

MSI Reproductive Choices

Standard Terms and Conditions

These Standard Terms and Conditions (**Terms**) shall apply to all goods and services procured by MSI Reproductive Choices and/or its subsidiaries and affiliates (**MSI**), unless and to the extent otherwise agreed with MSI in writing.

These Terms are important and should be studied carefully. In these Terms each of MSI and the Supplier is a party and they are together the parties.

1. **Scope and the Contract**

1.1 These Terms apply to and are deemed to be incorporated into:

- (a) each written agreement between MSI and the Supplier (**Agreement**);
- (b) any written order for goods or services from MSI to the Supplier (**Purchase Order**); and
- (c) anything else MSI expressly agrees in writing with the Supplier and any content imposed by law;

(together the **Contracts** and each is a **Contract**).

1.2 No other terms whether implied or otherwise will form part of the Contracts. The Supplier's standard terms and conditions of business shall not apply to the Contracts.

1.3 If any of the terms of a Contract conflict with or contradict each other, those terms will override each other in the following order of priority: (1) anything expressly agreed in writing between MSI and the Supplier which amends that Contract; (2) the Agreement; (3) the Purchase Order; (4) these Terms.

1.4 MSI will only be contractually bound under a Purchase Order when the Supplier accepts the Purchase Order with an acknowledgement in writing, or when MSI accepts prior performance by the Supplier.

2. **Specifications**

2.1 The quantity, quality, duration and description of the Deliverables, whether goods or Services, will be as specified in the Contract or as agreed by MSI in writing. **Deliverables** means all documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the goods or Services in any form.

2.2 The Supplier shall ensure that the Deliverables will conform with all descriptions and specifications set out in the Agreement or Purchase Order; shall be fit for any purpose that MSI expressly or impliedly makes known to the Supplier; will be free from defects in materials and workmanship; and comply with all statutory requirements and regulations.

2.3 MSI may reject any Deliverables which are not fully in accordance with the relevant Contract or if any Deliverables do not comply with the agreed technical specifications. Where goods are rejected due to their non-conformity with the descriptions and specifications set out in the Contract, MSI shall be entitled to a replacement of the goods or a full refund where it has made payment for such goods.

2.4 Any goods will have at least 75% (seventy-five per cent) of their manufactured shelf life unexpired at the time of the delivery, where applicable.

- 2.5 Where the Supplier is providing services to MSI (**Services**), then the Supplier warrants and undertakes to perform the Services:
- (a) with reasonable skill and care and in accordance with generally recognised best practices and standards in its industry;
 - (b) in the manner and within the time periods set out in the Contract or, if no specific time period is specified, within a reasonable period of time;
 - (c) in co-operation with MSI in all matters relating to the provision of the Services;
 - (d) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents in relation to: (i) the Services and any associated information and materials provided by the Supplier in connection with the Services, including computer programs, data, reports and specifications; and (ii) the use of any MSI materials or equipment;
 - (e) comply with any working practices rules or procedures for safety and security at the MSI location where any part of the Services are performed;
 - (f) notify MSI as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - (g) obtain suitable travel and other related insurances for the purposes of performing the Services and shall under no circumstances require that MSI provide these.

3. **Delivery of Goods**

- 3.1 The Supplier shall send an order confirmation within three (3) working days of receiving the Purchase Order from MSI, unless otherwise agreed between the parties. The order confirmation will confirm despatch date, transit time and total cost of the order.
- 3.2 If the Supplier cannot ship the full consignment in one order, the Supplier shall inform MSI within three (3) working days of receiving the Purchase Order. Where Deliverables are to be supplied in instalments, the Contract is still to be treated as a single contract.
- 3.3 Goods will be delivered to, and related services will be performed at, the address and on the date stated in the accompanying Purchase Order. If MSI does not specify a date, performance will be as soon as reasonably possible.
- 3.4 The Supplier must note the Purchase Order number in all correspondence, packing notes and invoices.
- 3.5 Unless otherwise stated, the Purchase Order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of the goods, necessary to enable MSI to use them for their intended purpose.
- 3.6 If the Purchase Order refers to terms such as FOB and CIF, which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.
- 3.7 Delivery of goods shall be completed on the completion of unloading of the goods at the delivery address stated in the accompanying Purchase Order.

- 3.8 Risk of damage or loss of goods passes to MSI in accordance with the provisions of the relevant Incoterms Rule or, where there is no such provision, on completion of delivery.
- 3.9 Property or ownership of goods will pass to MSI on despatch, unless MSI has paid in whole or in part for the goods in advance, in which case it will pass to MSI on the date of payment.

