

**TERMS AND CONDITIONS  
OF  
LILLY USA, LLC**

Updated on October 30, 2009

**Notice from Lilly USA, LLC to its Suppliers:**

These terms, conditions, and instructions shall be applicable to any purchase order and to all subsequent purchase orders received by you ("Seller") from Lilly USA, LLC ("Buyer") whether received by mail, by telephone, or by electronic means (each a "Purchase Order"), from the date of your receipt of these terms until such time as you receive a revised edition of these terms and conditions or other notice of revision or revocation of the same. These terms, conditions, and instructions shall apply to all transactions between you and Buyer until such further notice.

Additional or different terms, conditions, or instructions applicable to a particular order may be specified in the body of the Purchase Order, or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these terms, conditions, and instructions with the exception of Section 2, ELECTRONIC TRANSACTIONS, below.

Notwithstanding anything to the contrary contained herein, if Seller and Buyer 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, conditions, and instructions and any additional or different terms contained in any document generated by Seller.

**Please retain this document in your company files for future reference.**

- 1. APPLICABLE TERMS AND CONDITIONS:** Buyer's order expressly limits acceptance to the terms and conditions set forth on this document and the applicable Purchase Order. Any terms and conditions contained in a proposal, quotation or invoice of Seller shall not constitute a part of the contract of sale resulting from Seller's acceptance of Buyer's order unless such terms and conditions are specifically incorporated or noted as applicable in Buyer's order. Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of the terms and conditions contained in this document, notwithstanding such additional or different terms. Seller's shipment of goods or commencement of services in response to Buyer's order shall constitute acceptance on the terms and conditions set forth in this document and any additional or different terms contained in any acknowledgment or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller's acceptance.
- 2. ELECTRONIC TRANSACTIONS:**
  - A. EDI or web enabled EDI are the only acceptable methods of purchase orders and invoicing. Any exceptions must be approved by the Lilly Manager of Purchase to Pay Operations.
  - B. If Seller and Buyer have mutually agreed to the use of an Electronic Data Interchange ("EDI") system to facilitate purchase and sale transactions, Seller agrees:
    - i. That it shall not contest:
      - (i) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or
      - (ii) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form;
    - ii. That it shall use proper security procedures to protect its EDI records from improper access; and
    - iii. That the records maintained by Buyer regarding EDI purchase orders issued by Buyer shall be controlling.
- 3. PRICE:** Each Purchase Order shall be filled at the price specified on the Purchase Order. 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. Unless otherwise provided in a Purchase Order, payment will be due sixty (60) days after Buyer's Accounts Payable Department receives an invoice that complies with the requirements of these Terms, except that Buyer may withhold payment of any amount that it may reasonably dispute in good faith until such dispute is resolved.
- 4. MODIFICATION:** Modification, rescission, or amendment of Buyer's order or the contract of sale resulting from its acceptance shall be ineffective unless approved in writing by an authorized representative of Buyer's procurement department.
- 5. INSPECTION:** All Products furnished pursuant to a Purchase Order shall be subject to Buyer's inspection and approval, including acceptance testing by Buyer to verify that the Products satisfy all requirements conveyed by Buyer to Seller, including any specifications or documentation relating to the Products. If Buyer discovers a non-conformity within ninety (90) days following delivery of the Products and Buyer notifies Seller of the non-conformity, notwithstanding prior receipt and payment therefor, Seller shall, at Buyer's sole discretion, either (i) correct the non-conformity at no additional charge in a timely, professional manner, or (ii) refund monies paid by Buyer for the non-conforming Products or services attributable to or affected by the non-conforming Products, in which case Buyer shall return such non-conforming Products to Seller

at Seller's expense. Nothing in this Section shall be construed to limit or otherwise affect Buyer's indemnification rights, warranty rights or any other common law or statutory remedies.

**6. PACKAGING, DELIVERY, CANCELLATION:** Seller shall box, crate or package the goods for shipment in compliance with Applicable Laws, in accordance with good commercial and industry practice, and without charge to Buyer unless otherwise specified on the applicable Purchase Order. Buyer shall have the right to cancel all or any portion of any Purchase Order without liability if delivery is not made within the time stated in the Purchase Order.

