

## STANDARD EUROPEAN ECONOMIC AREA TERMS & CONDITIONS OF SALE

### 1. Definitions and interpretation

- 1.1 In these terms and conditions:
- 1.1.1 **Alliance** means Alliance Pharmaceuticals Limited, a company incorporated in England and Wales (company number 03250064) whose registered office is Avonbridge House, Bath Road, Chippenham, Wiltshire SN15 2BB.
  - 1.1.2 **Business Days** means a day (other than a Saturday or Sunday or public holiday in England) when banks in London are open for business.
  - 1.1.3 **Buyer** means any person, firm, company or body to whom Alliance supplies Goods.
  - 1.1.4 **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.
  - 1.1.5 **Products** means any product(s) which Alliance agrees to sell to the Buyer (including any part of parts of them).
  - 1.1.6 **Terms** means these terms and conditions (as may be amended from time by Alliance).
- 1.2 Words importing one gender include all genders, words importing the singular include the plural and words importing persons include corporations and vice versa.
- 1.3 The headings in these Terms are for locating references in the text and are not to be taken into account in interpretation.
- 1.4 Any reference to a statute (generally or specifically) includes any statutory extension, modification, amendment or re-enactment of that statute and any regulations or orders made under it.

### 2. General

- 2.1 Unless otherwise agreed in writing with Alliance, these Terms shall apply to the sale of all Products by Alliance, including but not limited to any purchase order, confirmation of order, specification or other document entered into by the parties (**Purchase Order**), and shall specifically override any conflicting terms which may be referred to, express or implied by the Buyer as a condition of acceptance by Alliance of the Buyer's order.
- 2.2 It is the Buyer's responsibility to ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.3 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 Products and Alliance shall have no liability for any failure by the Buyer to be so registered or authorised.
- 2.4 All orders are accepted and Alliance's Products are supplied only on condition that the Buyer shall not sell or supply any of the Products to any customer unless such customer is authorised by the relevant local authority and/or laws applicable to that customer's territory/region for the purchase of the Products.
- 2.5 Any variations to these Terms shall have no effect unless expressly agreed in writing and signed by a director of Alliance.

### 3. Title/risk

- 3.1 The Products shall be at the risk of the Buyer and insured by the Buyer from the moment of dispatch from Alliance's distribution warehouse(s) notwithstanding any carriage insurance arranged by Alliance.
- 3.2 Ownership of the Products shall not pass to the Buyer until Alliance has received in full (in cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to Alliance from the Buyer on any account.
- 3.3 Until such time as ownership in the Products passes to the Buyer in accordance with clause 3.2, the Buyer will, at no expense to Alliance:
  - 3.3.1 hold the Products as Alliance's fiduciary agent and bailee;
  - 3.3.2 keep the Products separate from those of the Buyer and third parties in such a way that they remain readily identifiable as Alliance's property;
  - 3.3.3 maintain the Products in satisfactory condition and ensure that any identifying mark or packaging on or relating to the Products is not destroyed, defaced or obscured; and
  - 3.3.4 keep the Products insured on Alliance's behalf for their full price against all risks (and promptly upon request will produce the policy of insurance to Alliance).
- 3.4 Alliance may recover Products in respect of which title has not passed to Buyer at any time. Buy hereby irrevocably licences Alliance, its officers, employees and agents to enter upon any premises of the Buyer for the purpose of either satisfying itself that clause 3.3 is being adhered to by Buyer or of recovering any Products in respect of which title has not passed to Alliance.
- 3.5 Until title to the Products has passed to Buyer pursuant to the terms of clause 3.2 Buyer shall possess the Products as fiduciary agent and bailee of Alliance. During such time as Buyer possesses the Products, as permitted by this Agreement, Buyer may in the normal course of its business sell the Products as principal (with title to those Products passing from Alliance to Buyer immediately before the time at which resale occurs) but without committing Alliance to any liability (other than as set out herein or which cannot be excluded by law) to the person dealing with the Buyer.
- 3.6 The Buyer's right to possession of the Products shall terminate immediately if:
  - 3.6.1 the Buyer has a receiver or administrative receiver appointed, passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order enters into any voluntary arrangements with its creditors or ceases or threatens to cease to carry on a business;
  - 3.6.2 the Buyer is unable to pay its debts in Alliance's reasonable opinion; or
  - 3.6.3 the Buyer fails to observe or perform any of his/its obligations under these Terms or any other contract between Alliance and the Buyer.
- 3.7 If any sums owing to Alliance by the Buyer are overdue, the Buyer grants Alliance, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored to recover and dispose all Products in which ownership has not passed to the Buyer under this clause 3.

