

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document, as amended from time to time in accordance with clause 11.4.

Contract: the contract between Mawdsleys and the Customer for the sale and purchase of Products in accordance with the Conditions.

Customer: the person who purchases the Products from Mawdsleys.

Good Distribution Practice (GDP): (a) current good distribution practice as described in Commission Guidelines on Good Distribution Practice of medicinal products for human use (2013/C 343/01) as updated or replaced from time to time; and (b) with respect to Great Britain, in place of or modifying the guidance described in point (a), any guidelines or principles published from time to time by the UK Regulatory Authority under regulation C17 of the Human Medicines Regulations 2012.

Mawdsleys: Mawdsley-Brooks & Company Limited or such other Mawdsley group company as shall accept the Order.

Order: an order for Products, issued by the Customer, in a form and format that is acceptable to Mawdsleys.

Products: the products to be supplied by Mawdsleys and purchased by the Customer, as specified in the Order.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a person or party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email but not facsimile.

2. Basis of Contract

2.1 Each Order constitutes an offer by the Customer to purchase the Products in accordance with the Conditions.

2.2 An Order shall only be deemed to be accepted when Mawdsleys issues an acknowledgement or acceptance of the Order or delivers the Products to the Customer (whichever occurs first), at which point the Contract in respect of such Products shall come into existence.

2.3 The Conditions apply to the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, whether in the Order or otherwise, or which may be implied by law, trade custom, practice or course of dealing.

2.4 Any descriptions provided by Mawdsleys, or made available on Mawdsleys' website, are for illustration purposes only and shall not form part of the Contract.

2.5 If the Customer cancels an Order following its acceptance, it shall compensate Mawdsleys for any losses or expenses that Mawdsleys' incurs as a result of the cancellation, unless otherwise agreed by Mawdsleys in writing.

3. Products

- 3.1 The quantity and description of the Products, including any relevant specification, shall be set out in the Order, unless the specification is otherwise preapproved and authorised by the Supplier, in writing, in advance.
- 3.2 The Customer shall inspect the Products upon delivery and give Mawdsleys notice of any defect, damage or shortage, providing photographs (where appropriate) and any other relevant, supporting information:
- (a) in relation to any shortages and/or damage that is apparent upon visual inspection: within 24 hours of delivery for cold-chain products, cytotoxic and controlled drugs and within two (2) Business Days of delivery for all other Products; and
 - (b) in relation to any defect that is not apparent upon visual inspection: within 24 hours of detection for cold-chain products, cytotoxic and controlled drugs and within two (2) Business Days of detection for all other Products;
- 3.3 Subject to clause 4.7 and conditional upon the Customer complying with clause 3.2 and ensuring that that Products are maintained in accordance with applicable storage requirements and conditions, Mawdsleys shall, at its option replace or refund the price of any defective Products and/or make good any shortages.
- 3.4 Mawdsleys shall not be liable for any claims associated with the Products if a defect is caused by abnormal storage conditions, failure to follow applicable storage requirements or Mawdsleys' instructions, or wilful damage or negligence following delivery to the Customer, or if the Products differ from their description in the Order because of changes made by Mawdsleys to ensure they comply with applicable statutory or regulatory requirements.
- 3.5 These Conditions shall apply to any replacement Products supplied by Mawdsleys.
- 3.6 The Customer warrants that it has, and shall maintain, all necessary licences, permits and authorisations, to purchase the Products in accordance with the Contract.
- 3.7 For supplies outside the UK, the Customer shall be responsible for complying with all applicable import and export controls laws and regulations in the relevant destination(s) and shall, unless otherwise agreed by Mawdsleys in writing, obtain and maintain all necessary clearances and consents for the supply of the Products (including any import licences). Without limitation to the foregoing, the Customer shall, at its own expense, provide Mawdsleys with (or where local laws or regulations require Mawdsleys to do so, assist Mawdsleys in procuring) any documents required under applicable laws and regulations for Mawdsleys to export the Products to the intended destination in accordance with such laws and regulations.
- 3.8 The Customer shall indemnify Mawdsleys if Mawdsleys suffers any loss, liability, claim, fine or expense arising in connection with any failure by the Customer to comply with its obligations under clause 3.6 and/or 3.7.

