GENERAL PURCHASING TERMS AND CONDITIONS OF CHIESI NV

1. DEFINITIONS AND INTERPRETATION

1.1 In these general purchasing terms and conditions, the following terms shall have the following meanings:

a) Chiesi: the limited liability company Chiesi NV (Belgian company number: 0826.654.883) and, to the extent applicable and indicated in the Agreement, its affiliate companies;
b) Supplier: the counterparty of Chiesi in respect of the Agreement;
c) Agreement: the written agreement between Chiesi and Supplier relating to the purchasing of items by or on behalf of Chiesi, the creation of any work, the execution of any order and/or the provision of any services, however named, for Chiesi's benefit to which the Terms and Conditions have been declared applicable;
d) Party/Parties: Chiesi and/or Supplier, depending on the context;
e) Terms and Conditions: the present general purchasing terms and conditions.

1.2 In the present Terms and Conditions, 'in writing' shall also be understood to mean electronic communication, for instance by email.

2. APPLICABILITY

2.1 These Terms and Conditions shall always apply to all requests, quotations, offers, orders, Agreements and other legal acts relating to the purchasing of items and/or the provision of services, however named, for Chiesi's benefit.

2.2 In the case of any contradiction, the provisions of the Agreement shall prevail over the provisions of the present Terms and Conditions.

2.3 Chiesi may unilaterally make reasonable amendments in these Terms and Conditions. Such amendments shall take effect 30 (thirty) days after the renewed Terms and Conditions were pointed out to Supplier. If Supplier does not accept these amendments, Supplier must inform Chiesi hereof in writing within 21 days after notification. Chiesi may then reconsider the amendments. If Chiesi does not change the amendments, Supplier may terminate the Agreement until the date on which the new Terms and Conditions take effect, as per that date. For the remainder, any deviations from and additions to the present Terms and Conditions shall be valid only if agreed by the Parties in writing.

2.4 Any general or other terms and conditions used by Supplier shall not be applicable. Clauses that deviate from and/or form an addition to these Terms and Conditions can only be relied on by Supplier, if and insofar as they were explicitly accepted by Chiesi in writing. Such deviating and/or additional clauses shall not affect the applicability of the other provisions of these Terms and Conditions and shall apply only to the agreement for which this was explicitly agreed in writing.

2.5 By accepting the present Terms and Conditions, Supplier also agrees to the applicability of these Terms and Conditions to all future agreements between Chiesi and Supplier and to all offers, quotations, order confirmations, orders/purchases and deliveries of products or services (or requests for such deliveries).

3. FORMATION AND AMENDMENT OF AGREEMENTS

3.1 An Agreement shall be formed through Chiesi's explicit written acceptance of Supplier's offer. An offer, whether made with or without any obligation, cannot be revoked by Supplier after its acceptance by Chiesi.

3.2 Unless agreed otherwise, Supplier is explicitly required to have several customers/clients in addition to Chiesi.

3.3 If Chiesi requests any amendments of an Agreement, Supplier shall render every assistance to be reasonably required from him in order to implement these amendments in that Agreement. If the requested amendments result in changes in the price, delivery time or other terms and conditions, Supplier shall notify Chiesi of such changes immediately, but no later than 3 days after the day on which Chiesi made the request to Supplier, failing which the amended Agreement shall be performed in accordance with the originally agreed price, delivery time and other terms and conditions, unless this would be unreasonable. If an amendment of the Agreement results in changes in the price, delivery time or other terms and conditions as referred to above, a new Agreement shall be formed only after Chiesi has accepted these amendments in writing.

4. PRICES/RATES AND PAYMENTS

4.1 All agreed prices or rates shall be fixed in euros, exclusive of value added tax and inclusive of all costs and (other) taxes and duties, unless explicitly agreed otherwise in writing.

4.2 These prices or rates shall be based on Delivered Duty Paid ('DDP') in conformity with the relevant provisions relating to that method of delivery in the most recent version of the Incoterms, currently the Incoterms® 2020.

4.3 If Supplier provides services on the basis of subsequent calculation, the rate used for that purpose shall be determined and approved by Chiesi in advance.

4.4 Unless agreed otherwise in writing, the costs of any offers, samples, trial shipments and example materials shall be for Supplier's account.

4.5 On the invoices and in the transport documents and accompanying correspondence, all references and Chiesi's purchase order number must always be stated. The invoices shall be sent to Chiesi electronically, by email to invoice@chiesi.com and shall be paid only after the inspection of the goods and/or services and the verification of the correct execution of the provided contractual services, also by checking the work.

