

PURCHASE ORDER TERMS AND CONDITIONS

Purchase Order Terms and Conditions for Suppliers (such applicable supplier, "Supplier") Working with Simtra US LLC dba Simtra BioPharma Solutions ("Simtra US") or with Baxter Oncology GmbH which does business under the trade name Simtra BioPharma Solutions ("Simtra Germany"). As used herein, "Simtra" shall mean either Simtra Germany or Simtra US based on the applicable entity issuing the underlying Purchase Order (as defined herein).

1. **AGREEMENT:** These Terms and Conditions apply to any purchase order ("Purchase Order") Simtra issues to Supplier. Any conflicting or deviating terms and conditions of Supplier shall not apply, even if Simtra does not expressly object to such terms and conditions. These Terms and Conditions are an integral part of all contracts Simtra US or Simtra Germany concludes with Supplier to purchase goods or services. They also apply to all future purchases by Simtra, even if they are not mentioned or agreed separately again. Any additions, exceptions, or changes to these Terms and Conditions are null and void *ab initio*, unless Simtra has approved such additions, exceptions, or changes in writing. To the extent there are any inconsistencies between these Terms and Conditions and those written on the face of the Purchase Order, the Terms and Conditions on the Purchase Order will control.
2. **PRICE:** Unless otherwise specified, the prices stated on the front of the Purchase Order include all charges for packing, hauling, storage, transportation to the point of delivery, and taxes, but no sales taxes (VAT). Sales and/or use taxes, if applicable, not subject to exemption shall be stated separately in Supplier's invoice. Any price reduction Supplier extends to others prior to delivery shall also be extended to Simtra. The prices set forth in the Purchase Order are firm and shall not be increased without Simtra's written consent.
3. **PAYMENT TERMS:** Simtra will make undisputed payments for goods and services that meet all applicable requirements within ninety (90) days after the later of: (a) receipt of the goods or completion of performance of the services identified in the Purchase Order; and (b) receipt of a complete invoice. Simtra may withhold payment of any amounts that it disputes in good faith. Payment of an invoice shall not constitute acceptance of any products, goods or materials, and the invoice will be adjusted for any errors, shortages, and/or defects. Any billing dispute will not be cause for Supplier's non-delivery of goods or non-performance of services.
4. **REIMBURSEMENT OF EXPENSES:** Any reimbursement of Supplier's expenses must be agreed upon in advance in writing by Simtra.
5. **CHANGES:** Simtra may at any time make changes in the scope or quantity of the goods or services covered by the Purchase Order, in which event an equitable adjustment will be made to any price, time of performance, and/or other provisions of the Purchase Order if appropriate. Claims for such an adjustment must be made within fifteen (15) days from the date of receipt by Supplier of notice of the change. Supplier shall not make substitutions or changes in quantities or specifications in the Purchase Order without Simtra's prior written approval.
6. **WARRANTY:** In addition, and without affecting any required warranties under applicable laws, Supplier covenants, represents and warrants that:
 - a) The goods or services ordered shall be merchantable; shall conform to the Purchase Order, to specifications, drawings, and other descriptions referenced in the Purchase Order, and to any accepted samples; shall be free from defects in materials and workmanship; shall be free from defects in design unless Simtra supplied the design; and shall be fit and safe for the intended purposes. Supplier warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens or encumbrances.
 - b) The goods: (1) **if supplied to Simtra US**, are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended (the "Act"), or within the meaning of any applicable state or municipal law in which the definitions of "adulteration" and "misbranding" are substantially identical with those contained in the Act; (2) **if supplied to Simtra US**, are not goods which may not be

introduced into interstate commerce, or which may not under substantially similar provisions of any state or municipal law, be introduced into commerce under the Act; (3) if supplied to Simtra Germany, comply with all relevant requirements for placing the goods on the market in the European Union and in the European Economic Area; and (4) otherwise comply with all applicable laws and regulations or other legal requirements concerning the manufacture, packaging and delivery of the goods.

- c) It will perform all services in a competent, professional and workmanlike manner and in compliance with all applicable laws, and it has the required qualifications and expertise to perform.
 - d) It will comply with Simtra's guidelines (and any future modifications thereto), including those related to data privacy and information security.
 - e) Neither it, nor any of its employees, or authorized subcontractors have: (i) been listed by any supranational (e.g. EC/EU), foreign, federal or state agency as excluded, debarred, suspended, or otherwise ineligible to participate in federal and/or state programs, including **(in case Simtra US places the Purchase Order)**, but not limited to, exclusion, debarment, or suspension as noted by the List of Excluded Individuals/Entities issued by the Office of Inspector General of the Department of Health and Human Services Office, the U.S. General Services Administration and/or the Food and Drug Administration; (ii) been convicted of any crime relating to any federal and/or state program; or (iii) been included on the Specially Designated Nationals list maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or any other similar list, domestic, foreign or supranational (e.g. SDN list of EC Resolution 881/2002).
 - f) No officer, director, partner, owner, principal, employee or agent of Supplier is an employee of a governmental agency or instrumentality is in a position to influence the actions or decisions regarding the activities of Supplier contemplated by the Purchase Order. Neither Supplier nor any person employed by or representing it has made, offered, promised or authorized, or shall make an offer, promise or authorize, either directly or indirectly, any official representative or employee of any governmental agency or instrumentality, any political party or officer thereof, or any candidate for public office, for the purpose of influencing a decision by any of them to take actions favorable to Simtra or Supplier on any matter related directly or indirectly to the subject of the Purchase Order, securing an improper advantage for Simtra, obtaining or retaining business or a business advantage, or the improper performance of a public official function or activity.
 - g) All these warranties and other warranties as may be prescribed by law shall extend to Simtra, its successors, assigns, and customers and to users of the goods or services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of three (3) years after delivery; and if the applicable laws provide for a longer period, such longer statutory period shall prevail. Claims under these warranties must be made within the applicable period prescribed by statute. Should the Purchase Order be issued under Simtra Germany, then the German Statutory warranty period shall apply.
7. **QUALITY, INSPECTION AND TESTING:** Goods supplied and purchased under the Purchase Order must conform to the specifications, drawings, samples or other descriptions that Simtra furnished or specified. Goods must be of merchantable quality, free from defects in material, workmanship and design, and suitable for the intended purpose. Goods purchased under the Purchase Order are subject to Simtra's reasonable inspection, testing, and approval at Simtra's destination. If Simtra finds any of the goods or services to be defective in material or workmanship, non-conforming to the warranties made herein, or not in conformity with the requirements of the Purchase Order, then, in addition, and without affect, to all rights under applicable laws, Simtra shall be entitled: (i) to require Supplier to supply replacement goods or re-perform the services in accordance with the Purchase Order as quickly as reasonably possible, or (ii) at Simtra's sole option and whether or not the Simtra has previously required Supplier to supply any replacement goods or re-perform the services, to reject and return such goods at Supplier's expense or to treat the Purchase Order as terminated by Supplier's breach and require the repayment of any part of the price which had been paid. Supplier shall also reimburse Simtra for all commercially reasonable, documented and actually incurred costs and expenses Simtra incurs as a result receiving non-conforming goods, including the cost of returning the non-conforming goods to Supplier, the costs, fees and penalties payable by Simtra to a customer, costs and expenses related to or arising from Simtra's purchase of substitute goods or services, incremental training

costs for substitute goods and costs to rework and redesign facilities to accommodate substitute goods or services, expedited shipping costs, recall and field correction costs, product re-testing costs and customer and regulatory authority notification costs and costs of destruction. Payment for any goods under the Purchase Order shall not be deemed acceptance of the goods.

