

## **Terms and Conditions of Sale**

### **1. Definitions:**

In these conditions

- 1.1.1. "Buyer" means any person, firm, company or body to whom Masters supplies any Goods;
- 1.1.2. "Contract" means any contract between Masters and the Buyer for the sale of Goods by Masters to the Buyer.
- 1.1.3. "DPA" means the Data Protection Act 1998;
- 1.1.4. "Goods" means any goods which Masters agrees to sell to the Buyer (including any part or parts of them);
- 1.1.5. "Intellectual Property Rights" means all copyright, database rights, topography rights, design rights, trade marks, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with Goods which are Masters' own branded goods;
- 1.1.6. "International Supply Contract" means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977;
- 1.1.7. "Personal Data" has the meaning ascribed to it in section 1(1) of the DPA;
- 1.1.8. "Masters" means Masters Pharmaceuticals Limited (Company number 01856573) whose registered office is Unit 380, Centennial Avenue, Centennial Park, Elstree, WD6 3TJ.

### **2. Contract Formation:**

- 2.1. No order in pursuance of any quotation or otherwise will be binding on Masters unless and until it is accepted by Masters in a written acknowledgement of order or by despatch of the Goods. Orders for items not available at time of order will be held by Masters pending their availability and will be fulfilled when stocks are available unless prior written cancellation is given by the Buyer in accordance with these Conditions.
- 2.2. Any quotation given by Masters does not constitute an offer and may be withdrawn by Masters at any time. In any event, any tender or quotation by Masters is deemed withdrawn unless accepted in writing by the Buyer within 30 days from its date, unless stated otherwise in the relevant tender or quotation.
- 2.3. Masters does not accept any terms and conditions of contract supplied by the Buyer including but not limited to the Buyer's standard conditions of purchase. Acceptance of an order by Masters shall be deemed acceptance of these Conditions only.
- 2.4. Each Contract shall be subject to these Conditions to the exclusion of any conditions of the Buyer; any variation to these Conditions will only bind Masters if expressly agreed in writing by a director of Masters.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by Masters shall be subject to correction by Masters without any liability on the part of Masters.
- 2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7. All samples, drawings, descriptive matter, specifications and advertising issued by Masters and any descriptions or illustrations contained in Masters' catalogues, brochures or websites are issued or published for the sole purpose of giving any approximate idea of the Goods described in them. They shall not form a representation and shall not form part of the Contract and this is not a sale by sample.
- 2.8. These Conditions will apply to each Contract even where Masters has not given a written acknowledgement of the Buyer's order provided that the Buyer has had prior notice of these Conditions.
- 2.9. All Goods are sold by Masters subject to the following:-
  - 2.9.1. The Goods must be resold in their original packaging and any trade marks must not be deleted or obscured; and
  - 2.9.2. Acceptance of the Goods by a wholesaler will be deemed to be an agreement by the wholesaler to notify his retail customer that the conditions in clause 2.9.1 above are applicable to any resale of the Goods.

3. **Delivery:**

3.1. If the Buyer fails or refuses to take delivery of the Goods at the time and place stated for delivery, or the Buyer fails to give Masters adequate delivery instructions then, without prejudice to any other rights Masters may have, Masters may:

3.2. Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and abortive delivery costs and associated costs; and/or

3.2.1. sell the Goods at the best price reasonably obtainable and (after deducting all reasonable storage and selling and other expenses of Masters) account to the Buyer for the excess over the price under the Contract after deducting Masters' costs and expenses or charge the Buyer for any shortfall below the price under the Contract.

3.3. All delivery and performance dates quoted by Masters or included in the Contract are given in good faith but are estimates only. Masters reserves the right to change delivery dates and shall notify the Buyer as soon as reasonably practicable. Time for delivery and/or performance shall not be of the essence of the Contract and Masters shall have no liability for late delivery or performance. Masters shall also be entitled to defer delivery until all monies due from the Buyer (whether under the Contract or otherwise) have been received.