4.6 Invoices that are due and payable shall be paid within 30 (thirty) days after receipt of the invoice by Chiesi.

4.7 The price that is applicable at the time of the formation of the Agreement shall be the agreed price and cannot be increased without Chiesi's prior written consent. Any price decreases that take effect before the time of delivery shall replace the agreed price.

4.8 If default interest is charged due to late payment without any valid reason, the rate to be used by Supplier shall not exceed 3% per year.

5. DELIVERY, PACKAGING, TRANSPORT AND RISK AND TRANSFER OF OWNERSHIP

5.1 Ordered goods shall be delivered in one shipment. Chiesi shall be entitled to return, without prior notice and at Supplier's risk and expense, any partial delivery/deliveries not agreed upon. If more or fewer goods are delivered than the agreed quantity and the deviation exceeds what is customary in the industry in which Supplier operates, Chiesi shall be entitled to either refuse the excess or return it at Supplier's risk and expense or, if less than agreed is being delivered, refuse delivery. Supplier shall deliver on the agreed date at the place of (final) destination indicated by Chiesi. All delivery times mentioned by Supplier shall be considered as times that are of the essence ('fatal'). If the delivery time is exceeded, Supplier shall be in default, unless he can rightfully rely on force majeure. For every working day or part of a working day with which the delivery time is exceeded, Chiesi shall be entitled to an immediately payable penalty of 1 (one) per mil of the price, with a maximum of 10% of the price, without prejudice to other rights that Chiesi has (including the right to performance, the right to dissolve the Agreement and the right to compensation of the damage suffered by Chiesi). Any delay in the execution of the order or during delivery respectively shall be immediately notified to Chiesi by Supplier, while indicating the circumstances that are causing this delay. Delivery prior to the agreed time can take place only with Chiesi's prior written consent. If delivery takes place prior to the scheduled date, Chiesi shall be entitled to either accept the goods or return them for Supplier's account.

5.2 The goods shall be packed in such a proper manner and protected in such a way that they will reach the place of delivery in good condition in the case of normal transport and can be safely unloaded there. Supplier is responsible for compliance with the national, international and/or supranational requirements regarding packaging and transport. Chiesi is prepared to advise Supplier to the best of its knowledge, but without any responsibility or liability, on packaging and transport and the relevant requirements and provisions.

5.3 Chiesi shall be entitled to not take receipt of the goods to be delivered, if the above-mentioned requirements and provisions have not been complied with.

5.4 Unless explicitly agreed otherwise in writing, the ownership of the goods shall pass to Chiesi at the time of their actual delivery or at the time of payment for the goods concerned, whatever is earlier, unless the goods are rejected by Chiesi in accordance with article 6.

5.5 The risk of the goods shall pass to Chiesi only at the time of delivery of the goods to Chiesi at the agreed place and in the agreed manner, unless the goods are rejected by Chiesi in accordance with article 6.

5.6 All aids, such as drawings, designs, models, forms, films, moulds, gauges or specific tools required for the execution of the delivery and made available to Supplier by Chiesi or produced or purchased for Chiesi's account shall continue to be owned or become owned by Chiesi.

5.7 Chiesi reserves the right to request Supplier at any time to replace any members of staff who are considered unsuitable to perform the activities in accordance with the quality standards determined and agreed between the parties for the specific Goods or Services delivered.

6. INSPECTION, EXAMINATION AFTER DELIVERY

6.1 Chiesi shall be authorised to inspect or cause to be inspected the goods upon or after receipt – and, insofar as relevant, also during production, processing and storage. Within a period of 30 working days to be counted from the date of delivery, Chiesi may notify Supplier in writing that it is rejecting the delivered goods if it appears that they are not in conformity with the Agreement, for instance because they are damaged, incomplete or defective otherwise. In that case the goods shall be deemed not to have been delivered. If the delivered goods or any part of the delivered goods have/has been rejected by Chiesi, Supplier shall do the following, in accordance with Chiesi's request and at his expense and within the reasonable period determined for that purpose by Chiesi:

a) still deliver what is missing;
b) pick up the rejected goods and then repair or replace them and deliver them to Chiesi again as soon as possible after repair or replacement.

6.2 If the rejected goods are not picked up within the period determined by Chiesi, the rejected goods may be returned for Supplier's account. The repaired or replaced goods or the goods delivered after all shall be inspected by Chiesi (again). Supplier shall continue to own and bear the risk of any damage to and loss of the goods that are rejected by Chiesi. If Supplier fails to comply with his obligations referred to in this article, he shall be in default by operation of law and shall immediately refund any amount paid, without any further demand to do so being required from Chiesi for that purpose.

