



## GENERAL TERMS & CONDITIONS OF PURCHASE

### 1. Definitions and Interpretation

1.1. In these conditions, the following words shall, where the context so admits, have the following meanings:

“**Affiliate**” shall mean:

- (i) an organisation, which directly or indirectly controls a party to this Agreement;
- (ii) an organisation, which is directly or indirectly controlled by a party to this Agreement;
- (iii) an organisation, which is controlled, directly or indirectly, by the ultimate parent company of a party.

Control as per (i) to (iii) is defined as owning more than fifty percent of the voting stock of a company or having otherwise the power to govern the financial and the operating policies or to appoint the management of an organisation.

With respect to Roche the term “**Affiliate**” shall not include Chugai Pharmaceutical Co. Ltd., 1-1, Nihonbashi-Muromachi 2-chome, Chuo-ku Tokyo, 103-8324, Japan (“**Chugai**”) unless Roche opts for the inclusion of Chugai by giving written notice to the Seller;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday when banks in London are open for business;

“**Buyer**” means Roche Diabetes Care Limited, a company registered in England and Wales with company number 09055599 whose registered office is at Roche House, Charles Avenue, Burgess Hill, West Sussex RH15 9RY and its Affiliates (as applicable);

“**Contract**” means any contract, incorporating these General Terms and Conditions of Purchase, each Purchase Order and all other terms expressly agreed in writing between the parties, between the Buyer and the Seller for the purchase of Goods and/or Services;

“**Data Protection Legislation**” means:

- until the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) comes into force in the UK, the Data Protection Act 1998 (**DPA**);
- from 25 May 2018, unless and until the GDPR is no longer directly applicable in the UK, the GDPR;
- until the proposed EU Regulation on Privacy and Electronic Communications (the **E-Privacy Regulation**) comes into force in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR);
- unless and until the E-Privacy Regulation is no longer directly applicable in the UK, the E-Privacy Regulation when it comes into force;
- any successor legislation to the GDPR, the DPA, the E-Privacy Regulation or PECR applicable in the UK; and
- any national implementing laws, regulations and secondary legislation relating to data protection and/or the legislation set out in (i) to (v) above, as amended or updated from time to time, in the UK;

“**Force Majeure Event**” means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of the party so prevented;

“**General Terms & Conditions of Purchase**” means these conditions of purchase (as may be amended from time to time in accordance with Condition 28.3) together with each Purchase Order and all documents and terms expressly incorporated here

“**Goods**” means the goods (including any of them or any part(s) of them) supplied by the Seller to the Buyer under a Contract;

“**Mandatory Policies**” means the following policies of the Buyer as updated from time to time:

- Roche Supplier Code of Conduct ([http://www.roche.com/dam/jcr:08d69ab9-e6d3-486c-bb13-d3b33bf4cd03/en/roche\\_supplier\\_code\\_of\\_conduct.pdf](http://www.roche.com/dam/jcr:08d69ab9-e6d3-486c-bb13-d3b33bf4cd03/en/roche_supplier_code_of_conduct.pdf));
- Roche Directive on the Protection of Personal Data (<http://www.roche.com/dam/jcr:7e3782f2-7226-4b15-8064-ae2daab3b8fa/en/ch-ser-protectiondata.pdf>);
- Roche Policy on Safety, Security, Health and Environmental Protection ([http://www.roche.com/she\\_policy.pdf](http://www.roche.com/she_policy.pdf));
- Roche Branding Guidelines (<http://brand.roche.com>);
- British In Vitro Diagnostics Association Code of Conduct ([http://www.bivda.co.uk/Portals/0/Documents/BIVDA\\_CoC\\_leaflet.pdf](http://www.bivda.co.uk/Portals/0/Documents/BIVDA_CoC_leaflet.pdf));
- The MedTech Code of Ethical Business Practice ([http://www.medtecheurope.org/sites/default/files/resource\\_items/files/20151202\\_MedTechEuropeCode.pdf](http://www.medtecheurope.org/sites/default/files/resource_items/files/20151202_MedTechEuropeCode.pdf)); and
- such other policies and codes of conduct as are set out at [http://www.roche.com/sustainability/what\\_we\\_do\\_for\\_partnership/suppliers.htm](http://www.roche.com/sustainability/what_we_do_for_partnership/suppliers.htm) or otherwise provided by the Buyer to the Seller from time to time;

“**Personal Data**” shall have the meaning given to it in the applicable Data Protection Legislation and shall include Special Categories of Personal Data;

“**Personal Data Breach**” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

“**Price**” means the price set out in the Contract and/or in a Purchase Order or, if no price is quoted, the price agreed between the parties in writing;

“**Purchase Order**” means any purchase order sent by the Buyer to the Seller in accordance with Condition 2 for the supply of Goods and/or Services incorporating these General Terms & Conditions of Purchase;

“**Seller**” means the company, firm or person from whom the Buyer orders the Goods and/or Services;

“**Services**” means the services including any deliverables which the Seller agrees to supply to the Buyer (including any of them or any part of them) under a Contract;

“**Special Categories of Personal Data**” means Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation. ‘**Genetic data**’, ‘**biometric data**’ and ‘**data concerning health**’ shall have the meanings given to them in the GDPR; and

“**Specification**” means the Buyer’s specifications or stipulations for the Goods and/or Services notified in writing to the Seller including any description of the nature of the Services and/or the appearance and function of the Goods and any performance criteria which the Goods and/or Services are required to fulfil.

