

# ELI LILLY AUSTRALIA PTY LTD

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. Application

These Terms and Conditions apply to any purchase order issued by Eli Lilly Australia Pty Ltd ABN 39 000 233 992 (which includes the business unit known as Elanco Animal Health) ("**Lilly**") to you for the provision of goods and/or services ("**Purchase Order**").

The current version of these Terms and Conditions which will apply to this Purchase Order is published on the Internet at <https://www.lilly.com.au/T&C> and may be amended from time to time at Lilly's sole discretion.

### 2. Acceptance

By accepting in writing, shipping goods specified in the Purchase Order ("**Goods**"), commencing services specified in the Purchase Order ("**Services**") or undertaking any other similar activity in response to the Purchase Order (and within any timeframe specified for acceptance), you agree to accept and be bound by the Purchase Order and these Terms and Conditions.

### 3. Scope of Goods and Services

Unless otherwise stated in the Purchase Order, details of the scope of Goods and Services to be provided to Lilly are set out in the relevant quote provided to Lilly by you ("**Quote**").

### 4. Other Terms and Conditions

These Terms and Conditions and any document incorporated by reference, including the Purchase Order, constitute the entire agreement of the parties about their subject matter. These Terms and Conditions override any other terms or conditions contained in any Quote, invoice, estimate, scope of work or other document issued by you or Lilly. If additional or different terms and conditions are specified in the Purchase Order which are inconsistent with these Terms and Conditions, the Purchase Order will take precedence over these Terms and Conditions to the extent of any inconsistency.

### 5. Delivery

You must deliver any Goods and perform any Services within the time stated in the Purchase Order. If you do not deliver all the Goods and perform all the Services specified in the Purchase Order within the time stated in the Purchase Order, or as otherwise agreed by the parties, Lilly may cancel all or any portion of the Purchase Order without liability.

Risk and title in the Goods will pass to Lilly on delivery of the Goods at the delivery address specified in the Purchase Order.

### 6. Price

Any Goods or Services shall be supplied to Lilly for the price specified in the Purchase Order. You are not entitled to an additional payment for packing or shipping of Goods unless specified in the Purchase Order.

You must provide Lilly with an invoice in respect of any Goods or Services supplied under the Purchase Order within [7] days of supplying such Goods or Services ("**Invoice**"). You will provide all supporting documentation to substantiate the amount charged, on request by Lilly or otherwise required by these Terms and Conditions. Lilly will pay you the lesser of the price specified in the Purchase Order and the Invoice within [30] days of receiving the Invoice.

### 7. GST and Taxes

Fees, costs and other expenses payable under the Purchase Order are exclusive of GST (as defined in A *New Tax System (Goods and Services Tax) Act 1999* (Cth) ("**GST Act**")) but are inclusive of any other applicable taxes, duties, imposts and other similar charges payable in respect of the Goods or the Services. If GST is payable, such amount must be specified in an Invoice (which is a tax invoice under the GST Act) and Lilly will pay you an additional amount equivalent to the GST at the time that payment to you is due.

### 8. General obligations

You warrant that:

- (i) all Goods and all materials used in performance of the Services will be new, free from faults in design and fit for the purpose for which they are supplied;
- (ii) the Goods will not be subject to any encumbrances, including any charge, lien, pledge or as any other security for payment of a monetary or other obligation;
- (iii) all Goods shipped under the Purchase Order will be accompanied by appropriate delivery papers;
- (iv) the Purchase Order number will appear on all documents and packages produced in connection with the Goods or Services; and
- (v) you will provide the Services to the highest level of skill, care and diligence, including in accordance with any specified timetable and the Services will be free from material defects as regards their performance.

Lilly will provide you with all information and all access to premises reasonably required by you to deliver the Goods or perform the Services under the Purchase Order. You agree to follow all reasonable directions of Lilly while on Lilly premises.

### 9. Inspection

Any Goods delivered by you under this Purchase Order are subject to Lilly's inspection and approval, regardless of prior receipt or payment. If Lilly determines, in its sole discretion, that any delivery of Goods which it has inspected is unsatisfactory, Lilly will notify you and may return the Goods to you for a full refund of any price paid by Lilly. Risk and title in the Goods will pass to you

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upon receipt of notice from Lilly. Transportation both ways will be at your expense.

