1. General scope of application

1.1 These General Terms & Conditions shall apply to all offers, quotations, supplies and services in the broadest sense to be rendered by Stichting International Dispensary Association, a civil-law foundation, also trading under the name of IDA Foundation, having its registered office at Slochterweg 35, (1027 AA) Amsterdam, the Netherlands (hereinafter to be referred to as "IDA"), as well as to all (additional) agreements between IDA and a customer (hereinafter to be referred to as the "Customer").

1.2 The General Terms & Conditions are amended from time to time and will be published on www.idafoundation.org. The most recent published version shall apply to future agreements, subsequent or partial orders and/or follow up orders, even if in a particular case they have not been transmitted or otherwise handed over to the Customer.

1.3 Deviations from the General Terms & Conditions may only be agreed in writing and will only apply to the specific agreements in respect of which the deviations were agreed upon and implemented.

1.4 If one or more of the provisions of the General Terms & Conditions are void, or are declared void by means of judicial intervention, the remaining provisions of the General Terms & Conditions will continue to apply in full. At such times, IDA and the Customer will consult to agree new provisions to replace the provisions that are void or that were declared void, whereby, if possible, the intention of the original provisions must be considered as much as possible.

1.5 No extension of time or waiver or relaxation of any of the General Terms & Conditions shall operate as an exclusion against any party in respect of its rights under those General Terms & Conditions, nor shall it operate to preclude such party thereafter from exercising its rights strictly in accordance with these General Terms.

1.6 As part of IDA's customer qualification procedure, the Customer must provide proof that they follow EU Good Distribution Practice (GDP) of medicinal products for human use (2013/C 343/01). The Customer shall complete and sign the qualification letter from IDA and provide supportive evidence(s) upon request.

2 Definitions

2.1 "Customer": the organization or person who enters into an agreement with IDA with the purpose to buy Products and/or Services from IDA Foundation.

2.2 "General Terms and Conditions": the general trading terms and conditions set out in this Agreement.

2.3 "Agreement": the contract between IDA and the Buyer for the purchase of Products and/or Services.

2.4 "Written": in these General Terms letter, fax, e-mails and (uploaded) electronic data are equal to written documents.

2.5 "Products" means any products (including but not limited to pharmaceuticals, medical supplies, medical kits, laboratory and hospital equipment) handled, stored or transported by IDA on the instructions of the Customer, and Products shall include any shipper carton, container, pallet, Styrofoam box or any other form of packaging or equipment used in connection with or in relation to such Products.

2.6 "Services" means any service that IDA carries out on the instruction of the Customer, including but not limited to procurement, inventory management, warehousing and the transportation of pharmaceuticals and medical supplies as well as technical assistance carried out at the instruction of the Customer.

2.7 Words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, words importing the whole shall be treated as including a reference to any part thereof, and expressions denoting a natural person shall be treated as denoting a legal entity and vice versa.

3. Customer’s General Terms and Condition

3.1 Any differing or conflicting general terms and conditions of the Customer shall not be applicable to any quotations, tenders, and other trade agreements and are hereby rejected. Consequently, any deviations from these General Terms shall be of no effect unless they have been agreed to in writing by IDA. These General Terms shall also be exclusively applicable if, in the knowledge of contrasting conditions on part of the Customer or conditions that deviate from these General Terms, IDA fulfills its obligation without restriction.

4. Insolvency / Bankruptcy

4.1 In the event that the Customer becomes insolvent or commits any acts of Insolvency or applies for bankruptcy or goes into liquidation, IDA shall be entitled immediately to terminate the Agreement without notice and without prejudice to any other rights of IDA hereunder.

5. Force Majeure

5.1 Neither Party shall be liable in respect of the non-performance of any of its obligations to the extent such performance is prevented owing to or occasioned by, directly or indirectly, any act of God, government, order or restriction, war, threat of war, hostility, sanction, revolt, riots, civil disorder, embargo, seizure, strike, labor dispute, fire, flood, explosion, pandemic (global or regional) or other cause or circumstance reasonably beyond the control of either Party (any such event, a “Force Majeure Event”); provided however, that if any Force Majeure continues for more than two months, either Party may terminate this Agreement by giving the other Party thirty (30) calendar days prior written notice of such intention to terminate without incurring any liability in regards to said termination.

6. Applicable Law and Jurisdiction

6.1 These General Terms shall be governed by and construed in accordance with the law of The Netherlands, explicitly excluding the United Nations Convention of the International Sale of Goods (CISG).