**7. GENERAL REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants:

- A. That no article supplied under Buyer's order and subject to the Federal Food, Drug, and Cosmetic Act, as amended (the "Act"), is adulterated within the meaning of the Act or is an article which may not, under the provisions of Section 301, 404 or 505 of the Act, be introduced into interstate commerce;
- B. That no article supplied under Buyer's order is produced in violation of the Generic Drug Enforcement Act of 1992, as amended (the "Act"), that Seller is not debarred and that Seller has not and will not use in any capacity in connection with the filling of this order the services of any individual or person (as defined in the Act) debarred by the United States Food and Drug Administration under the provisions of the Act. If at any time this warranty is no longer accurate, Seller shall immediately notify Buyer of such changed circumstances;
- C. That no article, software, services, or product supplied under Buyer's order is produced in violation of the Fair Labor Standards Act of 1938, as amended, and that the price of any article supplied under Buyer's order does not violate any provision of the Sherman Act or Robinson-Patman Act, as amended;
- D. That no article, software, services, or product supplied under Buyer's order, including Work Product (hereafter defined), infringes the claim of any trademark, copyright, patent, or other proprietary right of a third party; however, Seller does not warrant against infringement to the extent caused by the use of the article in combination with other material except that if Seller has knowledge of such intended combination, Seller warrants, to its best knowledge, no third party rights will be infringed by such use;
- E. That all articles, software, services, or product supplied under Buyer's order are free from defects, of merchantable quality, and in accordance with Buyer's specifications;
- F. That all articles, software, or product supplied under Buyer's order shall be shipped in full compliance with packaging, labeling, shipping, and documentation requirements, including requirements concerning hazardous materials, substances, and waste of all state, local, national, or international governmental agencies or authorities regulating any segments or modes of transportation employed to effect delivery of such articles to Buyer, and all hazardous materials, substances, and waste shall be packaged, marked, labeled and shipped in accordance with the applicable regulations of the United States Department of Transportation, the International Civil Aviation Organization, and the International Maritime Organization; and
- G. Seller agrees that any software, products or services provided under this Purchase Order will comply with all state, local, national, and international laws, regulations, rules or orders, including but not limited to regulations promulgated under Section 264 of the Health Insurance Portability and Accountability Act (Public Law 104-91 - "HIPAA"). Furthermore, Seller shall in good faith execute any and all agreements that Buyer is required to have Seller execute in order that Buyer may comply with HIPAA.
- H. Without limiting Seller's liability to Buyer or third parties hereunder, Seller shall maintain Commercial General Liability Insurance to include contractual and products/completed operations coverage to meet its indemnification obligations under this Purchase Order or loss as required by applicable international, country, federal, state, or local laws, regulations or orders. All such insurance shall be primary and not contributory with regard to any other available insurance to Buyer. Seller represents and warrants that it shall promptly file all claims made under this Purchase Order with its insurance carriers.
- I. That no article, software, service, or product supplied under Buyer's Order is supplied in violation of economic or trade sanctions imposed by the U.S. government against sanctioned countries, entities, or individuals, including but not limited to sanctions imposed by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by Executive Order of the President of the United States.
- J. That all articles, software, services, or products supplied under Buyer's Order are supplied in full compliance with the Export Administration Regulations, 15 CFR Parts 700-799.

Seller agrees to defend, indemnify, and hold harmless Buyer against all liability, costs, expenses (including attorney fees), damages and judgments occasioned by or resulting from breach of any of the foregoing warranties.

**8. SAFETY & SECURITY:** Seller will comply with, and will cause its affiliates and subcontractors to comply with, all policies and procedures that Buyer establishes to enhance the safety or security of Buyer's facilities or of persons at or near Buyer's facilities, including measures restricting access such as the use of identification badges and passwords. Seller will promptly notify Buyer of any violation of such policies and procedures. Seller will comply with, and will cause its affiliates and subcontractors to comply with, the instructions of any Buyer 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. Buyer retains its right to restrict or refuse any person (including Seller its affiliates and subcontractors) access to Buyer's facilities, computers, or other information systems. Without limiting the generality of the foregoing, Buyer may restrict or refuse access to any individual who does not do any of the following to Buyer's satisfaction: (i) submit to and pass a drug screen, (ii) pass a background check or (iii) accept or acknowledge

in writing a personal obligation to protect Buyer's Confidential Information. Such restriction or refusal excuses Seller's performance only if it renders Seller's performance impracticable, does not comport with Buyer's written procedures, and is manifestly unreasonable.