#### **4. Price**

- 4.1 The price of the Products shall be the prices agreed by Alliance and the Buyer as set out in any Purchase Order or the price otherwise specified by Alliance in writing.
- 4.2 Unless specified otherwise by Alliance in writing, payment shall be made by the Buyer in the currency specified in any acknowledgement of order or quotation or invoice issued by Alliance.
- 4.3 All prices are subject to alteration without notice. However, advance notice of price changes will be given if circumstances allow in Alliance's judgement.
- 4.4 All prices are quoted exclusive of VAT or any other applicable tax levied on purchase of the Products.

#### **5. Payment**

- 5.1 Invoices are due for payment on the date of invoice unless otherwise agreed in writing with Alliance. The time for payment of the prices shall be of the essence.
- 5.2 All invoices are subject to Value Added Tax, where applicable.
- 5.3 No payment shall be deemed to have been received until Alliance has received cleared funds.
- 5.4 Payment shall be made by the Buyer without deduction or set off of any kind.
- 5.5 Any prompt settlement discount agreed by Alliance from time to time shall only be available if this clause 5 is adhered to.
- 5.6 If the Buyer fails to make payment on the due date then Alliance shall be entitled to:
  - 5.6.1 cancel the contract or suspend any further deliveries to the Buyer;
  - 5.6.2 appropriate any payment made by the Buyer to such of the Products as Alliance may think fit; and
  - 5.6.3 without prejudice to Alliance's other rights and remedies, charge the Buyer interest on any overdue amount at the rate of 5% per annum over the base rate from time to time at the Bank of England, 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 Alliance in full, after as well as before any judgment.
- 5.7 Alliance reserves the right to recover all costs and expenses (including but not limited to legal expenses and other debt collection expenses) incurred in recovering sums due and overdue under these Terms.
- 5.8 Payments by cheque should be sent directly to Alliance Pharmaceuticals Limited, Avonbridge House, Bath Road, Chippenham, Wiltshire SN15 2BB.

#### **6. Deliveries**

- 6.1 Unless otherwise agreed in writing by Alliance delivery of the Products shall take place at the Buyer's place of business.
- 6.2 Any dates specified by Alliance for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time and Alliance will not accept liability for any suspension or delay nor for the consequences thereof.

- 6.3 If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or Alliance is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 6.3.1 risk in the Products shall pass to the Buyer (including for loss or damage caused by Alliance's or its agent's negligence);
  - 6.3.2 the Products shall be deemed to have been delivered; and
  - 6.3.3 Alliance may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.4 A delivery charge will be applied for delivery of ambient Products. Alliance reserves the right to charge a standard fee to Buyer where arrangements have to be made for overnight delivery, where the Buyer has requested this facility. Alliance reserves the right to charge a delivery fee for refrigerated Products.
- 6.5 Unless otherwise expressly agreed, Alliance may affect delivery in one or more instalments. Failure by Alliance to deliver one or more of the instalments in accordance with these Terms, or any claim by the Buyer in respect of one or more instalments, shall not entitle the Buyer to treat the contract as a whole as repudiated.
- 6.6 Delivery shall be by such carrier as may be appointed from time to time by Alliance and by such reasonable means as Alliance considers appropriate.
- 6.7 Alliance shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.
- 6.8 Buyer shall notify Alliance within 2 Business Days of any quantitative errors in delivery. In the event Buyer fails to notify Alliance then the Buyer shall be deemed to have accepted such order. On receipt of notice pursuant to this clause 6.8 Alliance shall make a pro-rata adjustment on the applicable invoice.

