

# PURCHASE ORDER TERMS AND CONDITIONS

**1. General.** This Purchase Order is an offer by ASTELLAS PHARMA CANADA, INC. or an affiliated entity of ASTELLAS PHARMA CANADA, INC. ("Buyer") to the seller listed on the accompanying Purchase Order ("Seller") and acceptance is limited to its provisions without additions, deletions, or other modifications. Buyer will not be responsible for goods or services delivered without issuance of its standard Purchase Order.

**2. Acceptance.** This Purchase Order may be accepted by delivering the goods or services by the specified delivery date. This Purchase Order is limited to the terms and conditions: (i) specified herein; (ii) specified on the face of the accompanying Purchase Order; and (iii) if applicable, specified in Buyer's written agreement with Seller.

Acceptance of all or part of the goods or services shall not (i) waive Buyer's right to cancel or return all or any portion of the goods or services that do not conform to the Purchase Order; (ii) bind Buyer to accept future shipments of goods or services; or (iii) preclude Buyer from making any claim for damages or breach of warranty. All purchases are subject to inspection and rejection by Buyer notwithstanding prior payment. Rejected goods will be returned at Seller's expense for transportation both ways and all related labor and packing costs. No goods returned as defective by Buyer shall be replaced by Seller without written permission of an authorized agent of Buyer.

Buyer may at any time, by written order, make changes within the general scope of this Purchase Order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this Purchase Order, Seller may request an adjustment in the price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly upon agreement by the parties.

**3. Compliance with Laws.** Seller warrants to Buyer that the goods and services shall be provided, manufactured, shipped, stored, and otherwise handled in strict compliance with all applicable federal, provincial and local laws, codes, ordinances, regulations, executive orders, industry standards and government policies, including but not limited to, those related to or governing environmental matters, occupational health and safety, labour and employment practices, human rights, immigration, product safety, shipping and labelling, language or bilingual requirements and food, drugs, natural health products, cosmetic and devices.

**4. Title.** Title conveyed to Buyer by Seller shall be good and merchantable and its transfer rightful. The goods and services shall be delivered free and clear of any lien, security interest, claim or encumbrance whatsoever.

**5. Hold Harmless.** Seller agrees to defend, indemnify and hold harmless Buyer, officers, directors, shareholders, affiliated entity, employees, agents, representatives, successors and assigns ("Indemnitees") from all losses, liabilities, damages, and/or expenses which may be sustained or claimed against an Indemnitee: (i) arising out of any breach of a representation, warranty or covenant contained herein or any provision or obligation under these Purchase Order Terms and Conditions; (ii) arising out of defective goods or negligent services hereby ordered; (iii) arising out of any injury to or death of any person, including Seller employees while in the course of providing goods or services to Buyer or affiliated entity, or any property

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damage which has resulted from or is connected with the actions or omissions of the Seller or any of the Seller's employees, agents, subcontractors and/or affiliates, or any use, handling or provision of any good and services; (iv) arising out of any failure of the goods and services to comply with, or conform to, any requirement under applicable law, regulation, or government policy, the good and services specifications, or any express or implied statements, representations, warranties and/or covenants that are published or made available by Seller on labels, promotional matter or otherwise; (v) any seizure, detention or destruction by public authority of the goods and services or any alleged or actual violation by such goods and services in connection with its manufacture, sale or re-sale, of any law or regulation; (vi) arising from Seller's use of automobiles, trucks, or heavy equipment; (vii) based on a claim that the goods or services supplied by Seller infringe a patent, copyright, or trademark or misappropriate a trade secret of a third party or (viii) the negligence or other wrongdoing of Seller, its employees, agents and/or affiliates, including the violation of any laws, regulations or other requirements. Seller shall, at the request of Buyer or affiliated entity, defend any such claim, action or lawsuit. If the goods or services become, or in Seller's opinion, are likely to become the subject of any infringement claim, Seller shall do one of the following at Seller's option and expense: (i) procure for Buyer the right to continue using the goods or services; (ii) replace or modify the goods or services so that they become non-infringing without losing functionality; or (iii) terminate Buyer's right to use the goods and/or services, whereupon Seller will refund to Buyer all amounts paid for such goods or services. The indemnity under this Paragraph 5 shall survive delivery and acceptance of goods and services and termination or expiration of this Purchase Order and/or Buyer's written agreement with Seller, if applicable.