- 9. NONDISCLOSURE:** Except to the extent provided in paragraph 11, Seller shall not disclose any information concerning Buyer's order or the contract of sale resulting from its acceptance, including its existence, without the prior written consent of Buyer.
- 10. CONFIDENTIALITY:** Buyer's "Confidential Information" includes all information that Buyer deems confidential or proprietary, including information deemed confidential by virtue of Buyer's obligations to another party and Confidential Information developed by Seller in connection with any Purchase Order. Buyer'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 Buyer's business; information subject to a right of privacy; and information Buyer maintains under a system of protection against unauthorized access. Seller will neither (i) disclose Buyer's Confidential Information except as authorized below or by Buyer in writing; nor (ii) use Buyer's Confidential Information for any purpose other than meeting Seller's obligations under any Purchase Order. Seller may disclose Buyer's Confidential Information:
- A. To its representatives, affiliates and subcontractors who need to know the information for the purpose of meeting Seller's obligations under a Purchase Order; provided that such representatives, affiliates and subcontractors must have contractual obligations that prohibit any disclosure and use of Buyer's Confidential Information in accordance with these Terms. Seller is responsible to Buyer for any unauthorized disclosure or use of Buyer's Confidential Information by Seller's representatives, affiliates or subcontractors.
  - B. To the extent compelled by Applicable Law; provided, however, that Seller will give Buyer reasonable advance notice of the disclosure to the extent such advance notice is permitted by Applicable Law.
  - C. In communications to its attorneys or accountants who have a professional obligation to maintain such information in confidence. Seller is responsible to Buyer for disclosure or use by any such persons of Buyer's Confidential Information not authorized by Buyer.

Promptly upon Buyer's request, Seller will either return or destroy all Records of Buyer's Confidential Information in Seller'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.

- 11. PUBLICITY:** Except to the extent expressly permitted under this Section, Seller shall not disclose any information concerning any Purchase Order or the contract of sale resulting from the acceptance thereof, including its existence, without the prior written consent of Buyer. Seller shall not use the name of Buyer, any employee of Buyer or any product or service of Buyer in any press release, advertising or materials distributed to prospective or existing customers or any other public disclosure, except as required by law or allowed in this Section. If required by law, Seller shall provide copies of the disclosure for the prior review and comment by Buyer's external corporate communications (public relations) department no less than ten (10) days prior to disclosure. In no event will Seller (i) represent, directly or indirectly, that any product or service provided by Seller has been approved, recommended, certified or endorsed by Buyer, or (ii) use Buyer's logos or other trademarks without the prior written consent of Buyer.
- 12. FEDERAL EEO AND AFFIRMATIVE ACTION LAW:** Buyer's order is subject to and incorporates by reference the provisions of the EEO clause in Section 202 of Executive Order 11246, 41 C.F.R. 60-250 and 41 C.F.R. 60-741, all as amended.
- 13. ASSIGNMENT:** To the extent allowed by applicable law, Seller shall not in any manner delegate its duty of performance or assign its rights or obligations under Buyer's order or the contract of sale resulting from its acceptance 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. CHOICE OF LAW, FORUM:** Each Purchase Order and any contract of sale resulting from its acceptance shall be governed in all respects by the laws of the State of Indiana, excluding its rules on conflict of law. Any action related to these Terms or any Purchase Order shall be brought and maintained exclusively in Marion County, Indiana.
- 15. UCC:** Seller and Buyer hereby expressly agree that the provisions of the Uniform Commercial Code as adopted by the State of Indiana shall apply to this Purchase Order, including, but not limited to, any software purchased under this Purchase Order.
- 16. RECORDS AND AUDITS:**
- A. At its own expense, Seller will create and maintain all Records (as defined below): (i) required by this Agreement and Applicable Law (as defined below) that relate to this Agreement and to Seller's performance under this Agreement; (ii) sufficient to demonstrate that any and all amounts invoiced to Buyer under this Agreement are accurate and proper in both kind and amount; (iii) sufficient to demonstrate the accuracy of any representations or reports submitted to Buyer under this Agreement; and (iv) sufficient to enable Buyer to comply with Applicable Laws and other legal obligations, to the extent that Seller has or reasonably should have knowledge of those Applicable Laws and other legal obligations. Record means without limitation, all information, data, text, images, sounds codes, source codes, computer programs, software, data bases or the like, used, created or obtained in the performance of this Agreement, inscribed in tangible medium or stored in an electronic or other medium and that is retrievable in perceivable form. Applicable Law means any statute, law, treaty, rule, code, ordinance, regulation, permit, license, interpretation, certificate or order of any federal, state, local or foreign government entity, authority, agency, court, or commission and any applicable arbitrator, or any judgment, decision, decree, injunction, writ, order subpoena, or like action of any court, arbitrator or other government entity.