1.2. In these General Terms & Conditions of Purchase:

- a) references to the singular include the plural;
- b) references to one gender shall include the others;
- c) references to any statute or statutory provision shall, unless the context requires otherwise, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
- d) headings are for convenience only and shall not affect the interpretation or construction of these General Terms and Conditions of Purchase;



- e) a reference to writing or written includes any mode of representation or reproducing words in visible form that is capable of reproduction in hard copy, including email;
- f) an obligation not to do something includes an obligation not to allow that thing to be done; and
- g) any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Formation, Commencement and Term

- 2.1. Subject to any variation under Condition 28.3, the provisions of Condition 2.5 or as otherwise expressly agreed in writing between the parties in the Contract, every Purchase Order and every Contract under which a Purchase Order is issued by the Buyer shall incorporate these General Terms & Conditions of Purchase to the exclusion of all other terms and conditions, including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract.
- 2.2. Each Purchase Order for Goods and/or Services will be accepted by the Seller on these General Terms & Conditions of Purchase, which cannot be varied, suspended or amended except in accordance with Condition 28.3.
- 2.3. The Purchase Order shall constitute an offer to purchase the Goods and/or Services subject to these General Terms and Conditions of Purchase (the "Offer"), which shall be deemed to be accepted on the earlier of the Seller giving written notice of acceptance of the Offer or any act by the Seller consistent with fulfilling the Purchase Order.
- 2.4. The Contract shall commence on the date specified in the Purchase Order and continue until:
  - a) in the case of Goods, completion of delivery of the Goods in accordance with the Contract; and
  - b) in the case of Services, for the term specified in the Purchase Order. If no term is specified then it will continue until the Services have been provided to the Buyer's full satisfaction; or
  - c) such other date as is agreed between the parties from time to time; or
  - d) the date on which it is terminated early in accordance with its terms.
- 2.5. Notwithstanding the foregoing, if the Buyer and the Seller have executed a formal written agreement which is in full force and effect, unless otherwise agreed in writing between the parties, the terms and conditions of that agreement will prevail over any General Terms & Conditions of Purchase to the extent the General Terms & Conditions of Purchase are inconsistent with that agreement.
- 2.6. Purchase Orders may be placed by the Buyer by telephone and will be on these General Terms & Conditions of Purchase but shall only be valid if subsequently confirmed by the Buyer via provision of a valid Purchase Order. All Purchase Orders and written confirmations must carry the Buyer's official Purchase Order number in order to be valid.
- 2.7. The Seller should not supply Goods and/or Services to the Buyer before the Seller has received a valid Purchase Order (stating the Purchase Order number) from the Buyer.
- 2.8. The Seller acknowledges and agrees that, save as otherwise agreed in writing between the parties, the Contract does not confer upon it any exclusivity and the Buyer shall be entitled to procure some or all of the Goods or Services from a third party, or manufacture the Goods or perform the Services itself, at any time.

## 3. Packaging and Delivery

- 3.1. The Seller shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

- 3.2. The Goods will be delivered to the Buyer's place of business or to the address stated in the Purchase Order. The Services will be performed at the Buyer's place of business or at the address stated in the Purchase Order.
- 3.3. The Goods and/or the Services will be delivered and/or performed during the Buyer's normal office hours on the date or within the period specified in the Purchase Order or otherwise in writing by the Buyer.
- 3.4. Time for delivery of the Goods and/or performance of the Services will be of the essence.
- 3.5. If the Goods are not delivered or the Services are not performed and/or completed on such date or within such period as stated in the Purchase Order, the Buyer will be entitled, without prejudice to any of its other rights under the Contract, including these General Terms and Conditions of Purchase, to terminate the Contract immediately by giving written notice to the Seller.
- 3.6. Without prejudice to the Buyer's other rights under the Contract, the Buyer is not obliged to accept quantities of the Goods which vary from those specified in the Specification and/or Purchase Order.
- 3.7. The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that Goods may be delivered in instalments then they may be invoiced and paid for separately. Any failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in the Contract.

## 4. Importation and Export Control

- 4.1. If the Goods are being imported to the Buyer from outside the United Kingdom the provisions of this Condition 4.1 shall apply notwithstanding any other provision of the Contract:
  - a) Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 shall have the same meaning for the purposes of the Contract. In the event of conflict between Incoterms 2010 and the Contract, the Contract shall prevail.
  - b) Unless stated otherwise in the Contract any Goods being imported to the Buyer shall be delivered "Delivery Duty Paid" (DDP) to the Buyer.
- 4.2. The Parties agree that all Goods, including software and technology, delivered under the Contract may be subject to foreign trade controls. The Seller shall strictly comply with all applicable national and U.S. laws and regulations for the control of import, export or re-export, transfer, brokering and transit. Prior to any transfer of Goods, the Seller shall guarantee that all necessary import and/or export licenses are obtained as may be required throughout the duration of the Contract.
- 4.3. The Seller shall inform the Buyer about the respective number of the Goods according to the EU Dual-Use Regulation, the Commerce Control List (CCL) of the U.S. Department of Commerce and/or the U.S. Munitions List (USML) of the U.S. Department of State. The Seller shall provide technical specifications of the Goods to enable the Buyer to classify the Goods according to the relevant foreign trade control and customs regulations.
- 4.4. The Seller shall declare the origin of Goods under customs law pursuant to the export and customs regulations applicable in each case, for example, by issuing the declaration on its invoice or by means of a certificate of origin or a long-term declaration (IHK). The Seller shall promptly notify the Buyer in writing of any change of origin. Where the Goods fall within the scope of a convention for the granting of tariff preferences, the Seller shall be obliged to issue a written declaration pursuant to the relevant free trade agreement, for example a long-term supplier declaration or, in individual cases, a declaration of origin on the invoice.
- 4.5. If, in relation to the import or export of Goods, additional official documents are required for the designated use of the Goods, the Seller shall promptly procure (if applicable) and provide these documents to the Buyer.



- 4.6. Any costs incurred from the obligations in this Condition 4 shall be borne by the Seller.
- 4.7. Seller declarations of all kind and specifications for a classification of the Goods are to be sent to the following address: Roche Diabetes Care Limited, Charles Avenue, Burgess Hill, West Sussex, RH15 9RY, United Kingdom, attn. Head of Procurement.
- 4.8. The Seller shall be liable for any losses, liabilities, damage and/or expenses (in particular punitive tariffs, legal costs, etc.), which the Buyer and/or its Affiliates incurs from incomplete and/or inaccurate information in connection with the obligations of the Seller under this Condition 4 (an "**Export Control Breach**") and shall fully indemnify the Buyer and its Affiliates from and against all losses, liabilities, damages and expenses incurred or paid by them in connection with any Export Control Breach.

