

General terms and conditions

1. General

1.1 These General Terms and Conditions (hereinafter "**GTC**") form an integral part of all contracts on the delivery of goods or the provision of services between the supplier of goods or the service provider, respectively (hereinafter "**Contractor**") and Merz Pharma GmbH & Co. KGaA or its affiliated companies located in Germany, respectively (hereinafter "**Principal**"). They shall apply if and to the extent that no other terms have been agreed upon and stipulated in an individual written agreement between Contractor and Principal. As far as in the following GTC the term „**Order**“ is used, this shall include all orders, call-offs of goods as well as assignments of services.

Any terms of business of the Contractor are only valid if and to the extent a written approval of the Principal is received by the Contractor expressly confirming the Principal's acceptance of the Contractor's terms of business. In particular, any references of the Principal to correspondence from the Contractor containing or referring to the Contractor's terms of business shall not constitute the Principal's acceptance of the applicability of such terms of business, notwithstanding if rejected by the Principal.

1.2 These GTC shall remain valid and shall prevail over any terms of business of the Contractor even if the Principal should accept any goods / services in the knowledge that the Contractor has purported to deliver them on terms of business of the Contractor that deviate from or are in conflict with these GTC.

1.3 Principal is entitled to adjust its GTC after their appliance, if such adjustments are necessary due to changes in the applicable laws and regulations or due to comparable reasonable changes in general. These adjustments are possible as long as the Contractor is not impaired by such adjustment. Adjustments shall be communicated by Principal with four (4) weeks prior written notice and shall only come into force if Contractor has not declined such adjustment within four (4) weeks from receipt in written form.

1.4 To the extent of any inconsistency between these GTC and any other written contract between the parties, the terms and conditions of such other contract shall prevail. For the purpose of this section, only written agreements, signed by both parties shall mean "other contract".

1.5 Bids and price quotes shall not be remunerated and shall not create any obligations on the part of the Principal. Bids, quotes and comparable offers by Contractor shall require a written acceptance of Principal to be binding upon the parties.

1.6 If Principal orders products or services from Contractor through any website or other e-commerce process, Contractor warrants that it has secured all sites and access points according to the current standards.

2. Obligations to provide assistance and materials and independence

2.1 Contractor shall specify expressly and finally in its offer any necessity of the Principal to provide assistance and materials. Apart from the obligations to provide assistance and materials, explicitly stipulated in individual Orders, the Contractor can only request further provision of assistance or materials from the Principal insofar as (i) these are necessary for the proper provision of the contractual service, (ii) these are necessarily provided by the Principal and (iii) any additional costs and expenses – including the compensation for own assistance or materials – arising on the side of the Principal are borne by the Contractor. The Principal can satisfy the obligations to provide assistance and materials, for which it is responsible, itself or by third parties.

The Contractor shall inform the Principal in due time about the type, scope, time and other details of the assistance and the materials, which are to be provided by the Principal, unless the respective details are explicitly named in the particular Order.

In any case the Contractor can only refer to a non-fulfillment of an obligation to provide assistance or materials by the Principal if it has set the Principal a reasonable final deadline in writing and informed it about the legal and actual consequences of the non-fulfillment.

2.2 The Contractor will act solely as an independent service provider and nothing contained in the GTC will at any time be construed to create the relationship of employer and employee, of principal and agent, of partners or of members of a joint venture between Principal and the Contractor or Principal and the Contractor's representatives, employees, personnel, partners or agents.

3. Delivery date, partial delivery of goods or services

3.1 The Contractor must comply with the agreed dates of delivery or dates of provision of services, respectively. In case of the delivery of goods such compliance requires the delivery free of any defects in accordance with the agreed specifications and the current safety requirements to the Principal within the Principal's regular business hours accompanied by the required shipping documents to the address specified in the relevant Order (hereinafter "**Place of Destination**"). Contractor will inform Principal furthermore prior and in writing about any necessary instructions and conditions for safe handling, health and accident prevention etc. and conforming technical standards. If the Principal and the Contractor have agreed to a delivery including assembly / service / training, the delivery of the goods shall not be considered to have taken place until the assembly / service / training has been duly carried out as specified. If a formal acceptance procedure is applicable either by law or by Order, the time specified for such acceptance proceedings shall be adhered to by both parties. Advance deliveries of goods / provision of services or partial deliveries / partial provision of services require the Principal's prior written approval, if not set forth differently by the Order.

