



LYNAS MALAYSIA SDN BHD (Company No. 752289D)

Purchase Order Terms and Conditions for the Supply Of Goods and/or Services

1. GENERAL

- 1.1 Subject to clause 1.3, these terms and conditions (**Terms & Conditions**) and the related purchase order (**Purchase Order**) constitute the whole of the contract (**Contract**) for the supply by the person, firm or corporation that the Purchase Order is addressed to (the **Supplier**) and Lynas Malaysia Sdn Bhd or its related body corporate issuing the Purchase Order (the **Buyer**) of the goods and/or services described in the Purchase Order (the **Goods and/or Services**).
- 1.2 The delivery of Goods or the commencement of performance of any Services by the Supplier will constitute acceptance by the Supplier of the Contract.
- 1.3 No other terms will apply whether or not they are contained in any order acknowledgment, invoice or other document dated before or after the date of the Purchase Order, unless those terms are expressly agreed to in writing by the Buyer (**Written Agreement**).
- 1.4 The Supplier must comply strictly with the requirements indicated on the Purchase Order for delivery of the Goods and/or performance of the Services.
- 1.5 These Terms & Conditions shall also apply to sales made on the basis of a trade term including, without limitation, the Incoterms 2010 (**Incoterms**). Where deliveries are made on the basis of one of the Incoterms, those Incoterms in force shall apply. In the event of an inconsistency between these Terms & Conditions and the trade terms, the Terms & Conditions shall prevail.
- 1.6 If there is any conflict or inconsistency between any Written Agreement, any terms contained in the Purchase Order (**Special Conditions**) and these Terms & Conditions, the conflict or inconsistency will be resolved in the following order of precedence:

- (a) the Written Agreement;

- (b) then the Special Conditions; and
(c) then the Terms & Conditions.

2. INVOICING AND PAYMENT

- 2.1 The fee payable by the Buyer to the Supplier for the Goods and/or Services will be set out in the Purchase Order. The Supplier shall not be entitled to any remuneration, reimbursement or payment of any other amount in respect of the provision of the Goods and/or Services.
- 2.2 The Supplier shall submit a valid tax invoice to the Buyer immediately or at least by the end of each calendar month for the Goods and/or Services supplied in that month (**Invoice**).
- 2.3 The Invoice must set out:
- (a) particulars of the Supplier entity, including its company number (if applicable);
- (b) particulars of all Goods and/or Services supplied by the Supplier during the relevant period;
- (c) the amount payable (including currency) by the Buyer in respect of those Goods and/or Services and particulars of how such amount was calculated;
- (d) the number of the Purchase Order to which the Invoice relates; and
- (e) any further information stipulated in any applicable law relating to service tax, goods and services tax or value-added tax, or by the Buyer, to enable the Buyer to claim an input tax credit (if applicable).
- 2.4 The Buyer will (subject to the Goods and/or Services having been satisfactorily received, or completed and accepted by the Buyer and subject to the prompt issuance of the Invoice to the Buyer) pay the amount properly invoiced by the Supplier (except to the extent that the Invoice is in dispute) within thirty (30) days after receipt of the Invoice.
- 2.5 Failure by the Buyer to pay the amount payable at the time due shall not be grounds to invalidate

or terminate the Contract nor entitle the Supplier to the payment of any interest charge.

- 2.6 The Buyer may deduct from such amount as may be due and payable by the Buyer pursuant to this Contract, any amounts payable by the Supplier to the Buyer.
- 2.7 The failure of the Buyer to comply with the requirements set out in clauses 2.2 to 2.4 may result in the Invoice being returned by the Buyer and a delay in payment of the Invoice.

3. ASSIGNMENT AND SUBCONTRACTING

- 3.1 The Supplier must not, without the prior written consent of the Buyer, assign or subcontract any portion of the Contract. The Buyer may in its absolute discretion refuse to consent to or approve the Supplier's request without giving reasons and may give that consent or approval on whatever terms and conditions it may in its absolute discretion think appropriate.
- 3.2 The Supplier acknowledges that no permitted assignment or sub-contracting under clause 3.1 in any way relieves the Supplier from the performance of any of its obligations under the Contract.
- 3.3 The Buyer may at any time assign any of its rights or obligations under the Contract.

