

ETHYPHARM UK
TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: any day which is not a Saturday, Sunday or public or bank holiday in the UK.

Confidential Information: all confidential information (however recorded or preserved) disclosed by the Supplier or its employees, officers, representatives, advisers or sub-contractors (**Representatives**) to the Customer and/or the Customer's Representatives who need to know the confidential information in question in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Contract: The Customer's purchase order and the Supplier's acceptance of it under clause 3.

Customer: the person, firm or company who purchases Goods from the Supplier.

Effective Date: the date of this agreement.

Goods: the products agreed in the Contract to be purchased by the Customer from the Supplier (including any part of parts or it).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Quotation: The Supplier's quotation for the Goods (if any).

Supplier: Ethypharm UK whose registered office is at Bampton Road, Harold Hill, Romford, Essex, RM3 8UG, United Kingdom.

1.2 Clause headings shall not affect the interpretation of this agreement. References to clauses are to the clauses of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether having separate legal personality). A reference to a **company** shall include any company, corporation, or other body corporate, wherever and however incorporated or established.

1.4 Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.

1.5 A reference to legislation including any statute, byelaw, regulation, rule, subordinate or delegated legislation or order is a reference to it as amended, extended, or re-enacted from time to time.

1.6 Except where otherwise stated, a reference to **writing** or **written** includes faxes and e-mail.

1.7 The words **include**, **including** and **shall** not be interpreted as limiting the generality of any foregoing words.

2. APPLICATION

2.1 This agreement shall:

(a) apply to and be incorporated in each Contract; and

(b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice, or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

2.3 No employee, sub-contractor or agent of the Supplier has any authority to add to or vary the Contract or this agreement or to make any representation or warranty unless such addition or variation or representation or warranty is in writing and signed by a director or the secretary of the Supplier or any named person authorised on behalf of the Supplier.

2.4 Any typographical, clerical, or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.5 The Supplier may at any time without notifying the Customer make any changes to the Goods which are necessary to comply with any applicable safety or other statutory provisions or legal obligations.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Goods specified in it in accordance with the terms and conditions of this agreement; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Goods in accordance with the terms of this agreement. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or as may be introduced at any time in its dealings with the Supplier shall not govern the Contract or this agreement.

4. ORDERS AND SPECIFICATIONS

4.1 Each order or acceptance of a Quotation for Goods by the Customer shall be deemed to be an offer by the Customer subject to the conditions set out in this agreement. The Customer shall ensure that its order is complete and accurate.

4.2 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier acknowledges the Customer's order, or the Supplier delivers the Goods to the Customer (whichever occurs earlier).

4.3 The quantity and description of the Goods and any specification for them shall be set out in the Quotation.

4.4 If an order which has been accepted by the Supplier is cancelled by the Customer within 14

days, an administrative charge of 25% of the value of the Goods will be charged to the Customer.

4.5 No order which has been accepted by the Customer or acknowledged by the Supplier may be cancelled by the Customer after 14 days, except with the agreement in writing of a director or the secretary of the Supplier. Any cancellation not agreed will not be accepted and full payment of the value of the Goods will be charged to the Customer and the Customer shall indemnify the Supplier in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier because of cancellation.

5. CHARGES AND PAYMENT

5.1 The Customer shall pay the amounts (without deduction or set off) in full as set out in the invoice and/or Contract together with any other related charges (**Charges**).

5.2 All amounts and fees stated or referred to in the Quotation or the Contract are exclusive of value added tax, which shall be added to the Supplier(s) invoice at the appropriate rate.

5.3 The Customer shall pay each invoice, which shall include any other related charges, submitted to it by the Supplier in full, and in cleared funds, within 30 days of the date of the invoice.

5.4 Written notice of any dispute in relation to the Charges and any other costs must be received by the Supplier in writing within 7 days of the date of the Supplier's invoice in question. If no such written notice is received, the Customer shall forfeit its right to dispute such Charges and/or costs. Such notice will include the following information:

- (a) the number of the disputed invoice.
- (b) the specific items which are in dispute; and
- (c) the reasons why they are disputed, together with supporting evidence.