3.2 If agreed between the parties Contractor will provide any offered measures for maintenance with as few nuisances for Principal as possible. The parties shall agree prior and in writing about any necessary timeslots and costs for maintenance.

3.3 If the Contractor recognizes that it will not be able to fulfill its contractual obligations either in full or in part, or not within the agreed timeframe, it must notify this to the Principal in writing forthwith. The notice must state both the reason(s) for the delay and the predicted delay in delivery time. Any acceptance by the Principal of a delayed or partial delivery of goods / provision of services shall by no means constitute a waiver of any rights of the Principal related to late or partial delivery of goods / provision of services.

3.4 If any documents, materials or assistance need to be prepared by the Principal to enable the Contractor to carry out the Order, it is the responsibility of the Contractor to request these documents, materials or assistance in due time.

4. Performance of services and quality of goods

4.1 Contractor shall provide the goods/ services in accordance with the agreed terms. Should the goods / services not be consistent with current industrial, technical and scientific standards or should different applicable industrial, technical and scientific standards include contradictory provisions this must be communicated to the Principal in order to obtain permission for disregarding certain provisions or to have the Principal decide which provision should be observed.

4.2 Contractor warrants that employees, subcontractors and agents deployed by the Contractor meet the requirements and qualifications necessary to perform the services or produce / deliver the goods.

4.3 Contractor shall furthermore obtain and maintain all necessary statutory, regulatory or other licenses and permits, certifications and consents necessary to deliver the goods and services under these GTC.

4.4 Contractor shall carry out and maintain effective quality assurance system and, if requested, demonstrate this to the Principal. This includes especially that the terms and conditions applicable to the contractual relationship between the parties also apply to the supply chain of the Contractor. The Principal shall have the right to inspect this quality assurance system free of any costs, either itself or through third parties commissioned by the Principal.

4.5 Any changes to the goods to be delivered or services to be provided require the prior written consent of the Principal.

5. Testing and inspection in the course fulfillment

5.1 The Principal shall be entitled to carry out any inspections in regular intervals during the performance by the Contractor. For this express purpose the Principal is authorized to enter the Contractor's premises and visit the installations and facilities relevant for the performance during the Contractor's usual business hours after giving prior notice. The Contractor and the Principal shall each bear their own costs incurred in conducting any such inspections.

5.2 Such inspections and their outcome shall not constitute a waiver of any contractual or legal rights of the Principal.

6. Use of subcontractors

Third parties (in particular any subcontractors) may only be employed or replaced by the Contractor with the Principal's prior written consent. If the Contractor intends to use subcontractors to perform its duties from the outset, the Contractor must inform the Principal of this when submitting its offer.

7. Shipping, packaging and passing of risk

7.1 Unless agreed otherwise the delivery of goods shall be made DAP (Incoterms 2010®) to the Place of Destination. Unless agreed otherwise the delivery shall be accompanied by two copies of the delivery note, the packing list, cleaning and inspection certificates according to the agreed specifications and all other necessary documents.

7.2 The Contractor shall uphold the Principal's interests during the delivery. Goods must be packed as so to avoid damage during transport. The Contractor is liable for any damage incurred due to improper packaging. The Contractor shall package, label and ship hazardous products according to the applicable national and international laws and regulations.

7.3 Up until the actual delivery of the goods specified together with the documents mentioned in clauses 7.1 and 7.2 at the Place of Destination, the Contractor shall bear the risk of loss or damage. If the parties have agreed a delivery inclusive of installation / assembly / service, the risk of loss or damage shall pass to the Principal after the installation / assembly / service has been duly completed as agreed and following the handover of the goods.

7.4 If a formal acceptance is stipulated by law or by the Order, the deadline for acceptance shall be specified by both parties upon written request by the Contractor. The result of the acceptance inspection shall be documented in an acceptance certificate. Risk of loss shall not pass from the Contractor to the Principal before a successful acceptance has been confirmed by the Principal in the acceptance certificate. Acceptance may not take place in any other manner, especially not through inspections, expert reports, certificates or records of work. Payment of invoice balances is not an indication of acceptance.

