

## Marie Stopes Kenya

### Purchasing Standard Terms and Conditions

These Standard Terms and Conditions (“Terms”) shall apply to all goods and services (together the “Deliverables”) procured by Marie Stopes Kenya (“MSK”), unless otherwise agreed with MSK in writing.

These Terms are important and should be studied carefully.

#### 1. Scope and the Contract

- 1.1 The contract between MSK and you, the Supplier, will comprise MSK’s written order (“Purchase Order”), these Terms, and anything else MSK expressly agrees in writing with you and any content imposed by law (together, the “Contract”). No other terms whether implied or otherwise will form part of the Contract.
- 1.2 If any of the terms of the Contract conflict with or contradict each other, those terms will over-ride each other in the following order of priority: (1) anything expressly agreed in writing between MSK and the Supplier; (2) the Purchase Order; (3) these Terms.
- 1.3 MSK will only be contractually bound when the Supplier accepts the Purchase Order with an order of acknowledgement in writing in the manner set out in these Terms, or when MSK accepts prior performance by the Supplier.

#### 2. Specifications

- 2.1 The quantity, quality, duration and description of the Deliverables, whether goods or services, will be as specified in the Purchase Order or as agreed by MSK in writing.
- 2.2 The Supplier shall ensure that the Deliverables will conform with all descriptions and specifications set out in the Purchase Order; shall be fit for any purpose that MSK expressly or impliedly makes known to the Supplier; will be free from defects in materials and workmanship; and comply with all statutory requirements and regulations.
- 2.3 MSK may reject any Deliverables which are not fully in accordance with the Purchase Order or if any Deliverables do not comply with the agreed technical specifications.
- 2.4 Any goods will have at least 75% (seventy-five per cent) of their manufactured shelf life unexpired at the time of the delivery, where applicable.

#### 3. Delivery

- 3.1 The Supplier shall send an order confirmation within three (3) working days of receiving the Purchase Order from MSK, unless otherwise agreed between the parties. The order confirmation will confirm despatch date, transit time and total cost of the order.
- 3.2 If the Supplier cannot ship the full consignment in one order, the Supplier shall inform MSK within three (3) working days of receiving the Purchase Order. Where Deliverables are to be supplied in instalments, the Contract is still to be treated as a single contract.
- 3.3 Goods will be delivered to, and services will be performed at, the address and on the date stated in the accompanying Purchase Order. If MSK does not specify a date, performance will be as soon as reasonably possible.
- 3.4 The Supplier must note the Purchase Order number in all correspondence, packing notes and invoices.

- 3.5 Unless otherwise stated, the Purchase Order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of the goods, necessary to enable MSK to use them for their intended purpose.
- 3.6 If the Purchase Order refers to terms such as FOB and CIF, which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.
- 3.7 Delivery of Goods shall be completed on the completion of unloading of the Goods at the address stated in the accompanying Purchase Order.
- 3.8 Risk of damage or loss passes to MSK in accordance with the provisions of the relevant Incoterms Rule or, where there is no such provision, on completion of delivery.
- 3.9 Property or ownership of goods will pass to MSK on despatch, unless MSK has paid in whole or in part for the goods in advance, in which case it will pass to MSK on the date of payment.

#### 4. Price

- 4.1 The price of the Deliverables will be stated in the Purchase Order, and unless otherwise stated, will be:
  - (a) Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of deliverables to or at the delivery address, and of any duties excluding VAT.
  - (b) Payable in the currency stated in the Purchase Order.
  - (c) Fixed for the duration of the Contract.
- 4.2 If MSK is entitled to rely on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables (Follow-on Deliverables) then the Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least thirty-six (36) months following full performance, at fair and reasonable prices which takes no advantage of MSK's dependence on the Supplier for their supply. Performance is the complete performance of the Supplier's contract obligations as described in these Terms.

#### 5. Payment

- 5.1 Each invoice must quote MSK's Purchase Order number. No sum may be invoiced more than six months after the date of delivery/performance.
- 5.2 Unless otherwise stated in the order, MSK will pay the contract price within thirty (30) days after receiving an invoice to be issued only after delivery / performance.
- 5.3 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the MSK to inspect such records at all reasonable times on request
- 5.4 MSK will be entitled to set off against the contract price any money owed to it by the Supplier.

#### 6. Change to specifications

- 6.1 MSK may notify the Supplier in writing of any change in the desired specification (including as to the quality and time frame).

- 6.2 If the change would reduce the Supplier's costs, the contract price will reduce to fairly reflect that saving.
- 6.3 If the change would increase the Supplier's costs, the Supplier will notify MSK within two (2) working days, in writing, whether it proposes a revision of the Contract price and of the amount of this revision.
- 6.4 The Supplier and MSK will then use their reasonable efforts to agree the revised terms in full, including as to price, pending which the contract variation will not take effect.
- 6.5 If the change would for any reason be unachievable, the Supplier will notify MSK within one (1) working day in writing with reasons.
- 6.6 Both parties will use reasonable efforts to reach a mutually acceptable contract variation. If such mutually acceptable variation cannot be agreed, MSK may revert to the original specification or cancel the Purchase Order, in which case it will reimburse the Supplier for any direct costs reasonably incurred by the Supplier prior to cancellation, which costs the Supplier will take all reasonable steps to minimise.