## 5. Seller General Obligations

- 5.1. In consideration of the payment of the Price by the Buyer, the Seller shall:
  - a) provide the Goods and/or Services under the Contract to the Buyer in full compliance with:
    - i. these General Terms and Conditions of Purchase and any applicable Purchase Order;
    - ii. all applicable laws and regulations;
    - iii. all key performance indicators ("**KPIs**") agreed between the Buyer and the Seller in writing from time to time; and
    - iv. the Mandatory Policies applicable to the Goods and/or Services;
  - b) hold and continue to hold all necessary licences, permits, authorisations and approvals required to conduct its business and provide the Goods and/or Services under the Contract;
  - c) provide the Goods and/or Services in accordance with the Buyer's reasonable instructions;
  - d) observe all health and safety rules and regulations, including those set out in the Mandatory Policies, and other reasonable security requirements that apply at any of the Buyer's premises or such other premises as the Goods are delivered and/or the Services performed;
  - e) not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
  - f) update the Buyer (either in writing or by telephone) on a regular basis and at such intervals as reasonably required by the Buyer in relation to the progress of its compliance with its obligations under the Contract the delivery of the Goods and/or the provision of the Services (as applicable); and
  - g) notify the Buyer of any anticipated delays to the provision of the Goods and/or Services as soon as reasonably practicable and in any event with 24 hours of becoming aware of any anticipated or actual delay.

## 6. Acceptance

- 6.1. The Buyer will not be deemed to have accepted the Goods until a reasonable period after the date of delivery of the Goods or after any latent defect would have become apparent. For the avoidance of doubt no inspection or testing by the Buyer whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods shall be deemed to constitute acceptance or approval of the Goods nor be deemed a waiver of the Buyer's rights either to cancel or to return all or any part of the Goods where the Goods are found to be defective or not in accordance with the Contract. Payment for the Goods shall not be deemed evidence of acceptance.
- 6.2. The Seller acknowledges that precise conformity of the Goods and Services with the Contract is of the essence of the Contract and the Buyer will be entitled to reject the Goods or terminate the Contract under Condition 25 if the Goods or

Services are not in conformance with the Contract. Any breach of this condition is deemed to be a material breach.

- 6.3. The Buyer shall be entitled to reject Goods that do not comply in all respects with the Contract and shall upon rejection return such Goods to the Seller at the risk and expense of the Seller. Upon notification of rejection, the Seller, at the Buyer's sole option, shall either:
  - a) at its sole cost and expense deliver to the Buyer Goods complying in all respects with the Contract in substitution for those rejected Goods; or
  - b) credit the Buyer in full for the invoice value of the rejected Goods.
- 6.4. The Seller shall promptly keep the Buyer informed of any matter of which it is or reasonably should be aware of in relation to the storage, transportation, handling, assembly or use of the Goods by the Buyer (including any legislation or advice from responsible or professional or legal bodies in respect of e.g. raw materials used in the manufacture of the Goods) and the actions the Seller has taken or proposes to take and those that the Buyer should take in relation to such matters.

## 7. Title and Risk

- 7.1. Risk in the Goods shall pass to the Buyer when the Goods are delivered in accordance with the Contract.
- 7.2. Title to the Goods shall pass to the Buyer on the earlier of the date of (i) payment for the Goods by the Buyer in full; or (ii) delivery of the Goods to the Buyer, in each case in accordance with the Contract, and without prejudice to any right of rejection which the Buyer may have under the Contract or by law.

## 8. Price and Payment

- 8.1. The Price for the Goods and/or the Services stated in the Contract and/or in the Purchase Order will not be increased without the consent of the Buyer and shall be inclusive of all expenses and costs including packing and carriage, of any duties, taxes, tariffs, labelling, insurance costs and all other costs or other impositions chargeable or leviable on the Goods and/or Services and of any other sums whatsoever payable to any person in respect of the Goods and/or Services incurred by the Seller in relation to the Goods and/or Services and their delivery unless otherwise agreed in the Contract and/or Purchase Order. No extra charges shall be effective unless agreed in writing and signed by the Buyer and all costs and expenses shall be charged to the Buyer at cost.
- 8.2. The Seller will only invoice the Buyer on or after delivery of the Goods and/or on completion of the performance of the Services or at such other times as agreed in writing between the parties.
- 8.3. Each invoice shall include all such supporting information as reasonably required by the Buyer.
- 8.4. If any sums are due to the Buyer from the Seller, then the Buyer shall be entitled to exercise the right to set-off such sums against any payments due to the Seller from the Buyer, whether such liability is present or future, liquidated or unliquidated or under or in relation to this or any other Contract. The Seller shall not be entitled to apply any amounts due to the Buyer under the Contract in or towards payment of any sum owing by the Buyer to the Seller in relation to any matter whatsoever.
- 8.5. Any money paid by the Buyer to the Seller in respect of any Goods rejected under the Contract, together with any additional expenditure over and above the Price specified in the Purchase Order reasonably incurred by the Buyer in obtaining other goods in replacement of any rejected Goods, will be paid by the Seller to the Buyer within seven (7) days of the date of the Buyer's notice demanding the same or, at the Buyer's sole option, shall be deducted from the money still to be paid by the Buyer to the Seller in relation to such Goods.
- 8.6. All sums payable under the Contract shall be inclusive of Value Added Tax ("**VAT**") (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority). Where it is agreed that VAT shall be paid by the Buyer, the Seller shall show as a





separate item in its invoice the amount of such VAT in GBP, including any exchange rate used, where applicable.

