

ELI LILLY CANADA INC.  
PURCHASE ORDER TERMS AND CONDITIONS  
Last updated January 1, 2008

1. **APPLICATION:** These terms and conditions ("Ts & Cs") apply to any purchase order received by you ("Seller") from Eli Lilly Canada Inc. ("Buyer") (each a "Purchase Order"), from the date of Seller's receipt of these Ts & Cs until such time as Seller receives a revised edition of these Ts & Cs. Additional or different Ts & Cs, applicable to a particular Buyer's order may be specified in the Purchase Order, and, in the event of a conflict, shall take precedence over these Ts & Cs. Seller's shipment of goods or commencement of services in response to a Purchase Order shall constitute acceptance of these Ts & Cs.
2. **PRICE:** The Contract shall be filled at the price specified on the Purchase Order, or at any lower price. If no price is specified, the Purchase Order shall be filled at the lowest of (a) the price last quoted by Seller; (b) the price last paid by Buyer to Seller; or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Buyer's procurement department.
3. **MODIFICATION:** Modification, rescission, or amendment of the Purchase Order shall be ineffective unless approved in writing by an authorized representative of Buyer's procurement department.
4. **INSPECTION:** All goods furnished pursuant to Buyer's order shall be subject to Buyer's inspection and approval, notwithstanding prior receipt and payment, and, if unsatisfactory, may be returned for full refund, transportation both ways at Seller's expense. Each deliverable ("Deliverable") under the Purchase Order shall be subject to acceptance testing by Buyer to verify that the Deliverable satisfies all requirements of the Deliverable conveyed by Buyer to Seller, including as applicable, specifications or documentation. If Buyer discovers a non-conformity within 90 days following delivery of a Deliverable and Buyer notifies Seller of the non-conformity, Seller shall either correct the non-conformity at no additional charge in a timely, professional manner, or, at Buyer's sole discretion, refund monies paid by Buyer for the services attributable to or affected by the non-conforming Deliverable.
5. **PACKAGING CHARGES:** Seller shall box, crate, or package as necessary for shipment without charge unless otherwise specified on the Purchase Order.
6. **DELIVERY, CANCELLATION:** Buyer shall have the right to cancel all or any portion of its order without liability if delivery is not made within the time stated in the Purchase Order.
7. **SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES:** Seller covenants, represents and warrants that:
  - (a) no goods or services supplied under the Purchase Order infringes the claim of any trade-mark, copyright, patent, or other proprietary right of a third party;
  - (b) all goods or services supplied under the Purchase Order are free from defects, of merchantable quality, and in accordance with Buyer's specifications;
  - (c) without limiting Seller's liability to Buyer or third parties hereunder, Seller shall maintain Commercial General Liability Insurance sufficient to meet its indemnification obligations under the Purchase Order. All such insurance shall be primary and not contributory with regard to any other available insurance to Buyer. Seller shall promptly file all claims made under the Purchase Order with its insurance carriers;
  - (d) Seller shall comply with all federal, provincial and local laws and standards as applicable to this Purchase Order, including, without limitation, compliance with any applicable laws and/or standards pertaining to the marketing of pharmaceuticals in Canada and any Buyer policies that Seller is made aware of by Buyer;
  - (e) Seller shall not give or promise anything of value, directly or indirectly, to a physician or government official (his/her relatives or nominees), political parties or party officials in exchange for getting or keeping business, or gaining any improper business advantage, and shall keep accurate records in compliance with all applicable laws (including, where applicable, compliance with the United States *Foreign Corrupt Practices Act*); and
  - (f) Buyer shall have the right, during business hours and upon reasonable notice, to audit and inspect such portions of the records required under section 7(b) as relate to the Purchase Order. Seller shall keep each record related to the Purchase Order for at least as long as is required by applicable laws and standards.

