

# GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES

VIVALTO SANTE



These general terms and conditions of purchase (the "**GTC**") apply to any order for services (the "**Services**") placed by a healthcare facility of the Vivalto Santé group (hereinafter the "**Facility**"), as the issuer of the order, with a natural or legal person or any other entity, in any form whatsoever, with or without legal personality (the "**Provider**"). The order for Products placed by the Facility with the Provider is hereinafter referred to as the "**Order**".

The Order includes in particular: (i) the Order form, (ii) the Order specifications (the "**Specifications**") and any additional documents issued by the Facility.

The Facility and the Provider are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

**1. DEFINITIONS**

In addition to the other terms and expressions defined elsewhere in these GTC, the capitalized terms and expressions used in these GTC, including the preamble, shall have the meaning ascribed to them below:

<b>“Article”</b>	refers to an article in these GTC.
<b>“Confidential Information”</b>	has the meaning ascribed to it in Article 12 of these GTC.
<b>“Facility”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“GTC”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“Notification”</b>	has the meaning ascribed to it in Article 4.5 of these GTC.
<b>“Order”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“Order Acceptance Period”</b>	has the meaning ascribed to it in Article 4.2 of these GTC.
<b>“Party(ies)”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“Provider”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“Receipt”</b>	has the meaning ascribed to it in Article <b>Erreur ! Source du renvoi introuvable.</b> of these GTC.
<b>“Services”</b>	has the meaning ascribed to it in the preamble to these GTC.
<b>“Specifications”</b>	has the meaning ascribed to it in the preamble to these GTC.

**2. SCOPE OF APPLICATION OF THE GENERAL TERMS AND CONDITIONS OF PURCHASE - ENFORCEABILITY**

The Provider's acceptance of an Order from the Facility, as well as any commencement of execution of an Order by the Provider, implies the Provider's full and unconditional adherence to these GTC, and excludes any conflicting provisions of the Provider's general terms and conditions of sale.

Any deviation from these GTC must be subject to prior written approval by the Facility.

The Facility's failure to enforce any provision of these GTC at any given time shall not be interpreted as a waiver of its right to enforce any such provision at a later time.

**3. FINANCIAL CONDITIONS – INVOICING – PAYMENT**

**3.1. Price**

The prices stipulated in the Order accepted by the Provider, under the conditions set out in Article 4 of these GTC, are fixed, final, flat rate and non-revisable.

These prices are quoted in euros and include all costs and taxes (excluding VAT) necessary for the execution of the Order. VAT applies in accordance with applicable regulations.

The Provider is responsible for determining the price (understood as any compensation for the Services concerned) offered and acknowledges and accepts that the prices indicated in the Order include all risks and are fair prices. Consequently, the Provider may not subsequently claim any price increase for any reason whatsoever.

**3.2. Invoicing**

Invoices relating to Orders must include all the information required by the applicable legislative and regulatory provisions, as well as the Order number, a description of the Services provided, the place where the Services were provided, the intra-community VAT number, where applicable, and the country of the Provider.

A separate invoice shall be issued by the Provider for each Order form, even in the case of combined services or services provided at several sites.

The Provider undertakes to issue and send the invoice only after the date of signature by the Facility of the execution note for the Services sent to it by the Provider, which also includes the word "approved" by the Facility. If the Services subject to the same Order are executed in several steps/successive phases, the Provider undertakes to send the invoice once the last Service concerned is executed, under the conditions provided for in article 4.5 below. In such case, no invoice shall be sent to the Facility, even if the latter signs an execution note only for part of the Services executed.

### **3.3. Payment**

All payments shall be made subject to (a) Acceptance (as this term is defined in Article 4.5 of these GTC) and (b) receipt by the Facility of the Provider's invoices in accordance with the provisions of Article 3.2 of these GTC.

Unless the Parties have agreed in writing to different specific payment terms, payment for the Services shall be made by bank transfer within 45 days end of month. This period starts from the date the Facility receives the Provider's invoice.

Except in cases where the Parties have agreed on specific payment terms, any late payment shall give rise to the automatic application of a late payment penalty, following the sending of a formal notice by registered letter with acknowledgement of receipt, which has remained unanswered for a period of thirty (30) days from its receipt. This penalty shall be calculated from the first day following the due date of the formal notice sent by the Provider to the Facility and shall be equal to a rate corresponding to three (3) times the legal interest rate in force on that date, applied to the amount of the sums due.

