



**Standard Terms and  
Conditions of Supply**

## The customer's attention is drawn in particular to the provisions of clause 5, 7 and 10.

These Terms and Conditions of Supply by the Supplier to the Customer apply in default of any other written and signed agreement.

### 1. Interpretation

#### 1.1 Definitions:

**"Business Day";** a day (other than a Saturday, Sunday or public holiday) 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 these Conditions.

**"Contract";** the contract between the Supplier and the Customer for the sale of Goods in accordance with these Conditions.

**"Customer";** the person or firm who purchases the Goods from the Supplier.

**"Force Majeure Event";** has the meaning given in clause 11.

**"Goods";** the goods (or any part of them) set out in the Order.

**"Order";** the Customer's order for the Goods, as set out or otherwise requested in the Customer's purchase, written or requested order format, the Customer's acceptance of the Supplier's quotation/offer, or otherwise as the case may be.

**"Specification";** any specification for the Goods that is agreed by the Customer and the Supplier.

**"Supplier";** Smartway Pharmaceuticals Limited, registered in England and Wales with company number 08481191 or Smartway Pharma Limited, registered in England and Wales with company number 08252650, whichever is confirmed on the Order.

#### 1.2 Interpretation

**1.2.1** A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

**1.2.2** Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**1.2.3** A reference to writing or written includes faxes and emails.

### 2. Basis of contract

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

**2.3** The Order shall be deemed to be accepted when the Supplier at its convenience confirms acceptance of the Order to the Customer verbally and/or in writing, at which point the Contract shall come into existence.

**2.4** The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

**2.5** Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or through any other means in which the Goods are described are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

**2.6** A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 28 Business Days from its date of issue.

### 3. Goods

**3.1** The Goods are described in the Supplier's confirmation, pro-forma and in the sales invoice, as the case may be.

**3.2** The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods and/or Specification. This clause 3.2 shall survive termination of the Contract.

**3.3** The Supplier reserves the right to amend the Specification if required by any applicable statutory, legal, manufacturer or regulatory requirements or guidance.

### 4. Delivery

**4.1** Unless otherwise agreed in writing, the Customer acknowledges that the Orders are sold on an ex-works basis meaning that the Customer must collect the Goods from the Supplier at the address set out in the Order.

**4.2** The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

**4.3** The Supplier shall ensure that:

**4.3.1** each delivery of the Goods is accompanied by a Packing Note that shows the type and quantity of the Goods (including the code number of the Goods, where applicable),

**4.3.2** if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the Packing Note and on the Order. The Customer shall make any such packaging materials available for collection at such times the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

**4.4** Delivery is completed on the completion of unloading of the Goods at the Delivery Location or the Supplier confirming that the Goods are available for collection at the Delivery Location, whichever is the later event.

**4.5** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.6** If the Supplier fails to deliver the Goods to the Delivery Location or otherwise fails to confirm that the Goods are available for collection at the Delivery Location, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**4.7** If the Customer fails to accept delivery of the Goods within 3 Business Days of Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Customers' failure to comply with its obligations under the Contract:

**4.7.1** delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready for collection at the Delivery Location; and

**4.7.2** The Supplier shall store the Goods until delivery takes place, and may, in its absolute discretion, charge the Customer for all related costs and expenses (including insurance and storage).

**4.8** If five Business Days after the day on which Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

**4.9** If Supplier delivers up to and including 20.0% more or less than the quantity of Goods ordered the customer may not and shall not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice. Unless otherwise expressly agreed in writing between the Customer and the Supplier.

**4.10** The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

**4.11** The Goods are not sold on a sale or return basis.

**4.12** The Supplier may from time to time send with the Goods a temperature logging device for the purpose of effective compliance. Where the Supplier does elect to use such a device, the Customer has an obligation to return the temperature logging device and comply with reasonable requests from the Supplier relating to the shipment.

## 5. Recall

**5.1** At any time, and in its absolute discretion, the Supplier may recall Goods that it has sold to the Customer, provided that such a recall is triggered by a Competent Authority and/or by a manufacturer of Goods sold to the Customer by the Supplier or that it is otherwise necessary, in the reasonable opinion of the Supplier.

**5.2** The cost of recalling Goods in accordance with this clause 5 will be those of the Supplier and not the Customer, provided that those costs are limited to the costs incurred in collection of the Goods.

**5.3** The Customer shall be under a duty to provide reasonable co-operation to the Supplier in effecting a recall under this clause 5.

