General Purchasing Conditions of Allergopharma GmbH & Co. KG
A company of Merck KGaA

Date: 20.01.2015

Section 1 - Scope

1. The present exclusively applicable conditions are integral to the purchase contract. Any conditions conflicting with or deviating from the present conditions or any other reservations by the Supplier shall only be deemed to be accepted if expressly accepted by ALLERGOPHARMA in writing in each individual case. Neither the absence of an express rejection nor ALLERGOPHARMA's acceptance of or payment for goods and services shall be deemed to constitute recognition of the Supplier's delivery conditions.
2. The present Conditions only apply to entrepreneurs in conformity with Section 310 (1) of the German Civil Code (BGB).
3. The present Conditions apply to all contracts placed with the Supplier in future, until a subsequent version is published.

Section 2 – Orders / Delivery

1. Order contracts and order amendments are only valid if laid down in writing. Verbal or telephoned orders are only legally valid if they are subsequently confirmed by the ALLERGOPHARMA Purchasing Department.
2. The Supplier must confirm each order, specifying a binding price and binding delivery deadline. If ALLERGOPHARMA does not have this confirmation within 10 working days after receipt of the order, ALLERGOPHARMA shall be entitled to cancel the order.
3. Partial deliveries or partial provision of services require the prior written consent of ALLERGOPHARMA.
4. If the Supplier has reason to suppose that it will not be able to perform its obligations or a part of its obligations (in particular with regard to the obligations specified in Section 6) or will not be able to comply with the performance lead times, the Supplier must immediately notify ALLERGOPHARMA of this fact.
5. If the Supplier fails to provide the delivery or service by the agreed deadline, the Supplier shall be liable in accordance with the applicable legal provisions. Any contractually agreed penalty for delay in delivery or service provision in accordance with Section 340 para. 2 of the German Civil Code (BGB) remains unaffected. If a penalty has been agreed, said penalty may be demanded up to the due date for payment, without any need to reserve the right to implement the penalty as stipulated in Section 341 (3) of BGB.

Section 3 – Prices/ Payment Terms

1. The price specified in this order is binding and is deemed fixed and non-revisable.
2. Prices must be quoted excluding VAT. In all cases, VAT must be shown separately.
3. Unless otherwise agreed in writing, payments shall be made, at MERCK's own choice, either within 14 days with 3% discount or net within 60 days from delivery and receipt of the duly completed invoice. Payments to suppliers are made in automatic weekly sequence ("payment run").
4. The word "delivery" is replaced by the word "acceptance" when the ordered product or service is subject to an acceptance test or acceptance procedure.

Section 4 – Transfer of Risk, Dispatch, Packing

1. The date and time of risk transfer are based on the agreed delivery conditions in accordance with Incoterms (2010 edition). Failing any such agreement, the risk is transferred to ALLERGOPHARMA on correct handover of the goods at the agreed place of delivery. In the case of machines and technical equipment, the risk is transferred only after acceptance is confirmed.
2. If in accordance with the present conditions a mode of delivery is agreed whereby ALLERGOPHARMA does not select the carrier, the Supplier is obliged to select the transportation means that is the most favourably priced and most suitable for ALLERGOPHARMA.
3. The goods must be appropriately packed to prevent damage in transit. The Supplier must pack, mark and dispatch hazardous goods in conformity with the requirements of the applicable legal provisions at the time of delivery. Packaging material must only be used to the extent that it is considered necessary for this purpose. Only eco-friendly packaging materials may be used.

Section 5 – Inspection for Defects and Faults

1. ALLERGOPHARMA shall inspect the goods within a reasonable time after delivery to identify any obvious deviations in quality and/or quantity and shall notify the Contractor of any such deviations within 10 working days of receipt of the goods. If ALLERGOPHARMA does not send the Supplier a notification to this effect within this time, the goods concerned shall be deemed to be accepted, unless a defect that was not detectable in the initial incoming goods inspection is discovered. All other defects that were not detectable during the initial incoming goods inspection must be notified to the Supplier by ALLERGOPHARMA as soon as they are discovered in the normal course of business. In accordance with Section 377 (3) of the German Commercial Code (HGB), a defect discovered after the initial inspection shall be considered to be notified in good time if this notification is submitted within 10 working days of the date of discovery. Payments do not imply any waiver of the right to lodge a complaint.
2. In determining whether a defect notification is submitted in good time the date when the notification was sent is decisive.

