

TERMS AND CONDITIONS - GOODS PURCHASE CONTRACT

1. INCONSISTENCY

- 1.1. These Terms and Conditions apply in place of, prevail and override any terms or conditions (whether or not in conflict or inconsistent with these Terms and Conditions) contained or referred to in any correspondence, quotation, purchase order, invoice, order confirmation, delivery docket or other documentation submitted by either party or elsewhere (including but not limited to the Purchase Contract) or implied by trade custom, practice or earlier course of dealing unless these Terms and Conditions are specifically excluded or varied in writing by a director or officer of both parties. Any attempt by You to interpose different or additional terms and conditions or in any respect alter or reject these Terms and Conditions is rejected by Us and will not become part of the Contract between You and Us and any purported provisions to the contrary are hereby excluded or extinguished and any similar provision in either party's terms and conditions shall be of no effect.

2. CONTRACT

- 2.1. We may issue a purchase order for Goods to You on the terms and conditions set out in the purchase order. On Your acceptance of Our purchase order, a Contract is formed and you must supply the Goods in accordance with the terms of the Contract.
- 2.2. We are not required to purchase any minimum quantity of Goods and any purchases that We make are non-exclusive.

3. GOODS

- 3.1. Upon delivery of the Goods in accordance with clause 5, You will invoice Us in accordance with clause 3.2. In consideration for the Goods supplied by You, We will pay the Price within 60 days from the end of the month in which We receive a tax invoice for the Goods from You, in accordance with clause 3.2.
- 3.2. The Price includes any applicable GST. Where GST is included in the Price, You must provide Us with a tax invoice that complies with all requirements in the GST Act and any other applicable Law.
- 3.3. All payments will be made in Australian currency unless otherwise agreed in writing.

4. RISK AND TITLE

- 4.1. The title and risk in the Goods shall remain with You until the Goods are received by the person specified by Us in the Purchase Contract at the point of delivery and/or in accordance with the Incoterm stated in the Purchase Contract.
- 4.2. Subject to Our rights of inspection and return in accordance with clause 5, on receipt of the Goods by the person specified by Us in the Purchase Contract at the point of delivery and/or in accordance with the Incoterm stated in the Purchase Contract, title and risk in the Goods shall pass to Us.
- 4.3. Terms used in this clause 4 which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning given to them in that Act.
- 4.4. To the extent permitted by law the parties agree that this Contract is not intended to and does not create a security interest.

- 4.5. To the extent that You are deemed to hold a security interest, You agree that You will not register any security interest, or any financing statement in relation to it, or take any steps to do so.

5. DELIVERY, INSPECTION AND RETURN

- 5.1. Goods are deemed to be sold to Us on Carriage and Insurance Paid (CIP) or Delivered Duty Paid (DDP) unless otherwise agreed in writing between the parties.
- 5.2. Time is of the essence for delivery and deliveries must be made both in the quantities and by the delivery date specified by Us in the Purchase Contract ("**Delivery Date**").
- 5.3. If delivery is not made by the Delivery Date (or within a reasonable time if no date is specified), then without prejudice to any other remedy available to us at Law, We are entitled to recover all reasonable losses incurred by Us arising from the delay. If You deliver more than one month after the Delivery Date, unless agreed in writing by Us, We may terminate the Contract without liability to You.
- 5.4. Without limiting any of Our rights, if We terminate the Contract in accordance with clause 5.3, We are entitled to:
- (a) return to You at Your risk and expense, any Goods which we had already received from You, which we cannot efficiently or commercially use due to the non or late delivery of Goods; and/or
 - (b) any money We have paid in respect of those Goods not delivered and/or those Goods already delivered but which cannot be effectively and commercially used due to the non or late delivery of Goods; and/or
 - (c) recover from You any additional expenditure reasonably incurred by Us in obtaining replacement Goods and any other loss, cost and damage reasonably or unavoidably incurred by Us arising from the late or non-delivery of the Goods or any part thereof including for the avoidance of doubt any sums which become payable to third parties as a result of the late or non-delivery.
- 5.5. On delivery of the Goods We reserve the right to reject any Goods supplied which fail Our inspection (in accordance with clause 5.6).
- 5.6. If after Our inspection of the Goods (and irrespective of whether You have obtained a receipt, a signed delivery docket or other form of acceptance of the Goods) it is found that the Goods supplied:
- (a) do not comply with any warranty by You about the Goods under the Contract, including the warranties in clause 6 and/or
 - (b) are found (in Our reasonable opinion) to be unsatisfactory, defective, of inferior quality; and/or
 - (c) otherwise fail to meet strictly the requirements of the Contract,
- We (without prejudice to any other rights We may have) may, although risk may have passed to Us or delivery may have been completed:
- (d) elect not to pay the Price (and, to the extent We have already paid the Price, obtain an immediate refund of it); and/or