- B. Seller will maintain all of the Records listed above for the longest of the following retention periods that applies: (i) any period prescribed by Applicable law or stated expressly in this Agreement; (ii) for Records related to invoices, for three (3) years after payment of the invoice by Buyer; (iii) for Records related to reports submitted to Buyer, for three (3) years after the report is submitted; and (iv) for all Records not addressed by one of the above, for three (3) years after the term of this Agreement.
- C. At no additional cost to Buyer, Seller will allow Buyer to inspect (and, upon request, Seller will furnish copies of) Records Seller is required to create or maintain under this Agreement for the purposes of evaluating and verifying: (i) compliance with the requirements of this Agreement; (ii) compliance with Applicable Law related to this Agreement or to Seller's performance under this Agreement; (iii) the accuracy and propriety of any invoice submitted to Buyer; and (iv) the accuracy of any representations or reports submitted to Buyer.
- D. At reasonable times and with reasonable advance notice, Buyer may enter and inspect any premises where Records are maintained or Services are performed as Buyer deems necessary to accomplish the evaluations and verifications described in the preceding subsection regarding access to Records. Seller will cooperate with Buyer and provide reasonable assistance to Buyer to facilitate the evaluation and inspection, and Buyer will reasonably cooperate with Seller to mitigate disruption to Seller's operations. In the event that Records are maintained, services are performed, or Buyer's property is kept at premises that Seller does not control, Seller will secure rights of entry and inspection sufficient to allow Buyer to exercise its rights under this section.
- E. Buyer, its employees, or designees may exercise Buyer's rights of entrance and inspection under this section. Examples of persons or designees that Buyer may designate include Buyer's independent auditors and representatives of any state, local or foreign government entity, authority, agency, court, or commission and any applicable arbitrator having jurisdiction over Buyer or its activities related to this Agreement.
- F. For Records generated by electronic databases, spreadsheets, programs or the like, Buyer'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 Work Product, Deliverables or Seller intellectual property. Seller's obligations under this section do not diminish Seller's other obligations toward, or Buyer's property rights to, such Records. Seller's obligations to maintain Records under this section are extinguished to the extent that Seller properly satisfies another obligation in this Agreement to deliver or to dispose of such Records. Deliverables means any materials, articles, substances, models, samples, software, data, records, reports, notices, documents, photographs, video recordings, audio recordings, drawings, designs, specifications, information and the like (whether physical, electronic, magnetic or other form) that Seller is specifically obligated to furnish Buyer or that are identified as Deliverables in this Agreement.
- H. Buyer will pay its own expenses for any inspection of the Records or Seller's premises. However, if in any audit, Buyer 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, Seller will, within thirty (30) days of receipt of Buyer's notice and supporting documentation, reimburse Buyer for its out-of-pocket costs incurred in conducting the audit, in addition to any remedies that Buyer 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.