7. RIGHT TO PERFORM AN AUDIT

7.1 Chiesi reserves the right, with due notice, and Supplier undertakes to perform any inspections and audits in Supplier's offices and buildings in order to inspect/audit the production processes, quality systems and all other data that may affect the correct and timely performance of the contractual services.

7.2 All information obtained during the above-mentioned inspections and audits shall be covered by article 9 "Intellectual Property".

8. FORCE MAJEURE

In the case of temporary force majeure on the side of Supplier, Chiesi shall have the option of either suspending Supplier's performance of the obligations under the Agreement for the duration of the force majeure or dissolving the Agreement without any court intervention. If the force majeure situation has lasted for 3 months or longer or as soon as it is certain that it will last for more than 3 months, both Parties shall be authorised to dissolve the Agreement without any court intervention. The Party who dissolves the Agreement due to a force majeure situation is not required to compensate the other Party for any damage. The following shall in any event, but without limitation, not be considered as force majeure, and shall therefore be at Supplier's risk and expense: strikes, worker exclusion, punctuality actions, illness, transport problems, non-performance of the obligations of suppliers or engaged third parties and interruptions in production on the part of Supplier.

9. INTELLECTUAL PROPERTY

The intellectual property rights to every creation that is made by Supplier (including by his staff or third parties engaged by Supplier) within the scope of the Agreement for Chiesi's benefit or is delivered as a result shall become owned by Chiesi. Insofar as the copyrights in respect of the goods or work produced are not already owned by Chiesi, Supplier shall transfer them to Chiesi at Chiesi's first request and perform the acts of delivery required for that purpose. This shall apply for the whole world, for the whole protection term of the right concerned, and for all methods and means of exploitation. The right thus granted can be transferred by Chiesi to a third party and shall include the right to adapt the works and to exploit or not to exploit them. Intellectual property rights include, without limitation, rights to inventions, trademarks, designs (whether registered or unregistered), domain names, copyright protected works, performances protected a neighbouring rights, databases, semiconductors, software, source codes, design rights, trade secrets, know-how and/or trade secrets.

9.1 Supplier shall immediately inform Chiesi, if he finds that a third party is infringing any intellectual property right of Chiesi or - if applicable - its suppliers or vendors/licensors or if any third party makes a claim against Supplier in connection with Chiesi's intellectual property rights – or, if applicable – its suppliers or vendors/licensors. If required by Chiesi, Supplier shall render all assistance that is reasonably required and that may result in the termination of the infringing acts or the dispute at the shortest possible notice.

9.2 Supplier shall refrain from any action that affects the distinctive character, the reputation or the goodwill of the trademark or brand (or any other intellectual property right) and/or the name of Chiesi as well as its products.

10. LIABILITY AND INDEMNIFICATION

10.1 If either of the Parties fails to comply with their contractual obligations and this failure also continues after written notice of default granting a reasonable period for the performance of these obligations, the other party may, without any court intervention, either dissolve all or part of the Agreement or demand full performance of the Agreement. In that case the other party shall also be entitled to claim compensation of the damage and costs.

10.2 Supplier shall indemnify Chiesi for all rights and claims of third parties to the extent they are rights and claims relating to or resulting from:

a) any acts or omissions on the part of Supplier, his staff or third parties engaged by Supplier for the performance of the Agreement and/or other third parties for whom Supplier is liable by law; and/or
b) defective products within the meaning of the Act of 15 February 1991; and/or
c) Supplier's failure to comply with the present Terms and Conditions or other legal requirements or instructions from Chiesi; and/or
d) Supplier's failure to inform, or sufficiently inform, (external) users about the use of the product, or
e) the Agreement existing between Supplier and Chiesi and its performance.

Supplier shall also compensate all damage suffered by Chiesi in such a case, including damage to Chiesi's good name and reputation.

11. OBLIGATIONS OF SUPPLIER AND INDEMNIFICATION

11.1 In connection with the products/services to be sold and delivered or sold and delivered to Chiesi by Supplier, Supplier shall at all times possess the relevant permits and certificates and comply with the conditions imposed therein, including, but without limitation, the conditions relating to the safety, transport, storage and sale of the products. If so requested, Supplier shall submit evidence hereof to Chiesi.