4. **Acceptance Process for Services**

- 4.1 The Supplier shall deliver all Services, including submission of any Deliverables to MSI, in accordance with the timings set out in the Contract.
- 4.2 If any part of the Services (including any Deliverables or milestones specified in the Contract) do not meet MSI's requirements, then MSI shall notify the Supplier in writing within twenty (20) Business Days of (a) completion of the Services; (b) (for Deliverables) receipt of such Deliverables; or (c) (for any milestone) notification to MSI of completion of the milestone and provide reasonable detail of the reasons for which the requirements of MSI have not been met. Such reworking shall be at no additional cost to MSI. **Business Day** means a day, which is not a Saturday, Sunday or Bank Holiday, when banks are open for business generally in England.
- 4.4 If the parties are unable to agree on a plan to rework the Services and Deliverables, the Supplier fails to rework the Services and Deliverables within the deadlines, or the reworked Services and Deliverables still fail to meet the requirements of MSI, then MSI may, without prejudice to any other rights under the Contract:
- (a) terminate the Contract in whole or in part without liability to the Supplier; and/or
 - (b) purchase substitute Services from elsewhere; and/or
 - (c) hold the Supplier accountable for any additional loss incurred.

5. **Price**

- 5.1 The price of the Deliverables will be stated in the relevant Contract, and unless otherwise stated, will be:
- (a) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties excluding VAT.
 - (b) payable in the currency stated in the Contract.
 - (c) fixed for the duration specified in the Contract.
- 5.2 If MSI is entitled to rely on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables (**Follow-on Deliverables**) then the Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least thirty-six (36) months following full performance, at fair and reasonable prices which takes no advantage of MSI's dependence on the Supplier for their supply. Performance is the complete performance of the Supplier's contract obligations as described in these Terms.

6. **Payment**

- 6.1 Each invoice must quote MSI's Purchase Order number. No sum may be invoiced more than six months after the date of delivery/performance.
- 6.2 Unless otherwise stated in the order, MSI will pay the contract price within forty-five (45) days after receiving an invoice, to be issued only after completed delivery/performance in accordance with the relevant Contract.

6.3 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow MSI to inspect such records at all reasonable times on request.

6.4 MSI will be entitled to set off against the contract price any money owed to it by the Supplier.

7. **Change to specifications**

7.1 MSI may notify the Supplier in writing of any change in the desired specification of goods or Services (including as to the quality and time frame).

7.2 If the change would reduce the Supplier's costs, the contract price will reduce to fairly reflect that saving.

7.3 If the change would increase the Supplier's costs, the Supplier will notify MSI within two (2) working days, in writing, whether it proposes a revision of the contract price and of the amount of this revision.

7.4 The Supplier and MSI will then use their reasonable efforts to agree the revised terms in full, including as to price, pending which the Contract variation will not take effect.

7.5 If the change would for any reason be unachievable, the Supplier will notify MSI within one (1) working day in writing with reasons.

7.6 Both parties will use reasonable efforts to reach a mutually acceptable Contract variation. If such mutually acceptable variation cannot be agreed, MSI may revert to the original specification or cancel the relevant Contract, in which case it will reimburse the Supplier for any direct costs reasonably incurred by the Supplier prior to cancellation, which costs the Supplier will take all reasonable steps to minimise.

8. **Compliance with Laws and Policies**

8.1 In performing its obligations under these Terms, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force (**Applicable Laws**), the MSI Business Partners Code of Conduct available on the Customer Partnership Parent's website, (**MSI Business Partners' Code of Conduct**), MSI's Compliance Requirements (**Compliance Requirements**) available on the Customer Partnership Parent's website and MSI's Data Protection Requirements (**Data Protection Requirements**) available on the Customer Partnership Parent's website and shall ensure that MSI can fully utilise the Deliverables for their intended purpose. **Customer Partnership Parent** means MSI Reproductive Choices, a registered charity, incorporated in England and Wales with company number 01102208.

8.3 The Supplier will inform MSI as soon as it becomes aware of any changes in the Applicable Laws which impact on its ability to perform the Services, deliver the goods or otherwise comply with these Terms.