The increased legal interest shall compensate the Provider on a lump-sum basis, and the Provider shall not be entitled to claim any other sum from the Facility on the grounds of late payment, subject to legal public policy provisions.

## **4. TERMS OF ORDER EXECUTION**

### **4.1. Order formalization**

The Facility sends the Provider the Order form issued by any authorized person. The date of sending of the Order form corresponds to the date on which it is transmitted to the Provider, by any means of communication (including, in particular, electronic mail, electronic data interchange (EDI) or post).

### **4.2. Order Acceptance**

The Provider shall confirm acceptance of the Order to the Facility in writing within a maximum period of three (3) days from the date of sending by the Facility of the initial or modified Order, as the case may be (the "**Order Acceptance Period**").

This confirmation, within this period, constitutes final acceptance and a firm commitment on the part of the Provider to carry out the Services ordered by the Facility at the price indicated in the Order.

Should the Provider fail to accept the Order in writing within the aforementioned period, the Facility may freely cancel the Order without justification or compensation.

### **4.3. Order execution**

Provider's obligations.

The Provider undertakes to:

- (a) Execute the Order in accordance with the terms and conditions stipulated, in the Order form and the Specifications and/or any other ancillary document issued by the Facility, and according to standard practice, being expressly bound to an obligation of result;
- (b) Provide appropriate advice, after having asked the Facility to obtain all the information necessary for the proper execution of the Order, and declare that it has received this information in due form;
- (c) Acknowledge that the information transmitted by the Facility is clear, unequivocal and sufficient to ensure proper execution of the Order;
- (d) Hold all legal and administrative authorizations that may be required for the execution of the Order;
- (e) Respect the right of the Facility to demand, after formal notice, the execution in kind of any obligation incumbent upon the Provider in the event of breach by it, except in the event that such execution is rendered impossible.

Means required to execute the Order. The Provider shall provide, at its own expense, all means necessary and appropriate for the execution of the Order.

Provider's personnel. The Provider undertakes to assign to the execution of the Order a personnel in sufficient number and with the professional qualifications and authorizations required for the proper execution of the Order and to ensure the supply of the Services ordered within the time limits set and in accordance with high quality standards.

The Provider remains fully responsible for its personnel and, where applicable, its subcontractors duly authorized by the Facility, under all circumstances. The execution of the Orders by the Provider expressly excludes any subordinate relationship between the Provider's personnel and the Facility, with such personnel remaining solely under the responsibility and hierarchical authority of the Provider.

The Provider undertakes to comply with all tax and social security obligations incumbent upon it, and to provide the Facility with all documents referred to in article D. 8222-5 of the French Labor Code (or any other applicable legal and/or regulatory provision). More generally, the Provider shall promptly provide the Facility with the certificates required by law.

In its capacity as employer, the Provider shall be personally responsible for salaries, wages, bonuses, social security contributions, paid leave, management and, in general, for all obligations incumbent upon it with respect to its personnel participating in the execution of the Order.

The Provider holds the Facility harmless against any claim in this respect under the provisions of the French Labor Code and undertakes to bear the financial

consequences of any sanction against the Facility on these various grounds.

**4.4. Changes to the Order**

Subject to a period of three (3) days following the sending of the initial Order to the Provider, the Facility may request the Provider, in writing, to modify the initial Order. The Provider shall confirm acceptance of the modified Order in writing to the Facility within the Order Acceptance Period specified in Article 4.2 of these GTC.

**4.5. Execution of Services**

The execution of Services refers to the actual provision of the ordered services, in accordance with the terms and conditions set out in the Order.

In particular, the Services must be performed on the dates, at the location(s), and according to the specifications defined in the Order, all of which are deemed mandatory.

The performance of the Services is evidenced by the Facility signing a performance report, which must include the annotation "approved" (or equivalent) by the Facility. The signing of the performance report establishes the date of receipt (the "**Receipt**") of the Services.

The Facility has a period of thirty (30) calendar days from the Receipt to notify the Provider of any reservation regarding the conformity of the Services, in accordance with the conditions set forth below (the "**Notification**").