4. INDEMNITY

- 4.1 The Supplier indemnifies the Buyer and its directors, officers, employees and agents in respect of all losses, damages, fines, penalties, costs, expenses or other liabilities incurred by or awarded against them in connection with:

- (a) loss of or damage to property, death or personal injury;
- (b) claims by third parties; and
- (c) fines, penalties and other sanctions imposed by a court, tribunal, regulator or other governmental authority under applicable laws, regulations, regulatory policies, regulatory guidelines or industry codes (**Applicable Laws**),

caused or contributed to by the Supplier or its directors, officers, employees, agents or contractors (**Supplier Personnel**) or by any breach of the Contract by the Supplier

(including breach of warranty), except to the extent that such loss, damage, death, injury, claim, fine, penalty or other sanction has been caused or contributed to by the wilful default or unlawful or negligent act or omission of the Buyer.

- 4.2 To the extent permitted by applicable law, neither party shall be liable to the other for special, incidental, indirect, punitive, aggravated or consequential damages (including, but not limited to, loss of profits, loss of reputation, loss of revenue, loss of production, loss or denial of opportunity and/or loss of goodwill) arising out of the supply, sale or use of the Goods and/or Services. Any liability arising out of any matter or circumstance giving rise to a claim in relation to the Contract is limited to loss or damage which arises naturally or in the usual course of things from breach of the Contract.

5. INSURANCE

- 5.1 Where the Supplier is required to perform any Services on premises which are owned or occupied by the Buyer or any of its related bodies corporate (**Lynas' Premises**) or where the Supplier will be present on Lynas' Premises, the Supplier will at its own expense procure and maintain:

- (a) all insurances required by law or which would be maintained in accordance with prudent business practice; and
- (b) any other insurances as reasonably directed by the Buyer.

- 5.2 If the Supplier fails to:

- (a) effect or maintain any of the insurances required under clause 5.1; or
- (b) have any subcontractor effect or maintain any such insurances,

then the Buyer may at the Supplier's cost:

- (c) effect and maintain that insurance;
- (d) pay the necessary premiums; and
- (e) recover from the Supplier the amount paid under this clause,

until the Supplier has complied with its obligations under this clause.

6. SUPPLY AND QUALITY OF GOODS AND/OR SERVICES

- 6.1 The Supplier must:
- (a) obtain all applicable permits, licences, exemptions, consents and approvals required for the Supplier and the Supplier Personnel to supply the Goods and/or Services;
 - (b) co-operate with staff, contractors and other persons providing Goods and/or Services to the Buyer and must immediately bring to the attention of the Buyer any conflict which may exist between the Supplier and any other such person; and
 - (c) comply with, and ensure that the Supplier Personnel comply with, the Buyer's policies and rules and any lawful direction by the Buyer or its related bodies corporate in respect of the supply of Goods and/or Services including, without limitation, safety, health and environment matters.
- 6.2 If requested by the Buyer, the Supplier must provide the Buyer with evidence of compliance with its obligations under clause 6.1(a) including, without limitation, copies of all Verification of Competency certificates.
- 6.3 The Supplier shall employ or cause to be employed in, upon or about the supply of the Goods and/or Services only such persons as are appropriately qualified, competent, skilled and experienced in their respective trades and callings to the degree ordinarily and reasonably expected.
- 6.4 If any of the Supplier Personnel do not comply with clause 6.1(c) whilst they are on Lynas' Premises, then, upon request by the Buyer, the Supplier must remove the relevant Supplier Personnel responsible for the non-compliance from Lynas' Premises.

7. RISK, TITLE AND INSPECTION

- 7.1 Subject to clause 7.3, title to and property in the Goods passes to the Buyer on payment of the price or delivery of the Goods to the place noted in the Purchase Order (whichever occurs first). The Supplier warrants that full, clear and

unrestricted title will be given to the Buyer clear of any encumbrances.