8. **RECALL**: If a defect, failure to conform to the specifications, failure to conform to applicable laws, or any other reason within Supplier's control, requires a recall of the goods, a, Supplier shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties.
9. **SHIPMENT OR DELIVERY SCHEDULES**: Shipment or delivery of goods shall be in accordance with the schedule specified in the Purchase Order. If Supplier does not, or it appears that Supplier will not, meet such schedule, Simtra may, in addition to any other rights or remedies provided by law or the Purchase Order, require that Supplier ship the goods via expedited routing to meet the schedule or to recover the time lost and Supplier shall pay the difference in shipping costs. Supplier shall reimburse Simtra for all commercially reasonable, documented and actually incurred costs and expenses Simtra incurs as a result of late delivery of goods, including the costs, fees and penalties payable by Simtra to a customer. Furthermore, after prior written notice to Supplier, Simtra may demand a contractual penalty of half of a percent (0.5%), up to a maximum of five percent (5%), of the respective order value for each commenced week of delay in delivery; the contractual penalty shall be set off against the incurred costs and expenses Simtra incurs as a result of late delivery of goods. If Supplier exceeds three (3) late deliveries in a thirty (30) day period, Simtra has the right to request a written action plan, normally in the form of a Supplier Corrective Action Plan from Supplier on how Supplier will resolve such chronic late deliveries.
10. **OVER SHIPMENT**: Over-shipment of goods that Simtra has not approved in writing will be returned, at Supplier's expense, if such over-shipment exceeds ten percent (10%) of the total purchase price specified in the Purchase Order, or either five hundred dollars (\$500.00) or five hundred Euros (EUR 500) (whichever is applicable), whichever is smaller.
11. **MANUFACTURER NOTIFICATION AND DOCUMENTATION OBLIGATIONS**: Supplier shall provide Simtra with all necessary documentation, instructions and information required to ensure proper handling, storage and use of the goods in accordance with the applicable manufacturer's specifications and regulatory requirements. This includes, but is not limited to:
 - a) **Special Handling Requirements**. If the goods require specific handling conditions, such as light protection, temperature regulation or humidity control, Supplier must clearly identify such requirements on all packaging and shipping documents and provide written instructions prior to delivery.
 - b) **Storage and Shelf Life**. Supplier shall provide reasonable documentation indicating the recommended storage conditions and clearly state the shelf life or expiration date of the goods. Goods with a limited shelf life must be delivered with a remaining shelf life of no less than twelve (12) months, unless a shorter period is agreed to by Simtra.
 - c) **Ongoing Obligation to Notify**. Supplier shall promptly notify Simtra of any updates or changes to the manufacturer's instruction, handling requirements, shelf-life data or regulatory compliance documentation that may affect goods in the possession of Simtra.
12. **SUBSTITUTION, MODIFICATION**: No substitution or modification of any goods, component parts, tooling, sources of raw materials, processes, or manufacturing sites may be made without Simtra's prior written consent.
13. **SPECIAL LAWS & COMPLIANCE**: In filling the Purchase Order, Supplier will comply with all applicable federal, state, and local laws, in particular with anti-corruption and money laundering laws as well as antitrust, labor regulations, and governmental orders ("Laws"), in addition to Simtra's policies and procedures, including, but

not limited to, those listed below:

a) Environmental Health and Safety (“EHS”) Obligations:

- (i) Supplier shall comply with all applicable environmental, health, and safety laws, including but not limited to those governing pollution, hazardous substances, and human health protection. This includes, **if supplied to Simtra US**, compliance with Laws such as RCRA, CERCLA, SARA, the Clean Water Act, Clean Air Act, TSCA, FIFRA, the Oil Pollution Act, EPCRA, and OSHA, as amended. “Hazardous Substances” include any regulated or potentially harmful materials, including petroleum products, asbestos, lead, PCBs, radioactive materials, and PFAS. Supplier assumes responsibility for implementing and monitoring all environmental, health, and safety (“EHS”) precautions and programs related any work performed in connection with the filling of a Purchase Order. Supplier acknowledges the importance of performing work and filling orders in a safe and responsible manner to prevent damage, injury or loss to individuals, the environment, real and personal property, facilities, equipment, materials, and supplies. Supplier will comply with all applicable Laws relating to safety and working conditions, including all applicable Occupational Safety and Health Administration (“OSHA”) regulations.
- (ii) As applicable, the Supplier will obtain, at its own expense, and comply with any necessary licenses, registrations, notifications, certificates, inspections, approvals, authorizations, and permits required under applicable environmental, health, and safety Laws.
- (iii) Incident Reporting: Supplier and its subcontractors shall immediately notify Simtra of any non-incidental spills, significant environmental impacts, or violations of EHS laws occurring in connection with the performance of any Purchase Order. A written report must be submitted within seventy-two (72) hours of the incident.

b) Data Protection.