5.5 Any dispute in relation to part of the Charges and/or costs shall not release the Customer from its obligation of paying the balance of the invoice.

5.6 The Customer shall indemnify the Supplier from and against all costs and expenses incurred by the Supplier in recovering any undisputed sum due to the Supplier from the Customer if the Customer fails to pay in accordance with clause 5.3 above.

5.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier:

- (a) reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- (b) may terminate the Contract or suspend any further deliveries of the Goods to the Customer.
- (c) may make a storage charge for any undelivered Goods at its current rates from time to time; and
- (d) may stop any Goods in transit.

5.8 Time for payment shall be of the essence of the Contract and this agreement.

5.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, but the Customer may not set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

6. DELIVERY

6.1 The Supplier shall use its reasonable endeavours to adhere to the delivery dates quoted for the Goods. However, the Supplier shall not be liable for any delay in delivery of the Goods however caused.

6.2 Time for delivery shall not be of the essence of the Contract or this agreement unless previously agreed by a director or the secretary of the Supplier or some other person authorised on behalf of the Supplier in writing.

6.3 Where dates are not quoted for delivery of the Goods, the Supplier will use its reasonable endeavours to deliver the Goods promptly.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate agreement and failure by the Supplier to deliver any one or more of the instalments in accordance with this agreement or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract or this agreement as repudiated.

6.5 If the Supplier fails to deliver the Goods (or any instalment) for any reason, no liability will be accepted by the Supplier for any loss whatsoever arising from any delay in delivery.

6.6 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.

6.7 If the Supplier is delayed or otherwise prevented in any way from making delivery of the Goods by any act or default by the Customer, any additional expenses incurred by the Supplier shall be charged to the Customer. Such delays shall be considered and agreed delivery schedules will be amended accordingly.

6.8 Delivery notes are to be signed by an authorised representative of the Customer on delivery. The Supplier excludes liability for any loss whatsoever arising for a signed delivery note which is unchecked by the Customer.

7. RISK AND PROPERTY

7.1 The Goods shall be at the Customer's risk from delivery.

7.2 Despite delivery having been made, property in the Goods shall not pass from the Supplier until:

- (a) the Customer has paid the cost of the Goods plus VAT in full; and
- (b) no other sums whatever shall be due from the Customer to the Supplier.

7.3 Until property in the Goods passes to the Customer in accordance with this clause, the Customer shall hold the Goods on a fiduciary basis as bailee for the Supplier. The Customer shall store the Goods (at no cost to the Supplier) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Supplier's property.

7.4 Notwithstanding that the Goods remain the property of the Supplier, the Customer may use the Goods in the ordinary course of the Customer's business. Until property in the Goods passes from the Supplier the entire proceeds of sale or any other dealing in or of the Goods shall be held in trust for the Supplier and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Supplier's money.

7.5 The Supplier shall be entitled to recover the costs of the Goods (plus VAT) notwithstanding that property in any of the Goods has not passed from the Supplier.

7.6 Until such time as property in the Goods passes from the Supplier, the Customer shall, upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Supplier. If the Customer fails to do so, the Supplier may enter upon any premises owned, occupied, or controlled by the Customer where the Goods are situated and repossess the Goods. On the making of such a request, the rights of the Customer under clause 7.4 shall cease.

7.7 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Customer does so, all sums whatever owing by the Customer to the Supplier shall forthwith become due and payable.

7.8 The Customer shall insure and keep insured the Goods to the full price against 'all risks' to the reasonable satisfaction of the Supplier until the date that property in the Goods passes from the Supplier and shall whenever requested by the Supplier produce a copy of the policy of insurance. Without prejudice to the other rights of the Supplier if the Customer fails to do so, all sums whatever owing by the Customer to the Supplier shall forthwith become due and payable.

8. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights and all other rights in the Goods shall be owned by the Supplier.

9. CONFIDENTIALITY

9.1 The Customer 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 Supplier's or of any member of the group of companies to which the Supplier belongs, except as permitted by condition 9.2.

9.2 The Customer may disclose the Supplier's Confidential Information:

(a) 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 or in connection with this Contract. The Customer shall ensure that its employees, officers, representatives, or advisers to whom it discloses the Supplier's Confidential Information comply with this condition 9; and

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

9.3 The Customer shall not use the Supplier's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

9.4 The provisions of this clause 9 shall continue to apply after termination of this agreement.

10. WARRANTIES

10.1 A claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the relevant specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within 48 hours from the date of delivery (in the case of cold chain goods, controlled and cytotoxic drugs 24 hours from the date of delivery) or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure (subject to the shelf life of the Goods and the Customer complying with storage requirements and conditions). A reasonable time is deemed to be within 48 hours (or 24 hours in the case of cold chain goods and controlled and cytotoxic drugs) of discovery of any defect or failure. If delivery is not refused, and the Customer does not notify the Supplier, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for any such defect or failure (including reimbursing the carriage paid for the returned Goods), and the Customer shall be bound to pay the price (and the costs of carriage) as if the Goods had been delivered in accordance with the Contract.

10.2 The Customer will return the Goods in question, except for cold chain goods and controlled drugs, in the same physical condition to the Supplier within 5 days from the date of the Customer's notification and shall quote and provide the following:

- (a) the Supplier's reference number.
- (b) the Customer's name and address.
- (c) the quantity, description, size, and strength of the Goods in question.
- (d) the invoice numbers.
- (e) the batch number of the Goods in question.
- (f) detailed reasons for the return of the Goods; and
- (g) photographic evidence in situ in all cases.

10.3 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods is notified to the Supplier in accordance with the Contract and the Supplier accepts and agrees the claim, the Supplier may replace the Goods free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) in which case the Supplier shall have no further liability to the Customer. In the case of cold chain goods and controlled and cytotoxic drugs, the Supplier shall pay for the destruction by the Customer of these Goods where the Supplier accepts that such cold chain goods and controlled and cytotoxic drugs are defective or faulty.

10.4 The Supplier shall be under no liability under clauses 10.1 and 10.3:

- (a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow storage

requirements, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration of the Goods without the Supplier's written approval.

(b) if the total price for the Goods has not been paid by the due date of payment.

(c) for any loss, damage, costs, expenses, or other claims for compensation arising from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any fault, act, or omission of the Customer.

10.5 Subject as expressly provided in the Contract, all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11. LIMITATION OF LIABILITY

11.1 This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:

(a) any breach of the Contract or this agreement.

(b) any use made by the Customer of the Goods or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

11.2 Nothing in the Contract or this agreement excludes the liability of the Supplier:

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

(b) for fraud or fraudulent misrepresentation.

11.3 Subject to condition 11.2:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty of the Supplier, its employees, agents or otherwise), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect, incidental, exemplary, punitive or consequential loss costs, damages, charges or expenses however arising under the Contract or this agreement, including loss or damage suffered by the Customer as a result of an action brought by a third party, even if such loss was reasonably foreseeable; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or this agreement shall be limited to the price for the Goods paid by the Customer in accordance with the terms of the Contract.

11.4 The Customer acknowledges and agrees that the limitations contained in this clause 11 are reasonable and acceptable to the Customer.

12. PRODUCT RECALL AND WITHDRAWAL

12.1 The Supplier may at any time and in its absolute discretion recall or withdraw any Goods from the market and/or supplied to the Customer.

12.2 Any such recall request made by the Supplier may initially be made orally and will be confirmed in writing.

12.3 The Customer shall immediately comply with the Supplier's instructions and/or request regarding the recall or withdrawal of the Goods.