## **7. Exports**

- 7.1 The Buyer acknowledges that Alliance may have reserved for itself or granted exclusive rights to distribute the Products in certain jurisdictions within the European Economic Area ("Exclusive Jurisdiction"). The Buyer therefore agrees not to actively promote or export Products from the territory to which the Product is delivered without first seeking permission from Alliance that it may export. Notwithstanding the foregoing, Alliance shall grant permission to export to any jurisdiction in the European Economic Area, which is not an Exclusive Jurisdiction.
- 7.2 If permission is granted by Alliance pursuant to clause 7.1, The Buyer shall be responsible for complying with any legislation or regulations governing the importation and sale of goods into the country of destination and shall, unless otherwise agreed, be additionally liable for the payment of any import duties or relevant charges and for all costs of shipment and freight (whether by air, sea or otherwise).

## **8. Non-delivery of Products**

- 8.1 No claims for non-delivery of Products will be accepted if the carrier's consignment note has been signed as complete.
- 8.2 Alliance shall not be liable for any non-delivery of Products (even if caused by Alliance's negligence) unless the Buyer gives written notice to Alliance of the non-

delivery within 2 Business Days of the date when the Products would in the ordinary course of events have been received.

- 8.3 Any liability of Alliance for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note against any invoice raised for such Products.

## **9. Returned goods policy**

- 9.1 Alliance will consider a request by the Buyer to return unsold Products in exchange for credit within a period of 1 year from the date of delivery subject to the following conditions:-
- 9.1.1 no returned goods will be accepted unless consent has been obtained by the Alliance's international customer services department;
  - 9.1.2 Products returned without prior written authority of Alliance pursuant to clause 9.1.1 may be destroyed at Alliance's discretion with no exchange or credit allowed to the Buyer;
  - 9.1.3 returns must be arranged at the Buyer's own expense, except in the case of damage in transit, product recall, initial stocks or errors made by Alliance, in which case Alliance will cover the Buyer's reasonable expenses incurred in arranging return of the Products; and
  - 9.1.4 notwithstanding acceptance by Alliance of any returned goods Alliance shall be under no obligation to allow to the Buyer any credit of any particular value or at all. Upon receipt of the goods Alliance may at its sole discretion, allow credit to the value of the goods at the original invoice price or the current invoice price (whichever is lower).
- 9.2 If consent is obtained in accordance with clause 9.1.1, then subject to clause 9.1, full credit of the price paid by the Buyer shall be given in respect of:
- 9.2.1 discontinued lines – i.e. Products not sold within 3 months after discontinuation of sale by Alliance (or earlier if prior approval is obtained from the Customer Services Department of Alliance);
  - 9.2.2 initial stocks – i.e. any initial stocks which have not been sold after a minimum period of three months (up to a period of 1 year) from delivery by Alliance;
  - 9.2.3 Products sent by Alliance in error;
  - 9.2.4 Products in respect of which quality control checks carried out by Alliance show a complaint by the Buyer to be justified; and
  - 9.2.5 Products which have been supplied by Alliance with less than 6 months shelf life remaining except for Products which by their nature have a shelf life of less than 6 months, for example, vaccines.
- 9.3 The following Products will not in any event be accepted for credit:
- 9.3.1 date-expired stock; and
  - 9.3.2 Products whose outer packaging or seals are broken.

