

TERMS OF PURCHASE

OBJECTIVE

To clearly set out the terms under which the Buyer purchases Goods and/or Services (in the absence of a formal procurement contract).

USERS

All parties supplying Goods and/or Services to the Buyer that are not bound by a separate formal procurement contract.

DEFINITIONS & INTERPRETATION

In these Terms of Purchase, the following words have the following meanings:

Buyer	Roche Products Pty Limited
Contract	Subject to clause 1.2 below, each contract between the Buyer and the Seller for the purchase of Goods and/or Services which is created on acceptance of a Purchase Order by a Seller
Terms of Purchase	These terms of purchase together with any Purchase Order and any documents and terms expressly or impliedly incorporated into them
Goods	The goods (if any) described in the Purchase Order
Purchase Order	Any purchase order duly completed on behalf of the Buyer and provided by the Buyer to the Seller for the supply of Goods and/or Services in such form as the Buyer may determine from time to time
Seller	The company, firm or person to whom the Purchase Order is addressed
Services	The services (if any) described in the Purchase Order
Specifications	Means the Buyer's specifications for the Goods and/or Services notified in writing to the Seller as well as any specifications that accompany the Goods and/or Services

1. Formation

- 1.1 Every Contract incorporates by reference and consists of these Terms of Purchase to the exclusion of any terms and conditions included in any document issued by the Seller.
- 1.2 However, if the Buyer and the Seller have executed a formal procurement contract which is in full force and effect, the terms and conditions of that contract will prevail, to the extent of any inconsistency with these Terms of Purchase.
- 1.3 Provision of a Purchase Order carrying the Buyer's official Purchase Order number is a valid offer and the Contract comes into effect on acceptance of that Purchase Order by the Seller. Unless previously withdrawn by the Buyer, Purchase Orders are deemed accepted if not rejected by the Seller by notice in writing within 7 days of the date of the Purchase Order.

2 Delivery

- 2.1 Goods will be delivered to the Buyer to such location and within such period as is stated for the delivery in the Purchase Order or the Buyer's instructions. Services will be commenced, provided and completed at the places and within the periods stated in the Purchase Order.
- 2.2 Time of delivery of the Goods and performance of the Services is of the essence of the Contract.
- 2.3 If the Goods are not delivered or the Services are not commenced and/or completed within such period as is stated in the Purchase Order the Buyer will be entitled, without prejudice to any of its other rights under these Terms of Purchase, to terminate the Contract by giving notice in writing to the Seller.
- 2.4 Upon consigning the Goods or any part of the Goods for delivery to the Buyer the Seller must give notice to the Buyer at the "deliver to" address stated on the Purchase Order.
- 2.5 The Buyer may, but will not be obliged to, accept quantities of the Goods which vary from those specified in the Specifications and/or Purchase Order, Goods of which the packaging has been damaged or Goods deemed by Buyer not to satisfy the Seller's warranties under these Terms of Purchase.
- 2.6 When required by the Buyer the Seller will mark the materials ordered in accordance with the reasonable instructions of the Buyer.
- 2.7 If the Goods are being imported to the Buyer from outside Australia the provisions of clauses 2.8 to 2.9 will apply notwithstanding any other provision of these Terms of Purchase.
- 2.8 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 will have the same meaning in these Terms of Purchase and the Contract. In the event of conflict between Incoterms 2010 and these Terms of Purchase, the latter will prevail.
- 2.9 Unless stated otherwise in the Contract any Goods being imported to the Buyer will be

delivered "Delivery Duty Paid" to Roche Products Pty Limited, Level 8, 30-34 Hickson Road, Sydney NSW 2000.