8. **INDEMNITY:** Seller agrees to defend, indemnify, and hold harmless Buyer against all liability, costs, expenses (including legal fees and disbursements), damages and judgments occasioned by or resulting from breach of the Purchase Order (including, without limitation, breach of the provisions in section 7).
9. **SECURITY:** Seller shall observe all facilities access, safety, and security measures required by Buyer, including measures restricting access such as the use of identification badges, passwords, and the like, and to enable Buyer to comply with applicable anti-terrorism program security criteria to ensure the security of the shipment from the point of origin. Seller shall ensure that its employees follow Buyer policies while at any Buyer site. Buyer retains its right to restrict or refuse any person, including Seller, its employees, affiliates, agents, or subcontractors, access to Buyer's facilities, computers, or other information systems.
10. **NONDISCLOSURE:** Seller shall not disclose any information concerning the Purchase Order, including its existence, without the prior written consent of Buyer.
11. **CONFIDENTIALITY:** Seller shall preserve as confidential, and shall not disclose to a third party or to employees or subcontractors without a need to know, or use for any purposes other than meeting Seller's obligations hereunder, any proprietary or confidential information of Buyer (including information of a third party which Buyer is under an obligation to maintain in confidence) (collectively, "Confidential Information") to which Seller may have access as a result of Buyer's order, the contract of sale resulting from its acceptance or the presence of Seller's employees at any Buyer site. Buyer's Confidential Information includes all information that Buyer deems confidential or proprietary, including: 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 and cost figures; construction plans; sales, marketing, and advertising studies and plans; customer lists; computer information and software; special techniques unique to Buyer's business; information subject to a right of privacy; and information Buyer maintains under a system of protection against unauthorized access. This confidentiality obligation shall apply to all such proprietary or confidential information of Buyer whether in its original form or a derivative form, including work product resulting from Seller's performance of Buyer's order. Seller shall not take photographs or video recordings of any portion of any work performed pursuant to Buyer's order or duplicate any drawings or specifications without the prior approval of Buyer. Nothing herein shall prevent the communication to others of any proprietary or confidential information which Seller can show was known to Seller or its representatives prior to its receipt from Buyer hereunder, was lawfully obtained by Seller or its representatives other than by disclosure from Buyer, or became public knowledge through no fault of Seller.
12. **PUBLICITY:** Seller shall not refer to the existence of the Purchase Order or use the name of "Eli Lilly Canada" in any press release, advertising or materials distributed to prospective or existing customers or any other public disclosure, except as required by law or expressly allowed in this section. If required by law, Seller shall provide copies of the disclosure for the prior review and comment by Buyer's public relations department, which shall have a minimum of 10 business days to review the materials. The foregoing notwithstanding, Seller may include "Eli Lilly Canada" as a customer in a complete listing of its clients, except in press releases or other materials distributed to the media. Buyer's logo may not be used under any circumstance.
13. **ASSIGNMENT:** Seller shall not delegate its duty of performance or assign its rights or obligations under the Purchase Order without Buyer'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.
14. **GOVERNING LAW:** The Purchase Order shall be governed by and construed according to the laws of the Province of Ontario and the laws of Canada applicable therein, excluding its rules on conflict of law. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply. Both Seller and Buyer irrevocably attorn to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto for the purposes of any disputes that may arise hereunder.

15. **INTERPRETATION:** The illegality or unenforceability of any term of the Purchase Order shall not affect the legality or enforceability of any other term of the Purchase Order. No waiver of any provision of this Purchase Order is binding unless it is in writing and signed by Buyer. No failure to exercise, and no delay in exercising, any right or remedy, under the Purchase Order 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 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 and neither shall act so as to suggest that it has such authority.
16. **ENGLISH LANGUAGE CONTRACT CLAUSE (FOR PURCHASE ORDERS MADE WITH QUEBEC-BASED SELLERS):** THE PARTIES ACKNOWLEDGE HAVING REQUIRED THAT THE PURCHASE ORDER AND ALL DOCUMENTATION AND NOTICES ENTERED INTO OR GIVEN PURSUANT HERETO OR RELATING DIRECTLY OR INDIRECTLY HERETO BE DRAWN IN ENGLISH. LES PARTIES RECONNAISSENT AVOIR EXIGÉ LA REDACTION EN ANGLAIS DU PRESENT BON DE COMMANDE AINSI QUE DE TOUS LES DOCUMENTS ET AVIS QUI POURRONT ÊTRE EXECUTES OU DONNES A LA SUITE DE OU AYANT UN RAPPORT DIRECT OU INDIRECT AVEC LE PRESENT BON DE COMMANDE.
17. **TAXES:** Buyer will not reimburse Seller for taxes related to the Purchase Order.
18. **PERSONAL INFORMATION:** To the extent Seller collects, uses or transfers any personal information (as defined by applicable Canadian privacy laws) on behalf of Buyer, Seller will comply with all requirements of such laws and the version of Buyer's *Vendor Privacy Standard* (published on the Internet at <http://supplierportal.lilly.com> or otherwise made available to Seller) in effect on the date the Seller accepts the Purchase Order. Buyer may revise its *Vendor Privacy Standard* from time to time in its sole discretion. All the requirements of the *Vendor Privacy Standard* are in addition to all of Seller's other obligations under the Purchase Order. All personal information is deemed to be Buyer's Confidential Information regardless of whether it satisfies that definition. Notwithstanding anything in this Purchase Order to the contrary:
  - (a) No action by Buyer expressly permitted by the *Vendor Privacy Standard* is a breach by Buyer the Purchase Order; and
  - (b) No such action excuses Seller's performance under the Purchase Order.
19. **SCHEDULES:**
  - (a) With respect to Buyer's purchase of software or information technology hardware or services (collectively, "IT Products"), the provisions in Schedule A shall apply to the Purchase Order, in addition to the terms and conditions set out above.
  - (b) With respect to Buyer'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 Purchase Order, in addition to the terms and conditions set out above.

