

# ELANCO CANADA LIMITED

## TERMS AND CONDITIONS

Updated on January 27, 2020

### 1. SCOPE AND PRECEDENCE

The following terms and conditions (the “Terms”) govern this Purchase Order (the “P.O.”) issued by Elanco Canada Limited (“Elanco”) whether it is received by you (the “Supplier”) by mail, telephone, or by any electronic means from the date of Supplier’s receipt of these Terms until such time as the Supplier receives a revised edition of these Terms or until the Supplier receives notification that these Terms were edited and posted on <http://suppliers.elanco.com> suppliers. Supplier agrees to sell and deliver any Deliverables, as defined in Section 3.D, that are subject to this P.O. for Elanco.

Despite anything to the contrary contained herein, if Supplier and Elanco have executed an agreement which governs the purchase and sale of the goods, software or services in issue, the terms of such agreement shall be controlling and shall take precedence over these Terms and any additional or different terms contained in any document generated by Supplier.

### 2. ACCEPTANCE

Offer and acceptance of any P.O. issued by Elanco is expressly limited to these Terms and the applicable P.O. Any terms and conditions contained in a proposal, quotation or invoice of Supplier shall not constitute a part of the contract of sale resulting from Supplier's acceptance of Elanco's order unless such terms and conditions are specifically incorporated or noted in the P.O. as provided in Section 1 above.

Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of these Terms, despite such additional or different terms.

Supplier's shipment of goods or commencement of services in response to Elanco's order shall constitute acceptance of these Terms and any additional or different terms contained in any acknowledgment or invoice form submitted by Supplier shall not constitute any part of the contract of sale resulting from Supplier's acceptance.

### 3. DEFINED TERMS

- A. “Adverse Event” means any unfavorable and unintended sign, symptom or disease temporally associated with the use of a medicinal, biological, medical device or pesticide product, whether or not considered to be related to such product.
- B. “Applicable Laws” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate, judgment, decree, injunction, writ, order, subpoena, or like action of a governmental authority that applies, as the context requires, to a P.O. or the performance of obligations or other activities related to a P.O.
- C. “Elanco’s Confidential Information” means all information that Elanco deems confidential or proprietary, including information deemed confidential by virtue of Elanco's obligations to another party and confidential information developed by Supplier in connection with any P.O. Elanco's Confidential Information includes, but is not limited to, information about research and development plans and results; new compounds and processes; evaluation procedures (including clinical and field testing); product formulations; manufacturing methods; applications to government authorities; pricing or cost; construction plans; sales, marketing, and advertising studies and plans; customer lists; computer information and software; special techniques unique to Elanco's business; information subject to a right of privacy; and information Elanco maintains under a system of protection against unauthorized access.
- D. “Deliverables” means: (i) for any order of goods, including software and any computer program, programming, modules, patches, upgrades, new versions and modifications thereto, Deliverables includes any goods or articles specified in Elanco’s order that Supplier is obligated to furnish to Elanco; and (ii) for any order of services, Deliverables includes all services provided to Elanco, together with all articles, materials, goods, information, works of authorship, trade-marks, artwork, drawings, text, specifications, calculations, reports, ideas, inventions, discoveries, processes, improvements, software, data, and other documentation and materials created, developed, conceived or first reduced to practice by Supplier, alone or with others, related to services rendered for Elanco under the P.O. or derived from information or materials Supplier has received from Elanco.
- E. “Existing Intellectual Capital” means any Intellectual Property that Supplier invented, created, developed, or acquired outside the course of its performance under the P.O. and without use of Elanco’s information or materials.

- F. "Governmental Authority" means (i) any national, federal, state, provincial or local government entity, authority, agency, instrumentality, court, tribunal, regulatory commission or other body, either foreign or domestic, whether legislative, judicial, administrative or executive and (ii) any arbitrator to whom a dispute has been presented under government rule or by agreement of the parties with an interest in such dispute.
- G. "Intellectual Property" means all inventions, original expressions of ideas embodied in a tangible form, copyrights, trade-marks, trade secrets, information, know-how, and the like that are afforded (or may be afforded upon action by a governmental authority, such as the Canadian Intellectual Property Office) Intellectual Property Rights.
- H. "Intellectual Property Rights" means the property rights or quasi-property rights afforded by patents, copyrights, trade-marks, or trade secrets; publicity rights, privacy rights, and moral rights (such as the rights of attribution and integrity).
- I. "Product Complaint" for drug products means any reports regarding: a) apparent changes in the physical or chemical properties (e.g. color, odor, taste, particles) of a product, (b) the packaging or labeling integrity of a product (e.g. identity, fill volume, missing label/information), (c) design issue or patient alleged dissatisfaction (e.g. capsule size, color of product). For medical devices and drug/device combination products means any written, electronic or oral communication that alleges deficiencies related to the identity, quality, durability, reliability, safety, effectiveness or performance of a medical device or accessory to any medical device after its release for distribution.
- J. "Records" means any information of any type (including text, data, code, images, sound, source codes, computer programs, software, databases, or the like) that is used, created, or obtained in the performance of any P.O., inscribed on tangible medium or stored in an electronic or other medium in a perceivable form.