8. Condition of the delivery or service, complaints and rights in the event of defects

8.1 The Contractor is responsible for delivering goods and services free of defects, in particular for the compliance with the agreed specification of goods and services, and, additionally, for ensuring that all guaranteed properties and features are present. In addition, the Contractor guarantees that goods and services meet the current technical standards, are delivered by qualified personnel, without any work of children or forced work, and are in line with all applicable legal regulations, such as environmental protection laws, and especially all laws and regulations of Germany and the EU. If machines, equipment or plants constitute delivery items, they shall meet the special safety requirements applicable to machinery, equipment and plants at the time and venue of fulfillment.

8.2 The Principal shall notify in writing any obvious defects to the Contractor within fifteen (15) working days following receipt of the goods at the Place of Destination. An obvious defect shall be defined as any defect visible at first sight upon delivery. Any defects that only become apparent at a later point in time must be notified in writing by the Principal within ten (10) working days following their identification. The date of sending such notice to the Contractor shall determine whether or not such notice has been validly issued and the Contractor hereby waives its right to object to any delayed notice of defect.

8.3 In the event of any defects, the Principal has the right to demand rectification of such defects according to applicable law. The mode of rectification shall be at the Principal's discretion. For the purposes of the rectification, the goods and / or services shall be made available to the Contractor either at the Place of Destination or at the location where the goods were located when defects were identified, according to the Principal's preference. The Contractor shall bear the cost of rectification and must execute rectification in all respects in accordance with the Principal's instructions and requirements. If Principal decides to destroy or dispose defective goods or parts thereof, Contractor is obliged to reimburse Principal the incurred costs therefor.

8.4 If (i) rectification has not been effected within a reasonable period, (ii) an attempt of rectification has failed, (iii) the Contractor seriously and irrevocably refuses to provide rectification, (iv) rectification may not be further postponed due to other reasons, or (v) it is not necessary by applicable law to request rectification, the Principal shall be entitled to claim all legal rights which are set forth for the event of (uncured / not rectified) non-performance or insufficient performance of the Contractor. This especially includes the right to remedy the defects itself at the cost and liability of the Contractor, or allow this work to be undertaken by third parties. The Principal is in this case entitled to demand compensation from the Contractor for the required measures. Any additional rights of the Principal concerning the Contractor's liability for defects or under any guarantees shall remain unaffected.

8.5 Claims under warranty shall become time-barred twenty-four (24) months after the passing of risk unless a longer expiration period is prescribed by law.

8.6 The Principal shall not be deemed to have waived any of its rights to make claims under warranty in the absence of an express written waiver.

9. Travel costs and travel time

9.1 Travel to anywhere other than the individual location (project or venue) mentioned in the Order requires the prior written consent of the Principal if the Contractor wants the corresponding costs compensated. The Contractor shall select the most economical solution of travel considering time and cost and provide evidence of this upon request by the Principal. Travel expenses shall be shown separately in all bills. Upon request by the Principal, the Contractor shall submit relevant documents as proof.

9.2 Reimbursable travel expenses are set forth according to the Travel Guideline of the Principal as attached to the Order, if not set forth differently in the Order.

9.3 The above travel expenses provided in clause 9.2 shall not apply if Principal and Contractor have made different arrangements in writing (e.g. travel expenses included in the hourly rate).

9.4 Travel times to a specific place of activity is not remunerated separately as working time.

10. Infringing property rights

It is the Contractor's responsibility to ensure that the delivery of goods and / or provision of services and the use thereof by the Principal will not infringe any patent laws, copyright or any other proprietary rights of third parties. Notwithstanding any legal claims, the Contractor shall indemnify the Principal from any third party claims for which the Principal may be held liable as a result of the infringement of any of the aforementioned property rights.

11. Insurance

The Contractor shall maintain sufficient liability insurance at its own expense for all possible damages it or its subcontractors or agents are responsible and thus liable. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Principal upon request in writing.

12. Invoicing and payment

12.1 The agreed prices are net of any applicable value-added tax and any other statutory taxes and duties. Invoices are to be issued for deliveries made and services provided. These invoices shall comply with the relevant statutory invoicing requirements according to the national value-added tax legislations to which the deliveries / services being invoiced are subject.

12.2 Contractor shall send all invoices as E-Invoices (as defined below) to the following email address: invoice@merz.de. Contractor shall send each E-Invoice as email attachment in editable pdf format (hereinafter referred to as "**E-Invoice**") only. Contractor shall create only one separate pdf formatted email attachment per invoice.