**6. Price.** The price for goods and services ordered hereby shall be the lower of: (i) the price stated on the accompanying Purchase Order or (ii) the same price charged by Seller to its most favored customers at the time of shipment of goods or provision of services of the same kind and quality taking into account quantity discounts. Price is inclusive of freight, all packaging and handling, transportation, and insurance unless explicitly indicated on the face of this Purchase Order or agreed to in writing by Buyer.

**7. Taxes.** Any prices stated on the face hereof shall be exclusive of any federal and/or any other provincial sales or services or similar taxes. Each party will be responsible for its own taxes, including property taxes on property it owns or leases, income taxes on its business and, any other taxes incurred by such party in connection with its business and with performing its obligations hereunder. Buyer will be responsible for any transaction taxes properly collectible from Buyer under Applicable Law. Seller will be responsible for payment of any transaction taxes that are, under Applicable Law, properly borne by Seller; including, but not limited to all export and import taxes. Any tax, tariff or duty which is imposed upon Seller by any governmental authority and included by the Seller in the price shall be separately stated on Seller's invoice(s).

**8. Delivery.** Unless designated otherwise: (i) For Domestic Orders: all deliveries are F.O.B. Destination to the location designated on this Purchase Order and (ii) For International Orders: all deliveries are Delivered Duty Paid as defined by Incoterms from time to time. For both domestic and international orders, all risk of loss shall remain with Seller until goods and services have actually been received and accepted by Buyer at the applicable destination according to the terms and conditions of this Purchase Order. The goods or services ordered must be received no later than the delivery date specified.

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**9. Quantities.** Quantities of goods or services ordered may not be changed without the prior written approval of Buyer. If the total or any portion of the goods received either exceeds or falls below the quantities ordered, Buyer shall have the right to reject and return any such shipments or portions thereof at Seller's expense for transportation both ways and all related labor and packing costs.

**10. Packaging and Shipping.** All shipping containers shall be packed and packaged to: (i) ensure safe arrival to final destination; (ii) secure the lowest transportation costs;(iii) comply with requirements of common carriers; (iv) meet Buyer's written instructions; and (v) meet the requirements of all applicable laws, ordinances, rules and regulations. Each package or container shall be marked clearly to show this Purchase Order number, ship date, and name of consignee and consigner. An itemized packing list shall be included in each container.

**11. Invoices.** Seller shall issue a separate invoice for each separate shipment. Each invoice shall include: (i) the Purchase Order number; (ii) Buyer's part numbers; and (iii) quantities shipped. Undisputed amounts shall be paid within 30 days of receipt and acceptance of goods or services and a correct invoice. Delays in receipt of goods or services, acceptance of goods or services, or a correct invoice will be just cause for Buyer to withhold payment without losing discount privileges. Cash discounts, if any, shall be computed as commencing with receipt of the invoice or goods or services, whichever is later.

**12. Representations and Warranties.** Seller represents, warrants and covenants to Buyer as follows and acknowledges that Buyer has relied upon the completeness and accuracy of such representations, warranties and covenants in entering into the Purchase Order:

- a.** the goods or services delivered, the packaging, labeling and sorting thereof, any installation, repair, and maintenance of goods, and any other performance pursuant to this Purchase Order, will be (i) free of infringement of property rights of third parties, including without limitation, any patent, trademark, trade name, copyright or right of publicity, or misappropriate any trade secret or violate any license or any other rights; (ii) free from defects in material and workmanship, be of even kind and quality and run without variation; (iii) be of merchantable quality; (iv) be fit for the intended use of the Buyer, Buyer's customers and any other intended uses of such goods and shall be new and not refurbished; and (v) be of grade and performance in conformity with all specifications, blueprints, designs, drawings, samples, models, descriptions, instructions, and other items referred to in this Purchase Order.
- b.** Seller shall maintain, solely at Seller's cost and expense, all licenses, permits, approvals, and the like necessary to conduct its business and perform its obligations under this Purchase Order.
- c.** any and all goods and services related marketing or promotional materials provided to Buyer shall be compliant with all applicable federal, provincial and local laws, regulations, government policy and other requirements, including but not limited to the laws, regulations and policies administered by Health Canada and the Competition Bureau, as applicable;
- d.** as applicable, the goods and services have been, are and will be placed in packages that reflect true net weight, measure, contents and size pursuant to applicable federal and provincial laws, regulations and government policies;

