

GENERAL PURCHASE CONDITIONS

KENYA SUPPLY UNIT (KSU)

Effective date: **July 01, 2014**

I. DEFINITIONS AND AGREEMENT

Article 1. Definitions

1.1 In these General Purchase Conditions (the “**Conditions**”) capitalised terms and expression shall have the following meanings:

“**Acceptance**” has the meaning given to such term in Article 8 (*Acceptance of Goods and transfer of risk*) of these Conditions;

“**Agreement**” means the binding agreement between KSU and the Supplier for the supply of Goods formed as described in Article 2 (*Agreement*) of these Conditions;

“**Cold Chain Goods**” means Goods requiring temperature control in accordance with Article 7 (*Cold Chain Goods*) of these Conditions;

“**Consignee**” means, where applicable in accordance with Article 4.1 (*Delivery*), the final destination of the Goods in the MSF project country to which the Goods shall be delivered;

“**Delivery Date**” means the date on or by which the Goods must be delivered to KSU or the Consignee as specified in the Purchase Order;

“**Defective Good**” means any Good which: (i) fails to conform to the quality standards detailed in Article 11 (*Quality*) or Article 12 (*Special Provisions for Medical Goods and Therapeutic Food*); (ii) is defective or of sub-standard quality; (iii) is not properly packed and labelled in accordance with Article 5 (*Packaging and Labelling*); (iv) is not delivered correctly in accordance with Article 4 (*Delivery*); or fails to conform to the terms and conditions of the Agreement in any other way;

“**Force Majeure Event**” means, in respect of any party, any event which is beyond its control, and which would prevent it from complying or make it impossible or substantially impractical for it to comply with any material provision of the Agreement including without limitation strikes, fire, civil disobedience, embargo, war, riots, rebellions, government action, earthquakes, floods or similar occurrences in any country (including without limitation an MSF project country) but shall not include problems solely associated with the Supplier’s business including transport problems, illness of staff, strikes, stagnation or raw materials shortages;

“**Goods**” means the tangible and intangible goods (including all related documents and parts) to be delivered by the Supplier to KSU pursuant to the Agreement;

“**Highly Regulated Country**” means Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxemburg, Norway, Portugal, Spain, Sweden, Switzerland, The Netherlands, United Kingdom and, USA. The following may be considered Highly Regulated Countries under certain conditions: Cyprus, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic and Slovenia;

“**Medical Good**” means any Good which is presented as having properties for treating or preventing disease in human beings;

“**Packing List**” means the list of Goods delivered or to be delivered to KSU the content of which is listed in Article 5.3 (*Packaging and Labelling*) of these Conditions;

“**Purchase Order**” means a written order signed by an Authorised Person of KSU to purchase Goods from the Supplier in accordance with Article 3 (*Purchase Orders and Supplier’s Confirmation*) of these Conditions;

“**Supplier**” means the person or entity accepting or confirming a Purchase Order and entering into the Agreement for the purpose of supplying Goods to KSU;

“**Therapeutic Food**” means any Good which products developed to meet the needs of malnourished people in crisis situations. These products are fortified with proteins, minerals and vitamins according to the nutritional needs of the patients (age, severity of malnutrition, associated pathologies or even local diets).

1.2 These Conditions are written in English.

1.3 References to any law, regulation, other statutory provision, guideline or standard shall be deemed to include references to such law, provision, guideline or standard as re-enacted, amended, extended, consolidated or replaced.

Article 2. Agreement

2.1 These Conditions, together with the relevant Purchase Order issued by KSU, set forth the terms under which KSU offers to purchase Goods from Supplier. When Supplier accepts KSU’s Purchase Order by sending a written confirmation a binding agreement (“**Agreement**”) shall be formed. The terms and conditions of the Agreement shall include exclusively and in order of their application:

- (a) the Purchase Order;
- (b) any attachments to the Purchase Order; and

(c) this General Purchase Conditions.