All Goods specified in the Purchase Order (including any documentation or materials generated in the performance of Services under the Purchase Order) are subject to acceptance testing by Lilly. If, in undertaking acceptance testing, Lilly discovers a non-conformity within 90 days after delivery of any Goods and notifies you of that non-conformity, you will correct the non-conformity at no additional charge or provide a refund to Lilly, at Lilly's sole discretion.

These rights are additional to any rights granted by law.

### 10. Ownership of Work Product

These Terms and Conditions do not affect the pre-existing intellectual property rights of either party (including any resources or data provided to you by Lilly for the purposes of performing the Services).

You represent and warrant that the intellectual property rights created or developed for the sole purpose of performing the Services and/or delivery of the Goods ("**Work Product**") and its use by Lilly will not infringe the intellectual property rights of any person. The Work Product will be owned on its creation or development by Lilly and you must execute all necessary assignments or documentation to vest ownership in Lilly in a timely manner. In relation to all copyright works created under these terms and conditions, you must procure the consents necessary to allow Lilly to materially alter those works and deal with those works without attributing authorship.

### 11. Insurance

Without limiting your liability to Lilly or third parties, you will maintain any insurance required to meet your indemnification obligations under the Purchase Order and these Terms and Conditions, including public liability and professional indemnity insurance. You will maintain such insurance from the date of the Purchase Order to at least [12] months after delivery of any Goods and performance of any Services. Upon request, you must provide Lilly with evidence of such insurance.

### 12. Compliance

Each party will ensure that it complies with all applicable laws, government regulations and industry codes, including, where applicable, the Medicines Australia Code of Conduct. You also agree to comply with any Lilly policies that you are made aware of. Unless Lilly directs otherwise, you shall procure at your own expense all permits, licenses and other approvals required to undertake any required activity under the Purchase Order.

### 13. Notice of Review, Audit or Inspections

You must provide Lilly with immediate notice of any governmental or regulatory review, audit or inspection of your facility, processes, or products that might relate to

the subject matter of the Purchase Order. Lilly must be given the opportunity to provide assistance to you in responding to any such review, audit or inspection. You will provide Lilly with the results of any such review, audit or inspection.

### 14. Books and Records

During the term of the Purchase Order and for three (3) years thereafter, your records relating to the performance of your duties and obligations under these Terms and Conditions will be open to inspection and subject to audit and reproduction by Lilly or Lilly's nominated agent or representative.

### 15. Anti-bribery laws

In carrying out its responsibilities under these Terms and Conditions, each party will comply with all applicable anti-bribery laws in the countries where the party has its principal place of business and where it conducts activities under these Terms and Conditions. The parties understand and agree to comply with the United States Foreign Corrupt Practices Act which generally prohibits the promise, payment or giving of anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage.

In this clause 15, "**government official**" means any official, officer, representative, or employee of, including any doctor employed by, any non-US government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office.

You represent and warrant that neither you nor any of your shareholders, directors, officers, employees, agents, or consultants is a government official for the purpose of:

- (i) influencing any act or decision of the government official in his/her official capacity;
- (ii) inducing the government official to do or omit to do any act in violation of the lawful duty of the official;
- (iii) securing any improper advantage; or
- (iv) inducing the government official to use his/her influence with the government or instrumentality to affect or influence any act or decision of the government or instrumentality with respect to any activities undertaken relating to these Terms and Conditions.

You further represent that no payment, authorisation, promise or gift of the type described above has been made prior to the date of the Purchase Order.

The parties will make reasonable efforts to comply with requests for information, including answering questionnaires and audit inquiries to enable the other

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party to ensure compliance with applicable anti-bribery laws.

**16. Termination**

Lilly may terminate the Purchase Order (in whole or part) on 5 days written notice to you. In the event of such termination, Lilly shall have no obligation to you except to pay all costs actually and reasonably incurred by you prior to the date of notification of termination plus a normally accepted trade allowance on such costs as full payment of your overhead and profit.