- (e) attempt, at Your risk and expense, to rectify any or all deficiencies in the Goods; and/or
 - (f) reject the Goods by notifying You of this rejection.
- 5.7. Upon rejection You shall, at Your expense, immediately remove the Goods from Our premises, failing which We may, at Your risk and expense return the Goods to You or, where the Goods are not in a suitable condition, in Our reasonable opinion to be returned, destroy them at Your expense. Without limiting the generality of Our other rights under the Contract, We reserve the right to recover from You any additional expenditure reasonably incurred by Us in obtaining replacement Goods and any other loss, cost or damage reasonably or unavoidably suffered or incurred by Us including for the avoidance of doubt any sums which become payable to third parties.
- 5.8. In this clause 5, references to removal, return and destruction expenses include (but are not limited to) the cost of packing, transport and handling where applicable.

6. WARRANTIES

- 6.1. These terms and conditions are additional to, and do not limit any rights or remedies that We may have under warranties, conditions, guarantees or undertakings granted or implied by the Australian Consumer Law, or any other applicable Law or that are otherwise made by You.
- 6.2. You warrant that:
- (a) You have the full power and authority to enter into the terms of the Contract;
 - (b) You have the right and title to the Goods delivered to Us and those Goods are free and clear of all liens, encumbrances, security interests and any other restrictions as to title;
 - (c) the Goods delivered to Us will be of commercial standard, acceptable quality, free of defects and comply with all applicable Laws;
 - (d) the Goods will be delivered using all due care and skill;
 - (e) the Goods delivered to Us have been manufactured, produced, processed, prepared and packaged, labelled, presented, described, stored, transported and delivered in accordance with the terms and conditions of the Contract and so as to comply with all applicable local and international Laws, standards or industry code requirements which apply to the Goods;
 - (f) the Goods are new and not refurbished or reconditioned;
 - (g) where We supplied written specifications and/or requirements the Goods will conform with such specifications and/or requirements;
 - (h) the sale, possession or use of the Goods as intended by Us will not infringe or contribute to the infringement of any third party rights including but not limited to Intellectual Property Rights (save that this warranty shall not apply in relation to any logos, designs, specifications or other materials provided by Us for incorporation into the Goods);
 - (i) You will at all times comply with all requirements of any applicable Laws of Australia and of the country of origin of the Goods applying to the Goods including but not limited to, the manufacture, storage, labelling, transportation, importation,

exportation, licensing approval or certification of the Goods and all other Laws from which Liability may accrue to Us by Your breach;

- (j) You will maintain the insurances in accordance with clause 16.3;
 - (k) the Goods will be insured up to the time risk of the Goods passes to Us in accordance with clause 4.2; and
 - (l) the Goods are fit for the particular purpose(s) for which We intend to use such Goods.
- 6.3. You agree to indemnify and keep Us (and Our officers, employees, agents, affiliates and Related Bodies Corporate) indemnified against all and any Liability arising from the breach of any warranty provided pursuant to this clause 6.
- 6.4. We warrant that:
- (a) We have the full power and authority to enter into the terms of the Contract; and
 - (b) We will at all times comply with all requirements of any applicable Laws of Australia.