3 Acceptance

- 3.1 The Buyer does not accept any Goods and/or Services (even if payment has been made) until a reasonable period after the date of delivery or after any latent defect would have become apparent. For the avoidance of doubt, no inspection or testing by the Buyer whether before or after delivery of the Goods and/or Services nor the signing of any delivery note or other document acknowledging physical receipt will constitute acceptance or approval for the purposes of the *Sale of Goods Act 1923* (NSW) or the *Competition and Consumer Act 2010* (Cth) nor be deemed a waiver of the Buyer's rights either to cancel or return all or any part where the Goods and/or Services are found to be defective or not in accordance with the Contract.
- 3.2 Before the expiry of the period set out in clause 3.1 the Buyer is entitled to reject such of the Goods and/or Services as do not comply in all respects with the Contract and these Terms of Purchase and will upon rejection return such Goods and/or Services to the Seller at the risk and expense of the Seller. Upon notification of rejection, the Seller, as the Buyer may require, must forthwith either at its own expense deliver to the Buyer Goods and/or Services complying in all respects with these Terms of Purchase in substitution for those rejected, or credit the Buyer in full for the invoice value of the rejected Goods and/or Services.
- 3.3 The Seller must promptly keep the Buyer informed of any matter of which it is or reasonably should, as a Seller of Goods, be aware relating to the storage, transportation, handling, assembly or use of the Goods by the Buyer (including legislation or advice from responsible or professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that the Buyer should take in relation to such matters.

4 Title and Risk

The title and risk in the Goods remains with the Seller until the Goods are delivered and accepted by the Buyer in accordance with the Contract when, without prejudice to any right of rejection which the Buyer may have under the Contract or by law, title to and risk in the Goods passes to the Buyer, provided that if the Buyer pays for the Goods prior to delivery, title to (but not risk in) the Goods passes to the Buyer when payment is made.

5 Price and Payment

- 5.1 The price of the Goods and/or Services stated in the Purchase Order will not be increased without the consent of the Buyer and is inclusive of the cost of packing and carriage and of any duties, taxes, tariffs, labelling, insurance costs and all other costs or other impositions on the Goods and/or Services and of any other sums whatsoever payable to any person in respect of the Goods and/or Services incurred by the Seller unless otherwise set out in the Purchase Order.
- 5.2 Unless provided to the contrary in the Purchase Order, the Seller may only invoice the Buyer on or after delivery of the Goods or completion of the performance of the Services.
- 5.3 If any sums are due to the Buyer from the Seller, then the Buyer will be entitled to

exercise the right to set-off such sums against any payments due to the Seller from the Buyer under or in relation to this or any other Contract. The Seller is not entitled to apply any amounts due to the Buyer under the Contract in or towards payment of any sum owing by the Buyer to the Seller in relation to any matter whatsoever.

- 5.4 Any money paid by the Buyer to the Seller in respect of any Goods and/or Services rejected under these Terms of Purchase together with any additional expenditure over and above the price specified in the Purchase Order reasonably incurred by the Buyer in obtaining other goods or services in replacement of any rejected Goods and/or Services must be paid by the Seller to the Buyer within 7 days of the date of the Company's notice demanding the same or, at the Buyer's option, will be deducted from the money still to be paid by the Buyer to the Seller in relation to such Goods and/or Services.
- 5.5 All sums payable under the Contract are exclusive of GST where applicable which will be added if appropriate at the rate prevailing at the relevant tax point. All Seller invoices must be compliant with the relevant GST law.
- 5.6 All Purchase Orders and invoices prepared pursuant to this Agreement are to be expressed in Australian Dollars, unless specifically designated otherwise in the Purchase Order. Payment is due 60 days after the date of receipt of the Seller's valid tax invoice. All invoices must quote the Buyer's Purchase Order number and the Seller's Australian Business Number (ABN) and must be sent to Accounts Payable, Roche Products Pty Limited, Level 8, 30-34 Hickson Road Sydney NSW 2000.
- 5.7 In the event that the Buyer wishes to dispute any part of an invoice, the Buyer must notify the Seller within 60 days of receipt of the invoice explaining the reason for the dispute, and the amount disputed. If the Seller is notified of a disputed invoice as provided above, the Seller will send a credit note for the full invoice and prepare 2 invoices: one for the disputed part and one for the undisputed part. The undisputed invoice will then be paid by the Buyer within 20 days of receipt.
- 5.8 Payment of invoices do not constitute acceptance of off-specification, unsuitable, deficient, or non-conforming Goods and/or Services or be construed as a waiver of any of the Buyer's rights or remedies under the Contract.