4. Delivery, Returns and Recalls

- 4.1 Mawdsleys shall arrange for the Products to be delivered to the address specified in the Order, or an address otherwise agreed in writing between the parties, which the Customer warrants is compliant with all applicable regulatory requirements.
- 4.2 Upon delivery, the Customer shall sign a delivery note, in a form and format acceptable to Mawdsleys, which shall constitute proof of delivery and evidence that the Products have been accepted.
- 4.3 The Customer shall accept delivery of the Products within the timeframe agreed by the Mawdsleys. Any dates quoted by Mawdsleys for delivery are approximate only and time is not of the essence.
- 4.4 If the Customer fails to take delivery of the Products on the agreed date, then, without prejudice to its other rights and remedies under the Contract, Mawdsleys may at its option:
- (a) store the Products until delivery takes place and charge the Customer for all related costs and expenses associated with storage, insurance and (if applicable) redelivery; or
 - (b) terminate the Contract and claim damages for any losses incurred because of the Customer's failure to take delivery of the Products.

- 4.5 Mawdsleys may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay or defect in an instalment shall not entitle the Customer to cancel the other instalments.
- 4.6 Unless otherwise agreed, packaging materials shall be returned to Mawdsleys at the Customer's expense.
- 4.7 The return of Products is subject to Mawdsleys' returns policy, available upon request and as amended from time to time. For the avoidance of doubt, Mawdsleys will not accept the return of any Products, under any circumstances, otherwise than in accordance with GDP.
- 4.8 Any recall of Products shall be managed in accordance with Mawdsleys' recalls policy, available upon request and as amended from time to time. For the avoidance of doubt, all recalls must be conducted in accordance with GDP.

5. Title and risk

- 5.1 Risk in the Products shall pass to the Customer on delivery.
- 5.2 Title to the Products shall not pass to the Customer until Mawdsleys receives payment in full and cleared funds or, if earlier, the Customer resells the Products in accordance with clause 5.4.
- 5.3 Until title to the Products has passed to the Customer, the Customer shall:
 - (a) hold the Products as bailee;
 - (b) store the Products separately from all other Products;
 - (c) ensure the Products are clearly identifiable as Mawdsleys' property;
 - (d) not remove, alter or obscure any mark on or packaging of the Products;
 - (e) maintain the Products in the condition in which they were delivered;
 - (f) keep the Products insured against all risks, for their full price, from the date of delivery;
 - (g) on reasonable notice, allow Mawdsleys to inspect the Products and provide such information concerning the Products as Mawdsleys may reasonably request; and
 - (h) notify Mawdsleys immediately if it becomes subject to any of the events listed in clause 8.1(b) or 8.1(c).
- 5.4 The Customer may resell the Products before title passes, subject to the following conditions:
 - (a) the resale occurs in the ordinary course of business;
 - (b) the Customer shall sell the Products as principal (not as Mawdsleys' agent) and title to the Products shall pass from Mawdsleys to the Customer immediately before the resale occurs; and
 - (c) proceeds from the sale of the Products, representing the amount owed to Mawdsleys, shall be held on trust by the Customer and promptly paid to Mawdsleys.
- 5.5 At any time before title to the Products passes to the Customer, Mawdsleys may:
 - (a) terminate the Customer's right to resell the Products under clause 5.4; and
 - (b) require the Customer to deliver up all Products that have not been resold, in accordance with Mawdsleys' returns policy and GDP, and if the Customer fails to do so, enter any premises of the Customer or its agent to recover such Products.

The Customer grants to Mawdsleys, its agents and employees an irrevocable licence to enter any such premises where the Products are or may be stored in order to inspect or repossess such Products.

6. Price and payment

- 6.1 The price of the Products shall be the applicable list price for the Products at the time the Order is placed, or such other price as may be agreed by Mawdsleys in writing prior to the date of the Order. Such price shall apply to the exclusion of any alternative price that the Customer may include in the Order.
- 6.2 The price of the Products excludes:
 - (a) value added tax (**VAT**), which the Customer shall pay to Mawdsleys at the prevailing rate, on receipt of a valid VAT invoice; and