The E-Invoice is assumed to have been received by Principal, if Contractor has received an email via invoice@merz.de with an acknowledgement of such receipt. If Contractor receives a delivery error message, it shall inform Principal promptly hereof and the parties shall agree on how such E-Invoice shall be submitted.

12.3 For deliveries each invoice and all shipping document must indicate the contact person of Contractor and Principal, the purchase order number of Principal, type and quantity of the delivery. Furthermore Contractor shall attach a supplier's declaration and a certificate of origin (EU-Suppliers) or a movement certificate EUR.1 and a certificate of origin (RoW-Suppliers), if applicable. Certificates of work completed and any other records are to be submitted with the invoice for services.

12.4 The application of a daily rate always assumes the Contractor's employee will work a minimum of eight (8) hours. Any overtime is included in the daily rate.

12.5 Unless agreed otherwise the payment shall be made sixty (60) calendar days upon receipt of an invoice, which meets the stated requirements.

12.6 All payments to Contractor will be made via bank transfer to a prior assigned and agreed bank account that is held in the name of Contractor in the country of legal registration of Contractor. Cash payments will not be made under any circumstances. Payments made to bank accounts in countries other than the country of registration of Contractor or to payment intermediaries will not be made if the specifics of the bank account or the payment intermediary are not agreed and verified by Principal prior to the payment.

12.7 Payment by the Principal shall not be an indication of acceptance of conditions or prices, and shall not constitute a waiver (i) of the Principal with regard to deliveries made / services provided that differ from those agreed upon, (ii) of the Principal's rights to inspection, and (iii) of the Principal's right to find fault with an invoice due to other reasons.

13. Assignment of contract, transfer, change of company name, offsetting and retention

13.1 The Contractor may assign the rights and obligations agreed upon with the Principal to third parties only with the prior written consent of the Principal. In case of services to be provided by a certain individual employee of the Contractor the Contractor requires the prior written approval of the Principal before assigning it to another employee.

13.2 The Contractor is required to notify the Principal forthwith in writing of any assignment of its duties by virtue of law and of any change of its trade name.

13.3 The Principal may assign its rights and obligations hereunder to any affiliated company at any time without the Contractor's prior agreement.

13.4 The Contractor is only permitted to offset claims that are undisputed or substantiated by court judgment. The Contractor is only entitled to a right of retention if the claim, due to which the right of retention shall be deemed valid, has its origins in the same contractual relationship.

14. Termination and rescission

14.1 Any agreement between the Principal and the Contractor may be terminated without notice for good cause. Grounds for good cause shall, in particular but without limitation, include: (i) a serious breach of duty by the Contractor which is not remedied within a reasonable period of time set forth by the Principal after the written complaint is received; (ii) a considerable deterioration of a party's financial situation which threatens to impact such party's ability to perform its obligations and / or to discharge of its tax and / or social liabilities; or (iii) the purchase or use of the goods or the services is or will be either entirely or partly impermissible due to legal or official regulations.

14.2 If the Contractor has acquired from the Principal any documents, records, plans or drawings within the scope of or for the purposes of fulfilling its duties the Contractor must forthwith hand them over to the Principal in the event of termination by the Principal. These requirements apply likewise in the event of rescission.

14.3 In the event of termination of the Order by the Principal, the Contractor must, at its own expense and regardless of the grounds for termination, forthwith dismantle and remove its plant, tools and equipment. Any waste or debris produced by the Contractor's work must be promptly removed and disposed of appropriately by the Contractor at its own expense.

15. Documents, confidentiality, rights of use and data protection

15.1 The Contractor must submit to the Principal the agreed quantity of any plans, calculations or other documents in order not to exceed the contractual deadline for execution.

15.2 The review of any documents by the Principal shall not relieve the Contractor of any of its responsibilities under the Order.

15.3 Any models, samples, drawings, data, materials and other documents provided to the Contractor by the Principal (hereinafter "**Principal Documentation**") shall remain the sole property of the Principal and must be returned to the Principal forthwith upon its request at any point in time. The Contractor shall have no rights to retain any Principal Documentation and is not entitled to make any reproductions or digital copies of these.