7. CHANGES, CANCELLATION AND VARIATIONS

- 7.1. At any time prior to the delivery of Goods, We may request by notice in writing that You change the Goods or any specification in relation to the Goods and Your obligations to supply the Goods following such a change will be subject to the parties agreeing on the applicable prices, rates or charges (acting reasonably).
- 7.2. At any time prior to delivery of the Goods, We may cancel or vary the Purchase Contract (in whole or in part) at any time in response to a legitimate business need, including cancellation of contracts by Our customers. We must provide You with prior written notice of such cancellation or variation and must pay You for all Goods actually delivered up to the date of such cancellation or variation.
- 7.3. Save as expressly set out in this clause 7, We will have no liability to You for cancelling or varying the Purchase Contract.

8. TERMINATION

- 8.1. Without derogating from any other provisions of the Contract, either party may immediately terminate the Contract by written notice to the other party if:
- (a) the other party is in default of any of its obligations set out in the Contract:
 - (i) which is not capable of remedy; or
 - (ii) which is capable of remedy but which is then not remedied within 30 days of written notice by the party of such default; or
 - (b) an Insolvency Event has occurred in relation to a party or to their Related Body Corporate.
- 8.2. We may, in addition to Our termination rights set out elsewhere in the Contract, immediately terminate the Contract by written notice to You if:
- (a) any dispute or litigation is initiated in the country of manufacture or supply of the Goods which may result in the prevention of the export of the Goods to Us from that country;

- (b) any dispute or litigation is initiated within Australia which may result in the prevention of the distribution, sale, promotion, storage, delivery, use of the Goods and/or, incorporation of the Goods into other goods by Us, Our agents, representatives or sub-contractors; or
 - (c) at any time if there is a change in Laws in relation to the Goods which would prevent the import, promotion, storage, delivery, use and/or distribution and sale of such Goods by Us.
- 8.3. We reserve the right to terminate the Contract without cause by giving You at least 60 days' prior written notice.
- 8.4. The termination of the Contract for any reason does not extinguish or otherwise affect any rights or liabilities of any party against the other which accrued prior to the time of the termination, or otherwise relate to or arise from any breach or non-observance of obligations under the Contract which arose prior to the time of termination.
- 8.5. Upon termination and without limiting any other rights under the Contract or under applicable Law:
- (a) We will be released from any further liability to pay for Goods not delivered pursuant to the Purchase Contract;
 - (b) We may refuse to accept delivery of Goods not delivered pursuant to the Purchase Contract;
 - (c) Subject to Our right of inspection and return in accordance with clause 5, We will pay You any outstanding monetary amounts payable up to the date of termination in respect of Goods that have been delivered on receipt of a valid tax invoice;
 - (d) You must refund Us any money We have paid in respect of those Goods not delivered;
 - (e) You must return all of Our property or confidential information provided to You under the Contract;
 - (f) Both parties agree to take all reasonable steps in the circumstances to mitigate any loss or damage resulting from the termination of the Contract; and
 - (g) Any indemnity or obligation of confidence under this Contract is independent and survives termination of this Contract, Any other provisions of the Contract which by its nature is intended to survive termination of this Contract survives termination including clauses 4.4, 5.4, 5.6, 6, 8.4, 8.5, 9, 11, 11, 12, 13, 14, 15 and 17.

9. CONFIDENTIALITY

- 9.1. Each party must keep confidential and secure, and must not disclose to any person:
- (a) the terms of the Contract; and
 - (b) all information each party receives from the other party or which relates to the Goods, a party's business, Intellectual Property Rights or any of Our other products, except and only to the extent that:
 - (c) disclosure is required by Law provided that the disclosing party provides the other party with prompt written notice of such legal requirement, affords the other party

with a reasonable opportunity, and cooperates with the other party's efforts to oppose or limit such disclosure, and if the other party is unsuccessful in its opposition, limit the disclosure to what is legally required as advised by the disclosing party's legal counsel;

