

국제계약서에 통상 들어가는 일반조항 GENERAL PROVISIONS 사례 – 제약회사 신제품

라이선스 및 생산공급 계약서 중 일반조항 샘플



26.1 **Relationship of Parties**. Each of the parties hereto is an independent contractor and nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee or joint venture relationship between the parties. No party shall have the right to, and each party agrees not to purport to, incur any debts or make any commitments or contracts for the other.

26.2 **Compliance with Law**. Each of the parties shall comply with all applicable international, federal, state and local laws, rules and regulations, including, but not limited to,

import/export restrictions, laws, rules and regulations governing product quality and safety and patent, copyright and trade secret protection.

26.3 **Arbitration.**

(a) Procedure. The parties recognize that bona fide disputes may arise which relate to the parties' rights and obligations under this Agreement. The parties agree that except as provided in Section 7.4, any such dispute shall be resolved by alternative dispute resolution in accordance with the procedure set forth in Exhibit F.

(b) Confidentiality of Proceedings. All arbitration proceedings hereunder shall be confidential and the arbitrator(s) shall issue appropriate protective orders to safeguard each party's Confidential Information. Except as required by law, no party shall make (or instruct the arbitrator(s) to make) any public announcement with respect to the proceedings or decision of the arbitrator(s) without prior written consent of the other party.

(c) Binding Effect. The provisions of this Section 12.3 shall survive any expiration or termination of this Agreement, and shall be severable and binding on the parties hereto, notwithstanding that any other provision of this Agreement may be held or declared to be invalid, illegal or unenforceable.

26.4 **Force Majeure**. Neither party shall be liable for failure to perform, or delay in the performance of, its obligations under this Agreement (other than payment obligations) when such failure or delay is caused by an event of force majeure. For purposes of this Agreement, an event of force majeure means any event or circumstance beyond the reasonable control of the affected party, including but not limited to, war, insurrection, riot, fire, flood or other unusual weather condition, explosion, act of God, peril of the sea, strike, lockout or other industrial disturbance, sabotage, embargo, act of governmental authority, compliance with governmental order or national defense requirements, or inability to obtain fuel, power, raw materials, labor or transportation facilities. A failure of supply by CyDex's supplier shall only be deemed an event of force majeure affecting CyDex if caused by a force majeure event affecting such supplier. If, due to any event of force majeure, either party shall be unable to fulfill its obligations under this Agreement (other than payment obligations), the affected party shall immediately notify the other party of such

inability and of the period during which such inability is expected to continue and the time for performance [*].

26.6 **Notices.** Any notice, request, or communication under this Agreement shall be effective only if it is in writing and personally delivered; sent by certified mail, postage pre-paid; facsimile with receipt confirmed; or by nationally recognized overnight courier with signature required, addressed to the parties at the addresses stated below or such other persons and/or addresses as shall be furnished in writing by any party in accordance with this Section 12.6. Unless otherwise provided, all notices shall be sent:

12.8 **Use of Name; Publicity.** No party shall use the name, trademark, trade name or logo of the other party, its Affiliates or their respective employee(s) in any publicity, promotion, news release or public disclosure relating to this Agreement or its subject matter, without the prior express written permission of the other party, except as may be required by law or the rules of NASDAQ or the New York Stock Exchange. In the event of a required public announcement, the party making such announcement shall provide the other party with a copy of the proposed text before such announcement sufficiently in advance of the

scheduled release of such announcement to afford such other party a reasonable opportunity to review and comment upon the proposed text and the timing of such disclosure.

12.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to any conflicts of law principles that require the application of the law of a different state). The United Nations Convention on the International Sale of Goods is hereby expressly excluded.

12.10 **Entire Agreement; Amendment**. This Agreement, together with the Quality Agreement, constitutes the entire agreement of the parties relating to the subject matter hereof and thereof and supersedes any and all prior or contemporaneous agreements, written or oral, between CyDex (and/or any of its Affiliates) and Hospira (and/or any of its Affiliates) relating to the subject matter hereof and thereof; provided, that any confidentiality/nonuse provisions of any prior agreement are not superseded and will remain in effect solely with respect to information provided under the terms of such prior agreement that is not subsequently provided to a Party under the terms of this Agreement.

If the Quality Agreement contains terms or conditions inconsistent with the terms of this Agreement, the terms of the Quality Agreement will control and prevail solely with respect to quality issues, and the terms of this Agreement shall control and prevail for all other matters. This Agreement cannot be amended except by way of an express writing signed by both parties.

12.11 **Binding Effect**. This Agreement shall be binding upon, and the rights and obligations hereof shall apply to, CyDex and Hospira and any successor(s) and permitted assigns. The name of a party appearing herein shall be deemed to include the names of such party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement.

12.12 **Waiver**. The rights of either party under this Agreement may be exercised from time to time, singularly or in combination, and the exercise of one or more such rights shall not be deemed to be a waiver of any one or more of the others. No waiver of any breach of a term, provision or condition of this Agreement shall be deemed to have been made by either party unless such waiver is addressed in writing and signed by an authorized

representative of that party. The failure of either party to insist upon the strict performance of any of the terms, provisions or conditions of this Agreement, or to exercise any option contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of any such term, provision, condition or option or the waiver or relinquishment of any other term, provision, condition or option.

12.13 **Severability**. If any provision of this Agreement is determined by a final and binding court or arbitration judgment to be invalid, illegal or unenforceable to any extent, such provision shall not be not affected or impaired up to the limits of such invalidity, illegality or unenforceability; the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any way; and the parties agree to negotiate in good faith to replace such invalid, illegal and unenforceable provision (or portion of provision) with a valid, legal and enforceable provision that achieves, to the greatest lawful extent under this Agreement, the economic, business and other purposes of such invalid, illegal or unenforceable provision (or portion of provision).

12.14 **Assignment**. Neither party may assign its rights or obligations under this Agreement

without the prior written consent of the other party; provided, however, that either party may assign this Agreement, in whole or in part, without such consent, to an Affiliate of such party or to any Third Party successor by merger or acquisition or by divestiture or spin-off of substantially all of the business to which this Agreement relates, upon written notice to the other party of any such assignment and, in the case of an assignment to an Affiliate, such party hereby guarantees the performance of any such Affiliate, and, in the case of a Third Party assignment, such Third Party shall assume the obligations of the assigning party under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligation, which such party may have or incur hereunder.

12.15 **Third Party Beneficiaries**. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective Affiliates, related Indemnified Parties (as set forth in Section 9), successors or permitted assigns and it is not the intention of the parties to confer third-party beneficiary rights upon any other person, including without limitation Sublicensees.

12.17 **Headings**. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

12.18 **Interpretation**. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no provision of this Agreement will be interpreted for or against any party because that party or its attorney drafted the provision.

12.19 **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original document, but both of which shall constitute one and the same instrument.

국제계약, 영문계약, 계약분쟁, 손해배상, Claim, License, R&D 제휴계약

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