3.4. Masters may at its discretion deliver the Goods by instalments and invoice the Buyer for each instalment individually. Failure by Masters to deliver any one or more of the instalments or any claim by the Buyer in respect of one or more of the instalments shall not entitle the Buyer to refuse to accept delivery of any other instalment.

3.5. If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract which can be accessed at [www.iccwbo.org](http://www.iccwbo.org) but in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. Masters shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.

3.6. If Masters delivers a quantity of Goods up to ten per cent more or less than the quantity stated in the Contract the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall, and the Contract price shall be adjusted on a pro rata basis to take account of such surplus or shortfall.

3.7. Unless specified otherwise by Masters or unless the Contract is an International Supply Contract, in which case the latest edition of Incoterms current at the date of the Contract shall apply, delivery shall take place immediately prior to the offloading of the Goods at the Buyer's premises or at such other premises as the Buyer and Masters may agree.

4. **Prices and Payment:**

4.1. Subject to clause 3.2 the Contract price of the Goods shall be the price set out in Masters' acknowledgement of order, , or the price otherwise specified by Masters in writing. Unless specified otherwise by Masters in writing payment shall be made by the Buyer in the currency specified in any acknowledgement of order or quotation or invoice issued by Masters.

4.2. Unless agreed otherwise in writing Masters shall be entitled to increase its prices at any time prior to despatch to take account of any increase in the cost to Masters of purchasing or supplying the Goods (including but not limited to any increase arising from any changes to the Buyer's order requested by the Buyer or any change in carriage charges, insurance premiums, exchange rates, taxes or customs duties) and such increased prices ruling at the date of despatch by Masters shall be substituted for the previous Contract price.

4.3. Unless specified otherwise in writing by Masters all prices quoted are exclusive of VAT, which the Buyer unless it is situated outside UK and/or the European Union shall be obliged to pay in addition to the quoted price.

4.4. Masters shall be entitled to deliver any order in instalments and payment for each instalment shall be a condition of delivery of subsequent instalments.

4.5. The Buyer shall pay for all Goods in full no later than the time specified by Masters in its acknowledgement of order notwithstanding that title to the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the Contract.

4.6. Without prejudice to Masters' other rights and remedies, if the Buyer is overdue with any payment owed to Masters, Masters reserves the right to charge the Buyer interest on any overdue amount at the rate of 4% per annum over the base rate from time to time at HSBC Bank plc, or at the rate specified under or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) such interest to accrue on a daily basis until the date payment is received by Masters in full, after as well as before any judgment.

4.7. Payment shall be made by the Buyer without deduction or set off of any kind.

4.8. Without prejudice to the other rights of Masters the Buyer shall pay all costs and expenses (including but not limited to legal expenses and other debt collection expenses) incurred by Masters in recovering and attempting to recover all or any amounts due to Masters from the Buyer.

4.9. Persons wishing to open new credit accounts must submit bank and trade references as required by Masters from time to time.

5. **Risk:**

5.1. Except where the Contract is an International Supply Contract, in which case the latest edition of Incoterms, Incoterms 2010, shall apply, risk in the Goods will pass to the Buyer on the earlier of:-

5.1.1. delivery;

5.1.2. when the Goods are ready for delivery but delivery is postponed at the Buyer's request; or

5.1.3. the date on which the Buyer fails to take delivery in accordance with the Contract.

5.2. Until the Contract price of the Goods comprised in the Contract or any other contract between the Buyer and Masters, and all other sums whatsoever which are or may become outstanding from the Buyer to Masters, shall have been paid or satisfied in full as cleared funds:-

5.2.1. The property in the Goods remains vested in Masters (notwithstanding the delivery of the same and the passing of risk therein) and the Buyer shall hold the Goods as the fiduciary agent and bailee of Masters;

5.2.2. the Buyer shall insure the Goods and, in the event of any loss or damage, shall immediately on receipt of the insurance monies remit to Masters the full Contract price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee for Masters;

5.2.3. the Buyer shall store the Goods in such a way (i) that is appropriate for such Goods, in accordance with any packaging instructions, legislation relating to such Goods and any other instructions of Masters (and Masters may request proof of storage on these terms); and (ii) that they can be readily identified as being Masters' property;