In no event shall Lilly be obligated to pay an amount in excess of the amount set out in the Purchase Order for the Goods and/or Services. You must, as soon as reasonably practicable after termination, refund to Lilly any payments made to you in advance.

**17. Early Termination**

If you are in material breach of these Terms and Conditions, Lilly may immediately terminate a Purchase Order. For the avoidance of doubt, a material breach includes a breach by you of:

- (i) sections 12 to 15 (inclusive); or
- (ii) any other provision of these Terms and Conditions which expressly provides conduct constituting a material breach.

If the Purchase Order is terminated (in whole or part) as a result of default by you, Lilly shall have no obligation to reimburse you for any Services performed by you and you will not be entitled to any damages, nor will Lilly indemnify you for any loss you may suffer, arising from Lilly exercising its right to terminate under this clause 17.

**18. Indemnity**

You agree to indemnify Lilly and its officers, employees or agents and will keep them indemnified in connection with any claims, damages, costs, proceedings ("**Claims**") or any other remedies actual, contingent or otherwise, arising directly or indirectly:

- (i) in contract, statute or tort (including negligence) in connection with the Terms and Conditions, the Purchase Order or their termination (including in relation to carriage and delivery of Goods, or infringement of the intellectual property rights of any person in connection with the Goods or Services); or
- (ii) out of any Claims made by your contractors, agents, affiliates or employees ("**Your Personnel**"), including in respect of their employment or engagement with you,

except to the extent these Claims arise directly from the wrongful or unlawful conduct of Lilly.

**19. Subcontractors**

You must not use any subcontractor without Lilly's prior written approval. If you use a subcontractor, you will be fully responsible for Services performed by the subcontractor to the same extent as if the Services were performed directly by you.

**20. Non-disclosure and Publicity**

You will not disclose to any other person any information concerning the Purchase Order, including its existence, whether in a press release, advertising or other materials, without Lilly's prior written consent. You must not refer to the existence of these Terms or Conditions (including the Purchase Order) or use any name relating to Lilly (including "Eli Lilly" or "Eli Lilly Australia") unless required by law, in which case you must provide copies of the disclosure to Lilly for the prior review and comment by Lilly. You must not use Lilly's name or logo in any manner which may suggest any relationship, association or endorsement between you and Lilly,

**21. Confidentiality**

You will keep any information of Lilly which by its nature is confidential or is designated by Lilly as confidential ("**Confidential Information**") confidential and secure at all times. You may only use or disclose Lilly's Confidential Information:

- (i) to the extent necessary to supply Goods or Services under the Purchase Order;
- (ii) if required by law; or
- (iii) if agreed by Lilly in writing.

If you become aware of an unauthorised disclosure or use of any Confidential Information or any such suspected disclosure or use, you must immediately notify Lilly.

You will ensure your employees agree in writing not to use or disclose any information learned or acquired in the delivery of the Goods or performance of the Services, including any information relating to the Work Products or any Confidential Information.

**22. Privacy**

You will comply with the provisions of the *Privacy Act 1988 (Cth)* ("**Privacy Act**") and all requirements of Lilly's Vendor Privacy Standard (published on the Internet at <http://supplierportal.lilly.com> or otherwise made available to you by Lilly), as amended from time to time at Lilly's sole discretion. The Vendor Privacy Standard will prevail over these Terms and Conditions to the extent of any inconsistency. All personal information (as defined in the Vendor Privacy Standard) is deemed to be Lilly's confidential information regardless of whether it satisfies the definition in section 21. Any failure to comply with the Vendor Privacy Standard will be a material breach of these Terms and Conditions.

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**23. Assignment**

Your rights and obligations under these Terms and Conditions are personal to you and may not be assigned to any third party without Lilly's prior written consent.

**24. Relationship of the Parties**

You acknowledge and agree that, in performing Services, you will be acting as an independent contractor, and neither you nor any of Your Personnel shall be deemed to be employees of Lilly for any purpose. Nothing in the Purchase Order makes either party the principal, agent, partner or joint venturer of the other party. Neither party has the authority to enter into any agreement on behalf of the other party nor shall either party act so as to suggest that it has such authority.

**25. Governing Law**

These Terms and Conditions are governed by and must be construed in accordance with the laws in force in New South Wales. You submit to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.