6 Warranty

- 6.1 The Seller undertakes, represents and warrants to the Buyer that both the raw materials used in manufacturing the Goods and that the Goods and/or the Services as applicable themselves will:
 - (a) conform in all respects as to quantity, quality, safety, instructions of the Buyer, or samples provided to the Buyer, and description, with all particulars stated in the Purchase Order, any applicable Specifications and all relevant national and EU statutes, directives, laws and regulations in force from time to time. Without prejudice to the generality of the foregoing, the Seller warrants that all Goods and/or Services and all raw materials used in manufacturing the Goods comply in all respects with all relevant laws and regulations, including, but not limited to, the *Competition and Consumer Act 2010* (Cth).
 - (b) be accompanied with accurate, complete and comprehensible instructions for their treatment, assembly, use and/or storage;

- (c) be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Purchase Order or Contract); and
 - (d) be free from design and other inherent defects (save to the extent that they have been supplied in accordance with designs of the Buyer).
- 6.2 The Seller must use all endeavours to transfer or assign to the Buyer or otherwise obtain for the benefit of the Buyer any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods and/or Services in respect of the Goods and/or Services (or part thereof) to the extent that the same is capable of such transfer or assignment to the Buyer or otherwise providing such benefit for the Buyer.
- 6.3 Where there is any breach of the Seller's warranty in clause 6.1 above or if any obligation, warranty or requirement imposed by, given or stated in the Contract in respect of the Goods and/or Services is not complied with, or the Goods and/or Services or any instalment of them are not delivered at the specified time or the Goods delivered are damaged the Buyer is entitled at its sole discretion without liability to the Seller (arising out of such action) and without prejudice to any other right or remedy the Buyer may take one or more of the following actions to:
- (a) cancel the Contract and treat the Contract as having never been entered into by the Seller; and/or
 - (b) reject the relevant Goods and/or Services (in whole or in part) and any Goods and/or Services already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods and/or Services; and/or
 - (c) refuse to accept any subsequent delivery of the Goods and/or Services; and/or
 - (d) recover from the Seller any costs reasonably incurred by the Buyer in obtaining substitute goods and/or services from another Seller; and/or
 - (e) require the Seller at its sole cost to replace, repair the Goods and/or Services or carry out such work as is necessary within 14 days so that the Goods and/or Services conform to the Contract, Purchase Order and Specifications; and/or
 - (f) require the Seller at its sole cost to re-execute the Services in accordance with the Contract, Purchase Order and Specification within 7 days; and/or
 - (g) treat this Contract as discharged by the Seller's breach and:
 - (i) delay payment of the price for the Goods and/or Services until the requirements of this Contract, Purchase Order and any Specification are entirely fulfilled;
 - (ii) refuse to make payment of the price of the Goods and/or Services; or
 - (iii) require the repayment of any part of the price of the Goods and/or Services which the Buyer has paid whether or not the Buyer has previously required

the Seller to repair the Goods, supply any replacement Goods or re-execute the Services; and/or

- (h) claim such damages as may have been incurred by the Buyer as a result of the Seller's breach of the Contract.

6.4 If the Buyer claims that a Purchase Order has not been fulfilled or has been incorrectly fulfilled the Seller is deemed to accept the validity of the claim unless it serves written notice on the Buyer disputing the said claim and stating the reasons for its dispute within 7 days of the date of the said claim.

6.5 If the Buyer exercises any right under this clause 6 the Buyer may at its absolute discretion require the Seller to collect the relevant Goods forthwith or return the Goods to the Seller at the Seller's cost.