- 2.2 The Supplier's own conditions of sale shall not bind KSU unless agreed to in writing by an Authorised Person of KSU.
- 2.3 The parties, in their sole discretion, may decide to execute a separate supply agreement fixing such terms as the price and the quantity of the Goods to be supplied. In this event the supply of Goods shall be governed by these Conditions and such separate supply agreement.

II. PURCHASE ORDERS AND DELIVERY OF GOODS

Article 3. Purchase Orders and Supplier's confirmation

- 3.1 KSU shall initiate purchases of Goods by sending Purchase Orders to the Supplier by email.
- 3.2 Purchase Orders shall contain the following minimum information:
- (i) Purchase Order number;
 - (ii) Description of Goods delivered, the code per good, the price per unit, the total price and the quantity delivered (one good per line);
 - (iii) Delivery Address;
 - (iv) Any specific information required by KSU.
- 3.1 The Supplier shall confirm its acceptance of a Purchase Order by email no later than two (2) business days following receipt of the Purchase Order. The Supplier's confirmation shall contain all information included on the Purchase Order and also the following additional information: Supplier's order reference and (where applicable) the expiry date.
- 3.1 In the event that the Supplier's confirmation includes different terms to those contained in the Purchase Order, such terms must be clearly stated in the Supplier's confirmation and expressly accepted by KSU in writing.

Article 4. Delivery

- 4.1 The Supplier shall be responsible for delivery of the Goods to KSU in accordance with the applicable Incoterm specified in the Purchase Order. Delivery shall be either to the KSU or to the Consignee, as specified in the Purchase Order. KSU shall be entitled to choose the mode of transport, in consultation with the Supplier.
- 4.2 The Supplier shall make all reasonable efforts to ensure that the Goods are delivered on or by the Delivery Date. The Supplier shall be responsible for any costs, expenses, losses or damages resulting

from the late delivery of Goods including, without limitation, demurrage cost.

- 4.3 In the event that the Supplier is or will be unable to deliver the Goods by the Delivery Date, KSU shall be entitled to cancel the Purchase Order without financial penalty.
- 4.4 The Supplier shall not be entitled to make partial Deliveries of the Goods included in a Purchase Order unless otherwise agreed in writing by KSU.

Article 5. Packaging and labelling

- 5.1 The Supplier shall ensure that:
- (a) Goods are delivered in individual packages or standard pallets available in the Supplier's jurisdiction, and wrapped in transparent film;
 - (b) all pallets are in a good state of repair and treated for insects in accordance with ISPM 15 (as evidenced by the appropriate mark);
 - (c) each Purchase Order is contained in a separate package and that no more than one Purchase Order is contained in each package;
 - (d) the Goods are packaged adequately to provide protection against outside influences, particularly against weather conditions prevailing during exportation and transportation including moisture, cold, heat, light and air. In particular, any carton shall be minimum double ply. Any fragile articles must be adequately packaged to comply with air and road transport requirements and applicable laws and regulations (including all IATA and IMO regulations);
 - (e) individual packages packed on the pallets are sufficiently solid to withstand stacking at a height of up to eight (8) metres and sufficiently filled (with no empty spaces) to avoid crushing on stacking;
 - (f) individual packages are adequately sealed using as much tape as necessary;
 - (g) where possible, maximum weight per package is 35 kg. In the event that total weight of the package exceeds 25kg, handles will be provided;
 - (h) minimum volume per package is 10 litres;