#### **4. PRICE AND PAYMENT TERMS and ELECTRONIC TRANSACTIONS**

Each P.O. shall be filled at the price specified on the P.O. Unless otherwise stated herein, this P.O. price includes costs, packing, crating, marking, transportation, bracing and damage, fees or charges of any kind incurred by Supplier in relation to this P.O. If no price is specified, the P.O. shall be filled at the lowest of (a) the price last quoted by Supplier; (b) the price last paid by Elanco to Supplier; or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Elanco's procurement department. Elanco issues payments on a weekly basis. All invoices which have reached their payment term maturity will be accumulated and paid in the next weekly payment. Elanco's standard payment terms are net sixty (60) days after Elanco's Accounts Payable Department receives an invoice that complies with the requirements of these Terms, except that Elanco may withhold payment of any amount that it may reasonably dispute in good faith until such dispute is resolved. Supplier may offer a discount on individual invoices at the time of invoice submission; those discounted invoices will be paid on the actual due date. Due dates and cash discounts are computed from the date an accurate invoice is received in Elanco's Accounts Payable Department. Elanco may return improper invoices for correction without loss of discount. In case of disputes, doubt concerning quality, or where rejections occur, Elanco may defer payment without penalty or loss of discount.

Supplier acknowledges and agrees that the Elanco Supplier eConnect Portal I (eConnect) shall be the only acceptable methods of purchase order dissemination and that invoicing in connection with purchase order shall be done via the eConnect. .

#### **5. MODIFICATION**

No modification to these Terms is valid unless approved in writing by an authorized representative of Elanco's procurement department.

#### **6. INSPECTION**

All Deliverables furnished pursuant to a P.O. shall be subject to Elanco's inspection and approval, including acceptance testing by Elanco to verify that the Deliverables satisfy all requirements conveyed by Elanco to Supplier relating to the Deliverables, including any specifications or documentation. If Elanco discovers a non-conformity within ninety (90) days following delivery of the Deliverables and Elanco notifies Supplier of the non-conformity, notwithstanding prior receipt and payment thereof, Supplier shall, at Elanco's sole discretion, either: (i) correct the non-conformity at no additional charge in a timely, professional manner, or (ii) refund monies paid by Elanco for the non-conforming Deliverables or services attributable to or affected by the non-conforming Deliverables, in which case Elanco shall return such non-conforming Deliverables to Supplier at Supplier's expense. Nothing in this Section shall be construed to limit or otherwise affect Elanco's indemnification rights, warranty rights or any other common law or statutory remedies.

#### **7. PACKAGING, DELIVERY, TERMINATION**

Supplier shall box, crate or package the Deliverables as required for shipment in compliance with Applicable Laws, in accordance with good commercial and industry practice, and without charge to Elanco unless otherwise specified on the applicable P.O. Elanco shall have the right to terminate all or any portion of any P.O. without liability if delivery is not made within the time stated in the P.O.

#### **8. GENERAL REPRESENTATIONS AND WARRANTIES: Supplier represents and warrants:**

- A. That all Deliverables supplied under the P.O. are free from defects, of merchantable quality, and in accordance with Elanco's specifications.

- B. The Deliverables do not and will not infringe the Intellectual Property Rights of any other party, and any use thereof by Elanco consistent with these Terms does not infringe such rights. This representation and warranty does not apply to infringement arising solely from: (i) anything Elanco provides which is incorporated into the Deliverable or Supplier's compliance with any designs, specifications, or instructions provided by Elanco or a third party at Elanco's direction; (ii) Elanco's modification of the Deliverable independent of Supplier; or (iii) the combination, operation or use of the Deliverable with any product, data, apparatus, or business method that Supplier did not provide and could not reasonably anticipate. In addition, with respect to services, all Deliverables produced under the P.O. shall be of original development and all Supplier property shall be of original development or licensable by Supplier.
- C. That it has enforceable written agreements with all of its employees and subcontractors assigning to Supplier ownership of all Intellectual Property Rights created in the course of their employment or engagement, and obligating such employees and subcontractors upon terms and conditions no less restrictive than these Terms, not to disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including without limitation, any Deliverable and any other information. Supplier shall take appropriate steps to adequately protect Elanco's data in its possession or information derived therefrom, including, without limitation, firewall protection, backup processes and procedures, and disaster recovery plans.
- D. That in the performance of its obligations under this P.O., Supplier shall comply, and shall require (by written agreement) its subcontractors, representatives and agents to comply, with all Applicable Laws, applicable Elanco policies and professional or good practice standards or codes applicable to the nature of the Deliverables provided, including but not limited to:
- i. Applicable provisions of the Anti-Bribery Commitments for Elanco Procurement Contracts as revised by Elanco from time to time and published at <http://suppliers.elanco.com> or otherwise made available to Seller. The parties agree that breach of said Anti-Bribery Commitments shall be considered a material breach of this P.O. and that Elanco immediately seek all remedies available under law and equity including termination of this P.O. if it believes, in good faith, that the provisions of such Anti-Bribery Commitments have been breached by the Supplier without owing to the other any damages or indemnification resulting from such termination. If the P.O. is terminated pursuant to this provision, Elanco may seek reimbursement or refund of any fees, other compensation or expense reimbursement paid by Elanco to Supplier, and no further amounts shall be due to Supplier pursuant to the P.O.
  - ii. Applicable provisions of Elanco's Animal Care and Use Requirements for Animal Researchers and Suppliers as revised by Elanco from time to time and published at <https://www.elanco.com/suppliers> or otherwise made available to Seller.
  - iii. Applicable provisions of federal and provincial laws relating to privacy and personal information and all requirements of Elanco's:
    - (i) Supplier Privacy Standard as revised by Elanco from time to time and published at <http://suppliers.elanco.com> or otherwise made available to Supplier. If applicable, Supplier shall promptly, upon acceptance of the P.O., complete and provide all information that may be requested of Supplier as part of the Supplier Privacy Standard, including completion of Exhibit A to the Supplier Privacy and Standard.
    - (ii) Information Security Standard as revised by Elanco from time to time and published at <http://suppliers.elanco.com> or otherwise made available to Supplier.
  - iv. That all Deliverables supplied under the P.O. shall be shipped in full compliance with packaging, labeling, shipping, and documentation requirements, including requirements concerning hazardous materials, substances, and waste of all provincial, local, national, or international governmental agencies or authorities regulating any segments or modes of transportation employed to effect delivery of such articles to Elanco, and all hazardous materials, substances, and waste shall be packaged, marked, labeled and shipped in accordance with all Applicable Laws.
  - v. Applicable provisions of federal and provincial laws relating to anti-spam, such as *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* (Canada), commonly called "CASL."
- E. Supplier acknowledges that it maintains its own financial authorization policies on ensuring requisite corporate authority has been given for specific transactions and agrees to maintain adequate internal controls. Supplier therefore agrees that any communications between the employees of the parties that may impact previously agreed upon financial, economic or legal expectations hereunder must be approved by the authorized individuals of Supplier. Supplier further agrees to meet upon request and/or enter into discussions to identify authorized individuals as well as take any corrective actions necessary for any past discrepancies in order to meet appropriate financial expectations for potential future transactions.
- F. Supplier understands and acknowledges that its requirements under this Section are in addition to all of Supplier's other obligations hereunder.
- G. Supplier acknowledges that, at any time, and without notice to Supplier, Elanco may disclose information relating to a possible violation of law, or of the Terms of this P.O., to a Governmental Authority.

