

**ELANCO AUSTRALIA PTY LIMITED  
PURCHASE ORDER TERMS AND CONDITIONS**

**June 2021**

**1. Application**

These Terms and Conditions apply to any purchase order issued by **Elanco Australia Pty Limited** (ABN 64 076 745 198) ("**Elanco**") to you ("**Supplier**") for the provision of goods and/or services ("**the Purchase Order**").

The current version of these Terms and Conditions which will apply to each Purchase Order is that published at the time of issue of the Purchase Order by Elanco on the Internet at <https://www.elanco.com/suppliers> (which terms may be amended from time to time at Elanco's sole discretion).

**2. Acceptance**

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

**3. Scope of Goods and Services**

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

**4. Other Terms and Conditions**

These Terms and Conditions and any document incorporated by reference, including the Purchase Order, constitute the entire agreement of the parties about their subject matter. These Terms and Conditions override any other terms or conditions contained in any Quote, invoice, estimate, scope of work or other document issued by Supplier or Elanco. If additional or different terms and conditions are specified in the Purchase Order which are inconsistent with these Terms and Conditions, the Purchase Order will take precedence over these Terms and Conditions to the extent of any inconsistency. Despite anything to the contrary contained herein, if Elanco and Supplier have executed an agreement which governs the purchase and sale of the Goods or Services in issue, the terms of such agreement shall be applicable to such purchase and sale and these Terms shall not apply.

**5. Delivery and Risk**

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

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

**6. Price**

Any Goods or Services shall be supplied to Elanco for the price specified in the Purchase Order. Supplier is not entitled to an additional payment for packing or shipping of Goods unless specified in the Purchase Order. Supplier must provide Elanco with a valid tax invoice in respect of any Goods or Services supplied under the

Purchase Order (quoting the Purchase Order number) within 7 days of supplying all such Goods or the completed Services, as applicable ("**Invoice**"). Supplier will provide all supporting documentation to substantiate the amount charged, on request by Elanco or otherwise required by these Terms and Conditions. Unless otherwise stated by Elanco in the Purchase Order, Elanco will pay Supplier the lesser of the price specified in the Purchase Order and the Invoice within 60 days of receiving a valid, undisputed Invoice. Elanco may withhold payment of any amount that it reasonably disputes in good faith, until such dispute is resolved.

#### **7. GST and Taxes**

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

#### **8. General obligations**

Supplier warrants that:

- a. all Goods and all materials used in performance of the Services will be new, free from faults or defects in design, of satisfactory quality and fit for the purpose for which they are supplied;
- b. the Goods will correspond with their specifications and with any samples provided to Elanco;
- c. the Goods will comply with all statutory requirements and regulations relating to the sale of the Goods;
- d. title to the Good is vested absolutely in the Supplier before transfer to Elanco;
- e. the Goods will not be subject to any encumbrances, including any charge, lien, pledge or as any other security for payment of a monetary or other obligation;
- f. all Goods shipped under the Purchase Order will be accompanied by appropriate delivery papers;
- g. the Purchase Order number will appear on all documents and packages produced in connection with the supply to Elanco of the Goods or Services; and
- h. Supplier will provide the Services to the highest level of skill, care and diligence, including in accordance with any specified timetable and the Services will be free from material defects as regards their performance.

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

#### **9. Inspection**

Any Goods and Services delivered by Supplier under the Purchase Order are subject to Elanco's inspection and approval, regardless of prior receipt or payment. If Elanco determines, in its sole discretion, that any delivery of Goods or Services which it has inspected is unsatisfactory, Elanco will notify Supplier and may return the Goods to Supplier or reject the Services for a full refund of any price paid by Elanco. Risk and title in such Goods will pass to Supplier upon receipt of notice from Elanco. Transportation both ways will be at Supplier expense. All Goods and Services specified in the Purchase Order (including any documentation or materials generated in the performance of Services under the Purchase Order) are subject to acceptance testing by Elanco. If, in undertaking acceptance testing, Elanco discovers a non-conformity within 90 days after delivery and notifies Supplier of that non-conformity, Supplier will correct the non-conformity at no additional charge or provide a refund to Elanco, at Elanco's sole discretion. These rights are additional to any rights granted by law.