5.2.4. the Buyer shall on request notify Masters of the precise location of each item of the Goods, identified where applicable by its invoice number, by supplying Masters at its expense within seven days of its request with a schedule of the said location;

5.2.5. the Buyer may sell the Goods in the ordinary course of business in the name of the Buyer as principal and not as agent for Masters; the Buyer acts as Masters' bailee in respect of such sales and shall immediately upon such sale, and whether or not payment has become due under clause 3, remit to Masters the full purchase price of the Goods sold less any part of it which has already been paid and, until such amount has been so remitted, shall hold such amount as trustee for Masters;

5.2.6. Masters may at any time revoke the Buyer's power of sale;

5.2.7. The Buyer's power of sale shall in any event automatically cease in any of the circumstances set out in clause 8.3;

5.2.8. The Buyer shall notify Masters without delay of any attachment of the Goods or actions by third parties which might infringe Masters' title to the Goods;

5.2.9. upon determination of the Buyer's power of sale Masters shall be entitled by itself, its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and Masters shall be entitled to claim from the Buyer the costs and expenses incurred by Masters in and ancillary to the process of removal and repossession; and

5.2.10. the Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Masters, but if the Buyer does so, all moneys owing by the Buyer to Masters shall (without prejudice to any other right Masters may have) immediately become due and payable.

5.3. Nothing in these Conditions shall:

5.3.1. Constitute or be deemed to have constituted the Buyer as Masters' agent, or

5.3.2. Prevent Masters from maintaining an action for the price, notwithstanding that the property in the Goods may not have passed to the Buyer.

6. **Damage or Loss in Transit:**

6.1. Masters will have no liability for damage in transit, shortage of delivery, non-delivery or loss of Goods unless the Buyer shall have given to Masters written notice of such damage, shortage or loss with reasonable particulars thereof within 72 hours of receipt of the Goods or (in the case of total loss or non-delivery) of receipt of the invoice or other notification of despatch. Masters' liability, if any, shall be limited to resupplying such Goods and it shall be a condition precedent to any such liability that the Buyer shall if so requested return the damaged Goods at its own expense to Masters within 14 days of such request.

6.2. Without prejudice to any other provision of these Conditions (in particular, but without limitation, clause 3) if Masters has submitted an invoice for Goods and the Buyer claims that the Goods have not been delivered it may request proof of delivery and at the sole discretion of Masters may be entitled to such proof as Masters has, but at the Buyer's own expense. A request for proof of delivery must be made in writing by the Buyer to Masters within 7 days of receipt of the relevant invoice.

7. **Limitation of Liability:**

7.1. Masters' liability for defective Goods is limited to resupplying or (in its discretion) repairing Goods or providing a credit to the Buyer of the Contract price for Goods which in each case are found within three months of delivery to be defective because of faulty or incorrect design, workmanship, parts or materials.

7.2. If there is any error in any weight, dimension, colour or other description which has formed a representation or is part of the Contract Masters' liability in respect of any loss, costs, expenses, liability or damage which the Buyer suffers as a result shall not exceed the price of the Goods in respect of which the description is incorrect.

7.3. Masters shall have no other or further liability in respect of any direct or indirect or consequential loss, costs, damage or expense sustained by the Buyer arising from or in connection with any defect, failure or error in the Goods save as expressly set out in this clause 7.

7.4. Subject to clause 7.9, in the event of any negligence by Masters its employees or agents in or in connection with the supply of the Goods or the design or manufacture thereof, Masters shall have no liability to the Buyer save as expressly set out in this clause 7.

7.5. Masters shall have no liability to the Buyer under these Conditions or under any Contract or otherwise:

7.5.1. where the Buyer has not within 7 days of discovering the same and within the time period specified in clause 7.1 given to Masters notice of any defect in the Goods and provided authority for Masters' employees or agents to inspect the Goods or (at Masters' request) returned the relevant Goods to Masters at Masters' request and at the Buyer's expense for the purposes of inspection; or

7.5.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal use, failure to follow the manufacturer's instructions, or the instructions set out in the instruction manual, or any other instructions (including any relevant legislation or regulations) misuse or alteration or unauthorised repair or use of the Goods; or

7.5.3. Where the allegedly defective Goods have not been returned to Masters in their original packaging together with all related accessories and components.

