



## **S&D PHARMA LIMITED TERMS AND CONDITIONS OF SALE**

### **1. INTERPRETATION**

- 1.1. The definitions and rules of interpretation set out below apply in these terms and conditions.**

**Company: S&D Pharma Limited or any subsidiary.**

**Contract: any contract including (but not limited to) the Sales Contract between the Company and the Purchaser for the sale and purchase of the Goods, incorporating these conditions.**

**Goods: any goods agreed in the Contract to be supplied to the Purchaser by the Company (including any part or parts of them).**

**Purchaser: the person, firm or company who purchases the Goods from the Company.**

**Sales Contract: the Company's standard written confirmation to supply the Goods requested by the Purchaser (detailing the price, quantity and delivery of the Goods).**

- 1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.**
- 1.3. Words in the singular include the plural and in the plural include the singular.**
- 1.4. Condition headings do not affect the interpretation of these conditions.**

### **2. APPLICATION OF TERMS**

- 2.1. Subject to any variation under 2.2 the Sales Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).**

- 2.2. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Purchaser 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 these conditions shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3. Each order or acceptance of a quotation for Goods by the Purchaser from the Company shall be deemed to be an offer by the Purchaser to buy Goods subject to these conditions.
- 2.4. No order placed by the Purchaser or quotation given by the Company shall be deemed to be accepted by the Company until a signed Sales Contract is issued by the Company or (if earlier) the Company delivers the Goods to the Purchaser.
- 2.5. The Purchaser shall ensure that the terms of its order set out in the Sales Contract and any applicable specification are complete and accurate.

### 3. DESCRIPTION

- 3.1. The quantity and description of the Goods shall be as set out in the Company's Sales Contract.
- 3.2. All samples, drawings, specifications and advertising issued by the Company and any illustrations as contained in the Company's catalogues or brochures or website are purely descriptive and not intended to form any part of the Contract.

### 4. DELIVERY

- 4.1 Unless otherwise agreed between the parties in writing, delivery of the Goods shall be made by the Company as specified and in accordance with the provisions in the Sales Contract.
- 4.2 Any dates specified by the Company in the Sales Contract for the delivery of the Goods shall be of the essence and if no dates are specified in the Sales Contract delivery shall be within a reasonable time.

- 4.3 Notwithstanding anything in these conditions to the contrary (but subject to condition 9) the Company shall not be liable for any incidental, direct, indirect, special or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses arising out of or in connection with the Contract in each case howsoever caused including without limitation by misrepresentation (whether made prior to and/or in this Agreement) negligence, other tort, breach of contract, breach of statutory duty or any claims arising under an indemnity caused directly or indirectly by any delay in the delivery of the Goods.
- 4.4 If for any reason the Purchaser fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Purchaser has not provided appropriate instructions, documents, licences or authorisations:
- 4.4.1 risk in the Goods shall pass to the Purchaser;
- 4.4.2 the Goods shall be deemed to have been delivered; and
- 4.4.3 the Company may store the Goods until delivery, whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.5 The Purchaser shall provide at its expense adequate and appropriate equipment and manual labour for loading or unloading (as appropriate) the Goods.
- 4.6 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 Sales Contract.
- 4.7 Claims for shortages before risk passes, must be made in writing within seven days of receipt of the Goods failing which proper delivery shall be presumed conclusively to have been made.

## 5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from such third party location as may be specified in the Sales Contract shall be conclusive evidence of the quantity received by the Purchaser on delivery unless the Purchaser can provide conclusive evidence proving the contrary.

- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Purchaser gives written notice to the Company of the non-delivery within seven days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or refunding the price of the Goods or issuing a credit note at the pro rata Sales Contract rate against any invoice raised for such Goods.

## 6 RISK/TITLE

- 6.1 The Goods are at the risk of the Purchaser from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Purchaser until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or which become due to the Company from the Purchaser on any account.
- 6.3 Until ownership of the Goods has passed to the Purchaser, the Purchaser shall hold the Goods on a fiduciary basis as the Company's bailee.
- 6.4 The Purchaser's right to possession of the Goods shall terminate immediately if:
- 6.4.1 the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser

or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or

6.4.2 the Purchaser suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Sales Contract or any other contract between the Company and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or

6.4.3 the Purchaser encumbers or in any way charges any of the Goods.

6.5 On termination of the Contract, howsoever caused, the Company's (but not the Purchaser's) rights contained in this condition 6 shall remain in effect.

## **7 PRICE**

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Sales Contract.

7.2 The Company reserves the right to vary prices at any time at its discretion, including additional costs incurred in exchange rate and currency movements, and additional costs in packing or transport. The Company also reserves the right to increase prices to recover any additional costs arising from variation or delay caused by the Purchaser's instructions or failure of the Purchaser to give the Company adequate information or instruction.

7.3 The Company reserves the right to impose a minimum order quantity or handling charge for any Goods or services supplied.

## **8 PAYMENT**

8.1 Payment of the price for the Goods (including VAT where applicable) and any additional transport, insurance, packaging and/or additional costs shall be set out in full in the Sales Contract.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 The Purchaser shall make all payments due under the Sales Contract in full without any deduction whether by way of set-off, counterclaim,

discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Purchaser.

