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# TERMS & CONDITIONS OF TRADING

**General**

1.1 The terms and conditions of sale set out in this document ("Terms and Conditions") represent the entire agreement and understanding between us and override any other express or implied terms in relation to any contract for sale of goods ("Contract"). These Terms and Conditions can be altered only by a written statement signed by one of our duly authorised officers. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of us which is not set out here or in the contract.

1.2 Subject to any variation under condition 1.1 the Contract shall be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions upon which you purport to apply under any purchase order, confirmation of order, specification or other document).

1.3 No terms or conditions endorsed on, delivered with or contained in your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

1.4 These Terms and Conditions shall apply only to contracts made between us and you. You agree that it is not our intention that any term shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

1.5 Due to the variability of raw material prices, Our quotations and price lists are merely for information and do not constitute an offer to contract. A binding contract will only arise when we have received your formal order and accepted it by sending you an acknowledgement of order.

1.6 Each order placed by the Buyer shall, on acceptance by the Seller, be treated as a separate contract. If there shall at any time be more than one contract in course of performance between the Seller and the Buyer, any question, dispute or difficulty which may arise in respect of one of such contracts, or the terms on which it may be settled shall not affect in any way the performance of other contracts nor shall the buyer be entitled to exercise in relation to any other contracts any right of set-off or counter-claim arising under one contract.

1.7 Once our acknowledgement has been sent an order can only be cancelled or altered if we agree in writing to accept cancellation or alteration. Even if we do accept this we reserve the right to charge for any costs reasonably incurred by us up to the date of alteration and/or cancellation.

1.8 Failure or delay by us in enforcing or partially enforcing any provision of these terms shall not be construed as a waiver of any of our rights under these Terms and Conditions or the Contract.

1.9 These Terms and Conditions are governed by Incoterms 2010, on the Ex-Works basis unless stated otherwise.

**2. Price**

2.1 Orders for items will be charged at the price shown in our current price list or order acknowledgement at the date of delivery which is exclusive of any lawful tax.

2.2 Where we have given a quotation for goods we will accept orders at the prices given in the quotation provided the order is placed within 60 days of the date of the quotation (some specialist materials this may differ and the validity period will be on the quotation). If the order is not placed within 60 days, we have the right to issue a new quotation.

2.3 Clwyd will invoice for the quantity of the weighed package for delivery, minus the calculated weight of the packaging. Clwyd also reserves the right to charge for packaging where the customer has special requests and to invoice for material used in testing, which will not be shipped.

2.4 Minimum order value is £350 (not including VAT or carriage), if the value of the order does not meet this threshold Clwyd Compounders Ltd reserve the right to add a small order fee to the order, this will be communicated on the order confirmation.

**3. Payment Terms**

3.1 Unless otherwise agreed in writing, all invoices must be paid in full without demand, deduction, set off or counterclaim, within the due periods as specified on our quotations or invoices.

3.2 Unless otherwise agreed in writing, all prices are strictly net cash for payment by the end of the month following the month of invoice date.

3.3 If you fail to pay us any sum due pursuant to the Contract, you shall be liable to pay interest to us on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

**4. Delivery**

4.1 Standard International delivery is Ex-Works, as defined by Incoterms 2010, at the premises of Clwyd Compounders Ltd, Wrexham, Wales, and is entirely your responsibility. Other international delivery terms are available at additional cost and are subject to prior written agreement. Delivery to UK Mainland addresses are chargeable in accordance with our Carriage Policy (available on request).

4.2 Time shall not be of the essence in relation to delivery of the goods. Delivery dates quoted by the Seller are given in good faith, but the Seller shall not be liable for failure to deliver on the specified date or dates.

4.3 Any liability that we may have for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods.

4.4 If the contract calls for delivery in instalments each instalment shall be deemed to constitute a separate contract. Any defect in any instalment or failure to deliver any instalment shall not give the Buyer the right to cancel future deliveries

4.5 You must arrange for manpower and equipment to be available to unload the goods when they are delivered.

**5. Damage and Loss in Transit**

5.1 For all Ex-Works deliveries, the goods are your responsibility from the time of despatch from our premises and any loss or damage of equipment in transit is entirely your responsibility as defined in Incoterms 2010. For all other delivery terms responsibility for any loss or damage is borne by the carrier.