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- e.** as applicable, any goods and services containing dangerous items have been clearly identified to Buyer, and Seller is compliant with the Federal *Transportation of Dangerous Goods Act*, *International Maritime Dangerous Goods Code* and any other international, federal, provincial and local law, regulations and government policies relating to dangerous goods;
- f.** the goods and services are not and will not be adulterated, contaminated, misbranded, or prohibited (as hazardous, dangerous or otherwise) or in contravention of the prescribed standards of composition and quality within the meaning of any applicable law, regulation or government policy (including the *Food and Drugs Act* and its regulations) and has not, is not and will not be articles which may not be introduced into interprovincial commerce under legislation;
- g.** Seller has, and will continue to have in place, a sufficiently tested, suitable and reliable goods and services safety and quality assurance program, including a process to effectively and efficiently address Recalls, as well as a defense system that effectively and materially addresses intentional acts of contamination and/or terrorism;
- h.** Seller has, and will continue to have, the proper policies and procedures in place to ensure the history, application, location and other relevant information reasonably required by Buyer from time to time, in connection with the goods and services, including their ingredients, components, inputs or other elements therein or related thereto, as applicable, can be clearly and properly traced or otherwise followed from their respective points of origin, through all stages of production, processing and distribution, to their post-delivery location(s). Seller shall maintain complete and accurate records and legally prescribed documents in support of the foregoing, and promptly provide same to Buyer upon request or in accordance with timelines communicated by Buyer to Seller from time to time;
- i.** all facilities where the goods and services are manufactured, processed, stored, labelled or packaged are, as applicable, certified and/or licensed by the appropriate governmental authority to manufacture, process, store, label or package the goods and services, and such certificate and/or licence is in good standing. Any such facilities have not been subject to any material adverse inspection, finding of deficiency, finding of non-compliance, regulatory or warning letter, investigation or other compliance or enforcement action, from or by Health Canada, or other governmental authority;
- j.** as applicable, the Seller has filed all reports and notifications with Health Canada, or other governmental authorities in relation to the good and services, and the facilities where the goods and services are manufactured, processed, stored, labelled or packaged;
- k.** to the knowledge of the Seller, no employee responsible for management of the manufacture, processing, storage, labelling or packaging of the goods and services has been sanctioned by a governmental authority for non-compliance with any applicable law, regulation or policy;
- l.** Seller has not given and will not give commissions, payments, kickbacks, gifts, entertainment, or other inducements to any employee or agent of Buyer in connection with the supply of goods and services and, to the best of its knowledge, no officer, director, employee, agent or representative of Seller has given any such commissions, payments, kickbacks, gifts, entertainment or other inducements to any employee or agent of Buyer;
- m.** other than as communicated to Buyer in writing, there is no outstanding litigation, arbitration or other dispute to which any Seller or its Sellers, representatives or agents, is a party

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which, if decided unfavourably, may have a material adverse effect on the ability of Seller to comply with its obligations under the Purchase Order;

**n.** Sellers has not and shall not use workers under the applicable legal age of employment or forced or involuntary labour or engage any Seller, contractor or partner that uses such workers. Sellers shall only use workers who are legally entitled to work in the jurisdiction in question.

**13. Inspection.** Buyer shall have the right to inspect and test the goods or services ordered at any time, including during the manufacture and construction, or preparation, notwithstanding any prior payment or inspection. Defective goods or services not in compliance with Buyer's drawings, specifications or standards may at any time be rejected even though such goods or services may have previously been inspected and accepted. Without limiting any rights it may have, Buyer at its sole option may require Seller, at Seller's expense to: (i) promptly repair or replace any or all rejected goods and/or services or (ii) refund the fees paid for any or all rejected goods and/or services. All such rejected goods will be held for Seller's prompt instruction and at Seller's risk. Rejected goods will be transported for return to Seller or destroyed at Seller's cost. Nothing contained herein shall relieve in any way Seller from the obligation of testing, inspection, and quality control. Payment for goods or services prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims Buyer may have against Seller or any other party.

