

# PHARMACY SUPPLIES CONDITIONS OF SALE

## 1. Definitions

- 1.1 In these conditions the following expressions shall have the following meanings:
- (a) "Buyer" means the person, firm, company or other legal entity (including without limitation any hospital, prison or government agency) placing an order with the Seller;
  - (b) "Contract" means the contract between the Seller and the Buyer for the sale and purchase of Goods which shall be subject to these Conditions;
  - (c) "Conditions" means these terms and conditions;
  - (d) "Goods" means all those goods and materials which are to be supplied to the Buyer by the Seller under the Contract;
  - (e) "Seller" means Pharmacy Supplies Limited.
- 1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.
- 1.3 The headings in these conditions are intended for reference only and shall not affect their construction.

## 2. Formation of Contract

- 2.1 All Goods sold by the Seller are sold subject to these Conditions, which shall be the sole terms and conditions of any sale by the Seller to the Buyer. These Conditions will prevail over any terms and conditions on the Buyer's order form, form of contract or any other communication sent by the Buyer to the Seller and the placing of an order for, or the acceptance of, the Goods by the Buyer shall indicate unqualified acceptance of these Conditions.
- 2.2 No employee, representative, agent or sales person has the Seller's authority to vary, amend or waive any of these Conditions on behalf of the Seller and no amendment or additions to any of these Conditions shall be deemed to have been accepted unless accepted in writing by a director of the Seller or set out as a special condition in the order confirmation.

## 3. Description of Goods

- 3.1 All specifications, descriptions, drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods and any advertising material and sample books are (unless clearly stated otherwise) only intended to serve as a guide and not to be relied on by the Buyer or treated as binding or as forming part of the Contract.

## 4. Orders and Delivery

- 4.1 In accordance with its obligations under the Data Protection Act 1998 the Seller hereby notifies the Buyer that telephone calls received by the Seller's order processing and customer support departments may be recorded or monitored for quality control and improvement purposes.
- 4.2 All times, dates or periods given for the delivery of the Goods are estimates only and shall not be of the essence of the Contract. The Seller shall use reasonable endeavours to supply by agreed delivery dates but shall not otherwise incur any liability whatsoever for any loss or damage resulting from delay howsoever caused. All goods are sold subject to reasonable availability and the Seller reserves the right to substitute materials of equivalent or superior specification without notice.
- 4.3 Unless otherwise stated in the Contract, the price of the Goods shall include the cost of delivery where orders are greater than £150 in Northern Ireland, £250 in Mainland UK or €250 in the Republic of Ireland. Below this level delivery charges are £2.50 in Northern Ireland, £5 in Mainland UK and €5 in the Republic of Ireland. In the case of 'special deliveries' (i.e. deliveries that are not normal scheduled deliveries) a separate charge will be specified in the Contract.
- 4.4 Where the Buyer fails to return undamaged to the Seller any returnable pallets or containers, in which the Goods were delivered, within 10 working days after the delivery date, the Seller shall be entitled to charge an additional amount in respect of such pallets or containers.

- 4.5 The Goods shall be delivered to the address stated in the Contract and the signature of an employee or agent of the Buyer at such address on the Seller's delivery note shall be conclusive proof of the delivery of the Goods.
- 4.6 If the Buyer fails to take delivery of the Goods on the date of delivery the Seller will be entitled, at its sole discretion and without prejudice to its other rights, either:
- (a) to store the Goods at the risk of the Buyer and the Buyer shall pay all costs and expenses of such storage (including any insurance) and any additional costs of carriage incurred; or
  - (b) to terminate the Contract with immediate effect and dispose of the Goods as the Seller may determine.
- 4.7 The Seller reserves the right to deliver in instalments at its discretion. Where delivery is by instalment, each instalment shall be treated as a separate contract and the failure by the Seller to deliver any one or more instalments in accordance with these Conditions, or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.8 The Buyer shall accept the supply of such quantity of the Goods (whether more or less) as reasonably approximates to the amount stipulated in the Buyer's order.
- 4.9 The Buyer shall indemnify and hold the Seller harmless from and against any costs or losses incurred by the Seller as a result of the Buyer's failure to take delivery of the Goods on the delivery date (in which case such indemnity shall include any additional storage charges) or cancellation of any order.

## **5. Price and Payment**

- 5.1 The price payable for the Goods shall be as stated in the Seller's Product Price List current at the date the order is accepted by the Seller.
- 5.2 The Seller shall be entitled to increase the price for the Goods at any time prior to delivery to take account of increases in costs including (but not limited to) labour, overheads and transport.
- 5.3 The price is inclusive of the cost of delivery as specified in Condition 4.3 but exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods all of which shall be added to the price for the Buyer's account unless otherwise stipulated in writing by the Seller. Republic of Ireland customers will be charged at Zero rate for VAT.
- 5.4 Unless otherwise agreed in writing, the Buyer shall make payment for the Goods in full not later than the end of the month after the month in which the statement for the Goods is dated. The Seller shall be entitled to invoice each instalment as and when delivery has been made. Time of payment shall be of the essence of the Contract.
- 5.5 Payment should not be made to any of the Seller's employees. Unless otherwise stated in the Contract payment should be made to:  
PHARMACY SUPPLIES LIMITED  
5-7 TOBERMORE ROAD  
DRAPERSTOWN  
BT45 7AG  
and where, after acceptance of an order, the Seller has grounds for believing that Buyer may not be able to fulfil its payment obligations, the Seller shall be entitled to require from the Buyer suitable security for such payment obligations prior to delivery of the Goods.
- 5.6 Discount is allowed subject to payment being received in time for banking on or before the last working day of the month following statement (weekends and Bank Holidays excepted). Any variation to these terms Conditions must be by prior arrangement. If payment of an account is not received by the due date, unless this is by prior agreement, discount allowed will be reduced by a late payment adjustment according to the Seller's formula for such adjustments current at the date payment became due.
- 5.7 In the event of overdue payment the Seller may charge interest at the higher of a rate of four per cent above the base lending rate from time to time of Lloyds TSB Bank plc or such rate as is set down in any relevant statute. Such interest will accrue, compounded on a daily basis, from the date upon which payment was due until payment in full and shall continue both before and after judgment.
- 5.8 The Buyer shall not purport to set off or withhold any payment claimed or due from the Seller under any Contract.

- 5.9 The provisions of this Condition 5 shall be subject to any specific terms entitled 'Standard Trading Terms and Conditions' from time to time governing the sale by the Seller of specific Goods at specific times and notified to the Buyer. Any Goods supplied by the Seller expressly subject to such Standard Trading Terms and Conditions shall be subject to the Standard Trading Terms and Conditions in force at the date that the order is accepted by the Seller.

## **6. Risk and Ownership**

- 6.1 Except as otherwise provided in these Conditions, the risk of damage to or loss of the Goods shall pass to the Buyer upon delivery of the Goods in accordance with clause 4.5 (but see below in respect of agency Goods).
- 6.2 The Seller shall retain title to and ownership of the Goods and the Buyer will hold them as Seller's bailee and fiduciary agent until the Seller has received payment in full of all sums due under the Contract. If payments received from the Buyer are not stated to refer to a particular invoice the Seller may appropriate such payments to any outstanding invoice at the Seller's discretion.
- 6.3 Until payment of the purchase price the Buyer shall be the bailee of the Goods and except where otherwise permitted by the Seller in writing the Goods shall be stored separately from any goods which belong to the Buyer or any third party, and shall be clearly marked and identifiable as being the Seller's property.
- 6.4 If the Buyer fails to make any payment to the Seller when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order made against it or being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur:
- (a) the Buyer grants the Seller the right to enter without prior notice any premises where Goods owned by it may be, and to repossess and dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under this or any other contract; and
  - (b) the Buyer's right to sell or otherwise dispose of the Goods shall terminate immediately; and
  - (c) the Seller shall have the right to withhold delivery of any undelivered Goods and stop any Goods in transit; and
  - (d) any and all sums unpaid in respect of the Goods supplied under the Contract shall become immediately due and payable. Unless the Seller expressly elects otherwise, any contract between the Seller and the Buyer for the supply of Goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this clause 6.
- 6.5 The Goods shall, once the risk has passed to the Buyer in accordance with this clause 6 or otherwise, be and remain at the Buyer's risk at all times unless and until the Seller has retaken possession of them and the Buyer shall comprehensively insure the Goods against loss or damage by accident, fire, theft or other risks usually covered by insurance in the type of business carried out by the Buyer.
- 6.6 The Risk and Ownership of Goods supplied by the Seller to the Buyer under agency arrangements will be as detailed in the terms and conditions agreed between the appropriate Manufacturer and the Buyer.

## **7. Sales by the Buyer**

- 7.1 The Buyer shall not sell or supply any of the Goods to customers in any country outside of the European Economic Area or to any third party in the knowledge that the Goods will be sold on to customers outside of the European Economic Area.
- 7.2 Goods are sold on the condition that if such Goods may only be supplied to the public by persons who are authorised then they are supplied to the public only by such authorised persons.