- (i) Supplier will comply with Simtra’s cybersecurity requirements, including, without limitation: not copying any of Simtra’s data to multiple locations, moving any of Simtra’s data out of Simtra’s systems or printing copies of any of Simtra’s Data unless approved by Simtra. Supplier must use encryption, both for information in transit as well as information at rest. Supplier must have a documented information security program that includes regular security awareness training, incident management procedures, security event monitoring, access and entitlement reviews, and employee termination procedures. Supplier must deploy endpoint detection and remediation on all endpoints to prevent, detect, and respond to malicious activity. Supplier must maintain continuous vulnerability and threat management processes designed to identify, assess, and mitigate security vulnerabilities and threats. Supplier must destroy and delete all of Simtra’s data upon Simtra’s request following completion of the engagement.
- (ii) All personal data processed by Supplier while providing services under these Terms and Conditions shall be processed in accordance with applicable data protection laws and regulations. To the extent applicable, Supplier will provide its Data Processing Addendum.

c) Supplier will comply with Simtra’s [Supplier Code of Conduct](#), [Privacy Policy](#) and [Terms of Use](#) in support of providing services, products or supplies.

d) Supplier will comply with all applicable anti-corruption and money laundering, antitrust and labor laws and regulations.

e) Without limiting the foregoing, and to the extent applicable, if the Purchase Order relates to a government contract and the Purchase Order has a value of either ten thousand dollars (\$10,000) or ten thousand Euros (EUR 10,000) (whichever is applicable) or more, and Supplier is a U.S. company, or provides any of the goods or services through its U.S. operations, Supplier must comply with various statutes, regulations, executive orders and legal obligations, including, but not limited to: EEO 11246 (Affirmative Action for Women and Minorities)—41 CFR 60-1.4; VEVRAA (Affirmative Action for Veterans)—41 CFR 60-300.5; Section 503 (Affirmative Action for Individuals with Disabilities)—41 CFR 741.5(a); Executive Order 13496 (Notice under the NLRA); and Public Law 95-507. .

Supplier also represents that:

- f) To the extent applicable, the goods are compliant with EU RoHS (RoHS-1 and RoHS -2) Directives or country/regional equivalent and agrees to furnish evidence of compliance upon request by Simtra.
 - g) The goods do not contain any substances regulated as a substance of very high concern (SVHC) in Annex XIV of the EU Registration, Evaluation, Authorization of Chemicals (REACH) directive, unless explicit notification is provided to Simtra in advance and subsequently as new substances are added to the REACH and Annex XIV and Candidate List periodically.
 - h) The goods are manufactured and provided to Simtra in a manner that complies with all applicable human rights laws, including local laws and international frameworks such as but not limited to California Transparency in Supply Chain Act and provisions of the Dodd-Frank Act (conflict minerals rules). Supplier further represents that the goods are conflict mineral-free, meaning any gold, tin, tantalum, or tungsten contained in the goods are sourced only from conflict – free zones, sources, and smelters. Supplier agrees to cooperate and fulfill related due diligence activities with its suppliers or represents that it has already done so.
 - i) The goods are consistent with, and can be used in compliance with, the Occupational Safety and Health Act of 1970 (“OSHA”), that services to be performed on Simtra's premises will be consistent with OSHA provisions, and that Supplier will provide Simtra the latest material safety data sheets for any chemical substance determined to be hazardous:
14. **INDEMNIFICATION**: Supplier shall defend, indemnify and hold Simtra, its successors, assigns, employees, customers, and users of the goods or services harmless with respect to all third-party claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by:
- a) Actual or alleged patent, copyright, or trademark infringement or violation of other proprietary right, arising out of the purchase, sale, or use of the goods or services covered by the Purchase Order;
 - b) Actual or alleged defect in the services or in the design, manufacture, or shipment of the goods;
 - c) Actual or alleged breach of warranty;
 - d) Failure of Supplier to deliver the goods or services on a timely basis; or
 - e) Failure of the goods or services to meet the requirements of any applicable law.