- 7.2 Risk in the Goods remains with the Supplier until delivery.
- 7.3 All Goods will be accepted by the Buyer subject to inspection by the Buyer within a reasonable time after delivery and to the Buyer being satisfied with the Goods. Payment for the Goods and/or Services before inspection does not constitute acceptance of them.

8. PACKAGING AND DOCUMENTATION

- 8.1 Goods must be adequately and safely packaged by the Supplier according to the requirements (if any) detailed in the Purchase Order. If there are no such requirements detailed, Goods must be packed in a manner that is consistent with all Applicable Laws and with good industry practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the place of delivery.
- 8.2 Without limiting its obligations under clause 8.1, the Supplier must ensure that the Goods are properly preserved for transport and storage, having regard to the nature of the Goods, the expected length of inactivity of the Goods, and the amount of time required to restore the Goods to service.
- 8.3 If the Goods deteriorate or suffer damage (including rust or corrosion) prior to their delivery to the Buyer's premises, then, without prejudice to the Buyer's rights under any other provision of the Contract, the Supplier must promptly repair or replace the Goods, at the Buyer's request.
- 8.4 The Supplier will:
- (a) submit one copy of each Invoice or credit note in relation to each Purchase Order; and
 - (b) mark the number of the Purchase Order and the relevant destination of the Goods on the Goods, and on all shipping notices, bills of lading, tax invoices, packing slips, cart notes and other documents.

9. DISPUTES

9.1 If a dispute or difference arises between the Supplier and the Buyer in respect of any fact, matter or thing arising out of, or in any way in connection with the Goods and/or Services or the Contract (**Dispute**), the Dispute must be determined in accordance with the procedure in this clause 9.

9.2 Where a Dispute arises, either party may give a notice to the other party specifying:

- (a) the Dispute;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position that the party believes is correct.

9.3 If a notice of Dispute is given under this clause 9, then the Dispute is to be referred to senior representatives of the parties, who must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within thirty 30 days after the date of the notice of Dispute.

9.4 If the representatives cannot resolve or agree upon a procedure to resolve the dispute or difference within the time specified in clause 9.3, either party may commence legal proceedings in an appropriate court to resolve the dispute or difference.

9.5 Notwithstanding any Dispute, the Supplier shall continue to supply the Goods and/or Services in accordance with the Contract without prejudice to its position in respect of such Dispute.

9.6 Nothing in this clause 9 will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief.

10. TERMINATION

10.1 The Buyer may, for its own convenience, terminate this Contract by giving 30 days' notice in writing to the Supplier and:

- (a) in relation to Services, the Supplier is only entitled to reasonable reimbursement of its costs for the Services actually performed up until termination. On termination, the Supplier is not entitled to payment for any

unperformed Services or for anticipated revenues or lost profits; and

(b) in relation to Goods:

(i) if the Goods to be supplied under this Contract are of standard stock of the Supplier, the Supplier is only entitled to payment for the Goods shipped prior to termination; or

(ii) if the Contract requires Goods to be manufactured or fabricated to the specification of the Buyer, the Supplier shall stop work under the Contract, except as may be otherwise directed by the Buyer, and the Buyer will pay to the Supplier an amount equal to:

(A) the costs actually incurred by the Supplier in the manufacture or fabrication of the Goods prior to termination; plus

(B) five percent (5%) of the amount calculated in clause 10.1(b)(ii)(A).

10.2 Either party may terminate the Contract (without prejudice to any other rights) immediately by notice in writing to the other party if:

(a) that other party is in breach of a material term of the Contract and has failed to remedy that breach within fourteen (14) days after receiving written notice from the first party specifying the breach and requiring its remedy; or

(b) that other party commits an act of bankruptcy or insolvency or makes or endeavours to make any scheme of arrangement with its creditors, or if any order appointing a receiver, receiver and manager or administrator or for the winding up of that other party (whether voluntary or otherwise) is made in any court of competent jurisdiction.