7 Inspection and Testing

The Seller must before delivery ensure, whether by inspection or testing or otherwise, that the Goods and/or Services comply with the Contract, and if required by the Buyer allow the Buyer to enter the premises of the Seller to test and inspect the Goods and/or Services prior to delivery.

8 Product Recall

8.1 The Seller must immediately notify the Buyer in writing providing all relevant details if it discovers that there is:

- (a) any defect in the Goods which have been delivered to the Buyer at any time; or
- (b) any error or omission in the instructions for the use and/or assembly of the Goods,

(whether or not any such defect, error or omission represents a breach of the warranty in clause 6.1 or any other clause) which causes or may cause any risk of death, injury or damage to property.

8.2 The Buyer may at its discretion and at the Seller's cost:

- (a) recall any Goods or any other products into which the Goods have been incorporated already sold by the Buyer to its buyers (whether for a refund, credit or replacement, at the Buyer's option); and/or
- (b) issue any notification whether in writing or otherwise to any third party about the manner or use or operation of any Goods or any other products into which the Goods have been incorporated already sold by the Buyer;

in each case on the basis of the identification whether by the Buyer, its buyers or any third party of any defect in the relevant Goods or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of the warranty in clause 6.1 above or any other clause) which the Buyer reasonably concludes affects or may affect any of the Goods supplied in a manner which causes or may cause any risk of death, injury or damage to property.

9 Sellers of Dangerous Goods

It is the Seller's responsibility to ensure correct packaging and labelling of dangerous Goods and preparations for both conveyance and use in accordance with all applicable and relevant laws, regulations and codes, including, but not limited to, the currently approved Australian Dangerous Goods Code.

10 Australian Standards

All Goods and/or Services must comply with all relevant Australian standards and relevant laws and be so designed and constructed to be safe and without risk to health when properly used. Adequate instructions must be supplied concerning the use and method of operation of each item and any conditions which are necessary to ensure that, when put to that use, it will be safe and without risk to health.

11 On Site Works

All Contract work carried out on the Buyer's site is subject to the Buyer's Safety Health Environment and Wellness (SHEW) policies which the Buyer will make available to the Seller on request. The Seller and its employees and contractors must follow the lawful directions of the Buyer's SHEW manager or their delegates. It is the responsibility of the Seller to provide its employees and contractors with any personal protective equipment necessary to meet the Buyer's requirements and statutory requirements.

12 Indemnity

- 12.1 The Seller acknowledges and agrees that the Buyer places particular reliance upon the Contract and in addition to any other remedy available to the Buyer, the Seller irrevocably and unconditionally indemnifies and holds harmless the Buyer, its employees, sub-contractors and agents in full and on demand and keeps them so indemnified from and against all third party claims, demands, actions, proceedings and all direct and indirect loss, damage, liability (including without limitation liability for death or personal injury attributable to the Goods and/or Services) settlement amounts, costs and expenses whatsoever (including without limitation any legal fees or costs arising out of or in connection with such claims, and other professional advisers' fees, economic loss, loss of profit, future revenue, reputation, goodwill, anticipated savings and costs) and any consequential loss made against or incurred or suffered by any of them and whether wholly or in part resulting directly or indirectly from or arising out of or resulting from the use and/or sale of the Goods or of any product incorporating the Goods and/or performance of the Services, except to the extent that such is due to the negligence of the Buyer, its employees or agents.
- 12.2 The Seller must provide all facilities, assistance and advice required by the Buyer or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Seller's performance, or purported performance of, or failure to perform, the Contract.

13 Seller's Legal & Social Responsibilities

The Seller must conduct its business and ensure that its subcontractors and other members of its corporate group conduct their businesses in accordance with all applicable local, national and international laws and in a socially responsible and ethical way. This includes complying with the Roche Supplier Code of Conduct (available on the Roche Australia website) and complying with all laws relating to the elimination of modern slavery, immigration, industrial relations, workplace safety, protection of the environment, eliminating bribery and corruption and the protection of human rights. The Seller will permit the Buyer to inspect and audit the Seller's business for compliance with this clause, and will grant necessary access to the Buyer for those purposes. The Seller will also obtain all necessary consents/undertakings for the Buyer to be able to conduct similar inspections and audits of the businesses of other members of the Seller's corporate group, and of the Seller's subcontractors.

