



# STANDARD TERMS OF PURCHASE OF GOODS OR SERVICES

between

## FINE CHEMICALS CORPORATION (PTY) LTD

company registration number 1999/015732/07  
("FCC")

and

## The person or entity supplying the Goods or rendering the Services to FCC

("Supplier")

(collectively "the Parties" and individually "a Party")

### 1. BACKGROUND AND SCOPE AND PURPOSE OF THIS DOCUMENT

- 1.1. FCC conducts business as a manufacturer and distributor of generic medicines and pharmaceutical products.
- 1.2. As an approved or potential supplier of FCC, the Supplier will supply goods and/or perform services from time to time to FCC (the "**Goods or Services**").
- 1.3. The nature, quantity and specifications of the Goods or Services shall be agreed upon between FCC and the Supplier in writing from time to time (the "**Specifications**").
- 1.4. These Standard Terms of Purchase (the "**Terms**") shall govern the supply of Goods and/or performance of Services by the Supplier to FCC and shall take precedence over any other conditions/terms which may be contained in the Supplier's documentation.

### 2. SITE RULES

- 2.1. In supplying the Goods and/or performance of Services, the Supplier shall ensure adherence by its employees/agents to FCC's "Site Rules for Contractors" ("**Site Rules**"), which will be made available on request.
- 2.2. The Site Rules shall not apply if the Supplier is required only to supply Goods and/or perform Services in circumstances where no presence of the Supplier is required on FCC's premises.

### 3. ORDER PROCEDURE

- 3.1. FCC shall place a written Purchase Order with the Supplier in the form of the FCC Purchase Order (the "**Purchase Order**"). The Purchase Order constitutes an offer by FCC to purchase Goods and/or Services from the Supplier in accordance with these Terms read together with the Specifications (if any).
- 3.2. The Purchase Order shall be deemed to be accepted on the earlier of: (i) the Supplier issuing written acceptance of the Purchase Order; or (ii) any act by the Supplier consistent with fulfilling the Purchase Order.
- 3.3. Once the Purchase Order has been deemed to have been accepted, the whole agreement between FCC and the Supplier shall constitute the Purchase Order, these Terms and the Specifications (if any) and shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.4. All of these Terms shall apply to the supply of the Goods and the performance of the Services, except where the application to one or the other is specified.
- 3.5. FCC shall not be obliged to pay for all or any part of the supply of the Goods or the rendering of the Services, unless such Goods or Services are supplied and performed (as the case may be) in accordance with the Purchase Order, these Terms and the Specifications (if any).

### 4. PRICING AND CURRENCY FLUCTUATIONS

- 4.1. Unless specified to the contrary by FCC, the price of the Goods or Services specified in the Purchase Orders shall be the full and exclusive remuneration of the Supplier in respect of the Purchase Order and shall therefore:
  - 4.2. be fixed and not subject to any adjustments due to:
    - 4.2.1. favourable or unfavourable exchange rate fluctuations;
    - 4.2.2. fluctuations in the cost of parts, materials or consumables;
    - 4.2.3. any other fluctuation, which may impact on the price of the Goods or Services; and
  - 4.3. include:
    - 4.3.1. all charges and costs required to effect delivery of the Goods to FCC or the performance of the Services in accordance with the Purchase Order and the Specifications (if any) and the requirements of **clause 9**;
    - 4.3.2. all taxes, custom duties, clearance, other charges, packaging, delivery, off-loading and insurance costs, unless otherwise specified by FCC in the Purchase Order; and
    - 4.3.3. Value Added Tax.

### 5. PAYMENT

- 5.1. Unless specified to the contrary in the Purchase Order, payment in respect of the Goods or Services shall be effected following final delivery of the Goods or performance of the Services in accordance with these Terms and the Specifications (if any).
- 5.2. Payment due by FCC in respect of the Goods or Services (the "**Payment**") shall be effected, in the currency specified in the Purchase Order:
  - 5.2.1. at the end of the month following the month during which the Goods are received by FCC and/or the Services are fully performed by the Supplier, and upon receipt of a valid tax invoice in respect of the Goods or Services; or
  - 5.2.2. if applicable, in accordance with the agreed payment terms or intervals specified in the Purchase Order.
- 5.3. Goods delivered or Services performed prior to the delivery or performance date specified in the Purchase Order shall, for purposes of these Terms, be deemed to have been delivered or performed on the date specified in the Purchase Order.