- H Unless Elanco directs otherwise, Supplier shall procure at its own expense all permits, licenses and other approvals required for the performance of the Services and shall arrange for all required inspections. Unless Elanco directs otherwise, Supplier further warrants that all materials utilized in the Services will be new.
- I Supplier will perform all Services under this P.O. in a professional best effort basis and in a diligent, worker-like, and expeditious manner.

9. Possession of Elanco's Property : In this section, "property" means property of any form other than real property, including but not limited to any substances, lab samples, parts, active pharmaceutical ingredients, containers and special packaging, compound, substance, material and includes all Elanco Information and Records and Intellectual Property. In the course of their relationship under this P.O, Supplier may have Elanco's property in its possession. Supplier will retain Elanco's property and will exercise appropriate care toward it to protect against damage, destruction, loss, unauthorized use, or unauthorized disclosure, but in no event will Supplier exercise a lower degree of care in safeguarding Elanco's property than Supplier uses in safeguarding its own property of a similar nature, provided that such degree of care is clear and consistent to ensure the protection of valuable property.
- A. Supplier will not encumber, including not possess or assert any lien, security interest, or other right against Elanco's property.
- B. Supplier will use Elanco's property only in connection with providing goods and/or services and performance of its obligations as set forth in this P.O., and not for any other purpose
- C. Supplier will promptly notify Elanco of any loss, damage, destruction, to Elanco's property in its possession and reimburse Elanco for the value of such lost, damaged or destroyed property.
- D. Supplier will neither dispose of Elanco's property nor transfer possession of it to anyone else except in accordance with this P.O. Supplier will follow Elanco's written instructions for disposition of any of Elanco's property (including any Records that are Elanco's property) in Supplier's possession at any time during the term of this P.O or upon expiration or other termination of this P.O.. Such disposition may include destruction, delivery to Elanco, or delivery to a third party designated by Elanco or to another destination of Elanco's choosing. Any Elanco Information provided to Elanco or a third party under this Section shall be in a format as agreed amongst the parties (e.g. XML, CSV or other common electronic format). For the purpose of electronic Records, "delivery" includes an electronic transmission of the Record or the delivery of the Record stored on an appropriate physical medium; and "destroy" or "destruction" includes the destruction of the physical medium on which a Record is stored or the complete and permanent removal of a Record including all copies and instance of Elanco Information from its storage medium,
- E. Promptly upon termination or expiration of this P.O., Supplier will (a) destroy all Elanco's Confidential Information in Supplier's possession or control, and remove all copies and instances of Elanco Confidential Information from Supplier's systems and files, subject to any document retention requirements set forth in this P.O., and certify to the same, or (b) at Elanco's discretion, return all Elanco Confidential Information to Elanco or a third party designated by Elanco, subject to any document retention requirements set forth in this P.O.
- F. Other than as provided in this Section, if Elanco does not furnish written instructions for disposition of its property within a reasonable period of time after expiration or termination of the P.O., Supplier will deliver to Elanco all of Elanco's property in its possession and will destroy any residual electronic Records that are Elanco's property, subject to any document retention requirement set forth in this P.O..
- G. Despite anything to the contrary in this P.O., Supplier may make and retain one (1) Record of any written work product, Deliverables or Elanco Confidential Information, as the case may be, solely for its legal archives.

## 10. SAFETY & SECURITY

Supplier will comply with, and will cause its representatives, affiliates and subcontractors to comply with, all policies and procedures that Elanco establishes to enhance the safety or security of Elanco's facilities or of persons at or near Elanco's facilities, including measures restricting access such as the use of identification badges and passwords. Supplier will promptly notify Elanco of any violation of such policies and procedures. Supplier will comply with, and will cause its representatives, affiliates and subcontractors to comply with, the instructions of any Elanco security official that are reasonably necessary to redress a threat, or to avoid an imminent threat, to the safety or security of such facilities or persons. Elanco retains its right to restrict or refuse any person (including Supplier and its affiliates, representatives and subcontractors) access to Elanco's facilities, computers, or other information systems. Without limiting the generality of the foregoing, Elanco may restrict or refuse access to any individual who does not do any of the following to Elanco's satisfaction: (i) pass a background check; or (ii) accept or acknowledge in writing a personal obligation to protect Elanco's Confidential Information. Such restriction or refusal excuses Supplier's performance only if it renders Supplier's performance impracticable, does not comport with Elanco's written procedures, and is manifestly unreasonable.

