

TERMS & CONDITIONS OF PURCHASE

1. ACCEPTANCE: The Seller shall, within _____ of receipt of this Purchase Order ("Order") communicate in writing its acceptance or rejection hereof. In the absence of a written acceptance by the Seller, the delivery of any material, equipment, or goods (collectively referred to as "Material") and/or service ordered hereunder by Upjohn South Africa (Pty) Ltd (hereinafter referred to as "Buyer") shall constitute a full acceptance by the Seller of this Order. The Seller shall not be entitled to accept this Order in part, in other words, it shall not be entitled to undertake to supply only some of the Material, unless the Buyer has agreed in writing thereto, and to the prices and other terms and conditions (to the extent that they differ from or are not recorded in the Order) on which such Material is to be supplied. Upon acceptance of the Order in terms of this clause, a valid and enforceable contract shall come into existence between the Buyer and Seller, incorporating the terms of this Order.
2. PRICE: Subject to the provisions of clause 8, prices quoted by the Seller and accepted by Buyer, as recorded in this Order, are final and will remain firm and will be deemed to include value-added tax at the prevailing rate prescribed by law. No modifications therefrom will be accepted without a specific agreement in writing signed by both the Seller and the Buyer to this effect.
3. DELIVERY: Time is of the essence and in the event that the Materials or services are not received within the stipulated delivery date as detailed in the Order, the Buyer reserves the right to cancel the Order, without limitation to any of its rights afforded to it in terms of all applicable law, whether wholly or partially, and procure the Materials or services from any alternative sources on Seller's account and risk, and to recover from the Seller any losses or damages of any nature
4. MATERIAL: Buyer reserves the right of rejecting the whole or part of the supply of Material if not found suitable for use due to discrepancies in quality, specifications, weight, dimensions etc., or due to delay or irregular delivery. The rejected Material shall have to be lifted by the Seller from the place at which such Material is delivered, or such other location as nominated by the Buyer within 15 (fifteen) days from the date of the rejection at the Seller's risk and expenses and the Buyer shall not be responsible for any loss / or damages to the same.
5. CONFORMITY OF TECHNICAL SPECIFICATION: The Material as per the Order is to be supplied strictly as per the specifications indicated in the Order. The Material with any deviations, whatsoever, from the said specifications are liable to be rejected wholly or partly. However, Buyer shall have the right at any time, by written notice, be entitled to unilaterally make changes in the designs, specifications, and quantity as applicable to the Material covered by the Order.
6. INSPECTION: Buyer, or its nominee, shall have the right to inspect Material at any time before dispatch and require such tests as may be required by the Buyer to be carried out to their satisfaction and for this purpose, the Seller shall allow the Buyer's representatives reasonable access, facilities and address to the Seller's premises and notify Buyer when the material is ready for inspection. In addition, all Material supplied by Seller shall be subject to inspection by Buyer at the point of delivery. Material not approved by the Buyer on inspection, either with regard to the quality, specification or quantity, may be rejected. In the event that the Buyer rejects any Material, whether in whole or in part, then in such circumstances the Seller shall collect the Material so rejected at its own cost, within 15 (fifteen) days of notification of rejection by Buyer. Without prejudice to the Buyer's rights to recover from the Seller any amounts advanced and/or expenses incurred by the Buyer upon failure of the Seller to take delivery of the rejected Material returned as above, the Buyer shall be entitled to sell or dispose of the Material at any time on the account and risk of the Seller either by public auction or by private sale without any further notice to the Seller.
7. PACKING: The Material supplied must be sufficiently and properly packed so as to ensure absence of loss or damage on arrival at the point delivery specified in the Order. Unless otherwise specifically stated, all packing cases, containers and other packing material shall be supplied free of cost. Any loss arising due to improper packing will be on Seller's account and Buyer will not be liable for any damage or loss in transit which so ever.
8. PAYMENT: If not otherwise stated or the Order, and where, in terms of the Order, the purchase price of any Material is calculated according to the weight or quantity of the Material, the payment will be made as per the actual weight or quantity received by Buyer. The Buyer's records shall be considered final and conclusive on these points. Buyer shall make the payment in accordance with payment terms set out in this Order, subject to (in the case of the supply of Material) receipt of Material in good condition, and receipt of a tax invoice conforming to the provisions of the Value-Added Tax Act, 1991.
9. CONFIDENTIALITY: This Order, and all drawings, documents, specifications, know how etc., given in pursuance of the Order ("Confidential Information") are strictly confidential and shall be treated as such by the Seller and the Seller shall procure that its employees, agents, sub-contractors and servants shall not disclose the Confidential Information, whether directly or indirectly, to any third party. The Seller shall not dispose off any part of the Order or publish or cause to be published, any details of this Order without the Buyer's previous consent in writing. The Seller hereby indemnifies the Buyer in respect of any breach of this clause 9.
10. PATENTS: Seller guarantees that (1) the Material or services supplied in terms hereof and (2) their sale or use, alone or in combination, will not infringe any South African or foreign patents or intellectual property and agrees to indemnify the Buyer against all judgments, decrees, costs and expenses, including attorney and client costs, resulting from any such alleged infringements, and covenants that Seller will, upon request of the Buyer and at the Seller's own expense defend, or assist in the defense of action which may be brought against the Buyer or those selling or using any of the Buyer's products by reason of any such alleged infringements.
11. LEGAL CONSTRUCTION: This Order shall in all respects be construed and interpreted in conformity with the laws of the Republic of South Africa.