5.2 The Seller reserves the right to deliver 10 per cent more or less than the contract quantity of goods. Any excess or shortage will be charged or deducted pro rata.

5.3 If delivery is to an address in Great Britain and you think that any of the goods have been damaged in transit or that some goods have not been delivered you must notify us in writing within five days of receipt. You must also retain any packaging in which the damaged goods were delivered. We cannot accept any responsibility for any such claim unless you comply with these requirements.

**6. Retention of Title**

6.1 Ownership of the goods which are the subject of the Contract shall not pass to you until they are fully paid for. Until we have received full payment you must store the goods in such a way as clearly to indicate at all times that the goods are owned by us and not do anything to the goods which may prevent them from being identified. We reserve the right to enter upon any relevant land or buildings with such transport as may be necessary for the purpose of repossession, but this shall be without prejudice to any other rights or remedies arising from any breach of contract.

6.2 If while we retain ownership of the goods the goods are incorporated in or attached to other goods the ownership of the whole of such goods shall vest in us and you shall hold such goods as our bailee and to our order until we have received payment in full in respect of our goods.

**7. Risk**

7.1 Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain with the seller until the seller has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the seller to the buyer under any contract whatsoever. Payment of the full price shall include, without limitation, the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer.

7.2 Subject to the above, all goods delivered by the Seller will remain the Seller's property until all debts owed to the Seller by the Buyer, including any balances existing, are settled. If any payments are overdue or the Buyer commits any act of bankruptcy or, if a limited company, satisfies any statutory ground for winding up by the court or voluntarily (other than for the purposes of amalgamation or reconstruction) then, without prejudice to any other remedies, the Seller may terminate any subsisting contracts with the Buyer and by its servants or agents enter the Buyer's premises to recover all goods in respect of which property has not passed

7.3. Until the property has passed, the Buyer shall hold the goods as the Seller's bailee in a fiduciary capacity. The goods may be resold by the Buyer in the ordinary course of the business as the Seller's agent. The fiduciary relationship shall continue in respect of the proceeds of sale and must first be used to discharge the outstanding indebtedness to the Seller in priority to any other claims. The Buyer shall also assign to the Seller at its request any unpaid debts arising from such sales to third parties where property in the goods has not passed prior to the sale. The Seller shall pursue such debts and thereafter return to the buyer any monies recovered in excess of sums owing and its reasonable costs and expenses of pursuing the claim.

**8. Warranty**

8.1 If it is proved to the Seller's satisfaction that any material or workmanship in the goods is defective, the Seller will at it's option, rectify, replace or give credit for the defective goods. As the conditions under which the goods are processed are outside the control of the Seller, the Seller's liability for defective goods shall normally be limited to the invoiced price, and will not cover any other expenditure incurred, or any consequential loss. It is the Buyer's responsibility to test the goods for processability, and to ensure that goods are correctly cured and handled to enable advised test results to be achieved, where relevant. The Buyer shall advise the Seller of any situation which may give rise to a claim under this clause at the earliest opportunity.

8.2 You accept responsibility for the return of the goods to our premises at your own cost.

8.3 Our liability under this clause as to the quality or fitness for any particular purpose of the goods shall be in lieu of any warranty or condition implied by law. Save as provided in this clause and in clause 9 below we shall not be under any liability whether in contract tort or otherwise in respect of the defects in goods delivered or for any injury (other than personal injury caused by our negligence as defined in the Unfair Contract Terms Act 1977 section 1) damage or loss resulting from such defects or from any work done in connection therewith.

8.4 This guarantee does not apply to defects caused entirely or partly by:-

8.4.1 Misuse or use in applications which the material has not been approved.

8.4.2 A third party's products being used with our materials which have not been approved for use

8.4.3 Failure to maintain or use the materials precisely in accordance with our instructions and recommendations.

8.4.4 Any advice we give on the design and application of the goods where you have supplied us with wrong, incomplete or misleading information.

8.5 If any defect does arise as stated above then you must notify us in writing as soon as reasonably practicable or in any event within fourteen days of the fault arising.