- (i) whenever a package contains mixed articles (items, batch numbers, serial numbers) a specific warning label is included;
 - (j) all Goods composed of multiple parts are delivered in one single package; and
 - (k) identical Goods are packaged in identical packaging (carton dimensions and quantity) unless otherwise approved by KSU in writing.
- 5.2 The Supplier acknowledges and agrees that the pallets will not be returned.
- 5.3 The Supplier shall ensure that:
- (a) a copy of the Packing List is sent to KSU prior to delivery. The Packing List shall include the following minimum information:
 - i. KSU Purchase Order reference;
 - ii. Delivery address: KSU or the Consignee in accordance with Article 4.1 (*Delivery*) of these Conditions;
 - iii. Description and quantity of each Good delivered per package with reference to the package number;
 - iv. Batch numbers or Serial numbers for each Good delivered, expiry dates and related quantities;
 - v. Weight & volume of each package;
 - vi. Number of packages for each pallet;
 - vii. Total weight, total volume, total number of packages, total number of pallets
 - viii. Name of manufacturer, country of origin for each Good delivered.
 - (b) the following documents are provided with each delivery:
 - i. Packing List (either as a separate document with the delivery or in a document bag on the external packaging);
 - ii. Certificate of origin (COMESA, AGOA, EUR 1, Form A or GSP);
 - iii. Bill of lading (originals – in case of seafreight);
 - iv. Shipper's Declaration (where applicable);
 - v. Customs documents and any other documents required for export or customs control (subject to mutual consultation).
 - (c) each individual package contained on a pallet is visible from the exterior and contains the following minimum information, which shall also be visible from the exterior when packed on the pallet:
 - i. Package number (each package shall be numbered separately);
 - ii. Supplier item reference (EAN product code in barcode where possible);
 - iii. Description of the Goods;
 - iv. Weight;
 - v. Quantity;
 - vi. Name of manufacturer;
 - vii. Composition;
 - viii. Batch number or serial numbers (with barcodes if possible); and
 - ix. Expiry date.
- 5.4 Notwithstanding the provisions of the applicable Incoterm, the Supplier shall be responsible for any loss or damage due to its failure to properly preserve, package, handle (before delivery as per the applicable Incoterm) or pack the Goods. KSU shall not be required to assert any claims for such loss or damage against the common carrier involved.
- Article 6. Dangerous Goods**
- 6.1 The Supplier shall ensure that:
- (a) dangerous Goods are properly classified, documented, certified, described, packaged, marked and labelled in accordance with the latest edition and addenda of the IATA Dangerous Goods Regulations;
 - (b) packing instructions for "Passenger and Cargo Aircraft" are followed;
 - (c) when dangerous Goods intended for air transport are carried by surface transport, any other applicable laws, regulations, standards or accepted industry practices (including the IMO Dangerous Goods Regulations) are followed; and
 - (d) dangerous Goods are sent and invoiced as a separate delivery.
- 6.2 Dangerous Goods in "Limited Quantity" ("Y" packing instructions) will not be accepted.
- 6.3 "Cargo Aircraft Only" packages will be accepted only with the prior written consent of KSU.
- 6.4 If the Supplier is unable to package the dangerous Goods separately in accordance with this Article 6 - Dangerous Goods, the Goods shall be delivered for packaging to KSU. The latest edition of the Material Safety Data Sheet (MSDS) must be provided for all dangerous goods classes, excepted for carbon

dioxide, solid (dry ice). The MSDS shall be in English.

Article 7. Cold Chain Goods

- 7.1 The Supplier shall ensure that Cold Chain Goods are:
- (a) packaged and delivered separately in accordance with the manufacturer's specifications and respecting all temperature control requirements. In particular any individual packages shall be preferably in a colour which protects against sunlight (preferably white or metallic but not brown);
 - (b) clearly labelled as such on at least three sides of the outer packaging;
 - (c) always sent and invoiced as a separate consignment; and
 - (d) according to the manufacturer's instructions:
 - i. for "Validated cold chain" Goods: delivered together with a statement signed by the Supplier's Responsible Pharmacist attesting to the maintenance of adequate temperature control conditions throughout the period of transportation for such Goods; or
 - ii. for "Traced cold chain" Goods: equipped with adequate temperature monitoring system which may be either: (i) a temperature recorder; or (ii) the combination of a "time-heat" indicator (3M card) and a "time-freeze" indicator (Freeze-tag), in each package.
- 7.2 The Supplier shall ensure that it has an adequate procedure in place for handling Cold Chain Goods. The procedure shall be fully documented and available for inspection by KSU on demand.
- 7.3 The Supplier shall follow any additional instructions provided by KSU with respect to packaging, temperature registration and delivery of Cold Chain Goods.
- 7.4 The Supplier shall provide KSU with any information reasonably necessary for KSU to evaluate the safety and effectiveness of any Cold Chain Goods including, without limitation, information relating to the effectiveness of such Cold Chain Goods following a break in the cold chain.