12. **GUARANTEE / WARRANTY:** The Seller warrants and represents that the Material (a) when delivered hereunder shall be free from all defects; (b) will conform strictly to the specifications, drawings or samples specified or furnished from time to time; and that the Material will be fit for the uses and intended purpose/s. The Seller warrants further that all services rendered by it in terms of this Order shall be performed in a manner and quality that persons are generally entitled to expect in services of that nature. Any breach of this clause 12 shall give the Buyer without prejudice to all other rights and remedies otherwise afforded to it, the right to reject the Material and treat the Order as terminated. All warranties shall survive any intermediate or final inspections, delivery, acceptance, or payment by purchase and shall continue in effect through a period of one year commencing from the date of delivery of Material to the Buyer.
13. **TRANSIT RISK:** Transit risk for Materials or any damage, wharfage or similar charges which the Buyer may have to incur due to the late receipt of the dispatch documents, Material or due to any mistake, whether negligent or otherwise, of the Seller and/or its agents will be borne solely by the Seller.
14. **SELLER'S RISK:** The Material shall be delivered by the Seller to the Buyer at the Buyer's place of business or at such other place as may be specified in the Order or by prior written notice by the Buyer, provided nevertheless that from the time of the dispatch thereof from the Seller and until such delivery the risk of any loss or damage to or deterioration of the Material from whatsoever cause arising shall be borne solely by the Seller.
15. **NON-LIABILITY OF BUYER:**
- (A) The Buyer assumes no obligation in relation to the Material delivered in excess of those quantities or specifications as detailed in the Order.
 - (B) The Buyer will not be liable in respect of any Order not given or confirmed on its official printed forms.
16. **LIABILITY FOR INJURY:** If the Seller is required by the terms of the Order to perform any work on the Buyer's premises, the Seller agrees that the Seller shall be responsible for any damages or injuries to persons and/or property, that the Seller shall indemnify the Buyer from and against any liability for such damages or injuries as may be caused by that the Seller shall indemnify the Buyer from and against any liability for such damages or injuries as may be caused by the Seller, the Seller's personnel and/or the Seller's agents. The Seller shall procure that its personnel shall at all relevant times comply with the health and safety procedures as prescribed by the Buyer from time to time. Before commencing any work detailed in the Order, the Seller shall furnish to the Buyer a certificate of insurance from a reputable third-party insurance provider, to the reasonable satisfaction of the Buyer, that the Seller carries adequate Public Liability and Property Damage Insurance and Workman's Compensation Insurance (or evidence of authority to self-insure to the reasonable satisfaction of the Buyer).
17. **SUBCONTRACTING:** The Seller shall not, without obtaining the prior written consent of the Buyer, be entitled to subcontract the performance of its obligations in terms of the Order to any third party, or any part thereof. Notwithstanding the Buyer's consent to subcontracting the performance of any obligations of the Seller, or part thereof, to a third party, the Seller shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of the Order, or any part thereof. The Seller shall be solely responsible for ensuring compliance by any of its subcontractors with any obligations related to this Order.
18. **COMPLIANCE WITH ANTI-BRIBERY AND U.S. TRADE CONTROL LAWS:**
- (A) **US TRADE CONTROL LAWS**
- 1) The Seller understands that BUYER is required to and abide by the UK Bribery Act (UKBA), U.S. Foreign Corrupt Practices Act (FCPA), and the export control and economic sanctions laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations (Title 15 of the U.S. Code of Federal Regulations Part 730 et seq.), and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control (Title 31 of the U.S. Code of Federal Regulations Part 500 et seq.) (collectively, "Trade Control Laws"), including those restricting trade with Crimea, Cuba, Iran, North Korea, and Syria, and with specified prohibited and restricted parties.
 - 2) The Seller represents and warrants that it will not sell, export, reexport or otherwise transfer any BUYER Products to any person in a U.S. embargoed destination, currently including Crimea, Cuba, Iran, North Korea, and Syria, unless authorized under U.S. law.
 - 3) The Seller warrants further that it is not identified on any U.S. or other Government list of prohibited or restricted parties, including without limitation:
 - 3.1 the Specially Designated Nationals List, Foreign Sanctions Evaders List, or other restricted parties lists maintained by the U.S. Treasury Department's Office of Foreign Assets Control;
 - 3.2 the Entity List, Unverified List, Denied Parties List, or other lists maintained by the U.S. Commerce Department's Bureau of Industry and Security; or
 - 3.3 restricted lists maintained by the European Union, or other cognizant U.S. or non-U.S. governmental authorities.
 - 4) The Seller further warrants that it is not owned or controlled, directly or indirectly, by any person identified on such lists, and the Seller will not sell, export, reexport or otherwise transfer any BUYER Products to any person identified on any such lists, or their 50% or more owned subsidiaries, unless authorized under U.S. or other applicable law.
- (B) **ANTI-CORRUPTION LAWS**
- 1) Seller understands that Buyer is required to and does abide by the United States Foreign Corrupt Practices Act ("FCPA"), the United Kingdom Bribery Act ("UKBA"), the OECD Convention on Combating Bribery of Foreign Public Officials in