## **10. Limitation of liability**

- 10.1 The following provisions set out the entire financial liability of Alliance (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

- 10.1.1 any breach of these Terms, including any deliberate personal repudiatory breach or any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
- 10.1.2 any use made or resale by the Buyer of any of the Products; and
- 10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with these Terms.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from these Terms.
- 10.3 Nothing in these Terms excludes or limits the liability of Alliance:
  - 10.3.1 for death or personal injury caused by Alliance's negligence; or
  - 10.3.2 for any matter for which it would be illegal for Alliance to exclude or attempt to exclude its liability; or
  - 10.3.3 for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and 10.3, Alliance's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance of or contemplated performance of these Terms shall be limited to the price payable by the Buyer under the Purchase Order. Subject to clauses 10.2 and 10.3 whether or not Alliance has been advised of the possibility of such losses.
- 10.5 Furthermore notwithstanding any other provision of these Terms, Alliance shall not be liable in contract, tort (including negligence), statutory duty or otherwise howsoever for any claim (including without limitation a claim pursuant to an indemnity), damage, loss or cost in respect of:
  - 10.5.1 any direct loss of anticipated savings; or
  - 10.5.2 any indirect loss or damage howsoever caused including:
    - 10.5.2.1 any indirect loss of profit;
    - 10.5.2.2 loss of anticipated profit including loss of profits on contracts;
    - 10.5.2.3 loss of the use of money;
    - 10.5.2.4 loss of business or opportunity;
    - 10.5.2.5 loss of good will;
    - 10.5.2.6 loss of operation time or wasted expenditure;
    - 10.5.2.7 management or staff time;
    - 10.5.2.8 loss of reputation; and/or
    - 10.5.2.9 loss of data

and the Parties intend that each type of loss under this clause shall be severable in accordance with clause 17.1.

- 10.6 For the avoidance of doubt this limitation of liability shall apply to any warranty given under these Terms.
- 10.7 The parties acknowledge and agree that the price charged by Alliance is calculated, in part, on the assumption that the liability of the Buyer and Alliance is set out in these Terms and as such the Buyer is advised to procure insurance against any risk not accepted by Alliance hereunder.



## 11. Indemnity

The Buyer shall indemnify and hold Alliance harmless from and against any claims, costs (including professional costs on a full indemnity basis), damages or demands arising as a result of neglect of the Products by the Buyer, or arising in respect of the use or sale of any Products manufactured by the Buyer and incorporating the Products, except where such claims, costs, damages or demands arise as a direct result of any act or omission of Alliance or as a direct result of acting in accordance with any instructions given by Alliance in respect of the Products.

## 12. Termination

- 12.1 Alliance may terminate these Terms immediately by giving notice in writing to the Buyer if:
- 12.1.1 the Buyer has a receiver or administrative receiver appointed, passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order enters into any voluntary arrangements with its creditors or ceases or threatens to cease to carry on a business;
  - 12.1.2 the Buyer fails to pay on its due date or within any agreed period of grace, any sum due under these Terms or any Purchase Order;
  - 12.1.3 the Buyer commits any material breach of these Terms or any other contract with Alliance, which in the case of a breach capable of being remedied, is not within 14 days of a written request to do so;
  - 12.1.4 the Buyer exceeds its credit limit with Alliance; or
  - 12.1.5 Alliance reasonably apprehends that any of the above is likely to occur and notifies the Buyer in writing.
- 12.2 If these Terms are terminated and the Products have been delivered but not paid for, the price shall become immediately payable notwithstanding any previous agreement to the contrary.
- 12.3 Termination of these Terms shall not affect any of Alliance's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

## 13. Product general terms

- 13.1 All stocks of the Products shall be stored in accordance any conditions set out on the Product's labelling and if not specified in a cool and dry place and shall include an obligation to deal with goods in accordance with the principles of good stock keeping practice.
- 13.2 The Buyer shall maintain records of order quantities, associated batch numbers and any other records specified by Alliance from time to time in respect of all sales to customers, for a minimum of 5 year after purchasing Products. In the event of any batch recall by Alliance, the Buyer shall co-operate with Alliance in taking all necessary steps to remove the relevant batch(es) from the market within the specified time. Products that are recalled from the Buyer's customer will be reimbursed at the full trade price with an additional handling fee paid (at Alliance's discretion) via a customer credit note.
- 13.3 Alliance and its authorised representative(s) shall, at all reasonable times, be entitled to enter any of the Buyer's depots or sub-depots or any other premises in

which the Products are or may be stored to for the purposes of inspection or batch recall of the Products.