## 11. REPORTING ADVERSE EVENTS AND PRODUCT COMPLAINTS

In performing services or delivering goods, Supplier and its affiliates, representatives or subcontractors may acquire information regarding Adverse Events or Product Complaints related to Elanco's products. If so, Supplier will report such information to Elanco by contacting Elanco Canada Customer Response Centre immediately, and in no event later than 24 hours, by phone at: **1-800-265-5475**, by email at: **Elanco\_CA\_Adverse\_Events\_Prod\_Complaints@lists.Elanco.com**, or in accordance with any relevant written instructions that Elanco makes available to the Supplier. This reporting obligation does not apply to information that Supplier or its affiliates, representatives or subcontractors received directly from Elanco or from a clinical investigator conducting a clinical trial on behalf of Elanco.

## 12. NONDISCLOSURE

Supplier shall not disclose any information concerning this P.O., including its existence, without the prior written consent of Elanco. Supplier shall not use the name of Elanco, any employee of Elanco or any product or service of Elanco in any press release, advertising or materials distributed to prospective or existing customers or any other public disclosure, except with Elanco's prior written consent or as required by Applicable Law. If required by Applicable Law, Supplier shall provide copies of the disclosure for the prior review and comment by Elanco's corporate communications (public relations) department no less than ten (10) days prior to disclosure. In no event, without the prior written consent of Elanco, will Supplier: (i) represent, directly or indirectly, that any Deliverable provided by Supplier has been approved, recommended, certified or endorsed by Elanco; or (ii) use Elanco's logos or other trade-marks.

## 13. CONFIDENTIALITY

Supplier will neither: (i) disclose Elanco's Confidential Information except as authorized below or by Elanco in writing; nor (ii) use Elanco's Confidential Information for any purpose other than meeting Supplier's obligations under any P.O. Supplier may disclose Elanco's Confidential Information:

- A. To its representatives, affiliates and subcontractors who need to know the information for the purpose of meeting Supplier's obligations under a P.O.; provided that such representatives, affiliates and subcontractors must have contractual obligations that prohibit any disclosure and use of Elanco's Confidential Information in accordance with these Terms. Supplier is responsible to Elanco for any unauthorized disclosure or use of Elanco's Confidential Information by Supplier's representatives, affiliates or subcontractors.
- B. To the extent compelled by Applicable Law; provided, however, that Supplier will give Elanco reasonable advance notice of the disclosure to the extent such advance notice is permitted by Applicable Law.
- C. In communications to its lawyers or accountants who have a professional obligation to maintain such information in confidence. Supplier is responsible to Elanco for disclosure or use by any such persons of Elanco's Confidential Information not authorized by Elanco.

Promptly upon Elanco's request, Supplier will either return or destroy all Records of Elanco's Confidential Information in Supplier's possession or control. With respect to electronic Records, "destroy" includes destroying the physical medium on which a Record is stored or completely and permanently removing a Record from its storage medium.

Nothing herein shall prevent the communication to others of any proprietary or confidential information which Supplier can show was known to Supplier or its affiliates, representatives or subcontractors prior to its receipt from Elanco hereunder, was lawfully obtained by Supplier or its affiliates, representatives or subcontractors other than by disclosure from Elanco, or became public knowledge through no fault of Supplier.

At any time, and without notice to Supplier, Elanco may disclose information relating to a possible violation of law, or the existence of these Terms, including the compensation provisions, to a client, to a government or government agency, and to anyone determined by Elanco to have a legitimate need to know.

## 14. INDEMNIFICATION

Supplier will defend, indemnify, and hold harmless Elanco and its Related Parties (defined below) against and from all liabilities, damages, losses, claims, proceedings, judgments, investigations, settlements, costs and expenses (including reasonable legal fees and disbursements) ("Losses") arising out of any suits, claims, actions or demands ("Claims") related to disputes between the parties or any Claims brought by a third party against Elanco or its Related Parties, arising out of or in connection with any breach of Sections 8.A through 8.D of this P.O. by Supplier or its Related Parties.

Each of Supplier and Elanco will defend, indemnify and hold harmless the other (and the other's Related Parties) against and from all Losses arising out of any Claims related to disputes between the parties, or any Claims brought by a third party against the other party or its Related Parties, arising out of or in connection with any breach by it of any other representation, warranty, or obligation under this P.O., or any negligence or willful misconduct by it (or by its Related Parties) in connection with its performance under this P.O.

For the purpose of this Section 14, "Related Parties" refers to the subsidiaries, parents, affiliated companies, officers, directors, employees, independent contractors, representatives, shareholders, trustees and agents of the applicable party.

In addition to the foregoing, in the event Supplier breaches any warranty of non-infringement of Intellectual Property Rights for any Deliverable, Elanco may elect one of the following remedies, in addition to recovering any other damages or indemnification under these Terms:

- A. Require Supplier to choose between furnishing either: a non-infringing substitute article or performance reasonably acceptable to Elanco, or obtaining for Elanco's benefit a license or assignment of rights sufficient to afford Elanco the full benefits of the Deliverable, both alternatives being at Supplier's expense.
- B. Recover (or withhold) from Supplier the portion of Supplier's compensation attributable to the infringing Deliverables, with a pro-rata deduction for the months between the effective date and the moment of notice by Elanco of breach of warranty of non-infringement, relative to sixty (60) months after the date of delivery of the Deliverable(s).