- (d) the disclosure is to a party's employees, officers, agents or professional advisers who are bound by similar confidentiality obligations and who have a need to know to perform the obligations under the Contract;
 - (e) the information is already in the public domain except as a result of a breach of the Contract; or
 - (f) a party has obtained prior written consent from the other party, which will be at the other party's absolute discretion.
- 9.2. A party must not make any public announcements or disclosure in relation to the Goods, the Contract or the parties' relationship without the other party's prior written consent, such consent not to be unreasonably withheld.
- 9.3. Our Intellectual Property Rights remain Our property whether during or after the termination of the Contract. You agree that You will not use any of Our Intellectual Property Rights for any purpose other than to supply Goods to Us and will return and deliver all of Our Intellectual Property Rights following the termination of the Contract.
- 9.4. The obligations set out in this clause continue to apply after the fulfilment of any part of the Contract or termination or cancellation of the Contract.
- 9.5. A party may require that the other party execute a further confidentiality deed. The terms and conditions of such a confidentiality deed shall be considered as a condition of this Contract.
- ## 10. FORCE MAJEURE
- 10.1. If a party is affected, or likely to be affected, by a Force Majeure Event that party must immediately give the other party prompt written notice of that fact including:
- (a) full particulars of the Force Majeure Event;
 - (b) an estimate of its likely duration;
 - (c) the obligations affected by it and the extent of its effect on those obligations; and
 - (d) the steps taken to rectify it.
- 10.2. The obligations of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- 10.3. A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute in any way it does not want to.
- 10.4. A party is not liable for its inability to perform, or delay in performing, any of its obligations under the Contract if that inability or delay is caused by a Force Majeure Event subject always to that party having complied with the provisions of this clause 10.
- 10.5. If a Force Majeure Event continues for more than 30 days, then the party not affected by the Force Majeure Event may immediately terminate the Contract without penalty by written notice to the other and the provisions of clause 8.5 shall apply.

11. OUR LIABILITY

- 11.1. Our maximum liability to You as a result of a breach of the Contract by Us (other than a breach of clauses 6 (Warranties) or 9 (Confidentiality)) will be limited to the total price of Goods contracted under the Contract. This amount represents a genuine estimate of the maximum amount of damages You will suffer in the event of default by Us. We will not, in any circumstances, be liable to You, whether in contract or tort or any other basis, for any special incidental, consequential, indirect or exemplary damages, including loss of profits, loss of revenue and/or loss of use.

12. INDEMNITY

- 12.1. You assume all risk of loss and indemnify Us and hold Us (and Our officers, employees, agents, affiliates and Related Bodies Corporate harmless from and against any and/or all Liability and prosecution arising from, or related to:

- (a) any manufacturing defect in the Goods (other than a defect arising solely as a result of the storage after delivery and handling of the Goods by Us which is not in accordance with the directions given to Us by You);
- (b) any use of the Goods;
- (c) any breach of the Contract, including breach of a warranty by You or any of Your officers, employees, agents or subcontractors; and
- (d) any unlawful or negligent act or omission by You, Your officers, employees, agents or subcontractors,

except to the extent the Liability is caused by Our negligence, fraud or wilful misconduct.

13. GOVERNING LAW & DISPUTE RESOLUTION

- 13.1. This Contract is governed by the laws of the State of New South Wales and the Commonwealth of Australia without giving effect to international principles of the conflict of laws and the parties expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by the Contract. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Commonwealth of Australia.

14. ANTI-BRIBERY

- 14.1. You shall comply with and will not cause Us or Our Associates to be in violation of the *United States Foreign Corrupt Practices Act 1977*, the *United Kingdom Bribery Act 2010*, the *Australian Criminal Code Act 1995* (Cth) and any other applicable anti-bribery legislation.
- 14.2. Without limiting clause 14.1, You will not, directly or indirectly, pay any money to, or offer or give anything of value to, any Government Official in order to obtain or retain business or to secure any commercial or financial advantage for You, any of Your respective affiliates, Us or Our Associates.
- 14.3. You must:
- (a) make and keep books, records and accounts in reasonable detail which accurately and fairly reflect the transactions and disposition of assets of Your company; and
 - (b) devise and maintain a system of internal accounting controls.

