and site access regulations as well as with Customer security regulations. Supplier must arrange for proper and safe transport and equipment, as well as skilled and qualified staff, able to speak the local languages of the Customer and/or English, to work in a safe, healthy and environmentally responsible manner. Customer may audit these aspects of this Agreement. Supplier shall report any irregularity with respect to safety, health, environment and security. In case of an incident Supplier shall, under supervision of Customer, immediately take all measures to clean up, isolate or prevent pollution resulting from such incident.

#### **13. Indemnification, liability and force majeure**

- 13.1 Supplier shall be liable and hold Customer, its Affiliates and their directors and employees ("Indemnified Parties"), harmless from and indemnify them against any and all actual or contingent damage, loss, injury/death, costs and claims suffered by or brought against Indemnified Parties, resulting from or connected with the Agreement, the use and/or sale of Goods by Indemnified Parties or any third party, the performance of the Services and the deployment of Supplier's Services by Indemnified Parties or any third party, except to the extent that this is caused by Customer's willful misconduct or gross negligence. The Parties agree that this indemnity remains enforceable notwithstanding the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.

- 13.2 Supplier is fully liable for the correct and timely payment of all taxes and levies indebted in connection to the performance of the Agreement and will indemnify Indemnified Parties against all claims and damages relating to its obligations concerning taxes, contributions and any claims of third parties, including the government.
- 13.3 In no event shall Customer be liable for any direct and indirect damages, including but not limited to lost revenue, lost profits or other consequential or incidental damages, based upon the Agreement.
- 13.4 Neither Party shall be liable towards the other Party for any non-fulfillment of the Agreement to the extent fulfillment thereof has been delayed, interfered with or prevented by an event entirely beyond the control of the Party concerned, was not for its risk and not reasonably foreseeable ("Force Majeure"), provided that the Party invoking Force Majeure shall use its best efforts to fulfill its obligations by any means possible. The mere fact of late supply of materials, labor or utilities shall not be deemed Force Majeure. In case a situation of Force Majeure continues for more than 30 days, Customer shall be entitled to (partly) terminate or cancel the Agreement by written notice. Customer may purchase similar goods and/or services from third parties during any period Supplier is unable to fulfill its obligations. The quantities affected shall be excluded from the calculation from any (minimum) volumes.

#### **14. Confidentiality**

Any and all information provided by or on behalf of Customer shall be treated as confidential and shall only be used by Supplier for the purpose of this Agreement. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis and on confidentiality conditions at least as stringent as those set out in this Article 14, except in case Supplier is required to disclose the information by virtue of a court order or statutory duty, provided that the Supplier shall immediately inform Customer. Supplier shall upon demand promptly return to Customer all such information and shall not retain a copy thereof. Supplier shall treat the existence of the Agreement as confidential. Supplier or its employees will sign a confidentiality agreement upon request.

#### **15. Ownership and intellectual property**

- 15.1 Any and all information, property or materials disclosed to Supplier remains the property of Customer. Supplier is not entitled to make use of or refer to any trademark, trade name, domain name, patent, design, copyright or other intellectual property right of Customer or any of its Affiliates, unless the prior written consent thereto has been obtained from Customer. Any authorized use shall be strictly in accordance with the instructions and for the purposes specified.
- 15.2 Supplier warrants that the Goods and/or Services, alone or in combination, will not result in or give rise to any infringement or misappropriation of any intellectual property right of a third party.
- 15.3 Supplier hereby assigns by way of present and future assignment all intellectual property rights, know-how, copyrights and other rights developed by or on behalf of Supplier explicitly for or based on Customer instructions.
- 15.4 All intellectual property rights to software, including source code, subsoftware and documentation, developed explicitly for Customer or based on Customer instructions shall rest with or be transferred to Customer. Intellectual property rights to other software shall remain with Supplier and Supplier shall grant Customer a non-exclusive, non-transferable, irrevocable, perpetual and royalty free license not limited to specific equipment or locations. Customer is allowed to provide sub-licenses thereunder to its Affiliates.

#### **16. Insurance**

The Supplier shall take out and maintain the insurance policies to cover the risks resulting from or connected with the Agreement. At the request of the Customer, Supplier will provide the insurance certificates evidencing Supplier's coverage and keep Customer informed of any changes.

#### **17. Termination and suspension**

Customer is entitled to suspend the performance of its obligations in whole or in part or terminate the Agreement with immediate effect, without prejudice to its right to claim damages and without any compensation to or indemnification of Supplier (i) in case Supplier is declared bankrupt, is in a state of liquidation, has ceased or suspended all or a substantial part of its business or is subject of a court order or preventative legal scheme of settlement, (ii) in case of noncompliance with import, export or chemical control regulations or the provisions of safety, health, environment and security or (iii) in case of non-approved changes in accordance with Article 10. After such termination Customer may return received Goods and/or Services in whole or part against repayment and retransfer of ownership therein to Supplier.

#### **18. Miscellaneous**

- 18.1 If any provision of these General Purchase Conditions should be or become ineffective or invalid, the other provisions will not be affected thereby. The Parties agree to replace the ineffective or invalid provision by a provision of similar import, which reflects as closely as possible the intent of the original clause.
- 18.2 Failure by either Party to require strict performance by the other Party of any obligation hereunder shall in no way affect its right thereafter to enforce any obligation, nor shall a waiver by either Party of any breach be held to be a waiver of any previous or later breach. No waiver will have any effect unless specific, irrevocable and in writing.
- 18.3 Supplier shall not assign the Agreement in whole or in part without Customer's written consent. Such consent shall not relieve Supplier from, and shall be subject to compliance with, any of the obligations under the Agreement. Customer is entitled to assign this Agreement or any part thereof to any Affiliate on prompt notice to Supplier.
- 18.4 Nothing in the Agreement shall be deemed to constitute either Party as the agent of the other or create a partnership, joint venture or employment relation between the Parties.
- 18.5 This Agreement shall be governed exclusively by the laws of The Netherlands with the exception of its conflict of laws principles. The United Nations Convention on contracts for the International Sale of Goods, concluded at Vienna on April 11, 1980, shall not be applicable. Any transport of Goods to or from a warehouse which may part of the Services is subject to the provisions of the treaty governing the transport mode at matter.
- 18.6 Any dispute shall in first instance be submitted to the competent court at Amsterdam, The Netherlands. Pending a dispute, neither Party shall be excused from performing any of its obligations under the Agreement, except for obligations directly affected by the dispute.
- 18.7 Expiry, termination or cancellation of the Agreement shall not affect any right or obligation, which expressly or by its nature survives such expiry, termination or cancellation, including but not limited to representations, warranties, confidentiality obligations, intellectual property rights and accrued rights.