## **10. 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, and material including all Elanco Confidential Information, electronic records or any other form of records and intellectual property. In the course of their relationship, 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, and 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, and such degree of care shall be sufficient and consistent to ensure the protection of valuable property.

In respect of Elanco's property:

- a. Supplier will not encumber, including not possess or assert any lien or other right against Elanco's property.
- b. Supplier will use Elanco's property only in connection with supplying the Goods and Services and performance of its obligations under a Purchase Order and these Terms and Conditions, 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 will reimburse Elanco for the value of such lost, damaged or destroyed property.
- d. Supplier will neither dispose of Elanco's property nor transfer or delivery possession of it to anyone else except in accordance with these Terms and Conditions. Supplier will follow Elanco's written instructions for disposition of any of Elanco's property in Supplier's possession at any time. 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 property provided to Elanco or a third party under this Section shall be in a format as agreed between 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 the provisions of Goods or Services to Elanco (or at any time upon Elanco's request), 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 Agreement, and certify to the same to Elanco, 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 these Terms and Conditions.
- 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 provisions of Goods or Services to Elanco to Elanco, 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 these Terms and Conditions.
- g. Despite anything to the contrary in these Terms and Conditions, Supplier may make and retain one (1) record of any written Work Product or Elanco Confidential Information, as the case may be, solely for its legal archives.

## **11. Ownership of Work Product**

These Terms and Conditions do not affect the pre-existing intellectual property rights of either party (including any resources or data provided to Supplier by Elanco for the purposes of performing the Services). Supplier represents and warrants that the intellectual property rights created or developed for the sole purpose of

performing the Services and/or the supply of the Goods (“**Work Product**”) and its use by Elanco will not infringe the intellectual property rights of any person. The Work Product will be owned on its creation or development by Elanco, and Supplier must execute all necessary assignments or documentation to vest ownership in Elanco in a timely manner. In relation to all copyright works created under these Terms and Conditions, Supplier must procure all consents necessary to allow Elanco to materially alter those works and deal with those works without attributing authorship.

## **12. Insurance**

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

## **13. Compliance**

Each party will ensure that it complies with all applicable local, national and international laws, regulations, industry codes.

In respect of the supply of Goods and Services to Elanco and in the performance of obligations under this Agreement, Supplier agrees to comply with all applicable Elanco policies that Supplier is made aware of including, without limitation,:

- a. Elanco’s Business Partner Code of Conduct located at <https://www.elanco.com/suppliers> (as may be amended from time to time);
- b. Applicable provisions of the Supplier Privacy Standard as revised by Elanco from time to time and published at: [https://assets-us-01.kc-usercontent.com/58017606-861d-00e9-35db-aff39487cc42/d4ea2da9-729e-4264-9732-d99b27920e12/Elanco%20Supplier\\_Privacy\\_Standard\(SPS\)%202020%20\(003\).pdf](https://assets-us-01.kc-usercontent.com/58017606-861d-00e9-35db-aff39487cc42/d4ea2da9-729e-4264-9732-d99b27920e12/Elanco%20Supplier_Privacy_Standard(SPS)%202020%20(003).pdf) or otherwise made available to Supplier; and
- c. Elanco’s Information Security Standard as revised by Elanco from time to time and published at: [https://assets-us-01.kc-usercontent.com/58017606-861d-00e9-35db-aff39487cc42/13210b05-d17a-4e20-b446-039fa346bd47/InformationSecurityStandard\\_v1.pdf](https://assets-us-01.kc-usercontent.com/58017606-861d-00e9-35db-aff39487cc42/13210b05-d17a-4e20-b446-039fa346bd47/InformationSecurityStandard_v1.pdf) or otherwise made available to Supplier.

Supplier’s failure to comply with section 3 (g) and/or 3 (h) of the Supplier Privacy Standard is a material breach of the Agreement.

Unless Elanco directs otherwise, Supplier shall procure at Supplier’s own expense all permits, licenses and other approvals required to undertake any required activity under the Purchase Order.

## **14. Notice of Review, Audit or Inspections**

Supplier must provide Elanco with immediate notice of any governmental or regulatory review, audit or inspection of Supplier’s facilities, processes, or products that might relate to the subject matter of the Purchase Order. Elanco must be given the opportunity to provide assistance to Supplier in responding to any such review, audit or inspection. Supplier will provide Elanco with the results of any such review, audit or inspection.

## **15. Books and Records**

During the term of the Purchase Order and for five (5) years thereafter, the Supplier’s records relating to the performance of Supplier’s duties and obligations under these Terms and Conditions will be open to inspection and subject to audit and reproduction by Elanco and/or Elanco’s nominated agent or representative.

## 16. Anti-bribery laws

In connection with these Terms and Conditions including any Purchase Order, the Parties have complied with, and will comply with, all applicable local, national, and international laws, regulations, industry codes dealing with government procurement, conflicts of interest, corruption or bribery, the U.S. *Foreign Corrupt Practices Act of 1977* (FCPA), as amended, the U.K. *Bribery Act 2010* (UKBA), as amended, and any laws enacted to implement the *Organisation of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Officials in International Business Transactions*.

In connection with these Terms and Conditions including any Purchase Order, Supplier has not made, or provided, and will not make or provide, any payment or benefit offered, given, promised to give, or authorized, and will not make, offer, give, promise to give, or authorize, any bribe, kickback, payment or transfer of anything of value, directly or indirectly, to Government Officials, customers, business partners, animal healthcare professionals or any other person in order to (i) secure an improper benefit or unfair business advantage, (ii) affect private or official/government decision making, (iii) inducing the person or official to do or omit to do an act in violation of a lawful or otherwise required duty, (iv) inducing the person or official to improperly influence the act of any organization, including any government or government instrumentality, to assist Supplier or Elanco in obtaining or retaining business, (v) affect prescribing or application of Elanco products, or (vi) induce someone to breach professional or ethical duties or standards. Supplier confirms that it is unaware of any improper benefit requested or received by any third party in connection with these Terms and Conditions including any Purchase Order.

In this Section 16, “**Government Official**” is any officer or employee or anyone acting in an official capacity on behalf of any of: (i) a government or any department or agency thereof; (ii) a public international organization, or any department, agency or institution thereof; (iii) a government-owned or controlled company, institution, or other entity, including a government-owned hospital or university; or (iv) any political party or party official or candidate for public or political party office.

## 17. Termination

Elanco may terminate the Purchase Order (in whole or part) on 5 days written notice to Supplier. In the event of such termination, Elanco shall have no obligation to Supplier except to pay all costs actually and reasonably incurred by Supplier prior to the date of notification of termination plus a normally accepted trade allowance on such costs as full payment of Supplier overhead and profit *provided that* in no event shall Elanco be obligated to pay an amount in excess of the amount set out in the Purchase Order for the Goods and/or Services. Supplier must, as soon as reasonably practicable after termination, refund to Elanco any payments made to Supplier in advance.

## 18. Early Termination

If Supplier is in material breach of these Terms and Conditions, Elanco may immediately terminate any or all Purchase Orders. For the avoidance of doubt, a material breach includes a breach by Supplier of:

- a. sections 13 to 16 (inclusive); or
- b. any other provision of these Terms and Conditions which expressly provides conduct constituting a material breach.

If the Purchase Order is terminated (in whole or part) as a result of default by Supplier, Elanco shall have no obligation to reimburse Supplier for any Services performed by Supplier and Supplier will not be entitled to any damages, nor will Elanco indemnify Supplier for any loss Supplier may suffer, arising from Elanco exercising its right to terminate under this clause 18.

## 19. Indemnity

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

- a. in contract, statute or tort (including negligence) in connection with these Terms and Conditions, the Purchase Order or their termination (including in relation to carriage and delivery of Goods, or infringement of the intellectual property rights of any person in connection with the Goods or Services); or
- b. out of any Claims made by Supplier's contractors, agents, affiliates or employees ("**Supplier Personnel**"), including in respect of their employment or engagement with Supplier, except to the extent these Claims arise directly from the wrongful or unlawful conduct of Elanco.

## 20. Subcontractors

Supplier must not use any subcontractor without Elanco's prior written approval. If Supplier uses a subcontractor, Supplier will be fully responsible for Goods supplied and Services performed by the subcontractor to the same extent as if the Goods were supplied by or Services were performed directly by Supplier.

## 21. Non-disclosure and Publicity

Without Elanco's prior written consent, Supplier must not:

- a. disclose to any other person any information concerning the Purchase Order or these Terms and Conditions, including their existence, whether in a press release, advertising or other materials or communications;
- b. use any name relating to Elanco (including ""Elanco Australia" or "Elanco") unless required by law, in which case Supplier must provide copies of the disclosure to Elanco for the prior review and comment by Elanco;
- c. use Elanco's name or logo in any manner which may suggest any relationship, association or endorsement between Supplier and Elanco.

## 22. Confidentiality

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

- a. to the extent necessary to supply Goods or Services under the Purchase Order;
- b. if required by law; or
- c. if agreed by Elanco in writing.

If Supplier becomes aware of an unauthorised disclosure or use of any Confidential Information or any such suspected disclosure or use, Supplier must immediately notify Elanco. Supplier will ensure its employees, consultants, agents and the like agree in writing not to use or disclose any information learned or acquired in the delivery of the Goods or performance of the Services, including any information relating to the Work Products or any Confidential Information.

### 23. Privacy and Security

Supplier will comply with the provisions of the *Privacy Act 1988 (Cth)* ("**Privacy Act**") and all requirements of Elanco's Supplier Privacy Standard (published on the Internet at <https://www.elanco.com/suppliers> or otherwise made available to Supplier by Elanco), as amended from time to time at Elanco's sole discretion and Elanco's Information Security Standard (published on the Internet at <https://www.elanco.com/suppliers> or otherwise made available to Supplier by Elanco), as amended from time to time at Elanco's sole discretion. The Supplier Privacy and the Information Security Standards will prevail over these Terms and Conditions to the extent of any inconsistency. All personal information (as defined in the Supplier Privacy Standard) is deemed to be Elanco's confidential information regardless of whether it satisfies the definition in section 22. Any failure to comply with Elanco's Supplier Privacy Standard will be a material breach of these Terms and Conditions.

### 24. Modern Slavery

Supplier acknowledges that Elanco has obligations to comply with the Modern Slavery Legislation and warrants that as at the date of issue of the Purchase Order to Supplier, that Supplier:

- a. has no knowledge of Modern Slavery Offences; and
- b. has taken reasonable steps to prevent the occurrence of Modern Slavery Offences within its organisation or supply chain.

Supplier agrees to comply with the Modern Slavery Legislation in its business and operations and not engage in any conduct or activity which constitutes a Modern Slavery Offence. Supplier shall undertake commercially reasonable efforts, due diligence, and ongoing monitoring to ensure there are no Modern Slavery Offences being conducted by any party in Supplier's supply chain, including Supplier's sub-contractors, irrespective of whether such sub-contractors are involved in provision of goods or services by or for Supplier to Elanco.

Supplier agrees to cooperate with Elanco including to:

- a. support and respond in a timely manner to any due diligence or monitoring activities undertaken by Elanco or its agent under the Modern Slavery Legislation;
- b. provide Elanco with an annual report, and if requested, further information upon which the Service Provider has relied in preparing such report, to enable Elanco to prepare and submit reports under applicable Modern Slavery Legislation; and
- c. notify Elanco as soon as practicable upon becoming aware of any Modern Slavery Offence, or of charges being laid in relation to such offence, within Supplier's organisation or supply chain.

"**Modern Slavery Legislation**" means the Modern Slavery Act 2018 (Cth) and to the extent to which it applies, the Modern Slavery Act 2018 (NSW) and any equivalent state or territory legislation. "Modern Slavery Offence" means any activity or action which is an offence under the Modern Slavery Legislation.

### 25. Animal Welfare

In carrying out its responsibilities under these Terms and Conditions, where relevant, Supplier will comply with all 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 Supplier.

### 26. Assignment

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

**27. Relationship of the Parties**

Supplier acknowledges and agrees that, in performing Services, Supplier will be acting as an independent contractor, and neither Supplier nor any of Supplier's personnel shall be deemed to be employees of Elanco for any purpose. Nothing in the Purchase Order makes either party the principal, agent, partner or joint venturer of the other party. Neither party has the authority to enter into any agreement on behalf of the other party nor shall either party act so as to suggest that it has such authority.

**28. Governing Law**

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