15.4 The Contractor is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the contract, in particular the information given in Principal documentation (hereinafter "**Confidential Information**"). The Contractor may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way, or use it for any purpose other than fulfilling the Order. Notwithstanding the aforementioned, this obligation shall be subject to any disclosure requirements of a legal, judicial or official nature. The aforementioned confidentiality obligation shall continue to apply for a period of ten (10) years after any agreement between the Principal and the Contractor has ended. This confidentiality requirement shall not include any information that (i) the Contractor lawfully possessed prior to the Principal's disclosure of such information, (ii) is lawfully known to the public, or (iii) has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the Contractor shall not release such a person from its obligation to confidentiality. The burden of proof for such an exception lies with the Contractor. The Contractor shall ensure that its employees and vicarious agents subject to this confidentiality agreement are obliged to confidentiality according to the rules set forth in these GTC by means of appropriate contractual agreements, too.

The Contractor shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorized access. This includes in particular the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause. The Contractor is required to promptly notify the Principal in writing in the event that Confidential Information is lost and / or accessed by unauthorized parties.

15.5 The Contractor shall grant to Principal the royalty-free, perpetual, freely transferable, irrevocable and sub-licensable right unrestricted in terms of territory, quantity and time, to use all Work Results, including all studies, training materials, concepts, operations and system descriptions, data files, software, graphics, calculations and other documents related hereto in all known media formats including electronic media, internet and online media saved to all imaging, audio and data storage devices created under the Order (hereinafter "**Work Results**"). The Contractor shall grant the Principal the right of use for Work Results of the aforementioned scope including for all types of use whatsoever whether or not known at the time of the agreement between the parties.

15.6 For work results, which have been prepared either by the Contractor itself or by third parties for the exclusive use of the Principal (hereinafter "**Individual Work Results**"), Contractor shall grant to Principal the rights set forth in Section 15.5 on an exclusive basis.

15.7 For the methods, tools and other programs that the Contractor customarily uses (hereinafter "**Standard Material**") and which are integrated into the Work Results or Individual Work Results, the Contractor shall grant to the Principal a non-exclusive right of use to the extent described in Section 15.5.

15.8 The Contractor is obliged to adhere to the current applicable laws and regulations regarding data protection, specifically to the European General Data Protection Regulation (hereinafter "**GDPR**") upon May 25, 2018, insofar Articles 2 and 3 GDPR are applicable to the Order. Transfers of personal data from Principal to Contractor have to be ruled according to Article 26 GDPR for joined controllership or according to Article 28 GDPR in case of commissioned processing of personal data.

16. Compliance

16.1 Contractor agrees it shall, at all times:

- conduct its business consistent with fair and vigorous competition and in compliance with all applicable competition laws and will not take unfair advantage of anyone by misrepresenting material facts, manipulation, concealment, abuse of privileged information, fraud, or other unfair business practice;
- will not offer, give or receive bribes, facilitating payments (undocumented or unofficial payment to ensure or speed up the proper performance of a government official's routine duties) or other improper payments, either directly or indirectly, in cash or in kind;
- comply with international trade control laws to ensure that certain countries, entities or persons, in particular those associated with terrorist activities, do not receive specific goods, services or any financial contributions;
- will not use any form of forced, compulsory, or child labor, and maintain a work environment in which all feel welcome and free of harassment, discrimination, or other improper conduct; and
- conduct its business in compliance with all applicable laws and in accordance with the Principal's third party code of conduct.

16.2 Contractor will indemnify and hold Principal harmless from all claims and damages arising from or in connection with any infringements of such illegal actions.

17. Miscellaneous

17.1 The Contractor may only refer to or publicly disclose otherwise its business relationship with the Principal with the prior written consent of the Principal.

17.2 The invalidity or unenforceability of any provision or part of a provision hereof shall not affect the validity of the entire Order.

17.3 In case of invalidity of a provision or a gap, the parties under-take to reach agreement concerning a provision which comes as close as possible to the original intent or purpose of the invalid provision, but takes into account those aspects that made it invalid in the first place.

17.4 Notices between the parties shall be hand delivered or sent by pre-paid registered post the addresses stated in the delivery documents. No notice shall be taken to have been delivered until actually received by the receiving party.

17.5 These GTC shall be construed and be subject to the substantive laws of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (hereafter "**CISG**") and the German law rules on the conflict-of-laws.

17.6 As far as legally permissible the place of jurisdiction shall be the competent courts in Frankfurt am Main, Germany.