Schedule A

**Applicable if Purchase Order involves IT Products**

1. **LICENSE:** Seller hereby grants to Buyer, and Buyer hereby accepts, on the following Ts & Cs, a nonexclusive and nontransferable, fully paid-up, irrevocable, world-wide, perpetual license (unless otherwise specified in the Purchase Order) to use the software for the number of users or copies of the software provided on the Purchase Order (the "**License**"). Unless specified otherwise on the Purchase Order, the license shall be an enterprise license for all applicable central processing units ("CPUs"). All license limitations on use by Licensee (per user, type of user (named, concurrent, etc.), per CPU, per node, per server, etc.) shall be specifically stated in the Purchase Order or shall be of no effect. Seller and Buyer expressly agree that any software shrink-wrap and click-through software licensing agreements shall not apply to any software purchased under the Purchase Order unless the Buyer expressly agrees in writing to such shrink-wrap or click-through software licensing agreement.
  2. **USE OF SOFTWARE AND DOCUMENTATION:**
    - (a) Buyer may, as part of the License, make additional copies of the software and documentation to support the licensed software and documentation. Buyer may also make backup and archival copies of the software and documentation. Unless otherwise provided on the Purchase Order, Buyer shall have the right to use the software on or in connection with any CPU that it utilized to fulfill its data processing needs. Buyer reserves the right to use the software at one or more sites and to transfer such software to any location as it may determine.
    - (b) Buyer, 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 Buyer within the scope of the License. Buyer may use the software acquired hereunder for such purposes and functions as may be necessary or convenient for Buyer's business purposes, including processing third party data, and the use of such shall not be restricted to any particular purpose or function.
    - (c) The License granted herein or the Purchase Order shall commence upon execution of the Purchase Order.
  3. **INFORMATION TECHNOLOGY REPRESENTATIONS AND WARRANTIES:** Regarding software or IT hardware ("IT Products"):
    - (a) Seller represents and warrants that at delivery and throughout the 12 month period following receipt of the IT Products (or any update thereto) by Buyer (the "**Warranty Period**") the IT Products shall conform to and will operate in accordance with the Purchase Order and all documentation and specifications supplied by Seller to Buyer. Seller shall not be responsible to the extent failures are caused by: (a) Buyer's failure to use the IT Products in accordance with instructions included in the documentation provided to Buyer by Seller; or (b) the modification of the IT Products by any person other than Seller, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing).
    - (b) Seller warrants that all tapes, diskettes or other electronic media provided to Buyer hereunder will be free from defects during the Warranty Period. Seller shall, within 5 days of notification by Buyer of such defect, replace any defective electronic media at no additional cost to Buyer.
    - (c) Seller 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.
    - (d) Seller represents and warrants that any equipment delivered hereunder shall be delivered to Buyer with the full warranty granted by the original manufacturer of the equipment still effective. Notice regarding warranty claims raised by Buyer due to defects and/or non-conformities in the equipment or in the operation of the equipment shall be given only to Seller, and upon receipt of such a notice, Seller shall take the steps necessary to effect repair of the equipment.
    - (e) Seller represents and warrants that if maintenance services are elected by Buyer, the maintenance services agreement shall become effective upon installation of the IT Product. Buyer'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 Buyer, provided Seller notifies Buyer in writing 30 days in advance of such renewal date. Notwithstanding the foregoing, Buyer's failure to install or utilize any improvements, enhancements or newly released versions of the IT Product shall have no effect on the Seller's provision of maintenance services. Seller warrants and represents that maintenance services for an IT Product shall be available from Seller for the greater of 2 years from the Acceptance Date of the IT Product by Buyer or the current version plus the one prior version. Seller shall provide to Buyer as part of maintenance services, updates and upgrades to the IT Product at no additional cost to Buyer.