- 14.4. If You breach clause 14.2, then We may immediately terminate this Contract by written notice to You.

15. NOTICES

- 15.1. A party will give any required notice under the Contract to the other party at the address, fax number or email address as last notified by the other party.
- 15.2. Notice will be effective once received, and will be deemed to be received if:
- (a) posted in Australia by regular post (on the sixth business day after posting);
 - (b) posted in Australia by priority post (on the fourth business day after posting);
 - (c) posted in Australia by express post (on the second business day after posting);
 - (d) posted from overseas (seven business days after posting);
 - (e) faxed (at the time shown on the transmission report that confirms that the complete message has been sent); or
 - (f) emailed (when successfully received at the recipient's email server).

16. MISCELLANEOUS

- 16.1. We may deduct or set off any amount payable to You by Us against any amount payable by You to Us including but limited to any amount due to Us from You for Goods rejected by Us or for any warranty claims made by Us.
- 16.2. You must promptly notify Us in writing if the following events occur, or are likely occur to You:
- (a) a change in the ownership or control of You;
 - (b) a change in the place of manufacture or distribution of the Goods;
 - (c) the sale or transfer of all or any part of Your business;
 - (d) the acquisition by any competitor of either Us, Mylan Inc or any of Our Associates of any interest of any kind in the ownership of You;
 - (e) an Insolvency Event concerning You or any Related Body Corporate; or
 - (f) any other matter or thing which may affect Your ability or capacity to supply the Goods to Us including but not limited to any changes in the regulatory status of the Goods or if any regulatory action is taken in respect of the Goods, and inform Us of any action planned to address any such matters or things.
- 16.3. You must maintain at Your sole expense, insurance with a reputable and solvent insurer(s) which adequately covers Your Liability to Us and to third parties arising out of or in connection with the Contract, including (but not limited to):
- (a) a comprehensive public and product liability policy to cover all sums which You may become legally liable to pay as compensation consequent upon:
 - (i) the death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) the loss of, or damage to, property.