Section 6 – REACH Clause

1. The Supplier certifies that none of the goods that it delivers to ALLERGOPHARMA contain or release substances that are subject to mandatory registration or authorization under EC Regulation No. 1907/2006 dated 18 December 2006 (REACH Regulation), including any future supplements and amendments but that are not registered or authorized. If substances as described in paragraph 1, whether as such, in preparations or in products, are only exempt from mandatory registration at the time of delivery to ALLERGOPHARMA on the basis of the transitional provisions laid down in the REACH Regulation for phase-in substances, the Supplier certifies that these substances have either been pre-registered by the Supplier itself, on time and in compliance with formal requirements, or that the Supplier has ensured that said substances have been pre-registered on time and in compliance with formal requirements by the relevant persons responsible for registration. The Supplier further certifies that it will inform ALLERGOPHARMA immediately if it becomes aware that a substance pre-registered in accordance with paragraph 2 is not definitively registered within the said substance's allotted transitional period, and in this case the Supplier undertakes to cease delivering any products containing said substances at the latest from the expiry of the relevant registration deadline.
2. Moreover, the Supplier certifies that it shall maintain any pre-registration, registration or authorization required under the REACH Regulation during the full period of its customer-supplier relations with ALLERGOPHARMA for all substances contained in the products supplied to ALLERGOPHARMA or released by said products. If the Supplier itself has not pre-registered , registered or authorized the relevant substance, the Supplier certifies that it has made sure that it will be immediately informed of any loss of validity of the pre-registration, registration or approval. The Supplier further certifies that it will inform ALLERGOPHARMA immediately it has knowledge of the expiry date of a required pre-registration, registration or authorization of a substance delivered to ALLERGOPHARMA, and as from this date to cease supplying ALLERGOPHARMA with any products containing or releasing said substances.
3. The Supplier undertakes to send ALLERGOPHARMA, with each delivery, an updated and complete safety data sheet complying with the requirements of the REACH Regulation - regardless whether the provision of this document is mandatory under the REACH Regulation or is only required on request. If the Supplier is required to conduct a Chemical Safety Assessment, the Supplier further certifies that it has checked that the safety data sheet matches the Chemical Safety Assessment and has been adjusted if necessary. If according to the provisions of the REACH Regulation a safety data sheet does not have to be supplied either as a mandatory obligation or on request, the Supplier undertakes to make available, in writing or in electronic form, information on the registration number (if available), any requisite authorization obligation and information on granted or refused authorizations, information on restrictions and all other available and relevant information necessary for the determination and application of appropriate risk management measures (safety information). Changes to safety data sheets or safety information must be notified to ALLERGOPHARMA immediately and indicated in the updated safety data sheet / safety information accompanying the first delivery.

4. If the Supplier is obliged to conduct a Chemical Safety Assessment for a substance contained in or released by a product delivered to ALLERGOPHARMA, and if a Chemical Safety Report has to be produced, in particular due to a notified use of a chemical by ALLERGOPHARMA, the Supplier certifies that it has conducted this assessment and integrated the conclusions from this assessment in the safety data sheet or safety information.
5. The Supplier undertakes to provide sufficient information for the safe use of any article delivered to ALLERGOPHARMA containing one or more substances meeting the criteria of Article 57 of the REACH Regulation (i.e. qualifying for inclusion in the list of substances subject to mandatory authorization) in a concentration of more than 0.1% weight by weight (w/w) and identified in accordance with Article 59 para. 1 of the REACH Regulation (i.e. included in the "candidate list").
6. The fulfilment of the obligations in paragraphs 1 to 5 above is one of the main duties of the Supplier.
7. If the Supplier is in default of the obligations deriving from paragraphs 1 or 2, ALLERGOPHARMA shall be entitled to withdraw from the contract if the products delivered by the Supplier do not or no longer comply with the requirements of the REACH Regulation. In the case of infringement of the obligations in paragraphs 3, 4 and 5, ALLERGOPHARMA is entitled to withdraw from the contract if the Supplier does not remedy the infringement within a reasonable time specified by ALLERGOPHARMA. Additional claims for damages remain unaffected.
8. If a third party that has purchased delivered products from ALLERGOPHARMA lodges a complaint against ALLERGOPHARMA because the delivered products did not conform to the requirements of the REACH Regulation, the Supplier must at the first written request indemnify ALLERGOPHARMA against these claims to the extent that the liability of ALLERGOPHARMA is based on an infringement of the Supplier's obligations under sections 1 to 45. ALLERGOPHARMA is not entitled to conclude any agreements with said third parties, in particular to agree a settlement, without the consent of the Supplier. The Supplier's indemnity relates to all expenses necessarily incurred by ALLERGOPHARMA due to or in relation to the claim by the third party, in particular including legal defence costs, administrative costs and all costs of a replacement purchase.