In the event of non-conforming or missing Services, the Facility may, at its discretion, request the Provider to remedy the situation or provide the missing Services, in accordance with the terms of the Order. Requests for rectification or provision of the missing Services do not exclude the possibility for the Facility to claim indemnities for any direct or indirect damages.

The Provider shall immediately inform the Facility in writing of any foreseeable delays in the performance of the Services and shall, at its own expense, take all additional measures necessary to ensure proper execution of the Order within the contractual timeframes.

In the event of delay in the execution of the Services, the Facility reserves the right, at its discretion, to:

- (a) cancel all or part of the Order which has not been executed on time, in which case the Facility shall not be liable for the price of the Services and any deposit paid to the Provider shall be reimbursed to the Facility on first request;
- (b) request the Provider to reimburse the Facility for any expenses incurred by the latter to mitigate the consequences of the late execution;

- (c) invoice the Provider, from the first day of delay, late payment penalties of two percent (2%) of the total amount of the Order, excluding taxes, per day of delay, without prior formal notice, unless other specific conditions have been agreed between the Parties;
- (d) entrust the execution of the Services to a third party, at the sole risk and expense of the Provider;

all without prejudice to any compensation that may be claimed by the Facility for any direct or indirect damages suffered by the Facility as a result of the late execution.

Payment by the Provider of any penalties whatsoever shall not relieve the Provider of its obligation to fulfill the obligation in question, nor shall it deprive the Facility of its right to cancel the Order.

## **5. INSURANCE**

The Provider represents that it has taken out all insurance policies with insurance companies that are known to be solvent covering (i) the risks incurred as a result of the execution of the Order, (ii) the risks of direct and indirect damages, whether foreseeable or unforeseeable, caused by itself or by its items or by its employees or subcontractors, and (iii) its civil liability "before and after execution", as well as its professional liability.

The Provider undertakes to keep them in force throughout its relationship with the Facility.

No later than the day on which the agreement is signed with the Provider, and subsequently at each request from the Facility, the Provider shall provide a certificate dated less than three (3) months old confirming that it has taken out the aforementioned insurance policies.

In addition to the payment of premiums, this certificate shall indicate the activities insured, the amounts covered, the deductibles and the main exclusions.

These insurance obligations do not exempt the Provider from its responsibilities, in particular in the event of failure to pay by its insurer (deductible, exclusion from the contract or exceeding the coverage limit). The Provider shall declare to the Facility within twenty-four (24) hours of its occurrence any loss or damage incurred in the execution of the Order.

## **6. VERIFICATIONS - AUDIT**

After giving prior notice to the Provider by letter, the Facility may carry out, at its own expense, by means of its internal auditors or a specialized firm it has appointed for this purpose, audits or inspections aimed at ensuring (i) the quality of the Services and their compliance with the technical specifications previously provided by the Provider to the Facility, (ii) compliance with confidentiality obligations, (iii) compliance with property rights (including intellectual property rights) of the Provider or third

parties, (iv) compliance by the Provider with its obligations regarding the processing of personal data, where applicable.

Furthermore, the Provider accepts that at any time, the Facility and/or any authority or independent body may verify the progress and conditions of execution of the Services or conduct tests or inspections at any place where the Services are executed.

The Provider is obliged to cooperate with the aforementioned auditors/inspectors, in particular by making available to the Facility all the elements, including documentation, required to carry out these audits and inspections, in order to demonstrate compliance with all its obligations for the entire duration thereof.

In the event of any non-conformity or defect in the execution of the Services, the Provider undertakes to remedy the situation, at its own expense and under its sole responsibility.

Documentary reviews, verifications, inspections, tests or audits carried out or performed by or on behalf of the Facility do not have the effect of modifying the Provider's obligations or reducing its liability to the Facility. Depending on the breaches observed, and without prejudice to the rights of the Facility or any measure it may take, the Facility reserves the right to claim from the Provider all or part of the costs it has incurred in carrying out such audits/inspections.

## **7. RIGHTS TO THE PRODUCTS - INTELLECTUAL PROPERTY**

The Provider represents that it is vested with all rights necessary to execute the Services ordered by the Facility.

