

# Terms and conditions of supply

## 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this condition shall apply in these conditions.

**Company:** Torrent Pharma (UK) Ltd;

**Conditions:** these Terms and Conditions of Supply;

**Contract:** any agreement between the Company and the Customer for the sale of Goods;

**Customer:** the person, firm or company who purchases the Goods from the Company;

**Goods:** any goods sold by the Company to the Customer;

**Working day:** any day other than a Saturday, Sunday, Bank Holiday or Statutory Holiday in the United Kingdom.

1.2 A reference to a particular law is a reference to that law in force taking account of any amendment, extension, application or re-enactment including any subordinate legislation.

1.3 Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly.

1.4 Words in the singular include the plural and in the plural, include the singular.

1.5 A reference to one gender includes a reference to the other gender.

1.6 Condition headings do not affect the interpretation of these Conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition

2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions

2.2 No terms or conditions referred to the Customer's purchase order shall form part of the Contract simply as a result of such document being referred to in the purchase order.

2.3 These Conditions apply to the sale of all Goods by the Company and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised director or officer of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each written purchase order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an agreement by the Customer to purchase Goods subject to these Conditions. Any order which does not have a valid purchase order number, bill to address and ship to address may not be accepted by the Company.

2.5 No order placed by the Customer shall bind the Company until the Customer's order has been accepted by the Company in writing, or by supplying the Goods to the Customer.

2.6 The Customer warrants that:

(a) it is properly authorised to purchase the Goods;

(b) it will provide the Company upon request with a valid authorisation to purchase the Goods;

(c) it will notify the Company immediately in writing if its authorisation to purchase the Goods is revoked, suspended or amended.

2.7 No order placed by the Customer which has been accepted by the Company pursuant to Condition 2.5 may be cancelled, varied, or deferred by the Customer, (in whole or in part) except with the

agreement in writing of the Company and subject to the payment of any corresponding costs incurred by the Company.

### **3. DESCRIPTION**

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation.
- 3.2 The Company may affect minor modifications to the specification of the Goods (including their packaging) without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods.
- 3.3 Subject to the provisions of Condition 10.1, the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

### **4. DELIVERY**

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take effect upon dispatch of the Goods to the Customer.
- 4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Customer must examine the Goods upon delivery and within 3 working days thereafter notify the Company in writing of any defects. In default the Customer will be deemed to have examined and accepted the Goods.
- 4.3 If for any reason the Customer fails to take or accept delivery of any or all of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or import authorisations:
  - (a) risk in the Goods shall pass to the Customer; and
  - (b) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage, additional delivery charges and insurance)
- 4.4 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

### **5. NON-DELIVERY**

No claim for non-delivery of the Goods shall be entertained unless the Company receives written notice of the non-delivery within 5 working days of the time that the Goods would ordinarily have been received, in which event the Company's liability shall be limited to replacing the Goods within a reasonable time, or issuing a credit note.

### **6. RISK AND TITLE**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Company has received in full all sums due to the Company in respect of the Goods and associated invoiced delivery charges.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - (a) not remove, deface or obscure any identifying mark or packaging on or relating to such Goods;
  - (b) maintain such Goods in accordance with the licensed storage conditions and current Good Distribution Practice.
- 6.4 Until title passes to the Customer, the Company may at any time require the Customer to return the Goods. If the Customer fails to do so promptly, the Company may enter upon any premises where the Goods are stored in order to recover the Goods. Any costs, charges and expenses incurred by the Company in so recovering the Goods (including legal fees) shall be payable by the Customer.

## **7. PRICE**

7.1 The price for the Goods shall be the price stated in the quotation, written agreement or contract between the Company and Customer or Company's list price for the Goods current at the time of receipt of the Customer's order.

7.2 Unless otherwise agreed in writing by the Company, prices shall be exclusive of Value Added Tax (VAT) which will be charged at the rate applicable at the date of delivery of the Goods.

## **8. PAYMENT**

8.1 The Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after acceptance of the Customer's order.

8.2 Payment is due within 30 days of the date of invoice, unless otherwise agreed in writing and specified in the invoice.

8.3 The time of payment shall be of the essence of the Contract.

8.4 No payment shall be deemed to have been received until the Company has received cleared funds. If a Customer's cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.