**9. Limitation of Liability**

9.1 Subject to Clause 4 and Clause 8 the following provisions set out our entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you in respect of:

9.1.1 Any breach of these conditions;

9.1.2 Any use made or resale by you of any of the goods, or of any product incorporating any of the goods; and

9.1.3 Any representation, statement or tortious act or omission including negligence arising under or in connection with any contract for sale.

9.2 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 the Contract.

9.3 Nothing in these conditions excludes or limits our liability:

9.3.1 For death or personal injury caused by our negligence; or

9.3.2 Under section 2(3), Consumer Protection Act 1987; or

9.3.3 For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

9.3.4 for fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.2 and clause 9.3:

9.4.1 Our total 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 shall be limited to price paid by the Buyer for the goods under the Contract; and

9.4.2 We shall not be liable to you for loss of profit, loss of business, in each case whether direct, indirect or consequential which arise out of or in connection with the Contract.

**10. Anti-Bribery**

10.1 We shall:

(a) comply with all applicable laws, statues and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

(b) Comply with our Ethics, Anti-bribery and Anti-corruption Policies as amended from time to time (**Relevant Policies**);

(c) have and shall maintain in place throughout the term of the Contract our own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;

(e) promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received by us in connection with the performance of any contract for the sale of goods made pursuant to these terms and conditions;

(f) Immediately notify the Buyer (in writing) if a foreign public official becomes an officer or employee of us or acquires a direct or indirect interest in us (and we warrant that we have no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract);

(g) within 3 months of the date of the Contract, and annually thereafter, on request by the Buyer certify to the Buyer in writing compliance with this clause 1 by us and all persons associated with us under clause 1.2.

10.2 We shall use reasonable endeavours to ensure that any person associated with us who is performing or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on use in this clause 1 (**Relevant Terms**). Notwithstanding the above, we shall have no liability to the Buyer for any breach by such persons of any of the Relevant Terms.

10.3 For the purpose of this clause 10, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 10 a person associated with us includes but is not limited to any of our subcontractors.

**11. Ownership Rights**

Unless otherwise agreed in writing, All technical information, formulation, mixing and manufacturing methods and all other information in relation to the goods or their attributes are our property and you are not allowed to do anything which may damage or endanger or challenge the validity of these ownership rights and you should not reproduce or otherwise use these without our prior written permission.

**12. Severance**

If any provision of these Terms and Conditions are prohibited by law or adjudged by a Court to be unlawful, void or unenforceable then that provision shall to the extent required be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying the remaining terms of these Terms and Conditions and shall not in anyway affect any other circumstances or the validity or enforcement of these Terms and Conditions.

**13. Force Majeure**

13.1 We cannot accept responsibility for any failure to fulfil our part of the contract which is caused by or attributable to acts, events, omissions or accidents beyond our reasonable control, including but not limited to any of the following:

13.1.1 Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

13.1.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

13.1.3 Terrorist attack, civil war, civil commotion or riots;

13.1.4 Nuclear, chemical or biological contamination or sonic boom;

13.1.5 Voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);

13.1.6 Fire, explosion or accidental damage;

13.1.7 Loss at sea;

13.1.8 Adverse weather conditions;

13.1.9 Collapse of building structures, failure of plant machinery, machinery, computers or vehicles;

13.1.10 any labour dispute, including but not limited to strikes, industrial action or lockouts;

13.1.11 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

13.1.12 interruption or failure of utility service, including but not limited to electric power, gas or water.

**14. Termination on Non-Payment or Insolvency**

14.1 We may suspend or terminate the Contract on thirty (30) days written notice to the Buyer if the Buyer fails to comply with any term, provision or condition of the Contract, or these Terms and Conditions, and shall fail to cure such non-compliance before the end of such thirty (30) day period.

14.2 We may at any time terminate the Contract with immediate effect by giving written notice to the Buyer if:

14.2.1 the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

14.2.2 the Buyer commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

14.2.3 The Buyer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

14.2.4 The Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

14.2.5 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

14.3 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

**15. Indemnity**

You will indemnify us and keep us indemnified against any loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by any breach by you of these Terms and Conditions including any act neglect or default by your employees or agents and including any breach by you resulting in any successful claim by any third party.

**16. Governing Law**

These Terms and Conditions shall be governed by and construed in accordance with English Law and be under the exclusive jurisdiction of the Courts of England.

**17. Date & Revision**