## **8. Recall of Goods**

- 8.1 In the event that the Seller should deem a recall of any Goods to be appropriate, the Buyer shall, upon notification from the Seller (which may be made verbally and subsequently confirmed in writing), render all reasonable assistance as may be requested by the Seller and, in particular, shall:

- (a) return to the Seller all of the Goods covered by the recall (the "Affected Goods"), and
  - (b) advise the Seller (as far as practicable) in writing of the buyers of all Affected Goods already sold by the Buyer.
- 8.2 The Seller shall be responsible for the reasonable cost of collection of Affected Goods from the Buyer and shall make the necessary arrangements for the collection of the Affected Goods.
- 8.3 In the event that the Seller is unable to return to replace the Affected Goods within a reasonable period after such recall, the Seller shall supply to the Buyer a credit note to the value of all Affected Goods so retained by the Seller.

## 9. Limitation of Liability

- 9.1 The following provisions of this Condition 9 set out the Seller's entire liability (including liability for the acts and omissions of its employees, agents and sub-contractors) in respect of:
- (a) any breach of the Contract; and
  - (b) any representation (other than fraudulent misrepresentation) statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 The following provisions are designed to take account of the fact that the Seller is not the manufacturer of the Goods but is simply a reseller. It shall be the responsibility of the Buyer promptly to check the Goods for quantity and patent defects following delivery by the Seller. The Seller shall only be liable for loss of or damage to the Goods whilst in transit or for any claim that the Goods are defective or do not otherwise comply with the Contract where **written notice** is given to the Seller by the Buyer:
- (a) in the case of loss, damage defect or non-compliance with the Contract within three working days of the date of delivery; or**
  - (b) in the case of Goods not delivered, within three working days of the date upon which the Buyer is notified that the Goods have been consigned for delivery.**
- 9.3 If the Buyer shall fail to give notice in accordance with condition 9.2 above the items delivered shall be deemed to be in all respects in accordance with the Contract and without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall thereafter be wholly barred.
- 9.4 In the event that the Buyer has a valid claim for any defect, loss, damage or non-compliance with the Contract the Seller's only obligations in respect of such defect, loss, damage or non-compliance shall be to:
- (a) make good any shortage or non-delivery; and/or
  - (b) at its option replace the items concerned or refund the cost of such Goods to the Buyer and any transport costs incurred by the Buyer in connection with the delivery of the Goods in question and/or their return to the Seller.
- 9.5 Subject to condition 9.7 the Seller shall not be liable for any costs, claims, damages or expenses, whether arising out of any tortious act or omission, any breach of contract or statutory duty, of an indirect or consequential nature or that are calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
- 9.6 Subject to condition 9.7 the aggregate liability of the Seller to the Buyer for any loss or damage (whether asserted by the Buyer or third parties) of whatever nature and caused as set out in Condition 9.1 shall be limited to and in no circumstances shall exceed the total invoice price of the Goods in respect of which the claim relates and the transport costs identified in condition 9.4(b), less any discount given and excluding VAT.
- 9.7 Nothing in these Conditions shall operate so as to exclude or in any way limit either party's liability for fraud, or for death or personal injury caused by its negligence, or any other liability that may not be excluded for limited as a matter of Northern Ireland law.

- 9.8 Nothing herein shall impose any liability upon the Seller in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Seller as to storage and handling of the Goods.
- 9.9 The Seller makes no representation or warranty that use of the Goods does not infringe the rights of any third party and the Seller accepts no liability in this respect.
- 9.10 Except as provided for in these Conditions, any conditions and/or warranties, (whether express or implied by statute or common law or howsoever) including but without limitation those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to the Seller) are hereby excluded.

## **10. Force Majeure**

- 10.1 The Seller shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of materials from normal sources of supply.

## **11. Waiver**

- 11.1 The waiver by the Seller of any right, or the failure by the Seller to exercise any right or to insist on the strict performance of any provision of the Contract, shall not operate as a waiver of, or preclude any further exercise or enforcement of (as the case may be) or other exercise or enforcement by the Seller of that or any other right or provision.

## **12. Severability**

- 12.1 Each provision of the Contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Contract but (except to that extent in the case of that provision) it and all other provisions of the Contract shall continue in full force and effect and their validity, legality and enforceability shall not be thereby be affected or impaired.

## **13. Contracts (Rights of Third Parties) Act 1999**

- 13.1 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **14. Assignment and Sub-contracting**

- 14.1 The Buyer shall not without the Seller's prior written consent assign, novate, transfer or sub-contract the Contract or any of its rights or obligations under it to any other person, firm, company or third party. The Seller may assign, novate, transfer or sub-contract the Contract or any of its rights or obligations under it to any other person, firm, company or third party.

## **15. Governing Law**

- 15.1 The Contract shall in all respects be governed by and construed in accordance with Northern Ireland law and the parties submit to the non-exclusive jurisdiction of the Northern Ireland courts.