- The limit of liability provided by this comprehensive public and product liability policy must not be less than \$10 million, unless otherwise agreed by the parties;
- (b) insurance in respect of all Claims and Liabilities arising, whether at common law or under statute, relating to workers compensation or employer's Liability, from any accident or injury to any person employed by You in connection with the performance of the Contract; and
- (c) an insurance policy which will cover the Goods until risk passes to Us in accordance with clause 4.2 for their full value against loss or damage, including loss or damage in transit and during unloading.
- 16.4. We may request to see and You will be required to produce within 48 hours, evidence that the insurance obligations under clause 16.3 have been complied with.
- 16.5. You shall provide Us with reasonable prior notice of, and the opportunity to attend (ourselves or through a representative of Us), any regulatory inspection of any facility at which any of the manufacturing, processing, testing or storage activities relating to the Goods are performed ("Covered Activities"); provided, that if prior notice of any such inspection is not possible, You shall provide notice and a summary of the results of such inspection to Us within three (3) business days after such inspection. You shall provide Us with copies of any written inspection reports, requests, directives or other correspondence or communications issued to You by any regulatory authority relating to the Covered Activities or the Goods ("Regulatory Communications") within three (3) business days of Your receipt thereof. Prior to responding to any Regulatory Communications, You will provide a copy of any such responses to Us for Our review and comment.
- 16.6. The rights of the parties under these terms and conditions are cumulative and additional to any other rights a party may have at law or in equity.
- 16.7. The Contract does not create a relationship of employment, trust, agency or partnership between the parties.
- 16.8. A party must not assign any of its rights or obligations under this Contract without the prior written consent of the other party, which must not be unreasonably withheld.
- 16.9. A party may not subcontract to any person the performance of any of its obligations under this Contract without the written approval of the other party, which must not be unreasonably withheld. You will remain fully responsible for the performance of this Contract and will not be relieved of that responsibility merely because of the subcontracting of the whole or any part of this Contract.
- 16.10. This Contract may be modified only in writing, signed by the parties' authorised signatories .
- 16.11. This Contract constitutes the entire agreement between the parties concerning the subject matter of this Contract and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.
- 16.12. This Contract may be executed in any number of counterparts. All counterparts will constitute one instrument,
- 16.13. Waiver of any provision of or right under this Contract
- (a) must be in writing signed by the party who is entitled to the benefit of that provision or right;
- (b) is effective only to the extent set out in any written waiver; and
- (c) will not act as a waiver of any other provision of or right under this Contract.
- 16.14. The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result. If, despite this, any provision of this Contract is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it must be severed so that the validity and enforceability of the remaining provisions are not affected.
- 17. DEFINITIONS**
- In these terms and conditions of purchase
- 17.1. **Act** means the *Corporations Act 2001* (Cth).
- 17.2. **Associates** mean any of Our subsidiaries, affiliates, associates, directors, officers, shareholders, employees, representatives or agents worldwide.
- 17.3. **Claim** means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with the Contract or its subject matter.
- 17.4. **Contract** means the Purchase Contract and these Terms and Conditions.
- 17.5. **Force Majeure Event** means any occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this document and that is beyond the reasonable control of that party including forces of nature, industrial action and action or inaction by a government agency.
- 17.6. **Goods** mean the products and services (if any) specified in the Purchase Contract.
- 17.7. **Government Official** shall designate any officer or employee of a government or any department, agency, or instrumentality thereof, or of a public international organisation, or any person acting in an official capacity for or on behalf of any **such** government or department, agency, or instrumentality, or for or on behalf of any such public international organisation.
- 17.8. **GST** means the goods and services tax under the GST Act.
- 17.9. **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time and includes other GST related legislation.
- 17.10. **Incoterms** means the standard accepted commonly used trade terms and conditions utilised in international trade as published by the International Chamber of Commerce and entitled Incoterms 2010.
- 17.11. **Insolvency Event** means in respect of a party death/liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, re-construction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of a party to pay its debts when they fall due, bankruptcy or the filing for bankruptcy or any event that is analogous to the aforementioned events under any Law.
- 17.12. **Intellectual Property Rights** means all past present and future rights in relation to patents, design rights, copyrights, trademarks and service marks know-how and rights of a like nature throughout the world (if any) (whether registered or not and applications for any of the foregoing).

- 17.13. **Law** means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law in the present or future whether State, Federal or otherwise and includes any requirements, standards, codes, guidelines or directions of a legal, government or regulatory authority including the Therapeutic Goods Administration – for example the PIC/S Guide to Good Manufacturing Practice for Medicinal Products.
- 17.14. **Liability** means any actual, quantifiable liability, whether present or future, including any costs, losses, damages, fees (including reasonable legal fees), fines, taxes and expenses and Liabilities has a corresponding meaning.
- 17.15. **Price** means the amount specified as the total price of the Goods in the relevant Purchase Contract.
- 17.16. **Purchase Contract** means the purchase order and/or contract issued by Us and accepted by You to which these Terms and Conditions attach, specifying the Goods to be supplied, the agreed Price for the Goods and other details relevant to the supply of the Goods, including any documents sent by Us to You specifying the requirements for quantity and specifications of the Goods and the timing of the delivery of the Goods. The Purchase Contract is subject to these Terms and Conditions.
- 17.17. **Related Body Corporate** has the same meaning ascribed to that term under the Act.
- 17.18. **Terms and Conditions** means these Terms and Conditions annexed to and applying to the Purchase Contract.
- 17.19. **Us, We, Our** means “Alphapharm Pty Limited ABN 93 002 359 739”.
- 17.20. **You, Your** means the seller / supplier of the Goods specified in the Purchase Contract.