

## 1. Definitions

1.1 In these Tender Terms and Conditions of Trade ("Terms"), unless the context otherwise requires:

- (a) "Audit Records" means the records referred to in sub-clause 13.4.
- (b) "Customer" shall mean the entity that places an order to purchase Goods or obtain services from the Supplier. "Supplier" shall mean the party Bristol-Myers Squibb Australia Pty Ltd; ABN 33 004 333 322 ("BMSA") supplying the Goods or Services to the Customer. "Goods" shall include both tangible and intangible goods, including documents or branded materials that may accompany the Goods.
- (c) "Services" shall include, but are not limited to, general services as well as consultancy services and any deliverables being part of the performance of Services.
- (d) "Modern slavery" includes conduct defined as 'modern slavery' under s 4 of the Modern Slavery Act 2018 (Cth).
- (e) "Order" shall mean the Purchase Order quoting a Purchase Order number and specifications of the Goods or Services the Customer agrees to purchase from the Supplier.
- (f) "Related Parties" include employees, agents, officers, and contractors, and any subsidiary companies, parent companies, and related companies, and suppliers or customers of any goods or services.

## 2. General

2.1 Unless otherwise agreed in writing between the parties, these Terms shall exclusively govern all Orders placed by the Customer for the supply of Goods and/or Services by Supplier.

2.2 The Supplier may vary or replace these Terms by notifying the Customer in writing, including by e-mail. Any variation takes effect immediately.

2.3 Both Supplier and Customer shall ensure that it and its activities under these "Terms" shall at all times comply with applicable laws, regulations, industry codes, moral standards and any agreements between the "Parties" are not proceeds of any illegal or immoral activity punishable by law.

## 3. Obligations of Contract

3.1 Orders are preferred to be received via Electronic Data Interface ("EDI"). If EDI is not possible, the orders can be made via e-mail, facsimile or mail. Orders made in oral or any other form must be confirmed in writing by Customer in order to become valid. Confirmation of Orders may be issued by mail, facsimile or e-mail to:

Bristol-Myers Squibb Australia Pty Ltd  
Customer Service Department  
Level 2, 4 Nexus Court  
MULGRAVE, VIC 3170  
Telephone: 1800 629 273  
Facsimile: 03 8523 4456

3.2 All communication between parties must quote a Purchase Order number as per the Order for Goods and/or Services placed by Customer to Supplier.

3.3 The acceptance of Orders by the Supplier includes acceptance of these Terms.

## 4. Specifications and Standards

4.1 The Supplier warrants that the Goods and/or Services (i) will be of satisfactory quality suitable for the intended purpose, (ii) are free from defects in design, materials, construction and workmanship and (iii) will conform with any agreed specifications, industry standards, samples or descriptions provided by the Customer and all other requirements of the agreement.

4.2 Supplier shall supply the Goods and Services with due care and skill and, in compliance with applicable laws, regulations and industry codes and, if notified, policies of the Customer.

## 5. Delivery

5.1 The Goods shall be delivered to, and the Services shall be provided at the delivery address specified in the Order. Deliveries shall be made during standard business hours in the State or Territory of the Customer.

5.2 Each delivery shall include a packing list identifying the Order with the Purchase Order number, description and quantity of the Goods and date of shipment.

5.3 The Goods shall be appropriately packaged and labelled in such a manner as to prevent damage during transport and carry all instructions necessary for the safe use of the Goods.

5.4 The Supplier reserves the right to charge Customer for freight charges where the Customer does not fulfil standard shipping quantities pertaining to Supplier's current wholesaler price list.

## 6. Delays and Force Majeure

6.1 Supplier reserves the right to select the mode of transportation and no claim may be made in the event of any delay.

6.2 Supplier or Customer will not be responsible for any unsuccessful or delayed performance of any obligations unforeseen by the agreement of both parties "Supplier" and "Customer" due to circumstances beyond reasonable control by either of the parties for example: natural disasters such as "acts-of-God", strikes, fires, explosions, blockades and any acts pertaining to the result of terrorism.

## 7. Deficiencies and Claims

7.1 In the event of any discrepancy between the Order and the delivered Goods, including but not limited to, short dated stock (Goods supplied to Customer with less than nine months before the Goods reach expiration date), under/over-supply, or damaged in transit, Customer must notify Supplier within 7 days of the accepted delivery and a "Stock Discrepancy" authorization number must be obtained from the Supplier.

7.2 All goods must be returned to the Supplier under the provisions of clause 7.1 with a "Returned Goods Authorization" "RGA" number and appropriate paperwork submitted to Supplier with the below information:

- Date of purchase
- Delivery docket number
- Invoice number
- Lot number
- Reason for return

7.3 Sales Representatives of the Supplier are not authorised to approve nor allow any claim in respect of Goods returned to the Supplier. Suppliers Finance Department is the only team authorised to approve or allow any claim in respect of Goods returned to the Supplier.

7.4 Supplier will not be obliged to provide any credit for Goods failing to be of merchantable quality pertaining to clause 7.1 until the Goods are returned to Supplier and provisions of clause 7.2 are met.

## 8. Risk and Title

8.1 Risk will pass on to the Customer upon Customer's acceptance of delivery.

8.2 Title to Goods will be retained by Supplier until full payment of Goods has been made by the Customer.

8.3 While the Title of Goods remains with Supplier, Customer shall store goods in a manner clearly identifying Goods as the "Property of BMSA".

8.4 Supplier and its agents reserve the right, so long as the Goods title remains with Supplier, without the necessity of giving any prior notice to enter on or into premises where the Goods are stored (whether or not premises of Customer), to search and or remove any of the Goods which Supplier has title and Supplier shall not be liable to the Customer or any person claiming through the Customer in respect of any act done in reliance on the authority.

8.5 Supplier reserves the right to register Customers in the Personal Properties Securities Register (PPSR) at the cost of the Supplier in accordance with Personal Properties Securities Act 2009 (Cth).

## **9. Pricing and Payment**

9.1 The price of Goods and Services shall be stated in the Order unless otherwise agreed between Supplier and Customer. All prices will be set out in the current Supplier price list.

9.2 In addition to the prices set on the Supplier price list, Customer must pay the appropriate "Goods and Services Tax" "GST" as defined by Goods and Services Tax Act 1999 (Cth) and the related Levy Imposition Act 1998 (Cth).

9.3 Payment terms remain 28 days from invoice date unless otherwise agreed by Supplier in writing.

9.4 Supplier shall have the right to charge a fee on any outstanding balance for amounts over AUD\$50,000.00 where the Customer fails to pay Supplier in full for Goods and/or Services provided within the provisions in clause 9.3. The fee shall be calculated based on the cash rate published by the Reserve Bank of Australia (RBA) plus a margin of 3%. The RBA cash rate shall be the rate published by the RBA on the first business day of each month and if this is no longer available, a comparable replacement rate agreed by the parties.

9.5 Supplier reserves the right to alter its price list and terms of payment at any time.

## **10. Warranty and Indemnification**

10.1 The Customer warrants that it is appropriately licensed and holds all relevant permits to sell the Goods by wholesale.

10.2 All pharmaceutical Goods provided by the Supplier are intended for human use only.

10.3 Supplier reserves the right to refuse sale of Goods and Services if Customer fails to adhere to clause 10.1 and 10.2 respectively.

10.4 Customer agrees to unconditionally and irrevocably indemnify Supplier against any loss, liabilities, damages, costs, legal fees, penalties, and expenses incurred by, or awarded against, Supplier as a result of any failure of Customer to comply with any provision in Clause 13.

## **11. Intellectual Property and Privacy**

11.1 Each party shall respect and comply with the Privacy Act 1988 as updated or amended from time to time.

11.2 All documents, methods of analysis and standards Supplier provides to Customer shall remain the property of Supplier and must not be made available to a third party without the written consent of Supplier.

## **12. Resale outside of Australia**

12.1 Customer should be aware that Goods and/or Services provided by Supplier are for the use or resale within the states and/or territories of Australia only. Without the written consent of Supplier, Customer may not resell Goods and/or Services outside Australia.

12.2 Customer is not an agent of Supplier and is not authorized to hold itself out as the agent of or in any way having authority to incur any obligation or make or give any promise, undertaking, or representation on behalf of Supplier in relation to the Goods and/or Services or in any other capacity.

## **13. Modern Slavery**

13.1 Customer agrees that it and its Related Parties comply, and will continue to comply, with all Australian and foreign modern slavery legislation, regulations and instruments applicable to any part of its business, operations or supply chain. 13.2 Customer represents that, after having made reasonable enquiries, neither it nor its Related Parties have been convicted of any offence relating to modern slavery, or the subject of any government, investigation, inquiry or enforcement proceedings by any government, administrative or regulatory body relating to any offence or alleged offence in connection with modern slavery.

13.3 Customer agrees that it will notify Supplier of any material risk or event of modern slavery in its business, operations or supply chain in two (2) business days of it having been discovered and will take practical and effective steps to immediately remedy that risk or event, and all steps necessary to prevent the recurrence of the conditions which gave rise to the risk or event.

13.4 Customer agrees that it will maintain records (Audit Records) which trace in a detailed manner all stages of its supply chain and operations in connection with this Order, and describes their operations which are involved in, related to or otherwise connected with the Order.

13.5 Customer agrees that the Audit Records will set out the steps that Customer has taken, at all stages in its supply chain and operations, to identify and assess the risks of modern slavery, report on the risks of modern slavery, and address the risks of modern slavery.

13.6 Customer agrees that it will produce the Audit Records for copying and inspection within five (5) business days of having received in writing a request from Supplier for access to the Audit Records.

13.7 Customer agrees that it will provide reasonable assistance to Supplier in supplying information concerning its supply chain and operations which may be relevant to Supplier's reporting obligations under any applicable Australian or foreign modern slavery law.

13.8 Customer acknowledges that the Supplier has relied upon the Customer's representations and agreements in this Clause 13 in it entering into these Terms.