## 17. CUSTOMS AND IMPORTS:

- A. Regarding any foreign-sourced goods or products imported into the United States ("Imported Products"), Seller shall provide information to Buyer, in the form, quality and detail reasonably required by Buyer, to enable Buyer to comply with applicable customs requirements, including the Customs-Trade Partnership Against Terrorism ("CTPAT"). If Seller participates in Customs Industry Partnership Programs (C-IPAT), Carrier Initiative Program ("CIP"), Super Carrier Initiative Program ("SCIP"), Business Anti-Smuggling Coalition ("BASC"), Seller shall so notify Buyer.
- B. Imported Products must be clearly marked with the country of origin (for customs purposes) on each container or on the merchandise as applicable.
- C. Invoices for Imported Products. For Imported Products, invoices (both commercial and pro forma) must contain (written in English) sufficient information and detail (as described below) as reasonably required by Buyer to comply with applicable customs requirements. A pro forma invoice is one provided for customs valuation purposes only, is not expected to be directly paid, and should contain the statement: "Value for Customs purposes only." Pro forma and commercial invoices must have consistent valuations for goods.
- D. Classification of Imported Products. At time of purchase of Imported Products, Seller shall provide to Buyer a proposed tariff classification for same as determined from the Harmonized Tariff Schedule of the United States. Buyer will make the final determination of the appropriate tariff classification and provide it to Seller for inclusion in the invoices. Buyer may choose to classify an item of imported goods within a special U.S. customs duty preference program. Such programs may require additional documentation from the supplier of the goods. Seller shall provide reasonable assistance to Buyer, at no additional charge to Buyer, to enable Buyer to comply with such program.

**18. EXPORT INFORMATION:** For each article, deliverable, good, software program, or product, Seller shall provide to Buyer a proposed Export Control Classification Number ("ECCN"). Buyer will make the final determination regarding the appropriate ECCN, Seller shall provide reasonable assistance to Buyer, at no additional charge to Buyer, to enable Buyer to determine the appropriate ECCN.

**19. TAXES.** Buyer will not reimburse Seller for taxes related to a transaction, except as provided on the Lilly Supplier Portal (on the

Internet at <http://www.supplierportal.lilly.com>).

**20. PERSONAL INFORMATION:** To the extent Seller receives, transmits, stores or otherwise possesses any Personal Information on behalf of Lilly, Seller will comply with all requirements of the version of Lilly's Vendor Privacy Standard (published on the Internet at <http://supplierportal.lilly.com> or otherwise made available to Seller) in effect on the date Seller signs this Agreement.

"Personal Information" means any information provided by Lilly and/or its affiliates or collected by Vendor for Lilly and/or its affiliates: (i) that identifies, or when used in combination with other information provided by Lilly or processed by Vendor on behalf of Lilly identifies, an individual; or (ii) from which identification or contact information of an individual person can be derived. Personal Information can be in any media or format, including computerized or electronic records as well as paper-based files. Lilly may revise its Vendor Privacy Standard from time to time in its sole discretion. The new revision replaces the old version as part of this Agreement to the extent that the changes do not materially alter Seller's rights or obligations under this Agreement. All the requirements of the Vendor Privacy Standard are in addition to all of Seller's other obligations under this Agreement, including those that are similar in nature. All Personal Information is deemed to be Lilly's Confidential Information regardless of whether it satisfies that definition. Notwithstanding anything in this Agreement to the contrary: (a) no action by Lilly expressly permitted by the Vendor Privacy Standard is a breach of this Agreement by Lilly; and (b) no such action excuses Seller's performance under this Agreement.

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

**21. LICENSE:** Seller hereby grants to Buyer, and Buyer hereby accepts, on the following terms and conditions, 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 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 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.

**22. 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.

**23. INFORMATION TECHNOLOGY REPRESENTATIONS AND WARRANTIES:** Regarding software or IT hardware ("IT Products"):

- A. Seller represents and warrants that at delivery and throughout the twelve (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 five (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 thirty (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 two (2) years from the Acceptance Date of the IT Product by Buyer or the current version plus the one (1) prior versions. Seller shall provide to Buyer as part of maintenance services, Updates and Upgrades to the IT Product at no additional cost to Buyer.

- F. Seller represents and warrants that the occurrence in or use by any IT Product supplied by Seller of any dates, including without limitation any date with a year specified as "99" or "00", regardless of other meanings attached to these values, and any date before, on or after January 1, 2000 ("Millennial 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 Millennial 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: (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 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.
- H. Seller warrants that it shall not use or incorporate Buyer's confidential information, data, or intellectual property in Seller's software or products.