## 6. Quality

**6.1** The Supplier warrants that on delivery the Goods shall:

**6.1.1** conform in all material respects with the Specification;

**6.1.2** be free from material defects in design, material and workmanship;

**6.1.3** be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

**6.1.4** be fit for any purpose held out by the Supplier

**6.2** Subject to clause 1, if:

**6.2.1** the Customer gives notice in writing to Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 1;

**6.2.2** The Supplier is given a reasonable opportunity of examining such Goods; and

**6.2.3** the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

**6.2.4** The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

**6.3** The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 1 in any of the following events:

**6.3.1** the Customer makes any further use of such Goods after giving notice in accordance with clause 2;

**6.3.2** the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

**6.3.3** the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;

**6.3.4** the Customer alters or repairs such Goods without the written consent of the Supplier;

**6.3.5** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

**6.3.6** the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory, legal, manufacturer or regulatory requirements.

**6.4** Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 1.

**6.5** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

**6.6** These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 7. Title and risk

**7.1** The risk in the Goods shall pass to the Customer on completion of delivery.

**7.2** Title to the Goods shall not pass to the Customer until the earlier of:

**7.2.1** The Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and

**7.2.2** the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 4.

**7.3** Until title to the Goods has passed to the Customer, the Customer shall:

**7.3.1** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

**7.3.2** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

**7.3.3** notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and

**7.3.4** give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**7.4** Subject to clause 5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

**7.4.1** it does so as principal and not as the Supplier's agent; and

**7.4.2** title to the Goods shall pass from Supplier to the Customer immediately before the time at which resale by the Customer occurs.

**7.5** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the Supplier may have:

**7.5.1** the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

**7.5.2** The Supplier may at any time:

**(a)** require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

**(b)** if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 8. Price and payment

**8.1** The price of the Goods shall be the price set out in the Order or invoice or as otherwise agreed between the Customer and Supplier.

**8.2** The Supplier may, by giving verbal or written notice to the Customer at any time before delivery, increase/decrease: (a) the price; or (b) quantity of the Goods to reflect any adjustments in the cost/availability of the Goods that is due to:

**8.2.1** any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

**8.2.2** any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

**8.2.3** any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

**8.3** The price of the Goods:

**8.3.1** excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

**8.3.2** excludes the costs and charges of packaging, insurance, administration charges (including, without limitation, Certificate of Origin, Certificate of Conformity and export permits), and transport of the Goods, which shall be invoiced to the Customer.

**8.4** The Customer shall settle in cleared funds all invoices on a pro-forma basis, unless otherwise agreed in writing between the Customer and the Supplier and as recorded on the terms of the invoice from the Supplier to the Customer.

**8.5** Where the Supplier agrees alternative terms to those set out in clause 8.4, the Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

**8.6** The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.



**8.7** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8.0% per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

**8.8** In addition to the remedy set out in clause 8.7, the Customer shall also pay all legal and professional costs on a full indemnity basis that are incurred by the Supplier in recovering amounts that are due under the Contract.

**8.9** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 9. Termination

**9.1** Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

**9.1.1** 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 5 Business Days of the Customer being notified in writing to do so;

**9.1.2** the Customer is subject to regulatory action/intervention by a national competent authority or similar regulatory authority/agency and that the nature of the action/intervention in the opinion of the Supplier means that termination is appropriate in the circumstances; or

**9.1.3** 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), 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;

**9.1.4** the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

**9.1.5** the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**9.2** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 1.1 to clause 9.1.5, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

**9.3** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**9.4** On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and in any event, within 5 days of an invoice being rendered.

**9.5** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

**9.6** 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.

## 10. Limitation of liability

**10.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

**10.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

**10.1.2** fraud or fraudulent misrepresentation;

**10.1.3** breach of the terms implied by section 12 of the Sale of Goods Act 1979;

**10.1.4** defective products under the Consumer Protection Act 1987; or

**10.1.5** any matter in respect of which it would be unlawful for Supplier to exclude or restrict liability.

**10.2** Subject to clause 10.1:

**10.2.1** The Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

**10.2.2** The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 5.0% of the price of the Goods.

## 11. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or

failure result from a events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 months, the party not affected may terminate this Contract by giving 10 Business Days written notice to the affected party.

## 12. General provisions and clauses

**12.1** Assignment and other dealings.

**12.1.1** The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

**12.1.2** The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

**12.1.3** Bribery. Each party acknowledges the existence of the Bribery Act 2010 and shall maintain appropriate policies and procedures in place to safeguard against the risk of bribery and corruption.

### 12.2 Confidentiality

**12.2.1** Each party undertakes that it shall not at any time during this agreement, and for a period of 5 years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by Clause 1.2. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.



**12.2.2** Each party may disclose the other party'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 agreement. 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 2; and

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

**12.2.3** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

**12.2.4** Where a signed Confidentiality Agreement has been entered into by the Supplier and Customer, the confidentiality provisions within that agreement (and not this) will prevail over this clause.

Entire agreement.

## 12.3 Entire Agreement

**12.3.1** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**12.3.2** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

**12.3.3** GDP. Each party acknowledges that the Guidelines on Good Distribution Practice 2013/C 343/01 may apply and where such an Order (by reason of the type of Order or the type of relationship), the parties will take reasonable steps to comply with GDP.

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

**12.5** Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**12.6** Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**12.7** Third party rights. Third party rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

**12.8** Governing law. 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.

**12.9** Jurisdiction. 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 this Contract or its subject matter or formation.



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