10.3 Upon termination of the Contract, the property in any materials appropriated to the manufacture or fabrication of Goods shall vest in the Buyer, who shall be entitled to immediate possession thereof.



10.4 Upon termination of the Contract under this clause 10 or clause 22, the Supplier will have no further rights or claims against the Buyer other than as set out in this clause 10, however termination will be without prejudice to any rights which either party may have against the other arising out of or connected with the Contract prior to the date of termination.

11. INSPECTION OF WORK AND RECORDS

11.1 The Buyer and its representatives shall have full and free access to the shops, factories or other places of business of the Supplier and its subcontractors at all reasonable times and with reasonable prior notice, in order that the Buyer may inform itself as to the general conditions and progress of the work covered by the Contract and to witness any tests which may be required under the Contract. No inspection by the Buyer shall be deemed to be an acceptance of the conditions then prevailing nor detract from the Buyer's right to reject Goods and/or Services not in accordance with this Contract.

11.2 When requested by the Buyer, the Supplier will issue to the Buyer regular reports on the progress of the work.

11.3 The Supplier will maintain proper records relating to the Contract for a period that is consistent with good industry practice and will make these available for inspection by the Buyer where reasonably required by the Buyer.

12. DELAYS AND EXTENSIONS OF TIME

12.1 If the Supplier fails to deliver and/or install the Goods or supply the Services as the case may be by the agreed dates, subject to clause 12.2, the Supplier shall be liable to pay to the Buyer an amount equal to 0.1% of the value of the Goods or the Services (as set out in the Purchase Order submitted in respect of the Goods or Services which have been delayed (**Total Order Value**)) per day for every day on and from the day after the due date for delivery up until the day on which the Goods or Services are actually provided or supplied (as the case may be).

12.2 The Supplier's liability for failure to achieve delivery of the Goods or performance of the

Services by the delivery date shall be subject to a maximum aggregate limit of ten per cent (10%) of the Total Order Value.

12.3 The Buyer may (in its absolute discretion), upon the request of the Supplier, grant an extension of time for performance of the Contract for delays caused by events outside the control of the Supplier.

13. SUSPENSION

13.1 The Buyer shall have the right, by notice in writing to the Supplier, to suspend the Contract or any part thereof to the extent detailed in the notice, to suit the convenience of the Buyer.

13.2 If the Buyer suspends the Contract or any part thereof under clause 13.1, the Supplier shall be reimbursed for all Goods satisfactorily completed and/or Services satisfactorily performed up to the date of suspension and for any other direct costs incurred by the Supplier in complying with the Buyer's instructions to suspend the Contract.

13.3 The Buyer may, by further notice, instruct the Supplier to resume the execution of the Contract to the extent specified and the Supplier shall so resume as soon as reasonably practicable subject to the operational circumstances and commitments of the Supplier prevailing at that time.

13.4 If the period of any suspension exceeds one hundred and twenty (120) days, the Supplier may serve a notice on the Buyer requiring permission within fourteen (14) days from the receipt of such notice to proceed with the execution of the Contract or that part thereof subject to suspension. If within the said fourteen (14) days the Buyer does not grant such permission, the Supplier, by a further notice, may (but is not bound to) elect to treat the suspension as termination for the Buyer's convenience in accordance with clause 10.1 above.

14. DESIGN, DATA, DRAWINGS AND BILLS OF MATERIAL

14.1 The Supplier will submit to the Buyer drawings, design calculations, data sheets, wiring diagrams, spares lists, bills of material, code certificates, manufacturing reports, installation

operation and maintenance manuals and any such other information or data (as applicable) as the Buyer may reasonably request or require.

- 14.2 The Buyer's approval or otherwise of the Supplier's drawings will be signified by the return to the Supplier of one copy suitably endorsed. If the Buyer does not approve or only gives qualified approval to such drawings, the Supplier will submit amended drawings to the Buyer.
- 14.3 Subject to clause 14.4, where the Buyer has approved drawings in accordance with this clause 14, the Supplier must manufacture or supply Goods in accordance with the drawings approved by the Buyer.
- 14.4 The Buyer's approval of the drawings will in no way relieve the Supplier of the responsibility for the correctness of the drawings or for errors in the manufacture or supply in compliance with those drawings. Such approval is given as approval in principle only and is not to be construed as meaning approval of the Supplier's design in detail.