In particular, the Provider expressly guarantees to the Facility:

- (a) that it has the capacity and that it has all the powers necessary to provide the Services ordered by the Facility;
- (b) that it has not done and will not do, by means of an assignment to a third party or by any other means, any likely to prevent or hinder the use or enjoyment of the Services by the Facility;
- (c) that it may use freely the intellectual property rights necessary for the execution, operation or use of the Services. These rights are free of any security interest and are not subject to any challenge or claim by any third party, employee or any public or private body.

The Provider undertakes to grant the Facility all intellectual/industrial property rights necessary for the use, exploitation, provision or distribution of the Services in the context of their agreed purposes.

The Provider shall hold the Facility harmless against all claims by third parties due to the infringement of any rights of ownership and/or intellectual/industrial property rights



relating to the Services.

The Provider shall hold the Facility harmless against any loss suffered by the Facility as a result of such claims.

These GTC do not imply any assignment or concession of intellectual and/or industrial property rights, or any transfer of technology or know-how from the Facility to the Provider. The latter is prohibited from exploiting, filing or registering any intellectual property right or title whatsoever (i) relating to any element or information made available by the Facility as part of the Services, or (ii) which it may have created or invented specifically in the context of or in connection with an Order.

Likewise, the Provider shall refrain from using, communicating or marketing, directly or indirectly and in any way whatsoever, the know-how specific to the Facility, or specific to the Facility's subcontractors, partners and Providers, of which the Provider may have become aware in the context of an Order.

Each of the Parties retains, subject to the rights of third parties, the intellectual property rights relating to its prior knowledge generated or acquired independently and/or prior to the date of signature of the Order.

## **8. WARRANTY**

The Provider warrants that the Services provided comply in all respects with:

- (a) the Order;
- (b) the technical specifications or requirements communicated by the Facility;
- (c) the regulations in force;

and that they are free from defects or inadequacies that would prevent their correct and compliant execution.

The Provider also warrants that the Services executed with all the quality, diligence, skill and professionalism that may be expected of an experienced service provider, and that they are fit for the purpose or purposes for which they are intended.

In the event of non-performance or non-conformity of the Services provided, the Provider undertakes to remedy, at its own expense and within the timeframe specified by the Facility, any reported shortcomings. This obligation includes, at the option of the Facility, either the resumption of the defaulting or non-compliant Services, or their total or partial re-performance.

All costs to ensure the resumption or re-performance of the Services, including, but not limited to, costs relating to the mobilization of the necessary resources, any compensatory indemnities, travel or other costs, shall be borne in full by the Provider. In the event of a breach of this Article, the Facility may substitute a third party to correct or perform the non-compliant Services, at the sole cost and risk of the

Provider. In such a case, the Service Provider undertakes to provide the third party retained by the Facility with all the documents, information or elements necessary to enable the correct performance of the Order.

The duration of this warranty is twelve (12) months from the date of their complete execution and acceptance by the, under the conditions set out in these GTC. The duration of the warranty may be increased provided it is mentioned in the Order. Any rework or re-execution of Services that do not comply with the terms of this warranty shall trigger a new warranty period of the same duration from the date of validation by the Facility of the corrected or re-executed Services.

This warranty period does not replace the applicable legal warranties, in particular those provided for by the Civil Code or any other regulation. In any event, the Provider remains liable and undertakes to hold harmless the Facility to the extent of one euro per euro for all direct and indirect pecuniary consequences resulting from damage of any kind suffered by the Facility as a result of defective, inadequate or non-compliant Services provided by the Provider.

#### **9. FORCE MAJEURE**

If a Party is prevented from fulfilling its obligations due to an event of force majeure within the meaning of article 1218 of the French Civil Code and the case law based thereon, it shall inform the other Party by written notice within five (5) working days from the date of occurrence of the effects thereof, by producing all appropriate evidence, and indicating the impact on the Order in progress as well as the measures taken to limit its effect.

Execution of the part of the Order directly affected by the force majeure event is suspended. It shall resume as soon as its effects cease. Each Party shall bear its own consequences of the force majeure event.

Should the effects of the force majeure event persist for more than one (1) month from the date of notification, the Order may be terminated automatically and without compensation, through no fault of the Parties, at the initiative of either Party, by registered letter with acknowledgement of receipt.