- 8.7. All Purchase Orders and invoices prepared pursuant to the Contract are to be expressed in GBP, unless specifically designated otherwise in the Purchase Order. To the extent permitted by law and unless agreed otherwise in writing between the parties, payment is due 60 days after receipt by the Buyer of a valid invoice from the Seller.
- 8.8. All invoices must quote the Buyer's Purchase Order number, the Seller's VAT number (if charged) and must be sent either by post to Accounts Payable, Roche Diabetes Care Limited, Charles Avenue, Burgess Hill, West Sussex, RH15 9RY, United Kingdom or by email to [burgesshill.apdc@roche.com](mailto:burgesshill.apdc@roche.com) (or as notified to the Seller from time to time). The Buyer will be entitled to reject and return to the Seller invoices which are sent to a different address and/or which do not bear the Buyer's official Purchase Order number and/or do not contain a valid VAT number (if charged). Rejected invoices shall not be valid invoices for the purposes of Condition 8.7.
- 8.9. In the event that the Buyer wishes to dispute any part of an invoice, the Buyer must notify the Seller within twenty (20) days of receipt of the invoice explaining the reason for the dispute, and the amount disputed. If the Seller is not notified of a disputed invoice within this time frame, the invoice will be deemed undisputed and will be due and payable in accordance with this Condition 8.
- 8.10. In the event of any late or non-payment of an undisputed invoice, the Seller shall be entitled to charge the Buyer interest at the rate of 1% per annum above the Bank of England base rate from the due date until the date of payment (whether before or after judgment) such interest to accrue until such time as payment is received by the Seller.
- 8.11. Payment of invoices shall not constitute acceptance of or be deemed acceptance of off-specification, unsuitable, deficient, or non-conforming Goods and/or Services and nor shall it be construed as a waiver of any of the Buyer's rights or remedies under the Contract.
- 8.12. Notwithstanding any purported contrary appropriation by the Seller, the Buyer will be entitled, by giving written notice to the Seller, to appropriate any payment by the Buyer to any invoice issued by the Seller.

## 9. Warranty

- 9.1. The Seller undertakes, represents and warrants to the Buyer that any Goods (including raw materials used in manufacturing the Goods) and the Services will:
  - a) conform in all respects as to quantity, quality, safety, instruction of the Buyer, or sample provided to the Buyer, and description, with all particulars stated in the Purchase Order, the Specification and all relevant national and EU statutes, directives, laws and regulations in force from time to time;
  - b) be free from defect in design, material and workmanship and remain so for at least 12 months after delivery of the Goods or provision of the Services to the Buyer;
  - c) be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods or Service deliverables (as applicable);
  - d) be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Contract);
  - e) be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of the Buyer);
  - f) be performed by an adequate number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the Contract;
  - g) be performed with the highest level of care, skill and diligence in accordance with industry best practice;

- h) if they are manufactured to any design, pattern, drawing or any other form of intellectual property right owned by the Buyer, are supplied exclusively to the Buyer;
- i) on delivery are accompanied by a delivery note and are accurately marked and labelled to enable the Buyer to identify the Goods; and
- j) comply in every respect with all applicable medical devices legislation and regulations relating to their manufacture, treatment, processing and packaging where the Goods are intended for use as medical devices or components for medical devices.

- 9.2. The Seller will use its best endeavours to transfer or assign to the Buyer or otherwise obtain for the benefit of the Buyer any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to the Buyer or otherwise providing such benefit for the Buyer.

## 10. Remedies

- 10.1. Without prejudice to any other rights or remedies of the Buyer (whether express or implied) where there is any breach of the Seller's warranty in Condition 9.1 or if any Seller obligation, warranty or requirement imposed by, given or stated in the Contract is not complied with, or the Goods or any instalment of the Goods are not delivered at the specified time or the Goods delivered are damaged, the Buyer shall be entitled at its sole discretion without liability to the Seller (arising out of such action) to take one or more of the following actions:
  - a) terminate the Contract under Condition 25.1;
  - b) reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non delivery of any undelivered Goods;
  - c) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make;
  - d) recover from the Seller any costs reasonably incurred by the Buyer in obtaining substitute Goods and/or Services from another seller;
  - e) require the Seller at its sole cost and expense to replace, repair the Goods or carry out such work as is necessary within fourteen (14) days so that any repaired or replaced Goods conform to the Contract, Purchase Order and/or Specification;
  - f) require the Seller at its sole cost and expense to re-perform the Services in accordance with the Contract, Purchase Order and/or Specification within seven (7) days;
  - g) where the Buyer has paid in advance for Goods and/or Services that have not been provided by the Seller, to have such sums refunded by the Seller;
  - h) treat this Contract as discharged by the Seller's breach and:
    - i. delay payment of the Price for the Goods and/or Services until the requirements of this Contract, Purchase Order and/or any Specification are entirely fulfilled;
    - ii. refuse to make payment of the Price for the Goods and/or Services; or
    - iii. require the repayment of any part of the Price for the Goods and/or Services which the Buyer has paid whether or not the Buyer has previously required the Seller to repair the Goods, supply any replacement Goods or re-perform the Services; and/or
  - i) claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's breach of the Contract.
- 10.2. If the Buyer claims that a Purchase Order has not been fulfilled or has been incorrectly fulfilled the Seller shall be deemed to accept the validity of the claim unless it serves written notice



on the Buyer disputing the said claim and stating the reasons for its dispute within seven (7) days of the date of the said claim.

10.3. If the Buyer exercises any right under this Condition 10 the Buyer may at its absolute discretion require the Seller to collect the relevant Goods forthwith or (at the Buyer's sole option) return the Goods to the Seller at the Seller's cost. If the Seller fails to collect the Goods under this Condition 10.3 within any reasonable timescale specified by the Buyer in writing (the "**Long-stop Date**") then:

- a) if not already passed, title in the Goods shall immediately pass to the Buyer on the Long-stop Date; and
- b) the Buyer shall be entitled to deal with the Goods in any way at its sole discretion without liability to the Seller.

10.4. These General Terms and Conditions of Purchase shall extend to all substituted or remedial Goods and/or Services.

#### 11. Inspection and Testing

11.1. The Seller shall before delivery ensure, whether by inspection or testing or otherwise, that the Goods and Services comply with the Contract.

11.2. Notwithstanding any such inspection or testing obligation of the Seller, the Buyer may at any reasonable time during the performance of the Contract enter upon the premises of the Seller for the purpose of inspecting and testing the Goods and any materials used in manufacturing the Goods (if applicable). The Seller will not unreasonably refuse any request by the Buyer to carry out such inspection and testing and will provide the Buyer with all facilities reasonably required.