### 6. DEDUCTION OR SET-OFF & RETENTION

- 6.1. FCC shall be entitled to deduct or set-off any amounts owing by the Supplier to FCC, against any amounts to be paid by FCC to the Supplier in respect of the Goods supplied or Services performed.
- 6.2. FCC shall be entitled to withhold an amount, not exceeding 10% (ten percent) of the Payment, in respect of any Goods supplied or Services performed, or which are to be supplied or performed, until the expiry of the Supplier's liability as defined in **clause 12.1** (the "**Retention**").

## 7. DELIVERY AND PERFORMANCE

- 7.1. 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 in these Terms.
- 7.2. The date for delivery of the Goods or the performance of the Services shall be the date specified in the Purchase Order or agreed between the Parties, in writing, from time to time.
- 7.3. In respect of the delivery of the Goods the Parties agree to apply the terms of Incoterms 2010, being the official rules for the interpretation of trade terms issued by the International Chamber of Commerce and the Purchase Order will set out the relevant Incoterms that are applicable.
- 7.4. Goods shall be delivered and Services performed during FCC's normal business hours at the stipulated place of delivery or the stipulated place of performance (as the case may be).
- 7.5. Against delivery of Goods to FCC by the Supplier, FCC shall issue the Supplier with a written delivery receipt signed by an authorised representative of FCC, against which ownership of, and all risk in and to, the Goods shall pass to FCC.
- 7.6. Acceptance of delivery shall only amount to an acknowledgment by FCC that the Goods of the quantity and nature stated in the Purchase Order were received and shall not amount to an acknowledgement that the Goods met the Specifications.
- 7.7. Without prejudice to any of FCC's other rights under these Terms or its remaining rights in law, if Goods delivered do not substantially comply with the Purchase Order and/or Specifications (if any), FCC shall be entitled to tender the return of the Goods to the Supplier, within 14 (fourteen) days of delivery, in which event:
- 7.7.1. FCC shall not be liable for payment in respect of the Goods returned;
- 7.7.2. the Goods shall be returned at the cost of the Supplier;
- 7.7.3. all risk in respect of Goods returned shall pass to the Supplier, upon notice by FCC to the Supplier that the Goods have been rejected and are available for collection at the premises to which they were delivered by the Supplier; and
- 7.7.4. ownership of the rejected Goods shall pass from FCC to the Supplier upon collection of those Goods.

## 8. PENALTY

- 8.1. The Supplier accepts that the time stated ("the Due Date") for the delivery of the Goods or the performance of the Services to FCC is:
- 8.1.1. a material and essential term of these Terms; and
- 8.1.2. a material inducement for FCC to have placed the Purchase Order.
- 8.2. If delivery of Goods or the performance of the Services is delayed beyond the Due Date, or if FCC has reasonable grounds to believe that the Supplier will be unable to deliver the Goods or perform the Services on or before the Due Date, FCC may, in its sole discretion and without prejudice to any of its other rights under these Terms or its remaining rights in law, elect to recover penalties for the delay at the rates specified in **clause 8.3**, or as varied in accordance with the Terms.
- 8.3. Unless specified to the contrary in these Terms, if the Supplier delivers, installs or commissions Goods or performs the Services after the Due Date, FCC shall be entitled to deduct from the Payment and/or recover from the Supplier a penalty equal to 2% (two per cent) of the value of the Purchase Order for each week, or part thereof, following the Due Date ("the Penalty").

## 9. PACKAGING AND SHIPPING

- Subject to any contrary provisions of the Specifications (if any):
- 9.1. all Goods delivered by the Supplier to FCC shall be suitably packed or otherwise prepared for shipment by the Supplier to secure the lowest transportation and insurance rates and comply with the carriers' requirements, while ensuring that the Goods reach their destination in good condition; and
- 9.2. without derogating from the provisions of **clause 9.1**, FCC reserves the right to specify the method of dispatch and

type of transportation and/or packaging to be used and to alter FCC's requirements in respect thereof from time to time, at FCC's discretion.

## 10. INSPECTION

- 10.1. Without derogating from the provisions of **clause 7.7**, FCC shall at all reasonable times, both prior to and upon delivery of the Goods or the performance of the Services, have the right to inspect the Goods or Services and shall be entitled to reject the Goods or Services that do not conform to the Purchase Order and/or the Specifications (if any).
- 10.2. Notwithstanding any such inspection, the Supplier shall remain fully responsible for the Goods and Services and any such inspection or testing shall not reduce, relieve or otherwise affect the Supplier's obligations in terms of the Purchase Order and/or Specifications (if any). The Supplier shall have no right to rely on the failure of FCC to identify defects during such inspection.
- 10.3. Notwithstanding acceptance by FCC of the Goods or Services upon delivery or performance thereof, FCC shall be entitled to reject the Goods or Services in accordance with the provisions of these Terms but without prejudice to its remaining rights in law, if they are subsequently found not to conform to the Purchase Order and/or Specifications (if any).
- 10.4. Rejected Goods will be held at the risk and expense of the Supplier, and unless otherwise directed by FCC, shall be replaced, at the sole expense of the Supplier, by those that conform to the Purchase Order.