#### **10. ADVERTISING**

Orders placed by the Facility may not be the subject of any direct or indirect advertising without the prior written consent of the Facility.

In any event, the Provider may not use the name of the Facility for any purpose whatsoever without the prior written consent of the Facility.

#### **11. NO EXCLUSIVITY**

No exclusive relationship may be inferred from the recurrence of Orders placed by the Facility with the Provider.

Consequently, the Facility shall not be obliged to place an Order with it for subsequent purchases.

It is the Provider's responsibility to ensure diversification of its market share with other customers for services which may or may not be identical to those provided to the Facility.

## **12. CONFIDENTIALITY**

The Provider shall not, without the prior written consent of the Facility, communicate to third parties, directly or indirectly, any information of any nature whatsoever relating to or included in the Order, which may be communicated to it by the Facility by any means whatsoever (in writing, orally or by any other means, including the transmission of samples, models, through video, computer and photographic means), or which may arise from the execution of the Order, hereinafter "**Confidential Information**".

The Provider warrants that the Confidential Information is used solely for the purpose of executing the Order. It undertakes (i) to protect the Confidential Information and keep it strictly confidential, (ii) not to copy, reproduce or duplicate it, in whole or in part, (iii) not to disclose it internally except to those members of its personnel who need to know it, and to inform them of its confidential nature and of the obligations attached to it. In this respect, the Provider shall ensure that these obligations are accepted and applied by its personnel.

The obligations arising from this Article shall remain in force for ten (10) years after execution or termination of the Order. On the date of execution or termination of the Order, the Provider must return the Confidential Information to the Facility or destroy it, without delay, without being able to enforce a right of retention against the Facility.

## **13. COMPLIANCE WITH APPLICABLE REGULATIONS**

The Provider represents that it is aware of and undertakes to comply with all applicable laws, regulations and practices, including all provisions relating to the fight against corruption and influence peddling, as well as applicable regulations relating to the protection of personal data.

Any breach of this Article shall be deemed a serious breach, for which the Provider alone shall be held liable, and the occurrence of which shall entitle the Facility to terminate all or part of the Order automatically, without notice and without further formalities, without prejudice to any legal proceedings that the Facility may take in this respect.

In addition, the Provider undertakes to reimburse and/or hold harmless the Facility, to the extent of one euro per euro, for any damages that the Facility may suffer as a result of, or in connection with, any inaccuracy in the declarations made by the latter under the terms of Article 13 of these GTC.

**14. ASSIGNMENT - SUBCONTRACTING - TRANSFER**

The Provider is prohibited from assigning, subcontracting or transferring in any form whatsoever all or part of the rights and/or obligations resulting from the agreement entered into with the Facility/the Order without the prior written authorization of the Facility. In any event, the Provider remains solely liable to the Facility for the proper execution of the Order.

**15. LANGUAGE - APPLICABLE LAW - SETTLEMENT OF DISPUTES**

The official language of these GTC is French. The use of any other language is only indicative, and in the event of interpretation difficulties, the Facility and the Provider shall refer solely to the French version of these GTC.

The Order is subject to French law and excludes the application of the Vienna Convention of April 11, 1980, on Contracts for the International Sale of Goods.

Unless otherwise agreed between the Parties, any dispute relating to the Order and/or the validity, interpretation and execution of these GTC shall be referred to the Court having jurisdiction where the Facility's registered office is located.

**16. NOTIFICATIONS**

Except as otherwise indicated in these GTC, any notification under an Order shall be made in writing and shall be considered as made and received (i) on the same day where it is delivered by hand, (ii) on the following day where it is sent by email and confirmed by registered letter with acknowledgement of receipt sent within twenty-four (24) hours, (iii) on the third business day following the sending where it is made by special mail service (such as DHL), (iv) on the day of receipt where the sending is made by registered letter with acknowledgement of receipt.

Any notification shall be sent, *a minima*, to both persons designated nominally and expressly by each Party for itself, at the time of formalization of the Order by the Facility and at the time of acceptance thereof by the Supplier.

**17. ADDRESS FOR SERVICE**

For the purposes of the execution of the Order, each Party agrees to elect as address for service its place of business signing the Order and, in the absence of any mention of a place of business signing the Order, its registered office.