11.3. If as the result of such inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within thirty (30) days of inspection or testing, the Seller will take all steps necessary to ensure compliance. Without prejudice to any other rights of the Buyer under the Contract, any failure of this obligation by the Seller will be deemed to be a material breach entitling the Buyer to terminate the Contract under Condition 25.

11.4. Notwithstanding any such inspection or testing, the Seller will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Seller's obligations under the Contract.

#### 12. Product Recall

12.1. The Seller shall immediately notify the Buyer in writing providing all relevant details if it discovers that there is:

- a) any defect in the Goods which have been delivered to the Buyer at any time; or
- b) any error or omission in the instructions for the use and/or assembly of the Goods;

(whether or not any such defect, error or omission represents a breach of the warranty in Condition 9.1 or any other Condition) which causes or may cause any risk of death, injury or damage to property.

12.2. The Buyer may at its discretion and at the Seller's cost:

- a) recall any Goods or any other products into which the Goods have been incorporated and sold by the Buyer to its buyers (whether for a refund, credit or replacement which shall in each case be undertaken by the Seller at the Buyer's option); and/or
- b) issue any notification whether in writing or otherwise to any third party about the manner or use or operation of any Goods or any other products into which the Goods have been incorporated and sold by the Buyer,

in each case whether identification is by the Buyer, its buyers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of the warranty in Condition 9.1 above or any other General Condition of Purchase) which the Buyer reasonably concludes affects or may affect any of the Goods supplied in a

manner which causes or may cause any risk of death, injury or damage to property.

#### 13. Contractors on Site

13.1. All contract work on site is subject to Roche Safety Regulations for Contractors, a copy of which will be made available to the Seller on request.

13.2. Where Goods are delivered and/or Services are performed at a third party's premises, the Seller will, and will ensure that all Seller Affiliates, employees, subcontractors, permitted assigns, agents or any other persons who perform any obligations under the Contract will, comply with all rules, policies and procedures that they are advised, or ought reasonably to have known, are applicable at the premises.

13.3. It is the responsibility of the Seller to provide its employees with any personal protective equipment necessary to meet the Buyer's requirements and statutory requirements.

#### 14. Records and Audit

14.1. The Seller will maintain:

- a) financial records according to generally accepted accounting principles to support its invoices to the Buyer;
- b) proof of required licences, certifications and permits; and
- c) all other relevant records in relation to the provision of the Goods and/or Services,

(together, the "**Records**").

14.2. The Seller agrees to:

- a) retain the Records for 7 years following the expiry or termination of the Contract, or such other time as is specified by Roche in order to comply with any law, regulation or existing commercial arrangement;
- b) upon the Buyer's reasonable request, provide the Buyer with a copy of the Records and permit the Buyer to reproduce the Records and retain the duplicate copies;
- c) allow the Buyer and/or its authorised representatives (including its professional advisors) on giving at least one month's notice to inspect the Records and audit the Seller's compliance with the terms of the Contract at the Seller's premises during normal business hours (an "Audit"); and
- d) undertake all corrective action reasonably requested by the Buyer and/or its authorised representatives following an Audit as soon as reasonably practicable following receipt of any corrective action request.

#### 15. Indemnity

15.1. The Seller acknowledges that the Buyer places particular reliance upon the Contract and in addition to any other remedy available to the Buyer, the Seller irrevocably and unconditionally indemnifies and holds harmless the Buyer, its employees, sub-contractors, permitted assigns and agents in full and on demand and keeps them so indemnified from and against: (i) all third party claims, demands, actions, proceedings; and (ii) all direct, indirect and consequential loss, damage, liability (including without limitation liability for death or personal injury attributable to the Goods) settlement amounts, costs and expenses whatsoever (including without limitation legal fees on an indemnity basis and other professional advisers' fees, economic loss, loss of profit, future revenue, reputation, goodwill, anticipated savings and costs) made against or incurred or suffered by any of them (together, "**Losses**") whether wholly or in part resulting directly or indirectly from or arising out of or resulting from:

- a) the use and/or sale of the Goods or of any product incorporating the Goods;
- b) performance of the Services;
- c) the Seller's breach of Condition 18, including any actual or alleged infringement of a third party's intellectual property rights in the UK or elsewhere;
- d) any breach of the warranties given by the Seller under the Contract, including those set out in Condition 9;



- e) any breach of the Data Protection Legislation (as defined in Condition 20.1); and/or
- f) the Seller's breach or negligent performance of the Contract,

except where such Losses are due to the negligence of the Buyer, its employees, sub-contractors, permitted assigns or agents.

15.2. The Seller shall provide all facilities, assistance and advice required by the Buyer or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Seller's performance, or purported performance of, or failure to perform, the Contract.

15.3. The provisions of Condition 17.2 shall not apply to the indemnity set out in Condition 15.1 above.

#### 16. Insurance

16.1. The Seller shall at its own cost effect and keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract.

16.2. The Seller shall on the written request of the Buyer from time to time provide the Buyer with reasonable details of the insurance maintained in force in accordance with this Condition, and, on the renewal of each policy, the Seller shall send a copy of the premium receipt to the Buyer when requested to do so in writing by the Buyer.

16.3. The Seller shall do nothing to invalidate any of the policies maintained in force in accordance with this Condition.

#### 17. Limitation of Liability

17.1. Subject to Condition 17.3, the Buyer's total liability whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising out of or in connection with the Contract shall be limited to the Price paid or payable by the Buyer under the Purchase Order.

17.2. Subject to Condition 15.3, neither the Buyer nor the Seller shall have any liability to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss or any loss of profits (whether direct or indirect, actual or anticipated) arising under or in connection with the Contract.

17.3. Nothing in the Contract shall limit or exclude any party's liability for:

- a) death or personal injury caused by a party's negligence or the negligence of its personnel or subcontractors; or
- b) fraud or fraudulent misrepresentation.