**14. Recalls.** If the goods or services are the subject of any order or requirement pursuant to any law requiring either Buyer or Seller to recall, withdraw, replace, repair, correct or otherwise take back all or any part of the goods or services, or if Buyer in its sole discretion acting reasonably or Seller acting reasonably, determines that it is necessary to effect a voluntary recall or corrective action (in either case, a "Recall") prior to any such order or requirement and either party implements a Recall, Seller shall be responsible for all costs, expenses and other losses (including lost profits) associated with or resulting from any such action. Seller shall provide all reasonable assistance to Buyer, at Buyer's request, to effect the Recall in accordance with any instructions of the applicable government authority having jurisdiction over the Recall. If Seller is notified by any government agency authority regarding the possibility of a Recall, or any potential safety issue associated with a good or service, Seller shall immediately notify Buyer in writing. Seller further agrees that it will promptly reimburse Buyer for all costs and expenses incurred by Buyer arising from a Recall or other corrective action relating to the goods or services.

**15. Ownership of Intellectual Property:** In the event that the Purchase Order of goods and services includes the creation of intellectual property for the benefit of the Buyer, including, without limitation, inventions, discoveries, ideas, and copyrightable works, such intellectual property shall be and remain at all times, as between Seller and Buyer the exclusive property of Buyer. Seller will make full and prompt disclosure to Buyer of any such intellectual property created, developed, made, conceived or reduced to practice as a result of services provided under this Purchase Order. Seller hereby assigns and transfers and, to the extent any such assignment cannot be made at present, will assign and transfer, to Buyer and its successors and assigns, all Seller's right, title and interest in and to all such intellectual property conceived for the benefit of the Buyer during the period of the Purchase Order that result from the provision of the goods and services, and on behalf of itself and its personnel, waive all moral rights therein.

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**16. Right to Cover.** If Seller repudiates this Purchase Order or fails to make delivery within the time specified herein, time being of the essence in connection with this Purchase Order (or, if no time of delivery has been specified, within a reasonable time after acceptance by Seller) or if Buyer rightfully rejects the goods or services or justifiably revokes acceptance thereof, then with respect to any and all goods or services involved, Buyer may pursue any remedy available including, without limitation, cancellation of this Purchase Order in whole or in part. In addition to recovering so much of the price as has been paid and irrespective of whether Buyer has cancelled this Purchase Order, Buyer may "cover" and have damages as to all goods and services affected whether or not they have been identified to this Purchase Order. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods or services in substitution for those due from Seller. Buyer shall recover from Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

**17. Set off Rights:** Buyer shall have the right, from time to time, to set off or deduct against any amounts owing to Seller by Buyer any amounts that may then be due and owing by Seller to Buyer. Such right shall survive any termination or expiration of the Purchase Order and shall remain enforceable against Seller notwithstanding any assignment or other conveyance by Seller of its accounts receivables.

**18. Limitation of Liability.** Buyer's liability to pay any amount to Seller for any reason shall not exceed the amount Buyer has agreed to pay Seller for the goods or services. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSSES ARISING FROM THE PURCHASE OF GOODS AND/OR SERVICES REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF THE CLAIM FOR DAMAGES, AND EVEN IF BUYER IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

**19. Miscellaneous.** Seller shall not assign this Purchase Order or any rights, nor delegate any duties to any third party. Any attempt to do so will be void. This Purchase Order shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Each party is an independent contractor of the other party.

**20. No Publicity.** Seller shall not, without the prior written consent of Buyer: (a) use the Trade-marks or other proprietary designations of Buyer or its affiliates in any form or manner or in any advertising or other materials that will be made available or provided to third parties or the public; (b) discuss with, or reveal to, third parties any aspect of this Purchase Order, except for the sole purpose of review by Seller's designated legal counsel and advisors; or (c) issue any news release, advertisement, or public communication in which Buyer or its affiliates, or their activities or relationship with Seller are mentioned.

**21. Insurance.** Unless otherwise expressly agreed to by Buyer in writing, Seller agrees to maintain at its own cost at all times all the necessary and appropriate insurance that a prudent person in the business of the Seller would maintain.