6.2 Any dispute, controversy or claim arising out of or in relation to these General Terms or the Agreement, including the (in)validity, breach or termination thereof, shall be settled by competent court in the place of business of IDA.

7. Offers

7.1 Offers made by IDA shall be free of obligation. They will be valid for a period of thirty (30) days unless otherwise indicated in the offer. IDA will only be bound by a quotation if the acceptance thereof is confirmed by the Customer in writing within this term of validity.

7.2 IDA shall be entitled at any time by notice to the Customer to cancel or resell from any offer in circumstances where it becomes impracticable or un-economical for IDA to carry out the contract at the offered rate and the Buyer shall have no claim whatsoever against IDA for any loss, damage, cost or expense that the Customer might incur as a result of IDA canceling or reselling from the offer.

8. Prices

8.1 The title of the Products and/or Services shall be as quoted in the IDA offer or at such price as IDA and the Customer may agree upon in writing.

8.2 All prices quoted for products, services and transport are based on the prices that apply at the time of the quotation. If one or more of the costs, including prices of transport, products, raw materials, fees, etc. change, IDA has the right to pass on these changes to the customer. IDA will be obliged to provide proof of changes to the Customer.

8.3 The price is based on the agreed INCOTERM 2020. This price is excluding value-added tax or any other applicable taxes.

9. Payment

9.1 Unless otherwise agreed upon between IDA and the Customer in writing, invoices shall be paid without any deductions within thirty (30) days upon issuing of the invoice where the invoice date shall be deemed as the date of issuing.

9.2 In the event of failure to pay by the due date, IDA shall be entitled to charge past-due interest in the amount of the statutory interest rate, established by the Dutch Central Bank (De Nederlandsche Bank N.V.) from the date of default onward. Furthermore, IDA shall be entitled to charge extrajudicial collection costs of 10% of the outstanding invoices, with a minimum of USD 150.00. IDA shall further be entitled to suspend deliveries and/or cancel its outstanding obligations.

9.3 Any set-off with a counterclaim shall be permitted only if such counterclaim is undisputed by IDA or has been confirmed by a non-appealable court decision.

General terms & Conditions - IDA Foundation 1/2024.
9.4 IDA shall, notwithstanding the applicable INCOTERM, retain title to all Products and/or relevant documentation delivered or yet to be delivered under the agreement until the Customer has fulfilled all its payment obligations. These payment obligations consist of payment in full of the sales price of the products delivered or yet to be delivered, plus amounts due for the Services performed that relates to the delivery and claims based on the attributable failure of the Customer to comply with its obligations, including the payment of compensation, extrajudicial collection costs, interest and any penalties.

9.5 Products for which IDA reserves title shall be maintained by the Customer as IDA’s escrow agent. The agent shall be obliged to handle the goods carefully and to ensure the products subject to retention of title with the due care and diligence of a prudent organisation, at least against damages deriving from fire, water, loss and/or theft, and on request to provide evidence to the effect that this insurance has been taken out. The Customer in advance irrevocably assigns to IDA all its claims under this insurance by means of security.

9.6 If products that are subject to retention of title become inseparably connected or mixed with other products, IDA shall have joint title to the new products. Claims arising from the sale of products for which IDA reserved title are hereby in advance assigns to IDA, such assignment being limited to the amount of the invoice value of products for which IDA Foundation has reserved title, in case of sale of IDA’s products together with other products, IDA hereby accepts the transfer of these claims.

9.7 The Customer shall only be entitled to sell products that are subject to retention of title in the ordinary course of business. The Customer shall not be entitled to dispose of the products in any other way, especially by pawning or as collateral. In case of a seizure or other measures of distraint by third parties, the Customer shall be obliged to inform the enforcement agencies about IDA’s property and to inform IDA within 3 (three) days about the seizure.

9.8 If there are justifiable grounds for doubts as to the solvency or creditworthiness of the Customer, IDA shall be entitled to prohibit the further sale or processing of delivered products, for which IDA reserves title, and to request its return at the expense of the Customer. The taking-back of products subject to retention of title does not constitute any cancellation or termination of the contract.

10. Shipment and Passing of Risk/Export Controls
10.1 The Customer shall be responsible for obtaining adequate insurance coverage against theft, loss, breakage, transport, fire, and water damages, as well as other insurable risks.

10.2 All risks into the Products shall pass to the Customer upon dispatch or shipment. This shall apply even in the case of partial shipments and if IDA has assumed additional obligations such as freight or shipping charges, direct delivery and installation. Any deviation from this will be reflected in the agreed INCOTERMS 2020 in writing.

10.3 If dispatch or shipment is delayed due to circumstances for which the Customer is responsible, the risk including the risks associated with shelf-life shall pass to the Customer as of the date of notification of readiness for dispatch or shipment.

10.4 If the delivery of the products by IDA is subject to the granting of an export or import license by a government and/or a governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import law or regulations, by placing the confirmed order, the Customer confirms that he/she holds or will arrange the relevant licenses, registration or other permits necessary to purchase or import the Products. Prior to placing an order, the Customer needs to inform IDA on any changes in the country of import regulatory requirements.

10.5 By accepting IDA’s offer, entering into an agreement, and/or accepting any of IDA’s products and/or services, the Customer agrees that it will not handle IDA products and/or documentation related hereto in violation of any applicable export or import control laws and regulations.

10.6 If an end-user statement is required, the Customer shall inform IDA thereof, and the Customer shall provide IDA with such document upon IDA’s first written request.

10.7 Taxes, levies duties, and deposits applicable will be as reflected in the INCOTERM 2020 or as agreed by both parties.

11. Delivery of the Products
11.1 Unless otherwise agreed upon, delivery of the products shall take place at the address specified in the Customer’s order and the Customer shall be deemed to have accepted the products upon their delivery. The Customer shall make all necessary arrangements to take delivery of the products whenever they are scheduled for delivery.

11.2 The delivery date specified by IDA is an estimate only. Time for delivery shall not be regarded as the essence of the agreement. IDA will take on a best-efforts obligation to adhere to the delivery date. Agreed delivery and completion periods can never be regarded as strict deadlines. If IDA does not deliver the products, IDA must be given a written notice of default and granted a reasonable period in which to comply with its delivery obligations.

11.3 If IDA is unavailable to deliver the products due to reasons for account of the Customer, then IDA shall be entitled to place the products in storage until such times as delivery may be affected. The Customer shall be liable for any expense associated with such storage and delayed deliveries.

12. Duties of Inspection and Notice of Defects
12.1 The Customer shall be obliged to inspect the packaging and the products immediately upon delivery and to report any damage or deviations in delivered amounts to IDA as well as the shipping agent. The Customer shall also clearly mark the delivery documents by specifying the damage or deviations and the extent thereof.

12.2 Obvious defects, including but not limited to damages resulting from transport or deviations in delivered amounts shall be notified to IDA in writing within 30 (thirty) days of receipt of the delivery.

12.3 The Customer loses the right to claim for lack of conformity of the products if the Customer does not give notice to IDA specifying the nature of the lack of conformity within three (3) days after the Customer has discovered such lack of conformity or ought to have discovered this.

13. Warranty
13.1 Section 13 shall only apply in the event no other specific warranty has been agreed in the agreement. Should any products be covered by a warranty issued by any third party, such third-party warranty terms shall apply.

13.2 IDA warrants that its products meet IDA’s specifications at the time of delivery. All warranty claims on the specifications of the Products must be made in writing within 30 (thirty) days after receipt of the Products. IDA’s sole liability and the Customers’ exclusive remedy for a breach of this warranty is limited to repair, replacement, or refund at the sole option of IDA.

13.3 To the maximum extent permitted by applicable law, IDA hereby expressly disclaims and renounces, and the Customer expressly waives, any warranty regarding results obtaining using the Products, including without limitation any claim of inaccurate, invalid, or incomplete results.

14. Limitation of Liability
14.1 All liability of IDA shall be limited to direct damages arising from gross negligence or omissions of IDA and will under all circumstances be limited to the price paid for the Products and/or the Services.

14.2 IDA will never be liable for indirect or consequential loss or damages, including stagnation in the regulated course of affairs within the organisation of the Customer, loss of profits and/ or goodwill, missed savings and consequential damages, related in any way with or caused by the Products of or performances by IDA.

14.3 The Customer will indemnify IDA against and will hold IDA harmless against all liabilities, such as losses, damages or claims including but not limited to, third-party claims that are related, directly or indirectly, costs and expenses to the performance of the agreement and all related financial consequences save and except where the losses, damages, or claims arise out of the gross negligence acts or omission of IDA as provided in paragraph 14.1 of this clause.

15. Intellectual Property Rights
15.1 IDA reserves all intellectual proprietary rights and copyrights to and in all documents provided to the Customer, including but not limited to cost estimates, drawings, and technical documentation. Such documents may not be made available to any third parties without IDA’s prior written consent.