

PURCHASE ORDER TERMS AND CONDITIONS

1. SUPPLY OF GOODS AND/OR SERVICES

- 1.1 Contractor hereby agrees to perform the Services and/or provide the Goods in accordance with the standards, specifications and timelines described in this Purchase Order (which includes these Purchase Order Terms and Conditions).
- 1.2 To the extent permitted by law and to the extent Contractor's terms and conditions are supplied to Lexicon in respect of the Goods or Services (including as printed on consignment notes, invoices or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of Lexicon signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 1.3 Where this Purchase Order relates to Goods and/or Services which are the subject of a contract between the Contractor and Lexicon, the terms of that contract shall apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 Contractor will:
- (a) perform the Services and/or provide the Goods in a professional and workmanlike manner;
 - (b) not interfere with Lexicon activities or the activities of any other person at the Delivery Point or the Site;
 - (c) be aware of and comply with, and ensure that Contractor's personnel are aware of and comply with:
 - i. all applicable laws including import and export laws;
 - ii. all site policies, to the extent that these documents are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
 - iii. all lawful directions and orders given by Lexicon's representative or any person authorized by law or the Site policies to give directions to the Contractor;
 - (d) ensure that the Contractor's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
 - (e) provide all such information and assistance as Lexicon reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Purchase Order, the supply of the Goods or the performance of the Services; and
 - (f) on request by Lexicon, provide to Lexicon and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by law in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Purchase Order.

2 DELIVERY

- 2.1 Contractor must deliver the Goods to the Delivery Point by the Delivery Date.
- 2.2 Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable laws.
- 2.3 Packages must be marked or a packing slip provided with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

3 TITLE AND RISK

Lexicon will have title to the Goods when Lexicon pays for those Goods. Lexicon will bear risk in the Goods when Lexicon takes delivery of those Goods at the Delivery Point.

4 TIME FOR PERFORMANCE OF THE SERVICES

Contractor must perform the Services by the date specified in the Purchase Order.

5 PRICE

- 5.1 Lexicon must pay the Contractor the Price for the conforming Goods and/or Services at the time set out in this Purchase Order (subject to the requirements of clause 6 having been satisfied).
- 5.2 The Price is inclusive of:
- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
 - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;
 - (c) the Contractor's compliance with its obligations under this Purchase Order; and
 - (d) all Taxes unless otherwise noted.

6 INVOICING AND PAYMENT

- 6.1 On delivery of the Goods and/or completion of the Services, the Contractor must provide to Lexicon an invoice which meets all the requirements of a valid invoice for consumption tax purposes in a relevant jurisdiction and must include the information set out in clause 6.3.
- 6.2 Contractor must provide the invoice to **AP@lexpharma.com**.
- 6.3 Any invoice must include the following details:
- (a) a reference to this Purchase Order and the relevant contract (if any) including the line item numbers on this Purchase Order and the contract number;
 - (b) a detailed description of the delivered Goods or Services performed, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
 - (c) an individual reference number for Lexicon to quote with remittance of payment;
 - (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on this Purchase Order, including the amount of any applicable Consumption Tax; and
 - (e) Lexicon Site and Lexicon contact name.
- 6.4 If Lexicon requests, the Contractor must provide Lexicon with all relevant records to calculate and verify the amount set out in any invoice.
- 6.5 Lexicon will pay all invoices that comply with clause 6.3 within 30 days after Lexicon's receipt of such invoice, except where Lexicon:
- (a) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor;
 - (b) disputes the invoice, in which case:
 - i. to the extent permitted by law, Lexicon may withhold payment of the disputed part of the invoice pending resolution of the dispute; and
 - ii. if the resolution of the dispute determines that Lexicon must pay an amount to the Contractor, Lexicon must pay that amount upon resolution of that dispute;
 - (c) is required by law to withhold a portion of payment for Services rendered by a foreign contractor.
- 6.6 Lexicon may reduce any payment due to the Contractor under this Purchase Order by any amount which the Contractor must pay Lexicon, including costs, charges, damages and expenses and any debts owed by Contractor to Lexicon on any account whatsoever. This does not limit Lexicon's right to recover those amounts in other ways.
- 6.7 Contractor may seek to collect interest on any undisputed fees that are not paid when due at a rate equal to the lesser of (a) one percent (1.0%) per month or (b) the maximum rate allowable by law, calculated on the total number of days delinquent.