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**22. Government Interactions.** Seller shall not contact, or otherwise knowingly meet with any Government Official for the purpose of discussing activities arising out of or in connection with this Purchase Order, without the prior written approval of Buyer and, when requested by Buyer, only in the presence of a Buyer designated representative. For the purpose of this Purchase Order, "Government Official" means: (a) any officer or employee of a government or any department, agency or instrument of a government; (b) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government; (c) any officer or employee of a company or business owned in whole or part by a government; (d) any officer or employee of a public international organisation such as the World Bank or United Nations; (e) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or (f) any candidate for political office; who, when such Government Official is acting in an official capacity, or in an official decision making role, has responsibility for performing regulatory inspections, government authorisations or licenses, or otherwise has the capacity to take decisions with the potential to affect Buyer business.

**23. Transparency.** As a condition of receiving the monies under this Purchase Order from Buyer, Seller acknowledges and agrees to Buyer's right to disclose details of the amount as part of Buyer's commitment to full transparency in all its interactions with healthcare facilities and institutions.

**24. Confidential Information.** Buyer's confidential and proprietary information includes, without limitation, its business plans; business strategies; marketing plans; industry and competitive information; technology, product and proposed product information; pricing and cost arrangements and agreements with Buyer, distributors, customers, suppliers, licensors and licensees; information relating to its customer base; information concerning employees and financial information. All such confidential and proprietary information shall (a) remain the property of Buyer, (b) be carefully preserved and maintained by Seller at its expense, and (c) be promptly returned to Buyer or satisfactorily accounted for upon completion of this Purchase Order or upon Buyer's written demand. Seller shall keep Buyer's confidential and proprietary information and this Purchase Order strictly confidential by employing adequate security safeguards. If Seller discovers that it has lost any Buyer confidential and proprietary information it shall immediately notify Buyer in writing. Seller shall ensure that the Buyer confidential and proprietary information will only be used, and disclosed to its employees strictly on a "need to know" basis, for the sole purpose of performing its obligations under this Purchase Order and only provided that any employee receiving Buyer confidential and proprietary information also agrees to terms of this Paragraph. Upon Buyer's written request Seller shall, at Buyer's option, deliver to Buyer all Buyer confidential and proprietary information and all materials derived from, or based in whole or in part on, Buyer confidential and proprietary information, or destroy same and certify in writing such destruction. Seller agrees that in the event of termination of this Purchase Order, in whole or in part, it shall continue to comply with this Paragraph and acknowledges and agrees that its obligations of non-disclosure with respect to Buyer confidential and proprietary information survives such termination.

**25. Force Majeure.** Failure of Buyer to take shipments of goods or receive services hereunder, if occasioned by fire, explosion, flood, war, accident, interruption of or delay in transportation, labor trouble, governmental regulation, or any other circumstances of like or different character beyond Buyer's reasonable control, or if occasioned by partial or complete suspension of operations at any of

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Buyer's offices or other business locations, shall not subject Buyer to any liability to Seller by reason thereof, but, at Buyer's option, the total quantity covered by this Purchase Order may be reduced by the extent of omitted shipments or services, or the specified delivery period may be extended by a time equal to that during which shipments or services shall be so omitted and such shipments shall then be made or services performed during the period of extension.

**26. Effect of Insolvency or Bankruptcy:** In the event of the insolvency or bankruptcy of Seller or should any proposal be made by Seller to its creditors regarding postponement of payment of its debts, this Purchase Order may be cancelled in whole or in part, at Buyer's sole option and at any time.

**27. Waiver.** A waiver of any term, condition or default of this Purchase Order shall not be construed as a waiver of any other term, condition, or default.

**28. Entire Agreement.** The Purchase Order represents the entire understanding between Buyer and Seller, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may be amended only by written mutual agreement of the parties. In the event of a conflict between the terms and conditions of this Purchase Order and any amendment thereto, the Purchase Order shall govern and control. Notwithstanding the foregoing, the provisions of this Purchase Order will not supersede any provisions of any other previously written agreement(s) that are currently in effect between the parties that govern the provision of the goods or services that are the subject of this Purchase Order.

**29. Governing Law.** This Purchase Order shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**30. Language:** The parties confirm that it is their wish that these Purchase Order Terms and Conditions, as well as other documents relating to the Purchase Order, including all notices, have been and will be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.