In the event of a claim under this Section 14, and in addition to any and all other contractual and statutory rights and remedies available to it, Simtra may, at its option, terminate the Purchase Order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Simtra is enjoined from use of the goods, Supplier shall, at Simtra's option, either procure for Simtra the right to continue using the goods, replace the goods with substantially equivalent goods, modify the goods so as to be usable by Simtra, or repurchase the goods at the price set forth in the Purchase Order. This Section 14 shall not be construed to indemnify Simtra for any loss to the extent it is attributable to Simtra's gross negligence or willful misconduct.

15. **INSURANCE**: Supplier shall obtain and keep in force for three years after the last delivery under the Purchase Order commercial general liability insurance covering each occurrence of bodily injury and property damage in the amount of not less than either five million dollars (\$5,000,000) or five million Euros (EUR 5,000,000) (whichever is applicable) (bodily injury) and either two million dollars (\$2,000,000) or two million Euros (EUR 2,000,000) (whichever is applicable) (property and any other damage) (or any other amount Simtra may indicate in the Purchase Order) combined single limit with special endorsements providing coverage for:
- a) Products and Completed Operations Liability;
 - b) Blanket Broad Form Vendor's Liability;
 - c) Blanket Contractual Liability;
 - d) Manufacturer's Errors and Omissions; and
 - e) Product Recall/Testing/Replacement Coverage.

If services are performed under the Purchase Order on Simtra's premises, Supplier shall also obtain Premises-

Operations, Personal Injury, and Independent Contractors Protective Liability endorsements, and shall further obtain Workers' Compensation, Employer's Liability and Automobile Liability Insurance coverage in amounts acceptable to Simtra, and if Supplier will have access to Simtra property, computer systems and/or data, Third Party Fidelity/Crime Coverage. If requested, Supplier shall furnish Simtra with a certificate evidencing the required insurance.

16. **RISK OF LOSS:** Supplier shall bear the risk of loss or damage to the goods covered by the Purchase Order until they are delivered to and accepted by Simtra.
17. **TITLE TO GOODS:** Retention of title by Supplier shall only apply insofar as it relates to Simtra's payment obligation for the respective goods to which Supplier retains title. In particular, extended or prolonged reservations of title are not permitted.
18. **SPARE PARTS:** Supplier is obliged to keep spare parts for the goods delivered to Simtra for a period of at least one (1) year after delivery. If Supplier intends to discontinue the production of spare parts for the goods delivered on or after the expiry of the period specified in the foregoing sentence, it shall notify Simtra of this immediately after the decision to discontinue. This decision must be made at least six (6) months before production is discontinued.
19. **LIMITATION OF LIABILITY:**
 - a) **IF SUPPLIED TO SIMTRA US:** SIMTRA, AS WELL AS ITS REPRESENTATIVES AND VICARIOUS AGENTS, WILL NOT BE LIABLE TO SUPPLIER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING LOST TIME, LOST PROFITS OR LOST SALES) ARISING FROM ANY TRANSACTIONS UNDER THE PURCHASE ORDER, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
 - b) **IF SUPPLIED TO SIMTRA GERMANY:** SIMTRA, AS WELL AS ITS REPRESENTATIVES AND VICARIOUS AGENTS, WILL ONLY BE LIABLE FOR DAMAGES - IRRESPECTIVE OF THE LEGAL GROUNDS - WITHIN THE SCOPE OF FAULT-BASED LIABILITY IN THE EVENT OF INTENT AND GROSS NEGLIGENCE. IN THE EVENT OF SIMPLE NEGLIGENCE, SIMTRA WILL ONLY BE LIABLE, SUBJECT TO LIMITATIONS OF LIABILITY UNDER APPLICABLE LAW (E.G. CARE IN SIMTRA'S OWN AFFAIRS; INSIGNIFICANT BREACH OF DUTY): (1) FOR DAMAGES RESULTING FROM INJURY TO LIFE, LIMB OR HEALTH, AND (2) FOR DAMAGES ARISING FROM THE BREACH OF A MATERIAL CONTRACTUAL OBLIGATION (OBLIGATION WHOSE FULFILLMENT IS ESSENTIAL FOR THE PROPER EXECUTION OF THE CONTRACT AND ON WHOSE COMPLIANCE THE CONTRACTUAL PARTNER REGULARLY RELIES AND MAY RELY); IN THIS CASE, HOWEVER, OUR LIABILITY IS LIMITED TO COMPENSATION FOR THE FORESEEABLE, TYPICALLY OCCURRING DAMAGE. ANY MANDATORY LIABILITY UNDER APPLICABLE LAW SHALL REMAIN UNAFFECTED AT ANY TIME.
20. **AUDIT:** To verify Supplier's compliance with the Purchase Order, Simtra and its representatives will have the right once annually, at reasonable times and places, and upon reasonable notice, to (a) inspect all facilities, resources and procedures employed by Supplier in manufacturing or providing the goods and services; and (b) examine all books and records relating to the goods and services. Alternatively, Simtra may accept written certification of compliance from Supplier, at Simtra's option.
21. **SIMTRA-FURNISHED MATERIAL:** Supplier shall not use, reproduce, or appropriate for, or disclose to anyone other than Simtra, any material, tooling, dies, drawings, designs, or other property or information furnished by Simtra ("Material") without Simtra's prior written approval. Title to all Material shall remain with Simtra at all times. Supplier shall bear the risk of loss or damage to the Material until it is returned to Simtra. All Material, whether or not spoiled or used, shall be returned to Simtra at termination or completion of the Purchase Order, unless Simtra shall otherwise direct.
22. **REFERENCES TO SIMTRA:** Without Simtra's prior written approval, Supplier shall not present nor publish, nor submit for publication, any work specifically resulting in relation to goods or services supplied solely for