11.2 Supplier guarantees that the products/services to be delivered shall meet the requirements of the applicable legislation and regulations, including, but without limitation, the Act of 25 March 1964 on medicines for human use, the Royal decree of 7 April 1995 on the information and advertising concerning medicinal products for human use as well as the deontological code of Pharma.be and Mdeon or, in case of services for the Grand-Duchy of Luxembourg, the Act of 25 November 1975 on medicines and the deontological code of IML. Suppliers shall in particular ensure that any claims, including an overview of potential recipients of such claims, if applicable, are assessed by Chiesi in writing prior to publication, and only after prior approval.

11.3 Supplier shall observe or follow all (legal or non-legal) instructions for use and storage as well as other directions that must be followed with regard to the products and their transport, storage and use and that contribute to, for instance, the products' shelf life and the users' safety. Supplier shall also make these instructions for use and storage as well as such other directions clearly and explicitly known to third parties that use the product. Supplier may not remove or alter instructions for use and storage or any other indications within or on the products or make any changes in the labelling or packaging of the products.

12. PRIVACY, CONFIDENTIALITY AND NON-DISCLOSURE

12.1 When performing the agreement, the Parties shall comply with the applicable legislation and regulations in the area of personal data protection. The Parties are required to render all reasonable assistance to each other in order to enable the other Party to comply with his obligations under the above-mentioned legislation and regulations.

12.2 Without prejudice to any applicable legal non-disclosure obligations, Supplier shall not disclose any information provided by or on behalf of Chiesi and related to the performance of the Agreement and/or Chiesi's business, unless Chiesi has given its explicit written consent in advance to disclose the information concerned. The same applies to the contents of the Agreement.

12.3 This non-disclosure obligation shall not apply to information that has become publicly known without the violation of any non-disclosure clause, if information was already known to Supplier at the time of the receipt of the information pursuant to the Agreement or if such information was provided to Supplier by a third party without the violation of a non-disclosure clause by that third party. The non-disclosure obligation shall also not apply to the extent that disclosure is required by law or pursuant to a binding decision of a court of law, other government body or a professional duty. However, to the extent possible, Supplier shall consult with Chiesi prior to the disclosure about the form and contents of the disclosure.

12.4 Supplier shall also impose the non-disclosure obligation on his employees and all other third parties that have access to the information concerned within the scope of the performance of their work for Supplier.

12.5 The non-disclosure obligation as referred to in this article shall continue in effect after the expiry or termination of the Agreement as long is the information concerned is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.

13. SUSPENSION AND DISSOLUTION

13.1 Chiesi shall be entitled to terminate the Agreement at any time and without providing any reasons with the observance of a notice period of at least 30 (thirty) days. Where appropriate, Chiesi shall only have to pay for the activities already performed by Supplier at the time of the termination date.

13.2 If and as soon as:

a) Supplier does not comply, or does not timely or properly comply, with any of his obligations under the present Terms and Conditions or under any Agreement with Chiesi and – if and insofar as any notice of default on the part of Chiesi is required – fails to remedy the default within the reasonable period determined by Chiesi;
b) third parties claim they have rights in respect of property of Supplier or if Supplier's goods are seized;
c) Supplier applies for a moratorium of payment or bankruptcy or Supplier's bankruptcy or moratorium is/has been applied for or Supplier makes a payment arrangement with any of his creditors or creates the impression that he is (or will be) insolvent in any other way;
d) Supplier (if he is a natural person) dies or a regime of guardianship ('*curatele*') or administration ('*bewind*') is initiated for him or when he indicates that he wishes to be eligible for the debt rescheduling scheme;
e) Supplier proceeds to wind up or liquidate his business, whether or not voluntarily, the business is continued in a different legal form, the registered office or actual place of business is moved to a different country or the direct or indirect control over Supplier is transferred to a third party;
f) Supplier assigns the rights under any agreement to which the present Terms and Conditions are applicable to a third party,

then all Chiesi's claims against Supplier on any account shall become payable immediately, without any further demand or notice of default. Moreover, Chiesi shall be entitled, at its own choice, to suspend its obligations to Supplier on any account, until Supplier has fully complied with his obligations to Chiesi and/or to wholly or partly dissolve the Agreement, in both cases without any court intervention, by means of a written statement and without being liable to Supplier in any way for damage, costs and interest, and notwithstanding Chiesi's right to claim full compensation (of the damage).

14. ANTI-CORRUPTION LEGISLATION AND RELATED OBLIGATIONS

14.1 Supplier declares he has familiarised himself and will comply with the anti-corruption legislation and Chiesi's anti-corruption policies (available via the following clickable Chiesi Anti-Corruption Policy).