#### 7. Compliance with Laws and Policies

- 7.1 In performing its obligations under these Terms, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force ("Applicable Laws"), the MSK Business Partners Code of Conduct and Schedule 1 and shall ensure that MSK can, in compliance likewise, fully utilise the Deliverables for their intended purpose.
- 7.2 The Supplier will inform MSK as soon as it becomes aware of any changes in the applicable laws which impact on its ability to perform the services, deliver the goods or otherwise comply with these Terms.
- 7.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 7.4 The Supplier's breach of this clause 7 shall be deemed to be a material breach under clause 12.1.3.

#### 8. Confidentiality and intellectual property rights

- 8.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 8.2 The relationship the Supplier has with MSK is confidential and must not be discussed with a third party without prior consent from MSK in writing.
- 8.3 MSK's brand and trademark (together "the Rights") are the exclusive property of MSK and must not be used by the Supplier in any circumstance without prior permission in writing from MSK.
- 8.4 The Supplier shall indemnify MSK against all third-party claims of infringement of intellectual property rights arising from the manufacture, supply or use of the goods, or receipt, use or supply of the services or any part thereof.

#### 9. Data Protection

- 9.1 In the event that the parties share any personal data under these Terms, they will enter into a data protection agreement and comply with the Data Protection Act 2018, where applicable, and all other applicable laws and

regulations (Data Protection Legislation). For the purposes of these Terms, "personal data" means any information relating to a natural person who can be identified, directly or indirectly, by that information.

#### 10. Indemnities

- 10.1 The Supplier shall ensure that the quantity, quality, description and specifications of the Deliverables will be those set out in the Purchase Order and will be of the best standards reasonably to be expected in the industry for that kind of Deliverable.
- 10.2 The Supplier warrants that all representations made by the Supplier about any Deliverables are correct and can be relied upon.
- 10.3 The Supplier will indemnify MSK and keep MSK indemnified against any cost, claim, expense or liability suffered or incurred by MSK arising out of, or in connection with, the Deliverables, including where the Deliverables are faulty, do not meet the specification or otherwise fail to meet the requirements of the Purchase Order.
- 10.4 If any goods or rights were bought or obtained by the Supplier from a third party then any benefits or indemnities to which the Supplier is entitled against that third party shall be held by the Supplier for MSK's benefit and the Supplier will, at MSK's request, transfer such benefits and indemnities to MSK.
- 10.5 This clause 10 shall survive the termination of the contract.

#### 11. Insurance

- 11.1 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance, as applicable to its activity, to cover the liabilities that may arise under or in connection with the Contract, and shall, on MSK's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

#### 12. Termination

- 12.1 MSK may, without prejudice to its other remedies, by written notice to the Supplier suspend performance of or terminate the Purchase Order in whole or in part if:
  - (a) the Supplier fails to deliver any or all of the Deliverables within the time period(s) specified;
  - (b) the Supplier fails to promptly replace any Deliverables rejected due to unacceptable quality after giving prompt notice of recall;
  - (c) the Supplier fails to perform any other obligation(s) under the Purchase Order; or
  - (d) the Supplier's business fails.
- 12.2 If MSK suspends or terminates the Purchase Order in whole or part, pursuant to clause 12.1 above, the Supplier shall deliver to MSK all Deliverables whether or not then complete, return all MSK materials and continue performance of the Purchase Order to the extent not terminated
- 12.3 MSK may, without prejudice to its other remedies, by thirty (30) days' written notice to the Supplier, suspend performance of or terminate the Contract or any Purchase Order, provided that, if MSK terminates a Purchase Order, MSK shall reimburse the Supplier for any direct costs reasonably incurred by the Supplier in connection with that Purchase Order prior to termination, which costs the Supplier will take all reasonable steps to minimise.

13. Force Majeure

13.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for six (6) weeks, the party not affected may terminate the Contract by giving thirty (30) days' written notice to the affected party.

14. Time is of the Essence

14.1 The time specified in the Purchase Order for delivery and any associated rights, and the performance of any services, shall be of the essence. If the Supplier is in breach of this clause, MSK may terminate the Contract and/or any or all outstanding orders for delivery of the Deliverables.

15. Notices

15.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

15.2 A notice or other communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) if sent by pre-paid first class post or other next Business Day delivery service at the time recorded by the delivery services.

15.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16. Contract Amendments

16.1 No variation in or modification of the terms of any Purchase Order shall be made except by written amendment signed by the parties.

17. Governing Law and Language

17.1 These Terms and any related Purchase Order shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English courts.

17.2 Each Purchase Order shall be written in English. All correspondence and other documents pertaining to the Purchase order which are exchanged by the parties shall be written in the same language.

18. Resolution of Disputes

18.1 In the event of a dispute arising out of or relating to this Agreement, including any question regarding its existence, validity or termination, the parties agree it shall be resolved as follows:

- (a) First, either party may seek settlement of a dispute by reference to a senior officer of each party for discussion and agreement. Each party agrees to nominate a senior officer for the purposes of this clause within 24 hours of being requested in writing to do so, providing at least email and telephone contact details for such senior officer.