#### 18. Intellectual Property

18.1. The Seller:

- a) warrants that it has full, clear and unencumbered title to the Goods and any deliverables to be provided under the Services, and has full and unrestricted rights to sell and transfer the Goods and/or the deliverables to the Buyer;
- b) confirms that, to the extent that the Goods and/or Services and any deliverables are manufactured or performed in accordance with or otherwise incorporate any design, pattern, drawing or other form of intellectual property right owned by the Buyer, the exclusive rights in copyright or any other intellectual property rights subsisting in the Goods and/or Services shall belong to the Buyer and that neither the Seller nor any of its Affiliates, employees, subcontractors, permitted assigns or agents shall have or shall assert any rights in relation to such intellectual property rights;
- c) shall, at its own expense, ensure that all requisite approvals have been obtained from any third party intellectual property right owners whose materials are utilised in any way in provision of the Goods and/or Services;

d) assigns to the Buyer, with full title guarantee and free from all third party rights, all intellectual property rights in the products of the Services;

e) shall obtain waivers of all moral rights in the products of the Services 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; and

f) shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the intellectual property rights assigned to the Buyer in accordance with Condition 18.1(d).

#### 19. Confidentiality

19.1. It is a condition of the purchase of the Goods and/or Services that the Seller shall not, without the prior written consent of the Buyer, issue or publish any statement in writing indicating that the Seller has supplied Goods and/or Services to the Buyer or is a supplier to the Buyer, whether regularly or intermittently or otherwise of the Goods and/or Services or any other goods and/or services nor make any public announcement whatsoever in relation to the existence of the Contract or the Seller's relationship with the Buyer.

19.2. The Seller shall, to the extent permissible under its existing contractual arrangements, disclose to the Buyer sufficient detail relating to those of its customers who would reasonably be considered direct or indirect competitors of the Buyer ("**Competitors**") to enable the Buyer to identify such Competitors. The Seller shall do all such things reasonably required by the Buyer, including entering into confidentiality agreements, to protect the Buyer's legitimate commercial interests in relation to its Competitors.

19.3. A party ("**Receiving Party**") shall keep in strict confidence (i) 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 Affiliates, employees, subcontractors, permitted assigns or agents, (ii) any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain as part of the Contract, (iii) any information that is marked or has been otherwise indicated to be confidential and (iv) all information in whatever form which would be regarded as confidential by a reasonable business person (together, the "**Confidential Information**").

19.4. The Disclosing Party warrants that it has the full and unconditional right to disclose the Confidential Information to the Receiving Party

19.5. The Receiving Party shall:

- a) only use the Confidential Information to discharge its obligations under the Contract;
- b) disclose the Confidential Information only to those of its Affiliates, employees, subcontractors, permitted assigns or agents who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract; and
- c) ensure that all Affiliates, employees, subcontractors, permitted assigns or agents who receive Confidential Information under Condition 19.5(b) comply with the obligations of confidentiality set out in Condition 19 as if they were a party to the Contract.

19.6. The obligations of confidentiality in this Condition 19 shall not extend to any information which the Receiving Party can demonstrate:

- a) is publicly available or becomes publicly available through no act or omission of the Receiving Party;
- b) was independently disclosed to the Receiving Party by a third party entitled to disclose the same;
- c) is required to be disclosed by the Receiving Party under any applicable law, or by order of a court or





governmental body or authority of competent jurisdiction.

19.7. Upon termination or expiration of the Contract for any reason, unless otherwise agreed in writing between the parties, the Receiving Party shall cease all use and make no further use of the Confidential Information and shall upon receipt of a written request from the Disclosing Party and at the Receiving Party's sole cost and expense promptly deliver up to the Disclosing Party or destroy (at the Disclosing Party's sole option) all Confidential Information, including any documents, materials and records in any medium containing or reflecting the Confidential Information. Notwithstanding the obligations set out in this Condition 19.7, the Receiving Party may retain one copy of the Confidential Information to the extent it is required to do so to comply with any law or regulation provided always that any retained Confidential Information is kept always in full compliance with the provisions of this Condition 19.

19.8. The provisions of this Condition 19 shall survive termination of the Contract.

## 20. Data protection

20.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 20, Controller, Processor, processing and Data Subject shall have the meanings given to them in the applicable Data Protection Legislation and process and processed shall be construed accordingly.

20.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Seller is the Processor.

20.3. Buyer employee, customer and/or patient data, including key personal data and contact data, is processed to enable the Seller to extinguish its obligations under the Contract. The duration of processing is equal to the term of the Contract.

20.4. To the extent that the Seller is required in connection with its obligations under the Contract to process any Personal Data on behalf of the Buyer and/or its Affiliates, the Seller will:

- a) process that Personal Data only on the written instructions of the Buyer (including, but not limited to, with regard to the transfer of Personal Data to a third country or an international organisation) unless the Seller is required by the applicable laws of any member of the European Union or the European Union to process Personal Data ("**Applicable Data Laws**"). Where the Seller is relying on Applicable Data Laws as the basis for processing Personal Data, the Seller shall, to the extent legally permissible, promptly notify the Buyer of this before performing the processing required by the Applicable Data Laws;
- b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- c) ensure that it has in place technical and organisational measures to protect against any Personal Data Breach appropriate to the harm that might result from the Personal Data Breach and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by the Seller);
- d) not appoint any third party processor of Personal Data under this Contract (a "**Third Party Processor**") unless:
  - i. the prior specific written consent of the Buyer has been obtained; and

- ii. the Third Party Processor is bound by terms which are substantially similar to those set out in this clause 20 under (i) a written Contract between the Seller and the Third Party Processor or (ii) Applicable Data Laws.