14 Insurance

The Seller must at its own cost effect, maintain and keep in place with reputable insurers current public and product liability insurance of \$20 million for each occurrence and in the aggregate and such other insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract. The Seller must on the written request of the Buyer from time to time provide the Buyer with reasonable details of the insurance policies maintained in force in accordance with this clause, and, on the renewal of each policy, the Seller must send a copy of the premium receipt and/or certificate of currency to the Buyer when requested to do so in writing by the Buyer. The Seller must not knowingly do anything that would invalidate any of the policies maintained in force in accordance with this clause.

15 Intellectual Property

- 15.1 The Seller will indemnify the Buyer and will keep the Buyer indemnified from and against all claims, loss, damage or expense brought, made or suffered by or against the Buyer by reason of any or any alleged infringement by the Goods and/or Services or their sale or use or incorporation in other Goods or Services of any letters patent, design, trade mark, copyright, trade secrets or other intellectual property rights in Australia or elsewhere.
- 15.2 In the event that any documents and/or materials are produced or provided by the Seller in the course of providing Goods and/or Services, the Seller agrees that such documents and materials are owned by the Buyer, and the Seller hereby assigns all of its rights, title and interest in such documents and materials to the Buyer. The Seller will perform all necessary acts to give effect to this assignment.
- 15.3 All plans, drawings, Specifications and patterns or other documents and materials relating to the Goods and/or Services, which are delivered by the Buyer to the Seller, will remain the property of the Buyer and forthwith upon the completion of the Contract or upon request by the Buyer will be returned to the Buyer at the Seller's cost. No such plans, drawings, Specifications, or pattern or document or material will be shown nor its contents disclosed to any other person without written agreement of the Buyer.

16 Pharmacovigilance

- 16.1 If in the course of the activities covered by this Agreement the Seller becomes aware of a suspected Adverse Events, Special Situation and Other Types Case Report and/or a product complaint associated with the use of a Roche medicinal product, this must be reported to the Roche Drug Safety department within 1 business day by one of the following methods:

Email: australia.drug_safety@roche.com

Mail: Phone: 02 9454 9444

Adverse Event (AE):

Any untoward medical occurrence in a patient, consumer or clinical investigation subject administered a medicine, which does not necessarily have a causal relationship with this treatment. An AE can therefore be any unfavourable and unintended sign (for example, an abnormal laboratory finding), symptom, or disease temporally associated with the use of a medicine, whether or not considered related to the medicine.

Special Situation and Other Case Type Report:

Pregnancy, breastfeeding, use associated with an AE in paediatric/elderly population, lack of efficacy, overdose, misuse, abuse, off label use, medication error (including intercepted medication error and potential medication error), occupational exposure, data related to a suspected transmission of an infectious agent via a medicinal product (STIAMP), drug interaction, falsified medicinal products (whether suspected or confirmed) and suspected AEs from class action lawsuits.

17 Confidentiality

- 17.1 It is a condition of the purchase of the Goods and/or Services that the Seller will not, without the written consent of the Buyer issue or publish any statement in writing indicating that the Seller has supplied Goods and/or Services to the Buyer or is a seller or supplier to the Buyer, whether regularly or intermittently or otherwise of the Goods or Services or any other goods or services but without prejudice to the Buyer's rights with respect to the supply of Goods or Services whether under these Terms of Purchase or by virtue of a course of dealing with respect to the Goods or Services or similar goods or services.
- 17.2 The Seller must keep and procure that its employees, agents and sub-contractors keep secret and confidential all information disclosed or obtained as a result of the relationship of the parties under the Contract and must not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the Buyer.
- 17.3 The obligations of confidentiality in this clause do not extend to any information which the Seller can show is in, or has become part of, the public domain other than as a result of the breach of the obligations or confidentiality obligations; was independently disclosed to it by a third party entitled to disclose the same or is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

18 Assignment and Subcontracting

The Seller may not assign or subcontract the Contract without the prior consent in writing of the Buyer, which it may withhold in its absolute discretion.