International Business Transactions, and all other applicable national and local anti-corruption laws (collectively, the "Anti-Corruption Laws"). Each Party represents and warrants that no one acting on its behalf will offer, promise, make, accept, solicit, authorize or provide, directly or indirectly, any payments, gifts, or anything of value to any person for the purpose of corruptly or improperly influencing or rewarding any action, inaction, or decision by such person, or for the purpose of obtaining or retaining business or securing an improper business advantage. This representation and warranty extends to bribery of government officials or government employees (including employees of government-owned and government-controlled corporations or agencies) and bribery of individuals or organizations operating in the private sector. Moreover, this representation and warranty extends to payments, even in nominal amounts, made to government officials to expedite or secure routine, non-discretionary actions (e.g. processing visas, licenses, or permits).

- 2) Each Party represents and warrants that no one acting on its behalf will offer, promise, make, accept, solicit, authorize or provide, directly or indirectly, any payments, gifts, or anything of value to any political party, official of a political party, or candidate (or to an intermediary of any such person) for the purpose of corruptly or improperly influencing or rewarding any action, inaction, or decision by such person.
 - 2.1 Seller understands that Buyer may immediately suspend payment, in its sole discretion and without notice, if the actions or inactions of Seller become subject to an investigation of potential violations of the Anti-Corruption Laws. Moreover, Seller understands that if Buyer determines that Seller failed to comply with the provisions of any Applicable Law, including the Anti-Corruption Laws, Buyer may immediately terminate this Agreement, and any payments due thereunder, in its sole discretion and without notice.
 - 2.2 Each Party warrants that all Persons acting on its behalf will comply with all Applicable Laws in connection with all work under this Agreement, including the Anti-Corruption Laws if any, prevailing in the country(ies) in which such Party has its principal places of business.
 - 2.3 Each Party further warrants and represents that should it learn or have reason to suspect any breach of the covenants in this section 2, it will immediately notify the other Party.
 - 2.4 Buyer shall be allowed to reasonable access to the Seller's books and records and shall have the right to audit the Seller on a periodic basis with respect to this section 2.

(C) Notwithstanding anything to the contrary herein, or in the Order, failure to comply with all applicable laws, including any anti-corruption laws applicable in any jurisdiction where the Order may be performed, shall result in the Buyer being entitled to summarily terminate the Order by providing written notice to this effect.

(D) The Seller further warrants and represents that (a) it shall, and procure that the its personnel shall, comply with all applicable laws when performing the Order, or any other services it may perform on behalf of third parties; and (b) should it learn or have reason to suspect any breach of the covenants of this clause, regardless of how remotely, it will promptly take appropriate remedial steps and notify the Seller, in writing, of the occurrence of same.

19. DOMICILIA AND NOTICES

(A) The Parties choose as their *domicilia citandi et executandi* for all purposes under this Order, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses set out in respect of each of them herein.

(B) Any notice or communication required or permitted to be given in terms of this Order shall be valid and effective only if in writing, but it shall be competent to give notice by email.

(C) Each Party may by notice to the other parties change the address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address or email address, provided that the change shall become effective vis-à-vis that addressee on the 10 (tenth) day from the receipt of the notice by the addressee.

(D) Any notice to a Party:

i. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

ii. sent by email to its chosen email address shall be deemed to have been received on the date of dispatch (provided a confirmatory receipt is obtained).

(E) Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

20. REMEDIES: The remedies reserved in this Order shall be cumulative and additional to any other or further remedies provided in law. No waiver of a breach of any provision of these Terms & Conditions and/or the Order shall constitute a waiver of any breach or of such provision.

21. MODIFICATION OF ORDER AND NON-ASSIGNMENT: Subject to clause 20 above hereof the Order contains the complete and final agreement between the Buyer and Seller and no agreement or the course of dealings between the Buyer and Seller or any usage or other understanding in any way purporting to modify the terms and conditions hereof shall be binding upon the Buyer unless made in writing and signed by the Buyer or the Buyer's authorized representative. The Seller shall not cede any of its rights or delegate any of its obligations in terms of this Order or any money due or to become due hereunder without the prior written consent of the Buyer or the Buyer's authorized representative PROVIDED THAT the Buyer at its discretion shall be entitled to cede, assign and delegate its rights and obligations arising out of the Order to any of its associated companies by providing written notice to this effect to the Seller.
22. DISPUTES: The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa in respect of any dispute arising from or in connection with the Order and/or these Terms & Conditions.