  4. Seller warrants that it shall not use or incorporate Buyer's confidential information, data, or intellectual property in Seller's software or products.
  5. **LICENSE OR MAINTENANCE TERMINATION:**
    - (a) In the event of a material breach by Buyer of any of its obligations under the applicable Purchase Order, Seller may terminate the licenses subject to such material breach, upon 60 days advance written notice to Buyer, provided that Buyer has not cured the breach within such notice period. This right to terminate shall not apply to Buyer's breach of any obligation relating to any maintenance services. Sixty days after termination of this Purchase Order pursuant to this section, Buyer shall discontinue further use of terminated licenses. Buyer shall, upon written request by Seller, provide Seller with written certification indicating the destruction of such copies of the software in Buyer's possession or under its custody or control.
    - (b) In the event of a breach by Seller of any of its representations, warranties or obligations under the applicable Purchase Order, these Ts & Cs or the maintenance agreement, Buyer may terminate either the License, as well as any associated maintenance services, or the maintenance services (if any) alone, upon 30 days notice to Seller, provided that Seller has not cured the breach within such notice period.
    - (c) If Buyer terminates the License and the maintenance services based on such breach, Seller shall refund any and all amounts paid hereunder by Buyer for the License and shall refund on a pro rata basis any and all amounts paid hereunder by Buyer for the maintenance services. Sixty days after termination of this Purchase Order pursuant to this section, Buyer shall discontinue further use of such licenses within 60 days of termination. Buyer shall, upon written request by Seller, provide Seller with written certification indicating the destruction of such copies of the software in Buyer's possession or under its custody or control.
    - (d) If Buyer terminates only the maintenance services, Seller shall refund on a pro rata basis any and all amounts paid hereunder by Buyer for maintenance services. Buyer shall retain all of its rights under the License.
    - (e) The other provisions of the Purchase Order and these Ts & Cs shall survive termination of any License.
  6. **DATA:** Buyer 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.
- (f) Seller represents and warrants that the occurrence in or use by any IT Product supplied by Seller of any particular date, will not adversely affect its performance with respect to date-dependent data, computations, output, or other functions and that the IT Product will create, store, process and output information related to all dates without errors or omissions and at no additional cost to Buyer. At Buyer's request, Seller will provide sufficient evidence to demonstrate the adequate testing of the IT Product to meet the foregoing requirements.
  - (g) Seller warrants:
    - (i) unless authorized in writing by Buyer; or
    - (ii) necessary to perform valid duties under the IT Products documentation, any IT Products provided to Buyer by Seller for use by Seller or Buyer shall:
      - (1) contain no hidden files;
      - (2) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides;
      - (3) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and
      - (4) 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 this Purchase Order, based on residency on a specific hardware configuration, frequency of duration of use, or other limiting criteria ("**Illicit Code**"). Provided and to the extent any program has any of the foregoing attributes, and notwithstanding anything elsewhere in this Purchase Order to the contrary, Seller shall be in default of this Purchase Order, and no cure period shall apply. In addition to any other remedies available to it under this Purchase Order, Buyer reserves the right to pursue any civil and/or criminal penalties available to it against the Seller.