- 8.5 If the Purchaser fails to pay the Company any sum due pursuant to the Sales Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the United Kingdom base rate, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 9 QUALITY

- 9.1 The Company warrants that (subject to the other provisions of these conditions) the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 Subject to condition 9.1 no warranty is given that the Goods are suitable for a particular or special purposes or for use in connection with any equipment or other product or item unless expressly given in writing by the Company in the Contract and in particular where the Goods are incorporated or form part of another product or contain or hold other products or substances the Company shall not be liable for any loss or damage to such other product or substance arising out of any defect or fault in the Goods.
- 9.3 The Company shall not be liable for a breach of condition 9.1 unless:
- 9.3.1 the Purchaser gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit, to the carrier, within seven days of the time when the Purchaser discovers or ought to have discovered the defect; and
- 9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods to confirm or have verified the defect.
- 9.4 The Company shall not be liable for a breach of the warranty in condition 9.1 if:
- 9.4.1 the Purchaser makes any further use of such Goods after giving such notice; or
- 9.4.2 the defect arises because the Purchaser failed to follow the Company's instructions as to the storage, or use of the Goods or (if there are none) good trade practice.

- 9.5 Subject to conditions 9.2, 9.3 and 9.4, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall at its option replace such Goods or refund the price of such Goods or issue a credit note at the pro rata Sales Contract rate provided that, if the Company so requests, the Purchaser shall return the Goods or the part of such Goods which is defective to the Company.
- 9.6 For the avoidance of doubt, where Goods are returned to the Company the Purchaser shall ensure that the Goods are returned to the Company free from hazard, including biological, chemical or radioactive. The Company reserves the right to refuse to accept Goods which in its view presents a hazard or may infringe legislation, or is without a signed declaration that the Goods are free from any contamination or infection.

## 10 DEFECTS

10.1 The purchaser must notify the Company in writing within seven days of delivery if the Goods:

10.1.1 do not meet the specification in the Sales Contract; or

10.1.2 are contaminated; or

10.1.3 are delivered in packaging which is dirty, damaged or not appropriately marked; or

10.1.4 are delivered with incorrect documentation.

10.2 In each case (as appropriate) the Purchaser must also provide the following:

10.2.1 a quality report detailing the discrepancies with the specification;

10.2.2 photographic evidence if the Goods are contaminated;

10.2.3 visual proof where the packaging of the Goods is dirty, damaged or wrongly marked; and/or

10.2.4 copies of the incorrect documentation supplied with the Goods.

10.3 Subject to Clause 7.2 the Company shall consider the defect (as the case may be) and will at its option either:

10.3.1 arrange for the replacement of the Goods (in part or all as appropriate); or

10.3.2 provide the correct documentation; or



10.3.3 refund the price of the goods, or issue a credit note, at the pro rata Sales Contract rate.

10.4 Where there is dispute as to whether the Goods are defective the issue will be referred to an independent laboratory whose decision will be final and whose costs shall be born by the party whose opinion as to defect is found to be in error.

## 11 LIMITATION OF LIABILITY

11.1 Subject to condition 4, condition 5 *and* condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:

11.1.1 any breach of these conditions; and

11.1.2 any use made or resale by the Purchaser of any of the Goods, or of any product incorporating any of the Goods; and

11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 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 Sales Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

11.3.1 for death or personal injury caused by the Company's negligence; or

11.3.2 under section 2(3), Consumer Protection Act 1987; or

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

11.3.4 for fraud or fraudulent misrepresentation.

11.4 Subject to condition 9.1 and condition 9.2:

11.4.1 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 or contemplated performance of the Sales Contract shall be limited to the Sales Contract price; and



11.4.2 the Company shall not be liable to the Purchaser for any pure economic loss, loss of production, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 12 DUTY OF CARE

12.1 The Purchaser has a responsibility to ensure all Goods supplied are stored and thereafter used responsibly and in accordance with all the appropriate legislative requirements and recommendations (which shall include but not be limited to the Purchaser maintaining the correct and appropriate licences and authorisations to import, purchase stock, distribute, process, promote and supply the Goods). The Purchaser shall take all appropriate precautions to ensure the safe and suitable installation, handling and use of the Goods. The Purchaser shall be responsible for taking all steps necessary to eliminate or reduce the risk to health and/or safety arising out of, possession and use of the Goods.

12.2 Subject to condition 9.1 the Company gives no warranty as to the suitability or performance of the Goods and the Purchaser shall be deemed to have satisfied itself as to the suitability of the Goods.

## 13 INDEMNITY

The Purchaser shall not use or deal with the Goods so as to infringe, interfere with or weaken any rights of the Company under or in respect of any patents, processes, proprietary information, trademarks, registered designs, logos, artwork or copyright for or in connection with the Goods. The Company shall have no liability for the infringement of the rights of any third party arising from the use of the Goods or the use of the Goods in combination with other goods, trademarks or processes not supplied by the Company.

## 14 EXPORT TERMS

14.1 The latest conditions of Incoterms apply to the Sales Contract.

14.2 In these terms and conditions "Incoterms" means the international rules for interpretation of trade terms of the International Chamber of Commerce as in force at the date of when the Contract is made. Unless otherwise required any term or expression which is defined in

or given a particular meaning by the provision of Incoterms shall have the same meaning as in these terms and conditions or the Sales Contract but if there is any conflict between the provisions of Incoterms and this Contract the latter shall prevail.

- 14.3 The Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties on them.

## 15 TERMINATION

The Company shall have the right, without prejudice to its other rights, to cancel or suspend the performance of the Contract or any part thereof should the Purchaser be in default of any of its obligations under the Contract or should there be any amounts due and unpaid by the Purchaser to the Seller whether in respect of the Purchaser's obligations under the Contract or any other contract.

## 16 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 6 months, the Purchaser shall be entitled to give notice in writing to the Company to terminate the Contract.

## 17 GENERAL

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability,

unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.