- 13.4 The Buyer will report any problems or medical information enquiries that they are aware of relating to Alliance's Products to one of the following contact numbers or email addresses:

Telephone number: +44 (0)1249 466966

Fax number: +44 (0)1249 466977

Pharmacovigilance email: [pharmacovigilance@alliancepharma.co.uk](mailto:pharmacovigilance@alliancepharma.co.uk)

Medical Information email: [medinfo@alliancepharma.co.uk](mailto:medinfo@alliancepharma.co.uk)

#### **14. Packaging**

- 14.1 The Buyer shall only resell the Products in the original selling packs supplied by Alliance and shall in no way repackage the Products or remove, alter or add to the labels on the packaging of the Products without the prior written consent of Alliance.
- 14.2 The Buyer shall not use and/or resell the Products for use in a clinical trial without the express prior written permission of Alliance.

#### **15. Intellectual property**

- 15.1 Nothing in these Terms shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights owned, held or licensed by Alliance, which shall remain vested in Alliance.
- 15.2 The Buyer shall not use (other than pursuant to these Terms) 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 Alliance or any associated company of Alliance owns or claims rights in anywhere in the world.
- 15.3 Unless authorised, no trade marks of which Alliance (or any of its affiliates or associates) are proprietors or authorised users shall be applied to any Products supplied by Alliance (or any such affiliate or associate) or removed from their original container except by a pharmacist in the course of dispensing a prescription endorsed by a qualified medical practitioner to indicate the name of the Product on the container or by a medical practitioner dispensing his own prescription. In a case where a trade mark was displayed on the goods when originally supplied by Alliance, this trade mark shall not be altered, partly removed or partly obliterated.
- 15.4 Alliance gives no warranty or representation that the Products do not infringe any Intellectual Property Rights of any third party anywhere in the world.
- 15.5 Buy shall (as soon as practicable after it comes to Buyer's notice) notify Alliance of (i) any actual or threatened or suspected infringement of any Intellectual Property Rights of Alliance or (ii) any claim by any third party that the use or sale of the Product infringes any rights of any other person. Buyer shall at the request and cost of Alliance do all things necessary as may be reasonably required to assist Alliance in taking and resisting any proceedings in relation to any such infringement or claim.



## **16. Force majeure**

- 16.1 Neither party will be liable to the other for any delay or failure to perform any of its obligations under these Terms to the extent that such delay or failure is caused by any supervening event beyond a party's control including but not limited to an act of God or governmental act, war or civil commotion, national emergency, fire, flood, storm, earthquake, pandemic, strike or lockout (**Force Majeure Event**).
- 16.2 Each party will use all reasonable efforts to mitigate the extent of the excusable delay or failure in the event of a Force Majeure Event and its adverse consequences and to recommence performance of the affected obligations as soon as and to the extent reasonably practicable.

## **17. Enforceability and waiver**

- 17.1 If any part of these Terms is held to be unenforceable or illegal for whatsoever reason such decisions shall not affect the validity or enforceability of any or all of the remaining conditions.
- 17.2 No failure or delay by a party to exercise any right or remedy provided under these Terms 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.

## **18. Governing Law**

- 18.1 These Terms and any dispute or claim arising out of or in connection with them or their 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.
- 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this addendum or its subject matter or formation (including non-contractual disputes or claims).

## **19. Assignment**

- 19.1 Alliance 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 these Terms.
- 19.2 The Buyer 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 these Terms without the prior written consent of Alliance.

## **20. Third party rights**

No person who is not a party to these Terms will have any right to enforce them pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **21. Notices**

Any notice or other communication given to a party under or in connection with these Terms 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 international prepaid post or other delivery service or commercial courier.