

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and (where applicable) Services from the Supplier.

Goods: the goods (or any part of them) set out in the Order.

Instructions: any instructions given by the Supplier, whether written or oral, in relation to the Goods, including but not limited to as to the storage, movement, and use of the Goods.

Licensed Goods: any Goods which are subject of a licence granted by the Medicines and Healthcare Products Regulatory Agency or European Medicines Agency.

Order: the Customer's order for the Goods and (where applicable) Services, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Product Specific Conditions: any special conditions applying to the Goods, as detailed in Schedule 1 to these Conditions or as previously accepted by the Customer.

Services: any ancillary services performed by the Supplier in connection with the supply of the Goods, as specified in the Order.

SPC: the 'Summary of Product Characteristics' information leaflet provided by the license holder for use by healthcare professionals and containing specific instructions on how to use the licensed product.

Specification: the specification (if any) of the Goods provided by the Supplier.

Supplier: Pharmaxo Pharmacy Services Limited, a company registered in England (06982573) whose registered office is at A15 Fiveways Light Industrial Estate, Westwells Road, Corsham, Wiltshire, SN13 9RG.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (c) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (d) A reference to **writing** or **written** includes faxes and e-mails (received at: notices@pharmaxo.com).

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Goods and Services (if applicable) in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier confirms acceptance of the Order at which point the Contract shall come into existence. Notwithstanding the foregoing, the Supplier may commence delivery of Goods and/or Services without having provided acceptance, in which case the Contract shall come into existence when it begins performance of the Contract.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier are issued for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. GOODS

3.1 The Goods are described in the Specification. The Supplier reserves the right to amend any of the Specification if required by any applicable statutory or regulatory requirements.

3.2 Any Services provided in connection with the supply of Goods shall be performed with all reasonable skill and care.

4. DELIVERY

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. Delivery shall take place between 8am and 6pm on a Business Day unless otherwise agreed.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 4.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods when attempted by the Supplier, it shall be required to pay a charge for re-delivery. Prior to re-delivery, the Supplier shall store the Goods until delivery takes place and may charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 20 Business Days after the Supplier first attempted delivery the Customer has not accepted delivery of the Goods, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) provide the Supplier, its employees, agents, consultants and subcontractors, with such access to the Customer's premises, equipment and facilities as may be required in order to supply the Goods and provide any Services;
 - (b) comply fully with the SPC or any similar instructions (where applicable) and with best clinical practice, at all times;
 - (c) not attempt to modify, adapt, reverse engineer, disassemble or reassemble any part of the Goods;
 - (d) not attempt to return any refrigerated Goods unless such return is within 24 hours of receipt and it has first provided evidence to the satisfaction of the Supplier's Responsible Person that the appropriate cold chain has been maintained for such Goods; and
 - (e) follow any Product Specific Conditions that may apply to the Goods.

6. QUALITY

- 6.1 Without prejudice to any other warranties provided by the Supplier with the Goods, the Supplier warrants that on delivery, the Goods shall conform in all material respects with their description and the Specification.
- 6.2 In the event that any Goods fail to conform with an applicable warranty, subject to clause 6.3, if:
- (a) the Customer gives notice in writing to the Supplier before the end of the next working day of discovery that some or all of the Goods do not comply with the warranty;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its sole option, replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 The Supplier shall not be liable for Goods' failure to comply with any warranty in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2(a);
 - (b) the defect arises because the Customer failed to follow the Instructions, the SPC (where applicable) or best clinical/professional practice regarding the storage, movement, or use of the Goods;
 - (c) the Customer breaches any of its obligations under clause 5;
 - (d) the Customer alters such Goods (or attempts to do so) without the written consent of the Supplier; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with an applicable warranty.

6.5 Any warranties or conditions which might be implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

8.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted or a quoted price is no longer valid, the Seller's list price current at the date of acceptance of the order.

8.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Supplier may invoice the Customer for the Goods on or the day of delivery.

8.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. INDEMNITY

9.1 The Customer shall indemnify and hold harmless the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and

all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier arising out of or in connection with a breach by the Customer of clause 5.

10. CONFIDENTIALITY

- 10.1 Subject to clause 10.2, a party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.
- 10.2 The receiving party may disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 10.3 This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. TERMINATION AND SUSPENSION

- 12.1 If the Customer becomes subject to any of the following events, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer:
- (a) the Customer breaches any term of these Conditions or a Contract;
 - (b) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Customer becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction;
 - (d) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
 - (e) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 12.3 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13. FORCE MAJEURE

13.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. GENERAL

14.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail (received at: notices@pharmaxo.com).
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail (received at: notices@pharmaxo.com), one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

14.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

15. DATA PROTECTION AND DATA PROCESSING

15.1 For the purpose of the Contract "Data Protection Legislation" means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the European General Data Protection Regulation (Regulation (EU) 2016/679) as enacted into the laws of the United Kingdom by the Data Protection Act 2018 and any amendment or re-enactment thereof and Data Subject; Controller; Processor; and other words and phrases used in this clause shall have the same meanings as in the Data Protection Legislation unless the context otherwise requires.

15.2 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data.

- 15.3 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer or as otherwise required by law.
- 15.4 The Supplier will take all reasonable steps to:
- (a) ensure the reliability and integrity of any of its personnel who have access to the Personal Data; and
 - (b) ensure that they are aware of and comply with the Company's duties concerning Personal Data under the Contract.
- 15.5 The Supplier and the Customer each agree that they will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 15.6 The Supplier shall ensure that it has in place appropriate technical and organisational measures (Protective Measures) designed to:
- (a) protect against an event that results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach (a Data Loss Event) having taken account of the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development, and cost of implementing any measures;
 - (b) enable the Supplier to take appropriate steps should a Data Loss Event occur; and
 - (c) protect the rights of any Data Subject who has been or may be affected by any Data Loss Event which occurs.