7.6. Masters shall in no circumstances be liable for any loss of profits, loss of contracts, loss of business or loss of reputation of the Buyer even if Masters has been advised of the possibility of the same.

7.7. Masters shall in no circumstances be liable for any indirect or consequential losses, costs or expenses of the Buyer.

7.8. All Goods are supplied with the benefit of the terms implied by section 12 of The Sale of Goods Act 1979. Subject to this, and to the fullest extent permitted by law all warranties, conditions and other terms implied by statute or common law are excluded from the Contract.

7.9. Nothing in these Conditions limits or excludes, or is intended to limit or exclude Masters' liability for death or personal injury caused by its negligence, nor for fraudulent misrepresentation.

7.10. Masters shall not be liable for any delay or failure to perform its obligations under any Contract to the extent that such performance is delayed, prevented or hindered by acts of God, failure of suppliers, breakdown of machinery, war, riot, sabotage, explosions, strikes, lockouts, shortages of labour, materials or fuel, fire, storm, flood or any circumstances which are outside the reasonable control of Masters ("Force Majeure Events"). If delivery is delayed for more than 3 months from receipt of the order by Masters as a result of a "Force Majeure Event", then either Masters or the Buyer may cancel the Contract and Masters will refund to the Buyer any payment made by the Buyer for such order but Masters shall have no liability in respect of such cancellation.

7.11. Subject to and without prejudice to the other provisions of this clause 7 and the provisions of clause 10, if Masters has any liability to the Buyer under or arising out of a Contract (whether in contract, tort (including but not limited to negligence) or otherwise) such liability shall not in aggregate exceed the Contract price.

7.12. Nothing in these Conditions shall affect the statutory rights of a person dealing as a consumer as defined in section 12 of the Unfair Contract Terms Act 1977.

8. **Cancellation or Termination:**

8.1. No cancellation, suspension or variation of the Contract by the Buyer shall be valid unless agreed by Masters in writing and such agreement will only be given on terms which fully compensate Masters in respect of any losses, costs, liabilities and expenses arising as a result of such cancellation.

8.2. If there shall be a Default as defined in clause 8.3 below Masters may, within a reasonable time after the Default defer or cancel any further deliveries, stop any Goods in transit and/or treat the Contract (and any other order or contact Masters may have with the Buyer) as determined but without prejudice to its rights to the full purchase price for Goods delivered and damages for any loss, cost, expense, liability or claim suffered by Masters in consequence of such determination.

8.3. A Default shall be any of the following:

8.3.1. Failure by the Buyer to make any payment when it becomes due;

8.3.2. Breach of contract by the Buyer;

8.3.3. The Buyer exceeds the credit limit set by Masters;

8.3.4. if the Buyer becomes bankrupt or insolvent or has a petition presented in respect of a winding up order in respect of it or has an order made for the appointment of an administrator to manage the affairs, business and property of it or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or any of its directors or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) levied upon its assets or under the national law of its own country suffers the equivalent of any of them, or takes any step with a view to entering into a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986); or

8.3.5. if the Buyer ceases or threatens to cease to trade, or if Masters shall reasonably doubt the solvency of the Buyer.

9. **Data Protection:**

9.1. Where the Buyer provides Masters with Personal Data, the Buyer understands that the Personal Data will be processed for the purposes of carrying out the processing, delivery and supply of any orders for Goods and/or Services and/or for carrying out credit checks prior to opening credit accounts. The Buyer agrees and accepts that where Masters processes Personal Data for such purposes, Masters may consult with and disclose such Personal Data to credit reference agencies, banks, credit insurers and other responsible organisations outside Masters' business and that such third parties may process the Personal Data and may retain it with any credit check carried out against the Buyer in order to carry out future credit checks whether

requested by Masters or by an unconnected third party. The Buyer warrants that it has obtained all necessary consents for the processing of such Personal Data in accordance with this clause.