Simtra or that identifies or may identify Simtra. Without Simtra's prior written consent (which is in its sole discretion to grant or withhold), Supplier shall not use Simtra's name in any advertising, articles, press release, social media, promotional materials or website advertising, or disclose to any third party the terms of the Purchase Order or the fact that Supplier is supplying goods or services to Simtra.

23. **USE OF SUPPLIER'S INFORMATION:** All information disclosed to Simtra in connection with the Purchase Order is furnished as part of the consideration for Simtra's placement of the Purchase Order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Simtra, its assigns, or customers, for its disclosure or use.

24. **TERMINATION:**

- a) Simtra may terminate the Purchase Order and, by doing so, terminate the contract with Supplier, in whole or in part, without liability: (i) if Simtra anticipated Supplier's breach of the Purchase Order and Supplier does not provide adequate assurance of its performance within ten (10) days of Simtra's request; (ii) if deliveries are not made by Supplier at the time or in the quantities specified in the Purchase Order; or (iii) in the event of a breach or failure by Supplier to meet other terms of the Purchase Order. This right shall be in addition to any other remedies or rights available to Simtra pursuant to applicable law.
 - b) Simtra may terminate the Purchase Order and, by doing so, terminate the contract with Supplier, in whole or in part, at any time by providing notice to Supplier in writing if Simtra decides, in its sole discretion, that it no longer needs the purchased goods or services. Supplier's sole compensation for such termination shall be payment by Simtra of the percentage of the total order price corresponding to the proportion of work completed in filling the Purchase Order prior to such notice, plus any reasonable actual out-of-pocket expenses (reasonably documented) incurred by Supplier in terminating orders and work in progress. Supplier shall submit such termination claim to Simtra within sixty (60) days of the date of termination and shall be subject to audit by Simtra.
 - c) Upon any termination under this Section 24, title to all equipment materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and any other items for which Supplier may submit a claim shall vest in Simtra, and Supplier shall promptly deliver these items to Simtra and take all necessary action to protect such property prior to such delivery.
25. **SETOFF:** Any claim against Supplier or any of its related entities by Simtra or any of its related entities which arise out of these Terms and Conditions, the Purchase Order or any other transaction may be set off against any money due to Supplier under the Purchase Order.
26. **ASSIGNMENT; SUBCONTRACTING:** Supplier shall not assign the Purchase Order either in full or in parts, or any of its contractual obligations without Simtra's prior written consent, which Simtra may withhold in its sole discretion, and any attempted assignment without Simtra's consent shall be null and void. Any permitted assignee shall assume in writing all obligations of Supplier under the Purchase Order. Simtra may assign the Purchase Order without the consent of Supplier. The Purchase Order will be binding upon and inure to the benefit of the successors and permitted assigns of each party.
27. **WAIVER; SEVERABILITY:** No waiver by Simtra of any breach of the Purchase Order by Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision. No claim or right arising out of a breach of the terms and conditions of the Purchase Order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless such waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. If at any time any one or more of the provisions contained the Purchase Order is or should become invalid, illegal or unenforceable in any respect under any law, rule, regulation or ruling, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
28. **FORCE MAJEURE:** No party hereto shall be liable or responsible to the other party, or be deemed to have defaulted under or breached the Purchase Order, for any failure or delay in fulfilling or performing any term of the Purchase Order, when and to the extent such party's (the "Impacted Party") failure or delay is caused