Section 7 - Guarantee

1. The Supplier is responsible for ensuring that its products and services are free of defects in materials and/or workmanship and free of any other physical defects and deficiencies in title. The Supplier further guarantees that the products and services are free of defects (material defects, defects in workmanship, other physical defects or deficiencies in title) that diminish their value or worth for normal or contractually required use.
2. The Supplier certifies that all the products that it supplies and all the services that it provides comply with all valid laws, regulations, directives, other legal provisions, DIN standards and recognized best practises applicable both to the supplier and to ALLERGOPHARMA.
3. If the delivered products do not satisfy one or all of the above requirements, ALLERGOPHARMA is entitled at its own choice to demand either remedy of the defect or the delivery of defect-free products. The costs of defect repair or of replacement delivery, including all ancillary costs, must be borne by the Supplier. If the remedied service is not provided within a reasonable time allowed by ALLERGOPHARMA for remedial action, ALLERGOPHARMA shall be entitled to reduce the purchase price or, in the event of an essential fault as defined in the applicable legal regulations, to withdraw from the contract. The legal right to compensation for damages, in particular to the payment of damages in lieu of the service, and the right to claim compensation for unnecessary costs remain unaffected.
4. In addition to the rights specified in para. 3 above, if the products or services delivered/provided by the Supplier are subject to acceptance tests or acceptance procedure, and if the remedial action is not provided within a reasonable period allowed by ALLERGOPHARMA, or if the Supplier does not remedy a defect, ALLERGOPHARMA shall be entitled to remedy the defect itself, or to procure remedial action from third parties, at the Supplier's risk and expense. ALLERGOPHARMA is entitled to demand an advance payment from the Supplier for the expenditure necessary to remedy the deficiency.
5. Unless otherwise agreed in writing, the Supplier is liable for defects that occur within 24 months from the date of receipt of the delivery from the Supplier or from the date of acceptance. The guarantee period for construction services is 5 years from the date of acceptance.
6. If the Supplier has undertaken to guarantee the properties or durability of the delivered product, ALLERGOPHARMA can additionally lodge a claim under the warranty conditions.
7. The Supplier shall indemnify ALLERGOPHARMA from all product liability claims or claims under the German Product Liability Law if said claims are attributable to a defect in the product delivered by the Supplier.
8. Notwithstanding these contractual stipulations, the Supplier is liable under the existing legal provisions.