- (b) (unless otherwise agreed) packaging, insurance, transport of the Products and other related charges, which shall also be charged to the Customer.
- 6.3 Mawdsleys may send an invoice to the Customer upon dispatch of the Products or any time thereafter.
- 6.4 The Customer is not entitled to credit terms unless specifically agreed by Mawdsleys in writing. Any terms agreed shall be subject to periodic review and Mawdsleys may set and vary credit limits from time to time and/or withhold further supplies if the Customer exceeds such limits.
- 6.5 The Customer shall pay each invoice submitted by Mawdsleys:
 - (a) unless otherwise agreed with Mawdsleys, within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Mawdsleys.
- 6.6 If the Customer fails to make a payment under the Contract by the due date, Mawdsleys may, without limiting its other rights, charge interest on the overdue sum at 4% a year above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis and apply from the due date for payment until payment in full, whether before or after judgment.
- 6.7 All amounts due under the Contract shall be paid in full without any set-off.
- 7. Limitation of liability**
- 7.1 The restrictions on liability in this clause 7 apply to every liability of Mawdsleys to the Customer, whether arising in contract, tort, negligence, statutory duty or otherwise.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence, or for fraud or fraudulent misrepresentation.
- 7.3 Subject to clause 7.2, Mawdsleys' total liability to the Customer shall not exceed the price of the Products paid by the Customer pursuant to the relevant Order.
- 7.4 Subject to clause 7.2, the following types of loss are wholly excluded:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to reputation or goodwill; and
 - (g) indirect or consequential loss.
- 7.5 This clause 7 shall survive termination of the Contract.
- 8. Termination & suspension**
- 8.1 Without limiting its other rights or remedies, Mawdsleys may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

- 8.2 Without limiting its other rights or remedies, Mawdsleys may suspend the supply of Products under a Contract, and/or refuse to accept any future Orders, if the Customer becomes subject to any events listed in clause 8.1, or Mawdsleys reasonably believes that the Customer is about to become subject to any of them.
- 8.3 On termination of the Contract for any reason the Customer shall immediately pay to Mawdsleys all outstanding, unpaid invoices and applicable interest and, in respect of Products supplied but for which no invoice has been submitted, Mawdsleys shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 8.4 Termination of the Contract shall not affect any rights and remedies that have accrued as at termination for either party.
- 8.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Force majeure

Neither party shall be in breach of the Contract, nor liable for delay in performing, or failure to perform, any of its obligations under the Contract, if such delay or failure results from circumstances beyond that party's reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

10. Compliance

- 10.1 In performing its obligations under the Contract, each party shall comply with all applicable laws and regulations from time to time in force.
- 10.2 Without limitation to the foregoing, the parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-facilitation of tax, anti-bribery and anti-corruption and anti-slavery and human trafficking, including without limitation the Criminal Finances Act 2017, the Bribery Act 2010 and the Modern Slavery Act 2015.
- 10.3 Both parties undertake to comply with all applicable data protection legislation, including without limitation the Data Protection Act 2018.
- 10.4 To enable Mawdsleys to check the Customer's compliance with this clause, the Customer shall:
- (a) upon reasonable notice, allow Mawdsleys to audit its facilities; and
 - (b) provide such information and documents as may be reasonably requested by Mawdsleys.

11. General

11.1 Assignment and other dealings.

- (a) Mawdsleys may at any time assign, charge or subcontract all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, charge, subcontract or deal in any other manner with any or all its rights or obligations under the Contract without the prior written consent of Mawdsleys.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, warranties, representations and understandings between them relating to its subject matter.

11.4 Variation.

(a) **Contract:** No variation of the Contract shall be effective unless it is in writing and signed by the parties.

(b) **Conditions:** Mawdsleys may update and replace the Conditions from time to time by issuing new terms on Mawdsleys' website and/ or sending a copy of the new terms directly to the Customer. The applicable Conditions shall be those on Mawdsleys' website on the date an Order is accepted by Mawdsleys.

11.5 Waiver. No waiver by the either party of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.6 Severance. If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted. The parties agree that this shall not affect the validity of the rest of the Contract, and they shall negotiate in good faith to agree a replacement provision that achieves the commercial intention of the original provision.

11.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address notified in writing to the other party.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the relevant address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this falls outside 9.00am to 5.00pm on a Business Day, at 9:00am on the following Business Day.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 Third party rights. Unless it is expressly stated otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 Governing law & Jurisdiction. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract.