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Purchase orders will be placed by IDA under the following Terms and Conditions for the procurement of Medicines, Medical and Laboratory supplies and Equipment through the Global Fund Pooled Procurement Mechanism and be subject to the terms of the applicable Framework Agreement between the Supplier and the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”). Special conditions will be described in the purchase order.

In the event of any discrepancies between the special conditions set forth in the Purchase Order, these Terms and Conditions, and the terms of the applicable Framework Agreement between the Global Fund and the Supplier, the order of priority is the following: (1) the Framework Agreement (when applicable); (2) the Special Conditions in the Purchase Order; and (3) these Terms and Conditions.

ARTICLE 1 Conditions and Agreement

- 1.1. These terms and conditions shall govern and form an integral part of all agreements entered into (including Global Fund Framework Agreement with the Supplier), all purchase orders placed by IDA and all offers, quotations and tenders, in the widest sense of these terms, drawn up by Supplier. Additional or different terms and conditions proposed by Supplier shall be void and of no effect unless accepted in writing by IDA.
- 1.2. In these terms and conditions, the Supplier is understood to be: any private or public (legal) entity as well as their legal successors with whom IDA has concluded, or intends to conclude, an agreement for the manufacturing of high quality Pharmaceuticals, Medical supplies, Laboratory supplies & equipment and/or any other products or services.
- 1.3. A purchase order, hereafter referred to as “PO”, placed by IDA becomes an exclusive agreement between IDA and Supplier for the products and services to be provided, subject to the terms and conditions contained herein and pursuant to the Global Fund Framework Agreement with the Supplier (when applicable). The PO is assumed to represent the agreement between parties fully and correctly. Acceptance by Supplier of a PO may be evidenced by (i) Supplier’s written or verbal assent or the written or verbal assent of any representative of Supplier, (ii) Supplier’s delivery of the products or the services, or (iii) other conduct by Supplier or any representative of Supplier consistent with acceptance of the PO. IDA shall not confirm any PO’s with Supplier until it receives the necessary funds for the PO or notification of approval of the Global Fund.
- 1.4. In the event of a conflict between the Supplier’s terms of acceptance and the PO terms and conditions, the PO terms and conditions shall govern unless IDA agrees in writing to the Supplier’s proposed terms, and provided that those terms are consistent with the Framework Agreement or have been approved by the Global Fund in advance (when applicable).
- 1.5. The PO number must appear on all invoices, bills of lading, packing lists, cartons, correspondence and other relevant documents.

ARTICLE 2 Deliveries

- 2.1 Transport and delivery shall be subject to the INCOTERMS (latest version of INCOTERMS as Issued by ICC, Paris, France) agreed. In case, the manner of transport and delivery are not indicated by IDA, the products and/or services shall be delivered by Supplier Free on Board (FOB) nearest port of loading. Risk and title to the products (free and clear of any encumbrances) shall pass to IDA on that delivery, unless expressly otherwise agreed in writing by IDA. IDA will hold such title and ownership only during transport and delivery to the end purchaser, the Global Fund Principal Recipient, according to the agreed Incoterms (2010) with such Principal Recipient.



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- 2.2** Notwithstanding any INCOTERM used in the PO, Supplier shall obtain any export licenses required for the products and/or services. Costs of obtaining those licenses shall be borne by Supplier. Supplier will furthermore comply will all applicable customs administration and control laws.
- 2.3** Supplier shall pack, mark and ship (if applicable) the products in such manner as to prevent damage during transport and which facilitates unloading, handling and storage.
- 2.4** Supplier shall deliver the products and/or services ultimately at the time specified in the PO. Time is of essence.
Seven (7) working days before the due sampling date as described in article 3.5 Supplier shall inform IDA, by electronic way (fax or e-mail) that the consignment of products is ready for Pre-shipment Inspection and sampling for quality testing, wherever required. Supplier shall submit to IDA within 3 days after the sampling date various documents, amongst which a copy of the invoice, a copy of the packing list, a copy of the Manufacturer's Certificate of Quality. Supplier is not allowed to move the goods, without an explicit green light to ship from IDA.
Where a supplier is responsible for shipping, supplier shall inform IDA by electronic way (fax or e-mail) a shipment will be dispatched and will provide shipping documents such as the Bill of Lading, within 7 days after departure of the vessel.
Original documents shall be made available to IDA upon first request of IDA.
- 2.5** As soon as Supplier notices that the agreed sampling date or delivery time will be exceeded, Supplier shall contact IDA immediately. The obligations of the Supplier shall however remain unchanged.
- 2.6** In case of late delivery Supplier will be in default and Supplier's obligation to deliver shall convert into an obligation to pay damages, except when IDA insists on delivery within a time to be specified by IDA. IDA shall nevertheless remain entitled, at its convenience, to receive damages and/or a penalty on account of late delivery. The penalty shall be considered as complementary and amounts to 0.1% per day of the cost of the shipment in each of the following cases: -
1. per day of delay in delivery of goods
2. per day of delay in delivery of documents
IDA has the right to hold Supplier, besides the complementary penalty, to the obligation to pay damages.
- 2.7** Partial deliveries are not authorized, unless IDA has agreed to this in writing by listing the partial delivery dates in the PO.
- 2.8** Supplier is not entitled to deliver more or less than the agreed numbers for each product in the PO at stake. In case of a deviation in (to be) delivered quantities, IDA has the right to delivery or return of the differences between what has been delivered and what was agreed. Furthermore, IDA has the right to claim compensation or to cancel the agreement as a result of this.
- 2.9** IDA reserves the right to delay delivery for a period of thirty (30) days after the agreed delivery time without Supplier being entitled to claim penalties or compensation for damages from IDA.

ARTICLE 3 Fitness and quality of products/packaging

- 3.1** Supplier expressly warrants and represents that (i) all products, including the packaging and labelling, and services to be supplied are new, of good quality, design, materials, construction and workmanship, free from any defects and not-infringing in any patent of any third party or constitute a misappropriation or infringement of the trade secrets or other intellectual properties rights of any third party; (ii) all products conform strictly to the specifications, approved samples, industry standards and all other requirements; and (iii) shelf life for products at the time of delivery of the products as per the agreed Incoterm shall be hundred percent (100%) of the total



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shelf life, unless previously agreed with IDA upon the prior approval from the Global Fund/ Principal recipient. Supplier also warrants that said products and services are fit for the purposes for which such products are ordinarily used and for purposes expressly made known to Supplier by IDA, and that the products are contained or packaged adequately to protect the products.

- 3.2** Products to be supplied shall meet the quality requirements laid down by IDA. Those quality requirements (inter alia product, packaging and labelling specifications) are also available at the website of IDA (www.idafoundation.org). These requirements and specifications are binding. For analytical methods and criteria the standards of the specified edition of the British, European or United States pharmacopoeia, if applicable, shall be binding. Also all directives and guidelines laid down by the World Health Organization are applicable.
- 3.3** In case products are or will be supplied under label of the Supplier the following applies. If the product, including the packaging and labelling, supplied by Supplier does not meet the requirements of the relevant authorities based on its registration in the destination country as indicated by IDA Supplier will accept return shipment and will reimburse IDA for the costs incurred by IDA for returning the products as well as for the price paid for the product supplied. Supplier will also indemnify and hold harmless IDA from any claims (including claims of the relevant authorities) and liabilities resulting from this non-conformity with the requirements. In all other cases IDA is responsible for meeting the requirements in the destination country.
- 3.4** IDA has, at all times and places, the right to (have) visit and inspect the actual production, testing, labelling, packing and shipping facilities. Supplier shall permit IDA or its representatives and/or any other appropriate regulatory authority of the territory in which the products are sold by IDA to visit and inspect all facilities without charging any costs. During the visit and inspection IDA has the right - at its own costs - to draw samples of the products in production or already produced and to take along the samples for further investigation.
IDA has the right to refuse acceptance of (partly) produced products. Non- acceptance will result in an immediate request for replacement or will lead to a financial claim.
- 3.5** Before shipments can take place, the consignments will be visually inspected; samples will be drawn and tested. Supplier is to keep the products in the warehouse until permission to ship has been given by IDA, based on the results of the inspection and tests.
- 3.6** Payment, inspection, testing or acceptance of any products by IDA shall not relieve Supplier of any of its obligations under the PO and/or any agreement, nor shall it constitute acceptance or approval of any products and/or services or constitute or operate as a waiver of any defect, non conformity or any rights or remedies available under the PO, any agreement or at law.
- 3.7** In the event that a quality control test shows that a product sample does not comply with the requirements set out in these terms and conditions (including the agreement and the Framework Agreement when applicable), Supplier shall replace the non-compliant products without costs to IDA or the Global Fund, including any costs associated with shipping to the location where the quality control testing occurred. Supplier is obligated to reimburse IDA for any other damages which arise due to a product sample being non-compliant, with the understanding that IDA will reimburse the Global Fund's relevant Principal Recipient.
- 3.8** Before and after the conclusion of the agreement, Supplier shall be bound to provide IDA with all information concerning the applications of the products and/or services and the risks attached to the use thereof.
- 3.9** IDA shall have a reasonable time, i.e. at least one (1) month, after delivery of the products and/or services to the end purchaser, the Global Fund Principal Recipient to (have) inspect them, at all times and places, and to reject and refuse acceptance of the products and/or services not conforming to the PO and/or any agreement.



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- 3.10** In the event of a non-conforming product, the following options will be applicable for IDA:
- a) to reject Non-Conforming Products and obtain a full refund from the Supplier, including shipping and insurance costs incurred;
 - b) to reject the Non-Conforming Products and obtain prompt replacement at the Supplier's sole expense (including further shipping and insurance costs); or
 - c) To retain the Non-Conforming Products at an equitably adjusted price.
- 3.11** Supplier is obligated to bear costs of any recall necessary in relation to the non-conforming products, including the costs related to the replacement of such products, the costs incurred by IDA, the Global Fund and the Principal Recipient in connection with the replacement of such products.

ARTICLE 4 **Compliance with law and Code of Conduct**

- 4.1** Supplier represents and warrants to IDA that the products will and have been designed, manufactured and delivered and/or the services will have been performed in compliance with all applicable laws and regulations (including, without limitation, environmental, health and safety laws and regulations, laws, regulations and approvals governing the manufacture of the products and any IDA policies for guidelines on the environment and banned substances from time to time informed to Supplier). Supplier has obtained and will maintain all licenses and permissions, authorizations and consents or waivers required for carrying on its obligations under this agreement. By confirming the Purchase Order, supplier confirms that the product ordered is registered in the country of destination and that no restrictions to importation of the product in that country apply
- 4.2** Supplier acknowledges and agrees that it has received a copy of the Code of Conduct (including the ETI Base Code) drawn up by IDA as well as the Global Fund Code of Conduct for Suppliers (as published on the Global Fund's website) and that both Codes are applicable and form an integral part of these terms and conditions. The Code of Conduct (including the ETI Base Code) is also available at the website of IDA (www.idafoundation.org).
- 4.3** Supplier represents and warrants that it complies with the WHO Guidelines for Good Storage Practices and WHO Good Distribution Practices and IDA's standard operating procedures, as may be updated from time to time.

ARTICLE 5 **Prices, Invoicing, Payment and Performance Security**

- 5.1** Any offers, quotations and/or tenders drawn up by Supplier are irrevocable.
- 5.2** All prices and rates quoted or agreed upon are fixed. Supplier shall under no conditions have any right to increase an agreed price, unless if stipulated in the Global Fund Framework Agreement when applicable and subsequently approved by the Global Fund.
- 5.3** The costs of quotations, samples, trial shipments and specimen materials shall be borne by Supplier, unless otherwise agreed upon in writing.
- 5.4** Invoices in single copy shall be sent by Supplier to the invoice address notified by IDA, stating both IDA's and Supplier's VAT registration number and the PO number.
- 5.5** Unless agreed otherwise through the Global Fund Framework Agreement when applicable, Supplier invoices shall be paid as follows:
- 100% of the product value within 30 days upon fulfilment of the FOB (Incoterm 2010) and receipt of the required documentation as per clause 2.4 of these terms and conditions, unless otherwise agreed in the PO and
 - 100% of the freight and other shipment-related costs upon delivery of the products according to

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the agreed Incoterm as stipulated in the PO, if the PO stipulates another Incoterm than FOB.

- 5.6 With regard to any payment obligation from IDA to Supplier under the PO and/or any agreement or for whatever reason, IDA is entitled to set off with any payment obligation from Supplier to IDA under the PO, any agreement or for whatever reason.

ARTICLE 6 Intellectual Properties

- 6.1 The products and/or services delivered may not infringe any patent or patent application, license, copyright, registered drawing, or design, trademark or trade name. Supplier shall pursuant to this warranty, indemnify, defend and hold the Global Fund and/or IDA harmless from any actions or claims brought against IDA and/or Global Fund pertaining to the alleged infringements of the above-mentioned rights.

ARTICLE 7 Force Majeure

- 7.1 The failure of a party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, the PO and/or any agreement insofar as such liability arises from an event of force majeure, provided however that (i) as soon as possible after being affected by a force majeure (but in no event more than three (3) days thereafter) the party so affected shall furnish to the other party all particulars of the force majeure and the manner in which its performance is thereby prevented or delayed and (ii) the party affected by such an event takes all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the conditions of the PO and/or any agreement and to mitigate the effect of the force majeure.

For the purposes of these terms and conditions "Force Majeure" shall mean an event beyond the reasonable control of a party which makes that party's performance impossible or so impractical as reasonably to be considered impossible and includes, but is not limited to: war, riot, civil disorder, earthquake, fire, explosion, flood or other adverse weather conditions, strikes or confiscation or any other action by governments.

- 7.2 In the event that any force majeure cannot be removed or overcome within sixty (60) days from the date the party affected first became affected, then either party may at the expiration of such period by notice to the other party terminate a PO and/or any agreement, without either party being liable to the other party for terminating the PO and/or any agreement.

In the event that it is evident that a force majeure cannot be removed or overcome at all, then either party may terminate a PO and/or any agreement immediately, without either party being liable to the other party for terminating the PO and/or any agreement.

- 7.3 During any delay or failure to perform by Supplier due to force majeure, IDA may purchase or allocate products from other available sources / panel suppliers, in which case the quantities under a PO and/or any agreement will be reduced by the quantities of such substitute products.

ARTICLE 8 Indemnification and Liability

- 8.1 Without prejudice to any other right or remedy available to IDA under the PO, any agreement or at law, Supplier shall indemnify and hold harmless IDA, its officers, employees and agents against all liabilities claims (including claims by third parties), suits, losses, damages, costs and expenses (including reasonable attorney's fees) whether direct or indirect, that result or arise from or are connected in any way with:



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- a) the performance by Supplier or any of its affiliates or subcontractors or any of its officers, employees and agents under these terms and conditions (including a breach of each relevant agreement/PO and the Global Fund Framework Agreement when applicable);
- b) any third party product liability claim in relation to any product supplied by Supplier;
- c) any defective products (including any Non-Conforming Products) supplied by Supplier ;
- d) any non-compliance by Supplier or any of its affiliates or subcontractors or any of its officers,
- e) employees and agents with any technical requirements applicable to any product supplied by supplier: and
- f) any claim of infringement or violation of a patent, design, trade-name, trademark, trade secret, or other intellectual property right of any third party in respect of any product supplied by Supplier and/or Supplier's performance under these terms and conditions, and the agreement or the Global Fund Framework Agreement (when applicable), and
- g) negligent or wrongful acts or omissions of Supplier.
- h) Supplier shall not settle any matter covered by this indemnity in a manner that affects the rights
- i) of, or imposes any obligations on IDA, without first obtaining the written approval of IDA.

8.2 In no way shall IDA be liable for damage or loss whatsoever suffered by Supplier under a PO and/or any agreement, save in the event of negligence or wilful misconduct of IDA or its officers, employees or agents in relation to the PO and/or any agreement. In no event shall Supplier be entitled to loss of profits, revenue, goodwill or production downtime or indirect, special, incidental or consequential damages.

ARTICLE 9 Modifications and Termination of the PO

9.1 In the event that the Global Fund or a Principal Recipient wishes to cancel partially or fully or amend a Purchase Order, IDA and the Supplier shall effect such amendment or cancellation of a Purchase Order immediately upon receipt of written notice by the Principal Recipient and /or the Global Fund. IDA and the Supplier shall use reasonable efforts to seek alternative acceptable means for the Principal Recipient to accommodate the request to amend or cancel the order, as applicable. In the event that costs have been incurred by the Supplier in connection with such cancellation or amendment, the Supplier may charge a cancellation fee, in an amount to be agreed between IDA and the Supplier based on the amount of work completed as of the date of such cancellation or amendment to be reimbursed by the Principal Recipient. In the event that products have already been produced, the Supplier may refuse such cancellation.

9.2 Supplier has a duty to use its best efforts to mitigate any damages or losses resulting from a termination by IDA. IDA shall have the right to audit all elements of the termination charge and Supplier shall make available to IDA on request, all books, records and papers relating thereto.

9.3 If Supplier fails to comply with any obligations of the PO and/or any agreement, Supplier shall be in default without further notice being required. In the event of default, insolvency or bankruptcy proceedings are instituted against Supplier (including voluntary insolvency or bankruptcy proceedings), Supplier is liquidated or dissolved, any attachment is made over the assets of Supplier or on its behalf, Supplier makes an unauthorized assignment for the benefit of the creditors, or any other person or entity than the person or entity having control over Supplier at the date of the PO acquires control over Supplier, IDA shall be entitled to rescind or terminate the PO in whole or in part, without prejudice to any other rights or remedies available to IDA under the PO, any agreement or at law (including, without limitation, the right to seek damages).

9.4 All provisions of the PO and/or any agreement destined to survive the dissolution, termination or expiration thereof shall survive such dissolution, termination or expiration.



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ARTICLE 10 **Governing law and Disputes**

- 10.1** Offers, quotations, tenders, PO's and/or any agreement, and the execution thereof as well as these terms and conditions themselves shall be governed by the laws of the Netherlands. Save in the event of disputes mentioned in article 3.7, all disputes arising out of or in connection with offers, quotations, tenders, PO's and/or any agreement, to which these terms and conditions apply, or these terms and conditions themselves or their interpretation or execution, shall first be attempted by Supplier and IDA to be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. All disputes with Suppliers established in the European Union that are not settled in that way within a period of thirty (30) days from the date the relevant dispute first arose may be submitted to the courts of Amsterdam, the Netherlands, unless compulsory regulations regarding relative competence prevent such. All disputes with Suppliers established outside the European Union that cannot be settled in that way within a period of thirty (30) days from the date the relevant dispute first arose shall be finally and exclusively settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by three (3) arbitrators designated in accordance to said rules. Place of arbitration shall be Amsterdam, the Netherlands and the proceedings shall be held in the English language.

ARTICLE 11 **Secrecy**

- 11.1** Each party undertakes towards the other party to maintain the strictest secrecy with regard to confidential information provided by the other party within the framework of a PO and/or any agreement. The receiving party shall, in addition, only make use of the confidential information insofar as this is necessary in connection with the performance of its obligations deriving from the relevant agreement. Confidential information shall also comprise all information that the providing party explicitly indicates as confidential.
- 11.2** Article 11.1 shall not apply in case of information publicly available, or acquired by the receiving party in a lawful manner, other than by means of the providing party, or if the receiving party, by virtue of a legal regulation or within the framework of the fulfilment of its obligations under the agreement, is bound to provide confidential information to third parties.

ARTICLE 12 **Miscellaneous**

- 12.1** IDA and Supplier are independent contracting parties. Nothing in the PO and/or any agreement makes either party the agent or legal representative of the other party for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in name of the other party.
- 12.2** Supplier will not, in any manner, advertise or publish that Supplier is contracted to provide products and/or services to IDA.
- 12.3** Supplier shall not subcontract, transfer or assign any of its rights or obligations under the PO and/or any agreement to any third party or any of its affiliates without the prior written consent of IDA. In case Supplier is permitted to subcontract any of its obligations hereunder, it shall remain fully responsible and liable for the proper performance of its obligations under any PO and/or agreement. IDA may assign any PO and/or agreement to any of its affiliates upon written notice to Supplier.
- 12.4** No waiver by IDA of any breach of any condition, covenant or term of the PO and/or any agreement shall be effective unless it is in writing and no failure or delay by IDA in enforcing any provision of the PO or in exercising any right, power or privilege hereunder shall operate as a waiver thereof.
- 12.5** In the event that any provision(s) of the PO, any agreement or these terms and conditions



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shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding of action shall not negate the validity or enforceability of any other provisions hereof. Such invalid or unenforceable provision shall be replaced with a provision which accomplishes – to the best possible extent – the original purpose of such provision.

- 12.6** Deviations from these terms and conditions shall only be binding if and in so far as this has been expressly agreed by the parties and if those deviations are consistent with the terms of the Framework Agreement between Supplier and the Global Fund (when applicable), and only in respect of the offers, quotations, tenders, PO's and/or any agreement to which they apply. These terms and conditions shall remain fully in force with regard to the other offers, quotations, tenders, PO's and/or any agreement.
- 12.7** IDA is authorized to make amendments to these terms and conditions which are consistent with the terms of the Framework Agreement between Supplier and the Global Fund. The amendments shall become effective on the specified effective date but shall not apply to PO's and/or any agreement agreed before that date. IDA shall send the amended terms and conditions to Supplier in good time. If no effective date is specified, the amendments shall apply to Supplier as soon as it is informed or becomes aware of the amendments, although they shall not apply to PO's and/or any agreement agreed before that date.
- 12.8** For the purposes of these terms and conditions, "in writing" shall be deemed to mean by letter, fax or electronic means.
- 12.9** IDA shall, at the request of the Supplier, provide Supplier with an (informal) translation of these terms and conditions in a language understandable by Supplier. Costs for this translation will be borne by Supplier. However, the English version shall prevail if a dispute should arise with respect to the interpretation of the content of these terms and conditions.