8.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

9. **Confidentiality and intellectual property rights**

9.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and

subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 9.2 The relationship the Supplier has with MSI is confidential and must not be published or discussed with a third party without prior consent from MSI in writing.
- 9.3 MSI's brand and trademarks are the exclusive property of MSI and must not be used by the Supplier in any circumstance without prior permission in writing from MSI.
- 9.4 The Supplier shall indemnify MSI against all third-party claims of infringement of intellectual property rights arising from the manufacture, supply or use of the goods, or receipt, use or supply of the Services or any part thereof.
- 9.5 Each party shall give full disclosure to the other of all IPR owned by it at the commencement of the Agreement (**Background IPR**) which is relevant to the Services (and the Supplier shall give MSI full disclosure of any IPR owned by a third party (**Third Party IPR**) it intends to use). **IPR** means patents, rights to inventions, copyright and related rights, moral rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and the rights in any embodiment of any of the foregoing rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 9.6 All Background IPR and Third Party IPR is and shall remain the exclusive property of the party owning it.
- 9.7 Each party warrants to the other party that its Background IPR does not, so far as it is aware, infringe the rights of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.
- 9.8 To the extent that any IPR arises or is obtained by or on behalf of the parties jointly or the Supplier alone in respect of the Deliverables or materials in the course of or in connection with the Services (**Services Project IPR**), it shall be owned by MSI and the Supplier hereby assigns to MSI with full title guarantee by way of present and future assignment all its right, title and interest in and to such Services Project IPR.
- 9.9 The Supplier shall obtain waivers of all moral rights in the Services Project IPR to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.10 The Supplier shall, promptly at MSI's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as MSI may from time to time require for the purpose of securing for MSI all right, title and interest in and to the IPR assigned to MSI in accordance with this clause 9.
- 9.11 Each party is responsible for obtaining any licences, permissions or consents in connection with any Third Party IPR which that party introduces into the Services Project IPR and so that MSI can make use of the Services Project IPR (such licences, permissions or consents to be in writing, copies of which the relevant party shall provide to the other party on request).

- 9.12 Nothing in the Contract shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that it does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 9.13 The Supplier:
- (a) warrants that the receipt, use and onward supply of the Services Project IPR and the Deliverables (excluding the MSI Background IPR) by MSI shall not infringe the rights, including any Third Party IPR, of any third party;
 - (b) shall refrain from any action prejudicial to the subsistence of the Services Project IPR and from action prejudicial to the assignment in this clause 9;
 - (c) shall indemnify MSI in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by MSI arising out of, or in connection with, the receipt, use or supply of the Services Project IPR and the Deliverables (excluding the MSI Background IPR).

10. Data Protection

- 10.1 The parties agree to comply with the Data Protection Requirements (as defined in clause 8.1) in relation to any processing of personal data. If any personal data (as defined in the Data Protection Requirements) is to be exchanged, the parties shall complete such additional documentation as may be required.

11. Indemnities

- 11.1 The Supplier will indemnify MSI and keep MSI indemnified against any cost, claim, expense or liability suffered or incurred by MSI arising out of, or in connection with, the Deliverables, including where the Deliverables are faulty, do not meet the specification or otherwise fail to meet the requirements of the Purchase Order or Agreement.
- 11.2 If any goods or rights were bought or obtained by the Supplier from a third party then any benefits or indemnities to which the Supplier is entitled against that third party shall be held by the Supplier for MSI's benefit and the Supplier will, at MSI's request, transfer such benefits and indemnities to MSI.

12. Insurance

- 12.1 During the term of a Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance, as applicable to its activity, to cover the liabilities that may arise under or in connection with the Contract, and shall, on MSI's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. Termination

- 13.1 MSI may, without prejudice to its other remedies, by twenty-eight (28) days' written notice to the Supplier, suspend performance of or terminate a Contract, provided that MSI shall reimburse the Supplier for any direct costs reasonably incurred by the Supplier in performing the Contract prior to termination, which costs the Supplier will take all reasonable steps to minimise.

- 13.2 MSI may, without prejudice to its other remedies, by written notice to the Supplier suspend performance of or terminate a Contract in whole or in part if:
- (a) the Supplier fails to deliver any or all of the Deliverables within the time period(s) specified;
 - (b) the Supplier fails to promptly replace any Deliverables rejected due to unacceptable quality after giving prompt notice of recall;
 - (c) the Supplier fails to perform any other obligation(s) under the Purchase Agreement; or
 - (d) the Supplier commits a breach of Clause 8 and/or the MSI Compliance Requirements.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate a Contract with immediate effect by giving written notice to the other party if:
- (a) subject to clause 13.5, the other party fails to perform any or all of its obligations under the Contract within periods specified in the Contract and (if such a breach is remediable) fails to remedy that breach within a period of ten (10) days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party.
- 13.4 Without affecting any other right or remedy available to it, MSI may terminate a Contract with immediate effect by giving written notice to the Supplier if there is a change of control of the Supplier.
- 13.5 Without affecting any other right or remedy available to it, the Supplier may terminate a Contract with immediate effect by giving written notice to MSI if MSI does not make payment of any fees and charges properly due to the Supplier by the due date for payment under clause 6, provided that:
- (a) the Supplier has given at least ten (10) Business Days' notice to MSI in writing that such payment is overdue;
 - (b) such payment remains overdue after the notice period; and
 - (c) MSI has not disputed the payment.

14. **Obligations after Termination or Expiry**

- 14.1 On termination or expiry of a Contract, the Supplier shall:

- (a) immediately deliver to MSI all Deliverables, whether or not then complete, provided they have been paid for, and return all of MSI's materials or equipment it holds and all Confidential Information or data shared by MSI for the purposes of the Contract. If the Supplier fails to do so, then MSI may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables, MSI material and equipment in its possession and will not use them for any purpose not connected with the Contract; and
- (b) supply all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All IPR in such materials shall automatically pass to MSI (to the extent that they have not already done so by virtue of clause 9) who shall be entitled to enter the premises of the Supplier to take possession of them;
- (c) certify to MSI that it has not retained any copies of the MSI materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 9; and
- (d) deliver to MSI on request in the form reasonably specified by MSI all data held by the Supplier which was provided to the Supplier by MSI or generated by the Supplier at MSI's request and **provide all assistance reasonably required by MSI to facilitate the smooth transition of the Services to MSI or any replacement supplier appointed by it.**

14.2 On termination or expiry of a Contract, the following clauses shall continue in force: clauses 8 to 11 inclusive and clauses 16 through to clause 26.

14.3 Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15. **Force Majeure**

15.1 Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving fourteen (14) days' written notice to the affected party.

15.2 In the case of any delay or non-performance by a party of any of its obligations under a Contract for reasons falling within clause 15.1 above (**Affected Obligations**), the party not affected shall not be obliged to perform its obligations under the Contract to the extent they relate to Affected Obligations.

16. **Time is of the Essence**

The time specified in the Contract for delivery and any associated rights, and the performance of any services, shall be of the essence. If the Supplier is in breach of this clause, MSI may terminate the Contract and/or any or all outstanding orders for delivery of the Deliverables.

17. **Notices**

17.1 Any notice or other communication given to a party under or in connection with a Contract shall be in writing and shall be delivered by hand or by pre-paid first class post or other next working

day delivery service at its registered office (if a company) or its principal place of business (in any other case) or if by email, to the email address stated in the Contract.

- 17.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt; and
 - (b) if sent by pre-paid first-class post or other next Business Day delivery service at the time recorded by the delivery services; and
 - (c) if sent by email, on delivery or if the day of delivery is not a working day in the place it is received, at 10:00 on the next following working day.

17.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. **Contract Amendments**

18.1 No variation in or modification of the terms of any Contract or these Terms shall be made except by written amendment signed by the parties.

19. **Waiver**

19.1 A waiver of any right or remedy under a Contract or these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

19.2 A failure or delay by a party to exercise any right or remedy provided under a Contract or these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under a Contract or these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.3 A party that waives a right or remedy provided under a Contract or these Terms or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

20. **Rights and Remedies**

20.1 The rights and remedies provided under a Contract and these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

21. **Severance**

21.1 If any provision or part-provision of a Contract or these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract or these Terms as the case may be.

21.2 If one party gives notice to the other of the possibility that any provision or part-provision of a Contract or these Terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

23. No Partnership or Agency

- 23.1 Nothing in a Contract or these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24. Third Parties

- 24.1 No one other than a party to a Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

25. Governing Law and Language

- 25.1 These Terms and the Contracts shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts.
- 25.2 Each Contract shall be written in English. All correspondence and other documents pertaining to a Contract which are exchanged by the parties shall be written in the same language.

26. Resolution of Disputes

- 26.1 In the event of a dispute arising out of or relating to these Terms or a Contract, including any question regarding its existence, validity or termination, the parties agree it shall be resolved as follows:
- (a) First, either party may seek settlement of a dispute by reference to a senior officer of each party for discussion and agreement. Each party agrees to nominate a senior officer for the purposes of this clause within 24 hours of being requested in writing to do so, providing at least email and telephone contact details for such senior officer.
 - (b) If the parties have not reached agreement under 26.1(a) above within 30 days, either party may elect to commence legal proceedings. Each party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with a Contract or its subject matter or formation.