Article 8. Acceptance of Goods and transfer of risk

- 8.1 Following delivery of the Goods, KSU shall sign the Packing List noting any Goods missing or any Defective Goods. KSU shall be entitled to return any Defective Goods identified upon delivery to the Supplier immediately.
- 8.2 Signature by KSU of the Packing List without reserves shall indicate acceptance of the Goods ("**Acceptance**").
- 8.3 Notwithstanding Acceptance, KSU may still reject the Goods and make a claim for damages where the Goods are not in complete compliance with the terms of the Agreement in accordance with Article 14 - Defective Goods.
- 8.4 Transfer of risk shall take place following Acceptance of the Goods.

III. PRICE AND PAYMENT

Article 9. Prices and payment terms

- 9.1 Payment's currency shall be according to specified in Purchase Order and shall include all costs and expenses incurred by the Supplier in fulfilment of its obligations under the Agreement (other than Value Added Tax) unless explicitly agreed otherwise in writing. Prices shall be inclusive of Value Added Tax.
- 9.2 Subject to Acceptance of the Goods by KSU and receipt of the Supplier's invoice, payment shall be made by bank transfer to the Supplier's bank account according to the payment terms agreed between the parties and included in the Purchase Order.
- 9.3 In the event that the Purchase Order does not mention the relevant payment terms, payment shall be made no later than sixty (60) days from the end of the month in which the invoice was received.

Article 10. Supplier's invoice

- 10.1 The Supplier shall ensure that each Purchase Order and each delivery of Goods shall be the subject of a separate invoice, and that each invoice includes the following details:
- (a) Shall be billed to MEDECINS SANS FRONTIERES;
 - (b) Purchase Order reference (KSU and Supplier);
 - (c) Delivery address;
 - (d) Name of manufacturer / Country of origin;

- (e) KSU item code;
- (f) Supplier item code;
- (g) Description of Goods;
- (h) Total quantity of Goods delivered;
- (i) Unit of Measure;
- (j) Price per unit of Goods;
- (k) Total price of Goods delivered;
- (l) Additional costs in case of non-CIF deliveries (e.g. for transport, handling and/or packaging).

10.2 The Supplier shall send an original copy of each invoice to KSU together with the delivery of the Goods.

10.3 As a recognized humanitarian organization, MSF has been granted tax exemption status on specified goods and services. The Government of Kenya issues exemption letters to MSF for goods and services that qualify for exemption status. Once a supplier receives the exemption letter(s), the supplier must issue a reimbursement of the exemption amount within 30 days of receipt of the documents. Failure to which MSF will deduct the exempted amount from any subsequent Service Provider' invoices and penalties shall be applied as per definition of MSF.

IV. QUALITY, DEFECTIVE GOODS AND CANCELLATION/ TERMINATION

Article 11. Quality

11.1 The Supplier shall ensure that:

- (a) in executing its obligations pursuant to the Agreement it complies with all applicable national and international laws, guidelines, standards and accepted industry practices;
- (b) the Goods delivered to KSU are fit for the purpose for which they are supplied, of good and merchantable quality, free from defects and conform to all relevant specifications, any samples provided to and validated by KSU, and all other terms and conditions contained in the Agreement;
- (c) the Goods shall be free from any and all liens and encumbrances;
- (d) the Goods have been designed, manufactured and delivered in compliance with all applicable national and international laws (including labour laws), guidelines, standards and accepted industry practices;

- (e) all necessary parts, accessories, aids, tools, spare parts, technical documents, user instructions and instruction manuals (in English) that are required for use of the Goods are delivered together with the Goods without any additional cost; and

- (f) batch release certificates and certificates of analysis together with any other documents reasonably requested by KSU in order to verify the quality of the Goods are provided with the Goods.