**10. Intellectual Property Rights:**

10.1. The Buyer acknowledges that:

10.1.1. The Intellectual Property Rights are Masters' (or its licensor's) property and shall remain vested in Masters (or its licensor);

10.1.2. Nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights.

10.2. The Buyer shall not remove or tamper with any copyright notices, confidential or proprietary legends or identification on the Goods.

10.3. The Buyer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which Masters or any associated company of Masters owns or claims rights in anywhere in the world.

10.4. The Buyer shall promptly and fully notify Masters of:

10.4.1. Any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Buyer's notice; and

10.4.2. Any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods infringes the rights of any person.

10.5 The Buyer agrees (at Masters' request) to do all such things as may be reasonably required to assist Masters in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 10.4 and in the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of the third party's intellectual property rights, Masters shall be given sole control of the defence of the claim, proceeding or suit, and Masters shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except Masters or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by Masters, or where the claim, proceeding or suit arises from Masters' adherence to the Buyer's requested changes to any specification for the Goods or from infringing items of the Buyer's origin, design or selection.

**11. Returns Policy:**

11.1. The Buyer shall not be entitled to return for credit any Goods unless Masters agrees in writing to such return and in any event in respect of International Supply Contracts, the Buyer may not return alleged defective Goods but shall submit a sample of the Goods to Masters for investigation. Any request for the return of Goods for any reason must be accompanied by the invoice number and the date on which the Goods were delivered together with the reason for the request. Save where Masters agrees that the returned Goods are defective due to faulty or incorrect design, workmanship or materials, Masters reserves the right to make a charge to cover the costs of administration and a handling charge up to 10% of the original invoice price of such Goods will be payable by the Buyer to Masters. Where any Goods are returned requiring reboxing or rework Masters reserves the right to make a charge for the costs for carrying out such work. Any Goods which Masters may agree in writing may be returned by the Buyer must be returned at the Buyer's expense. The Buyer agrees to comply with Masters' Returns Procedure (a copy of which is available upon request) when returning Goods to Masters.

11.2. For International Supply Contracts, the Buyer shall if requested to do so by Masters, destroy promptly any Goods found to be defective after investigation by Masters and shall provide Masters with written proof of such destruction on demand. Such a Buyer shall only be entitled to replacement Goods or a credit but not repair of such Goods.

12. **Authorisations:**

12.1 The Buyer hereby warrants that it is properly registered or authorised and holds all relevant and necessary licences under the laws of its place of business to receive the Goods and Masters shall have no liability for any failure by the Buyer to be so registered or authorised.

12.2 The Buyer hereby warrants:

12.2.1 that it has provided to Masters all necessary information and instructions regarding packaging requirements for the Goods in order to comply with all relevant legislation in its place of business or for the territory in which it may resell the Goods;

12.2.2 that it has and will comply with all relevant legislation regarding its reception and storage of the Goods

12.2.3 that it has notified Masters reasonably in advance and in writing of any specific legislation or requirements for the Goods relating to their packaging or so that it can comply with all relevant and necessary legislation.

12.2.4 The Buyer is responsible for checking the patent situation in the country of destination and in the country of sale for all products purchased. Masters shall have no liability for any patent infringement.

13. **General:**

13.1. Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time be notified pursuant to this provision to the party giving the notice.

13.2. Failure by Masters to enforce strict compliance with these Conditions by the Buyer shall not constitute a waiver of any provisions of these Conditions. No waiver by Masters of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

13.4. Masters shall be entitled to sub-contract, assign or transfer all or any of its rights and/or obligations under the Contract to any person, firm or company. The Buyer shall not be entitled to assign all or any of its rights and/or obligations under the Contract without the prior written consent of Masters.

13.5. No person who is not a party to a Contract shall be entitled to take the benefit of it by virtue of the Contracts (Rights of Third Parties) Act 1999 unless he is a permitted assignee of Masters.

13.6. All Contracts shall be governed by and interpreted in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.