19 Termination

19.1 The Seller must notify the Buyer immediately of any material breach of the Contract or these Terms of Purchase.

19.2 Without prejudice to any of its other rights under these Terms of Purchase the Buyer may by notice in writing to the Seller terminate the Contract forthwith if:

(a) the Seller is reasonably likely to commit, or has committed, a breach of the Contract, or

(b) the Seller ceases or threatens to cease to carry on business or permits any judgement against it to remain unsatisfied for seven days; or

(c) there is a change in control of the Seller, or

(d) being a company, and subject to any stay on termination that may be imposed by law, the Seller has a petition presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for its winding up, deregistration, dissolution, liquidation or the making of an administration order (otherwise than for the purposes of a bona fide amalgamation or reconstruction) or compounds, compromises, assigns, proposes a voluntary arrangement or enters into an arrangement (including a scheme of arrangement or deed of company arrangement) for the benefit of, all or any class of the person's creditors or members or a moratorium involving them, or if it becomes insolvent, or if a trustee receiver, administrative receiver, liquidator or similar officer is appointed in respect of all or any part of its business or assets; or

(e) the Seller suffers or undergoes any procedure analogous to any of those specified in clause 19.2 (d) above or any other procedure available in the country in which the Seller is constituted, established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor; or

(f) being an individual the Seller dies, is unable to pay their debts when they become due and payable, or becomes bankrupt or insolvent, or enters into any arrangement with creditors or takes or suffers any similar action in consequence of debts.

19.3 The termination of the Contract is without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

19.4 Upon termination of the Contract for any reason whatsoever:

(a) (subject to clause 19.3 above) the relationship of the parties ceases save as (and to the extent) expressly provided for in this clause 19.4;

(b) any provision which expressly or by implication is intended to come into or remain in force on or after termination continues in full force and effect. For the avoidance

of doubt, this includes but is not limited to clause 17 (Confidentiality); and

- (c) the Seller must immediately return to the Buyer (or if the Buyer so requests by notice in writing, destroy) at the Seller's expense all of the Buyer's property in its possession at the date of termination including all confidential information, together with all copies of such confidential information must certify that it has done so, and must make no further use of such confidential information and all plans, drawings, Specifications and patterns belonging to the Buyer.

20 Enforceability

If any clause or condition of the Contract is held to be or becomes void, invalid, unlawful or unenforceable for any reason whatsoever, the same is deemed omitted from the Contract and such omission will not affect the validity or enforceability of the remaining provisions of the Contract.

21 Waiver

No waiver of any right under, or breach of, these Terms of Purchase or any provision of the Contract will operate as a continuing waiver or waiver of any subsequent breach of that or any other provision. Any waiver of any breach of these Terms of Purchase must be in writing.

22 Notices

Any notice or other document required to be served on the Seller must be emailed or posted by express post to the Seller at the address set out on its latest invoice and any notice or other document required to be served on the Buyer must, in the case of an invoice or statement, be emailed or posted by express post to the Buyer's accounts department whose details are set out above at clause 5.6 and in any other case to the Buyer's Procurement Department as indicated on the Purchase Order.

23 Variation

No purported alteration or variation of any provision of the Contract or these Terms of Purchase will be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.

24 Applicable Law

These Terms of Purchase or a Contract and any dispute or claim arising out of or in connection with them will be governed by and construed in all respects in accordance with the laws of New South Wales. Nothing in these Terms of Purchase will prejudice any condition or warranty (expressed or implied) or right or remedy to which the Buyer is entitled in relation to the Goods and/or Services ordered by virtue of statute or common law and the parties irrevocably submit any dispute or claims arising out of these Terms of Purchase to the exclusive jurisdiction of the courts of New South Wales.