- (b) If the parties have not reached agreement under 18.1(a) above within 30 days, either party may elect to commence legal proceedings. Each Party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes of claims) arising out of or in connection with this Agreement or its subject matter or formation.

## Schedule 1 – Compliance

### 1. Fraud and Bribery

- 1.1 The Supplier represents and warrants that it is in compliance with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including, without limitation, the UK Bribery Act 2010, and undertakes that it will remain in compliance with all such laws, statutes, regulations and codes for the duration of this Agreement and shall procure the same from any persons associated with it and in each case, the Supplier:
- (a) will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 whether or not such activity, practice or conduct has been carried out in the UK;
  - (b) will not, directly or indirectly, offer, promise, pay, agree to pay, authorise payment of, give, accept or solicit, anything of value to or from a third party in order to secure or reward an improper benefit or improper performance of a function or activity; and
  - (c) do or not do any act that will cause or lead MSK to be in breach of Applicable Laws related to anti-bribery, anti-corruption or fraud.
- 1.2 The term “anything of value” includes, without limitation, bribes, kickbacks, a financial advantage or any other benefit, whether in cash or in kind, and whether tangible or intangible.
- 1.3 Marie Stopes Kenya (MSK) upholds free and fair procurement process with zero tolerance to Fraud & Bribery. Escalate confirmed demands for bribes by any MSK employee through our safe call number. **+44 191 5167764** OR Go on line to [www.safecall.co.uk/report](http://www.safecall.co.uk/report) and report any such incident.

### 2. Conflicts of Interest

- 2.1 The Supplier warrants and represents that it has no business, professional, personal or other interest, relationship or connection with any person employed or engaged by MSK, or any director or member of MSK that might conflict in any manner or degree with the performance of its obligations under this Agreement. The Supplier agrees that if any such actual or potential conflict of interest arises under this Agreement, the Supplier shall immediately inform MSK in writing of such conflict. The Supplier will follow MSK’s reasonable instructions to mitigate or manage or avoid such conflict.

### 3. Modern Slavery

- 3.1 The Supplier represents and warrants that it is in compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes, and undertakes that it will remain in compliance with all such laws, statutes, regulations and codes for the duration of this Agreement.
- 3.2 The Supplier represents and warrants that neither the Supplier nor any of its officers, employees or other persons associated with it:
- (a) have been convicted of any offence involving slavery or human trafficking; or
  - (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of, or in connection with, slavery or human trafficking.

3.3 The Supplier shall implement due diligence procedures for its subcontractors to ensure that there is no slavery or human trafficking in its supply chains.

4. **Money-Laundering and Terrorism**

4.1 Neither the Supplier, nor any affiliate of the Supplier, is under investigation by any governmental, administrative or regulatory authority for, or has been charged with, or convicted of, money laundering or terrorist related activities.

4.2 The Supplier represents and warrants that it is in compliance with all applicable anti-terrorism and anti-money laundering laws, statutes, regulations and codes, and undertakes that it will remain in compliance with all such laws, statutes, regulations and codes for the duration of this Agreement.

4.3 The Supplier is not listed, and to the best of the Supplier's knowledge, no employee, officer or director of the Supplier is listed, on any terrorist or proscribed party list issued by any national or supranational government or organisation.

4.4 The Supplier shall not use for the purposes of this Agreement any subcontractor who is listed, or whose directors, officers or employees are listed, on any terrorist or proscribed party list issued by any national or supranational government or organisation.

5. **Tax Evasion**

Our Suppliers must take a zero tolerance approach to the criminal evasion of all taxes wherever they operate, and to the knowing facilitation of another's tax evasion. As a minimum, we expect our suppliers to have reasonable and proportionate procedures in place to prevent the criminal facilitation of tax evasion by their employees or by those they transact in connection with MSK's business, and to also immediately report any concerns regarding the above to their MSK's contact or our safe call number. **+44 191 5167764** OR Go on line to [www.safecall.co.uk/report](http://www.safecall.co.uk/report) and report any such incident.

6. **General**

6.1 The Supplier shall provide MSK with all reasonable assistance to enable MSK to monitor compliance with this Schedule including, without limitation, responding to reasonable requests made by MSK for information on the Supplier's work practices, provide access to such information and evidence as MSK shall reasonably require to assess compliance and allowing MSK to inspect the Supplier's work premises and any housing provided by the Supplier to its employees or subcontractors.

6.2 The Supplier shall promptly provide MSK with information about any breaches of any of this Schedule or any of the Applicable Laws or the Supplier's owned related policies by employees or contractors related to the services and shall provide such reasonable information as requested by MSK for MSK to comply with its own legal and regulatory obligations and obligations to Funders to report such incidents.

6.3 Any breach of this Schedule is a material breach and which MSK may consider as incapable of remedy. For the avoidance of doubt, if it becomes apparent to MSK that a sub-contractor engaged by the Supplier in connection with this agreement is or may be involved in slavery or trafficking, this shall also be deemed a material breach.