**Schedule B**

**Applicable if Purchase Order involves Services**

1. **LABOUR FURNISHED BY SELLER:** Seller acknowledges and agrees that in performing Services, Seller will be acting solely as an independent contractor, and neither Seller nor any of its employees, associated consultants, subcontractors or employees of said consultants or subcontractors shall be deemed to be employees of Buyer for any purpose. Except as allowed by the Subcontractor provisions below, all persons employed by Seller in the performance of the Services are employees of Seller. Seller shall carry such employees on the payrolls of Seller and make all required payments to federal, provincial and local authorities covering payroll taxes and any other payments relating to such persons' employment.
2. **SUBCONTRACTORS:** Seller shall not use any subcontractor without the prior written approval of Buyer. Subject to the foregoing, if Seller should use a subcontractor, Seller shall be fully responsible for Services performed by the subcontractor to the same extent as if the Services were performed directly by Seller.
3. **VERIFICATION AND ACCEPTANCE OF SERVICES:** Seller shall document each Service call with a work order, which shall be signed by Buyer's representative and submitted with Seller's invoice.
4. **LIABILITY INSURANCE:** If Seller will perform Services on Buyer's property, Seller shall maintain in force during the performance of such Services liability insurance for not less than the following limits of liability:

Worker's Compensation	Statutory
General Liability	
Bodily Injury (any one person)	\$2,000,000
Bodily Injury (any one occurrence)	\$1,000,000
Property Damage	\$ 500,000
Professional Liability	\$1,000,000

5. **INDEMNIFICATION:** Seller agrees to defend, indemnify, and hold harmless Buyer, its directors, officers, agents, and employees from and against any and all claims, demands, losses, and expenses, including legal fees and disbursements, arising out of suits, claims and demands by reason of injury or death of any person(s) or damage to any property attributable to the willful misconduct, negligent acts or negligent omissions of Seller, its subcontractors, and their officers, agents or employees, except to the extent such claims or losses are due to the negligence of Buyer, its employees or agents.
6. **LIENS:** Seller agrees and warrants that no mechanics liens shall attach to Buyer's property by virtue of Seller's default in paying its employees, suppliers or subcontractors.

7. **OWNERSHIP OF WORK PRODUCT:** All articles, materials, goods, information, works of authorship, trade-marks, artwork, drawings, text, specifications, calculations, reports, ideas, inventions, discoveries, processes, improvements, software and other documentation and materials created, developed, conceived or first reduced to practice by Seller, alone or with others, related to Services rendered for Buyer under this Purchase Order or derived from information or materials Seller has received from Buyer ("**Work Product**") shall be the property of Buyer with Buyer owning the copyright and all other proprietary rights to the Work Product. All originals and copies of the Work Product shall be delivered to Buyer upon the earliest of the completion of the Services, the termination or suspension of the Services, or the written request of Buyer. Seller agrees to execute, without further consideration, assignments or other documents that may be necessary to establish Buyer's ownership of the Work Product. Seller shall cooperate with Buyer or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Buyer, and take other necessary actions as reasonably directed by Buyer, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to this Purchase Order. Seller hereby assigns and conveys to Buyer the entire right, title, and interest in and to such work including work created prior to the date of the Purchase Order, including the copyright therein and any copyright renewal thereof. Such cooperation and execution shall be performed without additional compensation to Seller; provided, however, Buyer shall reimburse Seller for reasonable out-of-pocket expenses incurred at the specific request of Buyer. Seller shall cause each of Seller's employees charged with performance of Services for Buyer or granted access to confidential information to execute an agreement recognizing Buyer's ownership rights and concurring with the obligations of Seller as set forth herein. Seller hereby grants Buyer a non-exclusive, perpetual license to use, copy, and distribute all Seller property provided to Buyer as part of the Work Product hereunder.
8. **SERVICE WARRANTIES:** Seller warrants that the Services will be executed in accordance with Buyer's order and all applicable federal, provincial and local laws, rules, regulations and guidelines, including all associated permits, licenses, orders, decrees, or other approvals. Unless Buyer directs otherwise, Seller 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 Buyer directs otherwise, Seller further warrants that all materials utilized in the Services will be new. Seller warrants that all Work Product produced under this Purchase Order shall be of original development and all Seller property shall be of original development or licensable by Seller, as the case may be, and all Work Product and property licensed or owned by Seller and used in the performance of any work under this Purchase Order shall not infringe or violate any patent, copyright, trade secret, trade-mark, or other third party intellectual property right. Seller shall perform all Services under this Purchase Order on a professional best effort basis and in a diligent, workerlike, and expeditious manner. Seller warrants that it has enforceable written agreements with all of its employees and all subcontractors: (i) assigning to Seller ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and (ii) obligating such employees upon Ts & Cs no less restrictive than contained herein, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including, without limitation, any Work Product, and any other information. Seller shall take appropriate steps to adequately protect Buyer's data in its possession or information derived therefrom, including, without limitation, firewall protection, backup processes and procedures, and disaster recovery plans.
9. **TERMINATION:** Notwithstanding any contrary terms contained above, Buyer shall have the right at its absolute discretion, 5 days following Buyer's written notice to Seller, to terminate, in whole or part, Buyer's order or any contract resulting from its acceptance. In the event of such termination, Buyer shall have no obligation to Seller except the obligation to pay all costs actually and reasonably incurred by Seller prior to the date of termination plus a normally accepted trade allowance on such costs as full payment of Seller's overhead and profit, provided, however, that in no event shall Buyer be obligated to pay an amount in excess of the amount set out in Buyer's order for the services; advance payments will be refunded accordingly. If Buyer's order or any resulting contract is terminated as a result of the default of Seller, Buyer shall have no obligation to reimburse Seller for any Services performed by Seller pursuant to Buyer's order or any resulting contract.