

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

February 2020

1. Application

These Terms and Conditions apply to any purchase order issued by Elanco Australasia Pty Ltd ABN [insert] ("**Elanco**") to you ("**Supplier**") for the provision of goods and/or services ("**Purchase Order**").

The current version of these Terms and Conditions which will apply to this Purchase Order is published on the Internet at <https://www.elanco.com/suppliers> and 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 ("**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, software, or services in issue, the terms of such agreement shall be controlling and these Terms shall not apply.

5. Delivery

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

7. GST and Taxes

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

(i) all Goods and all materials used in performance of the Services will be new, free from faults in design and fit for the purpose for which they are supplied;

(ii) the Goods will not be subject to any encumbrances, including any charge, lien, pledge or as any other security for payment of a monetary or other obligation;

(iii) all Goods shipped under the Purchase Order will be accompanied by appropriate delivery papers;

(iv) the Purchase Order number will appear on all documents and packages produced in connection with the Goods or Services; and

(v) 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 delivered by Supplier under this 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 which it has inspected is unsatisfactory, Elanco will notify Supplier and may return the Goods to Supplier for a full refund of any price paid by Elanco. Risk and title in the Goods will pass to Supplier ways will be at Supplier expense. All Goods specified in the Purchase Order (including any documentation or materials generated in the performance of Services under the Purchase Order) are subject to acceptance testing by Elanco. If, in undertaking acceptance testing, Elanco discovers a non-conformity within 90 days after delivery of any Goods and notifies Supplier of that nonconformity, 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, material and includes all Elanco Information and Records and Intellectual Property. In the course of their relationship under this Agreement, Supplier may have Elanco's property in its possession. Supplier will retain Elanco's property and will exercise appropriate care toward it to protect against damage, destruction, loss, unauthorized use, or unauthorized disclosure, but in no event will Supplier exercise a lower degree of care in safeguarding Elanco's property than Supplier uses in safeguarding its own property of a similar nature, provided that such degree of care is clear and consistent to ensure the protection of valuable property.

- a. Supplier will not encumber, including not possess or assert any lien or other right against Elanco's property.
- b. Supplier will use Elanco's property only in connection with providing Services and performance of its obligations as set forth in this Agreement, and not for any other purpose
- c. Supplier will promptly notify Elanco of any loss, damage, destruction, to Elanco's property in its possession and reimburse Elanco for the value of such lost, damaged or destroyed property.
- d. Supplier will neither dispose of Elanco's property nor transfer possession of it to anyone else except in

accordance with this Agreement. Supplier will follow Elanco's written instructions for disposition of any of Elanco's property (including any Records that are Elanco's property) in Supplier's possession at any time during the term of this Agreement or upon expiration or other termination of this Agreement. Such disposition may include destruction, delivery to Elanco, or delivery to a third party designated by Elanco or to another destination of Elanco's choosing. Any Elanco Information provided to Elanco or a third party under this Section shall be in a format as agreed amongst the parties (e.g. XML, CSV or other common electronic format). For the purpose of Electronic Records, "delivery" includes an electronic transmission of the Record or the delivery of the Record stored on an appropriate physical medium; and "destroy" or "destruction" includes the destruction of the physical medium on which a Record is stored or the complete and permanent removal of a Record including all copies and instance of Elanco Information from its storage medium,

e. Promptly upon termination or expiration of this Agreement, 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, or (b) at Elanco's discretion, return all Elanco Confidential Information to Elanco or a third party designated by Elanco, subject to any document retention requirements set forth in this Agreement..

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 Agreement, Supplier will deliver to Elanco all of Elanco's property in its possession and will destroy any residual Electronic Records that are Elanco's property, subject to any document retention requirement set forth in this Agreement.

g. Despite anything to the contrary in this Agreement, Supplier may make and retain one (1) Record of any written Work Product or Deliverables 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 delivery 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 the 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 laws, government regulations and industry codes, including, where applicable, the Medicines Australia Code of Conduct. Supplier also agrees to comply with any Elanco policies that Supplier is made aware of. 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 facility, 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 three (3) years thereafter, Supplier records relating to the performance of Supplier duties and obligations under these Terms and Conditions will be open to inspection and subject to audit and reproduction by Elanco or Elanco's nominated agent or representative.

16. Anti-bribery laws

In carrying out its responsibilities under these Terms and Conditions, each party will comply with all applicable anti-bribery laws in the countries where the party has its principal place of business and where it conducts activities under these Terms and Conditions. The parties understand and agree to comply with the United States Foreign Corrupt Practices Act which generally prohibits

the promise, payment or giving of anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage. In this clause 15, “**government official**” means any official, officer, representative, or employee of, including any doctor employed by, any non-US government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office. Supplier represents and warrants that neither Supplier nor any of Supplier’s shareholders, directors, officers, employees, agents, or consultants is a government official for the purpose of:

(i) influencing any act or decision of the government official in his/her official capacity;

(ii) inducing the government official to do or omit to do any act in violation of the lawful duty of the official;

(iii) securing any improper advantage; or

(iv) inducing the government official to use his/her influence with the government or instrumentality to affect or influence any act or decision of the government or instrumentality with respect to any activities undertaken relating to these Terms and Conditions. Supplier further represent that no payment, authorisation, promise or gift of the type described above has been made prior to the date of the Purchase Order. The parties will make reasonable efforts to comply with requests for information, including answering questionnaires and audit inquiries to enable the other party to ensure compliance with applicable anti-bribery laws.

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. 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 a Purchase Order. For the avoidance of doubt, a material breach includes a breach by Supplier of:

(i) sections 12 to 15 (inclusive); or

(ii) any other provision of these Terms and Conditions which expressly provides conduct constituting a material breach.

If the Purchase Order is terminated (in whole or part) as a result of default by 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 17.

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:

(i) in contract, statute or tort (including negligence) in connection with the Terms and Conditions, the Purchase Order or their termination (including in relation to carriage and delivery of Goods, or infringement of the intellectual property rights of any person in connection with the Goods or Services); or

(ii) out of any Claims made by Supplier 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 Services performed by the subcontractor to the same extent as if the Services were performed directly by Supplier.

21. Non-disclosure and Publicity

Supplier will not disclose to any other person any information concerning the Purchase Order, including its existence, whether in a press release, advertising or other materials, without Elanco's prior written consent.

Supplier must not refer to the existence of these Terms or Conditions (including the Purchase Order) or use any name relating to Elanco (including "Eli Elanco" or "Eli 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.

Supplier must not 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:

(i) to the extent necessary to supply Goods or Services under the Purchase Order;

(ii) if required by law; or

(iii) 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 employees agree in writing not to use or disclose any information learned or acquired in the delivery of the Goods or performance of the Services, including any information relating to the Work Products or any Confidential Information.

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> Elanco 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 21. Any failure to comply with the Vendor Privacy Standard will be a material breach of these Terms and Conditions.

24. Assignment

Supplier 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.

25. 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 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.

26. Governing Law

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

27. Animal Welfare

In carrying out its responsibilities under these Terms and Conditions, 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.