8.5 The Customer shall make all payments by bank transfer due under the Contract in full without any deduction.

8.6 Any failure by the Customer to pay the Company by the due date shall entitle the Company, without limiting any other remedy available to the Company:

(a) to charge interest at the rate of eight percent (8%) per annum above Bank of England base rate from time to time calculated on a daily basis until payment in full is made, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;

(b) to charge the Customer for any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;

(c) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;

(d) to immediately terminate the Contract, or suspend or cancel the further delivery of any Goods supplied by the Company;

8.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

## **9. WARRANTIES**

The Company warrants that upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and if the Goods do not conform to the applicable warranties the Company shall replace the Goods; or issue a credit note for the Goods.

## **10. LIMITATION OF LIABILITY**

10.1 Other than as provided in Condition 9 above and in Section 12 of the Sale of Goods Act 1979, all conditions, warranties and liabilities whatsoever whether express or implied, statutory or otherwise, are hereby expressly excluded and the Company shall be under no liability whatsoever for any loss or damage of whatsoever kind, howsoever caused or arising, including any direct, indirect or consequential loss or damage, lost profits, loss of use or other economic loss, provided that nothing herein contained shall be construed so as to exclude or limit the liability of the Company:

(a) for death or personal injury caused by the Company's negligence;

(b) for any matter for which it would be illegal for the Company to exclude (or limit) or attempt to

exclude (or limit) its liability; or  
(c) for fraud or fraudulent misrepresentation.

10.2 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of the Contract shall be limited to the Contract price.

10.3 The provisions of this Condition 10 which exclude or limit the liability of the Company shall also be deemed to exclude or limit the liability of the Company's directors, employees, agents and subcontractors.

## **11. INDEMNITY**

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities to the extent that any such liabilities arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

## **12. ADDITIONAL EXPORT TERMS**

12.1 In these Conditions "**Incoterms 2010**" means the international rules for the interpretation of credit terms at the International Chamber of Commerce as in force at the date when the Contract arises.

Unless the context otherwise requires, any term or expression which is defined here or given a particular meaning by the provisions of Incoterms 2010 shall have the same meaning in these Conditions.

12.2 Where the Goods are to be resold outside the United Kingdom, the Customer shall be responsible for notifying the Company at the time that the Customer's order is placed of any legislation or regulations in the country of destination which may affect the resale of the Goods, including any legislation or regulations governing the packaging and labelling of the Goods.

12.3 The Customer shall be responsible for complying with any legislation or regulations governing the Goods and the importation of the Goods into the country of destination and for the payment of any duties on the Goods. The Contract shall be subject to the procurement by the Customer at the Customer's own expense of any authorisations required for the import of the Goods. Failure to obtain any such documents shall not entitle the Customer to cancel the Contract.

12.4 Unless otherwise agreed in writing, the Goods shall be delivered to the Customer's place of business as mentioned on the Customer's purchase order. The Company shall be under no obligation to give the Customer the notice relating to insurance mentioned under Section 32(3) of the Sale of Goods Act 1979.

## **13. CONFIDENTIALITY**

The parties agree that each party will maintain the confidentiality of any information which has been designated as or which could reasonably be supposed to be confidential and shall not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any such confidential information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

## **14. ASSIGNMENT/SUBCONTRACTING**

The Company may assign the Contract or any part of it to any person, firm or company.

## **15. FORCE MAJEURE**

The Company reserves the right to defer, reduce or cancel the delivery of Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in conducting its business

due to circumstances beyond its reasonable control, including Acts of God, governmental, or local authority actions, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind, war, sabotage, insurrection, civil disturbance or requisition or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, accident, import or export regulations or embargoes, restraints or delays affecting carriers or any inability or delay in obtaining supply of adequate or suitable materials.

## **16. GENERAL**

The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

## **17. RETURN OF GOODS**

17.1 In the event that the Customer requests to return the Goods and the Goods are not defective, the Company shall be under no obligation to accept the return unless the reason for the return is an error on the Company's part.

17.2 In cases of return of pharmaceutical products from unlicensed premises (excluding cold chain pharmaceutical products), the Company must be notified immediately, within 3 days of the date of delivery and Goods must be returned to and received by the Company within 5 days of delivery to the Customer.

17.3 Cold chain pharmaceutical products will only be considered for return if from a Licensed Wholesale Dealer. Consideration to requests for return may be given if a) the Company is notified within 3 days of the date of delivery; and b) a written assurance is provided that the products have been stored at the correct temperatures whilst at their premises as well as verification of the transit temperatures from the Wholesaler back to the Company's warehouse. For the avoidance of doubt, no other return of cold chain pharmaceutical products will be considered.

17.4 For the avoidance of doubt, unless defective, the returns of Goods as detailed in Conditions 17.2 and 17.3 must be unused, undamaged and in the original undamaged packaging. All Goods are individually assessed before being authorised for return.