## 11. WARRANTIES AND UNDERTAKINGS

- 11.1. The Supplier gives the following warranties, representations and undertakings in respect of the Goods or Services, as the case may be:
- 11.1.1. any Service shall be performed with the best care, skill and diligence in accordance with the best practice in the Supplier's trade, industry or profession by personnel who are suitably experienced, qualified and skilled to perform the tasks assigned to them;
- 11.1.2. the Goods shall be free of any defect (latent or patent) in material or workmanship and shall be fit for the purpose designed or manufactured;
- 11.1.3. the Supplier has reviewed and understands the Specifications (if any) and will ensure that the Goods are supplied and/or the Services performed in accordance with such Specifications and otherwise in accordance with the provisions of these Terms and the Purchase Order;
- 11.1.4. the Goods shall, upon delivery to FCC, have been fully paid for by the Supplier, be fully owned by the Supplier, not be subject to any encumbrance or restriction and the Supplier shall be entitled to pass ownership of the Goods to FCC;
- 11.1.5. in respect of consumable or perishable Goods:
- 11.1.5.1. the Goods shall have an adequate remaining shelf-life, measured from date of delivery to FCC, to enable FCC to utilise the Goods prior to their stated expiry date, during the normal course of business of FCC;
- 11.1.5.2. the Goods shall remain free of defect in design, material or workmanship and good for consumption in accordance with their intended use until either their stated expiry date or the end of the defect liability period specified in **clause 12.1**, whichever is applicable;
- 11.1.6. all potentially hazardous substances, products or chemicals shall:
- 11.1.6.1. be clearly identified and marked with appropriate warnings;
- 11.1.6.2. be properly sealed or secured;
- 11.1.6.3. be delivered in a good and stable condition;
- 11.1.6.4. comply with all legal prescriptions regarding the manufacture, packaging, labelling, storage, handling, delivery and safety (including environmental safety).
- 11.2. Unless agreed to the contrary in writing by FCC, the warranties shall:

- 11.2.1. be in addition to, and not limited by reference to, any other warranties made by the Supplier in any other documentation accepted by FCC; and
- 11.2.2. not detract from any other warranties implied by law in respect of Goods or Services, regard being had to the Specification (if any) of and functions in respect of which the Goods or Services are purchased.
- 11.3. The Parties acknowledge that in terms of section 61 of the Consumer Protection Act, 68 of 2008, as amended ("the CPA Act") FCC and the Supplier may be jointly and severally liable to a consumer (as defined in the Act) for any harm caused wholly or partly as a consequence of:
- 11.3.1. supplying any unsafe goods; or
- 11.3.2. a product failure, defect or hazard in any goods; or
- 11.3.3. inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,
- irrespective of whether the harm resulted from any negligence on the part of FCC or the Supplier, as the case may be.
- 11.4. Each Party ("**Indemnifying Party**") hereby indemnifies and holds harmless the other Party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other Party as a result of or arising out of any harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the CPA Act, to the extent such harm is attributable to the negligent or intentional conduct of the Indemnifying Party or any contravention by the Indemnifying Party of any applicable law.
- 11.5. This **clause 11** shall survive termination of these Terms.
- 12. SUPPLIER'S LIABILITY**
- 12.1. Liability for Defects
- 12.1.1. If the Goods or Services manifest any defects (whether patent or latent) within the earlier of a period of 18 (eighteen) months from the delivery date or the date of performance or such other periods as may be stipulated in the Purchase Order or these Terms, the Supplier shall, at its cost and expense and within a reasonable time frame:
- 12.1.1.1. repair, replace any defective Goods or remedy or reperform any of the Services; and
- 12.1.1.2. refund to FCC all costs, damages or expenses (excluding consequential loss) suffered by FCC as a result of such defects.
- 12.1.2. The obligations of the Supplier in terms of **clause 12.1.1** in respect of all repaired, replaced or remedied or reperformed Goods or Services shall be extended for a further period of 12 (twelve) months (or such other period as may be agreed in writing) from the date of completion of such repair, replacement, or remedy or reperformance.
- 12.1.3. FCC shall be entitled to withhold any Payment due to the Supplier and claim against the Retention for the recovery of any amount due by the Supplier to FCC in terms of **clause 12.1**.
- 12.2. Insurance for Loss, Accidents or Damage
- 12.2.1. For the duration of these Terms and a period of 6 months thereafter, the Supplier shall maintain, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with these Terms.
- 12.3. This **clause 12** shall survive termination of these Terms.
- 13. INDEMNITY**
- 13.1. The Supplier indemnifies and holds FCC harmless against any claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties, which FCC may incur, suffer or sustain during or arising out of, or in connection with, the use of the Goods or the performance and/or use of the Services for their intended purpose, to the extent that such claims, costs, damages, expenses, judgments, losses, liabilities, obligations and/or penalties result from:
- 13.1.1. a defect in, or failure of, the Goods or Services; the incorrect manufacture of the Goods or performance of the Services by the Supplier;
- 13.1.2. a breach of any of these Terms and/or the Specifications (if any) including without limiting the generality of the foregoing a breach of the warranties and undertakings in **clause 11**; and/or
- 13.1.3. any claim for infringement of any intellectual property rights ("**Indemnified Loss**").
- 13.2. The Supplier shall be obliged to pay FCC the amount of Indemnified Loss incurred, suffered or sustained by FCC as soon as FCC is obliged to pay the amount thereof (in the case of any Indemnified Loss that involves a payment by FCC) or as soon as FCC suffers the Indemnified Loss (in the case of an Indemnified Loss that does not involve a payment by FCC).
- 13.3. This **clause 13** shall survive termination of these Terms.
- 14. FORCE MAJEURE**
- 14.1. Neither the Supplier nor FCC shall be liable for any failure to perform its obligations under the Conditions where such performance has been delayed, hindered or prevented by any circumstance beyond the control of that Party, including but not limited to Acts of God, strikes, lock outs, trade disputes, fire, government directions and/or war.
- 14.2. Where such circumstances beyond the control of the Parties prevent performance; the obligations of the Party shall be suspended until the termination of such circumstances, provided that should any suspension continue for more than 45 (forty five) continuous days either Party shall be entitled, on giving 7 (seven) days notice to the other, to terminate the Purchase Order.
- 15. TERMINATION CONSEQUENT OF BREACH OF ANCILLARY AGREEMENT**
- 15.1. If the Supplier –
- 15.1.1. commits a breach of any other agreement between FCC and the Supplier (all of which are deemed to be material), and fails to remedy such breach within any remedy period specified in such agreement; or
- 15.1.2. generally does anything which may substantially prejudice FCC's rights in terms of the Purchase Order and/or these Terms,
- then, FCC shall be entitled to terminate, at its sole discretion, the Purchase Order immediately on giving notice to the Supplier, without prejudice to any other rights in law which may be available to FCC.
- 16. BREACH**
- 16.1. If a Party (the "**Breaching Party**") breaches any provisions of these Terms, the Purchase Order and/or the Specifications (if any) and remains in breach for 7 (seven) days after receipt of written notice from the other Party (the "**Innocent Party**") requiring the Defaulting Party to rectify the breach, or if either Party repudiates the Purchase Order, the Innocent Party shall be entitled at its sole election to either:
- 16.1.1. sue for the immediate specific performance of any of the Defaulting Party's obligations under the Purchase Order, Terms and/or Specifications (if any), whether or not such obligation is then due; or
- 16.1.2. (either as an alternative for a claim for specific performance or upon the abandonment of such claim) to cancel the relevant Purchase Order. Written notice of such cancellation shall be given to the Defaulting Party and the cancellation shall take effect on the giving of that notice.
- 16.2. The Innocent Party's remedies in terms of this clause 16 are without prejudice to any other remedies set out in these Terms or its remaining rights in law.
- 17. SAMPLES**
- The Supplier shall supply to FCC samples or tests in relation to the Goods, in such volumes or extent as FCC may reasonably require, at no cost to FCC.
- 18. INTELLECTUAL PROPERTY RIGHTS**
- 18.1. All intellectual property rights ("**IPR**") arising in respect of and or associated with the Services or Goods shall vest absolutely in, and be owned by FCC, alternatively are upon delivery or performance licensed to FCC.