by or results from the following force majeure events (a "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake, epidemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; and (e) embargoes or blockades in effect on or after the date of the Purchase Order; (f) national or regional emergency. The Impacted Party shall give notice within twenty (20) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of sixty (60) consecutive days following written notice given by it under this Section 29, either party may thereafter terminate the Purchase Order upon ten (10) days' written notice to the other party.

29. CONTROLLING LAW; VENUE: The Purchase Order and the performance under it shall be controlled and governed by:

- a) for orders made by Simtra Germany—the law of the Federal Republic of Germany without taking recourse to its conflict of law provisions and the UN Sale of Goods law (CISG); and
- b) for orders made by Simtra US—the law of the State of Delaware.

Supplier hereby submits to the exclusive jurisdiction of the courts of Bielefeld for purposes of resolving any dispute arising from a Purchase Order made by Simtra Germany and to the exclusive jurisdiction of the state or federal courts in the State of Delaware for purposes of resolving any dispute arising from a Purchase Order made by Simtra US.

30. DISPUTE RESOLUTION: Any and all disputes, claims or controversies (each, a "Dispute" and, collectively, "Disputes") arising out of or relating to the Purchase Order, including without limitation, any Dispute as to the existence, validity, performance, breach or termination of the Purchase Order, shall be resolved in the following manner set forth in this Section 31.

- a) A party must first send written notice of the Dispute to the other party for attempted resolution by negotiation between executives of each party who have authority to settle the controversy. Such negotiations must be conducted within fourteen (14) days (all references to "days" in this provision are to calendar days) after such notice is received (the "Negotiation Period"). If the parties fail to meet or if the matter has not been resolved within such Negotiation Period, the parties shall mediate their Dispute within thirty (30) days after such Negotiation Period has expired unless Simtra communicates towards Supplier that it has elected not to proceed with mediation. If the mediation fails to resolve all outstanding Disputes between the parties, Simtra communicated towards Supplier that it has elected not to proceed with mediation, or if the mediation has not been scheduled within thirty (30) days of the end of the applicable Negotiation Period, either party may initiate arbitration (replacing the exclusive jurisdiction of the courts set forth in Section 29) with respect to the matters submitted to negotiation and mediation by filing a written demand for arbitration. Unless Simtra communicates towards Supplier that it has elected not to proceed with arbitration, such Disputes shall be settled by final and binding arbitration administered by:

- (1) For Disputes arising from a Purchase Order by Simtra Germany, the German Arbitration Institute (DIS) in accordance with its arbitration rules without recourse to the ordinary courts of law ("German Rules"). The place of arbitration shall be Munich, Germany. The language of the arbitration shall be English. The rules of law applicable to the merits shall be the law of the Federal Republic of Germany without taking recourse to its conflict of law provisions; and
- (2) For Disputes arising from a Purchase Order by Simtra US, the International Institute for Conflict Prevention & Resolution in accordance with its arbitration rules ("US Rules," and together with the German Rules, collectively, "Rules"). The place of arbitration shall be Chicago, Illinois.

