

# General Conditions on Procurement

(Version 2019)

## 1. Introduction

Purchase Orders or Contracts shall become effective, subject to a written confirmation of the Seller that he accepts the ICRC General Conditions on Purchasing.

Acceptance of the ICRC Purchase Order entails waiving by the Seller of his General Sales Conditions.

In case of conflict between the terms and conditions of the General Conditions on Purchasing and purchase orders, other contracts on the purchase or frame agreements related to the purchase at stake, the terms and conditions set forth in the latter documents shall prevail over the General Conditions on Purchasing.

For grain purchase:

Transaction to be under GAFTA conditions (N°. to be specified in the contract) where not contradictory to the terms below.

## 2. Quality Inspection

The buyer may inspect, or have inspected on his behalf by a specialized firm, the quality and quantity of the merchandise delivered as well as the production process involved (working conditions, hygiene and safety).

The inspection will be executed on the Buyer's account. The Seller is requested to co-operate fully with the inspection company.

Goods must comply with the specifications as stipulated in the Purchase Order. Acceptance of changes will only be based on an amendment document agreed by the Buyer.

## 3. Quality for Pharmaceuticals

The quality of drugs must comply with internationally recognised standards of pharmacopoeia and as specified in the original offer made by the Seller.

The Seller must provide with each shipment a quality certificate issued by the National Quality Control Department of the country of origin or by an independent quality control laboratory approved by the Buyer.

Products with an expiry date shall have at least two-thirds of their shelf life remaining at the time of shipment.

## 4. Packing and labelling Instructions

Packing to be sound, complying with normal commercial export standards for the type of goods specified in the contract. The packing material must be adequate to safeguard the goods during transportation and transit as well as for storage under special conditions such as tropical, Siberian climate, etc... The Seller shall be responsible for damage or loss due to poor or inadequate packing and/or labelling.

To allow easy and secure handling, the weight of a package should not exceed 50 kg.

Each consignment must be accompanied by a packing list, stating the number of cartons, the exact contents (type and quantity) including batch number and expiry date for consumables (food, medical, etc.) and the serial number for equipment.

For equipment, the serial number must be indicated on the outer packaging.

For **dangerous goods** the packaging must be in conformity with **IATA/IMO Dangerous Goods Regulations**, specific to the mode of transportation.

## **Cold Chain**

Goods such as vaccines must be shipped in the correct packing to maintain the cold chain and be labelled accordingly. The label must be clearly visible and include the correct warnings e.g. "KEEP COOL" and the required temperature for storage.

The Purchase Order may specify more detailed packing and/or labelling instructions.

## **5. Delivery**

Upon request the Seller must inform the Buyer within 24 hours of the exact status or geographical position of the ordered goods.

## **6. Export / Import Licence**

Purchase Orders are subject to the obtaining of export and/or import licence or other governmental authorisation that may be required.

The Seller shall be responsible for obtaining the export licence or authorisation but the Buyer will assist the Seller in these endeavours to the best of its ability. In the event of refusal thereof, the Purchase Order shall be deemed cancelled. Any advance payments / shipments will be returned as mutually agreed.

The Seller shall provide all necessary documents for export and import clearance. The Seller is responsible for all expenses or losses due to incorrect and/or incomplete documents or for the late arrival of documents.

For controlled medicines, the regulatory requirements concerning their import and export must be met. Buyer and Seller will do the best in their ability, to assist each other in this matter.

## **7. Delivery Terms**

According INCOTERMS ICC 2010, as specified in the contract. INCOTERMS ICC 2020 shall replace INCOTERMS ICC 2010 as of the 1<sup>st</sup> of January 2020.

## **8. Delays in Delivery**

The penalty clause will be imposed (if mentioned, in the Purchase Order) for late delivery of a commodity unless due to force majeure without prejudice to other measures stipulated in the present general conditions. Nevertheless, the Seller must inform the Buyer immediately in the case of possible delays or force majeure in order to enable the Buyer to take appropriate measures.

Besides penalties stipulated in the penalty clause the Seller is responsible for all costs arising due to late delivery, particularly for the possible cost of demurrage. Termination according to article 15 is always possible.

In case the Buyer cannot take delivery of the goods for any reason at the specified date, both parties shall do their utmost to find a mutually acceptable solution. The Buyer shall be responsible for any unavoidable expenditure.

## **9. Transfer of ownership**

The ownership of the supplies shall pass to the Buyer upon complete delivery of the supplies at the date and place of delivery according to the stipulated INCOTERMS in the contract.