7 CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

The Contractor must ensure that:

- (a) the Goods and Services supplied by the Contractor match the description of the Goods and Services in this Purchase Order;
- (b) if the Contractor gave Lexicon a sample of the Goods before Lexicon issues this Purchase Order, the Goods must correspond with the sample;
- (c) if the contractor provided Lexicon with a demonstration of the Services before Lexicon issued this Purchase Order, the Services correspond in nature and quality with the Services demonstrated;
- (d) if the Contractor showed Lexicon a result achieved by the Services before Lexicon issued this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (e) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional contractor;
- (f) the Goods and Services are fit for the purposes set out in, or which an experienced professional contractor would reasonable infer from, this Purchase Order;
- (g) the Goods are new (A stock) and of merchantable quality;
- (h) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Purchase Order;
- (i) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality and comply with any standards specified in this Purchase Order and are fit for their usual purpose and any purpose described in this Purchase Order; and
- (j) Lexicon has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on Lexicon's behalf if Lexicon so requests).

8 ACCEPTANCE AND CHANGE OF A PURCHASE ORDER

The Contractor may request changes to this Purchase Order, by written notice to the Lexicon contact specified in this Purchase Order, in response to which Lexicon may issue a changed Purchase Order. If Lexicon is unable to accept the requested changes, Lexicon will cancel this Purchase Order.

9 ENDING THIS PURCHASE ORDER

- 9.1 Lexicon may cancel this Purchase Order for any reason upon written notice to the Contractor, and:
- (a) subject to clause 7, Lexicon must pay for any part of the Goods delivered or Services performed prior to the cancellation;
 - (b) if the Contractor has shipped any Goods before the cancellation but the Goods have not been delivered to the Delivery Point at the date of cancellation, Lexicon may either:
 - i. subject to clause 7, accept those Goods when delivered, and pay the Price for them; or
 - ii. return the Goods to the Contractor at Lexicon's expense;

- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 9.1(b)ii or 9.1(c) applies:
 - i. to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Contractor for Lexicon, Lexicon must reimburse the Contractor in respect of any expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
 - ii. the Contractor is not entitled to the Price of those Goods or Services, or to any compensation for that cancellation other than as specified in this clause 9.1(a).

10 CONFIDENTIAL INFORMATION

- 10.1 The term “Confidential Information” shall refer to all Lexicon proprietary information provided to Contractor or to which Contractor is exposed in its performance of the Services, including without limitation any technology, know-how, trade secrets, formulas, processes, ideas, inventions (whether or not patentable), biological, chemical and other materials, research data and other technical information, as well as business and financial information, analyses, studies and data.
- 10.2 For a period of five (5) years following disclosure of Confidential Information under this Purchase Order, Contractor and its employees and subcontractors shall (a) hold the Confidential Information in strict confidence and take reasonable precautions to protect such Confidential Information, (b) not divulge any Confidential Information or any information derived therefrom to any third party, (c) not make any use whatsoever at any time of such Confidential Information except to carry out its obligations under this Purchase Order and (d) not copy or reverse engineer any such Confidential Information. Without granting any right or license, Contractor’s obligations under this section shall not apply to Confidential Information that Contractor can reasonably document: (a) was in its possession prior to receipt from Lexicon, (b) was in the public domain at the time of receipt from Lexicon, (c) subsequently becomes part of the public domain without breach of Contractor’s obligations of confidentiality under this Purchase Order; (d) is lawfully received by Contractor from a third party, where such third party has no obligation of confidentiality to Lexicon with respect to such Confidential Information, or (e) is developed independently by employees of Contractor without access to or knowledge of such Confidential Information. The foregoing exceptions shall not apply to Confidential Information merely because such information is embraced by more general information in the public domain or in the possession of Contractor.

11 INTELLECTUAL PROPERTY

- 11.1 All reports, records, data and other work product generated by Contractor pursuant to the performance of the Services (the “Work Product”) shall be owned exclusively by Lexicon.
- 11.2 Any inventions (whether or not patentable) arising from Contractor’s provision of the Services hereunder shall be owned exclusively by Lexicon; provided, that any inventions made solely by employees of Contractor pursuant to the performance of the Services that are not useful with respect to the Work Product or other aspects of Lexicon’s applicable drug discovery and development program, shall be the exclusive property of Contractor. Contractor hereby assigns to Lexicon all rights Contractor or its employees or representatives may have in any inventions owned by Lexicon pursuant to this Section 11.2 and any related intellectual property rights and agrees to obtain the cooperation of its employees, representatives and any other obligated parties in the preparation, filing, and prosecution of patent applications directed to any such inventions which may arise hereunder.
- 11.3 Subject to the terms and conditions of this clause 11, a party’s Background IP remains vested in that Party.
- 11.4 The Contractor grants Lexicon a non-exclusive, perpetual, royalty-free, irrevocable, transferable license (with the right to assign and sublicense) to use the Contractor’s Background IP to the extent necessary to use the Goods and/or Services.
- 11.5 Lexicon grants the Contractor a non-exclusive, royalty-free, revocable, non-transferable license to use the Work Product and Lexicon’s Background IP to the extent required to perform Contractor’s obligations under this Purchase Order.