Notwithstanding the foregoing, to the extent a party is seeking injunctive relief, either party may immediately bring a proceeding seeking preliminary injunctive relief in a court having jurisdiction over such matter, and this relief shall remain in effect until the parties reach a resolution or so long as the arbitrator(s) feel as appropriate.

- b) For Disputes under either ten million dollars (\$10,000,000) or ten million Euros (EUR 10,000,000) (whichever is applicable), one arbitrator shall either be mutually agreed by the parties or appointed in accordance with the applicable Rules. For Disputes over either ten million dollars (\$10,000,000) or ten million Euros (EUR 10,000,000) (whichever is applicable), a panel of three arbitrators shall be appointed in accordance with the applicable Rules. Within thirty (30) days following the initiation of an arbitration proceeding, the arbitrator(s) will be selected. No later than sixty (60) days after selection, the arbitrator(s) shall hold a hearing to resolve each of the issues identified by the parties. All arbitration proceedings shall be conducted in the English language. At least seven (7) days prior to the hearing, each party shall submit the following to the other party and the arbitrator(s): (i) A copy of all exhibits on which such party intends to rely in any oral or written presentation to the arbitrator(s); (ii) A list of any witnesses such party intends to call at the hearing, and a short summary of the anticipated testimony of each witness; (iii) a proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue; and (iv) a brief in support of such party's proposed rulings and remedies, provided the brief shall not exceed twenty (20) pages. The proposed rulings and remedies shall not contain any recitation of the facts or of any legal arguments. The parties agree that neither side shall seek as part of its remedy any punitive damages.
 - c) Within fourteen (14) days following completion of the hearing, each party may submit to the other party and the arbitrator(s) a post-hearing brief in support of its proposed rulings and remedies, provided that such brief shall not contain or discuss any new evidence and shall not exceed ten (10) pages. The arbitrator(s) shall rule on each disputed issue within twenty-one (21) days following completion of the hearing. Such ruling shall adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue and may adopt one party's proposed rulings and remedies on some issues and the other party's proposed rulings and remedies on other issues. The arbitrator(s) shall not adopt any written opinion or otherwise explain the basis of the ruling. If the arbitrator(s) rule in favor of one party on all disputed issues, the losing party shall pay the prevailing party's fees and expenses (including attorney's fees). If the arbitrator(s) rule in favor of one party on some issues and the other party on other issues, the arbitrator(s) shall allocate fees and expenses in a way that bears a reasonable relationship to the ruling. The rulings of the arbitrator(s) and the allocation of fees and expenses shall be binding, non-reviewable and non-appealable, and may be entered as a final judgment in any court having jurisdiction. Except as required by law, the parties agree to keep confidential the existence of the arbitration, the submissions made by the parties (including exhibits, testimony, proposed rulings and briefs) and the decisions made by the arbitrator(s), including its awards.
31. **INJUNCTIVE RELIEF:** Notwithstanding Section 30, Simtra may seek injunctive relief by a court of competent jurisdiction in accordance with Section 29.
32. **REMEDIES NOT EXCLUSIVE:** The rights and remedies of Simtra provided under these Terms and Conditions are cumulative and not exclusive and are in addition to any other rights and remedies provided at law or in equity.
33. **INDEPENDENT CONTRACTOR:** The relationship of the parties is that of independent contractors. The parties will not be deemed partners or joint ventures, nor will one party be deemed an agent or employee of the other party. Neither party has any express or implied right to assume or create any obligation on behalf of, or in the name of, the other party or to bind the other party to any contract, agreement or undertaking with any third party, and no conduct of a party shall be deemed to imply such right.
34. **NOTICES:** Any notices required or permitted under the Purchase Order will be in writing, will refer specifically

to the Purchase Order, and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in the Purchase Order. Notices under the Purchase Order will be deemed to be duly given: (a) when delivered by hand; (b) two days after deposit with a recognized national or international courier; or (c) on the delivery date indicated in the return receipt for registered or certified mail. A party may change its contact information immediately upon written notice to the other party in accordance with this Section 35.

- 35. **SEVERABILITY**: If any provision of these Terms and Conditions is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.
- 36. **AMENDMENT**: Any modification to the Purchase Order must be in writing and signed by an authorized representative of each party.