11.2 The Supplier shall provide KSU with any other documents or information reasonably necessary for KSU to verify the suitability for ongoing use of the Goods or comply with applicable laws (including without limitation customs laws or requirements) in the country to which such Goods are to be exported.

11.3 The Supplier hereby assigns to KSU all warranties for all Goods it receives from the suppliers and manufacturers of such Goods. The Supplier hereby authorises KSU to enforce all warranties assigned hereunder and shall provide all cooperation and assistance reasonably requested by KSU in this regard.

11.4 Inspections, verifications and/or tests by KSU or persons appointed by KSU may be carried out during production or delivery of the Goods. The Supplier shall, for this purpose:

- (a) grant access or ensure that access is granted to the locations where the Goods are produced, handled or stored;
- (b) cooperate and provide all reasonable assistance in the completion of such inspections, verifications and tests; and
- (c) submit all documents and information requested during the conduct of such inspections, verifications and tests.

11.5 Any costs associated with the granting of access, cooperation and assistance, or the provision of documents associated with an inspection - as referred to in Article 11.4 (*Quality*) - will be borne by the Supplier.

11.6 Such inspections shall not release the Supplier from any of its obligations, representations or warranties under the Agreement.

Article 12. Special provisions for Medical Goods and Therapeutic Food

- 12.1 In addition to the quality standards included in Article 11 (*Quality*) of these Conditions, in the event that the Goods are Medical Goods or Therapeutic Food, the provisions included in this Article 12 (*Special provisions for Medical Goods and Therapeutic Food*) shall also apply.
- 12.2 The Supplier (being a supplier of Medical Goods or Therapeutic Food) shall ensure that in executing its obligations pursuant to the Agreement it complies with (each as applicable):
- (a) Good Manufacturing Practices, Good Distribution Practices and Technical Report Series 823 and 902 issued by the World Health Organisation;
 - (b) the Model Quality Assurance System for procurement agencies issued by the World Health Organisation;
 - (c) any applicable national and international laws, guidelines and standards with respect to the production, distribution and marketing of Therapeutic Food; and
 - (d) any other relevant standard notified by KSU to the Supplier in writing prior to entry into the Agreement.
- 12.3 The Supplier shall ensure that all Medical Goods and Therapeutic Food shall be safe for human consumption and/ or use.
- 12.4 The Supplier shall ensure that all Medical Goods conform to:
- (a) where such Medical Good is registered in a Highly Regulated Country, the specifications included in such Medical Good's marketing authorisation issued in the relevant Highly Regulated Country; or
 - (b) where such Medical Good is not registered in a Highly Regulated Country, the specifications agreed between the Supplier and KSU and included in a Declaration of Equivalence, an Equivalence Undertaking, a Product Specification Sheet (PSS), or any other relevant document, signed by the parties.
- 12.5 The Supplier shall ensure that all necessary approvals, registrations, licenses or authorisations are obtained from any relevant regulatory authority in order to execute its obligations pursuant to the Agreement.