12 DEFECTS

- 12.1 If, during the Defects Correction Period, Lexicon finds any Defect in the Goods or Services (other than a Defect caused by Lexicon’s negligence), Lexicon may:
 - (a) reject the Goods with the Defect and return them to the Contractor, in which case the Contractor must replace the Goods free of charge and reimburse Lexicon for any expenses incurred;
 - (b) reject the Services with the Defect, in which case Contractor must re-perform the Services free of charge; or
 - (c) make good or engage another contractor to make good the Defect, in which case the Contractor must reimburse Lexicon for any expenses incurred.
- 12.2 If Contractor does not replace the Goods pursuant to clause 12.1(a) or re-perform the Services pursuant to clause 12.1(b) and:
 - (a) Lexicon has already paid Contractor for the Goods or Services with the Defect, Contractor must repay Lexicon the Price for those Goods or Services; or
 - (b) Lexicon has not already paid Contractor for the Goods or Services with the Defect, Lexicon is not liable to pay Contractor for those Goods or Services.

12.3 The acceptance of any Goods or Services with a Defect by Lexicon will not bind Lexicon to accept any other Goods or Services with a Defect and does not affect any of Lexicon's other rights under this Purchase Order or at law.

12.4 Where Contractor has made good any Defect under this clause, those Goods or Services will be subject to the same Defects Correction Period as the original Goods or Services, from the date Contractor made good the Defect.

13 ANTI-CORRUPTION OBLIGATIONS

To determine and ensure compliance with the United States Foreign Corrupt Practices Act, as amended from time to time, the UK Bribery Act 2010, and the OECD Anti-Bribery Convention (hereafter, "Anti-Corruption Laws"), Contractor shall, upon reasonable advance notice, permit Lexicon and its representatives during normal business hours to inspect and audit Contractor's business records. Contractor shall take such actions that are commercially feasible to adopt any reasonable suggestions of Lexicon to correct any deficiencies identified by any inspection or audit conducted by Lexicon. Contractor acknowledges that Lexicon is committed to complying with all national and transnational anti-bribery statutes including, without limitation, compliance with the Anti-Corruption Laws and agrees that Contractor will comply with their provisions at all times with regard to the Goods and/or Services including, but not limited to, not offering or giving anything of value to a foreign public official in connection with the performance of the official's duties or inducing an official to use their position to influence any acts or decisions of any foreign, state or public international organization.

14 CONTRACTOR TO MAINTAIN BOOKS AND RECORDS

14.1 Contractor will keep and maintain accurate and reasonably detailed books and financial records in connection with its performance under, and payments made in connection with, this Purchase Order. Contractor will, upon request, permit Lexicon to audit and examine any books and financial records necessary for the verification of Contractor's compliance with representations, warranties and undertakings under this Purchase Order.

15 MISCELLANEOUS

15.1 Independent Contractor. The parties acknowledge and agree that, in its performance of the Services hereunder, Contractor shall be acting solely in its capacity as an independent contractor and none of Contractor's employees or subcontractors shall be deemed to be employees of Lexicon for any purpose. It is expressly agreed that the relationship between Lexicon and Contractor shall not constitute a partnership, joint venture or agency. Neither Lexicon nor Contractor shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other, without the prior written consent of the other party to do so.

15.2 Insurance. Each party shall secure and maintain in full force and effect throughout the term of this Agreement appropriate insurance coverage for its activities and obligations hereunder in amounts and subject to exclusions consistent with industry standards and any applicable laws or regulations. Upon request, each party shall provide the other with a certificate of insurance evidencing such insurance coverage.

15.3 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS.

15.4 Governing Law. This Purchase Order shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof, and the federal and state courts of the State of Texas shall have exclusive jurisdiction with respect to any claims or disputes arising between the parties with regard to any matters related to this Purchase Order.

15.5 Validity. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future state or federal laws or rules and regulations promulgated thereunder effective during the term hereof, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

16 DEFINITIONS

In this Purchase Order (unless the context otherwise requires):

Authority means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Background IP means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

Consumption Tax means value-added Tax, sales Tax, goods and services Tax or any Tax analogous thereto, but excludes any statutory late payment interest or penalties.

Contractor means the party or parties named as such in this Purchase Order.

Defect means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.

Defects Correction Period means the period of 24 months from the date of delivery of the Goods and/or 12 months from the date on which a Service is last performed.

Delivery Date means the delivery date specified on the Purchase Order.

Delivery Point means the place for delivery of the Goods specified on this Purchase Order.

Goods means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified).

Price means the price or rates specified as such in this Purchase Order.

Purchase Order means this purchase order for Goods and/or Services issued by Lexicon to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

Services means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

Site means the place described as such in this Purchase Order as the place for the use or storage of the Goods by Lexicon or for the performance of the Services.

Tax:

- (a) Includes all present or future taxes, levies, duties, imposts, assessment royalties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but,
- (b) Does not include Consumption Tax.