## 15. LIMITATION OF LIABILITY

Elanco's liability to Supplier for negligence, breach of this P.O. or any other Claim shall not exceed the total amount owed to Supplier by Elanco under this P.O. at the time of breach. In no event shall Elanco be responsible for any indirect, special, consequential or incidental Claim.

## 16. LIABILITY INSURANCE

Supplier must carry and maintain policies covering all activities related to any Purchase Order and as otherwise required under Applicable Law to cover both Supplier and Elanco for: (i) professional liability; (ii) worker's compensation coverage; (iii) Commercial General Liability Insurance to include contractual and products/completed operations coverage; and (iv) automobile bodily and property damage liability, with minimum limits of at least \$5,000,000 per occurrence and \$10,000,000 aggregate. Required limits can be achieved by any combination of primary and excess policy limits.. All such insurance shall be (i) sufficient to meet Supplier's obligations under this P.O.; and (ii) primary and not contributory with regard to any other available insurance to Elanco. Supplier shall promptly file all claims made under the P.O. with its insurance carriers.

## 17. ASSIGNMENT

Supplier shall not in any manner delegate its duty of performance or assign its rights or obligations under this P.O. without Elanco's prior written consent, except that accounts receivables may be assigned in accordance with Applicable Law. Any attempted assignment in violation of the preceding sentence shall be of no force or effect.

## 18. GOVERNING LAW

The P.O. shall be governed by, interpreted and construed according to the laws of the Province of Ontario and the federal laws of Canada applicable therein, excluding its rules on conflict of law. Both Supplier and Elanco irrevocably agree to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto for the purposes of any disputes that may arise hereunder.

## 19. RECORDS, AUDITS, AND INSPECTIONS:

- A. At its own expense, Supplier will create and maintain all Records: (i) required by the Terms of this P.O., or under any Applicable Law that relates to Supplier's performance under a P.O.; (ii) sufficient to demonstrate that any and all amounts invoiced to Elanco under a P.O. are accurate and proper in both kind and amount; (iii) sufficient to demonstrate the accuracy of any representations or reports submitted to Elanco in connection with any P.O.; and (iv) sufficient to enable Elanco to comply with Applicable Laws and other legal obligations, to the extent that Supplier has or reasonably should have knowledge of those Applicable Laws and other legal obligations.
- B. Supplier will maintain all of the Records listed above for the longest of the following retention periods: (i) any period prescribed by Applicable Law or stated expressly in a P.O. or (ii) the term of the P.O. and for a period of five (5) years thereafter.
- C. At no additional cost to Elanco, Supplier will allow Elanco to inspect (and, upon request, Supplier will furnish copies of) Records that Supplier is required to create or maintain pursuant to this Section for the purposes of evaluating and verifying: (i) compliance with these Terms and any P.O.; (ii) compliance with Applicable Law; (iii) the accuracy and propriety of any invoice submitted to Elanco; (iv) compliance with any health, safety and environmental standards based on the Pharmaceutical Industry Principles for Responsible Supply Chain Management; and (v) the accuracy of any representations or reports submitted to Elanco. Supplier agrees to cooperate in good faith to investigate the extent of any potential violations of law in connection with the P.O.
- D. At reasonable times and with reasonable advance notice and subject to compliance with all applicable confidentiality provisions herein, Elanco may enter and inspect any premises where Records are maintained or services are performed as Elanco deems necessary to accomplish the evaluations and verifications described above. Supplier will cooperate with Elanco and provide reasonable assistance to Elanco, including answering questionnaires and narrowly tailored audit inquiries, to facilitate the evaluation and inspection, and Elanco will reasonably cooperate with Supplier to mitigate disruption to Supplier's operations. In the event that Records are maintained, services are performed, or Elanco's property is kept at premises that Supplier does not control, Supplier will secure rights of entry and inspection sufficient to allow Elanco to exercise its rights under this section.
- E. Elanco, its employees, or designees may exercise Elanco's rights of entrance and inspection under this section. Employees and designees shall be held to the same standards of confidentiality provided in these Terms through the independent contractual obligations he/she has

with Elanco. Examples of persons or designees that Elanco may designate include Elanco's independent auditors and representatives of any federal, provincial, local or foreign government entity, authority, agency, court, or commission and any applicable arbitrator having jurisdiction over Elanco or its activities related to a P.O.

- F. For Records generated by electronic databases, spreadsheets, programs or the like, Elanco's rights to access and inspection under this section extend to the database, spreadsheet or program that generated the Record as well as the Record itself.
- G. Some Records required by this section may also fall within the definition of Deliverables or within Supplier's Existing Intellectual Capital that is incorporated into the Deliverable. Supplier's obligations under this section do not diminish Supplier's other obligations toward, or Elanco's property rights to, such Records. Supplier's obligations to maintain Records under this section are extinguished to the extent that Supplier properly satisfies another obligation in these Terms or any P.O. to deliver or to dispose of such Records.
- H. Elanco will pay its own expenses for any inspection of the Records or Supplier's premises. However, if in any audit, Elanco determines that material issues exist that result, resulted or will result in an overcharge of one percent (1%) or more of the invoiced amount for the audited period, Supplier will, within thirty (30) days of receipt of Elanco's notice and supporting documentation, reimburse Elanco for its out-of-pocket costs incurred in conducting the audit, in addition to any remedies that Elanco may have for the overcharge (such as a refund). This subsection is intended as a fair allocation of audit expenses, not as damages or a penalty.
- I. Supplier shall provide Elanco with immediate notice of any governmental or regulatory review, audit or inspection of its facility, processes, or products that might relate to the subject matter of this P.O. Supplier shall provide Elanco with the results of any such review, audit or inspection. Elanco shall be given the opportunity to provide assistance to Supplier in responding to any such review, audit or inspection relating to the Deliverables.