15. CONFIDENTIALITY

- 15.1 The parties must keep confidential all information of a confidential or commercially sensitive nature acquired as a result of or in connection with the Contract.
- 15.2 Clause 15.1 does not apply to:
- (a) information after it becomes generally available to the public other than as a result of the breach of this clause 15 or any other obligations of confidence imposed on the receiving party;
 - (b) the disclosure of information in order to comply with any Applicable Law or legally binding order of any court, government agency or recognised stock exchange, provided that prior to such disclosure the party proposing to disclose the information gives notice to the other party with full particulars of the proposed disclosure.
- 15.3 The Supplier shall not advertise, publish or release unless required by law information or statements to the media or the public concerning the Contract or the operations of the Buyer, without the prior written agreement of the Buyer.

16. WARRANTIES

- 16.1 The Supplier warrants that:
- (a) in the case of Goods:
 - (i) they must match the description in the Purchase Order;
 - (ii) they are new, of merchantable quality and free from defect or fault;
 - (iii) they must be fit for their intended purpose;
 - (iv) workmanship and materials used by the Supplier, and Goods supplied pursuant to the Contract, will be in strict accordance with drawings, specifications, samples and relevant industry standards and codes and will be suitable for the purpose expressed or implied in this Contract;
 - (v) the Buyer will have the full benefit of any manufacturer's warranties; and
 - (vi) the Goods and their use by the Buyer will not infringe any patent, trade mark, copyright, industrial design or other industrial property right and the Supplier agrees to indemnify the Buyer against all costs and liabilities resulting from any infringement or alleged infringement;
 - (b) in the case of Services:
 - (i) they must match the description in the Purchase Order; and
 - (ii) they will be provided to standards of skill and care normally exercised by qualified and experienced professional or tradespersons in the performance of similar services.
- 16.2 The warranties and obligations in this clause 16 shall survive the term or termination of the Contract for a period of 2 years and shall be enforceable at any time in law or equity.
- 16.3 Without limiting any other remedies available to the Buyer, if, in the reasonable opinion of the Buyer, any part of the Goods and/or Services,

are not in accordance with the requirements of the Contract (including, without limitation, the warranties in clause 16.1), the Supplier must, at the Buyer's discretion, promptly re-supply or remedy the Goods and/or Services to the Buyer's reasonable satisfaction and at no additional cost to the Buyer. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself at its discretion have the defective Goods and/or Services re-supplied or remedied at the Supplier's cost.

17. DEFECTS LIABILITY PERIOD

17.1 For supply and install contracts the defects liability period will be twelve (12) months dating from the time of completion of commissioning, unless otherwise agreed in writing.

17.2 For supply only contracts the defects liability period will be:

- (a) in the case of consumables and spare parts, six (6) months from the date of despatch of the Goods from the Supplier's premises; and
- (b) in the case of all other Goods, eighteen (18) months from the date of despatch of the Goods from the Supplier's premises,

in each case unless otherwise agreed in writing.

17.3 As soon as reasonably practicable after being given written notice by the Buyer during the defects liability period, that the Buyer considers (acting reasonably) that there are any defects or omissions in any of the Goods and/or Services, the Supplier will rectify such defects or omissions at its own cost. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself make good the defective Goods and/or Services at the Supplier's cost.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 All Intellectual Property Rights belonging to a party prior to the date of the Purchase Order (**Order Date**) shall remain vested in that party. "**Intellectual Property Rights**" means all rights in and relating to copyright, trademarks, patents, design, moral rights, database rights and any other like rights (whether registered or

unregistered), including rights to registration of such rights, and rights to protect confidential information, know-how and trade secrets and any equivalent or similar forms of protection existing anywhere in the world.