- 18.2. The Supplier warrants in favour of FCC that it shall not claim any rights to any of the IPR and shall not do anything which is calculated or likely to undermine or prejudice FCC's right, title or interest in and to the IPR, nor FCC's use thereof.
- 18.3. The Supplier warrants in favour of FCC that the deliverables supplied in terms of this Agreement, shall not infringe any law or third Party IPR.
19. **DOMICILIUM**  
The Parties hereby choose their respective *domicilium citandi et executandi* for all purposes at the address specified in the Purchase Order.
20. **CESSION OR ASSIGNMENT**  
The Supplier shall not be entitled to cede, assign or subcontract any of its rights or obligations in terms of the Purchase Order and these Terms, without the prior written consent of FCC.
21. **SUPERSESSON**  
The Parties agree that these Terms read together with the Purchase Order and Specifications (if any) constitute the sole record of the agreement between the Parties in relation to the subject matter hereof. Neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. The Terms read together with the Purchase Order and the Specifications (if any) supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof, including any terms and conditions or agreement proffered by the Supplier.
22. **CODE OF CONDUCT**
- 22.1. Unless otherwise required or prohibited by applicable laws, the Supplier warrants, to the best of its knowledge, that in relation to the performance of its obligations to FCC, its holding company and subsidiaries and the subsidiaries of its holding company (collectively the "**FCC Group**") –
- 22.1.1. it does not employ engage or otherwise use any child labour in circumstances such that the tasks performed by any such child labour could reasonably be foreseen to cause either physical or emotional impairment to the development of such child;
- 22.1.2. it does not use forced labour in any form (prison, indentured, bonded or otherwise) and its employees are not required to lodge papers or deposits on starting work;
- 22.1.3. it provides a safe and healthy workplace, presenting no hazards to its employees. Any housing provided by the Supplier to its employees is safe for habitation. The Supplier provides access to proper sanitation, clean water, food, and emergency healthcare to its employees in the event of accidents or incidents at the Supplier's workplace;
- 22.1.4. it does not discriminate against any employees on any ground (including race, sexual orientation, religion, disability or gender);
- 22.1.5. it does not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
- 22.1.6. it pays each employee at least the minimum wage, or a fair representation of the prevailing industry wage, (whichever is the higher) and provides each employee with all legally mandated benefits;
- 22.1.7. it complies with the laws on working hours and employment rights in the countries in which it operates;
- 22.1.8. it is respectful of its employee's right to join and form independent trade unions and freedom of association.
- 22.2. The Supplier agrees that it is responsible for controlling its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent supplier of goods or renderer of services that are used by the Supplier when performing its obligations to the FCC Group.
- 22.3. The Supplier –
- 22.3.1. agrees that it is responsible for conducting its business in compliance with applicable environmental laws and regulations when performing its obligations to the FCC Group; and
- 22.3.2. shall ensure that –
- 22.3.2.1. it conducts its business in an environmentally conscious manner and insofar as is feasible from renewable resources; and
- 22.3.2.2. it minimises the resources used and waste generated by it.
- 22.4. The Supplier shall ensure that it has ethical and human rights policies and an appropriate complaints procedure to deal with any breaches of such policies. In the case of any complaints, the Supplier shall report the alleged complaint and proposed remedy to the FCC Group.
- 22.5. The Supplier will not, directly or indirectly, make any payment, offer or promise to make any payment or transfer of anything of value to –
- 22.5.1. any government official, or to any political Party or any candidate for political office, with the purpose of influencing decisions favourable to the Supplier and/or its business in contravention of applicable laws; and/or
- 22.5.2. any employee of the FCC Group, other than *bona fide* gifts which individually or cumulatively do not exceed the value of US\$200,00 (Two Hundred United States Dollars).
- 22.6. The Supplier will not, directly or indirectly, undertake any act or omission, whether alone or together with any other person or entity, which may contravene any applicable competition/anti-trust legislation, regulations and/or rules.
- 22.7. To the extent to which the Supplier undertakes its business activities in the Republic of South Africa, it shall comply with Broad-Based Black Economic Empowerment ("**BBBEE**") legislation and policies and on or before 1 May of each year it shall provide the FCC Group with a BBBEE Rating Certificate issued by an accredited agency.
23. **NON-VARIATION**
- 23.1. These Terms shall not be altered other than in writing and upon signature by duly authorised representatives of both Parties.
- 23.2. The Parties shall not be bound to any representation, undertaking or agreement unless accepted in writing by the Parties.
24. **APPLICABLE LAW**  
All disputes arising in connection with the Terms, the Purchase Order and/or the Specifications (if any) shall be determined in accordance with the laws of the Republic of South Africa.
25. **LEGAL COSTS**  
The Supplier shall pay all legal costs, including attorneys and client costs and collection commission, which FCC may incur in taking any steps to enforce its rights, and/or procure performance by the Supplier of its obligations, under these Terms, the Purchase Order and/or the Specifications (if any).