The ownership of rejected supplies and the risks pertaining to them shall be re-transferred to the Seller upon written notice from the Buyer.

## 10. Force majeure: inability to perform

A) Neither party shall be liable for any delay in performing or failure to perform any of its obligations hereunder if such delay or failure is caused by strikes, lockouts, labour disputes, riots, civil commotion, acts or restraints of governments or any similar unpredictable cause, beyond the control of the party in question provided that such party shall:

- give written notice within 24 hours to the other party of the existence of such cause and of the likelihood that a delay may take place, and
- do the best endeavour to perform their obligation hereunder notwithstanding the existence of such cause.

B) In the event that any of the causes specified in Clause A) subsists for a period of seven consecutive days at the least, either party shall be entitled to terminate this Contract by written notice to the other party.

C) The Buyer shall pay only the goods delivered. Any advance payment shall be returned.

## 11. Publicity

This contract shall not authorise the Seller to commercially exploit in any way the collaboration with the Buyer. Utilisation of written material produced and/or photos/films taken before, during or after the contract period is therefore not permitted. Exceptions may be granted, by the Buyer, exclusively in writing, upon special request.

## 12. Warranty / Rejected supplies

The Seller guarantees the conformity of the merchandise and indemnifies the buyer for any damage, direct or indirect due to any defect, material or immaterial (patent rights / ownership etc.) or insufficiency in workmanship. This warranty is without prejudice to any further guarantees provided by the Seller.

In particular, the Buyer has the right to reject commodities not meeting the specifications stipulated in the contract and/or are not accepted by the survey company.

In this case, the buyer may cancel the contract according to article 15 or request replacement of the goods. In both cases, the Seller is liable for the replacement costs, transportation, warehousing, taxes and charges and any other costs that may occur including removal or destruction.

## 13. Re-exportation restrictions

The Seller shall inform the ICRC of any potential re-export restrictions for the supplied products and/or services, whatever the country of destination. Such potential re-export restrictions for the concerned products and/or services must be clearly identified in advance in every offer to tenders or quotes.

## 14. Assignments and sub-contracts

The Seller shall not be entitled to assign or sub-contract any of its rights or obligations hereunder without the prior written consent of the Buyer.

## 15. Enforceability / Validity

Any provision hereof prohibited by, unlawful or unenforceable under any applicable law shall to the extent required by such law be ineffective without modifying the remaining provisions of the Contract.

Where however the provisions of any such applicable law may be waived they are hereby waived by the parties hereto to the full extent permitted by such law to the end that the Contract shall be a valid and binding agreement enforceable in accordance with its terms.

## 16. Termination

Without prejudice to any other remedies, the Buyer or the Seller shall have the right at any time to give written notice to the other party to cancel the [Contract or] Purchase Order forthwith in the following events:

- ❑ if the other party hereto shall have committed a material breach of any of the terms or conditions of the Contract and shall have failed to remedy the same after being required to do so by written notice from the party seeking to terminate this Agreement specifying the breach and by stating their intention to terminate the Contract if such breach is not so made good; or
- ❑ if one of the parties becomes insolvent

The Buyer shall be entitled to terminate a Contract or Purchase Order at any time for the Buyer's convenience, by giving at least [30 days'] notice of the effective date of such termination to the Seller. In the event of termination for convenience, the Buyer shall pay the Seller for any merchandise delivered to and accepted by the Buyer or manufactured for the Buyer prior to the effective date of such termination.

## 17. Privileges and immunities

Nothing contained in an ICRC Purchase Order shall be deemed a waiver, express or implied, of any privilege or immunity which the ICRC may enjoy.

## 18. Applicable law

**The applicable law to this contract and the clause of arbitration below is Swiss law exclusively without regard to conflicts principles.**

## 19. Arbitration

**All disputes arising out of or in connection with the present contract shall be finally settled by three arbitrators in accordance with the UNCITRAL Arbitration Rules as at present in force.**

Each party shall nominate one arbitrator. If within thirty days of the nomination of an arbitrator by one party, the other party has not nominated its arbitrator, the first party shall be entitled to request the appointing authority to nominate the second arbitrator. The two arbitrators choose the presiding arbitrator within thirty days. In the absence of agreement on the choice of the presiding arbitrator, the presiding arbitrator shall be named by the appointing authority.

The appointing authority shall be the Chamber of Commerce and Industry of Geneva.

The place of arbitration shall be Geneva, Switzerland.