#### **24. 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 sixty (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 (60) days after termination of this Purchase Order pursuant to this Section 24(A), 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 Terms and Conditions 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 thirty (30) days notice to Seller, provided that Seller has not cured the breach within such notice period.
    - i. 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 (60) days after termination of this Purchase Order pursuant to this Section 24(B)(i), Buyer shall discontinue further use of such licenses within sixty (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.
    - ii. 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.
  - C. The other provisions of the Purchase Order and these Terms and Conditions shall survive termination of any License.
- 25. UCITA:** Seller and Buyer hereby acknowledge and agree that any provisions of any state law adopting exactly or in modified form the Uniform Computer Information Transactions Act ("UCITA") shall not be applicable to this Purchase Order. Furthermore, both Seller and Buyer waive any and all rights arising from any such law.
- 26. 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.

**If this order involves performance by Seller of installation, maintenance, or other services, the following terms shall apply in addition to any applicable terms set out above:**

- 27. LABOR 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 state, federal and local authorities covering payroll taxes and any other payments relating to such persons' employment.
- 28. 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.
- 29. VERIFICATION AND ACCEPTANCE OF SERVICES:** Seller shall document each maintenance or service call with a work order, which shall be signed by Buyer's representative and submitted with Seller's invoice.
- 30. LIABILITY INSURANCE:** Seller shall maintain liability insurance policies covering all activities related to any Purchase Order and as otherwise required under Applicable Law (including worker's compensation coverage). Without limiting the generality of the foregoing, Seller shall maintain commercial general liability insurance with minimum limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 31. INDEMNIFICATION:** Each of Buyer and Seller will indemnify and defend the other (and the other's affiliates and representatives) against all losses, damages, costs or expenses, including interest, penalties, reasonable attorney or accountant fees, and expert witness fees related to disputes between the parties and to third party claims arising from any breach by it of its representations, warranties or obligations under these Terms or any Purchase Order or from any negligence or more culpable conduct by it (or by its affiliates or subcontractors (if any) or any of their respective representatives) in connection with its performance under any Purchase Order.

In addition to the foregoing, in the event Seller breaches any warranty on non-infringement for a Product, Work Product or Deliverable, Buyer may elect one of the following remedies, in addition to recovering any other damages or indemnification under these Terms:

- A. Require Seller to choose between furnishing either: a non-infringing substitute article or performance reasonably acceptable to Buyer, or obtaining for Buyer's benefit a license or assignment of rights sufficient to afford Buyer the full benefits of the Deliverables, Products, Software, and Services, both alternatives being at Seller's expense.
- B. Recover (or withhold) from Seller the portion of Seller's compensation attributable to the infringing Services, Products, Software, or Deliverables, with a pro-rata deduction for the months between the Effective Date and the moment of notice by Buyer of breach of warranty of non-infringement, relative to sixty (60) months after the date of delivery of the Product(s).
- 32. 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.
- 33. OWNERSHIP OF WORK PRODUCT:** All articles, materials, goods, information, works of authorship, trademarks, 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 Agreement or derived from information or materials Seller has received from Lilly ("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. 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.
- 34. SERVICE WARRANTIES:** Seller warrants that the services will be executed in accordance with Buyer's order and all applicable federal, state, local, and international 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, trademark, 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, workmanlike, 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 terms and conditions 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.

**35. TERMINATION:** Notwithstanding any contrary terms contained above, Buyer shall have the right at its absolute discretion, five (5) days following Buyer's written notice to Seller, to cancel, in whole or part, Buyer's order or any contract resulting from its acceptance. In the event of such cancellation, 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 canceled 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.

## I n s t r u c t i o n s :

### MARKINGS:

- Show Buyer's Order number on all packages.
- Each Container must also be plainly identified by:
  - Name of Manufacturer
  - Buyer's Product Title
  - Net Weight
  - Parcel Number of Total Parcels Shipped
  - Country of Origin Marking

### ADDITIONAL INSTRUCTIONS FOR SHIPMENTS OF DRUGS, CHEMICALS, AND PACKAGING MATERIALS:

- Each container must also be plainly identified with the Manufacturer's Control Number, Manufacturing Location, Buyer's Item Code, Lot or Batch Number.
- Keep number of lots to a minimum.