- 12.6 The Supplier shall ensure that the secondary packaging (exterior labelling) of all Medical Goods contains the following minimum information :
- (a) INN of the active ingredients;
 - (b) Dosage form;
 - (c) Quantity of active ingredients;
 - (d) Batch number;
 - (e) Expiry date;
 - (f) Manufacturing date when possible;
 - (g) Specific storage conditions;
 - (h) Name and address of the entity responsible for placing the Medical Good on the relevant market in which it is destined for sale, being the product licence holder and/ or distributor;
 - (i) Number of units per pack;
 - (j) Number of product registration when possible.
- 12.7 The Supplier shall ensure that the primary packaging (blisters, bottles, tubes, ampoules, vials) of all Medical Goods contains the following minimum information:
- (a) INN of the active ingredients;
 - (b) Quantity of active ingredients;
 - (c) Batch number;
 - (d) Expiry date;
 - (e) Manufacturing date (if possible); and
 - (f) Name of the product licence holder and/ or distributor.
- 12.8 The Supplier shall ensure that all sterile medical material is labelled with:
- (a) Identification of the Medical Good;
 - (b) Batch number and date of sterilization;
 - (c) Expiry date; and
 - (d) Name of the product licence holder and/ or distributor.
- 12.9 The Supplier shall ensure that all information referred to in Articles 12.6, 12.7 and 12.8 (*Special Provisions for Medical Goods and Therapeutic Food*) above is in English.

Article 13. Shelf life

The Supplier shall ensure that all Goods with an expiry date have, upon delivery, a remaining shelf life of at least two (2) years (in the event of a total shelf life of three (3) years or more) or two thirds (2/3) of their shelf life (in the event of a total shelf life shorter than three (3) years). No deviation shall be permitted from this requirement without KSU's written consent. Insofar as possible, the Supplier shall ensure that the Goods come from the same production batch.

Article 14. Defective Goods

- 14.1 KSU shall inform the Supplier in writing as soon as reasonably possible in the event of discovery of a Defective Good.
- 14.2 In the event that the Supplier becomes aware that any Defective Good has been supplied to KSU, the Supplier shall inform KSU no later than twenty four (24) hours after such discovery.
- 14.3 Without prejudice to the generality of Article 14.9 (*Defective Goods*) and any other remedy KSU may have at law or in equity, in the event of supply of a Defective Good the Supplier shall, by no later than thirty (30) days after discovery of the defect, at KSU's option:
- (a) take corrective action to resolve the problem (including without limitation repackaging, relabeling or delivering documentation);
 - (b) replace the Defective Good with a Good conforming to the terms and conditions of the Agreement and in all ways acceptable to KSU; or
 - (c) refund the price paid for such Defective Good or accept that KSU deduct the price for such Defective Good from the payment to the Supplier.
- 14.4 Where the Supplier is the manufacturer of a Defective Good, the Supplier shall investigate the defect and provide KSU with a copy of its investigation report no later than thirty (30) days from the notification of the Defective Good by KSU.
- 14.5 Where the Supplier is not the manufacturer of a Defective Good it shall ensure that the manufacturer is informed of the defect. The Supplier shall follow all instructions provided by the manufacturer and shall make reasonable efforts to ensure that the manufacturer investigates the defect and provides a copy of its investigation report to the Supplier and KSU within thirty (30) days from the notification of the Defective Good by KSU.
- 14.6 KSU shall be entitled to inform any governmental body of the supply of any Defective Good by Supplier.
- 14.7 The Supplier hereby declares that it has an effective recall procedure in place, complying with applicable laws, regulations and guidelines, specified in documents that will be provided to KSU upon demand. The Supplier shall implement recall measures if necessary according to its procedure following supply of a Defective Good.

- 14.8 The Supplier will defend, indemnify and hold harmless KSU and its affiliates, agents, officers, and employees from and against all claims, demands, causes of action, losses, liabilities, damages or costs (including without limitation reasonable outside attorney's fees and all costs associated with the defense of the matter) incurred as a result of the supply of any Defective Good (including without limitation any recall of a Defective Good).