18.2 The Supplier grants, and shall ensure that each of the sub-contractors grant, to the Buyer a royalty-free, non-exclusive, non-transferable, irrevocable and worldwide licence (including a right to sub-licence) to use and reproduce the Supplier's Intellectual Property Rights to the extent necessary to receive and use the Goods and/or Services.

18.3 The Intellectual Property Rights subsisting in the Bespoke Materials shall vest in the Buyer unconditionally and immediately on their creation. The "**Bespoke Materials**" are the concepts, operating manuals and processes, and other items in which Intellectual Property Rights subsist, which are developed by the Supplier or any of the Supplier Personnel in the performance of the Supplier's obligations under the Contract. The Buyer grants to the Supplier a royalty-free, non-exclusive licence (including a right to sub-licence) to use, reproduce, modify, adapt and develop such Intellectual Property Rights solely for the purpose of performing its obligations under the Contract.

18.4 The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party (**Third Party Intellectual Property Rights**) in the provision of the Goods and/or Services, or to the extent the Buyer will use or might propose to use any Third Party Intellectual Property Rights in the use and enjoyment of the Goods and/or Services:

- (a) it has obtained, or will obtain at no further cost to the Buyer, from the relevant third party all necessary licences and consents to use, or assignments of, such Third Party Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in clause 18.4(a).

19. QUANTITY

19.1 If the quantity of Goods delivered is greater than that specified in the Purchaser Order, the Buyer may return to the Supplier, or demand that the Supplier collect from the Buyer any excess quantities at the Supplier's sole risk and expense. Such excess Goods must be collected as soon as possible after receiving the Buyer's demand.

20. LIENS

20.1 The Supplier agrees that no lien will be filed by anyone against the Buyer or its property for Goods or labour or both furnished under the Contract, and that before final payment is made by the Buyer, the Supplier will, if required by the Buyer, furnish a complete release satisfactory to the Buyer, signed by all persons furnishing Goods or labour, waiving the right to file any lien.

21. TAXES

21.1 The Supplier will pay all taxes of every kind applicable to the performance of the Contract and will reimburse the Buyer if the Buyer pays any such taxes.

22. ANTI-BRIBERY & CORRUPTION

22.1 The Buyer is committed to operating in a manner consistent with the laws of the jurisdictions in which it operates, including all laws relating to bribery and corruption.

22.2 The Supplier undertakes to act in accordance with the principles set out in the Buyer's anti-bribery policy (**Policy**), a copy of which is available on the Buyer's website.

22.3 If the Buyer believes, acting reasonably, that the Supplier is acting or has acted in a manner which is inconsistent with the Policy, the Buyer may terminate the Contract (without prejudice to any other rights) immediately by notice in writing to the Supplier.

22.4 If the Supplier believes, acting reasonably, that the Buyer is acting or has acted in a manner which is inconsistent with the Policy, the Supplier must report the breach or suspected breach to the Buyer's General Counsel.

23. INDEPENDENT CONTRACTOR

23.1 The Supplier will be an independent contractor and shall not be considered an employee, partner or agent of the Buyer for any purpose whatsoever.

24. SEVERANCE

24.1 If any term of this Contract is deemed to be unlawful or unenforceable that term will be severed from this Contract and all other terms will remain in force.

25. WAIVER

25.1 Failure by the Buyer to insist on strict performance of any term or condition (including compliance with specifications detailed in the Purchase Order) will not be deemed to be a waiver of any of the Buyer's rights and remedies under the Contract nor of any rights arising out of any breach or default of the Supplier.

26. CONFLICTS OF INTEREST

26.1 The Supplier must not act in a position where the Supplier's interests are in conflict with the Buyer's interests.

27. EXCLUSION OF VIENNA CONVENTION

27.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

28. GOVERNING LAW & JURISDICTION

28.1 The Contract and any non-contractual obligations arising out of or in connection with it are governed by the law applying in Malaysia.

28.2 The parties submit to the non-exclusive jurisdiction of the courts having jurisdiction in Malaysia.