## **20. TAXES**

Any prices stated on the face hereof shall be exclusive of any federal and/or any other provincial sales or services or similar taxes. Each party will be responsible for its own taxes, including property taxes on property it owns or leases, income taxes on its business and, any other taxes incurred by such party in connection with its business and with performing its obligations hereunder. Elanco will be responsible for any transaction taxes properly collectible from Elanco under Applicable Law. Supplier will be responsible for payment of any transaction taxes that are, under Applicable Law, properly borne by Supplier; including, but not limited to all export and import taxes. The calculation of taxes shall not include, and Elanco shall not pay, any taxes that are related to intra-corporate transfers or intermediate supplies of the services between Supplier and its affiliates or between Supplier's affiliates and related entities.

## **21. REIMBURSABLE TRAVEL AND EXPENSES**

In the event that travel and other out-of-pocket expenses are included in an approved P.O., Elanco will reimburse Supplier only for Supplier's actual, reasonable, proper, out-of-pocket expenses, with no additional overhead, profit margin, administrative charges, handling fees, or other markup, directly attributable to the P.O. in accordance with Elanco's Travel Policy. Elanco shall provide Supplier with a copy of Elanco's Travel Policy upon request.

## **22. SCHEDULES**

With respect to Elanco's purchase of software or information technology hardware or services (collectively, "IT Products"), the provisions in Schedule A shall apply to the P.O., in addition to the terms and conditions set out above.

With respect to Elanco's purchase of installation, maintenance or other services (collectively, "Services") (other than the IT Products covered in Schedule A), the provisions in Schedule B shall apply to the P.O., in addition to the terms and conditions set out above.

## **23. TERMINATION**

Despite any contrary terms contained above, Elanco shall have the right to terminate this P.O. or cancel all or any part of the Deliverables, for any reason including convenience, by giving Supplier five (5) days prior written notice of its intent to so terminate or cancel. Elanco shall have the right to terminate or cancel this P.O. immediately upon notice to Supplier at any time prior to acceptance by Supplier of this P.O. In the event of such termination, Elanco shall have no obligation to Supplier except the obligation to pay all costs actually and reasonably incurred by Supplier prior to the date of termination plus a normally accepted trade allowance on such costs as full payment of Supplier's overhead and profit, provided, however, that in no event shall Elanco be obligated to pay an amount in excess of the amount set out in the applicable P.O.; advance payments will be refunded accordingly. If this P.O. is terminated as a result of the default of Supplier, Elanco shall have no obligation to reimburse Supplier for any services performed by Supplier pursuant to this P.O.

Supplier agrees that breach of Section 8(D) shall be considered a material breach of this P.O. and that Elanco may immediately seek all remedies available under law and equity including termination of this P.O. if it believes, in good faith, that such a breach by Supplier has occurred.

## **24. REMEDIES**

Supplier acknowledges that any violation of Terms of this P.O. would result in damages to Elanco, which may not be adequately compensated by monetary award alone. As such, Elanco shall be entitled as a matter of right to apply to a court of competent equitable jurisdiction for relief, waiver, restraining order, injunction, decree or any other remedy as may be appropriate to ensure compliance with the Terms of this P.O.

## **25. INTERPRETATION**

The illegality or unenforceability of any term of the P.O. shall not affect the legality or enforceability of any other term of the P.O. No waiver of any provision of this P.O. is binding unless it is in writing and signed by Elanco. No failure to exercise, and no delay in exercising, any right or remedy, under the P.O. will be deemed to be a waiver of that right or remedy. No waiver of any breach will be deemed to be a waiver of any subsequent breach. Nothing in the P.O. 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 and neither shall act so as to suggest that it has such authority.

## **26. ENGLISH LANGUAGE PURCHASE ORDER CLAUSE (FOR PURCHASE ORDERS MADE WITH QUEBEC-BASED SUPPLIERS)**

The parties acknowledge having required that the P.O. and all documentation and notices entered into or given pursuant hereto or relating directly or indirectly hereto are drawn in English. Les parties reconnaissent avoir exigé la rédaction en anglais du présent bon de commande ainsi que de tous les documents et avis qui pourront être exécutés ou donnés à la suite de ou ayant un rapport direct ou indirect avec le bon de commande.

## Schedule A

**If this order involves software or information technology hardware or services, the following terms shall apply in addition to the terms set out above:**

### A INFORMATION TECHNOLOGY HARDWARE OR SERVICES.

A.1 **LICENSE:** Supplier hereby grants to Elanco, and Elanco hereby accepts, on the following terms and conditions, a nonexclusive and nontransferable, fully paid-up, irrevocable, world-wide, perpetual license (unless otherwise expressly specified in the applicable P.O.) to use the software for the number of users or copies of the software provided on the P.O. (the "License"). Unless specified otherwise on the applicable P.O., the License shall be an enterprise license for all applicable central processing units ("CPUs") and available for use by Elanco, its affiliated companies, third party service providers, and other necessary parties. All license limitations on use by Elanco (per user, type of user (named, concurrent, etc.), per CPU, per node, per server, etc.) shall be specifically stated in the applicable P.O. or shall be of no effect. Elanco agrees not to cause or permit the: (i) use, copying, modification, rental, lease, or transfer of the software, except as expressly provided in these Terms; (ii) creation of any derivative works based on the software; or (iii) reverse engineering, disassembly, or recompilation of the software. Supplier and Elanco expressly agree that any software shrink-wrap and click-through software licensing agreements or other such terms shall not apply to any software purchased or licensed under any P.O. unless Elanco expressly agrees in writing to such shrink-wrap or click-through software licensing agreement.

### A.2 USE OF SOFTWARE AND DOCUMENTATION:

- i) Elanco may, as part of the License, make additional copies of the software and documentation to support the licensed software and documentation. Elanco may also make backup and archival copies of the software and documentation. Unless otherwise provided on the applicable P.O., Elanco shall have the right to use the software on or in connection with any CPU that Elanco utilizes to fulfill its data processing needs. Elanco reserves the right to use the software at one or more sites and to transfer such software to any location as it may determine.
- ii) Elanco, its agents, contractors, assignees and employees shall have the right to unlimited use of the software and to operate and use the software at any time and for any period of time at the convenience of Elanco within the scope of the License. Elanco may use the software acquired hereunder for such purposes and functions as may be necessary or convenient for Elanco's business purposes, including processing affiliated companies and third party data, and the use of such software shall not be restricted to any particular purpose or function.
- iii) The License granted herein or the P.O. shall commence upon execution of the applicable P.O.

### A.3 INFORMATION TECHNOLOGY REPRESENTATIONS AND WARRANTIES: Regarding software or IT hardware ("IT Products")

- i) Supplier represents and warrants that at delivery and throughout the twelve (12) month period following receipt of the IT Products (or any update thereto) by Elanco (the "Warranty Period") the IT Products shall conform to and will operate in accordance with the P.O. and all documentation and specifications supplied by Supplier to Elanco. Supplier shall not be responsible to the extent failures are caused by: (a) Elanco's failure to use the IT Products in accordance with instructions included in the documentation provided to Elanco by Supplier; or (b) the modification of the IT Products by any person other than Supplier, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing).
- ii) Supplier warrants that all tapes, diskettes or other electronic media provided to Elanco hereunder will be free from defects during the Warranty Period. Supplier shall, within five (5) days of notification by Elanco of such defect, replace any defective electronic media at no additional cost to Elanco.
- iii) Supplier represents and warrants that it shall at all times document the operation of the IT Products in a manner consistent with the best practices of the software development industry, and such documentation shall accurately reflect the operation of the IT Products and enable a person reasonably skilled in computer programming and in possession of the IT Products source code to use and maintain the IT Products fully and completely.
- iv) Supplier represents and warrants that any equipment delivered hereunder shall be delivered to Elanco with the full warranty granted by the original manufacturer of the equipment still effective. Notice regarding warranty claims raised by Elanco due to defects and/or non-conformities in the equipment or in the operation of the equipment shall be given only to Supplier, and upon receipt of such a notice, Supplier shall take the steps necessary to effect repair of the equipment.
- v) Supplier represents and warrants that if maintenance services are elected by Elanco, the maintenance services agreement shall become effective upon installation of the IT Product. Elanco's payment obligations for maintenance services shall begin at the end of the Warranty Period of the IT Products, and shall renew annually unless otherwise terminated by Elanco, provided Supplier notifies Elanco in writing thirty (30) days in advance of such renewal date. Notwithstanding the foregoing, Elanco's failure to install or utilize

any improvements, enhancements or newly released versions of the IT Product shall have no effect on the Supplier's provision of maintenance services. Supplier warrants and represents that maintenance services for an IT Product shall be available from Supplier for the greater of two (2) years from the acceptance date of the IT Product by Elanco or the current version plus the one (1) prior versions. Supplier shall provide to Elanco as part of maintenance services, Updates and Upgrades to the IT Product at no additional cost to Elanco.

- vi) Supplier represents and warrants that the occurrence in or use by any IT Product supplied by Supplier of any dates, will not adversely affect its performance with respect to date-dependent data, computations, output, or other functions (including, without limitation, calculating, comparing, and sequencing) and that the IT Product will create, store, process and output information related to or including dates without errors or omissions and at no additional cost to Elanco. At Elanco's request, Supplier will provide sufficient evidence to demonstrate the adequate testing of the IT Product to meet the foregoing requirements.
- vii) Supplier warrants that: (i) unless authorized in writing by Elanco; or (ii) necessary to perform valid duties under the IT Products documentation, any IT Products provided to Elanco by Supplier for use by Supplier or Elanco shall: (a) contain no hidden files; (b) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides; (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and (d) contain no key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under the applicable P.O., based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria ("Illicit Code"). Provided and to the extent any IT Product has any of the foregoing attributes, and notwithstanding anything elsewhere in the applicable P.O. to the contrary, Supplier shall be in default of such P.O., and no cure period shall apply. In addition to any other remedies available to it under this P.O., Elanco reserves the right to pursue any civil and/or criminal penalties available to it against the Supplier.
- viii) Supplier warrants that it shall not use or incorporate Elanco's Confidential Information, data, or intellectual property in Supplier's software or products.

#### A.4 LICENSE OR MAINTENANCE TERMINATION:

- i) In the event of a material breach by Elanco of any of its obligations under the applicable P.O., Supplier may terminate the licenses subject to such material breach upon sixty (60) days advance written notice to Elanco, provided that Elanco has not cured the breach within such notice period. This right to terminate shall not apply to Elanco's breach of any obligation relating to any maintenance services. Sixty (60) days after termination of such P.O. pursuant to this Section A.4 (i), Elanco shall discontinue further use of the terminated licenses. Elanco shall, upon written request by Supplier, provide Supplier with written certification indicating the destruction of such copies of the applicable software in Elanco's possession or under its custody or control.
- ii) In the event of a breach by Supplier of any of its representations, warranties or obligations under the applicable P.O., these Terms, or a maintenance agreement, Elanco may terminate either the License, as well as any associated maintenance services, or the maintenance services (if any) alone, upon thirty (30) days' notice to Supplier, provided that Supplier has not cured the breach within such notice period.
  - (1) If Elanco terminates the License and the maintenance services based on such breach, Supplier shall refund any and all amounts paid hereunder by Elanco for the License and shall refund on a pro rata basis any and all amounts paid hereunder by Elanco for the maintenance services. Sixty (60) days after termination of the License pursuant to this Section A.4(ii)(1), Elanco shall discontinue further use of such License. Elanco shall, upon written request by Supplier, provide Supplier with written certification indicating the destruction of all copies of the applicable software in Elanco's possession or under its custody or control.
  - (2) If Elanco terminates only the maintenance services, Supplier shall refund on a pro rata basis any and all amounts paid hereunder by Elanco for maintenance services. Elanco shall retain all of its rights under the License
- iii) The other provisions of the P.O. and these Terms shall survive termination of any License

A.5 **DATA:** Elanco owns all rights to any data or results generated as a result of the use of the IT Product and may use, execute, display, copy, manipulate and create derivatives of any data or results generated as a result of the use of the IT Product.

## Schedule B

**If this order involves performance by Supplier of installation, maintenance, or other services including research and development activities, the following terms shall apply in addition to the terms set out above:**

### **B INSTALLATION, MAINTENANCE, OR OTHER SERVICES:**

- B.1 LABOUR FURNISHED BY SUPPLIER:** Supplier acknowledges and agrees that in performing services, Supplier will be acting solely as an independent contractor, and neither Supplier nor any of its employees, associated consultants, subcontractors or employees of said consultants or subcontractors shall be deemed to be employees of Elanco for any purpose. Except as allowed by the “Subcontractors” provisions below, all persons employed by Supplier in the performance of the services are employees of Supplier. Supplier shall carry such employees on the payrolls of Supplier and make all required payments to federal, provincial and local authorities covering payroll taxes and any other payments relating to such persons' employment.
- B.2 SUBCONTRACTORS:** Supplier shall not use any subcontractor without the prior written approval of Elanco. Subject to the foregoing, if Supplier should use a subcontractor, Supplier shall be fully responsible for services performed by the subcontractor to the same extent as if the services were performed directly by Supplier and ensure that such subcontractors comply with all of the requirements of these Terms and the applicable P.O.
- B.3 VERIFICATION AND ACCEPTANCE OF SERVICES:** Supplier shall document each maintenance or service call with a work order, which shall be signed by Elanco's representative and submitted with Supplier's invoice.
- B.4 LIENS:** Supplier agrees and warrants that no mechanics liens shall attach to Elanco's property by virtue of Supplier's default in paying its employees, suppliers or subcontractor
- B.5 OWNERSHIP OF DELIVERABLES:** Elanco shall own all right, title and interest, including Intellectual Property Rights, in the Deliverables, and Supplier hereby assigns and conveys such right, title and interest to Elanco. All originals and copies of the Deliverables shall be delivered to Elanco upon the earliest of the completion of the services, the termination or suspension of the services, or the written request of Elanco. Supplier agrees to execute, without further consideration, assignments or other documents that may be necessary to establish Elanco's ownership of the Deliverables. Supplier shall cooperate with Elanco or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Elanco, and take other necessary actions as reasonably directed by Elanco, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to these Terms or a P.O. Such cooperation and execution shall be performed without additional compensation to Supplier; provided, however, Elanco shall reimburse Supplier for reasonable out-of-pocket expenses incurred at the specific request of Elanco. Supplier shall cause each of Supplier's employees charged with performance of services for Elanco or granted access to Elanco's Confidential Information to execute an agreement recognizing Elanco's ownership rights and concurring with the obligations of Supplier as set forth herein. Supplier hereby grants Elanco a non-exclusive, perpetual license to use, copy, and distribute all Supplier property provided to Elanco as part of the Deliverables hereunder. If the Deliverable incorporates any intellectual property (including software) that Elanco has purchased or licensed from Supplier pursuant to another written agreement, then such other agreement or provision shall control each party's rights with respect to such intellectual property.
- i) Despite the preceding clauses, Supplier retains all Intellectual Property Rights (other than the following license) to any portion of Existing Intellectual Capital that is incorporated into any Deliverable. Supplier grants to Elanco and its affiliates a non-exclusive, world-wide, royalty-free license to such Existing Intellectual Capital sufficient to allow full lawful use of the Deliverables that incorporate it, including the use of the Deliverables by Elanco's agents and independent contractors solely to furnish services to Elanco or its affiliates.
- ii) Despite the preceding clauses, if the Deliverables incorporate any Intellectual Property owned or controlled by a third party, then Supplier hereby grants to Elanco and its affiliates, or shall acquire on behalf of Elanco and its affiliates, a perpetual, royalty-free, world-wide, non-exclusive license or sublicense sufficient to allow full lawful use of the Deliverables that incorporate it, including the use of the Deliverables by Elanco's agents and independent contractors solely to furnish services to Elanco or its affiliates. Supplier hereby represents and warrants to Elanco that it has or will have the right to grant such license or sublicense and to incorporate such Intellectual Property into the Deliverable.