Section 8 – Compliance Clause

1. The Supplier is fully familiar with the MERCK social charter, which includes the principles concerning child labor and forced labor ("MERCK Principles"), viewable on the Merck website. The Supplier hereby confirms that it does not and will not employ any person under fifteen (15) years old or, in the case of dangerous work, any person under eighteen (18) years old, for the manufacture of goods or the production of services (hereinafter termed “child labor”). The Supplier must make every reasonable effort to ascertain if its suppliers use child labor in the manufacture of goods or the provision of services, and the Supplier must declare that after reasonable investigation it has no knowledge that any of its suppliers of goods or services use child labor. The Supplier hereby declares that the persons employed currently and in future by the Supplier for the manufacture and delivery of the goods or the provision of the services are present of their own free will. The Supplier declares that neither the Supplier nor the Supplier’s own suppliers of goods and services knowingly employs or employ at present or will employ in future any forced labor, as defined in the MERCK Principles. The Contractor is aware that these declarations and undertakings are essential conditions of the Contract. The Supplier shall compensate ALLERGOPHARMA for any liabilities deriving from infringements of this provision by the Supplier or by the Supplier’s own suppliers in connection with the goods or services used in the supply chain, and shall in this respect ensure that ALLERGOPHARMA is indemnified and held harmless. The Supplier further declares its agreement that if ALLERGOPHARMA finds any infringement of this provision, ALLERGOPHARMA shall inform the Supplier thereof, and the Supplier must immediately remedy this infringement. If ALLERGOPHARMA ascertains that the Supplier has not remedied the infringement, ALLERGOPHARMA shall be entitled to cancel the present Contract without notice, and this cancellation shall be considered to be for good reason.
2. The Supplier is familiar with the MERCK Social Charter and Code of Conduct, which can be viewed on the Merck website and which both contain principles against bribery and corruption ("MERCK Anti-corruption Principles"). The Supplier hereby confirms that it does not at present and will not in future use any illegal practices, such as financial donations or other gifts to ALLERGOPHARMA employees or their family members. The Supplier further declares its agreement that if ALLERGOPHARMA finds any infringement of the MERCK Anti-Corruption Principles, ALLERGOPHARMA shall inform the Supplier thereof and ALLERGOPHARMA shall be entitled to cancel the present Contract without notice, and this cancellation shall be deemed to be for good reason. The Supplier shall compensate ALLERGOPHARMA for any liabilities deriving from infringements of this provision by the Supplier and shall in this respect indemnify ALLERGOPHARMA and hold ALLERGOPHARMA harmless.

3. The Supplier is aware that ALLERGOPHARMA applies a high standard of care to the protection of the environment. The Supplier hereby confirms that it at least complies with the environmental protection laws of the country where it conducts business and manufactures or handles the products. ALLERGOPHARMA is entitled to conduct inspections, at its own discretion, during normal business hours and after reasonable prior notice, in order to make sure that the legal requirements of the country concerned are satisfied. The Supplier further declares its agreement that if MERCK finds any infringement of these laws, ALLERGOPHARMA shall inform the Supplier thereof and ALLERGOPHARMA shall be entitled to cancel the present Contract without notice, and this cancellation shall be deemed to be for good reason. The Supplier shall compensate ALLERGOPHARMA for any liabilities deriving from infringements of this provision by the Supplier and shall in this respect indemnify ALLERGOPHARMA and hold ALLERGOPHARMA harmless.

Section 9 - Confidentiality

1. The Supplier undertakes to treat all business information or technical information made available by ALLERGOPHARMA as industrial secrets in relation to third parties, unless said information is generally known. Said information may be forwarded exclusively to persons that need this information for the purpose of supplying ALLERGOPHARMA; any such information remains the sole property of ALLERGOPHARMA.
2. The Supplier is not allowed to refer to its business relations with ALLERGOPHARMA in its information and publicity material without the prior written consent of ALLERGOPHARMA.

Section 10 – Place of Performance

Unless otherwise specified in the order, the place of performance is the head office of ALLERGOPHARMA GmbH & Co. KG in Reinbek.

Section 11 – Severability Clause

If any of the provisions of the present Purchasing Conditions are or become invalid or unenforceable at any time and in any respect, the validity and enforceability of the other provisions shall in no way be affected or diminished. In this case, the invalid or unenforceable provision shall be replaced by a valid or enforceable provision that comes as close as possible to the economic intent of the original invalid or unenforceable provision.

Section 12 - Applicable Law / Place of Jurisdiction

The present contract is governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable. The place of jurisdiction for all disputes arising from or in connection with the contractual relations on the basis of the present Purchasing Conditions is Reinbek. In the case of actions brought by ALLERGOPHARMA, Reinbek is also the sole place of jurisdiction for the Supplier.