14.2 Chiesi and Supplier acknowledge that every breach of the provisions of this article or any part hereof shall constitute a significant breach of the Agreement. Should Chiesi receive any information or notification concerning facts or lawsuits which reasonably imply a breach of this article 14 or any part hereof, then Chiesi may immediately suspend or terminate the performance of the Agreement, without prejudice to the other rights and legal remedies Chiesi has.

15. MISCELLANEOUS

15.1 The nullity, invalidation or declaration of ineffectiveness of any of the provisions of the present Terms and Conditions shall not affect the validity of the other provisions. If one or more provisions are or become null and void, are or have been invalidated or become or have become ineffective, replacing provisions shall be included between Chiesi and Supplier which are valid and which most closely approximate the contents and purport of the provision(s) appearing to be null and void, invalidated or ineffective.

15.2 Supplier's rights and obligations under the present Terms and Conditions and/or any agreement to which the present Terms and Conditions are applicable cannot and may not be assigned to third parties or encumbered with any limited right, unless explicitly agreed otherwise in writing. This provision shall have effect under property law.

15.3 The present Terms and Conditions have been drafted in the Dutch language and translated into several other languages. In the case of differences in the text and/or interpretation between these different versions, the Dutch version of the Terms and Conditions shall always prevail and be binding.

16. PROCESSING OF PERSONAL DATA

16.1 If the work to be performed by Supplier (partly) consists of personal data to be processed for Chiesi's benefit within the meaning of the General Data Protection Regulation (GDPR) the provisions of this article shall apply, or when required, a detailed data processing agreement.

16.2 Supplier shall always process personal data in agreement with the provisions of the GDPR and any other applicable requirements and provisions. If so requested, Supplier shall immediately inform Chiesi in writing about the way in which Supplier implements his obligations under the legislation in the area of personal data protection and the related legislation and regulations.

16.3 All processing of personal data for Chiesi's benefit may take place only after Chiesi's prior written consent. Any processing operations explicitly described in the Agreement shall be deemed to take place at Chiesi's instructions.

16.4 Supplier shall not outsource his obligations pursuant to this article to sub-processors, unless Chiesi's specific written consent has been obtained for this in advance and Supplier has concluded a written agreement with such sub-processors that provides for levels of protection for the personal data which are at least equal to those applicable between Supplier and Chiesi.

16.5 Supplier shall process the personal data to be processed for Chiesi only within the EEA or in countries for which the European Commission has determined that they offer an adequate level of protection.

16.6 If Supplier intends to process personal data within the scope of the performance of the Agreement in countries other than those referred to in the previous paragraph of this article, Supplier shall not transfer such personal data without (i) either first obtaining (government) approval(s), where required, (ii) or making use of the EU Model Clauses applicable for that situation. Supplier shall not apply for the above-mentioned approval(s) before Chiesi has agreed hereto in writing. Chiesi shall be entitled to prohibit Supplier, if Chiesi reasonably considers this necessary (with a view to the protection of its personal data), from transferring the personal data to be processed for Chiesi to countries other than those referred to in this article. Their processing outside of the EEA shall require Chiesi's prior positive advice.

16.7 If the Agreement is terminated or expires, Supplier shall ensure that all (personal) data placed at his disposal within the scope of the performance of the Agreement is returned to Chiesi. Supplier shall destroy all copies and back-ups of the (personal) data at his disposal in such a manner that they are (permanently) unavailable to either Supplier or any third party.

16.8 Supplier's return of the data referred to in this article shall take place in a data format that is commonly used and manageable for Chiesi. Chiesi shall be entitled to further specify this format.

17. CODE OF INTERDEPENDENCE

Supplier declares he has familiarised himself with Chiesi's Code of Interdependence in which Chiesi's sustainability goals are set out (available via the following link: https://www.chiesi.be/code-of-interdependence) Supplier declares he also aims for sustainability in his business operations.

18. CHOICE OF LAW AND FORUM

18.1 All obligations between Chiesi and Supplier, the present Terms and Conditions and all (non-contractual) obligations arising therefrom or relating thereto shall be governed by Belgian law, with the exclusion of the conflict-of-law rules of Belgian private international law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) is explicitly excluded.

18.2 All disputes in respect of, arising from or relating to an Agreement concluded by Chiesi to which the present Terms and Conditions are wholly or partly applicable, the present Terms and Conditions as well as all (non-contractual) obligations resulting therefrom or relating thereto shall be exclusively submitted to the competent Dutch-speaking court in Brussels, Belgium in order to be resolved.