As between the Buyer and the Seller, the Seller shall remain fully liable for all acts or omissions of any Third Party Processor appointed pursuant to this clause 20.4(d);

- e) assist the Buyer, by appropriate technical and organisational measures, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to requests for exercising a Data Subject's rights, security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Data Law to store the Personal Data;
- g) maintain and make available to the Buyer complete and accurate records and information to demonstrate its compliance with this clause 20 and allow for and contribute to audits by the Buyer or the Buyer's designated auditor;
- h) immediately inform the Buyer if, in the Seller's opinion, an instruction infringes any Data Protection Legislation or Applicable Data Law;
- i) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
  - i. the Buyer or the Seller has provided appropriate safeguards in relation to the transfer;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Seller complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - iv. the Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data; and
- j) notify the Buyer without undue delay and in any event within 24 hours on becoming aware of an actual or suspected Personal Data Breach by email to [burgesshill.dataprivacy@roche.com](mailto:burgesshill.dataprivacy@roche.com) with sufficient detail to enable the Buyer to identify the facts relating to the Personal Data Breach, its effects and the Seller's remedial action and in all cases the Seller shall implement such remedial action as soon as possible and in any event within 12 hours of becoming aware of an actual or suspected Personal Data Breach.

20.5. At the Buyer's request, the Seller shall provide the Buyer with a copy of all the Buyer Personal Data held by it in the format and on the media reasonably specified by the Buyer.

20.6. The Seller shall indemnify the Buyer and its Affiliates in full against all liabilities, costs, expenses, damages or 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 the Buyer and/or its Affiliates arising out of or in connection with any breach by the Seller of its obligations under this clause 20. Liability under this indemnity is unlimited.

20.7. The Buyer may, at any time on not less than 30 days' notice, revise this clause 20 by replacing it with any applicable



controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## 21. Anti-bribery and anti-slavery and human trafficking

21.1. The Seller will, and will procure that any Seller Affiliates, employees, subcontractors, permitted assigns, agents or any other persons who perform any obligations under the Contract will:

- a) fully comply with the anti-bribery and corruption and anti-slavery and human trafficking requirements set out in the Roche Supplier Code of Conduct; and
- b) fully comply with, and not commit any act or omission which causes or could cause the Seller or the Buyer or any of its or their Affiliates to breach or commit an offence under, all laws, statutes, regulations and codes of practice relating to:
  - i. anti-bribery and/or anti-corruption, including the Bribery Act 2010; or
  - ii. anti-slavery and human trafficking in the UK and elsewhere, including the Modern Slavery Act 2015.

## 22. Compliance

22.1. The Seller will, and will procure that any Seller Affiliates, employees, subcontractors, permitted assigns, agents or any other persons who perform any obligations under the Contract will:

- a) keep accurate and up to date records showing:
  - i. all payments made and received and all other advantages given and received by it in connection with the Contract;
  - ii. all suppliers engaged in connection with the Contract; and
  - iii. the steps it has taken to comply with Conditions 20, 21 and 22; and
- b) have and maintain in place its own policies and procedures to ensure compliance with Conditions 20, 21 and 22,

and will permit the Buyer or any of its Affiliates or its or their authorised representatives to inspect those records, policies and procedures as required

22.2. The Seller warrants that neither it, nor its Affiliates, employees, subcontractors, permitted assigns or agents, having made reasonable enquiries, has been or is subject to any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with

- a) the Data Protection Legislation (as defined in Condition 20.1(a));
- b) bribery or corruption; or
- c) slavery or human trafficking.

22.3. The Seller shall ensure that all of its Affiliates, employees, subcontractors, permitted assigns or agents and any other third party who might perform services or provide goods in connection with the Contract do so only on the basis of a written contract which imposes on and secures from such persons terms equivalent to those imposed on the Seller in Conditions 20, 21 and 22 ("**Relevant Terms**"). The Seller shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Buyer for any breach by such persons of any of the Relevant Terms.

22.4. The Seller shall promptly notify the Buyer:

- a) if any personal data is lost or destroyed or becomes damaged, corrupted or unusable;
- b) if it becomes aware of any unauthorised or unlawful processing of personal data;
- c) if it receives any complaint, notice or communication directly or indirectly relating to the processing of personal data and/or either party's obligations under the Data Protection Legislation);

- d) of any request or demand for any financial or other advantage it receives;
- e) of any financial or other advantage it gives or intends to give, whether directly or indirectly, in connection with the Contract; and
- f) of any anticipated or actual breach of Condition 20, 21 or 22.

22.5. Any breach of Condition 20, 21 or 22 will be a material breach of the Contract and will enable the Buyer to terminate the Contract on immediate written notice to the Seller.

## 23. Business Continuity

23.1. The Seller shall have in place business continuity and IT disaster recovery plans (the "**Plans**").

23.2. The Plans must be based on the assessment of all reasonably foreseeable risks and must mitigate these risks sufficiently to maintain the delivery of Goods and Services (as applicable) to the Buyer in accordance with the Specification during periods of serious incident or business disruption.

## 24. Sub-Contracting and Assignment

24.1. The Contract and the General Terms & Conditions of Purchase shall be performed by the Seller or by its Affiliates and not by way of sub-contract to any other company, firm or person without the prior consent in writing of the Buyer.

24.2. Copies in duplicate of any sub-contract made in accordance with the Contract, with the omission only of any price stated therein, shall be delivered to the Buyer and no such sub-contract shall in any way limit or otherwise affect the obligations of the Seller under the Contract.

24.3. The Seller warrants that its contractual arrangement with permitted subcontractors shall substantially reflect these General Terms & Conditions of Purchase.

24.4. The Seller acknowledges and agrees that it remains fully liable to the Buyer for any Goods and/or Services supplied by a third party.

24.5. The Seller will not assign the Contract or any sub-contract made there under or any of their benefits to any third party without the written consent of the Buyer.

## 25. Termination

25.1. Without prejudice to any of its other rights under the Contract, the Buyer may by notice in writing to the Seller terminate the Contract immediately if:

- a) the Seller shall commit any breach of the Contract, or
- b) the Seller ceases or threatens to cease to carry on business or permits any judgment against it to remain unsatisfied for seven (7) days; or
- c) there is a change in control of the Seller, or
- d) being a company, an LLP or a partnership the Seller has a petition presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for its winding up (otherwise than for the purposes of a bona fide amalgamation or reconstruction) or compounds with its creditors, or if the Seller becomes insolvent, or an administrator is appointed to it or a receiver, liquidator or similar officer is appointed in respect of all or any part of its business or assets; or
- e) being an individual the Seller dies, or becomes bankrupt or insolvent, or enters into any arrangement with creditors or takes or suffers any similar action in consequence of debts.