Article 15. Cancellation of a Purchase Order

KSU shall be entitled to cancel a Purchase Order immediately, without financial penalty, and without prejudice to any other rights available to it either at law or in equity by written notice to the Supplier in the event that the Supplier:

- (a) is in material breach of any obligation under the Agreement and, where such breach is capable being remedied, fails to remedy it within seven (7) days of receipt of notice in writing specifying the breach;
- (b) an inspection carried out pursuant to Article 11.4 (*Quality*) reveals major flaws or reasons to suspect problems in the quality of the Goods;
- (c) becomes insolvent or makes an assignment for the benefit of its creditors, commences proceedings in bankruptcy, files or has filed against it a petition in bankruptcy, has a receiver appointed over a substantial part of its assets, or any similar proceedings are commenced in any relevant jurisdiction.

Article 16. Indemnities

Each party to the Agreement will defend, indemnify and hold harmless each other party and its affiliates, subsidiaries, licensees, agents, associates, officers, directors and employees from and against all claims, liabilities, demands, causes of action, damages or costs (including without limitation reasonable outside attorney's fees and all costs associated with the defense of the matter) arising out of any uncured breach of any obligation, representation, warranty or provision of the Agreement by the indemnifying party.

Article 17. Force Majeure Event

- 17.1 Neither party shall be responsible for any delay in performing or any failure to perform of any of its obligations hereunder if such delay or failure is due to any Force Majeure Event provided that the affected party:
- (a) provides immediate written notice to the other party of the existence of such Force Majeure Event and of the

likelihood of delay/ frustration of performance of such party's obligations under the Agreement; and

- (b) has used all reasonable efforts to perform its obligations hereunder and to minimize the impact of the Force Majeure Event.

17.2 In the event that any Force Majeure Event delays delivery of any Goods for more than twenty-four (24) hours from the scheduled Delivery Date, KSU shall be entitled to cancel the relevant Purchase Order without financial penalty.

Article 18. Insurance

18.1 The Supplier will maintain comprehensive general liability insurance (including products liability, property damage and personal injury liability, and any other liability as may be requested by KSU) a minimum limit specified by KSU for claims of bodily injury, including death, and any other damages that may arise from use of the Goods or acts or omissions of Supplier under the Agreement.

18.2 Such insurance policies will be written with appropriately licensed and financially responsible insurers. The Supplier shall inform KSU of any cancellation or reduction in coverage with a minimum of thirty (30) days prior written notice. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to KSU upon KSU's request.

V. MISCELLANEOUS

Article 19. Notices

Any notice to KSU under or in connection with the Agreement shall be in [writing, dated and signed], and shall be served by registered post or hand delivered or by email at or to the addresses indicated below or at or to such other address as may be subsequently notified by KSU to the Supplier. Any notice shall be deemed to be duly served:

- (a) If delivered personally, when left at the address indicated above;
- (b) If sent by registered post, three days after posting;
- (c) If sent by email, when sent.

Article 20. Confidentiality

20.1 The Supplier shall keep all information which it knows or should reasonably be expected to know is of a confidential nature ("Confidential Information") strictly confidential, and shall use such Confidential

Information only for purposes of execution of the Agreement.

20.2 Confidential Information shall include, without limitation, all information relating to the actions, missions and operations of Médecins sans Frontières anywhere in the world, the purchase of the Goods by KSU and the entry by KSU into the Agreement.

20.3 The Supplier agrees not to disclose any of the Confidential Information to any third party, except to its employees, consultants and advisors, who need to know such information for the purpose of execution of the Agreement and have undertaken to be bound by confidentiality obligations no less stringent than those imposed on the Supplier hereunder.

20.4 Unless explicitly agreed otherwise by KSU, the Supplier shall not record any Confidential Information obtained from KSU in its own files.

Article 21. Use of name and logo

Nothing in the Agreement will be construed as conferring a right to use, in advertising, publicity, promotional or sales literature, or otherwise, by either of the parties, any of the other party's name, logo or trademark, or any adaptation or translation thereof. Neither party shall be entitled to use the other party's name, logo or trademark or any adaptation or translation thereof, without the prior written consent of the party whose name, logo or trademark is sought to be used.