12.4 In the event of any such recall, the Supplier shall pay the Customer's reasonable and documented out-of-pocket expenses incurred in returning the Goods. The Customer shall provide all necessary assistance and shall always co-operate fully with the Supplier in connection with such recall.

13. TERMINATION

13.1 This agreement shall commence on the Effective Date and shall continue for the period set out in the Contract (**Initial Term**), unless otherwise terminated as provided in this clause 13.

13.2 Without limiting its other rights or remedies, either party may terminate the Contract and this agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any of the terms of the Contract or this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) the other party 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), 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.

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract or this agreement has been placed in jeopardy.

13.3 On termination of this agreement for any reason the accrued rights of the Supplier as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

13.4 Upon termination of this agreement under this clause 13 the Customer shall pay to the Supplier, on demand, all arrears of payments, interest and other sums payable under any Contract outstanding up to the date of termination and all costs and expenses (including legal costs) on a full indemnity basis incurred or sustained by the Supplier in enforcing any of the terms of the Contract.

14. MODERN SLAVERY

In performing the Customer's obligations under this agreement, the Customer shall and shall ensure that each of its affiliates, subcontractors and agents comply with all applicable laws, statutes, regulations, and codes from time to time in force in the jurisdiction in which it is based and the countries in which it operates in respect of slavery and human trafficking including, but not limited to, the Modern Slavery Act 2015 in the UK.

15. ANTI-BRIBERY

The parties will comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 in the UK in performing its obligations under this agreement.

16. DATA PROTECTION

Neither party shall do any act that puts the other party in breach of its obligations set out in the Data Protection Act 2018 and/or in the General Data Protection Regulation (Regulation EU 2016/679) GDPR as it forms part of the law of England by virtue of section 3 of the European Union (Withdrawal) Act of 2018, together with any other relevant data protection legislation or regulatory provisions, as amended from time to time (**Data Protection Obligations**) and nothing in this agreement shall be deemed to prevent any party from taking the steps it deems necessary to comply with its Data Protection Obligations.

17. FORCE MAJEURE

17.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, acts of God, acts of any governmental body, war, riot, insurrection, sabotage, armed conflict, embargo, fire, earthquakes, explosion, flood, strike or other labour disturbance, injunction, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications, shortages of raw materials or packaging materials, power or supply failures, delays due to dependence on third parties, or inability to obtain raw materials, supplies or affecting employees or agents or sub-contractors of the Supplier (**Force Majeure Event**); and the duty of the Supplier to provide the Goods shall be suspended and shall only recommence when the circumstances giving rise to such suspension shall have ceased.

17.2 If a Force Majeure Event prevents, hinders, or delays the Supplier's performance of its obligations for a continuous period of more than 12 weeks, either party may terminate this agreement immediately by giving written notice to the other party.

18. WAIVER

18.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

19. SEVERANCE

19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with

whatever modification is necessary to give effect to the commercial intention of the parties.

20. ENTIRE AGREEMENT

20.1 This agreement and any documents referred to in it, including additional terms specifically required by the Supplier where the Customer is based outside the UK (**Additional Terms**) constitutes the whole agreement between the parties and supersedes any previous arrangements, promises, assurances, warranties, representations, or understandings between them, whether written or oral, relating to its subject matter.

20.2 This agreement and any Additional Terms shall prevail over any inconsistent terms or conditions contained in the Customer's purchase order, confirmation of order, or specification or implied by law, trade custom, practice, or course of dealing.

20.3 Each party acknowledges that in entering into this agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance, warranty or understanding (whether made innocently or negligently) that is not set out in this agreement or the Additional Terms.

21. ASSIGNMENT

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, novate, charge, sub-contract, or deal in any other manner with any of its rights or obligations under this agreement.

22. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

24. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. NOTICES

25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9.00 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been

delivered in the normal course of post. For the purposes of this clause 22 “writing” shall not include e-mail.

26. GOVERNING LAW AND JURISDICTION

26.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).