The language of the arbitration shall be English.

## 20. Contract changes

No modification of the clauses of this contract shall be effected without the written agreement of both parties.

## 21. Working conditions and Child labour

By virtue of the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the ILO's Declaration on Fundamental Principles and Rights at Work, the Seller must respect the following:

- ❑ prohibition on the use of child labour;
- ❑ prohibition on the use of forced labour;
- ❑ national laws regarding hygiene, safety and labour rights.

The application of these principles shall be based on the laws of the country in which the items are produced.

Should those laws fail to be observed by the Seller and/or its suppliers, the Buyer may make recommendations. If these recommendations are not followed, the Buyer shall be entitled to suspend or cancel the contract. Already rendered Services that cannot be returned, or goods and services that the Buyer keeps, must be paid but no compensation for the cancellation of the contract will be due.

## 22. Prevention of sexual exploitation and sexual violence/abuse

Sexual exploitation and sexual violence/abuse are strictly prohibited by the ICRC Policy for the prevention of and response to sexual misconduct.

Each party shall take all necessary measures to prevent and address all forms of sexual exploitation and sexual violence/abuse.

The ICRC Global Compliance Office must be immediately notified of any ongoing investigations with respect to sexual exploitation and sexual violence/abuse using the [ICRC Integrity Line \(code\\_of\\_conduct@icrc.org\)](mailto:code_of_conduct@icrc.org) and cooperate with the ICRC auditors and investigators.

Failure to take all necessary measures, or to investigate allegations of sexual exploitation and sexual violence/abuse or to take corrective action, if such allegations are substantiated, shall constitute cause for termination of the contract.

## 23. Respect for the law

The Seller and/or its suppliers shall comply with the law. Should the Seller and/or its suppliers fail to do so, the Buyer shall be entitled to suspend or cancel the contract. Already rendered Services that cannot be returned, or goods and services that the Buyer keeps, must be paid but no compensation for the cancellation of the contract will be due.

## 24. Mines and other weapons

The Seller and/or its suppliers hereby certifies not to be involved in any manner whatsoever in the sale and/or production of mines or any other weapons. Should the Seller make a false certification in this respect, the Buyer shall be entitled to suspend or cancel the contract. Already rendered Services that cannot be returned or goods and services that the Buyer keeps, must be paid but no compensation for the cancellation of the contract will be due.

## 25. Environmental protection

The environmental policy of the Seller and/or its suppliers shall commit to reduce the environmental impacts: Environmental protection shall be taken into consideration in the complete production process and distribution chain, from the raw materials production to the point of sale, and is not limited to own activities and suppliers: local, regional and global environmental concerns shall be considered.

Whenever possible, the Buyer shall seek to procure goods and services that lessen the burden on the environment.

## 26. Compliance

The Seller shall comply with the ICRC [Code of Ethics for Procurement](#) and the ICRC Policy for prevention of and Response to Fraud and Corruption which strictly prohibit any form of Fraudulent Activity. Similarly, The Seller and/or its suppliers shall be held to high ethical standard and shall report any acts of Fraudulent Activity arising in relation to the procurement process and/or contract with the ICRC using the [ICRC Integrity Line \(code\\_of\\_conduct@icrc.org\)](mailto:code_of_conduct@icrc.org) and cooperate with the ICRC auditors and investigators or their designees.

The Seller and/or its suppliers warrants and covenants that he has not and will not offer any payment to, or confer or offer any benefit upon any third party, including any person/ firm employed by or on behalf of any government official/ employee, political party, employee of any political party, or political candidate with the

intent to influence the conduct of such third party in any manner or be relating to the subject of the procurement process and/or contract.

Failure to take all necessary measures to prevent or address Fraudulent Activity, or to investigate allegations of acts of Fraudulent Activity or to take corrective action (such as restitution of any amounts tainted by such Fraudulent Activity) if such allegations are substantiated, shall constitute cause for termination of the Contract.

The Seller shall permit access to the ICRC or to any other person or entity to which the ICRC has agreed to grant access, to all accounts, records, and other documents related to management and control systems, procurement process and/or contract execution to have them audited.

The Seller shall ensure that its suppliers comply with the provisions of this Section 26.

The Seller has an obligation to inform ICRC of any material change in the legal structure of the Seller.

**Seller:**

Company Name:.....
Address:.....
City: .....
Country: .....
Name of authorised person: .....
Title:.....
Signature.....
Date:.....
. Company stamp:.....

**(Please sign and stamp all pages)**