25.2. The Seller may by notice in writing to the Buyer terminate the Contract immediately if:

- a) the Buyer shall commit any material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 45 days of being notified in writing to do so; or
- b) the Buyer ceases or threatens to cease to carry on business or permits any judgment against it to remain unsatisfied for seven (7) days; or





- c) the Buyer has a petition presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for its winding up (otherwise than for the purposes of a bona fide amalgamation or reconstruction) or compounds with its creditors, or if the Buyer becomes insolvent, or an administrator is appointed to it or a receiver, liquidator or similar officer is appointed in respect of all or any part of its business or assets.
- 25.3. Subject to Conditions 25.2 and 27.3, the Seller may not cancel the Contract.
- 25.4. The Buyer is entitled to cancel the Contract in whole or in part at any time and for any reason by giving at least 30 days' written notice to the Seller. The Buyer's sole liability for termination under this Condition 25.4 will be to pay the Seller for all reasonably incurred costs directly relating to work-in-progress at the date of termination to the extent that the Seller is unable to mitigate such costs.
- 25.5. The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 25.6. Upon expiry or termination of the Contract for any reason whatsoever:
- a) subject to Condition 25.5, the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Condition 25.6;
  - b) any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect; and
  - c) the Seller shall immediately return to the Buyer (or if the Buyer so requests by notice in writing, destroy) all of the Buyer's property in its possession at the date of termination including all confidential information, together with all copies of such confidential information and shall certify that it has done so, and shall make no further use of such confidential information and all plans, drawings, specifications and patterns belonging to the Buyer.
- 25.7. If the Buyer terminates this Contract under Condition 25.1 then the Buyer shall be entitled to claim from the Seller:
- a) the cost of transferring its business to another supplier;
  - b) repayment of the Buyer's investment costs in the acquisition of the Goods and/or Services, save for the actual cost of the Goods or Services themselves; and
  - c) any other direct loss incurred by the Buyer arising as a result of the termination.
- 25.8. The parties may, acting reasonably and in good faith in all circumstances, agree in writing such steps as may be reasonably necessary for the orderly handover of the provision of Goods and/or Services, such that the provision of Goods and/or Services can be carried on after expiry or termination of the Contract with the minimum of interruption and inconvenience to the Buyer.

## 26. Notice

- 26.1. Any notice or other document required to be served on the Seller shall be delivered by hand or posted by first class post or sent by email to the business postal address or email address of the other party's nominated executive during working hours on any Business Day.
- 26.2. Any notice served in accordance with Condition 26.1:
- a) by hand shall be deemed to have been received when delivered, provided that if it is not left at that address between 9am to 5pm on any Business Day ("Working Hours") it shall be deemed to be received when Working Hours next commence;
  - b) by pre-paid first class post shall be deemed to have been received 2 Business Days after the date of posting; and
  - c) by email shall be deemed to have been received at the time of sending, provided that if it is not sent within

Working Hours it shall be deemed to be received when Working Hours next commence.

- 26.3. In the case of an invoice or statement, the document shall be delivered by hand or posted by first class post or sent by email to the Buyer's Accounts Department whose details are set out above at Condition 8.8 and in any other case to the Buyer's Purchasing Department as indicated on the Purchase Order.

## 27. Force Majeure

- 27.1. Any party that is subject to a Force Majeure Event shall not be in breach of the Contract provided that:
- a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
  - b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
  - c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, including putting in place the Plans in compliance with Condition 22, to carry out its obligations under the Contract and to resume the performance of its obligations as soon as reasonably possible.
- 27.2. During any period of suspension by the Seller of delivery of Goods or performance of Services in accordance with Condition 27.1 above, the Buyer shall be at liberty to purchase elsewhere such Goods and/or Services as it reasonably anticipates it may require and the Buyer may reduce the quantity to be taken under the Contract by that amount.
- 27.3. If the suspension prevails for a continuous period of more than three months, any party may terminate the Contract by giving fourteen (14) days' written notice to the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

## 28. General

- 28.1. The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- a) neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any representation or statement (whether made by the other party or any other person), which is not expressly set out in the Contract; and
  - b) nothing in this Condition 28 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 28.2. If any clause or condition of the Contract, including these General Terms & Conditions of Purchase, is held to be or becomes void, invalid, unlawful or unenforceable for any reason whatsoever, the same shall be deemed omitted from the Contract and such decision shall not affect the validity or enforceability of the remaining clauses or conditions of the Contract.
- 28.3. No purported alteration or variation of any provision of the Contract, including these General Terms & Conditions of Purchase, shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.
- 28.4. No waiver of any right under, or breach of, the Contract, including these General Terms & Conditions of Purchase, will operate as a continuing waiver or waiver of any subsequent breach of that or any other provision. Any waiver of any breach of the Contract shall be in writing.
- 28.5. Nothing the Contract 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.



28.6. Subject to Condition 28.7, each party confirms it is acting on its own behalf and not for the benefit of any other person.

28.7. No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms. The Seller acknowledges that the Buyer has entered into the Contract for its own benefit and for the benefit of each of its Affiliates and that the Contract is intended to be enforceable by each of the Buyer's Affiliates by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **29. Governing Law and Jurisdiction**

29.1. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and

construed in all respects in accordance with the laws of England.

29.2. Nothing in the Contract shall prejudice any condition or warranty (expressed or implied) or right or remedy to which the Buyer is entitled in relation to the material or Goods or Services ordered by virtue of statute or Common Law.

29.3. The parties irrevocably submit any dispute or claim arising out of the Contract, its subject matter or formation (including non-contractual disputes or claims) (a "**Dispute**") to the exclusive jurisdiction of the Courts of England. Notwithstanding this Condition 29.3, the parties may mutually agree (acting reasonably and in good faith in all circumstances) to submit to alternative dispute resolution to settle any Dispute

**Roche Diabetes Care Limited**

May 2018