### ADDITIONAL INSTRUCTIONS FOR PRODUCT RECALLS OR TECHNICAL BULLETINS:

Mail all product recalls using United States Postal Service Certified Mail using the following address format:

Lilly USA, LLC  
Re: Supplier Product Recall  
1 Lilly Corporate Center  
Indianapolis, IN 46285

Mail all Technical bulletins using United States Postal Service Certified Mail using the following address format:

Lilly USA, LLC  
Re: Supplier Technical Bulletin  
1 Lilly Corporate Center  
Indianapolis, IN 46285

### PACKING SLIPS:

A packing slip itemizing contents must be placed on the outside of each shipment in a protective envelope. Buyer's purchase order line number must appear with each item on Seller's packing slip. On shipments of drugs and chemicals, also show number of containers in each batch.

### SHIPPING ADDRESS AND DOCUMENTATION:

- Domestic and International Shipments. Inbound Routing Instructions: Prior to shipment, Seller shall meet Lilly requirements regarding the Lilly Inbound Routing Instructions as provided on the Internet at <http://supplierportal.lilly.com> or otherwise made available to Seller.

### INVOICES:

Standard Payment Terms:

Net sixty (60) days from the date of receipt of a valid and accurate invoice in Accounts Payable.

Show Buyer's purchase order number, net weights, payment terms and transportation terms. Buyer's purchase order line number must appear with each item on Seller's invoice.

For Imported Products, invoices (both commercial and pro forma) must contain (written in English):

- Name and complete address of seller/ manufacturer;
- Accurate and detailed description of the goods (adequate to permit accurate customs classification and clearance);
- The name and contact information of the person receiving the goods at Lilly;

- Quantity, unit of measure and purchase price of each item; tariff classification code from the Harmonized Tariff Schedule of the U.S.; clearly stated terms of sale; Chemical Abstract Service Number (CAS#) and International Non-Proprietary Name (INN), if available, for chemical compounds;
- Currency of purchase;
- Country of origin of goods;
- Separately itemized freight and insurance if to be paid by Buyer and included in the invoice;
- The port of entry to which the Imported Products are shipped; and
- Chemical compounds that are proprietary in nature shall have sufficient description to enable proper classification (e.g. Quinoline (with no other fused ring structure) derivatives including ester and halogens).

**Standard Invoice for VAT:**

- All VAT charges submitted to Lilly will be shown as a separate line item on all Supplier invoices.
- The invoices which include VAT charges must be delivered to Lilly in original paper invoice for payment to be considered.
- Vendors submitting invoices via EDI or web enabled EDI process should not submit duplicate paper invoices for this purpose. Further instructions can be obtained by calling (877) 511-1529.
- For instructions regarding Standard of Documentation Required for European VAT Reclaim see: <http://supplierportal.lilly.com>.

**Suppliers that have been pre-approved to mail invoices to Accounts Payable should use the following address:**

LILLY USA, LLC  
 ACCOUNTS PAYABLE DIVISION  
 P.O. BOX 12000  
 AGUADILLA, PR 00605

**Note:** Invoices submitted on paper that have not been pre-approved may be assessed a \$50 processing fee. Suppliers cannot assess this fee or any other invoice processing fees on their invoice.

Due dates and cash discounts are computed from the date an accurate invoice is received in Accounts Payable. Improper invoices may be returned for correction without loss of discount. Payments made by paper check are mailed on the due date. In case of disputes, doubt concerning quality, or where rejections occur, payment may be deferred without penalty or loss of discount. Additional questions on Lilly's invoice handling process may be directed to (877) 511-1529.

**BILLS OF LADING:**

Show Buyer's order number, net weight, gross weight, and/or tare weight where applicable, as well as the number of containers; if drugs or chemicals, also show number of containers in each batch. If transportation is F.O.B. origin and transportation charges are for Buyer's account, ship at released value rates that will produce lowest transportation cost via Buyer's designated carrier. When Buyer's carrier is not used and that results in higher transportation charges for Buyer, the excess charges will be deducted from Seller's invoice prior to payment.