Article 22. Intellectual Property Rights and tools etc

22.2 All copyright, database rights, toolsets, inventions, patents and any other intellectual property rights existing prior to the supply of Goods and which may be utilised by either party in the course of executing the Agreement shall remain the property of the originating party.

22.3 The Supplier shall return any tools, models, plans, drawings or similar items provided by KSU to the Supplier for the purpose of execution of the Agreement as soon as reasonably possible on demand by KSU.

Article 23. Intellectual Property Indemnity

23.1 The Supplier warrants that the use or supply by KSU of Goods delivered pursuant to the Agreement shall not infringe any third party patent, copyright or other proprietary right.

23.2 The Supplier shall defend, indemnify and hold harmless KSU and its affiliates from and against any and all third party claims and liabilities

(including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Goods infringe, violate or misappropriate a valid third party patent, copyright or other proprietary right.

Article 24. Ethics

- 24.1 The Supplier represents and warrants that no person or entity (including any elected official, civil servant, member of a political party, or officer or employee of KSU) has received or shall receive any direct or indirect benefit as a result of the entry into the Agreement or the performance thereof.
- 24.2 The Supplier represents and warrants that neither it nor any of its affiliates is engaged in any practice inconsistent with the rights set forth in the Convention of the Rights of the Child which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- 24.3 The Supplier further warrants that neither it, nor any of its affiliates is engaged in the sale or manufacture of anti-personnel mines or of components used in the manufacture of such mines.

Article 25. Safety and respect for the environment

- 25.1 The Supplier shall observe, and shall ensure that any third parties engaged by the Supplier for execution of the Agreement observes, applicable laws and regulations on workplace safety, occupational health, and protection of the environment.
- 25.2 The Supplier shall take positive action to reduce the environmental burden of its Goods, including packaging and production processes, and minimize any adverse impacts on the environment.

Article 26. Sub-Contracting

- 26.1 The Supplier shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of KSU. Any such pre-approved subcontracting, transfer, pledge or assignment shall not release Supplier from its obligations under the Agreement.
- 26.2 KSU shall be entitled to transfer or assign, either fully or partially, its rights and obligations pursuant to the Agreement to an affiliated entity.

Article 27. Set off

KSU may at all times set off the amount of any sums due by the Supplier hereunder against any amounts then held by it or against any amounts that may be owed by it to the Supplier including, without limitation, reimbursement of any amounts paid in respect of Defective Goods or any amounts due pursuant to the indemnities contained in Articles 14.9 (*Defective Goods*), Article 16 (*Indemnities*) and Article 23.1 (*Intellectual Property Indemnity*).

Article 28. Emergency contact

The Supplier shall provide KSU with an emergency contact number on which the Supplier may be contacted in the event of an emergency outside working hours.

Article 29. Independent entities

The parties hereto are and shall remain independent entities, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. The Supplier shall be responsible for the payment of any taxes, duties or fiscal charges due in respect of payments made by KSU to the Supplier pursuant to the Agreement.

Article 30. Waiver

No failure or delay on the part of KSU in exercising any right hereunder shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Parties herein are cumulative and not exclusive of any rights or remedies provided by law.

Article 31. Severability

If any one or more of the provisions contained in the Agreement shall be invalid, illegal or unenforceable under the laws of any jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired under the laws of such jurisdiction.

Article 32. Survival

Upon the expiration or termination of the Agreement for whatever reason, those terms and conditions which by their nature should survive shall survive, including without limitation Article 11 (*Quality*), Article 21 (*Confidentiality*) and the indemnities contained in Articles 14.9 (*Defective Goods*), Article 16 (*Indemnities*) and Article 23.1 (*Intellectual Property Indemnity*).

Article 33. Governing law and dispute resolution

This Agreement is governed by Kenya law.

All disputes arising out of or in connection with this Agreement or its interpretation or performance will be settled amicably. If amicable settlement cannot be reached, the matter shall be resolved by the courts of Nairobi, Kenya to whose jurisdiction the Parties hereby irrevocably submit.